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

Jean M. Lorizio, Esq.
Chairman

No. 25E-1359

ATLANTIC IMPORTING CO.
Petitioner,

v.

SAZERAC COMPANY, INC. &
PERNOD RICARD
Respondents

HEARD: 4/11/2019

MEMORANDUM AND ORDER ON
RESPONDENT PERNOD RICARD USA, LLC'S
MOTION FOR SUMMARY DECISION

Atlantic Importing Co. (the "Petitioner" or "Atlantic") is a Massachusetts wholesaler aggrieved at the refusal of Pernod Ricard USA, LLC ("PRUSA")[1] and The Sazerac Company, Inc. ("Sazerac"), to ship Del Maguey brand mezcal (the "Brand Items") to Atlantic. Atlantic filed its Verified Application for Relief ("Verified Petition") with the Alcoholic Beverages Control Commission (the "Commission" or "ABCC") on September 28, 2017.

On October 6, 2017, pursuant to the mandate in M.G.L. c. 138, § 25E, the Commission issued an order to PRUSA and Sazerac[2] to make sales of the Brand Items to Atlantic pending the Commission's determination of the petition on the merits (the "Ship Order").

On December 10, 2018, PRUSA filed a Motion for Summary Decision (the "Motion") regarding Atlantic's § 25E Petition arguing that under § 25E and applicable case law, PRUSA should not be required to sell the Brand Items to Atlantic. Filed along with the Motion was the Affidavit of Adam Sipos and various exhibits.

On December 21, 2018, Atlantic filed an Opposition to PRUSA's Motion for Summary Decision (the "Opposition") with exhibits.

PRUSA filed a Reply to the Opposition (the "Reply") on January 28, 2019.

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[1] PRUSA is incorrectly captioned in this matter as "Pernod Ricard."
[2] On November 9, 2018, the Commission dismissed Sazerac from the case.

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

2. Del Maguey is the producer of the Brand Items, which are hand-crafted, premium mezcal products produced in Mexico. (Adam Sipos Aff. at ¶ 3)[3]

3. In accordance with an importation agreement, Sazerac, an importer of alcoholic beverages, imported the Brand Items from Del Maguey for several years. (Ex. B to Opp. at Answer Nos. 5, 8; Ex. 2 to Motion) Sazerac would then sell the Brand Items to wholesaler Atlantic in Massachusetts. (Ex. C to Opp. at Answer No. 4)

4. The importation agreement between Sazerac and Del Maguey dated February 9, 2011 provides in part that:
    a. Sazerac had the right to appoint its own sub-distributors to market and sell the products. Nothing in the importation agreement gave Del Maguey the power to provide input on, approve, or disapprove the sub-distributors. (Ex. 2 to Motion, at § 2.2)
    b. "[Sazerac], in its sole discretion, will establish the prices it charges to Customers to whom it distributes the Products; provided that, without limiting the foregoing, [Sazerac] agrees, during the first Contract Year, to use commercially reasonable efforts to be consistent with [Del Maguey's] pricing guidelines for the Product (as such guidelines exist as of the Effective Date, and which are communicated in writing by [Del Maguey] to [Sazerac])." (Ex. 2 to Motion, at § 3.1)
    c. No joint venture, agency, independent contractor, partnership, employment, or franchise relationship was created by the importation agreement. (Ex. 2 to Motion, at § 12.9)
    d. Del Maguey was to meet periodically with Sazerac about marketing of the products. (Ex. 2 to Motion, at § 3.1)
    e. "At [Sazerac's] request, [Del Maguey was to] participate within reason in trade shows, product training, tastings, demonstrations, and market visits." Id.

5. A representative from each of Del Maguey and Sazerac reported to Atlantic that they arrived at "incentives" jointly. (Ex. C to Opp. at Answer 2)

6. During the time Sazerac imported the Brand Items, Del Maguey "was copied on most communications involving marketing, did trainings," visited Atlantic, and communicated with Atlantic employees. (Ex. C to Opp. at Answer 2)

[3] The Affidavit of Adam Sipos is Exhibit 1 to the Motion.

7. On July 31, 2017, NBV Investments, Inc. ("NBV") acquired a controlling interest in Del Maguey. (Sipos Aff. at ¶ 4) The other partial owner of Del Maguey starting on that date was Stigibeu, LLC, which is owned by three of the four individual prior shareholders of Del Maguey. (Ex. B to Opp. at Answer No. 6)

8. On that same date, Del Maguey gave notice to Sazerac that as of August 31, 2017 it would no longer use Sazerac to import the Brand Items. See id.

9. When the importation agreement between Del Maguey and Sazerac terminated, so did Sazerac's ability to sell the Brand Items to Atlantic. (Ex. B to Opp. at Answer No. 10)

10. Also on July 31, 2017, Del Maguey appointed PRUSA as the importer of the Brand Items pursuant to a distribution agreement of that date. (Adam Sipos Aff. at ¶ 5; Exs. A, B to Sipos Aff.)

11. PRUSA selected United Liquors, LLC as its wholesaler. (Sipos Aff. at ¶ 6) PRUSA has complete control over the selection of its Massachusetts wholesalers. See id.

12. Pernod Ricard S.A. is a beneficial interest holder of both NBV and PRUSA. (Sipos Aff. at ¶ 4)

13. PRUSA has never voluntarily sold the Brand Items to Atlantic. Indeed, PRUSA has only sold the Brand Items to Atlantic as a result of the Ship Order. (Sipos Aff. at ¶ 9)

14. Sazerac and PRUSA are competitors. They do not share any corporate ownership, officers, or directors. No PRUSA employees responsible for choosing PRUSA's wholesalers was formerly employed by Sazerac. PRUSA and Sazerac have never had any business dealings related to the Brand Items. (Sipos 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's obligations 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 Heublien, 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 PRUSA did not make regular sales of the Brand Items to Atlantic in the period of six months preceding the refusal to sell date of August 31, 2017. Therefore, the question is whether the particular facts in this case give rise to the imputation of Sazerac's § 25E obligations.

DISCUSSION

PRUSA 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 PRUSA and Sazerac, and that since there was no affiliation between PRUSA and Sazerac—they were competitors--, Sazerac's § 25E obligations cannot be imputed to PRUSA. Atlantic counters that the relevant relationship to examine is not that between PRUSA and Sazerac, but that between Del Maguey and Sazerac. In particular, Atlantic asserts that Sazerac was Del Maguey's agent. (Opp. at 8-9) Atlantic also asserts that PRUSA acquired whatever § 25E obligations Del Maguey had due to acquisition. (Opp. at 6-7) As set forth in detail below, the Commission finds that there are no genuine issues of material fact in dispute, that Atlantic has failed to prove an essential element of its case, and that PRUSA is entitled to judgment as a matter of law.[4]

The "relevant inquiry" in imputation of § 25E obligations is whether the successor supplier was the predecessor's agent "for the discrete purpose of making regular sales . . . to downstream

[4] Atlantic argues that the Commission should deny PRUSA's Motion, allow Atlantic to conduct additional discovery, and schedule a hearing on the merits of the case. Atlantic's arguments relative to conducting additional discovery were addressed in the Commission's November 9, 2018 and December 11, 2018 orders, and the Commission declines to reconsider those orders. As set forth below, this case, like many § 25E cases before it, 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." Id., quoting Theos & Sons, Inc. v. Mack Trucks, Inc., 431 Mass. 736, 742 (2000). As the Appeals Court summarized, "§ 14, comment, a, of the Restatement (Second) of Agency provides that an essential characteristic of an agency relationship is the right of a principal to control 'what the agent shall or shall not do before the agent acts, or at the time when he acts, or at both times." Id. at 507.

Here, there is no evidence of an agency relationship between the former importer, Sazerac, and the new importer, PRUSA, and Atlantic does not assert otherwise. PRUSA never voluntarily sold the Brand Items to Atlantic. Indeed, PRUSA has only sold the Brand Items to Atlantic as a result of the Ship Order. (Sipos Aff. at ¶ 9) Sazerac and PRUSA are competitors. Id. at ¶ 7. They do not share any corporate ownership, officers, or directors. Id. No PRUSA employees responsible for choosing PRUSA's wholesalers were formerly employed by Sazerac. Id. PRUSA and Sazerac have never had any business dealings related to the Brand Items. Id.

The other issue, which Atlantic raises as indicated above, is whether Sazerac was acting as Del Maguey's agent when the Importation Agreement was in effect. (Opposition, at 8-9) Atlantic and PRUSA both assert that the controlling case here is Brown-Forman Corp. v. Alcoholic Beverages Control Comm'n, 65 Mass. App. Ct. 498 (2006).[5] The Commission agrees. In summary, in that case, a Jamaican producer of rum ("Wray") distributed its rum through its subsidiary ("Carriage") but then changed distributors to an independent distributor ("UDV"). Brown-Forman Corp., 65 Mass. App. Ct. at 501. Both Carriage and UDV had sold the rum to wholesaler M.S. Walker ("Walker"). See id. Wray then terminated its agreement with UDV and began selling to Brown-Forman, which was not inclined to sell to Walker. See id. Walker brought a § 25E action before the Commission, which found that there was an agency relationship between Wray and UDV and ordered Brown-Forman to make regular sales of the rum to Walker. See id. at 499. Brown-Forman appealed the Commission's decision to the Superior Court, which reversed the Commission's decision and entered an order of judgment for Brown-Forman. See id. On appeal, the Appeals Court stated that, "for purposes of attribution to Brown-Forman under c. 138, § 25E, of the sales made to Walker by UDV, the relevant inquiry is whether UDV was acting as an agent for Wray for the discrete purpose of making regular sales of Appleton Rum to downstream customers." Id. at 506. In examining the relationship, the Appeals Court analyzed the distributorship agreement between Wray and UDV. See id. The agreement provided that "[a]ll of UDV's marketing activities were to be conducted in accordance with a marketing plan developed by UDV and approved by Wray on a biannual basis." Id. Wray also had the right to approve UDV's pricing strategy in connection with the marketing plan. See id. at 507-508. UDV had the right to appoint its own sub-distributors, and "there [was] nothing in the agreement that gave Wray the power to approve or veto UDV's appointment of downstream sellers nor to have any input into UDV's selection of those sellers." Id. at 507. The Appeals Court noted that "a manufacturer's right to fix a price can be a factor indicative of a distributor's status as an agent under general agency principles," but that the evidence of Wray's right to approve UDV's pricing strategy on its own

[5] Atlantic notes that the original Brown-Forman case before the Commission was based on a hearing as opposed to a motion for summary decision.

was not enough for a finding of an agency relationship. Id. at 508. The Appeals Court upheld the Superior Court decision for Brown-Forman.

The Importation Agreement between Del Maguey and Sazerac is similar in material ways to the terms of the distribution agreement between UDV and Wray in Brown-Forman. In both Brown-Forman and in the instant case, the importer/distributor had the right to appoint its own sub-distributors to market and sell the products, and the producer had no power to provide input on, approve, or disapprove the sub-distributors.[6] See Brown-Forman Corp., 65 Mass. App. Ct. at 507; Ex. 2 to Motion, at § 2.2. Additionally, in both the instant case and in Brown-Forman, the agreements specifically provided that no joint venture was created by the agreement. See Brown-Forman Corp., 65 Mass. App. Ct. at 506; Ex. 2 to Motion, at § 12.9. The Importation Agreement between Del Maguey and Sazerac went further in also disclaiming any agency, independent contractor, partnership, employment, or franchise relationship. (Ex. 2 to Motion, at § 12.9) Furthermore, with regard to marketing, in both Brown-Forman and in the instant case, the producers were to meet periodically with the importers (Wray with UDV and Del Maguey with Sazerac) about marketing of the products. See Brown-Forman Corp., 65 Mass. App. Ct. at 505; Ex. 2 to Motion, at § 3.1. In Brown-Forman, Wray was "to contribute specified minimum amounts in support of UDV's marketing activities," and in the instant case, "*[a]t [Sazerac's] request*, [Del Maguey was to] participate within reason in trade shows, product training, tastings, demonstrations, and market visits." See id. (emphasis added). Lastly, with regard to pricing for Sazerac's customers, the Importation Agreement provides that in the first year of the contract, Sazerac would use "commercially reasonable efforts to be consistent with [Del Maguey's] pricing guidelines for the [Brand Items]" and that thereafter Sazerac would, "*in its sole discretion, . . .* establish the prices it charges to Customers." (Ex. 2 to Motion, at § 3.1 (emphasis added)) In Brown-Forman, there was a reference in the distribution agreement to Wray's right to approve UDV's pricing strategy, but without further evidence or details on the issue, the court concluded that issue was "an insufficient basis upon which to sustain a finding of an agency relationship." Brown-Forman Corp., 65 Mass. App. Ct. at 508. As in Brown-Forman, the Commission finds here that the terms of the importation agreement do not expose an agency relationship.

Atlantic suggests that Del Maguey had control over Sazerac's marketing evidencing an agency relationship. In support of this assertion, Atlantic states in its answers to interrogatories that Del Maguey "was copied on most communications involving marketing, did trainings," visited Atlantic, and communicated with Atlantic employees. (Ex. C to Opp. at Answer 2) However, there is no evidence that Del Maguey had control over Sazerac with regard to those marketing activities. To the contrary, the importation agreement provided that Del Maguey would participate in marketing activities only upon Sazerac's request. (Ex. 2 to Motion, at § 3.1)[7] "[T]he fact that

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[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).

[7] Compare Brown-Forman where, "Wray could require UDV to discontinue any advertising, merchandising, or promotional activity that it deemed to be inconsistent with an approved plan or likely to damage its market reputation. The agreement also required Wray to contribute specified minimum amounts in support of UDV's marketing activities." Brown-Forman Corp., 65 Mass.

one party has subsidiary duties to act for the interests of another, as where a purchaser of goods from a manufacturer agrees that he will advance the interests of the manufacturer in certain respects, does not create an agency relationship with respect to the sale." Id. at 507 (citing Restatement (Second) of Agency, § 13, comment c (1958)).

Atlantic also asserts that an agency relationship is established due to pricing, and it points to its answers to interrogatories which state that a representative from each of Del Maguey and Sazerac reported to Atlantic that they arrived at "incentives" jointly. (Ex. C to Opp. at Answer 2) Atlantic does not identify in its answers to interrogatories the titles of those two representatives within their respective companies, when they made statements about "incentives," or the type of incentives to which they were referring (ie, marketing, pricing, etc). Atlantic argues in its Opposition that the "incentives" referred to pricing incentives over the course of the entire relationship between Sazerac and Del Maguey. There is no evidence to support that assertion. The answer merely refers to "incentives" generally and provides no time period. Even if Del Maguey and Sazerac discussed pricing incentives, there is no evidence that Del Maguey controlled the pricing. The evidence from the importation agreement shows that during the first year, Sazerac was "to use commercially reasonable efforts to be consistent with [Del Maguey's] pricing guidelines for the [Brand Items]" and after the first year, Sazerac had complete autonomy in pricing.[8] (Ex. 2 to Motion, at § 3.1) Contrary to Atlantic's suggestion in its Opposition that this language provided that Del Maguey would set the prices the first year, the agreement only provides that during the first year Sazerac would use efforts to be consistent with Del Maguey's pricing guidelines, to the extent such guidelines existed as of the effective date of the agreement and were communicated in writing to Sazerac. (Opp. at 8; Ex. 2 to Motion, at § 3.1) Del Maguey did not set prices, nor did it have the ability to veto Sazerac's established prices. (Ex. 2 to Motion, at § 3.1)

The Commission concludes that Atlantic has no reasonable expectation of proving an agency relationship between Del Maguey and Sazerac, and Atlantic has not alleged facts which would establish the existence of a genuine issue of material fact. Consequently, there can be no flow of § 25E rights up the chain of ownership, as Atlantic suggests.[9]

App. Ct. at 505. Wray's involvement in marketing to that extent was not sufficient for a showing of an agency relationship.

[8] The one-year period is comparable to transitional agreements, which courts have found do not evidence an agency relationship. United Liquors, LLC v. Haven Hill Distilleries, Inc. (ABCC Decision April 16, 2014) (providing that "[c]ourts 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.")

[9] Assuming, however, that there was an agency relationship between those two entities, Atlantic's analysis of the ownership is flawed. Atlantic asserts that PRUSA owned shares of Del Maguey, but the evidence shows otherwise. (Opp. at 6) NBV bought Del Maguey, and Del Maguey appointed PRUSA. PRUSA and NBV are both beneficially owned by Pernod Ricard, SA. (Sipos Aff. at ¶¶ 4, 5)

Having failed to meet the imputation test on grounds of agency, 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 Atlantic provides no arguments otherwise.

For the foregoing reasons, PRUSA's Motion is allowed.

CONCLUSION

The Commission concludes that PRUSA did not make, "regular sales of [the Brand Items] during a period of six months preceding [the August 31, 2017] refusal to sell," and there is no basis for imputing Sazerac's § 25E obligations. See G. L. c. 138, § 25E.

PRUSA's Motion for Summary Decision is **ALLOWED**

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

I, Elizabeth A. Lashway, hereby certify that I listened to the audio recording of the April 11, 2019 hearing in this matter and reviewed the Motion, Opposition, Reply, and all supporting documentation.

Elizabeth A. Lashway, Commissioner _____

Jean M. Lorizio, Chairman _____

Kathleen McNally, Commissioner _____

Dated: July 9, 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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