

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

TRISTAR FOOD WHOLESale CO., INC.,

Plaintiff,

v.

OCM GROUP USA, INC., *and*  
OCM GROUP USA NJ, INC.

Defendants.

\_\_\_\_\_/20

**SUMMONS**

**YOU ARE HEREBY SUMMONED** to appear in this action by serving a notice of appearance on Plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service, or within thirty days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

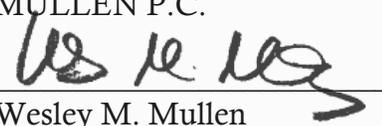
The basis of venue is CPLR 503.

**To the Above-Named Defendants:**

OCM GROUP USA, INC.  
16555 Gale Avenue  
City of Industry, CA 91745

OCM GROUP USA NJ, INC.  
1165 Cranbury South River Road  
Dayton, NJ 08810

DATED: September 24, 2020  
New York, New York

MULLEN P.C.  
BY:   
Wesley M. Mullen  
200 Park Avenue, Suite 1700  
New York, NY 10166  
(646) 632-3718  
wmullen@mullenpc.com

*Counsel for Plaintiff*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

TRISTAR FOOD WHOLESALE CO., INC.,

Plaintiff,

v.

OCM GROUP USA, INC., *and*  
OCM GROUP USA NJ, INC.

Defendants.

\_\_\_\_\_/20

**COMPLAINT**

Plaintiff Tristar Food Wholesale Co., Inc. ("Tristar") hereby alleges as follows against Defendants OCM Group USA, Inc. and OCM Group USA NJ, Inc. (together, "OCM" or "Defendants"):

**SUMMARY OF THE CASE**

1. This is an action for breach of contract.
2. In a written agreement, Tristar granted Defendants limited territorial rights to market Chinese Herbal Tea products in the Western United States — and Defendants promised not to sell products in the East.
3. Defendants breached the agreement by secretly distributing and selling products on the Eastern seaboard, outside their exclusive contractual territory — and ignoring Tristar's demands to cease and desist.
4. Tristar seeks damages, an accounting, and injunctive relief.

**PARTIES**

5. Plaintiff Tristar Food Wholesale Co., Inc. is a corporation organized under the laws of the state of New Jersey. Tristar conducts business in this County.

6. Defendant OCM Group USA, Inc. is a corporation organized under the laws of the state of California. OCM Group USA, Inc. markets, distributes and sells goods in this County — including Chinese Herbal Tea products sold in violation of the parties' agreement.

7. Defendant OCM Group USA NJ, Inc. is a corporation organized under the laws of the state of New Jersey. OCM Group USA NJ, Inc. markets, distributes and sells goods in this County — including Chinese Herbal Tea products sold in violation of the parties' agreement.

#### **JURISDICTION AND VENUE**

8. Jurisdiction is proper under CPLR 301.

9. Venue is proper under CPLR 503 and 509.

#### **FACTS COMMON TO ALL CAUSES OF ACTION**

10. Tristar and OCM Group USA, Inc. are parties to a Wang Lao Ji West Coast Distribution Agreement (Export Version) (the "Agreement") dated and executed on or about January 1, 2019.

11. Portions of the Agreement are confidential pursuant to the Agreement.

12. The Agreement is a valid and enforceable contract.

13. Under the Agreement, Tristar authorized OCM Group USA, Inc. to act "as the exclusive agent of Wang Lao Ji brand herbal tea products in the Western US market." (Agreement at Preamble.)

14. The Agreement defines the Western US market as the states of California, Oregon, Washington, Nevada, Idaho, Arizona, Montana, Wyoming, Colorado, New Mexico, and Texas. (*Id.* § I.3.)

15. OCM Group USA, Inc. agreed not to “sell[] Wang Lao Ji brand products in any way in markets outside the Western US Market ... .” (*Id.* § V.4.)

16. Under the Agreement, breach of OCM Group USA, Inc.’s covenant not to sell products outside the Western US Market entitles Tristar to liquidated damages. (*Id.*)

17. OCM Group USA, Inc. violated the Agreement by marketing and selling Wang Lao Ji brand herbal tea products outside the Western United States.

18. OCM Group USA, Inc. marketed and sold (and continues to market and sell) Wang Lao Ji products in Illinois.

19. OCM Group USA, Inc. marketed and sold (and continues to market and sell) Wang Lao Ji products in Massachusetts.

20. OCM Group USA, Inc. marketed and sold (and continues to market and sell) Wang Lao Ji products in New York.

21. OCM Group USA, Inc. marketed and sold (and continues to market and sell) Wang Lao Ji products in Pennsylvania.

22. On information and belief, OCM Group USA, Inc. marketed and sold (and continues to market and sell) Wang Lao Ji products at other locations outside the Western United States.

23. OCM Group USA, Inc., by and through its affiliated entity Defendant OCM Group USA NJ, Inc., warehoused and distributed (and continues to warehouse and distribute) Wang Lao Ji products at facilities in New Jersey.

24. On information and belief, OCM Group USA NJ, Inc. warehouses and distributes Wang Lao Ji products at facilities outside the Western United States.

25. On or about August 7, 2020, Tristar demanded that Defendants cease and desist from further violations of the Agreement.

26. Defendants did not cease and desist; instead, they continued willfully to breach the Agreement.

**AS AND FOR A FIRST CAUSE OF ACTION:**

**BREACH OF CONTRACT**

27. Plaintiff repeats, reiterates and realleges each and every allegation set forth in the previous paragraphs of this Complaint as though fully set forth herein.

28. Tristar and OCM Group USA, Inc. entered into the Agreement.

29. The Agreement is valid and enforceable.

30. Tristar has performed and continues to perform all obligations required of it under the Agreement.

31. OCM Group USA, Inc. breached its obligations under the Loan Agreement by distributing Wang Lao Ji herbal tea products outside the exclusive distribution territory provided in the Agreement.

32. As a result of the foregoing breaches, OCM Group USA, Inc. owes Tristar contractual damages in an amount to be determined at trial.

**AS AND FOR A SECOND CAUSE OF ACTION:**

**ACCOUNTING**

33. Plaintiff repeats, reiterates and realleges each and every allegation set forth in the previous paragraphs of this Complaint as though fully set forth herein.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.