

Colonial Wholesale Beverage Corp.
970 Old Reed Road
North Dartmouth, MA 02747

v.

Buzzards Bay Brewing, Inc.
98 Horseneck Road
Westport, MA 02790

No.: 25E-1270

Hearing Date: April 28, 2009

**MEMORANDUM AND ORDER ON
Motion To Determine
The Sufficiency of
Responses To Requests For Admissions**

This was a hearing before the Alcoholic Beverages Control Commission (“the Commission”). Colonial Wholesale Beverage Corp. (“COLONIAL”), the petitioner in Commission Case No. 25E-1270, is a Massachusetts wholesaler aggrieved at the refusal of Buzzards Bay Brewing, Inc. (“BUZZBAY”), a Massachusetts manufacturer of alcoholic beverages, to ship to COLONIAL BUZZBAY malt beverages brand items ordered by COLONIAL. On or about December 18, 2008, pursuant to the mandate in G.L. c. 138, § 25E, the Commission issued an order to BUZZBAY to make sales of the BUZZBAY brand items to COLONIAL pending the Commission’s determination of the petition on the merits.

BUZZBAY filed the motion that is the subject of this hearing and COLONIAL filed an opposition to the motion.

After hearing and consideration of the exhibits and arguments provided by the parties, the Commission finds the following facts and makes the following rulings.

Facts

1. On or about November 25, 2008, BUZZBAY sent a written notice to COLONIAL that on and after March 31, 2009, BUZZBAY would discontinue sales of the BUZZBAY brand items to COLONIAL. BUZZBAY stated 3 grounds for discontinuing sales to COLONIAL, a) failure to exercise best efforts in promoting the sale of BUZZBAY’S brands, b) disparagement of BUZZBAY’S products so as to impair BUZZBAY’S reputation as the brand owner and product manufacturer, and c) unfair preferment in sales effort for brand sales of a competitor.

2. COLONIAL filed with the Commission a petition dated December 9, 2008 seeking relief under M.G.L. c. 138, § 25E. In that petition COLONIAL denied BUZZBAY'S allegations of good cause to terminate sales to COLONIAL. COLONIAL further alleged mistakes and misconduct by BUZZBAY in the sales relationship with COLONIAL.
3. On December 18, 2008, the Commission issued an order to BUZZBAY to continue sales to COLONIAL until there was a final determination on the merits of the petition for relief. The Commission order also authorized discovery to take place.
4. On or about January 27, 2009, BUZZBAY conducted the deposition of Frank B. Sousa, Jr. A copy of the transcript of that deposition, or even pertinent portions of it, was not filed with the Commission before, during or after the hearing on the present motion.
5. BUZZBAY issued to COLONIAL a series of 43 requests for admission on or about February 12, 2009.
6. COLONIAL issued a response to the 43 requests for admission that consisted of an objection to each and every request for admission on or about March 16, 2009.¹
7. On or about March 27, 2009, BUZZBAY filed the pending motion and COLONIAL filed its opposition to this motion on or about April 23, 2009.

Discussion

The Commission is persuaded that requests for admission numbered 4, 6, 7, 11, 13-15, inclusive, 18-19, inclusive, 30, and 43 are not, in the current circumstances of this case, unreasonably cumulative and duplicative of other discovery. The plain language of these requests for admission issued by BUZZBAY persuades the Commission that these requests do eliminate disputes of facts, narrow the issues for hearing before the Commission, and save the Commission, if not the parties as well, time and expense. COLONIAL did not persuade the Commission that these requests for admission repeated clear and unambiguous answers given in the deposition.

Conclusion

The Alcoholic Beverages Control Commission determines that COLONIAL'S objections to each and every one of the 43 requests for admission is insufficient. The Commission hereby orders that Frank B. Sousa, Jr., John R. Vincent, Barbara Vincent, Frank B. Sousa III, Michael T. McHenry, Joanne Vincent Isabel, and Jana McHenry shall each personally appear before the Commission to

¹ The Commission notes that COLONIAL applied for a new, all-alcoholic beverages section 18 license on February 24, 2009. The application for this wholesale license dated February 17, 2009 identifies 5 individuals as directors of COLONIAL, while the records of the Secretary of the Commonwealth, corporations division, identifies other individuals as directors of COLONIAL. The Commission notes further that General Laws chapter 138, section 18 provides, in pertinent part, that "[t]he commission may issue ... to corporations organized under the laws of the commonwealth whereof all the directors are citizens of the United States and a majority thereof residents of the commonwealth ... licenses as wholesalers and importers."

give evidence and testimony at each hearing scheduled by the Commission regarding this pending 25E petition after the date of this Memorandum and Order, unless COLONIAL issues to BUZZBAY on or before September 30, 2009, with a copy thereof to the Commission, substantive responses to the requests for admission numbered 4, 6, 7, 11, 13-15, inclusive, 18-19, inclusive, 30, and 43, without exception, limitation or further objection.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Robert H. Cronin, Commissioner _____

Susan Corcoran, Commissioner _____

Dated at Boston, Massachusetts this 1st day of September 2009.

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 days of receipt of this decision.

cc: Robert F. Oberkoetter, Esq.
H. Glenn Alberich, Esq.
File