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Alcoholic Beverages Control Commission
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Chairman

NO. 25E-1324

MARTIGNETTI GROCERY CO., INC.
d/b/a CAROLINA WINE COMPANY,
PETITIONER,

v.

CONSTELLATION BRANDS, INC. and
CONSTELLATION BRANDS U.S. OPERATIONS, INC.
RESPONDENTS.
HEARD: 05/08/2017

MEMORANDUM AND ORDER ON RESPONDENTS' MOTION FOR SUMMARY DECISION AND PETITIONER'S CROSS MOTION FOR SUMMARY DECISION

Martignetti Grocery Co. d/b/a Carolina Wine Company ("Carolina") is a Massachusetts wholesaler aggrieved at the refusal of Constellation Brands, Inc. ("CBI"), a Massachusetts certificate of compliance holder, and Constellation Brands U.S. Operations, Inc. ("CBUSO") (collectively, "Constellation"), to ship Meiomi brand wines ("Brand Items") to Carolina. On September 8, 2015, pursuant to the mandate in M.G.L. c. 138, § 25E, the Alcoholic Beverages Control Commission (the "Commission" or "ABCC") issued an order to Constellation to makes sales of the Brand Items to Carolina pending the Commission's determination of the petition on the merits.

Constellation filed the instant Motion for Summary Decision (the "Motion") regarding the above-referenced Petition arguing that under § 25E and applicable case law, Constellation should not be required to sell the Brand Items to Carolina, specifically because CBI is not an agent of the predecessor supplier Copper Cane, LLC ("Copper Cane") and that there is no continuing affiliation between them; that there was no assignment of distributor arrangements or agreements; and that no facts support an attempted circumvention of § 25E. Carolina filed an Opposition to the Motion and a Cross-Motion for Summary Decision asserting that there is a continuing affiliation and an agency relationship between Copper Cane and Constellation; Constellation structured its acquisition of the Brand Items so as to circumvent § 25E; and there are genuine issues of disputed material fact. After a hearing and consideration of the exhibits and arguments provided by the parties, the Commission makes the following findings of fact and rulings of law.

FINDINGS OF FACT

1. Carolina is a Massachusetts wholesaler licensed under M.G.L. c. 138, § 18.

2. CBI is in the business of manufacturing, producing, and distributing a number of beer, wine, and spirits brands. (Hankinson Aff. at 1)

3. CBI holds Massachusetts Certificates of Compliance ("CoCs"). (Hankinson Aff. at 3)

4. CBUSO is a wholly-owned subsidiary of CBI. (Hankinson Aff. at 4)

5. Copper Cane is a California limited liability company, which as of August 3, 2015, was owned by the Wagner Family Trust and the Joseph J. Wagner 2011 Irrevocable Trust. (Ex. 2 to Motion at 10). Joseph J. Wagner ("Wagner"), a fifth-generation Napa Valley winemaker, was the trustee of the Wagner Family Trust and the Joseph J. Wagner 2011 Irrevocable Trust and a primary beneficiary of the Wagner Family Trust. (Id. at 10-11; Wagner Aff. at 1; Ex. 1. A. to Motion at Constellation 000264)

6. As of 2014, Copper Cane owned the Brand Items. (Wagner Aff. at 1-2)

7. In 2014 and 2015, CBUSO sought to add the Brand Items to its portfolio of products. (Ex. 2 to Motion at 5, 14)

8. CBUSO and Copper Cane entered into an Asset Purchase Agreement (the "APA") on June 30, 2015 with a closing date of August 3, 2015. CBUSO and Copper Cane amended the APA on August 3, 2015. (Ex. 1. A. to Motion at Constellation 00006, 00099, et seq.)

9. In summary, under the APA, "CBUSO purchased from Seller, among other things: all rights, title, interest, property, and assets to all formulae, recipes, blending procedures and instructions, manufacturing know-how, and other know-how used in the production, sale, and marketing of the Brand ("Business"); patents, copyrights, brand names, trademarks, service marks, domain names, trade dress, label designs, and the goodwill associated therewith; bottle designs and other designs used in the Business; advertising campaigns and layouts, advertising and promotional materials, website source code and object code, and Universal Product Codes for the Business; trade secrets, inventions, models, and intellectual property rights used in the operation of the Business; all goodwill associated with the foregoing; various claims and damages associated with the foregoing; all merchantable, usable, and salable blended and unblended bulk wine, finished goods labeled with the Brand being warehoused on Copper Cane's behalf; unlabeled case goods, raw materials, current vintage packaging supplies, labels, corks, bottles, retail sales merchandise and supplies, and point of sale materials; all authorizations to utilize the assets being acquired and to enjoy the benefit of the Business; certain, specifically identified and described contracts . . .; certain Business authorizations; and copies of financial and accounting records and database information . . ., for approximately $315,000,000.00. . ." (footnote omitted). (Hankinson Aff. at 2; see Ex. 1. A. to Motion at Constellation 00105-00106, 00110-00113).

10. CBUSO also purchased from Copper Cane certain contracts Copper Cane had with grape growers for grapes and wine (the "Assumed Contracts"). CBUSO only assumed those

liabilities related to the Assumed Contracts that arose on or after the APA closing. (Hankinson Aff. at 2; see Ex. 1. A. to Motion at Constellation 00006-00012, 00017-24, 00026, 00106, 00111-12, 00122)

11. Given that the 2014 vintage of the Brand Items' pinot noir and chardonnay wines could not be produced and bottled prior to the APA closing, CBUSO, Copper Cane, and other parties entered into certain limited agreements, as follows (Millard Aff. at 1-2):

    a. Winemaking Agreement: Copper Cane and CBUSO entered into the Winemaking Agreement on August 3, 2015 so that Copper Cane would produce, blend, and finish the bulk chardonnay and bulk pinot noir wine from the 2014 harvest. (Ex. 1. A. to Motion at Constellation 00354-55) The Winemaking Agreement was signed by Wagner as Manager of Copper Cane. See id. The Winemaking Agreement terminated in December 2015, although Copper Cane completed its obligations under the Winemaking Agreement in May 2016. (Millard Aff. at 2; Wagner Aff. at 2)

    b. Letter Agreement regarding Alternating Proprietor Agreement: By way of background, on June 20, 2013, and by amendment on July 24, 2014, Copper Cane, by its predecessor Meiomi, LLC, and The Ranch Winery ("The Ranch") entered into an Alternating Proprietor Agreement which permitted Copper Cane to undertake winemaking at The Ranch's location and for The Ranch to perform certain services for Copper Cane, including bulk storage and bottling services for agreed upon fees. (Millard Aff. at 2-3; Ex. 1. A. to Motion at Constellation 00318-347) On August 3, 2015, CBUSO, The Ranch, and Copper Cane entered into a letter agreement (the "Letter Agreement"), which provided for The Ranch to store and bottle the 2014 vintage of wine for CBUSO at the prices established in the Alternating Proprietor Agreement. (Millard Aff. at 3; Ex. 1. A. to Motion at Constellation 00311-316) Pursuant to the Letter Agreement, The Ranch bottled the 2014 vintage pinot noir between August 2015 through approximately May 2016. (Millard Aff. at 3)

    c. LangeTwins Bottling Agreement: CBUSO and LangeTwins Company ("LangeTwins") entered into an agreement on August 3, 2015 (the "LangeTwins Bottling Agreement") whereby LangeTwins agreed to receive, store, and bottle the 2014 vintage of the Meoimi chardonnay bulk wine, which it did in August 2015 through February 5, 2016. (Millard Aff. at 3; Ex. 1. A. to Motion at Constellation 00056-69) Prior to the APA, LangeTwins performed the same services for Copper Cane for the 2014 vintage of the Meoimi chardonnay wine. (Ex. 1. A. to Motion at Constellation 00056)

12. CBUSO, Copper Cane, and Wagner also entered into a consulting agreement dated August 3, 2015 (the "Consulting Agreement"), which was intended to provide for a transfer of knowledge and smooth transition of the Brand Items from Copper Cane to CBUSO. The Consulting Agreement, which relates to consultation regarding the production and marketing of the Brand Items, is scheduled to expire on August 3, 2017 at the latest. (Hankinson Aff. at 4; see Ex. 1. A. to Motion at Constellation 00042-53)

13. The Consulting Agreement provides that Wagner is an independent contractor, not an employee, of CBUSO and that nothing in the agreement "is intended to create any association, partnership, joint venture, or employment relationship between the parties." The Consulting Agreement further states that neither Copper Cane nor any of its employees, "shall have the authority to act for or on behalf of the Company or to bind the Company to any agreement, or in any other manner, without the express written consent of the Company." (Ex. 1. A. to Motion at Constellation 00047)

14. CBUSO and Wagner individually also entered into a Publicity License Agreement on August 3, 2015, allowing CBUSO to use Wagner's name and image in the marketing/advertising of the 2014, 2015, and 2016 vintages of the Brand Items. (Ex. A to Hankinson Aff. at Constellation 00266) The Publicity License Agreement states that it shall not result in a breach of any of agreements in which Wagner is a party. Id. at 00267.

15. "As of August 3, 2015, neither Copper Cane nor Wagner has any ownership of the Brand Items or any control or role in the distribution of the Brand Items, including the selection of wholesalers to whom the Brand Items are sold." (Ex. 2 to Motion at 5)

16. On or about August 21, 2015, CBI and CBUSO informed Carolina by way of letter that CBUSO had acquired the Brand Items and had appointed its parent company CBI as the national and international distributor of the Brand Items and therefore would be discontinuing sales of the Brand Items to Carolina effective December 31, 2015. (Exhibit C to Hankinson Aff.)

17. CBI has had a written distribution agreement with Horizon Beverage Company ("Horizon"), a Massachusetts wholesaler, since May 2012. After the APA closing, on September 17, 2015, the Brand Items were added to the products covered under the CBI/Horizon distribution agreement. (Hankinson Aff. at 7; Ex. 1. D. to Motion)

18. On or about August 28, 2015, Carolina filed its § 25E Petition. (Commission File)

19. On September 8, 2015, pursuant to the mandate in M.G.L. c. 138, § 25E, the Commission issued an order to Constellation to make sales of the Brand Items to Carolina pending the Commission's determination of the petition on the merits. (Commission File)

20. There is no evidence that CBUSO hired any employees of Copper Cane, and there is no evidence that CBUSO and Copper Cane have common employees, managers, officers, or directors.

DISCUSSION

Constellation argues that summary decision should be granted because CBI never made regular sales of the Brand Items to Carolina within the six months preceding its refusal to sell and that there is no ground for imputing the § 25E obligations to CBI. In so arguing, Constellation asserts that CBI is not an agent of Copper Cane and that there is no continuing affiliation between them; that there was no assignment of distributor arrangements or agreements; and that no facts support an attempted circumvention of § 25E. Carolina has responded by arguing that the Commission must deny Constellation's Motion for Summary Decision because: there is a continuing affiliation between Constellation and Copper Cane; there is an agency relationship between Copper Cane and

Constellation; Constellation structured its acquisition of the Brand Items so as to circumvent § 25E; and there are genuine issues of disputed material fact. Despite its last argument, Carolina also cross-moves for summary decision.

Summary decision is appropriate only where there are no genuine issues of material fact in dispute and where the moving party is entitled to judgment as a matter of law. Carey v. New England Organ Bank, 446 Mass. 270, 278 (2006); Branded-New England Co. v. Beringer Wine Estates Co., 25E-1145 (ABCC Decision May 24, 2000). Material facts are those that are substantive in nature and affect the result of the case. Carey, 446 Mass. at 278. Where the parties' rights and obligations are set forth in contracts, the interpretation of those contracts is a question of law, not an issue of fact. See Eigerman v. Putnam Investments, Inc., 450 Mass. 281, 287 (2007) ("interpretation of a contract is a question of law for the court. Whether a contract is ambiguous is also a question of law."); United Liquors, LLC v. Heaven Hill Distilleries, Inc., 25E-1284 (ABCC Decision January 6, 2015; heard April 16, 2014).

Section 25E provides in relevant part, that "[i]t shall be an unfair trade practice and therefor[e] unlawful for any manufacturer, winegrower, farmer-brewer, importer or wholesaler of any alcoholic beverages, to refuse to sell, except for good cause shown, any item having a brand name to any licensed wholesaler to whom such manufacturer, winegrower, farmer-brewer, importer or wholesaler has made regular sales of such brand item during a period of six months preceding any refusal to sell." G. L. c. 138, § 25E. The purpose of § 25E is to "redress economic imbalances in the relationships between wholesalers and their suppliers." Pastene Wine & Spirits Co. v. Alcoholic Beverages Control Comm'n, 401 Mass. 612, 618-619 (1988); see also Seagram Distillers Co. v. Alcoholic Beverages Control Comm'n, 401 Mass. 713, 716-717 (1988) (characterizing § 25E as "a vehicle by which the [C]ommission may reconcile the competing equities between suppliers and wholesalers of liquor in the Commonwealth"). Specifically, the legislature adopted § 25E to "counteract a tendency toward vertical integration in the liquor distribution industry." Pastene, 401 Mass. at 618-619. Nevertheless, § 25E does not achieve this goal by imposing inequities upon suppliers. Id.

Obligations under § 25E are particular to individual suppliers. Brown-Forman Corp. v. Alcoholic Beverages Control Comm'n, 65 Mass. App. Ct. 498, 499 (2006). Thus, § 25E does not generally require suppliers to continue to sell to wholesalers with whom an "unaffiliated predecessor" did business. Id.; see also Heublein, Inc. v. Capital Distributing Co., 434 Mass. 698, 701-702 (2001) (holding supplier who acquired predecessor's assets in arm's-length transaction not subject to predecessor's § 25E obligations); Pastene, 401 Mass. at 619 (holding alcohol manufacturer's acquisition and liquidation of independent importer not basis for imputing importer's § 25E obligations to manufacturer). This limitation in the scope of § 25E accommodates alcohol suppliers' legitimate need to carefully select the wholesalers with whom they deal. Heublein, 434 Mass. at 704 (noting existence of "legitimate business reasons for a new supplier . . . to want to evaluate its prospective wholesalers for the six-month trial period provided by . . . § 25E"); Seagram, 401 Mass. at 717, citing Union Liquors Co. v. Alcoholic Beverages Control Comm'n, 11 Mass. App. Ct. 936, 938 (1981) ("Persons in a highly sensitive, closely scrutinized business (such as the liquor business) have need to know about and appraise the persons behind corporations with whom they are doing business").

In some circumstances, however, the law imputes a supplier's § 25E obligations to its successor - even though the successor itself has not sold to the wholesaler - to prevent evasion of the

protections of § 25E. Gilman & Sons., Inc. v. Alcoholic Beverages Control Comm'n, 61 Mass. App. Ct. 916, 917 (2004), citing Heublein, 434 Mass. at 704. The courts and Commission have recognized imputation of a predecessor supplier to a successor predecessor in limited circumstances:

(1) "where the new supplier is an agent of the previous supplier," Brown-Forman Corp. v. Alcoholic Beverages Control Comm'n, No. 03-1684, 2004 WL 1385495, at *4 (Mass. Super. June 14, 2004); or where there is a continuing affiliation between the prior supplier and the new supplier, Heublein, 434 Mass. at 704;

(2) "where the previous supplier has assigned distribution rights to the new supplier," Brown-Forman Corp., 2004 WL 1385495, at *4; accord Heublein, Inc. v. Alcoholic Beverages Control Comm'n, 30 Mass. App. Ct. 611, 614-616 (1991); and

(3) where a transfer has occurred for "the specific purpose of circumventing § 25E," accord Heublein, 434 Mass. at 706; Pastene, 401 Mass. at 616.

There is no dispute that Constellation did not sell to Carolina the Brand Items in the period of six months preceding August 3, 2015. Therefore, the question is whether the particular facts in this case give rise to the imputation of Copper Cane's § 25E obligations to Constellation.

Whether There Is A Continuing Affiliation Between Copper Cane And Constellation Or Whether Constellation Is An Agent Of Copper Cane

Carolina asserts that Constellation and Copper Cane had a continuing affiliation such that Copper Cane's obligation was imputed to Constellation because of the transitional agreements that CBUSO entered into with Copper Cane and/or Wagner, in particular, the Winemaking Agreement, Letter Agreement regarding Alternating Proprietor Agreement, Publicity License Agreement, and Consulting Agreement. Carolina also asserts that the Consulting Agreement and Publicity Licensing Agreement evidence an agency relationship between CBUSO and Copper Cane. Constellation argues that such agreements do not evidence a continuing affiliation or that CBI is an agent of Copper Cane.

A successor supplier takes on its predecessor's § 25E obligations where there is a "continuing affiliation or agency relationship" between the suppliers. Brown-Forman, 65 Mass. App Ct. at 500 (quoting Heublein, 434 Mass. at 706). "Although there is no settled definition of 'continuing affiliation' . . . the prevailing thinking . . . is that the standard is met when either predecessor and successor have an agency relationship or when successor acquires predecessor's rights by contractual assignment or through joint venture." Beam Spirits & Wine, LLC, 32 Mass. L. Rptr. 258 at *6 (Super. Ct. July 16, 2014). The Appeals Court has evaluated the existence of a continuing affiliation or agency relationship for the purposes of § 25E by reference to general principles of agency, focusing on the suppliers' relationship with respect to the successor's sales to wholesalers. See Brown-Forman, 65 Mass. App. Ct. at 507 (stating "relevant inquiry" in imputation of § 25E obligations is whether successor supplier was predecessor's agent "for the discrete purpose of making regular sales . . . to downstream customers"). "Tellingly, the courts have adopted a vocabulary in applying Section 25E which suggests that mere contractual 'connections' or business 'dealings' will fall short of the kind of 'affiliation' required for imputation purposes." Beam Spirits & Wine, LLC, 32 Mass. L. Rptr. 258 at *6 n. 7.

"An agency relationship is created when there is mutual consent, express or implied, that the agent is to act on behalf of and for the benefit of the principal, and subject to the principal's control." Beam Spirts & Wine, LLC, 32 Mass. L. Rptr. *7, quoting Theos & Sons, Inc. v. Mack Trucks, Inc., 431 Mass. 736, 742 (2000). As the Superior Court has explained in the § 25E context,

> The Restatement (Second) of Agency (1958) identifies the existence of a fiduciary duty from agent to principal regarding matters within the scope of the agency, the power of the agent to alter legal relationships between the principal and third parties, and the right of the principal to control the agent's conduct with respect to matters within the purview of the agency as essential characteristics of an agency relationship.

Beam Spirits & Wine, LLC, 32 Mass. L. Rptr. 258 at *7. There is no continuing affiliation between CBUSO and Copper Cane such that Copper Cane's § 25E obligations should be imputed to Constellation. The transitional agreements that CBUSO and Copper Cane entered into in conjunction with the APA – Winemaking Agreement, Letter Agreement regarding Alternating Proprietor Agreement, Publicity License Agreement, and Consulting Agreement— (collectively, the "Transitional Agreements") were temporary and limited in scope. None of the Transitional Agreements allow Copper Cane to provide input or control in the selection of distributors or downstream customers. See Brown-Forman, 65 Mass. App. Ct. at 507 (stating "relevant inquiry" in imputation of § 25E obligations is whether successor supplier was predecessor's agent "for the discrete purpose of making regular sales . . . to downstream customers"). There is no evidence that following the execution of the APA and the Transitional Agreements that Copper Cane retained any rights or obligations regarding the sales, distribution, or wholesaler network of the Brand Items. "Courts have held that properly-drafted and implemented transitional agreements do not, without more, constitute the type of continuing affiliation or agency relationship which would subject a purchaser-distributor to § 25E obligations." United Liquors, LLC v. Heaven Hill Distilleries, Inc., 25E-1284 (ABCC Decision, January 6, 2015, heard April 16, 2014). Moreover, it is not evidence of a continuing affiliation between the former supplier company and new supplier company where the brand's creator, individually on his/her own, continues to assist with the marketing of the brand following an asset purchase sale agreement. See Beam Spirits & Wine, LLC, 32 Mass. L. Rptr. at *9. The Transitional Agreements here do not impose § 25E obligations on Constellation.

Carolina relies on the Commission's decision in Martignetti Grocery Co., Inc., d/b/a Carolina Wine Company v. Pine Ridge Winery, LLC d/b/a Crimson Wine Group Ltd. and Seghesio Wineries, Inc., 25E-1285 (ABCC Decision Nov. 20, 2013). In Pine Ridge, Seghesio sold its Brand Items to Crimson. Simultaneously, Seghesio and Crimson entered into a temporary Interim Winery Management Agreement ("Interim Agreement") because Crimson did not hold the necessary permits and licenses required to conduct the winemaking operations, nor did it hold a permit to export the Brands Items to Massachusetts. Then Crimson used Seghesio's CoC for several months. The Commission found that there was a violation of § 25E because (1) there was a continuing affiliation because as part of their Interim Agreement, Crimson used Seghesio's CoC and Crimson

hired 55-60 of Seghesio's employees, including the main winemaker and CEO of the Brand; and (2) Crimson also expressly assumed the sales liabilities of Seghesio in the APA.[1]

Pine Ridge is distinguishable from the instant case for several reasons, including because here, there is no evidence that Constellation hired any of Copper Cane's employees or that Copper Cane otherwise retained an indefinite role in the management and operation of the production and sale of the Brand Items, and Constellation did not use Copper Cane's certificates of compliance. In Pine Ridge, the Seghesio family's involvement with the brand was not temporary—the Seghesio family retained a "significant role" in the "management and operation of the licensed business." Pine Ridge, at 10. In contrast, here there is also no evidence that CBUSO and Copper Cane have common managers, officers, or directors. Moreover, unlike in Pine Ridge, here Constellation did not use Copper Cane's certificates of compliance.[2]

Furthermore, any indication of an agency relationship is absent from the record. Constellation at no time had any ownership interest in Copper Cane or vice versa, and neither Constellation nor Copper Cane had any right to direct, manage, or control the operations of the other, either before or following the APA. "[T]hese two entities had nothing whatsoever to do with one another prior to [Constellation's] asset acquisition from [Copper Cane] . . . ." Beam Spirits & Wine, LLC, 32 Mass. L. Rptr. at *7; see also id. at *7-8. Indeed, the Consulting Agreement further states that neither Copper Cane nor any of its employees, "shall have the authority to act for or on behalf of the Company or to bind the Company to any agreement, or in any other manner, without the express written consent of the Company." (Ex. 1. A. to Motion at Constellation 00047)

There is no genuine issue of material fact. The facts at issue primarily are based on the contracts entered into between the parties, Copper Cane, Wagner, and The Ranch, and LangeTwins. The Commission's interpretation of those contracts is a question of law, not an issue of fact. See Eigerman v. Putnam Investments, Inc., 450 Mass. 281, 287 (2007) ("interpretation of a contract is a question of law for the court"). The Commission finds no ambiguity in the contracts, but even if it did, "whether a contract is ambiguous is also a question of law." See id. Likewise, the Commission finds no genuine issue of material fact with regard to the parties' supporting affidavits and documentation.

Whether Copper Cane Assigned Distribution Rights to Constellation

The Commission agrees with Constellation that Copper Cane did not assign any of its distribution rights to Constellation. Unlike Heublein, Inc. v. Alcoholic Beverages Control Comms'n, 30 Mass. App. Ct. 611, 616 (1991), where the former supplier assigned its distribution rights to a new

[1] The APA involved the purchase of certain assets of Seghesio and specifically excluded the acquisition of liabilities, other than certain specifically listed liabilities, which did not include wholesaler distribution obligations under § 25E.

[2] Likewise, Carolina urges that there was a continuing affiliation in Copper Cane's continued use of its own permits to make wine for Constellation under the Winemaking Agreement. However, the Commission was confronted with a similar issue in United Liquors, LLC v. Heaven Hill Distilleries, Inc., 25E-1284 (ABCC Decision January 6, 2015, heard April 16, 2014), where the Commission found no basis to impute § 25E obligations where under the transitional agreement, the seller-supplier would "produce, process, and bottle" the brand items at its own facilities for at least one year.

supplier and therefore the new supplier was found to have assumed the former supplier's § 25E obligations, in the present case, CBUSO purchased the assets of Copper Cane related to the Brand Items in an arms-length transaction. See id.; (Ex. 1. A. to Motion at Constellation 00105-00106, 00110-00113) The only contracts that Constellation assumed from Copper Cane were those with grape growers for grapes and wine. (Ex. 1. A. to Motion at Constellation 00006-00012, 00017-24, 00026, 00106, 00111-12, 00122) Such contracts were not related to distributors or distribution rights.

Whether the APA Was An Attempt To Circumvent § 25E

There is no evidence that Constellation structured the APA so as to evade § 25E. As discussed above, the Transitional Agreements were temporary and arms-length transactions. Moreover, with regard to the APA, "structuring the execution of an arm's-length acquisition to ensure that [the new supplier has the opportunity to evaluate its prospective wholesalers does] not convert the purpose of the transaction to one intended to circumvent § 25E." Heublein, 434 Mass. at 704. The APA was "made at arm's length and there was no evidence before the commission of any agency relationship or continuing affiliation" between Constellation and Copper Cane, and therefore, Copper Cane's § 25E obligations cannot be imputed to Constellation. See Heublein, 434 Mass. at 707-708.

CONCLUSION

The Commission concludes that there was no six-month course of dealing in the Brand Items between Carolina and Constellation; there was no agency relationship between Constellation and Copper Cane; there was no continuing affiliation between Copper Cane and Constellation; Copper Cane did not assign its distribution rights to Constellation; there was no intent to circumvent § 25E; and therefore Carolina has no reasonable expectation of proving that Copper Cane's § 25E obligations should be imputed to Constellation.

Constellation's Motion for Summary Decision is **ALLOWED** and Carolina's Cross-Motion for Summary Decision is **DENIED**.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth Lashway, Commissioner Elizabeth A Lashway

Jean M. Lorizio, Chairman Jean M. Lorizio (EH)

Dated: July 26, 2017

You have the right to appeal this decision to the Superior Court 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: Mary O'Neal, Esq. via email
Mark Dickison, Esq. via email