

WINE INDUSTRY LEGAL RISKS

An article written by Mark Hamilton for Australian Vignerons Magazine.

In the present competitive and growing state of Australia's wine industry, most wine producers and grape growers are flat out growing their brands or striving to meet the ever increasing standards demanded by Australia's grape purchasers.

In this environment it is very easy and understandable to overlook the significant and ever increasing legal and financial risks faced by wineries and grape growers – many of which are fundamental to financial performance and – in fact – long term survival.

Recent press stories about fines imposed by environmental courts upon a large Australian wine producer – and the suspension of an export licence of a Riverland winery – are salutary reminders of the reality that – to guarantee long term survival – it is necessary to devote sufficient management time and expenditure to identify and address all financial risks and requirements.

Time spent now will save considerable “negative” time and expenditure later on – and avoid having to “involuntarily” address problems identified by third parties such as – in the above instances – the Environmental Protection Authority (South Australia) or the Australian Wine and Brandy Corporation.

A basic “check list” of more obvious or topical legal “risks” include the following:

- Winery waste: Identifying and implementing a waste management plan for your winery which both adopts “best practice” and which complies with all relevant environmental, planning and other legal requirements.

Whilst recently constructed wineries presumably may be more likely (but not certain) to comply with these requirements – long established wineries should not assume that they are exempt – by virtue of having been built at some earlier point in time. There is a positive obligation to comply with many of these requirements – whenever wineries were built. Get some advice.

■ **Label integrity:** Identifying and implementing practices, procedures and record keeping for the wineries grape intake, winemaking and finished goods production to ensure that, firstly, all finished wine products are “true to label” – that they comply with domestic and international labelling and packaging requirements, and secondly, so as to ensure that the winery can immediately establish compliance with these matters by reference to easily accessible, centrally located records.

Putting deliberate label “fraud” to one side, you do not wish to have your export licence suspended while you spend two frenetic, stress filled weeks collating the relevant information.

If your winemaking records and systems are a priority then this will also act to guard against the repercussions of the honest mistakes during the grape intake and value adding process.

■ **Managing insurance risk:** Reviewing insurance arrangements, policy documents and “fine print” is not a particularly attractive proposition for most of us – except perhaps the guy on TV who keeps interrupting Port Adelaide AFL matches – to extol the virtues of barcodes. This is however a significant risk area for the financial health and existence of your business.

Make sure you get the right person in your organisation to take responsibility for this and ensure that you identify all pertinent risks.

This should include – if you are exporting – such things as product liability insurance which operates in your export markets – and credit insurance (through organisations such as EFIC) so as to insure your export order payments. Remember the basic rule that if you cannot get credit insurance on a customer – then it is probably not worth doing business with the customer.

Other traps like using unregistered vineyard plant and equipment on public roads – and inadequate public liability cover – require careful consideration.

If you are in doubt – or do not have someone within your organisation with the requisite skills – then consider getting in an outside consultant to conduct an insurance review in the first year which will then set you on the right course for future years. This could prove to be money well spent.

- **Preparation of food at cellar door sales outlets:** Food must be prepared in accordance with all relevant health and planning requirements – and all necessary food preparation facilities must be provided to avoid food health risks. Insurers must be on notice of food preparation and sale activities. Consider the implications of uninsured, food poisoning claims – and the attendant publicity.
- **Brand protection:** Ensure that you have applied for all relevant trade mark protection over your brand both in Australia and overseas wine export markets where you market or intend to market your brand. By seeking trade mark protection you will quickly identify whether you are able to secure a long term right to market wine under that brand in a particular market place. There is little or no point in developing a brand where you do not have a monopoly over the words constituting the brand.
- **Retention of title clauses:** It is appropriate that you review your arrangements with wineries, distributors both in Australia and overseas – and with the retail trade, if you sell direct – to ensure that you include properly drafted retention of title clauses, on appropriate contractual documentation and invoices. This is to ensure that in the event that a liquidator or receiver and manager is appointed to a customer that title in the goods remains with you as the vendor until you receive payment in full.
- **Occupational health and safety risk:** A great starting point to ensure compliance with all occupational health and safety requirements is to get a qualified occupational health and safety consultant to conduct a full review of your business. This will enable you to address or identify major obvious risks immediately – and fix those- and to draft a plan for “continuous improvement”.

Appoint someone suitable on your staff as the OH&S officer for this purpose. Given the numerous occupational health and safety requirements it is virtually impossible for any individual – except for a specialist – to be sufficiently familiar with all the requirements to do this without outside assistance.

- **Foreign exchange risk:** Ask your banker to refer you to the experts within their organisation for information and advice regarding management of your foreign exchange risk if engaged in wine export. This is a specialist area riddled with risk. You may well choose to do nothing but live with the vagaries of currency fluctuation but it is a good idea to understand the issues and what – if any – mechanisms are available to manage your downside risk without exposing you to unacceptable risks.

■ **SARS and War:** Fortunately, we are coming out of a period – with the onset of special acute respiratory symptoms disorder – and the Iraq war – where the safety of marketing and business personnel travelling overseas was something to be considered. Common sense is probably the best indicator of action here – however, insurance arrangements for employees engaged in these activities must be considered.

These matters are but the tip of a very large – ever increasing – iceberg, which are as an important part of your business as the manufacture and sale of wine products or grapes.

One other type of “tip” – if you can’t bring yourself to deal with these issues because (for example) you are marketing or sales “type” then do yourself a favour – and get someone in who can – or sub-contract the task out. A good test is whether you can bring yourself to read through and carefully study the fine print of an insurance policy.