



The Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
Boston, Massachusetts 02114

Steven Grossman
Treasurer and Receiver General

Kim J. Gainsboro, Esq.
Chairman

No. 25E-1294
M.S. WALKER, INC.
V.
CONSTELLATION BRANDS, INC.
HEARD: 06/04/2014

**MEMORANDUM AND ORDER
ON CONSTELLATION BRANDS, INC. AND
M.S. WALKER, INC.**

This case arises under M.G.L. c. 138, §25E. Petitioner, M.S. Walker, Inc. (Walker) is a Massachusetts wholesaler aggrieved at the refusal of Constellation Brands Inc. ("Constellation"), a Massachusetts manufacturer of alcoholic beverages, to ship Mark West Wines (the "Brand Items") to Walker. On or about September 13, 2012, pursuant to the mandate in M.G.L. c. 138, §25E, the Commission issued an order to Constellation to make sales of, and ship the Mark West Wines brand items to Walker pending the Commission's determination of the petition on the merits. The Commission also authorized discovery to take place.

On February 7, 2014, Constellation filed a Motion for Summary Decision. In response, on February 20, 2014, Walker filed a Motion to Enlarge Time to Respond to Constellation's Motion for Summary Decision. On February 27, 2014, Walker filed a further Motion to Strike and to Compel Further Discovery Responses. On February 28, 2014 Constellation filed a Partial Opposition to Walker's Motion to Enlarge Time.

There has been no formal written response to Walker's Request for Production of Documents, although Constellation did provide some documents as an attachment to the Motion for Summary Decision.

As this case concerns the imputation of sales under c. 138 §25E, it is necessary to examine documents bearing on factors important in making a determination as to whether a continuing obligation to sell should be imputed to Constellation. Accordingly documents bearing on Constellation's relationship with Purple Wines before the transaction and after the transaction are very important to this matter and may be relevant to the outcome of this case.

CONCLUSION

The Commission orders Constellation to produce the following:

- a) Any and all documents, emails between Constellation and Purple Wines, including any agents, attorneys or employees thereof (including but not limited to any person listed by Constellation in its Answer to Interrogatory 8), in any way pertaining to this transaction or the relationship

- b) Any and all documents and emails between Constellation and Sonoma Wines, including any agents, attorneys or employees thereof (including but not limited to any person listed by Constellation in its Answer to Interrogatory 8), in any way pertaining to this transaction or the relationship between the entities, for a period of six months before the transaction closing date (June 8, 2012) forward one year following the transaction closing date;
- c) Any and all documents and emails between Constellation and David Benham, including any agents, attorneys or employees thereof (including but not limited to any person listed by Constellation in its Answer to Interrogatory 8), in any way pertaining to this transaction or the relationship between the entities, or a period of six months before the transaction closing date (June 8, 2012) forward one year following the transaction closing date ;
- d) Any and all documents and emails between Constellation and Horizon Beverages, including any agents, attorneys or employees thereof (including but not limited to any person listed by Constellation in its Answer to Interrogatory 8) which in any way bear on the Contract between Constellation and Horizon Beverages and its relation to Mark West Wines in any way pertaining to this transaction or the relationship between the entities, for a period of six months before the transaction closing date (June 8, 2012) forward one year following the transaction closing date;
- e) Any and all documents pertaining to Constellation's organizational structure and brand managers;
- f) Documents in any way pertaining to the implementation of the APA;
- g) Documents related to the relationship between Constellation Brands, Inc. and Constellation Brands U.S. Operations, Inc. (Requests 7, 13 and 14)
- h) The Executed Bottling Agreement.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman

Susan Corcoran, Commissioner

Dated: July 30, 2014

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 days of receipt of this decision.

cc: William F. Coyne, Jr., Esq. via email
Mary O'Neal, Esq. via email
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