

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

Anheuser-Busch, LLC, a Missouri	)	
limited liability company,	)	
	)	No. _____
Plaintiff,	)	
	)	
v.	)	COMPLAINT
	)	
Robert ‘Chick’ Fritz Inc.,	)	
an Illinois corporation,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff Anheuser-Busch, LLC (“Anheuser-Busch”), with its principal place of business at One Busch Place, St. Louis, Missouri 63118, by and through its attorneys, complains against defendant Robert ‘Chick’ Fritz Inc. (“Chick Fritz”), and for its causes of action alleges as follows:

**NATURE OF THE CASE**

1. The primary business of Chick Fritz is to distribute beers brewed by the competitors of Anheuser-Busch. Yet, as a result of legacy arrangements with previous suppliers, Chick Fritz carries a handful of Anheuser-Busch brands: Stella Artois and the Bass, Beck’s, Spaten, Franziskaner, and St. Pauli Girl families of beer (the “European Brands”).

2. From time to time, Anheuser-Busch has acquired the right to import certain brands of beer (including the European Brands) into the United States. The most efficient distribution of these brands is through the existing network of independent wholesalers who distribute Anheuser-Busch’s core domestic brands, including the Budweiser, Michelob, and Busch families of beer (“AB Wholesalers”).

3. Section 7(1.5) of the Illinois Beer Industry Fair Dealing Act (“BIFDA”), 815 ILCS 720/7(1), sets forth a process to determine reasonable compensation in the event a brewer terminates distribution rights held by a wholesaler and the brewer’s products make up 10% or less of the total annual volume of the wholesaler’s business for all beer products supplied by all brewers.

4. Anheuser-Busch and/or the AB Wholesalers have successfully completed the transfer of distribution rights for the European Brands upon payment of reasonable compensation with all but one non-AB Wholesaler in Illinois who falls under the 10% threshold set out in BIFDA Section 7(1.5). Chick Fritz is the only wholesaler in Illinois who has refused to transition these Anheuser-Busch brands to the AB Wholesalers pursuant to Section 7(1.5).

5. This action seeks a declaratory judgment that (1) the process set forth in BIFDA Section 7(1.5), 815 ILCS 720/7(1.5), applies to the termination of Chick Fritz’s distribution rights in this matter because the total annual volume of all beer products supplied by Anheuser-Busch to Chick Fritz represents less than 10% of the total annual volume of Chick Fritz’s business for all beer products supplied by all brewers; and (2) Anheuser-Busch offered Chick Fritz reasonable compensation for the fair market value of Chick Fritz’s business with relation to the European Brands it distributes.

### **PARTIES**

6. Anheuser-Busch is a Missouri limited liability company with its principal place of business at One Busch Place, St. Louis, Missouri 63118. Anheuser-Busch is the leading brewer of beer in the United States. Its brands include the Budweiser, Michelob, and Busch families of beer, as well as craft brands such as Goose Island and imports such as Stella Artois.

- a. The sole member of Anheuser-Busch, LLC is Anheuser-Busch Companies, LLC, a Delaware limited liability company with its principal place of business at One Busch Place, St. Louis, Missouri 63118.
- b. The sole member of Anheuser-Busch Companies, LLC is Anheuser-Busch InBev Worldwide, Inc., a Delaware corporation with its principal place of business at One Busch Place, St. Louis, Missouri 63118.

7. Chick Fritz is an Illinois corporation with places of business at 1000 Hazel Dell Road, Springfield, Illinois 62703, 2351 Mascoutah Avenue, Belleville, Illinois 62220, and 200 North Bellwood Drive, Alton, Illinois 62024. Chick Fritz primarily distributes beers brewed by Anheuser-Busch's competitors.

#### **JURISDICTION AND VENUE**

8. This is an action for declaratory judgment. The Court has jurisdiction under 28 U.S.C. §§ 1332 and 2201. The amount in controversy exceeds the sum or value of \$75,000 (exclusive of interest and costs), there is complete diversity of citizenship, and an actual controversy exists between the parties. This Court also has jurisdiction over the parties pursuant to BIFDA, 815 ILCS 720/9.

9. Venue in this district is proper pursuant to 28 U.S.C. § 1391, as a substantial part of the events or omissions giving rise to the claim occurred in the Central District of Illinois and Chick Fritz resides in and is subject to jurisdiction in the Central District of Illinois.

10. Venue in the Springfield Division of the Central District of Illinois is proper because Chick Fritz has a place of business in Sangamon County, at 1000 Hazel Dell Road, Springfield, Illinois 62703, and distributes several of the European Brands in Cass, Menard,

Morgan, Scott, Sangamon, Greene, Macoupin, and Montgomery counties, all within the Springfield Division of the Central District of Illinois.

### **FACTS**

11. In Illinois, as in most of the United States, beer is sold through a three-tier distribution system. Brewers produce beer and sell it to wholesalers. Wholesalers, in turn, sell to retailers. Retailers sell to consumers for on-premise consumption (bars, restaurants, *etc.*) or off-premise consumption (grocery stores, liquor stores, *etc.*).

12. In the case of imported beers produced outside of the United States, international brewers sell their brands to importers located in the United States. With the exception of brewing the beer, the importer functions in the same way as a domestic brewer, selling the imported brands to a network of authorized wholesalers, who, in turn, sell to retailers.

13. Anheuser-Busch distributes its core domestic brands (including the Budweiser, Michelob, and Busch families of beer) in Illinois through a network of independent AB Wholesalers. The AB Wholesalers are each party to the Anheuser-Busch Wholesaler Equity Agreement. Each AB Wholesaler has an exclusive territory and sells Anheuser-Busch's products only to retailers located within that designated territory.

14. Over the past decade, Anheuser-Busch has acquired the right to import into the United States certain brands of beer, including the European Brands.

15. Effective February 1, 2007, Anheuser-Busch became the exclusive United States importer of brands including Stella Artois and the Bass and Beck's families of beer.

16. Effective June 1, 2012, Anheuser-Busch became the exclusive United States importer of St. Pauli Girl brands.

17. Effective January 1, 2013, Anheuser-Busch became the exclusive United States importer of the Spaten and Franziskaner brands.

18. Chick Fritz distributes beer in southern Illinois. It is not an AB Wholesaler.

19. The only Anheuser-Busch brands that Chick Fritz distributes are the European Brands. Chick Fritz carries the European Brands in certain portions of its territory as a result of legacy arrangements with previous suppliers of those brands.

20. Chick Fritz distributes Spaten Lager, Spaten Dunkel, Spaten Optimator, Spaten Oktoberfest, Franziskaner, and Franziskaner Dunkel in Cass, Menard, Morgan, Scott, Sangamon, Greene, Macoupin, Montgomery, Calhoun, Jersey, Madison, Bond, St. Clair, Clinton, Washington, Monroe, Randolph, Marion, Jefferson, Effingham, Clay, Wayne, Hamilton, Saline, Pope, Johnson, Massac, Jasper, Crawford, Richland, Lawrence, Edwards, Wabash, White, Gallatin, and Hardin counties.

21. Chick Fritz distributes St. Pauli Girl Dark, St. Pauli Girl Lager, and St. Pauli NA in Mason, Cass, Menard, Morgan, Scott, Sangamon, Macoupin, Montgomery, Calhoun, Jersey, Madison, St. Clair, Monroe, and Randolph counties.

22. Chick Fritz distributes Beck's Oktoberfest in portions of Macoupin, Montgomery, Madison, and St. Clair counties.

23. Chick Fritz distributes Beck's Pilsner in St. Clair County.

24. Chick Fritz distributes Beck's Premium Light in portions of St. Clair County.

25. Chick Fritz distributes Beck's Dark, Beck's NA, and Beck's Sapphire in St. Clair County and portions of Monroe County.

26. Chick Fritz distributes Stella Artois in portions of Monroe and St. Clair counties.

27. Chick Fritz distributes Bass Ale in St. Clair, Monroe, and Randolph counties.

28. Anheuser-Busch has independent AB Wholesalers that distribute its core domestic and other brands in all of the territories in which Chick Fritz distributes the European Brands.

29. The most efficient distribution system for Anheuser-Busch is to have all of its brands, including the European Brands, sold through Anheuser-Busch's network of AB Wholesalers.

30. InBev USA was the prior importer of Stella Artois and the Bass and Beck's families. The standard InBev USA distribution agreement contained a provision stating that the contract would terminate immediately if InBev USA ceased to be the importer:

Wholesaler also agrees and acknowledges that Supplier [InBev USA] may end its relationship with a foreign manufacturer or seller as to one or more Supplier Products at any given time. Accordingly, and for whatever reason, should Supplier cease functioning as the United States Supplier of any one or more Supplier Products, Wholesaler agrees that it shall have no claim for compensation or cause of action against Supplier for damages of any kind whatsoever and *this Agreement shall terminate immediately* but only with regard to such Supplier Products that Supplier ceases to import.

(Emphasis added.)

31. The distribution agreement between Chick Fritz and Barton Beers, Ltd., the prior importer of St. Pauli Girl, contained a similar provision:

Anything herein to the contrary notwithstanding, *this Agreement shall automatically terminate* with respect to any Subject Beverage concurrently with the termination of Barton's appointment as the importer/supplier of any such Subject Beverage, whether by agreement by Barton or otherwise. Barton shall not be liable to Distributor for any damages resulting from the termination of this Agreement as aforesaid.

(Emphasis added.)

32. In Illinois, the relationship between brewers and wholesalers is governed, in part, by BIFDA.

33. The purpose and effect of Section 7 of BIFDA is to require brewers who terminate distribution rights held by wholesalers without cause to pay reasonable compensation for the fair market value of the terminated wholesaler's business with relation to the affected brand or brands, and to set forth a process to determine reasonable compensation where the brewer's products make up 10% or less of the total annual volume of the wholesaler's business for all beer products supplied by all brewers.

34. Pursuant to Section 7(1) of BIFDA, 815 ILCS 720/7(1):

[A]ny brewer that cancels, terminates or fails to renew any agreement, or unlawfully denies approval of, or unreasonably withholds consent, to any assignment, transfer or sale of a wholesaler's business assets or voting stock or other equity securities, except as provided in this Act, shall pay the wholesaler with which it has an agreement pursuant to this Act reasonable compensation for the fair market value of the wholesaler's business with relation to the affected brand or brands.

35. Section 7(1.5) of BIFDA, 815 ILCS 720/7(1.5), applies if a brewer agrees to pay reasonable compensation as defined in subsection 7(1) "and the total annual volume of all beer products supplied by a brewer to a wholesaler pursuant to agreements between such brewer and wholesaler represents 10% or less of the total annual volume of the wholesaler's business for all beer products supplied by all brewers."

36. The total annual volume of all beer products supplied by Anheuser-Busch to Chick Fritz represents 10% or less of the total annual volume of Chick Fritz's business for all beer products supplied by all brewers.

37. Section 7(1.5) of BIFDA, 815 ILCS 720/7(1.5), applies here.

38. Pursuant to Section 7(1.5) of BIFDA:

If a brewer is required to pay reasonable compensation as described in subsection (1) and the question of reasonable compensation is the only issue between the parties, the brewer shall, in good faith, make a written offer to pay reasonable compensation. The wholesaler shall have 30 days from receipt of the written offer to accept or reject the brewer's offer.

39. Also pursuant to Section 7(1.5) of BIFDA:

If the wholesaler, in writing, accepts the written offer, the wholesaler shall surrender the affected brand or brands to the brewer at the time payment is received from the brewer. If the wholesaler does not, in writing, accept the brewer's written offer, either party may elect to submit the determination of reasonable compensation to expedited binding arbitration. If one party notifies the other party in writing that it elects expedited binding arbitration, the other party has 10 days from receipt of the notification to elect expedited binding arbitration or to reject the arbitration in writing. Failure to elect arbitration shall constitute rejection of the offer to arbitrate.

40. Section 7(1.5) of BIFDA also sets forth the relevant procedures if the brewer and wholesaler agree to expedited binding arbitration, 815 ILCS 720/7(1.5)(A); if the brewer elects expedited binding arbitration but the wholesaler rejects the offer to arbitrate, 815 ILCS 720/7(1.5)(B); and if the wholesaler elects expedited binding arbitration but the brewer rejects, 815 ILCS 720/7(1.5)(C).

41. Anheuser-Busch has been prepared to engage in expedited arbitration with Chick Fritz to determine reasonable compensation for the fair market value of Chick Fritz's business with relation to the European Brands, but Chick Fritz has refused to engage in arbitration or cooperate in the process set forth in Section 7(1.5) of BIFDA. Instead, Chick Fritz maintains that Section 7(1.5) of BIFDA requires good cause for termination.

42. Anheuser-Busch and the AB Wholesalers whose exclusive territories overlap with Chick Fritz have made repeated attempts to amicably transition the European Brands from Chick Fritz to the AB Wholesalers for fair market value. Those efforts have been unsuccessful.

43. At the same time, all other non-AB Wholesalers in Illinois for whom Anheuser-Busch products represent 10% or less of their total annual sales volume have transferred the distribution rights for the European Brands to the AB Wholesalers for reasonable compensation.

44. For example, on December 22, 2014, Anheuser-Busch sent letters to eighteen non-AB Wholesalers in Illinois (including Chick Fritz) invoking Section 7(1.5) of BIFDA and seeking an amicable transition of the Spaten, Franziskaner, and St. Pauli Girl brands to AB Wholesalers. With the single exception of Chick Fritz, the other wholesalers reached an agreement to transfer the brands based on reasonable compensation for the fair market value of the brands.

45. Prior to that, Anheuser-Busch sent letters regarding Stella Artois and the Bass and Beck's families to every non-AB Wholesaler in Illinois who carried those brands and for whom Anheuser-Busch products represented less than the then-current statutory threshold set forth in Section 7(1.5). With the lone exception of Chick Fritz, the other non-AB Wholesalers reached an agreement to transfer the brands based on reasonable compensation for the fair market value of the brands.

46. Chick Fritz is the only holdout.

47. Chick Fritz is the only wholesaler in Illinois that takes the position that Section 7 of BIFDA requires good cause for termination.

48. On January 10, 2017, Anheuser-Busch offered Chick Fritz reasonable compensation for the fair market value of Chick Fritz's business with relation to the European Brands. For each of the European Brands, Anheuser-Busch offered to pay Chick Fritz a multiple of its gross profit on sales of that brand during the one-year period from January 1, 2016 to December 31, 2016. The gross profit multiples offered by Anheuser-Busch are as follows:

- a. Bass family: 5x
- b. Beck's family: 5x
- c. Stella Artois: 6.5x

- d. Spaten family: 5.5x
- e. Franziskaner family: 5.5x
- f. St. Pauli Girl family: 5x.

49. Anheuser-Busch's use of gross profit multiples to calculate the fair market value of the European Brands is the generally accepted method used to value brand distribution rights.

50. It is consistent with the method that Illinois beer wholesalers have used in numerous transactions over the years to value brand distribution rights.

51. A multiple of gross profit is a method of valuing brand distribution rights based on the profits earned by the wholesaler selling the brand. Typically in a brand transfer, a wholesaler is paid some multiple of its gross profit on sales of the relevant brand(s) for a specified time period.

52. Reasonable compensation for the fair market value of Chick Fritz's business with respect to each of the European Brands is not more than the multiples offered by Anheuser-Busch on January 10, 2017.

53. In response to Anheuser-Busch's January 10, 2017 offer of reasonable compensation, Chick Fritz's attorneys sent a letter dated January 23, 2017, disputing that Section 7(1.5) of BIFDA applies to terminations without cause. Chick Fritz's attorneys wrote: "Only where good cause exists *and the brands being terminated represent 10% or less of the total annual volume of the wholesaler's business* does the mechanism you refer to [Section 7(1.5)] apply." (Emphasis original.)

54. Chick Fritz's argument would turn the statute on its head. Wholesalers who are terminated for cause do not receive reasonable compensation for the fair market value of their business under BIFDA. To the contrary, the reasonable compensation provision set forth in

Section 7 of BIFDA specifically refers to situations where brewers cancel, terminate, or fail to renew a distribution agreement “except as provided in this Act,” or where a brewer “unlawfully denies approval of, or unreasonably withholds consent, to any assignment, transfer or sale of a wholesaler’s business assets or voting stock or other equity securities.” 815 ILCS 720/7(1).

55. In its response to Anheuser-Busch’s January 10, 2017 offer, Chick Fritz did not dispute that the gross profit multiples offered by Anheuser-Busch constituted reasonable compensation for the fair market value of Chick Fritz’s business with relation to the European Brands.

56. Chick Fritz does not dispute that the European Brands represent 10% or less of the total annual volume of its business for all beer products supplied by all brewers.

57. Chick Fritz’s attorneys threatened the “commencement of an appropriate civil action to prevent Anheuser-Busch’s threatened misconduct.”

### **COUNT ONE**

#### *Declaratory Judgment Regarding Application of BIFDA Section 7*

58. Anheuser-Busch realleges and incorporates by reference paragraphs 1 through 57 as if set forth at length herein.

59. As a brewer that has provided a notice of termination to Chick Fritz, Anheuser-Busch is obligated to pay Chick Fritz reasonable compensation for the fair market value of Chick Fritz’s business with relation to the European Brands.

60. On January 10, 2017, Anheuser-Busch offered to pay Chick Fritz reasonable compensation for the fair market value of its business with relation to the European Brands.

61. Chick Fritz does not dispute that the European Brands represent 10% or less of the total annual volume of its business for all beer products supplied by all brewers.

62. Because Anheuser-Busch has agreed to pay reasonable compensation for the fair market value of Chick Fritz's business with relation to the European Brands, and the total annual volume of all beer products supplied by Anheuser-Busch to Chick Fritz represents 10% or less of the total annual volume of Chick Fritz's business for all beer products supplied by all brewers, Section 7(1.5) of BIFDA applies.

63. Chick Fritz disputes that Section 7(1.5) of BIFDA applies.

64. Pursuant to BIFDA Section 9(2), 815 ILCS 720/9(2), "[a] brewer or wholesaler may bring an action for declaratory judgment for determination of any controversy arising under this Act or out of the brewer and wholesaler relationship."

65. Based upon the foregoing facts, there presently exists an actual, justiciable controversy between the parties as to whether Section 7(1.5) of BIFDA applies with respect to the termination of Chick Fritz's right to distribute the European Brands.

## **COUNT TWO**

### *Declaratory Judgment Regarding Reasonable Compensation*

66. Anheuser-Busch realleges and incorporates by reference paragraphs 1 through 65 as if set forth at length herein.

67. On January 10, 2017, Anheuser-Busch offered to pay Chick Fritz reasonable compensation for the fair market value of its business with relation to the European Brands by offering the following multiples of gross profit for the following brands:

- a. Bass family: 5x
- b. Beck's family: 5x
- c. Stella Artois: 6.5x
- d. Spaten family: 5.5x

e. Franziskaner family: 5.5x

f. St. Pauli Girl family: 5x.

68. Reasonable compensation for the fair market value of Chick Fritz's business with respect to each of the European Brands is not more than the multiples offered by Anheuser-Busch on January 10, 2017.

69. Chick Fritz responded to Anheuser-Busch's offer of reasonable compensation by alleging that Anheuser-Busch was attempting "to unlawfully terminate [its] distribution rights" and demanding that Anheuser-Busch "rescind and withdraw in writing the purported termination."

70. There presently exists an actual, justiciable controversy between the parties regarding reasonable compensation for the fair market value of Chick Fritz's business with relation to the European Brands.

#### **PRAYER FOR RELIEF**

WHEREFORE, Anheuser-Busch prays:

(a) That the Court enter a declaratory judgment that the process set forth in BIFDA Section 7(1.5), 815 ILCS 720/7(1.5), applies to the termination of Chick Fritz's distribution rights in this matter because the total annual volume of all beer products supplied by Anheuser-Busch to Chick Fritz represents less than 10% of the total annual volume of Chick Fritz's business for all beer products supplied by all brewers;

(b) That the Court enter a declaratory judgment that Anheuser-Busch offered Chick Fritz reasonable compensation for the fair market value of Chick Fritz's business with relation to the European Brands it distributes; and

(c) That the Court enter such other and further relief as this Court may deem just and proper.

DATED this 31st day of January, 2017.

Respectfully submitted,

/s/ L. Lee Smith

---

L. Lee Smith, ARDC 3122521  
lsmith@hinshawlaw.com  
HINSHAW & CULBERTSON LLP  
416 Main Street, 6th Floor  
Peoria, IL 61602  
Telephone: 309-674-1025  
Facsimile: 309-674-9328

Lead Counsel:

Peter E. Moll (Attorney Admission to be filed)  
Brian D. Wallach (Attorney Admission to be filed)  
CADWALADER, WICKERSHAM & TAFT LLP  
700 Sixth Street, NW  
Washington, DC 20001  
Telephone: 202-862-2200  
Facsimile: 202-862-2400  
Email: [peter.moll@cwt.com](mailto:peter.moll@cwt.com)  
[brian.wallach@cwt.com](mailto:brian.wallach@cwt.com)

Attorney for Plaintiff ANHEUSER-BUSCH, LLC