

# The State of South Carolina



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March 11, 1991

Mr. Nicholas P. Sipe, Executive Director  
Alcoholic Beverage Control Commission  
Edgar Brown Building  
1205 Pendleton Street  
Columbia, South Carolina 29201

Dear Mr. Sipe:

On behalf of the Alcoholic Beverage Control Commission (ABC) you ask whether a fortified wine known as Cisco, containing 20 percent alcohol by volume which is similar in its packaging and appearance to a relatively low alcohol wine cooler, can be removed from the store shelves and barred from sale in this state. You advise that this fortified wine is being packaged by the Canandaigua Wine Company "cooler style" causing consumers to be misled into thinking that the product is similar to those wine cooler products which traditionally have a much lower alcohol content. The Company was asked by both the National Council on Alcoholism and Drug Dependence and the Center for Science in the Public Interest to change the packaging and labeling of this product to eliminate this confusion. 1/ Initially, the Company refused to change the packaging and labeling of this product; but according to the Federal Department of Treasury, Bureau of Alcohol, Tobacco and Firearms, the Company has recently modified its position and now has agreed to some changes; the extent of these changes is unknown at this time. 2/

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1/ See attached copy of Dr. Paul Wood's letter dated January 17, 1990. Dr. Wood is President of the National Council on Alcoholism and Drug Dependence.

2/ Terry K. Cates, Chief, Industry Compliance Division, Department of Treasury, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226; (202) 535-6241.

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We are advised at least at the present time, that this fortified wine is imported and registered pursuant to the applicable state and federal statutes and regulations. We believe, however, that the ABC Commission is not limited only to those packaging and labeling requirements prescribed in Federal Regulation No. 4 [27 C.F.R. 4] and adopted in §61-9-610 of the South Carolina Code. Should the Commission believe that additional packaging and labeling requirements are necessary to eliminate public confusion, the Commission is authorized to enact different packaging and labeling regulations. 3/

Pursuant to §61-9-10 of the South Carolina Code, "all wines containing not in excess of twenty-one percent of alcohol by volume are hereby declared to be nonalcoholic and nonintoxicating beverages." This legislative definition exists for the sole purpose of providing a dual system of regulation and taxation on such beverages. State v. Turner, 198 S.C. 499, 18 S.E.2d. 376 (1942); Title 61, Chapter 9, S.C. Code of Laws (1991 Cum. Supp.). Thus, although declared by statute to be "nonalcoholic and nonintoxicating" this Cisco wine product is regulated in South Carolina. See §61-9-10 et seq. of the South Carolina Code of Laws and also §61-9-610 et seq. of the South Carolina Code of Laws.

Section 61-9-610 of the South Carolina Code adopts generally Regulation 4 (27 C.F.R. 4 et seq.) of the Department of Treasury, Bureau of Alcohol, Tobacco and Firearms dealing with the "Labeling and Advertising of Wine". Section 61-9-620 makes it "unlawful for any person to import, sell or offer for sale in this state, wines of which the labels, standards or identity do not conform to the provisions of said Regulation No. 4." According to the Chief of the Industry Compliance Division of the Department of Treasury, Bureau of Alcohol, Tobacco and Firearms, once the wine

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3/ The Bureau of Alcohol, Tobacco and Firearms advises that it has received numerous complaints from consumers about a wine specialty product having an alcohol content of twenty percent by volume, which is packaged in such a way that it resembles a "wine cooler". As such, the Bureau of Alcohol, Tobacco and Firearms is proposing to amend Regulation 27 C.F.R. 4.71 to provide that standard wine containers should be made and formed so as not to mislead the purchaser. Since Section 61-9-610 adopts the general federal law, this is construed to mean that the law is as it reads thereafter at any given time including amendments subsequent to the time of the adoption. 2A Sutherland Statutory Construction, §51.07, at 322 (4th Ed. 1973); Atty. Gen. Op. No. 84-104 (August, 1984). Therefore, if this proposal is adopted, then it will modify this State's existing general standards for packaging and labeling wine products. A copy of this proposed rule is provided for your review.

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bottle or package obtains the required certificate of label approval (ATF Form 5100.31), then these federal packaging and labeling requirements enforced by the Bureau of Alcohol, Tobacco and Firearms have been "technically satisfied." See also, 27 C.F.R. 4.50 and 27 C.F.R. 240.580. Thus, the federal authorities have determined that there has been technical compliance or satisfaction of the requirements of Federal Regulation No. 4.

A review of the Alcoholic Beverage Control Act and the Regulations adopted by the Commission does not reveal packaging and labeling standards for wine products that differ from the general federal standards incorporated by Sections 61-9-610 and 61-9-620. Nonetheless, it is clear that the Commission may adopt packaging and labeling standards that differ from Federal Regulation No. 4. Sections 61-9-610 provides in pertinent part that Federal Regulation No. 4 is adopted as the general standard "except insofar as the same shall differ from existing laws of the State or from any regulations adopted by the South Carolina Alcoholic Beverage Control Commission." Additionally, the Commission is expressly authorized to make regulations as to the containers in which wine may be sold at retail and declare to be "undesirable wine packages" any wine sold in a container prohibited by such regulations. See Section 61-9-640. Thus, we believe the General Assembly has expressly authorized the Commission to create regulations providing packaging and labeling standards that differ from federal regulations should the Commission determine that differing standards are desirable. <sup>4/</sup> Again, we understand that the Commission has not seen fit to heretofore adopt packaging or labeling requirements that differ from Federal Regulation 4; however, the enabling authority for the Commission to promulgate regulations setting different packaging and labeling requirements we believe is clear.

The procedures for promulgating legislative regulations is found in Article 1 of the South Carolina Administrative Procedures Act [§1-23-10 et seq.]. I recognize that the Commission's legal staff has significant experience in drafting and promulgating regulations pursuant to the APA and, thus, I will not here attempt to provide comprehensive instruction as to these detailed procedures. However, I do specifically reference Section 1-23-130 (1990 Cumm. Supp) which provides the procedure for promulgating emergency regulations. The Commission may use this emergency procedure should it find that the confused packaging and labeling of the

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<sup>4/</sup> The Commission, of course, has the express enabling authority to promulgate all rules and regulations necessary to implement and enforce the Alcoholic Beverage Control Act. Section 61-1-70.

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particular wine product presents "an imminent peril to public health, safety or welfare [which] requires immediate promulgation of emergency regulations...." Section 1-23-130 (a). Of course, whether the packaging and labeling of the particular wine product constitutes an imminent threat to public health, safety or welfare is a policy decision uniquely within the province of the Commission.

If I may provide any further assistance, please contact me.

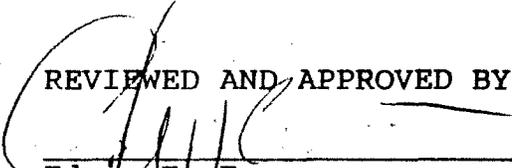
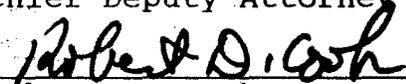
Sincerely yours,



Georgia L. Lewis  
Staff Attorney

GLL/srcj  
Enclosures

REVIEWED AND APPROVED BY:

  
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