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Department of the State Treasurer
Alcoholic Beverages Control Commission
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Jean M. Lorizio, Esq.
Chairman

No. 25E-1338

M.S. WALKER, INC.,

Petitioner,

v.

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

Respondents

**ORDER ON M.S. WALKER'S CHALLENGE TO DESIGNATION OF INFORMATION
AS HIGHLY CONFIDENTIAL AND FOR PRODUCTION OF COPIES**

The Alcoholic Beverages Control Commission (the "Commission") has reviewed and considered M.S. Walker, Inc.'s (the "Petitioner" or "M.S. Walker") Challenge to Designation of Information as Highly Confidential and for Production of Copies (the "Motion"); Opposition of Campari America LLC ("Campari"); Petitioner's Supplemental Memo; Affidavit of Mary E. O'Neal; Petitioner's Reply to Oppositions; Petitioner's Second Supplemental Memorandum; and the arguments presented by counsel for all parties at the October 20, 2017 hearing on this matter. The **Commission allows the Motion in part and denies it in part.**

On November 22, 2016, M.S. Walker and Campari filed a proposed Agreed Protective Order for Confidential Information (the "Agreement"), which the Commission approved on or about December 13, 2016. The Agreement provides in relevant part,

6. In addition to the above restrictions, any party shall have the further right, in good faith, to designate documents, information, or materials that it believes relate to current and critically sensitive financial, trade secret, or non-public product development information as being Highly Confidential. Such a designation may only be made to the extent of a good faith belief that such information might be of commercial benefit to the non-producing party, or that disclosure of the information could be highly damaging to the producing party. Highly Confidential information may be seen only by the trial attorney of a party. When a document is designated as Highly Confidential, a party shall, to the extent possible, provide a second copy of the document with redactions as needed to make it only Confidential. If a party believes that certain information is both Highly Confidential and irrelevant to the issues

before the Commission, it shall produce a requested document, but may redact information believed in good faith to be irrelevant, pending a determination as to relevance by the Commission. Before any person, other than trial counsel, gains access to Highly Confidential information, 1) the Commission must determine that the information does not qualify for a designation as Highly Confidential, and 2) the proposed recipient must be qualified to have access to Confidential Information through the Procedures set forth in ¶¶ 3 and 9.

See Agreement at ¶ 6. M.S. Walker challenges Campari's designation of approximately ten documents as Highly Confidential and requests that the Commission re-designate the documents and order that Campari produce to M.S. Walker's counsel unredacted copies of the documents currently marked as Highly Confidential. At the October 20, 2017 hearing on this matter, counsel for Campari provided the Commission with a copy of the subject documents—both in redacted and unredacted form.¹ Upon review of the subject documents, the Agreement, and arguments made by counsel, the Commission hereby orders the following:

- I. Campari was not obligated under the plain meaning of the Agreement to produce to M.S. Walker's attorney an unredacted version of the documents containing Highly Confidential information.

Upon designating certain documents as Highly Confidential, Campari required M.S. Walker's counsel to visit Campari's counsel's office to review those documents in unredacted form, and Campari refused to give M.S. Walker's counsel an unredacted copy.² M.S. Walker's counsel argues that the Agreement permits him to have an unredacted copy for his eyes only. The Commission disagrees. The Agreement provides that, "Highly Confidential information may be seen only by the trial attorney of a party" and does not specifically articulate that the attorney shall receive an unredacted copy of the document containing the Highly Confidential information. The next sentence provides that a "second copy" of the document shall be produced, "to the extent possible, . . . with redactions as needed to make it only Confidential." See Agreement at ¶ 6 (emphasis added). Moreover, it is "the party designating information as confidential or highly confidential [here, Campari, who has] the burden of proving the propriety of such designation." Agreement at ¶ 7.

"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 Freelander, 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

¹ The Commission is returning the unredacted documents to Campari with this Order.

² The Commission is unclear as to whether Campari's counsel provided M.S. Walker's counsel with an unredacted copy of the documents designated as Highly Confidential for purposes of the hearing before the Commission, and if so, whether Campari's counsel required M.S. Walker's counsel to return those documents at the close of the hearing. Based on the parties' filings and argument made at the hearing, the Commission assumes that M.S. Walker's counsel does not have a copy of those unredacted documents.

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.

In giving the Agreement its plain meaning, only M.S. Walker’s counsel may see the Highly Confidential information. Campari complied with M.S. Walker’s request to see the Highly Confidential information by inviting him to inspect the unredacted documents at Campari’s counsel’s office. Campari’s counsel also complied with the plain meaning of the agreement by redacting the Highly Confidential information from its production of documents and thereafter producing the subject copies as Confidential. As set forth below, Campari argues that some of the redacted Highly Confidential information is also irrelevant.

II. With regard to the redacted documents marked as Highly Confidential:

- Tabs 1 and 2 are marked Highly Confidential and have certain information redacted as Highly Confidential.³ The subject pages are part of agreements between Moët Hennessey USA (“Moët”) and Marnier, Inc., and the redactions are of dollar figures and product amounts. Respondents argue that the redacted information relates to “current and critically sensitive financial” information and that the disclosure of those redactions “might be of commercial benefit to” M.S. Walker. See Agreement at ¶ 6. Campari’s counsel argued that the disclosure of the redacted material to M.S. Walker would damage Campari and benefit M.S. Walker by affecting the parties’ ability to negotiate in the marketplace. Moreover, counsel for Moët argued that the information is irrelevant and that there is no legitimate business reason for a Massachusetts wholesaler to have the financial information that Campari has designated as Highly Confidential. The Commission agrees with the Respondents that the redacted information—dollar figures and product amounts related to an agreement between the predecessor wholesaler and its supplier—is irrelevant to the case at hand. The redactions shall stand in accordance with the terms of the Agreement.⁴
- Tab 3 (entitled “cost components formerly borne by SPML”) consists of two different charts containing financial information which are part of a separate, exclusive distribution agreement between SPML (the supplier) and Davide (Campari’s parent) related to Grand Marnier products. M.S. Walker’s counsel stated at the hearing that he is only seeking information related to the United States and the items at issue in this case: Grand Marnier Brand Liqueurs (the “Brand Items”). Both Campari and M.S. Walker incorporated the arguments made relative to Tabs 1 and 2. Campari asserts that the information is critically sensitive financial information which has no relevance to 25E issues and that release of the information could be highly damaging to the companies’ ability to negotiate in the marketplace. Moët agreed that the information is Highly Confidential. M.S. Walker questioned how release of the financial information to his client would be highly damaging to the releasing party.

³ Campari’s counsel indicated at the hearing that the intention was that these two documents would be Confidential but that the redacted portions would be Highly Confidential, consistent with paragraph 6 of the Agreement.

⁴ It is the Commission’s duty at hearings, “to receive and consider all relevant and reliable evidence . . . [and] to exclude irrelevant . . . evidence.” 801 CMR 1.02(10)(f).

The Charts are primarily in French, and the Commission questions whether the information is relevant to the instant 25E case. However, the Commission upholds Campari's Highly Confidential designation. M.S. Walker's counsel may arrange a time to again review these figures at Campari's counsel's office, but counsel for M.S. Walker may not share the Highly Confidential information with his client or anyone else.

- Tab 4 is marked Confidential, not Highly Confidential, and therefore, there is no issue for the Commission to decide regarding that document.
- Tab 5 is a PowerPoint presentation marked as Confidential and has certain information redacted as Highly Confidential. Campari's counsel indicated at the hearing that the redacting software mistakenly placed a redacting bar at the bottom of several pages and marked those pages as Highly Confidential. Campari has agreed to produce another copy of the document without the mistaken redactions and designations. The other redactions and Highly Confidential designations in the document are for sales, volumes, and financial data of SPML.

M.S. Walker asserts that the document cites as its source in numerous places the "Company's website, Annual report" and therefore that the information cannot be deemed Highly Confidential. However, the Agreement provides that, "compilations and/or summaries of information may nonetheless be deemed and designated, in good faith, as containing Confidential Information and subject to this Order even though some of the information and documents contained in such compilations and/or summaries may have been produced to third parties on a non-confidential basis." See Agreement at ¶ 8(c). Given the greater protection afforded Highly Confidential information, the Commission interprets this provision of the Agreement to also apply to Highly Confidential information.

The Commission finds that with regard to the document at Tab 5,

- Campari shall remove the mistaken redactions and designations that resulted from the redaction software;
 - On the basis of irrelevancy, Campari shall retain the redactions of information relating to products other than the Brand Items and relating to sales outside of the United States; and
 - Campari shall retain its other redactions and Highly Confidential designations.
- Tab 6 is an internal Campari email marked Confidential with five attached documents which are redacted in full and marked Highly Confidential. The redactions are of inventory transfer information, including the size, quantity, price, and inventory value of Grand Marnier products, from Moët to Campari. The Commission is not convinced that the information marked as Highly Confidential equates to "current and critically sensitive financial" information or that disclosure of the information "might be of commercial benefit" to M.S. Walker or "could be highly damaging" to Campari. Consequently, the Commission finds that the information which was redacted and marked as Highly Confidential should be unredacted and re-designated as Confidential.

- Tab 7 consists of internal Campari emails marked as Highly Confidential with certain information redacted. The tab consists of three email chains:
 - Document Bates Numbered Campari America 0327-0332:
 - The first two pages (0327 and 0328) have redacted information which relates to private personnel/employee information, including the salary of a named Campari employee. The Commission finds that the employee information does not fall under the definition of Highly Confidential according to the Agreement. While Campari argued that the redacted information is irrelevant to this case, M.S. Walker argued how it could be relevant. Campari shall remove the redactions on pages 0327 and 0328 except for the salary information, which should remain redacted on grounds of relevancy. These pages shall then be marked as Confidential.
 - The third and fifth pages of this document (0329 and 0331) have redacted information which relates to inventory that was destroyed and the cost of that inventory. The Commission is not persuaded that the information marked as Highly Confidential on these two pages equates to “current and critically sensitive financial” information or that disclosure of the information “might be of commercial benefit” to M.S. Walker or “could be highly damaging” to Campari. Consequently, the Commission finds that the information which was redacted and marked as Highly Confidential should be unredacted and re-designated as Confidential.
 - Document Bates Numbered Campari America 0339-0343: The redacted information marked as highly confidential relates to the revenue of and return on certain product. The Commission is not convinced that the information marked as Highly Confidential equates to “current and critically sensitive financial” information or that disclosure of the information “might be of commercial benefit” to M.S. Walker or “could be highly damaging” to Campari. Consequently, the Commission finds that the information which was redacted and marked as Highly Confidential should be unredacted and re-designated as Confidential.
 - Document Bates Numbered Campari America 0349-0353:
 - The first page has a redaction about the mood of an unnamed employee. The redaction does not fall under the definition of Highly Confidential. Campari argues that the redaction is also based on relevancy grounds. While the Commission questions the relevancy of this redacted information, based on the arguments made by M.S. Walker’s counsel, the Commission orders Campari to produce an unredacted version of 0349 with the designation of Confidential.
 - The second and fourth pages (0350 and 0352) contain the same email that had redactions at pages 0329-0331 above. The redactions relate to inventory that was destroyed and the cost of that inventory. The Commission is not persuaded that the information marked as Highly

Confidential equates to “current and critically sensitive financial” information or that disclosure of the information “might be of commercial benefit” to M.S. Walker or “could be highly damaging” to Campari. Consequently, the Commission finds that the information which was redacted and marked as Highly Confidential should be unredacted and re-designated as Confidential.

- Tab 8 is an email with an attached chart showing financial information related to Grand Marnier for 2014-2015. The Commission is not convinced that the information marked as Highly Confidential equates to “current and critically sensitive financial” information. Consequently, the Commission finds that the information which was redacted and marked as Highly Confidential should be unredacted and re-designated as Confidential.
- Tab 9 is an email with the number of cases of a product to be shipped redacted and marked as Highly Confidential. The Commission agrees with M.S. Walker that that information is not Highly Confidential and that Campari should produce this document to M.S. Walker without redactions and that the document should be re-designated as Confidential.
- Campari has no objection to removing the Highly Confidential designation in the document at Tab 10, and therefore, Campari shall produce the document to M.S. Walker without redactions and re-designate the document as Confidential.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth A. Lashway, Commissioner

Jean M. Lorizio, Chairman

Dated: July 11, 2018

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 days of receipt of this decision.

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Este documento é importante e deve ser traduzido imediatamente.
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Questo documento è importante e dovrebbe essere tradotto immediatamente.
Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.
这份文件是重要的，应立即进行翻译。

cc: William Coyne, Esq. via email
Mary E. O'Neal, Esq. via email
Anthony V. Bova II, Esq. via email (and mail with enclosures per n. 1)
William A. Kelley, Esq. via email