

A manufacturer agreed in writing with a beverage company to provide all the flavor syrup the beverage company's soft drink requires for the next three years. The beverage company's soft drink contains a small amount of caffeine. The manufacturer promised in the contract to "promote in good faith the sale of the soft drink," but the contract said nothing about restrictions on the products that the manufacturer could produce. The contract also stated that it was the "complete and final agreement" between the manufacturer and the beverage company.

Six months later, the manufacturer agreed with a competitor of the beverage company to produce flavor syrup for its caffeine-free beverages.

If the beverage company sues the manufacturer for breach of their contract, which of the following facts, if established, would most strengthen the beverage company's case?

- A. For many years in the soft-drink industry, it has been uniform practice for manufacturers to handle only one beverage brand at a time.
- B. Prior to signing the contract with the beverage company, a representative of the manufacturer said that the deal with the company would be "an exclusive."
- C. Since the manufacturer began to produce the competitor's beverages, the beverage company's sales have dropped 3%.
- D. The competitor's national advertising campaign disparages the beverage company's product by saying, "You don't need caffeine and neither does your soft drink."

Explanation:

UCC parol evidence rule

	Description		Priority of evidence
Inadmissible	Prior/contemporaneous agreements that contradict written contract		Express terms always control
Admissible	Course of performance	Sequence of conduct under contract involving repeated occasions for performance	Course of performance > course of dealing & trade usage
	Course of dealing	Sequence of conduct pertaining to previous contracts	Course of dealing > trade usage
	Trade usage	Regular practice or method of dealing in that particular business/industry	N/A

UCC = Uniform Commercial Code.

Under the **parol evidence rule**, prior or contemporaneous agreements cannot be used to contradict the express terms of a fully integrated, written contract. However, the UCC allows evidence of **trade usage** to be used to **explain or supplement** the terms of a **final contract** so long as that evidence is **reasonably consistent** with the contract's **express language**.* Trade usage refers to a **practice or method of dealing** that is observed with such **regularity in the industry** that the parties to a contract would be expected to observe it.

Here, the manufacturer and the beverage company had a fully integrated agreement because it was their "complete and final agreement." But the contract is silent as to whether the manufacturer can work for a competing beverage company. Therefore, evidence of trade usage—e.g., manufacturers to handle only one beverage brand at a time—is admissible to supplement the contract. And since this evidence shows that the manufacturer breached the contract when it agreed to produce flavor syrup for a competitor, it would most strengthen the company's case.

*Under the majority rule, trade usage is consistent with express language in the contract unless the usage completely negates specific express language.

(Choice B) Under the UCC, the parol evidence rule bars the admission of a prior agreement if the term *certainly* would have been included in the final contract but was not. Here, a

term of exclusivity would certainly have been included had that been the parties' intent. Therefore, this evidence would be inadmissible.

(Choice C) The fact that the beverage company's sales have dropped since the manufacturer's agreement with the competitor *suggests* that the agreement has negatively impacted the beverage company. But this does not provide direct evidence that the manufacturer breached the contract by failing to promote the sale of the soft drink in good faith. Therefore, this is not the strongest evidence for the beverage company's case.

(Choice D) The competitor's advertising campaign has no bearing on whether the manufacturer promoted the beverage company's soft drink "in good faith."

Educational objective:

The UCC parol evidence rule allows evidence of trade usage to be used to explain or supplement the terms of a final contract if that evidence is reasonably consistent with the contract's express language.

References

- UCC § 2-202 (explaining that trade usage is admissible to explain or supplement contract's terms).
- UCC § 1-303 (defining trade usage).

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