

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No. 13-127 (RWR)

ANHEUSER-BUSCH InBEV SA/NV and
GRUPO MODELO S.A.B de C.V.,

Defendants,

CONSTELLATION BRANDS, INC.,
207 High Point Drive, Building
100, Victor, New York 14564,

*Proposed Defendant-
Intervenor,*

and

CROWN IMPORTS LLC, One South
Dearborn Street, Suite 1700 Chicago,
Illinois 60603,

*Proposed Defendant-
Intervenor.*

**STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF CONSTELLATION
BRANDS, INC.'S AND CROWN IMPORTS LLC'S MOTION TO INTERVENE**

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INTRODUCTION

The Complaint in this action, filed January 31, 2013, and to which no responsive pleading has yet been filed, seeks to enjoin transactions transformational to Movants' businesses. The United States Department of Justice ("DOJ") sues to block Anheuser-Busch InBev SA/NV's ("ABI") acquisition of additional shares in Grupo Modelo S.A.B de C.V. ("Modelo"), a Mexican brewer of beer ("ABI/Modelo transaction").

Movant Constellation Brands, Inc. ("Constellation") entered an agreement with ABI pursuant to which, upon ABI's acquisition of Modelo shares, Constellation will become the sole owner of Movant Crown Imports LLC ("Crown"). Crown is the organization that markets, sells, and promotes the Modelo brand products in the United States. Constellation has been involved in the sale of Modelo's beer products in the United States since 1983, due to its ownership of Crown and, before that, Barton Beers Ltd. ("Barton"). Through the proposed transactions, Constellation intends to ensure that it will retain that position long into the future.

DOJ seeks to enjoin ABI's acquisition of Modelo shares, which fundamentally threatens Constellation's future in the beer business. And such an injunction would prevent Crown from achieving the benefits of an improved supply agreement that would enhance its competitive position. Constellation and Crown hold direct and substantial interests in the outcome of DOJ's requested injunction of ABI's acquisition of Modelo, because Constellation's acquisition of Crown is contingent upon the completion of the ABI/Modelo transaction that DOJ seeks to enjoin.

The federal courts favor intervention to allow parties with an interest in a transaction that is the subject of an action to participate in the defense of that case. The bar to intervene is low.

Federal Rule of Civil Procedure 24 compels intervention of right in these circumstances.

Alternatively, the Court, for its own benefit in ruling on a case of such economic significance, should exercise its discretion to allow permissive intervention. Adjudicating this action without Constellation and Crown participating as defendants would work manifest unfairness and invite discord with circuit precedent favoring intervention.

Constellation and Crown's intervention will serve the Court's and the parties' interest to ensure a complete record on which to resolve this significant case. Indeed, ABI and Modelo support intervention. DOJ opposes it.

Constellation and Crown respectfully request expedited briefing and an early oral argument on their Motion to Intervene.

STATEMENT OF FACTS

I. OVERVIEW OF CONSTELLATION BRANDS

Founded in 1945 and headquartered in Victor, New York, Constellation is a beverage alcohol company (beer, wine, and spirits) with sales in approximately 125 countries. (Ex. 1, Robert S. Sands Decl. ¶ 2.) Constellation operates approximately 30 wineries and other facilities, employing approximately 4,300 people worldwide. (*Id.*) Constellation has been active in the United States beer industry since 1993, when it acquired the Barton business. (*Id.* at ¶ 3.) Constellation currently participates in the beer industry by virtue of its interest in Crown, a joint venture half-owned by each of Constellation and Modelo. (*Id.* at ¶ 2.)

II. HISTORY OF MODELO BRANDS IN THE UNITED STATES

A. United States Sales Pre-Crown

Modelo began exporting its brands from Mexico for sale in the United States in the 1970s. Barton was the United States importer that handled those products, including Corona Extra® and Negra Modelo®. (Ex. 2, William F. Hackett Decl. ¶ 3.) Barton also imported non-Modelo brands such as Peroni®, St. Pauli Girl®, and Tsingtao®. (Ex. 1, Sands Decl. ¶ 3.)

In 1987, a second importing company, Gambrinus Import Company (“Gambrinus”), began importing the Modelo brands as well. (Ex. 2, Hackett Decl. ¶ 4.) At that time, the United States import rights were split: Barton sold the brands in the western United States and Gambrinus in the eastern United States. (*Id.*; Ex. 1, Sands Decl. ¶ 3.)

Constellation entered the beer industry in 1993 with its acquisition of Barton. (Sands Decl. Ex.1 ¶ 3.) Through that acquisition, Constellation gained exclusive control over pricing, marketing, sales, and distribution of the Modelo brands within its territory, which lasted until the end of 2006 when Crown became the importer across the United States. (*Id.* at ¶¶ 3-4.) During that time, Modelo brand sales in the United States increased from approximately 20 million cases per year to approximately 160 million cases per year. (Ex. 2, Hackett Decl. ¶ 6.) In 2006, Modelo terminated the Gambrinus importer agreement, and partnered with Constellation to form Crown which became the sole importer of the Modelo brands throughout the United States. (*See* Ex. 1, Sands Decl. ¶ 4; Ex. 2, Hackett Decl. ¶ 4.)

B. Formation and Operation of Crown

Crown began selling beer in 2007. (Ex. 1, Sands Decl. ¶ 4; Ex. 2, Hackett Decl. ¶ 2.) To develop the infrastructure of the Crown joint venture, Constellation contributed the Barton

organization (which at that time included importer rights for St. Pauli Girl® and Tsingtao®), along with its experienced executive team, and many of the administrative and back-office functions. (Ex. 1, Sands Decl. ¶ 5.) Modelo contributed an amount of cash equal to the value of the Barton assets. (*Id.*) Constellation and Modelo each appoints four members to the Crown Board of Directors. (*Id.* at ¶ 8; Ex. 2, Hackett Decl. ¶ 11.)

Crown currently imports eight Modelo brands—Corona Extra®, Corona Light®, Coronita®, Modelo Especial®, Modelo Light®, Negra Modelo®, Pacifico®, and Victoria®—and two non-Modelo brands, Somersby Cider® and Tsingtao®. (Ex. 2, Hackett Decl. ¶ 2.) Crown employs approximately 400 people and is headquartered in Chicago, Illinois, with regional sales staff working in offices in Irvine, California; Stamford, Connecticut; and Irving, Texas. (*Id.* at ¶ 7; Ex. 1, Sands Decl. ¶ 6.) Field sales staff cover each of its approximately 600 wholesaler territories. (Ex. 2, Hackett Decl. ¶ 7; Ex. 1, Sands Decl. ¶ 6.) Sales for the fiscal year ended February 29, 2012 totaled \$2.39 billion. (Ex. 2, Hackett Decl. ¶ 7; Ex. 1, Sands Decl. ¶ 6.)

As Modelo's exclusive United States importer, Crown is responsible for every aspect of the marketing, sales, and distribution to wholesalers of the Modelo brands in the United States. (Ex. 2, Hackett Decl. ¶ 8.) Crown purchases beer from Modelo in Mexico, takes title to the beer in Mexico, and then sells it into the market in the United States that Crown, and previously Barton, created for the beer through decades of work in developing the Modelo brands in the United States. (*Id.*) William Hackett, Crown President, his management team, and the broader team of Crown employees, perform many tasks, including developing and executing pricing and promotion strategies for the products in every market in the country; managing the sale of Crown's ten brands by developing a network of approximately 600 wholesalers; coordinating

retail activity; developing and executing first-in-class national and local advertising and promotional programming; and coordinating the logistics of forecasting volumes and transporting the beer from the breweries to the wholesalers. (*Id.* at ¶ 9.) Through these activities Crown competes against other suppliers' beer brands for sales in the United States, including, among many others, ABI's brands. (*Id.*) And those activities are performed by Crown employees. (*Id.*) Crown also manages compliance with federal and state beverage alcohol regulations and engages in government-relations activity on behalf of itself and the beer industry. (*Id.*)

Crown's management team is steeped in competing in the United States beer industry. The team includes William Hackett, President; Bruce Jacobsen, Executive Vice President, Sales; James Sabia, Executive Vice President, Marketing; and Thomas Wyness, Executive Vice President, Business Operations. (Ex. 2, Hackett Decl. ¶ 10.) Of these four executives, only Mr. Sabia did not also work at Constellation's Barton subsidiary prior to the formation of Crown. (*Id.*) In fact, both Messrs. Hackett and Wyness worked at Barton prior to its acquisition by Constellation. (*Id.*)

C. Modelo's Call Option for Constellation's Interest in Crown

The agreement to establish the Crown joint venture provided for an initial term of ten years that will end on December 31, 2016. (Ex. 1, Sands Decl. ¶ 9.) At any time up to three years prior to the end of the initial term (or any subsequent renewal term), Modelo possesses a right to notify Constellation that it intends to purchase Constellation's interest in Crown at the end of the term. (*Id.*) Towards the beginning of the Crown relationship, Modelo stated that it intended to purchase Constellation's interest at the end of the initial term, and Modelo has

indicated a similar intention more recently. (*Id.*) Constellation would object to any such exercise on a number of grounds. (*Id.*)

Modelo's intention to exercise its "call option" has colored Constellation's view of its investment in Crown, and led to some differences in philosophy with Modelo. (*Id.* at ¶ 10.) As a consequence of what had the potential to be a relatively short-term interest in the Crown venture compared with Modelo's, Constellation has sometimes had less incentive to invest in the long-term growth of the Modelo brands. (*Id.*) This misalignment in incentives has at times produced tensions between the Crown parents and hindered some of Crown's growth opportunities. (*Id.*)

III. THE PROPOSED TRANSACTION

A. The Restructuring of Modelo and Crown Ownership

In first half of 2012, ABI entered negotiations with Modelo to purchase the remaining interest in Modelo that it did not own already ("the ABI/Modelo transaction"). (Ex. 1, Sands Decl. ¶ 11.) ABI also began discussions to sell Modelo's interest in Crown to Constellation ("the ABI/Constellation transaction"), contingent upon the completion of the ABI/Modelo transaction. (*Id.*) ABI entered into both agreements on June 28, 2012. (*Id.* at ¶ 12; Compl. ¶ 23.)

Under the ABI/Constellation transaction agreement, Crown will become a wholly-owned Constellation subsidiary. (*Id.*) The ABI/Constellation transaction provides both Constellation and Crown with a number of benefits. Acquiring Modelo's 50% interest in Crown represents a transformational transaction for Constellation that enables it to retain the beer business it has owned, in whole or in part, since 1993 when it acquired Barton. (*Id.* at ¶ 13.) After the ABI/Constellation transaction, Crown becomes a platform for Constellation to invest and build

its presence in the beer category long term. (*Id.*) Constellation's profit interest in Crown will double. (*Id.* at ¶ 14.) The investment community recognizes the significance of the transaction for Constellation. (*Id.*) On the day the transaction was announced in June 2012, Constellation's share price increased by approximately 24%. (*Id.*) The stock declined by approximately 17% on January 31, 2013, when DOJ filed its lawsuit challenging the transaction. (*Id.*)

In contrast to Constellation, ABI and Modelo do not risk exit from the United States beer industry if DOJ's suit is successful. ABI is the largest brewer and marketer of beer sold in the United States and is positioned to continue selling beer worldwide. (*See* Compl. ¶ 17.) Modelo would remain a Mexican brewer, will continue to have its beer sold in the United States, and will retain its fifty-percent interest in its United States importer, Crown. (*See* Ex. 1, Sands Decl. ¶ 9.)

After the transaction, Crown retains the exclusive right to import and manage the sale, marketing, and distribution of the Modelo brands in the United States, and does so under more favorable conditions. (Ex. 2, Hackett Decl. ¶ 13.) Consolidating the ownership under Constellation creates stability and a streamlined governance structure for Crown as it continues to expand its brand portfolio in the United States. (*Id.* at ¶ 14.) Crown will have a favorable new supply agreement to purchase beer from Modelo's Mexican plants, contingent upon the ABI/Modelo transaction closing. (*Id.* at ¶¶ 12, 15.) Initial prices Crown will pay Modelo for beer are set at the amounts Crown paid Modelo in May 2012, and the prices increase at a rate less than the rate of inflation. (*Id.* at ¶ 15.)

Crown also would obtain the right to import the Modelo brands not currently sold in the United States. (*Id.* at ¶ 16.) This aspect of the transaction is particularly attractive. Crown will be able to import *any* beer marketed or sold by Modelo outside of the United States. (*Id.*)

Further, Crown will have more rights to obtain additional, newly developed beer products from Modelo. (*Id.*) Moreover, Crown allocation priority improves; under the new agreement, in the event of supply shortages, Crown will not be disadvantaged relative to the Mexican market, as it is under the current supply agreement, and will receive its pro-rata share of production. (*Id.* at ¶ 17.) Crown stands to benefit greatly if the ABI/Modelo transaction and the contingent ABI/Constellation transaction are completed.

B. DOJ's Investigation And Lawsuit

In July 2012, DOJ began investigating the ABI/Modelo and ABI/Constellation transactions. Constellation and Crown both were fully enmeshed in DOJ's investigation. In August 2012, DOJ issued a document request to Constellation, to which both Constellation and Crown responded. (*See, e.g.*, Ex. 1, Sands Decl. ¶ 15; Ex. 2, Hackett Decl. ¶ 18.) That request was substantially similar to the document requests DOJ issued to ABI and Modelo. Throughout the course of the investigation, DOJ included Constellation counsel on its communications with the parties. Constellation was treated as a party under the timing agreement governing DOJ's investigation and had its own legal representation at the parties' meetings with DOJ, and in some instances attended the DOJ meetings. Constellation and Crown worked with ABI and Modelo in submitting various white papers and making presentations to DOJ.

In the course of DOJ's investigation, Constellation and Crown produced voluminous documents to DOJ, and DOJ deposed five Crown employees and Constellation's President and CEO, Robert Sands. (*See, e.g.*, Ex. 1, Sands Decl. ¶ 15; Ex. 2, Hackett Decl. ¶ 18.) Throughout this process, McDermott Will & Emery LLP ("McDermott") represented both Constellation and Crown. (*See* Ex. 1, Sands Decl. ¶ 15; Ex. 2, Hackett Decl. ¶ 18.) Modelo was represented by

different counsel, Cravath, Swaine & Moore LLP. DOJ made various requests of Crown through Constellation's counsel, not Modelo's. McDermott negotiated limitations to DOJ's document requests on behalf of Constellation and Crown. McDermott managed the production of Constellation's and Crown's documents, including those Crown documents to which DOJ cites in its Complaint and the accompanying press release. (*See* Ex. 2, Hackett Decl. ¶ 18.)

ARGUMENT

Constellation and Crown are entitled to intervene of right because they satisfy the requirements imposed by Federal Rule of Civil Procedure 24(a)(2). Alternatively, this Court should exercise its discretion and permit Constellation and Crown to intervene under Federal Rule of Civil Procedure 24(b)(1)(B).

I. CONSTELLATION AND CROWN ARE ENTITLED TO INTERVENE AS A MATTER OF RIGHT

Timely intervention by affected entities is favored in the federal courts. The D.C. Circuit has long endorsed “a liberal application in favor of permitting intervention,” *Nuesse v. Camp*, 385 F.2d 694, 702 (D.C. Cir. 1967), so as to promote the “disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process,” *id.* at 700. *See Am. Horse Prot. Ass’n, Inc. v. Veneman*, 200 F.R.D. 153, 157 (D.D.C. 2001) (“AHPA”) (noting the “liberal and forgiving standard” for intervention).

Federal Rule of Civil Procedure 24(a)(2), governs intervention of right. That rule states:

On timely motion, the court *must* permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Constellation and Crown meet this standard.

A. Constellation and Crown Demonstrate a Substantial Interest in the Transactions That Are the Subject of the Litigation

Constellation and Crown each have a compelling economic interest in defeating DOJ's lawsuit challenging the legality of ABI's acquisition of the remainder of Modelo. If this court enjoins ABI's further acquisition of Modelo shares, it will effectively enjoin Constellation's acquisition of the remaining interest in Crown.

The acquisition of Modelo's 50% interest in Crown is a transformational transaction for Constellation's beer business. The transaction will double Constellation's participation in the beer business. By eliminating Modelo's call right for Constellation's interest in Crown, it also ensures Constellation's robust, long term participation in the United States beer business. Constellation has participated in that business since its 1993 acquisition of Barton, a business that Constellation supported and oversaw while it greatly expanded U.S. sales of the Modelo brand beers. Crown also has a paramount interest in seeing DOJ's challenge fail, because it will improve Crown's corporate governance, returning to a more streamlined structure with a single owner, and provide it with a supply agreement that is far superior to the one under which it operates currently.

In keeping with the D.C. Circuit's liberal approach to intervention, "the most pragmatic test possible" determines whether Constellation and Crown have a sufficient interest to intervene, not a "narrow formulation." *Nuesse*, 385 F.2d at 700; *see also Cascade Natural Gas Corp. v. El Paso Natural Gas Co.*, 386 U.S. 129 (1967) (interpreting intervention right broadly and permitting the State of California, a large investor-owned industrial user of energy, and a

competitor to intervene in a section 7 Clayton Act suit). Indeed, this Court has stated that “while the nature of the intervenor’s interest in the litigation cannot be ignored, it is more profitable to place primary emphasis on the other provisions of [the Rule] which deal with impairment of the interest claimed and the adequacy of the representation of that interest by the existing parties.” *AHPA*, 200 F.R.D. at 157.

Both Constellation and Crown hold a substantial interest in the transaction challenged in the Complaint, and therefore meet this threshold. As the Complaint recognizes explicitly (*see* Compl. ¶¶ 8-10, 24, 71-84), Constellation’s right to purchase Modelo’s interest in Crown is integral to this Court’s determination of whether ABI’s purchase of Modelo violates the Clayton Act. Neither transaction will occur without the other. (*See* Compl. ¶ 24 (“These transactions are contingent on the closing of ABI’s acquisition of Modelo.”).) ABI negotiated two agreements, one with Modelo and one with Constellation. DOJ conducted extensive discovery of Constellation and Crown in reviewing the matter. To consider ABI’s proposed acquisition of Modelo in a vacuum is akin “to turning a blind eye to the elephant in the room.” *Fed. Trade Comm’n v. Arch Coal, Inc.*, No. 1:04-cv-00534-JDB, Mem. Op. at 8 (D.D.C. July 7, 2004). Constellation and Crown indisputably possess an interest in the transactions that are the subject of this litigation.

B. Disposition of This Action Will Impair and Impede the Ability of Constellation and Crown To Protect Their Interests

Constellation and Crown must show only that disposition of the action “*may* as a practical matter impair or impede [their] ability to protect [their] interest.” Fed. R. Civ. P. 24(a)(2) (emphasis added). In considering this factor, courts look to the “practical consequences” of denying intervention. *Nuesse*, 385 F.2d at 702.

To deny intervention would impair and impede the ability of Constellation and Crown to protect their interests. They are organizations whose rights, business futures, and stock values are affected directly by the outcome of this litigation. DOJ's failure to name them as parties would deny Constellation and Crown the opportunity to participate directly in the litigation of this case, and they would not be guaranteed a seat at any potential settlement table. Constellation and Crown deserve their day in court to defend transactions transformative to their businesses.

C. The Existing Parties Do Not Adequately Represent the Interests of Constellation or Crown

This requirement is satisfied if the representation of Constellation's and Crown's interest by the existing parties *may be* inadequate—the burden here “should be treated as minimal,” *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003) (internal quotes omitted), and “not onerous,” *id.* (internal quotes omitted). To the extent that they bear this burden,¹ Constellation and Crown clearly satisfy it.

DOJ's factual allegations and proposed relief are directly adverse to Constellation's and Crown's interest. While ABI and Modelo certainly will oppose DOJ's Complaint, their interests differ in meaningful ways from Constellation's and Crown's. If DOJ's suit succeeds, each of Modelo and ABI will continue to operate in the United States beer business, but there is a possibility that Constellation will not (if Modelo is able to exercise its call option for

¹ Case law suggests that the party opposing intervention may in fact bear the burden of proving that the existing parties adequately represent the interests of the intervenor. *See Fund for Animals, Inc.*, 322 F.3d at 736 n.7 (explaining that while some cases “suggest that the burden is on the aspiring intervenor[,] [o]thers declare that the burden is on the opponent of intervention, because Rule 24(a)(2) states that if its first three factors are satisfied, intervention ‘shall’ be permitted ‘unless’ the applicant’s interest is already adequately represented”).

Constellation's Crown interest, over Constellation's objection).² If the suit succeeds, Crown will continue to be saddled with the dual ownership structure. Also, ABI, which is Crown's competitor in the United States sale of beer, does not have identical interests with its competitor, Crown, or Constellation. Neither ABI's nor Modelo's counsel represented Crown or Constellation throughout the entire DOJ investigation. If DOJ is successful, Modelo will most likely seek to exercise its call option to purchase the remaining interest in Crown, a position adverse to Constellation. (*See* Compl. ¶ 21.)

This case demands Constellation and Crown's intervention, as DOJ seeks to extinguish the contractual rights of both without allowing either to present a defense. No existing party can, or will, adequately represent the interests of Constellation and Crown.

D. The Motion to Intervene Is Timely

The timeliness of this Motion to Intervene cannot be questioned. DOJ filed its Complaint on January 31, 2013. No responsive pleading has been filed yet.

II. IN THE ALTERNATIVE, THIS COURT SHOULD GRANT CONSTELLATION AND CROWN PERMISSIVE INTERVENTION UNDER RULE 24(B)

Alternatively, Constellation and Crown should be permitted to intervene under Federal Rule of Civil Procedure 24(b)(1), which allows a court to exercise its discretion "upon timely application" of an applicant who "has a claim or defense that shares with the main action a common question of law or fact." Here, the Court also must consider "whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P.

² The market immediately recognized this possibility: On the day DOJ filed suit, Constellation's share price declined 17%. (*See* Ex. 1, Sands Decl. ¶ 14.)

24(b)(3). Rule 24(b) “provides basically that *anyone* may be permitted to intervene if his claim and the main action have a common question of law or fact” and as long as intervention does not delay adjudication of the existing parties’ rights. *Nuesse*, 385 F.2d at 704 (emphasis added).

Constellation and Crown meet both of these requirements.

A. Constellation and Crown Each Have Defenses That Share Common Issues of Law and Fact with DOJ’s Complaint

While “the rule speaks in ‘claim or defense,’” courts do not interpret it “strictly so as to preclude permissive intervention.” *Id.* Like *Nuesse*, here, “the legal issues are the same.” *Id.* Namely, whether the ABI/Modelo transaction, in light of Constellation’s acquisition of complete ownership of Crown and an improved supply agreement for Crown, results in a substantial lessening of competition. *See* Clayton Act, 15 U.S.C. § 18 (2013) (prohibiting acquisition where “the effect of such acquisition may be substantially to lessen competition”).

Indeed, DOJ included Constellation and Crown in almost every aspect of its investigation. Until the filing of this Complaint, DOJ communicated with ABI, Modelo, *and* Constellation. During the investigation, DOJ served ABI, Modelo, and Constellation with simultaneous and substantively identical document requests. Constellation’s and Crown’s counsel McDermott negotiated limits to the document request and produced documents for Constellation and for Crown. DOJ dealt with McDermott, not Modelo’s counsel, in connection with seeking Crown documents and testimony in the investigation. Constellation produced Crown documents in response to DOJ’s request to Constellation. DOJ deposed five Crown employees, including its president, as well as others responsible for the sales, marketing, pricing and other competitive issues described in the Complaint. Along with its legal counsel,

Constellation attended meetings with DOJ, and DOJ treated Constellation as a party under the timing agreement that governed the DOJ's investigation process.

DOJ now intends to capitalize on Constellation's and Crown's cooperation without allowing them to defend their own interests. Because the defense of those interests shares common questions of law and fact with DOJ's claim against ABI and Modelo, Constellation and Crown should be permitted to intervene.

B. Intervention Would Neither Delay Nor Prejudice the Adjudication of the Existing Parties' Rights, and Will Assist the Court

As explained above in section II.D., the Motion to Intervene raises no issues of delay, nor does it prejudice the adjudication of the existing parties' rights. Rather, to allow Constellation and Crown to intervene immediately facilitates a greater understanding of the sale of Modelo brands in the United States, for both entities have been involved in the importation and distribution of Modelo brands for decades. *See* 6 James Wm. Moore et al., *Moore's Federal Practice*, § 24.10[2][b] (3d ed. 2012) ("In deciding on a motion for permissive intervention, a court will consider whether the movant's input is likely to make a significant and useful contribution to the development of the underlying factual and legal issues, or alternatively, is likely to be counterproductive."). It is manifestly fair, and will assist the Court, to have these integral parties to the transactions as parties to the case.

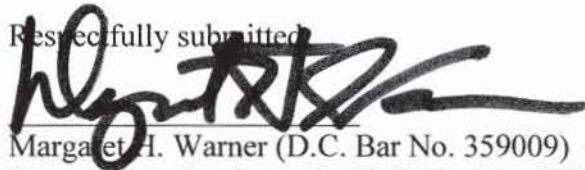
CONCLUSION

The federal courts favor intervention and the bar to intervene is low. Constellation and Crown hold direct and substantial interests in the outcome of DOJ's requested injunction in this case. If granted, the injunction would prevent Constellation from completing a significant transaction that would ensure its long term presence in the beer business and would greatly

increase its overall sales. DOJ's injunction directly threatens Crown by preventing its accessing a superior supply agreement, and preventing it from moving to a streamlined and focused corporate governance structure under Constellation. For these reasons, this Court should grant Constellation's and Crown's Motion to Intervene.

Dated: February 8, 2013

Respectfully submitted,

A large, bold, handwritten signature in black ink, appearing to read 'Margaret H. Warner', is written over the text 'Respectfully submitted,'.

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CERTIFICATE OF SERVICE

I, Jon B. Dubrow, certify that on February 8, 2013, I served the foregoing Statement of

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EXHIBIT 1

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

V.

ANHEUSER-BUSCH InBEV SA/NV and
GRUPO MODELO S.A.B de C.V.,

Defendants.

Civil Action No. 13-127 (RWR)

DECLARATION OF ROBERT S. SANDS

ROBERT S. SANDS declares:

1. I am the President and Chief Executive Officer of Constellation Brands, Inc. (“Constellation”), including its subsidiaries and ventures. I make this declaration in support of Constellation’s Motion to Intervene in the above-captioned action. I have personal knowledge of the matters in this declaration.

2. Founded in 1945 and headquartered in Victor, New York, Constellation is a beverage alcohol company (beer, wine, and spirits) with sales in approximately 125 countries. We employ approximately 4,300 people worldwide. Constellation participates in the beer industry by virtue of its interest in Crown Imports LLC (“Crown”), a joint venture half owned by each of Constellation and Grupo Modelo S.A.B. de C.V. (“Modelo”).

3. Constellation entered the beer industry in 1993 with its acquisition of Barton Beers Ltd. (“Barton”), which was then the importer of the Modelo brands in the western United States, as well as the national importer of Peroni®, St. Pauli Girl®, and Tsingtao®. Gambrinus

Import Company (“Gambrinus”) sold the Modelo brands in the eastern United States. Through the Barton acquisition Constellation owned the firm with exclusive control over pricing, marketing, and sales of the Modelo brands within its territory until the end of 2006.

4. Modelo terminated the Gambrinus importer agreement at the end of 2006 and partnered with Constellation to form Crown to serve as the sole importer of the Modelo brands throughout the United States. Crown began selling beer in 2007.

5. To develop the infrastructure of the venture, Constellation contributed the Barton organization (which at that time included importer rights for St. Pauli Girl® and Tsingtao®), along with its experienced executive team, and many of the administrative and back-office functions. Modelo contributed an amount of cash equal to the value of the Barton assets.

6. Crown employs approximately 400 people and is headquartered in Chicago, Illinois, with regional sales staff working in offices in Irvine, California, Stamford, Connecticut, and Irving, Texas. Field sales staff cover each of its approximately 600 wholesaler territories throughout the United States. It had sales of \$2.39 billion for the fiscal year ended February 29, 2012.

7. As Modelo’s exclusive U.S. importer, Crown is responsible for every aspect of the marketing, sales, and distribution to wholesalers of the brands in the United States.

8. The Crown Board of Directors consists of eight members, four of whom are appointed by Modelo and four of whom are appointed by Constellation. I serve as a Constellation-appointed Crown director. Board meetings generally are held quarterly. At these meetings, Crown executives present business plans for Board approval.

9. The agreement to establish the Crown joint venture provided for an initial term of ten years that will end on December 31, 2016. At any time up to three years prior to the end of the initial term (or any subsequent renewal term), Modelo has a right to notify Constellation that it intends to purchase Constellation's interest in Crown at the end of the term. Towards the beginning of the Crown relationship, Modelo stated that the firm intended to purchase Constellation's interest at the end of the initial term in 2016, and has indicated similar intent since then. Constellation would object to any such exercise on a number of grounds.

10. Modelo's intention to exercise its "call option" has colored Constellation's business analysis of its investment in Crown, and led to some differences in philosophy with Modelo. As a consequence of what had the potential to be a relatively short-term interest in the Crown venture compared with Modelo's, Constellation has sometimes had less incentive to invest in the long-term growth of the Modelo brands. This misalignment in incentives has at times produced tensions between the Crown parents and hindered some of Crown's growth opportunities.

11. In the first half of 2012, Anheuser-Busch InBev SA/NV ("ABI") informed me that it was entering negotiations with Modelo to purchase the remaining interest in Modelo which it did not already own ("the ABI/Modelo transaction"). At that time, ABI also began discussions with me to sell Modelo's interest in Crown to Constellation ("the ABI/Constellation transaction"), contingent upon the completion of the ABI/Modelo transaction.

12. On June 28, 2012, ABI and Constellation entered into a Membership Purchase Agreement, as well as an Amended and Restated Importer Agreement, to effect the ABI/Constellation transaction. Pursuant to the Membership Purchase Agreement, Crown would

become a wholly-owned Constellation subsidiary. Styled as a perpetual agreement, ABI would retain a right to recall the brand licenses in 10 years. Should ABI terminate the licenses, Constellation's buyout multiple is thirteen times earnings.

13. The ABI/Constellation transaction provides Constellation with a number of benefits. Acquiring Modelo's fifty percent interest in Crown represents a transformational transaction for Constellation that enables it to retain the beer business it has owned, in whole or in part, since 1993 when it acquired Barton. After the ABI/Constellation transaction, Crown becomes a platform for Constellation to invest and build its presence in the beer category long term.

14. As a result of this transaction, Constellation's profit interest in Crown will double. The investment community has recognized the significance of the transaction for Constellation. On the day the transaction was announced in June 2012, Constellation's share price increased by approximately 24%. The stock declined by approximately 17% on January 31, 2013, the day the United States Department of Justice ("DOJ") filed its lawsuit challenging the transaction.

15. In August 2012, DOJ issued a document request to Constellation. In response, documents of employees at Constellation, including myself, were collected and produced to DOJ. Additionally, I was deposed by DOJ on December 6, 2012. Beginning before the issuance of the document request, McDermott Will & Emery LLP has provided legal representation to Constellation and its employees in their official capacities.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED: February 8, 2013



Robert S. Sands
President & CEO
Constellation Brands, Inc.

EXHIBIT 2

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANHEUSER-BUSCH InBEV SA/NV and
GRUPO MODELO S.A.B de C.V.,

Defendants.

Civil Action No. 13-127 (RWR)

DECLARATION OF WILLIAM F. HACKETT

WILLIAM F. HACKETT declares:

1. I am the President of Crown Imports LLC (“Crown”). I make this declaration in support of Crown’s Motion to Intervene in the above-captioned action. I have personal knowledge of the matters in this declaration.

2. Crown is a joint venture half owned by each of Grupo Modelo (“Modelo”) and Constellation Brands, Inc. (“Constellation”), and it is the exclusive importer of the Modelo brands in the United States. Crown began selling beer in 2007. In addition to eight Modelo brands—Corona Extra®, Corona Light®, Coronita®, Modelo Especial®, Modelo Light®, Negra Modelo®, Pacifico®, and Victoria®—Crown also imports Somersby Cider® and Tsingtao®.

3. I have been continuously involved in various aspects of the sales, marketing, pricing, and brand development for Corona Extra® and other Modelo brands for almost thirty years. I have served as President of Crown since its formation. Prior to Crown, I worked for Barton Beers Ltd. (“Barton”). I joined Barton in January 1984. At that time Barton served as

sole importer of the Modelo brands in the United States, including Corona Extra® and Negra Modelo®.

4. In 1987, a second importing company, Gambrinus Import Company (“Gambrinus”), began importing the Modelo brands as well. At that time, the United States import rights were split: Barton sold the brands in the western United States and Gambrinus in the eastern United States. This two-importer arrangement continued until the formation of Crown which became the sole United States importer of the Modelo brands in 2007.

5. Barton became a subsidiary of Constellation in 1993.

6. From 1993 to 2007, total depletions (or sales) in the United States for the Modelo brand portfolio rose from 20 million cases per year to 160 million cases per year.

7. Crown employs approximately 400 people and is headquartered in Chicago, Illinois, with regional sales staff working in offices in Irvine, California, Stamford, Connecticut, and Irving, Texas. Field sales staff cover each of its approximately 600 wholesaler territories throughout the United States. It had sales of \$2.39 billion for the fiscal year ended February 29, 2012.

8. As Modelo’s exclusive United States importer, Crown purchases product from Modelo in Mexico and then, acting on its own account, is responsible for every aspect of the marketing, sales, and distribution to wholesalers of the Modelo brands in the United States including developing and executing pricing and promotion strategies. Crown purchases beer from Modelo, takes title to the beer, and then sells it into the market that Crown, and previously

Barton and Gambrinus, has created for the beer through decades of work in developing the Modelo brands in the United States.

9. My management team and I—with our broader team of Crown employees—perform many tasks, including developing and executing the day-to-day pricing and promotion strategies for the products in every market in the country which can change many times during the year; managing the sale of Crown’s ten brands by developing a network of approximately 600 wholesalers; coordinating retail activity; developing and executing first-in-class national and local advertising and promotional programming; and coordinating the logistics of forecasting volumes and transporting the beer from the breweries to the wholesalers. It is those types of activities through which Crown competes its beer brands against other suppliers’ beer brands for sales in the United States, including, among many others, those brands belonging to Anheuser-Busch InBev (“ABI”). And those activities are performed by Crown employees. Crown also manages compliance with federal and state beverage-alcohol regulations and engages in government relations activity on behalf of itself and the beer industry.

10. The Crown management team includes myself; Bruce Jacobsen, Executive Vice President, Sales; James Sabia, Executive Vice President, Marketing; and Thomas Wyness, Executive Vice President, Business Operations. Of these four executives, only Mr. Sabia did not also work at Constellation’s Barton subsidiary prior to the formation of Crown. Mr. Wyness and I both worked at Barton prior to its being acquired by Constellation.

11. The Crown Board of Directors consists of eight members, four of whom are appointed by Modelo and four of whom are appointed by Constellation. Board meetings are

generally held quarterly. At these meetings, Crown executives, including myself, present business plans that we have developed for Board approval.

12. In the first half of 2012, ABI entered into agreements to acquire Modelo (“ABI/Modelo transaction”) and to sell Modelo’s interest in Crown to Constellation. ABI’s agreements with Constellation included an Amended and Restated Importer Agreement (“Amended Importer Agreement”), which is contingent upon the ABI/Modelo transaction closing. The Amended Importer Agreement sets the terms under which Modelo will sell beer to Crown.

13. The Amended Importer Agreement provides Crown with a number of benefits. Crown retains the exclusive right to import and manage the sale, marketing, and distribution of the Modelo brands in the United States, and does so under more favorable conditions than have existed in the past.

14. Consolidating the ownership under Constellation creates stability and a streamlined governance structure for Crown as it continues grow its brand portfolio in the United States.

15. Under the favorable new Amended Importer Agreement, the initial prices Crown will pay Modelo for beer are set at May 2012 levels and increase at a rate less than that of inflation.

16. Crown would obtain the right to import the Modelo brands not currently sold in the United States. Crown will be able to import any beer marketed or sold by Modelo outside of the United States. Further, Crown will have more rights to obtain additional, newly developed

beer products from Modelo. All of these are improvements over Crown's current supply agreement.

17. Moreover, Crown allocation priority improves. Under the Amended Importer Agreement, in the event of supply shortages, Crown will not be disadvantaged relative to the Mexican market, as it is under the current supply agreement, and will receive its pro rata share of production.

18. In August 2012, the United States Department of Justice ("DOJ") issued a document request to Constellation. In response to DOJ's request, documents of employees at Crown, including myself, were collected and produced to DOJ. DOJ quoted in its Complaint and the accompanying press release some of my correspondence produced through this process. I was deposed by DOJ on December 3, 2012. Beginning before the issuance of the document request, McDermott Will & Emery LLP has provided legal representation to Crown and its employees in their official capacities.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED: February 8, 2013



William F. Hackett
President
Crown Imports LLC