

## Is It Legal to Sell Wine You Don't Own?

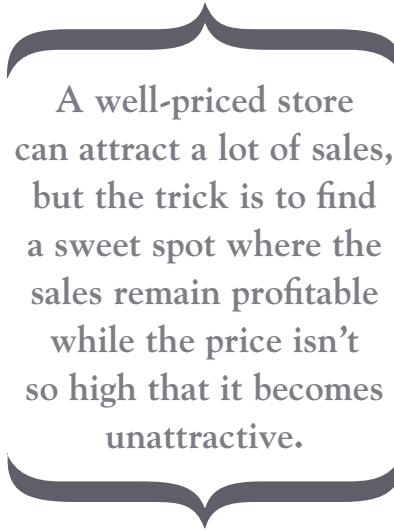
The concept of “just-in-time” inventory has become a hot button issue in the wine trade recently. Businesses selling wines they don't physically own have been attracting attention from state regulators and other areas of the trade. The California Alcoholic Beverage Control (CA-ABC) issued an advisory earlier this year that has had an impact on some business models and led some to suggest that any retailer selling wines they don't own is operating illegally. This is not the case.

The CA-ABC also added a caution that licensed retailers should only sell products they actually own: “To do otherwise could result in a consignment sale,” which is a violation of federal and state law. As the late Susan Cagann of the law firm FBM commented, “inventory cannot be returned if unsold. Any just-in-time delivery solutions should be carefully examined to ensure that the transaction is not a disguised consignment sale.” The scenario here is that a retailer makes a deal with a winery or wholesaler to sell a quantity of wine at a negotiated price. The wine is delivered to the retailer, who sells only part of the allocation and returns the rest, paying for the amount sold. This is a consignment sale and is in violation of federal and state alcohol law.

If a retailer receives an order from a customer for an item that the store doesn't have in stock, whether that customer walks into the store or identifies the items on the store website, that is not a consignment sale. There are several common trade practices—including the sale of wine futures—that rely on the sale of products that a store doesn't have in stock. These are not consignment sales as the goods cannot be returned to the wholesaler or supplier if not sold.

### Pricing Virtual Inventory

While perfectly legal, virtual inventory has been the focus of concern from sup-



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pliers who see their products online at low prices. Wine-Searcher has become such a fixture of the industry that retailers will check the price of an item online before agreeing to buy it from a distributor. Using prices on Wine-Searcher they decide where they want to position their price relative to other retailers online and calculate whether there is enough room for their customary margin.

Easy access to pricing information on Wine-Searcher presents both an opportunity and a challenge for the trade. A well-priced store can attract a lot of sales, but the trick is to find a sweet spot where the sales remain profitable while the price isn't so high that it becomes unattractive. Distributors also have pricing tools available to them with post-offs and 1-case discounts where they can make the price more attractive to a retailer who buys the wine.

Bottom line: there remain opportunities for licensed retailers who list virtual inventory to offer vast selections of products and to help the trade make visible everything available in the marketplace.

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