

# Wine.Com Sees Double Standard by States on Illegal Direct Shipping by Other Retailers

## Specialty Wine Retailers Unhappy with the Tactic

**W**ine.Com has confirmed that its attorneys are sending complaint letters identifying by name wine retailers in nine states where laws require an in-state presence for out-of-state retailers wanting to direct ship to consumers.

**Wine.Com** says it is taking the unusual and controversial actions because alcohol regulators that require out-of-state retailers to set up in-state operations for direct wine shipping are not uniformly applying and enforcing those regulations, putting the high-profile Wine.Com at a competitive disadvantage to its otherwise numerous illegal peers. Wine.Com has opened facilities in each of those states.

The move has dismayed some in the wine industry who fear that "turning in" companies that are violating various direct shipping restrictions feeds criticism that liberalizing regulatory controls will make it less likely that states effectively can collect taxes, monitor product safety and standards and be sure that minors cannot find a new channel for underage purchases.

"You have to ask yourself—Why would Wine.Com do this," said Tom Wark, executive director of the national **Specialty Wine Retailers Association**, which is funding lawsuits challenging states that currently allow only in-state

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—*Wine.Com CEO Rich Bergsund*

wine retailers to ship direct.

"The good that Wine.Com can do by joining with other retailers and their own peers in trying to gain more market access to wine for consumers is far greater than by doing what they are now doing."

Wine.Com CEO Rich Bergsund says his company wants "nothing more or nothing less than just a level playing field" for everyone engaged in interstate direct shipping.

"We've had to ask ourselves whether we are wasting our time and energy having all these warehouses all over the country or not while others apparently do not," added Bergsund. "We deserve an answer on that."

Bergsund says the uneven treatment and enforcement exists because either:

√ the agencies have turned a blind eye to the too-numerous-to-count illegal instances;

√ competing wine retailers have found a way to fly under the radar screen of regulators;

√ Or, the competing wine retailers have found a way to comply with such state laws without opening a physical presence and it perhaps is being quietly accepted by regulators who otherwise are not publicly discussing it.

### Wine.Com Strategy? Prohibition Fails

**A**lthough he doesn't say so in as many words, the circumspet Wine.Com CEO's strategy appears to be to make states realize that various bans on direct wine selling, in this case one applied just to out-of-state retailers, eventually will prove no more effective than did Prohibition, and the resulting underground economies and concomitant enforcement bureaucracies create more problems than anyone might have envisioned..

Wine.Com's complaint letters ask alcohol regulators why specifically identified companies are engaging in illegal direct shipping. Later, when not all companies come into com-

pliance after regulators advise them they are aware of the illegal shipping, at least in some cases a second follow-up complaint asks regulators why the same companies continue to direct ship and why still more others that Wine.Com now also specifically identifies are illegal direct selling and shipping.

Bergsund says the pioneering online retailer that he began running in June of 2006 has become "more aggressive" in recent months in asking these alcohol retailers to "clarify" such positions that essentially have created a dual-track business approach to interstate direct-to-consumer wine retailing—underground illegal sales from out-of-state facilities and above-board, multi-state legal operations with local operations.

None of the retailers interviewed by *WMR* would comment on the record for fear of being singled out by regulators, but one comment from one of the already cited companies best summed up their reaction:

*"I respect Wine.Com a lot, but it really is kind of lame what they are doing because it just doesn't recognize the fact that everybody, us, them and the states, all are trying to figure out a way to move forward on this incredibly complicated and complex issue."*

Bergsund, a former **Bain and Co.** consultant, told *WMR*

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that he is not reporting competitors for short-term gain, as some in the wine industry see the actions.

"There is a broader purpose we're trying to serve here and we're definitely not trying to pick on anybody or get back at anybody," said Bergsund. "There's nobody we're targeting."

The companies identified in Wine.Com's letters read like a *Who's Who in Wine Retailing* and range from **Sam's** in suburban Chicago to **Beverages, and more!** in California to Gary Vaynerchuck's **Wine Library** in New Jersey.

Bergsund said at this point the company would be "happy to go in either direction, obviously—having an in-state presence or not, and just be able to ship directly from out-of-state central warehouses.

"But our point is that we would like a level playing field for all wine sellers."

### In-State Presence Adds Big Costs

The nine states where Wine.Com has established physical presences and where, once in state it can legally ship to consumers there, are California, Washington, Massachusetts, New York, New Jersey, Florida, North Carolina, Ohio

and Connecticut. These states do not ban interstate shipment of wine by wineries nor in-state retailers, but do ban such shipments by out-of-state retailers.

Bergsund says the in-state presence requirement adds "great cost and considerable complexity" to its operations.

The differing inventories by state means a visitor to Wine.Com's web site must instantly be routed to individual web sites for each of those nine states. The result is that a pop-up window immediately asks each web site visitor to which state they plan on shipping wine and then offers only wines in each state's inventory.

### What's Reasonable Expectations?

When asked what he expected would be a reasonable expectation from Wine.Com's tactic were, Bergsund admitted he had no certain answer and said it is clear that at least in Washington and New York for now that a crackdown on competitors by some regulators is the result.

Brian Smith, a spokesman for the Washington state **Liquor Control Board**, says Wine.Com's complaints since July have resulted in 29 companies in five other states being noticed for illegal direct shipments. Additionally, Smith said the letters have encour-

aged the state to re-initiate online stings.

New York regulators were not available late Friday to discuss their response to Wine.Com's complaints. However, sources said several key retailers there face what they consider to be "aggressive, even harsh" responses by New York's Liquor Control Board, which are being taken on behalf of their colleagues in Washington because that state technically has no enforcement powers on out-of-state retailers. [wmr]

*e-xtra!* Email us for copy of letters from regulators/Wine.Com

## Wine.Com Buys Into Connecticut Market to Avoid In-State Requirements

**W**ine.com, which bills itself as the nation's top online wine store, recently entered the Connecticut market by acquiring **Chatham Spirits & Fine Wines**. Terms of the acquisition of the East Hampton, Conn.-based wine retailer and shipper were not disclosed.

San Francisco-based Wine.com noted that since wine cannot legally be shipped into Connecticut by out-of-state retailers, the move enables it to ship to its online customers in that state from its new in-state retail and warehouse location. The deal "makes Wine.com unique among its competitors who don't have a local facility in the state," its officials said, describing the Nutmeg State as the 17th largest state for wine consumption, according to the 2007 Adams Wine Handbook.

The acquisition also expands Wine.com's national network of licensed retail centers, now in 10 states, the company said. Each of those centers "sources wine from in-state wholesalers and sells to in-state consumers," thereby sidestepping regulations stopping shipments from out of state. In some cases, Wine.com said, a center is also legally permitted to sell and ship wine to other states. In all, the company said it ships to 25 states and the District of Columbia, which cumulatively account for 75 percent of U.S. wine consumption.

Lea Coppola, previously of Chatham, will lead Wine.com's Connecticut operation. [wmr]

