

## **Federal Trade Commission Reports Supporting Direct Wine Shipments**

The FTC enforces laws prohibiting unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce. Pursuant to this statutory mandate, the Commission seeks to identify and prevent, where possible, business practices and regulations that impede competition without offering countervailing benefits to consumers. The Commission and its staff have considerable experience in analyzing the competitive impact of regulations affecting the alcoholic beverage industry. FTC staff also has extensively analyzed the effects of bans on direct wine shipping. In October 2002, the Commission held a workshop to evaluate possible anticompetitive barriers to e-commerce in wine and many other industries. At the workshop, FTC staff heard testimony from several parties with divergent interests, including wineries, wholesalers, and state regulators. The staff also gathered evidence from package delivery companies, the Alcohol and Tobacco Tax and Trade Bureau, and regulators in states that allow direct shipping. In addition, the FTC staff conducted the first empirical study of a wine market in a state that banned interstate direct shipping. In July, 2003, FTC staff issued a comprehensive report on the competitive effects of bans on direct shipments of wine, and in October, 2003, the staff testified at a related congressional. (Taken from letter to Senator Paula Dackery, April 10, 2006)

July 3, 2003                      Federal Trade Commission Release of Results of Empirical Analysis of Direct Shipping

Findings noted:

- ◆ “Consumers can purchase many wines online that are not available in nearby brick-and-mortar stores.
- ◆ “...by banning interstate direct shipments, states limit consumers’ access to thousands of labels from smaller wineries.”
- ◆ “State bans on interstate direct shipping represent the single largest regulatory barrier to expanded e-commerce in wine.”
- ◆ “The FTC’s staff received more public comments and complaints about e-commerce barriers in wine than in any other industry.”

**Below are excerpts from recent FTC letters and press releases in response to requests from various state legislators regarding the wine shipping issue.**

August 21, 2006                      Remarks by Deborah Platt Majoras, Chairman of the Federal Trade Commission  
Luncheon Address – *The Progress & Freedom Foundation’s Aspen Summit*

“Government policies, too, can restrict or distort competition in ways that harm the market and consumers, and, indeed, government-imposed restrictions are among the most durable and effective restraints on competition. Take, for example, Internet wine sales, a growing and potentially important alternative to the traditional tightly-regulated, three-tiered system of producers, licensed wholesalers, and retailers. Many states still ban or severely restrict the direct shipment of wine to consumers. As part of its ongoing program to identify regulatory barriers to

competition that harm consumers, the FTC staff took an in-depth look at the effect of online wine sales and concluded that states could significantly enhance consumer welfare by allowing the direct shipment of wine as a purchase option. In doing so, FTC staff rebutted state claims that their laws advanced legitimate purposes, such as shielding minors from ordering wine online. Last year, the Supreme Court in *Granholm v. Heald* cited the FTC report when it rejected states' justifications for discriminatory restrictions on interstate wine sales."

---

April 12, 2006

Letter to Senator Paula Dockery, Tallahassee, Florida  
Comments regarding proposed Florida Legislation to Allow Interstate Direct Shipping  
From manufacturers both inside and outside the state.

Comments taken from FTC News Release:

"According to the FTC staff's comments, based on its extensive experience in analyzing the effects of bans on direct wine shipping, the proposed legislation:

- ◆ Likely would allow Florida consumers to purchase a greater variety of wines by substantially increasing the number of wine choices available to consumers. Through direct shipping, and particularly via the Internet, consumers can buy many wines that are not available in nearby bricks-and-mortar stores. It also allows for competition by smaller wineries that otherwise might not be able to distribute their wines effectively through state-mandated distribution systems.
  - ◆ Would allow Florida to satisfy its legitimate interest in preventing underage alcohol access without impeding competition or unduly burdening interstate commerce.
  - ◆ Would allow Florida to collect taxes on direct wine shipments. In the FTC's experience, states that permit interstate direct wine shipments generally report few or no problems with tax collections."
- 

March 23, 2006

Letter to Senator Fingerhut, Columbus, Ohio  
Comments on Proposed Direct Shipment Legislation

Comments taken from FTC News Release:

"In addition to promoting competition, which results in access to a greater variety of wine and lower prices for Ohio consumers, the comment states that the bill contains language that will ensure it does not result in the shipment of wine to underage consumers. Specifically, the consumer who orders the wine must be a least 21 years old and personally sign for the wine when it is delivered. The comment also reiterates the FTC staff's finding that states that permit interstate direct wine shipments report few or no problems with tax collection. The bill contains language to ensure this is the case in Ohio by requiring the manufacturer either to collect all applicable taxes from the consumer and pay them, or notify consumers that they are liable for such taxes."

"...if enacted, SB 179 would enhance consumer welfare and allow Ohio to meet its other public policy goals."

March 30, 2004            Letter to William Magee, Chairman, Assembly Agriculture Committee and  
   John R. Kuhl, Jr., Chairman, Senate Committee on Transportation and  
   Dean G. Skelos, Deputy Majority Leader, Senate  
   Albany, New York  
   Comments supporting New York's direct shipment of wine bills that would promote E-  
   commerce and consumer welfare.

Comments taken from FTC news release:

"...the bills would help consumers. Based on our empirical research, the bills could allow consumers to save significantly on more expensive wines. The bills would also give consumers access to thousands of wines from around the country."

"By eliminating the requirement that out-of-state sellers maintain a physical presence in New York, the direct shipping bills would eliminate the single largest regulatory barrier to expanded e-commerce in the wine industry."

"... these states generally report few if any problems with direct shipments to minors, or with collecting taxes from those shipments."

"...the bills contain all of the safeguards recommended by both the National Academy of Sciences and FTC staff, such as requiring an adult signature at the point of delivery."

---

March 31, 1999            Letter to Senator Dan Cronin, Springfield, Illinois  
   Regarding "Illinois Wine and Spirits Industry Fair Dealing Act of 1999"

Excerpt of letter from C. Steven Baker, Director of Chicago Regional Office of the Federal Trade Commission:

"We have seen no evidence suggesting that wine and liquor wholesalers are different from wholesalers in other industries, thus requiring special treatment under state commercial law. These wholesalers provide storage and distribution services that are typical for wholesalers, especially in the food and beverage industries. Nor have we seen anything to indicate that competition is unworkable in the wine and liquor industries or that state policy governing alcohol distribution would require such legislation."