NORTH BAY Business Journal

Wine law experts discuss legal strategies for wineries facing challenges, including tariffs

What legal avenues are available to mitigate shifting policies on tariffs, trade and import-export regulations?

Brandi Brown & Michael Maher: The domestic wine industry is facing a challenging landscape – uncertainty arising from President Trump's tariff policy has compounded an already slowing growth forecast and demand slump. It's time for wineries to reassess their supply chains (geographic origin of resources) and sales channels (geographic point of sale), as well as their existing commercial contracts.

In particular, wineries should review their existing commercial contracts to determine any rights (of either the winery itself or the counterparty to its contract) to delay payment and/or terminate due to commercial impracticability or force majeure events – unforeseen events not caused by the party that make a contract's performance extremely difficult. Such may be the case with 200% tariffs on imported wines or on foreign sourced supplies (e.g., oak barrels, aluminum for packaging, glass, corks, and bulk wine) that a party committed to purchase. Barring an express contractual right to terminate due to government actions, a mere increase in cost to perform may be insufficient to excuse a party's performance of the contract.

If the commercial contract does not provide an express remedy to guard against tariffs, regulatory changes or other governmental acts, the winery could consider renegotiating the contract. If the winery is the purchaser under the contract, given the volatility in tariff schedules from week-to-week or month-to-month, it could consider renegotiating payment terms to delay or spread out payment obligations or, where practicable, delay delivery of major purchases that would be impacted by today's tariffs. On the other side of the equation, if the winery is the seller under the contract, it should consider requiring advance payments and, if delivery is made prior to payment, ensure that it perfects and maintains any available security interests in the goods sold.

What steps can vintners and growers take to address labor shortages while staying compliant with immigration and wage laws?

Brandi Brown & Michael Maher: Vintners and growers should anticipate and be prepared for stricter enforcement of immigration laws. In particular, vintners and growers should consider conducting an internal I-9 audit in advance of any agency enforcement. Identifying potential issues in advance of the very short response timelines required under a formal U.S. Immigration and Customs Enforcement (ICE) Notice of Inspection can help reduce abrupt labor force disruptions if significant documentation discrepancies are identified and resolved in advance of federal enforcement actions.

Brandi Brown
Coblentz Patch Duffy & Bass LLP
700 Main St., Suite 301
Napa, CA 94559
415-772-5797
bbrown@coblentzlaw.com
coblentzlaw.com

Brandi Brown represents a diverse group of clients, including private equity funds, privately held companies, and international public companies, and focuses her practice on the food and beverage, hospitality, and creative services industries. As head of the firm's wine industry group, she has experience in guiding alcohol beverage brands through advertising campaigns and sponsorship and spokesperson agreements, among others.

Michael Maher
Coblentz Patch Duffy & Bass LLP
700 Main St., Suite 301
Napa, CA 94559
415-268-0532
mmaher@coblentzlaw.com
coblentzlaw.com

Michael Maher focuses on business and real estate matters, with significant experience in the agriculture, food and beverage, and hospitality industries. Prior to joining Coblentz, Michael worked for more than a decade as in-house general counsel in the wine and hospitality industry. He advises clients on their ongoing general business and commercial matters and in navigating complex regulatory operating environments.