

**STATE OF CONNECTICUT**

**DEPARTMENT OF CONSUMER PROTECTION**

**IN THE MATTER OF**

New England Wines & Spirits Inc.  
Michael F. O'Hara, Shipper Permittee  
New England Wines & Spirits, Inc., Backer  
Liquor Permit LIW.534  
Docket No. 14-645

Case No. 2014-799  
November 4, 2014

**MEMORANDUM OF DECISION**

This matter involves a request by Dreyfus Ashby Inc. for the termination of New England Wine & Spirits, Inc. as distributor in the State of Connecticut of Nederburg Cabernet Sauvignon (LBD.54380), Nederburg Chardonnay (LBD.18201), Nederburg Lyric (LBD.10850), Nederburg Pinotage (LBD.18200), Nederburg Sauvignon Blanc (LBD.54381), Nederburg Shiraz (LBD.54382) and Nederburg Special Late Harvest (LBD.20186) New England Wine & Spirits Inc. is the holder of wholesaler liquor permit LIW.534, and Dreyfus Ashby Inc. is the holder of out of state shipper liquor permit LSL.604.

A formal administrative hearing was held on September 25, 2014. Michael F. O'Hara, shipper permittee, appeared on behalf of New England Wines & Spirits, Inc., and Eileen Fable appeared with counsel on behalf of Dreyfus Ashby, Inc. At the conclusion of the hearing the record was left open for research of the department's records concerning the appointment history for the brands at issue.

The hearing was 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 following facts are found based upon the evidence adduced at the hearing. On September 1, 1992, Dreyfus Ashby Inc. (hereafter "Dreyfus") appointed New England Wines & Spirits Inc. (hereafter "New England") as distributor of certain Nederburg brands. In 2000 and 2002, additional Nederburg brands were appointed to New England by Dreyfus. In February 2006, Dreyfus dualled these products with World Wide Wines (now Brescome Barton, hereafter "Brescome") effective August 6, 2006. Statutorily required notice to New England was provided by Dreyfus by letter to New England dated February 2, 2006; the 2006 dualing was therefore effective and proper, and since August 2006, Brescome has also represented the Nederburg products in Connecticut.

By letter of August 7, 2013, Dreyfus attempted to appoint Slocum & Sons as an additional distributor of Nederburg products. However, this

attempt to appoint Slocum as an additional distributor was not done in accordance with the notice requirements of Section 30-17(a)(2), Connecticut General Statutes, is thus not effective, and Dreyfus was so notified. As of this time, the legal distributors for Nederburg wines in Connecticut are New England and Brescome.

The market for South African wines is growing. New England currently deals directly with Distell in South Africa and brings in Two Oceans wines. Distell also represents Nederburg wines. New England wishes to retain its rights to Nederburg products so that if in the future New England is able to purchase Nederburg products directly from Distell at a more favorable price than that available through Dreyfus, New England could combine Two Oceans wines and Nederburg wines in shipping containers, thus obtaining a competitive shipping price advantage.

New England has not ordered any Nederburg products since its last order in 2008. However, Brescome has ordered between 62 and 835 cases of product annually between 2006 and 2013 from Dreyfus and therefore, Nederburg wines have been available for purchase in Connecticut. The Nederburg products have been represented in the Connecticut marketplace consistently since at least 2006 by either New England or Brescome or by both.

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).

Based upon the substantial evidence presented and in consideration of the equities, we find that “just and sufficient cause” has not been established by Dreyfus which would justify the termination of New England’s distributorship. Accordingly, we hereby deny Dreyfus’s request to terminate New England as distributor of the Nederburg products in Connecticut.

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

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Elisa A. Nahas, Esq.  
Presiding Officer

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Angelo Faenza, Commissioner

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Steven Somma, Commissioner

*Parties:*

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*Non-Parties:*

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Connecticut Beverage Journal  
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Connecticut State Library  
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