

**STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

IN THE MATTER OF CB COASTAL, LLC,)	
D/B/A SEA SMOKE CELLARS, PETITION)	SR 2024-04
FOR SPECIAL TEMPORARY PERMIT TO)	SPECIAL RULING AUTHORIZING
SHIP PRODUCT PURSUANT TO TERMS OF)	ISSUANCE OF TEMPORARY
SALE.)	MISCELLANEOUS CONTINGENCY PERMIT
)	TO CB COASTAL, LLC.
)	

Nicholas J. Bergman, Esq., on behalf of CB Coastal, LLC.

Nicolas Seminoff, DAG, for the Division

BY THE DIRECTOR:

This matter concerns a California winery’s products that were purchased by New Jersey consumers but remain unshipped. CB Coastal, LLC, d/b/a Sea Smoke Cellars (“CB Coastal”)¹, has submitted a petition for relief before the Division of Alcoholic Beverage Control (Division) for a Temporary Miscellaneous Contingency Permit from the Division under N.J.S.A. 33:1-74 and N.J.A.C. 13:2-5.5, seeking the Division’s authorization to ship this product to its New Jersey purchasers. Because CB Coastal does not hold a New Jersey out of state winery license, it must obtain the Division’s authorization before it can ship this product. Due to the unique circumstances of this matter and for the reasons set forth herein, the Division will grant relief to CB Coastal, subject to the conditions contained in this Special Ruling.

¹ CB Coastal is a wholly-owned subsidiary of Constellation Brands, Inc., which holds a New Jersey Plenary Wholesale license issued by the Division.

Background

In June 2024, CB Coastal purchased Sea Smoke, Inc (“Sea Smoke”), a California winery producing only about 24,000 cases per year of “critically-acclaimed” products that are “truly limited in availability.” (Petition of CB Coastal, at pg. 1). Sea Smoke was a licensed New Jersey out of state winery (license number 3403-41-931-001), which was authorized to make direct-to-consumer sales of its wines and ship those wines from California to New Jersey customers. Due to the exclusivity of its wines, Sea Smoke used a mailing list system, whereby only consumers on the mailing list would be able to make advanced purchases of Sea Smoke’s limited availability of wine products. Sea Smoke’s products are not available in most retail stores, and many consumers try to but are unable to get on Sea Smoke’s mailing list. (See CB Coastal October 21, 2024, Supplemental Submission in support of its petition, at pg. 2). Sea Smoke would take orders from customers on its mailing list for its wines early in the calendar year (spring time and earlier), receive payment for those wines, and then hold the purchased products in a temperature-controlled storage space until outdoor ambient temperatures were low enough to allow shipment by non-refrigerated carrier, usually in late October through December of the year in which the wines were purchased. Once shipment was completed, Sea Smoke would remit the appropriate taxes to the New Jersey Division of Taxation.

Sea Smoke sold its operations to CB Coastal in June 2024, a company that does not hold a New Jersey out of state winery license. At the time of acquisition by CB Coastal, Sea Smoke was holding 256.75 cases (3081 bottles) of various Sea Smoke wines in temperature-controlled storage awaiting shipment to 266 individual New Jersey customers that had purchased that wine earlier in the year through the mailing list process outlined above. Every purchased product has an invoice

reflecting that the wine and shipping charges were paid by the New Jersey purchasers; they were simply awaiting the proper temperatures in which to ship the purchases.²

These purchases remained unshipped, however, at the time that CB Coastal acquired Sea Smoke. While CB Coastal acquired the existing inventory of Sea Smoke's, it is not able to ship the products purchased by the New Jersey purchasers because it does not have a New Jersey out of state winery license.³ CB Coastal represents that it holds similar out of state winery licenses in other states where such licenses are available.

CB Coastal wishes to preserve the Sea Smoke brand and reputation it has purchased, but recognizes it is not authorized to ship alcoholic beverages directly to New Jersey consumers. CB Coastal asserts that simply offering the New Jersey purchasers a refund could cause significant damage to the winery's reputation given that the product is unique, limited in availability, and well-reviewed in the industry. (Petition of CB Coastal, at pg. 3).

Accordingly, CB Coastal seeks a Temporary Miscellaneous Contingency Permit from the Division under N.J.S.A. 33:1-74 and N.J.A.C. 13:2-5.5 authorizing it to complete the shipment of these purchased-and-stored products to the New Jersey customers who ordered and paid for them, and remit the applicable taxes from those sales to the New Jersey Division of Taxation. CB Coastal requests the permit be active until December 31, 2024, to allow CB Coastal the flexibility to ship the purchased product when temperatures are appropriate. CB Coastal represents that this permit will represent the end of any direct to consumer relationships in New Jersey. Going forward, CB

² See Petition of CB Coastal, attached Customer List, identifying the order date, item name and quantity, township and zip code of each New Jersey purchaser's order.

³ CB Coastal cannot receive a New Jersey out of state winery license because its parent company, Constellation Brands, Inc., is ineligible for a New Jersey out of state winery license due to gallonage limits. See N.J.S.A. 33:1-10 (2e.)

Coastal will only sell its products in New Jersey through designated New Jersey wholesaler(s) as part of the three-tier system.

Legal Authority

The Division has a duty to supervise the manufacture, distribution, and sale of alcoholic beverages in a manner that fulfills the policies of the Alcoholic Beverage Control Act (ABC Act), N.J.S.A. 33:1-1 to 4-1. As directed by the Legislature, these policies include the duty to maintain trade stability, protect the interests of consumers, and encourage the beneficial aspects of competition. See N.J.S.A. 33:1-3.1. In accomplishing these duties, the Division has broad authority to regulate the alcoholic beverage industry and is entitled to heightened deference to allow for exercise of its discretion in the “delicate area” of alcohol regulation. Circus Liquors, Inc. v. Middletown, 199 N.J. 1, 12-13 (2009). “The grant of an express power is always attended by the incidental authority fairly and reasonably necessary or appropriate to make it effective Authority delegated to an administrative agency should be construed so as to permit the fullest accomplishment of the legislative intent.” Cammarata v. Essex County Park Comm'n, 26 N.J. 404, 411 (1958).

The Division is expressly authorized to issue Special Rulings “as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages.” N.J.S.A. 33:1-39. Furthermore, under N.J.S.A. 33:1-74, as implemented by N.J.A.C. 13:2-5.5, the Division has the authority to provide special relief in the form of temporary miscellaneous contingency permits “where it would be appropriate and consonant with the spirit of this chapter” to do so.

It is against this background that the Division reviews CB Coastal’s request for relief. The Division considers CB Coastal’s situation to be very unique as it involves a very limited quantity

of an exclusive wine product that was already purchased by New Jersey consumers but was being stored in a temperature-controlled facility on their behalf. These New Jersey consumers understood at the time of sale that shipment would not occur until suitable temperatures arrived. Due to the limited availability and unique nature of these products, it is unlikely that the New Jersey purchasers who have been waiting for shipment would be made whole if CB Coastal simply offered them a refund. There is no guarantee that they could acquire the vintage, amount, and type of wine they purchased through the New Jersey three-tiered system because these wines are not sold in most retail outlets and it is difficult to get onto the winery's mailing list. Also, the winery has a brand to maintain that may be unintentionally harmed if it is unable to complete these orders.

Temporary miscellaneous permits are not intended as a means to avoid the proper permitting process; however, in this case, the products in question were purchased and paid for while the operating entity held a New Jersey out of state winery license. But for CB Coastal's purchase of Sea Smoke's operations, Sea Smoke in all likelihood would have been able to ship the purchased products under its license, and the New Jersey purchasers would have received their sought-after wines. Issuance of a temporary miscellaneous contingency permit is proper in this case to make these New Jersey purchasers whole.

Accordingly, based on the foregoing and for special cause shown, the Director hereby authorizes the Licensing Bureau to issue a Temporary Miscellaneous Contingency Permit pursuant N.J.S.A. 33:1-74 and N.J.A.C. 13:2-5.5 to CB Coastal, LLC, on the following terms:

1. CB Coastal may only ship only the products listed in the "Sea Smoke Estate Winery New Jersey (DtC) Customer List (as of Sept. 2024)" attachment to CB Coastal's Petition (hereinafter "Customer List"), which totals 3081 bottles or 256.75 cases of

product. No other products may be shipped to any New Jersey consumers and/or address not on the Customer List.

2. All products shipped from CB Coastal to the New Jersey purchasers shall have been invoiced and paid for by the customer prior to June 30, 2024. This permit does not allow shipment of products purchased after June 30, 2024, whether or not they are on the Customer List.
3. This permit shall authorize direct to consumer shipment as outlined in (1), above, through December 31, 2024, at which time it will expire. No shipments to New Jersey consumers may be made on or after January 1, 2025.
4. CB Coastal shall notify the Division when it has completed all shipments on the Customer List, shall retain all records of shipment, and shall provide any and all records related to any and all of these shipments at the Division's request.
5. Upon shipment, CB Coastal shall remit the appropriate taxes to the Division of Taxation and shall retain records of the same.
6. The fee for this permit shall be \$200.00.

Conclusion

The relief granted above is based on the representations made by CB Coastal. Should any facts or circumstances differ from these representations, the Division reserves its right to revoke or modify the provisions above, or take any other appropriate action.



KIRSTIN KREUGER
INTERRIM DIRECTOR

Dated: December 10, 2024