IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

AMTEC INTERNATIONAL OF NY CORP.,	)	
	)	
Plaintiff,	)	Case No.: 1:20-cv-00003-LDH-PK
v.	)	
	)	Service Date: Due June 24, 2022
POLISH FOLKLORE IMPORT CO., INC.,	)	
	)	
Defendant.	)	

POLISH FOLKLORE IMPORT CO., INC.'S
RULE 12(b)(6) MOTION TO DISMISS AMENDED
COMPLAINT AND MEMORANDUM OF LAW IN SUPPORT

Defendant, Polish Folklore Import Co., Inc. ("PFI"), by its counsel, pursuant to Federal Rule of Civil Procedure 12(b)(6), hereby moves to dismiss the Amended Complaint of Plaintiff, Amtec International of NY Corp. ("Amtec") and submits its Memorandum of Law in Support:

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INTRODUCTION

Amtec is an importer and distributor of alcoholic beverages. (Ex. 1, ECF No. 17, Am. Compl., ¶¶ 1–2; *see also* Ex. 2, Redline of Am. Compl. showing changes from original Compl. ("Redline").) PFI is an importer of alcoholic beverages. (Ex. 1, ECF No. 17, Am. Compl., ¶¶ 3–4.) Amtec claims PFI wrongfully terminated Amtec's right to sell Zubr beer in New York and New Jersey. (*Id.* ¶¶ 7–8.) Amtec brings this suit under the New York Alcoholic Beverage Control Law ("ABC Law"), Section 55-c(b) (Count I) and the New Jersey Malt Alcoholic Beverages Practices Act ("MABPA"), N.J. Stat. Ann. §§ 33:1-1 to 33:5-5 (Count II). These statutes, commonly known as "franchise laws," generally prevent a brewer's termination of a distribution relationship between a brewer and a wholesaler absent good cause. (*See generally id.* ¶¶ 30–65.)

This Court must dismiss Amtec's Amended Complaint with prejudice for three independent reasons. First, Amtec fails to cure the deficiencies this Court identified in its ruling on PFI's original Motion to Dismiss. (*See* Ex. 3, ECF No. 16; Ex. 4, ECF No. 15.) Indeed, Amtec's Amended Complaint is almost identical to its original Complaint, which this Court dismissed because Amtec did not allege (a) any sales of Zubr beer to Amtec occurred in New York or New Jersey, or (b) title transfer of Zubr beer within New York or New Jersey. (*See* Ex. 3, ECF No. 16.) Second, and relatedly, Amtec's Amended Complaint allegations state only that the distributors to which PFI allegedly sold product are located in New York and New Jersey—not that the sales or transfer of title took place in New York or New Jersey. Third, Amtec cannot state a claim against PFI under the New York and New Jersey beer franchise laws because those laws make illegal a breach of a written agreement between the plaintiff wholesaler and the defendant brewer, and Amtec does not—and cannot—allege that PFI and Amtec had any agreement, let alone a written agreement required by the statutes. For each of these reasons, independently, this Court should dismiss Amtec's Amended Complaint with prejudice.

THE COMPLAINT AND 2000 AGREEEMENT

PFI accepts the well-pleaded allegations in Amtec's Amended Complaint for purposes of this Motion.

Beginning in 1998, Amtec imported Zubr from its then Polish brewer, Browar Dojlidy ("Dojlidy"), pursuant to an Import and Wholesale Agreement governing the importation and distribution of, *inter alia*, Zubr. (Ex. 1, ECF No. 17, Am. Compl., ¶ 8.) Dojlidy also appointed Amtec as its Zubr "brand agent" and exclusive distributor in, *inter alia*, New York and New Jersey. (*Id.* ¶¶ 9–13.) On December 31, 2000, Amtec and Dojlidy entered into a new agreement (the "2000 Agreement") pursuant to which Amtec would purchase Zubr from Dojlidy and be Dojlidy's exclusive distributor in New York and New Jersey. (*Id.* ¶¶ 14–16.) Amtec alleges Dojlidy directed it to sell Zubr in, *inter alia*, New York and New Jersey, and the Agreement stated Amtec was to be "the sole supplier" of Zubr within New York and New Jersey. (*Id.* ¶¶ 15–16.)

Amtec does not attach a copy of the 2000 Agreement to its Amended Complaint, but this Court may consider it because it is integral to the Amended Complaint. (*See infra*, p. 3–4.) Indeed, the 2000 Agreement partially or completely governs Amtec's claimed rights, and Amtec seeks to (a) enforce the 2000 Agreement against PFI (despite PFI not being a party to or in privity with a party to the 2000 Agreement), and (b) recover the value of rights governed by the 2000 Agreement. (*See* Ex. 1, ECF No. 17, Am. Compl., ¶¶ 51–62; Ex. 2, Redline, ¶¶ 51–62.) A true and accurate copy of a certified translation of the 2000 Agreement between Amtec and Dojlidy is attached as Exhibit 5. The 2000 Agreement is written in Polish and was translated into English by a certified translator. (Ex. 5, 2000 Agreement, at p. 9.) It is authenticated by Jakub Sumara's Affidavit, Exhibit 6 to this Motion. Most importantly, under the 2000 Agreement, the sale and exchange of the goods at issue (including the Zubr product) took place at Dojlidy's warehouse in Poland, at which time title to the goods passed to Amtec. (Ex. 5, 2000 Agreement, at p. 2–3, Art. 5, ¶¶ 1–3.)

On February 4, 2003, Kompania Piwoarska SA ("KP") purchased Dojlidy. (*Id.* ¶¶ 4, 18.) In April 2003, Dojlidy issued a new appointment letter to Amtec to distribute Zubr products in, *inter alia*, the states of New York and New Jersey, and Amtec continued to order Zubr from KP until at least September 2003. (*Id.* ¶¶ 17–19.) Amtec alleges KP "temporarily withdrew" Zubr from the United States during 2003. (*Id.* ¶ 21.) This "temporary" withdrawal lasted more than 14 years. (*Id.* ¶¶ 23, 25–26.) Amtec claims the 2000 Agreement, the appointment letter, and its status as the "exclusive distributor of record" for Zubr within, *inter alia*, New York and New Jersey never terminated. (*Id.* ¶¶ 22, 24.)

PFI sells and offers to sell Zubr to beer distributors in New York and New Jersey. (Id. ¶ 5.) During April 2018, nearly 15 years after Amtec placed its last Zubr order, PFI began to import Zubr into the United States. (*Id.* ¶¶ 19, 25–26.) Amtec alleges PFI (not KP) "terminated" Amtec's distribution rights by appointing New York and New Jersey distributors to sell Zubr in their respective states. (*Id.* ¶ 28.) However, Amtec does not allege (a) PFI had any agreement or business dealings with Amtec that could be terminated; (b) PFI was an assignee or otherwise in privity with KP; or (c) that PFI ever provided Amtec with any notice of termination. (*Id.* ¶¶ 28–29.)

APPLICABLE LEGAL STANDARD

When deciding a motion under Federal Rule of Civil Procedure 12(b)(6), this Court applies the two-pronged approach articulated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). *Sugar v. Greenburgh Eleven Union Free Sch. Dist.*, No. 18 CV 67 (VB), 2018 WL 6830865, at *2–3 (S.D.N.Y. Dec. 28, 2018). The Court: (a) disregards conclusions and threadbare recitals of the elements of a cause of action supported by conclusory allegations, and (b) takes only well-pleaded factual allegations as true and then evaluates whether they plausibly give rise to an entitlement to relief. *Iqbal*, 556 U.S. at 678–79; *Hayden v. Paterson*, 594 F.3d 150, 161 (2d Cir. 2010). A plaintiff must exceed a plausibility requirement, showing more than a possibility a

defendant acted unlawfully. *Iqbal*, 556 U.S. at 678–79 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)).

When assessing a Rule 12(b)(6) motion, in addition to considering the allegations in the Amended Complaint, documents incorporated by reference, and exhibits, this Court may consider documents integral to the complaint. *See DiFolco v. MSNBC Cable L.L.C.*, 622 F.3d 104, 111 (2d Cir. 2010) (quoting *Mangiafico v. Blumenthal*, 471 F.3d 391, 398 (2d Cir. 2006)). A document not attached as an exhibit and not expressly incorporated by reference qualifies as "integral" to the complaint if the complaint "relies heavily upon its term and effect." *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 153 (2d Cir. 2002) (quoting *Int'l Audiotext Network, Inc. v. Am. Tel. & Tel. Co.*, 62 F.3d 69, 72 (2d Cir. 1995)).

Under Federal Rule of Civil Procedure 15(a)(2), "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." At the same time, leave to amend may properly be denied for, *inter alia*, repeated failure to cure deficiencies by amendments previously allowed or the futility of any amendment. *See Ruotolo v. City of New York*, 514 F.3d 184, 191 (2d Cir. 2008); *see also Nat'l Credit Union Admin. Bd. v. U.S. Bank Nat'l Ass'n*, 898 F.3d 243, 257 (2d Cir. 2018) ("When a plaintiff was aware of the deficiencies in his complaint when he first amended, he clearly has no right to a second amendment even if the proposed second amended complaint in fact cures the defects of the first." (internal quotation marks omitted)); *Calcano v. True Religion Apparel, Inc.*, No. 19-cv-10442 (VSB), 2022 WL 973732, at *7–8 (S.D.N.Y. March 31, 2022) (dismissing First Amended Complaint with prejudice because defendant "raised essentially identical arguments in its original motion to dismiss, … as it did in its motion to dismiss the First Amended Complaint.").

ARGUMENT

This Court must dismiss Amtec's Amended Complaint for three independent reasons. First, Amtec did not cure the deficiencies this Court identified in its Order granting PFI's Motion to Dismiss the original Complaint. (Ex. 3, ECF No. 16.) Indeed, Amtec still has not alleged that PFI sold or offered to sell Zubr to Amtec, or transferred Zubr title to Amtec, within New York or New Jersey. Second, and relatedly, Amtec now alleges PFI terminated Amtec's alleged Zubr distribution rights in New York and New Jersey by appointing two different distributors and "by selling or offering to sell Zubr Brand product to those distributors in New York and New Jersey." (Ex. 1, ECF No. 17, Am. Compl., ¶ 28.) The phrase "in New York and New Jersey," however, modifies "those distributors," which means only that the distributors are located in New York and New Jersey, *not* that the alleged sales of or offers to sell Zubr took place in those states. And, besides, even if pleaded differently, PFI's sales to these other distributors is irrelevant. Third, the New York and New Jersey franchise laws only govern agreements made between "brewers" and "wholesalers." Both statutes require a written agreement, but Amtec does not—and cannot—allege the existence of *any* agreement between PFI and Amtec, let alone a written agreement between the parties for the sale of Zubr products. Alleging agreements between PFI and other distributors is of no consequence. Accordingly, this Court must dismiss Amtec's claims for violations of the New York and New Jersey franchise laws.

A. AMTEC'S AMENDED COMPLAINT DOES NOT ALLEGE A SALE OF, OFFER TO SELL, OR TRANSFER OF TITLE OF ZUBR PRODUCTS BY PFI TO AMTEC THAT OCCURRED IN NEW YORK OR NEW JERSEY.

Amtec failed to cure its Complaint deficiencies. In its Amended Complaint, Amtec does not plead (a) that PFI, Dojlidy, or KP sold or offered to sell Zubr product ***to Amtec*** within New York or New Jersey, or (b) transfer of Zubr product title ***to Amtec*** occurring within New York or

New Jersey. Without these requisite allegations, the New York and New Jersey franchise laws are inapplicable. New York's ABC Law, Section 55-c(b), defines a "brewer," in part, as an "[entity] who sells or offers to sell beer to a beer wholesaler **in this state**." (Emphasis added). Likewise, New Jersey's MABPA only governs contracts for the "supply, distribution and sale of the products of the brewer **in this State**." N.J. Stat. Ann. § 33:1-93.15(a) (emphasis added).

Amtec has not fixed the deficiency PFI and this Court identified in Amtec's Complaint. In fact, Amtec's Amended Complaint is nearly identical to its Complaint, which this Court determined did not adequately allege a sale of Zubr products ***to Amtec*** in New York or New Jersey. (Ex. 4, ECF No. 15, Mot. to Dismiss, at 14 (p. 10); Ex. 3, ECF No. 16, Order, at 11–14.) Amtec's changes in the Amended Complaint are inconsequential. Amtec: (1) added paragraph 5, which alleges only that PFI sells or offers to sell Zubr "to duly licensed beer distributors"—not Amtec—in New York and New Jersey and that those "sales or offers to sale [sic] take place at the location of the distributor"; (2) clarifies, in paragraph 8, that Amtec is the exclusive importer and distributor of "four"—not five—Dojlidy products; (3) added paragraph 15, which alleges that, by making Amtec its distributor, "Dojildy [sic] was directing that Amtec as distributor sell the Dojildy [sic] products in, *inter alia*, the states of New York and New Jersey"; (4) added paragraph 16, which purports to quote certain sections of the 2000 Agreement between Dojlidy and Amtec, but notably says nothing about the location of sales or title transfers; (5) added, in paragraph 28 (which deals with PFI allegedly terminating Amtec's exclusive distribution rights to Zubr by appointing two non-party distributors in those states) the phrases "or offering to sell" and "in New York and New Jersey"; and (6) added, in paragraph 29 (which alleges that PFI did not provide formal notice of termination of Amtec's supposed distribution rights to Zubr) the phrase "or offering to sell." (*See generally*, Ex. 1, ECF No. 17, Am. Compl.; Ex. 2, Redline.) Clearly, none of these additions

addresses the shortcomings this Court identified in its Order on the Motion to Dismiss. Indeed, PFI asserted in its Motion to Dismiss that Amtec "does not allege any sales of Zubr by Dojlidy, KP or PFI ***to Amtec*** occurring in New York or New Jersey." (Ex. 4, ECF No. 15, Motion to Dismiss, at 14 (p. 10) (emphasis added).) The added allegations, described above, do not fix this pleading deficiency. Accordingly, this Court should dismiss the Amended Complaint with prejudice.

The glaring omission of an essential *prima facie* element—sales or offers to sell Zubr in New York or New Jersey ***to Amtec*** or the transfer, in New York or New Jersey, ***to Amtec*** of title to Zubr products—is fatal to Amtec's claims as demonstrated by *S.K.I. Beer Corp. v. Baltika Brewery*, 443 F. Supp. 2d 313, 319 (E.D.N.Y. 2006), *aff'd*, 612 F.3d 705 (2d Cir. 2010). In *S.K.I Beer Corp.*, a beer distributor sued a brewer under New York's ABC Law, Section 55-c, alleging wrongful termination of its written exclusive distributorship agreement because the brewer refused to fill the distributor's orders and to renew their contract. The brewer argued, in part, the distributor failed to allege any sale of beer by the brewer to the distributor within the State of New York, and therefore Section 55-c did not apply. *Id.* The court agreed.

The court evaluated the statute's purpose and concluded it only "applies to sales and deliveries in New York." *S.K.I. Beer Corp.*, 443 F. Supp. 2d at 322. According to the court, any "sale or offer to sell that would subject a brewer to the Statute [55-c] must take place in New York." *Id.* In that case, the contract stated the goods were "handed over" to the plaintiff distributor at the brewer's place of business in Russia, at which time the delivery was completed. *Id.* The complaint contained no allegations that the brewer sold the goods to the distributor in New York or that transfer of title took place in New York. *Id.* The inability of the distributor to allege these

prima facie elements, among other reasons, required the court to dismiss the complaint, and the Second Circuit affirmed. *Id.*

The facts here are practically identical. Amtec fails to allege any sale or offer to sell Zubr ***to Amtec*** in New York or New Jersey by Dojlidy, KP or PFI. Amtec only alleges that *Amtec* sold and distributed beer in New York and New Jersey. (*See* Ex. 1, ECF No. 17, Am. Compl. and redline, ¶¶ 7–22.) This allegation is insufficient, and the foregoing omissions require dismissal.

Moreover, pursuant to the express terms of the 2000 Agreement, the sales and title transfer to Amtec occurred in Poland. The 2000 Agreement states:

> 1. The delivery of the Products and acceptance thereof by the Distributor [Amtec] shall be at the Manufacturer's [Dojlidy's] warehouse **located in Bialystok, at ul. Dojlidy Fabryczne 28, Poland**.
>
> 2. The title to the Products along with all the related costs and risks **shall pass onto the Distributor [Amtec] as at the moment of the Product's acceptance** by the Distributor [Amtec] confirmed in the relevant internal export invoice signed by the Distributor's [Amtec] authorized representative (EXW – the Manufacturer's warehouse located at ul. Dojlidy Fabryczne 28, Bialystok).

(Ex. 5, 2000 Agreement, at p. 2, Art. 5, ¶¶ 1-2 (emphasis added).) To the extent the Amended Complaint contains allegations that contradict these explicit contractual terms, the 2000 Agreement, which Amtec extensively references and quotes throughout the Amended Complaint (*see, e.g.*, Ex. 1, ECF No. 17, Am. Compl., ¶¶ 14–16), must control and this Court must disregard the contrary allegations in the Amended Complaint. *See Amidax Trading Grp. v. S.W.I.F.T. SCRL*, 671 F.3d 140, 147 (2d Cir. 2011); *Rajaratnam v. Motley Rice, LLC*, 449 F. Supp. 3d 45, 63 (E.D.N.Y. 2020).

Additionally, Dojlidy's and Amtec's contemplation of Amtec's distribution in New York and New Jersey is, as the *S.K.I. Beer Corp.* court concluded, of no moment. A distributor's reselling of beer within New York does not constitute a sale by a brewer to a wholesaler under

New York's ABC laws. *S.K.I. Beer Corp.*, 443 F. Supp. 2d at 322–23. The same logic, reasoning and conclusion of *S.K.I. Beer Corp.* apply to both of Amtec's claims because Amtec does not allege a brewer's sale or offer to sell Zubr to Amtec occurring in New York or New Jersey, and Amtec does not allege transfer of Zubr title in New York or New Jersey. Accordingly, for these reason alone, this Court should dismiss Amtec's Amended Complaint with prejudice.In addition, the 2000 Agreement makes clear that the sale and transfer of title of Zubr took place in Poland. Accordingly, any attempt by Amtec to replead would be futile, and the franchise laws do not apply.

Amtec attempts to avoid this necessary conclusion by adding allegations that PFI sold or offered to sell Zubr products to non-party distributors. (*See* Ex. 1, ECF No. 17, Am. Compl., ¶¶ 5, 28.) These allegations, however, do not save Amtec's claims. Indeed, in paragraph 28, Amtec alleges only that the distributors (to which PFI allegedly sold or offered to sell Zubr products) are located in New York and New Jersey. (*Id.* ¶ 28 ("[I]n 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 … in Amtec's territory and by selling or offering to sell Zubr Brand product to those distributors in New York and New Jersey.") *See S.K.I. Beer Corp.*, 443 F. Supp. 2d at 319 (discussing rule of the last antecedent). This paragraph, therefore, does nothing to avoid the dormant-commerce-clause concerns articulated by this Court and the *S.K.I. Beer Corp.* court—that New York and New Jersey cannot regulate brewer-wholesaler relations and agreements performed wholly outside of those states simply because the distributor happens to be licensed in New York or New Jersey—because it merely alleges the distributors are located in a certain place—not that sales or offers to sell took place in New York or New Jersey (or that those sales were to Amtec). (*See* Ex. 3, ECF No. 16, at 13.) Paragraph 5 suffers from the same problem: it alleges only that the distributors are located in New York or New Jersey, not that the

actual sales or offers to sell occurred there. (Ex. 1, ECF No. 17, Am. Compl., ¶ 5.) Moreover, even if Amtec repleaded to allege a brewer's sale or offer to sell in New York or New Jersey, or a transfer of title in New York or New Jersey, such amendment would not cure Amtec's failure to state viable claims because, as explained below, the franchise laws only protect distributors that have agreements with brewers. Amtec, however, does not allege an agreement with PFI.

Accordingly, this Court must dismiss the Amended Complaint with prejudice because Amtec has not alleged and cannot plausibly allege that (a) PFI, Dojlidy, or KP sold or offered to sell—in New York or New Jersey—Zubr product and that the sales or offers to sell were directed to Amtec; and (b) transfer of title occurred in New York or New Jersey, both because (i) Amtec does not allege it ever had a relationship with PFI; and (ii) any such contention of title transfer is belied by the 2000 Agreement, which Amtec repeatedly references throughout its Amended Complaint.

B. AMTEC'S AMENDED COMPLAINT FAILS TO ALLEGE THE EXISTENCE OF ANY AGREEMENT BETWEEN PFI AND AMTEC.

Additionally, Amtec's claims under the franchise laws fail because Amtec has not alleged the existence of an agreement between PFI and Amtec. Both New York's ABC Law and New Jersey's MABPA govern "agreements" made between "brewers" and "wholesalers." *See* ABC Law, § 55-c(3); N.J. Stat. Ann. §§ 33:1-93.15(b), 93.18; *S. End Dist. Corp. v. Hornell Brewing Co.*, 179 Misc. 2d 576, 578, 685 N.Y.S.2d 594, 596 (N.Y. Sup. Ct. 1999). An "Agreement" under the ABC Law 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." ABC Law, § 55-c(2)(a). New Jersey's law similarly applies "to all contracts, agreements and relationships among any brewers and wholesalers, including contracts,

agreements or relationships entered into, renewed, extended or modified after the effective date of this act." N.J. Stat. Ann. § 33:1-93.15(b). Importantly, both statutes require a *written* agreement. ABC Law, § 55-c(1) (noting the public policy of New York is to require a written agreement), (3) (requiring the existence of a written agreement); N.J. Stat. Ann. § 33:1-93.15(a) ("Every brewer shall contract and agree *in writing* with a wholesaler for all supply, distribution and sale of the products of the brewer in this State … ." (emphasis added)).

Here, Amtec does not plead the existence of a relationship or an agreement between PFI and Amtec, let alone the existence of a *written* agreement. It is axiomatic PFI cannot "cancel, fail to renew, or terminate an agreement" to which it is not a party. ABC Law, § 55-c(4); *see also* N.J. Stat. Ann. § 33:1-93.15(c) (stating it is a violation of MABPA "to terminate, cancel or refuse to renew a contract, agreement or relationship"); *SING for Service, LLC v. DOWC Admin. Servs., LLC*, No. 1:20-cv-5617-GHW, 2022 WL 36478, at *15–16 (S.D.N.Y. Jan. 3, 2022) ("Because DOWC is not a party to the Payment Plan Agreements, DOWC cannot modify them. A contract cannot be modified or altered without the consent of all parties thereto." (internal quotation marks omitted)); *Cty. of Morris v. Fauver*, 707 A.2d 958, 967 (N.J. 1998) (modification of contract requires consent of all parties *to the contract*).

Nowhere in the Amended Complaint does Amtec allege facts that could give rise to an inference that PFI and Amtec had a relationship or an agreement required by the franchise laws, let alone a *written* agreement. Instead, Amtec alleges its written agreement was with Dojlidy—not PFI—and nowhere in the Amended Complaint does Amtec connect the 2000 Agreement to PFI. (Ex. 1, ECF No. 17, Am. Compl., ¶¶ 14–17.) Indeed, Amtec alleges no facts relating to PFI until 2018—13 years after KP withdrew Zubr from the United States market. (*Id.* ¶¶ 21–25.)

Accordingly, Amtec fails to raise any right to relief because it has not alleged how it had any relationship or agreement with PFI protected by the franchise laws.

Simply stated, Amtec does not and cannot allege it had or has any relationship with PFI protected by New York's ABC Law or by New Jersey's MABPA. Additionally, Amtec does not and cannot allege the existence of a written agreement between PFI and Amtec, which both New York and New Jersey laws require. Amtec has failed two times to make these requisite allegations, and it is clear Amtec cannot cure this pleading deficiency by subsequent amendment. Accordingly, this Court must dismiss Amtec's Amended Complaint with prejudice.

CONCLUSION

Amtec failed to correct the deficiency this Court identified in its Order granting PFI's Motion to Dismiss the Complaint, which demonstrates Amtec is not capable of stating a viable cause of action against PFI. Indeed, Amtec does not and cannot allege that Dojlidy, KP, or PFI ever sold or offered to sell—within the states of New York or New Jersey—Zubr product ***to Amtec***. Moreover, Amtec does not and cannot allege the existence of any agreement between Amtec and PFI, let alone the written agreement required by New York's and New Jersey's franchise laws. Additionally, Amtec failed to substantively change its allegations to address the deficiencies this Court and PFI identified in connection with the first Motion to Dismiss, and it is clear Amtec cannot remedy these pleading deficiencies by further amendment. Accordingly, this Court must dismiss Amtec's Amended Complaint with prejudice.

Dated: June 24, 2022

Respectfully submitted,

POLISH FOLKLORE IMPORT CO. INC.

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EXHIBIT 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

AMTEC INTERNATIONAL OF NY CORP.

Plaintiff,

—against—

POLISH FOLKLORE IMPORT CO., INC.

Defendant.

----------X

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

AMENDED COMPLAINT

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, Schaumberg, 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..

6. Upon information and belief, on or about February 4, 2003, KP purchased Browar Dojilidy ("Dojildy"), 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, Dojildy was directing that Amtec as distributor sell the Dojildy 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 Dojildy.

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(l l) 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)(l), the Malt Beverages Practices Act prohibits a brewer from "terminat[ing], cancel[ling] 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.l5(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)(l), a brewer is prohibited from "terminat[ing], cancel[ling] 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

DONOVAN HATEM LLP

By: _____

Joshua S. Stern, Esq.
Attorneys for Plaintiff
112 W. 34th Street, 18th Floor
New York, New York 10120
(212) 244-3333

EXHIBIT 2

SUPREME UNITED STATES DISTRICT
COURT OF THE STATE EASTERN
DISTRICT OF NEW YORK COUNTY OF
KINGS

---------- X

AMTEC INTERNATIONAL OF NY CORP.

X

Plaintiff,

against

POLISH FOLKLORE
IMPORT CO., INC.

Defendant.

**TO THE ABOVE NAMED
DEFENDANT:**

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

Index Purchased:

SUMMONS

Basis of Venue
Plaintiffs Business
Address 430
Morgan Avenue
Brooklyn, New
York 11222

YOU

ARE

HEREBY

SUMMONE

D to answer

the Complaint

~~in this action and to serve a copy of your Answer, or if the Complaint is not served with this Summons, to serve notice of appearance on the plaintiffs attorney within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.~~

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~~SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF KINGS~~

~~AMTEC INTERNATIONAL OF NY CORP.~~

~~New York, New York 10120 (212) 244-3333~~

~~To: Polish Folklore Import Co., Inc.~~
~~1128 Tower Road~~
~~Schaumburg, Illinois 60173~~

~~1~~

~~EXHIBIT 1~~

FILED - KINGS COUNTY CLERK 11/25/2015 03:19 PM

~~Plaintiff,~~ **AMENDED COMPLAINT**

~~Index No.:~~

~~against~~

—against—

POLISH FOLKLORE IMPORT CO., INC.

Defendant.

~~----------X~~

----------X

Plaintiff, Amtec International of NY Corp., by and through its attorneys, Donovan Hatem LLP, as and for its ~~Verified~~ 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, Schaumberg, 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..

6. ~~5.~~Upon information and belief, on or about February 4, 2003, KP purchased Browar Dojilidy ("Dojildy"), and acquired the rights to manufacture the Zubr Brand.

~~1~~

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

7. ~~6.~~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. ~~7.~~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 ~~five~~ four separate Dojlidy products, namely Zubr, Magnat, Classic, Herbowe, and Porter, in the States ~~ofNew~~ of New York, Connecticut, New Jersey, Illinois, and Pennsylvania.

9. ~~8.~~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. ~~9.~~On February 11, 1998, Amtec was registered as the exclusive distributor for the Zubr Brand in the State of New Jersey.

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

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14. ~~13.~~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 ~~ofNew~~ of New York, Connecticut, New Jersey, Illinois, and Pennsylvania (the "2000 Agreement").

~~2~~

15. By expressly appointing Amtec as its distributor in the above states, Dojildy was directing that Amtec as distributor sell the Dojildy 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. ~~14.~~In addition, on or about April 24, 2003, Browar Dojlidy issued a new appointment letter to Amtec for Magnat, Zubr, Porter, and ~~Mocne~~ 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").

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19. ~~16.~~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.

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29. ~~26.~~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.

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

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

40. ~~37.~~Lastly, ABC § 55-c(l l) 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. ~~38.~~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. ~~39.~~Under N.J.S.A. ~~33:1-93.B(c),~~ 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. ~~40.~~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. ~~41.~~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.

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45. ~~42.~~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. ~~43.~~PFI is a "brewer" with respect to the Zubr Brand under the Malt Beverages Practices Act.

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

48. ~~45.~~Under N.J.S.A. ~~33:1-93.lS(c)(I~~33:1-93.15(c)(l), the Malt Beverages Practices Act prohibits a brewer from "terminat[ing], cancel[ling] 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. ~~46.~~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. ~~47.~~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 ~~8~~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. ~~48.~~Lastly, under N.J.S.A. ~~33:1-93.lS(b),~~ 33:1-93.l5(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. 49.In addition, under N.J.S.A. 33:1-93.15(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. 50.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§ ABC § 55-c)

54. 51.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. 52.Pursuant to ABC§ 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. 53.Pursuant to ABC§ 55-c(SABC § 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).

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57. 54.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. 55.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. 56.By reason of the foregoing, Amtec is entitled to an award of damages due to PFI's 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. ~~57.~~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. ~~58.~~Pursuant to N.J.S.A. ~~33:1-93.1'5(c)(l),~~ 33:1-93.15(c)(l), a brewer is prohibited from "terminat[ing], cancel[ling] 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 ~~o ri n~~ or in whole, except where the brewer establishes that it has acted for *good cause and in good faith.*~~-~~" (emphasis added)

62. ~~59.~~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 ~~10~~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. ~~60.~~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. ~~61.~~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. ~~62.~~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),~~ 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
~~November 25~~April 28, ~~2019~~ 2022

DONOVAN HATEM LLP

By: _____

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EXHIBIT 3

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

AMTEC INTERNATIONAL OF NY CORP., Plaintiff, v. POLISH FOLKLORE IMPORT CO., INC., Defendant.	**MEMORANDUM AND ORDER** 20-CV-3 (LDH)(PK)

LASHANN DEARCY HALL, United States District Judge:

Amtec International of N.Y. Corp. ("Plaintiff") brings the instant action against Polish Folklore Import Co., Inc. ("Defendant"), asserting violations of New York's Alcoholic Beverage Control Law ("ABC") § 55-c and New Jersey's Malt Beverage Practices Act. Defendant moves pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure to dismiss the complaint in its entirety.

BACKGROUND[1]

Plaintiff is a multi-brand distributor and importer of alcoholic and beverage products in New York, New Jersey, and Connecticut. (Compl. ¶¶ 1–2, ECF No. 1-2.) On or about January 11, 1998, Plaintiff entered into an "Import and Wholesale Agreement" (the "1998 Agreement") with Browar Dojlidy ("Dojlidy"). (*Id.* ¶ 7.) Pursuant to the 1998 Agreement, Dojlidy appointed Plaintiff as the sole importer and distributor of five of its products, including the Zubr brand ("Zubr"), in New York, Connecticut, New Jersey, Illinois, and Pennsylvania. (*Id.*) Shortly thereafter, on February 5, 1998, Dojlidy issued an appointment letter (the "1998 Appointment Letter"), designating Plaintiff as its brand agent for Zubr in New York, New Jersey, Connecticut, Illinois, Michigan, Wisconsin, Massachusetts, Maryland, Delaware, and Pennsylvania. (*Id.* ¶ 8.)

[1] The following facts are taken from the complaint and are assumed to be true for purposes of the instant motion.

Between February and March 1998, Amtec was registered as the exclusive distributor for Zubr in New Jersey, Connecticut, and New York, and thereafter, Amtec commenced exclusive distribution of Zubr in those states. (*Id.* ¶¶ 9–12.)

Approximately two years later, on or about December 31, 2000, Dojlidy entered into a new distribution agreement (the "2000 Agreement") with Plaintiff for the distribution of its product in New York, Connecticut, New Jersey, Illinois, and Pennsylvania. (*Id.* ¶ 13.) The 2000 Agreement contained a "choice of law" provision that indicated "[t]his Contract shall be governed by the laws of Poland, in particular[] by the provisions of the Polish Civil Code." (Def.'s Mem. L. Supp. Mot. Dismiss ("Def.'s Mem."), Ex. 2 (2000 Agreement) at 6, ECF No. 15-2.)[2] The 2000 Agreement also contained a durational term, which indicated it would remain in effect until December 31, 2002, "with the possibility of extension," but also included that both parties had the right to "terminate [the] Contract at any time, subject to a three (3) month period of notice" with certain notice requirements. (*Id.* at 5.)

On February 4, 2003, Kompania Piwoarska ("KP") purchased the Dojlidy brewery and acquired the rights to manufacture Zubr. (Compl. ¶¶ 5, 15.) On or about April 24, 2003, Dojlidy issued a new appointment letter to Plaintiff (the "2003 Appointment Letter") for several of its brands, including Zubr, for distribution in New York, New Jersey, Illinois, Michigan, Arizona, California, Connecticut, Florida, Georgia, Maryland, Nevada, Pennsylvania, Rhode Island, and Washington. (*Id.* ¶ 14; Def.'s Reply Mem. L. Supp. Mot. Dismiss, Ex. 6 ("2003 Appointment Letter"), ECF No. 15-11.)[3]

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[2] The 2000 Agreement referenced herein was not attached to the complaint but is incorporated by reference. *See Kramer v. Time Warner, Inc.*, 937 F.2d 767, 773 (2d Cir. 1991) ("[A] district court must limit itself to the facts stated in the complaint or in documents attached to the complaint as exhibits or incorporated in the complaint by reference.")

[3] The 2003 Agreement is also incorporated by reference.

Following KP's 2003 purchase of Dojlidy, Plaintiff continued to order Zubr through at least September 2003 for distribution in New York, New Jersey, and Connecticut. (Compl. ¶ 16.) For example, in 2004, Plaintiff sold approximately $165,000 of Zubr in New York and $187,000 in New Jersey, respectively. (*Id.* ¶ 17.) However, according to the complaint, KP "temporarily withdrew" Zubr from the United States market in August 2005 and remained outside of the United States through 2018. (*Id.* ¶¶ 18, 20.) On or around April 11, 2018, Defendant, an "importer of various brands of beer manufactured by [KP]," submitted an "Application for Certificate of Label Approval" to the U.S. Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau to begin the process of recommencing the import of Zubr into the United States market. (*Id.* ¶¶ 4, 22.) In or around September 2018, Defendant attempted to terminate Plaintiff's exclusive distribution rights for Zubr in Connecticut by providing a "formal notice of termination to [Plaintiff] regarding its distribution rights for Zubr" and selling Zubr to a new distributor, Arko. (*Id.* ¶¶ 23, 26.) However, this attempt was unsuccessful. (*Id.* ¶ 24.) On September 24, 2019, the State of Connecticut, Department of Consumer Protection issued a Memorandum of Decision finding that:

> (i) Even though KP had withdrawn Zubr from the United States market in 2005, [Plaintiff] had not relinquished its distribution rights; (ii) [the] Zubr Brand product distributed by [Plaintiff] was the same as that imported by [Defendant]; and (iii) [Defendant] did not have just and sufficient cause to terminate [Plaintiff's] exclusive distribution rights for the Zubr Brand in the State of Connecticut.

(*Id.* ¶ 24.) Thus, Plaintiff remained the "duly registered distributor" of Zubr in Connecticut. (*Id.*) And, in September 2018, Defendant terminated Plaintiff's distribution rights in New York and New Jersey by appointing two new exclusive distributors for Zubr. (*Id.* ¶ 25.) Defendant did not provide a formal notice of termination to Plaintiff. (*Id.* ¶ 26.)

STANDARD OF REVIEW

To withstand a Rule 12(b)(6) motion to dismiss, a complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible when the alleged facts allow the court to draw a "reasonable inference" of a defendant's liability for the alleged misconduct. *Id*. While this standard requires more than a "sheer possibility" of a defendant's liability, *id*., "[i]t is not the Court's function to weigh the evidence that might be presented at trial" on a motion to dismiss, *Morris v. Northrop Grumman Corp.*, 37 F. Supp. 2d 556, 565 (E.D.N.Y. 1999). Instead, "the Court must merely determine whether the complaint itself is legally sufficient, and, in doing so, it is well settled that the Court must accept the factual allegations of the complaint as true." *Id*. (citations omitted).

DISCUSSION

I. The New York and New Jersey Distributor Statutes

New York and New Jersey, "like many other states, [have] statutorily mandated a three-tier system for the distribution of beer." *See John G. Ryan, Inc. v. Molson USA, LLC*, No. 05CV3984, 2005 WL 2977767, at *3 (E.D.N.Y. 2005) (discussing New York statute); N.J. STAT. ANN. § 33:1-93.13(b) ("It is appropriate to recognize the guiding characteristics regarding the distribution of malt alcoholic beverages . . . to maintain the three-tier distribution system[.]"). Within this tiered-system, beer suppliers or brewers occupy the top level, distributors or wholesalers occupy the middle level, and local retailers make up the bottom tier. *Molson*, 2005 WL 2977767, at *3. Often, brewers selling beer in New York and New Jersey grant distributors exclusive distribution rights in a given territory, and "[a]s a result, distributors in a given territory

tend to become associated with the brands they distribute." *Id.* (discussing New York statute). Given this dynamic, the laws governing the relationship between a brewer and a wholesaler, seek to "level the playing field" by providing protections to beer wholesalers. *See S. End Distrib. Corp. v. Hornell Brewing Co.*, 685 N.Y.S.2d 594, 598 (Sup. Ct. 1999) (quoting Governor's Mem. approving L.1996, ch. 679, 1996 McKinney's Session Laws of N.Y., at 1927); N.J. STAT. ANN. § 33:1-93.13(c) ("It is . . . fitting and proper to regulate the business relationship between brewers and wholesalers of malt alcoholic beverages . . . to further the public policy of [New Jersey] and protect beer wholesalers from unreasonable demands and requirements by brewers . . .."); *see also* N.Y. ALCO. BEV. CONT. LAW § 55-c(1) ("ABC") ("[T]he regulation of business relations between brewers and beer wholesalers is necessary and appropriate to the general economy and tax base of [New York] and in the public interest."). Indeed, "[a]bsent statutory protection, brewers could arbitrarily wipe out investments made by wholesalers" to distribute beer and build relationships with brands. *Amtec Int'l of N.Y. Corp. v. Beverage All. LLC*, No. 10-CV-1147, 2011 WL 13244183, at *2 (E.D.N.Y. Feb. 1, 2011).

A. New York's Alcoholic Beverage Control Law

In New York, the Alcoholic Beverage Control Law (the "ABC") governs the relationship between brewers and wholesalers. Relevant here, ABC § 55-c outlines the requirements for "[a]greements between brewers and beer wholesalers." ABC § 55-c. Generally, the law requires that distribution agreements be in writing and prohibits the termination and material modification of such agreements without "good cause." *Id.* § 55-c(3). "Good cause" termination and modification of an agreement is limited to two instances: "(i) the implementation by a brewer of a national or regional policy of consolidation that is reasonable, nondiscriminatory, and essential, and (ii) the failure to comply with a material term of the distribution agreement after notice and

an opportunity to cure." *Molson*, No. 05CV3984, 2005 WL 2977767, at *4 (citing ABC § 55-c(2)(e)). However, a brewer or wholesaler may also terminate or otherwise modify an agreement if either party "takes any action which would provide grounds for immediate termination pursuant to the reasonable terms of a written enforceable agreement between them," or "in the event the brewer and beer wholesaler voluntarily agree in writing to terminate the agreement." ABC § 55-c(5)(d)(v)–(vi). In addition, under Section 55-c(6):

> If a brewer fails to comply with the provisions of this section, a beer wholesaler may maintain a civil action in a court of competent jurisdiction within this state for damages sustained in accordance with the laws of this state which shall govern all disputes arising under an agreement or by reason of its making and performance.

Id. § 55-c(6). While "the brewer has the burden of proving that its action was based upon good cause" in legal actions challenging termination, "the wholesaler retains the burden of proof in all other respects." *S. End Distrib. Corp.*, 685 N.Y.S.2d at 596.

B. New Jersey's Malt Beverages Practices Act

New Jersey's Malt Beverages Practices Act (the "MBPA") also "protect[s] beer wholesalers from unreasonable demands and requirements by brewers." N.J. STAT. ANN. § 33:1–93.13(c). Like the ABC, the MBPA prohibits a brewer from terminating any "contract, agreement or relationship with a wholesaler" unless the brewer establishes that it has "good cause" and acted in "good faith," which is implicit in New Jersey contract law. *See id.* § 33:1-93.15(c)(1), (c)(11). A party has "good cause" to act when the other fails "to substantially comply with reasonable terms contained in [the] contract or agreement . . . ." *Id.* § 33:1-93.14. For "successor brewers," or "any person, not under common control with the predecessor brewer, who by any means . . . 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," the MBPA also provides:

> It shall not be a violation of this act for a successor brewer to . . . terminate, in whole or in part, . . . the contract, agreement, or relationship with a wholesaler of the brewer it succeeded, for the purpose of transferring the distribution rights in the wholesaler's territory for the malt alcoholic beverage brands to which the successor brewer succeeded . . . provided that the successor brewer or the second wholesaler . . . first pays to the first wholesaler the fair market value of the first wholesaler's business with respect to the terminated brand . . . .

Id. §§ 33:1-93.14, -93.15(d)(1). The MBPA creates a cause of action for any wholesaler to bring suit against a brewer "for violation of [the MBPA], or against a successor brewer in connection with a termination pursuant to [§ 33:1-93.15(d)(1)] of this act[.]" *Id.* § 33:1-93.18(a).

II. Defendant's Arguments for Dismissal

In its motion to dismiss, Defendant raises several grounds—both procedural and substantive—as the basis for dismissal of the complaint. Specifically, Defendant argues: (1) Plaintiff's claims are time-barred by a statute-of-limitations period that "expired no later than 2011;" (2) New Jersey's MBPA does not retroactively apply to the 2000 Agreement or the 2003 Appointment Letter; (3) neither New York or New Jersey's distributor statutes apply to Defendant because Amtec has not pleaded purchases of title transfer within either state; (4) the 2000 Agreement is solely governed by Polish Law due to the choice-of-law provision; and, (5) the 2000 Agreement expired on its terms. (*See generally* Def.'s Mem. at 5–15, ECF No. 15.) The Court addresses each of Defendant's arguments in turn.

A. Applicable Statutes of Limitations

Defendant argues that Plaintiff's claims brought pursuant to the New York and New Jersey beer franchise laws are time-barred by the applicable statute of limitations. (Def.'s Mem. at 6–8.) Specifically, Defendant maintains that the alleged temporary withdraw of Zubr from the

United States market in 2005 was tantamount to a termination of the agreement under the ABC and MBPA statutes. (*Id.*) The Court disagrees.

As both parties appear to acknowledge, there is no statutory limitations period specified for claims brought under the ABC or the MBPA. Instead, the Defendant argues a three-year statute of limitations applies as, under New York law, "an action to recover upon a liability . . . created or imposed by statute" must be commenced within three years of the cause of action. (Def.'s Mem. at 6 (quoting N.Y. C.P.L.R. § 214(2)). As to the New Jersey statute, Defendant argues that New Jersey's six-year statute of limitations for contract actions applies to actions brought pursuant to the MBPA. (*Id.* (citing N.J. STAT. ANN. § 2A:14-1 ("an action "for recovery upon a contractual claim or liability, express or implied . . . shall be commenced within 6 years" from the time the cause of action accrued)).).

Ultimately, however, the Court need not decide which statute of limitations period applies, as Defendant has failed to establish that the statute of limitations began to accrue, as it maintains, when KP withdrew Zubr from the United States. Specifically, Plaintiff brings its claims under ABC § 55-c and the MBPA, both of which prohibit a brewer from terminating a lawfully appointed distributor except for "good cause." Terminating a lawfully appointed distributor without good cause, therefore, constitutes a statutory violation that would trigger the applicable statute of limitations period. Defendant does not direct the Court to any statutory language, which supports its proposition that Zubr's temporary withdrawal from the United States market constituted an impermissible termination, such that any statute of limitations period was triggered.

Defendant argues *Biotronik, A.G. v. Conor Medsystems Ireland, Ltd.*, 939 N.Y.S.2d 739, 2011 WL 5385980 (Table) (Sup. Ct. Oct. 19, 2011), stands for the proposition that "[t]he

'temporary withdrawal' of a product subject to an exclusive distributorship agreement constitutes a breach of contract." (Def.'s Mem. at 7.) Not so. *First*, as Plaintiff argues, *Biotronik* "concerns issues of contractual interpretation when a product was permanently . . . withdrawn from the market . . .." (Pl.'s Opp'n Def.'s Mot. Dismiss ("Pl.'s Opp'n") at 7, ECF No. 15-7).[4] Here, Plaintiff alleges only an alleged "temporary" withdrawal of the product from the distributor's territory in 2005. Moreover, in this case, Plaintiff has not alleged a contractual breach; instead, Plaintiff alleges a statutory violation. (Compl. ¶¶ 18, 54–55, 60–61.) *Second*, even assuming *Biotronik* was factually analogous, it would not change the Court's conclusion. That is, the *Biotronik* court did not reach the conclusion Defendant suggests. Rather, the court determined that "[t]he disputed issues of fact presented on this application forecloses [it] from ruling, as a matter of law, that [the defendant] did not breach the [d]istribution [a]greement when it withdrew [the product] from the market . . . ." *Biotronik*, 939 N.Y.S.2d 739, 2011 WL 5385980 (Table), at *22.

[4] Defendants' only cited authority, *Biotronik*, is factually inapposite and does not convince the Court that the statute of limitations began to accrue when KP withdrew Zubr from the United States. In *Biotronik*, the defendant moved for summary judgment seeking to dismiss the action brought pursuant to a distribution agreement. 939 N.Y.S.2d 739, 2011 WL 5385980, at *1 (Table) (Sup. Ct. Oct. 19, 2011). There, the distribution agreement provided that the plaintiff would be the exclusive distributor of a "novel drug-eluting stent." *Id.* Further, the defendant was required to give the plaintiff 12 months' advance notice of a decision to discontinue manufacturing the stent and the right to continue placing orders for those 12 months. *Id*. The agreement also gave the defendant the exclusive right and obligation to issue recalls, safety alerts, or other similar remedial actions. *Id.* at *2. The agreement "recite[d] that European regulatory approval [was] the essence of the agreement." *Id*. Thus, if a clinical trial revealed efficacy or safety issues, "the parties would negotiate in good faith to reduce the minimum quantities [the plaintiff] was otherwise obliged to purchase." *Id.* After a clinical trial that "did not identify safety issues," the defendant announced that it was "terminating its application for FDA approval and withdrawing [its product] from the markets where it had been approved for sale." *Id*. at *2. The plaintiff argued that "there were no safety or health concerns underlying the decision to" withdraw the product and alleged that the defendant breached the distribution agreement through its "sham recall." *Id*. One of the issues before the court was whether the defendant's withdrawal of the product from the market was a recall or a discontinuance under the agreement. The court held that the terms governing a discontinuance could very well apply to a recall that involves a permanent withdrawal from the market. *Id.* at *5. Recognizing that the meaning of the word recall as used in the agreement was ambiguous, the court denied defendant's motion for summary judgment, and further explained that because disputed issues of fact remained, the Court could not foreclose, as a matter of law, that the defendant did not breach the distribution agreement. *Id*. at *9–11.

Further, to the extent Defendant directs the Court to documentary evidence, including email communications between Plaintiff and KP that purportedly establishes that KP repudiated the 2000 Agreement, such evidence cannot properly be considered at this stage as it is not incorporated into the complaint by reference, nor judicially noticeable. *See Hu v. City of New York*, 927 F.3d 81, 88 (2d Cir. 2019) ("In deciding a Rule 12(b)(6) motion, the court may consider only the facts alleged in the pleadings, documents attached ... or incorporated by reference in the pleadings, and matters of which judicial notice may be taken." (internal quotation marks and alteration omitted)).

Accordingly, Defendant's motion to dismiss the claims as time-barred fails.

B. Retroactive Application of the MBPA

Defendant argues that New Jersey's MBPA does not apply, as it post-dates Amtec's agreement with Dojlidy and Amtec's last purchases of Zubr. (Def.'s Mem. at 8–9.) Again, the Court disagrees.

New Jersey's MBPA was enacted on March 1, 2006. N.J. Stat. Ann. § 33:1-93.15 Notably, and as Defendant argues, the statute explicitly provides "[t]his act shall apply to all contracts, agreements and relationships among any brewers and wholesalers, including contracts, agreements or relationships entered into, renewed, extended or modified after the effective date of this act." *Id.* That said, the MBPA also provides that "[c]ontracts, agreements *and relationships* existing prior to the effective date of this act that are *continuing in nature*, have an indefinite term or have no specific duration shall be deemed . . . to have been renewed 60 days after the effective date of this act." *Id*. (emphasis added).

Defendant is correct that that the enactment of the MBPA postdates the 2000 Agreement and any alleged purchase of beer by Plaintiff to distribute in New Jersey. (Def.'s Mem. at 8–9.)

That said, Defendant's argument ignores the explicit statutory language that enables retroactive application for contracts, agreements, and relationships, that existed prior to the effective date of the act, but that are continuing in nature. N.J. STAT. ANN. § 33.1-93.15. On the one hand, Plaintiff argues that the complaint alleges that on April 24, 2003, Dojildy (which had been purchased by KP), issued the 2003 Appointment Letter with no specific durational term. (Pl.'s Opp'n. at 9.) Defendant, on the other hand, argues that the 2003 Appointment Letter merely "acknowledges [Plaintiff] as KP's brand agent" and "is not a distribution agreement" extending the exclusive distribution rights granted under the 2000 Agreement. (Def.'s Reply at 4.) Despite Defendant's implication, the Court need not decide the full scope of the 2003 Appointment Letter. The Court is satisfied that, at the very least, the 2003 Appointment Letter is sufficient to establish a relationship that is continuing in nature. Accordingly, the MBPA applies and Defendant's motion to dismiss on this ground fails.

C. Application of the New York and New Jersey Beer Distributor Statutes

Defendant argues that Plaintiff's claims fail, as a matter of law, because Plaintiff has not alleged any of Defendant's purchases took place in the United States or that title transfer occurred within New York or New Jersey. (Def.'s Mem. at 9–11.) Here, the Court agrees.

New York's ABC, section 55-c(2)(b), defines "brewer" 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 this state* or any successor to a brewer." ABC § 55-c(2)(b) (emphasis added).[5] New Jersey's MBPA

[5] Defendant also argues that Plaintiff failed to allege that Defendant is a "brewer" or a "successor to a brewer" and thus subject to the ABC. (Def.'s Mem. at 12–14.) Under the ABC, a brewer is defined in relevant part as "any person or entity engaged primarily in business as a[n] . . . importer . . . who sells or offers to sell beer to a beer wholesaler in this state or any successor to a brewer." *Id.* 2(b). Plaintiff alleges that Defendant "is the importer of various brands of beer . . . including the Zubr brand[.]" (Compl. ¶ 4; *see also id.* ¶¶ 22, 32). At this stage, that allegation is sufficient to plead that Defendant is an importer who sold beer to Plaintiff, a wholesaler; Defendant is thus subject to the ABC. Because the Court finds that Plaintiff has sufficiently alleged Defendant is a brewer under

has a similar provision, indicating "[e]very brewer shall contract and agree in writing with a wholesaler for all supply, distribution and sale of the products of the brewer *in this State*, and each contract shall provide and specify the rights and duties of the brewer and the wholesaler with regard to such supply, distribution and sale." N.J. Stat. Ann. § 33:1-93.15 (emphasis added). Based on the language of these statutes, Defendant argues Plaintiff must, and has failed to, plead a sale or offer to sell within New York or New Jersey. (Def.'s Mem. at 10–11.) In response, Plaintiff argues the "in this state" language should only be read as modifying the words "wholesaler" not "sells or offers to sell." (Pl.'s Opp'n at 15.) Or, in other words, only the wholesaler needs to be within New York or New Jersey. (*Id.*)

Ultimately, the crux of the Court's analysis on this issue turns on the interpretation of the language "in this state" under both statues. And here, both parties' analysis heavily references *S.K.I. Beer Corp. v. Baltika Brewery*, a district court opinion within the Eastern District of New York that considered this language within the New York statute as a matter of first impression. 443 F. Supp. 2d 313 (E.D.N.Y. 2006), *aff'd*, 612 F.3d 705 (2d Cir. 2010). In effect, Defendant urges the Court to adopt the reasoning of the *S.K.I. Beer Corp.* court's analysis, while Plaintiff urges the Court to deviate from it. Ultimately, the Court finds the analysis in *S.K.I. Beer Corp.* persuasive and instructive here.

In *S.K.I Beer Corp.*, the court considered a dispute between Baltika Brewery and S.K.I. Beer Corporation, which turned, in part, on the "scope and meaning" of the "in this state" language of New York's ABC, particularly whether the language modified "wholesaler" or "sells or offers to sell." *Id.* at 318–23. There, the court first acknowledged that both interpretations were reasonable. The court noted "[o]ne might reasonably read the phrase 'in this state' as

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the ABC, it need not consider the parties arguments concerning whether Defendant is also a successor to a brewer under the statute.

qualifying 'wholesaler'—and not the type of transaction," which would comport with the rule of the last antecedent, "an interpretive canon which confines the effect of qualifying words and phrases to the word or phrase immediately preceding the qualifier." *Id*. at 318. However, the court also noted "[the contrary] interpretation is also reasonable, because one could, despite the rule of the last antecedent, read the phrase 'in this state' to refer back to the verbal phrase 'sells or offers to sell beer,'" given "the phrasing here simply follows the order of object, indirect object, and place standard to English[.]" *Id*. at 319. Nonetheless, the court recognized statutory construction is a "holistic endeavor," and conducted a fulsome analysis of the statutory language as a whole, the implications of each interpretation, and the legislative history of the statute. *Id*. at 319–21. Based on this analysis, the court determined "it is clear that the phrase 'in this state' refers to the entire phrase preceding it[,]" or in other words, "the New York legislature intended to limit the Statute to sales and deliveries in New York." *Id*. at 320.

Given the *S.K.I. Beer Corp*. court's persuasive and thorough analysis, this Court need not reproduce the same here. That said, the Court notes it finds particularly persuasive the *S.K.I. Beer Corp.* court's concern that Plaintiff's interpretation raises constitutional concerns, namely, the dormant Commerce Clause. *Id*. ("Plaintiff's reading would impose New York's statutory regime for brewer-wholesaler relations on agreements consummated and completed on the other side of the globe simply because the wholesaler was licensed under New York law."). In effect, accepting Plaintiff's argument would mean that any transaction in the world with a licensed New York wholesaler is covered by the New York beer distribution statute. The constitutional concerns apply equally to the New Jersey distributor statute. Against this backdrop, the Court

agrees Plaintiff here must plead that Defendant made a sale or offer to sell Zubr in New York or New Jersey, which Plaintiff has not done.[6]

D. Contractual Claims

Defendant summarily argues that neither of the beer distributor statues apply as the 2000 Agreement is governed by Polish law and the 2000 Agreement expired on its own terms. (Def.'s Mem. at 14–15.) Defendant's arguments in this regard, however, are based on a mischaracterization of the claims brought by Plaintiff—which are not pursuant to the terms of the 2000 Agreement, but rather state statute.

As to the choice of law provision, the parties agreed in the 2000 Agreement that the contract shall be governed by the laws of Poland. (2000 Agreement, Art. 15 ¶ 5.). Plaintiff, however, does not bring a breach of contract claim here. The choice of law provision is thus inapplicable to the present dispute which does not involve any claim for breach of contract. *See, e.g.*, *Fin. One Pub. Co. v. Lehman Bros. Special Fin.*, 414 F.3d 325, 335 (2d Cir. 2005) ("Under New York law . . . tort claims are outside the scope of contractual choice-of-law provisions that specify what law governs construction of the terms of the contract . . . ."); *Plymack v. Copley Pharm., Inc.*, No. 93 CIV. 2655, 1995 WL 606272, at *5 (S.D.N.Y. Oct. 12, 1995) ("A contractual choice-of-law provision, however, does not bind the parties with respect to non-contractual causes of action.").

CONCLUSION

For the foregoing reasons, Defendant's motion to dismiss is GRANTED in part, and DENIED, in part. Specifically, Defendant's motion to dismiss is GRANTED with respect to

[6] In contemplation of the Court reaching this determination, Plaintiff does not argue it has satisfied this pleading standard, but rather, requests leave to amend its pleading in this regard. (Pl.'s Mem. at 11.) Accordingly, Plaintiff's request for leave to amend its pleading is granted.

whether Plaintiff pleaded a sale or offer in New York and New Jersey. Defendant's motion is DENIED with respect to whether Plaintiff's claims are time-barred, whether the claims are expired by the terms of the 2000 Agreement, whether Plaintiff pleaded Defendant is a brewer subject to the ABC, and whether the MPBA applies to Plaintiff's claims concerning distribution in New Jersey. Further, Plaintiff's motion to amend its complaint is GRANTED.

SO ORDERED.

Dated: Brooklyn, New York
March 31, 2022

/s/ LDH
LASHANN DEARCY HALL
United States District Judge

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

AMTEC INTERNATIONAL OF NY CORP.,	)	
	)	
Plaintiff,	)	Case No.: 1:20-cv-00003-LDH-PK
v.	)	
	)	Service Date: November 19, 2020
POLISH FOLKLORE IMPORT CO., INC.,	)	
	)	
Defendant.	)	

POLISH FOLKLORE IMPORT CO., INC.'S RULE 12(b)(6)
MOTION TO DISMISS AND MEMORANDUM OF LAW IN SUPPORT

Defendant, Polish Folklore Import Co., Inc. ("PFI"), by its counsel, pursuant to Federal Rule of Civil Procedure 12(b)(6), hereby moves to dismiss the Complaint of Plaintiff, Amtec International of NY Corp. ("Amtec") and submits its Memorandum of Law in Support as follows.

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I. INTRODUCTION

Amtec's two-count Complaint seeks relief for time-barred contract and statutory rights Amtec lost more than fourteen years ago. To conceal this staleness, Amtec dresses its claims under two state statutes – New York and New Jersey beer franchise laws, which govern relationships between beer brewers and wholesalers in New York and New Jersey, including how and when their contracts may be terminated. As demonstrated herein, Amtec's Complaint must be dismissed because (a) Amtec's rights long ago expired; and (b) the beer franchise laws do not apply to PFI and Amtec or to the contract at issue.

II. THE COMPLAINT

PFI accepts Amtec's well-pleaded Complaint allegations for purposes of this Motion. Amtec is an importer and distributor of alcoholic beverages. Ex. 1, Complaint, at ¶ 1. PFI is an importer of alcoholic beverages. *Id.* at ¶ 2. At issue is a dispute concerning the rights (or value of said rights) to distribute Zubr beer in New York and New Jersey. *Id.* at ¶¶ 6-7.

Beginning in 1998, Amtec imported Zubr from its then Polish brewer, Browar Dojlidy ("Dojlidy"), pursuant to an Import and Wholesale Agreement governing the importation and distribution of, *inter alia*, Zubr. *Id.* at ¶ 7. Dojlidy also appointed Amtec as its Zubr "brand agent" and exclusive distributor in, *inter alia*, New York and Jersey. *Id.* at ¶¶ 8-12. On December 31, 2000, Amtec and Dojlidy entered into a new agreement (the "Agreement"), pursuant to which Amtec would purchase Zubr from Dojlidy and be Dojlidy's exclusive distributor in New York and New Jersey. *Id.* at ¶¶ 14-15.

On February 4, 2003, Kompania Piwoarska SA ("KP") purchased Dojlidy. *Id.* at ¶¶ 4, 15. Amtec alleges KP "temporarily withdrew" Zubr from the United States during 2003. *Id.* at ¶

18. This "temporary" withdrawal lasted more than 14 years. *Id.* at ¶¶ 22-23. Amtec claims the Agreement and its relationship with Zubr never terminated. *Id.* at ¶ 19.

During April 2018, nearly 15 years after Amtec placed its last Zubr order, PFI began to import Zubr into the United States. *Id.* at ¶¶ 22-23. Amtec alleges PFI (not KP) "terminated" its distribution rights by appointing two Zubr distributors in New York and New Jersey. *Id.* at ¶ 23. However, Amtec does not allege PFI had any agreement or business dealings with Amtec which could be terminated. *Id.* at ¶ 25. In addition, Amtec does not allege PFI ever provided Amtec with any notice of termination. *Id.* at ¶ 26.

Amtec brings suit under the New York Alcoholic Beverage Control Law (Count I), and the New Jersey Malt Alcoholic Beverages Practices Act (Count II). These statutes generally prevent a brewer's termination of distribution relationship between a brewer and a wholesaler absent good cause. *See generally id.* at ¶¶ 38-62.

III. ADDITIONAL FACTS THIS COURT MAY CONSIDER

A. The Contract.

Amtec fails to attach a copy of the Agreement to its Complaint. However, (1) the Agreement partially or completely governs Amtec's claimed rights, and (2) Amtec is seeking to either (a) enforce the Agreement against PFI, or (b) recover the lost value of its distribution rights governed, in whole or in part, by the Agreement. Ex. 1, the Complaint, ¶¶ 51-62. Accordingly, the Agreement is an integral document to the Complaint, which, as discussed *infra* at p. 5, § IV(B), this Court may consider when ruling on the motion to dismiss. A true and accurate copy of a certified translation of the Agreement between Amtec and Dojlidy is attached as Exhibit 2 and as authenticated by Jakub Sumara's Affidavit, Exhibit 5 hereto. The Agreement is written in Polish and was translated into English by a certified translator. *Id.*, p. 9.

Significantly, the Agreement contains a durational term. It states, the "[Agreement] shall come into force as at the day of its signing and shall be concluded for a defined period of time until December 31, 2002," with a possibility of extension. Ex. 2 at p. 5, Art. 14, ¶ 1. The Agreement also contains a termination provision, allowing either party to terminate on three months' written notice. *Id.* at ¶ 2. Moreover, Amtec and Dojlidy did not evidence any intent in the Agreement to be bound by or subject to New York or New Jersey law. To the contrary, the Agreement contains a choice of Polish law provision. *Id.* at p. 6, Art. 15, ¶ 5. Also significant, pursuant to the Agreement, the sale and exchange of the goods at issue (including the Zubr product) took place at Dojlidy's warehouse in Poland, at which time title to the goods passed to Amtec. *Id*. at p. 2-3, Art. 5, ¶¶ 1-3.

B. KP Terminated Amtec's Rights During 2005 and PFI Subsequently Obtained Its Rights from a Third-Party.

During July 2019, Amtec and PFI participated in an administrative hearing before the Connecticut Department of Consumer Protection, Liquor Control Commission. PFI timely appealed the Commission's Order and the appeal is pending in the Connecticut Superior Court. *See* Exhibit 3 hereto, a true and accurate copy of PFI's confirmation of e-filing its complaint for administrative review on December 12, 2019.[1] This Court may take judicial notice of the administrative record on appeal, as discussed *infra*, relevant portions of which are attached as Group Exhibit 4. At the administrative hearing and in its post-hearing brief, Amtec introduced

[1] The administrative appeal of the Connecticut Liquor Control Commission's order remains pending in the Superior Court of the Judicial District of New Britain under docket number HHB-CV-20-6056990-S.

evidence establishing that: (1) KP, not PFI, was the manufacturer of Zubr, and (2) KP, not PFI, terminated the Agreement and any of Amtec's franchise rights during no later than 2005.

Specifically, during February 2005, Amtec attempted to place an order with KP to purchase Zubr. Ex. 4 [Ex. T to Amtec's Post-Hearing Brief, the 2005 email chain] at R. pp. 1187-94.[2] KP responded (a) it was not selling Zubr in the United States market; and (b) the Agreement with Amtec had expired. *Id.* Amtec responded and contended the Agreement was "still in force effect [sic]." However, KP reiterated there was no contract between the companies. *Id.* Subsequently, Amtec placed an order for Zubr, but KP did not respond. Ex. 4, [Ex. U to Amtec's Post-Hearing Brief, Amtec's unfulfilled purchase order to KP], at R. pp. 1195-1201, and [Amtec's Post-Hearing Brief] at R. p. 1000 ("On May 19, 2005, Amtec subsequently submitted an order for Zubr, which KP did not fill.").

Notably, PFI does not import Zubr from KP or Dojlidy, the entities from which Amtec imported Zubr. Instead, PFI imports Zubr from Mag Dystrybucja, one of KP's distributors in Poland. Ex. 4 [Amtec's Post-Hearing Brief] at R. p. 1001.

IV. APPLICABLE LEGAL STANDARDS

A. Rule 12(b)(6) Motion

When deciding a Rule 12(b)(6) motion, this Court applies the two-pronged approach articulated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). *Sugar v. Greenburgh Eleven Union Free Sch. Dist.*, No. 18 CV 67 (VB), 2018 WL 6830865, at *2–3

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[2] Citations to Group Exhibit 4 – portions of the administrative record on appeal pending in the Connecticut administrative appeal – are made as "R. p. __" in reference to the appellate record's pagination and will designate the document being referenced in brackets where applicable. Group Exhibit 4 is ordered by pagination of the record.

(S.D.N.Y. Dec. 28, 2018). The Court: (a) disregards conclusions and threadbare recitals of the elements of a cause of action supported by conclusory allegations, and (b) takes only well-pleaded factual allegations as true and then evaluates whether they plausibly give rise to an entitlement to relief. *Ashcroft*, 556 U.S. at 678-679, *Hayden v. Paterson*, 594 F.3d 150, 161 (2d Cir. 2010). A plaintiff must exceed a plausibility requirement, showing more than a possibility a defendant acted unlawfully. *Id.*, quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. at 556.

B. Authority to Review Additional Materials

When assessing a Rule 12(b)(6) motion, in addition to considering complaint allegations, documents incorporated by reference, and exhibits, courts may consider documents integral to the complaint and matters subject to judicial notice. *Sugar v. Greenburgh Eleven Union Free Sch. Dist.*, No. 18 CV 67 (VB), 2018 WL 6830865, citing *Mangiafico v. Blumental*, 471 F.3d 391, 398 (2d Cir. 2006), *Tellabs, Inc. v. Makor Issues & Rights, Ltd.* 551 U.S. 308, 322 (2007).

A document not attached as a complaint exhibit and not expressly incorporated by reference is "integral" to the complaint if the complaint "relies heavily upon its term and effect," the Court may consider the document when ruling on a motion to dismiss. *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 153 (2d Cir. 2002). With respect to judicial notice, a court may take notice of the records of state administrative proceedings, which are public records, without converting a motion to dismiss into a motion for summary judgment. *Thomas v. Westchester Cty. Health Care Corp.*, 232 F. Supp. 2d 273, 277 (S.D.N.Y. 2002).

V. ARGUMENT

This Court should dismiss Amtec's Complaint for the following, independent, reasons: (A) Amtec's claims are time-barred, because Amtec lost any Agreement and franchise rights no later than 2005 and the statutes of limitation expired no later than 2011; (B) New Jersey's

MABPA does not apply because (i) its enactment postdates the Agreement, and (ii) the end of Amtec's Zubr importing by years, and it is not retroactive; (C) Amtec's purchases of Zubr and the transfer of title took place in Poland and are not subject to the beer franchise laws; (D) PFI is not a "brewer" with respect to Amtec and Zubr and, therefore, not covered by the beer franchise laws; and (E) Amtec may not recover under the beer franchise laws because the Agreement is governed by Polish law and it expired during 2012 pursuant to its terms.

A. AMTEC'S CLAIMS ARE TIME-BARRED.

Amtec's claims are time-barred by the applicable statutes of limitations. There are no statutory limitations periods in New York's or New Jersey's beer franchise laws. Therefore, the applicable limitations period under New York law is three years for "an action to recover upon a liability . . . imposed by statute." *See* N.Y. C.P.L.R. 214(2). Alternatively, the New York catchall limitations period of six years applies. *See* N.Y. C.P.L.R. 213(1) (pertaining to actions "for which no limitation is specifically prescribed by law"). In New Jersey, the applicable limitations period for an action on a contract is six years. *See* N.J.S.A. § 2A:14-1. All limitations periods have long expired, since no later than 2011.

Amtec brings suit to recover the value of its lost Agreement and statutory rights due to a termination without good cause as required under the beer franchise laws. Under New York law, it is well established the limitations period for a breach action "begins to run from the day the contract was breached, not from the day the breach was discovered, or should have been discovered." *Kermanshah v. Kermanshah*, 580 F. Supp. 2d 247, 260 (S.D.N.Y. 2008) (internal citations omitted). Although Amtec's claims are statutory in nature, the same logic applies. When KP disavowed its obligations to Amtec without compensation (whether through termination, repudiation or a failure to renew), the limitations periods commenced.

From the face of the Complaint, Amtec's injury occurred no later than "in or around 2005," when KP "temporarily" withdrew Zubr from the United States. Ex. 1, the Compl., at ¶ 18. Amtec attempts to avoid its limitations problem by alleging a "temporary withdrawal" of a product from the market is not tantamount to a termination, a rescission, or a failure to renew the Agreement, which would constitute violations of the beer franchise laws. *Id.* at ¶ 19. Respectfully, this Court should reject Amtec's legal conclusion. The "temporary withdrawal" of a product subject to an exclusive distributorship agreement constitutes a breach of contract. *Biotronik, A.G. v. Medsystems Ireland, Ltd.*, 33 Misc. 3d 1219(A), 939 N.Y.S.2d 739 (Sup. Ct. 2011) (denying defendant's motion for summary judgment on breach of distribution agreement claims where defendant contended it had issued a valid recall to "temporarily withdraw" a product from the market).

A review of the Agreement makes clear Dojlidy or KP terminated the Agreement. The Agreement obligated the manufacturer, Dojlidy, to sell to Amtec a fixed amount of products. *See* Ex. 2, the Agreement, at p. 8, Appendix No. 4. The Agreement did not empower Dojlidy to "temporarily withdraw" products. *Id.* The alleged "temporary" withdrawal was therefore a breach or termination of the Agreement and a violation of the beer franchise laws (assuming, *arguendo*, they applied).

Likewise, other Amtec documents from the Connecticut administrative hearing unequivocally refute Amtec's "temporary" withdrawal allegation. During 2005, Amtec and KP exchanged a series of emails in which KP repudiated the Agreement. In responding to Amtec's purchase order for Zubr, KP stated: "[t]he agreement between the companies Amtec and Dojlidy [KP's predecessor] expired," and "[a]s far as I am aware, there is no agreement between the companies [KP] and Amtec." Ex. 4 [Ex. T to Amtec's Post-Hearing Brief, the 2005 email chain]

at R. pp. 1187-94. KP subsequently ignored Amtec's submitted purchase order for Zubr. Ex. 4 [Ex. U to Amtec's Post-Hearing Brief, Amtec's unfulfilled purchase order to KP], at R. pp. 1195-1201, and [Amtec's Post-Hearing Brief] at R. p. 1000 ("On May 19, 2005, Amtec subsequently submitted an order for Zubr, which KP did not fill.").

KP's repudiation of the Agreement and refusal to ship Zubr to Amtec each independently triggered the limitation periods. KP also never renewed the Agreement, which also triggered the franchise laws' limitation periods. Amtec's claim that a fourteen-year gap is excusable because it never received a "formal termination" from KP is untenable and contrary to the law. Ex. 1, the Compl., at ¶ 19. Amtec's causes of action – under contract and statute – expired no later than six years after KP prevented Amtec from distributing Zubr in the United States, no later than 2011. Amtec's claims are at least eight years' time barred. For this independent reason, this Court should dismiss Amtec's Complaint.

B. NEW JERSEY'S MABPA POST-DATES THE AGREEMENT'S EXECUTION AND DOES NOT APPLY.

The New Jersey MABPA post-dates Amtec's Agreement with Dojlidy and Amtec's last purchases of Zubr. Accordingly, assuming *arguendo* Amtec's claims are not time barred, the later enactment of the MABPA confers no rights in Amtec to claim a statutory violation. As alleged in the Complaint, Amtec most recently purchased beer to distribute in New Jersey during September of 2003, and KP refused to sell beer to Amtec no later than 2005. Ex. 1, Compl., at ¶¶ 16, 18. The Agreement became effective on December 31, 2000, and expired by its terms as of "December 12, 2002, with possibility of extension," and with a voluntary termination provision. Ex. 2, at p. 1, and p. 5, Article 14, ¶¶ 1-2.

In Count II, Amtec seeks relief under the MABPA and specifically under section 93.15(c)(1), which prohibits a brewer from terminating or failing to renew a wholesaler's contract without good cause. *See* Ex. 1, Compl., at ¶¶ 57-62. However, MABPA did not become effective until March 1, 2006, several years after the Agreement became effective and one year after 2005, when Amtec claims KP refused to sell to Amtec. *See* N.J. S.A. §§ 33:1-93.12 through 33:1-93.20. Therefore, Amtec may not obtain relief under the MABPA, and Amtec fails to state a claim upon which relief may be granted as to Count II.

PFI anticipates Amtec will argue the MABPA has a retroactive application to contracts existing prior to its effective date of March 1, 2006. However, the Agreement does not qualify. Section 93.15(b) provides the MABPA shall apply to all "contracts, agreements, and relationships existing prior to the effective date of this act that are continuing in nature, have an indefinite term or have no specific duration." These descriptors do not apply, because as set forth *supra*: (a) the Agreement had an explicit duration term with a voluntary termination provision; (b) KP had refused to make sales to Amtec; and (c) KP had fully repudiated, terminated, and/or failed to renew the Agreement by denying it was in force and effect during mid-2005. Accordingly, the MABPA does not and cannot apply. For this independent reason, this Court should dismiss Count II of Amtec's Complaint.

C. NEITHER OF THE BEER FRANCHISE LAWS APPLIES BECAUSE AMTEC HAS NOT PLEADED ANY PURCHASES OR TITLE TRANSFER WITHIN NEW YORK AND NEW JERSEY.

Amtec's claims also fail as a matter of law because Amtec has not pleaded (1) any of Dojlidy's or KP's sales took place in the United States, or (b) title transfer occurring within New York or New Jersey, which are the only transactions governed by each State's respective beer franchise law. New York's ABC Law, Section 55-c(b), (Count I) defines a "brewer" in part as

an "[entity] who sells or offers to sell beer to a beer wholesaler **in this state**." (Emphasis added). Likewise, New Jersey's MABPA (Count II) governs contracts for the "supply, distribution and sale of the products of the brewer **in this State**." N.J. Stat. Ann. § 33:1-93.15(a) (emphasis added).

The Complaint does not allege any sales of Zubr by Dojlidy, KP or PFI to Amtec occurring in New York or New Jersey. These glaring omissions of an essential *prima facie* element are fatal to Amtec's claims as demonstrated by *S.K.I. Beer Corp. v. Baltika Brewery*, 443 F. Supp. 2d 313, 319 (E.D.N.Y. 2006), *aff'd*, 612 F.3d 705 (2d Cir. 2010). In *S.K.I Beer Corp.*, the plaintiff beer importer sued under Section 55-c for an alleged wrongful termination of its written exclusive distributorship agreement because the defendant brewer refused to fill plaintiff's orders and to renew their contract. The defendant argued, in part, the importer failed to allege any sale of beer by the brewer to the importer within the State of New York, and therefore Section 55-c did not apply. *Id.* The court agreed.

The court evaluated the statute's purpose and concluded the statute only "applies to sales and deliveries in New York." *S.K.I. Beer Corp.*, 443 F. Supp. 2d at 322 (E.D.N.Y. 2006). According to the court, any "sale or offer to sell that would subject a brewer to the Statute [55-c] must take place in New York." *Id.* In that case, the contract provided the goods were "handed over" to the plaintiff importer at the defendant's place of business in Russia, at which time the delivery was completed. *Id.* The complaint contained no allegations that the goods were sold by the brewer to the importer in New York and that transfer of title took place in New York. *Id.* The inability of the importer to allege these *prima facie* elements, among other reasons, required the court to dismiss the complaint, and the Second Circuit affirmed. *Id.*

The facts at bar are practically "on all fours." Amtec fails to allege any sales or offers to sell Zubr to Amtec in New York or New Jersey by Dojlidy, KP or PFI. Amtec only alleges that *Amtec* sold and distributed beer in New York and New Jersey. This allegation is insufficient and the foregoing omissions warrant dismissal. More importantly, a review of the Agreement reveals the sales and title of transfer to Amtec occurred in Poland. The Agreement states:

> 1. The delivery of the Products and acceptance thereof by the Distributor [Amtec] shall be at the Manufacturer's [Dojlidy's] warehouse **located in Bialystok, at ul. Dojlidy Fabyrczne 28, Poland**.
>
> 2. The title to the Products along with all the related costs and risks **shall pass onto the Distributor [Amtec] as at the moment of the Product's acceptance** by the Distributor [Amtec] confirmed in the relevant internal export invoice signed by the Distributor's [Amtec] authorized representative (EXW – the Manufacturer's warehouse located at ul. Dojlidy Fabryczne 28, Bialystok).

Ex. 2, the Agreement, at p. 2, Article 5, §§ 1-2 (emphasis added).

The parties' contemplation of Amtec's distribution in New York and New Jersey is, as the *S.K.I. Beer Corp.* court concluded, of no moment. A distributor's reselling of beer within New York does not constitute a sale under New York's ABC laws. *S.K.I. Beer Corp.*, 443 F. Supp. 2d at 322-23. The same logic of *S.K.I. Beer Corp.* applies to both of Amtec's franchise claims. The sale and transfer of title of Zubr took place in Poland, and the franchise laws do not apply. Accordingly, for this independent reason, this Court should dismiss Amtec's Complaint.

D. PFI IS NOT A BREWER SUBJECT TO NEW YORK'S ABC LAW.

The New York ABC Law governs the relationship between a "brewer" or a "successor to a brewer" and a "wholesaler." PFI is neither a "brewer" nor a "successor to a brewer," and it cannot be liable under New York's ABC Law.

Section 55-c(2)(a), N.Y. Alc. Bev. Cont. Law § 55-(2)(a), defines a "brewer" 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 this state or any successor to a brewer.

Section 55-2(c), N.Y. Alc. Bev. Cont. Law § 55-(2)(c), defines a "successor to a brewer" as:

> Any person or entity which acquires the business or beer brands of a brewer, without limitation, by way of the purchase, assignment, transfer, lease, or license or disposition of all or a portion of the assets, business or equity of a brewer in any transaction, including merger, corporate reorganization, or consolidation or the formation of a partnership, joint venture or other joint marketing alliance.

Amtec does not allege PFI is a brewer with which it had a direct relationship. In fact, Amtec does not allege how PFI purportedly developed any contractual privity with Amtec or became obligated pursuant to the original agreement Amtec has with brewer Dojlidy or its successor, KP, which repudiated the expired Agreement. Instead, Amtec simply concludes "PFI is a 'brewer' with respect to the Zubr Brand products." This is precisely the type of conclusory and speculative label which will not survive a Rule 12(b)(6) motion and this Court must reject.

Because Amtec admits PFI was not the brewer with which Amtec had the Agreement or import relationship, Amtec's sole method of establishing liability pursuant to New York law is to plead and prove PFI is a "successor to a brewer," as that term is statutorily defined. However, Amtec fails to make this requisite allegation. It is insufficient, standing alone, for Amtec to allege PFI is a successor to a brewer merely because it currently has Zubr import rights. In a similar case – involving Amtec as a defendant – the Illinois Appellate Court came to this conclusion under Illinois' analogous beer franchise law. *Grant Importing & Distrib. Co. v. Amtec Int'l of N.Y. Corp.*, 384 Ill. App. 3d 68, 72, 892 N.E.2d 1134, 1137 (Ill. App. Ct. 2008). Similar to New York, Illinois defines "successor brewer," as a "person who in any way obtains

the distribution rights that a brewer . . . importer, or master distributor once had to manufacturer or distribute a brand or brands of beer whether by merger, purchase of corporate shares, purchase of assets, or any other arrangement, including but not limited to any arrangements transferring the ownership or control of the trademark, brand or name of the brand." 815 Ill. Comp. Stat. Ann. 720/1.1.

The Illinois *Grant Importing* court concluded the "method in which the distribution rights are obtained are critical to a determination of whether an entity is a successor brewer." *Grant Importing & Distrib. Co.*, 892 N.E.2d at 1136-37. The court continued "[w]e believe that the statute contemplates that, in order to qualify as a successor brewer, the distribution rights must have been obtained **through some arrangement with the holder of the original rights**." *Id.* (emphasis added). Thus, an importer does not become a "successor to a brewer" merely because that importer obtained distribution rights previously held by a different importer. Indeed, if the mere possession of the rights to import or distribute a brand were sufficient to establish "successor to a brewer" status, the legislature's inclusion of the various statutory methods of acquiring a prior importer's business or brands would be mere surplusage.

The Complaint in the instant case is bare of any allegations how PFI "obtained its distribution rights through some arrangement with the original holder of the rights that is similar to the type of transaction contemplated by statute." *Id.* at 1137. This omission is fatal to Amtec's New York claim unless Amtec can plead sufficient facts that exceed a plausibility threshold to support its legal conclusions. But, Amtec cannot make these allegations. Instead of doing so, Amtec now attempts to flip the same argument it made and won in the Illinois case in an attempt to hold PFI liable where there are no allegations how PFI acquired its rights through

any "purchase, assignment, transfer, lease, or license or disposition of all or a portion of the assets, business or equity of a brewer… ." N.Y. Alc. Bev. Cont. Law § 55-c(2)(c).

Finally, this Court need not speculate how PFI came to import Zubr. Amtec submitted evidence regarding PFI's relationship with Zubr in the Connecticut administrative hearing. As Amtec acknowledged, "instead of purchasing the product from KP, PFI was appointed by MAG Dystrybucja, a Polish distributor of KP." Ex. 4, [Amtec's Post-Hearing Brief], at R. p. 1001. Thus, Amtec is well aware PFI did not obtain its rights through a transaction with KP, the entity with which Amtec allegedly had an Agreement until, at the latest, 2005. Amtec has not alleged any relationship with MAG Dystrybucja, and has not alleged PFI obtained the Zubr rights through a "purchase, assignment, transfer," etc., as required by the New York statute before PFI could ever be considered a successor to a brewer. Accordingly, PFI is not a "brewer" with respect to Amtec and Zubr. For this independent reason, this Court should dismiss Count I of Amtec's Complaint.

E. THE BEER FRANCHISE LAWS DO NOT APPLY.

The beer franchise laws simply do not apply to Amtec's Agreement, and Amtec may not obtain its requested relief. Beyond the fact that the actual sales and title transfer occurred in Poland, per the Agreement: (a) Dojlidy and Amtec agreed the Agreement was governed by Polish law, **not** New Jersey or New York law; and (b) the Agreement expired by its own terms.

1. The Agreement is Governed by Polish Law.

The Agreement contains a choice of law provision, which courts generally enforce if the chosen law "bears a reasonable relationship to the parties or the transaction." *Madden v. Midland Funding, LLC*, 237 F. Supp. 3d 130, 148 (S.D.N.Y. 2017). In considering whether a reasonable relationship exists, courts consider (a) the location of negotiation and performance of

the agreement; (b) the parties' places of incorporation and principal places of business; and (c) the property which is the subject of the transaction. *Id.* A party's principal place of business in the selected forum is enough, standing alone, to satisfy the reasonable relationship test. *Id.*

Here, the Amtec and Dojlidy Agreement "shall be governed by the laws of Poland" and the Polish Commercial Code. Ex. 2, p. 6, Art. 15, ¶ 5. There is no dispute Dojlidy was located in Poland, brewed Zubr in Poland, and sold and transferred title of the beer to Amtec in Poland. There is a substantial and strong relationship between the choice of law provision and the Agreement. Thus, Polish, not New York or New Jersey law, controls.

Clearly, the Agreement Parties never intended the Agreement – governed by Polish law, concerning sales and transfers of title in Poland – to be subject to New York and New Jersey laws. This is particularly true because those state laws contain terms materially different from those to which the Agreement Parties agreed. Because Polish law governs the Agreement and the relationship between Dojlidy and Amtec, Amtec may not seek relief under New York and New Jersey laws. For this reason, independently, this Court should dismiss Amtec's Complaint.

2. The Agreement Expired on Its Terms.

Amtec and Dojlidy's Agreement term ran through December 12, 2002, with a "possibility of extension." Ex. 2, p. 5, Art. 14, § 1. Amtec fails to plead how or why the Agreement remained in force and effect or became resurrected and purportedly binding on a different company (PFI) during the intervening 14 years after (a) the Agreement expired; and (b) KP refused to fill Amtec's orders and denied the Agreement was in effect. For this independent reason, this Court should dismiss Amtec's Complaint.

VI. CONCLUSION

Amtec improperly seeks to evade the staleness of its contract and statutory claims to recover the alleged value of its contract rights through inapplicable statutes, more than 14 years after its contractual relationship with the former brewer ended. The Agreement expired and is not binding on PFI. Nor do the franchise laws apply to PFI and Amtec. Amtec has failed to state a claim upon which relief can be granted. Respectfully, this Court should dismiss Amtec's Complaint, with prejudice.

Dated: November 19, 2020

Respectfully submitted,

POLISH FOLKLORE IMPORT CO. INC.

/s/ Earl E. Farkas
By one of its Attorneys

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a true and correct copy of the above-titled **Defendant's Rule 12(b)(6) Motion to Dismiss and Memorandum in Support** was served upon all parties of record by sending copies of the same via first-class U.S. mail with postage prepaid and electronic mail at or before 5:00 PM CST on November 19, 2020, to the following attorneys of record:

Counsel for Plaintiff Amtec International of NY Corp

Joshua S. Stern, Esq.
Donovan Hatem, LLP
112 W. 34th St., 18th Fl.
New York, New York 10120
jstern@donovanhatem.com

Donna Murphy

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----------X

AMTEC INTERNATIONAL OF NY CORP.

Plaintiff,

—against—

POLISH FOLKLORE IMPORT CO., INC.

Defendant.

----------X

Index No.:
Index Purchased:

SUMMONS

Basis of Venue
Plaintiff's Business Address
430 Morgan Avenue
Brooklyn, New York 11222

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer, or if the Complaint is not served with this Summons, to serve notice of appearance on the plaintiff's attorney within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: New York, New York
November 25, 2019

DONOVAN HATEM LLP

By: _____

Joshua S. Stern, Esq.
Attorneys for Plaintiff
112 W. 34th Street, 18th Floor
New York, New York 10120
(212) 244-3333

To: Polish Folklore Import Co., Inc.
1128 Tower Road
Schaumburg, Illinois 60173

EXHIBIT 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----------X

AMTEC INTERNATIONAL OF NY CORP.

Plaintiff,

---against—

POLISH FOLKLORE IMPORT CO., INC.

Defendant.

----------X

Index No.:

COMPLAINT

Plaintiff, Amtec International of NY Corp., by and through its attorneys, Donovan Hatem LLP, as and for its Verified 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, Schaumberg, 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, on or about February 4, 2003, KP purchased Browar Dojilidy ("Dojildy"), and acquired the rights to manufacture the Zubr Brand.

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

6. 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.

7. 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 five separate Dojlidy products, namely Zubr, Magnat, Classic, Herbowe, and Porter, in the States of New York, Connecticut, New Jersey, Illinois, and Pennsylvania.

8. 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").

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

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

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

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

13. 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").

14. In addition, on or about April 24, 2003, Browar Dojlidy issued a new appointment letter to Amtec for Magnat, Zubr, Porter, and Mocne 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").

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

16. 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.

17. 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.

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

19. 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

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

21. 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.

22. 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.

23. 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.

24. 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.

25. 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 Co. in New Jersey) in Amtec's territory and by selling Zubr Brand product to those distributors.

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26. 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 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

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

28. 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.

29. 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).

30. "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).

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

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

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33. 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."

34. 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."

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

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

37. Lastly, ABC § 55-c(l l) 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

38. 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").

39. 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."

40. 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.

41. 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.

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42. 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."

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

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

45. Under N.J.S.A. 33:1-93.15(c)(l), the Malt Beverages Practices Act prohibits a brewer from "terminat[ing], cancel[ling] 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)

46. 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.

47. 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

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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."

48. 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."

49. 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.

50. 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)

51. 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.

52. 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.

53. 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).

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54. 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.

55. 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).

56. 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)

57. 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.

58. Pursuant to N.J.S.A. 33:1-93.15(c)(l), a brewer is prohibited from "terminat[ing], cancel[ling] 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)

59. 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."

60. 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.

61. 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.

62. 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
November 25, 2019

DONOVAN HATEM LLP

By: _____
Joshua S. Stern, Esq.
Attorneys for Plaintiff
112 W. 34th Street, 18th Floor
New York, New York 10120
(212) 244-3333

DISTRIBUTORSHIP CONTRACT

Concluded on December 31, 2000 in Białystok by and between:
"**BROWAR DOJLIDY**" [Dojlidy Brewery] a limited liability company with its registered seat in Białystok, at ul. Dojlidy Fabryczne 28, 15-955 Białystok, entered into the register of Entrepreneurs maintained by the Local Court [Pol. *Sąd Rejonowy*] on Białystok, Commercial Court, Registry Division, under no. RHB 1217, NIP [VAT no.]: 542-00-11-792,
represented by:
1. Janina Koczara – Member of the Board
2. Przemysław Nowacki – Member of the Board

Hereinafter referred to as the **MANUFACTURER**

And

AMTEC International of NY Corp., with its registered seat in the USA, State of New York, County of Winchester, address: 213-215 N.9th St. Brooklyn, NY 11211, USA,
represented by:
Bogdan Pajor – President,
hereinafter referred to as the **DISTRIBUTOR**.

[Rectangular sticker reading: EXHIBIT, Respondents 2]

WHEREAS the MANUFACTURER has decided to launch the Products (defined hereinafter) on the market of the Territory (defined hereinafter),

WHEREAS the DISTRIBUTOR is willing to purchase the Products for the purposes of distributing the same within the Territory,

WHEREAS both parties are planning to expand the Products' market to the Territory,

in light of the afore, the Parties hereby agree as follows:

ARTICLE 1
DEFINITIONS

1. For the purposes of this Contract, "Products" shall mean good produced by the Manufacturer, as listed in detail in Appendix no. 1 hereto;
2. For the purposes of this Contract, "Territory" shall mean the geographic area specified in Appendix no. 2 hereto;
3. For the purposes of this Contract, "Price List" shall mean the price listing agreed upon by the Parties hereto and provided as Appendix no. 3 to the Contract;
4. For the purposes of this Contract, the expression "Sales Schedule" shall mean the framework schedule of sales and Product delivery dates, appended hereto as Appendix no. 4.

ARTICLE 2
SUBJECT OF CONTRACT

1. This Contract is concluded to specify the terms and conditions of collaboration between the Parties with regard to the sales and distribution of Products offered by the Manufacturer.
2. The Manufacturer hereby undertakes to sell Products to the Distributor and the Distributor undertakes to purchase Products and distribute the same, at its own risk and expense, within the Territory – subject to the provisions stipulated herein.

EXHIBIT 2

ARTICLE 3
SPECIFIC OBLIGATIONS OF THE DISTRIBUTOR

1. The Distributor shall organize, of and by itself, a wholesale and retail network within the Territory and shall ensure continuous supply of the Products thereto.
2. The Distributor – during the terms of this Contract – shall make all reasonable efforts to promote and expand sales of the Products, as well as to maintain and improve the Products' reputation.
3. The Distributor shall ensure storage of the Products in conditions consistent with the standards of beer storage.
4. The Distributor shall be obliged to inform the Manufacturer of any changes pertaining to the legal status of its business (name, address, personnel, persons authorized to represent the company, composition of the management board, etc.) as well as, where necessary, provide the Manufacturer, upon request, with information necessary to establish the Distributor's financial standing.
5. The Distributor shall not be authorized to accept any orders, take any credit, make or accept any commitments, be it express or implied, for or on behalf of the Manufacturer, nor shall it be authorized to represent the Manufacturer as an agent thereof or in any other capacity other than specifically agreed in this Contract.
6. The Distributor shall not use, or allow any natural or legal person under its control to use, any trademarks, or tradenames constituting the property of the Manufacturer without prior express consent of the Manufacturer.
7. Upon expiry of this Contract, the Distributor shall discontinue the use of any trademarks, service names or other tradenames or other Product designations used under the consent of the Manufacturer, as well as any marketing materials containing such trademarks, service names, tradenames or other designations owned by the Manufacturer.

ARTICLE 4
SPECIFIC OBLIGATIONS OF THE MANUFACTURER

1. The Manufacturer hereby grants the Distributor the right to use trademarks used in the designations of the Products, within the Territory and for the duration of the term of this Contract, for purposes related to the export and sales of Products and any related marketing activities.
2. The Manufacturer undertakes to name the Distributor as the sole supplier of the Products within the Territory to any new customers.
3. The Manufacturer undertakes to maintain the adequate quality of the Products in compliance with all applicable standards.
4. The Manufacturer undertakes to use only brand-new bottles and pallets.

ARTICLE 5
PERFORMANCE OF THE SUBJECT OF CONTRACT

1. The delivery of the Products and acceptance thereof by the Distributor shall be at the Manufacturer's warehouse located in Białystok, at ul. Dojlidy Fabryczne 28 , Poland.
2. The title to the Products along with all the related costs and risks shall pass onto the Distributor as at the moment of the Product's acceptance by the Distributor confirmed in the relevant internal export invoice signed by the Distributor's authorized representative (EXW – the Manufacturer's warehouse located at ul. Dojlidy Fabryczne 28, Białystok).

3. The Distributor shall be obliged to collect the Products on a regular basis, in accordance with the Products acceptance dates specified in the Sales Schedule.

ARTICLE 6
ORDERS

1. The Parties agree that the sale of Products shall take place only on the basis of orders placed by the Distributor within timeframes and in quantities stipulated in the Sales Schedule.
2. The orders referred to in paragraph 1 shall be placed by the Distributor by mail or fax, at least 14 days in advance prior to the planned date of delivery.
3. The orders shall be subject to acceptance or rejection by the Manufacturer, in whole or in part. The Manufacturer shall notify the Distributor of the acceptance or rejection, in whole or in part, of each order within one business day or receiving the order.
4. If an order is rejected, in whole or in part, the Sales Schedule shall be subject to amendment. The amendment shall adjust the time frame for the subsequent orders from the Distributor.

ARTICLE 7
QUANTITATIVE ACCEPTANCE

1. The quantitative acceptance of the Products shall be confirmed in the form of an internal export invoice signed by the representatives of the Distributor and the Manufacturer upon verifying that the quantity of the Products is consistent with the Distributor's order.
2. If quantity inconsistencies are not notified within the time frame specified in paragraph 1 above, the Distributor shall lose the right to make claims regarding the same.

ARTICLE 8
PRICE

1. Products shall be sold by the Manufacturer to the Distributor at prices specified in the Price List applicable as at the day of the sale.
2. The Manufacturer reserves the right to change the Product prices specified in the Price List. Any such change shall be notified by the Manufacturer to the Distributor at least 30 days in advance.
3. If the prices are subject to change, the Manufacturer shall provide the Distributor with the new applicable Price List, which shall be tantamount to amendment of the prices of Products sold by the Manufacturer under this Contract.

ARTICLE 9
PAYMENTS

1. The Distributor's payment for Products requisitions in an order, constituting a *pro-forma invoice*, shall be effected by depositing 50% of the purchase price, by way of advance payment, to the Manufacturer's bank account: **Kredyt Bank S.A. Białystok** [redacted]
The remaining 50% of the purchase price shall be paid to the Brewery's bank account within 35 (thirty-five) days of the date of issue of the invoice.

2. The Manufacturer's initiation of order performance activities shall be conditional upon the receipt of the Distributor effecting the advance payment.
3. The Distributor shall be obliged to present to the Manufacturer an adequate document confirming the payment. The document can be provided to the Manufacturer in person, by mail or by fax. The Manufacturer shall accept a document provided by fax only if the content of the faxed document remains legible.
4. The Distributor's payments shall be deemed as duly effects once the funds have been credited to the Manufacturer's bank account.

ARTICLE 10
CONFIDENTIALITY CLAUSE

1. The Distributor undertakes to keep confidential, during the term of this Contract, and not disclose without prior written consent of the Manufacturer, except as required by law or a competent authority, any information that remains not publicly available and is disclosed to the Distributor, and to use Confidential Information solely for purposes related to the performance of this Contract.
2. A breach by the Distributor of the provisions of the confidentiality clause contained in this Article shall oblige the Distributor to pay to the Manufacturer a contractual penalty in the amount stipulated in Art. 12.3 of this Contract.

ARTICLE 11
CONTRACTUAL PENALTIES

1. In the case of the Distributor's failure to comply with the Product acceptance time limits stipulated in Art. 6.1., the Distributor shall pay a contractual penalty for each day of delay in the amount of 1% (one percent) of the value of unclaimed Products.
2. In the case of the Distributor's failure to comply with Product volumes specified in the Sales Schedule, the Distributor shall be obliged to pay to the Manufacturer a contractual penalty in the amount of 10% (ten percent) of the value of Products unordered and/or unclaimed in due time.
3. In the event of the Distributor's breach of the obligations specified in Art. 3 or Art. 10.1 hereof, the Distributor shall be obliged to pay to the Manufacturer, for each instance of breach, a contractual penalty in the amount of USD 5.000,- (five thousand US dollars).

ARTICLE 12
SECURITY ON MANUFACTURER'S RECEIVABLES

1. By way of securing the Manufacturer's receivables under this Contract, on the date of signing hereof, the Distributor shall submit to the Manufacturer three (3) blank promissory notes with a "protest waived" clause signed by the Distributor.
2. The Manufacturer shall be entitled to fill out any of the promissory notes, at any time, stating the amount of receivables in arrears or contractual penalties due and assign the due date thereof. The promissory notes shall be returned to the Distributor immediately upon the expiry of this Contract, provided that any and all amounts due from the Distributor to the Manufacturer have been duly settled.

ARTICLE 13

SECURITY ON CONTINUITY OF COLLABORATION

1. This Contract constitutes an agreement strictly bound to the Distributor and as such may not be assigned by the Distributor without prior written consent of the Manufacturer.
2. The Distributor shall be *obliged to inform* the Manufacturer of any changes pertaining to the legal status of its business (name, address, personnel, principles of representation, etc.).
3. The Distributor shall be obliged to inform the Manufacturers immediately, in advance of any actual or legal circumstances related to in particular:
   a) the intention to discontinue economic activity or planned suspension thereof,
   b) initiation of bankruptcy, liquidation, or enforcement proceedings,
   c) loss of the license to trade in beer.

   Failure to notify the Manufacturer of any of the circumstances specified hereinabove shall constitute a material breach of the Contract with the consequences stipulated in Art. 14.3 of this Contract.
4. The Distributor hereby represents that any entity acquiring, in whole or in part, the title to or other rights in the Distributor's business shall be bound by all of the provisions of this Contract and that the rights and obligations of the parties under the provisions of this Contract shall survive and remain fully binding. The same shall apply irrespective of whether said acquisition occurs by way of sale of assets, sale of shares, a public offering, merger, or international partnership. Otherwise, all obligations under this Contract shall remain jointly and severally binding on the owners of (partners in) the Distributor's business as at the date of signing this Contract.

ARTICLE 14
TERM OF CONTRACT AND TERMINATION

1. This Contract shall come into force as at the day of its signing and shall be concluded for a defined period of time until December 31, 2002, with the possibility of extension.
2. Each of the Parties may terminate this Contract at any time, subject to a three (3) month period of notice submitted at the end of a calendar month. In each case the notice of termination shall be served by registered mail or in person. In particular, the date of receipt of the first postal advice note by the addressee or return of the letter to the sender with an "addressee unknown" or similar annotation shall also be construed as the date on which such notice has been duly served.
3. Notwithstanding of the foregoing, this Contract may be terminated by the Manufacturer with immediate effect, subject to written notification, in the event of:
   a) failure to provide the commercial effects stipulated in the Contract, in particular the Distributor's failure to comply with the time limits, order volumes and Product acceptance terms stipulated in the Sales Schedule,
   b) declaration of bankruptcy or liquidation with regard to the Distributor, or high likelihood of any of such circumstances occurring,
   c) a material breach of another provision of this Contract.

ARTICLE 15
FINAL PROVISIONS

1. This Contracts, including the appendices hereto, constitutes the sole and exclusive agreement between the Manufacturer and the Distributor pertinent to the subject matter hereof. This Contract supersedes any prior arrangements made between the Parties, be it written or oral. Both Parties confirm that they are not bound by any agreement, guarantee, or arrangement other than provided in this Contract.
2. All the appendices to this Contract constitute integral parts hereof.
3. This Contract shall remain binding upon the successors of the Distributor in the event that the Distributor sells its assets, merges with another company, or sells or assigns any part of its business.
4. Each of the Parties hereto hereby represents and warrants to the other Party that it has the full right and authority enter into this Contract, all the necessary steps have been taken by the Party with the competent authorities to facilitate the conclusion and performance of this Contract, the Party is bound by no contractual or other obligations that would prevent it from signing or performing this Contract. Each of the Parties hereto represents that it has presented registration documents valid as at the day of entering into this Contract.
5. This Contract shall be governed by the laws of Poland, in particularly by the provisions of the Polish Civil Code.
6. Any amendment or modification of this Contract must be done in writing by mutual agreement of the Parties, otherwise null and void.
7. All property disputes arising from or in relation to this Contract shall, under the Parties agreement, be subject to settlement by the Arbitration Court at the National Chamber of Commerce in Warsaw (Poland) pursuant to the court's rules of procedure.
8. Other disputes not subject to arbitration shall be settled by a common court of law competent for the Manufacturer's registered seat.
9. The headings used by the Parties in this Contract have been included only for the sake of convenience and shall not have normative significance.
10. Any correspondence and notifications pertaining to this Contract shall be deemed as served if sent to the following service addresses of the Parties, unless an address change has been duly notified by a Party:
    a) Ul. Dojlidy Fabryczne 28, 15-955 Białystok – Manufacturer
    b) 213-215 N. 9th St. Brooklyn, NY 11211, USA – Distributor
11. This Contract has been drawn up in two identical copies, one for each of the Parties.

Signatures and stamps of the Parties to the Contract

Manufacturer		**Distributor**
[rectangular stamp reading: Member of the Board, Chief Commercial Officer, Przemysław Nowacki; (-) signature illegible] [rectangular stamp reading: Member of the Board, /illegible/]	[rectangular stamp reading: BROWAR DOJLIDY Spółka z o.o. [LLC], 15-955 Białystok, ul. Dojlidy Fabryczne 28, tel. 7410-430, Dir. 73-29-970, NIP [VAT no.] 542-00-11-792, REGON [stat. no.] 050254575]	

APPENDIX No. 1
PRODUCT SPECIFICATION

to the Distributorship Contract of December 31, 2000

The **Products** shall include the following products of the Manufacturer:

1. **"Żubr" Beer**
2. **"Magnat" Beer**

APPENDIX No. 2
Territory

to the Distributorship Contract of December 31, 2000

The **Territory** shall include the territories of the following US states:

1. **New York**
2. **Connecticut**
3. **New Jersey**
4. **Illinois**
5. **Pennsylvania**

APPENDIX No. 3
Price List

to the Distributorship Contract of December 31, 2000

The Parties to this Contract Product Price List:
1. "Żubr" Beer (0.5-liter bottle) – 6.2% vol, 12.5 BLG – USD 0.43
2. "Magnat" Beer (0.5-liter bottle) – 7.0% vol, 15.0 BLG – USD 0.47

APPENDIX No. 4
SALES SCHEDULE

to the Distributorship Contract of December 31, 2000

The Parties to this Contract agree upon the following schedule of Product orders in 2001:

In the period from January 2001 to December 2001 – 462,000 0.5-liter bottles.

Day Translations

Certified Translation

Certificate of Accuracy

Witold Wojtaszko
Translator

Translated documents: Distributorship Contract of December 31, 2000 (Browar Dojlidy / AMTEC International of NY Corp.)

As a translator for Day Translations, Inc., I, Witold Wojtaszko, declare that I am a bilingual translator who is thoroughly familiar with the English and Polish languages. I have translated the attached document to the best of my knowledge from Polish into English and the English text is an accurate and true translation of the original document presented to the best of my knowledge and belief.

Signed on March 31, 2020



Witold Wojtaszko

Professional Translator for Day Translations, Inc.

ADMINISTRATIVE APPEAL UNDER GENERAL STATUTES SECTION 4-183 — NOTICE OF FILING
(For use when service is made by certified or registered mail)

JD-CV-137 Rev. 10-15
C.G.S. § 4-183; P.B. § 14-7A

STATE OF CONNECTICUT
SUPERIOR COURT
www.jud.ct.gov

Instructions to Person Appealing Decision:

1. *Serve, in accordance with applicable law, a copy of the Appeal and this Notice of Filing by certified or registered mail on the agency that made the decision that is being appealed at the address of the agency or, if allowed by law, at the Office of the Attorney General, 55 Elm Street, Hartford, Connecticut.*
2. *Also serve a copy of the Appeal and this Notice of Filing by certified or registered mail on each party named in the decision of the agency at the address of the party contained in the decision.*
3. *File the Appeal and this Notice of Filing with the Clerk of the Superior Court for the Judicial District of New Britain or for the Judicial District in which the person appealing resides or, if that person is not a resident of this state, with the Clerk of the Judicial District of New Britain.*

Name of case *(Plaintiff v. Defendant)*		Case type code *(See reverse for codes)*
Polish Folklore Import Co., Inc. v. Connecticut Department of Consumer Protection, et al.		Major: **A** Minor: **20**
Judicial District	Address of Court	Telephone number of Court *(with area code)*
New Britain	**20 Franklin Square, New Britain, CT 06051**	**(860)515-5180**

Number of Plaintiffs: **1** | Number of Defendants: **3** | ☐ Form JD-CV-2 attached for additional parties

Parties	Name *(Last, First, Middle Initial)* and Address of Each party *(Number; Street; P.O. Box; Town; State; Zip; Country, if not USA)*	
First Plaintiff	Name: **Polish Folklore Import Co., Inc.** Address: **1128 Tower Road, Schaumberg, IL 60173**	P-01
Additional Plaintiff	Name: Address:	P-02
First Defendant	Name: **State of Connecticut Department of Consumer Protection** Address: **450 Columbus Boulevard, Suite 901, Hartford, CT 06103 c/o Attorney Caitlin Anderson**	D-01
Additional Defendant	Name: **Boguslaw Pajor, Amtec International of NY Corp.** Address: **1 Hartford Square, New Britain, CT 06052**	D-02
Additional Defendant	Name: **Attorneys Joshua Stern and Laura Beth Foster** Address: **Donovan Hatem LLP, 112 West 34th Street, 18th Floor, New York, NY 10120 -- Attorneys for Amtec**	D-03
Additional Defendant	Name: Address:	D-04

Notice To Defendant

1. The Plaintiff will file the attached Appeal of a final administrative decision. The Appeal attached to these papers states the claims that each Plaintiff is making.
2. **To be notified of further proceedings, you or your attorney must file a form called an "Appearance" with the clerk of the above-named Court at the above Court address within thirty (30) days of the mailing of the Appeal. You do not have to come to court on that date unless you receive a separate notice telling you to come to court.**
3. If you do not file an "Appearance" in a timely manner, the Court is authorized to enter a sanction against you.
4. The "Appearance" form may be obtained at the Court address above or at *www.jud.ct.gov* under "Court Forms."
5. If you have questions about the Notice of Filing and the Appeal, you should talk to an attorney quickly. **The Clerk of Court is not allowed to give advice on legal questions**.

Signed *(Sign and "x" proper box)*		Name of person signing at left	Date
Robert F Shea Jr	☐ Plaintiff ☒ Attorney for Plaintiff	**Robert F. Shea, Jr.**	**12/12/2019**

ADA NOTICE
The Judicial Branch of the State of Connecticut complies with the Americans with Disabilities Act (ADA). If you need a reasonable accommodation in accordance with the ADA, contact a court clerk or an ADA contact person listed at *www.jud.ct.gov/ADA*.

For Court Use Only
File Date

EXHIBIT 3

Docket number

STATE OF CONNECTICUT

RETURN DATE: JANUARY 14, 2020	)	SUPERIOR COURT
	)	
POLISH FOLKLORE IMPORT CO., INC.	)	JUDICIAL DISTRICT OF NEW BRITAIN
	)	
v.	)	
	)	AT NEW BRITAIN
DEPARTMENT OF CONSUMER PROTECTION, LIQUOR CONTROL DIVISION and AMTEC INTERNATIONAL OF NY CORP.	)	DECEMBER 12, 2019

ADMINISTRATIVE APPEAL

Polish Folklore Import Co., Inc. ("Polish Folklore"), by its undersigned counsel, pursuant to Connecticut General Statutes § 4-183, files this Administrative Appeal of the Decision of the Department of Consumer Protection, Liquor Control Division, issued on October 31, 2019 in the matter captioned *Boguslaw Pajor, Amtec International of NY Corp., Backer Amtec International of NY Corp., Liquor Permit Nos: LIW.605, LCB.517 and LCL.574*, Case No. 2019-500. In support thereof, Polish Folklore states:

INTRODUCTION

1. At issue is the right to sell at wholesale in Connecticut an imported beer called Zubr. Appellant Polish Folklore is a small importer and out-of-state shipper of alcoholic beverages. During 2018, Polish Folklore began to import Zubr beer, which is brewed in Poland by a company called Kompania Piwowarska. After Polish Folklore began to sell Zubr to a licensed Connecticut alcohol beverage distributor by the name of Arko, LLC ("Arko"), Amtec International of NY Corp. ("Amtec"), which operates competitive import and distribution companies, complained to the Department of Consumer Protection, Liquor Control Division ("Liquor Control Division"). Amtec claimed (a) it sold -- almost 15 years ago -- a beer called Dojlidy Zubr, which was brewed by a company by the name of Dojlidy Brewery; (b) Kompania Piwowarska's Zubr

was the "successor" to Dojlidy Brewery's Dojlidy Zubr, and (c) Amtec was thus entitled to be the distributor of Zubr in Connecticut pursuant to the Connecticut Liquor Control Act (the "Act").

2. Significantly, Zubr and Dojlidy Zubr are distinct and different brands and products. Dojlidy produced many beer products, including, but not limited to, Dojlidy Classic, Dojlidy Herbowe, Dojlidy Porter, Dojlidy Magnat and Dojlidy Zubr. The Dojlidy Brewery is no longer owned by Dojlidy, it is no longer operated as the Dojlidy Brewery, and none of the Dojlidy beers, including Dojlidy Zubr, have been produced for at least a decade. The Dojlidy Zubr trademark, which remained owned by Dojlidy, has expired.

3. During 2003, Kompania Piwowarska purchased the Dojlidy Brewery operations. However, Kompania Piwowarska did not produce Dojlidy Zubr or any other of the Dojlidy beers. Kompania Piwowarska brews Zubr, which is not the same brand as Dojlidy Zubr. Polish Folklore imports Zubr, not Dojlidy Zubr.

4. Although Zubr uses the old Dojlidy Zubr recipe, the brands are legally distinct. Zubr and Dojlidy Zubr have different packaging labels, with different designs and different colors. Moreover, each product was registered with the State of Connecticut, pursuant to the Act, under different legal names. Each product was also registered with the federal Alcohol and Tobacco Tax and Trade Bureau ("TTB"), the federal alcoholic beverage regulator, under different legal names and with different federally approved packaging labels.

5. Amtec never registered any brand with any regulator by the name of Zubr. All of Amtec's State and Federal registrations were for Dojlidy Zubr. Additionally, both the State and Federal regulators treated Zubr and Dojlidy Zubr as distinct and different brands.

6. As a consequence of Amtec's complaint, the Liquor Control Division ordered Arko to stop selling Zubr to licensed retailers in Connecticut.

7. On June 7, 2019, Polish Folklore filed a petition with the Liquor Control Division in which it sought a determination by the Liquor Control Commission, *inter alia*, that: (a) Amtec is not, and was never, entitled to distribute Zubr in Connecticut; and (b) assuming *arguendo* Amtec had any right to distribute Zubr in Connecticut, (i) Polish Folklore had just and sufficient cause pursuant to the Act to terminate Amtec's distributorship, and (ii) Amtec waived its right to claim entitlement to distribute Zubr in Connecticut because it made no effort to purchase Zubr from Polish Folklore.

8. On July 18, 2019, the Liquor Control Commission held an evidentiary hearing and left the record open until August 12, 2019 for the parties to file post-trial briefs. On September 24, 2019, the Liquor Control Commission issued a Memorandum of Decision in favor of Amtec.[1] A copy of the September 24, 2019 Memorandum of Decision is attached hereto as Exhibit A. On October 11, 2019, Polish Folklore filed a Motion to Reconsider, which the Liquor Control Commission denied on October 31, 2019 without examining or addressing any of the points of error and arguments Polish Folklore presented. A copy of the October 31, 2019 Liquor Control Division ruling is attached hereto as Exhibit B.

9. Polish Folklore brings this action for administrative review and for judgment reversing the Liquor Control Commission's Orders of September 24, 2019 and October 31, 2019 and for such other relief as requested herein.

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[1] One of the three Commissioners resigned after the hearing and before the Liquor Control Commission issued the Memorandum of Decision in this case.

The Parties

10. Appellant, Polish Folklore, is an Illinois corporation with its principal place of business in the State of Illinois. Polish Folklore is licensed as an out-of-state shipper of alcoholic beverages with the Liquor Control Division. Polish Folklore is the authorized United States importer of Zubr, which is produced by Kompania Piwowarska. Kompania Piwowarska appointed MAG Dystrybucja (a Polish distribution company) as the "Official Supplier" of Zubr to Polish Folklore. Polish Folklore purchases Zubr from MAG Dystrybucja.

11. The Liquor Control Division is an "agency" within the executive branch of government as that term is defined in Connecticut General Statutes § 4-166(1).

12. Amtec is a New York corporation, with its principal place of business in the State of New York. Amtec is an importer of alcoholic beverages, and Amtec owns and operates an alcoholic beverage distributor within the State of Connecticut.

Venue and Jurisdiction

13. Polish Folklore appeals pursuant to Connecticut General Statutes § 4-183 from the October 31, 2019 final decision of the Liquor Control Commission of the State of Connecticut Department of Consumer Protection.

14. Polish Folklore has exhausted all administrative remedies and is aggrieved by a final decision pursuant to Connecticut General Statutes § 4-183.

15. This appeal is filed and is being served within forty-five days of the October 31, 2019 final decision issuance in accord with General Statutes § 4-183.

Standard of Review

16. The interpretation of statutes presents a question of law. Although the Court is to give considerable weight to factual and discretionary determinations of administrative agencies, it is for the Courts, and not for administrative agencies, to expound and apply governing principles

of law. The Court's duty is to determine, in view of all the evidence, whether the agency, in issuing its orders, acted unreasonably, arbitrarily, illegally or in abuse of its discretion.

Applicable Law

17. The Liquor Control Act provision at issue states in pertinent part:

> (2) When a holder of a wholesaler permit has had the distributorship of any alcohol, beer, spirits or wine product of a manufacturer or out-of-state shipper for six months or more, such distributorship may be terminated or its geographic territory diminished upon (A) the execution of a written stipulation by the wholesaler and manufacturer or out-of-state shipper agreeing to the change and the approval of such change by the Department of Consumer Protection; or (B) the sending of a written notice by certified or registered mail, return receipt requested, by the manufacturer or out-of-state shipper to the wholesaler, a copy of which notice has been sent simultaneously by certified or registered mail, return receipt requested, to the Department of Consumer Protection. No such termination or diminishment shall become effective except for just and sufficient cause, provided such cause shall be set forth in such notice and the Department of Consumer Protection shall determine, after hearing, that just and sufficient cause exists.
>
> C.G.S.A. § 30-17 (a)(2)

18. The Act applies only to a distributorship, *i.e.*, an ongoing relationship between a brewer and a distributor with respect to a particular brand, and then only to distribution relationships of six months or longer. C.G.S.A § 30-17(a)(2). The relationship can be terminated (assuming the existence of a distributorship) for just and sufficient cause. *Id.*

19. Connecticut law requires each brand of beer to be registered separately. It is not sufficient to simply register a general class of brands produced by a brewer.

20. The Act, as Section 30-63, states in pertinent part:

> Registration of brands, fees. Posting and notice of prices. Brand registration of fortified wine. When departmental approval prohibited. (a) No holder of any manufacturer, wholesaler or out-of-state shipper's permit shall ship, transport or deliver within this state, or sell or offer for sale, any alcoholic liquors unless the name of the

> brand, trade name or other distinctive characteristic by which such alcoholic liquors are bought and sold, the name and address of the manufacturer thereof and the name and address of each wholesaler permittee who is authorized by the manufacturer or his authorized representative to sell such alcoholic liquors are registered with the Department of Consumer Protection and until such brand, trade name or other distinctive characteristic has been approved by the department.
>
> C.G.S.A § 30-63.

21. Sec. 30-6-B1 of the regulations provides:

> Sales to permittees. Every holder of an out-of-state shipper's permit shall sell only to a manufacturer or wholesaler in good standing within the state. No bottled goods shall be shipped into the state by an out-of-state shipper until the brand has been registered and the distributor nominated as required by section 30-63 of the Connecticut General Statutes.

22. Federal law is in accord with Connecticut law. Pursuant to Federal law, every brand of beer must receive a Certificate of Label Approval ("COLA"). 27 C.F.R. Subpart C - Labeling Requirements for Malt Beverages.

23. Section 30-17 of the Act does not give a distributor a right to distribute a brand it has never before distributed.

24. What constitutes a brand is a question of law, which is decided by considering a number of factors, including whether the products have: (a) different names; (b) different labels with different designs and colors; (c) different brewers; (d) different out-of-state shipper registrations; (e) different price postings; and (f) different federal COLAs. Also significant is how the distributors, the State and the Federal regulators treat the products.

Proceedings Before the Commission

25. At the hearing before the Commission, the following evidence was presented:

a. In addition to Dojlidy Zubr, the Dojlidy Brewery produced many beer products, including, but not limited to, Dojlidy Classic, Dojlidy Herbowe, Dojlidy Porter and Dojlidy Magnat.

b. The Dojlidy Brewery is no longer owned by Dojlidy, and is no longer operated as the Dojlidy Brewery. During 2003, Kompania Piwowarska purchased the operations of the Dojlidy Brewery.

c. Kompania Piwowarska is the Zubr brewer, *whereas* the Dojlidy Brewery was the Dojlidy Zubr brewer.

d. Kompania Piwowarska brews Zubr in multiple breweries, *whereas* Dojlidy Zubr was brewed only in the Dojlidy Brewery, which has not operated as the Dojlidy Brewery since 2003.

e. The trademarked name of the brand Amtec sold was Dojlidy Zubr, not Zubr. Kompania Piwowarska did not own the Dojlidy Zubr trademark.

f. The Dojlidy Brewery continued to own the Dojlidy Zubr trademark after it closed, and the Dojlidy Zubr trademark expired.

g. Zubr is packaged in a predominantly green can, *whereas* Dojlidy Zubr was packaged in a predominantly red can.

h. The Zubr beer label contains the phrase "Recipe of Dojlidy Brewery" for marketing purposes, which phrase also appears on products that were never produced by Dojlidy Brewery, such as PraZubr, *whereas* the Dojlidy Zubr label stated it was brewed at the "Dojlidy Brewery Bialystok," the purpose of which statement was to let the consumer know where the beer was brewed.

i. The brand name Zubr is prominently displayed on the brand Polish Folklore sells, *whereas* the brand name Dojlidy Zubr is prominently displayed on the brand Amtec sold.

j. Zubr is 6.0% alcohol by volume, *whereas* Dojlidy Zubr was 5.7% alcohol or 6.2% alcohol by volume.

k. Polish Folklore was authorized by MAG Dystrybucja (a Polish distributor for Kompania Piwowarska, the brewer of Zubr) to import a brand called Zubr, *whereas* Amtec (a New York importer) was

authorized by the Dojlidy Brewery to import the Dojlidy brand of products, including Dojlidy Zubr.

l. Polish Folklore filed a Federal COLA application for a brand called Zubr, *whereas* Amtec filed two Federal COLA applications for a brand called Dojlidy Zubr.

m. Polish Folklore registered a brand called Zubr Lager Beer with the Liquor Control Division, *whereas* Amtec registered a brand called Dojlidy Zubr or Dojlidy Zubr Beer with the Liquor Control Division.

n. Arko (Polish Folklore's Connecticut wholesaler) price posted Zubr in Connecticut, until requested by the Liquor Control Division to remove the price posting, *whereas* Amtec (the distributor) price posted "Dojlidy Zubr" and Amtec never price posted "Zubr."

o. Polish Folklore invoiced Arko for the purchase of Zubr, *whereas* Amtec invoiced its customers for the purchase of "Zubr – Dojlidy."

p. Amtec's monthly tax filings with Connecticut repeatedly reference "Zubr – Dojlidy" and not Zubr.

q. Other alcoholic products are sold by other companies and are called Zubr. One is another unrelated beer. One is another unrelated vodka. Polish Folklore also sold Arko PraZubr beer, which also has a bison on its label.

r. Amtec never once filed a document with the State or the Federal regulators calling the brand it was selling Zubr.

s. Amtec last sold Dojlidy Zubr during 2005.

t. Amtec never attempted to purchase Zubr from Polish Folklore, even though Amtec knew Polish Folklore was the United States importer of Zubr.

u. The brand Dojlidy no longer exists. The Dojlidy Brewery was sold and Dojlidy beers, including Dojlidy Zubr, have not been brewed for more than a decade.

The Commission's Memorandum of Decision

26. In its Memorandum of Decision, the Commission concluded "(1) Amtec was the duly appointed and registered exclusive importer and distributor of ***Zubr*** in the State of Connecticut by letter dated on or about 1998 from Dojlidy Brewery; (2) Amtec was duly reappointed and registered as the exclusive distributor of ***Zubr*** in State of Connecticut by letter dated April 24, 2003 from Dojlidy Brewery; (3) Amtec never relinquished its distribution rights to ***Zubr*** beer; (4) Amtec actively purchased and/or distributed ***Zubr*** beer to Connecticut retailers from 1998 to 2005; (5) Kompania Piwowarska S.A. (hereinafter "KP"), purchased the Dojlidy Brewery on February 4, 2003; (6) Amtec ceased distributing ***Zubr*** beer in Connecticut because KP the Polish manufacturer of Zubr beer, withdrew the product from the United States market from 2005 to 2018 and was unable to fill any Amtec purchase orders; (7) Polish Folklore never offered to sell Zubr beer to Amtec, which was the duly appointed and registered exclusive importer and distributor of ***Zubr*** in the State of Connecticut; (8) ***Zubr*** beer has been continuously brewed since 1768 according to the same recipe of the Dojlidy Brewery; (9) Zubr beer is sold with a distinctive label portraying the Zubr logo – a bison, and the bottle neck refers to the product as "Zubr"; and (9) (sic) Zubr beer is sold under the same brand name irrespective of a different alcohol by volume (ABV) or hops content." (Emphasis added.)

27. The Commission jumped to the conclusion, that Zubr and Dojlidy Zubr were the same product and brand. In reaching its decision, the Commission only concluded Zubr and Dojlidy Zubr are the same product and brand purportedly because:

> (1) both beers have been brewed pursuant to the exact same recipe; (2) both beers are brewed at the Dojlidy Brewery; (3) both beers use the Zubr beer trade name; and (4) both beers use the same bison logo. The fact that the beer might have a different brewery owner, different packaging, or lack of sales does not make the two beers different brands.

28. The Commission's conclusions are both legally and factually inaccurate and are clearly erroneous in view of the reliable, probative and substantial evidence of the whole record.

A. The Commission Failed to Apply the Legal Standards Considered When Determining Whether Products are the Same or Different.

29. The Commission committed reversible error because it never considered the relevant legal factors applied when determining whether two alcohol beverage products are the same or different. These factors include each product's (a) different name; (b) different label with different designs and colors; (c) different brewers; (d) different out-of-state shipper registrations; (e) different price postings; and (f) different federal COLAs. Nor did the Commission consider how the distributors, the State and the Federal regulators treat and classify the products.

30. The Memorandum of Decision is, accordingly, in legal error, in excess of the Commission's statutory authority and arbitrary and capricious and/or an abuse of discretion.

B. The Commission's Findings of Fact are Clearly Erroneous in View of the Reliable, Probative and Substantial Evidence of the Whole Record, and its Findings Are Arbitrary and Capricious.

31. The Commission's Memorandum and Decision repeatedly and wrongfully concludes without any basis in fact that Amtec sold a product called "Zubr." This error is found in Commission findings above numbered (1), (2), (3), (4), (6) and (7). This conclusion is contrary to all of the evidence presented, which unequivocally demonstrates that Amtec sold a beer called "Dojlidy Zubr," not "Zubr." Among the evidence the Commission ignored, (a) Amtec's state registration listed the product it sold as "Dojlidy Zubr;" (b) Amtec obtained a federal COLA for the brand "Dojlidy Zubr;" (c) the brand name "Dojlidy Zubr," not "Zubr," appeared on the product Amtec previously sold; and (d) Amtec never once filed a document with the State or the Federal regulators calling the brand it was selling "Zubr."

32. The Memorandum of Decision is, accordingly, in legal error, in excess of the Commission's statutory authority and arbitrary and capricious and/or an abuse of discretion.

C. The Commission Applied Inapplicable Brand Reintroduction Law to Conclude Amtec has a Right to Distribute Zubr.

33. The Commission committed reversible error when it relied upon Commission decisions holding that the withdrawal of a product from the marketplace does not constitute just and sufficient cause for an out of state shipper to terminate a distribution relationship upon the product's reintroduction into the Connecticut marketplace. The error was committed because the products Zubr and Dojlidy Zubr are not, and have never been, the same product or brand.

34. The Memorandum of Decision is, accordingly, in legal error, in excess of the Commission's statutory authority and arbitrary and capricious and/or an abuse of discretion.

D. The Commission Wrongly Concluded Polish Folklore had an Obligation to Solicit Amtec to Purchase and Distribute Zubr.

35. The Commission committed reversible error when it concluded Polish Folklore had an affirmative duty to seek out Amtec and offer Amtec the opportunity to purchase Zubr for wholesale distribution in the State of Connecticut.

36. Polish Folklore imports the Zubr brand of beer, not Dojlidy Zubr, which Amtec last sold during 2005. Nothing in the law required Polish Folklore to offer Amtec the opportunity to distribute Zubr in Connecticut.

37. The Memorandum of Decision is, accordingly, in legal error, in excess of the Commission's statutory authority and arbitrary and capricious and/or an abuse of discretion.

E. Amtec Waived any Right to Distribute Zubr, Assuming *Arguendo*, Zubr is the Same Beer as Dojlidy Zubr.

38. The Commission committed reversible error by failing to address Amtec's waiver of its right to distribute Zubr beer, assuming *arguendo* Zubr is the same brand/product as Dojlidy Zubr.

39. Polish Folklore presented uncontroverted evidence that Amtec never attempted to purchase Zubr from Polish Folklore.

40. Because Amtec never attempted to purchase Zubr from Polish Folklore, Amtec waived its right to complain about its claimed entitlement to purchase and distribute Zubr in Connecticut.

41. The Memorandum of Decision is, accordingly, in legal error, in excess of the Commission's statutory authority and arbitrary and capricious and/or an abuse of discretion.

F. Assuming, *Arguendo*, Zubr is the Same Beer as Dojlidy Zubr, Polish Folklore had Just and Sufficient Cause to Terminate Amtec's Right to Distribute Zubr in Connecticut.

42. The Commission committed reversible error when it did not consider Amtec's failure to purchase, or even attempt to purchase, Zubr beer from Polish Folklore for distribution in Connecticut.

43. Amtec never placed an order for Zubr with Polish Folklore, and never attempted to place an order with Polish Folklore, for the purchase of Zubr for distribution in Connecticut.

44. Failure to purchase or attempt to purchase product from the legally registered importer of the product constitutes just and sufficient cause under the Act warranting a termination of distribution rights.

45. The Memorandum of Decision is, accordingly, in legal error, in excess of the Commission's statutory authority and arbitrary and capricious and/or an abuse of discretion.

WHEREFORE, Plaintiff Appellant, Polish Folklore, Inc. respectfully prays for the entry of a judgement finding:

A. The Liquor Control Commission committed reversible error;

B. Dojlidy Zubr and Zubr are, and have always been, different brands;

C. Amtec never had a right to distribute Zubr, and therefore is not entitled to distribute Zubr pursuant to the Liquor Control Act, C.G.S.A § 30-17 (a)(2);

D. There is just and sufficient cause to terminate Amtec as a distributor, assuming *arguendo* Dojlidy Zubr and Zubr are the same brand;

E. Polish Folklore is legally entitled to sell Zubr to Arko (its registered Connecticut distributor);

F. Polish Folklore is entitled to recover from the State reasonable fees and expenses pursuant to Connecticut General Statutes § 4-184a; and

G. For such other and further relief as is just.

Dated: December 12, 2019

Respectfully submitted,

POLISH FOLKLORE IMPORT CO., INC.

By: Robert F. Shea, Jr.
One of its Attorneys

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EXHIBIT A

STATE OF CONNECTICUT

DEPARTMENT OF CONSUMER PROTECTION

IN THE MATTER OF

Boguslaw Pajor
Amtec International of NY Corp.
1 Hartford Square
New Britain, CT 06052

Case No. 2019-500
September 24, 2019

MEMORANDUM OF DECISION

This matter involves a request to terminate Amtec International of NY Corp. (hereinafter "Amtec"), holder of out-of-state wholesaler permit LIW.605, Connecticut out-of-state shipper of liquor permit LCL.574, and Connecticut out-of-state shipper of beer permit LCB.517, as wholesaler for Zubr beer in the State of Connecticut. A formal administrative hearing was held on July 18, 2019 before the Liquor Control Commission (hereinafter "Commission"). The record was left open to allow for the submission of post-hearing briefs until August 12, 2019.

The Department of Consumer Protection had received a notice dated June 7, 2019 from Polish Forklore Import Co., (hereafter "Polish Forklore") holder of an out-of-state shipper liquor permit LSL.1814 and out-of-state shipper of beer permit LSB.1001, for the termination of Amtec, as wholesaler for Zubr beer in the State of Connecticut.

Polish Forklore seeks to terminate Amtec's distribution rights pursuant to Section 30-17(a)(2) which requires a showing of "just and sufficient cause". The statute defines just and sufficient cause as "...the existence of circumstances which, in the opinion of a reasonable person considering all of the equities of both the wholesaler and the manufacturer or out-of-state shipper warrants a termination or diminishment of a distributorship as the case may be." The "...determination of what constitutes "just and sufficient cause" is a matter for consideration by this Commission, after weighing the equities of both parties to

ascertain whether termination is warranted." Schiefflin & Co. v. Department of Liquor Control, 194 Conn. 165, 479 A.2d 1191 (1984).

Based upon the evidence and testimony adduced at the hearing, we find the following facts: (1) Amtec was the duly appointed and registered exclusive importer and distributor of Zubr in the State of Connecticut by letter dated on or about 1998 from Dojlidy Brewery; (2) Amtec was duly reappointed and registered as the exclusive distributor of Zubr in the State of Connecticut by letter dated April 24, 2003 from Dojlidy Brewery; (3) Amtec never relinquished its distribution rights to Zubr beer; (4) Amtec actively purchased and/or distributed Zubr beer to Connecticut retailers from 1998 to 2005; (5) Kompania Piwowarska S.A. (hereafter "KP"), purchased the Dojlidy Brewery on February 4, 2003; (6) Amtec ceased distributing Zubr beer in Connecticut because KP the Polish manufacturer of Zubr beer, withdrew the product from the United States market from 2005 to 2018 and was unable to fill any Amtec purchase orders; (7) Polish Forklore never offered to sell Zubr beer to Amtec, which was the duly appointed and registered exclusive importer and distributor of Zubr in the State of Connecticut; (8) Zubr beer has been continuously brewed since 1768 according to the same recipe of the Dojlidy Brewery; (9) Zubr beer is sold with a distinctive label portraying the Zubr logo – a bison, and the bottle neck refers to the product as "Zubr"; and (9) Zubr beer is sold under the same brand name irrespective of a different alcohol by volume (ABV) or hops content.

Based upon the testimony given at the Hearing and evidence submitted into the record, Amtec has demonstrated that it is the duly appointed and registered distributor of Zubr beer to retailers in the State of Connecticut. Previous decisions by the Commission have held that the withdrawal of a product from the marketplace for several years does not constitute just and sufficient cause to terminate a distributorship. *(In the Matter of Amtec International of NY Corp., October 22, 1988,* citing Declaratory Ruling *In Re Johnny Barton, Inc.* November 10, 1987). In addition, the Commission declined to terminate a wine distributorship in Connecticut even though product had not been ordered for more than six years. *(In the Matter of New England Wines & Spirits, Inc. November 4, 2014).*

Polish Forklore makes the additional legal argument that the Zubr beer that was distributed by Amtec is a different brand than the product imported by Polish Forklore. The Commission finds this legal argument to be without factual basis. The evidence and testimony presented at the hearing demonstrate the following: (1) both beers have been brewed pursuant to the exact same recipe; (2) both beers are brewed at the Dojlidy Brewery; (3) both beers use the Zubr beer trade name; and (4) both beers use the same bison logo. The fact that the beer might have a different brewery owner, different packaging, or lack of sales does not make the two beers different brands.

Polish Forkore's General Manager, Jakub Samara, testified that the recipes of both beers are identical. No contrary evidence or testimony was submitted by Polish Forklore to refute this testimony. In addition, KP admits in Polish Forklore's June 7, 2019 letter submitted to the Commission, that "[t]his is to inform that Kompania Piwowarska SA...on 04.02.2003 purchased the Dojlidy Zubr brewery in Pialystock. Therefore, since 2003, the company has been the owner of the ZUBR brand, is in the possession of the formula and all the rights above." (See Exhibit K to Polish Forklore's Termination Notice). KP's admission that it took over the Zubr brand from the Dojlidy Brewery upon its acquisition is evidence that the two beers are one and the same product.

In addition, Polish Forklore makes the argument that its Zubr beer is a "brand extension" different from Amtec's Zubr beer brand. The Commission finds this legal argument to be without merit. The evidence submitted to the Commission demonstrates that Polish Forklore's Zubr beer and Amtec's Zubr beer are both sold under the Zubr trade name and both use the logo of a bison on the beer's packaging. Polish Forkore's General Manager, Jakub Samara, testified that the recipes of both beers are identical with the only distinction between the two beers being the use of Dojlidy (the brewery for both products) in the name of both said brands. Finally, the two beers different alcohol by volume (ABV) or hops content is a byproduct of the manufacturing process and does not constitute a "brand extension".

Based upon the testimony and evidence presented at the Hearing and subsequent briefs submitted into the record, the Commission does not find the existence of circumstances that warrant a termination in accordance with C.G.S. Section 30-17(a)(2).

DEPARTMENT OF CONSUMER PROTECTION
LIQUOR CONTROL COMMISSION
BY:

Anne K. Stiber

Anne K. Stiber, Esq., Designated Presiding Officer

Laura Anne Cahill

Laura A. Cahill, Commissioner

Parties:

Attorneys Joshua S. Stern and Laura Beth Foster, Attorneys for Amtec International of NY Corp.
Donovan Hatem LLP
112 West 34th Street, 18th Floor
New York, NY 10120

Attorney Earl E. Farkas, Attorney for Petitioner, Polish Forklore Import Co., Inc.
Gozdecki, Del Giudice, Americus, Farkas & Brocato, LLP
One East Wacker Drive, Suite 1700
Chicago, IL 60601

Attorney Robert F. Shea, Jr., Attorney for Petitioner, Polish Forklore Import Co., Inc.
Law Offices of Robert F. Shea, Jr., LLC
P.O. Box 271883
Hartford, CT 06127

Nonparties:

John Suchy, Director, Liquor Control Division
Connecticut Beverage Journal, 2508 Whitney Ave, P.O. Box 185159. Hamden, CT 06518

Connecticut State Library, 231 Capitol Avenue, Hartford, CT 06106

EXHIBIT B

STATE OF CONNECTICUT

DEPARTMENT OF CONSUMER PROTECTION

October 31, 2019
Via US Mail and Certified Mail

Boguslaw Pajor
Amtec International of NY Corp.
1 Hartford Square
New Britain, CT 06052

Case No. 2019-500

DENIAL OF REQUEST FOR RECONSIDERATION

On July 18, 2019, after due notice, the Department of Consumer Protection, Liquor Control Commission, held a request for termination hearing regarding Amtec International of NY Corp. ("Amtec"), as requested by Polish Folklore Import Co., Inc. ("Polish Folklore"). The record was held open until August 12, 2019 to allow for the submission of post-hearing briefs. In a decision dated September 24, 2019, the Liquor Control Commission denied the request for termination.

In an e-mail sent on October 11, 2019, Polish Folklore sent a motion for reconsideration in accordance with Connecticut General Statues Section 4-181a. In an e-mail sent October 21, 2019, Amtec sent its opposition to Polish Folklore's request.

In order to grant reconsideration of its decision, we must find there has been an error of fact or law that must be corrected, new and material evidence exists that for good reason was not presented previously, or other good cause for reconsideration has been shown. In the present case, however, the request for reconsideration fails to include any of the above. Polish Folklore has failed to provide any actionable justification for reconsideration. Therefore, the Liquor Control Commission, Department of Consumer Protection hereby denies the request for reconsideration of its September 24, 2019 decision.

DEPARTMENT OF CONSUMER PROTECTION
LIQUOR CONTROL COMMISSION
BY:

Anne K. Stiber

Anne K. Stiber, Esq.
Designated Presiding Officer

Laura Cahill, Commissioner

Parties:
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Attorney Earl E. Farkas
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Non-parties:
Connecticut Beverage Journal, 2508 Whitney Ave., P.O. Box 185159, Hamden, CT 06518
John Suchy, Director, Liquor Division
Connecticut State Library, 231 Capitol Avenue, Hartford, CT 06106

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retailers throughout Connecticut. (*See* Exhibit J, Invoices)[6] In connection therewith, Amtec price posted Zubr in Connecticut. For the next seven years through at least July 2005, Amtec sold Zubr to retailers in Connecticut. (*See* Exhs. K, L, M, N, O, P, and Q, Beverage Tax Returns)

C. The Sale of the Dojlidy Brewery to KPin 2003

On or about February 4, 2003, Browar Dojlidy sold the Dojlidy Brewery to KP, which is a SABMiller[7] subsidiary. (*See* Exhibit R, and PFI Exhibit 14)[8] (*See also*, Exhibit K to PFI's Termination Notice wherein KP attests that it "purchased the Dojlidy Zubr brewery in Bialystok. Therefore, since 2003 the company [KP] has been the owner of the ZUBR brand, is in the possession of the formula and all the rights to be above.") Nevertheless, despite the sale of the Dojlidy Brewery to KP, Amtec continued to order Zubr through September 2003. (*See* Exhibit S, Purchase Orders) Tellingly, the documents evidencing Amtec's post-KP acquisition orders simply list the product being sold as Zubr and not as Dojlidy Zubr.

During 2004, as indicated in correspondence to KP from the then Amtec General Manager, Beata Wiacek ("Wiacek") (who testified at the Hearing), Amtec emailed KP's Export Manager, Jerzy Kowalski to place additional orders of Zubr; but, Kowalski did not respond thereto. Ultimately, Wiacek's email was sent to Anna Swietek at KP who only then informed Amtec that "there are no specific plans on the distribution of Zubr in the U.S." (*See* Exhibit T, 2004 Email) On May 19, 2005, Amtec subsequently submitted an order for Zubr, which KP did not fill. (*See* Exhibit U, Purchase Orders)

II. KP'S REINTRODUCTION OF ZUBR INTO THE US MARKET

A. PFI's Distribution of Zubr in Connecticut

[6] The handwritten invoices simply refer to the product as Zubr.
[7] In 2002, South African Breweries bought the North American Miller Brewing Company to found SABMiller, becoming the second largest brewery, after North American Anheuser-Busch.
[8] "PFI Exhibit _" refers to PFI's hearing exhibits.

GROUP EXHIBIT 4

Zubr remained out of the United States market from 2005 through 2018. On April 11, 2018, PFI submitted an Application for Certificate of Label Approval, which the TTB approved on April 26, 2018 (the "PFI Certificate"). (*See* PFI Exhibit 15) Much like Amtec's 1997 Certificate and its 2003 Certificate, the PFI Certificate provided that the Zubr beer front labels read as follows: "ORIGINAL RECIPE OF BEER DOJLIDY (NAME OF THE CITY)" and "ORIGINAL RECIPE AND TASTE." Additionally, as shown on the three labels attached thereto: (1) the front label contained a logo of a bison, (2) the neck label read "ORIGINAL RECIPE," and (3) the back label stated "ZUBR LAGER BEER DOJLIDY BREWERY," "ORIGINAL RECIPE AND TASTE," and listed an ATV of 6% (as compared with 6.2% on the 1997 Certificate and 5.7% on the 2003 Certificate). (See Exhibit V, Regarding Simplification of Packaging) Although there was no testimony as to when PFI began to import Zubr into the US, it appears that it was middle to end of 2018.[9] However, instead of purchasing the product from KP, PFI was appointed by MAG Dystrybucja ("MAG"), a Polish distributor of KP.[10]

Thereafter, PFI specifically undertook to undermine Amtec's distribution rights in Connecticut. In particular, by Letter of Appointment dated September 27, 2018, PFI certified that it had appointed Arko as a distributor for the State of Connecticut for "ZUBR LAGER BEER." On October 14, 2018, PFI registered "ZUBR LAGER BEER" with the Department.

In January 2019, Amtec first became aware that Arko had price posted Zubr in Connecticut, and contacted the Department to report same. (PFI Exhibit 7) However, in its response to Amtec's assertion that it had the rights to distribute Zubr in Connecticut, PFI claimed that the Zubr product distributed by Amtec was different than the product being imported by PFI. Accordingly, by letter dated April 25, 2019 to the Department, Amtec replied to PFI's ridiculous

[9] PFI's appointment letter (PFI Exhibit 14) is not dated until October 17, 2018.

EXHIBIT T

Beata Wiacek

From: Anna Świętek <ANNA.SWIETEK@kp.sabmiller.com>
To: Beata Wiacek <beata@yespils.com>
Sent: Monday, April 18, 2005 8:22 AM
Subject: RE: Magnat and Żubr

Dear Beata,

Today I have attempted to get in contact with Mr. Bogusław Pajor.
As far as I am aware, there is no agreement between the companies Piwowarska and Amtec. Thus, I do not really understand the focus on the company Piwowarska: "Our Agreement is still in force."

The beer Magnat was removed from production at the Dojlidy Breweries. There are also no specific plans on the distribution of Żubr in the US. I will attempt to clarify this issue on the phone with Bogusław.

At the Dojlidy Breweries (BD) there is no export department and the entirety of export activities is handled in Poznan. Mr. Kowalski has not worked at BD since last year.

Sincerely,
Anna Świętek

Anna Świętek
Kompania Piwowarska S.A.
Tel: +48 61 87 87 415
Fax: +48 61 87 87 538
Mobile: +48 601 569 355
E-mail: aswietek@kp.pl

-----Original Message-----
From: Beata Wiacek [mailto:beata@yespils.com]
Sent: Wednesday, March 09, 2005 8:36 PM
To: Anna Świętek
Subject: Re:

Ms Anna Swietek

We have received you e-mail.
In response to you statement that our agreement has expired I would like to correct you that our Agreement is still in force effect
and Amtec is the importer for the United States for your brands Dojlidy Zubr and Magnat.
Regarding the missing documents you have mentioned I would like to inform you that a whole package of documents was mailed by registered letter
(# RR 162513918 US) on November 5th 2004 to your attention.
I would like to add that Amtec is still interested in having your brands in our portfolio and attached please find our order for 4 containers of
Zubr and Magnat beer.

Thank you,

Beata Wiacek
General Manager
Amtec Int'l of NY Corp.

4/18/2005

— Original Message —
From: Anna Świętek
To: Beata Wiacek
Sent: Wednesday, February 23, 2005 9:42 AM

Dear Beata,
Currently the company Piwowarska does not sell Żubr beer for export to the US.

Therefore, the agreement between the companies Amtec and BD expired but there remains one unpaid amount of USD 6,603.00, which occurred in conjunction with the overload of a computer at BB. I therefore kindly request that you send an invoice for the amount above in order to pay this amount, in accordance with the correspondence dated 11/03/04.

Kind regards,

Ania Świętek

Anna Świętek
Kompania Piwowarska S.A.
Tel: +48 61 87 87 415
Fax: +48 61 87 87 538
Mobile: +48 601 569 355
E-mail: aswietek@kp.pl

— Original Message —
From: Beata Wiacek [mailto:beata@yespils.com]
Sent: Thursday, February 10, 2005 7:38 PM
To: Anna Świętek
Subject: Dojlidy
Greetings,

I took the liberty to write to you because I have not had contact with the current export manager at Dojlidy, Mr. Jerzy Kowalski, for several months.
I have not received any response to any of my e-mails in which I request information on Żubr and Magnat.
We are prepared to place orders and we wish to prepare promotions but no one has contacted us.
I kindly request information on who can be contacted on these issues and who is the person in charge of exports.

Sincerely,
Beata Wiacek
General Manager
Amtec Int'l of NY Corp.

4/18/2005

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4/18/2005

TRANSPERFECT

STATE OF NEW YORK
CITY OF NEW YORK
COUNTY OF NEW YORK

CERTIFICATION

I, Anders Ekholm, as an employee of TransPerfect Translations, Inc., do hereby certify, to the best of my knowledge and belief, that the provided Polish into English translation(s) of the source document(s) listed below are true and accurate:

- Emails between Beata Wiacek and Anna Swietek from February to April 2005

TransPerfect Translations, Inc., a translation organization with over 90 offices on six continents, is a leader in professional translations. TransPerfect Translations, Inc. has over twenty years experience translating into the above language pair, its work being accepted by business organizations, governmental authorities and courts throughout the United States and internationally.

TransPerfect Translations, Inc. affirms that the provided translation was produced in according to our ISO 9001:2015 and ISO 17100:2015 certified quality management system, and also that the agents responsible for said translation(s) are qualified to translate and review documents for the above language pair, and are not a relation to any of the parties named in the source document(s).

Anders Ekholm, Project Assistant

Sworn to before me this
Wednesday, July 17, 2019

Signature, Notary Public

AURORA ROSE LANDMAN
NOTARY PUBLIC-STATE OF NEW YORK
No. 01LA6380858
Qualified in New York County
My Commission Expires 09-17-2022

Stamp, Notary Public

Beata Wiacek

From: "Anna Świętek" <ANNA.SWIETEK@kp.sabmiller.com>
To: "Beata Wiacek" <beata@yespils.com>
Sent: Monday, April 18, 2005 8:22 AM
Subject: RE: Magnat i Żubr

Szanowna Pani Beato,

Postaram się w dniu dzisiejszym skontaktować z p. Bogusławem Pajorem.

O ile mi wiadomo, nie ma umowy pomiędzy Kompanią Piwowarską a firmą Amtec. Nie bardzo więc rozumiem uwagę na temat umowy z Kompanią Piwowarską: " our Agreement is still in force".

Piwo Magnat zostało wycofane z produkcji w Browarach Dojlidy. Nie ma też konkretnych planów co do dystrybucji piwa Żubr w USA. Postaram się wyjaśnić tę sprawę telefonicznie z p. Bogusławem.

W browarach Dojlidy nie istnieje dział eksportu i całość sprzedaży eksportowej jest obsługiwana w Poznaniu. Pan Kowalski nie pracuje w BD od maja zeszłego roku.

Z wyrazami szacunku,
Anna Świętek

Anna Świętek
Kompania Piwowarska S.A.
tel: +48 61 87 87 415
fax: +48 61 87 87 538
mobile: +48 601 569 355
e-mail: aswietek@kp.pl

-----Original Message-----
From: Beata Wiacek [mailto:beata@yespils.com]
Sent: Wednesday, March 09, 2005 8:36 PM
To: Anna Świętek
Subject: Re:

Ms Anna Swietek

We have received you e-mail.
In response to you statement that our agreement has expired I would like to correct you that our Agreement is still in force effect
and Amtec is the importer for the United States for your brands Dojlidy Zubr and Magnat.
Regarding the missing documents you have mentioned I would like to inform you that a whole package of documents was mailed by registered letter
(# RR 162513918 US) on November 5th 2004 to your attention.
I would like to add that Amtec is still interested in having your brands in our portfolio and attached please find our order for 4 containers of
Zubr and Magnat beer.

Thank you,

Beata Wiacek
General Manager
Amtec Int'l of NY Corp.

---- Original Message ----
From: Anna Świętek
To: Beata Wiacek
Sent: Wednesday, February 23, 2005 9:42 AM

Szanowna Pani Beato,

Aktualnie Kompania Piwowarska nie prowadzi sprzedaży piwa Żubr do USA.

Ponieważ umowa pomiędzy firmą Amtec i BD wygasła, a pozostała jeszcze nie rozliczona kwota 6.603,00 USD, która powstała w wyniku strat w związku
z przeładowaniem komputera w BD, bardzo proszę o przesłanie faktury na powyższą kwotę w celu rozliczenia tej kwoty, zgodnie z pismem z dnia 3.11.04.

Pozdrowienia,

Ania Świętek

Anna Świętek
Kompania Piwowarska S.A.
tel: +48 61 87 87 415
fax: +48 61 87 87 538
mobile: +48 601 569 355
e-mail: aswietek@kp.pl

-----Original Message-----
From: Beata Wiacek [mailto:beata@yespils.com]
Sent: Thursday, February 10, 2005 7:38 PM
To: Anna Świętek
Subject: Dojlidy

Witam

Pozwalam sobie do Pani napisac poniewaz od kilku miesiecy nie mam kontaktu z dotychczasowym managerem exportu w Dojlidach Panem Jerzym Kowalskim.
Nie dostalam odpowiedzi na zaden z mich e-mail w ktorych prosze o informacje na temat Zubra i Magnata.
Jestesmy gotowi do zlorzenia zamowien, chcemy przygotowac promocje ale nikt z nami sie nie kontaktuje.
Bardzo prosze o informacje do kogo mozemy kierowac pytania i kto jest osoba ktora zajmuje sie exportem

Z powazaniem
Beata Wiacek
General Manager
Amtec Int'l Of NY Corp.

Ta wiadomosc oraz wszystkie zalaczniki w postaci plikow przekazane wraz z nia przeznaczone sa wylacznie dla adresata (lub adresatow) i moga byc poufne. Jesli otrzymaliscie Panstwo te wiadomosc przez pomylke, prosimy ja zniszczyc i skontaktowac sie z nadawca. Odpowiedzi na te wiadomosc moga byc monitorowane przez KP S.A. Jesli nie sa Panstwo adresatem tej

wiadomosci, zabronione jest jej ujawnianie, kopiowanie, dystrybuowanie lub jakiekolwiek inne wykorzystanie niezgodne z interesem KP S.A. Uzycie lub ujawnienie wiadomosci bez odpowiednich uprawnien jest zabronione i moze byc niezgodne z prawem. Poglady i opinie wyrazone w tej wiadomosci nie musza byc zgodne z pogladami Zarzadu KP S.A.

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4/18/2005

EXHIBIT U

Registered No. RR 162 505 179 US

Date Stamp

To Be Completed By Post Office

Reg. Fee 7.50	[redacted]
Handling Charge	Return Receipt
Postage .80	Restricted Delivery
Received by	

MAY 18 2005 3:30 PM

Customer Must Declare Full Value $

☐ With Postal Insurance
☐ Without Postal Insurance

Domestic insurance up to $25,000 is included in the fee. International indemnity is limited. (See Reverse).

OFFICIAL USE

To Be Completed By Customer (Please Print) All Entries Must Be in Ballpoint or Typed

FROM
AMTEC INT OF NY CORP.
430 MORGAN AVE
BROOKLYN, NY 11222
U.S.A.

TO
KOMPANIA PINOWARSKA / SAB MILLER
ANNA SWIATEK
UL. DOJLIDY FABRYCZNE 28, 15-955 BIALYSTOK
POLAND

PS Form **3806**, **Receipt for Registered Mail** *Copy 1 - Customer*
May 2004 (7530-02-000-9051) *(See Information on Reverse)*
For domestic delivery information, visit our website at *www.usps.com*®

Registered No. RR 162 505 165 US

Date Stamp

To Be Completed By Post Office

Reg. Fee 7.50	[redacted]
Handling Charge	Return Receipt
Postage .80	Restricted Delivery
Received by	

MAY 18 2005 3:30 PM

Customer Must Declare Full Value $

☐ With Postal Insurance
☐ Without Postal Insurance

Domestic insurance up to $25,000 is included in the fee. International indemnity is limited. (See Reverse).

OFFICIAL USE

To Be Completed By Customer (Please Print) All Entries Must Be in Ballpoint or Typed

FROM
AMTEC INT OF NY CORP.
430 MORGAN AVE.
BROOKLYN, NY 11222
U.S.A.

KOMPANIA PINOWARSKA S.A.

Emtec
INTERNATIONAL OF NY CORP.
Beer Importer & Distributor
430 Morgan Avenue, Brooklyn, NY 11222 | Tel. 718-782-8993, Fax 718-782-8990 | info@yespils.com

18 Maj 2005

Pani Anna Swietek
Dzial Exportu
Kampania Piwowarska
Ul Dojlidy Fabryczne 28
15-955 Bialystok

W zalaczeniu przesylam ponownie zamowienia na piwo Zubr i Magnat.
Prosze o kontakt kiedy mozemy liczyc na zrealizowanie zamowien.

Z powazaniem
Beata Wiacek
General Manager

AMTEC INT'L OF NY CORP.

Beer Importer & Distributor
430 Morgan Av, 1-800-YES-PILS
Brooklyn, NY 11222
1-800-YES-PILS

Purchase Order

DATE	P.O. NO.
3/9/2005	1579

Vendor

Dojlidy Bialystok Brewery
28 Dojlidy Fabryczne St.
15955 Białystok,Poland

SHIP TO

AMTEC INTERNATIONAL OF NY CORP.
430 MORGAN AVENUE
BROOKLYN, NY 11222
USA

ORDER #	TERMS	Expected	SHIP VIA
	Due on receipt	3/9/2005	

ITEM	DESCRIPTION	QTY	RATE	AMOUNT
Zubr-Dojlidy	Zubr-Dojlidy 16.9 FL.Oz.			
	1 KONTENER 40 STOPOWY NA PALETACH			

AMTEC INT'L OF NY CORP
Beer Importer & Distributor
430 Morgan Avenue
Brooklyn,NY 11222
TEL (718)782-8993
FAX (718)782-8990

Total $0.00

AMTEC INT'L OF NY CORP.
Beer Importer & Distributor
430 Morgan Av, 1-800-YES-PILS
Brooklyn, NY 11222
1-800-YES-PILS

Purchase Order

DATE	P.O. NO.
3/9/2005	1580

Vendor

Dojlidy Bialystok Brewery
28 Dojlidy Fabryczne St.
15955 Bialystok,Poland

SHIP TO

AMTEC INTERNATIONAL OF NY CORP.
430 MORGAN AVENUE
BROOKLYN, NY 11222
USA

ORDER #	TERMS	Expected	SHIP VIA
02/2005	Due on receipt	3/9/2005	

ITEM	DESCRIPTION	QTY	RATE	AMOUNT
Magnat Dojlid	Magnat Dojlidy Bialystok 16.9 Fl.Oz. 1 KONTENTENER 40 STOPOWY NA PALETACH			

AMTEC INT'L OF NY CORP.
Beer Importer & Distributor
430 Morgan Avenue
Brooklyn,NY 11222
TEL (718)782-8993
FAX (718)782-8990

Reata Wigcell

Total $0.00

AMTEC INT'L OF NY CORP.

Beer Importer & Distributor
430 Morgan Av, 1-800-YES-PILS
Brooklyn, NY 11222
1-800-YES-PILS

Purchase Order

DATE	P.O. NO.
3/9/2005	1581

Vendor

Dojlidy Bialystok Brewery
28 Dojlidy Fabryczne St.
15955 Bialystok,Poland

SHIP TO

Amtec Int'l of NY Corp - Chicago
2690 LAKE STR,
MELROSE PARK, IL 60160
USA

ORDER #	TERMS	Expected	SHIP VIA
03/2005	Due on receipt	3/9/2005	

ITEM	DESCRIPTION	QTY	RATE	AMOUNT
Zubr-Dojlidy	Zubr-Dojlidy 16.9 FL.Oz.			

1 KONTENER 40 STOPOWY NA PALETACH

UWAGA !!!!!!!!!!

WYSYLKA DO CHICAGO

AMTEC INT'L OF NY CORP
Beer Importer & Distributor
430 Morgan Avenue
Brooklyn,NY 11222
TEL (718)782-8993
FAX (718)782-8990

Total $0.00

AMTEC INT'L OF NY CORP.
Beer Importer & Distributor
430 Morgan Av, 1-800-YES-PILS
Brooklyn, NY 11222
1-800-YES-PILS

Purchase Order

DATE	P.O. NO.
3/9/2005	1582

Vendor

Dojlidy Bialystok Brewery
28 Dojlidy Fabryczne St.
15955 Bialystok,Poland

SHIP TO

Amtec Int'l of NY Corp - Chicago
2690 LAKE STR,
MELROSE PARK, IL 60160
USA

ORDER #	TERMS	Expected	SHIP VIA
04/2005	Due on receipt	3/9/2005	

ITEM	DESCRIPTION	QTY	RATE	AMOUNT
Magnat Dojlid	Magnat Dojlidy Bialystok 16.9 Fl.Oz.			
	1 KONTENER 40 STOPOWY NA PALETACH			
	UWAGA!!!!!!!!!!!			
	WYSYLKA DO CHICAGO			

AMTEC INT'L OF NY CORP
Beer Importer & Distributor
430 Morgan Avenue
Brooklyn,NY 11222
TEL (718)782-8993
FAX (718)782-8990

Beata Wizcale

Total $0.00

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

AMTEC INTERNATIONAL OF NY CORP.,	)	
	)	
Plaintiff,	)	Case No.: 1:20-cv-00003-LDH-PK
v.	)	
	)	
POLISH FOLKLORE IMPORT CO., INC.,	)	
	)	
Defendant.	)	

AFFIDAVIT OF JAKUB SUMARA

I, Jakub Sumara, under penalties of perjury, state:

1. I am an individual over the age of 18, have personal knowledge of the following facts, and would and could testify competently to the same if so called.

2. I am employed by Polish Folklore Import Co., Inc., Defendant in the above-captioned matter. Defendant is respectfully moving this Court to issue an order dismissing Plaintiff's Complaint pursuant to Rule 12(b)(6).

3. I have reviewed Defendant's Rule 12(b)(6) Motion to Dismiss and Memorandum of Law in Support (the "Motion"). Polish Folklore Import Co., Inc., is entitled to the requested relief because Plaintiff has failed to state a claim as a matter of law for the reasons set forth in the Motion.

4. Additionally, all of the exhibits appended to the Motion are true and accurate copies of the documents as they are identified therein.

FURTHER AFFIANT SAYETH NOT.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 19, 2020

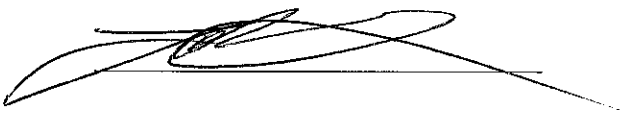

EXHIBIT 5

EXHIBIT 5

DISTRIBUTORSHIP CONTRACT

Concluded on December 31, 2000 in Białystok by and between:
"**BROWAR DOJLIDY**" [Dojlidy Brewery] a limited liability company with its registered seat in Białystok, at ul. Dojlidy Fabryczne 28, 15-955 Białystok, entered into the register of Entrepreneurs maintained by the Local Court [Pol. *Sąd Rejonowy*] on Białystok, Commercial Court, Registry Division, under no. RHB 1217, NIP [VAT no.]: 542-00-11-792,
represented by:
1. Janina Koczara – Member of the Board
2. Przemysław Nowacki – Member of the Board

Hereinafter referred to as the **MANUFACTURER**

And

AMTEC International of NY Corp., with its registered seat in the USA, State of New York, County of Winchester, address: 213-215 N.9th St. Brooklyn, NY 11211, USA,
represented by:
Bogdan Pajor – President,
hereinafter referred to as the **DISTRIBUTOR**.

[Rectangular sticker reading: EXHIBIT, Respondents 2]

WHEREAS the MANUFACTURER has decided to launch the Products (defined hereinafter) on the market of the Territory (defined hereinafter),

WHEREAS the DISTRIBUTOR is willing to purchase the Products for the purposes of distributing the same within the Territory,

WHEREAS both parties are planning to expand the Products' market to the Territory,

in light of the afore, the Parties hereby agree as follows:

ARTICLE 1
DEFINITIONS

1. For the purposes of this Contract, "Products" shall mean good produced by the Manufacturer, as listed in detail in Appendix no. 1 hereto;
2. For the purposes of this Contract, "Territory" shall mean the geographic area specified in Appendix no. 2 hereto;
3. For the purposes of this Contract, "Price List" shall mean the price listing agreed upon by the Parties hereto and provided as Appendix no. 3 to the Contract;
4. For the purposes of this Contract, the expression "Sales Schedule" shall mean the framework schedule of sales and Product delivery dates, appended hereto as Appendix no. 4.

ARTICLE 2
SUBJECT OF CONTRACT

1. This Contract is concluded to specify the terms and conditions of collaboration between the Parties with regard to the sales and distribution of Products offered by the Manufacturer.
2. The Manufacturer hereby undertakes to sell Products to the Distributor and the Distributor undertakes to purchase Products and distribute the same, at its own risk and expense, within the Territory – subject to the provisions stipulated herein.

EXHIBIT 2

ARTICLE 3
SPECIFIC OBLIGATIONS OF THE DISTRIBUTOR

1. The Distributor shall organize, of and by itself, a wholesale and retail network within the Territory and shall ensure continuous supply of the Products thereto.
2. The Distributor – during the terms of this Contract – shall make all reasonable efforts to promote and expand sales of the Products, as well as to maintain and improve the Products' reputation.
3. The Distributor shall ensure storage of the Products in conditions consistent with the standards of beer storage.
4. The Distributor shall be obliged to inform the Manufacturer of any changes pertaining to the legal status of its business (name, address, personnel, persons authorized to represent the company, composition of the management board, etc.) as well as, where necessary, provide the Manufacturer, upon request, with information necessary to establish the Distributor's financial standing.
5. The Distributor shall not be authorized to accept any orders, take any credit, make or accept any commitments, be it express or implied, for or on behalf of the Manufacturer, nor shall it be authorized to represent the Manufacturer as an agent thereof or in any other capacity other than specifically agreed in this Contract.
6. The Distributor shall not use, or allow any natural or legal person under its control to use, any trademarks, or tradenames constituting the property of the Manufacturer without prior express consent of the Manufacturer.
7. Upon expiry of this Contract, the Distributor shall discontinue the use of any trademarks, service names or other tradenames or other Product designations used under the consent of the Manufacturer, as well as any marketing materials containing such trademarks, service names, tradenames or other designations owned by the Manufacturer.

ARTICLE 4
SPECIFIC OBLIGATIONS OF THE MANUFACTURER

1. The Manufacturer hereby grants the Distributor the right to use trademarks used in the designations of the Products, within the Territory and for the duration of the term of this Contract, for purposes related to the export and sales of Products and any related marketing activities.
2. The Manufacturer undertakes to name the Distributor as the sole supplier of the Products within the Territory to any new customers.
3. The Manufacturer undertakes to maintain the adequate quality of the Products in compliance with all applicable standards.
4. The Manufacturer undertakes to use only brand-new bottles and pallets.

ARTICLE 5
PERFORMANCE OF THE SUBJECT OF CONTRACT

1. The delivery of the Products and acceptance thereof by the Distributor shall be at the Manufacturer's warehouse located in Białystok, at ul. Dojlidy Fabryczne 28 , Poland.
2. The title to the Products along with all the related costs and risks shall pass onto the Distributor as at the moment of the Product's acceptance by the Distributor confirmed in the relevant internal export invoice signed by the Distributor's authorized representative (EXW – the Manufacturer's warehouse located at ul. Dojlidy Fabryczne 28, Białystok).

3. The Distributor shall be obliged to collect the Products on a regular basis, in accordance with the Products acceptance dates specified in the Sales Schedule.

ARTICLE 6
ORDERS

1. The Parties agree that the sale of Products shall take place only on the basis of orders placed by the Distributor within timeframes and in quantities stipulated in the Sales Schedule.
2. The orders referred to in paragraph 1 shall be placed by the Distributor by mail or fax, at least 14 days in advance prior to the planned date of delivery.
3. The orders shall be subject to acceptance or rejection by the Manufacturer, in whole or in part. The Manufacturer shall notify the Distributor of the acceptance or rejection, in whole or in part, of each order within one business day or receiving the order.
4. If an order is rejected, in whole or in part, the Sales Schedule shall be subject to amendment. The amendment shall adjust the time frame for the subsequent orders from the Distributor.

ARTICLE 7
QUANTITATIVE ACCEPTANCE

1. The quantitative acceptance of the Products shall be confirmed in the form of an internal export invoice signed by the representatives of the Distributor and the Manufacturer upon verifying that the quantity of the Products is consistent with the Distributor's order.
2. If quantity inconsistencies are not notified within the time frame specified in paragraph 1 above, the Distributor shall lose the right to make claims regarding the same.

ARTICLE 8
PRICE

1. Products shall be sold by the Manufacturer to the Distributor at prices specified in the Price List applicable as at the day of the sale.
2. The Manufacturer reserves the right to change the Product prices specified in the Price List. Any such change shall be notified by the Manufacturer to the Distributor at least 30 days in advance.
3. If the prices are subject to change, the Manufacturer shall provide the Distributor with the new applicable Price List, which shall be tantamount to amendment of the prices of Products sold by the Manufacturer under this Contract.

ARTICLE 9
PAYMENTS

1. The Distributor's payment for Products requisitions in an order, constituting a *pro-forma invoice*, shall be effected by depositing 50% of the purchase price, by way of advance payment, to the Manufacturer's bank account: **Kredyt Bank S.A. Białystok** [redacted]
The remaining 50% of the purchase price shall be paid to the Brewery's bank account within 35 (thirty-five) days of the date of issue of the invoice.

2. The Manufacturer's initiation of order performance activities shall be conditional upon the receipt of the Distributor effecting the advance payment.
3. The Distributor shall be obliged to present to the Manufacturer an adequate document confirming the payment. The document can be provided to the Manufacturer in person, by mail or by fax. The Manufacturer shall accept a document provided by fax only if the content of the faxed document remains legible.
4. The Distributor's payments shall be deemed as duly effects once the funds have been credited to the Manufacturer's bank account.

ARTICLE 10
CONFIDENTIALITY CLAUSE

1. The Distributor undertakes to keep confidential, during the term of this Contract, and not disclose without prior written consent of the Manufacturer, except as required by law or a competent authority, any information that remains not publicly available and is disclosed to the Distributor, and to use Confidential Information solely for purposes related to the performance of this Contract.
2. A breach by the Distributor of the provisions of the confidentiality clause contained in this Article shall oblige the Distributor to pay to the Manufacturer a contractual penalty in the amount stipulated in Art. 12.3 of this Contract.

ARTICLE 11
CONTRACTUAL PENALTIES

1. In the case of the Distributor's failure to comply with the Product acceptance time limits stipulated in Art. 6.1., the Distributor shall pay a contractual penalty for each day of delay in the amount of 1% (one percent) of the value of unclaimed Products.
2. In the case of the Distributor's failure to comply with Product volumes specified in the Sales Schedule, the Distributor shall be obliged to pay to the Manufacturer a contractual penalty in the amount of 10% (ten percent) of the value of Products unordered and/or unclaimed in due time.
3. In the event of the Distributor's breach of the obligations specified in Art. 3 or Art. 10.1 hereof, the Distributor shall be obliged to pay to the Manufacturer, for each instance of breach, a contractual penalty in the amount of USD 5.000,- (five thousand US dollars).

ARTICLE 12
SECURITY ON MANUFACTURER'S RECEIVABLES

1. By way of securing the Manufacturer's receivables under this Contract, on the date of signing hereof, the Distributor shall submit to the Manufacturer three (3) blank promissory notes with a "protest waived" clause signed by the Distributor.
2. The Manufacturer shall be entitled to fill out any of the promissory notes, at any time, stating the amount of receivables in arrears or contractual penalties due and assign the due date thereof. The promissory notes shall be returned to the Distributor immediately upon the expiry of this Contract, provided that any and all amounts due from the Distributor to the Manufacturer have been duly settled.

ARTICLE 13

SECURITY ON CONTINUITY OF COLLABORATION

1. This Contract constitutes an agreement strictly bound to the Distributor and as such may not be assigned by the Distributor without prior written consent of the Manufacturer.
2. The Distributor shall be *obliged to inform* the Manufacturer of any changes pertaining to the legal status of its business (name, address, personnel, principles of representation, etc.).
3. The Distributor shall be obliged to inform the Manufacturers immediately, in advance of any actual or legal circumstances related to in particular:
   a) the intention to discontinue economic activity or planned suspension thereof,
   b) initiation of bankruptcy, liquidation, or enforcement proceedings,
   c) loss of the license to trade in beer.

   Failure to notify the Manufacturer of any of the circumstances specified hereinabove shall constitute a material breach of the Contract with the consequences stipulated in Art. 14.3 of this Contract.
4. The Distributor hereby represents that any entity acquiring, in whole or in part, the title to or other rights in the Distributor's business shall be bound by all of the provisions of this Contract and that the rights and obligations of the parties under the provisions of this Contract shall survive and remain fully binding. The same shall apply irrespective of whether said acquisition occurs by way of sale of assets, sale of shares, a public offering, merger, or international partnership. Otherwise, all obligations under this Contract shall remain jointly and severally binding on the owners of (partners in) the Distributor's business as at the date of signing this Contract.

ARTICLE 14
TERM OF CONTRACT AND TERMINATION

1. This Contract shall come into force as at the day of its signing and shall be concluded for a defined period of time until December 31, 2002, with the possibility of extension.
2. Each of the Parties may terminate this Contract at any time, subject to a three (3) month period of notice submitted at the end of a calendar month. In each case the notice of termination shall be served by registered mail or in person. In particular, the date of receipt of the first postal advice note by the addressee or return of the letter to the sender with an "addressee unknown" or similar annotation shall also be construed as the date on which such notice has been duly served.
3. Notwithstanding of the foregoing, this Contract may be terminated by the Manufacturer with immediate effect, subject to written notification, in the event of:
   a) failure to provide the commercial effects stipulated in the Contract, in particular the Distributor's failure to comply with the time limits, order volumes and Product acceptance terms stipulated in the Sales Schedule,
   b) declaration of bankruptcy or liquidation with regard to the Distributor, or high likelihood of any of such circumstances occurring,
   c) a material breach of another provision of this Contract.

ARTICLE 15
FINAL PROVISIONS

1. This Contracts, including the appendices hereto, constitutes the sole and exclusive agreement between the Manufacturer and the Distributor pertinent to the subject matter hereof. This Contract supersedes any prior arrangements made between the Parties, be it written or oral. Both Parties confirm that they are not bound by any agreement, guarantee, or arrangement other than provided in this Contract.
2. All the appendices to this Contract constitute integral parts hereof.
3. This Contract shall remain binding upon the successors of the Distributor in the event that the Distributor sells its assets, merges with another company, or sells or assigns any part of its business.
4. Each of the Parties hereto hereby represents and warrants to the other Party that it has the full right and authority enter into this Contract, all the necessary steps have been taken by the Party with the competent authorities to facilitate the conclusion and performance of this Contract, the Party is bound by no contractual or other obligations that would prevent it from signing or performing this Contract. Each of the Parties hereto represents that it has presented registration documents valid as at the day of entering into this Contract.
5. This Contract shall be governed by the laws of Poland, in particularly by the provisions of the Polish Civil Code.
6. Any amendment or modification of this Contract must be done in writing by mutual agreement of the Parties, otherwise null and void.
7. All property disputes arising from or in relation to this Contract shall, under the Parties agreement, be subject to settlement by the Arbitration Court at the National Chamber of Commerce in Warsaw (Poland) pursuant to the court's rules of procedure.
8. Other disputes not subject to arbitration shall be settled by a common court of law competent for the Manufacturer's registered seat.
9. The headings used by the Parties in this Contract have been included only for the sake of convenience and shall not have normative significance.
10. Any correspondence and notifications pertaining to this Contract shall be deemed as served if sent to the following service addresses of the Parties, unless an address change has been duly notified by a Party:
    a) Ul. Dojlidy Fabryczne 28, 15-955 Białystok – Manufacturer
    b) 213-215 N. 9th St. Brooklyn, NY 11211, USA – Distributor
11. This Contract has been drawn up in two identical copies, one for each of the Parties.

Signatures and stamps of the Parties to the Contract

Manufacturer	**Distributor**
[rectangular stamp reading: Member of the Board, Chief Commercial Officer, Przemysław Nowacki; (-) signature illegible] [rectangular stamp reading: Member of the Board, /illegible/]	[rectangular stamp reading: BROWAR DOJLIDY Spółka z o.o. [LLC], 15-955 Białystok, ul. Dojlidy Fabryczne 28, tel. 7410-430, Dir. 73-29-970, NIP [VAT no.] 542-00-11-792, REGON [stat. no.] 050254575]

APPENDIX No. 1
PRODUCT SPECIFICATION

to the Distributorship Contract of December 31, 2000

The **Products** shall include the following products of the Manufacturer:

1. **"Żubr" Beer**
2. **"Magnat" Beer**

APPENDIX No. 2
Territory

to the Distributorship Contract of December 31, 2000

The **Territory** shall include the territories of the following US states:

1. **New York**
2. **Connecticut**
3. **New Jersey**
4. **Illinois**
5. **Pennsylvania**

APPENDIX No. 3
Price List

to the Distributorship Contract of December 31, 2000

The Parties to this Contract Product Price List:
1. "Żubr" Beer (0.5-liter bottle) – 6.2% vol, 12.5 BLG – USD 0.43
2. "Magnat" Beer (0.5-liter bottle) – 7.0% vol, 15.0 BLG – USD 0.47

APPENDIX No. 4
SALES SCHEDULE

to the Distributorship Contract of December 31, 2000

The Parties to this Contract agree upon the following schedule of Product orders in 2001:

In the period from January 2001 to December 2001 – 462,000 0.5-liter bottles.

Day Translations

Certified Translation

Certificate of Accuracy

Witold Wojtaszko
Translator

Translated documents: Distributorship Contract of December 31, 2000 (Browar Dojlidy / AMTEC International of NY Corp.)

As a translator for Day Translations, Inc., I, Witold Wojtaszko, declare that I am a bilingual translator who is thoroughly familiar with the English and Polish languages. I have translated the attached document to the best of my knowledge from Polish into English and the English text is an accurate and true translation of the original document presented to the best of my knowledge and belief.

Signed on March 31, 2020



Witold Wojtaszko

Professional Translator for Day Translations, Inc.

EXHIBIT 6

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

AMTEC INTERNATIONAL OF NY CORP.,	)	
	)	
Plaintiff,	)	Case No.: 1:20-cv-00003-LDH-PK
v.	)	
	)	
POLISH FOLKLORE IMPORT CO., INC.,	)	
	)	
Defendant.	)	

AFFIDAVIT OF JAKUB SUMARA

I, Jakub Sumara, under penalties of perjury, state:

1. I am an individual over the age of 18, have personal knowledge of the following facts, and would and could testify competently to the same if so called.

2. I am employed by Polish Folklore Import Co., Inc., the defendant in the above-captioned matter. Defendant is respectfully moving this Court to issue an order dismissing Plaintiff's Amended Complaint under Federal Rule of Civil Procedure 12(b)(6).

3. I have reviewed Defendant's Rule 12(b)(6) Motion to Dismiss Amended Complaint and Memorandum of Law in Support (the "Motion"). Polish Folklore Import Co., Inc., is entitled to the requested relief because Plaintiff has failed to state a claim as a matter of law for the reasons set forth in the Motion.

4. Exhibit 2 attached to the Motion is a redline of the Amended Complaint as compared to the Complaint. I have reviewed this Exhibit and it correctly identifies the differences between the Complaint and the Amended Complaint.

5. Exhibit 5 attached to the Motion is a translated copy of the 2000 Agreement from Polish to English by a certified translator, which was introduced into evidence during a Connecticut proceeding involving as participants the parties to this litigation. That case is

captioned *Polish Folklore Co., Inc. v. Department of Consumer Protection, Liquor Control Division*, No. HHB-cv20-6056990S (Conn. Super. Ct.).

6. Additionally, all the exhibits appended to the Motion are true and accurate copies of the documents as they are identified in the Motion.

FURTHER AFFIANT SAYETH NOT.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 23, 2022

Jakub Sumara

ORAL ARGUMENT REQUESTED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

AMTEC INTERNATIONAL OF NY CORP.,	)	
	)	
Plaintiff,	)	Case No.: 1:20-cv-00003-LDH-PK
v.	)	
	)	Date of Service: June 24, 2022
POLISH FOLKLORE IMPORT CO., INC.,	)	
	)	
Defendant.	)	

NOTICE OF MOTION

PLEASE TAKE notice that on June 24, 2022, Defendant, Polish Folklore Import Co., Inc., by and through its undersigned counsel, moved this Court to dismiss Plaintiff's Amended Complaint pursuant to Rule 12(b)(6) and, in support of the same, the undersigned served upon you **Polish Folklore Import Co., Inc.'s Rule 12(b)(6) Motion to Dismiss Amended Complaint and Memorandum of Law in Support** via email and first class U.S. mail with postage prepaid.

PLEASE TAKE further notice that oral argument is requested and we shall appear before Judge LaShann DeArcy Hall in Courtroom 4H North of the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, for such argument and to present the aforesaid Motion on a date and time to be designated by the Court, for a judgment to dismiss Plaintiff's Amended Complaint pursuant to Rule 12(b)(6) and entry of any other relief that the Court deems just and equitable.

Dated: June 24, 2022

Respectfully submitted,

POLISH FOLKLORE IMPORT CO., INC.

/s/ Earl E. Farkas
By one of its Attorneys

Keven Danow – *Local Counsel*
DANOW, MCMULLAN & PANOFF, P.C.
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(312) 782-5010 (phone)
Email: e.farkas@gozdel.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the above-titled **Notice of Motion and Defendant's Rule 12(b)(6) Motion to Dismiss Amended Complaint and Memorandum of Law in Support** were served upon all parties of record by sending copies of the same via first class U.S. mail with postage prepaid and electronic mail at or before 5:00 PM EDT on June 24, 2022, to the following attorneys of record:

Counsel for Plaintiff Amtec International of NY Corp.

Joshua S. Stern, Esq.
Wilson Elser Moskowitz Edelman & Dicker, LLP
1133 Westchester Ave.
White Plains, NY 10604
Phone: (914) 872-7177
Joshua.Stern@wilsonelser.com

Donna Murphy