City Beverages LLC v. Crown Imports LLC et al Doc. 105

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CITY BEVERAGES LLC,

Plaintiff,

v.

CROWN IMPORTS LLC et al.,

Defendant.

CASE NO. 3:22-cv-05756-DGE

ORDER ON SECOND MOTION FOR TEMPORARY RESTRAINING ORDER (DKT. NO. 91)

I. INTRODUCTION

This matter comes before the Court on Plaintiff's second motion for a temporary restraining order. (Dkt. No. 91.) For the reasons discussed herein, the Court DENIES the Motion.

II. BACKGROUND

A. Factual History

Plaintiff is City Beverages, LLC d/b/a Olympic Eagle Beverages ("Olympic Eagle"). (Dkt. No. 1 at 5.) Defendants are Constellation Brands, Inc. ("Constellation") and Crown

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Imports, LLC d/b/a Constellation Brands Beer Division ("Crown Imports"). (*Id*.) Crown Imports is a Constellation wholly-owned subsidiary. (*Id*. at 6.)

Olympic Eagle and Crown Imports operate under a Distribution Agreement originally entered between Barton Beers, LTD ("Barton") and Olympic Eagle (Dkt. No. 5-1), subsequently assigned to Crown Imports (Dkt. No. 5-2 at 2), and then subsequently amended by Crown Imports and Olympic Eagle (*Id*. at 3–8).

Constellation has sought to terminate the Distribution Agreement. Olympic Eagle asks the Court to enter a temporary restraining order preventing transfer of the distribution rights until after compensation due to Olympic Eagle for the distribution rights has been determined by agreement or arbitration.

1. Constellation's Acquisitions through 2013

In 1993, Constellation acquired Barton as its wholly-owned subsidiary. (Dkt. No. 98 at 2.) At that time, Barton was the sole importer of Modelo brand beer in the United States. (*Id*.) Modelo brand beer includes popular Mexican beer such as Modelo, Pacifica, Corona, and Victoria. (*Id*.)

In 2003, Barton entered into a distribution agreement with Olympic Eagle granting Olympic Eagle the right to distribute Modelo brands in a defined territory in the State of Washington. (*Id*.) Since 2003, the Distribution Agreement has been amended multiple times, including granting Olympic Eagle additional distribution rights to new brands or brand extensions in its territory. (*Id*.; Dkt. No. 5-2 at 3–8.)

In 2007, Constellation and Grupo Modelo formed Crown Imports in a 50-50 venture. (Dkt. No. 98 at 2.) As part of this formation, Constellation's subsidiary (Barton) transferred most all of its assets to Crown Imports, making Crown Imports the supplier of Modelo brand

beer within the western United States under various distribution agreements, including the 2003 Barton Distribution Agreement with Olympic Eagle. (*Id*.; Dkt. No. 5-2 at 2.)

In 2013, beer giant Anheuser-Busch, Inc. ("ABI") was primed to acquire Grupo Modelo. (Dkt. No. 98 at 2–3.) ABI manufactures, imports, or supplies beer brands in the United States, including the Budweiser, Busch, Michelob, Bud Light, and Natural Light brands. (*Id*. at 3.) The Department of Justice, expressing antitrust concerns over this potential acquisition, opposed the deal. The Department of Justice required Constellation to acquire Grupo Modelo's 50% share of Crown Imports, making Constellation the sole owner of Crown Imports. (*Id*. at 2–3.)

As part of the same action involving the Department of Justice, Constellation additionally "acquired the right to manufacture and distribute the Modelo Brands in the United States in perpetuity." (*Id*. at 3.) Where previously Constellation, through its subsidiary, only had the right to import Modelo brand beer from Mexico, as of 2013 Constellation obtained the right to manufacture and distribute Modelo brand beer within the United States. (*Id*.) Thus, Constellation, through various wholly-owned subsidiaries, including Crown Imports, has been "the sole brewer and importer of the Modelo Brands in the United States" since 2013. (*Id*.)

Also as part of the 2013 acquisition of the remaining interest in Crown Imports, Constellation was given the right to terminate ABI-owned distributors:

> [F]or ABI's majority-owned distributors ("ABI-Owned Distributors") that distribute Modelo Brand Beer, Constellation will have a window of opportunity to terminate that distribution relationship and direct the ABI-owned distributor to sell the distribution rights to another distributor. Similarly, should ABI subsequently acquire any distributors that have contractual rights to distribute Modelo Brand Beer, Constellation may require ABI to sell those rights.

(Dkt. No. 93 at 26; *see also* Dkt. No. 98 at 3.)

2. Constellation's Post-2013 Distributor Terminations

In accordance with its authority, Constellation terminated distribution agreements with ABI-Owned Distributors in 2015 but not distribution agreements with independent distributors that also distributed ABI products, such as Olympic Eagle. (Dkt. No. 98 at 3.) On April 1, 2014 and August 22, 2017, Crown Imports amended the Distribution Agreement with Olympic Eagle and otherwise reaffirmed its contractual relationship with Olympic Eagle. (Dkt. No. 5-2 at 3–4.)

Between 2018 and 2021, "Constellation terminated eight independent California Distributors (e.g., distributors not owned by ABI)[.]" (Dkt. No. 98 at 4.) Constellation asserts "[t]he decision to terminate these distributors had nothing to do with Constellation's acquisition of the remaining ownership interest in Crown Imports back in 2013[.]" (*Id*.) Instead, Constellation states these terminations were made after it "evaluated the territories and markets and determined that its interests would be better served by other distributors." (*Id*.) Constellation states that "[a]pproximately 17% of Constellation's beer volume is sold by distributors that concurrently distribute ABI products and approximately 34% of Constellation's beer distributors also sell ABI brands." (*Id*.) It identifies that "there is at least one distributor in California with concurrent ABI and Constellation distribution rights; Constellation has no plans to terminate this distributor." (*Id*.)

Notwithstanding that Crown Imports is the only signatory to the Distribution Agreement at issue in this litigation, Constellation and Crown Imports admitted that "Constellation is the beverage supplier under the Distribution Agreement." (*Compare* Dkt. Nos. 1 at 7 and 52 at 6.[1])

[1] During oral argument on the present motion, the Court questioned whether Olympic Eagle had alleged facts sufficient to pierce Crown Imports' corporate veil or to conclude that Crown Imports was Constellation's alter ego. Because Constellation admitted it was the "supplier" under the Distribution Agreement, the Court assumes Constellation and Crown Imports are one and the same for purposes of this motion.

B. Procedural History

On September 8, 2022, Constellation informed Olympic Eagle it was terminating the Distribution Agreement. (Dkt. No. 7 at 2.) On October 6, 2022, Olympic Eagle filed a complaint, requesting preliminary and permanent injunctions against Constellation/Crown Imports' without-cause termination of the Distribution Agreement. (Dkt. No. 1.) Olympic Eagle put forth three bases for relief: Washington's Wholesale Distributor/Supplier Equity Agreement Act, Washington's Franchise Investment Protection Act, and the plain terms of the Distribution Agreement itself.

On November 4, 2022, Olympic Eagle filed a temporary restraining order ("TRO") requesting the Court prevent termination of the Distribution Agreement while it adjudicated the then-pending preliminary injunction. (Dkt. No. 28.) On November 8, 2022, the Court granted the TRO. (Dkt. No. 40.) On December 12, 2022, the Court ruled in favor of Olympic Eagle on the preliminary injunction and enjoined Constellation from terminating the Distribution Agreement without cause. (Dkt. No. 51.) In its preliminary injunction order, the Court reasoned that Olympic Eagle was likely to succeed on the merits based on its interpretation that the Wholesaler Act did not allow without-cause terminations. On January 4, 2023, Constellation appealed to the Ninth Circuit. (Dkt. No. 55.) On July 20, 2023, the Ninth Circuit vacated the preliminary injunction. (Dkt. No. 78.) It concluded, "[a]lthough the text of the Act does not expressly state that suppliers always have the right to terminate distribution agreements without cause, it clearly allows a supplier to contract for that right." (*Id*. at 2.) It further concluded,

"[t]he [Distribution] Agreement grants [Constellation/Crown Imports] the right to terminate without cause." (*Id.* at 4.[2])

On July 21, 2023, "Constellation issued notice to Olympic Eagle . . . stating that it 'is terminating the Distribution Agreement dated October 22, 2003.'" (Dkt. No. 86 at 2.)

The parties, and the presumed successor distributor CoHo Distributing LLC ("Columbia"), agreed the termination of the Distribution Agreement would not become effective until 60 days from the July 21, 2023 termination notice or 30 days after the Ninth Circuit's mandate issued, whichever was later. (*Id*. at 4.) The parties also stipulated to modify the deadlines set forth in Washington Revised Code § 19.126.040(7)–(8),[3] and instead agreed that, "[i]n the event that the termination contemplated by the Termination Notice becomes effective,

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[2] As to Olympic Eagle's Franchise Investment Protection Act claim, the Ninth Circuit determined such claim would unlikely succeed and that, even if Olympic Eagle could establish such claim, it was likely that Olympic Eagle waived any right to injunctive relief as a remedy for a Franchise Investment Protection Act violation. (*Id*. at 4–5.)

[3] The provisions provide:

> (7) In the event the terminated distributor and the successor distributor do not agree on the fair market value of the affected distribution rights within thirty days after the terminated distributor is given notice of termination, the matter must be submitted to binding arbitration. Unless the parties agree otherwise, such arbitration must be conducted in accordance with the American arbitration association commercial arbitration rules with each party to bear its own costs and attorneys' fees;
> (8) Unless the parties otherwise agree, or the arbitrator for good cause shown orders otherwise, an arbitration conducted pursuant to subsection (7) of this section must proceed as follows: (a) The notice of intent to arbitrate must be served within forty days after the terminated distributor receives notice of terminated distribution rights; (b) the arbitration must be conducted within ninety days after service of the notice of intent to arbitrate; and (c) the arbitrator or arbitrators must issue an order within thirty days after completion of the arbitration[.]

Wash. Rev. Code § 19.126.040(7)–(8).

and Olympic Eagle and Columbia do not agree on the fair market value of the affected distribution rights within thirty-five days following the issue of the Ninth Circuit's Mandate . . . the matter must be submitted to binding arbitration[.]" (*Id*.) The stipulation contained a clause noting that "Nothing in this Stipulation shall be construed as a waiver by either party of any claims, defenses, or any other rights related to this dispute." (*Id*. at 5.) It also clarified that, "[f]or the avoidance of doubt, Olympic Eagle disputes Constellation's right to terminate the distribution agreement." (*Id*.)

On September 19, 2023, the Ninth Circuit denied Olympic Eagle's request for rehearing en banc. (Dkt. No. 88.) The Ninth Circuit issued its mandate on October 12, 2023, effectuating its July 20, 2023 judgment. (Dkt. No. 89.)

Constellation asserts that, per the parties' stipulation, the Distribution Agreement should be terminated on November 10, 2023, 30 days after the mandate issued. On October 31, 2023, Olympic Eagle filed a second temporary restraining order, arguing termination cannot take place until after the fair market value of the distribution rights has been determined. (Dkt. No. 91.)

C. Claims of Irreparable Harm.

Olympic Eagle identifies, it "would need to expand geographically or acquire additional brands to try to make up for the significant loss of revenue and profit from the loss of Constellation brands." (Dkt. No. 92 at 3.) It states, "[t]his will take time and significant amounts of money." (*Id*.) At the same time, it acknowledges that "[e]ven with time and money, success [in expanding or acquiring new brands] is highly speculative as [it] [has] tried to buy significant brands in the past and [has] been unsuccessful." (*Id*.; *see also* Dkt. No. 93 at 6) ("Because we have sought to buy other significant brands in the past and have been unsuccessful, it is speculative in the least to say that we will succeed now.")).

Olympic Eagle identifies that "[t]he second notice from Defendants of losing Constellation brands put Olympic Eagle in default on its loan from Wells Fargo." (Dkt. No. 92 at 3.) It has $11 million currently outstanding on its bank loan. (*Id*.) "Wells Fargo has put Olympic Eagle on notice that the bank could refuse to let Olympic Eagle borrow additional funds on [its] current loan[.]" (*Id*.) Olympic Eagle asserts "it will be difficult if not impossible to obtain new financing in an amount necessary to satisfy [its] working capital needs and reinvest in the business from another bank because of . . . reduced cashflows from losing Constellation's brands." (*Id*. at 4.) It asserts it will face significant financial repercussions if the transfer of rights occurs before it "receive[s] a fair market value payment[.]" (*Id*.)

III. DISCUSSION

A. The Parties' Stipulation

Constellation asserts the negotiated stipulation entered on August 28, 2023 precludes Olympic Eagle from raising any argument under Washington Revised Code § 19.126.040(4). (Dkt. No. 97 at 7–8.)

Notwithstanding the Parties' stipulation as to the procedure related to Constellation's termination notice, the timing of its effect and the transfer of distribution rights, it is undeniable that Olympic has not waived its claims asserted in this Motion. (Dkt. No. 86 at 5) ("Nothing in [the] Stipulation shall be construed as a waiver by either party of any claims, defenses, or any other rights related to this dispute. For the avoidance of doubt, Olympic Eagle disputes Constellation's right to terminate the distribution agreement."). Based on explicit language in the Stipulation, the Court concludes the stipulation has no effect on Olympic Eagle's attempt to seek a temporary restraining order under a new theory.

B. Temporary Restraining Order – Legal Standard

A TRO is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). The standard for issuing a TRO is the same as that of a preliminary injunction. It requires a party to demonstrate "(1) 'that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest.'" *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (citing *Winter*, 555 U.S. at 20).

As an alternative to the *Winter* test, a preliminary injunction is appropriate if "serious questions going to the merits were raised and the balance of the hardships tips sharply in the plaintiff's favor," thereby allowing preservation of the status quo when complex legal questions require further inspection or deliberation. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011). However, "'serious questions going to the merits' and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, *so long as* plaintiff also shows that there is a likelihood of irreparable damage and that the injunction is in the public interest." *Id*. at 1135 (emphasis added). The moving party bears the burden of persuasion and must make a clear showing that it is entitled to such relief. *Winter*, 555 U.S. at 22.

C. TRO Analysis

Olympic Eagle argues Washington Revised Code § 19.126.040(4) prohibits Constellation from "terminating Olympic Eagle['s Distribution Agreement] until after the fair market value arbitration initiated by Columbia has concluded." (Dkt. No. 91 at 12.) It asserts the termination of the Distribution Agreement in this case results from Constellation's 2013 acquisition of manufacturing and distribution rights and Constellation's election to transfer the Distribution

Agreement from Olympic Eagle to Columbia. (*Id*. at 16–18.) As support, Olympic Eagle notes that Constellation's 2013 acquisition of manufacturing and distribution rights made Constellation ABI's direct competitor, and asserts that ABI "would not be terminating its own distributors without cause . . . [and] thus the termination is a consequence of Constellation acquiring control of the [Modelo] brands." (*Id*. at 18.) At a minimum, Olympic Eagle argues there are serious questions as to whether § 19.126.040(4) prevents the transfer of the Modelo brands to Columbia until after the fair market value arbitration is completed. (*Id*. at 20.)

Constellation argues Olympic Eagle is not likely to prevail on its claims that § 19.126.040(4) bars transfer of distribution rights until after completion of the fair market value arbitration. It asserts there must be a direct connection between the acquisition of new rights *and* the election of a different distributor; otherwise, "any decision to terminate a distributor would ultimately be a consequence of its past acquisition of brand rights" as "any termination . . . necessarily 'results from' its prior acquisition of those rights." (Dkt. No. 97 at 15.) Constellation further asserts Olympic Eagle advances "conspiracy theories and speculation" to argue the termination in this case resulted from acquisition of rights that occurred nine years prior to the notice of termination. (*Id*. at 17.) Constellation points out that it executed amendments to the Distribution Agreement with Olympic Eagle after the 2013 acquisition reaffirming Olympic Eagle's distributor status and that currently "34% of its distributors nationwide also distribute ABI products." (*Id*. at 15.) If further offers that its subsequent market evaluations performed well after the 2013 acquisition drove the decision to terminate Olympic Eagle's Distribution Agreement, not the fact that it acquired rights in 2013. (*Id*.)

Washington Revised Code § 19.126.040(4) provides in part:

> . . . In the case of terminated distribution rights resulting from a supplier acquiring the right to manufacture or distribute a particular

> brand and electing to have that brand handled by a different distributor, the affected distribution rights will not transfer until such time as the compensation to be paid to the terminated distributor has been finally determined by agreement or arbitration[.]

At issue is whether the termination of the Distribution Agreement resulted from Constellation's 2013 acquisition of rights and its election to change distributors. The phrase "resulting from" is not defined in the statute. Nor does there appear to be a decision interpreting this phrase as used in this statute.

Olympic Eagle argues "resulting from" requires only that the termination "is a consequence of" Constellation's 2013 acquisition of manufacturing and distribution rights. (Dkt. No. 91 at 18.) As support, Olympic Eagle relies on the dictionary definition of "result" and a state court decision, *State v. Velezmoro*, 384 P.3d 613 (Wash. Ct. App. 2016). In the context of a state criminal restitution statute, *Velezmoro* recognized the application of a "but-for" test in applying the term "resulting from." It stated and held:

> Generally, the but-for test is the way to prove that one event was the factual cause of another. But where the application of that test leads to anomalous results, alternative ways of proving causation may apply. In the circumstances here, where an unknown number of people possessed pornographic images of Vicky's abuse, each possessor had a share in causing her harm. The trial court did not err in determining that Velezmoro's offense was a cause of Vicky's loss. We affirm.

384 P.3d at 614. Accordingly, Olympic Eagle asserts "but-for" or actual causation is all that § 19.126.040(4) requires. (Dkt. No. 100 at 3–4.)

Constellation disputes *Velezmoro*'s application. It asserts, "the question is whether an event (acquisition of brand rights) resulted in the supplier's act (termination). In other words, it presents a question of the supplier's motivation . . . [,] not whether the acquisition of brand rights was in the chain of events leading to the termination." (Dkt. No. 97 at 17.) Furthermore, Constellation argues, Olympic Eagle's interpretation "merely requires that a brand acquisition

occur at any point before the termination. But that would include virtually *all* terminations and the exception would swallow the rule." (*Id*.)

The Court agrees "resulting from" as used in § 19.126.040(4) indicates a "but-for" or actual causation requirement but disagrees that the acquisition factor should be considered in isolation from the election factor. In other words, because § 19.126.040(4) requires that termination results from the acquisition of rights and the election of a new distributor, both requirements relative to one another must be the actual, or but-for, cause of the termination. To fail to recognize a relationship between the two criteria would mean that every termination would fall within § 19.126.040(4) regardless of when the election of a new distributor occurred relative to the acquisition of rights and regardless of whether the decision to elect a new distributor was for reasons completely independent of the acquisition of the rights.[4]

With this understanding in mind, the Court considers whether Olympic Eagle has established it is entitled to a temporary restraining order.

1. Likelihood of Success

Pointing to its current Equity Agreement with ABI, Olympic Eagle asserts its rights under the 2003 Barton Distribution Agreement (and subsequent amendments) "would not have been terminated without cause" because the ABI Equity Agreement "does not allow AB to terminate . . . without cause." (Dkt. No. 93 at 6.) According to Olympic Eagle, this shows the termination of the Distribution Agreement resulted from Constellation's 2013 acquisition of rights.

[4] For example, under Olympic Eagle's interpretation, if Company A acquired rights in 1901 and subsequently, 100 years later in 2001, decided to elect a new distributor for reasons completely unrelated to the acquisition that occurred in 1901, the terminated distributor could avail itself of § 19.126.040(4). This scenario, in the Court's view, would be an inappropriate application of § 19.126.040(4)

But this conclusion is speculative. Even if ABI had completed its acquisition of Modelo Grupo in 2013, it is unknown whether ABI would have maintained the 2003 Barton Distribution Agreement as-is, whether it would have modified it, whether it would have terminated it, or whether it would have negotiated a new distribution agreement covering Modelo brands identical or even similar to the Equity Agreement under which Olympic Eagle currently operates.[5] Accordingly, reliance on Olympic Eagle's Equity Agreement to establish the termination of the Distribution Agreement resulted from the 2013 acquisition of rights is misplaced.

Alternatively, Olympic Eagle argues the Distribution Agreement's termination, initially attempted in 2022, resulted from Constellation's 2013 acquisition of rights because it became ABI's direct competitor and chose to exercise its right to terminate ABI-owned Distributors in 2015. (Dkt. No. 100 at 4–7.) As the theory goes, because Constellation terminated the Seattle ABI distributor in 2015 and transferred those rights to Columbia, Olympic Eagle's termination nine years after the 2013 acquisition and seven years after the termination of the Seattle ABI distributor is the culmination of Constellation's desire "to consolidate its Puget Sound area distribution." (Dkt. No. 100 at 6.) Put another way, "Olympic Eagle's termination is a continuation of Constellation's efforts to redirect its route to market for the Modelo brands it manufactures away from the distributors aligned with its competitor[.]" (Dkt. No. 91 at 8–9.)

The challenge with this theory is that it is just a theory, based solely on Olympic Eagle's belief as to Constellation's motives and the timing of such motives relative to the 2013 acquisition of rights. Olympic Eagle presents no facts establishing that, as of 2013, Constellation

[5] The Department of Justice clearly was concerned about the anti-trust implications of ABI's acquisition of Modelo and, arguably, ABI could have directed distribution of Modelo brands to ABI-owned distributors. The point is one simply does not know what ABI would have done with the 2003 Barton Distribution Agreement had it acquired Modelo.

planned to eliminate all ABI-affiliated distributors from distributing Modelo brands.[6] In contrast, the record establishes that after the 2013 acquisition of rights, Olympic Eagle's distribution rights were twice affirmed through amendments to the Distribution Agreement, and nine years lapsed between acquisition of rights and the first attempt to terminate the Distribution Agreement. It also is undisputed that Constellation continues to maintain distribution agreements with ABI-affiliated distributors, currently making up 34% of its distributors.

Furthermore, although Constellation only received manufacturing and distributing rights for Modelo brand beer in 2013, it had been sole importer of the beer, via its subsidiaries Barton and Crown Imports, since 1997. If Constellation had wanted to freeze out ABI-affiliated distributors from selling Modelo brand beer to their retailers, it could have done so any time after 1997. Constellation's acquisition of manufacturing and distribution rights in 2013 did not provide it with any additional power to cut off ABI-affiliated distributors from Modelo brand products; as sole importer, that power was already in its hands.

Accordingly, based on the record presented, Olympic Eagle fails to establish it will likely succeed on its claim that the termination of the Distribution Agreement resulted from Constellation's acquisition of rights *and* its election of a different distributor.

This factor weighs against a preliminary injunction.

2. Irreparable Harm

For purposes of this Motion, the Court focuses on the harm that would result from the immediate transfer of rights versus a transfer occurring after arbitration. This is because harm to

[6] At oral argument, Olympic Eagle asserted it was prevented from conducting further discovery on this and other issues because of the discovery stay. However, Olympic Eagle never argued discovery was necessary to establish a claim under § 19.126.040(4). In fact, as Constellation notes, the § 19.126.040(4) claim was never previously raised.

Olympic Eagle appears inevitable as the Ninth Circuit has already ruled the Distribution Agreement grants Constellation the ability to terminate its distributions rights without cause—and Constellation in fact has initiated such termination. Thus, the issue is whether irreparable harm will result from immediate transfer of rights versus eventual transfer. This is a harm distinct from the irreparable harm already resulting from the termination of the Distribution Agreement.

"Irreparable harm is traditionally defined as harm for which there is no adequate legal remedy, such as an award of damages." *Arizona Dream Act Coal. V. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014) (citation omitted). In other words, "financial injury . . . will not constitute irreparable harm if adequate compensatory relief will be available in the course of litigation." *Mountaineers Foundation v, The Mountaineers*, 2023 WL 36333430 (W.D. Wash. May 24, 2023) (quoting *Goldie's Bookstore, Inc. v. Superior Ct. of State of Cal.*, 739 F.2d 466, 471 (9th Cir. 1984) (internal quotations omitted).

Olympic Eagle asserts the transfer of rights cannot occur immediately because it cannot wait until arbitration to receive compensation. It needs to take steps to expand geographically or acquire additional brands to make up for the loss of revenue and profit that will occur from losing the Modelo brand. However, Olympic Eagle presents no evidence that it has current opportunities to expand or acquire new brands. Rather, it notes that "success is highly speculative" and that past attempts to buy additional brands have been unsuccessful. Moreover, the record lacks information as to Olympic Eagle's current financial status. There is no information about its current assets relative to the funds it would take to acquire new brands or territory. Thus, even if Olympic Eagle received immediate payment through arbitration, it is speculative as to whether it would succeed in expanding or acquiring new brands.

Olympic Eagle also identifies that it already is in default of its bank loan as a result of Constellation's termination notice. This means the transfer of rights now or after arbitration does not impact its default status. And, while Olympic Eagle identifies that its bank has given it notice that it "could refuse" additional funds, the record does not establish the bank would refuse additional funds if the transfer of rights were to immediately occur. And while there certainly will be financial repercussions, Olympic Eagle does not identify that its operations would cease if an immediate transfer occurs. Again, financial harm is inevitable because a termination is occurring.

Olympic Eagle also asserts harm from the loss of goodwill due to the transfer of rights. This loss of goodwill results from the termination of the Distribution Agreement and not so much as a result of whether the transfer occurs now or after arbitration.

Based on the record presented, the Court is unable to find Olympic Eagle has put forth sufficient evidence to show it will face irreparable harm that is *distinct* from the harm caused by the termination of the Distribution Agreement.

This factor weighs against a preliminary injunction.

3. Balance of Equities

While the Court concludes Olympic Eagle has not identified irreparable harm resulting from immediate transfer that is distinct from the irreparable harm caused by the termination of the Distribution Agreement, the harm Olympic Eagle would suffer if a preliminary injunction were not granted is still greater on balance than the harm Constellation would suffer from the issuance of a permanent injunction.

This is because any harm Constellation complains of would only be temporary. Constellation holds all rights to manufacture and distribute the Modelo brands. It owns the

Modelo brand market in the region subject of the Distribution Agreement. There is no evidence that Constellation, through its distributors, would be unable to maintain its relationships with the retailers or that sales of its products would forever be injured. In fact, there is no evidence there would be a gap in the delivery of Modelo products to retailers if an injunction were granted. Thus, as compared to the financial harm Olympic Eagle will suffer from a delay in compensation, Constellation likely would not suffer any significant financial harm.

This factor weighs in favor of granting the Motion.

4. Public Interest

"When the reach of an injunction is narrow, limited only to the parties, and has no impact on non-parties, the public interest will be 'at most a neutral factor in the analysis rather than one that favor[s] [granting or] denying the preliminary injunction.'" *Stormans, Inc.*, 586 F.3d at 1138–1139 (citations omitted). "If, however, the impact of an injunction reaches beyond the parties, carrying with it a potential for public consequences, the public interest will be relevant to whether the district grants the preliminary injunction. *Id*. at 1139.

Olympic Eagle argues that "compliance with the law" is in the public interest. (Dkt. No. 91 at 26.) Olympic Eagle contends that Constellation violated the law in terminating their Distribution Agreement without cause and so the TRO is in the public interest. (*Id*.) Notwithstanding Olympic Eagle's belief that Constellation violated the law in terminating Distribution Agreement without cause, the Ninth Circuit has already determined Constellation's without cause termination is lawful. (Dkt. No. 78 at 4) ("The [Distribution] Agreement grants [Constellation/Crown Imports] the right to terminate without cause."). Thus, determination of compensation for the distribution rights is a private affair resting squarely in the interests of the parties and not the public. And, because it does not appear the termination of the Distribution

Agreement would create a lapse in the public's ability to purchase Modelo products, there is no impact on the public.

This factor weighs against a preliminary injunction.

5. *Wild Rockies/Winter* Alternative Test Not Applicable

Olympic Eagle argues that in the event it is unable to convince the Court of its likelihood of success on the merits of its § 19.126.040(4) claim, at a minimum it has raised serious questions about the merits of its claim, which means the alternative *Wild Rockies/Winter* test for obtaining injunctive relief applies. (Dkt. No. 91 at 20.)

However, as already noted, the alternate *Wild Rockies/Winter* is inapplicable if a petitioner fails to establish the likelihood of irreparable damage and that the injunction is in the public interest. *Alliance for the Wild Rockies*, 632 F.3d at 1135 ("'serious questions going to the merits' and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as plaintiff also shows that there is a likelihood of irreparable damage and that the injunction is in the public interest.").

Having concluded the records fails to establish irreparable damage or public interest in the grant or denial of a preliminary injunction, Olympic Eagle is not entitled to relief under the *Wild Rockies/Winter* test.

IV. CONCLUSION

Because Olympic Eagle has failed to establish a likelihood of success, irreparable harm, or that a grant of the Motion is in the public interest, the Court DENIES Plaintiff Olympic Eagle's second motion for a temporary restraining order. (Dkt. No. 91.)

Dated this 9th day of November 2023.

David G. Estudillo
United States District Judge