



## **Amtec International of NY Corp. v. Polish Folklore Import Co., Inc.**

2023 | Cited 0 times | E.D. New York | March 31, 2023

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK AMTEC  
INTERNATIONAL OF NY CORP., Plaintiff,

v. POLISH FOLKLORE IMPORT CO., INC., Defendant.

### MEMORANDUM AND ORDER

20-CV-3 (LDH) (PK)

, United States District Judge:

Plaintiff this action against Polish Folklore Defendant , Law § 55- Alcoholic Beverages Practices Act. Defendant moves pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure to dismiss amended complaint in its entirety.

BACKGROUND 1 Plaintiff is a multi-brand distributor and importer of alcoholic and beverage products. (Am. Compl. ¶ 2, ECF No. 17.) On or about January 11, 1998, Plaintiff entered into an Import pursuant to which it became the exclusive importer of in New York, Connecticut, and New Jersey. (Id. ¶ 8.) Between February and March 1998, Plaintiff was registered as the exclusive distributor for Zubr in New Jersey, Connecticut, and New York, and thereafter commenced exclusive distribution of Zubr in those states. (Id. ¶¶ 10 13.) Two years

1 The following facts taken from the amended complaint (ECF No. 17) are assumed to be true for the purpose of this memorandum. For a more detailed recitation of the background of this case, see Amtec International of NY Corp. v. Polish Folklore Import Co., No. 20-cv-0003, 2022 WL 992565, at \*1 2 (E.D.N.Y., Mar. 31, 2022). later, on December 31, 2000, Dojlidy and Plaintiff renewed the distribution agreement (the , which extended (Id. ¶ 14.)

Brewery and acquired the rights to manufacture Zubr. (Id. ¶ 6.) KP reappointed Plaintiff to distribute Zubr in New York, New Jersey, and Connecticut, and Plaintiff continued to do so until at least September 2003. (Id. ¶¶ 17, 19.) KP ultimately withdrew Zubr from the United States market in August 2005. (Id. ¶ 21.) However, it s. (Id. ¶ 22.)

In April 2018 submitted an Application for Certificate of Label Approval to the U.S. Department of Treasury,



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Alcohol and Tobacco Tax and Trade Bureau in anticipation of reintroducing Zubr to the United States market. (Id. ¶¶ 4, 25.) Defendant subsequently attempted to terminate Plaintiff's exclusive distribution rights for Zubr in Connecticut, but was foreclosed from this effort by Department of Consumer Protection. (Id. ¶¶ 26-27.) Undeterred, Defendant proceeded to appoint two new exclusive distributors for Zubr in New York and New Jersey. (Id. ¶ 28.) Defendant failed to provide Plaintiff with any formal notice of termination in either jurisdiction. (Id. ¶ 29.)

### STANDARD OF REVIEW

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A claim is facially plausible when the alleged facts allow the court to draw a *Id.* While this *id.*, Morris v. Northrop Grumman Corp., 37 F. Supp. 2d 556, 565 (E.D.N.Y. 1999). Court must merely determine whether the complaint itself is legally sufficient, and, in doing so, *Id.* (citations omitted).

DISCUSSION As with the original complaint in this matter, Plaintiff's amended claims arise under New ABC Practices Act BP, each of which regulate the relationships between brewers,

distributors, and local retailers of alcohol and beverage products. See *Amtec Int'l of N.Y. Corp. v. Polish Folklore Import Co.*, No. 20-CV-0003, 2022 WL 992565, at \*3 (E.D.N.Y., Mar. 31, 2022) *Amtec I*. In addressing Plaintiff's original complaint, the Court determined that Plaintiff failed to plead adequately that Defendant was subject to ABC or MABPA. *Id.* at \*6. Specifically, the Court explained that a brewer falls outside of the reach of ABC unless it sells or offers to sell beer to a wholesaler in the state of the New York. *Id.* Likewise, MABPA only extends to the supply, distribution, or sale of products that occur within New Jersey. *Id.* Because the Court found that Plaintiff failed to plead a sale by Defendant in either New York or New Jersey, Plaintiff necessarily failed to state a claim under either ABC or MABPA. *Id.* at \*5-6. Defendant, in its renewed motion to dismiss, maintains that the amended complaint suffers

from the same deficiencies fatal to the original complaint, and should be dismissed accordingly. (Def. Mot. at 5, ECF No. 22.). The Court agrees.

Most of the allegations pleaded in the original complaint remain unchanged here. That said, Plaintiff helpfully identifies the material changes in the amended complaint as follows:

(1) PFI sells and offers to sell Zubr Brand products to duly licenses

distributors in the States of New York and New Jersey, with the sales actually taking place in New York and New Jersey. (2) Brand product in New York and New Jersey

constituted (3) [Dojlidy] expressly appointed Amtec as distributor to sell [Dojlidy]



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products in the State of New York and New Jersey. Moreover, the 2000 Agreement purchase the Products for the purposes of distributing the same within the Territory. (4) Additionally, the 2000 Agreement also provides the following:

tribute the same, at its own risk and expense, within the Territory subject to ; Distributor the right to use trademarks used in the designations of the Products, within the Territory and for duration of the terms of this Contract, for purposes related to the export and sales of Products and any related marketing undertakes to name the Distributor as the sole supplier of the Products within the Territory t

(. at 7 8, ECF No. 22-1) (citations omitted.) As Plaintiff sees it, these new allegations are sufficient to overcome the complaint s prior deficiencies. Plaintiff is wrong.

In granting Defendant motion to dismiss the original complaint, the Court relied heavily on the reasoning set forth in *S.K.I. Beer Corp. v. Baltika Brewery*, 443 F. Supp. 2d 313 (E.D.N.Y. 2006), , 612 F.3d 705 (2d Cir. 2010). That case considered the very question at issue here: whether any transaction anywhere in the world with a licensed New York wholesaler is covered by [ABC], or whether it pertains only to those transactions where the sale or the offer are made in New York. *Id.* at 319. While the court in *S.K.I. Beer Corp.* acknowledged that the statute could reasonably be interpreted to mean the former, it ultimately held that the statute, when viewed holistically, s the conclusion that it regulates only those sales and deliveries which take place in the State of New Id. at 318, 322. The court keenly noted that , which provides for regulation of the sale and delivery of beer by brewers *Id.* at 319 (emphasis in original). And, more to the point, the court found that ABC is instinct with the purpose of regulating the sale and delivery in [the state of New York] of alcoholic beverages. *Id.* (citing ABC § 2).

Here, according to the 2000 Agreement, [] . . .

account, both of which were situated in Poland. (See Ex. 2 at 2 3, .) In other words, the sale and delivery of the product at issue, Zubr, took place outside of New York and New Jersey.

In addition, and as the Court previously found, Plaintiff s effort to prosecute Defendant for violations of ABC and MABPA runs afoul of the dormant Commerce Clause. See *Amtec I*, 2022 WL 992565, at \*6. Here again, *S.K.I. Beer Corp.* proves instructive. As that court explained, [t]he Commerce Clause . . . precludes the application of a state statute to commerce that takes place wholly outside of the S borders whether or not the commerce has effects within the state *S.K.I. Beer Corp.*, 443 Supp. 2d at 319 320 (quoting *Healy v. Beer Inst.*, 491 U.S. 324, 336 (1989)). Therefore, for the same reason claim fails under a reading of the statute, it fails under the United States Constitution: The transaction for the sale of the product between Plaintiff and Defendant was wholly extraterritorial to both New York and New Jersey. That, as Plaintiff argues 0 Agreement makes clear that the final destination of the Zubr Brand products was New York and New Jersey, is of no consequence. (Pl. 9.) Put differently, the



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dormant Commerce Clause operates to preclude a state from regulating wholly extraterritorial commerce, even where the commerce may have effects within the state. Likewise, allegations that Defendant sold or offered to sell to other duly licensed distributors, such sales actually taking place in New York and New Jersey does not overcome the Commerce Clause. 2

(Am. Compl. ¶ 5.) Under current argument, a state would be permitted to regulate wholly extraterritorial commerce between a brewer and distributor so long as that brewer conducts any commerce within the state, however tangential. Such a finding cannot be read consistent with the Commerce Clause; rather it would do violence to it. 3

CONCLUSION GRANTED in its entirety.

SO ORDERED. Dated: Brooklyn, New York /s/ LDH March 31, 2023 LASHANN DEARCY HALL

United States District Judge

2 In so arguing, Plaintiff highlights that this Court's [the] Zubr product be sold, or title transferred to Amtec in the S (Pl. 7.) True, it was not stated expressly. So, to remove all doubt, and for the reasons set forth above, it does. 3 The Court rejects argument that because Plaintiff was the intended New York distributor appointed by Defendant, failing to apply ABC's of each state. In support of this proposition, Plaintiff cites *John G. Ryan, Inc. v. Molson USA, LLC*, No. 05-CV-3984, 2005 WL 2977767 (E.D.N.Y. Nov. 7, 2005). However, *Molson* held that the New York ABC-arbitration clause was preempted by the Federal Arbitration Act, noting that the Twenty-first Amendment, though relevant regulation of intoxicating liquors is concerned[,] *Molson*, 2005 WL 297767 at \*6 (quoting *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 412-13 (1984)). *Molson* offers no support for position.

