IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

BILL JONES DISTRIBUTORS, INC.,	**Case No. CV 2014-0001774**
Plaintiff,	**MEMORANDUM DECISION AND ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION AND DENYING DEFENDANTS' MOTION TO DISMISS**
vs.	
BOISE SALES CO. d/b/a HAYDEN BEVERAGE CO. and YOUNG'S MARKET COMPANY OF IDAHO, LLC d/b/a HAYDEN BEVERAGE CO.,	
Defendants.	

THIS MATTER came before the Court on December 16, 2014, for a hearing on Plaintiff's Motion for Preliminary Injunction, filed November 12, 2014, and Defendants' Motion to Dismiss, filed December 2, 2014. Plaintiff Bill Jones was represented at the hearing by Nicole C. Hancock of STOEL RIVES LLP. Defendants Boise Sales Co. d/b/a Hayden Beverage Co. and Young's Market Company of Idaho, LLC d/b/a Hayden Beverage Co. (collectively, "Hayden") were represented by Michael O. Roe of GIVENS PURSLEY LLP.

I. ISSUE PRESENTED

Whether the Beer Act, Idaho Code § 23-1101 *et seq.*, and the County Option Kitchen and Table Wine Act, Idaho Code § 23-1301 *et seq.* (hereafter, "Wine Act"), govern the relationships of the parties in the manner proposed by Bill Jones or in the manner proposed by Hayden.

II. LEGAL STANDARDS

A. Standard for Preliminary Injunction

In *Brady v. City of Homedale,* 130 Idaho 569, 944 P.2d 704 (1997), the Idaho Supreme Court stated:

> **Whether to grant or deny a preliminary injunction is a matter for the discretion of the trial court.** *Harris v. Cassia County,* 106 Idaho 513, 517, 681 P.2d 988, 992 (1984). An appellate court will not interfere with the trial court's decision absent a manifest abuse of discretion. *Id.* **A preliminary injunction "is granted only in extreme cases where the right is very clear and it appears that irreparable injury will flow from its refusal."** *Id.* at 518, 681 P.2d at 993 (citing *Evans v. District Court of the Fifth Judicial Dist.,* 47 Idaho 267, 270, 275 P. 99, 100 (1929)).
>
> In determining whether a trial court has committed a manifest abuse of discretion, the reviewing appellate court "must determine (1) whether the trial court correctly perceived the issue of one of discretion; (2) whether the trial court acted within the outer boundaries of its discretion, consistently with applicable legal standards; and (3) whether the trial court reached its decision by exercise of reason." *Lankford v. Nicholson Mfg. Co.,* 126 Idaho 187, 188–89, 879 P.2d 1120, 1121–22 (1994). Furthermore, an appellant bears the burden of showing an abuse of the trial court's discretion. *Southern Idaho Prod. Credit Ass'n v. Astorquia,* 113 Idaho 526, 528, 746 P.2d 985, 987 (1987).

Id. at 572, 944 P.2d at 707. (Emphasis supplied).

Idaho Rule of Civil Procedure 65(e), which establishes the grounds for preliminary injunction, provides in part:

(1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the acts complained of, either for a limited period or perpetually.

(2) When it appears by the complaint or affidavit that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury to the plaintiff.

(3) When it appears during the litigation that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual.

I.R.C.P. 65(e)(1)-(3).

B. Standard for I.R.C.P. 12(b)(6) Motion to Dismiss

The Idaho Supreme Court in *Orrock v. Appleton*, 147 Idaho 613, 618, 213 P.3d 398, 403 (2009), stated:

> "[T]he following defenses shall be made by motion: ... (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted[.]" I.R.C.P. 12(b)(6). **"In reviewing a ruling on a motion to dismiss for failure to state a claim upon which relief may be granted, the question is whether the non-movant has alleged sufficient facts in support of his claim, which if true, would entitle him to relief."** *Rincover v. Dep't of Fin.*, 128 Idaho 653, 656, 917 P.2d 1293, 1296 (1996). **This Court makes "every reasonable intendment" in order to "sustain a complaint against a motion to dismiss for failure to state a claim."** *Idaho Comm'n on Human Rights v. Campbell*, 95 Idaho 215, 217, 506 P.2d 112, 114 (1973).

Id. at 618, 213 P.3d at 403. (Emphasis supplied).

Similarly, in *Harper v. Harper*, 122 Idaho 535, 835 P.2d 1346 (Ct. App. 1992), the Idaho Court of Appeals stated:

> **A motion to dismiss under Rule 12(b)(6) for failure to state a claim must be read in conjunction with Rule 8(a), which sets forth the requirements for pleading a claim and calls for "a short and plain statement**

> **of the claim showing that the pleader is entitled to relief" and a demand for relief. I.R.C.P. 8(a)(1), (2). As with a motion under Rule 8(a), every reasonable intendment will be made to sustain a complaint against a Rule 12(b)(6) motion to dismiss.** *Idaho Comm'n on Human Rights v. Campbell,* 95 Idaho 215, 217, 506 P.2d 112, 114 (1973). **A court may grant a motion to dismiss for failure to state a claim under Rule 12(b)(6) only "when it appears beyond doubt that the plaintiff can prove no set of facts in support of [the] claim which would entitle [the plaintiff] to relief."** *Wackerli v. Martindale,* 82 Idaho 400, 405, 353 P.2d 782, 787 (1960); *Ernst v. Hemenway and Moser, Co.,* 120 Idaho 941, 946, 821 P.2d 996, 1001 (Ct.App.1991). It need not appear that the plaintiff can obtain the particular relief prayed for, as long as the court can ascertain that some relief may be granted. Wright & Miller, Federal Practice and Procedure § 1357, at 339 (1990). Whether the pleadings meet this liberal standard presents a question of law over which we exercise free review. *Ernst,* 120 Idaho at 945, 821 P.2d at 1000. **We observe that, as a practical matter, a dismissal under Rule 12(b)(6) is likely to be granted only in the unusual case in which the plaintiff includes allegations showing on the face of the complaint that there is some insurmountable bar to relief.** Wright & Miller, *supra,* § 1357, at 344–45.

Id. at 536, 835 P.2d at 1347. (Footnote omitted). (Emphasis supplied).

III. DISCUSSION

A. Plaintiff's Motion for Preliminary Injunction is Granted.

Bill Jones moves to enjoin Hayden from soliciting, selling, or distributing beer, wine, and Red Bull products in his Exclusive Territory of Bonner County and Boundary County, Idaho.

Idaho has a three-tier beer and wine distribution system with intentional demarcation lines between each tier. In Tier 1, beer and wine manufacturers produce the product or import product from manufacturers/producers. In Tier 2, distributors deliver beer and wine to retail outlets. In Tier 3, retail outlets sell the beer and wine to consumers. The distributors in Tier 2 act as the middlemen between the suppliers in Tier 1 and retailers in Tier 3, and as such, are offered certain statutory protections through the Beer and Wine Acts.

The Declaration of Policy of the Beer Act provides:

> It is hereby declared to be the policy of the legislature of the state of Idaho to regulate and control the importation, sale and distribution of beer within the state of Idaho, in the exercise of its powers under the twenty-first amendment to the constitution of the United States of America, and pursuant to section 26, article III, of the constitution of the state of Idaho. In furtherance of that policy, **the restrictions and regulations contained in this chapter are enacted to promote equality and fair dealing in the business relationship between Idaho distributors of beer and the suppliers of such product** and to assure the establishment and maintenance of an orderly system for the distribution of such products in accordance with the laws of this state regulating the sale and distribution of such products to the public.

Idaho Code § 23-1101. (Emphasis supplied). Likewise, the purpose of the Wine Act is "to regulate the importation, distribution and sale, both at wholesale and retail, of wines while reserving to each county of this state the right to prohibit the distribution or sale of wine within its borders." I.C. § 23-1302. This Court shall determine how the Beer and Wine Acts govern the relationships of the parties in a manner consistent with said statutory policy and purpose..

In Idaho's three-tier system of distribution, a relationship arises between the beer/wine supplier and the distributor in which the supplier sell products to the distributor, and the distributor resells those products to retail outlets. Under the Beer and Wine Acts, Idaho law prohibits terminating, modifying, cancelling, discontinuing, or failing to renew an agreement with a distributor except under specific circumstances set forth in the statutes.

The Beer Act provides that "[a] supplier may amend, modify, terminate, cancel, discontinue or fail to renew an agreement with a distributor immediately upon written notice given by the supplier as provided in section 23-1108, Idaho Code, only if" one of the eight circumstances set forth in Idaho Code § 23-1105 occurs. I.C. § 23-1105.

Under the Beer Act, a "supplier" is defined as:

> ... any person, either within or outside the state of Idaho, who enters into an agreement with a distributor for the sale of beer to such distributor with the intent that such products will be resold by the distributor to retailers within the state of Idaho. The term "supplier" shall also be deemed to include the successor in interest to a supplier's business generally, or with reference to a specific brand or brands, of beer. The term "supplier" shall not include any person who produces fewer than thirty thousand (30,000) barrels of beer annually and who is licensed by the state of Idaho for such purpose.

Idaho Code § 23-1102(12). Additionally, under the Beer Act, a "distributor" is defined as

> ... a business entity, whether sole proprietorship, partnership, corporation, association, syndicate, or any other combination of persons, licensed by the state of Idaho to sell beer to retailers. The term "distributor" shall not include a brewery, brewery branch or subsidiary thereof, which is licensed by the state of Idaho and which license authorizes sales of beer to be made directly to a retailer, whether or not licensed as a distributor by the state of Idaho.

I.C. § 23-1102(5).

Accordingly, the Court finds that Bill Jones, as a licensed distributor, is clearly a distributor under the Beer Act. *See Declaration of Emmett W. (Bill) Jones in Support of Motion for Preliminary Injunction* (filed November 12, 2014), at p. 2, ¶¶ 3-4. Conversely, Hayden is a supplier under the Beer Act for purposes of this case,[1] because it is a person that entered into an agreement with a distributor, Bill Jones, for the sale of beer to Bill Jones with the intent that such products would be resold by Bill Jones to retailers in Idaho. *See id.*, at p.2, ¶ 10; p. 3, ¶ 14, and Exhibit 2.

Similarly, the Wine Act provides:

> (1) It shall be unlawful for any vintners, winery, importer or dealer, directly or indirectly, or through an affiliate, subsidiary, officer, director, agent or employee:

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[1] The Court recognizes that Hayden may also be a distributor in other territories in which Hayden distributes products to retailers. But for purposes of this lawsuit, Hayden has not historically distributed any products in the Exclusive Territory.

...

> (f) To cause a termination, cancellation, nonrenewal or substantial change in competitive circumstances in the relationship with the distributor without providing at least ninety (90) days' written notice of the termination, cancellation, nonrenewal or substantial change in competitive circumstances. The notice shall state all the reasons for termination, cancellation, nonrenewal or substantial change in competitive circumstances and shall provide that the distributor has ninety (90) days from the date of receipt by said distributor of the vintner's, winery's, importer's or dealer's notice in which to rectify any claimed deficiency. If the deficiency is rectified within ninety (90) days the notice shall be void. The notice provisions of this section shall not apply if the reason for termination, cancellation or nonrenewal is insolvency, the occurrence of an assignment for the benefit of creditors, or bankruptcy. If the reason for termination, cancellation, nonrenewal or substantial change in competitive circumstances is nonpayment of sums due for the purchase of product, the distributor shall be entitled to written notice of such default, and shall have twenty (20) days in which to remedy such default from the date of delivery or posting of such notice.

I.C. § 23-1328A(1)(f).

Under the Wine Act, a "distributor" is "a person to whom a wine distributor's license has been issued." I.C. § 23-1303(1)(c). As a licensed distributor, Bill Jones is a distributor under the Wine Act. *See Declaration of Emmett W. (Bill) Jones in Support of Motion for Preliminary Injunction* (filed November 12, 2014), at p. 2, ¶¶ 3-4.

The Plaintiff's Complaint alleges that "Hayden is a dealer of wine products as the ordinary and commonly understood meaning is used in the Wine Act." *Complaint* (filed October 28, 2014), at p. 16, ¶ 112. The Wine Act does not define "dealer," but provides that "[a]ll other words and phrases used in this chapter, the definitions of which are not herein given, shall be given their ordinary and commonly understood and accepted meanings." I.C. § 23-1302(2).

Hayden argues that the definition of "dealer" in Chapter 10, Section 23-1001(d) should be used in this case. However, the Court disagrees, because the Wine Act is in Chapter 13, and it

specifically states that "all other words used **in this chapter**, the definitions of which are not herein given shall be given their ordinary and commonly understood and accepted meanings." I.C. § 23-1302(2) (emphasis supplied). It does not state that definitions can be lifted from other chapters in Title 23 (Alcoholic Beverages). Because the definition of dealer proposed by Hayden is set forth in another chapter, it is not applicable to this case, pursuant to I.C. § 23-1302(2).

Black's Law Dictionary (6th ed. 1990), at p. 399, defines a "dealer" as "[i]n the popular sense, one who buys to sell; not one who buys to keep, ..." Accordingly, the Court finds that Hayden is a dealer in this case, under the term's commonly understood meaning, because Hayden purchased beer for the Exclusive Territory, not to keep, but to sell to Bill Jones.

Hayden contends that the Beer and Wine Acts do not apply to this case because the relationship between Hayden and Bill Jones is that of distributor and sub-distributor, not of supplier and distributor, and thus, falls outside the scope of the Beer and Wine Acts. The Court disagrees, noting that nowhere in the Acts do they make reference to a sub-distributor or a distributor/sub-distributor relationship. Further, Hayden's interpretation of the Acts seemingly contravenes the express policy and purpose of both Acts by exempting certain licensees from regulation.

Based upon these findings, and upon review of the allegations in the Complaint and the Declaration of Emmett W. (Bill) Jones, this Court finds that the continuance of Hayden's termination of Bill Jones' distribution rights in the Exclusive Territory during this litigation will produce great or irreparable injury to Bill Jones by way of loss of business, loss of customers, and loss of reputation and goodwill. The Court also finds that this is an extreme case where the distribution rights of Bill Jones in the Exclusive Territory are very clear, and it appears that

irreparable injury will flow from their termination.[2] Because the Court finds the plaintiff's sixth and seventh causes of action for alleged violations of the Beer and Wine Acts to provide sufficient grounds for injunctive relief under I.R.C.P. 65(e), it need not address the remaining counts as they of the Complaint as potential grounds a preliminary injunction.

B. Defendants' Motion to Dismiss is Denied.

It is instructive to reiterate the standard for a motion to dismiss as set forth in *Harper v. Harper*, *supra*:

> **A court may grant a motion to dismiss for failure to state a claim under Rule 12(b)(6) only "when it appears beyond doubt that the plaintiff can prove no set of facts in support of [the] claim which would entitle [the plaintiff] to relief."** *Wackerli v. Martindale,* 82 Idaho 400, 405, 353 P.2d 782, 787 (1960); *Ernst v. Hemenway and Moser, Co.,* 120 Idaho 941, 946, 821 P.2d 996, 1001 (Ct.App.1991). It need not appear that the plaintiff can obtain the particular relief prayed for, as long as the court can ascertain that some relief may be granted. Wright & Miller, Federal Practice and Procedure § 1357, at 339 (1990). Whether the pleadings meet this **liberal standard** presents a question of law over which we exercise free review. *Ernst,* 120 Idaho at 945, 821 P.2d at 1000. **We observe that, as a practical matter, a dismissal under Rule 12(b)(6) is likely to be granted only in the unusual case in which the plaintiff includes allegations showing on the face of the complaint that there is some insurmountable bar to relief.** Wright & Miller, *supra,* § 1357, at 344–45. (Footnote omitted)

122 Idaho at 536, 835 P.2d at 1347. (Emphasis supplied).

Applying the liberal standard set forth in *Harper*, this Court cannot find that "it appears beyond doubt that the plaintiff can prove no set of facts in support of [the] claim which would entitle [the plaintiff] to relief" or that "the plaintiff includes allegations showing on the face of the complaint that there is some insurmountable bar to relief." *Id.* Rather, making "every

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[2] The Court is not making a finding on the factual and disputed issue of the propriety of Hayden's notice and termination of the relationship between the parties, only that prior to this dispute arising, Bill Jones had a clear right to distribute the products in the

reasonable intendment" to sustain the Complaint against the Rule 12(b)(6) motion to dismiss, this Court finds that the facts set forth in the Plaintiff's Complaint, if true, may entitle him to some relief. Accordingly, the defendants' motion to dismiss is denied.

IT IS SO ORDERED.

DATED this 15 day of January, 2015.

Barbara Buchanan
District Judge

IV. CONCLUSION AND ORDER

NOW, THEREFORE, based on the foregoing, IT IS HEREBY ORDERED THAT:

1. Plaintiff's Motion for Preliminary Injunction is GRANTED. The defendants are hereby enjoined from (1) terminating Bill Jones' distribution rights to the beer and wine products in the Exclusive Territory; (2) refusing to sell any beer and wine products to Bill Jones for distribution in the Exclusive Territory; and (3) distributing Red Bull in the Exclusive Territory.
2. Plaintiff shall post a bond of $10,000.
3. Defendants' Motion to Dismiss is DENIED.

Exclusive Territory, and the status quo should be maintained until the factual issues in dispute are resolved.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, and delivered via facsimile transmission, this 15 day of January, 2015, to:

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