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[*1] **Krinos Foods, Inc., Appellant, v Vintage Food Corporation, Respondent. Index
604223/04**

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**SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST DE-
PARTMENT**

*2006 NY Slip Op 5145; 30 A.D.3d 332; 818 N.Y.S.2d 67; 2006 N.Y. App. Div. LEXIS
8431*

June 27, 2006, Decided

June 27, 2006, Entered

PRIOR HISTORY:

*Krinos Foods, Inc. v. Vintage Food Corp., 2006 NY App
Div LEXIS 4205 (1st Dept, Apr. 6, 2006)*

Decker Decker Dito & Internicola, LLP, Staten Island
(Charles N. Internicola of counsel), for respondent.

JUDGES: Concur--Mazzarelli, J.P., Andrias, Gonzalez,
Sweeny and McGuire, JJ.

HEADNOTES

Torts--Interference with Contractual Relations.--
Plaintiff's cause of action for tortious interference with
contract was properly dismissed for lack of allegation
that nonparty foreign supplier of food products breached
exclusive distributorship agreement; allegation that sup-
plier approved of defendant's sale of its products in plain-
tiff's territory was speculative and vague.

Torts--Interference with Business Relations

Trusts--Constructive Trust.--Plaintiff's cause of ac-
tion to impose constructive trust on profits realized by
defendant in selling supplier's products in plaintiff's ex-
clusive distributorship territory was properly dismissed
for lack of allegation that parties had confidential or fi-
duciary relationship.

Equity--Unjust Enrichment.--Plaintiff's cause of ac-
tion for unjust enrichment, based on profits defendant
realized in selling supplier's products in plaintiff's exclu-
sive distributorship territory, was properly dismissed for
lack of allegation that plaintiff bestowed any kind of
benefit on defendant.

Trademarks, Trade Names and Unfair Competition--
Unfair Competition

COUNSEL: Lazare Potter Giacovas & Kranjac LLP,
New York (Robert A. Giacovas of counsel), for appel-
lant.

OPINION

[**332] [***68] Order, Supreme Court, New York
County (Helen E. Freedman, J.), entered July 11, 2005,
which granted defendant's motion to dismiss the com-
plaint for failure to state a cause of action, unanimously
affirmed, with costs.

[**333] Plaintiff alleges that its one-year exclusive
distributorship agreement with a nonparty foreign sup-
plier of confectionary food products was terminated by
the supplier when plaintiff failed to meet the stipulated
minimum sales quota, that such failure was caused by
defendant's selling the supplier's products in plaintiff's
exclusive territory, and that pursuant to a trade custom,
plaintiff's agreement with the supplier would have been
continuously renewed for at least 10 years as long as
plaintiff met its annual sales quota.

Plaintiff's cause of action for tortious interference
with contract was properly dismissed for lack of an alle-
gation that the supplier breached the distributorship
agreement (*see NBT Bancorp v Fleet/Norstar Fin.
Group*, 87 NY2d 614, 620-622, 623-624, 664 NE2d 492,
641 NYS2d 581 [1996]; *Israel v Wood Dolson Co.*, 1
NY2d 116, 120, 134 NE2d 97, 151 NYS2d 1 [1956]). We
reject plaintiff's use of defendant's affidavit to argue that
if, as defendant "baldly" states therein, the supplier "was
aware" and "approved" of defendant's sale of its products
in plaintiff's territory, then the supplier did indeed breach
the agreement. Such an allegation is speculative and

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vague in that it fails to give fair notice that the supplier sold products to defendant in violation of the agreement.

Plaintiff's allegation that defendant interfered with plaintiff's business relations with the supplier in order "to advance its own competing interests in gaining profits from the sale of [the supplier's] products" is insufficient to show that defendant used the "wrongful means," e.g., "physical violence, fraud or misrepresentation, civil suits and criminal prosecutions, and some degrees of economic pressure," necessary to state a cause of action for tortious interference with business relations (*see NBT Bancorp*, 87 NY2d at 624; *Carvel Corp. v Noonan*, 3 NY3d 182, 190-193, 818 NE2d 1100, 785 NYS2d 359 [2004]).

Plaintiff's cause of action to impose a constructive trust on the profits realized by defendant in selling the supplier's products in plaintiff's territory was properly dismissed for lack of an allegation that the parties had a confidential or fiduciary relationship (*see Panetta v Kelly*, [*2] 17 AD3d 163, 165, 792 NYS2d 455 [2005],

lv dismissed 5 NY3d 783, 835 NE2d 663, 801 NYS2d 803 [2005]). The cause of action for unjust enrichment, based on the same realization of profits, was properly dismissed for lack of an allegation that plaintiff bestowed any kind of benefit on defendant (*see Sergeants Benevolent Assn. Annuity Fund v Renck*, 19 AD3d 107, 111-112, 796 NY.2d 77 [2005]).

Nor can plaintiff base a cause of action for unfair competition on defendant's acts of importing, selling and offering to sell products that defendant knew were covered by the distributorship agreement. Such acts do not, as plaintiff conclusorily alleges, [***334] constitute "a bad faith misappropriation" of plaintiff's skill, labor [***69] and expenditures (*see Randa Corp. v Mulberry Thai Silk, Inc.*, 2000 WL 1741680, *3-4, 2000 US Dist LEXIS 17014, *12-13 [SD NY 2000]; *cf. Beverage Mktg USA, Inc. v South Beach Beverage Co., Inc.*, 20 AD3d 439, 799 NYS2d 242 [2005]).

Concur--Mazzarelli, J.P., Andrias, Gonzalez, Sweeney and McGuire, JJ.