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A-B's Match and Snatch Struck Down by Mississippi's Supreme Court

Dear Client:

And so it continues. (Please try to pay attention, because this is an important development for brewers and distributors and consultants and lawyers engaged in distributor transactions).

Remember this case in Mississippi — started three years ago — the one that Yuengling once called “a horror story”? Well, it ended up in the Mississippi Supreme Court, and while it wasn't a slam dunk either way, the court's findings yesterday present problems for A-B's contract provision of “match and snatch” — interceding itself into its distributor deals and redirecting a done deal to another distributor of its choosing — at least in states like Mississippi with similar franchise laws.

RECAP. It's been a long time, so let's recap (yes just read it through): Two days before A-B/Yuengling Rex Distributing's sale to Adams Distributing (also A-B and Yuengling) was to close, A-B informed Rex it was exercising a right under the distribution contract to “match and snatch” the sale of Rex and direct it to another distributor of its choosing, in this case A-B distributor Mitchell Distributing (which, significantly, does *not* sell Yuengling. More on that later).

According to Rex's complaint, “this eleventh-hour interference turned out to be part of a continuing scheme by Anheuser-Busch to manipulate its distributors.” Recall before that A-B had attempted to convince its Mississippi distributors not to take on Yuengling, and Mitchell was the only one who complied.

Rex alleged A-B “asserted the match-and-redirect claim to reward Mitchell and simultaneously to punish Rex for selling a competitor's beer, since under the terms of the sale contract, Rex bore the risk its other suppliers would refuse the transfer of its distribution rights to the new purchaser.”

And that's exactly what Yuengling did when Rex acceded to Anheuser-Busch's demand, costing Rex \$3.1 million and leading to this lawsuit.

So, to recap and simplify:

- Rex had a deal to sell to Adams in Mississippi, including Yuengling.
- At the last minute, A-B informed Rex it was redirecting the sale to Mitchell Distributing, leaving Yuengling dangling.
- Rex alleges this was a “reward” for Mitchell since it didn't take Yuengling like the rest of the red network in Mississippi.
- Meanwhile, Yuengling terminated Rex and declined to approve Mitchell as the buyer, leaving Rex holding the bag. [see [BBD 04-17-2017](#) and [BBD 08-29-2017](#)]
- Rex sued everybody, saying A-B's Match n Snatch provision violates the Mississippi Beer Industry Fair Dealing Act and A-B breached its contract with Rex by failing to ensure Rex received the same price it would have

had A-B not redirected the sale, and that Yuengling had violated the state franchise law by refusing to approve Mitchell.

-The trial court dismissed all these counts, so it moved to the Mississippi Supreme Court, who heard the cases *en banc*.

WHAT THE HIGH COURT SAID. Yesterday's ruling was a mixed bag, but the bottom line is it gives Rex a significant win, mainly that the court said that A-B's match and snatch is "null and void" under Mississippi franchise law, and that A-B's demands "may have amounted to unjustified 'interference' with Rex's transfer to Adams, an allegedly qualified transferee. BIFDA expressly provides a remedy for damages resulting from violations of its protections..... The circuit court's dismissal for failure to state a claim is reversed."

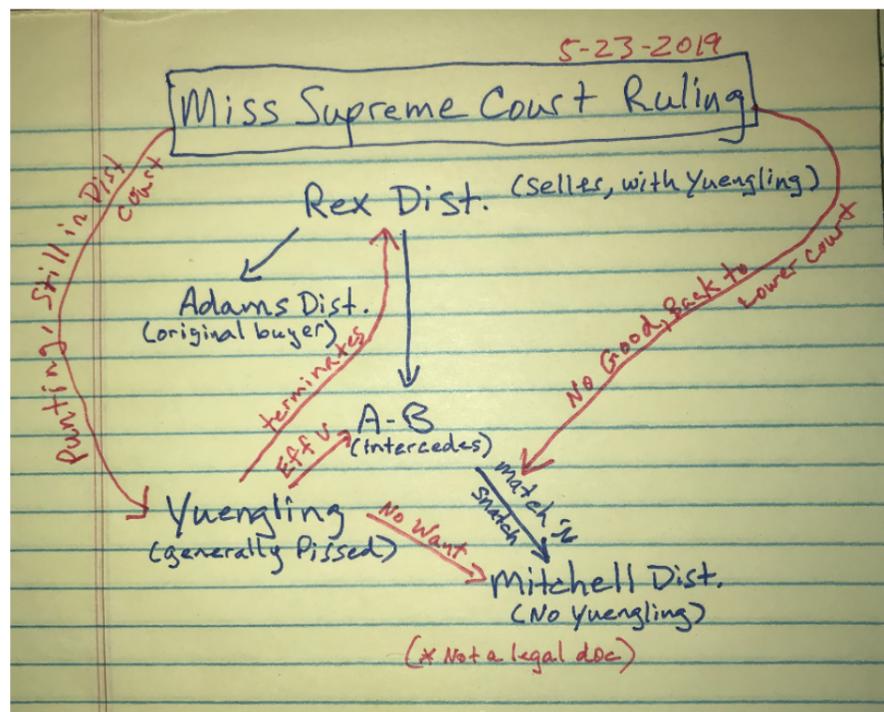
However, it wasn't a total loss for A-B, as the court affirmed the dismissal of Rex's claim that A-B breached its contract with Rex.

The Supreme Court punted on the Yuengling termination lawsuit as that survived the lower court's motion to dismiss, so it remains pending.

But that's not all, the court did allow that perhaps Mitchell engaged in tortious interference in the deal, by allegedly coordinating it all with A-B.

"We conclude that the trial court erred in dismissing Rex's claim against Mitchell for tortious interference with contract" said the *en banc* panel, and also reversed "the dismissal of Rex's civil-conspiracy claim against Mitchell."

I know, I know, it's still complicated. Luckily, we've retained a talented graphic artist to give a visual illustration:



I'm quite certain that clears it up.

So back to the lower courts it goes, with a generally disgusted Yuengling in tow.

So the real question: Why doesn't A-B just settle? It's only \$3 million. That's a long lunch in St. Louis or a short one in New York. The legal fees alone will rival that. Here's why: A-B can't have this precedent out there because many states have similar fair dealing language as Mississippi. Also, saving face and all that, and legal counsel earning fees.

And for distributors for sale it's a big deal too, because it factors into the value of your company in a big way. Stay tuned, folks....

(Click [here](#) for our previous coverage of these cases).

MEMORIAL DAY AD ROUNDUP: SUPERMARKETS SLINGING SPIRITS AT PRICES EQUAL TO OR CHEAPER THAN BEER

It has been theorized for a while now that price is one of the main reasons spirits are beating beer's brains in. After performing our usual spot-check of supermarket ads across the country ahead of Memorial Day weekend, it is hard to disagree.

Perhaps the most glaring example of this comes at a Safeway in Seattle.

Here, shoppers can purchase a 750ml of Tito's, Ketel One, Jack Daniels or Camarena Tequila for the same price as a 12-pack of Heineken or Redhook – \$16.99.

They can grab a whole handle of lower-end vodka (Platinum) or rum (Admiral Nelson's) for \$13.99; cheaper than a 12-pack of Corona (\$14.99).

And they can take home a 750ml bottle of Smirnoff for under 10 bucks (\$8.99) – the same price as a six-pack of Bud Light Orange.

We wish we could say these frightening findings stopped at that particular store, but they didn't.

The weekly ad at a Ralph's in Los Angeles displays a "digital deal" touting how shoppers can take their choice of an 18-pack of Modelo (cans) or a 750ml of Jameson, Maker's Mark or Gentleman Jack all for \$15.99.

That same store is also slinging 750ml bottles of Jim Beam, Jose Cuervo, Svedka, Bacardi or Malibu for under a Hamilton (\$9.99) – the same price that six-packs of Fat Tire and Sierra Nevada Pale Ale are going for at the store.

Then at an Oakland Safeway, shoppers can snag a 750ml of Tito's or Jack Daniels for \$14.99, the same price as a 12-pack of Corona/Modelo, Heineken, Lagunitas IPA, Firestone Walker 805, or Sierra Nevada Pale Ale.

Down south at a Rouses Supermarket in New Orleans, consumers who trade there can take home a 24-pack of Michelob Ultra for the same price as a whole handle of Malibu Rum – \$23.99.

And in the Midwest at a St. Louis Schnucks, shoppers can snag a 750ml bottles of New Amsterdam vodka or Malibu Rum for \$9.99 – that's four bucks cheaper than a 12-pack of Blue Moon there (\$13.99).

APRIL DOMESTIC BEER SHIPMENTS DOWN ON AN EXTRA SELLING DAY

One more bit of sobering news before we head into Memorial Day weekend: April domestic tax paid shipments fell 0.2% in April, representing a 22,149-barrel decline from last April, per Beer Institute estimates.

Doesn't sound that bad, until you realize we had an extra selling day in April. If you adjust the trend to account for the extra day, the trend stands at -4.7%, according to BI chief economist Michael Uhrich.

Regardless, the 0.2% drop in April, marks the third straight month of domestic tax paid declines: February and March tax paid were down 0.6% and 2%, respectively.

YTD tax paid (through April) are now down 0.4%, that's 216,371 barrels off of last year's pace.

Until Tuesday. Have a safe and prosperous Memorial Day,

Harry, Jenn, and Jordan

"Truly great madness cannot be achieved without significant intelligence."

– Henrik Tikkanen

————— *Sell Day Calendar* —————

Today's Sell Day: 18

Sell days this month: 23

Sell days this month last year: 23

This month ends on a: Fri.

This month last year ended on a: Thurs.

YTD sell days Over/Under: 0

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