

Boston Beer Corp. v Boening Bros., Inc.
2021 NY Slip Op 32834(U)
December 27, 2021
Supreme Court, New York County
Docket Number: Index No. 655582/2021
Judge: Andrew Borrok
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ANDREW BORROK PART 53

Justice

-----X

BOSTON BEER CORPORATION, MANHATTAN BEER
DISTRIBUTORS LLC,

Plaintiff,

- v -

BOENING BROTHERS, INC., OAK BEVERAGES, INC.,
DANA DISTRIBUTORS, INC., DUTCHESS BEER
DISTRIBUTORS, GASKO & MEYER, INC.

Defendant.

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INDEX NO. 655582/2021

MOTION DATE _____

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

Upon the foregoing documents and for the reasons set forth on the record (12.27.21), the preliminary injunction must be denied because the movant has failed to establish irreparable harm. (*Doldo Brothers, Inc. v Coors Brewing Company*, 2008 WL 657252 [ND NY 2008]; *Dana Distributors, Inc. v Crown Imports, LLC*, 2008 WL 458577 [2d Dept 2008]).

The Plaintiffs brought this action knowing that they needed to comply with Section 55-C of the Alcohol and Beverage Control Law prior to terminating the distribution agreement. The legislature required that consolidation plans be reasonable, non-discriminatory, essential and contemporaneous.

On May 24, 2021 (the **May 24th Letter**; NYSCEF Doc. 52), in response to receiving Boston Beer's Notice of Regional Wholesale Network Consolidation Policy dated March 24, 2021, the

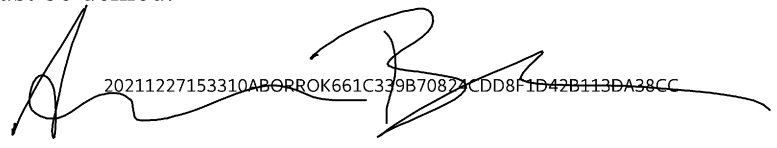
distributors objected because they alleged that it was not reasonable, essential, non-discriminatory or contemporaneous, and therefore failed to constitute “good cause” under the statute. Among other reasons set forth in the May 24th Letter, the distributors made clear that the policy was not reasonable nor essential because (i) Boston Beer “appear[ed] to be applying one consolidation policy nationally (consolidation of Dogfish Head distributors) and an entirely different policy in the State of New York” and (ii) it permitted Boston Beer to terminate distributors that had no connection with the Dogfish Head brand (*id.*) Additionally, and as the May 24th Letter makes clear, the distributors objected to the consolidation plan as unreasonable because (x) the concern that the Dogfish Head Acquisition (the **DH Acquisition**) caused the distribution network to grow too big can not be a basis under the statute because this was known at the time of the DH Acquisition and therefore can not be used as pretext for terminating distribution relationships with long-term distributors (as this then could be used in an acquisition and gut the protections afforded to distributors under the statute) and (y) that the alleged inefficiencies within the Boston Beer network were caused by Boston Beer and in any event predated the DH Acquisition -- (and noting that the distributor-movants were in fact the first distributors in their respective territories and if Boston Beer had offered these products to the distributor-movants themselves, they would have been the only distributors of these products in the region). Stated differently, the May 24th Letter makes clear the distributor-movants timely objected to the consolidation plan as unreasonable because the reasons for the consolidation were pretextual and caused by Boston Beer itself or otherwise predated the DH Acquisition. Therefore, on the record before the court, the movant has met its burden in demonstrating a likelihood of success on the merits.

Additionally, as this court previously explained, the statute is clear that equitable relief is available notwithstanding the fact that the action may also seek money damages. This explains both why the distributor-movants brought this motion and why the defendants seek to counterclaim for money damages and also seek equitable relief enjoying the consolidation itself.

However, the distributor-movants have failed to demonstrate irreparable harm. They merely indicate that the impact on their business would be “significant”. To wit, the distributor-movants fail to adequately quantify the impact on their business. Therefore, the injunction must be denied.

For the avoidance of doubt, on September 21, 2021, Boston Beer brought this action seeking a declaration that the proposed consolidation plan was “reasonable, nondiscriminatory and essential and fully complies with the Statute (NYSCEF Doc. No. 1 Paragraph 26) and on September 24, 2021, Boston Beer provided a 90 day notice of the consolidation policy (NYSCEF Doc. No. 5). On December 20, 2021 (i.e., before expiration of the 90 day notice), the distributor-movants brought this motion seeking an injunction. Stated differently, it is simply not correct that the distributor-movants waited until there was a “new status quo” to seek injunctive relief. Additionally, the court notes that “any confusion in the market” is created by Boston Beer’s own conduct in sending out the undated announcement (NYSCEF Doc. No. 57) that as December 21, 2021 Manhattan Beer would be the new distributor prior to paying the distributor-movants as required by the statute.

However, as set forth above, because the distributor-movants have failed to demonstrate irreparable harm, the preliminary injunction must be denied.


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12/27/2021
DATE

ANDREW BORROK, JSC

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	