



FARELLA BRAUN + MARTEL LLP

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BEST PRACTICES

DIRECT SHIPPING AND ONLINE PROMOTION OF
ALCOHOL

TIFFANIE C. DE LIBERTY

(707) 967- 4000

big firm know how + small firm know you

Considerations and Best Practices

- COSTS vs. BENEFITS
- WHERE CAN YOU SHIP?
- AGE VERIFICATION
- SHIPPING INFORMATION FOR CONSUMERS

Considerations and Best Practices

Relationships With Wholesalers

- Do you have a contract with a wholesaler?
- Are there restrictions in the contract with respect to selling to consumers?
 - Directly?
 - Using third party?

Considerations and Best Practices

Exclusivity. Supplier agrees that, during the Term, Distributor shall be the exclusive distributor of the Products in the Territory. **Supplier will not sell or ship the Products, directly or indirectly, or through a third party, to** any other person or entity in the Territory including, without limitation, airlines, railroads, military bases, governments, hotels, restaurants, wholesalers, wineries, retail accounts, and **consumers**.

Considerations and Best Practices

On-site Purchase Required

- Evidence consumer visited tasting room
 - Original signature
 - Credit card receipt
 - Driver's license
- One-time sales only
 - No continued wine club shipments

Considerations and Best Practices

- Don't try to get around direct shipping laws
 - Joseph Black
 - Joe Black
 - J. Black
 - J. K. Black
 - Mary Black
- Wine shipped for marketing purposes is subject to direct shipping laws

Considerations and Best Practices

Educate Tasting, Sales & Marketing Teams

- Direct shipping and prohibited states
- Where you can ship
- Age verification
- Volume limitations
- Collecting customer information
- Penalties for violating direct shipping laws
 - Winery
 - Employee

Considerations and Best Practices

On-Line Privacy

- Federal Laws
 - Protecting children, health and financial data
- State Laws
 - California
 - Massachusetts and Nevada
 - Utah and Montana

California Privacy Protection Act

- PII – name, address, e-mail address, telephone number, and social security number
- Requires conspicuous posting of privacy policy on home page and hyperlink
- Identify categories of PII
- With whom will PII be shared
- Describe how to review and change PII
- Effective date

Considerations and Best Practices

- Privacy Policy
 - Collection of PII (not of children)
 - Use of cookies, web bugs, tracking software, etc.
 - Use of PII
 - Sharing and disclosure of PII
 - Confidentiality, storage and security of PII
 - Access to and updating PII
 - Opting in/out
 - Effective date and amendments
- Review state child protection listings

Considerations and Best Practices

Terms of Use

- Binding agreement and acknowledgement
- Intended audience (21 or older)
- Use of software, trademarks or materials
- User content
- Compliance with IP laws

Considerations and Best Practices

Terms of Use

- Inappropriate content
- Removal of infringing materials and process
- Right to terminate use
- No warranties and limitation of liabilities
- Indemnification for user acts
- Amendments

Considerations and Best Practices

Third Parties

- State scrutiny of unlicensed third parties
- Marketing agents, compliance agents, agents of the consumer, agents of the winery, agents of the retailer, fulfillment operators, logistics providers, affiliate marketers

Considerations and Best Practices

State concerns :

- Exercise of license privileges by non-licensees
- “Sale”
 - Transfer of title
 - Solicitation or receiving of orders
 - Delivery of alcohol
- Shipping from unlicensed location

Considerations and Best Practices

State concerns:

- Consignment sales
- Tied house issues
- Inducements or “free” goods to consumers
- Profit sharing

Considerations and Best Practices

Websites that sell wine

- **Exercise of License Privileges**
 - Ideally, website should have a license
 - Shipping pursuant to permits; avoid three tier
 - Avoid tied house
 - No paying retailer for advertising, content, etc.
 - Transaction involves both retailer and manufacturer

Considerations and Best Practices

Websites that sell wine

- **“Sales” by unlicensed entities”**
 - Click through to winery
 - Use escrow with no control by unlicensed entity
 - No ownership of wine
 - Processing and fulfillment of order through and from winery
 - Winery controls pricing
- **Profit Sharing**
 - Flat fee for each click through or referral
 - Not a percentage of wine sold

Considerations and Best Practices

Websites that sell wines

- **Consignment Sales**
 - Avoid shipping through three-tier
- **Inducements to Consumers**
 - No “free” shipping
 - “Complimentary shipping” or “shipping included in price”

Considerations and Best Practices

Social Networking, Blogs, Viral Marketing

- Authenticity
- Ownership and Control of content (company and user)
- Confidential Information
- Intellectual Property Use and Violations
- Competitors
- Advertising of Alcohol
 - False and Misleading content
 - Children and control
 - Health claims

Considerations and Best Practices

Social Networking, Blogs, Viral Marketing

- Have a social networking policy
 - Cover company and employee sites
 - Ownership and content
 - Confidential information
 - Appropriate Conduct
 - Falsity and Misleading
 - Use of IP
 - Competitors
 - Advertising of Alcohol

Considerations and Best Practices

Advertising of Alcohol: General Principles

- Include Responsible Advertising Information:
 - winery name and address (city and state)
- No offers, gifts, premiums

Considerations and Best Practices

Advertising of Alcohol: General Principles

- No:
 - false or misleading statements
 - statements inconsistent with label
 - disparaging competitors
 - obscenity or indecency
 - portrayals or appeals to children
 - models under 25

Considerations and Best Practices

Advertising of Alcohol: General Principles

- No:
 - statements of athletic prowess or attractiveness
 - excessive drinking
 - showing consumption
 - therapeutic or health claims
 - Santa Claus, Easter Bunny, biblical characters or events
 - seals, flags, government endorsement

THANK YOU



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Wine

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