

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

STATE OF OHIO, <i>ex rel.</i>	:	
ATTORNEY GENERAL	:	
DAVE YOST,	:	Case No. 2:20-cv-3430
	:	
Plaintiff,	:	Judge Sarah D. Morrison
	:	
v.	:	Magistrate Judge Chelsey M. Vascura
	:	
WINE.COM, INC., <i>et al.</i>	:	
	:	
Defendants.	:	

**CONSENT DECREE AND FINAL JUDGMENT BETWEEN THE STATE OF OHIO
AND DEFENDANT AWS HOPKINS, LLC, d.b.a. ACE SPIRITS**

Plaintiff, State of Ohio, (“the State”), filed a Complaint in this action against Defendant AWS Hopkins, LLC, d.b.a. Ace Spirits (“Defendant” or “Ace Spirits”), and six other named Defendants for preliminary and permanent injunctive relief to restrain continuing violations of Ohio liquor laws, Ohio Rev. Code Chapters 4301 and 4303, by Defendants. The State and Defendant Ace Spirits have consented to entry of this Consent Decree and Final Judgment between the State of Ohio and Defendant AWS Hopkins, LLC, d.b.a. Ace Spirits (the “Consent Decree”).

Now, therefore, without trial of any issue of law or fact, without admission of any issues of law or fact, and upon consent of the State and Defendant Ace Spirits, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION AND VENUE

1. The Court has both personal jurisdiction over Defendant and subject matter jurisdiction over the case pursuant to 27 U.S.C. § 122a(c), 28 U.S.C. § 1331, Fed. R. Civ. P. 4(k), and Ohio Rev. Code 2307.382. The Complaint states a claim upon which preliminary and

permanent injunctive relief can be granted against Defendant under 27 U.S.C. § 122a(c). Venue is proper in this Court.

II. PERSONS BOUND

2. The terms and provisions of this Consent Decree shall apply to and be binding upon the State, Defendant, and Defendant's successors in interest, parents, subsidiaries, affiliated entities, directors, officers, managers, agents, members, assigns, and employees.

3. No change in ownership or corporate status of Defendant including, but not limited to, any transfer of assets or real or personal property shall in any way alter the Defendant's obligations under this Consent Decree.

III. DEFINITIONS

4. The following terms are defined as follows for purposes of this Consent Decree:
- a. "Business records" means Defendant's records concerning shipments of Spirits or Wine to consumers, online order receipts, promotional materials and advertisements, in any form whatsoever, and tax returns.
 - b. "Complaint" means the Complaint for Injunctive Relief filed by the State on July 8, 2020, in the above-captioned matter.
 - c. "Defendant" means AWS Hopkins, LLC, d.b.a. Ace Spirits, and its successors in interest, parents, subsidiaries, affiliated entities, directors, officers, managers, agents, members, assigns, and employees.
 - d. "Division of Liquor Control" means the Ohio Department of Commerce, Division of Liquor Control.
 - e. "Effective Date" means the date the Clerk of Courts enters this Consent Decree.
 - f. "Paragraph" means a portion of this Consent Decree identified by an Arabic numeral or an uppercase or lowercase letter.
 - g. "Parties" means the State and Defendant.
 - h. "Section" means a portion of this Consent Decree identified by a Roman numeral.

- i. “Spirits” means “spiritous liquor” as defined by Ohio Rev. Code 4301.01(B)(5) and includes any intoxicating liquors that contain more than twenty-one (21) percent alcohol by volume. Spirits and spiritous liquor are included within the definition of “intoxicating liquor” as set forth in 27 U.S.C. § 122a(a)(2).
- j. “State” means the State of Ohio by and through its Attorney General Dave Yost.
- k. “Wine” means “wine” as defined by Ohio Rev. Code 4301.01(B)(3) and includes all liquids fit to use for beverage purposes containing not less than one-half of one per cent of alcohol by volume and not more than twenty-one per cent of alcohol by volume, which is made from the fermented juices of grapes, fruits, or other agricultural products. Wine is included within the definition of intoxicating liquor as set forth in 27 U.S.C. § 122a(a)(2).

IV. OBLIGATIONS REGARDING SPIRITS

5. Defendant shall immediately and permanently cease directing shipments of Spirits to consumers in the State of Ohio.

6. Defendant shall immediately and adequately train and educate its directors, officers, managers, agents, members, assigns, and employees that Defendant is not authorized to sell and/or ship Spirits directly to consumers located in the State of Ohio.

7. Defendant shall place adequate disclaimers in all advertisements for the sale of Spirits that may be viewed within the State of Ohio, including but not limited to web-based advertisement, to clarify that such offers are not available for acceptance by consumers located in the State of Ohio.

8. Defendant shall make modifications as are reasonably necessary to ensure that its ordering systems, regardless of format or mechanism (whether web-based, telephonic, print, or mail), do not result in the shipment of Spirits to consumers located in the State of Ohio.

9. The obligations set forth in this Section IV shall remain in full force and effect unless and until a change in Ohio law permits Defendant to lawfully ship Spirits to consumers located in the State of Ohio.

V. OBLIGATIONS REGARDING WINE

10. Defendant shall immediately cease directing shipments of Wine to consumers in the State of Ohio.

11. Defendant shall immediately and adequately train and educate its directors, officers, managers, agents, members, assigns, and employees that Defendant is not authorized to sell and/or ship Wine directly to consumers located in the State of Ohio.

12. Defendant shall place adequate disclaimers in all advertisements for the sale of Wine that may be viewed within the State of Ohio, including but not limited to web-based advertisement, to clarify that such offers are not available for acceptance by consumers located in the State of Ohio.

13. Defendant shall make modifications as are reasonably necessary to ensure that its ordering systems, regardless of format or mechanism (whether web-based, telephonic, print, or mail), do not result in the shipment of Wine to consumers located in the State of Ohio.

14. The obligations set forth in this Section V shall remain in full force and effect unless and until Defendant obtains proper permits and authorization from the Division of Liquor Control to lawfully ship Wine to consumers located in the State of Ohio and complies with all applicable regulations in the Ohio Revised Code and Ohio Administrative Code.

VI. GENERAL OBLIGATIONS

15. Defendant shall grant the Ohio Attorney General's Office and the Division of Liquor Control access to Defendant's business records related to shipments of Spirits and/or Wine into the State of Ohio, upon reasonable demand, such that the Ohio Attorney General's Office and/or the Division of Liquor Control may monitor Defendant's compliance with Ohio liquor laws for a period of five years from the Effective Date of this Consent Decree.

16. If, at any time during a period of five years from the Effective Date of this Consent Decree, Defendant is found to have illegally shipped Spirits to a consumer located in the State of Ohio, Defendant shall pay the Division of Liquor Control One Hundred and Fifty Dollars (\$150.00) per each such illegal shipment of Spirits.

17. If at any time during a period of five years from the Effective Date of this Consent Decree, Defendant is found to have illegally shipped Wine to a consumer located in the State of Ohio without having a proper permit from the Division of Liquor Control to do so, Defendant shall pay the Division of Liquor Control One Hundred and Fifty Dollars (\$150.00) per each such illegal shipment of Wine.

VII. MUTUAL RELEASE AND COVENANT NOT TO SUE

18. In consideration of Defendant's fulfillment of the terms set forth in Sections IV through VI above, the State releases and covenants not to sue Defendant for the specific claims alleged against Defendant in the Complaint and specifically reserves the rights set forth in Paragraph 21 herein.

19. In consideration of the State's release and covenant not to sue Defendant as set forth in Paragraph 18, Defendant releases and covenants not to sue the State for any claims or defenses that may have been raised by Defendant in this action or in response to this action, including but not limited to any claims that the State has intentionally interfered with Defendant's contractual or business relationships.

VIII. RESERVATION OF RIGHTS

20. The State expressly reserves the right to seek any and all legal relief available for violations of Ohio Rev. Code Chapter 4301, Ohio Rev. Code Chapter 4303, and/or the Ohio Administrative Code that occur by Defendant after the Effective Date of this Consent Decree.

21. The Parties expressly understand and acknowledge that this Consent Decree shall not be binding on any county prosecutor in the State of Ohio. The parties expressly understand and acknowledge that this Consent Decree is not binding on the Ohio Department of Taxation for purposes of any assessments or actions it may take for unpaid taxes, penalties, and interest. Defendant reserves, and does not waive, any rights, claims or defenses with respect to any such claims or actions.

IX. ATTORNEYS' FEES AND COSTS

22. The Parties expressly acknowledge and agree that each shall be responsible for its own attorneys' fees and costs.

X. MODIFICATIONS

23. This Consent Decree may be modified by agreement of the Parties. Modifications shall be in writing, signed by counsel for the State, counsel for Defendant, and an authorized representative of Defendant and memorialized in an order executed and entered by the Court. Any such modifications shall be effective on the date the Court enters its order approving such modifications.

XI. OTHER CLAIMS

24. Nothing in this Consent Decree shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation not a party to this Consent Decree, for any liability arising from, or related to, the allegations in the Complaint including, but not limited to Defendants Wine.com, Inc., U.S. Beverage Advertising Corp., Pacific Wine & Spirits, LLC, ShakeStir, LLC, Winc, Inc., and Houdini, Inc.

XII. RETENTION OF JURISDICTION

25. This Court shall retain jurisdiction of this matter for the purpose of overseeing compliance with and resolving disputes arising under this Consent Decree.

XIII. ENTRY OF CONSENT DECREE BY CLERK

26. Upon signing of this Consent Decree by the Court, the clerk is directed to enter it upon the journal and the Parties will be served electronically. Within three (3) days of entering the judgment upon the journal, the clerk is directed to serve upon all Parties notice of the judgment and its Effective Date upon the journal, in the manner prescribed by Rule 5(b) of the Federal Rules of Civil Procedure and note the service in the appearance docket.

XIV. AUTHORITY TO ENTER INTO THE CONSENT DECREE

27. The signatory for Defendant represents and warrants that he or she has been duly authorized to sign this document and so bind the Defendant to all terms and conditions thereof.

IT IS SO ORDERED AND AGREED.

JUDGE SARAH MORRISON
United States District Court
Southern District of Ohio

APPROVED:

DAVE YOST
OHIO ATTORNEY GENERAL

BY JONATHAN FULKERSON, DAG



20/11/6

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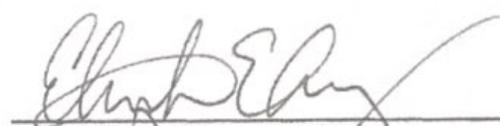
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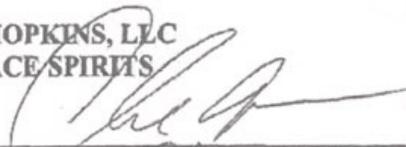
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d/b/a Ace Spirits*

AWS HOPKINS, LLC
d.b.a. ACE SPIRITS

By: 

Printed Name: Chad Moe

Title: VP

Date: 11/5/20