

**Poznań Appellate Court judgment**  
**dated 26 October 2005**  
**Case No. I ACa 172/05**

**Summary by arbitraz.laszczuk.pl:**

The claimant filed a claim with an *ad hoc* arbitration court in Lublin in 2003 seeking an order to require the respondent to assume the claimant's rights and responsibilities under an agreement with an American company for exclusive importation and distribution of a Polish vodka brand in the United States.

In 1996 the claimant had entered into an agreement with an American importer for exclusive rights to the vodka in the US. The agreement provided that in the event of termination of the agreement the claimant was required to reimburse the distributor for its expenditures on marketing of the vodka in the US for the last five years.

In 1999 an agreement was entered into among 25 Polish distilleries, dividing up vodka brands that had previously been produced nationwide by different members of the state-owned Polmos distillery group. Under the 1999 agreement, the Ministry of Treasury conducted an auction for nationwide vodka brands among the various Polmos units, and the rights to the vodka brand in question were won by the respondent. The various Polmos units were given one year to assure that the winner of the auction for each brand received full rights to the brand. The claimant thus assigned its export rights to the respondent, and from then on the respondent exported the brand to the US. However, the respondent refused to assume the claimant's rights and obligations under the 1996 import agreement because it objected to the clause under which it would have to reimburse the American company for its marketing expenses. (The American company had consented to the respondent's assumption of its agreement with the claimant. In a separate proceeding against the claimant before the Court of Arbitration at the Polish Chamber of Commerce, the US company had won an award of about PLN 24 million for reimbursement of its marketing expenses.)

The *ad hoc* arbitration court granted the relief sought, ordering the respondent to assume the claimant's rights and responsibilities under the 1996 agreement with the American distributor.

The respondent filed a motion with the Zielona Góra Regional Court to set aside the award. The regional court set aside the award as contrary to public policy, holding that the 1999 agreement on division of the nationwide Polmos brands required the respondent only to make its best efforts to assume the claimant's export obligations, but did not require the respondent to enter into any specific agreement with a third party. The appellate court affirmed.

**Excerpt from the text of the court's ruling:**

**An arbitration award issued in violation of Civil Code Art. 64 and 65 §§ 1 and 2 infringes the rule of law because it forces the defendant to conclude a specific, unfavourable contract even though there is no duty to conclude such contract either under provisions of law or under the obligations undertaken by the defendant. This is a violation of the principle of commercial freedom, manifest among other things in the freedom to establish the terms of agreements and in the freedom to choose commercial partners.**