

EXCERPT 2

THE BIZAREE WORLD OF FRANCHISE LAWS

POLITICS, BUREAUCRACY, & ORGANIZED CRIME

During my early years as a winery sales executive, I learned very quickly the challenge wine producers face with an archaic obstacle called Franchise Laws. It would be a better description, though, to call them what they are, Franchise Protection. Essentially, what these state laws do is give a Monopoly to their Wholesale Distributors. Some are more restrictive than others but, the main feature is that the producer gives up his rights in that state to move his wine brand to another Wholesale Distributor unless they can prove "good cause."

In Georgia's case, when the producer assigns their brand to a Distributor, they give up the rights for the brands' life. That is right; you read that correctly. The only recourse you have is to stop selling wine in the state for up to three years. They force you to go out of business in the state. When I explained this to Ken Starr in the spring of 2005 as we awaited the Supreme Court ruling in the Granholm v. Heald case, he could not believe me. He was astounded and commented something along the lines of where is the Justice Department in all of this. My response was, "that is why I am telling you about it." Once the interstate shipping of wine is adjudicated, and the Consumer can buy wine directly from the producer, this is the next and most egregious law I believe we need to attack.

Distributors' usual business practice in Georgia (and other states) is to make a deal with a competing distributor in their market to trade or sell a brand for another brand's rights. I guess because Georgia started as a Penal Colony, they like to keep producers in leg irons.

I discovered this practice as a young, inexperienced VP of Sales in 1985 when I was at William Hill Winery. The following narrative is a brief excerpt from my Chapter on Politics, Bureaucracy, and Organized Crime. It has been edited for brevity.

Speaking of Georgia, during the first year and a half in which the sales in the market were my direct responsibility, I never spent more money and time achieving so little as I did in Georgia. They had a way of dealing with folks from out of town in a very "southern slick, but down-home manner."

They would openly welcome you, make you feel wanted and comfortable but would always find some way to avoid being held accountable for the lack of positive sales results or the mishaps that inevitably occurred during your visit to the market.

As my frustration with so little progress in Georgia began to get the best of me, I researched the options for alternative representation. That is when I got a cold slap in the face by the Alcoholic Beverage Laws' unique nature and how they applied so differently in each market. Georgia is the textbook case on how the "locals" protect their own. I uncovered the brutal fact that once you, as a wine producer, assign your brand to a wholesale distributor in Georgia, they now own the right to it for life. You have virtually no recourse short of pulling out of the market if you want to change distributor partners in the state. They trade brands from one distributor to another, much as we did with baseball cards when we were young. It was unbelievable the power they had with the state legislators and how they got such laws passed, labeled "Franchise," to protect their position. More like a Monopoly. Not surprising that Georgia is one of the most corrupt state governments--nothing money cannot buy.

Being young, aggressive, and naive, I contacted an attorney that a local retail merchant recommended. His name escapes me now, but I do recall his first name was Paul. Well, he had no problem taking our check for \$1,500 as a retainer. He told me he would look at our case and advise me about the options. After many weeks and several other invoices totaling over \$7,500, which we paid in full, he informed me that there was little that we could do short of pulling out of the market for a full three years.

When I objected that there must be some way to challenge this law, he offered the following comment for my consumption. "Well now, those laws were indeed written to protect the hometown boys, weren't they!" When I pleaded further about the lack of fairness, he blew me away with his next statement. "I am afraid there is nothing you can do as I know the law very well; you see, I was the former commissioner at the ABC and helped write the language of that law." Talk about being conned. Man, did I feel foolish. I vowed someday; someday, I would get these laws changed. I thought, never again!!

POSTSCRIPT:

After the Supreme Court ruling in our favor on May 16, 2005, I was sidetracked by my Heart Attack. However, Kirkland & Ellis's legal team continued to meet with various wine industry folks to determine the next steps and where the industry should turn their attention. Ken had made it clear that the FTC was willing to further investigate the wine industry practices but, they needed a "road map" to help guide them through the maze of restrictions and anti-competitive laws. It was still my belief that the number one issue was to challenge these Franchise Laws. No more significant harm was being done to all wine suppliers, whether they were domestic or imported, than these barriers.

Eventually, I headed up a new organization. It was incorporated as a non-profit 501(c (3) for the express purpose of raising money to provide the FTC with a *White Paper*. That report would outline the harm these protectionist laws did to the Consumer because the FTC's primary focus is on anti-competitive practices that negatively affect the Consumer. The new organization was aptly named the Wine Fair Trade Coalition; (WFT). I will leave that story for another excerpt in the future and along with it the failure of the wine Industry to adequately protect and fund their future.