

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

DICHELLO DISTRIBUTORS, INC.	)	
	)	
Plaintiff,	)	CASE NO. 3:20-cv-01003-VLB
	)	
v.	)	
	)	
ANHEUSER-BUSCH, LLC	)	
	)	
Defendant.	)	AUGUST 14, 2020

**ANSWER TO COUNTERCLAIMS**

Dichello Distributors, Inc. (“Dichello”) answers the Counterclaims asserted by Anheuser-Busch Companies, LLC and Anheuser-Busch, LLC (together, “AB”) and asserts defenses thereto as follows. Dichello denies all allegations not expressly admitted.

**Nature of the Case**

1. Denied.
2. Denied.
3. Denied.
4. Admitted that John Hall worked at Dichello in or about 2013 and that he is the son of Gloria Dichello Hall. Denied that John Hall “began” working at Dichello in 2013.
5. Denied.
6. Denied.

**Parties**

7. Admitted as to all parts except subparagraphs (a.) and (b.) for which Dichello lacks knowledge or information sufficient to form a belief about the truth of the allegations and therefore denies them.

8. Admitted.

**Jurisdiction and Venue**

9. Dichello lacks knowledge or information sufficient to form a belief about the truth of the allegations and therefore denies them.

10. Dichello lacks knowledge or information sufficient to form a belief about the truth of the allegations and therefore denies them.

11. Admitted.

**Facts**

12. Admitted.

13. Admitted.

14. Denied.

15. Denied.

16. Dichello admits that it is AB's sole route to market for certain beer brands in all of Fairfield and New Haven Counties and portions of Litchfield and Middlesex counties in Connecticut. The remaining allegations are denied.

17. Denied.

18. Dichello lacks knowledge or information sufficient to respond to the allegation of the first sentence of paragraph 18 and therefore denies it. Dichello

**denies that the Equity Agreement is valid, binding and/or enforceable, but admits that the purported agreement is purportedly governed by Connecticut law.**

**19. Denied.**

**20. Denied.**

**21. Denied.**

**22. Denied.**

**23. Denied.**

**24. Denied.**

**25. Denied.**

**26. Denied.**

**27. Dichello denies that the Equity Agreement is valid, binding and/or enforceable, but admits that paragraph 27 accurately quotes the specified section of the purported agreement.**

**28. Denied.**

**29. Denied.**

**30. Denied.**

**31. Dichello admits that its nominal Equity Agreement Manager left the company in December of 2012 and that Peter Deane became the next nominal Equity Agreement Manager.**

**32. Admitted that Mr. Deane left the company less than a year later. Denied that Dichello was required to assign an ownership to him.**

**33. Admitted that Dichello hired Sal DiBetta who became its nominal Equity Manager.**

**34. Admitted that Dichello has had no nominal Successor Manager since 2012. The remaining allegations are denied.**

**35. Admitted that John Hall is the son of Gloria Dichello Hall, Chairman and Chief Executive Officer of Dichello. Denied that Gloria Dichello Hall is a trustee of Dichello.**

**36. Admitted that John Hall worked at Dichello from 1996 to 2001, and has worked at Dichello from 2013 to the present. The remaining allegations are denied.**

**37. Admitted that John Hall worked at Dichello from 1996 to 2001, and has worked at Dichello from 2013 to the present.**

**38. Admitted that AB Field Sales personnel met with John Hall and Sal DiBetta to discuss management succession. The remaining allegations are denied.**

**39. Denied.**

**40. Admitted that John Hall signed a purported development plan. The remaining allegations are denied.**

**41. Denied.**

**42. Denied.**

**43. Admitted that AB interviewed John Hall for the purported Successor-Manager position. The remaining allegations are denied.**

**44. Admitted that AB sent Dichello a letter on July 31, 2015 purporting to disapprove John Hall as purported Successor-Manager. The remaining allegations are denied.**

**45. Admitted that Dichello terminated Sal DiBetta in August of 2015. The remaining allegations are denied.**

**46. Admitted that the termination of Sal DiBetta left Dichello without a nominal Equity Agreement Manager or nominal Successor-Manager.**

**47. Admitted that Dichello designated Peter Deane as its nominal Successor Manager.**

**48. Admitted that AB purportedly approved Peter Deane by letter dated October 30, 2015. The remaining allegations are denied.**

**49. Denied.**

**50. Admitted that AB and Dichello met at AB's Region office in Boston to discuss succession management at Dichello. The remaining allegations are denied.**

**51. Dichello admits that the subject of providing Mr. Deane with an ownership interest at Dichello was discussed at the meeting. The remaining allegations are denied.**

**52. Denied.**

**53. Admitted that AB purportedly granted a six-month waiver of the purported Successor-Manager requirement. The remaining allegations are denied.**

**54. Admitted that on October 6, 2016, AB purportedly provided Dichello "90 days to either submit to Anheuser-Busch a Successor-Manager Application or to request yet another waiver of the Successor-Manager requirement by**

**submitting a statement to Anheuser-Busch setting forth specifically why such a waiver is required.” The remaining allegations are denied.**

**55. Admitted that Dichello did not offer a candidate for or request an additional waiver of the purported Successor-Manager requirement by January 7, 2017. The remaining allegations are denied.**

**56. Admitted that on or before October 23, 2016, Dichello did not transfer any ownership interest to Peter Deane. The remaining allegations are denied.**

**57. Admitted that in early 2017 Dichello explored selling its business. The remaining allegations are denied.**

**58. Admitted that Dichello has not sold its business.**

**59. Admitted that nominal Equity Manager Peter Deane does not have any ownership interest in Dichello.**

**60. Denied.**

**61. Admitted that Dichello has no nominal Successor-Manager. The remaining allegations are denied.**

**Count One**

**62. Dichello incorporates by reference its responses to each and every allegation above as if set forth in full herein.**

**63. Denied.**

**64. Denied.**

**65. Denied.**

**66. Denied.**

**67. Denied.**

68. Denied.

69. Denied.

70. Admitted that Peter Deane became Dichellos's nominal Equity Manager on October 29, 2015, and that he has never had an ownership interest in Dichello. The remaining allegations are denied.

71. Denied.

72. Denied.

**Count Two**

73. Dichello incorporates by reference its responses to each and every allegation above as if set forth in full herein.

74. Denied.

75. Denied.

76. Denied.

77. Denied.

78. Admitted that Dichello does not have a nominal Successor-Manager.

The remaining allegations are denied.

79. Denied.

80. Denied.

**Count Three**

81. Dichello incorporates by reference its responses to each and every allegation above as if set forth in full herein.

82. Denied.

83. Denied.

84. Denied.

85. Denied.

86. Denied.

87. Denied.

88. Denied.

89. Denied.

90. Denied.

**Count Four**

91. Dichello incorporates by reference its responses to each and every allegation above as if set forth in full herein.

92. Denied.

93. Denied.

94. Denied.

95. Denied.

96. Denied.

97. Denied.

98. Denied.

99. Denied.

100. Denied.

101. Denied.

**Count Five**

102. Dichello incorporates by reference its responses to each and every allegation above as if set forth in full herein.



**103. Denied.**

**104. Denied.**

**105. Denied.**

**106. Denied.**

**107. Denied.**

**108. Denied.**

**109. Denied.**

**Prayer for Relief**

**Dichello denies that AB is entitled to any of the relief requested in paragraphs 1 through 5 of the Prayer for Relief, or to any relief from Dichello whatsoever.**

**AFFIRMATIVE DEFENSES TO COUNTERCLAIMS**

**Dichello asserts the following affirmative defenses without conceding that it has the burden of proof or persuasion as to any of them and without conceding that AB does not have to prove each and every element of its counterclaims.**

**First Affirmative Defense**

**AB's claims are barred because the Equity Agreement is illegal and unenforceable in whole or in part under Connecticut law and regulations, including the Connecticut Liquor Control Act, Conn. Gen. Stat. § 30-1, et seq., Connecticut Department of Consumer Protection Regulations for Intoxicating Liquors, Conn. Regs. State Agencies § 30-6-A1, et seq., the Connecticut Antitrust**

Act, Conn. Gen. Stat. § 35-24, *et seq.*; federal law, including the Sherman Antitrust Act, 15 U.S.C. § 1, *et seq.*; and/or on grounds of public policy.

**Second Affirmative Defense**

AB's claims for relief are moot, and the Court therefore lacks subject matter jurisdiction to hear them.

**Third Affirmative Defense**

AB has failed to allege an actual, justiciable controversy as is required to obtain declaratory or other relief.

**Fourth Affirmative Defense**

AB has failed to exhaust available administrative remedies including without limitation those available under the Connecticut Liquor Control Act, Conn. Gen. Stat. § 30-1, *et seq.* and Connecticut Department of Consumer Protection Regulations for Intoxicating Liquors, Conn. Regs. State Agencies § 30-6-A1, *et seq.*, and the Court therefore lacks subject matter jurisdiction AB's claims.

**Fifth Affirmative Defense**

AB's claims should be referred to the Connecticut Liquor Control Commission under the doctrine of primary jurisdiction.

**Sixth Affirmative Defense**

AB lacks standing to seek relief against or from Dichello.

**Seventh Affirmative Defense**

The Counterclaim fails to state a claim upon which relief can be granted.

**Eighth Affirmative Defense**

AB's claims are barred in whole or in part by the statute of limitations.

**Ninth Affirmative Defense**

AB's claims are barred in whole or in part by the doctrines of waiver and/or estoppel.

**Tenth Affirmative Defense**

AB's claims are barred in whole or in part by the doctrine of unclean hands.

**Eleventh Affirmative Defense**

AB's claims are barred in whole or in part by the doctrine of laches.

**Twelfth Affirmative Defense**

AB's claims are barred in whole or in part by the doctrine of issue preclusion.

**Thirteenth Affirmative Defense**

AB's claims are barred in whole or in part by the doctrine of claim preclusion.

**Fourteenth Affirmative Defense**

Dichello's conduct was privileged and justified because the acts complained of, to the extent they occurred at all, were undertaken pursuant to a statutory right.

**Fifteenth Affirmative Defense**

AB's claims are barred in whole or in part because they have failed to allege any fraudulent conduct and associated damages with particularity.

**Sixteenth Affirmative Defense**

The injuries alleged by AB were not proximately caused by any conduct or act of Dichello.

**Seventeenth Affirmative Defense**

AB's claims are barred, in whole or in part, because in alleging fraud or mistake, they have failed to state with particularity the circumstances constituting fraud or mistake.

**Eighteenth Affirmative Defense**

AB's own acts and omissions caused or contributed any losses they experienced.

**Nineteenth Affirmative Defense**

AB's recovery is barred in whole or in part by their failure to mitigate their alleged damages.

**Twentieth Affirmative Defense**

Under no circumstances is AB entitled to statutory penalties, declaratory relief, punitive damages, or attorneys' fees and costs.

**Twenty First Affirmative Defense**

AB's claims are barred by the United States Constitution and the Connecticut Constitution.

**WHEREFORE, Dichello respectfully requests that this Court dismiss AB's Counterclaims with prejudice; that AB's demand for relief be denied in every respect; that Dichello be awarded its costs in connection with this litigation; and the Court grant such other and further relief as may be just, proper, and equitable.**

**DEMAND FOR TRIAL BY JURY**

**Pursuant to Fed. R. Civ. P. 38(b), Plaintiff hereby demands a trial by jury in this action.**

**PLAINTIFF,  
DICHELLO DISTRIBUTORS, INC.**

**/s/ John R. Horvack, Jr.**

**John R. Horvack, Jr. (Federal Bar No. 12926)  
David S. Hardy (Federal Bar No. 20904)  
Damian K. Gunningsmith (Federal Bar No. 29430)  
Carmody Torrance Sandak & Hennessey LLP  
195 Church Street, 18<sup>th</sup> Floor  
New Haven, CT 06509  
Tel.: (203) 777-5501  
Fax.: (203) 784-3199  
jhorvackjr@carmodylaw.com  
dhardy@carmodylaw.com  
dgunningsmith@carmodylaw.com**

**Leonard C. Reizfeld (Federal Bar No. ct01933)  
10 Marietta Street  
Hamden, CT 06514  
Tel.: (203) 288-5599  
Fax: (203) 281-7766  
reizfeld@gmail.com**

**CERTIFICATION OF SERVICE**

I hereby certify that on August 14, 2020, a copy of the foregoing Answer to Counterclaims was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

*/s/ John R. Horvack, Jr.* \_\_\_\_\_

John R. Horvack, Jr.