

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN LIQUOR CONTROL COMMISSION

In re: SLJ Group, Inc.
d/b/a: Lionstone International
1151 E. Laraway Rd.
Joliet, IL 60433-9520

RECEIVED

OCT 11 2018

Complaint No: CV-501566
_____ /

MI LIQUOR CONTROL COMMISSION
OFFICE OF THE CHAIRPERSON

REQUEST FOR DECLARATORY RULING

NOW COMES SLJ Group, Inc., doing business as Lionstone International ("Lionstone"), pursuant to Section 63 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.263, and the applicable rules of the Michigan Liquor Control Commission (the "Commission"), Rules 436.1971 – 436.1975, and hereby requests a declaratory ruling as to the applicability of certain statutes administered by the Commission to the actual state of facts described herein.

I. INTRODUCTION

Lionstone brings this Request for Declaratory Ruling to the Commission because the Commission issued against Lionstone a multi-count Complaint dated July 10, 2018. (See Exhibit A, Complaint.) The Complaint contends that Lionstone: (1) engaged in the direct sell (sic) of wine to consumers contrary to MCL 436.1203(15) and/or MCL 436.1113a(7); and (2) allowed Direct Wines, Inc. ("DWI") to derive use or benefit from Lionstone's license contrary to Rule 436.1041(1).

Because the Complaint relates to other complaints issued against parties with which Lionstone does business, as well as a Cease and Desist letter issued against DWI by the Attorney General, we respectfully request that the Commission consider these matters together, apply the law to the facts, determine that Lionstone is not engaged in the direct sale of wine to consumers, determine that DWI is not subject to licensure by the Commission, determine that Lionstone has not violated the use and benefit rule, and that the Commission rescind and withdraw the Complaint issued against Lionstone.

II. STATEMENT OF FACTS

1. Lionstone is a licensed outstate seller of wine in the State of Michigan and holds License #83162 issued by the Commission. (See Exhibit B, Affidavit of Nicholas Lucca; ¶ 3..)
2. Lionstone is licensed by the Tax and Trade Bureau of the US Department of Treasury as a wholesaler and importer of wine products. (See Exhibit B, Affidavit of Nicholas Lucca; ¶ 3.)

3. All wine products offered by Lionstone are sold and distributed in the State of Michigan by Cornerstone Wine Distributors LLC, a Michigan licensed wholesaler. (See Exhibit B, Affidavit of Nicholas Lucca; ¶ 5.)
4. Lionstone has never engaged in the direct sale of any brand of wine to consumers in the State of Michigan, including but not limited to the period from October 23, 2018 to November 20, 2017, as set forth in the Complaint. (See Exhibit B, Affidavit of Nicholas Lucca; ¶ 7.)
5. Lionstone holds a variety of other licenses in other states and has done business on a national basis with other wholesalers. (See Exhibit B, Affidavit of Nicholas Lucca; ¶s 4 and 6.)
6. In the State of Michigan, all wines Lionstone sells to Michigan wholesalers are registered prior to sale. (See Exhibit C, Supplemental Affidavit of Nicholas Lucca; ¶ 7.)
- 7.

III. RELEVANT STATUTES AND RULES

1. Michigan Liquor Control Code of 1998 (the “Code”), 1998 PA 58, MCL 436.1001, *et seq*, particularly Section 203, MCL 436.1203, and subsections (15), (17), and (25)(m) set forth below:

(15) A retailer that holds a specially designated merchant license located in this state may use a third party facilitator service by means of the internet or mobile application to facilitate the sale of beer or wine to be delivered to the home or designated location of a consumer as provided in subsection (12) or this subsection, and a third party facilitator service may deliver beer or wine to a consumer on behalf of a retailer that holds a specially designated merchant license located in this state, if all of the following conditions are met:

(a) If the third party facilitator service delivers beer or wine under this subsection, the third party facilitator service verifies that the individual accepting the delivery of the beer or wine is at least 21 years of age.

(b) A manufacturer, warehouse, wholesaler, outstate seller of beer, outstate seller of wine, supplier of spirits, or outstate seller of mixed spirit drinks does not have a direct or indirect interest in the third party facilitator service.

(c) A manufacturer, warehouse, wholesaler, outstate seller of beer, outstate seller of wine, supplier of spirits, or outstate seller of mixed spirit drinks does not aid or assist a third party facilitator service by gift, loan of money or property of any description, or other valuable thing as defined in section 609, and a third party facilitator service does not accept the same.

Michigan Liquor Control Commission
Request for Declaratory Ruling
SLJ Group, Inc.

(d) The retailer or consumer pays the fees associated with deliveries provided for under this subsection.

(e) The third party facilitator service offers services for all brands available at the retail location.

* * *

(17) A third party facilitator service shall not deliver beer, wine, or spirits to a consumer under subsection (15) or (16), as applicable, and shall not facilitate the sale of beer, wine, or spirits under subsection (15) or (16), as applicable, unless it applies for and is granted a third party facilitator service license by the commission. The commission may charge a reasonable application fee, initial license fee, and annual license renewal fee. The commission shall establish a fee under this subsection by written order.

* * *

(25) As used in this section: . . .

(m) “Third party facilitator service” means a person licensed by the commission to do any of the following:

(i) Facilitate the sale of beer or wine to a consumer as provided in subsection (15) on behalf of a retailer that holds a specially designated merchant license located in this state.

(ii) Facilitate the sale of spirits to a consumer as provided in subsection (16) on behalf of a retailer that holds a specially designated distributor license located in this state.

(iii) Deliver beer or wine to a consumer as provided in subsection (15) on behalf of a retailer that holds a specially designated merchant license located in this state.

(iv) Deliver spirits to a consumer as provided in subsection (16) on behalf of a retailer that holds a specially designated distributor license located in this state.

2. Michigan Liquor Control Code of 1998 (the “Code”), 1998 PA 58, MCL 436.1001, *et seq*, particularly Section 113a(7), MCL 436.1113a(7), set forth below:

“Wholesaler” means a person who is licensed by the commission and sells beer, wine, or mixed spirit drink only to retailers or other licensees, and who sells sacramental wine as provided in section 301. A wholesaler includes a person who may also act as a master distributor unless prohibited from doing so by its supplier or manufacturer in a written agreement required by either section 305(3)(i) or 403(3)(i) and, by mutual agreement with an outstate seller of beer or wine, can be

Michigan Liquor Control Commission
Request for Declaratory Ruling
SLJ Group, Inc.

authorized by the outstate seller of beer or wine to do, in the manner provided by the commission, either or both of the following:

- (a) Register with the state of Michigan the labels of the outstate seller of beer or wine.
- (b) On behalf of the outstate seller of beer or wine, collect excise taxes levied by the state of Michigan and remit the taxes to the commission.

3. Commission Rule 436.1041(1), set forth below:

A licensee or an applicant for a license shall not obtain or attempt to obtain a license for the use or benefit of another person whose name does not appear on the license. In addition, a licensee shall not allow a person whose name does not appear on the license to use or benefit from the license.

4. Michigan Administrative Procedures Act, 1969 PA 306, MCL 24.201, *et seq.*

IV. DISCUSSION

DWI works with internet based wine clubs including WSJwine, Virgin Wines, and Laithwaite's Wine, to provide media and marketing services. Those wine clubs offer portals to Michigan consumers giving them the ability to purchase wines from Wine Dock Liquor & Fine Wine, Inc. ("Wine Dock") that are otherwise not generally available in Michigan. Wine Dock takes the orders and fulfills those orders utilizing Michigan's 3-tier system of wine distribution by placing an order with a licensed wholesaler, which places an order with Lionstone, a licensed outstate seller of wine. The subject wine products rights are registered as required by Michigan law and all taxes are paid by the appropriate licensee.

Cornerstone, as the wholesaler, accepts Wine Dock's order for a particular wine product and orders that product from Lionstone. Lionstone sells the product to Cornerstone – not to any consumers, Cornerstone sells the product to Wine Dock – not to any consumers. Wine Dock pays UPS or FedEx to deliver the wine to Wine Dock's customers from Wine Dock's licensed premises.

With respect to wine distribution, MCL 436.1203 defines a "third party facilitator service" at Subsection (25)(m) to mean a person licensed by the commission to do any of the following:

(i) *Facilitate* the sale of beer or wine to a consumer *as provided in subsection (15)* on behalf of a retailer that holds a specially designated merchant license located in this state.

* * *

(iii) *Deliver beer or wine to a consumer as provided in subsection (15)* on behalf of a retailer that holds a specially designated merchant license located in this state.

MCL 436.1203(25) (emphasis added). This section of the law refers back to Subsection (15), which states that an SDM licensed retailer may “use a third party facilitator service by means of the internet or mobile application to *facilitate* the sale of beer or wine to be delivered to the . . . consumer . . . and a third party facilitator service may deliver beer or wine to a consumer on behalf of a retailer . . . if *all of the following conditions are met*: . . .” The entirety of Subsection (15) is set forth above. The “conditions” refer to outstate sellers of wine not having an interest in a third party facilitator service and outstate sellers of wine not aiding or assisting a third party facilitator service. Lionstone does not have an interest in, nor aid or assist, any third party facilitator service. In addition, Lionstone does not deliver wine to consumers. It is not clear what the Commission was attempting to achieve by citing this confusing new third party facilitator licensing statute, MCL 436.1203(15), in the Complaint against Lionstone.¹ Surely the Commission cannot be suggesting that Lionstone should be licensed as a third party facilitator service. Lionstone is a licensed outstate seller of wine that is operating strictly within the law and within Michigan’s 3-tier system of distribution.

The Complaint also references MCL 436.1113a(7), the definition of “wholesaler,” as an alternative statute that Lionstone has somehow violated in its operation. Lionstone, as a licensed outstate seller of wine, is “licensed by the commission to sell wine that has not been manufactured in this state to a wholesaler in this state in accordance with rules promulgated by the commission.” MCL 436.1109(10). Lionstone sells wine not manufactured in Michigan to Cornerstone, a Michigan licensed wholesaler. MCL 436.1113a(7) also provides that, by mutual agreement Lionstone and Cornerstone could agree that Cornerstone would register with the Commission the labels of Lionstone and could agree that Cornerstone could collect excise taxes levied by Michigan on Lionstone products and remit those taxes to the state on Lionstone’s behalf. In the case of the particular products identified in the Complaint, Lionstone sells the wine to Cornerstone which then sells that wine to Wine Dock, a licensed SDM retailer. The products are appropriately registered and taxes are appropriately paid. There is no violation of this section of the law.

Finally, Lionstone is not allowing DWI to derive use or benefit of Lionstone’s outstate seller of wine license in violation of Rule 436.1041(1). Lionstone understands that DWI provides a variety of marketing and media services to Wine Dock much as other media and marketing companies (including newspapers, magazines, and trade associations) provide advertising and marketing services to Wine Dock and other retailers in this state. While the services performed relate to promoting wine products that also happen to be sold by Lionstone throughout the United States, a conclusion that there must, therefore, be a use or benefit violation is erroneous.

V. DECLARATORY RULING REQUEST

Based on the actual state of facts described herein and the applicability of the referenced statutes and rules the Commission administers to those facts, Lionstone requests that the Commission

¹ The US District Court for the Eastern District of Michigan recently held that the statute in question, 2016 PA 506, MCL 436.1203, is unconstitutional in certain regards. *Lebamoff Enterprises v Snyder*, Case No 17-10191, 9-28-2018.

Michigan Liquor Control Commission
Request for Declaratory Ruling
SLJ Group, Inc.


declare and rule that the July 10, 2018 Complaint issued against Lionstone be rescinded and withdrawn because: (1) Lionstone is not directly selling wine to consumers in violation of MCL 436.1203(15); (2) Lionstone is not directly selling wine to consumers in violation of MCL 436.1113a(7); and (3) Lionstone is not allowing DWI to derive use or benefit from its outstate seller of wine license.

Respectfully submitted,

JPHOWE, PLLC

Dated: October 11, 2018

By:



J. Patrick Howe (P68634)
JPHOWE, PLLC
280 N. Old Woodward, Ste. 12
Birmingham, Michigan 48009
(248) 385-3112 (phone)
(888) 450-1682 (fax)

Michigan Liquor Control Commission
Request for Declaratory Ruling
SLJ Group, Inc.

EXHIBIT A



STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

RICK SNYDER
GOVERNOR

SHELLY EDGERTON
DIRECTOR

NOTICE OF HEARING ON COMPLAINT
(Authorized by M.A.C. R436.1909)

September 14, 2018

To: SLJ GROUP, INC.
D/B/A LIONSTONE INTERNATIONAL
1151 E Laraway Rd,
Joliet, IL 60433-9520

Complaint No: CV-501566

The Michigan Liquor Control Commission (MLCC) has scheduled a violation hearing on the enclosed Complaint filed against you which alleges a violation of the laws of the State of Michigan, or rules of the Commission, or both, with respect to the operation of your establishment, for:

At: MLCC Lansing District Office
525 W. Allegan Street
Lansing, MI 48909

On: Wednesday
October 17, 2018
10:00 AM

Administrative rule R 436.1913 requires a licensee (individual, co-licensee, partner, corporate officer, general partner, etc.) to personally appear at the hearing. You may bring any exhibits or witnesses you wish to have testify on your behalf. Failure to attend this hearing may result in actions taken against your license(s), including immediate suspension, at the discretion of the Hearing Commissioner, under the authority granted by Section 903 of the Liquor Control Code, 1998 PA 58, MCL 436.1903, as amended.

You have the right to have an attorney represent you. The attorney must file a written appearance before, or at, the time of the hearing. Your attorney can mail or fax their appearance to this office prior to the date of hearing. **Please note that under administrative rule R 436.1927(1), "all documents and papers pertaining to a hearing or appeal hearing shall be filed at the Lansing Office of the Commission."**

Any request for postponement of these proceedings must conform to administrative rule R 436.1931(1), which states, "Requests for postponements shall be made in writing not less than 2 working days before the violation hearing or appeal hearing date unless waived by a Commissioner." A Commissioner or duly authorized agent of the Commission may grant your written postponement request. Please direct any such requests to Lori Schrader at (517) 284-6267, or by fax at (517) 763-0053.

If you have any questions regarding the hearing process, please contact the Hearings and Appeals Section between the hours of 8:00 AM and 5:00 PM, Monday through Friday, at **(517) 284-6270**.

Sincerely,

Julie Wendt, Director
Executive Services Division

JW: RC

Enclosures

cc: Mailing Address
Atty. J. Patrick Howe
Inv. Raymond
Inv. Blau



State of Michigan
Department of Licensing and Regulatory Affairs
LIQUOR CONTROL COMMISSION
525 W. Allegan St.
P.O. Box 30005
Lansing, Michigan 48909-7505

Complaint No. 8-CV-501566
Business ID No. 18314
L-8

In Re: SLJ Group, Inc.
d/b/a Lionstone International
1151 E Laraway Rd
Joliet, IL 60433-9520

Date: July 10, 2018

OSSB OSSW

COMPLAINT

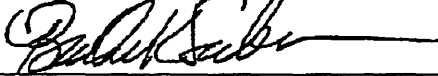
This Complaint alleges that the licensee or the licensee's agent, clerk or employee:

1. an outstate seller of wine, engaged in the direct sell of wine to consumers, specifically: October 23, 2017 sale of HJ Fabre Malbec Reserve wine through WSJ Wine website, contrary to Section 203(15) and/or Section 113a(7) of the Michigan Liquor Control Code, MCL 436.1203(15) and/or MCL 436.1113a(7).
2. an outstate seller of wine, engaged in the direct sell of wine to consumers, specifically: October 31, 2017 sale of Mediterranean White wine through WSJ Wine website, contrary to Section 203(15) and/or Section 113a(7) of the Michigan Liquor Control Code, MCL 436.1203(15) and/or MCL 436.1113a(7).
3. an outstate seller of wine, engaged in the direct sell of wine to consumers, specifically: November 20, 2017 sale of California Goldstrike Cabernet Sauvignon wine through WSJ Wine website, contrary to Section 203(15) and/or Section 113a(7) of the Michigan Liquor Control Code, MCL 436.1203(15) and/or MCL 436.1113a(7).
4. an outstate seller of wine, engaged in the direct sell of wine to consumers, specifically: October 23, 2017 sale of Collezione di Pablo Chanti wine through Laithwaites Wine website, contrary to Section 203(15) and/or Section 113a(7) of the Michigan Liquor Control Code, MCL 436.1203(15) and/or MCL 436.1113a(7).
5. an outstate seller of wine, engaged in the direct sell of wine to consumers, specifically: October 31, 2017 sale of Via Castilla Tempranillo wine through Laithwaites Wine website, contrary to Section 203(15) and/or Section 113a(7) of the Michigan Liquor Control Code, MCL 436.1203(15) and/or MCL 436.1113a(7).
6. an outstate seller of wine, engaged in the direct sell of wine to consumers, specifically: November 30, 2017 sale of Deloach Chalk Hill Chardonnay wine through Laithwaites Wine website, contrary to Section 203(15) and/or Section 113a(7) of the Michigan Liquor Control Code, MCL 436.1203(15) and/or MCL 436.1113a(7).
7. an outstate seller of wine, engaged in the direct sell of wine to consumers, specifically: October 23, 2017 sale of Pillaastro Primitiva wine through Virgin Wines website, contrary to Section 203(15) and/or Section 113a(7) of the Michigan Liquor Control Code, MCL 436.1203(15) and/or MCL 436.1113a(7).
8. an outstate seller of wine, engaged in the direct sell of wine to consumers, specifically: October 31, 2017 sale of Lobo Falcao wine through Virgin Wines website, contrary to Section 203(15) and/or Section 113a(7) of the Michigan Liquor Control Code, MCL 436.1203(15) and/or MCL 436.1113a(7).

9. an outstate seller of wine, engaged in the direct sell of wine to consumers, specifically: November 20, 2017 sale of Bridge Lane Dry Rose' wine through Virgin Wines website, contrary to Section 203(15) and/or Section 113a(7) of the Michigan Liquor Control Code, MCL 436.1203(15) and/or MCL 436.1113a(7).
10. allowed Direct Wines, whose name does not appear on the license, to derive use or benefit from the license, contrary to Rule 436.1041(1).

Wherefore, it is requested that a hearing be conducted, and a decision made in accordance with section 903 of the Michigan Liquor Control Code being MCL 436.1903, and the Liquor Control Commission Rules.

LIQUOR CONTROL COMMISSION
LICENSING AND ENFORCEMENT DIVISION

By: 

ACKNOWLEDGMENTS

This complaint was drafted pursuant to a written Violation Report or other information which was submitted to the enforcement arm of the Commission. A copy of the Violation Report or other information is being furnished to you along with this Complaint. The licensee may waive a hearing and acknowledge the facts pursuant to this Report.

SEE REVERSE SIDE FOR WAIVER OF HEARING AND ACKNOWLEDGMENT FORM

LC-678-4L (07/2014) DLARA is an equal opportunity employer/program. Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.

Michigan Liquor Control Commission
Request for Declaratory Ruling
SLJ Group, Inc.

EXHIBIT B

AFFIDAVIT OF NICHOLAS ANTHONY LUCCA

**RE: NOTICE OF HEARING ON COMPLAINT FILED BY THE MICHIGAN LIQUOR
CONTROL COMMISSION TO SLJ GROUP, INC. d/b/a LIONSTONE
INTERNATIONAL IDENTIFIED AS COMPLAINT #8-CV-501566**

I, **NICHOLAS ANTHONY LUCCA**, being first duly sworn upon oath, hereby depose and state as follows:

1. I am in excess of twenty-one (21) years of age, and I have personal knowledge of the facts set forth in this Affidavit and know same to be true. If sworn to testify, I would testify competently and under penalty of perjury as to the matters set forth hereinbelow.

2. I am President of SLJ Group, Inc. d/b/a Lionstone International (hereinafter "Lionstone").

3. Lionstone is licensed by the Tax and Trade Bureau of the Department of the Treasury as a wholesaler and importer of wine products and by the State of Michigan as an out of state seller of wine under the name of SLJ Group, Inc. d/b/a Lionstone International, 28188 N. Ballard Drive, Lake Forest, Illinois 60045, identified as Michigan license number 83162.

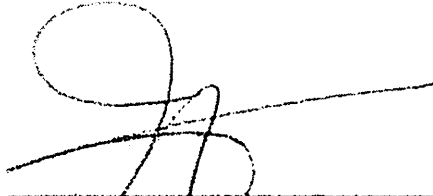
4. Lionstone also holds a variety of other state licenses as a wholesaler, importer, and out of state shipper.

5. Lionstone's out of state seller of wine license in Michigan is used only to ship wine products to Cornerstone Wine Distributors, LLC.

6. Lionstone has done business on a national basis with other wholesalers.

7. Lionstone has never engaged in the direct sale of any brand of wine to consumers in the State of Michigan, including but not limited to the period from October 23rd, 2017 to November 20th, 2017 as set forth in the aforementioned complaint.

FURTHER AFFIANT SAYETH NOT.



NICHOLAS ANTHONY LUCCA

SUBSCRIBED AND SWORN TO
before me this 1st day
of October 2018.



Notary Public

