

E-Commerce: New Wineries vs. The System

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E-commerce is a boon to many veteran Main Street retailers, but in the policy debates over online sales, the veterans increasingly pit themselves against startup online merchants. In the fight for every last sale, particularly in the tight economy, traditional and online merchants are turning to the courts and to legislators for help.

In the wine business, mom-and-pop shops found a profitable niche in Internet sales, and they are challenging the well-entrenched system of wholesale liquor distributors, who are rallying to stop them.

The debate is draped in arguments about underage drinking, consumer protection and states' rights in the post-Prohibition era. But online wine sellers say it is fundamentally about sales.

"It's all about the money, honey," said WineAmerica President David Sloane, paraphrasing British poet Andrew Motion. Wholesalers historically have served as a funnel through which all liquor sales must pass, he said, but in the wine business the system is profitable only for huge wineries with known brands.

"Volume brands are where the big money is to be made," Sloane told lawmakers Thursday at a hearing before the House Subcommittee on Commerce, Trade and Consumer Protection. WineAmerica, in Washington, is the national association of wineries.

Some states allow interstate wine shipment, and most states allow intrastate wine shipment. The legal questions revolve around states' rights under the 21st Amendment (which

repealed Prohibition) and the interstate commerce clause. Circuit courts have not ruled entirely consistently on the matter, and many observers expect the matter will be settled by the Supreme Court.

Wholesalers point to the problem of teenage drinking as a primary reason to end the interstate shipment practice.

"We should not create a virtual vending machine for alcohol on the Internet," said Juanita Duggan, president of the Wine and Spirits Wholesalers of America Inc., in Washington. "It's about kids, communities and common sense."

To illustrate her point, Duggan described the case of a minor who was living in a rehabilitation facility and ordered a case of bourbon over the Internet. The bourbon was delivered to the facility, where the minor drank it, she said.

"He drank the whole thing," Duggan told lawmakers, adding that he then ordered a second case.

Dismissing online sales proponents who say that wine shipments to minors can be curtailed by verification controls, Duggan said that shippers use euphemistic return addresses and that liquor boxes conceal their contents.

"We have enough problem with face-to-face transactions," she said, arguing that online wine sales constitute a small but growing part of the underage-drinking problem. "From our perspective, there is absolutely no way to control that."

Next page: FTC: Online wine sales increase choice, lower prices.

The wholesalers face an uphill battle in Washington, however, as even the Federal Trade Commission concluded recently that online wine sales provide increased consumer choice and in some cases lower prices.

"The Internet does not change the baseline principles of freedom and competition," said Todd Zywicki, director of the FTC's Office of Policy Planning.

Warning that legacy regulations can inhibit the growth of e-commerce, Zywicki testified that many state bans on interstate wine shipment are in place because the wholesale distribution system was developed before the Internet existed. As e-commerce continues to expand, the potential cost of restrictions will rise, he said.

In her testimony, Duggan condemned the FTC's conclusion as preordained. "It is the triumph of rhetoric over reason," Duggan told lawmakers. "It is intellectually dishonest and scientifically specious."

Many in Congress are not convinced, however, that the issues raised by the wholesalers are not mainly a diversion from the larger economic battle.

"I have to say it's about 5 percent for the kids and about 95 percent for the money, honey," Rep. George Radanovich, R-Calif., said. "This is about money, and it's about market share, and that's OK."

Calling the wholesalers' argument "economic protectionism" in the guise of social policy, Rep. John Shimkus, R-Ill., said many small wineries in Illinois do not have the luxury of working within the traditional wholesale structure.

For others, however, the issue of online wine sales raises questions, separate and distinct from other online sales, which transcend economics.

Controlled substances are "not the same as contact lenses or golf clubs," said Rep. Edolphus Towns, D-N.Y. "There's really no control here in terms of youngsters being able to order it, being able to receive it, and that's a real problem."

The wholesalers concede that there is an economic issue at stake, but they say it is one that motivates startup producers to attack the long-established distribution system.

"There is a huge worldwide glut of wine on the market," Duggan told lawmakers, adding that the easiest tactic for new wineries is to attack the system. "There simply is too much wine."

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