



*Commonwealth of Massachusetts  
Alcoholic Beverages Control Commission  
95 Fourth Street, Suite 3  
Chelsea, Massachusetts 02150-2358*

**Jean M. Lorizio, Esq.**  
*Chairman*

**NO. 25E-1370**

**CLASSIC WINE IMPORTS, INC.**  
**Petitioner,**

**v.**

**THE WINE GROUP, LLC**  
**Respondents.**  
**HEARD: 2/11/2020**

**MEMORANDUM AND ORDER ON  
RESPONDENT THE WINE GROUP'S  
MOTION FOR SUMMARY DECISION AND CLASSIC'S CROSS-MOTION FOR  
SUMMARY DECISION**

Classic Wine Imports, Inc. ("Classic") is a Massachusetts wholesaler aggrieved at the refusal of The Wine Group, LLC ("TWG") to ship certain brands, namely, the "Seven Deadly" wines (the "Brand Items") to Classic.

On November 6, 2018, pursuant to the mandate in M.G.L. c. 138, § 25E, the Alcoholic Beverages Control Commission (the "Commission" or "ABCC") issued an order to TWG to make sales of the Brand Items to Classic pending the Commission's determination on the petition on the merits (the "Ship Order").

On November 18, 2019, TWG filed the instant Motion for Summary Decision ("Motion") arguing that under § 25E and applicable case law, TWG should not be required to sell the Brand Items to Classic, specifically because TWG, who never made sales to Classic prior to the Ship Order, is not an agent of the predecessor supplier Michael-David LLC and Phillips Farm, LLC ("Sellers"); that there is no continuing affiliation between them; that there was no assignment of wholesale distribution arrangements or agreements; and that no facts support an attempted circumvention of § 25E. TWG filed along with its Motion, the Affidavit of John Sutton and additional supporting documents.

On December 6, 2019, Classic filed its Opposition to the Motion and a Cross-Motion for Summary Decision ("Classic's Motion") asserting the Sellers' § 25E obligations should be imputed to Classic because there was a continuing affiliation between TWG and the Sellers. In support of its Opposition, Classic filed eight exhibits.

On December 27, 2019, TWG filed its Reply. After a hearing on February 11, 2020, and in consideration of the exhibits and arguments provided by the parties, the Commission makes the following findings of fact and rulings of law.

There is one (1) audio recording of this hearing.

#### FINDINGS OF FACT

1. Classic is a Massachusetts wholesaler licensed under M.G.L. c. 138, § 18. (Classic's Verified § 25E Petition at 1)
2. The Wine Group is in the business of manufacturing, producing, and selling a variety of wine brands in the United States, with its principal place of business in Livermore, California. (Affidavit of John Sutton at 1<sup>1</sup>)
3. TWG holds a number of certificates of compliance ("COC") issued by the ABCC under M.G.L. c. 138, § 18B. (Sutton Aff. at 3)
4. Michael-David LLC and Phillips Farm LLC ("Sellers") are limited liability companies formed under the laws of the State of California. (Asset Purchase Agreement (the "APA")<sup>2</sup> at TWG 00005)
5. TWG and the Sellers entered into an Asset Purchase Agreement on October 18, 2018 and the Closing took place on or about the same day. (Sutton Aff. at 4, 7d)
6. The "Purchased Assets" included the Sellers' right, title, and interest in and to the "rights, properties, and assets, either tangible or intangible, owned, used or held for use by the Sellers and their Affiliates that are associated exclusively with the Business [as defined to mean the marketing and sale of the Brand Items, known as the "Seven Deadly" wine brands]." These assets included:
  - (i) all inventory of wine, whether bulk or bottled, from the [REDACTED] vintages, together with any non-wine retail inventory and packaging materials used in connection with the [REDACTED] vintages, which are held by or on behalf of the Sellers, in each case, with respect to the Business, including the inventory listed on Schedule 2.01(a)(i) (the "Purchased Wine");
  - (ii) all grapes on the vines owned by the Seller and their Affiliates which are contemplated to be used in the Business's production of approximately [REDACTED] of 2018 vintage wine for the Brands, consistent with past practice (the "Purchased Grapes");

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<sup>1</sup> The Affidavit of John Sutton is Exhibit 1 to the Motion.

<sup>2</sup> Both The Wine Group and Classic filed copies of the APA with their motions. The Wine Group's copy is found at Exhibit A to Sutton's Affidavit, which is Exhibit 1 to the Motion. Classic's copy is found at Exhibit 3 to their Opposition and Cross-Motion. The Wine Group's copy includes all of the APA's exhibits and attachments, and therefore, the Commission references that copy.

- (iii) all Intellectual Property owned, used or held for use that are related exclusively to the Business, including the trademarks “The Seven Deadly Zins”, “Seven Deadly Red”, “The Seven Deadly Sins”, the image marks related to the Brand and all related goodwill (the “Business IP”)
- (iv) all marketing, advertising and point-of-sale materials related exclusively to the Business, including websites, social media accounts and distributor/DTT lists related to the Business;
- (v) all labels, bottles and packaging materials exclusively used in the Business;
- (vi) all rights of the Sellers under those contracts set forth on Schedule 2.01(a)(vi) (such Contracts, collectively, the “Assumed Contracts”); and
- (vii) copies of all production records, financial records and other records, including those required by Law specifically used or held for use by the Sellers exclusively in connection with the operation of the Business.

(Sutton Aff., at 5, see Ex. A at TWG 00005, 00012-14)

7. Certain Excluded Assets were not purchased under the APA, including the Sellers’ cash on hand, bank accounts, customer mailing lists, all brands of the Sellers other than the Brand Items, and Excluded Contracts. (Sutton Aff. at 7a, see Ex. A at TWG pp. 00013-14)
8. Excluded Contracts is defined in the APA as “all Contracts (including all distribution agreements) to which Seller is a party as of the date here on whether or not related to the Business, excluding any Assumed Contracts.” (Sutton Aff. at 7b, see Ex. A at TWG 00008.)
9. The “Assumed Contracts” are identified on Schedule 2.01(a)(vi) of the APA and none are listed. (Sutton Aff. at 7b, see Ex. A at TWG 00174)
10. TWG and the Sellers entered into several Ancillary Agreements as closing deliverables under the APA. These agreements included a Bulk Wine Purchase Agreement, a Trademark License Agreement, and a Cross-License Agreement. (Sutton Aff. at 8, see Ex. A at TWG 00005.)
11. The APA and Ancillary Agreements constitute a fully integrated agreement. (Sutton Aff. at 7h, see Ex. A at TWG 00038.)
12. On October 19, 2018, TWG and Phillips Farm, LLC entered into a Bulk Wine Purchase Agreement (“BWPA”). (Ex. A to Sutton Aff. at TWG 00050 - 00060)
13. Pursuant to the BWPA, Phillips agreed to make, store, and deliver to TWG certain bulk wines for a limited period of time following the closing of the transactions contemplated in the APA. Id.

14. "Bulk Wine" is defined in the BWPA as:

...the vintage 2016, vintage 2017 and vintage 2018 wine made by [Phillips] and approved by [TWG] in accordance with this Agreement, consisting of at least 99% vintage specific wine for the applicable vintage, at least 95% Lodi appellated wine, and which wine shall look smell and taste and have objective characteristics (e.g. alcohol levels, residual sugar levels, acid levels, etc.) similar to recent vintages of (a) the Seven Deadly Zins brand wine, if such vintage 2016 and vintage 2017 bulk wine is intended by the Purchaser to be sold as Seven Deadly Zins brand wine, (b) the Seven Deadly Red brand wine, if such vintage 2016 and vintage 2017 bulk wine is intended by Purchaser to be sold as Seven Deadly Red brand wine and (c) the Zinfandel and Petite Sirah bulk wine used in Seven Deadly Zins and Seven Deadly Red at the same state of completion as the respective vintage 2018 wines will be in at the time Purchaser takes possession of such vintage 2018 Zinfandel and Petite Sirah bulk wines.

(Ex. A to Sutton Aff. at TWG 00050)

15. The parties entered into the BWPA "...to allow Phillips to advance production and blending of wine from vintages 2016, 2017 and 2018, and to deliver those three vintages to TWG when they were in the agreed-upon state of completion after the closing of the transaction. At the time of the closing, the bulk wine was in various stages of production and, as provided in the BWPA, Phillips agreed to complete specified, agreed-upon blending and finishing tasks to deliver the bulk wine to TWG. For the 2016 and 2017 vintages, TWG undertook additional blending, filtering, fining and other processes to complete the wine and prepare it for bottling." TWG was in the process of blending, finishing and bottling the 2018 vintage at the time Mr. Sutton's affidavit was signed. (Sutton Aff. at 9b)
16. Given the terms of the BWPA, Phillips was responsible for "all aspects of grape-growing/purchasing, winemaking, production, storage and delivery to [TWG] of the Bulk Wine, in each case in compliance with the terms of [the] Agreement, and all applicable federal, state, local and, if applicable, international rules, laws and regulations." (Sutton Aff. at 9c, see Ex. A at TWG 00052)
17. "TWG was entitled to have 'input on the wine blends throughout the winemaking process and [Phillips was required to] use their reasonable best efforts to accommodate [TWG's] input regarding the bulk wine.'" (Sutton Aff. at 9c, see Ex. A at TWG 00050)
18. The BWPA did not pertain to any vintage beyond 2018. Beginning with the 2019 vintage, TWG was solely responsible for producing and finishing the wine. As such, the BWPA has expired. (Sutton Aff. at 9f)
19. During the pendency of the BWPA, Phillips had no control with regards to the manufacture and production of the Brands other than under the BWPA, and Phillips had no control over the distribution of the Brands. (Sutton Aff. at 9g)
20. On October 19, 2018 Michael-David LLC and TWG entered into a Trademark License Agreement ("License Agreement"). (Ex. A to Sutton Aff. at TWG 00155 - 00167)