



*Commonwealth of Massachusetts*  
*Alcoholic Beverages Control Commission*  
*95 Fourth Street, Suite 3*  
*Chelsea, Massachusetts 02150-2358*

**Jean M. Lorizio, Esq.**  
*Chairman*

**No. 25E-1379**

**BOSTON WINE CO. LTD.,**  
**Petitioner**

**v.**

**MERRYVALE VINEYARDS LLC**  
**AND**  
**PACIFIC HIGHWAY WINES & SPIRITS, LLC,**  
**Respondents.**

**MEMORANDUM AND ORDER ON PETITIONER'S MOTION TO COMPEL  
DISCOVERY FROM PACIFIC HIGHWAY AND MOTION TO CHALLENGE  
DESIGNATION OF INFORMATION AS HIGHLY CONFIDENTIAL**

The Commission hereby issues this Memorandum and Order in response to Boston Wine Co. Ltd.'s Motion to Compel Discovery from Pacific Highway, and Motion to Challenge Designation of Information as Highly Confidential ("Motions").

The Commission has reviewed BWC's Motions, Pacific Highway Wines & Spirits' Opposition, BWC's Replies, and all relevant papers. The Commission allows the Motions in part and denies in part as set forth below.

**PROCEDURAL BACKGROUND**

This case arises under M.G.L. c. 138, §25E. Boston Wine Co. Ltd. ("Petitioner" or "BWC") is a Massachusetts wholesaler aggrieved by the refusal of Pacific Highway Wines & Spirits, LLC ("Pacific"), a Massachusetts certificate of compliance holder, to ship Merryvale and Starmont brand wines ("Brand Items") to BWC. On June 6, 2019, the Commission issued an order to Pacific to make sales of the Brand Items to BWC pending the Commission's determination of the petition on its merits. The Commission also authorized discovery to take place, with the provision that "[d]iscovery by each party may include not more than forty-five (45) written interrogatories, not more than thirty (30) requests for the production of documents and not more than two (2) depositions."

On December 19, 2019, the parties filed a Protective Order for Confidential Information requesting the Commission approve it and enter it as an order. Thereafter, on December 30, 2020, the

Commission issued an “Order on “Confidentiality Stipulation and Protective Order”” for Confidential Information.

On January 10, 2020, BWC filed a Motion to Challenge Designation of Information as Highly Confidential. Pacific filed its Opposition on February 26, 2020, and BWC filed a Reply on March 3, 2020.

On January 23, 2020, BWC filed a Motion to Compel Discovery from Pacific Highway. Pacific filed its Opposition on February 26, 2020, and BWC filed a Reply on March 3, 2020.

The Commission held a hearing on the Motions on August 27, 2020.

### MOTION TO COMPEL

BWC’s Motion to Compel raises six alleged deficiencies as to Pacific’s discovery responses:

- a) Failure to include attachments to emails that were produced;
- b) Failure to include documents other than emails, including documents referenced in the emails, such as presentation materials and proposals;
- c) Failure to specify responsive documents;
- d) Failure to provide complete interrogatory answers;
- e) Failure to provide information about the relationship between Merryvale and the previous supplier V2/Delicato; and
- f) Failure to provide information about how Pacific Highway is compensated.

Pacific argues that it has fully responded to BWC’s first set of discovery requests, including comprehensive answers to interrogatories and 230 pages of responsive documents.

(a)&(b) Failure to include attachments to emails that were produced and Failure to include documents other than emails, including documents referenced in the emails, such as presentation materials and proposals

Pacific has produced hundreds of pages of emails in response to Request Nos. 4, 5, and 6 (PHY038-229), many of which indicate the existence of an attachment or attachments, but said attachments have not been produced. In addition, many emails reference documents which have not been produced.

Pacific shall produce any attachments to emails it produced in response to discovery requests, as well as any documents referenced within the emails.

(c)&(d) Failure to specify responsive documents and Failure to provide complete interrogatory answers

Pacific has produced hundreds of pages of documents, with each page Bates number stamped. Pacific’s answers to both the request for production of documents and interrogatories specifically reference the corresponding Bates stamped pages.

For the reasons set forth in Pacific Highway Wine & Spirits Opposition to Boston Wine Co. LTD.’s Motion to Compel Discovery, the Commission denies the motion to compel as to (c) and (d).

(e) Failure to provide information about the relationship between Merryvale and the previous supplier V2/Delicato

BWC argues that because Merryvale and V2 Wine Group are involved in litigation to which Pacific is also a party, Pacific must have additional documents in its possession. Pacific indicated through its Answers to Interrogatories and its Responses to Request for Production of Documents that all responsive documents in its possession have been produced.

For the reasons set forth in Pacific Highway Wine & Spirits Opposition to Boston Wine Co. LTD.'s Motion to Compel Discovery, the Commission denies the motion to compel as to (e); however to the extent any documents already produced are emails with attachments or emails which reference other documents, those attachments and/or documents shall be produced in accordance with the Commission's ruling regarding (a) and (b) above.

(f) Failure to provide information about how Pacific Highway is compensated

Prior to the Commission hearing, an unredacted copy of the Distribution Agreement was provided to BWC. The Distribution Agreement provides information related to Pacific's compensation. As a result, this issue is moot, and the Commission need not make a determination as to (f).

MOTION TO CHALLENGE THE DESIGNATION OF INFORMATION AS HIGHLY CONFIDENTIAL

BWC's Motion to Challenge the Designation of Information as Highly Confidential ("Highly Confidential Motion") alleges that all documents produced by Pacific have been designated as "highly confidential" and do not qualify for such designation.

Pacific argues the entire 230-page document production, except for seven (7) pages it voluntarily re-designates, is properly designated as highly confidential as the production "almost entirely consists of documents relating to the negotiation and implementation of Pacific's distribution agreement for Merryvale Brand Items." Pacific further argues, that "[t]he release of these documents would put Pacific at a serious disadvantage with respect to negotiating new distribution agreements for new brands, a disastrous outcome for Pacific." (Pacific's Opposition to BWC's Motion to Challenge Designation of Information as Highly Confidential)

BWC and Pacific filed a "Protective Order for Confidential Information" ("the Agreement"), which the Commission approved on or about December 30, 2020. The Agreement provides that "'Highly Confidential Information' shall mean Confidential Information that involves current and critically sensitive financial, trade secret, or non-public product development information that may be of commercial benefit to the non-producing party or highly damaging to the producing party if disseminated." (Agreement at ¶2) Once designated, "[o]nly trial counsel of record for a non-producing party, and all partners, associates, paralegals and clerical personnel of the firm who are performing legal services in connection with this action may have access... Upon request, a party producing highly confidential information to counsel, shall also, to the extent feasible, provide a version of the same information redacted so that it may be treated as Confidential, and shared with persons who have access to confidential information under this Order." (Agreement at ¶9) The Agreement also states "[t]he party designating information as confidential or highly confidential shall have the burden of proving the propriety of such designation." (*Id.*)

“The language in contracts is to be given its plain meaning in the [absence of] ambiguity or sufficient evidence demonstrating the parties’ intentions to the contrary. See Freeland, 357 Mass. at 525-26. Massachusetts Mun. Wholesale Elec. Co. v. City of Springfield, 49 Mass. App. Ct. 108, 111 (2000) (‘In interpreting a contract, the court must construe all words that are plain and free from ambiguity according to their usual and ordinary meaning.’).” Templeton Bd. Of Sewer Commissioners v. American Tissue Mills of Mass., Inc., 2005 WL 1156109 (Mass. Super. April 19, 2005), at \*6.

As stated above, BWC’s Motion to Challenge the Highly Confidential Designation and its Reply point specifically to the press release documents. Pacific, in its Opposition and at the Commission hearing, agreed to remove the highly confidential designation from the press release and related documents. Therefore:

- As agreed to by Pacific Highway, documents bearing the Bates numbers: PHY 061-062, PHY 073-074, PHY 131-132 shall not be designated as highly confidential.

BWC also pointed to the organizational chart at PHY 001 and argued it should be not designated as highly confidential. The Commission agrees with BWC and is not persuaded that the information on the chart equates to “current and critically sensitive financial” information or that disclosure of the information “might be of commercial benefit” to BWC or “could be highly damaging” Pacific and therefore the highly confidential designation shall be removed and the document at PHY 001 re-designated as confidential

As to the remaining documents, the Commission makes the following findings:

- Pacific provided an unredacted copy of the Distribution Agreement to BWC, Bates numbered: PHY 002-037 which has been designated as Highly Confidential. The Commission is persuaded that the Distribution Agreement “might be of commercial benefit” to BWC or “could be highly damaging” to Pacific and therefore the highly confidential designation shall remain in place.
- BWC failed to specify which documents in the hundreds of pages of internal emails and external emails with Merryvale, the highly confidential designation should not apply. The Commission agrees with Pacific that the remaining emails consists of documents relating to the negotiation, projection and implementation of the distribution agreement with Merryvale. The Commission is persuaded that the information marked as highly confidential on the remaining pages equates to “current and critically sensitive financial” information or that disclosure of the information “might be of commercial benefit” to BWC or “could be highly damaging” to Pacific and therefore the highly confidential designation shall remain in place.

### CONCLUSION

For the foregoing reasons, BOSTON WINE CO. LTD's Motion to Compel and Motion to Challenge Designation as Highly Confidential is ALLOWED IN PART AND DENIED IN PART.

### AMENDED SCHEDULING ORDER

- a) Discovery responses as set forth above shall be due on or before January 24, 2025;
- b) Any and all Motions for Summary Decision shall be due by February 21, 2025;
- c) Any and all oppositions or responses due by March 7, 2025.

### **ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Deborah Baglio, Commissioner

Jean M. Lorizio, Chairman

Dated: December 17, 2024

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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cc: William Coyne, Esq.  
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Administration, File