Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
239 Causeway Street
Boston, Massachusetts 02114
Telephone: (617) 727-3040
Fax: (617) 727-1510

Jean M. Lorizio, Esq.
Chairman

No. 25E-1338

M.S. WALKER, INC.,
Petitioner,

v.

MOET HENNESSY USA, INC. and
CAMPARI AMERICA LLC,
Respondents

HEARD: 1/11/2019

MEMORANDUM AND ORDER ON
RESPONDENTS' MOTIONS FOR SUMMARY DECISION AND
PETITIONER'S OPPOSITION

M.S. Walker, Inc. (the "Petitioner" or "M.S. Walker") is a Massachusetts wholesaler aggrieved at the refusal of Campari America LLC ("Campari") and Moet Hennessey USA, Inc. ("Moet"), to ship Grand Marnier Brand Liqueurs (the "Brand Items")[1] to M.S. Walker. M.S. Walker filed its Verified Application for Relief ("Verified Petition") with the Alcoholic Beverages Control Commission (the "Commission" or "ABCC") on August 16, 2016.

On September 2, 2016, pursuant to the mandate in M.G.L. c. 138, § 25E, the Commission issued an order to Campari and Moet to make sales of the Brand Items to M.S. Walker pending the Commission's determination of the petition on the merits (the "Ship Order").

On September 24, 2018, Campari filed a Motion for Summary Decision ("Campari's Motion") regarding M.S. Walker's § 25E Petition arguing that under § 25E and applicable case law, Campari should not be required to sell the Brand Items to M.S. Walker. Filed along with the Motion was the Affidavit of Daniel Butkus and various exhibits.

On the same date, Moet filed a Motion for Summary Decision ("Moet's Motion") with the Affidavit of Christopher O'Rourke and various other exhibits.

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[1] The Brand Items include: Grand Marnier Cordon Rouge, Grand Marnier Cordon Jaune, Grand Marnier Cuvee du Centenaire, Grand Marnier Cuvee du Cent Cinquantenaire, Grand Marnier Quintessence, Grand Marnier Natural Cherry, Grand Marnier Raspberry Peach, GM Titanium, Grand Marnier 1880, Cherry Marnier, Louis Alex Bourbon Barrel, Louis Alexandre, and the Extract Cordon Rouge. (Affidavit of Daniel Butkus, at ¶ 6)

On October 9, 2018, M.S. Walker filed an Opposition to Campari's Motion and Motion for Summary Decision (the "Opposition" or "M.S. Walker's Motion"), the Affidavit of Carl Barnes with exhibits, and the Affidavit of Attorney Coyne with exhibits.[2]

Campari filed a Reply Supporting its Motion (the "Reply") on January 4, 2019.

M.S. Walker did not oppose Moet's Motion and, in fact, conceded at the hearing on this matter that the Commission could enter summary judgment in Moet's favor.

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.

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

FINDINGS OF FACT

1. M.S. Walker is a Massachusetts wholesaler licensed under M.G.L. c. 138, § 18 with a place of business in Somerville, Massachusetts. (Verified Petition, at ¶ 1)

2. Moet, a Delaware corporation, is in the business of marketing and distributing Moet Hennessy wine and spirit products in the United States. (Affidavit of Christopher J. O'Rourke, at ¶ 2)

3. For more than six months, Moet sold the Brand Items to wholesaler M.S. Walker. (Verified Petition, at ¶ 3; O'Rourke Aff., at ¶¶ 3, 6; Ex. E to Coyne Aff., at 1)

4. The Brand Items are owned and produced by Societe des Produits Marnier Lapostolle S.A. ("SPML"). (Butkus Aff., at ¶ 11; Ex. I to Coyne Aff., at 20)

5. Moet's distribution rights arose from a distribution agreement ("Moet Distribution Agreement") with Marnier-Lapostolle, Inc. ("MLI"), which was effective from January 1, 2013 through June 30, 2016.[3] (Butkus Aff., at ¶¶ 15-16; Ex. C to Butkus Aff.) Moet and MLI also entered into a marking agreement on the same date, January 1, 2013, relative to the Brand Items (the "Moet Marketing Agreement"). Id. at ¶ 17; Ex. D to Butkus Aff.)

    a. The Moet Marketing Agreement states that it and the Moet Distribution Agreement "constitute the entire agreement among the parties relating to the subject matter hereof and supersede all agreements and understandings relating thereto, including, but not limited to the Distribution Agreement dated January 1, 2007 between the parties, as amended, and the Joint Venture Agreement dated January 1, 2007 between the parties."[4] (Ex. D to Butkus Aff. at 0109-0110) The words "Joint

[2] Note that in its Opposition/Motion, M.S. Walker requested that the Commission defer decision on the motions for summary decision and allow M.S. Walker additional time for discovery. M.S. Walker's counsel withdrew that request at the hearing on the motions.

[3] MLI is a United States subsidiary of SPML and Marnier Investissements, a Swiss holding company that is a subsidiary of SPML. (Exhibit C to Butkus Aff., at 0085)

[4] Counsel for M.S. Walker and Campari stated at the hearing before the Commission that they do not have a copy of the Joint Venture agreement, and therefore the terms of that agreement are not before the Commission.

Venture" had been inserted in handwriting, and the word "Marketing" in its place had been crossed out. See id.

b. Similarly, the Moet Distribution Agreement states that "[t]his agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. It supersedes any prior written or verbal agreement or document of any kind whatsoever, including but not limited to the Distribution Agreement dated January 1, 2007 between the parties hereto, but excluding the Joint Venture Agreement between the parties hereto."[5] (Ex. C to Butkus Aff. at 0095)

c. The Moet Marketing Agreement also provides that "[n]othing contained in this Marketing Agreement shall be construed to create a partnership or agency relationship between the parties hereto or their affiliates. It is understood and agreed that neither party in its performance under this Marketing Agreement shall be deemed to be, or shall hold itself out to be, the partner, agent, employee or representative of the other party. Nothing in this Marketing Agreement shall be construed to grant to any party any right or authority to assume or create any obligation on behalf or in the name of any other party, and each party hereby indemnified all other parties with respect to any such obligation." (Ex. D to Butkus Aff., at 0109)

d. The Moet Marketing Agreement and Moet Distribution Agreement expired on June 30, 2016. (Ex. C to Butkus Aff. at 0092; D to Butkus Aff. at 0107)

e. Moet exclusively selected its own wholesalers, without input from MLI. (O'Rourke Aff. at, ¶ 6)

6. Campari is a subsidiary of Davide Campari-Milano S.p.A ("Davide"), which is a publicly traded Italian company. (Butkus Aff., at ¶ 1) Campari is in the business of distributing

[5] Campari argues that the reference to the "Joint Venture Agreement" in this provision was an error and should have referenced the Marketing Agreement. The Commission agrees. On two pages prior, another provision of the agreement refers to the "Joint Venture" Agreement, and those words are crossed out and the word "Marketing" is inserted in handwriting. There, "Joint Venture Agreement" was a defined term in parenthesis and quotation marks, which leads the Commission to conclude that where "Joint Venture Agreement" was changed to "Marketing Agreement" as a defined term, "Joint Venture Agreement" should be changed to "Marketing Agreement" throughout the remainder of the document. (Ex. C to Butkus Aff. at 0093) This conclusion is consistent with the exclusivity provision of the Moet Marketing Agreement. See supra ¶ 5(a). In interpreting a contract, "an interpretation which gives a reasonable, lawful, and effective meaning to all the terms [of the agreement] is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect . . . [and] separately negotiated or added terms are given greater weight than standardized terms or other terms not separately negotiated." Restatement (Second) of Contracts, § 203 (1981, 10/18 update). "[I]n cases of inconsistency a handwritten or typewritten term inserted in connection with the particular transaction ordinarily prevails. Similarly, a typewritten term may be . . . controlled by an inconsistent handwritten insertion in another part of the agreement. It is sometimes said generally that handwritten terms control typewritten and printed terms, and typewritten control printed." Id. at comment f.

various internationally-known spirits brands throughout the United States. (Butkus Aff., at ¶ 2)

7. Campari holds a Massachusetts Certificate of Compliance ("CoC"). (Butkus Aff., at ¶ 3)

8. On March 14, 2016, Davide and SPML entered an Exclusive Distribution Master Agreement (the "Framework Agreement") relative to distribution of the Brand Items. Id. at ¶ 12; Ex. A to Coyne Aff.; Ex. A to Butkus Aff., at 0004. The Framework Agreement provided that SPML and a Davide subsidiary would agree to a separate distribution agreement mirroring the terms of the Framework Agreement. (Butkus Aff., at ¶ 13; Ex. A to Coyne Aff., at 0128)

9. On June 30, 2016, SPML and Davide's subsidiary, Campari, entered into the Exclusive Distribution Master Agreement (the "Campari Agreement")[6], which became effective on July 1, 2016. Id. at ¶ 4. Under the Campari Agreement, Campari became the exclusive distributor of the Brand Items in the United States as of July 1, 2016. (Ex. A to Butkus Aff., at 0004, 0005, 0007)

10. Campari alone has the right to determine who will distribute the Brand Items in different states. (Butkus Aff. at ¶ 27; Ex. A to Butkus Aff., at 0007) With regard to Massachusetts, Campari decided not to use the wholesaler that Moet had used, M.S. Walker. (Butkus Aff., at at ¶¶ 28-29; Ex. G to Butkus Aff.)

11. On July 28, 2016, Campari notified M.S. Walker that it had become the exclusive distributor of the Brand Items as of July 1, 2016 and that it had decided to appoint a different distributor for the Brand Items in Massachusetts. Id.; Ex. G to Butkus Aff.

12. The Campari Agreement provides that Campari is "an independent contracting party, not an agent or legal representative" of SPML. (Ex. A to Butkus Aff. at 0008)

13. On June 12, 2017, Campari and SPML entered into a subsequent distribution agreement ("Subsequent Campari Agreement") that had an effective date of January 1, 2017. (Butkus Aff., at n.1; Ex. B to Butkus Aff., at 0176-0177)

14. The Subsequent Campari Agreement provides that Campari and SPML are independent contractors and that the agreement does not create an agency relationship or joint venture. (Ex. B to Butkus Aff., at 0181)

15. Under the Subsequent Campari Agreement, Campari has the exclusive right to appoint sub-distributors and agents in the United States. (Ex. B to Butkus Aff., at 0176) The Subsequent Campari Agreement provides that any agreement with a sub-distributor or agent shall be consistent with the Subsequent Campari Agreement and, if the sub-distribution agreement is to be for a term exceeding five years, SPMI shall give prior consent. (Ex. B to Butkus Aff., at 0176)

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[6] For ease of reference, the Commission uses herein the abbreviated contract names used by Daniel Butkus of Campari in his affidavit, and they are the same terms used in the various agreements.

16. Neither Davide nor SPML play a role in Campari's selection of sub-distributors, although Campari and Davide occasionally communicate about sales reports, marketing strategies, and budget and financial planning concerning the Brand Items. (Butkus Aff., at ¶ 27)

17. Davide has purchased the majority of the stock of SPML. (Ex. I to Coyne Aff., at 25)

18. Moet and Campari are competitors, and there has never been an agency relationship or any other type of affiliation between them. (O'Rourke Aff., at ¶ 7)

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." Because § 25E matters are complex, 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 too 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 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. 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").

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. 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 Campari did not make regular sales of the Brand Items to M.S. Walker in the period of six months preceding the refusal to sell date of July 1, 2016. Therefore, the question is whether the particular facts in this case give rise to the imputation of Moet's § 25E obligations to Campari.

DISCUSSION

Campari asserts that this case is a simple change of importer situation, that the only relevant relationship for consideration in the § 25E inquiry is that between Moet and Campari, and that since Moet and Campari had no relationship whatsoever—they were competitors and there was no agency, joint venture, or other affiliation between them--, Moet's § 25E obligations cannot be imputed to Campari. M.S. Walker counters that the relevant relationship to examine is not that between Moet and Campari, specifically, but that among all of the parties named in the facts section above. In particular, M.S. Walker asserts that there was a joint venture between Moet and MLI, which flowed upstream to SPML (MLI's parent), and that since Davide purchased the majority of SPML's stock, and Davide is Campari's parent, the joint venture relationship flowed to Campari. The Commission finds M.S. Walker's argument flawed for several reasons.

"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, 2014 WL 4082142, *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, 2014 WL 4082142, at *7. The Appeals Court has discussed the elements of joint venture:

> [t]he key requirement in finding [the] existence [of a joint venture] is an intent to associate. . . Factors indicating such an intent include an agreement among the participants for joint profits and a sharing of losses; a contribution of money, assets, talents, etc., to a common undertaking; a joint property interest in the subject matter of the venture; and a right to participate in the control of the venture.

Mass. Prop. Ins. Underwriting Ass'n v. Georgaklis, 77 Mass. App. Ct. 358, 361-362 (2010) (quoting Gurry v. Cumberland Farms, Inc., 406 Mass. 615, 623-624 (1990)).

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, 2014 WL 4082142, at *6 n. 7.

Here, while it appears as though there was a joint venture relationship between Moet and MLI as of January 1, 2007, the Moet Marketing Agreement and Moet Distribution Agreement provide that they superseded the joint venture agreement. (Ex. D to Butkus Aff. at 0109-0110; Ex. C to Butkus Aff., at 0095); see supra n. 4. Consequently, there is no evidence that most recently in the relationship between Moet and MLI, that there was a joint venture agreement in effect. To the contrary, the joint venture agreement between Moet and MLI ceased when the Moet Marketing and Distribution Agreements took effect. (Ex. D to Butkus Aff. at 0109-0110; Ex. C to Butkus Aff., at 0095); see supra n. 4.

Likewise, there is no evidence of an agency or joint venture agreement between Moet and MLI through the Moet Marketing and Distribution Agreements. The most critical aspect of the relationship between Moet and MLI is that Moet selected its own wholesalers without input from MLI. (O'Rourke Aff. at, ¶ 6); see Brown-Forman Corp. v. Alcoholic Beverages Control Comm'n, No. 03-1684, 2004 WL 1385495, at *6 (Mass. Super. June 14, 20014) (providing that, "[m]ost important for purposes of § 25E, the agreement gave [the manufacturer] no power whatever to dictate the identity of the wholesalers to whom [the distributor] would sell the product within its territory); Brown-Forman, 65 Mass. App. Ct. at 507 (questioning whether successor supplier was predecessor's agent "for the discrete purpose of making regular sales . . . to downstream customers"). Additionally, there are no other facts to support an agency or joint venture between Moet and MLI evidenced by the Moet Marketing and Distribution Agreements. In fact, the parties expressly agreed in the Moet Marketing Agreement, which was in effect at the same time as the Moet Distribution Agreement, that "neither party in its performance under [the] Marketing Agreement shall be deemed to be, or shall hold itself out to be, the partner, agent, employee or representative of the other party." (Ex. D to Butkus Aff., at 0109) Moreover, there was no "agreement . . . for joint profits [or] a sharing of losses; . . . contribution of money, assets, talents, etc., to a common undertaking; . . . joint property interest in the subject matter of the venture; [or] a right to participate in the control of the venture." Mass. Prop. Ins. Underwriting Ass'n, 77 Mass. App. Ct. at 361-362 (quoting Gurry, 406 Mass. at 623-624). "That parties engaged in a mutually beneficial endeavor agreed to a joint planning process for certain aspects of the endeavor does not, in itself, put one in control of the other." Brown-Forman Corp., 2004 WL 1385495, at *6.

Given that there was no agency or joint venture agreement between Moet and MLI following the effective date of the Moet Marketing and Distribution Agreements, there can be no flow of § 25E rights up the chain to SPML, then to Davide, and then to Campari, as M.S. Walker suggests.

As for the relationship between the current supplier, Campari, and the former supplier, Moet, Moet and Campari are competitors, and there has never been an agency relationship or any other type of affiliation between them.[7] (O'Rourke Aff., at ¶ 7)

Having failed to meet the imputation test on grounds of agency, joint venture, and continuing affiliation, the next question for imputation purposes is whether there was an assignment or intent to circumvent § 25E. There is no evidence of an assignment or an intent to circumvent, and M.S. Walker does not suggest otherwise, except as described above.

For the foregoing reasons, Campari's Motion is allowed, and M.S. Walker's Motion is denied.

Moet's Motion:

The Commission grants Moet's Motion for the same reasons as cited above and also because Moet is not a proper party to this case. Notably, M.S. Walker does not oppose the granting of Moet's Motion.

Massachusetts General Laws, Chapter 30A, which governs state administrative procedure, defines a party to an adjudicatory proceeding, in relevant part, as, "(a) the specifically named persons whose legal rights, duties or privileges are being determined in the proceeding. . ." M.G.L. c. 30A § 1 (3). Moet's legal rights, duties and/or privileges are not being determined in this proceeding. Moet was removed as the distributor of the Brand Items by MLI when the contract between them ended. Consequently, Moet has had no role with importing, marketing, or distributing the Brand Items since that time. It follows that had M.S. Walker succeeded on the merits of this case, Moet would be in no position whatsoever to provide the relief that M.S. Walker seeks—sale to M.S. Walker of the Brand Items for distribution. Consequently, Moet is not a proper party to this proceeding, as defined by Chapter 30A. Moet's Motion for Summary Decision is allowed.

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[7] M.S. Walker's assertion that the Commission should not look to the relationship between the former supplier and the new supplier is contrary to case law. See M.S. Walker v. The Wine Group, 25E-1289 (ABCC Decision May 20, 2016) (providing that, "[a]s the Superior Court has affirmed, when considering any agency relationship, the only relationship that matters is whether 'the new supplier is an agent of the previous supplier,' Brown-Forman Corp., 2004 WL 1385495 at *4; accord Charles E. Gilman & Sons v. Alcoholic Beverages Control Comm'n, 61 Mass. App. Ct. 916, 917 (2004); Pastene Wine & Spirits v. Alcoholic Beverages Control Comm'n, 401 Mass. 612, 618 (1988); Beam Spirits & Wine, LLC v. Alcoholic Beverages Control Comm'n, 32 Mass. l. Rptr. 433 at *6, C.A. No. 13-2229C (Aug. 18, 2014) (Gordon, J.), or whether '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)").

CONCLUSION

The Commission concludes that Campari did not make, "regular sales of [the Brand Items] during a period of six months preceding [the July 2016] refusal to sell," and there is no basis for imputing Moet's § 25E obligations to Campari. See G. L. c. 138, § 25E.

Campari's Motion for Summary Decision is **ALLOWED**. Moet's Motion for Summary Decision is **ALLOWED**. M.S. Walker's Motion for Summary Decision is **DENIED**.

The matter is dismissed, and the Commission's previous Ship Order is DISSOLVED effective 30 days from the date of this decision.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth A. Lashway, Commissioner Elizabeth A Lashway

Jean M. Lorizio, Chairman Jean M. Lorizio

Kathleen McNally, Commissioner Kathleen McNally

Dated: March 11, 2019

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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William A. Kelley, Jr. Esq. via email
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