



*Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, Massachusetts 02150-2358*

Jean M. Lorizio, Esq.
Chairman

NO. 25E-1377

CLASSIC WINE IMPORTS, LLC
Petitioner,

v.

KOBRAND CORP.,
Respondent.

HEARD: 8/19/2020

**MEMORANDUM AND ORDER ON
RESPONDENT'S MOTION FOR SUMMARY DECISION AND
PETITIONER'S OPPOSITION**

Classic Wine Imports, LLC ("Classic") is a Massachusetts wholesaler aggrieved at the refusal of Kobrand Corp. ("Kobrand") to ship alcoholic beverages bearing the name Montes a.k.a. Vina Montes wines, including but not limited to Montes Icons Wines, Montes Alpha Special Cuvee; Montes Outer Limits; Montes Alpha Series; Montes Limited Selection Series; Montes Classic Series; Montes Special Releases; Montes Sparkling Angel, etc. (the "Brand Items") to Classic.

On May 17, 2019, pursuant to the mandate in M.G.L. c. 138, § 25E, the Alcoholic Beverages Control Commission (the "Commission" or "ABCC") issued an order to Kobrand to make sales of the Brand Items to Classic pending the Commission's determination of the petition on the merits (the "Ship Order").

On May 4, 2020, Kobrand filed the instant Motion for Summary Decision ("Motion") regarding Classic's § 25E Petition arguing that under § 25E and applicable case law, Kobrand should not be required to sell the Brand Items to Classic because Kobrand has not made six months of regular sales of the Brand Items to Classic, nor do any grounds exist for the imputation of § 25E obligations to Kobrand, specifically because Kobrand is not an agent of the predecessor supplier T.G.I.C. Importers, Inc. ("TGIC"); there is no continuing affiliation between them; that there was no assignment of distributor arrangements or agreements; and there is no attempted circumvention of § 25E. Kobrand filed in support of its Motion, the Affidavit of Robert T. DeRoose ("DeRoose Affidavit") with attached exhibits including: the Distribution Agreement between Montes S.A. and Kobrand ("Kobrand Distribution Agreement"); an Agreement between Montes S.A. and TGIC

("TGIC Distribution Agreement"); notification of cessation of doing business from Kobrand to Classic; and a press release entitled "Kobrand Corporation Named Exclusive U.S. Importer for Acclaimed Chilean Wine Pioneer, Vina Montes."

On May 15, 2020, Classic filed its Opposition to Kobrand's Motion for Summary Decision (the "Opposition") asserting that TGIC's § 25E obligations should be imputed to Kobrand and that an evidentiary hearing should be scheduled after which the Commission could decide the matter on its merits. In support of its Opposition, Classic filed the Affidavit of Peter A. Grupp ("Grupp Affidavit"), along with the following exhibits: Press Release by Kobrand Corporation; Classic Wine Imports, LLC's Application for Relief; April 29, 2019 Letter from Kobrand to Classic regarding Purchase Orders; Distribution Agreement by and between Kobrand and Montes S.A.; and Distribution Agreement by and between TGIC Importers, Inc. and Montes S.A..

On June 9, 2020, Kobrand filed its Reply in support of Motion for Summary Decision ("Reply").

The Commission held a hearing on August 19, 2020, regarding Kobrand's Motion for Summary Decision and Classic's Opposition.

After a hearing and consideration of the arguments and exhibits 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. Classic is a Massachusetts wholesaler licensed under M.G.L. c. 138, §18 with a usual place of business in Taunton, Massachusetts. (Verified § 25E Petition, at ¶1)
2. Kobrand is a supplier of alcoholic beverages with a usual place of business at 1 Manhattanville Road, Purchase, New York 10577. (Verified § 25E Petition, at ¶2)
3. Kobrand holds a Certificate of Compliance issued by the Commission under M.G.L. c. 138, §18B. (Verified § 25E Petition, at ¶2)
4. The Brand Items are a series of Chilean wines produced by Vina Montes ("Montes"). (Exhibit A to Grupp Affidavit, at Kobrand 0035)
5. For several years, TGIC, a supplier, sold the Brand Items to Classic. (Verified § 25E Petition, at ¶ 3)
6. Pursuant to the terms of the TGIC Distribution Agreement dated January 1, 2004, between TGIC and Montes, TGIC was granted the exclusive rights to import, sell and distribute the Brand Items in the United States of America, and excluded Puerto Rico, the U.S. Virgin Islands, United States Embassies and Consulates, and Duty-Free Stores. (Exhibit B to DeRoose Aff., at Kobrand 0019-0031)
7. TGIC and Montes acknowledge in the TGIC Distribution Agreement that their relationship was that of independent contractors, "and not as partners, joint ventures or principal or agent" and that "[n]either party shall have the right or authority to assume or create any

responsibility express or otherwise implied, on behalf of the other party or to bind the other party in any manner whatsoever". Id.

8. The TGIC Distribution Agreement required, *inter alia*, that TGIC:
 - a. actively promote, distribute, create and increase sales of the Brand Items;
 - b. cooperate with Montes and maintain adequate sales staff;
 - c. seek prior written approval from Montes for any marketing materials utilized;
 - d. keep adequate accounting records and provide Montes with reasonable access to such records;
 - e. use "reasonable efforts" which includes developing sales goals; and
 - f. utilize sub-distributors and other shipment means as it requires and under the terms TGIC determines in its sole discretion. Id.
9. The TGIC Distribution Agreement provided for an initial term of five (5) years commencing on January 1, 2004. The term would automatically renew for additional five (5) year periods unless either party elected not to renew and provided adequate notice. Id.
10. On or about January 1, 2019, Montes entered into an exclusive distribution agreement with Kobrand as its sole and exclusive distributor of the Brand Items in the United States (the "Kobrand Agreement"). (DeRoose Aff., at ¶5(a), Exhibit A to Opposition, at Kobrand 0004)
11. TGIC was no longer authorized to import or distribute any Brand Items as of January 1, 2019. (DeRoose Aff., at ¶5(a)-(c), Exhibit A to Opposition, at Kobrand 0004-0005)
12. The Kobrand Agreement expressly states "[t]his Agreement does not constitute either Party as the agent or legal representative of the other Party for any purpose whatsoever. Neither party is granted any right or authority to assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of the other Party, or to bind the other Party in any manner." (DeRoose Aff., at ¶5(k), Exhibit A to Opposition, at Kobrand 0016)
13. The Kobrand Agreement does not give Montes any authority or control over downstream distributors. (DeRoose Aff., at ¶5(e), Exhibit A to Opposition, at Kobrand 0004-0018)
14. Kobrand's obligations include:
 - a. actively importing, promoting, and distributing the Brand Items;
 - b. exercising "commercially reasonable efforts" which includes developing sales goals and plans;
 - c. maintaining adequate levels of product and sales staff;

- d. matching Montes financial contributions to advertising and promotion of Brand Items and determining solely the best use of those funds.

(DeRoose Aff., at ¶5(f) ¶5(g) ¶5(h) ¶5(i), Exhibit A to Opposition, at Kobrand 0004-0012)

15. As exclusive importer and distributor of the Brand Items, Kobrand appointed Horizon Beverage Company Inc. ("Horizon"), to distribute the Brand Items in Massachusetts. Montes and its previous importer, TGIC, had no control over Kobrand's selection of downstream wholesalers and distributors. (DeRoose Aff., at ¶13, Exhibit A to Opposition, at Kobrand 0004-0018)
16. After January 1, 2019, Classic submitted its purchase orders for the Brand Items to Kobrand and Kobrand subsequently filled one purchase order. (DeRoose Aff., at ¶14, Exhibit C to Opposition, at Kobrand 0032)
17. By a letter dated April 29, 2019, Kobrand notified Classic that it would no longer ship the Brand Items to Classic. The Notification of Cessation of Doing Business stated in part,

...We understand that your company had previously purchased the Brand from the predecessor importer/distributor, TGIC Importers, Inc. We have recently filled one PO for the Brand submitted by you, but we are notifying you that Kobrand will not fill any further Pos for the Brand as may be submitted by you.

(DeRoose Aff., at ¶15, Exhibit C to Opposition, at Kobrand 0032)

Kobrand did not sell to Classic after 4/29/2019. Id.

18. Kobrand and TGIC share no common officers, directors or employees; and have never entered into a joint venture, ownership, or partnership with each other. (DeRoose Aff., at ¶10)
19. Kobrand and TGIC share no affiliation and TGIC's distribution rights were not assigned to Kobrand at any period. (DeRoose Aff., at ¶11)

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 Rules rely on the courts' interpretation of Mass. R. Civ. P. 56 so 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. 714, 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 judgment 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. 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 (nothing existence of "legitimate business reasons for a new supplier...to want to evaluate its prospective wholesalers for the six-month 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 a 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 the 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, 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.

DISCUSSION

The initial burden on summary judgment is on the moving party, Kobrand. See Kourouvacilis, 410 Mass. at 716. Kobrand may meet its burden on summary judgment by showing that Classic has no reasonable expectation of producing evidence on an essential element of its case. See Id. Kobrand filed the DeRoose Affidavit whose facts are supported by the following documents: the Kobrand Distribution Agreement; the TGIC Distribution Agreement; the notification of cessation of doing business from Kobrand to Classic; and a press release entitled "Kobrand Corporation Named Exclusive U.S. Importer for Acclaimed Chilean Wine Pioneer, Vina Montes". Classic filed the Grupp Affidavit which refers only to its exhibits: Press Release by Kobrand Corporation; Classic Wine Imports, LLC's Application for Relief; April 29, 2019 Letter from Kobrand to Classic regarding Purchase Orders; Kobrand Distribution Agreement; and TGIC Distribution Agreement, and none of which contradicts any material facts presented in the DeRoose Affidavit. The DeRoose Affidavit along with the exhibits thereto meet Kobrand's initial burden on summary decision by showing that Classic "has no reasonable expectation of proving [its]case." Id. As a result, the burden then shifts to Classic to advance specific facts that establish a genuine issue for trial. See Id.

In instant case, TGIC's distribution agreement with Montes expired on December 31, 2018, and Kobrand was appointed the exclusive distributor of the Brand Items as of January 1, 2019. (DeRoose Aff. at ¶5(a), Exhibit A to DeRoose Aff. at Kobrand 0004)

Kobrand made only one sale of the Brand Items to Classic in the period of six months preceding its refusal to sell in April of 2019. (DeRoose Aff. ¶14, Exhibit C to DeRoose Aff. at Kobrand 0032) Kobrand did not make regular sales of the Brand Items in the preceding six months before notifying Classic that it would not fulfill any additional purchase orders, (DeRoose Aff. ¶14, Exhibit C to DeRoose Aff. at Kobrand 0032) therefore, "good cause" obligations under §25E do not attach and the question before the Commission is whether the particular facts in this case give rise to the imputation of §25E obligations to Kobrand. Imputation arises when an agency/affiliation can be shown, there has been an assignment of distribution rights or an intent to circumvent §25E obligations.

Joint venture/agency/continuing affiliation

There is no dispute that Montes utilized TGIC as the exclusive importer of the Brand Items and on January 1, 2019, Kobrand became the exclusive importer of Brand Items in accordance with the Distribution Agreement between Montes and Kobrand. (DeRoose Aff. at ¶5(a) – (c), Exhibit A to DeRoose Aff. at Kobrand 0004-0005) No evidence has been presented as to a direct agency relationship or continuing affiliation between TGIC and Kobrand. Nor has any evidence been presented as to a joint venture between TGIC and Kobrand.

Instead, Classic argues that TGIC's obligations should be imputed to Kobrand through Montes. Although there is no evidence of any relationship between Kobrand and TGIC, Classic argues a triangular relationship exists amongst the three entities through which TGIC's obligations should be imputed through Montes to Kobrand. In other words, Classic asserts that TGIC's predecessor supplier obligations should be imputed up to Montes by virtue of an agency relationship and as a result, those predecessor obligations flow down to Kobrand.

A successor supplier takes on its predecessor's §25E obligations where there is a "continuing affiliation or agency relationship" between the suppliers. Brown-Forman, 65 Mass. App. Ct. at 500 (quoting Heublein, 434 Mass. at 406). "Although there is no settled definition of 'continuing affiliation' ...the prevailing thinking... is that the standard is met when either predecessor and successor have an agency relationship or when successor acquires predecessor's rights by contractual assignment or through joint venture." Beam Spirits & Wine, LLC v. Alcoholic Beverages Control Comm'n, No. 13-02229-C, 2014 WL 4082142, at *6 (Mass. Super. Ct. July 16, 2014). "An agency relationship is created when there is mutual consent, express or implied, that the agency is to act on behalf of and for the benefit of the principal, and subject to the principal's control." Beam Spirits & Wine, LLC, 2014 WL 4082142, *7, quoting Theos & Sons, Inc. v. Mack Trucks, Inc., 431 736, 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 conducts 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. Similarly, 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...[F]actors indicating such an intent including 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.

There is no evidence that Montes exercised sufficient control over TGIC to create an agency relationship that would then obligate Kobrand under § 25E. "The test of an agency relationship is whether the principal has 'the right to control' the purported agent" and "[t]he question of control must be considered with respect to the particular conduct in issue..." Brown-Forman Corp., 2004 WL 1385495, at *6, (quoting Cowan v. Eastern Racing Association Inc., 330 Mass. 135, 141-142 (1947)). Montes did not exercise sufficient control to establish an agency relationship with TGIC. Under the terms of its Distribution Agreement, TGIC had sole control over which sub-distributors it would use. (DeRoose Affidavit, Exhibit B at Kobrand 0019-0031) Montes had no authority to exercise control over the selection, appointment or termination of downstream distributors. (DeRoose Affidavit, Exhibit B at Kobrand 0019-0031) Similarly, Montes does not retain any control over the selection, appointment or termination of Kobrand's downstream distributors in its Distribution Agreement. (DeRoose Affidavit ¶5(k), Exhibit A at Kobrand 0016) (DeRoose Affidavit ¶5(e), Exhibit A at Kobrand 0004-0018) In oral argument, Classic concedes that most important factor in determining whether an agency relationship exists is the right to select downstream distributors. Classic further admits that under the TGIC distribution agreement, it was TGIC that had the right to select downstream distributors and not Montes. There is no evidence to the contrary.

Although it may be the most crucial factor, Classic argues the Commission must consider the overall context of the agreement and points to contractual allocations of marketing resources, reporting requirements, marketing strategy, inventory requirements, and monitoring sales to establish an agency relationship existed. The Commission agrees that provisions must be considered in the context of the whole agreement; however, in this case those provisions are insufficient to establish Montes had sufficient control over TGIC to give rise to an agency relationship, particularly where TGIC had sole control over appointment of sub-distributors.

For the reasons cited above, there is no evidence to show a continuing affiliation or joint venture.

Assignment

There is no evidence that TGIC assigned any of its distribution rights to Kobrand. For the reasons discussed above, there is no evidence that Montes acquired §25E obligations to Classic through TGIC and subsequently assigned those distribution rights to Kobrand.

Intent to Circumvent

There is no evidence that any party intended to circumvent its §25E obligations and Classic does not argue there was such an intentional circumvention.

Classic's documentation does not establish a genuine issue for trial. As a result, Classic's failure to prove an essential element of its case, "renders all other facts immaterial" and requires summary judgment in favor of Kobrand. See Kourouvacilis, 410 Mass. at 711.

Finally, Classic also argues that a full hearing on the merits is warranted in this matter. The Informal Fair Hearing Rules allow for motions for summary decision in §25E cases. See *supra*, at 5. Indeed, §25E cases are regularly disposed of by summary decision. As the Superior Court acknowledged,

[n]othing in [the] language [of §25E] mentions, let alone requires, an evidentiary hearing. A motion for summary decision under 801 Code Mass. Reg.s 1.01(7)(h) is a perfectly lawful means to resolve an administrative matter that presents no disputed facts. The word "hearing" itself does not preclude holding a motion hearing, as opposed to an evidentiary one. Indeed, Mass.R.Civ.P. 56(c) contemplates a "hearing," but certainly does not require an evidentiary hearing, where the whole point is to determine whether a trial is warranted. The ABCC had every right to proceed in the same way, by conducting a motion hearing, rather than an unnecessary evidentiary proceeding.

Boston Wine Co., Ltd. d/b/a/ Winebow Boston v. Alcoholic Beverages Control Comm'n, No. 18-567-D, at 6-7 (Mass. Super. Ct. Mar. 26, 2018). The Commission has the authority to dispose of §25E cases by means of summary decision and finds the facts of this case lend themselves to such a disposition.

CONCLUSION

The Commission concludes that Kobrand did not make "regular sales of the Montes brand wines during a period of six months preceding the refusal to sell," and there is no basis for imputing §25E obligations to Kobrand. See G. L. c. 138, § 25E.

Kobrand'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

Deborah A. Baglio, Commissioner Deborah A. Baglio

Jean M. Lorizio, Chairman Jean M. Lorizio

Crystal Matthews, Commissioner Crystal Matthews

Dated: April 30, 2025

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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cc: Mark Dickison, Esq. via email
Peter Grupp, Esq. via email
Michael J. Rossi, Esq. via email
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