BROWER | VANDER VEEN

BRENNEN J. GORMAN, Esq.
800 First St #357
Muskegon, MI 49443

November 7, 2017

Michigan Liquor Control Commission
% Commissioners Deloney, Quimby, and Olshove
PO Box 30005
Lansing, MI 48909

Re: Wesco, Inc.
Declaratory Ruling Request of MCL 436.1541

Petitioner, Wesco, Inc., by and through its attorney, Brennen J. Gorman of Brower Vander Veen, PLC, makes its request for a declaratory ruling pursuant to MCL 24.263 and R 436.1971. Petitioner asks the Michigan Liquor Control Commission ("MLCC") to (1) declare a standard or non-exhaustive list of services to be used in calculating the minimum inventory requirement created by MCL 436.141, in a manner similar to the Commission's February 26, 2008 Administrative Order regarding qualified inventory; and (2) determine a means by which a Licensee may report those expenses to the Commission and tally them toward the $250,000 threshold.

I. Background

Petitioner is Wesco, Inc. ("Wesco"). Wesco is licensed by the Commission at over fifty gas stations/convenience stores across the state of Michigan and is headquartered in Muskegon, Michigan. The average Wesco store, without a SDD liquor license, only requires about $80,000 in total inventory. To satisfy the SDD inventory threshold in its stores with SDD liquor licenses, Petitioner is forced to carry up to an additional $170,000 per store in certain local government units. Across all stores, Petitioner holds more than two million dollars in surplus and redundant goods – a number which will only increase as it acquires additional quota SDD liquor licenses. In addition to these goods, Petitioner annually spends several million dollars on necessary and universally expected services provided to its customers and surrounding communities.

II. Proposed Services

The guiding statute for this request is MCL 436.1541, which requires an applicant for, or the holder of a Specially Designated Distributor ("SDD") liquor license, at a location that also owns or operates motor vehicle fuel pumps, to maintain a minimum inventory on the premises, excluding alcohol and motor vehicle fuel, of <u>goods and services customarily marketed</u> by approved types of businesses.[1] The minimum requirement is either $250,000 or $12,500, varying with regard to the location and population of the local governmental unit upon which the premise sits.[2]

Historically this requirement has been fulfilled by licensees amassing large amounts of one item to reach the necessary amount of qualified goods as the average gas station convenience store has limited space and has no need for that amount of inventory. To Petitioner's knowledge the

[1] MCL 436.1541(1)(a)(ii) (emphasis added).
[2] *See* MCL 436.1541(1)(a)(ii); MCL 436.1541(2)(b); MCL 436.1541(3)(b); MCL 436.1541(11)(a)(i)(B).

p. 248.345.5624 | f. 231.421.6605 | e. bjg@bvvlaw.com

application of services to the threshold has not been considered by the Commission. Here, Petitioner finds that the basic rules of the English language give the statute an unambiguous plain meaning.

While services are not defined explicitly in the Liquor Control Code, The Oxford Dictionary of Economics provides some insight in the definition of "services," in the context of the economy, stating, "[e]conomic goods which do not take a tangible and storable form. In some cases, these require the physical presence of the customer, as for example with hairdressing, medical treatment, or live entertainment. In other cases, services can be performed at a distance: for example, legal representation or insurance."[3]

A "service," in the context of MCL 436.1541 is clearly meant to encompass an intangible economic activity provided by an approved type business. In the scope of MCL 436.1541 they type of services customarily provided by approved type businesses can be either be those that customers pay for and those that customers receive at the business' expense. Petitioner expects that as with inventory, the question is not whether a service should qualify, but rather *which* services are customarily marketed by approved type business. Below Petitioner has included several services, which it believes are customarily marketed by approved type businesses and should be accepted by the Commission.

Customer Service Representatives

There are universal expectations customers have when entering a gas station convenience store. When a customer enters a gas station convenience store, any gas station convenience store, they do so with the expectation that they will be serviced by an employee at the counter. These employees stock the shelves, trouble shoot customer issues, and maintain the cleanliness of the premise. Employees are the faces of the company for whom they work. The General Manager of a store often takes on additional duties, managing electronic surveys, taking customer calls, comments, complaints, and inquiries.

The cost associated with staffing includes wages/salaries/benefits and any resources used in the interview/hiring/training of these customer service representatives. It is important for gas station convenience stores to provide this service because it creates an expectation of service and can improve the stations operation, product, and service provided to the customer. Without customer service representatives, the business would cease to function. The absolute need and expectation that there will be a customer service representative upon entering the premise qualifies the capital expended as a service customarily marketed.

Credit Card Machines

Credit cards have grown into the go-to means of paying for goods and services. Pay-at-the-pump stations are emblematic of the rapid growth driven by consumers adjusting the means by which they paid for goods and services. While the machines are simple enough to acquire, the transactional fees and fees charged by the credit card processing company create an ever-present burden on businesses. While the exact percentage varies business-to-business, these payments are necessary for gas stations convenience stores to pay to provide an expedient and competitive business.

[3] *Services*, A Dictionary of Economics (3rd ed. 2009).

The total cost businesses pay each year toward credit card processing fees are a direct result of the service they provide by hosting credit card machines for customer's use. While there are gas stations that do exist without credit card machines, they are not the norm nor the expectation of a customer in need of gasoline. Similar to customer service representatives, the service's pervasiveness is one that rises to the level of customarily marketed.

As further evidence of this position, MCL 436.2024 of the Michigan Liquor Control Code utilizes the term "automatic teller machine services." While this statute may not directly discuss credit card machines, it does interpret an exceedingly similar machine as a "service." Petitioner believes in the lack of any on-point statutes or rules regarding services, utilizing other areas of the Code to infer intent is necessary. Here, Petitioner asserts that as both automatic teller machines and credit card machines sole function is to read a credit card or a debit card, they should be treated as services.

Technically Trained Personnel

It is not uncommon for gas stations to be the home for a mechanic garage or automatic car wash. For a garage to function, it requires the employment of certified mechanics and automatic car washes need to be maintained as they are prone to break down. While these are certainly not nearly as common as customer service representatives, these employees are integral for the businesses that opt to market themselves as a with either service. While the business will likely earn money from its investment, it is the investment necessary to provide the service that should qualify wages/salaries/benefits for technically trained personnel as a qualified service customarily marketed.

III. Accounting for Services

As services need to be counted toward the threshold, Petitioner requests that the Commission determine how these figures should be documented by Licensees, when/if Licensees should report those figures to the Commission, what Licensee would need to do if its monthly total incidentally fell below the threshold and any other relevant considerations in accounting for services.

IV. Conclusion

Petitioner respectfully requests that the Commission determine, which services are customarily marketed by approved types of businesses to be applied toward the $250,000 threshold and that the Commission determine a method of accounting those expenditures. Petitioner requests the Commission issue a declaratory ruling to that effect with regard to MCL 436.1541.

If you have any questions or concerns, please do not hesitate to contact me by phone or email at any time.

Best Regards,

Brennen J. Gorman