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

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Laura A. Cahill, Commissioner

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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.

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LIQUOR CONTROL COMMISSION
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