



OREGON WINE  
PORTLAND  
SYMPOSIUM

# Staying Compliant in Consumer Marketing

...it's enough to drive you to drink.

February 11 2020

*1<sup>er</sup> Cru*  
SOLUTIONS

PROGRAM  
PRODUCER



OREGON  
WINE  
BOARD

TRADE SHOW  
PRODUCER



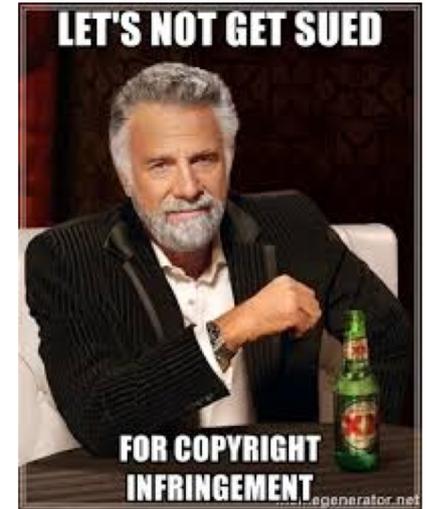
OREGON  
WINEGROWER  
ASSOCIATION

*Élevage* consulting

# Staying Compliant in Consumer Marketing

**Objective:** Our goal today is to provide our wine industry family with the knowledge and tools to:

- Understand the legalities of alcohol consumer marketing, in a rapidly-changing digital environment
- Audit current consumer marketing compliance
- Assess legal compliance risk
- Educate yourself and your team on legal best practices
- Form internal winery “policies” for self-regulation and legal risk avoidance
- Know when it’s time to enlist professional help



*The most interesting man in the world?*

# Disclaimer

**The information provided is not intended to constitute legal advice; instead, all information, content, and materials available are for general informational purposes only. Information provided may not constitute the most up-to-date legal or other information.**

**Readers should contact their attorney to obtain advice with respect to any particular legal matter. Only your individual attorney can provide assurances that the information contained herein – and your interpretation of it – is applicable or appropriate to your particular situation.**



**CASES SHIP FREE**

Buy 12 or more bottles of wine and get **FREE SHIPPING** when you use promo code **FREE SHIPPING** at checkout.

\*Shipping is based on destination. Not available in LA, HI, AK, and other states liquor laws. Free shipping valid on ground shipping only and not available to Alaska.

Natural wine is an invitation to rediscover wine.

**Welcome**

By clicking "enter" you verify that you are 21 years of age or older. Let's rediscover wine together.



Find your beach.

**Corona Extra**

Imported by Crown Imports LLC, Chicago, IL 60603

and Bogie Wines in a Store Near

By clicking **VERIFY** below you are confirming that you are 21 years of age or older.

**WINE & Win**

Two listeners will win a wine fridge plus \$100 in free wine!

♥ 🗨 🍷

Liked by **farmbliss** and **127 others**

EDIT: GIVEAWAY CLOSED & WINNER CONTACTED.

In honor of my passion for this company and the incredible non-toxic wine we love so much, I'm giving away one Scout & Cellar birthday box.

**FREE SHIPPING**



**12 12 OUNCE CANS**



Vanessa Hadick is co-owner and chief strategic officer of Premier Cru Solutions, a wine business consultancy based in the Willamette Valley. Vanessa grew up in the wine industry in Monterey, CA, and holds a B.A. in international relations and gender studies from UC Davis and an MBA from Portland State University. A chance internship at Campari global headquarters in Monaco at 19 landed Vanessa in the marketing world, and the rest was history.

After holding positions with Constellation Wines in San Francisco and Treasury Wine Estates in Australia for the first decade of her wine marketing career, Vanessa moved to Oregon in 2015 to be a part of this incredibly collaborative wine community. She was fortunate to serve as the marketing director for Sokol Blosser Winery before launching Premier Cru Solutions with her business partner in 2019. Vanessa serves on the marketing steering committee for the Willamette Valley Wineries Association as well as the Oregon Wine Board's education committee and is passionately committed to environmental and social sustainability as the future of business.

Vanessa Hadick  
Premier Cru Solutions  
[vanessa@premiercrusolutions.com](mailto:vanessa@premiercrusolutions.com)



Kathryn Quinn is an alcohol beverage compliance professional with over 15 years' experience in the industry. Prior to her current role with Winery Exchange in Novato, California, she started her career with Allied Domecq Wines in Healdsburg. From there she rode out two acquisitions, first joining Beam Wine Estates and then shortly thereafter joining Constellation Brands in San Francisco. Over her career, Kathryn has served in various roles in the legal and regulatory field of alcohol beverage compliance, concentrating her work on licensing, packaging and labeling compliance, new product development and marketing, and advertising compliance for beer, wine and spirits.

Kathryn is a Sonoma wine country native and holds a B.A. in political science with a concentration in pre-law from Cal Poly, San Luis Obispo, and a Paralegal Certificate from Sonoma State University. She also holds a WSET Level 2 Certification.

## Kathryn Quinn Winery Exchange



Meg Murray is a connector, passionate community builder, wine industry expert and entrepreneur. She is the founder of NASTY WOMAN WINES, a progressive wine brand that produces unapologetically tasty wines and donates 20% of net profits to help get more women to the table in policy and leadership.

Meg co-owns *élevage* consulting and helps wineries and wine-related businesses make, market and move their product. She consults on sales and marketing and brokers bulk wine. She cofounded PROJECT M Wines out of Oregon's Willamette Valley with her husband, winemaker Jerry Murray.

Meg has been working with wine since 2003. She holds certificates in both wine business management and wine industry finance & accounting from Sonoma State University, in addition to a Wine Fundamentals I and II certificate from the International Sommelier Guild. Meg has a B.A. in international studies from Portland State University. She resides in McMinnville with her family.

Meg Murray  
*élevage* consulting  
[meg.murray@elevageconsulting.com](mailto:meg.murray@elevageconsulting.com)



Jeff Giametta focuses on regulatory and licensing issues in the alcohol beverage industry, representing wineries, breweries, distilleries, restaurants, hotels, and other businesses in alcohol regulatory matters nationwide. He has significant experience counseling clients on state and federal alcohol regulatory and trade practice matters, with a particular emphasis on the marketing, advertising, and promotion of alcoholic beverages in both traditional and digital media. He also leads the firm's team that handles licensing and permitting activities for alcohol beverage clients. In addition, he is working to support the development of a responsible, professional, and successful cannabis industry in Oregon and Washington. Before joining DWT, Jeff managed the Regulatory Affairs and Compliance team for a large winery in California.

Jeff Giametta  
Davis Wright Tremaine LLP  
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Davis Wright  
Tremaine LLP



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# Self-Regulation

- The Federal Trade Commission (FTC) aims to protect consumers from industries promoting harmful, dangerous, or exploitative products or practices
- Largest alcohol supplier trade associations:
  - Distilled Spirits Council (DISCUS)
  - The Wine Institute
  - The Beer Institute
- Voluntary practices, self-regulation
- FTC oversight and audits



# Tied-House Regulations

- Legal definition/Overview
- General framework
- Historic background – ties to Prohibition
- “Thing of Value”

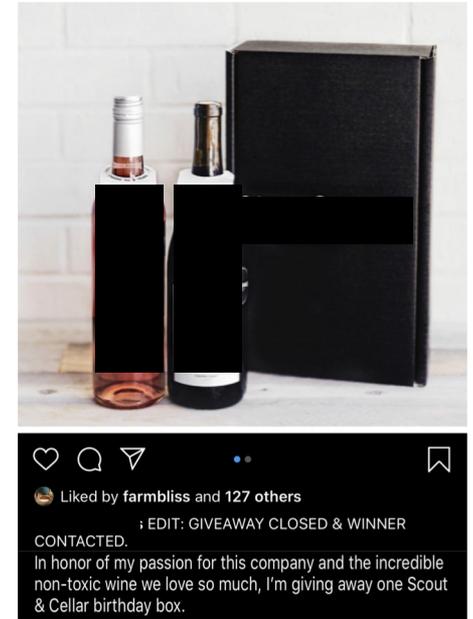


# The Juicy Stuff:

## Prohibited Practices & Self-Regulatory Code

# Giveaways

- No free alcohol goods may be provided in connection with the marketing and sale of alcoholic beverages
- Applies to everyone, even if you don't hold a liquor license
- Wine-related prizes are allowable - eg branded corkscrews or clothing - though cannot be given to minors.



Get \$10 off + a FREE bottle of wine  
with any new Oh! Ho Ho! Box pre-sale order.  
Just \$49.99 + free shipping! A \$184+ total value.

# Shipping Offers

- This includes free shipping
- Same rules apply to the word “complimentary”
- Incorporating the price of shipping into the wine is allowed
  - Eg: “Price includes the cost of shipping”



**FREE-SHIPPING**



Free shipping on orders above \$399 TODAY ONLY!

# Age: It's Not Just a Number

- Age of models/people appearing in photo shoots
  - LDA or older?
- Publication demographics for marketing or advertising
  - 71.6%
  - Require proof
- Social Media - Snapchat

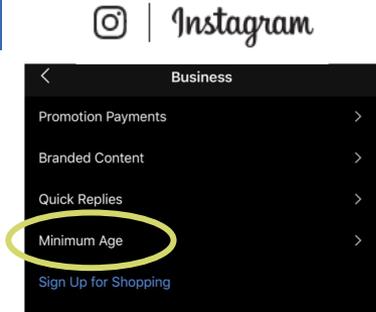
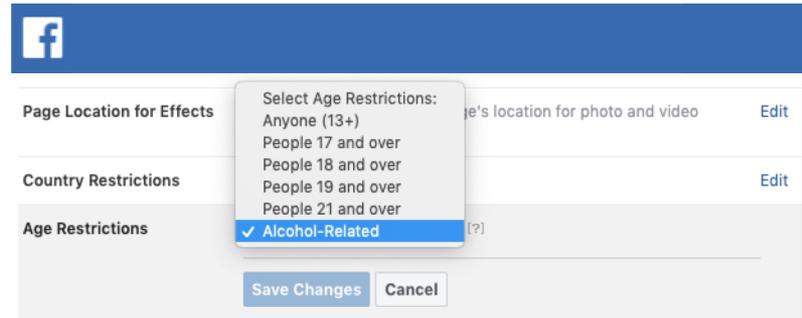
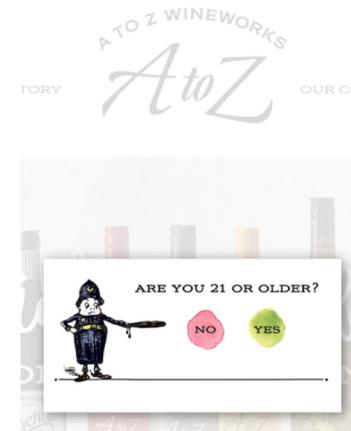
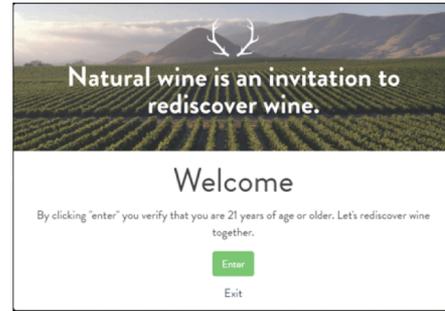


**'Snapchat's audience is too young for us' says Heineken as it builds its mobile strategy around Instagram instead**



# Age Gating

Recommended, not required...yet!



# Appealing to Children



## Spuds Can't Promote Beer Dressed as Santa

December 2, 1987



# Active Consumption

**OLCC, Chapter 845, Division 7, 845-007-0020:**

“The Commission prohibits advertising if it contains...A person displayed drinking an alcoholic beverage.”



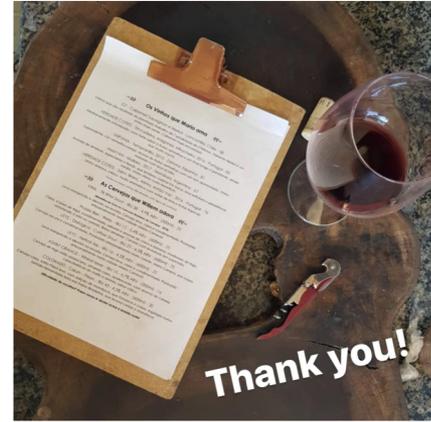
# Active Consumption

Compliant with  
self-regulation  
codes



# Tied-House Regulations

- Wineries are prohibited from calling out a specific account
- Considered a “thing of value”, “free goods”, favoritism
- Applies to social media, digital marketing, eblasts
- “Save Mart Grape Escape” - event headlining sponsor
- Wally’s Catalog - CA
- Allowed - OR - but only for events



ABC actions involving winery social media became an issue in connection with an annual wine and beer tasting event, “The Save Mart Grape Escape” held in Sacramento in June 2014. **Save Mart**, a California supermarket chain and an ABC retail licensee, was mentioned in online Tweets, or retweets on **Twitter** and Facebook posts by at least 11 of the 45 Grape Escape participating wineries, prior to and during the event, to promote attendance among social media followers.

## The Wally's Catalog.

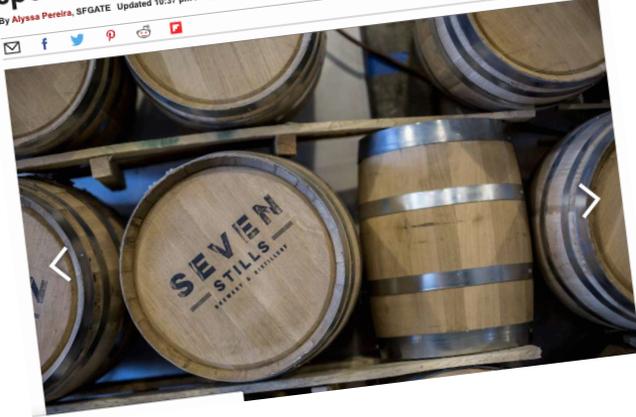
A number of California wineries found this out the hard way, when they purchased ads to appear in a holiday catalog for Wally's, a large southern California retailer. The wineries were contacted by the catalog printer. Ads were purchased directly from the printer, not the retailer. The wineries claimed that this was a straightforward purchase of advertising in a catalog sent to 125,000 consumers. But the ABC said that it was a tied house violation, and fined each winery \$10,000.

The wineries appealed the ABC's decision and won the first round, but the Court of Appeal upheld the ABC's contention that a winery's payment for advertising in the exclusive catalog of single retailer was furnishing a “thing of value” to the retailer, in violation of the tied house laws. The mere fact that the third party took the money did not insulate the winery from the violation, since the money was used to pay for costs of a retailer's catalog, reducing what the retailer had to pay.

# Tied-House Regulations

## Seven Stills hit with 60 tied-house violations, will shutter Bayview and Mission spaces

By [Alyssa Pereira](#), SFGATE Updated 10:37 pm PST, Sunday, February 2, 2020



## Seven Stills Brewery and Distillery Pauses Production and Closes Three Locations

Mission Bay remains open, Sunset closes temporarily, and Mission and Bayview shutter permanently

by [Becky Duffett](#) and [Eve Batey](#) | Feb 3, 2020, 3:20pm PST

f t SHARE



# Promoting Winemaker Dinners, In-store Tastings

- Regs vary by state - Oregon loosened only in past 2 years
  - OAR 845-013-0040
- Research laws pertaining to each state before actively promoting
- Even where allowed, most states limit messaging to retailer's name and address, date of event, name of supplier's product
  - Do not list price of winemaker dinner
  - No "laudatory statement" allowed – anything resembling praise
- Applies to winery eblasts, website, social media

# “Where to Buy”

- Lists multiple accounts - no favoritism
- If publishing a list of where to buy, list 7+ accounts

Find Bogle Wines in a Store Near You

97003]

CABERNET SAUVIGNON  CHARDONNAY  ESSENTIAL RED  MERLOT  OLD VINE ZINFANDEL  
 PETITE SIRAH  PETITE SIRAH PORT  PHANTOM CHARDONNAY  PHANTOM RED  PINOT NOIR  
 ROSE  SAUVIGNON BLANC

**TRADER JOES**  
11753 SW BEAVERTON HILLSDALE  
BEAVERTON Oregon 970052992  
0.43 MI DIRECTIONS  
Cabernet Sauvignon, Chardonnay, Essential Red, Old Vine Zinfandel, Petite Sirah

**NEW SEASONS MARKET**  
3495 SW CEDAR HILLS BLVD  
BEAVERTON Oregon 970051337  
0.44 MI DIRECTIONS  
Chardonnay, Old Vine Zinfandel, Petite Sirah, Pinot Noir

# ADA Website Compliance

## New York Wineries Sued over Website Accessibility for Visually Impaired

Lawsuits accuse wineries like Long Island's Wölffer Estate of violating the Americans with Disabilities Act



## Is Your Winery's Website ADA Compliant?

As a series of lawsuits hit East Coast wineries, the industry pushes for best practices and education on accessible sites.

by **Stacy Briscoe**

*Jul 2019 Issue of Wine Business Monthly*

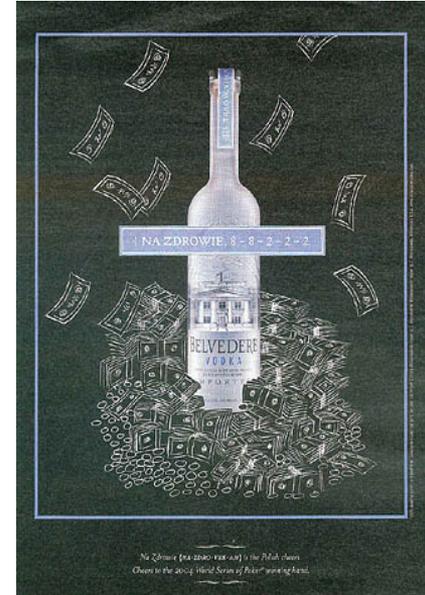
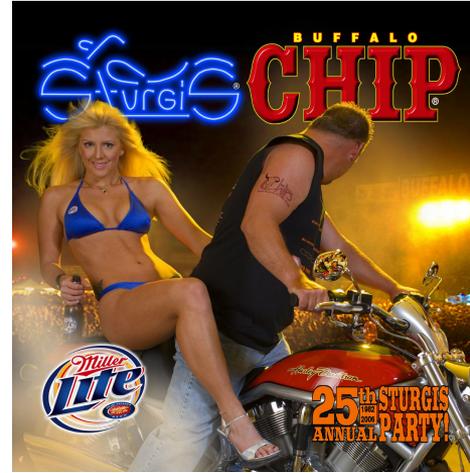
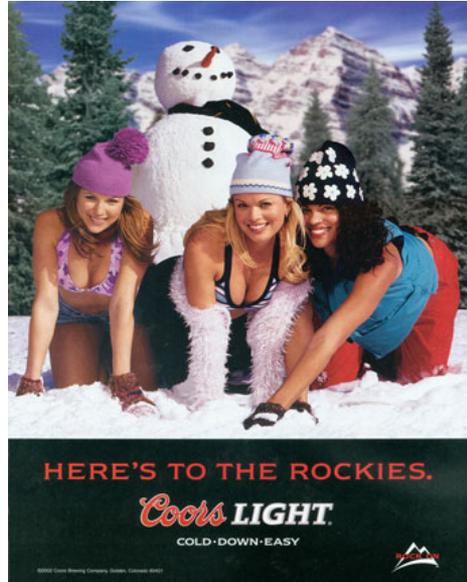
The last few years have seen a severe increase in Americans with Disability Act (ADA) web accessibility claims—lawsuits that allege certain websites are unusable by those with disabilities because said sites are not coded to work with assistive technology, such as screen readers. According to the Seyfarth ADA Title III News & Insights Blog ([adatitleiii.com](http://adatitleiii.com)), written by ADA Title III specialty team attorneys, the number of suits filed in federal court under Title III of the ADA in 2018 ...

# Etc...

## Others to Avoid:

- Depiction of drinking before, during, or after physical activities that require “a high degree of alertness or coordination”
  - Skiing, driving a forklift, mowing the lawn...
- Portrayal of drinking in a prohibited location
  - Public park restricting alcohol consumption, middle school campus, snuck into a sporting event
- Displaying the effects of alcohol content
  - eg relaxation, happiness, loss of control, sexual attraction
- Excessive drinking or intoxication
- Influencer Marketing: must disclose payment/partnership

Etc...



## Q&A

Bring it!

Please send in your questions via the app. We will review and prioritize based on popularity. We will try to get to as many as possible while being mindful of our time limit.

# Resources: Industry Groups

**NCSLA** National Conference of State Liquor Administrators [www.nscla.org](http://www.nscla.org)

*State Surveys and Regulatory resources available to members.*

**NABCA** National Alcohol Beverage Control Association [www.nabca.org](http://www.nabca.org)

*State Surveys and Regulatory resources available to members.*

**DISCUS** Distilled Spirits Council of the United States [www.distilledspirits.org](http://www.distilledspirits.org)

*Regulatory resources for members and DISCUS Code of Responsible Practices for Beverage Alcohol Advertising & Marketing also available.*

**OREGON WINE BOARD** [trade.oregonwine.org](http://trade.oregonwine.org)

*Oregon specific industry and regulatory resources.*

**WINE INSTITUTE** [www.wineinstitute.org](http://www.wineinstitute.org)

*California focused, but great public resources especially for Direct-to-Consumer shipping compliance. Wine Institute Code of Advertising Standards including Digital Marketing Guidelines also published online.*

# Resources: Government

**TTB** Alcohol and Tobacco Tax and Trade Bureau [www.ttb.gov](http://www.ttb.gov)

*Federal resources plus links to all State Alcohol Beverage Control Boards. Free subscription newsletters available.*

**FDA** Federal Drug Administration [www.fda.gov](http://www.fda.gov)

*Resources for labeling wines under 7% ABV and Food Facility Registration.*

**FTC** Federal Trade Commission [www.ftc.gov](http://www.ftc.gov)

*“Self-Regulation in the Alcohol Industry: Report of the Federal Trade Commission” 2014 is the most recent report available.*

**OREGON LIQUOR CONTROL COMMISSION** [Oregon.gov/olcc/pages/index.aspx](http://Oregon.gov/olcc/pages/index.aspx)

*State resources on licensing, labeling, laws and regulations.*

# Resources: Desk Reference

**The Digest of Wine & Spirits Law** (formerly M.J. Kramer, aka The Red Books)

*Online and Paper Subscription of state alcohol beverage regulations. A must have resource covering state licensing, label registration, franchise laws, pricing and promotions and advertising.*

# Resources: Wine Law and Industry Blogs

Many compliance services and law firms published beverage alcohol blogs or newsletters. A sampling is noted below, but a Google search offers additional resources.

<https://www.dwt.com/expertise/industries/food-beverage>

Davis Wright Tremaine LLP, Food & Beverage

[www.sovos.com/shipcompliant/blog](http://www.sovos.com/shipcompliant/blog)

Industry news, trends and insight from ShipCompliant

[www.alcohollawadvisor.com](http://www.alcohollawadvisor.com)

Regulatory and Distribution Law Updates for the Alcohol Industry  
(McDermott Will & Emery)

[www.beveragelaw.com/booze-rules](http://www.beveragelaw.com/booze-rules)

(Hinman & Carmichael LLP)

[www.dpf-law.com/practices/wine-law/](http://www.dpf-law.com/practices/wine-law/)

(Dickenson Peatman & Fogarty)

[www.alcohol.law](http://www.alcohol.law)

(Strike & Techel)