



and CITY Markham, collectively the “CITY Entities,”), SD of Illinois, Inc. (“SDI”) and Double Eagle Distributing Company (“Double Eagle”) (SDI and Double Eagle, collectively the “Soave Entities,” and together with the CITY Entities, WEDCO, and AB Inc., “Plaintiffs”), hereby move for summary judgment on their Commerce Clause claim. In support of this motion, Plaintiffs submit herewith a Local Rule 56.1 statement of material facts as to which there is no genuine issue and a supporting appendix of exhibits, and a supporting memorandum of law, and further state as follows:

1. In this action, brought pursuant to 28 U.S.C. 1983, Plaintiffs seek redress for Defendants’ attempt to unconstitutionally grant preferential treatment to in-state beer producers over out-of-state producers. Defendants have prohibited non-resident brewers from performing the distribution function under Illinois’ three-tier alcoholic beverage licensing system, despite the fact that Defendants permit in-state brewers to distribute beer in the State, which is expressly permitted under the Illinois Liquor Control Act of 1934 (the “Liquor Control Act”). *See* 235 ILCS 5/5-1(a) (“A Brewer may make sales and deliveries of beer . . . to retailers provided the brewer obtains an importing distributor’s license or distributor’s license in accordance with the provisions of this Act.”).

2. Under well-established Commerce Clause jurisprudence, a law discriminates explicitly against interstate commerce if by its own terms it regulates disparately out-of-state and in-state economic interests and favors the in-state interests. *Granholm v. Heald*, 544 U.S. 460, 467 (2005). State laws that discriminate explicitly against interstate commerce “face ‘a virtually *per se* rule of invalidity.’” *Granholm*, 544 U.S. at 476 (quoting *Philadelphia v. New Jersey*, 437 U.S. 617 (1978)). The one extremely limited exception to the “*per se* rule of invalidity” requires the state to demonstrate that the law “advanc[es] a legitimate local purpose that cannot be

adequately served by reasonable nondiscriminatory alternatives.” *See, e.g., Or. Waste Sys v. Dep’t of Envir. Quality of the State of Oregon*, 511 U.S. 93, 98 (1994).

3. Defendants admit that they treat brewers differently depending on where they brew their beer and require an out-of-state brewer to distribute its beer through an unaffiliated distributor simply because it brews its beer out-of-state, while an in-state brewer may perform the distribution function itself. (Plfs.’ LR 56.1 Stmt. ¶ .) This discrimination against out-of-state beer producers is subject to the *per se* rule of invalidity. Defendants are unable to meet their extraordinary burden of justifying the law as necessary to achieve a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives.

4. The appropriate remedy for this unconstitutional discrimination is to treat out-of-state brewers equally and allow them the same privilege to distribute beer in Illinois. Attached hereto as Exhibit A is the text of a proposed declaratory judgment.

WHEREFORE, for the reasons set forth herein and in defendants’ Local Rule 56.1 statement and memorandum of law, the Court should grant this motion and enter judgment in favor of Plaintiffs on their Commerce Clause Claim and enter the declaratory judgment as set forth above.

Dated: April 9, 2010

Respectfully submitted,

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– Markham L.L.C., SD of Illinois, Inc., and  
Double Eagle Distributing Company**

**CERTIFICATE OF SERVICE**

Edward M. Crane, an attorney, hereby certifies that on April 9, 2010, he caused true and correct copies of the foregoing Plaintiffs' Motion For Summary Judgment On Their Commerce Clause Claim, to be served on Defendants' counsel via the Court's ECF filing system.

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/s/ Edward M. Crane

Edward M. Crane

# EXHIBIT A



Injunctive Relief

Defendants are permanently enjoined from the following:

1. Denying, refusing to issue, refusing to renew, or revoking a license, or taking any other action against AB Inc. or any other entity, on the grounds that AB Inc. or its affiliates holds or acquires, or is affiliated with an entity that holds or acquires, Illinois Distributor's or Importing Distributor's Licenses.
2. Denying, refusing to issue, refusing to renew, or revoking the Distributor's or Importing Distributor's Licenses requested by or held by AB Inc., CITY Beverage – Illinois, L.L.C., CITY Beverage L.L.C., CITY Beverage – Markham L.L.C., Chicago Distributing L.L.C., or any of their affiliates on the grounds of AB Inc.'s affiliation with an entity that holds a Distributor's or Importing Distributor's License.
3. Denying, refusing to issue, refusing to renew, or revoking AB Inc.'s Non-Resident Dealer's license on the grounds that it holds a Distributor's or Importing Distributor's License or is affiliated with an entity that holds a Distributor's or Importing Distributor's License
4. Taking any other action against AB Inc., CITY Beverage – Illinois, L.L.C., CITY Beverage L.L.C., CITY Beverage – Markham L.L.C., Chicago Distributing L.L.C., or any of their affiliates based on any affiliation between AB Inc. and the CITY Beverage entities.

Dated: \_\_\_\_\_

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Robert M. Dow, Jr.  
United States District Court Judge