

Licence  
Appeal  
Tribunal

Tribunal  
d'appel en  
matière de permis



DATE: 2016-07-28  
FILE: 10197/VQAA  
CASE NAME: 10197 v. Vintner's Quality Alliance Ontario

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Appeal from a Compliance Order of the Vintner's Quality Alliance Ontario under the  
*Vintners Quality Alliance Act, 1999*, S.O. 1999, c. 3

The Old Third Vineyard

Appellant

-and-

Vintner's Quality Alliance Ontario

Respondent

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## REASONS FOR DECISION AND ORDER

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**ADJUDICATORS:** Patricia McQuaid, Vice-Chair (presiding)  
Bryant Greenbaum, Member

### APPEARANCES:

**For the Appellant:** Alexandra Mayeski, Counsel

**For the Respondent:** Paul-Erik Veel, Counsel

Heard in Toronto: July 6, 2016

## REASONS FOR DECISION AND ORDER

The Vintner's Quality Alliance Ontario (the "VQAO") issued Compliance Order 17-01 (the "Compliance Order"), pursuant to the *Vintners Quality Alliance Act*, S.O. 1999 Chapter 3, (the "Act"), requiring the Old Third Vineyard (the "Appellant" or "Old Third") to remove the term "Prince Edward County" from its website and any other descriptive materials associated with wines that are not approved by the VQAO. Old Third appealed the Compliance Order to the Tribunal and requests that the Compliance Order be dismissed.

At the outset, the parties agreed that the Compliance Order is stayed pending the Tribunal's decision. Further, for the purpose of the hearing, Counsel for the VQAO advised that the issue is the use of the term "Prince Edward County" in the "banner" on the top of every page of its website. The specific wording is as follows:

*The Old Third*  
Producers of fine wine and cider in Prince Edward County

## FACTS

The relevant facts are not in dispute; no oral evidence was called at the hearing. The Appellant is a manufacturer of wine and cider located in Prince Edward County, which is a municipality in Ontario. It is not a member of the VQA, nor is it a producer of VQA approved wines. On February 3, 2016, the VQAO wrote to Old Third advising that the term "Prince Edward County", when used in association with wine production, is reserved for approved VQA wines pursuant to s. 3(2) of Ontario Regulation 406 (the "O. Reg."), prescribed under the Act, and requested that reference to Prince Edward County be removed from its website. There is no allegation that Old Third is using the term "Prince Edward County" on its wine bottles in a manner which is contrary to the Act.

## THE LAW

Section 1 of the Act states as follows:

1. The purpose of this Act is to establish and maintain an appellation of origin system for Vintners Quality Alliance wine that will allow consumers to identify such wines on the basis of the areas where the grapes are grown and the methods used in making the wine.

The core provisions of the Act relating to the use of regulated terms are set out in section 6 of the Act:

6. (1) A manufacturer shall not use the terms, descriptions and designations established by the wine authority without its approval. 1999, c. 3, s. 6 (1).

*Application for approval*

(2) A manufacturer may only apply to the wine authority for an approval to use the terms, descriptions and designations if the manufacturer is a member of the wine authority. 1999, c. 3, s. 6

Regulation 406 deals with the terms, descriptions and designations referred to in section 6, and provides that “no person shall use certain terms and designations on a label or container of wine unless the wine is approved and certain conditions satisfied”. The Respondent submits that this section must be read as a broad prohibition on the term “Prince Edward County”.

“Label” is defined in the Regulation as “any display of printed or written wording or graphic symbols, that are present on a container of wine or that are associated with a wine”.

## **ANALYSIS**

The issue is whether the use of the term “Prince Edward County” on the website banner constitutes use on a “label” contrary to the Act and its regulations.

Counsel are in agreement with the basic rules of statutory interpretation, as set out in the case law put before the Tribunal, and that these rules are equally applicable to the interpretation of regulations. The statutory provision must be read in its entire context, taking into consideration not only the ordinary and grammatical sense of the words, but also the scheme and object of the statute. Every word included in a statute is presumed to make sense and to have a specific role to play in advancing the legislative purpose. Furthermore, interpretation of a statute or regulation should not be absurd; an interpretation can be considered absurd if it leads to ridiculous or frivolous consequences, if it is extremely unreasonable or inequitable, if it is illogical or incoherent, or if it is incompatible with other provisions or with the object of the legislation.

Counsel also agreed that the critical provision is the definition of “label”. Respondent’s Counsel submitted that the first part of the definition: “any display of printed or written wording or graphic symbols, that are present on a container of wine...” captures the label on a bottle of wine as one would understand the ordinary use of the word. It is the last clause that is more problematic; specifically, the meaning to be given to the words: “any display of printed or written wording or graphic symbols ...that are associated with a wine”.

Interpretation of this last clause must be done contextually. The words of the first clause in the definition are very specific to a bottle. Respondent’s Counsel suggests that the words “associated with” in the second clause must mean something broader, which has

a certain logic. But read in its entirety, the clause reads "...printed or written wording ...that are associated with a wine (emphasis added). When this is read in conjunction with the words that precede them, "a container of wine", it is a reasonable inference that the written/printed wording is in respect of the singular – a wine. Broader, more general words, such as in association with a manufacturer or a vineyard, are not used though these are words used elsewhere in the Act and regulations. This suggests a legislative intent for a narrower interpretation that is limited to a specific wine, not all of the wine that a vineyard may produce.

The Respondent did not point to an example where Old Third used the designated words "Prince Edward County" in association with a particular wine. It is not, for example, describing its pinot noir as a "Prince Edward County Pinot Noir" on its website. Rather, what the VQAO suggests is Old Third is using the words in the banner in association with all of its wines, to take advantage of the value attaching to the words Prince Edward County.

The Tribunal does not find that to be a reasonable conclusion. The words on the banner read: "Producers of fine wine and cider in Prince Edward County". The Tribunal notes that reference is made to both wine and cider. Cider is not regulated by the VQA. The information conveyed in the banner is that the Appellant, which produces both wine and cider, is located in Prince Edward County. It locates it geographically. Giving the words, in context, their ordinary meaning, they do not convey that the Appellant produces a Prince Edward County wine.

The principle that statutory interpretation should not lead to absurd consequences must be given considerable weight. In communications to Old Third, the VQA Compliance and Information Officer wrote:

"The same rules that apply to the labelling of bottles also apply to any use associated with the wine, including signage, **written or electronic materials that describe the wine**. ...you may want to change "Prince Edward County" to "local" or the name of the nearest town or even "Canada" if you want to generalize..." (emphasis added)

The Tribunal notes that the communication refers to describing the wine, not the vineyard, but also striking is the suggestion that Old Third could only describe itself in such vague terms, which would not assist a person in locating it. The word "local" would be of no help, nor would "Canada". The town could be used – Hillier – but as Respondent's Counsel pointed out, if one accepts the VQAO's position, the Appellant could not say Hillier in Prince Edward County, nor even Hillier, Ontario, because "Ontario" too is a controlled term. This, the Tribunal concludes, is indeed an unreasonable if not an absurd consequence. The Appellant is not using the controlled term "Prince Edward County" to describe its wines generally, nor is it using the words to describe a wine produced by the Appellant. And, the words "a wine" are the specific words chosen by the legislators for the definition of "label". Rather, in its banner, the Appellant is describing, factually, the location of its vineyard. The VQAO gives its

approval to a wine; it does not give its approval to a vineyard per se. As noted by Appellant's Counsel, a vineyard may produce both VQA approved wines and wines that are not approved.

The Tribunal appreciates the point made by Respondent's Counsel that the internet is the contemporary manifestation of a brochure, and that the Act and its regulations are equally applicable to written material that appears on a website; however, the words on the Appellant's banner do not, for the reasons noted above, run afoul of the Act.

The Tribunal therefore agrees with the Appellant's submission – that to construe the words on the banner as proposed by the Respondent would be giving an overly broad interpretation of the Regulations and the regulatory limits on the use of the term "Prince Edward County".

## ORDER

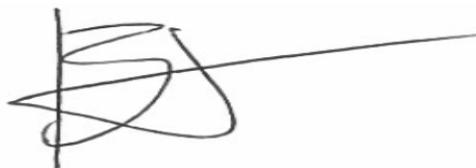
Pursuant to the authority vested in it under the provisions of the Act and its regulations, the Tribunal dismisses Compliance Order (17-01) issued by the Respondent on April 12, 2016.

LICENCE APPEAL TRIBUNAL



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Patricia McQuaid, Vice Chair



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Bryant Greenbaum, Member

*Released: July 28, 2016*