

**THE DISTRICT OF COLUMBIA  
ALCOHOLIC BEVERAGE CONTROL BOARD**

**In the Matter of:** \_\_\_\_\_ )

Gina Trippi and John Kerr )

) License No. N/A  
) Order No. 2011-398

*Request for an Advisory Opinion* )

at premises )

4401 Davenport Street, N.W. )

Washington, D.C. 20016 )

**BEFORE:**

Nick Alberti, Interim Chairperson  
Donald Brooks, Member  
Herman Jones, Member  
Calvin Nophlin, Member  
Mike Silverstein, Member

**ADVISORY OPINION**

Gina Trippi and John Kerr (Petitioners), have asked the Alcoholic Beverage Control Board (Board) to determine whether their proposed business plan complies with Title 25 of the District of Columbia Official Code and Title 23 of the District of Columbia Municipal Regulations.

As part of the Petitioner's business plan, the Petitioners would like to obtain a Wholesaler Class B License to sell alcoholic beverages to Retail Licensees. See Letter from Gina Trippie and John Kerr to the Alcoholic Beverage Control Board and General Counsel, page 1, dated August 2, 2011. The Petitioners' plan is to offer for sale alcoholic beverages produced and offered by wholesalers, distributors, importers, and wineries inside and outside of the District of Columbia. Id. The Petitioners do not intend to operate a store front; rather, the Petitioners seek to take orders from their website, forward the orders to the source of supply, which will then ship the alcoholic beverages directly to the purchaser. Id. The Petitioners have expressed that they do not wish to take possession of the alcoholic beverages before they are delivered to the purchasers and do not wish to maintain a storage facility. Id. at 2. The Petitioners have stated that they will comply with the record keeping and invoice requirements contained in the ABC laws. Id. at 2.

The questions presented to the Board are as follows:

Question 1: Whether a Wholesaler Licensee, without a storage facility, may take orders for the sale of alcoholic beverages and have the source of supply ship the products directly to the Retail Licensee?

Question 2: If the answer to Question 1 is no, would it satisfy the ABC laws if the Wholesaler Licensee obtains a storage facility but does not take delivery of the products?

Question 3: May a Wholesaler Licensee lease its storage space to another Wholesaler Licensee and share materials and transportation services?

Question 4: If the answers to Questions 1 and 2 are no, would it satisfy the ABC laws if the Petitioners obtain a Solicitor's License, when the Petitioners would operate a website offering alcoholic beverages for sale, forward orders to the source of supply, who would then ship the products directly to the Retail Licensee?

## CONCLUSIONS OF LAW

### Questions 1 and 2

1. We find that a Wholesaler Licensee must take actual possession at its Board approved location of any alcoholic beverages that it sells before such beverages are delivered to Retail Licensees. Specifically, District law states in relevant part that “[a] wholesaler’s license shall authorize the licensee to sell beverages *from the establishment* described . . .” D.C. Code § 25-111 (2001) (emphasis added). Further, District law states that “[a]lcoholic beverages shall not be . . . *kept for sale* . . . by any licensee other than *at the licensed establishment*” unless stored at a facility holding an off-premise storage permit. D.C. Code § 25-754(a) (emphasis added); 23 DCMR § 205 (2008). D.C. Code § 25-754(b) also requires that alcoholic beverages in the possession of a Wholesaler Licensee be stored upon premises located within the District of Columbia.

2. As noted above, District law requires that a Wholesaler Licensee take actual possession of alcoholic beverages that it sells at its Board approved location prior to their delivery to Retail Licensees. We note that licensees are authorized “to sell beverages from the establishment described” and that such beverages shall not be “kept for sale” at a location that is not authorized to store alcoholic beverages by the Board. § 25-111, 25-754(a); 23 DCMR § 205. As a result, allowing the source of the alcoholic beverages to ship directly to Retail Licensees, without the product ever being possessed by the Wholesaler Licensee, violates § 25-754(a) by permitting the source of supply, rather than the Wholesaler Licensee, to keep the product for sale to Retail Licensees. As such, we answer Questions 1 and 2 in the negative.

### Question 3

3. We answer question 3 in the affirmative. A Wholesaler Licensee may store alcoholic beverages at either (1) its initial Board approved location or (2) any facility located within the District of Columbia that obtains an off-premises storage permit from the Board. 23 DCMR § 205.1 (2008). Furthermore, nothing in District law prevents licensed wholesalers from sharing transportation services and materials, so long as wholesalers do not transfer alcoholic beverages pursuant to the primary American source of supply rule and also maintain separate books and records. See 23 DCMR §§ 900.1-900.2 (2008).

### Question 4

4. We answer question 4 in the affirmative provided that, in addition to obtaining a solicitor's license, the following two criteria are met. First, pursuant to D.C. Code § 25-119(a), the Retail Licensee would need to apply for and obtain an import permit from our agency to be eligible to transport alcoholic beverages ordered from the website into the District of Columbia. The import permit would be required to accompany any alcoholic beverages ordered from the website during their transport into the District from the source of supply to the Retail Licensee. Second, under the District's import system, alcoholic beverages are only permitted to be imported or transported into the District of Columbia by a Retail Licensee if the brand of alcoholic beverages is not otherwise obtainable by the Retail licensee in sufficient quantity from a District licensed manufacturer or wholesaler. See D.C. Code §§ 25-119 and 25-772 (2001); 23 DCMR § 1301 (2008). As such, the source of supply utilized by the website would have a duty to follow the District's importation rules contained in both D.C. Code §§ 25-119 and 25-772, and make sure that offered alcoholic beverages come from the primary American source of supply, as discussed below.

5. We further remind the Petitioners that licensed wholesalers may only purchase alcoholic beverages from the primary American source of supply. Under 23 DCMR § 199, the primary American source of supply is defined as: "the manufacturer, distiller, rectifier, vintner or importer of the brand of alcoholic beverages at the time that the beverage became a marketable product in the United States, or its duly authorized agent." 23 DCMR § 199.1 (2008). In that vein, 23 DCMR § 900 states that it is unlawful for a wholesaler to purchase or sell any alcoholic beverages that are not purchased from the primary American source of supply. §§ 900.1-900.2 (2008). As such, pursuant to 23 DCMR § 900, a Wholesaler Licensee may only purchase and sell beverages from the original manufacturer or importer of the alcoholic beverages and not, as the Petitioners describe in their letter, other wholesalers.

### ORDER

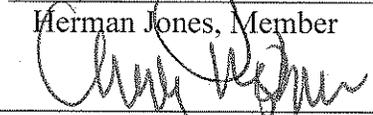
Accordingly, it is this 21<sup>st</sup> day of September 2011, **ORDERED** that the above represents the **ADVISORY OPINION** of the Board pursuant 23 DCMR § 1902.

District of Columbia  
Alcoholic Beverage Control Board

  
\_\_\_\_\_  
Nick Alberti, Interim Chairperson

  
\_\_\_\_\_  
Donald Brooks, Member

  
\_\_\_\_\_  
Herman Jones, Member

  
\_\_\_\_\_  
Calvin Nophlin, Member

\_\_\_\_\_  
Mike Silverstein, Member

Pursuant to D.C. Code § 1902.6 (2008), if the requestor disagrees with the Board's advisory opinion in any respect, he or she may, within twenty (20) calendar days after issuance of the opinion, petition the Board in writing to reconsider its opinion, setting forth in detail the reasons and legal argument which support the requestor's points of disagreement, or may request the Board to issue a declaratory order, pursuant to § 1903. Advisory opinions of the Board may not form the basis of an appeal to any court in the District of Columbia.