

**UNITED STATES OF AMERICA
DEPARTMENT OF TREASURY
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU**

In the Matter of the Proposed)
Suspension of the Basic Permit Issued)
to:)
)
) No. AF-97542
)
Three Monkeys Wine LLC)
1300 Montgomery Road)
Sebastopol, California 95473)
Basic Permit CA-W-17271)

INITIAL DECISION

On December 14, 2018, the Alcohol and Tobacco Tax and Trade Bureau (TTB) issued to Three Monkeys LLC an Order to Show Cause why its authority to operate under basic permit number CA-W-17271 should not be suspended because of willful violations of the conditions of the permit, as set forth in the Order to Show Cause.

Title 27, United States Code, Section 204(e), provides in pertinent part that, by order of the Secretary of the Treasury, and after due notice and opportunity for a hearing to the permittee, a basic permit shall be suspended for such period as the Secretary of the Treasury deems appropriate if the Secretary finds that the permittee has willfully violated any of the conditions of the permit.

Three Monkeys LLC and TTB have entered into a Settlement Agreement to resolve the immediate matter, which is currently before an Administrative Law Judge (ALJ). As part of the agreement, Three Monkeys LLC acknowledges the violations set forth in the Order to Show Cause and has agreed to withdraw its request for hearing. Therefore, under the authority of 27 C.F.R. § 71.79(b), TTB makes the following Findings and Decision.

EVIDENCE PRESENTED BY THE GOVERNMENT

1. The Order to Show Cause issued December 14, 2018.
2. A Settlement Agreement executed by Three Monkeys LLC acknowledging the violations alleged in the Order to Show Cause and agreeing to the imposition of a one-day suspension.

FINDINGS OF FACT AND CONCLUSIONS

1. Three Monkeys LLC has agreed to withdraw its hearing request, which it filed in response to TTB's Order to Show Cause of December 14, 2018.

2. Three Monkeys LLC acknowledged the allegations contained in the Order to Show Cause, without admitting fault, and agreed to a one day suspension in resolution of the matter.
3. Three Monkeys LLC's authority to operate under basic permit number CA-W-17271 may and should be suspended for a period of one day.

DECISION AND ORDER

1. In pertinent part, basic permits issued pursuant to the Federal Alcohol Administration Act are conditioned upon compliance with the requirements of 27 U.S.C. §§ 205 and 206 "and with all other Federal laws relating to distilled spirits, wine, and malt beverages, including taxes with respect thereto." 27 U.S.C. § 204(d).
2. Three Monkeys LLC violated the conditions of its basic permit in the following manner and instances:
 - a. Three Monkeys LLC is a TTB-regulated industry member, operating as a bonded winery in California.
 - b. [REDACTED] is a TTB permitted wholesaler located in [REDACTED].
 - c. Beginning in approximately March 2015 and continuing through approximately March 2018, Three Monkeys LLC sold wine to [REDACTED] on consignment. Specifically, Three Monkeys LLC provided wine to [REDACTED] pursuant to an arrangement whereby the wholesaler was not obligated to pay for the wine until after the wholesaler sold the wine to retailers.
 - d. Three Monkeys LLC acted willfully, or with plain indifference to the requirements of the FAA Act, in entering into the consignment sale arrangements with [REDACTED].
3. The FAA Act, 27 U.S.C. § 205(d), makes it unlawful for an industry member to sell, offer for sale, or contract to sell to any trade buyer (a wholesaler or retailer) on consignment.
4. Consignment sales are arrangements where the trade buyer is not obligated to pay for distilled spirits, wine, or malt beverages until after the trade buyer sells the distilled spirits, wine, or malt beverages. 27 C.F.R. § 11.22.
5. An FAA Act basic permit is conditioned upon compliance with the requirements of section 205 of the FAA Act. 27 U.S.C. § 204(d).
6. TTB may suspend a basic permit issued under the FAA Act if its holder willfully violates any of the conditions of the permit. 27 U.S.C. § 204(e)(1).

Three Monkeys LLC has acknowledged the violations alleged in the Order to Show Cause and agreed to a suspension in resolution of the allegations. Three Monkeys LLC and TTB have agreed that Three Monkeys LLC's authority to operate under basic permit number CA-W-17271 is to be suspended for a period of one day. It is, therefore, decided that the period of suspension will and shall be on November 29, 2019.

TTB will exercise its enforcement discretion and will not treat this suspension as a "first violation" under 27 U.S.C. § 204(e)(1), unless it discovers Three Monkeys LLC engaged in conduct similar to the violations alleged in such Order on or after the date ordered to serve your suspension.

Dated

Deputy Assistant Administrator, Field Operations
Alcohol and Tobacco Tax and Trade Bureau

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SUSPENSION AGREEMENT

1. Three Monkeys Wine LLC agrees to withdraw its hearing request in the above-referenced matter.
2. Three Monkeys Wine LLC continues to deny the allegations. Three Monkeys Wine LLC asserts that it did not knowingly violate any laws, and it is withdrawing its hearing request due to the mounting cost of defense and the risk and uncertainty of litigation.
3. The Deputy Assistant Administrator (Field Operations), Alcohol and Tobacco Tax and Trade Bureau (TTB), and Three Monkeys Wine LLC agree that Three Monkeys Wine LLC's authority to operate under basic permit CA-W-17271 will be suspended for a period of one (1) day.
4. Three Monkeys Wine LLC's ability to operate under basic permit CA-W-17271 will be suspended by order of the Deputy Assistant Administrator (Field Operations). Three Monkeys Wine LLC will serve its suspension on November 29, 2019.
5. During the period of suspension, Three Monkeys Wine LLC cannot conduct those normal business activities that it otherwise would legally conduct through its basic permit. Activities that shall not be performed during the suspension include, but are not limited to:
 - a. Producing wine.
 - b. Filling orders for wine for customers;
 - c. Placing orders of wine for customers;

- d. Contracting to sell or offering to sell wine;
 - e. Shipping of wine in interstate or foreign commerce; or
 - f. Advertising or disseminating, or causing to be advertised or disseminated, in interstate or foreign commerce, any advertisements of wine.
6. During the period of suspension, Three Monkeys Wine LLC may conduct activities that would allow maintenance of its current stock or inventory. Such activities include, but are not limited to:
- a. Activity that would only relate to maintaining or preserving wines which have already been produced;
 - b. Taking inventory of warehouse goods;
 - c. Performing administrative activities such as bookkeeping;
 - d. Rearranging warehouse stock;
 - e. Altering, changing, or creating, but not placing in interstate or foreign commerce, advertisements of wine; and
 - f. Maintaining content on its threemonkeyswine.com website, but disabling any portion of the website allowing customers to place orders for wine.
7. TTB will exercise its enforcement discretion and will not treat this suspension as a “first violation” under 27 U.S.C. § 204(e)(1), unless it discovers Three Monkeys Wines LLC engaged in unlawful conduct similar to the violations alleged in such Order on or after the date ordered to serve your suspension.
8. The parties agree that the information in TTB’s suspension decision is not return information under 26 U.S.C. § 6103 and is not subject to any other confidentiality provisions. As such, Three Monkeys Wine LLC understands that TTB will publish information from the suspension decision on its public website and in its newsletter.
9. Three Monkeys Wine LLC agrees that this suspension agreement is valid regardless of the date the Deputy Assistant Administrator signs this agreement, the Order to Show Cause, the Decision, and the Order Suspending Permit and expressly waives any objections if the Deputy

Assistant Administrator signs any or all of those documents before Three Monkeys Wine LLC signs this agreement.

Three Monkeys Wine LLC

Date: 9/6/19

By: [REDACTED]
Name: [REDACTED]
Title: Managing Member

Date: September 9, 2019

[REDACTED]
[REDACTED]
Deputy Assistant Administrator, Field Operations
Alcohol and Tobacco Tax and Trade Bureau