

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

VIGNERONS DE LA MEDITERANEE, S.A.,

Index No.:

Plaintiff,

SUMMONS

-against-

PASTERNAK WINE IMPORTS, PASTERNAK
WINE IMPORTS LLC and DOMAINES
BARONS DE ROTHSCHILD,

Basis of Venue

Defendants' Residence:

500 Mamaroneck Avenue
Harrison, New York 10528

Defendants.

To Above Named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with the summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); in the case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint plus interest thereon together with the costs of this action.

Dated: Rochelle Park, New Jersey
January 5, 2015

SLATER, TENAGLIA, FRITZ, & HUNT, P.A.
Attorneys for Plaintiff

By: 
James T. Hunt, Jr.

Defendants' Address(es):

Pasternak Wine Imports, LLC
500 Mamaroneck Avenue
Harrison, NY 10528

Pasternak Wine Imports
777 West Putnam Avenue
Greenwich, CT 06830

Domaines Barons de Rothschild
c/o Pasternak Wine Imports, LLC
500 Mamaroneck Avenue
Harrison, NY 10528

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF WESTCHESTER

<p>VIGNERONS DE LA MEDITERANEE, S.A.</p> <p style="text-align: right;"><i>Plaintiff,</i></p> <p style="text-align: center;">-against-</p> <p>PASTERNAK WINE IMPORTS, PASTERNAK WINE IMPORTS LLC and DOMAINES BARONS DE ROTHSCHILD</p> <p style="text-align: right;"><i>Defendants.</i></p>	<p>Index No.:</p> <p><u>VERIFIED COMPLAINT</u></p>
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Plaintiff, Vignerons De La Mediteranee, S.A. (hereinafter referred to as the “Plaintiff” or “VM”), by and through its attorneys, Slater, Tenaglia, Fritz & Hunt, P.A., as and for its Verified Complaint, respectfully sets forth and alleges as follows:

PARTIES

1. At all relevant times herein, Plaintiff was and is a foreign corporation organized under the laws of France and has its principle place of business in Narbonne, France.
2. At all relevant times herein, Defendant Pasternak Wine Imports (“PWI”) is a Connecticut Partnership having its principal place of business at 777 West Putnam Avenue, Greenwich, Connecticut 06830.
3. At all times hereinafter mentioned, Defendant PWI was and is a partnership authorized to conduct business in the State of New York.
4. At all times hereinafter mentioned, Defendant PWI was and is a business entity which derives substantial revenue from its business and activities within the State of New York.
5. At all times hereinafter mentioned, Defendant PWI was a company transacting business within the State of New York.
6. At all relevant times herein mentioned, Defendant Pasternak Wine Imposts LLC

("PWI LLC") is a limited liability Company organized and existing under the laws of the State of New York, having a business address at 500 Mamaroneck Ave., Harrison, New York 10528.

7. At all times hereinafter mentioned, Defendant PWI LLC was and is a business entity which derives substantial revenue from its business and activities within the State of New York.

8. At all times hereinafter mentioned, Defendant PWI LLC was and is a Domestic corporation duly authorized to conduct business in the State of New York.

9. At all times hereinafter mentioned, Defendant PWI LLC was a company transacting business within the State of New York.

10. At all relevant times herein mentioned, Defendant Domaines Barons de Rothschild ("DBR") is a foreign company organized and existing under the laws of France, having a business address at 33, rue de la Baume, 75009 Paris, France.

11. At all times hereinafter mentioned, Defendant DBR was and is a partnership conducting business in the State of New York.

12. At all times hereinafter mentioned, Defendant DBR was and is a company conducting business in the State of New York.

13. At all times hereinafter mentioned, Defendant DBR was and is a business entity which derives substantial revenue from its business and activities within the State of New York.

14. At all times hereinafter mentioned, Defendant DBR was a company transacting business within the State of New York.

FACTUAL ALLEGATIONS

15. VM specializes in producing and supplying of wine and wine products, which it exports to several countries, including the United States.

16. Defendant PWI purchases inventory and distributes imported wines to licensed retail sellers in the United States.

17. Defendant PWI LLC purchases inventory and distributes imported wines to licensed retail sellers in the United States.

18. Defendant DBR is engaged in the business of owning and managing wine-producing properties including manufacturing and supplying of wine products.

19. Defendant DBR is a direct competitor of VM.

20. VM and PWI entered into a written distribution agreement (the "Agreement") wherein PWI became an exclusive importer and distributor of certain VM wines to the United States including Puerto Rico and the U.S. Virgin Islands.

21. Defendant PWI was required to exclusively and actively sell, promote, advertise and market VM wines in the United States including Puerto Rico and the U.S. Virgin Islands.

22. Defendant PWI agreed not to market, represent or sell in the United States, Puerto Rico and the U.S. Virgin Islands any French varietal Vin de Pays d'Oc wines not supplied to it by VM without the written consent of VM.

23. Section 16(c) of the Distribution agreement provides that no agreement or understanding modifying or extending the terms of this agreement shall be binding upon the other party unless contained in a writing signed by its duly authorized representative.

24. Section 16(f) of the Distribution agreement provides that the agreement is governed by the laws of New York.

25. Upon information and belief and without consent, PWI marketed, represented and sold competing wines from the French de Pays d'Oc region in the United States, Puerto Rico and the U.S. Virgin Islands, which were wines not supplied to it by VM.

26. Upon information and belief, without written consent, PWI transferred all of their benefits, interests, liabilities and obligations under the Distribution Agreement to PWI LLC.

27. Upon information and belief, PWI had been invoiced for the wines they were supplied and have failed to remit payment on the outstanding invoices.

28. Upon information and belief in or around March 2007, PWI without notice, cause, or the consent of Plaintiff, made PWI LLC the exclusive distributor of VM Wines.

29. Upon information and belief in or around March 2007, PWI arbitrarily and without notice to VM gave exclusive distributionship of the VM wines to PWI LLC, thus breaching and terminating all relationships with VM.

30. As a result of the PWI's breach of the Distribution Agreement, VM sales of wines in the United States, Puerto Rico and the U.S. Virgin Islands decreased significantly.

31. Upon information and belief and without consent, PWI LLC marketed, represented and sold in the United States, Puerto Rico and the U.S. Virgin Islands wines not supplied to it by VM.

32. Upon information and belief, PWI LLC had been invoiced for the wines it was supplied by Plaintiff but has failed to remit payment on the outstanding invoices.

33. Upon information and belief, DBR, a direct competitor of VM, purchased an ownership stake of PWI LLC.

34. At that time, PWI LLC suffered from an actual conflict of interest, in that it was obligated to market and promote Plaintiff's brands but was in fact owned, in part, and then entirely, by a competitor company, and therefore had less incentive to promote Plaintiff's goods.

35. Upon information and belief, DBR without notice, cause, or the consent of Plaintiff, in essence became a distributor of VM Wines.

36. Upon information and belief, DBR conspired with PWI LLC to preserve and expand its market position by foreclosing access to VM's products, business and distribution channels in the United States, Puerto Rico and the U.S. Virgin Islands, and by forcing, enticing and/or compelling PWI LLC to market and advertise DBR's competing wines rather than Plaintiff's wines.

37. As a result, PWI LLC failed to comply with its contractual obligations to Plaintiff by failing to properly promote and market Plaintiff's wines.

38. As a result of DBR's interference and acquisition of the VM Distribution Agreement, VM sales of wines in the United States, Puerto Rico and the U.S. Virgin Islands decreased.

39. Upon information and belief, in 2013, DBR purchased a 100% interest in PWI LLC and became the sole owner of PWI LLC.

40. This transaction placed PWI LLC in an actual conflict of interest, in that it was 100% owned by a competitor of Plaintiff.

41. Upon information and belief, DBR's conduct was in bad faith as they utilized their improper and unlawful interference with Plaintiff's business and contractual relations to their own advantage.

42. Upon information and belief, DBR without notice, cause, or the consent of Plaintiff, in essence became the exclusive distributor of VM Wines.

43. As a result of DBR's interference and breach of the Distribution Agreement, VM sales of wines in the United States, Puerto Rico and the U.S. Virgin Islands decreased.

44. Upon information and belief, DBR has been invoiced for the wines they were supplied and have failed to remit payment on the outstanding invoices.

**As And For A First Cause Of Action
For Breach Of Contract Against PWI**

45. Plaintiff repeats, reiterates and realleges each and every allegation contained in the above Paragraphs of this Complaint as if more fully set forth at length herein.

46. At all times herein mentioned, there was a valid Distribution Agreement between VM and PWI.

47. At all times herein mentioned, Plaintiff substantially performed in accordance with the Distribution Agreement.

48. PWI arbitrarily and without notice, cause or the consent of Plaintiff transferred exclusive distributorship of VM wines to PWI LLC, thus breaching and terminating all relationships with Plaintiff.

49. As a result of the wrongful breach of the Distribution Agreement, Plaintiff's sales of wine in the United States, Puerto Rico and the U.S. Virgin Islands significantly decreased.

50. Pursuant to the Agreement, Plaintiff supplied wine product to PWI and PWI LLC, both of which have refused to pay for same per the Agreement.

51. PWI and PWI LLC have failed to make payments under the terms of the Agreement. PWI and PWI LLC's failure to make payments also constitutes a material breach of the terms and conditions of the Agreement.

52. VM's damages were caused by PWI and PWI LLC's breach of its duties under the Distribution Agreement, without any fault, want of care or culpable conduct on the part of VM contributing thereto.

53. Based upon the foregoing, VM has been damaged in an amount that exceeds the jurisdictional limits of all lower courts.

**As And For A Second Cause Of Action For Breach Of
The Implied Covenant of Good Faith And Fair Dealing Against PWI**

54. Plaintiff repeats, reiterates and realleges each and every allegation contained in the above Paragraphs of this Complaint as if more fully set forth at length herein.

55. The Agreement between VM and PWI obligated PWI to perform the terms and conditions of the Distribution Agreement fairly and with good faith and to refrain from doing any act that would deprive Plaintiff of the benefit of the agreement.

56. VM performed all of its duties and conditions under the Agreement.

57. PWI breached the implied covenant of good faith and fair dealing by transferring the exclusive distributionship of VM wines to PWI LLC, without notice, cause or the consent of Plaintiff, thus depriving VM of the benefit of the exclusive Distribution Agreement for which it had bargained.

58. As a proximate and direct result of PWI's breach of the covenant of good faith and fair dealing, VM was caused to suffer damages to its business.

59. VM's damages were caused by PWI's breach of the covenant of good faith and fair dealing, without any fault, want of care or culpable conduct on the part of VM contributing thereto.

60. Based upon the foregoing, VM has been damaged in an amount that exceeds the jurisdictional limits of all lower courts.

**As And For A Third Cause Of Action
For Unjust Enrichment Against PWI**

61. Plaintiff repeats, reiterates and realleges each and every allegation set forth in the above Paragraphs of this Complaint with the same force and effect as if herein set forth in full.

62. At all relevant times, Plaintiff supplied PWI with wines as set forth in the

Agreement.

63. PWI has failed to pay for the goods and services it received from Plaintiff.

64. PWI received the benefit of Plaintiff's goods throughout the course of the parties' dealings and it is unconscionable for PWI to reap these benefits without paying Plaintiff for them.

65. As a direct and proximate result of PWI's misconduct, Plaintiff has been damaged in an amount in excess of \$613,749.60. This amount excludes any and all costs, filing fees, interest and attorney's fees incurred to collect the money owed to Plaintiff.

**As And For A Fourth Cause Of Action
For Account Stated Against PWI**

66. Plaintiff repeats, reiterates and realleges each and every allegation set forth in the above Paragraphs of this Complaint with the same force and effect as if herein set forth in full.

67. PWI is indebted to Plaintiff in the principal sum of \$613,749.60 plus interest and counsel fees, which remain due and owing from PWI, upon an account stated between them, and did promise to pay Plaintiff the sum upon demand.

68. Payment has been demanded and has not been made.

69. As a result, PWI was unjustly enriched at the expense of VM and therefore VM has been damaged in the amount of \$613,749.60 plus interest and counsel fees.

**As And For A Fifth Cause Of Action
For Breach Of Contract Against PWI LLC**

70. Plaintiff repeats, reiterates and realleges each and every allegation set forth in the above Paragraphs of this Complaint with the same force and effect as if herein set forth in full.

71. Plaintiff supplied PWI LLC with wines and PWI LLC has failed to make payments under the terms of the Agreement.

72. Plaintiff has fully performed its obligations to PWI LLC pursuant to the Agreement.

73. PWI LLC's failure to make payments under the terms of the Agreement constitutes a material breach of the terms and conditions of the Agreement.

74. As a direct and proximate result of the PWI LLC's failure to pay the outstanding invoices PWI LLC has breached the Agreement with Plaintiff and Plaintiff has sustained damages.

**As And For A Sixth Cause Of Action For
Tortious Interference With Contractual Relations Against PWI LLC**

75. Plaintiff repeats, reiterates and realleges each and every allegation set forth in the above Paragraphs of this Complaint with the same force and effect as if herein set forth in full.

76. VM and PWI entered into a binding Agreement.

77. Upon information and belief, PWI LLC arbitrarily and without notice, cause or the consent of Plaintiff, knowingly, intentionally and tortiously induced PWI to breach its Distribution Agreement with VM and transfer all of its rights to PWI LLC.

78. PWI LLC's conduct interfered with the business relationship that VM had established with PWI. PWI LLC circumvented the exclusive distribution agreement to advance its own competing interests in gaining profits from the sales of VM wines.

79. But for PWI LLC's tortious interference, VM would have continued to grow its business.

80. As a proximate and direct result of PWI LLC's actions, VM was caused to suffer damages to its business

81. As a result of PWI LLC's intentional interference with the Agreement, VM has been damaged in the amount of lost profits in an amount to be determined at trial.

**As And For A Seventh Cause Of Action For
Unjust Enrichment Against PWI LLC**

82. Plaintiff repeats, reiterates and realleges each and every allegation set forth in the above Paragraphs of this Complaint with the same force and effect as if herein set forth in full.

83. PWI LLC knowingly imported, sold and offered for sale VM products in the United States, Puerto Rico and the U.S. Virgin Islands in direct violation of the Distribution Agreement.

84. All profits gained by PWI LLC through its interference with the Agreement rightfully belong to VM.

85. In addition, at all relevant times, Plaintiff supplied PWI LLC with wines as set forth in the Agreement.

86. PWI LLC has failed to pay for the goods and services it received from Plaintiff.

87. PWI LLC received the benefit of Plaintiff's goods throughout the course of the parties' dealings and it is unconscionable for PWI LLC to reap these benefits without paying Plaintiff for them.

88. As a result of PWI LLC's tortious interference with VM's exclusive distributorship and PWI LLC failure to pay for the goods and services received, PWI LLC was unjustly enriched at the expense of VM and therefore VM has been damaged in an amount to be determined at trial, but believed to be not less than \$613,749.60 plus interest and counsel fees.

**As And For An Eighth Cause Of Action For
Account Stated Against PWI LLC**

89. Plaintiff repeats, reiterates and realleges each and every allegation set forth in the above Paragraphs of this Complaint with the same force and effect as if herein set forth in full.

90. PWI LLC, being indebted to Plaintiff, in the principal sum of \$613,749.60 plus

interest and counsel fees remain due and owing from PWI LLC, upon an account stated between them, did promise to pay Plaintiff the sum upon demand.

91. Payment has been demanded and has not been made.

92. As a result, PWI LLC was unjustly enriched at the expense of VM and therefore VM has been damaged in the amount of \$613,749.60 plus interest and counsel fees.

**As And For A Ninth Cause Of Action For
Breach Of Contract Against DBR**

93. Plaintiff repeats, reiterates and realleges each and every allegation set forth in the above Paragraphs of this Complaint with the same force and effect as if herein set forth in full.

94. DBR was supplied wines and has failed to make payments under the terms of the Agreement.

95. Plaintiff has fully performed its obligations to DBR pursuant to the Agreement.

96. DBR's failure to make payments under the terms of the Agreement constitutes a material breach of the terms and conditions of the Agreement.

97. As a direct and proximate result of DBR's failure to pay the outstanding invoices DBR has breached the Agreement with Plaintiff and Plaintiff has sustained damages.

**As And For A Tenth Cause Of Action For
Tortious Interference With Contractual Relations Against DBR**

98. Plaintiff repeats, reiterates and realleges each and every allegation set forth in the above Paragraphs of this Complaint with the same force and effect as if herein set forth in full.

99. VM and PWI entered into an Agreement for the sale of wines.

100. Upon information and belief, Defendant DBR knew of PWI's contractual relationship with VM.

101. Upon information and belief, notwithstanding this knowledge, Defendant DBR

has knowingly, intentionally and tortiously induced Defendant PWI to breach the Distribution Agreement with VM. Defendants did so without any valid or legitimate business reason.

102. DBR's conduct interfered with the business relationship that VM had established with PWI. DBR circumvented the exclusive distribution agreement to advance its own competing interests in gaining profits from the decline of sales of VM.

103. But for DBR's tortious interference, VM would have continued to grow its business.

104. As a result of DBR's intentional interference with the Agreement, VM has been damaged in the amount of lost profits in an amount to be determined at trial.

**As And For An Eleventh Cause Of Action For
Unjust Enrichment Against DBR**

105. Plaintiff repeats, reiterates and realleges each and every allegation set forth in the above Paragraphs of this Complaint with the same force and effect as if herein set forth in full.

106. DBR knowingly, imported, sold and offered for sale VM products in the United States, Puerto Rico and the U.S. Virgin Islands in direct violation of the Distribution Agreement.

107. All profits gained by DBR through its interference rightfully belong to VM.

108. In addition, at all relevant times, Plaintiff supplied DBR with wines as set forth in the Agreement.

109. DBR has failed to pay for the goods and services it received from Plaintiff.

110. DBR received the benefit of Plaintiff's goods throughout the course of the parties' dealings and it is unconscionable for DBR to reap these benefits without paying Plaintiff for them.

111. As a result of DBR's tortious interference with VM's exclusive distributorship and DBR's failure to pay for the goods and services received, DBR was unjustly enriched at the

expense of VM and therefore VM has been damaged in an amount to be determined at trial, but believed to be not less than \$613,749.60 plus interest and counsel fees.

**As And For A Twelfth Cause Of Action For
Unfair Competition Against DBR**

112. Plaintiff repeats, reiterates and realleges each and every allegation set forth in the above Paragraphs of this Complaint with the same force and effect as if herein set forth in full.

113. Defendant DBR and Plaintiff are direct competitors in the marketplace.

114. Defendant DBR has engaged in a series of deceptive commercial practices in an effort to obtain unfair gains and a competitive advantage over Plaintiff by foreclosing access to VM's products, business and distribution channels in the United States, Puerto Rico and the U.S. Virgin Islands.

115. Upon information and belief, Defendant engaged in the conduct alleged herein in bad faith, fully intending to utilize its improper and unlawful interference with Plaintiff's business, to its own advantage.

116. Defendant's aforesaid conduct constitutes willful unfair competition in violation of the common law of the State of New York.

117. Defendant's actions alleged above constitute unfair competition, including without limitation, misuse of confidential customer information and commercially unethical acts and practices.

118. Upon information and belief, by its willful acts, Defendant has made and will continue to make substantial profits and gains to which it is not in law or equity entitled.

119. Upon information and belief, by its actions, Defendant intends to continue its unfair competition, unless restrained by this Court.

120. Based upon the foregoing, VM has been damaged in an amount that exceeds the

jurisdictional limits of all lower courts.

**As And For A Thirteenth Cause Of Action
For Account Stated Against DBR**

121. Plaintiff repeats, reiterates and realleges each and every allegation set forth in the above Paragraphs of this Complaint with the same force and effect as if herein set forth in full.

122. DBR, being indebted to Plaintiff, in the principal sum of \$613,749.60 plus interest and counsel fees remain due and owing from DBR, upon an account stated between them, did promise to pay Plaintiff the sum upon demand.

123. Payment has been demanded and has not been made.

124. As a result, DBR was unjustly enriched at the expense of VM and therefore VM has been damaged in the amount of \$613,749.60 plus interest and counsel fees.

WHEREFORE, the Plaintiff demands judgment against the Defendants in an amount that exceeds the jurisdictional limits of all lower courts on each cause of action, with costs, interest and disbursements.

Dated: Rochelle Park, New Jersey
January 5, 2015

SLATER, TENAGLIA, FRITZ & HUNT, P.A.
Attorneys for Plaintiff

By: _____

James T. Hunt, Jr.
395 W. Passaic Street, Suite 205
Rochelle Park, New Jersey 07662
(201) 820-6001
&
488 Madison Avenue – 24th Floor
New York, New York 10022


VERIFICATION

James T. Hunt, Jr., an attorney duly admitted to practice law in the courts of the State of New York, affirms the following under penalty of perjury pursuant to CPLR § 2106:

I am the attorney for the Plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true.

The reason why this verification is made by me and not by the Plaintiff is that my office is located in a county other than the one in which Plaintiff resides. The grounds of my belief as to all matters in the Complaint not stated to be upon my knowledge are based upon my review of the file.

SLATER, TENAGLIA, FRITZ & HUNT, P.A.

By: 
James T. Hunt, Jr.
395 W. Passaic Street, Suite 205
Rochelle Park, NJ 07662
(201) 820-6003