

**FILED
04-26-2021
CIRCUIT COURT
DANE COUNTY, WI
2020CV001563**

BY THE COURT:

DATE SIGNED: April 26, 2021

Electronically signed by Julie Genovese
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 13

DANE COUNTY

L'Eft Bank Wine Company LTD.,

Plaintiff,

v.

Case No. 2020CV1563

Bogle Vineyards, Inc. et al.

Defendants.

**DECISION AND ORDER GRANTING PLAINTIFF'S MOTION FOR A
TEMPORARY RESTRAINING ORDER**

This court held an evidentiary hearing on plaintiff's motion for a temporary injunction on February 15-17, 2021.¹ Having considered the pleadings, stipulations, testimony, exhibits and submissions of the parties, the court makes the following facts and conclusions of law:

FINDINGS OF FACT

1. Plaintiff L'Eft Bank Wine Company Limited (L'Eft Bank) is a Wisconsin corporation with its principal place of business located in McFarland,

¹ Judge Shelley Gaylord had granted an ex parte TRO on July 30, 2020.

Wisconsin. L'Eft Bank buys and resells primarily wine, and some spirits and glassware, to large and small retail businesses, including on-premise retailers like restaurants and bars, and off-premise retailers like supermarkets, chain stores, and independent liquor stores.

2. Defendant Bogle Vineyards, Inc. (Bogle) is a California corporation with its principal place of business in Clarksburg, California. Bogle produces and sells wine through a network of wholesale distributors.
3. Defendant Capitol-Husting Company, Inc.(Capitol-Husting) is a Wisconsin corporation with its principal place of business in Milwaukee. It is known primarily as a wholesale distributor of spirits.
4. L'Eft Bank began in 1985 as a small wholesaler with a single employee and has grown into a successful distributor with more than fifty employees, serving the entire state of Wisconsin.
5. Bogle began as a small, family-owned company that offered only a few varietals of wine. Today, Bogle has become one of the largest wine producers in the United States, selling a variety of wines under its traditional "Bogle" brand name, as well as "Phantom" and "Juggernaut" brand wines.
6. Bogle's wines are widely regarded as quality wines at reasonable prices and sell in large volumes, particularly in retail and chain stores. Bogle's wines are exceptional in that respect, comparable to popular wine brands like Kendall Jackson.

7. Bogle was one of the very first brands that L'Eft Bank sold, beginning in early 1986, and L'Eft Bank, as Bogle's very first distributor outside of California, was responsible for introducing Bogle wine into Wisconsin.
8. For over thirty years, L'Eft Bank has been the only distributor that has sold Bogle's wine products in Wisconsin.
9. Bogle and L'Eft Bank have never had a written agreement. Bogle and L'Eft Bank's distribution agreement has always been oral, based on the parties' three-decades-long course of dealing. Bogle and L'Eft Bank have regularly referred to each other as "partners."
10. In late 2011 Bogle attempted to obtain a written distributor agreement with L'Eft Bank. Bogle proposed a written distribution agreement that purported to confirm the parties' existing relationship, including its exclusive nature. However, there were a number of proposed terms that did not codify the parties' existing relationship, but instead would have changed it. For instance, the proposed agreement contained terms that would have more easily permitted Bogle to terminate the relationship and which purported to override the protections afforded to L'Eft Bank under the Wisconsin Fair Dealership Law. L'Eft Bank was uneasy with many of these proposed terms that would have altered its longstanding relationship with Bogle. The parties exchanged proposed drafts but ultimately did not execute a written agreement. Although they did not reduce their relationship to a written contract, their

business relationship continued on as it had before under their oral distribution agreement and decades-long course of dealing.

11. Until it sent L'Eft Bank a termination notice and tried to transfer its customer base to Capitol-Husting in July 2020 (which precipitated this lawsuit), Bogle has not permitted any other wine distributors to sell its products in Wisconsin.
12. Wine distributors in Wisconsin, and elsewhere, are generally exclusive, and retailers, particularly the ever-critical chain stores, will not tolerate multiple distributors taking up their time on the same wine brand in the same territory. For this very reason, when Bogle tried to have Capitol-Husting become a dual distributor for a one month period in July 2020 until Bogle could complete the termination of L'Eft Bank, customers were so confused that L'Eft Bank's orders were rejected by chain store customers.
13. When L'Eft Bank first began selling Bogle wine, it sold fewer than 500 cases annually. In 2020, L'Eft Bank sold nearly 32,000 cases of Bogle's wine.
14. Bogle is L'Eft Bank's largest, most important product line. In 2020 (the year that Bogle sent its termination notice), Bogle accounted for approximately 22% of L'Eft Bank's total case sales, 16% of its total revenues, and 13% of its gross profit.
15. In the past five years, Bogle accounted for an average of about 18% of L'Eft Bank's annual total case sales, 15% of its total annual revenues,

and 13% of its total gross profits. While L'Eft Bank sells other product lines, no other brand accounts for more than 5% of L'Eft Bank's business, and most represent far less than that.

16. Bogle products serve as "door openers" for L'Eft Bank. A "door opener" allows L'Eft Bank to get in the door with retailers to sell smaller or lesser-known product lines. Customers purchase Bogle wines from L'Eft Bank because they have become so popular, and L'Eft Bank is the only source for those wines. This enables L'Eft Bank to sell other, less popular and lower-volume wines from other suppliers to those customers, increasing L'Eft Bank's overall sales.
17. Twenty percent of Bogle's "off premises" customers buy only Bogle; 35% purchase 80% or more of Bogle; and nearly 90% of L'Eft Bank customers buy some portion of Bogle.
18. In the wholesale business (as opposed to retail), most advertising is done through the time and effort devoted to training and educating on- and off-premise (retail) customers about the wine products L'Eft Bank distributes (rather than to the consumers). At L'Eft Bank, this is done by its personnel, merchandizers and sales force. Social media, like Facebook and Instagram, are sparsely used by wholesalers.
19. When L'Eft Bank personnel make sales pitches to retailers, they usually lead with Bogle, because it is L'Eft Bank's "door opener" brand.

20. L'Eft Bank sales personnel and merchandizers spend significantly more time and effort on Bogle than on any other single brand L'Eft Bank sells.
21. L'Eft Bank pays its sales force a higher commission rate than other distributors typically do in recognition of these efforts.
22. In promoting the Bogle brands, L'Eft Bank personnel use the Bogle logos and trademarks. L'Eft Bank's entryway is usually adorned with Bogle promotional materials— emblems of the Bogle brand are the first thing visitors to L'Eft Bank's facility see.
23. L'Eft Bank's customers, and other distributors, are well aware of the strong affiliation between L'Eft Bank and Bogle.
24. Even Capitol-Husting personnel refer to Bogle as L'Eft Bank's "keep the lights on" brand, and when one of Capitol-Husting's employees left to go work for L'Eft Bank, Capitol-Husting's field sales manager joked, "You're going to sell Bogle."
25. L'Eft Bank devotes substantial resources to insuring Bogle wines make it to Wisconsin consumers. L'Eft Bank buys significant volumes—full truckloads—of Bogle wines, more than for any of its other suppliers, and pays to have them brought from California to its Wisconsin warehouse.
26. L'Eft Bank maintains a substantial inventory of Bogle wine. L'Eft Bank maintains between \$200,000 and \$500,000 of Bogle wine at any given time.

27. Bogle requires that L'Eft Bank be able to make frequent deliveries to retailers, so L'Eft Bank maintains an average of four times more inventory of Bogle wine than any of its other products.
28. L'Eft Bank personnel take orders, and L'Eft Bank drivers use L'Eft Bank trucks to deliver Bogle wine to stores and restaurants throughout Wisconsin. L'Eft Bank trucks deliver other products too, but the loads are often predominately made up of Bogle wine in comparison to the other products. At times, L'Eft Bank is only delivering Bogle wine.
29. L'Eft Bank personnel help customers manage their own inventories of Bogle wine. L'Eft Bank also stocks Bogle wine on the customers' shelves. L'Eft Bank merchandizers and sales personnel frequently visit customers, restocking shelves, creating and maintaining big and small in-store displays, working on product presentations, and teaching the retailers' employees and even consumers about Bogle's products. L'Eft Bank performs more of these services for Bogle than any other brands; Bogle requires additional inventory and stocking services (unlike many other brands) and additional attention.
30. As far back as 1993, Bogle insisted that L'Eft Bank increase deliveries, initiate new sales programming, use special sales incentives, increase the number of presentations, and meet Bogle's ever-increasing sales goals
31. Since the early 1990s, Bogle has provided L'Eft Bank with recommended programming, pricing, and annual case sale objectives

for Wisconsin. Bogle continues setting and policing aggressive sales goals for L'Eft Bank to this day.

32. In 2000, L'Eft Bank moved to a facility with a larger, custom-built, climate-controlled warehouse, and added office staff specifically to help L'Eft Bank grow Bogle's sales. In 2006, L'Eft Bank expanded that facility by adding 7,500 square feet of heated and air-conditioned warehouse space at an additional cost of \$4,230 rent per month, with the annual rent increasing by about 1.5% per year thereafter. L'Eft Bank helped design the space and additions, and then paid a premium on its lease payments, so it had the ideal storage space for its Bogle wine. This additional space is devoted almost entirely to storing Bogle products. L'Eft Bank would not have made these investments but for Bogle's increasing demands. Today, L'Eft Bank pays \$19,000 per month for its space, with a large portion of the warehouse dedicated to Bogle products.
33. L'Eft Bank now has twelve trucks, many of which are temperature-controlled for wine, including some specifically to ship Bogle wines in full truckload quantities. L'Eft Bank would not have purchased all of these trucks if it did not sell Bogle brands.
34. L'Eft Bank's employees, including its drivers, warehouse and logistics personnel, sales representatives, merchandizers and managers, spend the highest percentage of their time on Bogle.

35. Many L'Eft Bank employees, including its CEO, Mark Johnston, and President, Stacy Sandler, dedicate anywhere from 10% to 30% of their time to Bogle, while several employees spend more than 50% of their time on Bogle, and one employee is almost 100% devoted to Bogle.
36. L'Eft Bank has also created positions primarily to address Bogle sales. For example, L'Eft Bank appointed a Vice President of Chain Management specifically to be the point person for Bogle wine sales in chain stores.
37. L'Eft Bank's officers and managers travel to California to meet with Bogle's executive management team and learn more about Bogle's products, including visits in 2015 and 2016 to meet with Jody Bogle, Bogle's owner and Director of Public Relations, and a 2019 visit to meet with Sam Bon, Bogle's National Sales Manager.
38. L'Eft Bank spends substantial time training every new employee about Bogle – its varietals, its history and its goals – because Bogle is L'Eft Bank's number one brand, and unlike any other product L'Eft Bank carries, Bogle is discussed at every L'Eft Bank sales meeting.
39. Unlike many of L'Eft Bank's suppliers, Bogle provides L'Eft Bank with particular sales goals and monitors them on a frequent basis. At the outset of each year, Bogle provides L'Eft Bank with case sales goals for Wisconsin for three categories of its wine products: Bogle's traditional core varietals, and its recently-added Phantom and Juggernaut brands. For instance, in January 2019, Bogle wanted L'Eft

Bank to increase its case sales by 3% for Bogle's traditional branded products (which represent the bulk of Bogle products) over its 2018 case sales. Bogle also advised L'Eft Bank that Bogle wanted to see an increase in case sales of the newer brands—75% for Phantom and 100% for Juggernaut.

40. In 2020, Bogle urged L'Eft Bank to increase its case sales for Bogle's traditional branded products by 5% over its 2019 case sales, and to increase the Phantom and Juggernaut brands by 25% and 50%, respectively.
41. L'Eft Bank successfully met and exceeded its sales goals for Bogle traditional products in 2019 and, at the time of the July 22, 2020 termination notice, was on track to exceed all of Bogle's 2020 sales goals, including the aspirational Phantom and Juggernaut goals. In fact, Bogle was so pleased with L'Eft Bank's performance in 2019 that Bogle's Mid-West Regional Manager, Brennan McGrath, congratulated L'Eft Bank at a February 2020 sales meeting at L'Eft Bank's offices. McGrath raved that L'Eft Bank had "knocked it out of the park," said that its performance was "awesome" and that it had done a "phenomenal job."
42. At the end of 2020, L'Eft Bank successfully exceeded Bogle's overall 2020 sales goals and the 5% goal set for Bogle traditional products. L'Eft Bank also exceeded the 50% sales goal for Juggernaut, and nearly met the 25% goal set for Phantom

43. L'Eft Bank's sales of Bogle's products so far in the first two months of 2021 have exceeded the pace of sales L'Eft Bank had at the same point in 2020.
44. L'Eft Bank and Bogle communicate frequently about the status of Bogle sales and progress toward the goals, and about sales programs.
45. Bogle expects L'Eft Bank to provide numerous reports and audits, and demands access to L'Eft Bank's staff that other suppliers typically do not demand. Bogle also requires daily sales reports from L'Eft Bank.
46. L'Eft Bank personnel communicate with Bogle on a frequent basis—by phone, email and in-person meetings—about a multitude of issues, including strategy, pricing, programs and customer demands.
47. Each month, Bogle expects L'Eft Bank to audit the prices of Bogle's brands and Bogle's competitor's brands at L'Eft Bank's off-premise chain accounts and create a mid-month report just for Bogle.
48. L'Eft Bank must communicate with Bogle more than with any of its other suppliers. L'Eft Bank has met and continues to meet those requirements. Compared to L'Eft Bank's other suppliers, Bogle requires L'Eft Bank to set up and maintain substantially more in-store promotions and displays (particularly for L'Eft Bank's chain store customers), requires more frequent and regular product training, and requires more monitoring and managing of customer's product inventory.

49. Each year, Bogle requires L'Eft Bank to invest a substantial amount of time, effort and money into a special promotion it calls "Bogle Big Week." L'Eft Bank must prepare for Bogle Big Week months in advance. L'Eft Bank's obligations include: (1) purchasing and maintaining substantially more inventory – usually up to \$500,000 worth; (2) matching Bogle offered SPIFS (i.e., incentives) to L'Eft Bank's sales personnel; (3) advising customers about Bogle's special deals; (4) distributing Bogle promotional materials; and (5) aggressively promoting and generating sales. Bogle expects huge results for each Bogle Big Week. In October 2020, L'Eft Bank sold about 7,000 cases of Bogle wines, exceeding the goal Bogle had set for it.
50. Bogle also requires L'Eft Bank to serve many customers in remote areas of Wisconsin that buy small volumes of Bogle products, and almost nothing else. L'Eft Bank has made substantial investments to serve those far-reaching Wisconsin locations.
51. Prior to August 2020, L'Eft Bank used a third-party delivery service to ship Bogle's products to some remote locations in northwestern Wisconsin. In 2020, Bogle instructed L'Eft Bank that it would no longer allow L'Eft Bank to use a third-party delivery service, and required L'Eft Bank to create its own direct system to deliver to these remote locations. L'Eft Bank complied by purchasing a customized Ford van

at a cost of over \$46,000 and hiring two new drivers and revising its processes to make the deliveries directly.

52. In late 2017, Bogle brought on Brennan McGrath as its Mid-West Regional Manager. McGrath was apparently unhappy with L'Eft Bank's performance and admitted that he was actively working to "build a case" to terminate L'Eft Bank, beginning in early 2018.
53. L'Eft Bank perceived Brennan McGrath's displeasure. L'Eft Bank's CEO, Mark Johnston, wrote a letter to McGrath in June 2019 complaining that while McGrath always appears to be a "reasonable partner" in person, he repeatedly sends "toxic emails" expressing "disdain" for L'Eft Bank.
54. Mark Johnston wrote to Bogle's National Sales Manager, Sam Bon, requesting a meeting, and in July 2019, Johnston traveled to California to meet with Bon. During their meeting, Johnston provided Bon with a document identifying the numerous investments that L'Eft Bank recently had made and planned to make in the upcoming months to increase Bogle sales and "enhance [its] representation of Bogle in Wisconsin."
55. According to Johnston, Bon did not reject L'Eft Bank's offer to make the additional investments. Johnston perceived the in-person meeting with Bon in California to be cordial and positive. Bon never mentioned

any prospect of terminating the Bogle-L'Eft Bank relationship, and L'Eft Bank made each of the investments described in the letter.²

56. In July 2018, L'Eft Bank appointed Stacy Sandler as its brand manager devoted solely to Bogle; no other brand in L'Eft Bank's product portfolio has a brand manager solely dedicated to its care.
57. In late 2019, L'Eft Bank appointed a statewide sales manager, Cassidy Browne, who devotes a significant amount of her time solely to Bogle.
58. In early 2020, L'Eft Bank purchased a SUV for Browne to use (at a cost of nearly \$30,000) so she could travel to customer locations throughout Wisconsin, again primarily to address Bogle's demands for more statewide coverage.
59. L'Eft Bank added two new sales representatives to cover the Eau Claire/LaCrosse area and the north Milwaukee/Sheboygan/Plymouth/Elkhart Lake regions of Wisconsin. It also hired additional delivery and warehouse personnel.
60. In March 2019, L'Eft Bank purchased a truck specifically to handle large Bogle deliveries for an amount exceeding \$70,000. In June 2019, L'Eft Bank purchased a Sprinter Van for over \$50,000 to use for wine deliveries. Neither the specialty refrigerated truck nor the Sprinter Van would have been required but for L'Eft Bank's Bogle sales.

² Bon did not testify at the hearing.

61. From January through August of 2020, L'Eft Bank's case sales for Bogle's traditional brands grew 11.4% over the same period in 2019, and L'Eft Bank's case sales for Bogle's Phantom and Juggernaut brands grew by about 31% and 71%, respectively. Bogle acknowledges that in July of 2020, at the time it tried to terminate the relationship, L'Eft Bank was meeting, and in fact, exceeding, its sales goals for 2020.
62. On July 22, 2020, Bogle sent L'Eft Bank a letter stating that it was terminating L'Eft Bank as its Wisconsin distributor effective August 31, 2020, and that, effective August 1, 2020, Capitol-Husting would be a dual distributor of Bogle's wine products in Wisconsin. The July 22, 2020 letter further indicated that, after L'Eft Bank's termination, Capitol-Husting was to be the successor distributor of Bogle's wine products in Wisconsin.
63. Unbeknownst to L'Eft Bank, Capitol-Husting had been courting Bogle for several years. In March 2019, Capitol-Husting told Bogle that like L'Eft Bank, Capitol-Husting would make Bogle its "No. 1 focus."
64. With regard to the reason for the termination, Bogle wrote in its July 2020 termination notice: "While we appreciate your past efforts, this is a business decision made in the best interests of our brands and is not intended to be punitive or arbitrary."
65. In its July 22, 2020 termination notice, Bogle specifically acknowledged the existence of the Wisconsin Fair Dealership Law, but

advised (incorrectly) that it did not apply to wine dealers like L'Eft Bank.

66. It appears that Bogle views its professional relationship with L'Eft Bank as "not salvageable." Bogle concluded that L'Eft Bank has demonstrated neither the desire nor the capacity to grow along with Bogle. Bogle also cannot get past Mark Johnston complaining about allegedly "toxic" emails sent by Brennan McGrath.
67. In March 2020, without advising L'Eft Bank of its deficiencies or giving L'Eft Bank an opportunity to remedy them, Bogle decided to terminate L'Eft Bank because, in Bogle's view, L'Eft Bank had underperformed as compared to the market index; poorly serviced chain accounts; had chosen not to make basic investments in the brand; and L'Eft Bank executives had behaved unprofessionally and communicated in a hostile way.
68. However, Bogle's termination letter cited no "good cause" and provided no opportunity to cure as those terms are used in the Wisconsin Fair Dealership Law. Bogle confirmed that the termination of L'Eft Bank was not for cause, and that the termination letter did not provide L'Eft Bank with 90 days' prior notice of termination of its dealership, or an opportunity to cure.
69. In fact, Bogle appears to have assumed based on advice from Capitol-Husting's president that the Wisconsin Fair Dealership Law specifically excludes wine distributors.

70. Capitol-Husting was so certain of its legal interpretation and wanted to woo Bogle away from L'Eft Bank so badly that Capitol-Husting ultimately agreed to indemnify Bogle 100 percent for the losses and costs associated with any lawsuit arising out of the termination of L'Eft Bank.
71. Bogle acknowledged that at the time it attempted to terminate L'Eft Bank, some of its other distributors were not meeting sales goals for Bogle wines. Bogle confirmed that it had no plans to terminate any of those distributors
72. Most customers, especially critical chain stores, will only accept product from one distributor per wine brand.
73. Several L'Eft Bank customers rejected deliveries of Bogle wine from L'Eft Bank after Capitol-Husting told them that it was the new Bogle distributor.
74. L'Eft Bank had 28 deliveries rejected as a result of the short-term "dual" status.
75. Since the issuance of the TRO, Bogle and L'Eft Bank have continued to work together in a professional manner, and business has been good. L'Eft Bank had a very successful "Bogle Big Week" in October 2020, exceeding even Bogle's expectations.
76. If Bogle is allowed to terminate the relationship, L'Eft Bank's customers would likely stop purchasing not only Bogle wine, but other products

from L'Eft Bank as well, as the hassle of a separate distributor would not be justified without the key Bogle brand.

77. If Bogle is allowed to terminate L'Eft Bank as a distributor, L'Eft Bank is likely to lose substantial sales, not only from its customers that buy only Bogle, but many others as well.
78. L'Eft Bank relies on the profits from its Bogle sales to cover its ongoing operational costs, including those related to the investments it made in its warehouse expansion, vehicles and employees specifically related to the Bogle brands. Depriving L'Eft Bank of those profits would threaten the health of L'Eft Bank as an ongoing business.
79. L'Eft Bank's deliveries without Bogle would become unprofitable and entire routes may have to be cut, resulting in additional losses.
80. If its relationship with Bogle is terminated, L'Eft Bank also will lose the substantial investments and goodwill it created by way of the time its personnel spent promoting Bogle throughout the state.
81. Termination will also threaten L'Eft Bank's reputation with customers and other suppliers, which could result in additional customer losses, and even prevent L'Eft Bank from obtaining new products, as suppliers will be left to wonder whether there will be a L'Eft Bank without Bogle.
82. The threatened termination of L'Eft Bank has hurt employee morale, and any actual loss of Bogle would be an even greater blow. Employee departures would be a real risk, especially for L'Eft Bank's sales force whose earnings depend in part on commissions from sales.

83. Without Bogle, L'Eft Bank will also be in a position where it will have to consider changing its entire business to survive, including possibly laying off employees.
84. The harm stemming from the termination of L'Eft Bank could not be addressed simply by downsizing and picking up a few more products. When General Beverage lost a customer that represented a mere 8% of its gross profits, it took five years to replace the profits from that brand.

CONCLUSIONS OF LAW

1. Section 813.02(1), entitled "Temporary injunction; when granted."

provides:

(a) When it appears from a party's pleading that the party is entitled to judgment and any part thereof consists in restraining some act, the commission or continuance of which during the litigation would injure the party, or when during the litigation it shall appear that a party is doing or threatens or is about to do, or is procuring or suffering some act to be done in violation of the rights of another party and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act.

(b) Prior to granting a temporary injunction or temporary restraining order, the court may attempt to contact the party sought to be restrained, or his or her counsel if known, by telephone and allow all parties to be heard on the equities between the parties, the availability of other remedies, the damages which may be sustained if the temporary injunction or restraining order is granted, and other relevant matters.

2. To receive a temporary injunction, a party seeking an injunction need only establish a reasonable likelihood of success on the merits; it does not have to prove its entire case at that early stage

of the proceedings. See *Bloomquist v. Better Bus. Bureau of Milwaukee*, 17 Wis. 2d 101, 104 (1962).

3. L'Eft Bank claims that it is a dealer under the Wisconsin Fair Dealership Law, Wis. Stat. §135.01 *et seq.*
4. Section 135.02(3)(a), Stats. defines a "dealership" as:

A contract or agreement, either expressed or implied, whether oral or written, between 2 or more persons, by which a person is granted the right to sell or distribute goods or services, or use a trade name, trademark, service mark, logotype, advertising or other commercial symbol, in which there is a community of interest in the business of offering, selling or distributing goods or services at wholesale, retail, by lease, agreement or otherwise.
5. It is undisputed that there was an oral agreement between L'Eft Bank and Bogle by which L'Eft Bank was granted the right to sell or distribute goods.
6. The dispute is whether there was a "community of interest" in the business of selling or distributing the goods at wholesale.
7. To determine a "community of interest," the court must consider the guideposts of a "continuing financial interest" and "interdependence" between the parties." *Ziegler Co. v. Rexnord, Inc.*, 139 Wis. 2d 593, 604-05 (1987).
8. The *Ziegler* court listed ten non-exclusive factors (the "Ziegler factors") to consider in determining whether a "community of interest" exists. It is important to consider all facets of a business relationship as reflected in the parties' actual dealings in their totality, not individually. *Id.* at 605-06.

9. In *Central Corp. v. Research Products Corp.*, 2004 WI 76, ¶ 33, 272 Wis. 2d 561, the court re-affirmed the importance of considering “all facets of a business relationship, as reflected in the parties’ actual dealings, and not limiting the inquiry to one deficient factor”.
10. Broadly, the relationship between L’Eft Bank and Bogle over the years meets this standard. L’Eft Bank and Bogle often referred to each other as “partners.” Bogle recognized L’Eft Bank as its “Wisconsin distributor” and, in fact, its very first distributor outside of Bogle’s home state of California. Customers and other dealers in Wisconsin (including Capitol-Husting) likewise recognized L’Eft Bank as Bogle’s one and only Wisconsin distributor.
11. The ten *Ziegler* factors also support finding a “community of interest”.
 - a. *Length of Relationship.*

The parties have had a business relationship for over 30 years.
 - b. *Extent and Nature of Grant of Territory.*

L’Eft Bank has been the sole distributor in Wisconsin for three decades. L’Eft Bank was Bogle’s first distributor outside of the State of California. The fact that L’Eft Bank is Bogle’s exclusive distributor is consistent with how wine is distributed in Wisconsin generally, and even how Bogle distributes its wine throughout the United States. Wine distributors in Wisconsin are typically exclusive,

meaning that there is only one distributor for a brand in any particular territory.

c. *Percentage of Sales/Revenues/Gross Profits.*

Bogle is L'Eft Bank's most important product line—in fact, it is well known in the industry as L'Eft Bank's “keep-the-lights-on” brand. L'Eft Bank derives far more of its overall case sales, revenues and gross profits from the sale of Bogle products than from any other brand it sells. Bogle currently accounts for about 22% of L'Eft Bank's total case sales, 16% of its total revenues, and 13% of its gross profit. In the past five years, Bogle accounted for an average of about 18% of L'Eft Bank's annual total case sales, 15% of its total annual revenues, and 13% of its total gross profits.

No other brand sold by L'Eft Bank comes close to the percentage of case sales, revenues and gross profits that Bogle generates for L'Eft Bank each year. Bogle relies on federal case law which focuses primarily on the percentage of sales and profits as dispositive of the community of interest. *Ziegler* too suggested a “low percentage [of revenues] is strong evidence, evidence that may be ultimately determinative.” *Ziegler*, 139 Wis. 2d 593, 607. However, *Ziegler* and subsequent case law support that Wisconsin courts “should examine other facets of the business relationship.” *Id.* In fact, L'Eft Bank's percentages exceed the percentages that other Wisconsin courts have found, together with the other *Ziegler*

factors, to be sufficient to establish a community of interest. See, e.g., *Central Corp.*, 2004 WI 76, ¶¶9, 35 (8-9% of sales and profits, while not a large percentage, not dispositive when considered with other *Ziegler* factors); *Kelley Supply, Inc.v. Chr. Hansen, Inc.* , 2012 WI App 40, ¶¶ 17-19 & n.4, 340 Wis. 2d 497(unpublished) (dealer derived an average of 14% revenues and 10.3% of its gross profits from sales of supplier's products over most recent four-year period).

Further, among “off premises” customers, 20% only buy Bogle; 35% purchase 80% or more of Bogle; and nearly 90% of customers buy some Bogle.

d. *Extent and Nature of Financial Investment in Inventory, Facilities and Goodwill*

L'Eft Bank has made substantial investments to promote and sell Bogle's wines over the course of their relationship. For example, L'Eft Bank made significant investments in its inventory of Bogle wine. Due to the high-volume nature of Bogle wine sales and the demands of its promotional programs (including the annual “Bogle Big Week”), L'Eft Bank was required to maintain a substantial inventory of Bogle wine—usually between \$200,000 and \$500,000 worth. In *Central Corp.*, the court found \$60,000 to \$70,000 of inventory to be “substantial amount” weighing in favor of a “community of interest.” 2004 WI 76, ¶12, 272 Wis. 2d 561. L'Eft Bank maintains far more Bogle wine in its inventory than any other

product it carries.

L'Eft Bank has also made significant investment in its facilities. It expanded and upgraded its warehouse in order to accommodate Bogle products. Like the dealer in *Central Corp.*, L'Eft Bank moved into a larger facility, and even paid to expand it, in reliance on its continued relationship with Bogle. See *Central Corp.*, 2004 WI 76, ¶ 14; see also *Kelley Supply*, 2012 WI App 40, ¶ 27 (unpublished) (noting that Kelley had expanded its warehouse in part due to the sale of the supplier's products)

L'Eft Bank has made numerous other substantial investments to meet Bogle's demands for more and more sales and in reliance on the continued dealership relationship with Bogle. These investments include capital investments like the addition of vehicles (needed for Bogle volumes and frequent deliveries); personnel (including the training, hiring and reorganization of its staff just for Bogle); and work (including the substantial time and effort to meet Bogle's demands for special audits and frequent reports, and the investment of employee time to develop goodwill for Bogle).

While many of these investments can be used for other products (like the warehouse and trucks), L'Eft Bank would not have made the additional investments in the first place if it did not have Bogle. See also *Central Corp.*, 2004 WI 76, ¶¶ 12, 35 (finding that investments, including leased warehouse space, supported a

community of interest, even if distributor could utilize some portion of them for other product lines).

As recently as 2019, Mark Johnston met with Sam Bon to advise him of the investments L'Eft Bank intended to make in Bogle products. Those investments included designating a brand manager exclusively for Bogle (which no other L'Eft Bank brand has); appointing a statewide sales manager who would dedicate most of her time to Bogle; hiring two new sales representatives to cover the Eau Claire/LaCrosse and the Milwaukee/Sheboygan/Plymouth/Elkhart Lake regions; hiring new warehouse and delivery personnel; and purchasing new vehicles to deliver Bogle throughout Wisconsin, including a customized truck to make large Bogle deliveries.

Bogle also required L'Eft Bank to stop using third-party delivery trucks to make deliveries in more remote locations, and L'Eft Bank purchased vehicles for this purpose. Bogle acknowledged and received the benefit of all of the investments (which helped increase sales in 2020), but failed to tell L'Eft Bank that Bogle was considering a switch to another dealer. Bogle claims that these investments can be used for other product lines and therefore they do not support a community of interest. However, the Wisconsin Supreme Court rejected these arguments, holding that while the defendant did not specifically "require" the plaintiff to maintain an

inventory, the plaintiff had to maintain a substantial inventory to function successfully and ensure it had enough product to coincide with promotions. *Central Corp.*, 2004 WI 76, ¶12, 272 Wis. 2d 571. The Court noted that plaintiff had also leased more warehouse space based in part on the amount of the defendant's inventory plaintiff anticipated would need to be stored. *Id.* at ¶14. These factors weighed in favor of a community of interest and presented genuine issues of fact. *Id.* at ¶35.

e. *Percentage of Time or Revenue Devoted to the Grantor's Products or Services.*

L'Eft Bank devotes significant time, money and effort marketing and selling Bogle's wine products, its most important brand. L'Eft Bank spends more time on Bogle than any of its other product lines, and many of its employees spend the majority of their time (some up to 100%) on Bogle. Even Capitol-Husting acknowledged that Bogle was L'Eft Bank's "No 1 focus."

f. *The Extent and Nature of the Obligations that the Contract or Agreement Imposes on the Parties*

Bogle has imposed substantial obligations on L'Eft Bank, including yearly sales goals; frequent, high volume deliveries; frequent visits to customers; substantial and special daily reporting; required in-house service and deliveries even to remote accounts in Wisconsin; additional staff training; creation of a mid-month report

required by Bogle where L'Eft Bank staff must audit the prices of Bogle's brands and competitor's brands; etc.

g. The extent and nature of the dealer's use of the grantor's commercial symbols

This is not the type of business where employees wear branded uniforms or deploy social media blitzes to wine drinkers. It is a wholesale business, meaning that distributors sell to the retailers, who then interact with the wine consumers. Accordingly this is not an important factor in the analysis.

h. The Number of Dealer Personnel Devoted to the Alleged Dealership

L'Eft Bank personnel spend substantial time specifically on Bogle. L'Eft Bank hired additional delivery, warehouse, sales and merchandizing staff specifically to manage Bogle products, and several of its employees are dedicated almost exclusively to Bogle.

i. The Extent and Nature of any Supplementary Services the Dealer Provides to Consumers of the Grantor's Products or Services

L'Eft Bank provides many supplementary services for Bogle and customers, including customer assistance, training, auditing, reporting, etc. All of these obligations and supplement services are well beyond those expected by L'Eft Bank's other wine suppliers.

12. Other evidence supports the importance of the Bogle brand to the viability of L'Eft Bank's business. Capitol-Husting was willing to finance this litigation in order to obtain the Bogle line. In courting Bogle, Capitol-Husting recognized the importance of Bogle to L'Eft

Bank, assuring Bogle that just as L'Eft Bank had, it too would make Bogle a number one priority. When an employee left Capitol-Husting to work for L'Eft Bank, Capitol-Husting's field sales manager joked, "You're going to go sell Bogle."

13. Having determined that there is a likelihood of success on the merits on whether the relationship is covered by the WFDL, then there appears to be no dispute that Bogle's termination notice failed to comply with the WFDL's requirements for good cause, notice and an opportunity to cure. See Wis. Stat. § 135.03.
14. Bogle concedes that the termination was not for "good cause" as required by the WFDL.
15. Bogle's termination notice did not provide L'Eft Bank with the required 90-days' prior notice of termination, or with 60-days' opportunity to cure alleged deficiencies See Wis. Stat. § 135.04.
16. It appears that Bogle terminated L'Eft Bank based on Capitol-Husting's erroneous interpretation of Wisconsin law.
17. The Wisconsin Fair Dealership Law presumes that a violation of its provisions by a grantor is an irreparable injury for purposes of determining if a temporary injunction may be issued. Wis. Stat. § 135.065.
18. This presumption stems from the purposes of the Wisconsin Fair Dealership Law. These purposes "are to promote the public's interest in fair business relationships between dealers and grantors,

to protect dealers from unfair treatment by grantors, who may use their superior economic and bargaining powers to the disadvantage of small business owners, and to provide dealer with rights and remedies in addition to those existing by contract or common law.”

Wis. Stat. §135.025 (2)(a)-(c).

19. To this end, the WFDL “shall be liberally construed to promote its underlying remedial purposes and policies.” Wis. Stat. § 135.025(1). *See also Jungbluth v. Hometown, Inc.*, 201 Wis.2d 320, 328, 548 N.W.2d 519 (1996). “While the WFDL has been characterized as protectionist in nature, because it regulates the free market...it is up to the legislature to determine such policy matters. *Central Corp.*, 2004 WI 76, ¶28, 272 Wis. 2d 561.
20. The concepts of inadequate remedy at law and irreparable harm are interconnected. “To say that the injury is irreparable means that the methods of repair (remedies at law) are inadequate.” *Fleet Wholesale Supply Co. v. Remington Arms Co.*, 846 F.2d 1095, 1098 (7th Cir.1988).
21. While money damages could ultimately be awarded at a trial if L’Eft Bank prevails, L’Eft Bank’s ability to stay in business will be seriously strained between now and the trial if L’Eft Bank loses its largest product line. The loss of Bogle will have adverse effects on employee morale and compensation; customers’ perceptions of L’Eft Bank; sales of other products that L’Eft Bank sells because it

is in constant contact with large chain stores that primarily purchase Bogle; and L'Eft Bank's ability to finance its operations and this lawsuit pending resolution. Thus I conclude that L'Eft Bank will suffer irreparable harm.

22. Because a temporary injunction is equitable, the court must consider a number of other factors. Wis. Stat. §813.02(1)(a) (In deciding TRO, parties must "be heard on the equities between the parties, the availability of other remedies, the damages which may be sustained if the temporary injunction or restraining order is granted, and other relevant matters.)
23. In considering the equities, the court is mindful of the fact that the grant of a temporary injunction forces Bogle to continue to do business with L'Eft Bank --a relationship Bogle perceives to be strained. However, the parties have continued to do business since the initial grant of the TRO in July 2020, and L'Eft Bank has generally exceeded sales expectations since July 2020.
24. Bogle also argues that because the relationship between L'Eft Bank was not exclusive, even if a temporary restraining order is appropriate, Bogle should be able to appoint Capitol-Husting a dual distributor.
25. Based on the evidence at the hearing, however, it appears that permitting Capitol-Husting to serve as a dual distributor would change the competitive circumstances of the dealership agreement

and would violate §135.03, Stats. The testimony supports that in the wine distribution industry, there is one distributor for a particular region, and L'Eft Bank has been the only distributor of Bogle wines for over 30 years. Further, L'Eft Bank's relationship with critical chain stores would be seriously compromised because these chains would not know from whom they should order. The confusion has already been evidenced by the rejection of L'Eft Bank orders by chain stores after the appointment of Capitol-Husting as a dual distributor. Accordingly, to preserve the status quo, the temporary restraining order must not only prohibit the termination of L'Eft Bank pending the trial but must also prohibit Bogle from appointing Capitol-Husting as a dual distributor.

26. The court agrees with Bogle that the statute in these circumstances provides for L'Eft Bank posting a bond to protect Bogle in the event that L'Eft does not succeed at trial. See Wis. Stat. §813.06

ORDER

For the reasons stated, the plaintiff's motion for a temporary injunction is granted. Bogle is enjoined from terminating L'Eft Bank and appointing Capitol-Husting as a dual distributor. The parties are expected to confer and report to the court whether a hearing is necessary on the terms and amount of the bond within 14 days of this decision.