



Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
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Chairman

NO. 25E-1366

CLASSIC WINE IMPORTS, INC. d/b/a VISION WINE & SPIRITS
Petitioner,

v.

GORDON & MACPHAIL,
Respondent.

HEARD: 6/21/2018

MEMORANDUM AND ORDER ON
RESPONDENT'S MOTION TO TERMINATE SHIP ORDER
OR, IN THE ALTERNATIVE, CLARIFY THE SHIP ORDER

The Alcoholic Beverages Control Commission ("Commission") hereby issues this Memorandum and Order in response to Gordon & MacPhail's Motion to Terminate Ship Order or, In the Alternative, Clarify the Ship Order, filed with the Commission on April 11, 2018.

PROCEDURAL BACKGROUND

This case arises under M.G.L. c. 138, § 25E. Petitioner, Classic Wine Imports, Inc. d/b/a Vision Wine & Spirits ("Classic"), is a Massachusetts wholesaler aggrieved at the refusal of Gordon & MacPhail¹ ("G&M"), a Massachusetts certificate of compliance holder, to ship several alcoholic beverages² (the "Brand Items") to Classic. On or about February 22, 2018, Classic Wine Imports Inc. filed a Petition pursuant to M.G.L. c. 138, § 25E, against G&M. On February 22, 2018, pursuant to the mandate in § 25E, the Commission issued an order to G&M to make sales of the Brand Items to Classic pending the Commission's determination of the Petition on the merits.

On April 11, 2018, G&M filed its Motion to Terminate Ship Order or, In the Alternative, Clarify the Ship Order (the "Motion"). On May 2, 2018, Classic filed its Opposition to the Motion (the "Opposition"). On June 18, 2018, G&M filed its Reply Supporting its Motion. The Commission held a hearing on the matter on Thursday, June 21, 2018.

¹ Correct citation is Speymalt Whisky Distributors Ltd. d/b/a Gordon & MacPhail.

² Atholl Brose; Benromach; Connoisseurs Choice; and Gordon & MacPhail brand whiskies.

FINDING OF FACTS

1. Speymalt Whisky Distributors Ltd. d/b/a Gordon & MacPhail (“G&M”) is an independent bottler, distiller, and distributor of Scotch Whisky located in Elgin, Scotland. G&M distills or matures and bottles several scotch whisky brands including Benromach, Atholl Brose, Connoisseurs Choice whisky and various G&M scotch whiskies (the “Brand Items”). (Affidavit of David King)
2. G&M holds a Certificate of Compliance (“COC”) from the Massachusetts Alcoholic Beverages Control Commission (“ABCC”). (Commission File)
3. Classic Wine Imports, Inc. began importing the Brand Items approximately 20 years ago. (Verified Opposition)
4. As of January 16, 2018, G&M informed Classic that it would no longer do business with Classic. (Verified Opposition)

DISCUSSION

According to Massachusetts General Law Chapter 138, § 25E, “it shall be an unfair trade practice and therefor 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&M asserts that Classic has not made regular purchases of the Brand Items during the six-month period immediately preceding the refusal to sell date of January 16, 2018 and as such, the Commission should allow G&M’s Motion. Classic asserts that Orders to Ship should not be disturbed until both parties have had a chance to argue the merits of the Petition and the Commission has issued a final decision.

The purpose of an order to ship is to maintain the status quo during the course of the § 25E litigation. Somerset Importers, Ltd. v. Alcoholic Beverages Control Comm’n, 28 Mass. App. Ct. 381, 384-385 (1990) (§ 25E obligates supplier “to maintain normal business volume” pending ABCC’s decision upon supplier’s alleged § 25E obligations); Austin-Nichols & Co., Inc. v. Alcoholic Beverages Control Comm’n, Suffolk County Superior Court C.A. No. 02-0619H (Walker, J., Mem. & Order Mar. 27, 2002) (§ 25E ship order’s purpose is to “preserve the status quo” pending the Commission’s final ruling upon the § 25E obligations, if any, of a supplier). The statute is explicit that, upon a wholesaler’s application, the Commission “*shall order* the manufacturer, importer or wholesaler giving notice of refusal to sell to continue to make sales in the regular course to such wholesaler *pending determination by the commission on the merits of said appeal.*” M.G.L. c. 138, § 25E (emphasis added). The merits of the appeal have not yet been heard, and therefore, the Commission must continue to enforce its order.

CONCLUSION

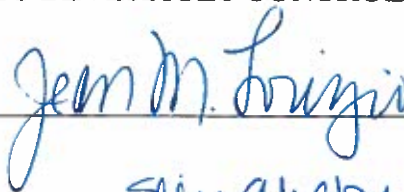
The Commission has reviewed and considered G&M's Motion to Terminate, or in the Alternative, to Clarify the Order to Ship, Classic's Opposition, and G&M's Reply Supporting its Motion to Terminate as well as the exhibits, and arguments made at the Commission hearing, and **DENIES** the Motion.

The Commission's Ship Order of February 2018 remains in full effect.

The Commission further establishes that **all discovery shall be completed on or before February 22, 2019.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Elizabeth A. Lashway, Commissioner



Kathleen McNally, Commissioner



Dated: December 6, 2018

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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