Disruptive Technologies: The Internet and Wine

- Third Party Providers
  - Lot18
  - Amazon
  - Facebook

- Social Media Guidelines
  - Facebook
  - Twitter
  - YouTube

John Trinidad
jtrinidad@dpf-law.com
Disclaimer

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Disruptive Technologies

- Innovations that disrupt a market’s “value network.”
  - Can alter relationship between existing players in the market.
  - Allows for new entrants that market may not have expected.
- Impact of disruptive technologies may be muted (or delayed) in highly regulated industries.
Disruptive Technologies: The Internet and Wine

- **Third Party Providers**
  - Lot18
  - Amazon
  - Facebook

- **Social Media Guidelines**
Outline

- Introduction
- Overview of Third Party Provider Model
- State Guidelines re Third Party Providers
- What’s Next?
Possible Anticompetitive Barriers to E-Commerce: Wine

IV. Recommendations

Based on an extensive review of the empirical data, the testimony at the workshop, and other evidence, FTC staff believes that states could enhance consumer welfare by allowing direct shipping from out-of-state wineries and retailers, as well as from in-state suppliers. State bans on interstate direct shipping represent the single largest regulatory barrier to expanded e-commerce in wine. By allowing interstate direct shipping, states would give consumers the opportunity to save money on their wine purchases, and would let consumers choose from a much greater variety of wines. Consumers also could enjoy the convenience of home delivery.

- Legacy laws can unintentionally inhibit e-commerce. In many cases, state bans on interstate direct shipment of wine exist not as a response to e-commerce, but because the three-tier distribution system developed before the Internet even existed. As e-commerce continues to expand, the potential cost to consumers of restrictions will rise. Consequently, legacy laws that inhibit e-commerce merit re-examination.
Granholm and E-Commerce

consumers. The differential treatment between in-state and out-of-state wineries constitutes explicit discrimination against interstate commerce.

This discrimination substantially limits the direct sale of wine to consumers, an otherwise emerging and significant business. FTC Report 7. From 1994 to 1999, consumer
reach new markets. Technological improvements, in particular the ability of wineries to sell wine over the Internet, have helped make direct shipments an attractive sales channel.
Questions for this session

☐ E-commerce is not static and continues to evolve. In theory, creates opportunities for producers.

☐ But does the legal/regulatory system allow or impede producer’s ability to take advantage of these opportunities?

Business innovation often outpaces legal change. Lawmakers are perpetually playing “catch up.”
Outline

□ Introduction

□ Overview of Third Party Provider Model

□ State Guidelines re Third Party Providers

□ What’s Next?
Traditional Retail
Wine in America: Law and Policy (Aspen Elective) [Paperback]
Richard P. Mendelson (Author)
Be the first to review this item

List Price: $72.00
Price: $69.35 & FREE Shipping. Details
You Save: $2.65 (5%)

Only 7 left in stock (more on the way).
Ships from and sold by Amazon.com. Gift-wrap available.

Want it tomorrow, Aug. 24? Order within 9 hrs 45 mins and choose Saturday Delivery at checkout. Details

20 new from $65.35 10 used from $79.43

FREE TWO-DAY SHIPPING FOR COLLEGE STUDENTS
Learn more

Formats
Kindle Edition  $65.88  --  --
Paperback  $69.35  $65.35  $79.43
Wine in America: Law and Policy (Aspen Elective) (Paperback)
by Richard Mendelson

Be the first to review this product

Return to product information

Have one to sell?

Amazon Protection

New from $65.35 (Save 10%) Used from $79.43

New 1-10 of 20 offers

Price + Shipping Condition Seller Information

$65.35 $3.99 shipping New Aspire Textbooks
Brand New books on affordable price. Shipping method: Standard & Expedite. Standard takes 7-8 and Expedite takes 4-6 working days. Read more

$69.35 & FREE Shipping. Details

In Stock. Want it delivered Saturday, August 24? Order it in the next 9 hours and 43 minutes, and choose Saturday Delivery at checkout. See details

Domestic shipping rates and return policy.
Amazon Redefining “Retail”

What does “being a retailer” mean?

What does it mean to “sell” a product?
Alcohol Beverage Licenses

Anyone wishing to sell wine to consumers must hold a state license that grants them retail privileges.

- CA Type 02 Winegrowers in CA
- CA Type 20 Off-premise
- CA Type 42 On-premise (among others)

License regime allows for collection of taxes, compliance with state alcohol-beverage laws.
California Law

Bus. & Prof. Code Sec. 23025.
"Sell" or "sale" and "to sell" includes any transaction whereby, for any consideration, title to alcoholic beverages is transferred from one person to another, and includes the delivery of alcoholic beverages pursuant to an order placed for the purchase of such beverages and soliciting or receiving an order for such beverages, but does not include the return of alcoholic beverages by a licensee to the licensee from whom such beverages were purchased.
Amazon Marketplace

1. Selects Product
2. Sets Price
3. Delivers Product to Customer
4. Holds Inventory
5. Maintains Store
6. Payment Processing

Sell on Amazon.com
Timeline: 2009 Cal. Advisory

9/2008: Amazon announces partnership w/ wine fulfillment company

6/2009: California ABC Issues Advisory re TPM
The Department’s position is that any Third Party Service Provider soliciting orders of alcoholic beverages for or on behalf of licensees is engaged in the “sale” of alcoholic beverages and must hold a license issued by the Department. “Solicitation” includes transactions often described as an “offer to purchase” by the consumer.

- Management decisions, pricing decisions, controlling the distribution of funds, and profiting from the sale of alcoholic beverages are considered fundamental privileges of a licensee. As such, if any such decisions are made by non-licensees, or if non-licensees share in the profits from the sale of alcoholic beverages, violations of Business and Professions Code sections 23300 and 23355 may occur.

Violation of the above statutory provisions may subject a licensee to discipline, even if all prohibited activities are conducted by a Third Party Service Provider.
Timeline: Amazon exits

- 9/2008: Amazon announces partnership w/ wine fulfillment company
- 10/2009: Amazon scraps wine program
- 6/2009: California ABC Issues Advisory re TPM
9/2008: Amazon announces partnership w/ wine fulfillment company

6/2009: California ABC Issues Advisory re TPM

10/2009: Amazon scraps wine program

10/2011: California ABC Issues new Advisory re TPM.

2008 2009 2010 2011 2012 2013
Although the Department remains concerned that certain activities by Third Party Providers may violate California law, particularly in the areas of sales by a person without a license and the exercise of impermissible control of a licensee by a person without the privilege of that license (Business and Professions Code section 23300), the Department believes that licensees and Third Party Providers can form business relationships that facilitate lawful transactions for sales of alcoholic beverages over the Internet. Accordingly, the Department now issues the following advisory guidelines to assist licensees and unlicensed Third Party Providers in complying with California law:

- For the purposes of this advisory, the term "Third Party Provider" refers to unlicensed entities that are involved with the promotion, marketing, and facilitation of sales of alcoholic beverages by licensees over the Internet. Third
California 2011 Advisory

- Licensed entity must “control” the transaction: set price, products available, accept/reject offers.

- Flow of funds through escrow or similar type account.

- TPPs can receive “reasonable” compensation.

- **GOAL**: avoid having an unlicensed entity exercise “control” over licensee.
Timeline: New Entrants

- **9/2008**: Amazon announces partnership w/ wine fulfillment company.
- **6/2009**: California ABC Issues Advisory re TPM.
- **10/2009**: Amazon scraps wine program.
- **10/2011**: California ABC Issues new Advisory re TPM.
- **10/2008**: Amazon announces partnership w/ wine fulfillment company.
- **6/2009**: California ABC Issues Advisory re TPM.
- **1/2012**: ShipCompliant launches Marketplace.
- **11/2012**: Amazon launches wine division.
- **12/2012**: Facebook Gifts launches.
- **10/2011**: California ABC Issues new Advisory re TPM.
Timeline: NYSLA hearing

- **2008**:
  - 9/2008: Amazon announces partnership w/ wine fulfillment company

- **2009**: 10/2009: Amazon scraps wine program

- **2010**: 6/2009: California ABC Issues Advisory re TPM

- **2011**: 10/2011: California ABC Issues new Advisory re TPM

- **2012**: 1/2012: ShipCompliant launches Marketplace. 11/2012: Amazon launches wine division 12/2012: Facebook Gifts launches

- **2013**: 1/2013: NYSLA hearing re TPM
NYSLA Definition of “sell”

NY ABC SEC. 28:

"Sale" means any transfer, exchange or barter in any manner or by any means whatsoever for a consideration, and includes all sales made by any person, whether principal, proprietor, agent, servant or employee of any alcoholic beverage and/or a warehouse receipt pertaining thereto. "To sell" includes to solicit or receive an order for, to keep or expose for sale, and to keep with intent to sell and shall include the delivery of any alcoholic beverage in the state.
New York’s Three Tier System

California

Winery / Importer

Wholesaler

Retailer

Consumer

New York

Winery / Importer

Wholesaler

Retailer

Consumer

Third Party Providers ???

NY Law allows for DTC, but winery must apply for Direct Shipper’s License and consent to NY jurisdiction.

Applies only to wine produced by out of state winery.
1/2013 NYSLA Hearing

- Response to petition by ShipCompliant and others re their TPP model.

- Questions from board focused on sales through three tier system.

- NYSLA Concern: unlicensed entities exercising control over licensees
  
  “A license issued to any person … shall not be transferable to any other person…. It shall be available only to the person therein specified, and only for the premises licensed and no other….,”
4/2013 NYSLA Ruling

- Petition denied.
- Concerns related to passive NY wholesalers and retailers as part of the TPP model.
- NYSLA announces hearing for TPP internet sales.
Regulations Try to Catch Up

2008

9/2008: Amazon announces partnership w/ wine fulfillment company

6/2009: California ABC Issues Advisory re TPM

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2009

1/2012: ShipCompliant launches Marketplace.

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1/2013: NYSLA hearing re TPM

2011

12/2012: Facebook Gifts launches

2012

8/2013: NYSLA hearing re TPM

2013

10/2009: Amazon scraps wine program

10/2011: California ABC Issues new Advisory re TPM.

1/2013: NYSLA hearing re TPM
8/2013 NYSLA Hearing

☐ Focus on Amazon model.

☐ Key question was degree of control unlicensed player has over licensee

☐ selection and pricing;

☐ accept/reject order;

☐ payments.
Outdated idea of advertising

Print Advertising

Online Advertising

- Flat Fee from Producer to Advertiser
- Fee based on purchases, clicks, "success."
- Customer data.
Concern re control

In view of the above, you are directed to immediately cease and desist selling and shipping alcoholic beverages into New York State.

If you wish to discuss this matter or have any questions you may reach me at 212-961-8342.

Sincerely,

[Signature]

JACQUELINE P. FLUG
COUNSEL TO THE AUTHORITY

cc: David Bregenzer
New Jersey Division of Alcoholic Beverage Control
140 East Front Street, 5th Floor
PO Box 087
Trenton, New Jersey 08625
What’s Next?

☐ E-commerce models still evolving

☐ Blending of Social Media and Commerce

☐ Mobile Apps
Fulfillment by Amazon

- Selects Product
- Sets Price
- Holds Inventory
- Maintains Store
- Payment Processing
- Delivers Product to Customer
Fulfillment by Amazon

☐ Do state laws allow wineries to use “Fulfillment by Amazon”?

☐ If not, why?
What’s Next?

- TPPs turn to wine retail model?
- Blending Social Media and Commerce
- Mobile Apps
Who do Consumers Trust

Mean Level of Influence by Source

<table>
<thead>
<tr>
<th>SOURCE</th>
<th>MEAN RATING</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommendation from wine knowledgeable friend</td>
<td>6</td>
</tr>
<tr>
<td>Recommendation of wine shop staff</td>
<td>5.3</td>
</tr>
<tr>
<td>Recommendation of a sommelier in a restaurant</td>
<td>5.2</td>
</tr>
<tr>
<td>Recommendations in an email or newsletter (print or online) from a wine retailer</td>
<td>4.1</td>
</tr>
<tr>
<td>Tasting note/recommendation from the wine columnist in your local newspaper</td>
<td>4</td>
</tr>
</tbody>
</table>

Is this limited to real friends, or does it include social media “friends”?
Mobile tools

- Immediate, on the spot access to “wine knowledgeable friends.”
- Can expand your pool of “wine knowledgeable friends” to include professionals.
- Increasingly, not just a social tool: blending of social and commerce.
Thomas Pastuszak
Sommelier & Wine Director of The NoMad. Classical Pianist, committed to getting everyone to the table to share great food & wine together. Twitter @thomaspastuszak

128 Wines  53 Regions
Could drink this anytime! Acid for dayyysss!

Where’d you get this?  Who was with you?

Share

Facebook  ON
Twitter  ON
Instagram  OFF
Steve Matthiasson

One of the top ten most mineral
reds I've had. Big fleshy wine despite the 12.5 alc or
the lack of fruitiness, but structured by the hard
flavors. Serious Syrah, a little joking on the label text,
no humor in the wine. Deadly serious.

Irma Matheny
Intrigued. I would love to try this.

Sarah Mason Pittenger
Just had some of this over the weekend!
Cathy Corison
Winemaker and proprietor at Corison, Valley benchland Cabernet Sauvignon, elegance and a sense of place

John Trinidad

Christina Turley
Former momosomm, now traipsing the country on behalf of Turley Wine Cellars.

Jon Bonné
Wine Editor, SF Chronicle
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Social Media Advertising

- Two categories of TTB advertising regulations
  - Mandatory Statements
  - Prohibited Activities

- TTB Industry Circular 2013-01 makes clear that alcohol beverage industry member use of Social Media is considered “advertising.”
Social Media Guidelines

☐ TTB Industry Circular 2013-01 provides guidance on how industry members should integrate mandatory statements in their use of social media.

☐ Also makes clear that regulations re prohibited activities apply to use of social media.
Mandatory Statements (27 CFR 4.62)

☐ Name, city and state of industry member responsible for the advertisement.

☐ Conspicuous statement of the class, type or distinctive designation (often the label) if for one product.

■ Exception: advertisements referring to “general wine line or all of the wine products of one company”
Mandatory Statements on Social Media

- Should be placed in a location where viewer is likely to find information about the brand/company.
  - Facebook Fan Page: profile or “about” section
    - Presumably not required on each individual post on FB Fan Page.
  - Twitter: profile section
    - Not required in each individual tweet.
  - Videos: YouTube profile page
    - BUT – if video can be downloaded by users, then it must include mandatory statement in the video itself.
SONOMA-CUTRER VINEYARDS INVITES YOU TO DRINK OUR WINES RESPONSIBLY. www.sonomacutrer.com/responsibility ©2013 Sonoma-Cutrer

About

SONOMA-CUTRER VINEYARDS INVITES YOU TO DRINK OUR WINES RESPONSIBLY. www.sonomacutrer.com/responsibility ©2013 Sonoma-Cutrer Vineyards, Windsor, CA

Mission

Sonoma-Cutrer represents a commitment to excellence and a passion for Chardonnay like no other winery and is known as “America’s Grand Cru.” Our “Grand Cru” philosophy is a unique assimilation of traditional Burgundian vinemaking methods and our own technological innovation. It’s a perfect balance of tradition and discovery, bringing forth noble wines that express a sense of place, vintage after vintage.

Company Overview

Sonoma Cutrer is a balanced confluence of Old World Heritage and New World Innovation, that combines our unique sense of Place and approachability with our meticulous philosophy and quality to produce balanced world-class Chardonnays and Pinot Noir that are distinct reflections of their terroir.

Basic Info

Founded 1973

Awards http://sonomacutrer.com/awards.aspx

Products

- Russian River Ranches
- Sonoma Coast
- Les Pires
- The Cutrer
- Pinot Noir
- Founders Reserve
- Basura Pinot Noir

Contact Info

Website http://www.sonomacutrer.com/
Prohibited Activity (27 CFR 4.64)

- General prohibition against false, untrue, or misleading statements.
- **Disparaging** competitor’s products.
- **Obscene** or indecent statement, design, or representation.
- Representation of analyses, tests or guarantees that (“irrespective of falsity”) may be **likely to mislead** consumers.
- Statement, design, or representation that wine has **intoxicating** qualities.
- Certain **health-related** statements.

NOTE: This is not a complete list. For full list of restrictions, see 27 CFR 4.64.
Online content pushing limits

California Winery's Ads Pair the Product With Sex, Drugs and More Sex Goes great with debauchery By David Kiefaber
Questions re Third Party Content

☐ TTB Industry Circular states that regulations apply to “fan pages for alcohol beverage products or companies and any content regarding alcohol beverage products posted to the pages by the industry member.”

☐ BUT, if an industry member includes a link to another website or content (i.e., in a tweet, blog post, FB Fan Page comment), TTB may consider the contents of that link as part of the industry member’s advertisements.
Summary re Social Media

☐ Make sure **mandatory statement** is properly included in social media channels.

☐ Make sure employees responsible for company/brand social media are familiar with **prohibited activities**.

☐ Be cautious about any content online that you repost, retweet, or otherwise make available under the company/brand’s social media account(s).

☐ Be aware that additional social media guidance may be forthcoming once FTC completes its study.
## Links and Resources

<table>
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<tr>
<td><strong>DP&amp;F’s LexVini Blog post re TTB Circular:</strong> <a href="http://lexvini.blogspot.com/2013/05/new-ttb-guidelines-on-social-media-and.html">http://lexvini.blogspot.com/2013/05/new-ttb-guidelines-on-social-media-and.html</a></td>
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For any additional information, please contact John Trinidad.

Email – jtrinidad@dpf-law.com

Linkedin - www.linkedin.com/in/johntrinidad/