

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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AMTEC INTERNATIONAL OF NY CORP.

Plaintiff,

—against—

POLISH FOLKLORE IMPORT CO., INC.

Defendant.

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Plaintiff, Amtec International of NY Corp., by and through its attorneys, Donovan Hatem LLP, as and for its Amended Complaint alleges as follows:

THE PARTIES

1. Plaintiff Amtec International of NY Corp. (“Amtec”) is a New York corporation with its principal place of business located at 430 Morgan Avenue, Brooklyn, New York.

2. Amtec is a duly licensed, multi-brand distributor and importer of alcoholic and beverage products within, *inter alia*, the States of New York, Connecticut, and New Jersey.

3. Upon information and belief, Defendant Polish Folklore Import Co., Inc. (“PFI”) is an Illinois corporation with its principal place of business at 1128 Tower Road, Schaumburg, Illinois.

4. Upon information and belief, PFI is the importer of various brands of beer manufactured by Kompania Piwoarska SA (“KP”) in the States of New York, Connecticut, and New Jersey, including the Zubr brand (“Zubr Brand”).

5. Upon information and belief, in connection with its role as an importer, PFI sells and offers to sell Zubr Brand products to duly licensed beer distributors in the States of New York, Connecticut, and New Jersey. Upon information and belief, such sales or offers to sale take place at the location of the distributor in the States of New York and New Jersey..

Case No.: 1:20-cv-00003
(LDH)(PK)

AMENDED COMPLAINT

6. Upon information and belief, on or about February 4, 2003, KP purchased Browar Dojlidy (“Dojlidy”), and acquired the rights to manufacture the Zubr Brand.

**PLAINTIFF'S RELATIONSHIP WITH BROWAR
DOJILDY AND ITS SUCCESSOR, KP**

7. Amtec has been an importer, brand agent, and distributor of the Zubr Brand in certain states, including New York, New Jersey, and Connecticut since approximately 1998.

8. On or about January 11, 1998, Amtec and Dojlidy entered into a formal Import and Wholesale Agreement pursuant to which Dojlidy appointed Amtec as its exclusive importer and distributor of four separate Dojlidy products, namely Zubr, Magnat, Classic, Herbowe, and Porter, in the States of New York, Connecticut, New Jersey, Illinois, and Pennsylvania.

9. On or about February 5, 1998, Browar Dojlidy issued an appointment letter designating Amtec as its brand agent for Magnat and Zubr for the states of: New York, New Jersey, Connecticut, Illinois, Michigan, Wisconsin, Mass., Maryland, Delaware, and Penn. (the “1998 Appointment Letter”).

10. On February 11, 1998, Amtec was registered as the exclusive distributor for the Zubr Brand in the State of New Jersey.

11. On February 26, 1998, Amtec was registered as the exclusive distributor for the Zubr Brand in the State of Connecticut.

12. On March 11, 1998, Amtec was registered as the exclusive distributor for the Zubr Brand in the State of New York.

13. Thereafter, Amtec commenced exclusive distribution of the Zubr Brand in the States of New York, New Jersey, and Connecticut.

14. Approximately two years later, on or about December 31, 2000, Browar Dojlidy and Amtec entered into a new distribution agreement for Zubr and Magnat products for the states of New York, Connecticut, New Jersey, Illinois, and Pennsylvania (the “2000 Agreement”).

15. By expressly appointing Amtec as its distributor in the above states, Dojlidy was directing that Amtec as distributor sell the Dojlidy products in, *inter alia*, the states of New York and New Jersey. Indeed, the 2000 Agreement, provides that “the MANUFACTURER has decided to launch the Products (defined hereinafter) on the market of the Territory (defined hereinafter).” Moreover, the 2000 Agreement also provides that “the Distributor is willing to purchase the Products for the purposes of distributing the same within the Territory.”

16. Additionally, the 2000 Agreement also provides the following: (i) “Distributor undertakes to purchase Products and distribute the same, at its own risk and expense, within the Territory – subject to the provisions stipulated herein”; (ii) “Manufacturer hereby grants Distributor the right to use trademarks used in the designations of the Products, within the Territory and for duration of the terms of this Contract, for purposes related to the export and sales of Products and any related marketing activities”; and (iii) “Manufacturer undertakes to name the Distributor as the sole supplier of the Products within the Territory to any new customers.”

17. In addition, on or about April 24, 2003, Browar Dojlidy issued a new appointment letter to Amtec for Magnat, Zubr, Porter, and Moene for the States of: New York, New Jersey, Illinois, Michigan, Arizona, California, Connecticut, Florida, Florida, Georgia, Maryland, Nevada, Pennsylvania, Rhode Island, and Washington (the “2003 Appointment Letter”).

18. On or about February 4, 2003, Dojlidy sold the Dojlidy Brewery to KP, which was a SABMiller subsidiary, becoming the legal successor to Dojlidy.

19. Nevertheless, despite the sale of the Dojlidy Brewery to KP, Amtec continued to order Zubr from KP through at least September 2003, and continued to sell the Zubr Brand to retailers in the States of New York, New Jersey, and Connecticut.

20. For instance, for the year 2004, Amtec sold approximately \$165,000 of the Zubr Brand in the State of New York, and \$187,000 in the State of New Jersey.

21. Upon information and belief, in or around 2005, KP temporarily withdrew the Zubr Brand from the United States market.

22. However, at no point in time were the 2000 Agreement and/or 2003 Appointment Letter granting Amtec its distribution rights for the States of New York, New Jersey, and Connecticut ever terminated or rescinded by KP or any other entity, and Amtec has continued to remain the exclusive distributor of record for the Zubr Brand in the States of New York, New Jersey, and Connecticut.

PFI'S TERMINATION OF AMTEC'S DISTRIBUTION RIGHTS

23. The Zubr Brand remained out of the United States market from August 2005 through 2018 (the "Withdrawal Period").

24. Despite this, during the Withdrawal Period, Amtec continued to remain the exclusive distributor of the Zubr Brand in the States of New York, New Jersey, and Connecticut.

25. On or about April 11, 2018, PFI submitted an Application for Certificate of Label Approval to the United States Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau in order to begin the process of recommencing import of the Zubr Brand into the United States market. Thereafter, upon information and belief, PFI began to import the Zubr Brand into the United States in the second half of 2018.

26. In or around September 2018, PFI attempted to terminate Amtec's exclusive distribution rights for the Zubr Brand in the State of Connecticut by appointing a new exclusive distributor, namely Arko, and began to sell Zubr Brand product to Arko.

27. PFI's termination of Amtec's distribution rights for the Zubr Brand in the State of Connecticut proved unsuccessful. In fact, on September 24, 2019, the State of Connecticut, Department of Consumer Protection issued a Memorandum of Decision ruling that (i) even though KP had withdrawn Zubr from the United States market in 2005, Amtec had not relinquished its exclusive distribution rights; (ii) that the Zubr Brand product distributed by Amtec was the same as that imported by PFI; and (iii) PFI did not have just and sufficient cause to terminate Amtec's exclusive distribution rights for the Zubr Brand in the State of Connecticut. Thus, Amtec continues to remain the duly registered distributor of Zubr Brand product in the State of Connecticut.

28. Similarly, upon information and belief, in or around September 2018, PFI terminated Amtec's exclusive distribution rights for the Zubr Brand in the States of New York and New Jersey by appointing two new exclusive distributors (S.K.I. Wholesale Beer Corp. in New York and Kohler Distributing in New Jersey) in Amtec's territory and by selling or offering to sell Zubr Brand product to those distributors in New York and New Jersey.

29. Although PFI has not provided formal notice of termination to Amtec regarding its distribution rights for Zubr Brand products, as it did in Connecticut, by selling or offering to sell Zubr Brand products to other distributors in the States of New York and New Jersey, which is Amtec's exclusive territory, such actions constitute a defacto termination of Amtec's distribution rights.

NEW YORK BEER DISTRIBUTOR STATUTE

30. The relationship between "brewers" and "wholesalers" of beer in New York is regulated by Alcoholic Beverage Control Law Section 55-c ("ABC § 55-c").

31. Under ABC § 55-c(2)(a), an "Agreement" is defined as any contract, agreement, arrangement, course of dealing or commercial relationship between a brewer and a beer wholesaler pursuant to which a beer wholesaler is granted the right to purchase, offer for sale, resell, warehouse or physically deliver beer sold by a brewer.

32. A "Brewer" is defined as any person or entity engaged primarily in business as a brewer, manufacturer of alcoholic beverages, importer, marketer, broker or agent of any of the foregoing who sells or offers to sell beer to a beer wholesaler in New York, or any successor to a brewer, under ABC§ 55-c(2)(b).

33. "Beer wholesaler" and "wholesaler" means the holder of a wholesaler's license pursuant to Section fifty-three of the Alcoholic Beverage Control Law who purchases, offers to sell, resells, markets, promotes, warehouses or physically distributes beer sold by a brewer, under ABC § 55-c(2)(d).

34. PFI is a "brewer" with respect to the Zubr Brand products under ABC § 55-c.

35. Amtec is a "wholesaler" with respect to the Zubr Brand products under ABC§ 55-c.

36. In enacting ABC§ 55-c, New York recognized the substantial role wholesalers play in the development of the market and good will of a brewers' products and the equity that wholesalers develop in such good will, and sought to protect the significant investment of capital and resources by New York wholesalers by prohibiting, under ABC § 55-c(4), the termination or the material modification of "Agreements" except for "good cause."

37. ABC§ 55-c(2)(e) defines "Good cause" as, *inter alia*, "[t]here is a failure by the beer wholesaler to comply with a material term of an agreement required by subdivision three of this section between the brewer and beer wholesaler, provided that: (A) the wholesaler was given written notice by the brewer of the failure to comply with the agreement as provided for in subdivision five of this section and in which the brewer states with particularity the basis for the brewer's determination of non-compliance, and upon the wholesaler's written request within ten days of receipt of the notice, the brewer has supplemented such notice by submitting to the wholesaler in writing the brewer's recommended plan of corrective action to cure the claimed defaults or deficiencies in a manner satisfactory to it; (B) the wholesaler was afforded a reasonable opportunity to assert good faith efforts to comply with the agreement by curing the claimed defaults or deficiencies specified in said notice within the time provided for in clause (C) of this subparagraph; and (C) the wholesaler was afforded fifteen days after receipt of such notice to submit a written plan of corrective action to comply with the agreement by curing the claimed non-compliance and seventy five days to cure such non-compliance in accordance with the plan."

38. ABC § 55-c(6) provides that a beer wholesaler may maintain a civil action in a court of competent jurisdiction within this State.

39. ABC§ 55-c(6) also provides that the burden of proof for "good cause" to terminate is with the brewer.

40. Lastly, ABC § 55-c(11) states the protections granted to wholesalers under Section 55-c "may not be altered, waived or modified by written or oral agreement in advance of a bona fide case and controversy arising under a written agreement complying with this section."

NEW JERSEY MALT BEVERAGE PRACTICES ACT

41. The relationship between "brewers" and "wholesalers" of beer in New Jersey is regulated by the Malt Beverages Practices Act, N.J.S.A. 33: 1-93.12 *et seq* (the "Malt Beverages Practices Act").

42. Under N.J.S.A. 33:1-93.13(c), the act was in part intended to "protect beer wholesalers from unreasonable demands and requirements by brewers, while devoting sufficient efforts and resources to the distribution and sale of malt alcoholic beverages."

43. Under N.J.S.A. 33:1-93.14, a "Wholesaler" means a plenary wholesale licensee or a limited wholesale licensee who purchases malt alcoholic beverages from a brewer for the purpose of resale to Class C licensees or State Beverage Distributor Licensees.

44. Under N.J.S.A. 33:1-93.14, a "Brewer" means any person, whether located within or outside the State who: (a) brews, manufactures, imports, markets or supplies malt alcoholic beverages and sells malt alcoholic beverages to a plenary wholesale licensee or a limited wholesale licensee for the purpose of resale; (b) is an agent or broker of such a person who solicits orders for or arranges sales of such person's malt alcoholic beverages to a plenary wholesale licensee or a limited wholesale licensee for the purpose of resale; or (c) is a successor brewer.

45. Under N.J.S.A. 33:1-93.14, a "Successor brewer" means any person, not under common control with the predecessor brewer, who by any means, including, without limitation, by way of purchase, assignment, transfer, lease, license, appointment, contract, agreement, joint venture, merger, or other disposition of all or part of the business, assets, including trademarks, brands, distribution rights and other intangible assets, or ownership interests of a brewer, acquires the business or malt alcoholic beverage brands of another brewer, or otherwise succeeds to a brewer's interest with respect to any malt alcoholic beverage brands."

46. PFI is a "brewer" with respect to the Zubr Brand under the Malt Beverages Practices Act.

47. Amtec is a "wholesaler" with respect to the Zubr Brand under the Malt Beverages Practices Act.

48. Under N.J.S.A. 33:1-93.15(c)(1), the Malt Beverages Practices Act prohibits a brewer from "terminat[ing], cancel[ing] or refus[ing] to renew a *contract, agreement or relationship with a wholesaler*, or to fail or refuse to grant to a wholesaler the right to purchase and resell any brand extension under the same form of agreement as the base product, in part or in whole, except where the brewer establishes that it has acted for *good cause and in good faith*." (emphasis added)

49. Under N.J.S.A. 33:1-93.14(1), "Good cause" means, and is limited to "a failure to substantially comply with reasonable terms contained in a contract or agreement between a brewer and wholesaler that contains the same terms as the brewer's contract with similarly situated United States, not including United States territories or possessions, distributors.

50. In addition, under N.J.S.A. 33:1-93.14(3), the Malt Beverages Practices Act also requires that the Brewer "first giv[e] the wholesaler written notice setting forth all of the alleged deficiencies on the part of the wholesaler and giving the wholesaler a reasonable opportunity of not more than 120 days to cure the alleged deficiencies; provided, however, that such period for cure may be increased or reduced to a commercially reasonable period by an order of a court in this State in a proceeding in which each party shall bear its own costs and expenses."

51. Lastly, under N.J.S.A. 33:1-93.15(b), the Malt Beverage Practices Act provides that "the injured wholesaler's reasonable damages shall include the fair market value of the wholesaler's business with respect to the terminated brand or brands."

52. In addition, under N.J.S.A. 33:1-93.15(a), a wholesaler is also entitled to the costs of bringing an action including, but not limited to, reasonable attorney's fees.

53. Under N.J.S.A. 33:1-93.14, "Fair market value" of an asset means "the price at which the asset would change hands between a willing seller and a willing buyer when neither is acting under compulsion and when both have knowledge of the relevant facts."

FIRST CLAIM FOR RELIEF
(Breach of ABC § 55-c)

54. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 50 above with the same force and effect as if fully set forth herein.

55. Pursuant to ABC § 55-c(4), no brewer may cancel, fail to renew, or terminate an agreement with a distributor, unless the brewer has good cause as defined in the statute, and provided the brewer has acted in good faith.

56. Pursuant to ABC § 55-c(5), no brewer may cancel, fail to renew or terminate an agreement unless the brewer or beer wholesaler furnished prior notification in accordance with ABC§ 55-c(5)(c).

57. PFI has breached ABC § 55-c by terminating Amtec's distribution rights in the State of New York by appointing a new exclusive distributor for the Zubr Brand in the territory without good cause and in bad faith.

58. PFI has breached ABC § 55-c by terminating Amtec's distribution rights in the State of New York by appointing a new exclusive distributor for the Zubr Brand in the territory without the required notification in accordance with ABC§ 55-c(5)(c).

59. By reason of the foregoing, Amtec is entitled to an award of damages due to PFI's violation of ABC § 55-c in an amount to be determined by the court pursuant to Section 7 of

ABC §55-c, which exceeds the jurisdictional limitation of all lower Courts which would otherwise have jurisdiction over this action.

SECOND CLAIM FOR RELIEF
(Breach of Malt Beverage Practices Act)

60. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 56 above with the same force and effect as if fully set forth herein.

61. Pursuant to N.J.S.A. 33:1-93.15(c)(1), a brewer is prohibited from "terminat[ing], cancel[ing] or refus[ing] to renew a *contract, agreement or relationship with a wholesaler*, or to fail or refuse to grant to a wholesaler the right to purchase and resell any brand extension under the same form of agreement as the base product, in part or in whole, except where the brewer establishes that it has acted for *good cause and in good faith*." (emphasis added)

62. Pursuant to N.J.S.A. 33:1-93.14(3), before attempting to terminate a wholesaler, a brewer must "first giv[e] the wholesaler written notice setting forth all of the alleged deficiencies on the part of the wholesaler and giving the wholesaler a reasonable opportunity of not more than 120 days to cure the alleged deficiencies; provided, however, that such period for cure may be increased or reduced to a commercially reasonable period by an order of a court in this State in a proceeding in which each party shall bear its own costs and expenses."

63. PFI has breached the Malt Beverages Practices Act by terminating Amtec's exclusive distribution rights for the Zubr Brand in the State of New Jersey by appointing a new exclusive distributor in the same territory without good cause and in bad faith.

64. PFI has breached the Malt Beverages Practices Act by terminating Amtec's exclusive distribution rights in the State of New Jersey for the Zubr Brand by appointing a new


exclusive distributor in the same territory without the required notification in accordance with N.J.S.A. 33:1-93.14(3), and without giving Amtec the ability to cure the alleged deficiencies.

65. By reason of the foregoing, Amtec is entitled to an award of damages due to PFI's violation of Malt Beverage Practices Act in an amount to be determined by the court pursuant to N.J.S.A. 33:1-93.14(b), but which exceeds the jurisdictional limitation of all lower Courts which would otherwise have jurisdiction over this action.

WHEREFORE, Plaintiff demands judgment against Defendant for all causes of action in a sum which exceeds the jurisdictional limitation of all lower Courts which would otherwise have jurisdiction over this action, together with attorneys' fees, costs and disbursements and interest from the date of any verdict rendered herein.

Dated: New York, New York
April 28, 2022

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