

STATE OF CONNECTICUT

DEPARTMENT OF CONSUMER PROTECTION

IN THE MATTER OF

Ace Distributing, LLC
Walter Kaczynski, Shipper Permittee
Ace Distributing LLC., Backer
Liquor Permit # LIW.580
Docket No. 09-560

Case No. 2009-1716
May 12, 2009

MEMORANDUM OF DECISION

This matter involves a request by Fruit of the Vines, Inc. for the termination of Ace Distributing, LLC, as distributor in the State of Connecticut of the products set forth in a letter dated February 4, 2009 from Fruit of the Vines, Inc. to Ace Distributing LLC-PC attached hereto as Exhibit A. Fruit of the Vines, Inc., (hereinafter "Fruit of the Vines") is the holder of out-of-state shipper liquor permit LSL.1148 and Ace Distributing, LLC (hereinafter "Ace") is the holder of wholesaler liquor permit #LIW.580. A formal administrative hearing was held on April 23, 2009, at which time Walter Kaczynski, president of Ace, appeared and Paul Whitby, manager of Dancing Bear Cellars, appeared on behalf of Fruit of the Vines.

The hearing was properly held in accordance with Section 30-17(a)(2)(B) of the Connecticut General Statutes. Section 30-17(a)(2)(B) of the Connecticut General Statutes provides the method by which

termination or diminishment may occur of a distributorship. The statute provides, *inter alia*,

No such termination or diminishment shall become effective except for just and sufficient cause, provided such cause shall be set forth in such notice and the Department of Consumer Protection shall determine, after hearing, that just and sufficient cause exists...For the purposes of this section, "just and sufficient cause" means the existence of circumstances which, in the opinion of a reasonable person considering all of the equities of both the wholesaler and the manufacturer or out-of-state shipper warrants a termination or a diminishment of a distributorship as the case may be.

The determination of what constitutes "just and sufficient cause" is a matter for this Commission, after considering the equities of both parties to ascertain whether termination is warranted. Schiefflin & Co. v. Department of Liquor Control, 194 Conn. 165, 479 A.2d 1191 (1984).

Fruit of the Vines, Inc. formally requested termination by its letter of February 4, 2009 to Ace citing as its reason Ace's failure to purchase identified wines from Fruit of the Vines since specific dates, either 2004, 2005 or 2006, as identified in Exhibit A.

The following facts are found based upon the evidence adduced at the hearing. In 2004, Wine Source had the importation rights to the wines set forth in Exhibit A, and had authorized and appointed Ace to distribute such wine products. In 2004, Ace made a large, initial purchase of product from Wine Source in the amount of \$72,844.98. Wine Source is now out of business; and in 2006, Liquid Assets Group,

now known as Dancing Bear Cellars (hereafter, "Dancing Bear") took over the lines at issue here and obtained new letters of authorization from the brand owners. Ace has wine product in its inventory that it had purchased from Wine Source in 2004. In 2006, Ace made additional purchases of the subject wine from Dancing Bear, on behalf of Fruit of the Vines, totaling less than \$500. Ace does not advertise the availability of the particular wines for sale on its website. In the fall of 2008, Philippe Vernet, president of Fruit of the Vines, Inc., wrote to Ace requesting that Ace relinquish these brands due to inactivity, and Fruit of the Vines' desire to distribute its products in this state. Mr. Kaczynski acknowledged that he received and opened the letter, threw the letter into the trash and returned the empty envelope to Fruit of the Vines, without any further attempt at communication. Since 2006, Ace has been aware of the company from which purchase the wines, however, it has not made any additional purchases for the past three to five years.

There was some dispute among the witnesses as to the circumstances in this case. The Liquor Control Act vests in the Commission a liberal discretionary power to determine credibility of witnesses and factual matters with regard to liquor permits. Fenton v. Liquor Control Commission, 151 Conn. 537, 539, 200 A.2d 481 (1964).

The Liquor Control Commission's authority to prescribe the conditions under which distributorships may be terminated is a legitimate method of structuring the state's liquor distribution system.

Schiefflin & Co., 194 Conn. at 183. Based upon the substantial evidence presented, we find there is just and sufficient cause to justify the termination of Ace as the distributor of the wines, for the reasons set forth in Exhibit A in Connecticut. Fruit of the Vine's request to terminate Ace is hereby granted.

**DEPARTMENT OF CONSUMER PROTECTION
LIQUOR CONTROL COMMISSION
BY**

Elisa A. Nahas, Esq.
Presiding Officer

Steven Somma, Commissioner

Angelo Faenza, Commissioner

Parties:

Ace Distributing, LLC, Walter Kaczynski, Shipper Permittee, 3 Ridgewood Road,
Burlington, CT 06013
Philippe Vernet, President, Fruit of the Vines, Inc., 161 West 54th Street,
New York, NY 10019
Fruit of the Vines c/o Paul Whitby, Dancing Bear, 890 Garrison Ave—
Box 16, Bronx, NY 10474 (718-620-6800)

Non-Parties:

John Suchy, Director, Liquor Control Division
Connecticut Beverage Journal, 2508 Whitney Ave., P.O. Box 185159,
Hamden, CT 06518
Connecticut State Library, 231 Capitol Avenue, Hartford, CT 06106