



Wine & Spirits Wholesalers of Kentucky

November 6, 2020

Advisory Opinion Request - Supplement

Wine spritzers, no matter the alcohol content, meet the definition of “wine” and cannot be sold at stores where sales of staple groceries exceed 10% or greater of gross sales receipts (KRS 243.230(5); 804 KAR 4:270). A wine spritzer, as disclosed on numerous brand websites, is typically wine combined with sparkling water, and may include fruit juice and natural flavors. One product in question, Movo Wine Spritzers, lists the following ingredients on its website and packaging: “Delicious Wine, Sparkling Water, Fruit Juice, and Natural Flavors.” It is our understanding that the ABC, as advised by the previous administration, are classifying these products as “weak cider” and are therefore allowing them to be sold in convenient and grocery stores.

Kentucky’s definition of “wine” includes sparkling wine not to exceed 24% ABV, as well as preparations or mixtures vended in retail containers not to exceed 15% ABV (KRS 241.010 (74)). Notably, the definition explicitly excludes “weak cider” as a “wine”, so a product cannot be both a “wine” and a “weak cider.” It is one or the other.

The definition of “weak cider” was created in 2014 by the General Assembly to allow low alcoholic ciders (e.g., Angry Orchard) to be sold at convenient and grocery stores (KRS 241.010 (70)). “Weak cider” means any fermented fruit-based beverage containing more than 1% but less than 7% ABV. While one could attempt to argue that a wine spritzer is fruit-based simply because fruits (typically grapes) are crushed to make wine, it squarely meets the definition of “wine.” Furthermore, the explicit exclusion of a “wine” also being a “weak cider” is significant – it appears the legislature anticipated wine-based products could be classified as “weak cider” under the newly created definition so they prohibited it in the “wine” definition. Instead, they decided to include “weak cider” under the “malt beverage” definition, not the “wine” definition (KRS 241.010 (38)). Notably, the TTB treats wine spritzers and all wine-based products as “wine,” not a malt beverage.

It should be noted there are many other wine-based products under 7% ABV that could arguably fit under the same analysis, including moscato and rosé. Many of these products are packaged in traditional wine bottles and have never been considered “weak ciders.” However, it is important not to be misled by the packaging of wine spritzers, which are essentially the same products in a can instead of a wine bottle (like canned wine). If the ABC continues to classify wine spritzers as a “weak cider,” it could have a tremendous domino effect allowing other wine-based products to be sold in convenient and grocery stores.

There are also important tax implications to a product being designated as a “weak cider,” as the excise tax is reduced from \$.50/gallon (wine) to \$.08/gallon (malt beverage), an 84% decrease.