

## **Social Media and the ABC: Renwood Contests Accusation About Social Media Post**

**ABC Filed Enforcement Actions Against at least 11 wineries after 2014 Save Mart Grape Escape event**

*Posted by **Ted Rieger** on May 01, 2015*

Renwood Winery, based in Plymouth, Amador County, represented by the San Francisco-based law firm Hinman & Carmichael LLP, is contesting a California Department of Alcoholic Beverage Control (ABC) accusation that a post on the winery's Facebook page related to the 2014 Save Mart Grape Escape event in Sacramento violated California's "tied-house" regulations. Arguments in the case were presented at an ABC Administrative Hearing held April 28 in Jackson, California, in Amador County.

The Grape Escape is an annual wine, beer and food event held in downtown Sacramento presented by the Sacramento Convention and Visitors Bureau. Save Mart, a Northern California supermarket chain, was the title sponsor for the June 7, 2014 event, and was mentioned in social media posted by some of the 40+ participating wineries to encourage their followers and fans to attend the event. At least 11 wineries had enforcement accusations filed by ABC for violation of Section 25502(a)(2) of the California Business and Professions Code. ABC contends the wineries gave "a thing of value," free advertising on social media for the benefit of Save Mart Supermarket.

Ten of these winery licensees settled their accusations with ABC, accepting a penalty of one-year probation for admitting to the offense, with a 10-day license suspension stayed in each case. None of these wineries paid a fine, or received a license suspension, which would have resulted in lost sales for 10 days. However, this violation is now part of each of the licensees' disciplinary records. Renwood was the one winery that chose to contest the accusation. Renwood has no prior disciplinary history with ABC.

(See the article in the **May 2015 issue of Wine Business Monthly**, "*California ABC Regulatory Enforcement Clashes with Winery Social Media Use*," for more information and background on this situation, and issues regarding social media and ABC regulations.)

Hinman & Carmichael senior counsel John Edwards argued the respondents' case at the April 28 hearing on behalf of Renwood, with assistance from founding partner John Hinman, before administrative law judge (ALJ) Nicholas Loehr.

ABC trade enforcement special counsel Dean Lueders, representing ABC in the accusation, argued, "This is a very simple case," that involves "tied-house" laws. He stated that Renwood was a winegrower licensee who gave "free advertising to a retailer" (Save Mart Supermarket, an off-sale retail licensee) through a posting on Facebook. He argued that previous cases and existing case law establish the basis for the accusation and violation.

At the hearing, and in a written brief filed with ABC prior to the hearing, Edwards requested that the

case be dismissed. Edwards' and Hinman's written brief stated: "There is no evidence to support that Renwood provided a 'thing of value' to Save Mart. Without such evidence, the Department cannot establish a violation of Section 25520 (a)(2) and the Accusation should be dismissed."

Edwards called Renwood Winery's VP of administration Angela Kooken as a witness. Questioning from Edwards revealed that Renwood neither sold nor marketed any of its wine through Save Mart, and it had no commercial affiliation with Save Mart. Renwood was invited by the Sacramento Convention and Visitors Bureau to participate in the Save Mart Grape Escape event, and the fact that Save Mart was the event's title sponsor had no bearing on Renwood's decision to participate. Renwood has participated in the annual event dating back to 2004, even prior to Save Mart being the title sponsor.

Under questioning from Edwards, Kooken testified that the posting on the winery's Facebook page was copied from the Facebook page for the event itself, which included Save Mart's name as part of the event title and logo. Kooken said the purpose of the Facebook post was to inform the winery's Sacramento consumers and Facebook followers they would be at the event so they could attend and taste their wines. Kooken said, "Social media is how you market today, it plays a huge role in marketing."

On cross examination, Lueders asked Kooken if it ever occurred to her that such a posting on Facebook would be a violation of "tied-house" law. Kooken responded, "It never crossed my mind. It was the name of the event." Edwards argued: "Renwood had no role whatsoever in naming the event, and had no commercial tie with Save Mart. It marketed the event, not Save Mart."

Edwards also argued that a major intent of California "tied-house" laws is to prevent collusion between alcohol producers, wholesalers and retailers in order to prevent market domination by brands and the entities producing and selling them. As such, ABC should present evidence that the accusation is addressing the intent of the regulation. In addition, he said the ABC has the burden to show that the penalty imposed in this case will advance a legitimate government interest. Edwards also cited related state and federal court case decisions that protect commercial free speech. In the respondents' written hearing brief, Edwards summarized: "Respondents contend that: (1). 25502(a)(2) does not apply to Renwood's Facebook posting; and (2). even if it did apply, enforcement of that statute against them would be an impermissible abuse of the Department's discretion, in that enforcement would punish them for speech protected by the First Amendment to the United States Constitution and Article I, 2(a) of the California Constitution."

ALJ Loehr explained, under the ABC administrative hearing process, he did not have authority to dismiss the case or issue a decision at the hearing. His role is to evaluate the evidence presented and issue a Proposed Decision for consideration by the ABC Director. The ABC Director can adopt or reject the Proposed Decision. If the licensee is not satisfied with the ABC Director's decision, an appeal process is available.

The ALJ set a schedule for parties to file written briefs of closing arguments. These will be reviewed before the ALJ issues a Proposed Decision, which will not likely occur any earlier than August.

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