

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

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

**NO. 25E-1331  
RUBY WINES, INC.,  
Petitioner,**

**v.**

**SANTA MARGHERITA USA, INC.,  
Respondent.  
HEARD: 3/15/2023**

**MEMORANDUM AND ORDER ON RESPONDENT SANTA MARGHERITA USA,  
INC.'S MOTION FOR SUMMARY DECISION**

Ruby Wines, Inc. ("Petitioner" or "Ruby") is a Massachusetts wholesaler aggrieved at the refusal of Santa Margherita USA, Inc. ("Respondent" or "SMUSA") to make sales of Santa Margherita and S. Margherita brand wines (the "Brand Items"). The Petitioner filed its petition with the Alcoholic Beverages Control Commission ("Commission" or "ABCC") on April 19, 2016. On May 6, 2016, pursuant to the mandate in § 25E, the Commission issued an order to SMUSA to make sales of the Brand Items to Ruby pending the Commission's determination of the petition on the merits.

On January 4, 2020, SMUSA filed its Motion for Summary Decision and on December 16, 2021, a Renewed Motion for Summary Decision (SMUSA's Motion") regarding Ruby's § 25E Petition arguing that under § 25E and applicable case law, SMUSA should not be required to sell the Brand Items to Ruby. Specifically, SMUSA argues it has never had six months of dealings with Ruby and no grounds exist for imputation of any predecessor supplier's § 25E obligations to SMUSA. Along with its Motion, SMUSA filed the Agreement between Santa Margherita, S.p.A. and Paterno Imports, Ltd., d/b/a Terlato Wines International, Appointment Letter of Santa Margherita, S.p.A., Affidavit of Vincent Chiaramonte, SMUSA's Answers to Interrogatories, Affidavit of Ettore Nicoletto and other supporting documents.

On February 2, 2023, Ruby filed its Opposition to SMUSA's Motion for Summary Decision asserting that Santa Margherita, S.p.A. may have retained § 25E obligations through its agent, Terlato, and/or after assigning its distribution rights to SMUSA.

After a hearing on March 15, 2023, and in consideration of the exhibits filed and arguments made by the parties, the Commission makes the following findings of fact and rulings of law.

There is one (1) audio recording of this hearing.

#### FINDINGS OF FACT

1. Ruby Wines, Inc. is a Massachusetts wholesaler licensed under M.G.L. c. 138, § 18 with a usual place of business at 625 Bodwell St. Extension in Avon, Massachusetts. (Ruby's Verified § 25E Petition, at ¶ 1)
2. Santa Margherita S.p.A. is an Italian company engaged in the manufacture and production of wine, including the Brand Items. (Exhibit 7 to Motion, Affidavit of Ettore Nicoletto, at ¶ 2)
3. Paterno Imports Ltd., d/b/a Terlato Wines International ("Terlato") is an importer of alcoholic beverages with a usual place of business at 900 Armour Drive, Lake Bluffs, IL. (Ruby's Verified § 25E Petition, at ¶ 2)
4. Santa Margherita and Terlato entered into an Agreement (the "Agreement") on December 18, 2007, wherein Santa Margherita granted Terlato the exclusive rights to import, sell, distribute and market the Brand Items. (Exhibit 1 to Motion at SM 00008)
5. The Agreement provided in part that:
  - a. Terlato, after reasonable consultation with Santa Margherita, will use the channels of distribution which Terlato, in its judgment, deems best for the Brand Items. (Exhibit 1 at SM 000010)
  - b. Santa Margherita...will not ship or sell the Products to the Territory, except upon the order of by the direction of Paterno. They will refer to Paterno any and all orders and inquiries for such Products that it may receive for shipment to customers distributing them within the Territory. (Id.)
  - c. The parties shall meet once each calendar year for the purpose of planning sales and marketing activity in the Territory ("Annual Meeting") for the following calendar year ("Subject Year"). (Id. at SM 00012)
  - d. Terlato's resale price of the Brand Items will be set in its sole discretion. (Id. at SM 00016)
  - e. "...either party may give written notice to the other party that it intends to terminate this Agreement ("Paragraph 2 Notice")". If said Paragraph 2 Notice is provided in accordance with the notice requirements of the Agreement, the "Agreement shall terminate, without any liability whatsoever to the other party except as specifically provided in this Agreement: on the fifth December 31<sup>st</sup> following delivery of such notice if given on any day from January 1 through June 30; and on the sixth December 31<sup>st</sup> following delivery of such notice if given on any day from July 1 through December 31 (Paragraph 2 Notice Period)". (Id. at SM 00009)
  - f. The parties are dealing with one another hereunder as independent contractors and not as partners, joint venturers or principal and agent. (Id. at SM 00026)
  - g. "[t]his Agreement shall constitute the entire understanding by and between the parties as to the subject matter hereof, replacing and superseding all previous

agreements and understandings between the parties hereto or their predecessors concerning subject matter. No modification of this Agreement shall be of any effect unless set forth in writing and signed by both parties. The Attachments to the Agreement form an integral part of it as if fully incorporated and set forth in the text of this Agreement.” (*Id.*)

6. Terlato sold the Brand Items to Ruby. (Ruby’s Verified § 25E Petition)
7. On June 27, 2011, Santa Margherita provided Terlato with written notice of termination of the Agreement. (Ex. 2 to Motion, at SM 00005)
8. On January 1, 2016, Santa Margherita appointed Santa Margherita USA, Inc. as the Primary Source for the Brand Items. (Ex. 3 to Motion)
9. SMUSA is a Florida corporation engaged in the business of importing and distributing the Brand Items into the United States and distributes the wines to Massachusetts and various other states. (Exhibit 4 to Motion, Affidavit of Vincent Chiaramonte, at ¶ 2)
10. SMUSA is a wholly owned subsidiary of Santa Margherita S.p.A. (*Id.*)
11. Santa Margherita and SMUSA are separate legal entities which keep separate accounts and records, have separate offices, different addresses and different employees. (Nicoletto Aff. at ¶ 6)
12. SMUSA holds a Certificate of Compliance issued by the Commission pursuant to M.G.L. c. 138, § 18B. (*Id.*)

#### SUMMARY DECISION STANDARD

The Commission operates under the Informal “Fair Hearing” Rules promulgated under 801 C.M.R. 1.02 in matters arising under M.G.L. c. 138, § 25E. Although not specified in the Informal Rules, parties may file motions pursuant to 801 C.M.R. 1.02(7)(c) governing “special requests.” Given the complexities of § 25E matters, the Commission tracks the summary decision protocol laid out in the Formal Rules under 801 C.M.R. 1.01(7)(h) in order to promote regularity and efficiency with its procedures. Because the Formal Rule relies on the courts’ interpretation of Mass. R. Civ. P. 56, so does the Commission.

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). “[A] fact is ‘material’ when it ‘might affect the outcome of the suit under the governing law.’” Dennis v. Kaskel, 79 Mass. App. Ct. 736, 741 (2011) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). 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. United Liquors, LLC v. Heaven Hill Distilleries (ABCC Decision April 16, 2014); see Lumber Mut. Ins. Co. v. Zoltek Corp., 419 Mass. 704, 707 (1995) (stating that “[t]he interpretation of a written contract . . . is a question of law, not of fact.”).

It is clear that “a party moving for summary [decision] in a case in which the opposing party will have the burden of proof at trial is entitled to summary [decision] . . . if he demonstrates, by reference to material described in Mass. R. Civ. P. 56(c), unmet by countervailing materials, that the party opposing the motion has no reasonable expectation of proving an essential element of the party’s case.” Kourouvacilis v. General Motors Corp., 410 Mass. 706, 716 (1991); see United Liquors, LLC v. Heaven Hill Distilleries (ABCC Decision April 16, 2014). If the moving party meets its burden, then it becomes the nonmoving party’s burden “to respond by ‘set[ting] forth specific facts showing that there is a genuine issue for trial.” Kourouvacilis, 410 Mass. at 716 (quoting Mass.R.Civ.P. 56(e)). The nonmoving party cannot defeat the motion for summary decision by “rest[ing] on [its] pleadings and mere assertions of disputed facts . . . .” LaLonde v. Eissner, 405 Mass. 207, 209 (1989). The nonmoving party “must respond and allege specific facts which would establish the existence of a genuine issue of material fact . . . .” Pederson v. Time, Inc., 404 Mass. 14, 17 (1989); see Michalak v. Boston Palm Corp., 2004 WL 2915452, at \* 2 (Mass. Super. Ct. Sept. 17, 2004) (providing that “[t]he non-moving party must oppose the motion with admissible evidence on the issue in order to defeat the summary judgment motion”). The failure of the nonmoving party to prove an essential element of its case “renders all other facts immaterial” and mandates summary decision in favor of the moving party. Kourouvacilis, 410 Mass. at 711.

#### SECTION 25E REQUIREMENTS

Section 25E, in relevant part, provides 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. 135, § 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, quoting 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”).

However, in some circumstances 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. Charles E. Gilman & Sons, Inc. v. Alcoholic Beverages Control Comm’n, 61 Mass. App. Ct. 916, 917 (2004). The courts and Commission have recognized imputation of a predecessor supplier to a successor supplier 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. Ct. June 14, 2004); or where there is a continuing affiliation between the prior supplier and the new supplier, Heublein, 434 Mass. at 706;
- (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,” Brown-Forman Corp., 2004 WL 1385495, at \*4; accord Heublein, 434 Mass. at 704; Pastene, 401 Mass. at 616.

There is no dispute that SMUSA did not make regular sales of the Brand Item to Ruby in the period of six months preceding its refusal to sell in April of 2016. Therefore, the question before the Commission is whether the particular facts in this case give rise to the imputation of Terlato’s § 25E obligations to SMUSA.

### DISCUSSION

SMUSA asserts that this matter involves a simple change of importer, that the only relationship to consider relative to § 25E is that between SMUSA and Terlato, and given that there was, and is, no affiliation between the two, Terlato’s § 25E obligations should not be imputed to SMUSA. Ruby, on the other hand, argues that the proper relationship for consideration is that between Santa Margherita and Terlato and contends that Santa Margherita acquired § 25E obligations through its agent, Terlato and/or due to its assignment of distribution rights to SMUSA. As detailed below, the Commission finds there are no genuine issues of material fact in dispute, that Ruby has failed to prove an essential element of its case, and that SMUSA is entitled to judgment as a matter of law.<sup>1</sup>

The “relevant inquiry” in imputation of § 25E obligations is whether the successor supplier was the predecessor’s agent “for the discreet purpose of making regular sales . . . to downstream

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<sup>1</sup> Ruby argues that the Commission should deny SMUSA’s Motion, allow and/or order additional discovery, and schedule a hearing on the merits of the matter. Ruby’s arguments regarding discovery were addressed in the Commission’s Order of February 8, 2023, and the Commission declines to reconsider those orders. As set forth in this Memorandum, this matter is ripe for summary decision.

customers.” See Brown-Forman, 65 Mass. App. Ct. at 506. “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 Spirits & Wine, LLC, 2014 WL 4082142, \*7, quoting Theos & Sons, Inc. v. Mack Trucks, Inc., 431 Mass. 736, 742 (2000). “A key characteristic of agency relationships is the principal’s right to control ‘what the agent shall or shall not do before the agent acts, or at the time when he acts, or both.’” Id. (quoting Restatement (Second) of Agency § 14 comment a (1958); L. Knife & Son, Inc. v. Alcoholic Beverages Control Comm’n, 201 WL 5553349).

Here, there is no evidence of an agency relationship between the former supplier, Terlato, and the new supplier, SMUSA. SMUSA argues that Terlato is a competitor, and other than the purchase of inventory and remaining labels after being appointed the Primary American Source, there have been no transactions, relationships, or business dealings between them. (Chiaramonte Aff. at ¶ 5) SMUSA has no ownership interest in Terlato, Terlato has no ownership interest in SMUSA and there is no common ownership between the two. (Id.) Terlato has no role in the selection of Massachusetts wholesalers and Terlato does not benefit from SMUSA’s distribution of the Brand Items. (Chiaramonte Aff. at ¶ 4, 5)

Ruby argues the question remains as to whether Terlato acted as Santa Margherita’s agent during the pendency of the Agreement. SMUSA counters with reference to the Agreement which states otherwise: Terlato, after reasonable consultation with Santa Margherita, will use the channels of distribution that Terlato in its judgment deems best for the Brand Items; (Exhibit 1 at SM 00010) Terlato had sole discretion as to pricing for sale to wholesalers; (Id. at SM 00016) The Agreement comprised the entirety of the relationship between Santa Margherita and Terlato as to the Brand Items; (Nicoletto Aff. at ¶ 4) Terlato was never an agent of Santa Margherita and there has never been any common ownership joint venture or other affiliation between the two entities. (Exhibit 1 at SM 00026, Nicoletto Aff. at ¶ 4)

The Commission concludes that Ruby has no reasonable expectation of proving an agency relationship or a continuing affiliation between either SMUSA and Terlato or Santa Margherita and Terlato and has failed to allege facts that would establish a genuine issue of material fact.

Ruby having failed to meet the imputation test as to agency or continued affiliation, the Commission next must determine whether there was an assignment or intent to circumvent § 25E.

Ruby argues in its opposition that Santa Margherita assigned its distribution rights to its wholly owned subsidiary, SMUSA, and as such, retained § 25E obligations. (Opposition, at 2)

In 2011 and in accordance with the Agreement, Santa Margherita elected to terminate its relationship with Terlato, effective December 31, 2015. (Exhibit 1 at SM 00009, Chiaramonte Aff. at ¶ 4) SMUSA was *appointed* the U.S. importer of the Brand Items as of January 1, 2016. (Chiaramonte Aff. at ¶ 4) Despite the parent-child relationship, Santa Margherita and SMUSA are separate legal entities, keep separate accounts and records, have separate offices, different addresses and different employees. (Nicoletto Aff. at ¶ 6) The Massachusetts Supreme Judicial Court recognized in Scott v. NG US 1, Inc., 450 Mass. 760 that “[o]ne of the basic tenets of that body of law is that corporations – notwithstanding relationships between or among them – ordinarily are regarded as separate and distinct entities.” Scott v. NG US 1, Inc., 450 Mass. 766 (2008).

This appointment was not made in an attempt to circumvent § 25E and was not a “mere assignment.” (Chiaromonte Aff. at ¶ 4)

There is no evidence of an assignment or any attempt to circumvent § 25E. Facts are necessary to defeat a motion for summary decision and Ruby’s arguments regarding an assignment and/or efforts to circumvent § 25E are not based on facts.

For the foregoing reasons, SMUSA’s Motion is allowed.

#### CONCLUSION

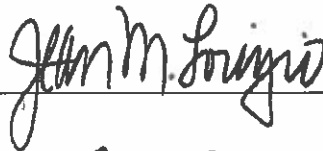
The Commission concludes that Ruby did not make “regular sales of Santa Margherita brand wines during a period of six months preceding SMUSA’s refusal to sell,” and there is no basis for imputing Terlatto’s § 25E obligations to SMUSA. See M.G.L. c. 138, § 25E.

SMUSA’s Motion for Summary Decision **ALLOWED**.

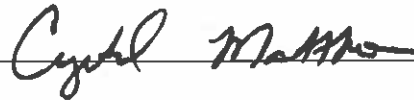
The matter is dismissed, and the Commission’s previously issued Ship Order is **DISSOLVED** effective 30 days from the date of this decision.

#### **ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah A. Baglio, Commissioner



Dated: March 22, 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. via email  
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