

STATE OF CONNECTICUT
DEPARTMENT OF CONSUMER PROTECTION

IN THE MATTER OF

Ace Distributing, LLC
Walter Kaczynski, Shipper Permittee
Ace Distributing LLC, Backer
Liquor Permit # LIW.580
Docket No. 10-1101

Case No. 2010-566
August 26, 2010

MEMORANDUM OF DECISION

This matter involves a request by Slocum & Sons of Maine, Inc. for the termination of Ace Distributing, LLC, as distributor in the State of Connecticut of Karma Tequila. Slocum & Sons of Maine, Inc. (hereinafter "Slocum") is the holder of out-of-state shipper liquor permit LSL.638 and Ace Distributing, LLC (hereinafter "Ace") is the holder of wholesaler liquor permit LIW.580. A formal administrative hearing was held on July 1, 2010, at which time Pasquale Morabito, general manager, appeared on behalf of Ace, and Maureen Pesticci, president, appeared on behalf of Slocum. At the conclusion of the hearing, the record was left open until July 12, 2010 for the submission of additional documents. Both parties submitted additional written materials.

The hearing was properly held in accordance with Section 30-17(a)(2)(B) of the Connecticut General Statutes. Section 30-17(a)(2)(B) of the Connecticut General Statutes provides the method by which termination or diminishment of a distributorship may occur. The statute provides, *inter alia*,

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...For the purposes of this section, "just and sufficient cause" means 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 a diminishment of a distributorship as the case may be.

The determination of what constitutes "just and sufficient cause" is a matter for this Commission, after considering 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).

Slocum formally requested termination by its letter of May 27, 2010 to Ace citing four reasons, upon which the determination must be based. First, only five bottles of Karma Tequila were sold each month during the months of December 2009 and January 2010. Second, solid sales leads from prospective customers were not followed up; this adversely affected the sales of Karma Tequila. Third, depletion reports were not provided for the months of February and March 2010. Fourth, there was an inventory showing forty bottles since January 2010 with no sales updates or reorders.

The following facts are found based upon the evidence adduced at the hearing: Karma Tequila is a super premium tequila. Joseph Flamini is the Connecticut Brand Ambassador for Karma, and he has visited both on-premises and off-premises locations in attempts to promote Karma. He provided Ace with solid leads of locations interested in the product, both current Ace customers and locations which presently did not deal with Ace. These leads were not adequately pursued by Ace and the product was not placed with those who desired it, to the detriment of Karma.

Based upon the evidence presented, Ace sold five bottles of Karma in December 2009 and five bottles in January 2010. Ace had an inventory of approximately 40 bottles of Karma in January, 2010. Despite repeated requests, depletion reports were not provided by Ace for February and March 2010. After the hearing, invoices were provided to the Department which may show some sales of Karma Tequila. However, lacking the repeatedly requested information from Ace, Slocum was correct in concluding at the time of its May 27, 2010 request to terminate, that there had been no sales or reorders of the product since January 2010.

The Liquor Control Commission's authority to prescribe the conditions under which distributorships may be terminated is a legitimate method of structuring the state's liquor distribution system. Schiefflin & Co., 194 Conn. at 183. Based upon the substantial evidence presented, we find there is just and sufficient cause to justify the termination of Ace as the distributor of Karma Tequila for the reasons set forth in Slocum's request to terminate. Slocum & Sons of Maine, Inc's request to terminate Ace is hereby granted.

**DEPARTMENT OF CONSUMER PROTECTION
LIQUOR CONTROL COMMISSION
BY**

Elisa A. Nahas, Esq.
Presiding Officer

Steven Somma, Commissioner

Angelo Faenza, Commissioner

Parties:

Ace Distributing, LLC, Walter Kaczynski, Shipper Permittee, 3 Ridgewood Road, Burlington, CT 06013

Maureen Pesticci, President, Slocum & Sons of Maine, Inc. P.O. Box 238, South Freeport, ME 04078

Non-Parties:

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