DOCKET NO.: HHB-CV20-6056990S	:	SUPERIOR COURT
POLISH FOLKLORE CO., INC.	:	JUDICIAL DISTRICT OF NEW BRITAIN
v.	:	
DEPARTMENT OF CONSUMER PROTECTION, LIQUOR CONTROL DIVISION, ET AL.	:	NOVEMBER 24, 2020

OFFICE OF THE CLERK
SUPERIOR COURT
2020 NOV 24 AM 11 01
JUDICIAL DISTRICT OF
NEW BRITAIN

MEMORANDUM OF DECISION

The plaintiff petitioned the defendant Liquor Control Commission[1] for a declaratory ruling that it had the exclusive right to distribute Zubr beer in Connecticut. The Commission denied the petition, finding that another company, Amtec International of NY Corp., had the exclusive distribution rights to Zubr beer. The plaintiff now appeals that ruling. Because substantial evidence supports the Commission's factual findings, and because its decision does not prejudice the plaintiff's substantial rights for any of the reasons set forth in General Statutes § 4-183(j), the Commission's decision is AFFIRMED.

I

FACTUAL AND PROCEDURAL BACKGROUND

The Plaintiff ("Polish Folklore") is an importer and out-of-state shipper of alcoholic beverages. It claims the exclusive right in Connecticut to sell Zubr beer through a distributor named Arko. Zubr beer is brewed in Poland by a company called Kompania Piwowarska.[2] Defendant Amtec International of NY Corp. ("Amtec") is an out-of-state wholesaler which also claims the exclusive right to sell Zubr beer in Connecticut.

---

[1] The Liquor Control Commission ("Commission") is a body within the Liquor Control Division of the defendant Department of Consumer Protection. The court refers to the Commission as the defendant solely for ease of reference.

[2] "Zubr" means bison in Polish.

11/24/20 Copy sent to Reporter of Judicial Decisions; notice sent to all counsel of record.

In 1998, Amtec obtained the exclusive right to distribute Zubr beer in Connecticut through an arrangement with the Polish brewer, Dojlidy Brewery. In 2003, Kompania Piwowarska purchased the Dojlidy Brewery. The purchase included the rights to the Zubr beer product. In 2005, Kompania Piwowarska stopped selling Zubr beer in the United States and declined to fill further orders that Amtec placed.

In 2018, Polish Folklore began to sell Zubr beer in Connecticut through Arko. Polish Folklore did not buy the product directly from Kompania Piwowarska, but rather from MAG Dystrybucja, a Polish distributor of Kompania Piwowarska. Polish Folklore registered and price-posted Zubr with the appropriate federal and state regulators.

In January 2019, Amtec learned that Polish Folklore was selling Zubr beer in Connecticut through Arko. Amtec contacted the Department of Consumer Protection, Liquor Control Division, and explained that Amtec had exclusive Zubr beer distribution rights in the state. On June 5, 2018, the Department formally agreed with Amtec and ordered Arko to remove Zubr beer from its price postings.

Polish Folklore responded by petitioning the Commission for a declaratory ruling that the two Zubr beer products were not, in fact, the same brand. Specifically, Polish Folklore argued that Amtec had sold a brand called "Dojlidy Zubr" beer, whereas Polish Folklore was currently selling a different brand called "Zubr" beer. In the alternative, Polish Folklore argued that even if the two brands were the same, "just and sufficient" grounds existed to terminate Amtec's distributorship under General Statutes § 30-17,[3] including that Amtec had waived or abandoned

[3] General Statutes § 30-17 (a) (2) provides in relevant part: "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

any distributorship rights it once had by making no effort to purchase and distribute Zubr beer after 2005.

The Commission held an evidentiary hearing on July 18, 2019 and issued its final decision on September 24, 2019, which found 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 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 Dojlidy Brewery; (9) Zubr beer is sold with a distinctive

---

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. If an emergency occurs, caused by the wholesaler, prior to such hearing, which threatens the manufacturers' or out-of-state shippers' products or otherwise endangers the business of the manufacturer or out-of-state shipper and said emergency is established to the satisfaction of the Department of Consumer Protection, the department may temporarily suspend such wholesaler permit or take whatever reasonable action the department deems advisable to provide for such emergency and the department may continue such temporary action until its decision after a full hearing." (Emphasis supplied.)

label portraying the Zubr logo – a bison, and the bottle neck refers to the product as "Zubr"; and (8) Zubr beer is sold under the same brand name irrespective of a different alcohol by volume (ABV) or hops content." Memorandum of Decision (dated September 24, 2019), 2 ("Final Decision").

The Commission also found that both Zubr beer products were brewed using the "exact same recipe," that both beers were brewed "at the Dojlidy Brewery" (notwithstanding the change in ownership) and that both beers used the Zubr beer trade name and Bison logo. Id., 3. "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." Id.

Significantly, Kompania Piwowarska admitted in a letter submitted in evidence that it "purchased the Dojlidy Zubr brewery" and that "since 2003, the company has been the owner of the ZUBR brand, is in the possession of the formula and all the rights above." Id. (citing Exhibit K).

In sum, the Commission squarely rejected Polish Folklore's primary argument that its Zubr beer product and Amtec's Zubr beer product were different brands. The Commission also rejected Polish Folklore's alternative argument that Amtec's exclusive distributorship rights should be terminated under General Statutes § 30-17 for "just and sufficient cause" based on Amtec's alleged abandonment or waiver of those rights. The Commission explained that "the withdrawal of a product from the marketplace for several years does not constitute just and sufficient cause to terminate a distributorship." Id., 2.

Polish Folklore filed a motion for reconsideration, which the Commission denied. Polish Folklore then timely filed this administrative appeal. The court heard oral argument on September 25, 2020.

II

DISCUSSION

Polish Folklore makes two basic arguments on appeal: First, the Commission erred in finding that the two Zubr beers are the same brand; second, even if the beers are the same brand, the Commission erred by declining to terminate Amtec's exclusive distributorship for "just and sufficient cause" under § 30-17 (a) (2). Neither argument is persuasive.

A.

Preliminarily, the court must decide whether the Commission's determination that the two Zubr beers at issue are the same brand is a question of fact, a mixed question of law and fact, or a matter committed to the agency's discretion.[4] This issue is critical because it determines the scope of the court's review under General Statutes § 4-183(j). If the Commission's brand determination is a purely factual matter, the substantial evidence standard applies. If the determination is a mixed question of law and fact, Polish Folklore argues for plenary review. But if the determination was committed to the Commission's discretion, the court's scope of review is limited to whether the Commission abused its discretion or acted arbitrarily or capriciously.

Polish Folklore argues that a brand determination is a mixed question of law and fact because it requires the Commission to identify legally relevant criteria and then to make factual findings based on those criteria. Polish Folklore's Memorandum of Law in Support of Administrative Appeal (dated April 6, 2020) ("Polish Folklore Mem."), 16-22. The Commission contends that whether two liquor products are the same or different brands is a matter committed to its administrative discretion. "There is no provision in the Liquor Control Act, or in the pertinent Commission Regulations, which sets forth the criteria for the Commission to weigh

[4] Neither party argues that whether the two beers are the same brand is a question of law.

when making a determination as to what constitutes a Brand. Accordingly, the relevant criteria for this decision are left to the Commission. . . . It is well established that the Commission is granted significant deference in this process." Brief of the Defendant, Department of Consumer Protection, Liquor Control Commission (dated April 29, 2020), 6-7.

The court agrees with the Commission. Neither the Liquor Control Act nor any regulation promulgated thereon requires the Commission to apply specific legal criteria when resolving a brand dispute. The Commission was not precluded from considering the factors or criteria that Polish Folklore asked it to consider, but it was not required to do so.[5]

Accordingly, the court applies the abuse of discretion standard to the Commission's selection of the criteria it used to decide that the two beer products were the same brand. The court applies the substantial evidence standard to the Commission's basic findings of fact.

B

The court concludes that the Commission did not abuse its discretion when it used criteria such as common recipes, trade names, and logos to determine whether the two beers were the same brand. While other federal or state regulators might have used different or additional criteria, the court is not persuaded that the Commission acted arbitrary or capriciously in its selection of relevant criteria.

---

[5] *Kysela Pere et Fils* v. *Matias*, Docket No. CV990585559, 2001 WL 1329946 (Superior Court, Oct. 10, 2001), on which Polish Folklore places great weight, does not require a different conclusion. *Kysela* was a collections action involving an alleged breach of an exclusive wine distributorship agreement. By way of defense, the defendant (an out-of-state wine shipper) argued that the wine it was providing to another distributor was a different brand from the one it was legally obligated to distribute through the plaintiff. To resolve this dispute, the court looked to a ruling of the then Bureau of Alcohol, Tobacco and Firearms, which identified certain criteria relevant to resolving the brand dispute. Id., * 4. The Commission was not a party to the case, and the decision does not suggest, must less hold, that the Liquor Control Act or any agency regulation requires the Commission to use those factors.

The court also concludes that substantial evidence supports the Commission's basic findings of fact, particularly its findings that both beers have been brewed pursuant to the exact same recipe and at the same brewery since 1768;[6] both beers use the Zubr beer trade name; and both beers use the same bison logo.[7]

Perhaps most significant, Polish Folklore does not contest a critical admission by the current owner of the Dojlidy Zubr brewery, Kompania Piwowarska. The current owner stated that in 2003 it purchased the rights to the Zubr beer *brand*—not merely the recipe. See Commission Final Decision, 3 (citing Exhibit K). When the current owner of a particular brewery admits that the product a new distributor (e.g., Polish Folklore) is selling is the same brand that the previous owner brewed and sold to the original distributor (e.g., Amtec), any argument that the two products are different brands borders on the specious.

C

Polish Folklore offers a backup argument. It contends that even if the two Zubr beers are the same brand, the Commission should have terminated Amtec's exclusive distributorship for "just and sufficient cause" under General Statutes § 30-17 (a) (2). According to Polish Folklore, just and sufficient cause existed because Amtec allegedly waived or lost its rights to distribute Zubr beer in 2005. The court rejects this alternative argument for two reasons.

Initially, the argument is contrary to the plain and unambiguous language of § 30-17 (a) (2). In relevant part, the statute states, "When a holder of a wholesaler permit has had the

---

[6] The court agrees with Polish Folklore that this factor alone would not support the Commission's determination that the two beers are the same brand. But the Commission did not rely solely on this fact.

[7] Polish Folklore argues that the Commission repeatedly erred in its factual findings when it stated that Amtec sold a product called "Zubr." According to Polish Folklore, Amtec sold a product called "Dojlidy Zubr." See Polish Folklore's Memorandum of Law, 24-28. The Commission did not find this alleged factual distinction credible.

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 . . . (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." (Emphasis added.) General Statutes § 30-17 (a) (2).

To illustrate how this provision works, let us call the manufacturer or out-of-state shipper of a particular product Party A. And let us call the particular wholesaler with whom Party A has a distributorship agreement Party B. The plain language of the statute permits Party A to ask the Commission to terminate the agreement with Party B, provided that Party A complies with the statute's notice procedures, i.e., Party A must send written notice to Party B and the Commission. In this case, Party A is Kompania Piwowarska, which purchased the Dojlidy Brewery in 2003, including the rights to the Zubr beer product. Party B is Amtec, which has the exclusive right to distribute Zubr beer in Connecticut via its 1998 agreement with Dojlidy Brewery, Kompania Piwowarska's predecessor-in-interest.

The plain language of the statute does not authorize a Party C—a stranger to the distribution agreement between Party A and Party B—to ask the Commission to terminate the agreement. If Party A desires to replace Party B with Party C, Party A may send the requisite statutory notice of intent to terminate to Party B and to the Commission. The Commission will then hold a hearing to determine whether Party A has presented "just and sufficient cause" to terminate its arrangement with Party B. But Party C cannot initiate termination proceedings.[8]

[8] During oral argument, the court asked the Commission's counsel about this interpretation of the statute. Counsel answered that the Commission has on occasion permitted a non-party to an exclusive distribution agreement to ask the Commission to terminate the agreement under § 30-17

Polish Folklore is Party C. Therefore, it lacks standing under § 30-17 (a) (2) to ask the Commission to terminate the exclusive distribution agreement between Amtec and Kompania Piwowarska. For this reason Polish Folklore's alternative argument for reversing the Commission's final decision must fail.

The court would reach the same conclusion, however, even if Polish Folklore had standing under § 30-17 (a) (2) to ask the Commission to terminate Amtec's exclusive distributorship. The Commission correctly noted that "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." Final Decision, 1-2 (quoting *Schiefflin & Co.* v. *Department of Liquor Control*, 194 Conn. 165, 479 A.2d 1191 (1984)). Could the Commission have balanced the equities Polish Folklore's favor? Perhaps. Did the Commission abuse its discretion when it balanced the equities in Amtec's favor? No.

Polish Folklore also argues that Amtec "waived" and/or "lost the right to distribute" Zubr beer in 2005 when Kompania Piwowarska ceased selling the product in the United States. Polish Folklore Mem., 22-24, 31-32. The Commission rejected this argument based on its past precedents, particularly its declaratory ruling in *In re: Johnny Barton, Inc.* (November 10, 1987). The following excerpt from that decision is informative: "Section 30-17 [of the Liquor Control Act], the provision . . . that deals with termination and diminishment, has been around in some

---

(a) (2). The Supreme Court has held that an "agency's reasonable interpretation of an ambiguous statute is entitled to deference only when that interpretation has been subjected to judicial review or the agency interpretation is both reasonable and time-tested. To satisfy the time-tested requirement of the rule according deference to an agency's interpretation of a statute, that interpretation must formally have been articulated and applied over a long period of time. . . ." (Internal quotation omitted.) *Brucuglio* v. *Thompsonville Fire Dist. # 2*, 190 Conn. App. 718, 730, 212 A.3d 751 (2019). Because the relevant text in § 30-17 (a) (2) is not ambiguous, the court does not defer to the Commission's interpretation.

form since 1933. . . . Since 1949 it has been amended in twelve different sessions of the legislature. The statute and actions taken pursuant to it have been challenged in several important and hotly contested cases. To say that it has been a controversial section of the Liquor Control Act and one that has been the subject of intense and detailed legislative scrutiny would certainly be no overstatement.

"The Commissioners do not believe one can 'read in' common law concepts of abandonment when this area of the law . . . has evolved so painstakingly over the years through legislative enactment. This statute . . . and the Regulations . . . set forth a detailed framework to guide the Department in the determination if a termination or diminishment has occurred. Abandonment is not mentioned in the statute or regulation despite the great detail with which the framework is outlined. We must assume that abandonment is not a manner by which a wholesaler can be terminated or have its territory diminished unless the affected out-of-state shipper or manufacturer cites that as cause for the termination or diminishment (in the case of beer) and then proves to the Commissioners at a public hearing that just and sufficient cause for the termination or diminishment exists." Polish Folklore Memorandum of Law, 9.

The court agrees that *In re: Johnny Barton, Inc.* applies here. If a manufacturer/out-of-state shipper of a liquor product has a longstanding exclusive distribution arrangement with a particular wholesaler, and if that wholesaler effectively abandons the arrangement by not purchasing the product for an extended period of time, the manufacturer/out-of-state shipper may cite abandonment as "just and sufficient cause" for the Commission to terminate the exclusive distribution agreement. However, if a new out-of-state shipper (like Polish Folklore) enters into an agreement with the manufacturer or authorized seller to distribute a product, the new out-of-

state shipper cannot collaterally attack the original wholesaler's (e.g., Amtec) exclusive distribution agreement by arguing that the original wholesaler abandoned that agreement.[9]

III

CONCLUSION

The Commission did not act contrary to law, nor did it abuse its discretion, when it selected particular criteria to decide whether the two Zubr beer products are the same brand. The Liquor Control Act leaves the selection of relevant criteria to the Commission's discretion. Further, substantial evidence supports the Commission's factual findings. Accordingly, there is no merit to Polish Folklore's arguments that the Commission committed reversible error in deciding that the Zubr beer products are the same brand. Polish Folklore's alternative argument that the Commission should have terminated Amtec's exclusive distribution agreement for "just and sufficient cause" under § 30-17 (a) (2) is also unpersuasive, both on standing grounds and on its merits.

For the foregoing reasons, the Commission's Final Decision is AFFIRMED.

SO ORDERED.

Dated: November 24, 2020

/s/ Daniel J. Klau, Judge

[9] Polish Folklore argues that *In re: Johnny Barton* permits out-of-state shippers to make abandonment arguments. Polish Folklore's Reply Memorandum (dated May 22, 2020), 14. Polish Folklore misreads that decision. *In re: Johnny Barton* acknowledges that an out-of-state shipper may cite abandonment as grounds for termination *if the out-of-state shipper is a party to the exclusive distributor agreement that the shipper wants to terminate*. That is not the case here. Polish Folklore is an out-of-state shipper, but it is not the out-of-state shipper that has a distributorship agreement with Amtec.