



*Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
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Jean M. Lorizio, Esq.
Chairman

**NO. 25E-1354
UNITED LIQUORS, LLC
Petitioner,**

v.

**HEINEKEN USA, INC. d/b/a FIVE POINTS TRADING CO. and
SARAIVA ENTERPRISES, INC.
Respondents.**

**NO. 25E-1356
SARAIVA ENTERPRISES, INC.
Petitioner,**

v.

**HEINEKEN USA, INC. d/b/a FIVE POINTS TRADING CO. and
ENTERPRISES, INC.
Respondents.
HEARD: 8/10/2017**

**MEMORANDUM AND ORDER ON
UNITED LIQUORS, LLC AND SARAIVA ENTERPRISES, INC.'S
JOINT MOTION TO CONSOLIDATE**

On June 30, 2017, United Liquors, LLC ("United") and Saraiva Enterprises, Inc. ("Saraiva") filed a Joint Motion to Consolidate. Heineken USA, Inc., d/b/a Five Point Trading Co. ("Heineken") filed Opposition to the Motion to Consolidate and a Cross Motion to Stay the United matter. The Alcoholic Beverages Control Commission ("Commission") held a hearing on August 10, 2017.

PROCEDURAL BACKGROUND

This case arises under M.G.L. c. 138, § 25E. Petitioner, Saraiva is a Massachusetts Wholesaler aggrieved at the refusal of Heineken, through their affiliate Five Points Trading Company, to ship Sagres beer ("Brand item"). Petitioner, United, is a Massachusetts Wholesaler aggrieved at the refusal of Heineken, through their affiliate Five Points Trading Company, to ship the Brand Item

to Saraiva as United purchases the Brand Item from Saraiva. On April 3, 2017, pursuant to the mandate in M.G.L. c. 138, § 25E, the Commission issued an order to the respondent to make sales of the Brand Item to Saraiva pending the Commission's determination of the petition on the merits.

On June 30, 2017, United and Saraiva filed a Joint Motion to Consolidate. On July 10, 2017, Heineken filed its Opposition to the Joint Motion to Consolidate and a Cross Motion to Stay the United Matter.

On August 10, 2017, the Commission held a hearing regarding the above-mentioned motions.

DISCUSSION

The Commission operates under the Informal "Fair Hearing" Rules promulgated under 801 C.M.R. 1.02. Under 801 C.M.R. 1.02(9)(a), "a group hearing may be held if it appears from the request for a hearing or other written information submitted by the Parties that the matters involve questions of fact which are identical, or the sole issue involves federal or state law or policy, or changes in federal or state law."

Similarly, Mass. R. Civ. P. Rule 42(a) regarding consolidation states "when actions involving a common question of law or fact are pending before the court, in the same county or different counties, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."

The Commission's decision as to consolidation is discretionary, and this is the first decision of its kind issued by the Commission.

United and Saraiva contend that they have a common interest in that they are both Massachusetts Wholesalers that have sold the Brand Item. United and Saraiva acknowledge there is a difference in their interests in that United is what they call a "sub distributor," as they purchase the Brand Item from Saraiva. Nevertheless, the parties argue that consolidating their cases would be more efficient given what they perceive to be a common set of facts at issue. In addition, Saraiva argues that as a smaller business, efficiency and cost savings are important to them.

Heineken argues that there are differences between the legal and factual issues in the United matter and the Saraiva matter, and that the critical case to be determined is Saraiva's given that if the Commission finds no 25E obligations are to be imputed to Five Points, the legal analysis would end. There would be no need to go forward with United's case.

Heineken opposes consolidation in an effort to protect itself from having to divulge confidential and/or highly confidential information to both Massachusetts wholesalers when it may only be necessary to provide that information to one. In addition, consolidation, as Heineken points out, would create the "illogical result" of Saraiva becoming both a Petitioner and a Respondent in the same consolidated matter. Finally, Heineken argues that United will not be prejudiced by their matter being stayed as the Commission's Ship Order remains in effect and the Brand Item will continue to be sold to Saraiva, which assumedly will continue to sell it to United.

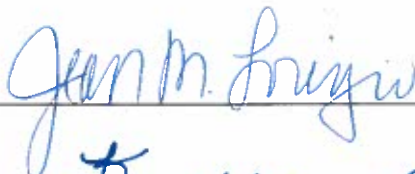
The Commission is persuaded that the facts and issues in the two matters are sufficiently distinct as to make proceeding individually the best course. In addition, given that one matter is determinative of the other's going forward, the Commission is persuaded that the United matter should be stayed.

CONCLUSION

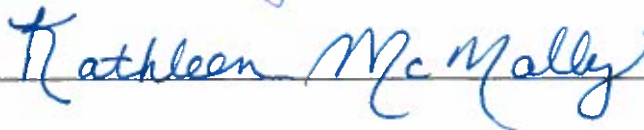
For the foregoing reasons, United's and Saraiva's Joint Motion for Consolidation is **DENIED**; Heineken USA, Incorporated's Cross Motion to Stay the United Matter is **ALLOWED**.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Kathleen McNally, Commissioner



Dated: April 4, 2018

You have the right to appeal this decision to the Superior Courts under the provisions of Chapter 30A of the Massachusetts General Laws within thirty (30) days of receipt of this decision.

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