

MINISTRY OF SMALL BUSINESS AND RED TAPE REDUCTION
AND MINISTER RESPONSIBLE FOR LIQUOR DISTRIBUTION BRANCH
INFORMATION NOTE

Cliff #: 37395

Date: February 11, 2016

PREPARED FOR: Honourable Coralee Oakes, Minister of Small Business and Red Tape Reduction and Minister Responsible for the Liquor Distribution Branch

ISSUE: Compliance Audit of FreshTAP

BACKGROUND:

- The LDB completed a compliance audit of FreshTAP Pour Systems Inc. DBA Vancouver Urban Winery ("FreshTAP") for the period covering April 1, 2013, to March 31, 2015.
- FreshTAP is a Vancouver-based company, founded in 2011. They advertise themselves on their website as "the first and leading company offering custom kegging services to wineries in Canada."
- The purpose of the audit was to determine compliance with the terms and conditions set out in the Commercial Winery sales agreement entered into by FreshTAP and the LDB (the "Agreement").
- Audits are necessary to ensure that all liquor manufacturers in BC are abiding by the applicable laws and operating within the terms of their sales agreements. This helps to ensure there is consistency of treatment and fairness in the industry.
- During the course of the audit, the LDB made a number of findings of non-compliance.
- The LDB is working with FreshTAP to discuss potential solutions and next steps. As an initial step, the LDB met with FreshTAP on February 5 to present the audit findings and confirm the required corrective actions.
- This week, the LDB plans to communicate the required corrective actions with FreshTAP, via letter. The LDB also plans to communicate with the specific Land Based Wineries and import agents involved, via letter.
- It is worth noting FreshTAP also owns Postmark Brewing. Postmark Brewing was recently assessed for \$32,433.90. (See Briefing Note cliff # 37290 for more information).

DISCUSSION:

Findings Related to FreshTAP's Kegging Operations

- During the course of the audit, the LDB determined that FreshTAP is currently providing kegging services for a number of Land Based Wineries (58), Commercial Wineries (7) and import wineries (15). To do this, FreshTAP is transferring bulk wine from these wineries into their own facilities and completing

the kegging process there. In some cases, they are also storing and distributing the packaged kegs. See Appendix A for the full list of wineries for which FreshTAP provides kegging services.

Kegging for Land Based Wineries

- As stated above, FreshTAP is providing kegging services for a number of Land Based Wineries. This means that bulk land based wine is being transferred into FreshTAP's facilities in order to be kegged.
- However, this presents an issue as the LDB cannot differentiate between wine that FreshTAP has brought in for its Land Based Winery kegging operations, and wine that FreshTAP has brought in for its own Commercial Winery operations. This differentiation is necessary for the LDB to assess whether appropriate mark-up has been remitted for the kegged product.
- FreshTAP has been informed that, if they wish to continue providing kegging services to Land Based Wineries, they will need to separate their lines of business and segregate their Commercial Winery kegging operations from their Land Based Winery kegging operations.
- This is required so that the LDB can clearly differentiate between Land Based wine and Commercial wine. This also reduces the likelihood of co-mingling between Commercial wine and Land Based wine, which is prohibited under the Land Based Winery Sales Agreement and is contrary to the intent of the Land Based Winery policy.
- A 90-day transition period will be provided to industry, during which time FreshTAP will be allowed to continue to provide kegging services to Land Based Wineries. This may help to mitigate any potential disruptions in service to the industry and should provide FreshTAP with sufficient time to take the corrective actions around getting the proper licensing. The 90-day transition period may be extended if there are extenuating circumstances. However, during this period, co-mingling of Land Based wine and Commercial wine remains prohibited, and any wine found to be co-mingled will be subject to mark-up.
- The LDB will be sending a letter to the specific Land Based Wineries involved this week, to inform them that FreshTAP's kegging operations are currently under review and to outline potential next steps.

Import Wine

- FreshTAP has been importing bulk wine for kegging purposes. They purchase wine from 15 import wineries, including brands such as Domaine Bousquet and J. Lohr.
- After kegging the import wine, FreshTAP has been registering the SKUs with the LDB *as their own* and then marketing and selling the kegged wine *as the import winery's brands* and not as a brand of FreshTAP wine.
- This practice is in violation of the Agreement as it does not meet the definition of "Product". The definition includes "*wine purchased in bulk by you and packaged*

*while under your ownership, or control, registered and **sold by you under a brand or marketing name owned by you...***

- FreshTAP may import bulk wine under their Commercial Winery licence. However, under the Agreement, they must use the wine in the production of **their own brand** and cannot sell it under a separate brand that they do not own.
- FreshTAP has been informed that this practice must cease immediately or the LDB may terminate or suspend the Agreement.
- The LDB will be sending a letter to the specific import agents involved this week, to inform them that FreshTAP's business practices are currently under review and that the arrangement that they have with FreshTAP, whereby FreshTAP purchases their import wine in bulk and kegs/distributes it, must cease immediately.

Payment of Audit Expenses

- Under the Agreement and as per LDB standard procedure, if an audit discloses that a manufacturer has acted in a manner contrary to the terms and conditions of the Agreement, the manufacturer must pay the LDB the expenses associated with the audit.
- As a result of the LDB's audit findings, the amount owing by FreshTAP for audit expenses is \$11,025.
- FreshTAP must (i) pay the LDB the audit expenses or (ii) have an agreed-upon payment plan in place by March 11, 2016, or the LDB may terminate or suspend the Agreement.

Variance in Reported Sales

- In recalculating the sales reported to the LDB, it was determined that there is an underreported and unexplained variance of s.21 litres of wine.
- As a result, mark-up has been assessed on this volume and the amount owing is s.21
- FreshTAP must (i) pay the LDB the mark-up assessed or (ii) have an agreed-upon payment plan in place by March 11, 2016, or the LDB may terminate or suspend the Agreement.

VQA Wine in Kegs

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ATTACHMENTS:

Appendix A: List of Wineries

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Reviewed by				
Dir: CT, RL	ED: AH, RB	ADM: BL	DM: TM	MIN:

Appendix A

List of Wineries

Commercial Wineries (7)

Andrew Peller
Bounty Cellars
Cedar Creek
Constellation

Granville Island Sake
Pac Breeze
Roaring Twenties Wine Co.

Land Based Wineries (58)

Alderlea Vineyards
Artisan Food and
Beverage Group Inc.
Backyard Vineyards
Baillie-Grohman Estate
Winery
Bartier Family
Vineyards
Bench 1775
Black Hills – Cellarhand
Blasted Church
Vineyards
Blue Grouse
Burrowing Owl
CC Jentsch Cellars
Chaberton Estate
Winery
Church & State
Clean Slate
Clos Du Soleil
Desert Hills Estate
Winery
Dirty Laundry
Earlco - Three Sisters
Eau Vivre
Fort Berens Estate
Winery
Glenterra Vineyards
Hester Creek
Hillside Cellars

Joie Farm Winery
Kalala Organic Estate
Winery
Lake Breeze Vineyards
Lang Vineyards
Lastella Winery
Laughing Stock
Le Vieux Pin Winery
Maverick Estate Winery
Meyer Family Vineyards
Monster Vineyards
Moon Curser Vineyards
Nichol Vineyards
Noble Ridge Winery
Okanagan Crush Pad
Orofino
Painted Rock Estate
Perseus (Terrabella)
Poplar Grove
Quail's Gate
Road 13 Vineyards
Serendipity Winery
Seven Directions Wine
SouthEnd Farm &
Vineyard
Sperling Vineyards
Stoneboat Vineyards
Summerhill Pyramid
Synchromesh Wines Inc.
Therapy Vineyards

Thornhaven Estate
Winery
Tinhorn Creek
Township 7
Unsworth Vineyard
Upper Bench Winery
Wild Goose
Young & Wyse

Import wines (15)

Cannonball (Dream Wines)
Domaine Bousquet
Empson Canada
Full Glass Wines - Landmark
Hahn Family Winery - Andrew Peller Imports
J Lohr Vineyards & Wines - Landmark
Lagaria (Empson & Co. SpA)
Lenny Bruce - Mureda
Lenny Bruce Wines & Spirits Ltd
LIX - Landmark
Monte Antico (Empson & Co. SPA)
Que Guapo
Sonoma Wine Company
Bieler Family/Three Thieves
Dream Wines

MINISTRY OF SMALL BUSINESS AND RED TAPE REDUCTION
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Cliff #: 37408

Date: February 18, 2016

PREPARED FOR: The Honourable Coralee Oakes, Minister of Small Business, Red Tape Reduction and Responsible for the Liquor Distribution Branch

ISSUE: Liquor Distribution Branch (LDB) Warehousing Solution

BACKGROUND:

- In 2014, government sold lands housing the LDB's primary warehouse, the Vancouver Distribution Centre (VDC).
- The sale agreement included provisions for an immediate three year lease-back, as well as options for two, one-year options extensions. Should all options to extend be exercised, the lease will terminate August 2019.
- In October 2015, the Ministry established an Executive Project Board for the VDC Project consisting of five senior executives across government as well as representation from Treasury Board Staff to provide direction and oversight through all phases of the VDC Relocation Project.
- A Concept Plan was developed by a Project Team comprised of members of the LDB, Partnerships BC and Sedlak Management.
- s.12,s.13,s.17

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DISCUSSION:

- s.12,s.13,s.17
- In the next few days, the LDB expects to issue RFPs for technical advisors to support the development of the Business Plan, including:
 - Land Advisor - to advise on the development of site requirements, participate in a competitive selection process for a site, evaluate and provide recommendations on a preferred site and manage the transaction process;

- Facility Consultant Advisor - to assemble, lead, manage and coordinate a team of specialist consultants, including architectural, mechanical, electrical and civil engineering consultants; and,
- Quantity Surveyor - to provide capital cost estimates and facility operating costs for the lifecycle of the proposed new facility.

Interim Solution:

- At the same time, there is an additional requirement for an interim stopgap measure to address immediate need, as the current VDC is at capacity.
- The LDB has been reviewing options for leasing additional space until the new warehouse can be established. This interim warehousing solution will be a complementary process to the development of the Business Plan.
- While staff are currently aware that a new warehouse is required before August 2019, the proposal for an interim warehousing solution has not yet been communicated.
- The scope and nature of the RFP for a Land Advisor requires reference to the interim solution. Thus, it is critical that the LDB communicates with staff prior to the release of the RFP that additional space may be procured, subject to government approval, and this will potentially require an interim move of some staff and operations.

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NEXT STEPS:

- The LDB intends to notify the B.C. Government and Service Employees' Union (BCGEU) one business day prior to the Advisor RFPs being issued.
- s.12
at the same time

 the Advisor RFPs are issued, the LDB intends to communicate with staff that some staff and operations may be moving to an interim space, contingent on the results of the RFEOI and government approval, and will commit to keeping them apprised.

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