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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92048732
Party	Defendant Ronald Beckenfeld
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Date	06/20/2013
Attachments	Lovitz Declaration - Reply for MSJ.pdf(2463910 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

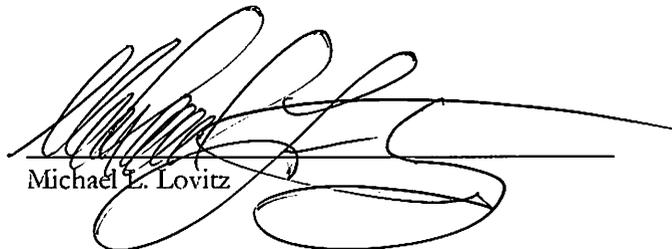
ALTVATER GESSLER – J.A. BACZEWSKI	:	Cancellation 92048732
INTERNATIONAL (USA) INC. and ALTVATER	:	
GESSLER – J.A. BACZEWSKI GMBH,	:	
	:	
Petitioners,	:	Registration No.: 2,731,948
	:	
v.	:	
	:	
RONALD BECKENFELD,	:	
	:	
Respondent	:	Attorney Docket No. B1001-9001

**SUPPLEMENTAL DECLARATION OF MICHAEL L. LOVITZ IN SUPPORT OF
PETITIONER’S MOTION FOR SUMMARY JUDGMENT**

I, Michael L. Lovitz, hereby state as follows:

1. I am a partner in the law firm of Lovitz IP Law PC, which firm had served as legal counsel to Respondent in this matter.
2. This declaration is made in support of Registrant’s Reply to Petitioners’ Opposition to Registrant’s Motion for Summary Judgment in the above-captioned matter.
3. The facts stated herein are within my personal knowledge and are true to the best of my knowledge and belief.
4. Attached as Exhibit 1 are true and correct copies of excerpts from the transcript of the discovery deposition of Mickey Beckenfeld, taken on May 8, 2008.
5. Attached as Exhibit 2 are true and correct copies of excerpts from the transcript of the discovery deposition of John Wilson, taken on November 18, 2011.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief, dated this 20th day of June, 2013.



Michael E. Lovitz

EXHIBIT 1

COPY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Registration Nos. 2,731,948

-----x

ALTVATER GESSLER - J.A. BACZEWSKI
INTERNATIONAL (USA) INC. AND ALTVATER
GESSLER - J.A. BACZEWSKI GMBH,

Petitioners,

CANCELLATION NO. 92048732

v.

RONALD BECKENFELD,

Registrant.

-----x

May 8, 2008
10:12 A.M.

Deposition of MICKEY BECKENFELD,
taken by Petitioner, at the offices of Mutual
Wholesale Liquor, 4510 South Boyle Avenue, Los
Angeles, California 90058, before Sara U. Misa, a
Certified Shorthand Reporter and Notary Public
within and for the State of California.

ARTA PASCULLO, President



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1 M. Beckenfeld

2 Q. Wilson drafted your
3 correspondence?

4 A. Well, he may have drafted the
5 letter and I signed it.

6 Q. Do you know whose idea it was to
7 draft the letter?

8 A. Wilson handled it. He handled
9 the account and 90 percent of this time was
10 spent with Gessler. I wasn't too much
11 involved with the details.

12 Q. Did you speak with Elek Gessler
13 at the time this agreement was signed?

14 A. No.

15 Q. Do you know whether Wilson spoke
16 with Gessler at the time?

17 A. I don't know.

18 Q. Do you remember what the
19 financial condition of Baczewski was in 1992
20 when the agreement was signed?

21 A. If I know what?

22 Q. What kind of financial situation
23 Baczewski was in when they signed this letter?

24 A. I don't know what it is. I know
25 they had some trouble, some bankruptcy

1 M. Beckenfeld

2 trouble.

3 Q. What do you know about those
4 bankruptcy troubles?

5 A. Before I bought their label from
6 Gessler, he had some trouble and he wanted to
7 get the item placed very badly. So we
8 decided, as much as we are against it, not to
9 own a brand, but we produce or we import.

10 We decided we're going to put it
11 on and put some muscles behind it. We hired a
12 national sales manager to work with
13 wholesalers, worked with the state control
14 stores, worked for discount beers. See if we
15 can place it. The only condition I would buy
16 it if we sell it to me the label and the
17 brand.

18 Q. Had --

19 A. We agreed that he will sell me
20 the label if I give him an order. So we
21 prepared the order. When I say "we," John
22 Wilson is the one who handled it.

23 Q. Did you ever speak with Elek
24 Gessler about these issues?

25 A. Well, there was nothing to speak

1 M. Beckenfeld

2 about.

3 Q. The first paragraph of the letter
4 signed by you says, "This confirms and
5 outlines the arrangements reached between us
6 today by telephone on vodka Monopolowa - J.A.
7 Baczewski."

8 Do you remember that telephone
9 conversation?

10 A. Who was the telephone
11 conversation with?

12 Q. I assume the same day the letter
13 was written or dated August 27, 1992.

14 A. If I had talked to Gessler?

15 Q. Yes. Did you?

16 A. I don't remember.

17 Q. Wasn't Mutual selling Baczewski
18 products prior to the date of this letter?

19 A. Yes.

20 Q. How much product was it selling?

21 A. I don't know.

22 Q. Approximately a small amount?
23 Medium?

24 Large?

25 A. You'd have to ask Wilson.

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

ALTVATER GESSLER-J.A. BACZEWSKI,
GMBH, et al.,

Plaintiffs,

vs.

No. Cancellation
92048732(TTAB)

RONALD BECKENFELD,

Defendant.

~~~~~

DEPOSITION OF  
JOHN F. WILSON  
NONCONFIDENTIAL PORTION

November 18, 2011  
10:49 a.m.

1875 Century Park East  
Suite 500  
Los Angeles, California

Martin Spee, CSR 10303



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1 Q. Did Mutual ever manufacture a product  
2 named Merika?

3 A. No, no.

4 Q. Did Mutual ever manufacture and sell  
5 Monopolowa vodka in the U.S.?

6 A. No.

7 Q. Do you know who first thought of the  
8 name Monopolowa for vodka?

9 A. The name of Monopolowa came from the  
10 Gesslers, because at one time they sold the product  
11 to Mutual and to other distributors in the U.S.

12 Q. Are you familiar with the  
13 circumstances under which Mutual first began  
14 distributing Monopolowa vodka in the U.S.?

15 A. Yes. From the time that I joined the  
16 company, yes.

17 Q. When was that?

18 A. 1975. Again, I don't know if they had  
19 Monopolowa at that time or whether it was an item  
20 they were distributing, but certainly around the --  
21 sometime after 1982, and again, I can't be specific.  
22 Mutual Wholesale was buying Monopolowa from the  
23 supplier at that time, which was Mr. Gessler or  
24 Altvater Gessler.

25 Q. Do you know whether the name



1 Monopolowa has a meaning in a foreign language?

2 A. My understanding it's Polish for  
3 monopoly.

4 Q. And what is the role of -- strike  
5 that.

6 MR. LOVITZ: Is this a good spot to  
7 take a break?

8 MR. SLOANE: Absolutely.

9 (A recess was taken at 11:51 a.m., and  
10 back on the record at 11:57 a.m.)

11 MR. SLOANE: Back on the record.

12 Q. Mr. Wilson, are you familiar with a  
13 company named Altvater Geissler-J.A. Baczewski?

14 A. Yes, I am.

15 Q. Who are they?

16 A. They're a company that supplied Mutual  
17 with Monopolowa vodka.

18 Q. Are you familiar with a gentleman  
19 named Elek Gessler?

20 A. Elek Gessler was the father of Rasiel  
21 and Tom.

22 Q. Was Elek involved in Altvater  
23 Gessler-J.A. Baczewski?

24 A. Yes.

25 Q. What was his role in the company, to



1 the best of your knowledge?

2 A. Well, to the best of my knowledge, he  
3 headed the company up; it was his company. I think  
4 he had the designation of president at one time.

5 Q. For purposes of this deposition, I'll  
6 just refer to the company as Altvater Gessler. Are  
7 you familiar with Rasiel Gessler?

8 A. Yes.

9 Q. Who is Rasiel Gessler?

10 A. He's the son of Elek Gessler.

11 Q. Do you know whether or not Rasiel  
12 Gessler is involved with the company Altvater  
13 Gessler?

14 A. Yes, he is.

15 Q. What role -- you mentioned that  
16 Altvater Gessler supplies Monopolowa vodka to  
17 Mutual. What role does Altvater Gessler play in  
18 connection with supplying Monopolowa vodka to  
19 Mutual?

20 A. Basically, they're an agent, you might  
21 say, for the brand in the sense that one -- but they  
22 don't do any bottling or manufacturing, and they  
23 sub-job that to a company called Horvath. When  
24 Mutual sends in their order, they send it to Horvath  
25 and copy Altvater Gessler on the order.



1 Wholesale.

2 Q. Communication to whom?

3 A. Back to Mutual Wholesale, the  
4 applicant. Probably sent to my attention.

5 Q. This, in fact, is an application filed  
6 with the U.S. Trademark Office. Does that refresh  
7 your recollection as to the significance of this  
8 document, Mr. Wilson?

9 A. Yes, it does.

10 Q. Do you have any reason to believe this  
11 is not the application filed by Mutual with the  
12 United States Patent and Trademark Office to  
13 register the trademark Monopolowa for vodka?

14 A. No.

15 Q. Did you sign this application,  
16 Mr. Wilson?

17 A. I sure did.

18 Q. Did you sign it under penalty of  
19 perjury?

20 A. Yes. That's what I read, yeah.

21 Q. You asserted in the application that  
22 you believe Mutual to be the owner of the trademark  
23 Monopolowa for vodka; is that correct?

24 A. That's correct.

25 Q. What did you base that assertion on?



1           A.       On the fact that the product name had  
2       been transferred to Mutual by Mr. Gessler.

3           Q.       By virtue of what?

4           A.       The signed agreement that is part of  
5       the -- is it 1992 communication, or whenever? It's  
6       apparently to the purchase agreement.

7           Q.       Did -- at the time that Mutual applied  
8       to register the trademark Monopolowa with the U.S.  
9       Trademark Office, did you also inquire as to  
10       registering the name Baczewski?

11          A.       I never inquired into registering the  
12       name Baczewski. My communication to the attorney  
13       who handled this application, I sent him the copy of  
14       the purchase agreement and the transfer of title  
15       agreement.

16          Q.       Did you ever inquire into registering  
17       Baczewski with the trademark office?

18          A.       Not specifically in my initial request  
19       to the attorney. Again, as I say, I sent along the  
20       agreement on the transfer of the brand name which  
21       included reference to Altvater Gessler.

22          Q.       Altvater Gessler as a company or as a  
23       trademark?

24          A.       As the part of the title.

25          Q.       When you say "part of the title," do



1 remember right.

2 Q. Who drafted this Letter of  
3 Authorization and Power of Attorney?

4 A. I did.

5 Q. It we'll mark as Wilson 14 a two-page  
6 document beginning with a letter dated August 27,  
7 1992.

8 (Whereupon, Exhibit 14 was marked for  
9 identification.)

10 MR. SLOANE:

11 Q. Are you familiar with this document,  
12 Mr. Wilson?

13 A. Yes, I sure am.

14 Q. Is this the 1992 agreement to which  
15 you've been previously referring?

16 A. It is, yes.

17 Q. Who prepared this document?

18 A. I did.

19 Q. Did you prepare it for Mickey  
20 Beckenfeld to sign?

21 A. I did, yes.

22 Q. Does that mean you prepared both the  
23 letter on the first page and the document shown on  
24 the second page?

25 A. I did, yeah.



1 Q. Just to clarify for the record, this  
2 two-page document has Bates numbers ALT 462 and 464  
3 written on the bottom. Who faxed this document to  
4 Elek Gessler?

5 A. It would be probably my secretary at  
6 the time.

7 Q. Would she have done that at your  
8 direction?

9 A. Exactly, yes.

10 Q. Was the Letter of Authorization and  
11 Power of Attorney shown in Exhibit 13 actually  
12 signed on the same date, August 27, 1992 referred to  
13 in Exhibit 14?

14 A. I don't know. I can't remember. I  
15 put this date on here because -- on the copy of the  
16 prepared power of attorney and authorization to  
17 correspond with the date of the agreement, which I  
18 thought was appropriate at that time.

19 Q. Had there been a Letter of  
20 Authorization or Power of Attorney signed previous  
21 to 1992?

22 A. I thought there was but I couldn't  
23 find one in the file.

24 Q. Isn't it correct that you lost the  
25 original?



1           A.       Well, something happened to it. You  
2 know, these things were used repeatedly as we made  
3 the registration -- or applied for registration in  
4 the various states that we -- and so obviously, if  
5 it's a stereotype document, it would have been -- a  
6 sample would have been kept in the file. And when I  
7 went to find this particular authorization, this  
8 wasn't there.

9           Now, it could have been that the original  
10 authorization did not have that bottom part on it,  
11 okay? It is also confirmed here that we -- by  
12 separate agreement brand ownership of Monopolowa  
13 Family USA has already been transferred to Mutual.  
14 I don't know.

15           But in the meantime, I thought it was  
16 important to place that on this power of attorney  
17 just to substantiate and corroborate the fact that  
18 there had been agreement to that effect.

19           Q.       So in other words, the Letter of  
20 Authorization in general, did it have any function  
21 other than in connection with various state  
22 registrations?

23           A.       It was a limited power of attorney  
24 that entitled -- that allowed us to make -- to  
25 register the product wherever we felt it was



1 important to do so.

2 Q. With the state government?

3 A. Exactly.

4 Q. Is it your testimony that the Letter  
5 of Authorization shown here was in a standard form  
6 but for the additional paragraph confirming transfer  
7 of ownership by separate agreement?

8 A. It's possible, but again, I could not  
9 find the original document. And I know we must have  
10 had one because otherwise, how could we have gotten  
11 the product registered up to this point?

12 Q. Where would I find the registration  
13 with the various state and local governments for  
14 Monopolowa?

15 A. Where would you find it?

16 Q. Yes.

17 A. I would have to think with the  
18 respective states that we had applied for  
19 registration.

20 Q. Were you the person at Mutual  
21 responsible for making those state registrations?

22 A. Yes, I was.

23 Q. Just to clarify, I believe your  
24 testimony has been that the letter of authorization  
25 shown here is in a standard form also used in



1 connection with other brands, but for the additional  
2 paragraph confirming ownership, correct?

3 A. That's correct.

4 Q. But you don't have any specific  
5 recollection of adding that paragraph?

6 A. No, I added the paragraph.

7 Q. Do you recall adding the paragraph?

8 A. Yes, I do. And that's why Rasiel  
9 objected to signing it and giving me the  
10 authorization.

11 Q. Was the authorization shown in  
12 Exhibit -- was the authorization shown in Exhibit 13  
13 ever signed in the same form by Elek Gessler or by  
14 anyone else at Altvater Gessler?

15 A. I don't know what the original one, if  
16 in fact it did have. But certainly as far as Rasiel  
17 is concerned, he didn't sign it.

18 Q. Why didn't he sign it?

19 A. Because he did not agree with the fact  
20 that Mutual was the owner of the Monopolowa brand.

21 Q. I'll introduce Wilson Exhibit 15;  
22 one-page document dated March 16, 2003.

23 (Whereupon, Exhibit 15 was marked for  
24 identification.)

25 THE WITNESS: After the letter that I



1 belief was on the basis of -- again, on the basis of  
2 the agreement.

3 MR. SLOANE:

4 Q. Getting back to Exhibit 14, I believe  
5 that you testified that you were the person who  
6 drafted the contents of these two pages; is that  
7 correct?

8 A. Exactly, yeah. Well, I drafted them  
9 from an understanding that was given to me by  
10 Mr. Beckenfeld.

11 Q. The first paragraph of the August 27,  
12 1992 agreement states, "This confirms and outlines  
13 the arrangement reached between us today by  
14 telephone." Did you participate in that telephone  
15 conversation?

16 A. No, not on that particular one. What  
17 I'm referring to is, obviously this letter was  
18 written under the signature of Mickey Beckenfeld.

19 Q. But you didn't sit in on, or otherwise  
20 hear the conversation?

21 A. No. I did speak to Mr. Gessler  
22 afterwards and following up his signature for the  
23 drafted agreement, and also the agreement on the  
24 transfer of the brand ownership.

25 Q. Why didn't Mutual or Mickey Beckenfeld



1 have an attorney draft any assignment document?

2 A. Well, I suppose it all becomes a  
3 matter of economics. I would imagine Mickey didn't  
4 think it was necessary for an attorney to be  
5 involved, and maybe he didn't want to spend the  
6 money.

7 Q. Did you think an attorney should be  
8 involved?

9 A. No, because at that time I felt that  
10 it was pretty specific and direct and a simple  
11 agreement. And so even if I had and suggested it, I  
12 don't think there would be an attorney involved.

13 Q. Why not?

14 A. Well, because again, as I say, I don't  
15 think Mickey felt it was a necessity to have an  
16 attorney being involved.

17 Q. This is a pretty big deal, a company  
18 transferring ownership of its brand to another  
19 company?

20 A. That's true. By the same token, while  
21 you're alluding to the fact that, you know, that  
22 maybe it would have been best to have -- what about  
23 Gessler? He's signing the document too and you have  
24 agreement with two parties. When I actually spoke  
25 to Mr. Gessler, he didn't even have a secretary to



1 help him to fax back the document.

2 Q. How old was Elek Gessler at the time  
3 of the 1992 agreement?

4 A. I don't know. I don't know. He was  
5 getting up in age, but again I could not make a  
6 guess as to how old he was.

7 Q. And do you personally have any legal  
8 training?

9 A. Not really.

10 Q. Not really or no?

11 A. No, I have no -- I mean, apart from  
12 whatever business law that in my academic learning,  
13 or in my business experience, I'm not really -- I  
14 don't profess to have legal knowledge.

15 Q. Why do you think that Elek Gessler  
16 agreed to transfer any trademark rights to Mutual at  
17 the time of the 1992 letter?

18 A. Well, it was my understanding that  
19 Mr. Gessler was having a problem and continuing with  
20 the supply of Monopolowa Vodka. And it was  
21 explained to me that one of the reasons that he was  
22 having this problem is that he didn't have the  
23 financing to involve a actual bottler or producer of  
24 the product. He was merely a middleman.

25 He said it was his brand but he wasn't doing



1 the bottling, and so he had to involve a processor,  
2 and being able to supply whatever we were ordering.  
3 And apparently, he had struggled with the fact that  
4 we had been paying him for the product, which  
5 included whatever he had agreed to pay the actual  
6 bottler.

7 But apparently he wasn't -- and again, I  
8 don't know the whole story. I'm only going on  
9 recollection. Apparently, the money was not getting  
10 back to the bottler quick enough to whereby the  
11 bottler would quickly respond to future orders.

12 And so I think that he -- because he knew  
13 Mickey Beckenfeld had no trouble in financing things  
14 such as this, that he perhaps he -- Mickey could be  
15 the panacea in the situation and supply the funds to  
16 allow the continuation of the flow of the product.

17 Well, obviously, Mickey thought, well, what's  
18 in this for me? If I'm going to finance the deal,  
19 what do I get out of it? And I think that that's  
20 what precipitated the arrangement to whereby, one,  
21 Mickey -- why would Mickey, who had no interest in  
22 the product, agree to finance it?

23 Q. What was the quid pro quo for Elek  
24 Gessler?

25 A. Well, I mean, it would allow him to



1 continue with the supply of the product and make  
2 whatever he made on each of the orders.

3 Q. Did this purported agreement impose  
4 any continuing obligation on the part of Mutual to  
5 continue to buy from Altvater Gessler?

6 A. No, other than the fact that we did  
7 sign the purchase agreement because, you know, at  
8 that time Altvater Gessler was the key to the  
9 supply.

10 Q. So aside from the single purchase  
11 order, are you stating that you don't believe there  
12 was any ongoing obligation on the part of Mutual to  
13 continue to buy from Altvater Gessler?

14 A. I think there was a sense of honor and  
15 loyalty involved, you know, in the sense of one --  
16 and that's been demonstrated over the years since  
17 this took place.

18 Q. How long would that obligation last?

19 A. At this time -- at the time that this  
20 document was even considered, nobody was thinking  
21 about matters such as that. It's only when we  
22 started to make inroads with the product that, all  
23 of a sudden, the Gesslers, you know, they're looking  
24 to this and saying, hey, this is our brand, not  
25 Mutual.



1 Q. Would it have made sense for Elek  
2 Gessler to sell the product for a dollar if Mutual  
3 could go the next day and turn to another supplier  
4 of the product?

5 A. Yeah, but remember, we were dealing  
6 with a commodity that was already available. And  
7 again, like I said before, for Mutual to go at that  
8 time and seek out another supplier and have to wait  
9 for the setup, the labels and the flow of the  
10 product, there would have been a delay.

11 So I'm assuming that expediency was part of  
12 the considerations here, and that one, okay here's  
13 the source. Do we want to continue with it? And by  
14 this time, we already made inroads with certain  
15 customers and made placements for the product that  
16 we felt had a potential and viability. So, you  
17 know, it's only natural that we would latch onto  
18 this situation. I don't see any other reason for  
19 this to take place.

20 Obviously, there was a need for Mr. Gessler  
21 to tie up with someone who he had the confidence in  
22 being able to help him finance the deal.

23 Q. I'm asking you for your opinion,  
24 legally speaking, whether or not Mutual had the  
25 right the next day, August 28, 1992, to turn around



1 and start going to another supplier?

2 A. I suppose in a way -- we never thought  
3 about it. But I suppose in a way that we had the  
4 opportunity to do that. But again, as I say, we  
5 were quite happy with the association with Altvater  
6 Gessler.

7 (Off the record.)

8 MR. SLOANE: Back on the record.

9 Q. The 1992 letter shown in Exhibit 14  
10 states, "It was agreed that you would immediately  
11 fax your letter declaring the transfer of brand  
12 ownership in the United States of America on Vodka  
13 Monopolowa-J.A. Baczewski to this company, Mutual  
14 Wholesale, Inc., parentheses, Mutual, end  
15 parentheses, for the sum of one U.S. dollar."

16 Did Mr. Elek ever fax a letter transferring  
17 the brand?

18 A. No. What he did was he signed this,  
19 which was prepared in my office.

20 Q. "This" meaning page 2 of Exhibit 14?

21 A. Right. One and two, because as you'll  
22 note, on page 1 he has the -- has signatures at the  
23 bottom.

24 Q. Earlier you testified about what  
25 constituted the trademark. That may have been in



1 connection with Altvater Gessler, but this paragraph  
2 refers to Vodka Monopolowa/J.A. Baczewski?

3 A. No reference to that. That's my  
4 error. It has no reference to Gessler, but it has  
5 J.A. Baczewski.

6 Q. What is your understanding of that  
7 compounded mark, "Vodka/Monopolowa/J.A. Baczewski?"  
8 Why did you express it that way?

9 A. Because that was what was on the  
10 label. And since it was a transfer of brand  
11 ownership, whatever was on the label I felt was  
12 important and -- as far as the brand name was  
13 concerned.

14 Q. Do you believe, as we sit here today,  
15 that Mutual owns trademark rights in the wording  
16 J.A. Baczewski?

17 A. I do in the sense that one, that's  
18 what this agreement agrees to.

19 Q. Why didn't Mutual ever apply to  
20 register the trademark J.A. Baczewski with the U.S.  
21 Trademark and Patent office?

22 A. As you'll see, I sent this whole  
23 package to the attorney. And he, for whatever  
24 reason, did not include Baczewski in the  
25 registration but rather than Monopolowa. Which I



1 didn't object to on the basis of, one, that as far  
2 as I was concerned, Monopolowa was the most  
3 important part of the transfer of title.

4 Q. Who owns rights to the trademark  
5 Monopolowa for gin in the U.S.?

6 A. It's not Mutual because we didn't  
7 apply for the registration of Monopolowa. And I  
8 think that anybody who was applying for the  
9 registration of Monopolowa Gin in the U.S. would run  
10 up against a hurdle because of the fact that the  
11 name Monopolowa is registered in the name of Mutual.

12 Q. Do you think that Altvater Gessler  
13 owns trademark rights, or that it retained trademark  
14 rights, for Monopolowa for gin in the U.S.?

15 A. I don't know whether they made the  
16 application or not.

17 Q. Did Elek Gessler or Altvater Gessler  
18 ever pay one dollar as contemplated by the agreement  
19 to Mutual?

20 A. I don't know. Again, as I say, I  
21 don't know -- apart from the written arrangement, I  
22 don't know what Mickey and Elek did as far as that's  
23 concerned.

24 Q. Did you ever inquire?

25 A. No.



1 Q. Why did you stipulate for payment of  
2 \$1?

3 A. Because that's what I was told was the  
4 part of the arrangement.

5 Q. Who told you that?

6 A. Mickey.

7 Q. What exactly did Mickey tell you  
8 following his telephone conversation with Elek  
9 Gessler on August 27, 1992?

10 A. He explained to me -- we were -- prior  
11 to his communication with Mr. Gessler, Mr. Elek  
12 Gessler, our concern was the lack of continuity of  
13 supply. So obviously on that particular day a  
14 communication took place between Mickey and Mr. Elek  
15 Gessler and this is what came out of the -- this was  
16 a result of the conversation -- I mean, of the  
17 conversation.

18 And, one, I'm having to assume that Mickey  
19 was expressing his concern on the lack of flow, and  
20 then Mr. Gessler, Elek Gessler would explain to him  
21 the reason why. And between them they came up with  
22 this agreement.

23 Q. Why didn't they just come up with a  
24 distribution arrangement between them or some kind  
25 of financial arrangement? Why involve the



1 trademark?

2 A. I cannot speak for Mickey Beckenfeld  
3 in this regard. In the sense that one, that as I  
4 said before, I'm sure one of the questions that  
5 Mickey would have with regard to the situation with  
6 Mr. Elek Gessler would be, well, okay, I'll finance  
7 -- I'll agree to it, but what am I getting out of  
8 it?

9 Q. For example, they could have come up  
10 with an exclusive distribution arrangement?

11 A. They could have, but on the other  
12 hand, that might not have satisfied Mickey. I don't  
13 know. I can't speak for Mickey in this regard.

14 Q. The letter further stipulates on  
15 methods of payment on all purchases for said brand.  
16 Is there any time limitation imposed upon that  
17 pricing?

18 A. No. And that was one of the things  
19 that Rasiel brought to our attention and a lot of  
20 period whereby, one, he wanted to make the agreement  
21 more elaborate. Again, as I say, you know, we  
22 weren't thinking about all of these things at this  
23 time.

24 What we -- what our concern was, how do we  
25 stimulate and continue the flow of the product, and



1 again, as I say, I can't speak for Mickey, but I  
2 have to assume that he felt he had achieved  
3 something and improving the time intervals on the  
4 flow of the product.

5 Q. How long did this pricing arrangement  
6 last?

7 A. All I can say is that until there was  
8 a change in each of the changes on the prices is  
9 documented and a similar type of document --

10 Q. I'll get to the purchase orders. Are  
11 you testifying that this pricing was only good up  
12 until the point when the next purchase order issued?

13 A. Not the next purchase order. The next  
14 price increase was agreed upon.

15 Q. How would price increases be agreed  
16 upon and reflected in writing?

17 A. Always with an agreement drawn up  
18 between the two parties and signed off by both  
19 parties; the two parties being Altvater Gessler and  
20 Mutual Wholesale Liquor, Incorporated.

21 Q. How many pricing arrangements were  
22 entered into between Mutual and Altvater Gessler  
23 during your time with Mutual?

24 A. I would have to say five or six, at  
25 least. And so there are documents to reflect these



1 changes.

2 Q. Are there any other terms to the  
3 purported transfer of the trademark Monopolowa as  
4 between Mutual and Altvater Gessler, other than what  
5 is contained in Exhibit 14?

6 A. Not that I know of.

7 Q. The bottom, the signature block to the  
8 August 27 letter states Eric Gessler?

9 A. Yeah. That was my mistake, but he  
10 changed it to Elek and correction.

11 Q. Why did you think his name was Eric?

12 A. I didn't know the man. I thought his  
13 name was Eric Gessler till this happened and that  
14 corrected my thinking.

15 Q. How come the date is not filled in on  
16 the bottom of the August 27 letter?

17 A. I don't know. That was up to  
18 Mr. Gessler to finalize on that.

19 Q. Were you concerned that the date  
20 hadn't been filled in?

21 A. Not really, because the date is on the  
22 letter, August 27.

23 Q. Where was Mr. Gessler physically  
24 residing when he purportedly signed this letter?

25 A. I think it was in Austria, but I'm not



1 quite certain.

2 Q. The letter doesn't have an address.  
3 Is that because you were uncertain of where  
4 Mr. Gessler was located?

5 A. That could be, yes. And I was faxing  
6 it to him anyway. At that time, I think he was  
7 traveling a lot between -- to be honest with you, at  
8 this time I don't know. I don't know whether I was  
9 aware of the fact that he lived in New Jersey or  
10 wherever it was in the U.S. that he lived.

11 Q. So he may have been in New Jersey or  
12 Austria for all you know?

13 A. Yeah, but as far as I know, if I  
14 remember, he was in Austria because I seem to  
15 remember him saying to me that he was having a  
16 problem with his secretary. And that was  
17 contributing to the delay in his completion of the  
18 second part of the agreement, or page 2 of the  
19 agreement.

20 Q. Was the secretary named Stephanie  
21 Saeur, S-A-E-U-R?

22 A. I don't know.

23 Q. Did you ever have any dealings with  
24 his secretary?

25 A. Not really. Apart from the fact --



1 no, no. I don't remember any dealings with her.

2 Q. Was this August 27, 1992 letter  
3 agreement ever notarized?

4 A. No.

5 Q. Did you ever ask that it be notarized?

6 A. No.

7 Q. How did you come to put in Altvater  
8 Gessler GAB as the name for the company  
9 countersigning the letter?

10 A. Well, I seen some reference to this  
11 GAB before, and I can't remember where. Although  
12 Mr. Gessler -- Rasiel did observe upon that at a  
13 time subsequent to this. But it was way after the  
14 document was --

15 Q. What do you mean by observe the point?

16 A. I think that that GAB, I don't know  
17 where -- I got it from someplace, and I'm assuming I  
18 got it from some communication or correspondence or  
19 whatever. I don't know how significant it is, but  
20 because I had seen it and the fact that Mr. Gessler  
21 signed off on it, I didn't have any second thoughts  
22 about it.

23 Q. Do you know for certain that this is  
24 Elek Gessler's signature that's shown?

25 A. I don't know for certain, but I did



1 communicate with him on the telephone and sent him  
2 the documents and this is what I got in response, so  
3 I had to assume that it was his signature.

4 Q. What is your understanding as to the  
5 language crossed out in the second paragraph of the  
6 letter?

7 A. My understanding is that he wanted to  
8 confirm that the entitlement on the transfer was  
9 only for the U.S.A. and for no other region or area.

10 Q. Does that say "and Asia" in crossed  
11 out lettering?

12 A. It may have. I think so.

13 Q. Who put in "and Asia"?

14 A. I did because that was my  
15 understanding.

16 Q. Who struck it out?

17 A. Mr. Gessler.

18 Q. When do you believe page 2 to Exhibit  
19 14 to have been sent by Mutual?

20 A. There's a date on this of August 27,  
21 '92.

22 Q. It says on the bottom in reverse,  
23 "sent by Continental Vitamin Company."

24 A. That was sometimes if our fax machine  
25 wasn't working, we would sometimes ask Continental



1 to transmit the document; not often but sometimes.

2 MR. LOVITZ: Peter, can we go off the  
3 record for a second?

4 MR. SLOANE: Yeah.

5 (Off the record.)

6 (The reporter read the requested  
7 portion of the record, as follows:

8 "Q. It says on the bottom in reverse,  
9 "sent by Continental Vitamin Company.

10 A. That was sometimes if our fax machine  
11 wasn't working, we would sometimes ask Continental  
12 to transmit the document; not often but sometimes.")

13 MR. SLOANE:

14 Q. Mr. Wilson, do you recall receiving  
15 the signed version of this letter on or about August  
16 27, 1992? In other words, do you recall Elek  
17 Gessler signing and faxing it back?

18 A. I know he did because I was on his --  
19 to get it back because I thought it was important.

20 Q. Why do you think a separate agreement  
21 was required, apart from the August 27, 1992 letter?

22 A. Other than the fact that I felt that  
23 the transfer of title should be on a separate  
24 document, that was the only requirement. I mean,  
25 the only thought in my mind at the time.



1 Q. Why did you think it should be  
2 separate?

3 A. Because really it has nothing to do  
4 with -- I mean, the purchase agreement is one thing,  
5 but the transfer of title is another thing. And  
6 there was no malice in my thought in the sense that  
7 one -- to separate them. I just felt they had an  
8 association, but it was -- I think it was preferable  
9 that we had the transfer of brand ownership spelled  
10 out on a separate document.

11 Q. The separate document refers to brand  
12 and label format. What is meant by that?

13 A. Where is that?

14 Q. It's in the parenthetical on the  
15 second line.

16 MR. LOVITZ: Other page.

17 THE WITNESS: Brand and label format,  
18 yes, exactly. Okay. Your question was, what is the  
19 significance of that?

20 MR. SLOANE:

21 Q. Right.

22 A. Well, I merely -- I mean, I wanted to  
23 tie together as much as possible what the -- that  
24 the transfer of the brand and the label in its  
25 present format was part of the agreement.

