



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

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

**NO. 25E-1348**

**CLASSIC WINE IMPORTS, LLC f/k/a  
CLASSIC WINE IMPORTS, INC.  
Petitioner,**

**v.**

**PASTERNAK WINE IMPORTS LLC &  
ESPRIT DU VIN FINE WINE MERCHANTS  
Respondents.  
HEARD: 8/19/20**

**MEMORANDUM AND ORDER ON  
CLASSIC WINE IMPORTS, LLC'S SECOND  
MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

The Alcoholic Beverages Control Commission ("Commission") hereby issues this Memorandum and Order in response to Classic Wine Imports, LLC f/k/a Classic Wine Imports, Inc's ("Classic") Second Motion to Compel Production of Documents (the "Motion").

**PROCEDURAL BACKGROUND**

This case arises under M.G.L. c. 138, § 25E. Petitioner, Classic Wine Imports, LLC f/k/a Classic Wine Imports, Inc. ("Petitioner" or "Classic") is a Massachusetts wholesaler aggrieved at the refusal of Pasternak Wine Imports, LLC ("Pasternak") and Esprit du Vin Fine Wine Merchants ("Esprit") (collectively, the "Respondents") to make sales of certain alcoholic beverages (the "Brand Items"). The Petitioner filed its petition with the Commission on February 6, 2017. On February 7, 2017, pursuant to the mandate in § 25E, the Commission issued an order to the Respondents to make sales of the Brand Items to Classic pending the Commission's determination of the petition on the merits (the "Ship Order"). The Commission also authorized discovery to take place, with the provision that "[d]iscovery by each party may include not more than forty-five (45) written interrogatories, not more than thirty (30) requests for the production of documents and not more than two (2) depositions." The initial discovery deadline was June 7, 2017, but was extended several times per the request of the parties.

On May 22, 2019, Esprit filed a Motion for a Protective Order and on June 11, 2019, Classic filed its Opposition. Esprit filed a Reply on June 24, 2019. The Commission held a hearing on the Motion for a Protective Order on July 12, 2019, and on September 13, 2019, issued a Memorandum

and Order. In its Memorandum and Order the Commission directed that Esprit produce to Classic certain emails regarding the Asset Purchase Agreement and transition operations with a date range of December 7, 2015, or the date of the Letter of Intent<sup>1</sup>, whichever is later, to December 31, 2017. The Commission deemed discovery to be otherwise closed and set an updated scheduling order. Motions for Summary Decision were due by November 18, 2019, with any oppositions or responses due by November 29, 2019.

On November 27, 2019, Classic filed its Second Motion to Compel Production of Documents (the “Motion”) with 9 exhibits. On the same day Esprit filed its Motion for Summary Decision and Supporting Memorandum of Law. Esprit filed its Opposition to Classic’s Second Motion to Compel (the “Opposition”) with exhibits A, B and C on December 13, 2019. On December 18, 2019, Classic filed its Opposition to Esprit’s Motion for Summary Decision. The Commission held a hearing on Classic’s Second Motion to Compel, Esprit’s Opposition, Esprit’s Motion for Summary Decision and Classic’s Opposition on August 19, 2020.

### FACTUAL BACKGROUND

For many years, Pasternak was the importer of the Brand Items, and Classic, a wholesaler, purchased the Brand Items from Pasternak for sale in Massachusetts. On December 7, 2016, Esprit and Pasternak entered into an asset purchase agreement (“APA”) whereby Esprit purchased from Pasternak certain assets, rights, and properties related, in part, to the Brand Items. Esprit then decided to sell the Brand Items to a different wholesaler.

### DISCUSSION

#### Applicable discovery rules

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. Under these Rules, “Parties to an Adjudicatory Proceeding are encouraged to engage in voluntary discovery.” 801 C.M.R. 1.02(8)(a). Because § 25E matters are complex and usually include voluminous discovery, the Commission generally tracks the discovery protocol as laid out in the Formal Rules under 801 C.M.R. 1.01(8) and cites to the Massachusetts Rules of Civil Procedure in order to provide helpful guidance and to promote regularity and efficiency in granting discovery requests. See Alexander Cella and Gerald McDonough, Massachusetts Practice: Administrative Law & Practice § 548 (2014) (“it would appear that the full panoply of discovery techniques, including depositions and interrogatories, available under the Formal Rules may be made available to a party under the Informal/Fair Hearing Rules as a matter of discretion under appropriate circumstances”).

#### Document Production

Classic alleges Esprit has failed to fulfill discovery obligations as ordered by the Commission in its September 13, 2019 Memorandum and Order (the “Order”). Classic contends: 1) Esprit’s document production pertaining to Transition Operations is lacking and should be supplemented, and 2) Esprit failed to produce several categories of documents which are highly relevant and necessary for Classic to properly prosecute its case. Specifically, Classic states Esprit should be

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<sup>1</sup> It is unknown if there even was a letter of intent.

ordered to produce a multitude of documents relating to Transition Operations, some of which Classic learned of through the deposition of Esprit representatives.

Esprit, on the other hand, argues it has complied with the Order and that the documents sought by Classic are irrelevant to the disposition of this case given the undisputed fact that no transition operations took place in Massachusetts. Esprit's position is supported by the Affidavit of Frank Vella. (Ex. A to the Opposition) Mr. Vella is the Director of Operations for the Taub Family Wine and Spirits Services, LLC, ("Taub") a company that provides administrative services for other Taub family companies, including the Respondent in this matter, SMT Acquisitions LLC, d/b/a Taub Family Selections.<sup>2</sup> (Vella Aff., at ¶ 1, Ex. A to the Opposition) Mr. Vella is familiar with and has both personal knowledge or has been provided information believed to be true regarding the facts and circumstances surrounding the Asset Purchase Agreement that is the subject of this matter, between Esprit and Pasternak. (Vella Aff., at ¶ 4, Ex. A to Opposition) Mr. Vella states, "Esprit and Pasternak did not engage in any of the Transition Operations described in APA § 5.13 with respect to any of the Brand Items in Massachusetts." (Vella Aff., at ¶15; Ex. A to the Opposition) Esprit points to Mr. Vella's deposition wherein he also confirmed no transition operations took place in Massachusetts. (Vella Dep., at p. 36-37, Ex. C to Opposition)

Further bolstering Esprit's argument is the Affidavit of Badr Benabdessadek. (Exhibit B to the Opposition) Mr. Benabdessadek is the Chief Administrative Officer for Taub. (Benabdessadek Aff., at ¶ 1, Exhibit B to Opposition) Mr. Benabdessadek is familiar with and has personal knowledge of or has been provided with information believed to be true regarding the facts and circumstances surrounding the negotiation, execution and implementation of the Asset Purchase Agreement between Esprit and Pasternak. (Benabdessadek Aff., at ¶ 7, Exhibit B to the Opposition) Mr. Benabdessadek states, "Esprit and Pasternak did not engage in any of the Transition Operations described in APA § 5.13 with respect to sales of the Brand Items in Massachusetts." (Benabdessadek Aff., at ¶ 26, Exhibit B to the Opposition.)

The Commission DENIES Classic's Motion to Compel for the reasons set forth in Esprit's Opposition.

### CONCLUSION

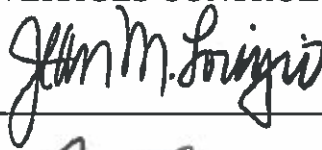
For the foregoing reasons, Classic's Motion to Compel Production of Documents is **DENIED**.

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<sup>2</sup> SMT Acquisitions LLC formerly conducted business under the name SMT Acquisitions LLC d/b/a Esprit Du Vin ("Esprit"). SMT Acquisitions LLC updated its d/b/a name with the Commission on or about October 10, 2018. For the sake of clarity, the parties continue to refer to SMT Acquisitions LLC as Esprit throughout the pendency of this matter.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Jean Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: March 24, 2022

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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Peter Grupp, Esq. via email  
Michael Rossi, Esq. via email  
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