

Combs Wines & Spirits LLC v Diageo N. Am., Inc.

2023 NY Slip Op 32201(U)

June 30, 2023

Supreme Court, New York County

Docket Number: Index No. 652517/2023

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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COMBS WINES AND SPIRITS LLC	INDEX NO.	<u>652517/2023</u>
Plaintiff,	MOTION DATE	<u>06/02/2023</u>
- v -	MOTION SEQ. NO.	<u>001</u>
DIAGEO NORTH AMERICA, INC.,		
Defendant.	DECISION + ORDER ON MOTION	

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 27, 28, 30

were read on this motion to SEAL COMPLAINT.

Plaintiff Combs Wines and Spirits LLC (“Combs Wines”) motion to seal is **granted in part**. The redactions proposed by Defendant Diageo North America, Inc. (“Diageo”) are accepted to the extent specified below.

This sealing motion has an unusual posture. Combs Wines filed a Complaint asserting a single claim for an injunction against Diageo concerning the marketing and distribution of DeLeón Tequila. As a precaution, Combs Wines moved to seal its Complaint in order to provide *Diageo* an opportunity to argue that sealing is warranted in light of a contractual confidentiality provision. In fact, Combs Wines argues that broad sealing of the Complaint is *not* warranted.

The substantive arguments in support of sealing are contained in Diageo’s brief. It argues that sealing is warranted but proposes more limited redactions than Combs Wines’s original motion had protectively proposed (NYSCEF 16 [Proposed Redacted Complaint]). However, the Court finds that Diageo’s proposed redactions are still too broad.

Pursuant to § 216.1 (a) of the Uniform Rules for Trial Courts, this Court may seal a filing “upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties” (22 NYCRR § 216.1 [a]).

The Appellate Division has emphasized that “there is a broad presumption that the public is entitled to access to judicial proceedings and court records” (*Mosallem v Berenson*, 76 AD3d 345, 348 [1st Dept 2010]). “Since the right [of public access to court proceedings] is of constitutional dimension, any order denying access must be *narrowly tailored to serve compelling objectives*, such as a need for secrecy that outweighs the public's right to access” (*Danco Labs., Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 6 [1st Dept 2000] [emphasis added]; *see also, e.g. Gryphon Dom. VI, LLC v APP Intern. Fin. Co., B.V.*, 28 AD3d 322, 324 [1st Dept 2006]). Sealing motions should be decided expeditiously because they affect the public’s right of access (*Mosallem* at 353).

Sealing should generally be limited to “trade secrets, confidential business information, or proprietary information” (*Vergara v Mission Capital Advisors, LLC*, 187 AD3d 495 [1st Dept 2020]). “Furthermore, because confidentiality is the exception and not the rule, ‘the party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access’” (*Maxim, Inc. v Feifer*, 145 AD3d 516, 517 [1st Dept 2016] [citations omitted]).

Diageo argues that its proposed redactions (reflected in NYSCEF 15) are necessary to secure (i) commercially sensitive business records and strategy information concerning the DeLeón Tequila brand at issue (Cplt. ¶¶17, 20, 60, 68, 79, 80, 85, 86, 96); (ii) confidential records and commercially sensitive business records concerning the Ciroc brand, which it argues

is irrelevant (Cplt. ¶¶10, 33, 34, 69, 90, 91); and (iii) non-public communications with regulators (Cplt. ¶¶16, 61).

The Court has reviewed Diageo's proposed redactions and finds that only the following limited redactions to specific paragraphs of the Complaint are permissible under the stringent standards applicable to sealing motions: ¶79 (only the number of agave plants may be redacted), ¶80 (only the number of agave plants may be redacted), ¶85 (only the numbers of cases, shipments, and depletions may be redacted), ¶90 (only the number of cases may be redacted), and ¶96 (only the number of cases may be redacted). All other proposed redactions (including those initially proposed protectively by Combs Wines and those subsequently proposed by Diageo) are rejected.

Accordingly, it is

ORDERED that Plaintiffs' motion to seal is **GRANTED IN PART** to the extent specified above; it is further

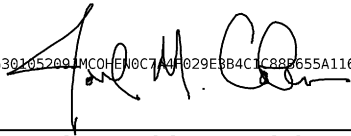
ORDERED that the County Clerk shall maintain the documents filed as NYSCEF Document Numbers 2 and 9 under seal, so that the documents may be accessible only by the parties, their counsel, and authorized court personnel; it is further

ORDERED that Plaintiff shall file a public version of its Complaint with the above-approved redactions to paragraphs 79, 80, 85, 90, and 96 within five (5) days; it is further

ORDERED that as it relates to future submissions, made by any party, that contain subject matter that the Court has authorized to be sealed by this Decision and Order, the parties may file a joint stipulation, to be So Ordered, which will authorize the filing of such future submissions to be filed in redacted form on NYSCEF, provided that an unredacted copy of any document is contemporaneously filed under seal; it is further

ORDERED that nothing in this Order shall be construed as authorizing the sealing or redactions of any documents or evidence to be offered at trial.

This constitutes the Decision and Order of the Court.

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6/30/2023
DATE

JOEL M. COHEN, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
			<input type="checkbox"/>	DENIED	OTHER
					REFERENCE