

United States v. Beam Suntory, Inc. (N.D. Ill. 2020)

Nature of the Business.

Beam Suntory Inc. ("Beam"), a Chicago, Illinois-based corporation, is a multinational corporation that produces and sells distilled beverages. From 2011 through 2014, the company maintained stock that was registered with the SEC under Section 12(b) of the Exchange Act and traded on the New York Stock Exchange. Before 2011, Beam was known as Beam Global Spirits & Wine, Inc., which was owned by Fortune Brands, Inc., a holding company which had a class of publicly traded securities registered with the SEC that also traded on the New York Stock Exchange. In April 2014, Beam went private and was delisted from the New York Stock Exchange.

Beam's wholly owned subsidiary, Beam Global Spirits & Wine (India) Private Limited ("Beam India"), is an Indian corporation that imports and distributes Beam's products through India. In 2011, Beam India came under the responsibility of Beam's Asia Pacific/South America business unit, which is based in Australia.

Influence to be Obtained.

According to the DOJ, throughout the relevant period, Beam and Beam India allegedly paid bribes to senior Indian government officials in exchange for approval of a license to bottle a line of mixed-alcoholic beverages that the company sought to market and distribute in India. The bribes were allegedly authorized by a high-ranking executive at Beam's Asia Pacific/South America business unit and made through Beam India's third-party bottler.

The DOJ also alleged that Beam, along with others, conspired to fail to implement and maintain an adequate system of internal accounting controls which would have detected Beam India's alleged bribes to Indian government officials. Moreover, the DOJ alleged that Beam conspired with others to falsify its books and records, specifically by "recording falsified expenses that were consolidated into Beam's books, records, and accounts and by maintaining false Sarbanes-Oxley sub-certifications, in an effort to conceal the improper payments made to Indian government officials."

Enforcement.

On October 23, 2020, the DOJ entered into a deferred prosecution agreement with Beam for causing Beam India to violate the FCPA's anti-bribery, internal controls, and books-and-records provisions. According to the deferred prosecution agreement, PAC agreed to pay a monetary penalty in the amount of \$19,572,885 and to implement an enhanced compliance and ethics program.

On July 2, 2018, the SEC issued a related cease-and-desist order against Beam, pursuant to which it paid \$6,181,838 in disgorgement and pre-judgment interest to settle charges against it for violations of the FCPA's anti-bribery, books-and-records, and internal controls provisions. Beam also agreed to pay a civil penalty of \$2 million but was not credited for this amount in the DOJ action given the time lag and a lack of sufficient cooperation from the company to settle investigations from both agencies at the same time.

Key Facts

Citation. *United States v. Beam Suntory, Inc.*, No. 20-CR-745 (N.D. Ill. Oct. 23, 2020).

Date Filed. October 23, 2020.

Country. India.

Date of Conduct. 2006 – 2012.

Amount of the value. Approximately \$18,000.

Amount of business related to the payment. Not stated.

Intermediary. Third-party sales promoters and distributors.

Foreign official. Various Indian government officials.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. \$19,572,885.

Compliance Monitor/Reporting Requirements. Compliance and Ethics Program.

Related Enforcement Actions. *In the Matter of Beam Inc.*, SEC No. 3-18568 (July 2, 2018).

Total Combined Sanction. Approximately \$27,754,723.