

ESTTA Tracking number: **ESTTA728630**

Filing date: **02/22/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91215993
Party	Plaintiff Karma Culture LLC
Correspondence Address	KATHERINE H MCGUIRE WOODS OVIATT GILMAN LLP 700 CROSSROADS BUILDING, 2 STATE STREET ROCHESTER, NY 14614 UNITED STATES trademarks@woodsoviatt.com, kmcguire@woodsoviatt.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Katherine H. McGuire, Esq.
Filer's e-mail	trademarks@woodsoviatt.com, kmcguire@woodsoviatt.com
Signature	/Katherine H. McGuire/
Date	02/22/2016
Attachments	noticeofreliance.pdf(217297 bytes ) noticeofrelianceex1.pdf(230976 bytes ) noticeofrelianceex2.pdf(237891 bytes ) noticeofrelianceex3.pdf(254345 bytes ) noticeofrelianceex4.pdf(160371 bytes ) noticeofrelianceex5.pdf(163322 bytes ) noticeofrelianceex6.pdf(1735383 bytes ) noticeofrelianceex7.pdf(379709 bytes ) noticeofrelianceex8.pdf(264933 bytes ) noticeofrelianceex9.pdf(966919 bytes ) noticeofrelianceex10.pdf(471672 bytes ) noticeofrelianceex11.pdf(94511 bytes ) noticeofrelianceex12.pdf(105616 bytes ) noticeofrelianceex13.pdf(330261 bytes ) noticeofrelianceex14.pdf(684859 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of U.S. Trademark Application No. 77/876,479  
For the mark: KARMA CALIFORNIA BRUT  
Date filed: November 19, 2009

---

KARMA CULTURE LLC,

Opposer,

**Opposition No. 91215993**

v.

KARMA CHAMPAGNE, INC.,

Applicant.

---

**OPPOSER'S NOTICE OF RELIANCE**

Pursuant to 37 CFR 2.122(e), Opposer, Karma Culture LLC, by and through its counsel, hereby makes the following of record:

1. Trial Exhibit No. 1 – copy of a publically available Internet document having the URL [http://karmachampagne.com/press/2010/Brides-12.8.10%20\(1\).pdf](http://karmachampagne.com/press/2010/Brides-12.8.10%20(1).pdf) that was printed on May 27, 2014 and last accessed on February 18, 2016. The document is located on Applicant's "Press" page of its website and appears to be a screen shot of an article in brides.com demonstrating Applicant's use of the mark KARMA which is likely to confuse consumers of Opposer's KARMA branded products.

2. Trial Exhibit No. 2 – copy of a publically available Internet document having the URL [http://karmachampagne.com/press/2009/HawaiiBrideandGroom\\_July132009.pdf](http://karmachampagne.com/press/2009/HawaiiBrideandGroom_July132009.pdf) that was printed on May 27, 2014 and last accessed on February 18, 2016. The document is located on

Applicant's "Press" page of its website and appears to be a screen shot of an article from Hawaii Bride & Groom demonstrating Applicant's use of the mark KARMA which is likely to confuse consumers of Opposer's KARMA branded products.

3. Trial Exhibit No. 3 – copy of a publically available Internet document having the URL <http://karmachampagne.com/press/2010/HighRiseHostess-6.21.10.pdf> that was printed on May 27, 2014 and last accessed on February 18, 2016. The document is located on Applicant's "Press" page of its website and appears to be a screen shot of an article from High Rise Hostess demonstrating Applicant's use of the mark KARMA and making mixed beverages using Applicant's KARMA branded product.

4. Trial Exhibit No. 4 – copy of a publically available Internet document having the URL [http://karmachampagne.com/press/2008/Luxist\\_Nov\\_2008.pdf](http://karmachampagne.com/press/2008/Luxist_Nov_2008.pdf) that was printed on May 27, 2014 and last accessed on February 18, 2016. The document is located on Applicant's "Press" page of its website and appears to be a screen shot of an article from luxist.com demonstrating Applicant's use of the mark KARMA which is likely to confuse consumers of Opposer's KARMA branded products.

5. Trial Exhibit No. 5 – copy of Applicant's internet homepage a publically available Internet document having the URL <http://karmachampagne.com/> that was accessed and printed on February 18, 2016. The document demonstrates Applicant's use of the mark KARMA throughout its website which is likely to confuse consumers of Opposer's KARMA branded products.

6. Trial Exhibit No. 6 – copies of Applicant's previously submitted application for trademark for the mark KARMA CALIFORNIA BRUT, U.S. Trademark Application Ser. No. 77/202209 publically available from the United States Patent and Trademark Office's Trademark

Status and Document Retrieval (“TSDR”) database. The TSDR file contains Applicant’s prior application attempting to register the dominant word mark KARMA and the Office’s refusal thereof. Application 77/202209, in conjunction with the evidence presented in Opposer’s Trial Exhibits Nos. 1-5, above, demonstrate that Applicant is attempting to circumvent the Trademark Office by registering the entire KARMA CALIFORNIA BRUT mark while presenting to the public that its goods are marketed simply as KARMA or KARMA™.

7. Trial Exhibit No. 7 – copy of a publically available Internet document having the URL <http://www.nielsen.com/us/en/insights/news/2015/grapes-of-worth-how-supermarkets-are-becoming-local-wine-shops.html> that was accessed and printed on February 22, 2016. The document was published on the internet on February 19, 2015 and demonstrates the likelihood of confusion as Opposer’s KARMA branded products and Applicant’s wine products bearing the infringing KARMA mark are sold in the same channels of trade, specifically within supermarkets.

8. Trial Exhibit No. 8 – copy of a publically available Internet document having the URL <http://wineeconomist.com/2011/05/09/sizing-up-supermarket-wine/> that was accessed and printed on February 22, 2016. The document was published on the internet on May 9, 2011 and demonstrates the likelihood of confusion as Opposer’s KARMA branded products and Applicant’s wine products bearing the infringing KARMA mark are sold in the same channels of trade, specifically within supermarkets.

9. Trial Exhibit No. 9 – copy of a publically available Internet document having the URL <http://drinkkarma.com/buy-in-stores/> that was accessed and printed on February 22, 2016 from Opposer’s website, drinkkarma.com. The document demonstrates a likelihood of confusion

between Opposer's KARMA branded products and Applicant's wine products bearing the infringing KARMA mark.

10. Trial Exhibit No. 10 – copy of a publically available Internet document having the URL <http://blog.timesunion.com/tablehopping/13597/wine-in-supermarkets-fight-ensnares-yonos/> that was accessed and printed on February 22, 2016. The document demonstrates that wines are sold alongside non-alcoholic beverages, such as carbonated sodas.

11. Trial Exhibit No. 11 – copy of the Ohio Revised Code Annotated § 4303.12 accessed via [www.lexis.com](http://www.lexis.com) on February 22, 2016. The document demonstrates that the State of Ohio issues permits to retail stores (e.g. supermarkets) to sell wine for off-premises consumption.

12. Trial Exhibit No. 12 – copy of the Virginia Code Annotated § 4.1-209 accessed via [www.lexis.com](http://www.lexis.com) on February 22, 2016. The document demonstrates that the State of Virginia issues licenses to convenience grocery stores to sell wine for off-premises consumption, § 4.1-209(4).

Pursuant to 37 CFR 2.120(j), Opposer, Karma Culture LLC, by and through its counsel, hereby makes the following of record:

13. Trial Exhibit No. 13 – Opposer's First Set of Interrogatories; specific Interrogatory No. 3.

14. Trial Exhibit No. 14 – Applicant's Response to Opposer's First Set of Interrogatories; specific Response No. 3.

DATED: February 22, 2016  
Rochester, New York

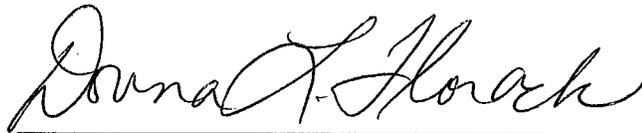
By: /Katherine H. McGuire/  
WOODS OVIATT GILMAN LLP  
Katherine H. McGuire, Esq.  
2 State Street, 700 Crossroads Building  
Rochester, New York 14614  
Telephone: (585) 987-2800  
Facsimile: (585) 454-3968  
kmcguire@woodsoviatt.com

*Attorneys for Opposer*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing **OPPOSER'S NOTICE OF RELIANCE**, has been served on Applicant by emailing a copy to Gary L. Eastman, Esq., counsel for the Applicant, at gary@eastmanmccartney.com and by mailing said copy on February 22, 2016 via First Class Mail, postage prepaid to:

Gary L. Eastman, Esq.  
Eastman & McCartney LLP  
401 West A Street, Suite 1785  
San Diego, CA 92101



---

Donna Florack  
Woods Oviatt Gilman LLP  
2 State Street, 700 Crossroads Building  
Rochester, New York 14614  
Tel.: 585.987.2800  
Fax: 585.454.3968

**CERTIFICATE OF FILING**

I hereby certify that a true and complete copy of the foregoing **REGISTRANT'S NOTICE OF RELIANCE**, together with the identified trial exhibits, has been filed electronically with the Trademark Trial and Appeal Board via the Office's ESTTA electronic filing interface on this day, February 22, 2016.



Donna Florack  
Woods Oviatt Gilman LLP  
2 State Street, 700 Crossroads Building  
Rochester, New York 14614  
Tel.: 585.987.2800  
Fax: 585.454.3968

# EXHIBIT 1

sign in | join now—it's free

BRIDES MAGAZINE: [subscribe](#) | [give a gift](#) | [quest](#)

**brides.com** We make weddings better



[Ideas](#) | [Dresses & Style](#) | [Answers](#) | [Local](#) | [Honeymoons](#) | [Home & Registry](#) | [Engagement](#) | [Community](#) | [Shop](#) | [Win](#) | [Our Magazine](#)

*Aisle Say*

From the editors of [brides.com](#)

FOOD, DRINKS, AND DESSERTS • GOOD GIFTS

## Single serve champagne

WEDNESDAY DECEMBER 8, 2010



You may have seen KARMA's individually-packaged screw top wine bottles before (they're perfect for favors or outdoor wedding cocktails) so we were excited to find out about the introduction of single-serve KARMA Champagne. They're something extra special for a casual backyard wedding, or to bring as a gift to your New Year's Eve party. Plus their light and crisp taste is certain to satisfy all. Bottles are \$5 each and are sold at Whole Food Markets and [bevmo.com](#). —Cari Wolfert

**KEYWORDS:**

Edible Wedding Favors, Wedding Champagne, Wine For Weddings

## EXHIBIT 2

*Finishing Touch*



## INTRODUCING KARMA

admin | Jul 13, 2009 | Comments 0

- KARMA, the only single-serve sparkling wine designed to be enjoyed directly from the glass bottle – no champagne flute or straw needed.
- Perfect for wedding toasts (no need to rent expensive champagne flutes), or enjoying anytime
- Twist-off cap so you don't have to struggle with a cork.
- Mix up bellinis right in the bottle – take a sip and then pour in orange juice, peach puree, even fresh raspberries.
- Founded by San Diego native, Patrick Wilson, who believes that everyday is a celebration and champagne isn't just for special occasions.
- Taste: clean, crisp and moderately dry; with subtle hints of melon and pear
- Each bottle contains a glass and a half of sparkling wine with only 160 calories.
- KARMA is served on all Virgin America flights – toast in the sky!
- Price: \$6.99 a bottle or \$28 for a four-pack

For more info: [www.karmabeverages.com](http://www.karmabeverages.com)



## EXHIBIT 3

# High-Rise Hostess

[FRONT PAGE](#)

[WHO IS THE HIGH-RISE HOSTESS?](#)

[WHAT PEOPLE ARE SAYING ABOUT HRH](#)



## Good Karma

June 18, 2010 · [Leave a Comment](#)



We all need some good Karma in our life, no?! That is why we should be be up on the roof this summer sipping **KARMA**. I just learned about this new drink, the first ever single serve **sparkling wine** (the grapes are from Central California). Don't you just love it?! It comes in a **glass bottle** (don't worry, its eco friendly) with a **screw off cap**. The folks over at [KARMA](#) are pretty smart, they left just the right amount of room at the top of the bottle for you to add a little somethin' somethin' (**recipes below**)

to make it **festive** (if it is not already). Now, that's what I call easy entertaining . I can't wait to take a few into **Central Park** on **July 14** when I go to see the **New York Philharmonic** [play live on the Great Lawn](#). Oh, how I love NYC in the **summer!**

### Kiss of KARMA

Single serve bottle of KARMA sparkling wine

Drop in 1 sugar cube

Top with Sloe Gin

Garnish with sliced Strawberry

### KARMA Peach Passion

Single serve bottle of KARMA sparkling wine topped off with Peach Schnapps and a dash of lemon juice

### KARMA Chameleon

Single serve bottle of KARMA

Equal parts Raspberry liqueur and Blue Curacao

Serve with Orange slice

## EXHIBIT 4

## Karma Partners with Virgin America for High Fliers

Posted Nov 1st 2008 9:02AM by [Jared Paul Stern](#)

Filed under: [Journeys](#), [Wine](#)

[Karma](#), the elegant California brut-style sparkling wine in modern single-serving bottles, has partnered with [Richard Branson's](#) California-based Virgin America airlines on upscale cocktails for high fliers. Created by San Diego native Patrick Wilson, the premium ready-to-drink treat is packaged in a glass bottle resembling a champagne flute.

[Virgin America](#) flights feature moodlighting, custom-designed leather seats and the only on-demand, in-flight food ordering system via a video touch-screen at every seat. Karma, made from hand-selected California grapes, is clean, crisp and dry with subtle hints of melon and pear. Wilson decided to package it this way to further the concept that every day should be a celebration. We're with him there.



**Tags:** [Airlines](#), [Champagne](#), [Karma](#), [Sparkling wine](#), [SparklingWine](#), [Virgin America](#), [VirginAmerica](#)

[Share](#) | [Print this](#) | [Permalink](#) | [Email this](#) | [Comments \[0\]](#)

## EXHIBIT 5

# KARMA

ABOUT KARMA | LOCATIONS | DRINKS + PARINGS | PRESS | GALLERY | CONTACT



You can also visit us on: [facebook](#) [twitter](#)

Copyright 2014. ALL RIGHTS RESERVED KARMA Fine Beverages, Inc.  
PLEASE DRINK RESPONSIBLY. IT'S GOOD KARMA.

Site by Silent Goals

## EXHIBIT 6

Side - 1



**NOTICE OF ABANDONMENT**  
**MAILING DATE: May 1, 2008**

The trademark application identified below was abandoned in full because a response to the Office Action mailed on Sep 19, 2007 was not received within the 6-month response period.

If the delay in filing a response was unintentional, you may file a petition to revive the application with a fee. If the abandonment of this application was due to USPTO error, you may file a request for reinstatement. Please note that a petition to revive or request for reinstatement **must be received within two months from the mailing date of this notice.**

For additional information, go to <http://www.uspto.gov/teas/petinfo.htm>. If you are unable to get the information you need from the website, call the Trademark Assistance Center at 1-800-786-9199.

**SERIAL NUMBER:** 77202209  
**MARK:** KARMA CALIFORNIA BRUT  
**OWNER:** Patrick S. Wilson

Side - 2

UNITED STATES PATENT AND TRADEMARK OFFICE  
COMMISSIONER FOR TRADEMARKS  
P.O. BOX 1451  
ALEXANDRIA, VA 22313-1451

FIRST-CLASS  
MAIL  
U.S POSTAGE  
PAID

PATRICK S. WILSON  
PATRICK S. WILSON  
2033 SAN ELIJO AVENUE #580  
CARDIFF-BY-THE-SEA, CA , CA 92007

**To:** Patrick S. Wilson ([patrick@karmabeverages.com](mailto:patrick@karmabeverages.com))  
**Subject:** TRADEMARK APPLICATION NO. 77202209 - KARMA CALIFORNIA BRU - N/A  
**Sent:** 9/19/2007 7:50:00 PM  
**Sent As:** ECOM106@USPTO.GOV  
**Attachments:** [Attachment - 1](#)  
[Attachment - 2](#)  
[Attachment - 3](#)  
[Attachment - 4](#)  
[Attachment - 5](#)  
[Attachment - 6](#)  
[Attachment - 7](#)

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**SERIAL NO:** 77/202209

**MARK:** KARMA CALIFORNIA BRU

**\*77202209\***

**CORRESPONDENT ADDRESS:**

PATRICK S. WILSON  
PATRICK S. WILSON  
2033 SAN ELIJO AVENUE #580  
CARDIFF-BY-THE-SEA, CA, CA 92007

**RESPOND TO THIS ACTION:**

<http://www.uspto.gov/teas/eTEASpageD.htm>

**GENERAL TRADEMARK INFORMATION:**

<http://www.uspto.gov/main/trademarks.htm>

**APPLICANT:** Patrick S. Wilson

**CORRESPONDENT'S**

**REFERENCE/DOCKET NO:**

N/A

**CORRESPONDENT E-MAIL ADDRESS:**

patrick@karmabeverages.com

**OFFICE ACTION**

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

**ISSUE/MAILING DATE:** 9/19/2007

TEAS PLUS APPLICANTS MUST SUBMIT DOCUMENTS ELECTRONICALLY OR SUBMIT FEE:

TEAS Plus applicants should submit the following documents using the Trademark Electronic Application System (TEAS) at <http://www.uspto.gov/teas/index.html>: (1) written responses to Office actions; (2) preliminary amendments; (3) changes of correspondence address; (4) changes of owner's address; (5) appointments and revocations of attorney; (6) amendments to allege use; (7) statements of use; (8) requests for extension of time to file a statement of use, and (9) requests to delete a §1(b) basis. If any of these documents are filed on paper, they must be accompanied by a \$50 per class fee. 37 C.F.R. §§2.6(a)(1)(iv) and 2.23(a)(i). Telephone responses will not incur an additional fee. NOTE: In addition to the above, applicant must also continue to accept correspondence from the Office via e-mail throughout the examination process in order to avoid the additional fee. 37 C.F.R. §2.23(a)(2).

The assigned examining attorney has reviewed the referenced application and determined the following.

**Refusal to Register - Confusingly Similar**

Registration of the proposed mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. **2,629,371**. Trademark Act Section 2(d), 15 U.S.C. §1052(d); TMEP §§1207.01 *et seq.* See the enclosed registration.

The Court in *In re E. I. Du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973), listed the principal factors to be considered in determining whether there is a likelihood of confusion under Section 2(d). Any one of the factors listed may be dominant in any given case, depending upon the evidence of record. *In re Dixie Restaurants, Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997). In this case, the following factors are the most relevant: similarity of the marks, similarity of the goods and/or services, and similarity of trade channels of the goods and/or services. See *In re Opus One, Inc.*, 60 USPQ2d 1812 (TTAB 2001); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593 (TTAB 1999); *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999); *In re L.C. Licensing Inc.*, 49 USPQ2d 1379 (TTAB 1998); TMEP §§1207.01 *et seq.*

Taking into account the relevant *du Pont* factors, a likelihood of confusion determination in this case involves a two-part analysis. First, the marks are compared for similarities in appearance, sound, connotation and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Second, the goods or services are compared to determine whether they are similar or related or whether the activities surrounding their marketing are such that confusion as to origin is likely. *In re National Novice Hockey League, Inc.*, 222 USPQ 638 (TTAB 1984); *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re Int'l Tel. and Tel. Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Prods. Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); TMEP §§1207.01 *et seq.* The term, KARMA, is dominant and identical in spelling, sound and meaning. The word, vista, the descriptive terms, California Brut, and the stylized and design features in the application, are subordinate elements that do not diminish the common commercial impression created by the dominant term. In addition, the marks are used in connection with wine. Given the similarity of the marks, goods and trade channels, confusion as to source is likely.

The goods and/or services of the parties need not be identical or directly competitive to find a likelihood of confusion. Instead, they need only be related in some manner, or the conditions surrounding their marketing are such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods and/or services come from a common source. *On-line Careline Inc. v. America Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471 (Fed. Cir. 2000); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984); *Guardian Prods. Co., Inc. v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); *In re Int'l Tel. & Tel. Corp.*, 197 USPQ 910 (TTAB 1978); TMEP §1207.01(a)(i). Any doubt regarding a likelihood of confusion is resolved in favor of the prior registrant. *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988); TMEP §§1207.01(d)(i).

If the applicant chooses to respond to the refusal to register, the applicant must also respond to the following informalities.

### **Disclaimer Required**

Applicant must insert a disclaimer of “**CALIFORNIA BRUT**” in the application, because the wording describes the type of wine applicant sells and the fact that it originates in California. *See attached definitions.* Trademark Act Section 6, 15 U.S.C. §1056; TMEP §1213.

The computerized printing format for the Office’s *Trademark Official Gazette* requires a standardized format for a disclaimer. TMEP §1213.08(a)(i). The following is the standard format used by the Office: No claim is made to the exclusive right to use “**CALIFORNIA BRUT**” apart from the mark as shown. *See In re Owatonna Tool Co.*, 231 USPQ 493 (Comm’r Pats. 1983).

### **Identification of Goods Amendment Required**

The identification of goods is unacceptable as indefinite. The applicant must amend the identification to specify the common commercial names of the goods and arrange them by proper classification in ascending numerical order by international class. If there is no common commercial name, the applicant must describe the product and its intended use. TMEP §§1402.01 and 1402.03. The applicant may access the Office’s *Acceptable Identification of Goods and Services Manual* at:

<http://tess2.uspto.gov/netahhtml/tidm.html>.

Please note that, while an application may be amended to clarify or limit the identification, additions to the identification are not permitted. 37 C.F.R. §2.71(a); TMEP §1402.06. Therefore, the applicant may not amend to include any goods that are not within the scope of goods set forth in the present identification.

The applicant may adopt the following identification, if accurate:

**Class 33:** *Delete* “Alcoholic beverages, namely, non-carbonated and/or carbonated wine”  
*Substitute* **Sparkling wine**

### **Entity Clarification Required**

The name of an *individual* person appears in the section of the application intended for the trademark owner’s name, but the entity type is set forth as a *corporation*. Applicant must clarify this inconsistency. TMEP §803.03.

If applicant is an individual and the owner of the mark, applicant may simply request that the entity be amended to “individual” and indicate his/her country of citizenship for the record. 15 U.S.C. §1051(a)(2); 37 C.F.R. §2.32(a)(3)(i); TMEP §§803.02(a) and 1201.02(c). Alternatively, if applicant is in fact a corporation, the correct name of the corporation (and U.S. state or foreign country of incorporation or organization) should be set forth. TMEP §§803.02(c) and 803.03(c).

If, in response to the above request, applicant provides information indicating that it is not the owner of the mark, registration will be refused under Trademark Act Section 1, 15 U.S.C. §1051, because the application was void as filed. Only the owner of a mark may apply to register the mark. TMEP §§803.01, 803.06, and 1201.02(b).

### **Color Claim Amendment Required**

The color claim of record includes the colors, brown, gold, black and white, however, the mark shown on the drawing appears only in BROWN. Applications for color marks must include both a list of the colors that are claimed as a feature of the mark and a description of where the colors appear in the mark. 37 C.F.R. §2.52(b)(1); TMEP §807.07 *et seq.* Common color names should be used to describe the colors in the mark, e.g., magenta, yellow, turquoise. TMEP §807.07(a)(ii).

Applicant must amend the color claim of record to read as follows:

**The color BROWN is claimed as a feature of the mark.**

**Description of Mark and Color Location Amendments Required**

Applicant must submit a concise description of the mark that includes an accurate description of the color in the mark. 37 C.F.R. §2.37; TMEP §§808 *et seq.* The following is suggested:

**The mark consists of the words, KARMA CALIFORNIA BRUT, shown in BROWN.**

**Trademark Counsel Recommended**

Applicant may wish to hire a specialist attorney to assist in prosecuting this application because of the technicalities involved. The Office cannot aid in the selection of a trademark attorney. 37 C.F.R. §2.11. Applicant may wish to consult the Yellow Pages for a listing of attorneys specializing in trademark or intellectual property law, or seek guidance from its local Bar Association attorney-referral service.

/Barbara A. Gold/  
Trademark Attorney  
Law Office 106  
571/ 272-9165  
571/ 273-9106 (fax)  
Barbara.Gold@uspto.gov

**RESPOND TO THIS ACTION:** If there are any questions about the Office action, please contact the assigned examining attorney. A response to this Office Action should be filed using the Office's Response to Office action form available at <http://www.uspto.gov/teas/eTEASpageD.htm>. If notification of this Office action was received via e-mail, no response using this form may be filed for 72 hours after receipt of the notification. **Do not attempt to respond by e-mail as the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

**STATUS CHECK:** Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

**TYPED DRAWING**

**Serial Number**

78002582

**Status**

REGISTERED

**Word Mark**

KARMA VISTA

**Standard Character Mark**

No

**Registration Number**

2629371

**Date Registered**

2002/10/01

**Type of Mark**

TRADEMARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(1) TYPED DRAWING

**Owner**

Herman, Joseph, B. INDIVIDUAL UNITED STATES 6670 North Branch Road  
Benton Harbor MICHIGAN 49022

**Goods/Services**

Class Status -- ACTIVE. IC 033. US 047 049. G & S: wine. First  
Use: 2002/01/01. First Use In Commerce: 2002/01/01.

**Disclaimer Statement**

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "VINEYARDS" APART FROM  
THE MARK AS SHOWN.

**Filing Date**

2000/04/04

**Examining Attorney**

CHOSID, ROBIN

**DESIGN MARK**

**Serial Number**

77132639

**Status**

NON-FINAL ACTION - MAILED

**Word Mark**

KARMA

**Standard Character Mark**

No

**Type of Mark**

TRADEMARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

**Owner**

KARMA Champagne, Inc. DBA KARMA Fine Beverages CORPORATION CALIFORNIA  
P.O. Box 130728 Carlsbad CALIFORNIA 92013

**Goods/Services**

Class Status -- ACTIVE. IC 033. US 047 049. G & S: Alcoholic beverage produced from a brewed malt base with natural flavors; Alcoholic beverages, namely, carbonated and non-carbonated wine; Alcoholic malt coolers; Rum.

**Description of Mark**

The mark consists of stylized font with each letter capitalized. All the letters in brown or gold..

**Colors Claimed**

The applicant claims color as a feature of the mark, namely, brown or gold.

**Filing Date**

2007/03/16

**Examining Attorney**

AYALA, LOURDES

KARMA

classmates-com	Alexandria, VA	Select Your State ▾	Search Your School
----------------	----------------	---------------------	--------------------

Word or phrase:  Search

Find definitions  Find translations  Search all dictionaries

Jump to: [General](#), [Art](#), [Business](#), [Computing](#), [Medicine](#), [Miscellaneous](#), [Religion](#), [Science](#), [Slang](#), [Sports](#), [Tech](#), [Phrases](#)

We found 20 dictionaries with English definitions that include the word **california**:

Tip: Click on the first link on a line below to go directly to a page where "california" is defined.

➔ **General** (17 matching dictionaries)

1. [California](#) : Encarta® World English Dictionary, North American Edition [[home](#), [info](#)]
2. [California](#) : Wiktionary [[home](#), [info](#)]
3. [California](#) : The Wordsmyth English Dictionary-Thesaurus [[home](#), [info](#)]
4. [California](#) : The American Heritage® Dictionary of the English Language [[home](#), [info](#)]
5. [California](#) : Infoplease Dictionary [[home](#), [info](#)]
6. [California](#) : Dictionary.com [[home](#), [info](#)]
7. [California](#) : UltraLingua English Dictionary [[home](#), [info](#)]
8. [California](#) ([American Music Club album](#)), [California](#) ([Belinda Carlisle song](#)), [California](#) ([CTA](#)), [California](#) ([CTA Blue Line](#)), [California](#) ([CTA Green Line](#)), [California](#) ([CTA Pink Line](#)), [California](#) ([Dutch Ship](#)), [California](#) ([Electric Prunes album](#)), [California](#) ([Low single](#)), [California](#) ([Mr. Bungle album](#)), [California](#) ([PA](#)), [California](#) ([album](#)), [California](#) ([ambrosia](#)), [California](#) ([disambiguation](#)), [California](#) ([province](#)), [California](#) ([song](#)), [California](#) ([state](#)), [California](#) : Wikipedia, the Free Encyclopedia [[home](#), [info](#)]
9. [California](#) : Rhymezone [[home](#), [info](#)]
10. [California](#) : Columbia Encyclopedia, Sixth Edition [[home](#), [info](#)]
11. [California](#) : The New Dictionary of Cultural Literacy [[home](#), [info](#)]

Quick definitions (**California**)

- **noun**: a state in the western United States on the Pacific; the 3rd largest state; known for earthquakes

Test Your Skills --

[Try the SAT Question of the Day](#)

11. [California](#) : The New Dictionary of Cultural Literacy [[home](#), [info](#)]
12. [California](#) : Encarta® Online Encyclopedia, North American Edition [[home](#), [info](#)]
13. [CALIFORNIA](#) : 1911 edition of the Encyclopedia Britannica [[home](#), [info](#)]
14. [California](#) : Columbia Gazetteer of North America [[home](#), [info](#)]
15. [california](#) : WordNet 1.7 Vocabulary Helper [[home](#), [info](#)]
16. [California](#) : LookWAYup Translating Dictionary/Thesaurus [[home](#), [info](#)]
17. [California](#) : Columbia Encyclopedia, Sixth Edition (Encyclopedia.com) [[home](#), [info](#)]

➤ **Miscellaneous** (1 matching dictionary)

18. [CALIFORNIA](#) : AbbreviationZ [[home](#), [info](#)]

➤ **Religion** (1 matching dictionary)

19. [California](#) : Catholic Encyclopedia [[home](#), [info](#)]

➤ **Science** (1 matching dictionary)

20. [California](#) : LITTLE EXPLORERS(TM) Picture Dictionary [[home](#), [info](#)]

Phrases that include **california**: [california current](#), [california newt](#), [california redwood](#), [california sagebrush](#), [california buckwheat](#), [more...](#)

Words similar to **california**: [golden state](#), [more...](#)

[Additional searches for california...](#)

Search completed in 0.023 seconds.



Word or phrase:

Find definitions  Find translations  Search all dictionaries

Jump to: [General](#), [Art](#), [Business](#), [Computing](#), [Medicine](#), [Miscellaneous](#), [Religion](#), [Science](#), [Slang](#), [Sports](#), [Tech](#), [Phrases](#)

We found 29 dictionaries with English definitions that include the word **brut**:

Tip: Click on the first link on a line below to go directly to a page where "brut" is defined.

➔ **General** (23 matching dictionaries)

1. [brut](#) : Encarta® World English Dictionary, North American Edition [[home](#), [info](#)]
2. [brut](#) : Compact Oxford English Dictionary [[home](#), [info](#)]
3. [brut](#) : Merriam-Webster's Online Dictionary, 10th Edition [[home](#), [info](#)]
4. [Brut](#) : Wiktionary [[home](#), [info](#)]
5. [brut](#) : The American Heritage® Dictionary of the English Language [[home](#), [info](#)]
6. [brut](#) : Infoplease Dictionary [[home](#), [info](#)]
7. [brut](#) : Dictionary.com [[home](#), [info](#)]
8. [brut \(adj.\)](#) : Online Etymology Dictionary [[home](#), [info](#)]
9. [brut](#) : UltraLingua English Dictionary [[home](#), [info](#)]
10. [Brut \(Layamon\)](#), [Brut \(cologne\)](#), [Brut](#) : Wikipedia, the Free Encyclopedia [[home](#), [info](#)]
11. [Brut](#) : Online Plain Text English Dictionary [[home](#), [info](#)]
12. [brut](#) : Webster's Revised Unabridged, 1913 Edition [[home](#), [info](#)]
13. [brut](#) : Rhymezone [[home](#), [info](#)]
14. [Brut \(f\)](#), [Brut](#), [brut\(e\)](#) : AllWords.com Multi-Lingual Dictionary [[home](#), [info](#)]
15. [brut](#) : Webster's 1828 Dictionary [[home](#), [info](#)]
16. [Brut](#) : E Cobham Brewer, The Reader's Handbook [[home](#), [info](#)]
17. [Brut](#) : Columbia Encyclopedia, Sixth Edition [[home](#), [info](#)]
18. [brut](#) : Hutchinson's Dictionary of Difficult Words [[home](#), [info](#)]
19. [Brut](#) : Dictionary of Phrase and Fable (1898) [[home](#), [info](#)]

Quick definitions (**brut**)

- **adjective:** (of champagne) extremely dry
- [Word origin info is available.](#)

Test Your Skills --

[Try the SAT Question of the Day](#)

20. [BRUT](#) : 1911 edition of the Encyclopedia Britannica [[home](#), [info](#)]
21. [brut](#) : Hutchinson Dictionaries [[home](#), [info](#)]
22. [brut](#) : WordNet 1.7 Vocabulary Helper [[home](#), [info](#)]
23. [brut](#) : LookWAYup Translating Dictionary/Thesaurus [[home](#), [info](#)]

➤ **Art** (2 matching dictionaries)

24. [Brut](#) : Paris Cookbook [[home](#), [info](#)]
25. [brut-](#) : A Cross Reference of Latin and Greek Elements [[home](#), [info](#)]

➤ **Medicine** (1 matching dictionary)

26. [brut](#) : The On-line Medical Dictionary [[home](#), [info](#)]

➤ **Science** (1 matching dictionary)

27. [Brut](#) : Biological Sciences Dictionary [[home](#), [info](#)]

➤ **Tech** (2 matching dictionaries)

28. [BRUT \(RAW\)](#), [BRUT](#) : French-English Wine Glossary [[home](#), [info](#)]
29. [Brut](#) : Wine Taster's Glossary [[home](#), [info](#)]

Phrases that include **brut**: [beton brut](#)

Words similar to **brut**: [bruting](#), [more...](#)

[Additional searches for brut...](#)

*Search completed in 0.03 seconds.*

**To:** Patrick S. Wilson ([patrick@karmabeverages.com](mailto:patrick@karmabeverages.com))  
**Subject:** TRADEMARK APPLICATION NO. 77202209 - KARMA CALIFORNIA BRU - N/A  
**Sent:** 9/19/2007 7:50:04 PM  
**Sent As:** ECOM106@USPTO.GOV  
**Attachments:**

**IMPORTANT NOTICE**  
**USPTO OFFICE ACTION HAS ISSUED ON 9/19/2007 FOR**  
**APPLICATION SERIAL NO. 77202209**

Please follow the instructions below to continue the prosecution of your application:

**VIEW OFFICE ACTION:** Click on this link [http://portal.uspto.gov/external/portal/tow?DDA=Y&serial\\_number=77202209&doc\\_type=OOA&ma](http://portal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77202209&doc_type=OOA&ma) (or copy and paste this URL into the address field of your browser), or visit <http://portal.uspto.gov/external/portal/tow> and enter the application serial number to **access** the Office action.

**PLEASE NOTE:** The Office action may not be immediately available but will be viewable within 24 hours of this notification.

**RESPONSE MAY BE REQUIRED:** You should carefully review the Office action to determine (1) if a response is required; (2) how to respond; and (3) the applicable **response time period**. Your response deadline will be calculated from **9/19/2007**.

**Do NOT hit "Reply" to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System response form at <http://www.uspto.gov/teas/eTEASpageD.htm>.**

**HELP:** For *technical* assistance in accessing the Office action, please e-mail [TDR@uspto.gov](mailto:TDR@uspto.gov). Please contact the assigned examining attorney with questions about the Office action.

**WARNING**

- 1. The USPTO will NOT send a separate e-mail with the Office action attached.**
- 2. Failure to file any required response by the applicable deadline will result in the [ABANDONMENT](#) of your application.**



\*\*\* User:bgold \*\*\*

#	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/ Search Duration	Search
01	1	0	1	1	0:01	77202209[SN]
02	0	0	0	0	0:02	"karma california brut"[bi,ti] not 1
03	627	N/A	0	0	0:02	*{"ckq"}arma*[bi,ti] not 1
04	5362	N/A	0	0	0:01	*{"ckq"}al{v}{ "fph"}orn*[bi,ti] not 1
05	557	N/A	0	0	0:01	*brut*[bi,ti] not 1
06	1443929	N/A	0	0	0:02	"033"[cc]
07	0	0	0	0	0:01	3 and 4 and 5 and 6
08	200	88	112	81	0:01	3 and 6
09	2	2	0	0	0:01	4 and 5 and 6
10	3	N/A	0	0	0:01	3 and 4 and 6
11	184	103	1	1	0:01	5 and 6
12	0	0	0	0	0:01	3 and 5 and 6
13	200	88	112	81	0:02	6 and 8
14	184	103	81	63	0:01	6 and 11

Session started 9/19/2007 5:24:33 PM

Session finished 9/19/2007 6:26:24 PM

Total search duration 0 minutes 18 seconds

Session duration 61 minutes 51 seconds

Default NEAR limit=1ADJ limit=1

Sent to TICRS as Serial Number: 77202209

# KARMA

CALIFORNIA BRUT

# Trademark/Service Mark Application, Principal Register

## TEAS Plus Application

Serial Number: 77202209

Filing Date: 06/10/2007

**NOTE: Data fields with the \* are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.**

The table below presents the data as entered.

Input Field	Entered
<b>TEAS Plus</b>	<b>YES</b>
<b>MARK INFORMATION</b>	
*MARK FILE NAME	<a href="#">\\TICRS2\EXPORT13\772\022\77202209\xml1\FTK0002.JPG</a>
*SPECIAL FORM	YES
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	KARMA CALIFORNIA BRUT
*COLOR MARK	YES
*DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of stylized letters and words in brown, gold, black and/or white.
*COLOR(S) CLAIMED (If applicable)	Brown, gold, black and/or white
PIXEL COUNT ACCEPTABLE	YES
PIXEL COUNT	871 x 300
<b>APPLICANT INFORMATION</b>	
*OWNER OF MARK	Patrick S. Wilson
*STREET	2033 San Elijo Avenue #580
*CITY	Cardiff-by-the-Sea, CA
*STATE (Required for U.S. applicants)	California
*COUNTRY	United States

*ZIP/POSTAL CODE (Required for U.S. applicants only)	92007
EMAIL ADDRESS	patrick@karmabeverages.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
<b>LEGAL ENTITY INFORMATION</b>	
*TYPE	CORPORATION
*STATE/COUNTRY OF INCORPORATION	California
<b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>	
*INTERNATIONAL CLASS	033
*DESCRIPTION	Table wines; Tonic sweet grape wine containing extracts from ginseng and conchona bark (ninjin-kinatetsu wine); White wine; Wine; Wine coolers; Wine punch; Wine punches; Wines; Aperitif wines; Aperitifs with a wine base; Cooking wine; Fruit wine; Grape wine; Kits for making wine; Natural sparkling wines; Port wines; Prepared wine cocktails; Red wine; Sparkling fruit wine; Sparkling grape wine; Sparkling wine; Strawberry wine; Sweet wines; Alcoholic aperitif bitters; Alcoholic beverage produced from a brewed malt base with natural flavors; Alcoholic beverages of fruit; Alcoholic bitters; Alcoholic cocktail mixes; Alcoholic cocktails containing milk; Alcoholic coffee-based beverage; Alcoholic egg nog; Alcoholic essences; Alcoholic extracts; Alcoholic fruit extracts; Alcoholic malt coolers; Alcoholic punch; Alcoholic tea-based beverage; Aperitifs with a distilled alcoholic liquor base; Prepared alcoholic cocktail; Rum; Alcoholic beverages, namely, <b>non-carbonated and/or carbonated wine</b>
*FILING BASIS	SECTION 1(b)
<b>ADDITIONAL STATEMENTS INFORMATION</b>	
*TRANSLATION (if applicable)	
*TRANSLITERATION (if applicable)	
*CLAIMED PRIOR REGISTRATION (if applicable)	
*CONSENT (NAME/LIKENESS) (if applicable)	
*CONCURRENT USE CLAIM	

(if applicable)	
<b>CORRESPONDENCE INFORMATION</b>	
*NAME	Patrick S. Wilson
FIRM NAME	Patrick S. Wilson
*STREET	2033 San Elijo Avenue #580
* CITY	Cardiff-by-the-Sea, CA
* STATE (Required for U.S. applicants)	California
* COUNTRY	United States
* ZIP/POSTAL CODE (Required for U.S. applicants only)	92007
* EMAIL ADDRESS	patrick@karmabeverages.com
* AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
<b>FEE INFORMATION</b>	
NUMBER OF CLASSES	1
FEE PER CLASS	275
TOTAL FEE DUE	275
<b>SIGNATURE INFORMATION</b>	
* SIGNATURE	/patrick s. wilson/
* SIGNATORY'S NAME	Patrick S. Wilson
SIGNATORY'S POSITION	Owner
* DATE SIGNED	06/09/2007
<b>FILING INFORMATION SECTION</b>	
SUBMIT DATE	Sun Jun 10 02:18:31 EDT 2007
TEAS STAMP	USPTO/FTK-XX.XXX.XX.XXX-2 0070610021831383388-77202 209-370cd66fb15ea1473aaab 39f7f8ae90777f-CC-3781-20 070610014406358942

## **Trademark/Service Mark Application, Principal Register**

### **TEAS Plus Application**

**Serial Number: 77202209**

**Filing Date: 06/10/2007**

To the Commissioner for Trademarks:

Correspondence Information: Patrick S. Wilson

2033 San Elijo Avenue #580

Cardiff-by-the-Sea, CA, California 92007

patrick@karmabeverages.com (authorized)

A fee payment in the amount of \$275 will be submitted with the application, representing payment for 1 class(es).

### **Declaration**

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /patrick s. wilson/ Date: 06/09/2007

Signatory's Name: Patrick S. Wilson

Signatory's Position: Owner

RAM Sale Number: 3781

RAM Accounting Date: 06/11/2007

Serial Number: 77202209

Internet Transmission Date: Sun Jun 10 02:18:31 EDT 2007

TEAS Stamp: USPTO/FTK-XX.XXX.XX.XXX-2007061002183138

3388-77202209-370cd66fb15ea1473aaab39f7f

8ae90777f-CC-3781-20070610014406358942



# KARMA

CALIFORNIA BRUT

## EXHIBIT 7



MENU▼

Search All Nielsen

Submit

---

INSIGHTS

---

SOLUTIONS

---

NEWS CENTER

---

ABOUT

NEWSWIRE

# GRAPES OF WORTH: HOW SUPERMARKETS ARE BECOMING LOCAL WINE SHOPS

**CONSUMER** | 02-19-2015

Tweet



Share



submit

---

There's a wine retailing revolution taking place across America, and it's happening in the supermarket. No longer confined to specialty shops and liquor marts, wine is carving out its own territory on the grocery floor, which is giving savvy retailers an opportunity to offer convenience and boost their profits in the process.

While it may have once been a destination to pick up a bottle from one or two lower-end options, many supermarkets today now offers a cornucopia of vino varieties. As consumers have ramped up their desires for distinctive and varied options, grocery retailers have ratcheted up their efforts with three primary goals in mind: offer convenience of a one-stop shop, participate in a big and

growing category, and ring up bigger basket sales. And based on recent trends, consumers and retailers are both reaping the benefits.

Growth in wine-selling stores has come from all directions—from limited-assortment types of stores to high-end/natural and gourmet outlets, and from smaller formats to outlets with massive floor plans. The number of grocery stores that sell wine is growing, hitting almost 30,000 as of mid-December 2014, up from 27,850 in 2010. Despite the increasing saturation, sales are keeping pace.

During 2014, supermarkets across the U.S. (including mass-merchant superstores) rang up \$8.6 billion in wine sales, which represents about 42% of the country's "off-premise"—i.e., store bought—wine consumption for the year. What's more impressive is the growth within these outlets compared with overall wine sales: consumer spending on wine in these outlets rose just over 4% compared from 2013.

## CONSUMERS SPEND MORE OVERALL WHEN THEY BUY WINE

Not only are supermarkets thriving as wine vendors, they're enticing bigger basket sales in the process. For example, the average consumer spends \$47 per trip to the supermarket when they don't make a wine purchase. That amount, however, jumps to \$75 when the shopper buys wine. Interestingly, the additional \$28 isn't just for vino. In fact, the wine accounts for only about \$15. The consumer spends the rest on items that typically pair well with wine, suggesting that selling wine not only diversifies supermarket offerings but goes hand-in-hand with additional sales in the process.

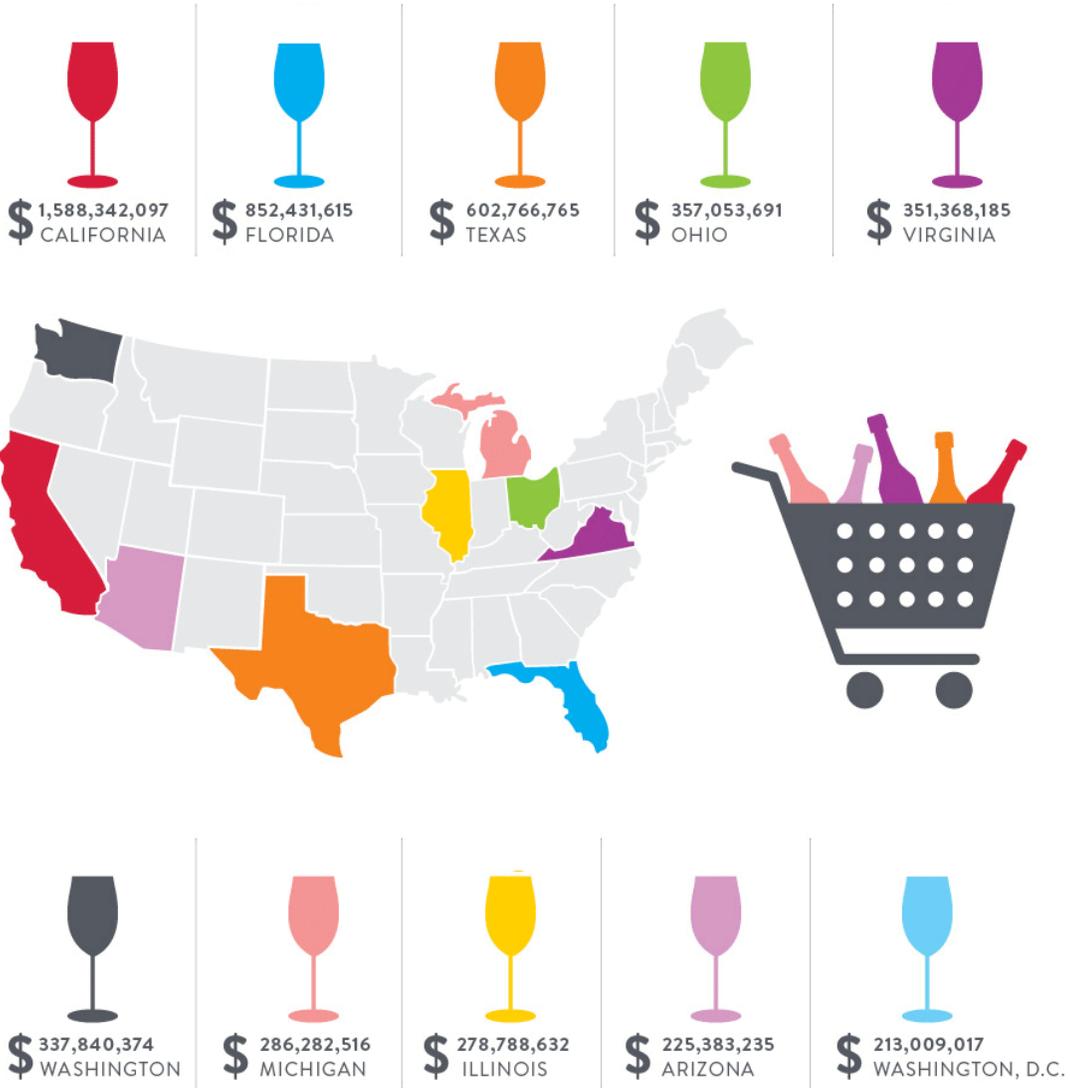
Unlike opportunities in other food and beverage categories, wine isn't something that all supermarkets can capitalize on. In fact, several states in the U.S. don't allow supermarkets to sell wine. And some states that do allow supermarkets to have liquor licenses are relatively restrictive in how brands can use them. In New Jersey, for example, one store chain can only have two liquor licenses, which means that only two stores in that chain can sell wine in the Garden State—regardless of how big a footprint the supermarket brand has there.

And supermarkets aren't just selling a few scattered varieties of wine. Nielsen research shows that the average grocery store sells about 360 different wines in a week—and that number continues to grow. California is the stand-out leader in supermarket wine sales, ringing up about

\$1.6 billion in annual sales. That's almost two times the amount sold in Florida, which sells the second-most wine in supermarkets.

## SUPERMARKET WINE SALES BY STATE

### TOP 10 STATES



Note: Sales data from U.S. food stores only.



Copyright © 2015 The Nielsen Company

## THE WINE THAT BINDS

While wine is a discretionary purchase, it's one that consumers rarely forgo—even when times are tight, overall consumption of wine has continued to grow. But the story isn't really about just how much wine was purchased—it's also about price tags. While it's true that Americans purchased more wine in 2014 than in the previous year in Nielsen measured channels, the uptick was only about 1%. However, across all those channels, dollar sales grew to almost \$14.5 billion, 3.6% ahead of last year. Nielsen estimates that almost all of that difference in dollar vs volume growth was due to consumers “drinking better” by buying more expensive wine.

So the opportunity and growth potential for supermarkets is undeniable. And by capitalizing on the trend, they not only boost their sales, they offer something their customers will cherish: the benefit of one-stop shopping. From the consumer's perspective, having access to their preferred vintages while they're shopping for food is a major time saver. From the retailer's perspective, wine is an opportunity. Retail stores like categories that grow, and even during the recent recession, wine sales grew. And when retailers see that grocery is pretty flat, they're bound to covet big categories that are turning in notable profits. Retail stores also like categories that boost overall basket sales. Wine does both. So, it's a win for consumers and retailers. Cheers to that.

---

Tagged: [SHOPPER](#) | [CPG AND RETAIL](#) | [GROCERY](#) | [ALCOHOLIC BEVERAGES](#)

Tweet



Share



submit

## RELATED NEWS

[Tops of 2015: Alcoholic Beverages](#)>>

[They're Thirsty for Deals, But Millennials Won't Sacrifice Taste or Quality in their Alcoholic Beverages](#)>

[Battle of the Sparkling Wines: Champagne vs. Prosecco](#)>>

[Get Ready for the Great Pumpkin Invasion](#)>>

[Tapped In: Craft and Local Are Powerful Trends in the Beer Aisle](#)>>

## RELATED REPORTS

[The Beverage Alcohol Media Report](#)>

[Design Audit Report: Wine](#)>

[The Digital Consumer's Journey in Western Europe's Grocery Market](#)>

[Case Study: Weirdly Awesome, and Effective](#)>

[Understanding Assortment Expandability and Saturation for Revenue Growth](#)>

Interested in learning more?

[Contact Us](#)

## COMPANY INFO

[About Nielsen](#)

[Investor Relations](#)

[Nielsen Families](#)

[Citizenship & Sustainability](#)

[Press Room](#)

[Careers](#)

[Contact Us](#)

## INSIGHTS

[Newswire](#)

[Reports](#)

[Top Ten & Trends](#)

[How We Measure](#)

[Webinars & Events](#)

[Newsletter Sign-up](#)

## SOLUTIONS

[Advertising Effectiveness](#)

[Audience Measurement](#)

[Marketing Mix](#)

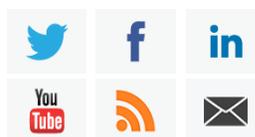
[Price and Promotion](#)

[Product Development](#)

[Reputation Management](#)

[Segmentation](#)

[Shopper](#)



[Privacy Policy](#) | [Terms of Use](#) | [Site Map](#)

Copyright © 2016 The Nielsen Company. All Rights Reserved.

## EXHIBIT 8

About these ads (<https://wordpress.com/about-these-ads/>)

REPLY

## The Wine Economist

### Sizing Up Supermarket Wine

MAY 9, 2011 *By* Mike Veseth *in* WINE DISTRIBUTION, WINE MARKETS4 COMMENTS

I have seen the future of wine. It's on display right now at your local supermarket — unless of course you live in New York or one of the several other areas where misguided state law forbids the sale of wine and food in the same establishment. Your day will come for supermarket wine, my friends, but not quite yet.

I don't mean to suggest that supermarket wine is the *only* direction that wine is heading, but it is a very powerful force. As the world of wine broadens and American wine drinking culture becomes more firmly established in the socio-economic mainstream, wine sales seem likely to become even more concentrated in the vectors where everyday consumer purchases are made. Supermarkets aren't the only important wine selling space, but they are one of the most dynamic.

#### The Rise (and Rise) of Supermarket Wine

It just makes sense. The U.S. did not achieve its current status as the world's #1 wine market (ranked by total not per capita sales) because more people are spending time at specialist wine shops or liquor stores, although I am sure that is happening (note the success of businesses like BevMo and Total Wine). The increased availability of wine at supermarkets, Costco and Sam's Club and now also drug store chains (all included in my broad definition of "supermarket wine") is driving the market.

A recent article on [Shanken News Daily](http://www.shankennewsdaily.com/index.php/2011/04/27/146/australian-wines-problems-persist-in-2011-but-yellow-tail-stands-apart-with-success/) (<http://www.shankennewsdaily.com/index.php/2011/04/27/146/australian-wines-problems-persist-in-2011-but-yellow-tail-stands-apart-with-success/>) notes that Yellow Tail wines have been able to keep their U.S. sales high despite wine market problems generally and Australian wine problems in particular by increasing drug store sales to offset declining purchases in other retail segments. Drug stores? Wine next to lipstick, baby wipes and band-aids? Walgreens wine? Yes! Walgreens has even launched [a house brand called Colby Red](http://www.dailyherald.com/article/20110127/business/701279900/), (<http://www.dailyherald.com/article/20110127/business/701279900/>) a California red blend supplied by Treasury Wine Estates.

The British led the way in supermarket wine and for good or bad the world has followed their path. Wine is attractive to grocery store owners because of its relatively high retail margins and its ability to sell other goods at the same time. The British pioneered house brand supermarket wines and that trend is continuing, too. Here in the U.S., most major retailers have their own wine brands (generally made for them by large scale producers such as The Wine Group) – even Walmart and 7-Eleven.

In Britain, the [venerable Oddbins chain](http://www.decanter.com/news/wine-news/524059/final-oddbins-stores-close) (<http://www.decanter.com/news/wine-news/524059/final-oddbins-stores-close>) has closed its last store, a victim in part of pressure from Tesco and other supermarket chains. (Tesco is now the world's largest retailer of wine.) Supermarket sales are seen as the key to rising consumption in China, too, although they are not the only growth area in this rapidly maturing market. Torres is [expanding its Everwines store chain](http://www.decanter.com/news/wine-news/524105/torres-plans-major-expansion-in-china), (<http://www.decanter.com/news/wine-news/524105/torres-plans-major-expansion-in-china>) for example, an indication that specialty shop sales are rising as well.

#### Half and Half

Supermarket wine is one of those "is the glass half full or half empty" issues. It is hard not to appreciate how much supermarkets have done to promote wine (where they are allowed to do so), especially compared with the dismal selection and service of just a few years ago, but it is also easy to dismiss them as being part of a trend towards simplified wine from corporate makers. I think both trends exist: supermarket wine is a business and so for the most part it follows established business practices. But wine consumers are complicated people who appreciate diverse offerings, so consumer interests are strong, too.

I wanted to take the measure of a "typical" supermarket wine department and I was fortunate to get some help. Our local business district partnered with my university a few weeks ago to organize a "Spring Zing" festival designed to get students and their visiting families to connect with local retailers. Our neighborhood Safeway hosted a book signing by [my favorite cookbook author Cynthia Nims](http://www.cynthianims.com/aboutcynthia.php) (<http://www.cynthianims.com/aboutcynthia.php>) and invited me to give a talk in their wine aisle. This was my first supermarket gig (but I hope not my last), so I felt a little like Roger Miller's "King of Kansas City" – a #1 supermarket attraction (see video at the end of this post).

About a dozen students, parents and random curious Safeway shoppers met me for the talk. I briefed them about supermarket wine then turned them loose to do some fieldwork. I had questions for them to answer — a treasure hunt! How big is the wine section (how many different wines are sold)? How many different countries are represented? How many different U.S. states? And what are the cheapest and most expensive wines on sale? How, in short, does supermarket wine measure up?

#### Big and Small



They found the answers pretty quickly. Total number of wines? About 750 according to two economics majors (economists are good with numbers!). Is that a big number? No — and yes. No in the sense that it is a small number of SKUs compared with the tens of thousands of wines that are available. This is a tiny slice of the pie in that regard. But it is a big number compared with, say, Costco, which stocks fewer than 150 different wines at any one time. And of course it is a big number compared to any other part of the store. Where else in a modern supermarket can you choose from among this many different options?

A lot of the wine sold here comes from a few large producer portfolios — Gallo, Constellation Brands, The Wine Group, Ste Michelle Wine Estates and so on. So in one sense the diversity is less than it might initially appear and that's why some enthusiasts, who want to see more small producer labels, are disappointed in supermarket selections. But there are also many wines from high quality medium sized wineries (Hedges, for example, and Frog's Leap at this store) so it would be wrong to say that supermarket wine is only limited to big players. And some of the big dogs offer real diversity, too — the wines don't all come out of one big vat in Lodi!

Where in the world does the wine come from? This Safeway store had a strong regional bias in favor of Washington and California wines with smaller selections from other areas. The usual suspects showed up. Twelve foreign countries (Australia, New Zealand, France, Germany, Italy, Spain, Portugal, Chile, Argentina, South Africa, Greece and Japan — if you count plum wine) — and four U.S. states: Washington, Oregon, California and New Mexico (Gruet sparkling wine).

### High and Low

It didn't take very long for my crew to sniff out the highest and lowest priced wines and the difference was amazing.

Initially they focused on Quail Oak, Safeway's house brand wine (made by The Wine Group, I believe) that was in Two Buck Chuck range at \$2.99. But then they got out their calculators and discovered that they could purchase 5-liter bag-in-boxed Franzia wine for even less — about \$2 per bottle equivalent. That's the low tide price point at this Safeway.

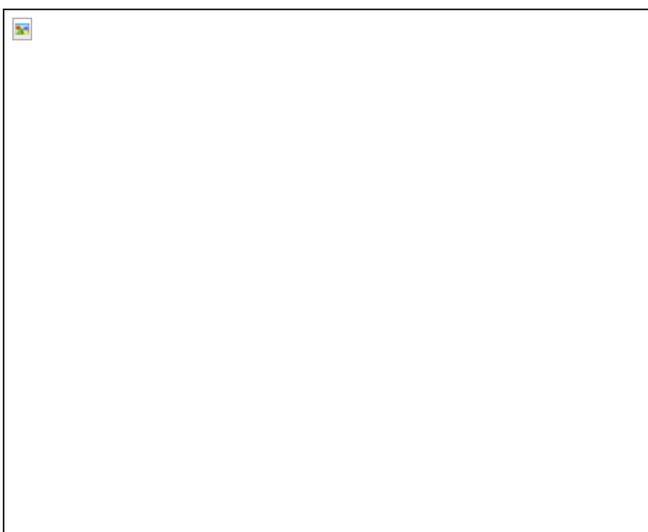
The high price? A bottle of vintage Champagne was priced at more than \$300 (but only about \$220 with your Safeway Club Card discount). It is even cheaper if you buy a six-pack and take the extra 10 percent discount. Very expensive for supermarket wine! But it makes the bottle of Dom Perignon sitting next to it in the display case seem relatively affordable.

The most expensive wine is 100 times the price of the cheapest one! What a tremendous range of price points! I think it is probably impossible to find an equivalent gap between low and high price for products in the same overall category anywhere else in the store.

The supermarket wine phenomenon is very interesting to me because it provides clues as to how the American wine scene is changing. While it is obviously wrong to draw general conclusions from a single specific case, I do think this one store is very interesting in terms of the questions that it raises about price, selection ... and the future of wine.

>><<

Reading over this post it occurs to me that a valid criticism would be that I am not demanding enough of supermarket wine. I seem to accept supermarkets for what they are and not press them to offer even more choice and diversity. I think this is half true — I do accept that supermarkets are subject to economic constraints that define their business model. I acknowledge that, as key wine sales vectors, they have power to shape the wine culture if they want to. I am optimistic that they will do so in response to changing consumer preferences. The typical Safeway wine department profiled here is enormously different from what I would have found ten or fifteen years ago. Who knows what I will find ten years hence?



>>><<

Thanks to Safeway for inviting me to talk about wine in their store. Thanks to everyone who showed up and participated in my wine treasure hunt game.

## 4 responses

WINE CURMUDGEON says:

May 9, 2011 at 10:07 am

The supermarket business is crucially important to the future of wine in the U.S., and the Mainstream Wine Media mostly ignores it. Why is the average price of a bottle of wine about \$6 in the U.S. (from Nielsen)? Because grocery stores sell a lot of those 5-liter boxes of Franzia.

GRAPE GROWER says:

May 10, 2011 at 10:37 am

Thank you for a fun article Mike! Yes, we here in New York are waiting, and hoping, and praying we can make wine in grocery stores happen. As a family winegrape farm, we have lobbied for many years for the cause. We are not giving up, and stories like yours help tell the story. It is truly a no brainer, and benefits all. Whether you are a consumer looking for \$2 or \$200 wine, and the state is pocketing the tax money.

GORDON says:

May 10, 2011 at 5:39 pm

New York state has 1/3 the fatalities of people under 21 due to alcohol related deaths compared to Fl. Tx. and Ca. The wine industry suffered due to a bad image for years and selling wines in grocery stores and gas stations will not help .

New York has a better representation of wine brands because each mom and pop retailer is free to sell what they want not what corporate dictates. I would rather support the little guy than let Walmart dictate my choices.

A family farm/winemaker should understand that his best customers live near his farm and the best retailer for his product is neighboring stores that understand the locals. When the big retailers buy from the big suppliers he will be lucky to get a job stocking the shelves because he wont be able to make a dime growing/selling his wine. A Farmer should know about Corporate farms!

ED DRAVES says:

May 11, 2011 at 3:10 am

As a person who makes his living selling NY wine, I have followed this issue very closely. The reason the vast majority of wineries are against this ill conceived plan to sell wine in gas stations, groceries and box stores is that it would close many of their retail partner wine shops. The New York wine industry, under current rules and laws, is thriving! There are new wineries opening every year. Closing the outlets for these wineries and replacing them with box stores/grocery stores and gas stations that have all but ignored (with the exception of 3 day perishables) local agriculture makes no economic sense. We need to support local, support jobs and foster taxable revenue in NY State. Uncork NY and say no to out of state interests!

## The Wine Economist

*[Blog at WordPress.com.](#) | [The Elemin Theme.](#) Design by [Themify.](#)*



## EXHIBIT 9



## Let the enlightenment begin.

You can purchase Karma Wellness Water at one of the stores listed here.

For Canadian Retailers, please **click here** (<http://www.karmacanada.ca/buy-in-stores/>).





*Bristol Farms*  
An Extraordinary Food Store.



WOODMAN'S  
• MARKETS •

---

EMPLOYEE OWNED





**GELSON'S**  
THE *Super* MARKET



**Giant®**





**ingles**

# HARPS<sup>TM</sup>

H O M E T O W N F R E S H



meijer®

 **Pit  
Stop**



**Rainbow<sup>®</sup>**

# REASOR'S®









# ROUNDYS®



**LUCKY**  
**VITAMIN**

*Wegmans*











**Marshalls®**





Press Area (<http://drinkkarma.com/press/>) Contact (<http://drinkkarma.com/contact/>)

(<http://www.tjmaxx.com>)

© 2016 Karma Culture LLC

## EXHIBIT 10

Sections

---

**TABLE HOPPING**


---

## Wine-in-supermarkets fight ensnares Yono's

By [Steve Barnes](#), senior writer on February 23, 2010 at 1:42 PM

---

-----  
 ADVERTISEMENT  
 -----

The battle over the sale of wine in supermarkets today landed, however unexpectedly, on a local restaurant. The opposing camps used the occasion of a dinner at Yono's in Albany this evening to snipe at one another.

Tonight's 90-person dinner is in advance of a big state Capitol lobbying event on Wednesday, when 750 people from around the state will join with The Last Store on Main Street, a coalition of small

businesses opposing wine sales in supermarket, to protest the proposed change in state law. They foresee mass closure of small liquor stores, which would have difficulty competing with supermarket wine prices, if the measure goes through.

Noting the choice of restaurant, Michael Rabinowitz, spokesman for the coalition\* that wants wine sales in supermarkets, released the following statement:

If you look at the [\(Yono's\) wine list](#), you will notice that 0% of the wines by the glass are from New York, 0% of the half bottles are from New York, 0% of the large format wines are from New York and less than 1% of the



bottles are from New York. Given that Last Store on Main Street has spent so much time talking about the New York wine industry, it is shocking that they would hold their lobby day dinner tonight in a restaurant that holds the New York wine industry in such low regard.

Michael McKeon, spokesman for The Last Store on Main Street, snapped back:

We have had a special selection prepared for this event that features only New York state wines. Instead of finding that out, they stooped to attacking us. Unlike Wegmans and its restaurant, which barely has any New York wines in it, and unlike big-box and corporate stores that care only about profits, we took steps to make sure there were only New York state wines for this event.

The supermarket chain Wegmans operates a restaurant called the Next Door Bar & Grill, adjacent to one of its suburban Rochester stores; it offers 11 New York state wines, or 5 percent of its [list](#).

Dominick Purnomo, sommelier of Yono's, told me:

My family and I have supported New York wines for the past 30 years. We continue to participate in the New York Wine & Grape foundation events, we have given seminars at the Finger Lakes wine festival, and we have donated our time and talents to the Northeast regional food bank's harvest dinner each September, which features exclusively New York State wines. For the past 2 years we have worked with New York State wineries in presenting seminars for the New York International Wine Auction at the Otesaga resort. For the past 4 out of 5 years we have given multiple seminars each year at the Pride of New York Harvest Fest.

Our wine list changes daily, and the amount of New York State wine on it ebbs and flows with the current menu. In our casual brasserie, DP, adjacent to Yono's and listed under the same liquor license, we are currently featuring three NYS wines by the glass, Amici Vineyard Cabernet Franc, Millbrook Tocai Friulano & Ravines Riesling.

Finally, my family and I have never been involved in politics or spinning things but in the hospitality business.

\*New Yorkers for Economic Growth and Open Markets is a statewide coalition of family farms, liquor stores, supermarket chains, independent food stores, grocery wholesalers and small businesses that includes the Business Council of New York State, the New York Farm Bureau, the New York Wine Industry Association, the New York State Wine Grape Growers, the Food Industry Alliance, the Empire State Restaurant and Tavern Association and the New York Association of Convenience Stores.

## 39 Responses

*williepitt* says:

February 23, 2010 at 2:04 pm

I think it rather interesting, however, that a restaurant whose management SAYS it deals in NYS wines finds them so hard to locate that it has to make special arrangements for the sake of this lobby. That gives the lie to those who claim that the present situation is good for local wineries.

*williepitt* says:

February 23, 2010 at 2:05 pm

I hope the pro-wine-in-groceries lobby is planning to counteract this effort by the Neanderthals.

*silly* says:

February 23, 2010 at 2:37 pm

@williepit – Most restaurant wine lists are constantly evolving. NYS isn't really known for the types of wine most people enjoy with hearty winter cuisine, i.e zinfandels, syrahs, cabernets. I think it is much easier to place a NYS product on a warm weather winelist, like the Glenora Gewurztraminer we always promoted when Yono's was at 289 Hamilton St.

*North Greenbush Dad* says:

February 23, 2010 at 2:53 pm

i would prefer grocery stores would stick to selling food.

*FineWineGuy* says:

February 23, 2010 at 2:56 pm

I know for a fact that Yono's/DP has carried the following New York State Wines & spirits.

Millbrook Cabernet Franc

Millbrook Pinot Noir

Millbrook Tokaji

Ravines Dry Riesling

Wolffer Estate Selection Merlot

LiV Vodka (Long Island Vodka)

These are only the ones I can currently attest to. However, Over the many years I've done busines with them Yono's has always supported NYS Wines.

*The Original Mike* says:

February 23, 2010 at 3:11 pm

I personally don't care whether a restaurant carries nys wine or not.

*Pat* says:

February 23, 2010 at 3:21 pm

Go, Nick!

*williepitt* says:

February 23, 2010 at 3:41 pm

You may all be right, and the (non-)availability of NYS wines may have other reasons entirely. In which case the people who say things would be worse if wine were sold in groceries are, yet again, talking nonsense.

*Matt* says:

February 23, 2010 at 3:55 pm

Nice research there Rabinowitz. Way to shoot yourself in the foot.

*Jose Arteche* says:

February 23, 2010 at 4:04 pm

Two words Vitis Labrusca. Majority of NYS wines are made with this vinifera. Try eating that with a steak or seafood.

*Mr. Sunshine* says:

February 23, 2010 at 4:22 pm

Wine should be sold in supermarkets and convenience stores, period.

*The Dining Diva* says:

February 23, 2010 at 4:49 pm

Does anyone know Price Chopper's position on this? I have signed petitions to support the local wine and liquor store. It is hard to believe that a supermarket could compete on variety or even price – let alone shelf space.

*Darwin* says:

February 23, 2010 at 5:08 pm

I always find it amazing that New York restaurants “have trouble” finding award winning wines from the 300+ wineries that operate in this state. It seems that they are more interested in wine from India than from New York. UNCORK NEW YORK!

*William Dowd* says:

February 23, 2010 at 5:10 pm

Several of these comments show nothing but a lack of knowledge about the breadth and depth of NYS wines – particularly that the “majority” of NY wines come from *Vitis labrusca* or that NY doesn't produce much in the way of bold reds.

As someone who writes about NY wines and who has judged in the annual NY state wine competition for years, I can attest to the fact both such comments are erroneous.

That's one of the greatest weaknesses of our technology: It allows people to make off-the-cuff remarks that are not worthy of dissemination.

Differences of opinion, fine. But both sides should make comments based on a bit of research to be grounded in reality.

*williepitt* says:

February 23, 2010 at 5:50 pm

OK, Dowd (#14). I don't disagree with you.

But, as a declared partisan, I have to know: do you, or don't you, think the situation would improve (or at least not change) if wine were sold in grocery stores?

*zack* says:

February 23, 2010 at 6:12 pm

@14,

Mr. Dowd, I have no doubt about your knowledge on the subject and don't question the veracity of your comments. But by not showing any sources beyond your own tongue to back up your assertions you are doing exactly what you accused others of.

*williepitt* says:

February 23, 2010 at 6:39 pm

Yup, back up your assertions and orientate yourself by making fine quoted statements. 😊

*ross44* says:

February 23, 2010 at 7:09 pm

We'd all like to see New York wines well represented in our fine restaurants but let's face it:

New. York. Wines. Do. Not. Sell. Off. The. Winelists.

Sad but true. They're wonderful wines but for one reason or another, put them against wines in the same price range and pedigree and let them compete for the dining dollar against California, France, Argentina, Spain, Australia, South Africa, Chile and even Italy...well, they just don't stand a chance. And what's going to change the game even more is when the first fine wines from China hit the market. Cabernet Sauvignon 2002, Beijing \$11.99, anyone?

New York State wines are fabulous and overlooked and need a major marketing overhaul. And all you wineguys better get on board.

*Carol Doolittle* says:

February 23, 2010 at 7:11 pm

This shows, again, that the liquor lobby does not support NYS wines. What's the 'special selection,' Michael and how will you verify it? Taste preference is personal so that's nothing to discuss here. But one point is certain – until wine can be sold in NY food stores all New Yorkers will pay other across-the-board taxes because of the lost tax revenue that food-store wine licenses and sales would generate. And the private enterprises of agriculture, allied

businesses and even the tourist businesses suffer as a result of the stultifying liquor store monopoly. No liquor stores will close – unless they want to – when wine can also be sold in food stores; where else will consumers get their brandy and spirits? Thank heaven some liquor stores in NYS are in favor of opening their opportunities too!  
*slilly* says:

February 23, 2010 at 8:09 pm

Mr. Dowd – I would never claim to have as much professional knowledge of wine as you, but I do have some familiarity with some of the producers in the Finger Lakes. From my own limited perspective it seems that NY truly excels in the production of rieslings, gewurztraminers, cabernet francs and ice wines. While I only possess a novice understanding of wine, I am a professional librarian and did a bit of research following your chastising post. The information below comes from a report produced by a Wine Industry Research Group, MKF Research.

#### GRAPES IN NEW YORK STATE

“...New York State also accounts for approximately one sixth of total US production of non-wine grape juice products... New York produces several varieties of grapes: Native American grapes (such as Catawba and Concord), French-American hybrid grapes (grapes developed by French scientists such as Aurora, Seyval Blanc and Vignoles, along with American hybrids developed by Cornell researchers such as Cayuga White, Melody, and Traminette) and *Vitis vinifera*, the traditional European wine grape (such as Cabernet Sauvignon, Merlot, Riesling). Although there has been a gradual increase in *Vitis vinifera* production in the state as wine production has increased, *Vitis vinifera* represents only about 10% of total grape production. Concord remains New York’s dominant grape variety, the vast majority of which is used for non-fermented products such as Welch’s grape juice.”

I am a fan of wine and enjoy NYS wines – we poured Hermann Weimer at our wedding 15 years ago and it remains a favorite. I’ve also enjoyed your work, Mr. Dowd, for at least as many years, however your tone left a taste in my mouth worse than any Empire State wine than I can imagine.

*dbysm* says:

February 23, 2010 at 9:16 pm

Carol Doolittle, being you have such a small winery, your only purpose is to get your wines into the stores in your own Cayuga Lake area, as you have no means of transportation and marketing of your wines or enough of it for all of NY State. As far as tourist business goes read this from Wine Press:

Thanks to the wine industry stretching the tourist season by many months, there are now nearly 5 million visits annually and \$376.5 million in wine-related tourism expenditures, not to mention the many businesses created or expanded like Bed & Breakfasts, hotels, transportation companies, restaurants and gift shops. Wine is a gold mine for New York’s economy: \$3.76 billion a year.

So, what is your problem?

*The Original Mike* says:

February 23, 2010 at 9:34 pm

Dowd, how many times have you ordered or bought and paid for a NY wine in the last year ?

*Sarah* says:

February 23, 2010 at 10:35 pm

Funny, the last time I had a NYS wine in a restaurant was not locally, but Osteria del Circo in NYC during Restaurant Week. My dining companions found the Dr. Frank a lovely addition to our meal. My problem was that the markup was 166%. That’s what keeps me from ordering NYS wines in restaurants. When I know I can get it locally at a considerably lower price, I won’t order the bottle.

*breadchick* says:

February 23, 2010 at 10:42 pm

This is one person’s impression (or past impression) of NYS wines – at least from the Finger Lake region:

In the 80’s, my husband and I would do an annual road trip up and down the Valley at the various wineries and buy lots of what they had to offer. We enjoyed the wines we bought. Mostly red, I admit.

My mother, on the other hand, would go out every year to the Finger Lakes region and bring back wines. My perception, which may be entirely due to my mother's taste, is that those wines were either very dry, minerally, tart, or tasting so much like Welch's concord grape juice. I really couldn't drink what she would bring home with any dinner. And I do like white wine very much.

So, my perception has been that a lot of NYS wines are like the ones she brought home – which seemed to me to be the majority of what's produced here.

I don't blame the restaurants, because I can't imagine people ordering a bottle of wine they aren't familiar with to some extent.

I blame the wineries themselves. I've never seen a commercial for Finger Lakes wines. I've never seen a grower walking through their vines, talking about how good their wines are – like you see in CA commercials. I almost can guarantee that a lot of people living here aren't even aware that we have so many wineries.

If you make it personal, people will accept and gravitate to your vines. Get your butts out there and sell like all the other wineries do.

Tell me why I should trust you and not think that your my mother's winery.

And, if the whole issue is that the wineries are too small to handle any real distribution – than that's another story.

*breadchick* says:

February 23, 2010 at 10:50 pm

Sorry – “you're my mother's winery” not “your.”

*Jeff* says:

February 23, 2010 at 10:50 pm

Isn't Carol Doolittle the same person that stated that grapes will “die on the vine” without grocery stores but on her own website notes she had an awful harvest and wouldn't have been able to provide the supply. How is that a crack pot wine hobbist has been so knowledgable. She couldn't even get her grapes grown last year. How about you focus on that sweetie!

*Tina* says:

February 24, 2010 at 10:29 am

I am shocked you people are (mostly) so rude! Speaking of mothers, most of yours didn't teach you many manners. That aside,

we are a 6th generation family farm trying to stay in business. We grow 80% vinifera grapes and 20% French-American hybrids. We are known as premium winegrape growers. Our grapes have been in many Governors Cup wines over the years. We have had a struggle to sell the grapes more and more over the past 5 years. Wineries cancel grapes at harvest time due to no additional outlets to sell their wines. Their warehouses are backlogged, and it trickles back to the family farm. I suppose you would rather have us develop condos around the beautiful Finger Lakes than green rolling vineyards?

We (and the NYS Winegrape Growers and The NYS Farm Bureau) have been trying for over 30 years to have wine in food stores passed. If this is so bad for family farms, why have we been trying for SO LONG?

It works in EVERY major grape growing region in the US. Why not here? Open your minds, see the possibilities, our NY wines CAN compete with wines from all over the world. Let's give them a chance!

And please start playing a little nicer around here.

Have a nice day.

*Carol Doolittle* says:

February 24, 2010 at 11:31 am

Since 1978 – 32 years – NY wine grape growers and some wineries have been politely asking the NYS legislature to allow the sale of wine in food stores for many constructive reasons – including the growth of agriculture and allied tourist businesses.

In return for their requests some liquor stores boycotted wines from wineries who spoke in favor of wine being sold in food stores. Some wine stores in NYS are wonderful supporters of NY and other quality wines; many are not.

Thus, I reacted to the article about liquor store owners supporting a restaurant that has only 3 or 4 NY wines on it's list.

Thanks for checking our website, Jeff. We had a cold summer so our late ripening varieties of grapes didn't ripen fully. So in the true method of making Champagne from less than perfectly ripe grapes, we'll make methode champenois from them. I said that on our website – so taking it out of context was not good. If we can't supply food stores at our current production level others can – and our whole NYS economy will be better for it. dbysm – don't know who you are; I don't hide – We and other small wineries choose to distribute all or most from our tasting room and, yes, are a main tourist draw. But if gas goes to \$4+ a gallon with a recession, we're toast because there is no room in any NY liquor store for NY wines – without- taking another NY wine already there off the shelf. That does not help grow the economy.

I'm not nasty to you and expected the same from you. I thank Steve for opening this dialogue. Over and out.

*williepitt* says:

February 24, 2010 at 11:38 am

Tina, I fully agree with you on the real issue here. But if you think people are nice & polite on blogs, you've been living in a cave. If you don't like the way they communicate, then it's better that you stay off.

*Tina* says:

February 24, 2010 at 12:20 pm

I suppose that is what is wrong with our culture, people feel free to be nasty when they don't have to look someone in the face.

I prefer to be polite. The world would be better if people could politely have debates over a lovely glass of wine, purchased wherever was the most convenient place for you, grocery store, liquor store, or winery tasting room.

Cheers!

*Patrick* says:

February 24, 2010 at 12:28 pm

I know it's apples to oranges, but I like the analogy of beer in supermarkets on the "Beer Nut" blog by George DePiro.

*kp* says:

February 24, 2010 at 6:58 pm

I want NY wines to sell in stores & restaurants not food stores. I support NY wines.. A lot of people do not, that is one reason you do not see a lot of them on wine lists. If there was a demand then the restaurants would have more. I know a few stores that have limited the NY wine sections as a lot of the NY winerys want wine in food stores..Isn't that asking for sales and then lobbying to take away their business.

It is a hot topic.. Bottom line.. People will lose jobs, stores will close, Wegmans, PC, Hannaford etc. will have it all.. Wine/liquor shops cant stay open selling liquor only and they will not be able to order a truckload of one wine and get a deal like a large chain will be able too. Do you think every liquor store should now carry bread, milk and veggies too??

*Gene* says:

February 25, 2010 at 7:27 pm

If wine is allowed to be sold in supermarkets, it will hurt the small NY State wineries. Supermarkets will only be selling the "Top 20" or so most popular wines. They will not special order for you like your local liquor stores do and have been doing for years. I have lived in other states where wine is sold in supermarkets, and have already experienced these same things. In Chicago, for example which sells liquor and wine in supermarkets, I shopped exclusively at local wine and liquor stores for 4 main reasons. Variety, knowledgeable staff, lower prices, and preferring to give my business to the small business owner rather than feed the corporate giant!

*The Restaurant Geek* says:

February 27, 2010 at 2:40 pm

My concern with wine being sold in supermarkets is obvious...their purchasing power will allow them to out price the "Mom and Pop" locally owned shops, forcing many out of business. Once they're gone, they're gone forever. Supermarkets by nature are far more bottom lined oriented, they won't waste shelf space on slower seller or less profitable lables. Thus, we the consumer will have less options to choose from. If you're happy with Yellow-Tail and Kendall Jackson only...well, supermarket wine sales might seem like a good idea to you. I for one, enjoy strolling the

aisles of interesting (often quirky) little wine shops, and exploring different wines based on the advice of knowledgeable shopkeepers dedicated to their product.

I'm also a big fan of NYS wines. I know it's been discussed before but I'm not sure of the legalities of allowing supermarkets in NYS to sell ONLY wines produced in NYS??? Probably some sort of "restraint of trade" issues, but if it is do-able that might be the best compromise on this issue. Supermarkets get wines to sell, NYS wine makers get access to larger markets and consumers get options...a win-win-win.

There is also a bit of an upstate vs. downstate issue. If I live in Manhattan (or was an elected representative from NYC), the idea of selling wines in supermarkets may seem like a good way for the state to generate additional sales tax revenue during this current economic downturn. Since I wouldn't shop much in supermarkets anyway, chances are my favorite NYC wine shop wouldn't be too effected by this new law. Upstate will be far more effected. Small, often family owned businesses may go under. Jobs lost there will not be offset by new hires in supermarkets (to sell their new product line)...a net loss to employment. The additional sales tax expected by supermarket wine sales implies greater volume of wine being sold...does the State really want to encourage more alcohol consumption? Isn't there extra expenses associated to the State when alcohol consumption goes up? Won't more wine connoisseurs simply e-shop or mail order wines (out of state) no longer available to them? I've said this before...If it ain't broke, don't fix it. The current system works. I don't see supermarkets going under because they can't sell wine but I'm sure many small wine shops won't be able to compete with the big boys. It just seems short sighted. If small businesses are supposed to be the backbone of the American economy, why then is NYS changing the rules of the game, knowing it may hurt many small businesses. Just makes no sense...but hey, what do I know!

*Beckner says:*

[March 1, 2010 at 12:41 pm](#)

This really is a no-brainer. New York wines need more outlets in order to grow. 35 other states including every other major wine and grape producing state allow wine in grocery stores.

There are half as many liquor stores in New York today as there were twenty years ago. The reason for this is because big "super store" liquor stores are moving in and forcing real mom-and-pops out of business. The only people who are benefiting from the current system are owners of huge stores. Now they are posing as the people they forced out of business.

I would much rather support New York wineries and grape growers (and increase state revenue without raising taxes) than maintain a Prohibition-era system that only benefits a few wealthy business owners.

*williepitt says:*

[March 1, 2010 at 2:43 pm](#)

Beckner (#35), that makes sense, though no one seems to have pointed it out before. Obviously, if the superstores are already knocking out the smaller stores, there's not much left for groceries to bump. The thinning-out process has already taken place.

So where were the "mom & pop" fanatics years ago, when this "horrible" really happened? And do they really have any reason to scream now? Seems not.

Which leaves the big lobbyists such as the distributors to say all the scary stuff and fool everyone else. And they've done a great job of it!

*Gene says:*

[March 1, 2010 at 8:00 pm](#)

Have you checked on the laws that currently exist within each of those other 35 states. First do that, then compare that with the laws that we currently have in place in NYS. If we change the law, then we must also change other parts of the law as well. Not just the selling of wine in grocery stores! There is more to this than the government officials and wine lobbyists are telling you.

*dbysm says:*

[March 2, 2010 at 8:41 pm](#)

Wrong info being put out about the 35 other states allowing wine in grocery stores. Get all the facts correctly. Each state had their own laws. Those states that allowed it way back after prohibition, at that time there was no large big box or chain stores. Everyone started out on fair play. And the others were state stores to begin with, allowing the grocery stores to take on the wine and some states liquor too. Our state made their own laws and only allowed 1

store to be owned for all these years. And they have done a good job since of keeping the alcohol under control the right way. This is not about consumers convenience. It is about the greediness of the major chains and box stores for more profits. They don't lose anything if this doesn't pass, but the liquor stores will lose their everyday wine sales which is their main sellers and helps pay their bills, taxes, insurances, kids college education, etc. All communities will lose out on the sales at grocery stores. The money from wine sales will go to main corporate headquarters. Many out of state.

*williepitt* says:

March 3, 2010 at 9:25 am

Gene (#37), I'm very aware that all states have their own systems. Duh! Our system is cockamamie, and we should adopt another one – which is what this legislative proposal would do. Did you get the cuckoo notion that it changed only one law?

dbsym (#38), welcome to the modern world of commerce. It goes way beyond wine, and rightly so. There is no reason at all that we should be forced to do business the way it was done in the 1930's.

**Eat, drink and be candid, with Times Union Senior Writer Steve Barnes**



**Search this blog**

Keyword search across all the entries in this blog.

Keyword	<b>GO</b>
---------	-----------

## Subscribe to Table Hopping

Enter your email address to subscribe to this blog and receive notifications of new posts by email.

Join 539 other subscribers

Email Address	<b>SUBSCRIBE</b>
---------------	------------------

## Recent Comments

### Area's first CilantroMex opening by end of month (3)

**Don't Golub Way Mad, Just Golub Way:** Clearly, since your comment contains an error. You're fired.

---

### Crown Grill to end dinner service after Sunday (2)

**JJJ:** I think it's all of those things. Saratoga is high-end for upstate NY but the majority of diners are...

---

**DC:** Maestros, Mingle, Crown Grille, a few others are getting by, not sure what the continual problem is in this town...

---

### Table Hopping giveaway: Tickets Nine Pin state cider bash (23)

**\$cott:** Pulled pork

---

**Jai:** Crepes filled with ham, spinach and cheese.

---

**Colleen:** cheese

---

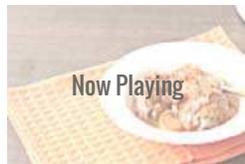
### Druthers wins big at Mac-n-Cheese Bowl (14)

**\$cott:** I think the problems stem from the giant circular line that forms halfway through the event. People who get...

## Categories

- Beer, wine and spirits
- Bulletin
- Closed restaurants
- Contests/giveaways
- Dining deals
- Food/dining media
- General
- Musings
- New restaurants
- News
- Q&A
- Recommendations
- Restaurants/chefs
- Valentine's Day '16
- Where to dine in ...?

Wine-Braised Chicken and Carrots  
Martha Stewart



### Wine-Braised Chicken and Carrots

Sarah Carey's wine braised chicken is a simple twist on...



### How To Make Cast-Iron Skillet Tortilla Pizza

Thanks to Serious Eats for the recipe!



### Chocolate Cherry Dessert Clusters

Sarah's 3 ingredient no bake chocolate dessert is so quick...

## Links for Table Hopping

[Albany County restaurant inspections site](#)

[Albany Eats!](#)

[All Over Albany](#)

[Christen in the Kitchen](#)

[derryX](#)

[Docskonoz — The Blog](#)

[Healthy-Delicious blog](#)

[Notes on Napkins](#)

[Recipe Box](#)

[Times Union restaurant reviews](#)

[Return to Top](#)

---

[Contact Us](#) [Our Company](#) [Careers](#) [Advertising](#) [Ad Choices](#) [Terms & Conditions](#) [Privacy Policy](#)

**About** [Your California Privacy Rights](#)

[Blogs](#) [Weather](#) [School Closings](#) [Events Calendar](#) [Weddings/Celebrations](#) [Births](#) [Obituaries](#)

**Content** [Online Store](#) [Puzzles Palace](#)

**Connect** [Newsletters](#) [Facebook](#) [Twitter](#) [Pinterest](#) [Google+](#) [Instagram](#)

[Subscriber Services](#) [Home Delivery](#) [Become a Carrier](#) [iPad app](#) [Times Union Plus](#)

**Subscribe** [Copyright and Reprint](#) [eEdition](#)

---

© Copyright 2016 The Hearst Corporation

-->

## EXHIBIT 11



26 of 36 DOCUMENTS

Page's Ohio Revised Code Annotated  
Copyright © 2016 Matthew Bender & Company, Inc., a member of the LexisNexis Group.  
All rights reserved.

\*\*\* Current with Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 45 (SB 223) with the exception of file 44 (SB 190) \*\*\*

Title 43: Liquor  
Chapter 4303: Liquor Permits

**Go to the Ohio Code Archive Directory**

*ORC Ann. 4303.12 (2016)*

**§ 4303.12 C-2 permit.**

Permit C-2 may be issued to the owner or operator of a retail store to sell wine in sealed containers only and not for consumption on the premises where sold in original containers. The holder of this permit may also sell and distribute in original packages and not for consumption on the premises where sold or for resale, prepared and bottled highballs, cocktails, cordials, and other mixed beverages manufactured and distributed by holders of A-4 and B-4 permits, and containing not less than four per cent of alcohol by volume, and not more than twenty-one per cent of alcohol by volume. The fee for this permit is three hundred seventy-six dollars for each location.

**HISTORY:** 141 v H 428 (Eff 12-23-86); 143 v H 111 (Eff 7-1-89); 143 v S 131. Eff 7-25-90; 150 v H 95, § 1, eff. 9-26-03.

**NOTES:**

Section Notes

Editor's Notes

Analogous to former *RC* § 4303.12 (GC § 6064-15; 115 v PtII, 118 (130), § 15; 116 v 511 (525); 117 v 628; 118 v 631; 118 v 691; 120 v 96; 124 v 209; Bureau of Code Revision, 10-1-53; 130 v 1005; 131 v 1048; 134 v H 240; 138 v H 470; 139 v S 14; 139 v H 357; 140 v S 74; 140 v H 37), repealed 141 v H 428, § 2, eff 12-23-86.

Cross-References to Related Sections

Application for permits, *RC* § 4303.26.

Definitions, *RC §§ 4301.01, 4303.01.*

Disposition of fees; return of initial fee, *RC § 4303.24.*

Permits issued for one year, *RC § 4303.27.*

Petition for election concerning particular location, *RC § 4301.333.*

Renewal of permit, *RC § 4303.271.*

Surrender and cancellation upon entry of permit holder into military service, *RC § 4303.32.*

#### Ohio Administrative Code

Possession of spirituous liquor on certain premises prohibited. *OAC 4301:1-1-55.*

Sanitation requirements. *OAC 4301:1-1-17.*

#### Notes to Decisions

Constitutionality Authority of permit holder

#### **Constitutionality**

By reason of the provisions of Ohio Const. art XVIII, § 3, section 25-3-2 of the Toledo municipal code is invalid because it is in conflict with this section and *R.C. 4303.27: Auxter v. Toledo, 173 Ohio St. 444, 20 Ohio Op. 2d 71, 183 N.E.2d 920, 1962 Ohio LEXIS 657 (Ohio 1962).*

#### **Authority of permit holder**

A C-2 permit issued pursuant to the Ohio liquor control act authorizes the person to whom it is issued to carry on at the place specified therein the business of selling beer and other intoxicating liquors as that business is described in this section, and a municipal ordinance which prohibits the carrying on by such person of such business at that place without a city license to do so, that is obtainable only upon paying a fee, would conflict with this section and *R.C. 4303.27: Auxter v. Toledo, 173 Ohio St. 444, 20 Ohio Op. 2d 71, 183 N.E.2d 920, 1962 Ohio LEXIS 657 (Ohio 1962).*

## EXHIBIT 12



4 of 9 DOCUMENTS

CODE OF VIRGINIA

Copyright (c) 2016 by Matthew Bender & Company, Inc.

a member of the LexisNexis Group.

All rights reserved

\*\*\* Current through Chapter 1 of the 2016 Regular Session of the General Assembly \*\*\*

TITLE 4.1. ALCOHOLIC BEVERAGE CONTROL ACT

CHAPTER 2. ADMINISTRATION OF LICENSES

ARTICLE 2. LICENSES GRANTED BY BOARD; LIMITATIONS; REVOCATION AND SUSPENSION

**GO TO CODE OF VIRGINIA ARCHIVE DIRECTORY**

*Va. Code Ann. § 4.1-209 (2016)*

§ 4.1-209. Wine and beer licenses; advertising

A. The Board may grant the following licenses relating to wine and beer:

1. Retail on-premises wine and beer licenses to:

a. Hotels, restaurants and clubs, which shall authorize the licensee to sell wine and beer, either with or without meals, only in dining areas and other designated areas of such restaurants, or in dining areas, private guest rooms, and other designated areas of such hotels or clubs, for consumption only in such rooms and areas. However, with regard to a hotel classified by the Board as (i) a resort complex, the Board may authorize the sale and consumption of alcoholic beverages in all areas within the resort complex deemed appropriate by the Board or (ii) a limited service hotel, the Board may authorize the sale and consumption of alcoholic beverages in dining areas, private guest rooms, and other designated areas to persons to whom overnight lodging is being provided, for on-premises consumption in such rooms or areas, and without regard to the amount of gross receipts from the sale of food prepared and consumed on the premises, provided that at least one meal is provided each day by the hotel to such guests. With regard to facilities registered in accordance with Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 of the Code of Virginia as continuing care communities that are also licensed by the Board under this subdivision, any resident may, upon authorization of the licensee, keep and consume his own lawfully acquired alcoholic beverages on the premises in all areas covered by the license. For purposes of this subdivision, "other designated areas" includes outdoor dining areas, whether or not contiguous to the licensed premises, which may have more than one means of ingress and egress to an adjacent public thoroughfare, provided that such outdoor dining areas are under the control of the licensee and approved by the Board. Such noncontiguous designated areas shall not be approved for any retail license issued pursuant to subdivision A 5 of § 4.1-201;

b. Persons operating dining cars, buffet cars, and club cars of trains, which shall authorize the licensee to sell wine and beer, either with or without meals, in the dining cars, buffet cars, and club cars so operated by them, for

on-premises consumption when carrying passengers;

c. Persons operating sight-seeing boats, or special or charter boats, which shall authorize the licensee to sell wine and beer, either with or without meals, on such boats operated by them for on-premises consumption when carrying passengers;

d. Persons operating as air carriers of passengers on regular schedules in foreign, interstate or intrastate commerce, which shall authorize the licensee to sell wine and beer for consumption by passengers in such airplanes anywhere in or over the Commonwealth while in transit and in designated rooms of establishments of such carriers at airports in the Commonwealth, § 4.1-129 notwithstanding. For purposes of supplying its airplanes, as well as any airplane of a licensed express carrier flying under the same brand, an air carrier licensee may appoint an authorized representative to load wine and beer onto the same airplanes and to transport and store wine and beer at or in close proximity to the airport where the wine and beer will be delivered onto airplanes of the air carrier and any such licensed express carrier. The air carrier licensee shall (i) designate for purposes of its license all locations where the inventory of wine and beer may be stored and from which the wine and beer will be delivered onto airplanes of the air carrier and any such licensed express carrier and (ii) maintain records of all wine and beer to be transported, stored, and delivered by its authorized representative;

e. Hospitals, which shall authorize the licensee to sell wine and beer in the rooms of patients for their on-premises consumption only in such rooms, provided the consent of the patient's attending physician is first obtained;

f. Persons operating food concessions at coliseums, stadia, racetracks or similar facilities, which shall authorize the licensee to sell wine and beer in paper, plastic or similar disposable containers, during any event and immediately subsequent thereto, to patrons within all seating areas, concourses, walkways, concession areas and additional locations designated by the Board in such coliseums, stadia, racetracks or similar facilities, for on-premises consumption. Upon authorization of the licensee, any person may keep and consume his own lawfully acquired alcoholic beverages on the premises in all areas and locations covered by the license;

g. Persons operating food concessions at any outdoor performing arts amphitheater, arena or similar facility which (i) has seating for more than 20,000 persons and is located in Prince William County or the City of Virginia Beach, (ii) has capacity for more than 3,500 persons and is located in the Counties of Albemarle, Augusta, Nelson, Pittsylvania, or Rockingham, or the Cities of Charlottesville, Danville, or Roanoke, or (iii) has capacity for more than 9,500 persons and is located in Henrico County. Such license shall authorize the licensee to sell wine and beer during the performance of any event, in paper, plastic or similar disposable containers to patrons within all seating areas, concourses, walkways, concession areas, or similar facilities, for on-premises consumption. Upon authorization of the licensee, any person may keep and consume his own lawfully acquired alcoholic beverages on the premises in all areas and locations covered by the license; and

h. Persons operating food concessions at exhibition or exposition halls, convention centers or similar facilities located in any county operating under the urban county executive form of government or any city which is completely surrounded by such county, which shall authorize the licensee to sell wine and beer during the event, in paper, plastic or similar disposable containers to patrons or attendees within all seating areas, exhibition areas, concourses, walkways, concession areas, and such additional locations designated by the Board in such facilities, for on-premises consumption. Upon authorization of the licensee, any person may keep and consume his own lawfully acquired alcoholic beverages on the premises in all areas and locations covered by the license. For purposes of this subsection, "exhibition or exposition hall" and "convention centers" mean facilities conducting private or public trade shows or exhibitions in an indoor facility having in excess of 100,000 square feet of floor space.

2. Retail off-premises wine and beer licenses, which shall authorize the licensee to sell wine and beer in closed containers for off-premises consumption.

3. Gourmet shop licenses, which shall authorize the licensee to sell wine and beer in closed containers for off-premises consumption and, the provisions of § 4.1-308 notwithstanding, to give to any person to whom wine or beer may be lawfully sold, (i) a sample of wine, not to exceed two ounces by volume or (ii) a sample of beer not to exceed four ounces by volume, for on-premises consumption. The licensee may also give samples of wine and beer in designated areas at events held by the licensee for the purpose of featuring and educating the consuming public about the alcoholic beverages being tasted. Additionally, with the consent of the licensee, farm wineries, wineries, breweries, and wholesale licensees may participate in tastings held by licensees authorized to conduct tastings, including the pouring of samples to any person to whom alcoholic beverages may be lawfully sold. Notwithstanding Board regulations relating to food sales, the licensee shall maintain each year an average monthly inventory and sales volume of at least \$ 1,000 in products such as cheeses and gourmet food.

4. Convenience grocery store licenses, which shall authorize the licensee to sell wine and beer in closed containers for off-premises consumption.

5. Retail on-and-off premises wine and beer licenses to persons enumerated in subdivision 1 a, which shall accord all the privileges conferred by retail on-premises wine and beer licenses and in addition, shall authorize the licensee to sell wine and beer in closed containers for off-premises consumption.

6. Banquet licenses to persons in charge of banquets, and to duly organized nonprofit corporations or associations in charge of special events, which shall authorize the licensee to sell or give wine and beer in rooms or areas approved by the Board for the occasion for on-premises consumption in such rooms or areas. Except as provided in § 4.1-215, a separate license shall be required for each day of each banquet or special event. For the purposes of this subdivision, when the location named in the original application for a license is outdoors, the application may also name an alternative location in the event of inclement weather. However, no such license shall be required of any hotel, restaurant, or club holding a retail wine and beer license.

7. Gift shop licenses, which shall authorize the licensee to sell wine and beer only within the interior premises of the gift shop in closed containers for off-premises consumption and, the provisions of § 4.1-308 notwithstanding, to give to any person to whom wine or beer may be lawfully sold (i) a sample of wine not to exceed two ounces by volume or (ii) a sample of beer not to exceed four ounces by volume for on-premises consumption. The licensee may also give samples of wine and beer in designated areas at events held by the licensee for the purpose of featuring and educating the consuming public about the alcoholic beverages being tasted.

8. Gourmet brewing shop licenses, which shall authorize the licensee to sell to any person to whom wine or beer may be lawfully sold, ingredients for making wine or brewing beer, including packaging, and to rent to such persons facilities for manufacturing, fermenting, and bottling such wine or beer, for off-premises consumption in accordance with subdivision 6 of § 4.1-200.

9. Annual banquet licenses, to duly organized private nonprofit fraternal, patriotic or charitable membership organizations that are exempt from state and federal taxation and in charge of banquets conducted exclusively for its members and their guests, which shall authorize the licensee to serve wine and beer in rooms or areas approved by the Board for the occasion for on-premises consumption in such rooms or areas. Such license shall authorize the licensee to conduct no more than 12 banquets per calendar year. For the purposes of this subdivision, when the location named in the original application for a license is outdoors, the application may also name an alternative location in the event of inclement weather. However, no such license shall be required of any hotel, restaurant, or club holding a retail wine and beer license.

10. Fulfillment warehouse licenses, which shall authorize associations as defined in § 13.1-313 with a place of business located in the Commonwealth to (i) receive deliveries and shipments of wine or beer owned by holders of wine or beer shipper's licenses, (ii) store such wine or beer on behalf of the owner, and (iii) pick, pack, and ship such wine or beer as directed by the owner, all in accordance with Board regulations. No wholesale wine or wholesale beer licensee,

whether licensed in the Commonwealth or not, or any person under common control of such licensee, shall acquire or hold any financial interest, direct or indirect, in the business for which any fulfillment warehouse license is issued.

11. Marketing portal licenses, which shall authorize agricultural cooperative associations organized under the provisions of the Agricultural Cooperative Association Act (§ 13.1-312 et seq.), with a place of business located in the Commonwealth, in accordance with Board regulations, to solicit and receive orders for wine or beer through the use of the Internet from persons in the Commonwealth to whom wine or beer may be lawfully sold, on behalf of holders of wine or beer shipper's licenses. Upon receipt of an order for wine or beer, the licensee shall forward it to a holder of a wine or beer shipper's license for fulfillment. Marketing portal licensees may also accept payment on behalf of the shipper.

12. Gourmet oyster house licenses, to establishments located on the premises of a commercial marina and permitted by the Department of Health to serve oysters and other fresh seafood for consumption on the premises, where the licensee also offers to the public events for the purpose of featuring and educating the consuming public about local oysters and other seafood products. Such license shall authorize the licensee to (i) give samples of or sell wine and beer in designated rooms and outdoor areas approved by the Board for consumption in such approved areas and (ii) sell wine and beer in closed containers for off-premises consumption. Samples of wine shall not exceed two ounces per person. Samples of beer shall not exceed four ounces per person. The Board shall establish a minimum monthly food sale requirement of oysters and other seafood for such license. Additionally, with the consent of the licensee, farm wineries, wineries, and breweries may participate in tastings held by licensees authorized to conduct tastings, including the pouring of samples to any person to whom alcoholic beverages may be lawfully sold.

B. Notwithstanding any provision of law to the contrary, persons granted a wine and beer license pursuant to this section may display within their licensed premises point-of-sale advertising materials that incorporate the use of any professional athlete or athletic team, provided that such advertising materials: (i) otherwise comply with the applicable regulations of the Federal Bureau of Alcohol, Tobacco and Firearms; and (ii) do not depict any athlete consuming or about to consume alcohol prior to or while engaged in an athletic activity; do not depict an athlete consuming alcohol while the athlete is operating or about to operate a motor vehicle or other machinery; and do not imply that the alcoholic beverage so advertised enhances athletic prowess.

C. Persons granted retail on-premises and on-and-off-premises wine and beer licenses pursuant to this section or subsection B of § 4.1-210 may conduct wine or beer tastings sponsored by the licensee for its customers for on-premises consumption. Such licensees may sell or give samples of wine and beer in designated areas at events held by the licensee for the purpose of featuring and educating the consuming public about the alcoholic beverages being tasted. Additionally, with the consent of the licensee, farm wineries, wineries, and breweries may participate in tastings held by licensees authorized to conduct tastings, including the pouring of samples to any person to whom alcoholic beverages may be lawfully sold. Samples of wine shall not exceed two ounces per person. Samples of beer shall not exceed four ounces per person.

**HISTORY:** Code 1950, § 4-25; 1952, c. 535; 1956, c. 520; 1962, c. 532; 1964, c. 210; 1970, cc. 627, 723; 1972, c. 679; 1973, c. 343; 1974, c. 267; 1975, c. 408; 1976, cc. 134, 447, 496, 703; 1977, c. 439; 1978, c. 190; 1979, c. 258; 1980, cc. 526, 528; 1981, cc. 410, 412; 1982, c. 66; 1984, c. 200; 1987, c. 365; 1988, c. 893; 1989, c. 42; 1990, c. 707; 1991, c. 628; 1992, cc. 215, 350; 1993, cc. 190, 828, 866; 1994, c. 585; 1995, cc. 544, 570; 1996, cc. 443, 604; 1997, c. 489; 2001, c. 361; 2002, c. 204; 2003, cc. 329, 589, 1029, 1030; 2004, c. 487; 2005, cc. 652, 784; 2006, cc. 94, 153, 256, 826, 845; 2007, c. 813; 2008, cc. 179, 186, 192, 875; 2010, cc. 317, 561; 2011, c. 626; 2014, cc. 125, 612; 2015, c. 412.

**NOTES: CROSS REFERENCES.** --For penalty for falsifying an application for a license pursuant to § 4.1-209 or § 4.1-210, see § 4.1-325.1. For provision making it unlawful to knowingly make false statements in order to secure an application for a banquet or special events license pursuant to § 4.1-209 or mixed beverage special events license pursuant to § 4.1-210, see § 4.1-325.1.

EDITOR'S NOTE. --Acts 1993, cc. 190 and 828 also amended former § 4-25, from which this section is derived. Pursuant to § 30-152, the 1993 amendments by cc. 190, 828 have been given effect in this section as set out above. In accordance with c. 190, the last sentence in subdivision 1a was added. In accordance with c. 828, the phrase "or performances immediately subsequent thereto" was inserted after "exhibitions, events" in subdivision 1 f.

Acts 1995, cc. 744 and 803, cls. 5, which provide: "That any and all certificates of public convenience and necessity, certificates as limousine and executive sedan carriers authorizing operations, permits and licenses for brokers in the nature of those authorized by this Act, issued by the State Corporation Commission prior to July 1, 1995, shall remain in full force and effect" is applicable to certificates issued for sight-seeing carriers by boat under subdivision 1 c of this section.

THE 2001 AMENDMENTS. --The 2001 amendment by c. 361 added the subsection A designator to the introductory language, added the third sentence in subdivision A 6, and added subsection B.

THE 2002 AMENDMENTS. --The 2002 amendment by c. 204, in subdivision A 1 f, substituted "during any event and immediately subsequent thereto" for "during the performance of professional sporting exhibitions, events or performances immediately subsequent thereto."

THE 2003 AMENDMENTS. --The 2003 amendment by c. 329 substituted "sight-seeing boats, or special or charter boats" for "boats for which certificates as a sight-seeing carrier by boat, or a special or charter party by boat have been issued by the Department of Motor Vehicles pursuant to § 46.2-2099.20" in subdivision A 1 c.

The 2003 amendment by c. 589 rewrote clause A 1 g (ii), which formerly read: "has seating for more than 3,500 persons and is located in any county with a population between 65,000 and 70,000."

The 2003 amendments by cc. 1029 and 1030 are identical, and in subdivision A 2, deleted "or ship" following "deliver" in the first sentence and added the last sentence; in subdivision A 5, deleted "or ship" following "deliver" in the first sentence and added the last sentence; and in subdivision A 7, deleted "or ship" following "deliver" in the first sentence and added the last sentence.

THE 2004 AMENDMENTS. --The 2004 amendment by c. 487 added subdivision A 9.

THE 2005 AMENDMENTS. --The 2005 amendment by c. 652 added clause (iii) to the end of the first sentence in subdivision A 1 g; and made related changes.

The 2005 amendment by c. 784, in subdivision A 6, inserted "Except as provided in § 4.1-215" at the beginning of the second sentence, and substituted "subdivision" for "subsection" in the third sentence.

THE 2006 AMENDMENTS. --The 2006 amendment by c. 94, in subdivision A 1 a, inserted the clause (i) designation and added clause (ii).

The 2006 amendment by c. 153, effective March 23, 2006, added the last sentence in subdivision A 1 a.

The 2006 amendment by c. 256 inserted "racetracks" in two places in the first sentence in subdivision A 1 f; in subdivision A 3, substituted "two ounces" for "one ounce" in clause (i), and substituted "four ounces" for "two ounces" in clause (ii); and added subsection C.

The 2006 amendment by c. 826 substituted "two ounces" for "one ounce" in clause (i) and "four ounces" for "two ounces" in clause (ii) of subdivision A 3.

The 2006 amendment by c. 845 deleted "and to deliver the same to purchasers in accordance with Board regulations. All such deliveries of wine or beer shall be performed by the owner or any agent, officer, director, shareholder or employee of the licensee" at the end of subdivisions 2, 5 and 7.

THE 2007 AMENDMENTS. --The 2007 amendment by c. 813, in subdivision A 1 g, substituted "Prince William County or the City of Virginia Beach" for "any county with a population between 210,000 and 216,000 or in any city with a population between 392,000 and 394,000" in clause (i), substituted "the Counties of Albemarle, Augusta, Pittsylvania, or Rockingham, or the Cities of Charlottesville or Danville" for "any county with a population between

65,000 and 70,000 or in a city with a population between 40,000 and 47,000" in clause (ii) and substituted "Henrico County" for "any county operated under the county manager form of government" in clause (iii).

THE 2008 AMENDMENTS. --The 2008 amendment by c. 179, effective March 3, 2008, added the second and third sentences of subdivision A 3.

The 2008 amendment by c. 186 inserted "or Roanoke" in subdivision A 1 g and made related changes.

The 2008 amendments by cc. 192 and 875 are nearly identical, and added the last sentence of subdivision A 3. Subdivision A 3 has been set out in the form above at the direction of the Virginia Code Commission.

THE 2010 AMENDMENTS. --The 2010 amendments by cc. 317 and 561 are identical, and inserted subdivisions A 10 and A 11.

THE 2011 AMENDMENTS. --The 2011 amendment by c. 626 added subdivision A 12.

THE 2014 AMENDMENTS. --The 2014 amendment by c. 125, in subdivision A 1 d, added the last two sentences.

The 2014 amendment by c. 612, in subdivision A 7, deleted "unchilled" following "wine and beer" and added the language beginning "and, the provisions of § 4.1-308" to the end of the subdivision.

THE 2015 AMENDMENTS. --The 2015 amendment by c. 412 added the last two sentences in subdivision A 1 a and inserted "Nelson" in subdivision A 1 g.

MICHIE'S JURISPRUDENCE REFERENCES. --For related discussion, see *2B M.J. Aviation*, § 1.

EDITOR'S NOTE. --The cases below were decided prior to Acts 2003, cc. 1029 and 1030, which enacted § 4.1-112.1 [see now §§ 4.1-209.1 and 4.1-212.1] and amended other sections of Title 4.1.

CONSTITUTIONALITY. --Virginia's ban on the direct shipment of wine to Virginia consumers from out-of-state entities, while Virginia not only permits, but encourages, direct shipment to consumers by in-state wineries and farm wineries, violates the dormant commerce clause and is unconstitutional. *Bolick v. Roberts*, 199 F. Supp. 2d 397, 2001 U.S. Dist. LEXIS 11118 (E.D. Va. 2001), modified and approved, *Bolick v. Roberts*, 199 F. Supp. 2d 397, 2002 U.S. Dist. LEXIS 6376 (E.D. Va. 2002), vacated and remanded sub nom. *Bolick v. Danielson*, 330 F.3d 274 (4th Cir. 2003), and partially rendered moot by 2003 legislation.

System whereby Virginia wineries, farm wineries, breweries, and off-premises licensees could directly ship beer and wine to Virginia and out-of-state consumers, where legal, but out-of-state vendors could neither obtain a Virginia license nor directly ship beer or wine to Virginia consumers, was the very definition of a facially discriminatory law; statutes were unconstitutional forms of discrimination in their in-state preferences for Virginia wine and beer. *Bolick v. Roberts*, 199 F. Supp. 2d 397, 2002 U.S. Dist. LEXIS 6376 (E.D. Va. 2002), vacated and remanded sub nom. *Bolick v. Danielson*, 330 F.3d 274 (4th Cir. 2003), and partially rendered moot by 2003 legislation.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, article, chapter, subtitle or title.

## EXHIBIT 13

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of U.S. Trademark Application No. 77/876,479  
For the mark: KARMA CALIFORNIA BRUT  
Date filed: November 19, 2009

---

KARMA CULTURE LLC,

Opposer,

**Opposition No. 91215993**

v.

KARMA CHAMPAGNE, INC.,

Applicant.

---

**OPPOSER'S FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Opposer, Karma Culture LLC, by and through its attorneys, Woods Oviatt Gilman LLP, propounds and submits the following interrogatories to the Applicant, Karma Champagne, Inc., to be responded to within thirty (30) days of the service of the interrogatories.

**DEFINITIONS AND INSTRUCTIONS**

Unless negated by the context of the question, the following definitions are applicable to all inquiries set forth in these interrogatories:

- A. As used in this request, "Applicant" shall mean, Karma Champagne, Inc.
- B. As used in this request, "Opposer" shall mean, Karma Culture LLC.

C. As used in this request, the term "Applicant's Mark" shall mean Applicant's U.S. trademark Application No. 77/876,479.

D. As used in this request, the term "Opposer's Mark" shall mean Opposer's U.S. Trademark Registration No. 4,063,528.

E. Whenever used in this request, the singular includes the plural and the plural includes the singular; the words "and" and "or" are to be read as both conjunctive and disjunctive; the word "including" means "including without limitation." The term "person" means any natural person or any business, legal, or governmental entity or association.

F. When referring to a person, the term "identify" means to state the name, personal and business addresses, personal and business telephone numbers, and identity of that individual's position, employment and/or involvement with the Applicant corporation including the length of that position, employment and/or involvement and the principle business activities of that individual.

G. When referring to a document, the term "identify" means to state, to the extent known, the type of document, general subject matter, date of the document, author(s), addressee(s) and recipient(s).

H. When referring to an event or date, the term "identify" means to state, to the extent known, the date on which the event occurred, all persons involved in the event for which the date is being provided, the role of each such person in the event for which the date is being provided, and all persons with personal knowledge of the occurrence of the event on that date.

I. The use of a verb in any tense shall be construed as the use of the verb in all other tenses whenever necessary to bring within the scope of the specification all responses that might otherwise be construed to be outside its scope.

J. Each interrogatory shall be answered separately and fully, unless it is objected to, in which event the reasons for the objections should be specifically and separately stated.

K. Answers to the following interrogatories shall be based on all information and documents within the custody, possession, or control of Applicant; all responsive information known to or in the possession of Applicant's agents, employees, representatives, or any other persons or entities is deemed to be within the custody, possession, or control of Applicant.

L. Where a complete answer to a particular interrogatory is not provided, the interrogatory shall be answered to the extent possible and a statement made explaining why only a partial answer can be given.

M. Answers to these interrogatories shall set out each interrogatory in full before each answer. Separate answers shall be given in response to each interrogatory and, when an interrogatory has subdivisions, to each subdivision.

N. Answers to the following interrogatories shall specifically identify the person providing information used to prepare each response.

O. Whenever a date, amount, computation, or figure is requested, the exact date, amount, computation, or figure is to be given unless it is unknown. If it is unknown, the approximate or best estimate should be given, and the answer should state that such date, amount, computation, or figure is an approximation or estimate.

P. If any claim is made that any information requested herein is privileged, or constitutes an attorney's work product, and any such information is not provided, in lieu of each such response, please provide a written statement that describes the factual basis of the purported privilege or claim of work product in sufficient detail so as to permit the court to adjudicate the validity of the claim.

Q. Each request shall be deemed to be continuing so as to require prompt supplementation of responses as provided by the Federal Rules of Civil Procedure.

R. The answers to all interrogatories are to be separately verified under oath by the Applicant, and the objections, if any, are to be signed by the attorney making them.

### **INTERROGATORIES**

1. Identify each person who you expect to call as a witness in the instant Opposition Proceeding and the subject matter of that person's testimony.

2. Identify each expert you expect to introduce as a witness in the instant Opposition Proceeding and the subject matter of that person's testimony.

3. State the date on which the Applicant first used the mark KARMA CALIFORNIA BRUT as the source of origin of products and services. In that regard, set forth the following:

- (a) The product or service which the Applicant first used the name or mark KARMA CALIFORNIA BRUT in connection with.
- (b) Did the Applicant advertise or otherwise promote the products and/or services using the name or mark KARMA CALIFORNIA BRUT?
- (c) If the answer to Interrogatory 3(b) above is in the affirmative, identify each newspaper, periodical, media outlet, Web site or other advertising medium used by the Applicant to advertise, promote or otherwise solicit sales of such products and/or services.
- (d) For each medium identified in Interrogatory 3(c) above, provide the geographic locations, circulation and length of time of such advertisement and/or promotion.

4. Specify the total expenditures made by the Applicant between the date of first use and April 21, 2014 for advertising, promotion or solicitation of sales of goods and/or services using the name or mark KARMA CALIFORNIA BRUT.

5. Specify the annual revenue, by customer, derived from the sales of goods and/or services using the name or mark KARMA CALIFORNIA BRUT since the date of Applicant's first sale of such goods and/or services.

6. For each sale referenced in response to Interrogatory 5 above, identify the records maintained by Applicant supporting, evidencing or otherwise reflecting each such sale.

7. Identify each survey, search or other investigation conducted and/or obtained with respect to Applicant's KARMA CALIFORNIA BRUT Mark in relation to the goods to be offered for sale and/or sold under or in connection with Applicant's KARMA CALIFORNIA BRUT Mark.

8. For each product in connection with which Applicant is using or intends to use Applicant's KARMA CALIFORNIA BRUT Mark, identify, in detail, the channels of trade through which such products have been or are intended to be sold, including but not limited to a general description of the type of customers to whom Applicant does or intends to advertise, promote, and/or sell Applicant's products in connection with Applicant's KARMA CALIFORNIA BRUT Mark.

9. (a) Is Applicant aware of any instance of confusion or mistake regarding Applicant and Opposer, their respective goods, or businesses, and/or Opposer's KARMA Mark and Applicant's KARMA CALIFORNIA BRUT Mark?

(b) Has Applicant received any communication addressed or directed to, or which mentions, refers or relates in any way to, Opposer, Opposer's KARMA Mark and/or Opposer's products/services?

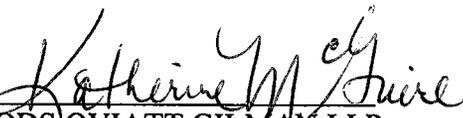
(c) Is Applicant aware of any instance where any person thought, assumed or otherwise indicated a belief that there is or may be an association between Applicant and Opposer, Applicant's KARMA CALIFORNIA BRUT Mark and Opposer's KARMA Mark, and/or the respective products or services or businesses of Applicant and Opposer?

10. (a) If the answer to Interrogatory No. 9(a), above, is other than an unqualified negative, identify each instance of confusion or mistake.

(b) If the answer to Interrogatory No. 9(b), above, is other than an unqualified negative, identify each such communication to which that interrogatory refers.

(c) If the answer to Interrogatory No. 9(c), above, is other than an unqualified negative, identify each such instance where any person thought, assumed or otherwise indicated a belief that there is or may be an association between Applicant and Opposer and/or their respective products, services or businesses.

DATED: December 15, 2014  
Rochester, New York

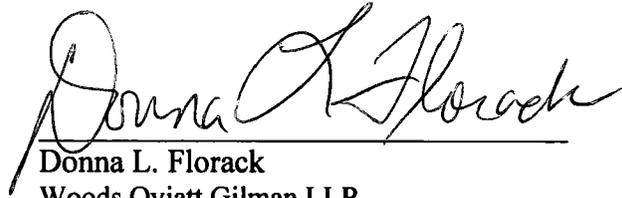
By:   
WOODS(OVIATT GILMAN LLP  
Katherine H. McGuire, Esq.  
2 State Street, 700 Crossroads Building  
Rochester, New York 14614  
Telephone: (585) 987-2800  
Facsimile: (585) 454-3968  
kmcguire@woodsoviatt.com

*Attorneys for Opposer*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing **OPPOSER'S FIRST SET OF INTERROGATORIES** has been served on Applicant by emailing a copy to Gary L. Eastman, Esq., counsel for the Applicant, at [gary@eastmanmccartney.com](mailto:gary@eastmanmccartney.com) and by mailing said copy on December 15, 2014 via First Class Mail, postage prepaid to:

Gary L. Eastman, Esq.  
Eastman & McCartney LLP  
401 West A Street, Suite 1785  
San Diego, CA 92101  
Telephone: 619-230-1144  
Email: [gary@eastmanmccartney.com](mailto:gary@eastmanmccartney.com)



Donna L. Florack

Donna L. Florack  
Woods Oviatt Gilman LLP  
2 State Street, 700 Crossroads Building  
Rochester, New York 14614  
Tel.: 585.987.2800  
Fax: 585.454.3968

## EXHIBIT 14

RECEIVED JAN 20 2015

1 Gary L. Eastman, Esq. (CSB #182518)  
2 Tifanie H. Nelson, Esq. (CSB #286935)  
3 EASTMAN & MCCARTNEY LLP  
4 401 West A Street, Suite 1785  
5 San Diego, CA 92101  
6 (619) 230-1144

DOCKETED

Attorneys for Applicant  
KARMA CHAMPAGNE, INC.

7 **UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE**  
8 **TRADEMARK TRIAL AND APPEAL BOARD**

10 KARMA CULTURE, LLC,  
11  
12 Opposer,

Opposition No.: 91215993

Mark: KARMA CALIFORNIA BRUT  
Serial No.: 77876479

13 v.

14 KARMA CHAMPAGNE, INC.,  
15 Applicant.

**APPLICANT'S RESPONSE TO  
OPPOSER'S FIRST SET OF  
INTERROGATORIES**

17  
18 PROPOUNDING PARTY: KARMA CULTURE, LLC  
19 RESPONDING PARTY: KARMA CHAMPAGNE, INC.  
20 SET: ONE

21  
22 In accordance with Rules 26 and 33 of the Federal Rules of Civil  
23 Procedure, Applicant Karma Champagne, Inc. ("Responding Party") hereby  
24 responds to Opposer Karma Culture, LLC ("Propounding Party") first set of  
25 interrogatories. Under Rule 26(a)(1)(A) of the Federal Rules of Civil Procedure,  
26 this response is based only upon such information presently available to and  
27 specifically known to Responding Party as a result of diligent and reasonable  
28 inquiry. This response is given without prejudice to Responding Party's right to

Applicant's Response to Opposer's First Set of Interrogatories

Opposition No.: 91215993

1 present evidence at the time of trial of any subsequently discovered information.  
2 Responding Party reserves the right to supplement or correct this response upon  
3 continuing investigation and discovery pursuant to Rule 26(e) of the Federal Rules  
4 of Civil Procedure. This response is made in a good faith effort shall not be  
5 construed to prejudice Responding Party regarding further discovery, independent  
6 investigation, and analyses.

7  
8 **RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES**

9  
10 **INTERROGATORY NO. 1**

11 Identify each person who you expect to call as a witness in the instant  
12 Opposition Proceeding and the subject matter of the person's testimony.

13 **RESPONSE TO INTERROGATORY NO. 1:**

14 Objection. Responding Party objects to the definition of the term "identify"  
15 when referring to a person as overly broad, unduly burdensome, and compound.  
16 Requiring Responding Party to state the "name, personal and business addresses,  
17 personal and business telephone numbers, and identity of that individual's  
18 position, employment and/or involvement with the Applicant corporation  
19 including the length of that position, employment and/or involvement and the  
20 principle business activities of that individual" requires a laborious, time-  
21 consuming analysis and search of incidental, secondary, and perhaps irrelevant  
22 and trivial information. Further, the definition of the term "identify" when  
23 referring to a person seeks information about separate and distinct subjects and  
24 therefore this interrogatory constitutes multiple interrogatories disguised as one.  
25 Responding Party further objects to this interrogatory as cumulative and unduly  
26 burdensome to the extent that the information sought has already been disclosed to  
27 Propounding Party by way of Responding Party's Initial Disclosures pursuant to  
28 Rule 26 of the Federal Rules of Civil Procedure.

1 Subject to and without waiving the forgoing objections, Responding Party  
2 responds as follows:

3 1. PATRICK S. WILSON

- 4 • Applicant
- 5 • Patrick S. Wilson may be contacted through the undersigned  
6 attorney: Gary L. Eastman, Esq. at Eastman & McCartney LLP, 401  
7 West "A" Street, Suite 1785, San Diego, California 92101,  
8 Telephone (619) 230-1144.
- 9 • Patrick S. Wilson is expected to testify on the following list of  
10 subjects:
  - 11 ○ Karma Fine Beverages, Inc., formerly known as Karma  
12 Champagne, Inc.;
  - 13 ○ The application and prosecution history for the mark KARMA  
14 CALIFORNIA BRUT, Serial No. 77/876,479;
  - 15 ○ Applicant's commercial use of the mark KARMA  
16 CALIFORNIA BRUT in connection with the goods identified  
17 in Serial No. 77/876,479;
  - 18 ○ Ownership of the mark KARMA CALIFORNIA BRUT, Serial  
19 No. 77/876,479;
  - 20 ○ Conception of the mark KARMA CALIFORNIA BRUT,  
21 Serial No. 77/876,479;
  - 22 ○ Promotional materials for goods sold in connection with the  
23 mark KARMA CALIFORNIA BRUT, Serial No. 77/876,479;
  - 24 ○ Sales records and gross revenue for the goods sold in  
25 connection with the mark KARMA CALIFORNIA BRUT,  
26 Serial No. 77/876,479;
  - 27 ○ Differences of the parties mark;
  - 28 ○ Prior use of Applicant's mark; and

1                   o Consumer recognition and publicity of Applicant's Mark.

2 INTERROGATORY NO. 2

3           Identify each expert you expect to introduce as a witness in the instant  
4 Opposition Proceeding and the subject matter of that person's testimony.

5 RESPONSE TO INTERROGATORY NO. 2:

6           Objection. Responding Party objects to the definition of the term "identify"  
7 when referring to a person as overly broad, unduly burdensome, and compound.  
8 Requiring Responding Party to state the "name, personal and business addresses,  
9 personal and business telephone numbers, and identity of that individual's  
10 position, employment and/or involvement with the Applicant corporation  
11 including the length of that position, employment and/or involvement and the  
12 principle business activities of that individual" requires a laborious, time-  
13 consuming analysis and search of incidental, secondary, and perhaps irrelevant  
14 and trivial information. Further, the definition of the term "identify" when  
15 referring to a person seeks information about separate and distinct subjects and  
16 therefore this interrogatory constitutes multiple interrogatories disguised as one.

17           Subject to and without waiving the forgoing objections, Responding Party  
18 responds as follows:

19           At this time, Responding Party does not expect to introduce expert  
20 testimony. However, discovery is ongoing and Responding Party reserves the  
21 right to supplement this response upon continuing investigation and discovery  
22 pursuant to Rule 26(e) of the Federal Rules of Civil Procedure.

23           State the date on which the Applicant first used the mark KARMA  
24 CALIFORNIA BRUT as the source of origin of products and services. In that  
25 regard, set forth the following:

- 26                   a. The product or service which the Applicant first used the name or  
27 mark KARMA CALIFORNIA BRUT in connection with.

28

1 b. Did the Applicant advertise or otherwise promote the products  
2 and/or services using the name or mark KARMA CALIFORNIA  
3 BRUT?

4 c. If the answer to Interrogatory 3(b) above is in the affirmative,  
5 identify each newspaper, periodical, media outlet, Web site or  
6 other advertising medium used by the Applicant to advertise,  
7 promote or otherwise solicit sales of such products and/or  
8 services.

9 d. For each medium identified in Interrogatory 3(c) above, provide  
10 the geographic locations, circulation and length of time of such  
11 advertisement and/or promotion.

12 RESPONSE TO INTERROGATORY NO. 3:

13 Objection. This interrogatory seeks information about separate and distinct  
14 subjects and therefore constitutes multiple interrogatories disguised as one.

15 Responding Party further objects to this interrogatory to the extent it seeks  
16 information not relevant to any party's claim or defense in this matter.

17 Responding Party further objects to this request as overly broad, vague and  
18 ambiguous in that it is unrestricted by time period.

19 Subject to and without waiving the forgoing objections, Responding Party  
20 responds as follows:

21 Responding Party first used the mark KARMA CALIFORNIA BRUT in  
22 commerce in approximately September 2007. The mark KARMA CALIFORNIA  
23 BRUT is used in connection with the advertisement, promotion, and sale of  
24 alcoholic beverages. The alcoholic beverages sold under and in connection with  
25 the mark KARMA CALIFORNIA BRUT are promoted and advertised on the  
26 website [www.karmachampagne.com](http://www.karmachampagne.com), and have appeared in the following online  
27 and/or printed publications which are available to the general public and of  
28 general circulation: "am NEWYORK," (website [www.amny.com](http://www.amny.com)); Boca Raton

1 News Society & The Arts;” “E Online” (website: [www.eonline.com](http://www.eonline.com)); “Fox News”  
2 (website: [www.foxnew.com](http://www.foxnew.com)); “Hawaii Beverage Guide;” “Hawaii Bride &  
3 Groom” (website: [www.hawaiibride.com](http://www.hawaiibride.com)); “InStyle” (website: [www.instyle.com](http://www.instyle.com));  
4 “In Touch Weekly” (website: [www.intouchweekly.com](http://www.intouchweekly.com)); “OK Magazine”  
5 (website: [www.okmagazine.com](http://www.okmagazine.com)); “OK Weekly;” “Parenting” “Star Magazine;”  
6 “Time Out New York;” “USA Today” (website: [www.usatoday.com](http://www.usatoday.com)); “US  
7 Magazine” (website: [www.usmagazine.com](http://www.usmagazine.com)); among others.

8 INTERROGATORY NO. 4

9 Specify the total expenditures made by the Applicant between the date of  
10 first use and April 21, 2014 for advertising, promotion or solicitation of sales or  
11 goods and/or services using the name of mark KARMA CALIFORNIA BRUT.

12 RESPONSE TO INTERROGATORY NO. 4:

13 Objection. Responding Party objects to this interrogatory to the extent it  
14 seeks confidential research, technical, cost, price, marketing or other commercial  
15 information of Responding Party. Responding Party further objects to this  
16 interrogatory to the extent it seeks information not relevant to any party’s claim or  
17 defense in this matter.

18 Subject to and without waiving the forgoing objections, Responding Party  
19 responds as follows:

20 Responding Party will provide a further response to this interrogatory upon  
21 the entry of a stipulated protective order sufficient to protect the confidentiality of  
22 the information sought.

23 INTERROGATORY NO. 5

24 Specify the annual revenue, by customer, derived from the sales of goods  
25 and/or services using the name of mark KARMA CALIFORNIA BRUT since the  
26 date of Applicant’s first sale of such goods and/or services.

27 RESPONSE TO INTERROGATORY NO. 5:

28

1           Objection. Responding Party objects to this interrogatory to the extent it  
2 seeks confidential research, technical, cost, price, marketing or other commercial  
3 information of Responding Party. Responding Party further objects to this  
4 interrogatory to the extent it seeks information not relevant to any party's claim or  
5 defense in this matter. Responding Party further objects to this request as overly  
6 broad, vague and ambiguous in that it is unrestricted by time period.

7           Subject to and without waiving the forgoing objections, Responding Party  
8 responds as follows:

9           Responding Party will provide a further response to this interrogatory upon  
10 the entry of a stipulated protective order sufficient to protect the confidentiality of  
11 the information sought.

12 INTERROGATORY NO. 6

13           For each sale referenced in response to Interrogatory 5 above, identify the  
14 records maintained by Applicant supporting, evidencing or otherwise reflecting  
15 each such sale.

16 RESPONSE TO INTERROGATORY NO. 6:

17           Objection. Responding Party objects to the definition of the term "identify"  
18 when referring to a document as overly broad, unduly burdensome, and  
19 compound. Requiring Responding Party to state the "type of document, general  
20 subject matter, date of the document, author(s), addressee(s) and recipient(s)"  
21 requires a laborious, time-consuming analysis and search of incidental, secondary,  
22 and perhaps irrelevant and trivial information. Further, the definition of the term  
23 "identify" when referring to a document seeks information about separate and  
24 distinct subjects and therefore this interrogatory constitutes multiple  
25 interrogatories disguised as one. Responding Party further objects to this  
26 interrogatory on the grounds that the information sought may be obtained by  
27 examining Responding Party's business records and answering the interrogatory  
28 would require Responding Party to engage in burdensome or expensive research.

1 Responding Party further objects to this request as overly broad, vague and  
2 ambiguous in that it is unrestricted by time period.

3 Subject to and without waiving the forgoing objections, Responding Party  
4 responds as follows:

5 Responding Party will provide a further response to this interrogatory upon  
6 the entry of a stipulated protective order sufficient to protect the confidentiality of  
7 the information sought.

8 INTERROGATORY NO. 7

9 Identify each survey, search or other investigation conducted and/or  
10 obtained with respect to Applicant's KARMA CALIFORNIA BRUT Mark in  
11 relation to the goods to be offered for sale and/or sold under or in connection with  
12 Applicant's KARMA CALIFORNIA BRUT Mark.

13 RESPONSE TO INTERROGATORY NO. 7:

14 Objection. Responding Party objects to the definition of the term "identify"  
15 when referring to a document as overly broad, unduly burdensome, and  
16 compound. Requiring Responding Party to state the "type of document, general  
17 subject matter, date of the document, author(s), addressee(s) and recipient(s)"  
18 requires a laborious, time-consuming analysis and search of incidental, secondary,  
19 and perhaps irrelevant and trivial information. Further, the definition of the term  
20 "identify" when referring to a document seeks information about separate and  
21 distinct subjects and therefore this interrogatory constitutes multiple  
22 interrogatories disguised as one. Responding Party further objects to this  
23 interrogatory on the grounds that the information sought may be obtained by  
24 examining Responding Party's business records and answering the interrogatory  
25 would require Responding Party to engage in burdensome or expensive research.  
26 Responding Party further objects to this request as overly broad, vague and  
27 ambiguous in that it is unrestricted by time period.

28

1 Subject to and without waiving the forgoing objections, Responding Party  
2 responds as follows:

3 Responding Party will provide a further response to this interrogatory upon  
4 the entry of a stipulated protective order sufficient to protect the confidentiality of  
5 the information sought.

6 INTERROGATORY NO. 8

7 For each product in connection with which Applicant is using or intends to  
8 use Applicant's KARMA CALIFORNIA BRUT Mark, identify, in detail, the  
9 channels of trade through which such products have been or are intended to be  
10 sold, including but not limited to a general description of the type of customers to  
11 whom Applicant does or intends to advertise, promote, and/or sell Applicant's  
12 products in connection with Applicant's KARMA CALIFORNIA BRUT Mark.

13 RESPONSE TO INTERROGATORY NO. 8:

14 Objection. This interrogatory seeks information about separate and distinct  
15 subjects and therefore constitutes multiple interrogatories disguised as one.

16 Responding Party further objects to this request as overly broad, vague and  
17 ambiguous in that it is unrestricted by time period. Responding Party further  
18 objects to this interrogatory on the ground that the phrase "type of customers" is  
19 vague and ambiguous and does not provide Responding Party with sufficient  
20 particularity to understand the nature and scope of the information sought.

21 Subject to and without waiving the forgoing objections, Responding Party  
22 responds as follows:

23 Responding Party targets selling to the marketing channels of select retail  
24 stores and directly to targeted classes of consumers through its website.

25 Responding Party targets the alcohol beverage industry and alcohol enthusiasts  
26 through stores that sell such products. Responding Party has done marketing  
27 through advertising.

28

1 INTERROGATORY NO. 9

2 (a) Is Applicant aware of any instance of confusion or mistake regarding  
3 Applicant and Opposer, their respective goods, or businesses, and/or Opposer's  
4 KARMA Mark and Applicant's KARM CALIFORNIA BRUT Mark?

5 (b) Has Applicant received any communication addressed or directed to, or  
6 which mentions, refers or relates in any way to, Opposer, Opposer's KARMA  
7 Mark and/or Opposer's products/services?

8 (c) Is Applicant aware of any instance where any person thought, assumed  
9 or otherwise indicated a belief that there is a or may be an association between  
10 Applicant and Opposer. Applicant's KARMA CALIFORNIA BRUT Mark and  
11 Opposer's KARMA Mark, and/or the respective products or services or  
12 businesses of Applicant and Opposer?

13 RESPONSE TO INTERROGATORY NO. 9:

14 No.

15 INTERROGATORY NO. 10

16 (a) If the answer to Interrogatory No. 9(a), above, is other than an  
17 unqualified negative, identify each instance of confusion or mistake.

18 (b) If the answer to Interrogatory No. 9(b) above, is other than an  
19 unqualified negative, identify each such communication to which that  
20 interrogatory refers.

21 (c) If the answer to Interrogatory No. 9(c) above, is other than an  
22 unqualified negative, identify each such instance where any person thought,  
23 assumed or otherwise indicated a belief that there is or may be an association  
24 between Applicant and Opposer and/or their respective products, services or  
25 businesses.

26 RESPONSE TO INTERROGATORY NO. 10:

27 Not applicable.

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: January 14, 2015

EASTMAN & MCCARTNEY LLP

By /s/ Gary L. Eastman  
Gary L. Eastman, Esq.  
Attorneys for Applicant  
KARMA CHAMPAGNE, INC.

1 VERIFICATION

2  
3 I am an authorized agent of Applicant Karma Champagne, Inc. in this  
4 proceeding. I have read the above responses to Opposer's first set of  
5 interrogatories and know its contents. I verify under penalty of perjury that the  
6 foregoing answers are true and correct to the best of my knowledge and belief.  
7

8 Dated:

9  
10 By: \_\_\_\_\_

11 Patrick Wilson  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I hereby certify that a true and complete copy of the foregoing  
**APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES**

has been served on the Opposer Karma Culture, LLC via ~~electronic mail~~<sup>JK</sup> and by mailing a copy of the same on January 14, 2015 via First Class Mail, postage prepaid to:

kmcguire@woodsoviatt.com  
Katherine H. McGuire, Esq.  
Woods Oviatt Gilman LLP  
2 State Street 700 Crossroads Building  
Rochester, NY 14614

Executed in San Diego, California on January 14, 2015

By /s/ Gary L. Eastman