

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of:)
)
Washington Wholesale)
)
Request for Advisory Opinion)
)
_____)

License No. 60518
Order No.: 2009-225

BEFORE: Peter B. Feather, Chairperson
Mital M. Gandhi, Member
Nick Alberti, Member
Charles Brodsky, Member
Donald Brooks, Member
Herman Jones, Member

ALSO PRESENT: Paul Pascal, Counsel for Washington Wholesale

ADVISORY OPINION AND ORDER

Washington Wholesale is a licensed wholesaler in the District of Columbia pursuant to D.C. Code § 25-111(c)(1). Prior to the Hearing before the Alcoholic Beverage Control Board (the “Board”) on July 1, 2009, Washington Wholesale requested the Board’s approval of a “Just-in-Time” delivery system because they were unable to locate suitable space in the District to accommodate their space requirements. The Board rejected this request, which prompted the instant issue before the Board – whether Washington Wholesale could purchase alcohol from a wholesaler in Maryland, Reliable Churchill without running afoul of the Primary American Source Rule. Because Washington Wholesale is requesting the Board’s approval of an activity that has not yet been engaged in, the matter is not ripe for adjudication; however, the Board will perceive this request as one for an Advisory Opinion, and the Board hereby opines:

FINDINGS OF FACT

1. Washington Wholesale is a Class A Wholesaler in the District of Columbia. *See Alcoholic Beverage Regulation Administration (“ABRA”) Licensing File Number 60518.* Washington Wholesale has presented an issue to the Board for which it requests an advisory opinion as to whether the proposed activity comports with the law. Counsel for Washington Wholesale requested a hearing before the Board, which occurred on July 1, 2009. *Transcript, July 1, 2009*, at 3-9. The Board notes that this issue has some history before the Board based on a continuing problem of limited warehousing space. *See Correspondence from Counsel for Washington Wholesale and Republic National Distributing Company*, letters dated June 10, 2008, December 12, 2008, and April 13, 2009, and supporting documents.

2. Republic National Distributing Company and Washington Wholesale had a Fact Finding Hearing before the Board on October 8, 2008, to review a request for a “Just-in-Time” delivery system. *Transcript, October 8, 2008*, at 3-7. This request came in light of the Wholesalers’ difficulty in finding adequate storage space within the District of Columbia to meet their increased sales needs. *Transcript, October 8, 2008*, at 3-4. For purposes of this Board Opinion, the details of the “Just-in-Time” delivery system are more fully described in the Transcript and need not be restated herein because the Board rejected this proposal informally and Counsel presented another alternative – the issue raised during the July 1, 2009 Hearing.

3. Washington Wholesale requested the Board to approve a proposed solution to their space constraint problem by permitting them to purchase alcoholic beverages directly from Reliable Churchill, a Maryland wholesaler. *Transcript, July 1, 2009*, at 7-9. The two wholesalers are owned by a parent company, Charmer Sunbelt Group. *Transcript, July 1, 2009*, at 5. They also share common executives and a common purchasing operation. *Transcript, July 1, 2009*, at 5. Washington Wholesale wants to have the ability to purchase products from Reliable Churchill if they become short on product in their otherwise fully-stocked warehouse. *Transcript, July 1, 2009*, at 7. All of Washington Wholesale’s systems would remain intact – employees, sales, purchasing, marketing, drivers, etc. *Transcript, July 1, 2009*, at 8. The only difference would be the possibility that at some point, up to ten percent of their product would be purchased from Reliable Churchill instead of the Primary Source. *Transcript, July 1, 2009*, at 8. This allows them to operate in the District in spite of their difficulty in securing more warehouse space. *Transcript, July 1, 2009*, at 14-15.

CONCLUSIONS OF LAW

4. Counsel for Washington Wholesale argued that because Washington Wholesale and Reliable Churchill are part of a larger conglomerate and purchase from the same “Primary American Source,” the intent of the Primary American Source Rule is not violated by this proposed operation. *Transcript, July 1, 2009*, at 15. From time to time, the Board is asked to interpret certain provisions of the laws and regulations that it

enforces. This is not a contested case, rather, it is a request from a licensed wholesaler for an opinion on whether a proposed business operation comports with the ABC laws. The Board commends the Licensee for its continuing efforts to work with the Board to try to solve a logistical problem of space constraints and the Board welcomes additional proposals. However, the Board cannot find that this proposed operation comports with the law. The Board took this matter under advisement at the time of the hearing. Upon consideration of Washington Wholesale's request to purchase alcohol from its "sister" corporation, Reliable Churchill in Maryland, the Board finds that this proposed activity conflicts with the Primary American Source Rule espoused in 23 D.C.M.R. §§ 900.1 and 900.2.

5. Washington Wholesale and Reliable Churchill are both alcoholic beverage wholesalers, incorporated in different states and operating as separate corporate entities, but owned by the same conglomerate company, Charmer Sunbelt Group. Although Counsel represents that Washington Wholesale and Reliable Churchill share a common purchasing operation, the Board cannot find that they are the same "wholesaler" for purposes of circumventing the Primary American Source Rule. The Rule, in two parts, states:

23-900. PRIMARY AMERICAN SOURCE OF SUPPLY.

900.1 It shall be unlawful for any wholesaler to purchase any alcoholic beverage for resale unless the alcoholic beverages are purchased from the primary American source of supply for the brand of alcoholic beverages sought to be resold.

900.2 It shall be unlawful for any wholesaler to sell any alcoholic beverages in the District of Columbia if the alcoholic beverages have not been purchased by the wholesaler from the primary American source of supply.

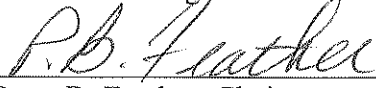
The Board cannot approve Washington Wholesale's request to purchase alcoholic Beverages from another wholesaler, Reliable Churchill, because the law states that the purchase must be "from the primary American source of supply." Reliable Churchill does not qualify as a "Primary American Source", nor is it the *same* wholesaler as Washington Wholesale. The Board cannot endorse Washington Wholesale's proposed operation because it does not comply with 23 D.C.M.R. § 900. Therefore, the request to permit the purchase of alcoholic beverage by Washington Wholesale from Reliable Churchill is **DENIED**.

ORDER

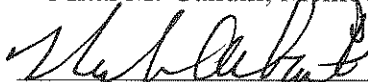
Based on the foregoing reasons, as well as all of the information submitted to the Board with respect to this matter, it is hereby **ORDERED** on this 9th day of September, 2009, that Washington Wholesale's request to purchase alcoholic beverages from Reliable Churchill is **DENIED**.

Further, it is the **ADVISORY OPINION** of the Board that this proposed operation is not compliant with the laws governing the operation of alcoholic beverage wholesalers in the District of Columbia because a wholesaler may only purchase alcoholic beverages from the Primary American Source. 23 D.C.M.R. § 900.

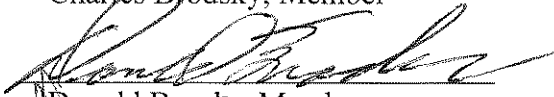
District of Columbia
Alcoholic Beverage Control Board


Peter B. Feather, Chairperson

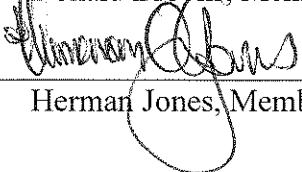
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