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Duncan Liquor Law Letter



DUNCAN LIQUOR LAW LETTER

MARCH, 2018

A monthly newsletter for the clients of R.E. "Tuck" Duncan, Attorney at Law
Please forward as you deem appropriate.

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*This information is not to be considered legal advice.  
Consult a competent attorney on specific questions.*



"May you have all the happiness  
and luck that life can hold-  
And at the end of all your rainbows  
may you find a pot of gold."

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No. 116,068

IN THE COURT OF APPEALS OF THE STATE OF KANSAS  
STATE OF KANSAS,

Appellee,

v.

TIMOTHY J. WILLIAMS,

Appellant.

SYLLABUS BY THE COURT

1.

[Because the crime of refusing to submit to a breath test has been declared unconstitutional by the Kansas Supreme Court, a pending conviction for a violation of the statute must be dismissed or vacated.](#)

2.

A conviction for a violation of Wichita Municipal Ordinance 11.38.150 as it existed prior to September 13, 2016, cannot be used as a predicate offense for sentencing enhancement purposes under the Kansas driving under the influence statute.

3.

Judges are not required to turn a blind eye to a person's total criminal history. They are free to consider all prior convictions and the facts related to said convictions as long as such consideration does not enhance a defendant's sentence beyond the statutory maximum.

Appeal from Sedgwick District Court; STEPHEN J. TERNES and BRUCE C. BROWN, judges. Opinion filed March 9, 2018. Convictions reversed in part, sentences vacated in part, and case remanded with directions.

full decision at: <http://www.kscourts.org/Cases-and-Opinions/opinions/CtApp/2018/20180309/116068.pdf>

## **TTB PLANS TO "SUBSTANTIALLY INCREASE" TRADE PRACTICE INVESTIGATIONS**

Source: Wine & Spirits Daily  
March 9th

The Alcohol Tobacco Tax and Trade Bureau (TTB) raked in about \$21.8 billion in revenues, with just over \$8 billion from wineries, breweries and distilleries in fiscal 2017, representing about 38% of its total revenues.

In f2017, TTB received about 170,000 label applications and 14,500 formula applications. Moreover, the number of wineries, breweries and distilleries was way up yet again.

- . Wineries grew nearly 40%, with small wineries driving the increase.
- . Breweries increased 140% overall.
- . Distillery count has increased 107% since 2013, driven by a boom in small distillers.

### **TTB INVESTIGATIONS**

Thanks to a \$5 million increase in the TTB budget in May 2017, TTB created an Office of Special Operations within its Trade Investigations Division, and the funding is available through the end of fiscal 2018. "With these additional resources, TTB intends to substantially increase the number of trade practice investigations and increase outreach to the regulated industry to prevent and address violations," per the report.

You may recall, TTB is currently involved in three large-scale investigations in Florida and Illinois, and earlier this month announced an investigation into consignment sales in California [see WSD 03-01-2018].

No. 117,571

IN THE COURT OF APPEALS OF THE STATE OF KANSAS  
STATE OF KANSAS, ex rel.,  
GEARY COUNTY SHERIFF'S DEPARTMENT,

Appellant,  
v.  
ONE 2008 TOYOTA TUNDRA, VIN: 5TBBV54158S517709;  
\$84,820.00 IN U.S. CURRENCY, MORE OR LESS;  
and  
APPROXIMATELY 11.9 GRAMS OF MARIJUANA,  
Defendants,  
and  
RYAN P. BOYLE,  
Appellee.

#### SYLLABUS BY THE COURT

1.

Although forfeiture actions are civil in nature, the protections against unreasonable searches and seizures guaranteed by the Fourth Amendment to the United States Constitution and § 15 of the Kansas Constitution Bill of Rights are applicable. Therefore, the constitutional exclusionary rule applies to forfeiture proceedings.

2.

The Fourth Amendment to the United States Constitution protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend IV. Section 15 of the Kansas Constitution Bill of Rights provides the same protection from unlawful government searches and seizures as the Fourth Amendment. 2

3.

A traffic stop is a seizure under the Fourth Amendment to the United States Constitution. For the traffic stop to be constitutionally reasonable, the officer must know of specific and articulable facts that create a reasonable suspicion the seized individual is committing, has committed, or is about to commit a crime or traffic infraction.

4.

A traffic stop seizure that is justified at its inception can become illegal if the officer unreasonably prolongs the duration of the stop beyond its mission. While law enforcement does not extend the duration of a stop by asking questions related to its purpose, questions unrelated to the purpose of the stop are permitted so long as an officer's inquiries into matters unrelated to the justification for the traffic stop do not measurably extend the duration of the stop.

5.

A routine traffic stop is a relatively brief encounter, and the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's "mission"-to address the traffic violation that warranted the stop and attend to related safety concerns. Because addressing the infraction is the purpose of the stop, it may last no longer than is necessary to effectuate that purpose. Authority for the seizure thus ends when tasks tied to the traffic infraction are-or reasonably should have been-completed.

6.

On-scene investigation into other crimes detours from the mission of the traffic stop. So too do safety precautions taken in order to facilitate such detours. While an officer may conduct certain investigations unrelated to the traffic violation, the officer may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual. 3

7.

The time permitted to complete the mission or investigation of a traffic violation includes precautions taken to promote officer safety and ordinary inquiries

incident to the traffic stop. Ordinary inquiries incident to a traffic stop expressly and typically include checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance. These checks serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly.

8.

Because traffic stops are especially fraught with danger to police officers, the time needed to complete the mission of investigating the traffic infraction may require an officer to take certain negligibly burdensome precautions in order to complete his or her mission safely. Given this danger, detaining a motorist for a short period so that law enforcement may check for any outstanding warrants or criminal history, even though the purpose of the stop had nothing to do with such prior criminal history, may be justified for officer safety.

9.

Under the facts of this case, the officer's request of dispatch to conduct a criminal history check of the driver unreasonably prolonged the stop as the tasks associated with the stop had been completed at the time of the request. Moreover, any safety concerns associated with the stop no longer existed at the time the officer's request was made.

Appeal from Geary District Court; BENJAMIN J. SEXTON, judge. Opinion filed February 23, 2018. Affirmed.

full decision at: <http://www.kscourts.org/Cases-and-Opinions/opinions/CtApp/2018/20180223/117571.pdf>

## **TOTAL WINE & MORE'S LEGISLATIVE SCORECARD**

Yesterday we reported on the latest legislative win for Total Wine & More, the nation's largest beer, wine, and liquor retailer, allowing it to move into the Tennessee market for the first time [see WSD 02-26-2018]. That got us thinking about the fact that Total Wine has by and large had great success in its fight to change state laws, swaying legislation in their favor in eight of the 20 states they operate in.

But they haven't come out on top every time, so we decided to compile a scorecard including the retailer's legislative wins, losses and ongoing efforts (that we know of) during the last 15 years.

### **WINS**

- Delaware: Total Wine was instrumental in passing the Sunday Alcohol Sales Bill in 2003 to allow sales on Sundays.
- Maryland: Total Wine won a 10-year battle with the state and overturned a ban on volume discounts and other pricing rules in 2009.
- Georgia: Again pushed for sales on Sunday. In 2011, the majority of Georgia ended the ban on Sunday alcohol sales.

- Minnesota: Lifts ban on Sunday sales.
- Connecticut: Bill passes in 2015 to allow liquor stores to stay open an hour later with support from Total Wine.
- South Carolina: The state Supreme Court struck down the liquor license cap after Total Wine challenged the cap in court [see WSD 03-30-2017].
- Massachusetts: Similar to its efforts in Connecticut, the retailer sued the state to overturn a state law that prevents alcohol vendors from selling products below their wholesale cost [see WSD 02-03-2017]. Last summer a Boston judge ruled that retailers can sell alcohol at deep discounts when ordered in bulk, per the Boston Globe.
- Tennessee: Total Wine challenged a local residency requirement forcing retailers to reside in the state for at least two years before applying for a liquor license. Last week an appellate court upheld a ruling to nix the law.

## LOSSES

- Connecticut: Total Wine filed suit against state alleging that its minimum pricing practice for wine and spirits is "price fixing" and has created "artificially high price levels" [see WSD 08-24-2016]. Last year, a federal judge dismissed the lawsuit claiming that Connecticut's minimum pricing law -- crafted to discourage over-consumption -- preempts any federal antitrust laws [see WSD 06-07-2017]. The case is currently winding through the appeals court.
- Maryland: A bill referred to as the "Total Wine Bill" that would have allowed existing liquor stores to obtain a second license in Montgomery County failed in April, per Bethesda Magazine.
- Tennessee: In 2014, a bill was introduced to the Tennessee General Assembly meant to cap the number of liquor stores allowed per retailer. Total Wine fought against the bill; however the bill passed the legislature in March 2016.

## ONGOING

- Connecticut: In February, Gov. Dannel Malloy submitted another bill to change the state's liquor laws and get rid of the minimum pricing statute, the same issue Total Wine tried to get rid of [see WSD 02-07-2018]. If they can't change it through the lawsuit above, perhaps it will through legislation.

## Vintner Igor Sill sues Napa Vision 2050

Daniel Mufson, president of Napa Vision 2050, allegedly wrote that Sill was "ripping out precious vernal pools on Atlas Peak to plant yet more grapes"

by Kerana Todorov  
February 23, 2018

A Napa Valley vintner is suing an environmental group and one of its member for libel over comments posted online that he claims have cost him more than \$100,000 in wine sales, according to court records.

Igor Sill farms "a natural and sustainable terraced hillside Cabernet Sauvignon" vineyard in St. Helena and on Atlas Peak near Napa.

Comments that are the focus of the lawsuit were posted in June, days after an article Sill wrote was published via a website, "wineindustryadvisor.com," and entitled "The Magic behind Napa's Mountain Grown Wines." In it, Sill described his vineyard on Atlas Peak.

A few days later, Daniel Mufson, president of Napa Vision 2050, allegedly wrote that Sill was "currently ripping out precious vernal pools on Atlas Peak to plant yet more grapes. Creating terror in the animal population as he acts to create terroir," according to the complaint filed Feb. 14 in Napa County Superior Court.

The comments were posted on Napa Vision 2050's website. The group has worked on a number of issues affecting Napa County, including an initiative proponents say will protect oaks and watersheds in Napa County.

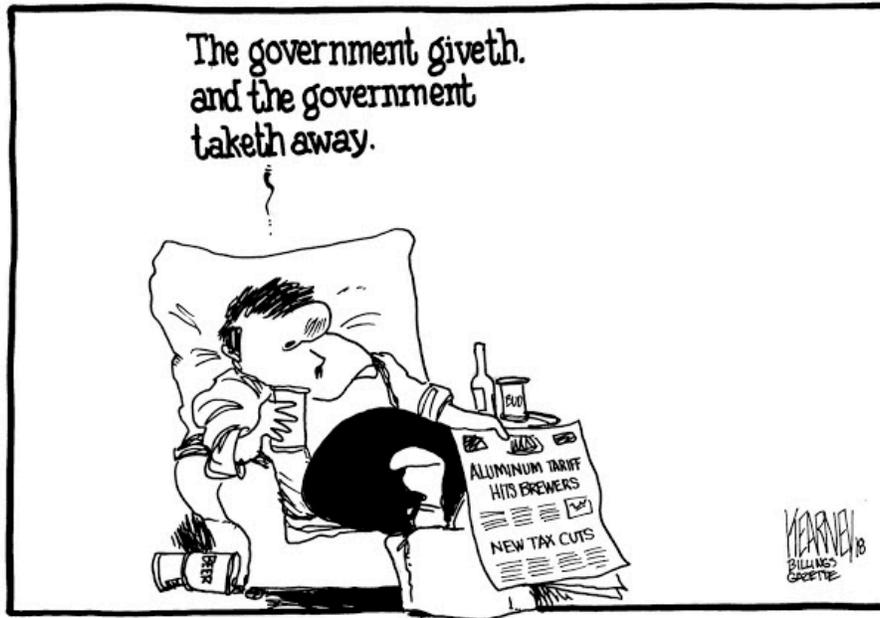
Sill said the entire statement was false and cost him at least \$100,000 in lost wine sales, according to the court filing. Sill, who lost his Atlas Peak estate winery in the October fires, said he sells his wine primarily on the Internet.

"This statement is libelous on its face," according to the complaint. The statement exposes Sill to "hatred, contempt, ridicule, and obloquy because it makes it appear that in his vineyard farming operations that (Sill) acted in callous disregard of legitimate concerns for the environment and its 'biota,'" according to the lawsuit.

Sill invited Mufson and Napa Vision 2050's attorney to visit his Atlas Peak property in December, according to the lawsuit. The "inspection revealed that no vernal pool had been ripped out, nor any trees had been cut down," according to the complaint. Still, there was no correction to the article, according to the lawsuit.

The post now cannot be read on Napa Vision 2050's website. Sill's attorney, James V. Jones, of Napa, said his client respects Mufson and Napa Vision 2050. "There is no personal ill will in this," Jones said. The lawsuit was filed after the parties could not come to an "agreement," he said. "My client has been damaged by the publication," Jones said.

Mufson on Monday declined to comment on the lawsuit. "We have retained counsel and because the matter is currently in litigation, we do not have a comment at this time," Mufson said in an email. The lawsuit's allegations include libel and negligent defamation, according to the document.



## **New Hampshire: Hennessy Cognac, Liquor at Center of 'Bootlegging' Allegations, Was N.H.'s Top Seller Last Year**

Source: <http://nhpr.org/>

By TODD BOOKMAN & LAUREN CHOOLJIAN

March 14, 2018

It may not be every New Hampshire reveler's go-to drink order, but Hennessy cognac was the top selling spirit by volume at state-run liquor stores in 2017, accounting for nearly 5 percent of total sales that year.

Hennessy also happens to be the liquor at the center of bootlegging allegations made last month by Executive Councilor Andru Volinsky, who is calling for an investigation into how the New Hampshire Liquor Commission handles large all-cash sales made by out-of-state residents.

According to data from the National Alcohol Beverage Control Association, a trade group for the 17 states -- including New Hampshire -- that manage liquor sales, 104,173 cases of Hennessy VS were sold in 2017. That accounts for roughly 4.3 percent of total case sales for the state.

The next highest case sales by volume were for Tito's Vodka, at 96,118 cases, Captain Morgan Spiced Rum, at 93,587 cases, and Absolut Vodka, at just over 60,000 cases.

Last month, Volinsky said he witnessed two customers purchase \$24,000 worth of Hennessy at the Keene liquor store. (The employee who completed the sale has since been fired.) In a letter to Governor Chris Sununu and Attorney General Gordon MacDonald, Volinsky said the customers divided the transaction up at the register into smaller sales to avoid triggering IRS reporting requirements, a violation of federal rules.

New Hampshire-purchased Hennessy cognac has been at the center of several high-profile bootlegging arrests in recent years, including criminal cases in New York, Vermont and Massachusetts. New Hampshire's relatively lower prices, as compared to neighboring states and New York, have long drawn customers into the state.

"Former employees who have contacted me since this story broke have indicated that the State Liquor Commission uses the strategy of cash bulk sales or 'bootlegging' to a greater extent than was used in the past," Volinsky said. "The fact that Hennessy was the top selling brand by case in New Hampshire in 2017 underscores just how reliant on bootlegging the Commission has become in its efforts to continue to boost sales."

As an Executive Councilor, Volinsky said he is concerned that this practice "may not be legal and is not sustainable" and he called for "proper authorities in the state [to] look into the matter."

The state Attorney General's office said it is still reviewing Volinsky's documents, and can't yet comment.

The New Hampshire Liquor Commission has denied that it is improperly handling large all-cash sales, and said it has policies in place to ensure that employees follow state and federal laws. It has criticized Volinsky for his "sting operation."

In a statement, a spokesman for the Commission said "it should come as no surprise that NHLC sells significant amounts of wines and spirits. Our vast selection of over 11,000 products and our competitive prices are why more than 11 million annual consumers from around the country shop at our 79 NH Liquor & Wine Outlet locations and spent \$700 million with us last year."

In a state with no income or sales tax, the Liquor Commission is an important source of revenue, accounting for roughly 6 percent of the state's general fund last year. However, the state's monthly revenue reports show that for the last three months, the Commission has been running short of its predicted revenue totals. So far this year, the Commission is about \$3.2 million behind where they planned to be, according to state numbers. It is unclear what caused the shortfall in Liquor Commission revenues to the general fund. The Commission declined to comment.

Inventories of Hennessy, however, remain high at retail stores located near the state's borders. As of publication of this story, the NHLC website accounted for 3,000 200ml bottles of Hennessy at the Keene location, nearly 1,200 in Nashua, with 860 bottles of the same size available for sale in Salem.

New Hampshire has long relied on out-of-state customers for a large share of liquor sales. According to a spokesman for the Liquor Commission, the Commission is, in fact, required to spend 80 percent of its media ad buy budget in out-of-state markets. Last fiscal year, nearly 60 percent of total sales were made to non-New Hampshire residents.

There will likely be lots of customers, both locals and those from afar, shopping at New Hampshire's state-run liquor stores in the coming days. Through March 28th, the Liquor Commission is again running its promotional card giveaway, where a \$150 purchase is rewarded with a \$25 gift card. According to Volinsky's letter, the Commission also has a "VIP" gift card available, which returns \$250 for every \$1,500 worth of transactions.

Volinsky said he's learned that "lines of bulk sales customers form outside the stores" when the promotions are in place.

## **Tennessee: Liquor and beer superstore comes to Tennessee**

Source: [knoxnews.com](http://knoxnews.com)

Tyler Whetstone, USA TODAY NETWORK

February 22nd

Total Wine Spirits Beer & More, a superstore for wine and liquor, will be opening a location in Knoxville. The big-box wine store, which bills itself as the nation's largest wine and spirits dealer, has more than 170 locations in 20 states, but the Knoxville store will be the first one in the state of Tennessee. The store is planned for the Turkey Creek area, at 11370 Parkside Drive.

The Knoxville City Council approved a certificate of compliance for Total Wine in December and the Tennessee Alcoholic Beverage Commission approved the company's application last month.

"We are excited about coming to Knoxville and providing consumers with that which they deserve: service, selection, price and an outstanding customer experience," spokesman Edward Cooper said in an emailed statement.

The approval was sealed earlier this week when the U.S. Court of Appeals for the Sixth Circuit upheld a ruling that struck down portions of a state law that required a liquor store owner to live in the state two years prior to applying for a liquor license.

**According to William Cheek III of Waller Law in Nashville, Total Wine challenged and won the local residency requirement. Cheek said the issue of whether out-of-state residents qualify for retail liquor licenses has been settled.**

"We brought the suit challenging the residency requirement and are pleased with the appeals court's decision," Cooper said.

Competitor: Total Wine drives off smaller stores Terrance Pate is the general manager of Cedar Bluff Discount Wine and Spirits on Cross Park Drive, not far from where Total Wine will open. He said local wine stores have been preparing for Total Wine's entry into the Knoxville market since late 2016 or early 2017. He's concerned about what Total Wine will do to the local, smaller liquor store.

"Total Wine is known to come in and run out local businesses," he said. "They lower prices to make themselves competitive; they try to shut those people down until they can't compete with them. They lower prices for a year or more, then they start raising them back up (once competition is gone)."

Pate said the state's wine in grocery stores law, that came into effect in 2016, hit local stores hard, with most stores losing 48-50 percent and causing some to close. Total Wine could be worse, he said.

"The problem is the consumer is too tied up into convenience that nobody sees the bigger picture in the long run, just like wine in grocery stores," he said. "They're hurting their neighbors and local businesses and they're sending tax dollars out of state.

"They can't see the forest for the trees," he said. Publix spokesperson Brenda Reid said the business, including the Publix in Turkey Creek, is used to competitors moving into the market. She said Publix would continue to provide the best service possible to customers, and said the store could tweak its wine offerings if needed to remain competitive.

"If we look at tweaking our product mix in the wine department we would do that if we had to, but I haven't heard (any reason) to do that," she said.

Sunday wine sales may happen soon

Earlier this week, the House State Government Subcommittee moved the state closer to allowing wine and liquor to be sold on Sundays. The measure passed Wednesday with a unanimous voice vote. The legislation, HB 1540, would align hours of liquor and wine sales with beer sales. Current law prohibits wine and liquor to be sold on major holidays and between 11 p.m. on Saturday and 8 a.m. on Monday.

A little more about Total Wine Total Wine's headquarters is in Bethesda, Maryland. Total Wine has a store in Greenville, South Carolina, and has several stores clustered in Atlanta, Georgia and Charlotte, North Carolina. The stores run anywhere from 20,000 to 50,000 square feet. Total Wine has challenged longstanding alcohol laws in numerous states with litigation, lobbying, and rallying support from customers.

According to a May 2017 Boston Globe story, the company helped get alcohol sales on Sundays in the state of Minnesota, a later closing time for liquor stores in Connecticut, pushed for the overturn of a ban on volume discounts in Maryland, and was able to get the cap lifted on the number of store licenses in South Carolina.

"It's not unusual for a large company to use its legal and government affairs resources to change the status quo so its business model gets accommodated," Marc Sorini, a national alcohol attorney, told the Globe. "But Total Wine has been far more aggressive than most retailers, and they've won a number of important cases."

## [Injured Man Wins \\$37.5M In Dram Shop Suit Against Club](#)

Source: Law360

By Joyce Hanson

March 14, 2018

A truck driver who became completely disabled and whose wife died in a drunken driving crash won a \$37.5 million judgment Tuesday in Illinois state court in a dram shop lawsuit against the strip club that served the drunken driver, the man's lawyers said.

Judge Vincent Lopinot, an Illinois circuit court judge in St. Clair County, handed the \$37.5 million award to plaintiff Lucas Williams for the death of his wife and to compensate him for his own complete disability due to the "horrific" drunken

driving crash that took place in November 2010, according to Williams' lawyer, Mark Avera.

The judge's award following a bench trial went against Deja Vu Showgirls, a St. Louis strip club now doing business as Larry Flynt's Hustler Club, in the suit that was litigated as a dram shop case, according to court filings.

Dram shop laws allow suits against clubs, restaurants, retailers and hospitality businesses for over-serving people who then cause drunken-driving accidents. In the Williamses' case, the Illinois Dram Shop Act provided for the plaintiff to seek recovery of damages from the seller of the alcohol.

"This was a tragic event that destroyed and changed lives forever," Avera said in a statement. "It's a stark reminder of the dangers of drinking and driving."

Tuesday's verdict arose from a Nov. 17, 2010, collision on Interstate 64 that occurred in Illinois, east of St. Louis. According to the complaint filed a year later, Lucas Williams and his wife, Jessica, were driving as an "over-the-road" team for trucking company Celadon Group Inc. when drunken driver Robert W. Casares crashed into them.

The Williamses were traveling during the pre-dawn hours when Casares drove east in the westbound lanes and hit their truck head on, causing the truck to careen into a steep ravine in the highway median, Williams alleged. Casares had become intoxicated at Larry Flynt's Hustler Club just before he headed out on the highway, the complaint said.

The truck turned on its side and caught fire, and the husband-and-wife team rushed to escape the cab, but Jessica Williams didn't make it and died in the crash, according to the suit. Lucas Williams did survive, but he suffered severe burns over half of his body and was hospitalized for six months.

"He has permanent injuries as a result of the crash, including being totally disabled and unable to return to trucking," according to a statement from Lucas Williams' lawyers. "The verdict includes damages for Jessica's wrongful death and Mr. Williams' personal injury claim.

Legal counsel for Williams did not respond immediately Wednesday to requests for further comment.

Larry Flynt's Hustler's Club did not respond immediately to a request for comment.

### **Michigan: Liquor store owners take half-mile fight to court**

**Source:** <https://www.detroitnews.com/>  
**Jonathan Oosting**  
**March 9, 2018**

**A long-running battle over Michigan's prohibition against liquor stores operating within a half-mile of each other is back in court as existing small**

**business owners try to stop the state from eliminating the distance requirement.**

**Michigan Court of Claims Judge Stephen Borrello in January temporarily blocked plans to rescind the liquor store rule after the Associated Food and Petroleum Dealers sued the state for a second time. Borrello is set to hear arguments in the case on March 19.**

**Eliminating the rule would cause "irreparable harm" to thousands of liquor store owners who "have invested substantial sums, time and sweat" to obtain state licenses with the expectation a competitor could not open next door, according to the lawsuit.**

**The complaint seeks to keep the four-decade-old rule in place while the Michigan House considers a Senate-approved bill that would write the 2,640-foot distance requirement into state law.**

**But the Liquor Control Commission says the rule squashes competition and is seeking to dismiss the case. Attorney General Bill Schuette's Office argues the state followed proper protocols for rescinding the rule.**

**"Plaintiff wishes to maintain its competitive advantage, but the public interest would also be harmed by allowing this advantage to continue," Assistant Attorney General Rosendo Asevedo wrote in a Feb. 20 filing.**

**The store owner association first sued the state in early 2017 to force public hearings on the attempt to eliminate the rule. Half-mile supporters note the state also regulates competition by controlling prices and operating a three-tiered licensing system for suppliers, wholesalers and retailers.**

**The commission is complying with Borrello's "stay" that temporarily kept the rule in place, said a spokesman, who declined further comment on the litigation. Chairman Andy Deloney previously said the rule "significantly limits the ability for smaller businesses to grow, or even get into the business in the first place."**

**While representatives from Kroger, CVS and 7-Eleven have publicly backed plans to scrap the rule, an open hearing and public comment period were dominated by opposition from existing owners and associations that represent them.**

**Angry owners also flooded a December hearing before the Joint Committee on Administrative Rules, which quietly allowed the rule to be eliminated when they declined to object within 15 days.**

**"For me, I see it as an anti-competitive rule," said Rep. Steven Johnson, R-Wayland, who chaired the joint committee hearing. Eliminating the rule makes "free market sense," he said Friday.**

**The Michigan Senate in December approved a plan to keep the half-mile rule in place by writing it into state law. The proposal by Sen. Rick Jones, R-Grand Ledge, would allow exemptions for grocery stores that are at least 20,000 square feet and derive 20 percent of their sales from food.**

**The House has yet to take up the bill amid ongoing negotiations.**

**"The big elephant in the room, and the only group really trying to make some noise, is Meijer, and they're being really disingenuous about it," said Auday Arabo, president and chief executive of the Associated Food and Petroleum Dealers. "What they'd like is to get liquor into every one of their gas stations."**

**Jones confirmed Grand Rapids-based Meijer superstore chain has raised concerns about the legislation and said negotiations are "still up in the air."**

**Spokesman Frank Guglielmi confirmed Meijer supports efforts to eliminate the half-mile rule, but he said doing so would not allow the company to sell liquor in gas stations. Instead, he noted Meijer recently announced plans to open six small-format stores in urban areas by 2021.**

**"While we have no plans to put liquor in our gas stations, we are continuing to invest in different store formats throughout the state, and the half-mile rule would limit our ability in some cases to offer liquor to our customers," Guglielmi said in an email.**

**Liquor Control Commission spokesman David Harns said gas stations are governed by specific liquor licenses that would not be affected by rescinding the half-mile rule, calling the matter "completely unrelated."**

**Jones said he sympathizes with small business owners who "invested their entire life savings" in a liquor store only to see the state try to change a distance rule that has existed since the late 1970s.**

**Local governments are also concerned "about the possibility of having (liquor) stores all in one area," Jones said. "It's possible you could have stores congregate on one corner, and that's not what cities want."**

**Eliminating the half-mile rule would not increase the number of available licenses, but critics warn it would allow multiple liquor stores to operate next door to each other, creating potential magnets for crime.**

**The Liquor Control Commission, however, has said measuring distances between existing stores and proposed locations is a significant burden on staff resources.**

**The rule is "a never-ending source of absurdly inventive lawyering and litigation and will continue to be unless rescinded," Deloney told legislators in December.**

***MY MARCH ARTICLE FOR THE KANSAS BEVERAGE NEWS:***  
on the status of beverage alcohol legislation half way through 2018 session.  
[March 2018 KS Beverage News article on KS legislation](#)

**The Cereal Malt Beverage trailer bill mentioned in the article  
was signed by the Governor on March 15.**

## Bards Of The Bench Pen Spirited Ruling In \$18M Wine Row

Source: Law360

By Dave Simpson

March 7, 2018

A California appellate panel on Wednesday, in the words of the Bard of Avon, agreed with a lower court that a man who spent \$18 million on counterfeit fine wine did not sustain a loss to property and is not entitled to coverage under his insurance policy.

David Doyle's predicament is a "Shakespearean tragedy," the panel wrote in the published, unanimous decision penned by Justice Eileen C. Moore, but the court still found that Fireman's Fund Insurance Co. did not breach its contract when it stuck Doyle with the "devil wine" and denied his claim.

"Doyle did not buy a provenance insurance policy," the panel said. "Doyle bought a property insurance policy." The decision opened and closed with lines from William Shakespeare's "Othello" and sprinkled in a "verily" or "agreeth" here and there to keep with the theme.

In 2007, Doyle began insuring his "world-class" wine collection through Fireman's "Valuable Possessions" policy, which included a \$19 million limit, according to court documents. During the eight-year stretch that he was insured by Fireman's, he bought \$18 million of supposedly rare wine from Rudy Kurniawan, court records show.

"But a law enforcement investigation revealed that, for many years, Kurniawan had apparently been filling empty wine bottles with his own wine blend and had been affixing counterfeit labels to the bottles," the panel explained. Kurniawan was convicted of fraud in 2013 and sentenced to 10 years in prison.

Other victims of the scheme included Michael Fascitelli, the former CEO of Vornado Realty Trust, Brian Devine, chairman of the board of Petco Animal Supplies Inc., and William Koch, the billionaire sibling of David and Charles Koch, according to the government. In all, Kurniawan was pinned with selling at least \$20 million worth of counterfeit wine.

In 2014, Doyle filed a claim seeking reimbursement for the "losses" he sustained as a result of Kurniawan's fraud. Fireman's shot it down, saying there was no covered loss. In 2015, Doyle alleged breach of contract with a lower court, which dismissed the complaint without leave to amend.

Doyle appealed, claiming his policy provided him protection against crime-related losses, even if those losses weren't a result of physical damages to the wine. Fireman's countered that "the wine is in the exact same condition now that it was in when [Doyle] first insured it."

On Wednesday, the panel agreed with Fireman's, noting that in the contract - which provides insurance for "direct and accidental loss . . . to covered property" - the preposition "to" links the modifier "loss" to the subject phrase "covered property."

"Fireman's Fund was insuring against any losses to the wine," the panel said. "Fireman's Fund was not insuring against any losses to Doyle's finances or to his unrealized expectations as to the value of the wine he had purchased." Doyle argued that his policy did not list fraud as an exclusion and therefore it should be covered, court records show.

The panel said that the fact that the policy doesn't specifically reference fraud is "irrelevant" because the burden is on the insured to establish that fraud, or any other basis for a claim, is within the scope of the coverage. The panel closed with a piece of advice for Doyle from the pen of William Shakespeare: "The robbed that smiles steals something from the thief." Representatives for the parties declined to comment.

## **Regulators investigate Napa, Sonoma wineries and distributors for illegal trade practices**

Source: THE PRESS DEMOCRAT  
BILL SWINDELL  
March 6, 2018

Federal and state agents visited more than 30 wine-related businesses in Napa and Sonoma counties last week as part of a probe into consignment sales, in which a winery or wholesaler buys back bottles that don't sell at the retail level.

Officials from the federal Alcohol and Tobacco Tax and Trade Bureau (TTB) and the state Department of Alcoholic Beverage Control visited the wineries and distributors as part of an investigation into illegal trade practices. The businesses were not named, said TTB spokesman Tom Hogue.

The probe is part of national \$5 million campaign by the TTB to crack down on unlawful trade practices in the alcoholic beverage sector. Last year, federal agents conducted similar investigations in the Miami and Chicago areas as part of "pay-to-play" schemes where a supplier or a wholesaler offers inducements to a retailer to stock a particular wine, spirit or beer. Local brewers contend such practices also occur in California.

"This is the tip of the iceberg," said John Hinman, a San Francisco lawyer who represents local wineries and breweries. His firm provides guidance and education on how producers can adhere to federal and state law. While permitted in other industries, consignment sales are illegal in the alcohol beverage sector as a result of post-Prohibition laws. **Federal law has not been enforced on a wide-scale basis until recently, Hinman said.**

There have been past cases of abuse in the beer sector. MillerCoors paid a \$450,000 fine in 2015 for guaranteeing wholesalers that it would buy back its Miller Fortune beer that did not sell. Anheuser-Busch paid a \$300,000 fine for a similar violation in 2016.

State and federal regulators are likely focusing on consignment sales because they are easy to prosecute, Hinman said. Details of the violation are typically

found in emails, contracts or invoices of the parties, he said. "This is an easy one," Hinman said. "It doesn't take a lot of brain power to figure it out."

The cases are typically settled administratively through fines, though certain egregious violations can result in a suspension or even a loss of license to produce alcohol, Hinman said. The businesses, including retailers, also could be liable at the state level for violating a law that prohibits suppliers extending credit to a retailer for a period beyond 30 days, he added.

While not commenting on the specifics of the probe, Napa Valley Vintners said in a statement that the winery trade group "has a long track record of educating and encouraging our members to follow all local, state and federal laws related to the sale and consumption of wine."

## REMINDER - KOMBUCHA MAY BE SUBJECT TO REGULATION AS AN ALCOHOL BEVERAGE

Source: TTB  
March 9th

If you produce kombucha that contains 0.5 percent or more alcohol by volume (at any time during production, when bottled, or at any time after bottling), TTB regulations will apply.

You, as the producer, are subject to the Internal Revenue Code provisions that apply to alcohol beverages.

Also, the container of any alcohol beverage (including kombucha) sold or distributed in the United States with an alcohol content of 0.5 percent or more must be labeled with the health warning statement required by the Alcoholic Beverage Labeling Act of 1988. Depending on how your product is produced, the labeling, advertising, and permit provisions of the Federal Alcohol Administration Act may apply as well.

To learn more, please visit our kombucha page.

## **Customers Ripped Off by Wine Store Now Being Sued. Premier Cru customers had to beg and threaten the wine store for refunds; now a bankruptcy trustee is suing them to get the money back**

Peter Hellman Posted: February 14, 2018

What would you do if a wine merchant took your money but never delivered the bottles? You'd ask for your money back. Now what if that store went bankrupt and the lawyer charged with paying off the store's creditors sued you for your refund?

That's the situation facing dozens of former customers of Premier Cru, the infamous Berkeley, Calif., shop that went belly-up in 2016, 11 months before its proprietor, John Fox, was sentenced to six and a half years behind bars for fraud. Since December, the trustee tasked with Premier Cru's bankruptcy has filed at least 60 lawsuits against former customers. These "adversarial complaints" are aimed at nullifying transactions that occurred anywhere from a day to more than a decade before Premier Cru filed for chapter 7.

The covey of defendants include home furnishings magnate and prominent collector Park Smith and Alibaba cofounder and Brooklyn Nets owner Joseph Tsai. They received partial deliveries of wine or partial refunds, which court-appointed trustee Michael Kasolas alleges gave them an unfair edge in bankruptcy proceedings over thousands of other former Premier Cru customers who received neither wines nor refunds.

#### "Claw Backs"

In a term often used during the Bernie Madoff case, these actions are called claw backs. The aim is to give all similarly situated creditors a fair shake when the kitty is eventually divided up.

About 20 of the complaints are aimed at nullifying transactions in which Premier Cru delivered wine or refunded money to customers within 90 days of bankruptcy. The law requires the reversal of most such late-in-the-game transfers. The aim is to prevent savvy creditors and insiders from beating out others by swooping in when they sense the end is near.

One current defendant, Walter McLallen, took delivery Jan. 6, 2016, just two days before the bankruptcy filing, of 146 bottles purchased earlier for \$17,873. One day later, defendant David Cramer got Premier Cru to ship him wine that he'd paid \$16,510 for five years earlier. And venture capitalist James Tananbaum, after "threatening to initiate civil or criminal proceedings" against Premier Cru, according to Kasolas' complaint, extracted a refund of \$259,083 during the 90-day pre-bankruptcy window. The trustee sued to void the refunds. Three months ago, a compromise was reached in which Tananbaum agreed to return \$150,000 to the trustee's account.

Shirlin Wong, a California podiatrist who started buying wine from Premier Cru in 2003, received little of the wine she paid for. In 2015, she sued Premier Cru in state court to recover \$230,000 for undelivered wines. That October, she got a settlement check for \$78,936.

But last December, Kasolas sued Wong, claiming that she had received a "preferential transfer" from Premier Cru within the 90-day window. The complaint asks for payment of the exact amount paid to Wong by Premier Cru plus pre-judgment interest and court costs. A hearing in her case in San Francisco is scheduled for Feb. 14. (Neither she nor her lawyer responded to requests for comment.)

#### "Fraudulent Conveyance"

Many of the lawsuits, however, are not based on the 90-day rule. In 2010, William Gladstone's firm, Hawaii-based Gladstone Imports, purchased 480 bottles of 2007 Château Lafite Rothschild from Premier Cru for \$407.95 each. The wines were delivered in 2012—speedier than Premier Cru's norm—but only after Gladstone incessantly "pestered" the shop's staff and John Fox. He also waged his campaign on social media, even after he got his wine. "I was relentless," Gladstone says. "Even so, I lost two big clients, because I couldn't deliver the wine on time." Now Kasolas is suing Gladstone Imports for the value of those 480 bottles of Lafite.

Roger Shideler, an owner of No Limits Fine Wine in Santa Ana, Calif., had a similar experience. In one of multiple angry emails to Fox, Shideler wrote on May 16, 2012, "I tell my clients I will have their wines this week and they are not here. You make a f---g liar out of me again! You have cost me well over 100K with your lies to me."

In a lawsuit against No Limits Fine Wine, Kasolas asserts that the defendant's purchase of 32,129 bottles (not all delivered) for more than \$4 million was in furtherance of Premier Cru's "massive fraud." Kasolas asks for an order to be entered to recover the value of wine transfers and cash refunds "in an amount to be proven at trial." Shideler would not comment on the case.

The lawsuits against Gladstone and No Limits Fine Wine, like about half the recent filings, are based on the notion of "fraudulent conveyance." The money paid to Premier Cru, rather than securing the wines it was meant for, was used by Fox to pay off other customers or to pay for his personal expenses, including \$900,000 to 12 women for "personal services."

Under bankruptcy law, the transactions between Premier Cru and its unsecured creditors can be nullified and the value of the transactions recovered for deposit to the trustee's account. Those creditors must wait in line with all other equally situated unsecured creditors for payout.

"Every bottle has its own story."

How big those payouts will be is another question. Most of the fraudulent conveyance cases are being handled on a contingency basis by Kathy Phelps, a Los Angeles lawyer. Phelps will be paid 40 percent of settlements she achieves up to \$3 million and slightly less after she passes that figure.

According to Don Cornwell, a Los Angeles lawyer (and a wine collector) who has advised several of the defendants, the trustee's goal is to settle all the cases prior to trial. "I know of one creditor who was sued for more than \$1 million," Cornwell told Wine Spectator, "but the trustee offered to settle for \$50,000."

In another twist causing squawks, many of the defendants are being sued for the value that Phelps assigns to their wines at the time of delivery, rather than at the time of purchase. In the lawsuit against Gladstone, for example, Phelps values the 480 Lafite bottles at \$600 each in 2012, a 50 percent increase over what Gladstone says was his "fair market" price two years earlier.

How had she calculated the increase? Phelps, the author of a book on Ponzi schemes, told Wine Spectator that the new price had been determined by experts, but declined to reveal their identity. "Evaluations are often subject to dispute," Phelps said. "We invite defendants to give us contrary evaluations. Every bottle has its own story."

David Rosendorf, a Florida-based bankruptcy lawyer unconnected to the Premier Cru case, suggests that customers who criticized and hounded the retailer and its president, John Fox, prior to bankruptcy, did themselves no favors. "For your mom-and-pop customer, there may have been no reason to believe that a fraud was going on. Their defense is that they received the wine in good faith and for fair value," he said. "But if someone is receiving the goods with suspicion, and complaining on emails and on Yelp that this a Ponzi scheme, they could not mount a good-faith defense."

Last week, Gladstone filed his response to the trustee's complaint, asserting that his purchases were legitimate, for fair value, and that the statute of limitations had run out on the claims against him. Gladstone further alleges that "Trustee and his counsel knew that customers would rather pay thousands of dollars to settle the bogus claims rather than to incur even larger amounts of expenses to defend themselves in response to the trustee's bogus claims." Accusing the

trustee and his counsel of "extortion or attempted extortion," Gladstone demands a jury trial. Several other defendants are expected to do the same.

Mark Bostick, the trustee's lawyer, estimates that final payouts will come some time in 2018. No one will estimate how much creditors will see after the court proceedings are finished.

The Premier Cru debacle is casting a long shadow, according to Daniel Posner, head of the National Association of Wine Retailers (NAWR) and owner of a wine shop in White Plains, N.Y. "The fine wine world is a very small one," he said. "There are only so many buyers for these wines. And now they are extremely pessimistic about us. All of a sudden, you have customers who were out \$50,000 from Premier Cru that are not so quick to give me money. You give them ETA's for the arrival of their wine, and they say, 'Umm ... I'll wait for it to arrive.'"

Corrected: The original story misstated the number and relative value of wines Gladstone Imports purchased; it was 480, at what William Gladstone asserts was a fair market price at the time, not below market price.

## **MillerCoors sues former strategist, competitor over alleged breach of contract**

Greg Trotter  
Contact Reporter  
Chicago Tribune

Chicago-based MillerCoors is suing its former top strategist for allegedly violating his contract by taking a similar job at Constellation Brands, a direct competitor.

The lawsuit, filed Wednesday in Cook County Circuit Court, is seeking a temporary restraining order and preliminary injunction, along with damages, in order to block Eric McCloskey from his new job at Constellation for 12 months, the duration of his noncompete agreement. Until earlier this week, McCloskey was senior director of strategy and analytics for MillerCoors and the company's "most knowledgeable and highest ranking employee regarding (pricing, marketing and innovation) analytics and analyses," according to the lawsuit. The lawsuit alleges that by taking the job of vice president of sales strategy for wine and spirits for Constellation, McCloskey violated his noncompete agreement, which prohibits working for a direct competitor within 12 months of leaving MillerCoors.

"We believe that this move is a direct violation of his noncompete agreement with MillerCoors and are taking steps to enforce our rights under the agreement," Marty Maloney, MillerCoors spokesman, said in a statement Friday.

The lawsuit also alleges that McCloskey attached an external flash drive to his MillerCoors laptop on Jan. 28, the day he resigned from the company, and researched how to clear and transfer files.

When reached Friday, McCloskey, 50, said he was in the process of hiring an attorney but otherwise declined comment. A Constellation Brands spokesman didn't immediately return requests for comment.

Constellation Brands' beer business, which includes Corona, Modelo, Pacifico and Ballast Point, is also headquartered in Chicago. But McCloskey's new role in the wine and spirits business would be based in Canandaigua, N.Y., closer to his mother, who had been ill, according to the lawsuit.

Nevertheless, MillerCoors also considers itself in direct competition with Constellation's wine and spirits business.

In recent years, beer has lost market share to wine and spirits. As a result, MillerCoors has studied how to attract wine and spirits consumers to its own products, the lawsuit said, which cited Crispin Rose as a new MillerCoors product intended to appeal to wine drinkers.

McCloskey, who reported directly to MillerCoors CEO Gavin Hattersley, was the company's top strategist that led these analyses. At the time of his resignation, McCloskey's team was working on an analysis specifically focused on Constellation, the lawsuit says.

MillerCoors offered to reduce the duration of the noncompete agreement to allow McCloskey to start at Constellation June 1, according to the lawsuit, but Constellation's general counsel of wine and spirits said that start date was "unacceptable."

MillerCoors is suing McCloskey on two counts of breach of contract - one regarding his noncompete agreement and the other his confidentiality agreement - and one count of violating the Illinois Trade Secrets Act. MillerCoors also filed one count of intentional interference with contract against Constellation Brands.

In his resignation letter, cited in the lawsuit, McCloskey wrote: "I regret the difficult position this puts you in more so after the immense kindness and understanding you have expressed toward my family's current situation. ... You have made me aware of MillerCoors' likely response to my decision, however the potential troubles that may result were ultimately outweighed by the personal and professional priorities satisfied by Constellation's offer."

Business News February 16, 2018 / 2:31 AM / 8 days ago

### [Australia's Treasury Wines says sues 'copycat' for imitating brand in China](#)

SYDNEY (Reuters) - Australia's Treasury Wine Estates, the world's largest standalone winemaker, on Friday said it launched legal action in the country's Federal Court against a "copycat" it accused of imitating its prestigious Penfolds brand in China.

China is Australia's largest wine export market, where a 60 percent surge in sales last year lifted Treasury to a record half-year profit for the six months to December 31.

Penfolds wines and, especially, the ultra-high-end Grange vintages, are popular and profitable, and are sold under the brand name "Ben Fu" in China.

Melbourne-based Treasury last year won a legal challenge in China over its right to use "Ben Fu" as a trademark and said it launched its action against wine-seller Rush Rich, in a bid to protect its reputation.

"Of particular concern is the issue of copycat wine," Treasury said in a statement. "[It] is believed to be sourced and bottled through bulk wine suppliers...then exported under labels that copy the look and feel of Penfolds wines, infringing TWE's rights to the Penfolds and Ben Fu trademarks."

Australian corporate filings show Rush Rich is based in Adelaide.

Court filings were not immediately available. Reuters was unable to immediately find a publicly-available telephone number for a representative of Rush Rich, which does not have an Australian website.

Australian and New Zealand suppliers of goods from wine and lamb to honey have lately been stepping up efforts to combat fakes, particularly in the lucrative Chinese market.

"Our strong regulatory system is pivotal to our export success," Tony Battaglione, chief executive of the Winemakers' Federation of Australia, is quoted as saying in Treasury's emailed statement.

"This success relies on the integrity and quality of our wine - a reputation that is put at risk by copycat wines."

Reporting by Tom Westbrook; Editing by Clarence Fernandez

## **Illegal liquor sales charges dropped against owners of St. Louis wine storage firm**

By Joel Currier St. Louis Post-Dispatch Feb 6, 2018 (0)

ST. LOUIS \* The circuit attorney's office has dismissed felony charges from 2016 that a St. Louis couple who own a wine storage business were selling liquor without a license.

The charges, dropped by St. Louis prosecutors Friday against Marc Lazar, 41, and his wife, Katherine Lazar, 37, alleged their business Domaine Storage, would routinely email offers to sell wine to Missouri residents without a license. Founded more than a decade ago, the company stores more than 1.8 million bottles of wine in five U.S. warehouses in Chicago, New Jersey, Washington, Napa Valley and at 3300 Samuel Shepard Drive in Grand Center.

A spokeswoman for the St. Louis circuit attorney's office said she would look into why the cases were dismissed but did not get back to a reporter.

The cases against the Lazars were set for trial Feb. 26 in St. Louis Circuit Court, their lawyers said. The prosecutor's office informed them Friday of the dismissals and that it was considering refiling charges soon.

"We're very pleased at the dismissal at this point in time," said Bill Margulis, who represents Marc Lazar.

Paul D'Agrosa, who represents Katherine Lazar, said the couple's business has remained open and has received a state consumption license for wine tastings on the premise. He said the couple have been waiting for approval of a consumption license from the city.

Marc Lazar is a registered sex offender. In 2005, he was convicted of first-degree statutory rape of a victim under the age of 14, and statutory sodomy, both felonies. He was sentenced to 10 years in prison, but a judge suspended execution of the sentence and Lazar was placed on five years' probation.

## **Immigration Compliance Must-Knows for C-store Retailers**

By Chelsea Regan - 02/08/2018

ALEXANDRIA, Va. - On the heels of U.S. Immigration and Customs Enforcement (ICE) raids on multiple 7-Eleven locations, it's more important than ever for convenience store retailers to school themselves in immigration compliance.

Under the Trump administration, there is an increased focus on enforcement and compliance. For instance, ICE has been told to increase its worksite enforcement by 400 percent, according to Guidepost Solutions CEO Julie Myers Wood and Managing Director John Connolly, who co-presented a recent webinar titled "What Every Convenience Store Should Know About Immigration Compliance." The webinar was hosted by NACS, the Association for

Convenience & Fuel Retailing, and sought to answer retailer questions about the impact on the industry, how to prepare for ICE arriving at locations, the current administration's focus and efforts pertaining to immigration, and what the future of immigration under Trump's administration holds.

As ICE expands its reach, it will zero-in on repeat offenders of employing undocumented workers, as well as companies that are deliberately hiring those who are undocumented.

ICE's worksite enforcement strategy consists of a three-pronged approach:

- Inspections, fines and debarments;
- Employer and employee arrests; and
- Outreach and education through IMAGE, a formal membership certification program.

Retailers who should be most concerned about an ICE raid are those with a previous criminal record or on the receiving end of administrative action by ICE or the Department of Labor (DOL).

Wood and Connolly warned that every worksite enforcement investigation is "unique" and involves many contributing factors, such as:

- Knowingly hiring unauthorized workers.
- Evidence of trafficking, harboring, fraud, money laundering and mistreatment of employees.
- Threats of deportation, coercion, substandard wages and unsafe working conditions.

So, what's a retailer to do? They outlined the following measures:

#### I-9 Forms

A basic and imperative measure that retailers must take is ensuring that every individual hired has completed an I-9 form, including U.S. citizens, permanent residents, and immigrants authorized to work in the U.S. The only exempt groups are employees who were hired prior to Nov. 7, 1986, independent contractors, and those employed by a contractor providing contract services. Section One of the I-9 must be completed by the employee on or before the first day of work commences. Section Two of the I-9 must be completed and signed by the employer within three business days.

Wood and Connolly noted that the I-9 form was revised last summer. With the revision, employees must now certify whether or not a preparer and/or translator(s) was used. For more information on the I-9 form, employers can visit [USCIS.gov](http://USCIS.gov).

Due to the possibility of fraudulent I-9 forms, employees need to be on the lookout for them, lest they be held liable. One way an employer can know if a document is real or not is the "reasonable test," which merely means that the document in question appears to be genuine and relates to the prospective employee.

An employer should also look for any indication of fraud. Does the document reflect the proper agency that issued it? Does the information on the back of the card match the information on the front?

Other I-9 warnings: Employers cannot accept photocopies of I-9 documents and must personally examine the original document themselves. Employers cannot request I-9 documents during an interview or at anytime before hiring, nor can they require more documents than required by law or refuse to honor acceptable documents. Employers must keep employees' I-9 forms for three years after the date of hire or one year after the date of termination - whichever is later.

## Penalties

In terms of civil or administrative penalties, employees who are found guilty of knowingly hiring and continuing to employ undocumented workers can face anywhere from a \$548 to \$4,384 fine per violation for a first offense. Failing to produce an I-9 form or other violations could incur fines from \$220 to \$2,191 per instance.

These sorts of violations are divided into "Technical Violations" and "Substantive Violations." The former include incorrectly completed I-9s and a failure to enter date of hire, and may be granted a 10-day grace period to correct. The latter include missing I-9s, an employee's failure to sign, and an employer's failure to review a document.

In the case of criminal activity, such as engaging in a pattern or practice of hiring, recruiting or referring undocumented workers, the penalties are more severe. An employer could face a \$3,000 fine per undocumented worker employed and up to six months in prison.

## Mitigating Factors

If employers have the resources to do more than the minimum of staying on top of their employees' I-9 forms, there are a number of other options to stay in the good graces of ICE and the DOL.

Wood and Connolly suggest employers do the following:

- Participate in the Department of Homeland Security's E-Verify program.
- Establish a "level of cooperation" with ICE and Homeland Security Investigation agents.
- Seek assistance through ICE and participate in IMAGE.
- Have a robust internal immigration compliance program.

The E-Verify program is a government system that's meant to aid in confirming employment authorization. However, it doesn't eliminate the possibility of identity fraud, nor does it guarantee I-9s are accurate.

## If ICE Comes

If ICE raids your stores, the key is to be prepared and have a strategy in place. An employee onsite should be designated to handle the visit, should one occur. Other staff members should be informed that they're to divert any investigators to this person.

It should be determined early on whether ICE is acting on a subpoena, arrest warrant, search warrant, or nothing. The designated staff member should also obtain the name of the ICE agent leading the operation. A call should be placed to the business's counsel or compliance advisor.

Looking ahead, Wood and Connolly believe it's more than likely that there will be additional changes to immigration and labor laws and how they will be enforced. While Trump has detailed a plan that he would like to see put in place, it's uncertain how exactly that will be translated into policy. Regardless, employers must be vigilant to ensure they're keeping up-to-date with the latest changes.

**Palm Bay International files trademark lawsuit against Winebow over Italian wine marks** seeks to prevent Winebow and its affiliates, including New York-based Martin Scott Wines Ltd., from importing, marketing and selling "Niro" and "Sheep Thrills" wines

by Kerana Todorov  
February 23, 2018

A Florida-based Italian wine importer has filed a lawsuit over the trademarks - "Niro" and "Sheep Thrills."

Palm Bay International Inc. alleges in its lawsuit the Italian producer, Citra, has no rights to the U.S. trademarks "Niro" and "Sheep Thrills" because Palm Bay owns the marks in the United States, according to the complaint filed Feb. 20 in federal court in New York.

Palm Bay wants a federal judge to declare that Palm Bay is the exclusive owner of these two US trademarks, according to court filings. It also seeks to prevent Winebow and its affiliates, including New York-based Martin Scott Wines Ltd., from importing, marketing and selling "Niro" and "Sheep Thrills" wines in the United States, according to the lawsuit.

The U.S. Alcohol and Tobacco Tax and Trade Bureau approved Palm Bay's "Sheep Thrills and "Niro" labels in 2015 and 2016 respectively, according to TTB records.

Palm Bay, a family-owned company based in Florida with offices in New York, and Citra, based in Ortona, Italy, did have a long-term business relationship that ended last fall. The two companies signed a contract in 1991 in which Palm Bay became the exclusive importer of Citra wine and other brands in the United States as long as Palm Bay met annual sales goals, according to the complaint filed Feb. 20.

The companies "enjoyed a long and mutually beneficial business relationship" until Oct. 30 when Citra decided to terminate the contract, effective April 30, according to court records.

On Feb. 7, Palm Bay sent a letter to Citra and importer and distributor, The Winebow Group, to demand that they stop importing, marketing and selling "Sheep Thrills" or "Nero" wines, according to court records. Neither Citra nor The Winebow Group responded, according to the complaint.

Palm Wine Holdings LLC, an entity of Palm Bay, received its "Sheep Thrills" mark in 2016. Palm Bay therefore has exclusive right to this trademark in the United States, according to the letter Palm Bay sent to The Winebow Group and Consorzio Cooperative Riunite D'Abruzzo - or Citra.

Palm Bay "conceived of the 'Sheep Thrills' brand name," according to the letter. Palm Bay also financed and created the labels and marketing and promotional materials for the brand as well as for "Niro," according to the letter sent Feb. 7.

"Hence, Palm Bay is the owner of all common law trademark rights in and to the "Niro" brand under governing U.S. trademark law," according to the Feb. 8 letter included in the federal complaint

But on Jan. 10, Martin Scott Wines filed a new label application with the Alcohol and Tobacco Tax and Trade Bureau for the "Niro" brand to sell Citra wines imported in the United States.

Palm Bay's complaint also wants Citra to forgo its mark "Niro di Citra", saying Citra has not used the trademark since its 2013 registration and therefore has abandoned the mark, according to the complaint.

Editor's note, an earlier version of this article incorrectly indicated that Palm Bay named The Wine Group in this case.

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