

November 23, 2011

Telephone: (717) 783-9454

FAX: (717) 787-8820

Maria Di Massa

GABRIA Imports, Inc.

Re: Wine Importing and Sales

Dear Ms. Di Massa:

ISSUE: Your e-mail of October 29, 2011, states that you are the president of GABRIA Imports, Inc., (“GABRIA”), which will import wine from Italy into Philadelphia, where you have a bonded warehouse and a company handling your shipping needs. You advise that you hold a federal permit from the U.S. Alcohol and Tobacco Tax and Trade Bureau (“TTB”) in addition to your importer license. You ask how you would go about selling your product to out-of-state markets. You also ask whether GABRIA may sell directly to wholesalers in possession of an out-of-state license, given that GABRIA can deal with distributors or wholesalers located outside the Commonwealth, and if so, whether you may ship imported wine directly to these wholesalers, or whether they may arrange for shipping from GABRIA’s warehouse.

Records maintained by the Pennsylvania Liquor Control Board (“Board”) indicate that GABRIA Imports, Inc., is the holder of Importer License No. I-846 (LID 65647) for the premises located at 717 Moredon Rd., Jenkintown, Pennsylvania.

OPINION: Be advised that only the Board, an importer licensee, a sacramental wine licensee or a licensed direct shipper may import liquor or wine into the Commonwealth. [47 P.S. § 4-491(11)]. An importer license permits the holder to bring or import wine and spirits into Pennsylvania from other states or United States possessions and foreign countries, and to purchase wine and spirits from manufacturers located outside of Pennsylvania which will be sold either outside of Pennsylvania or to the Board. All importation of wine and spirits into Pennsylvania by the importer must be consigned to the Board or to the principal place of business or authorized place of storage maintained by the licensee. [47 P.S. § 4-410(e)]. Once the wine or spirits are properly imported into Pennsylvania,

the product may be stored by the licensed importer at its warehouse or at the storage facilities of a bailee-for-hire licensee or a bonded warehouse licensee. [47 P.S. §§ 4-410, 5-501, 5-505.1].

Therefore, as a licensed importer, you may import wine into Pennsylvania and store it at your warehouse prior to sale either outside of Pennsylvania or to the Board.

In response to your specific questions about how you would go about selling your product to out-of-state markets, whether you may sell directly to out-of-state wholesalers, and whether you may ship directly to such wholesalers or if they may arrange for shipping, please be advised that the Commonwealth does not regulate sales of alcohol that occur outside the Commonwealth. Section 102 of the Liquor Code defines “sale” as including any transfer of liquor, alcohol or malt or brewed beverages for a consideration. [47 P.S. § 1-102]. Sales that occur in other states would be subject to the regulations of the state in which the sale occurs and the TTB.

Be advised that the Board has the general authority to control the manufacture, possession, sale, consumption, importation, use, storage, transportation and delivery of liquor and alcohol within the Commonwealth. [47 P.S. § 2-207(b)]. Under the Liquor Code, only limited wineries and distilleries of historical significance are afforded the statutory ability to operate as a direct retailer of wine and liquor to consumers. [47 P.S. § 5-505.2 and 47 P.S. § 5-505.3]. Accordingly, only the Board would have the authority to sell your product directly to persons in Pennsylvania for off-premises consumption. However, this can be effectuated in multiple ways.

First, your company could submit a listing proposal to the Board for the sale of your products through the Board’s approximately six hundred ten (610) wine and spirits stores. Products not listed for regular sale through the Board’s wine and spirits stores may be acquired by residents of the Commonwealth (including licensees of the Board) via special liquor order (“SLO”). [47 P.S. § 3-305]. SLOs may be placed at any of the Board’s wine and spirits stores, or via the Bureau of Product Selection at (717) 783-7601. SLOs must be shipped to a Board-operated store and may be either for personal use or, if purchased by a licensee, for resale in any licensed establishment.

Please note that the holder of a vendor's permit may sell liquor to the Board and employ agents who may promote the sale of liquor through the Board's wine and spirits stores. [40 Pa. Code § 13.71]. Such agents may also solicit from licensees orders for those brands of liquor that have been listed as an SLO or luxury item. [40 Pa. Code § 13.73]. SLOs or luxury item orders obtained by the licensed vendors or their agents shall be filed with one (1) of the wine and spirits stores. [40 Pa. Code § 13.73]. All special liquor order purchases and luxury item purchases must first be consigned to a wine and spirit store before being released for delivery to the consumer. SLOs and luxury item orders placed by a licensed vendor or the vendor's agent for a retail customer may be released by the wine and spirits store for delivery to the consumer. [40 Pa. Code § 13.79(d)]. A vendor's permit would permit this service. Furthermore, a fee may be charged for these services.

Finally, section 488 of the Liquor Code provides that Pennsylvania residents may purchase wine over the Internet and have it shipped to one (1) of the Board's more than six hundred ten (610) wine and spirits stores of their choosing, where they may pick it up, provided such purchases are made via the Internet from direct wine shippers, who have been licensed by the Board. [47 P.S. § 4-488]. The following additional conditions apply to such direct wine shipper orders: Pennsylvania residents may only order wines that are not listed in the Board's Internet catalog of available wines; Internet orders will be shipped to wine and spirits stores of the purchaser's choice; the purchaser must be at least twenty-one (21) years old; and all wines must be for personal use, not for resale; the purchaser or his or her designee must sign an affidavit affirming these facts on receipt of the order; and a direct wine shipper may not ship more than nine (9) liters to a single resident in any one (1) month. Furthermore, the wine will be subject to a shipping charge, and must add a four dollar fifty cent (\$4.50) handling fee, Pennsylvania's eighteen percent (18%) liquor tax, and six percent (6%) sales tax (and an additional two percent (2%) sales tax in Philadelphia County and one percent (1%) sales tax in Allegheny County).

For information on how to obtain a vendor's permit or a direct shipper license, please contact the Bureau of Licensing at (717) 783-8250 or visit the Board's website at www.lcb.state.pa.us, click on "For Licensees," and then "Applications and Forms."

If it is your desire to sell your products to the Board, it is recommended that you review a document entitled “Procedures and Policies for Vendors,” which contains detailed information on the Board’s listing process, as well as helpful information for potential vendors. You can access the document at the following website: <http://www.portal.state.pa.us/portal/server.pt?open=514&objID=611707&mode=2>. The above-provided website also has links to other helpful documents related to labeling, shipping, and U.S. Customs. In addition, you may directly contact the Board’s Bureau of Product Selection at (717) 787-7965.

Should you have any further questions or concerns regarding this matter, please do not hesitate to contact this office.

THIS OPINION APPLIES ONLY TO THE FACTUAL SITUATION DESCRIBED HEREIN AND DOES NOT INSULATE THE LICENSEE OR OTHERS FROM CONSEQUENCES OF CONDUCT OCCURRING PRIOR TO ITS ISSUANCE. THE PROPRIETY OF THE PROPOSED CONDUCT HAS BEEN ADDRESSED ONLY UNDER THE LIQUOR CODE AND REGULATIONS. THE LAWS AND POLICIES ON WHICH THIS OPINION IS BASED ARE SUBJECT TO CHANGE BY THE LEGISLATURE OR THE PENNSYLVANIA LIQUOR CONTROL BOARD.

Very truly yours,

FAITH S. DIEHL
CHIEF COUNSEL

cc: Pennsylvania State Police,
Bureau of Liquor Control Enforcement
Jerry W. Waters, Director, Office of Regulatory Affairs
Tisha Albert, Director, Bureau of Licensing

LCB Advisory Opinion No. 11-501