



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

Jean M. Lorizio, Esq.
Chairman

25E-1438

UNITED LIQUORS, LLC
Petitioner,

v.

FREIXENET MIONETTO USA, INC.
Respondent.

HEARD: 9/18/2023

**MEMORANDUM AND ORDER ON UNITED'S MOTION FOR SANCTIONS AND
FREIXENET'S CROSS-MOTION TO DISMISS AND OPPOSITION TO
MOTION FOR SANCTIONS AND UNITED'S OPPOSITION TO MOTION TO DISMISS**

The Alcoholic Beverages Control Commission ("Commission") hereby issues this Memorandum and Order in response to United Liquors, LLC's ("United") Motion for Sanctions and Freixenet Mionetto USA, Inc.'s ("Freixenet") Opposition and Freixenet's Cross-Motion to Dismiss and United's Opposition.

PROCEDURAL BACKGROUND

United filed an Application for Relief under G.L. c. 138, §§ 25A and 25E as a Massachusetts wholesaler aggrieved at Freixenet's refusal to ship or material curtailment of the sale of Freixenet and Segura wines (the "Brand Items") to United.

On February 27, 2023, pursuant to the mandate in M.G.L. Ch. 138, § 25E, the Alcoholic Beverages Control Commission (the "Commission" or "ABCC") issued an order (the "Ship Order") to Freixenet to make sales of the Brand Items to United pending the Commission's determination of the petition on the merits.

By letter dated April 10, 2023, Freixenet notified the Commission that it had never refused to sell or to fulfill any orders for the Brand Items and had not notified United of any intent to discontinue sales.

On April 28, 2023, United filed the instant Motion for Sanctions (“Motion”) alleging Freixenet violated the Ship Order requiring Freixenet to sell United the Brand Items in the regular course of business as well as Massachusetts General Laws Chapter 138, § 25A which prohibits suppliers from engaging in price discrimination against MA wholesalers.

On May 24, 2023, Freixenet filed its Cross-Motion to Dismiss and Opposition to Motion for Sanctions. Freixenet asserts United’s Motion for Sanctions is groundless and its § 25E Application should be dismissed for failure to state a claim and for lack of subject matter jurisdiction.

On June 23, 2023, United filed its Opposition to Freixenet’s Cross-Motion to Dismiss asserting that its Petition for Relief under §§ 25A and 25E stems from Freixenet’s violations of G.L. c. 138, § 25A which constitutes a ‘refusal to sell’ prohibited under § 25E.

On July 6, 2023, Freixenet filed its Reply in support of its Motion to Dismiss.

The Commission held a hearing on September 18, 2023 regarding United’s Motion for Sanctions and Freixenet’s Cross-Motion to Dismiss and Opposition to Motion for Sanctions and United’s Opposition to Motion to Dismiss.

After hearing and consideration of the arguments made 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. United is a wholesaler of alcoholic beverages with a usual place of business in Taunton, Massachusetts. (Verified § 25E Petition, at ¶1)
2. Freixenet is a supplier of alcoholic beverages with a usual place of business at 81 Main Street, Suite 303, White Plains, New York. (Verified § 25E Petition, at ¶2)
3. United made purchases of the Freixenet and Segura brands (“Brand Items”) in the regular course for more than six months and had served as the exclusive Massachusetts wholesaler with respect to the Brand Items. (Verified Petition, at ¶¶ 3, 4)
4. On January 27, 2023, Freixenet dueled the Brand Items with another Massachusetts licensed wholesaler to market, sell and distribute the Brand Items. (Verified § 25E Petition, at ¶ 4)
5. On January 30, 2023, Freixenet notified United it was discontinuing its past pricing support, including floor credits and rate per cases discounts. (Verified § 25E Petition, at ¶5)
6. United alleges in its § 25E Petition that it “...learned that Freixenet, while withholding support from United, was providing significant support to its preferred wholesaler ...with the result that to match the retail pricing United would have to sell the brands significantly below cost.” (Verified § 25E Petition, at ¶5)

7. On February 22, 2023¹, United filed an Application for Relief Under G.L. Ch. 138 §§ 25A and 25E. (Verified § 25E Petition, at ¶(6))

STANDARD OF REVIEW

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” wherein a party “may request rulings or relief in writing at any time” This includes motions to dismiss. Because § 25E cases are complex, the Commission often looks to the Formal Rules under 801 C.M.R. 1.01(7)(g)(1) to promote regularity and efficiency with its procedures. Since the Formal Rules rely on the courts’ interpretation of Mass. R. Civ. P. 12(b)(6), so too does the Commission. Boston Wine Co. LTD. v. Merryvale Vineyards, 25E-1379 (ABCC Decision August 23, 2022) Pursuant to 801 CMR section 1.01 (7)(g)(3), the Commission may dismiss an appeal for lack of jurisdiction or where the appeal fails to state a claim upon which relief can be granted.

Motions to dismiss are decided under the well-recognized standards. “The Massachusetts Supreme Court has held that an adjudicator cannot grant a motion to dismiss if the non-moving party’s factual allegations are enough to raise a right to relief above the speculative level based on the assumption that all of the allegations in the appeal are true, even if doubtful in fact.” LD Holdings LLC d.b.a Bar 74 (ABCC Decision 1/23/2019) *citing* Iannacchino v. Ford Motor Co., 451 Mass. 623, 636 (2008).

DISCUSSION

In its motion to dismiss, Freixenet argues the Commission should dismiss United’s § 25E petition for failure to state a claim and lack of subject matter jurisdiction, maintaining that there have been no facts alleged that, if true, would be a violation of § 25E.

The Commission regulates the “conduct of the business of manufacturing, importing, exporting, storing, transporting and selling alcoholic beverages” that occurs within Massachusetts. Chapter 10, section 71, of the General Laws “which established the ABCC, was legislatively intended to ‘give the commission comprehensive and exclusive jurisdiction over the conduct of liquor business in the commonwealth.’” Austin, Nichols & Co. v. Alcoholic Beverages Control Comm’n, 2005 WL 2476218 at *3 (Mass. Super. Aug. 26, 2005), quoting Universal Mach. Co. v. Alcoholic Beverages Control Comm’n, 301 Mass. 40 (1938); accord Miller Brewing Co. v. Alcoholic Beverages Control Comm’n, 56 Mass. App. Ct. 801, 810 n.7 (2002); S&H Independent Premium Brands East, LLC et al v. Win-It-Too d/b/a Global Beer Network et al, 25E-1382 (ABCC Decision August 21, 2021); Johnson Brothers of Massachusetts, Inc. (ABCC Decision Oct. 4, 2019)

Massachusetts General Law Chapter 138, § 25E states, “[i]t 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

¹ That same date, United filed a Complaint with the ABCC Investigation and Enforcement Division, alleging Freixenet is engaging in price discrimination in violation of M.G.L. Ch. 138, §25A. (See United Liquors, LLC’s Opposition to Cross-Motion to Dismiss, footnote 1)

wholesalers has made regular sales of such brand item during a period of six months preceding any refusal to sell." M.G.L.ch. 138, § 25E

A "[r]efusal to sell," ... must mean something other than an entire cutting off. Otherwise it would be possible to restrict sales to a symbolic amount which was so small that it would eliminate a wholesaler as a factor so far as a particular brand name product was concerned. A purpose of Section 25E, counteracting vertical integration in the liquor distribution business, would be subverted." Somerset Importers, Ltd v. Alcoholic Beverages Control Comm'n, 28 Mass. App. Ct. 381, 384. See Pastene Wine & Spirits Co. v. Alcoholic Beverages Control Comm'n, 401 Mass. 612, 618 (1988); Seagram Distillers Co. v. Alcoholic Beverages Control Comm'n, 401 Mass. at 716.

Here, there have been no assertions that Freixenet has refused to sell the Brand Items to United, or rejected, in whole or in part, any order placed by United. Rather, United's complaint alleges Freixenet is offering discounts on the Brand Items to another Massachusetts wholesaler in violation of § 25A. In oral argument before the Commission, United concedes that Freixenet has not terminated sales of Brand Items to United or failed to fill purchase orders. United asserts that although there has been no discontinuation of sales, Freixenet is engaging in discrimination in favor of another Massachusetts wholesaler and the alleged price discrimination is a "material curtailment" of volume of sales of the Brand Items to United and therefore § 25E applies.

No specific allegations supporting a claim that Freixenet's actions lead to price discrimination have been pleaded in United's Petition. Freixenet did not discontinue or limit sales of the Brand Items to United. Further, United's allegations regarding another Massachusetts wholesaler, not a party to this action, and its discounted pricing to retailers, do not support its speculative claim of price discrimination by Freixenet resulting in the material curtailment described in its Petition. While it generally disfavors dismissal of § 25E petitions or requests for relief from ship orders, the Commission finds it is appropriate in this circumstance where there have been no facts alleged by United in its Petition that, if true, would be a violation of § 25E.

CONCLUSION

The Commission has reviewed and considered United's Motion for Sanctions, Freixenet's Cross-Motion to Dismiss, and United's Opposition.

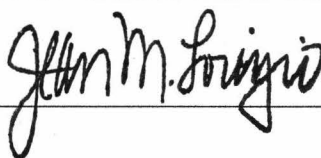
Freixenet's Cross-Motion to Dismiss is ALLOWED. The matter is dismissed without prejudice. The Commission's previous order to ship is DISSOLVED effective 30 days from the date of this decision. As a result of the Commission granting Freixenet's Motion to Dismiss, United's Motion for Sanctions is moot.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

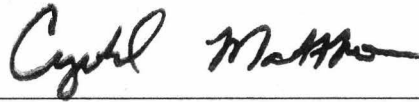
Deborah Baglio, Commissioner



Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Dated: May 14, 2026

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: J. Mark Dickison, Esq., via email
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Administration, File