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CASE ALERT

DIRECT SHIPMENT OF WINE TO OTHER STATES

Hatch & Parent's Wine Practice Group is monitoring an important court case dealing with the issue of direct shipment of wines to other states.

A recent ruling by a court of appeals in New York upheld a New York state law that bans the direct shipment of out-of-state wines to New York residents. It appears that the United States Supreme Court will finally be addressing this critical issue sometime in the near future.

The New York law is similar to laws in 29 other states and requires that imported liquors be distributed only through licensed wholesalers and retailers to ensure accountability and responsibility and that taxes are paid.

This case was originally brought by a small winery in Virginia that annually produces about 2,500 cases of Pinot Noir, Chardonnay and Riesling. A California winery joined the case. The wineries sued the New York State Liquor Authority, arguing that that law was discriminatory because it allowed in-state wineries to ship directly to New York consumers, but not out-of-state wineries.

The trial court agreed with the wineries, finding that the law was in fact discriminatory. That court rejected New York's argument that out-of-state wineries could easily get a license in New York to distribute as either a wholesaler or a winery. The court stated that it was unreasonable to require an out-of-state winery to become a resident in order to compete on equal terms.

The State of New York appealed this ruling, and the Court of Appeals sided with the State. In other words, the original court's ruling was reversed.

The Court of Appeals concluded that New York has a legitimate interest in monitoring the flow of alcohol into the state by regulating its physical presence. New York state wineries are licensed by the state and subject to inspection, as are state wholesalers. Out of state wineries are not.

As you may know, appellate courts in other states have taken different views. In August 2003, Michigan's courts overturned a direct shipment ban. Other courts have taken similar positions, while an Indiana court has upheld such a ban.

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The different positions taken by different courts around the country suggests that the U.S. Supreme Court may decide to get involved and issue a definitive ruling within the next year or two.

For those of you who are directly shipping around the country, it is important to stay current on the various requirements and restrictions imposed by each of the 49 other states. Until the Supreme Court decides this issue, there are no national standards that apply equally to all states.

We would be pleased to send you a copy of this case upon your request. Please feel free to contact me at (805) 882-1408 or EBerg@HatchParent.com.

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