

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Petition of

JOSEPH E. SEAGRAM & SONS, INC.

DECLARATORY
RULING

DEC No. 27-14

For a Declaratory Ruling Pursuant to
Section 204 of the State Administrative
Procedure Act and Part 619 of Title 6
of the Official Compilation of Codes,
Rules and Regulations of the State of
New York

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Joseph E. Seagram & Sons, Inc. ("Seagram"), by its attorneys,
Helm, Shapiro, Anito & Aldrich, P.C., has petitioned for a
Declaratory Ruling whether Seagram's product, "St. Regis", is
subject to regulation by the Department of Environmental
Conservation ("Department") under the New York State Returnable
Container Act ("RCA"), Title 10 of Article 27 of the Environmental
Conservation Law ("ECL"), and the regulations implementing it at
6 NYCRR Part 367.

The question whether a de-alcoholized wine is subject to
regulation under the RCA presents a case of first impression.
Because it is not clear on the face of the RCA or its regulations
whether a de-alcoholized wine must be sold in returnable
containers, it is in the public interest to grant the petition and
issue a Declaratory Ruling, to inform both Seagram and the

industry of the regulatory status of this product and like products.¹

Seagram's product, St. Regis, is described and labelled as a "de-alcoholized wine" which contains less than one-half of one percent of alcohol. The label of the specimen bottle provided by Seagram describes the contents as "WINE WITHOUT THE ALCOHOL" and "DE-ALCOLHOLIZED WINE 99.51% ALCOHOL FREE." St. Regis is the result of a process wherein ripe wine grapes are crushed, fermented and processed to produce a white wine, following which substantially all of the alcohol produced by the fermentation is removed by use of a centrifugal molecular film evaporator. Subsequent to the removal process, the de-alcoholized wine is further processed by the addition of grape concentrate to reach the optimum sugar/acid balance, and by the addition of natural flavorings, both practices common in the wine industry. The product is then subject to stabilization, clarification, the addition of small amounts of carbon dioxide,² and is then bottled.

1 Low-alcohol wine, as compared to de-alcoholized wine, is made by other processes. The usual method is to partly ferment unripened grapes. Seagram, however, uses full fermentation of ripe wine grapes and then removes the alcohol with a special process, and this results in de-alcoholized wine rather than a low-alcohol wine. For purposes of this Ruling, de-alcoholized wine refers specifically to St. Regis, and no opinion is expressed concerning the applicability of the RCA to low-alcohol wine.

2 The petition, in paragraph 10, notes that approximately .376 grams of carbon dioxide per 100 milliliters is added. Under federal regulations, still wines may contain not more than .392 grams of carbon dioxide per 100 milliliters of wine (27 CFR 251.42a).

The product is not diluted by the addition of water. The ingredients of St. Regis, as listed on the label, are as follows: de-alcoholized chablis (french colombar, chenin blanc wines and dry white wine), wine grape juice from concentrate, carbon dioxide, citric acid and sulphur dioxide. The product will be marketed in a green glass bottle which in color, shape and size is a standard bottle for white wine.

Seagram asserts that the alcohol removal process is the only step in making St. Regis that is not a standard wine-making procedure. With this one exception, the process by which St. Regis is made is indistinguishable from the process by which other wines are made. The result is a product with the flavor and many other characteristics of wine, but de-alcoholized.

The essence of Seagram's contention is that St. Regis is not subject to regulation under the RCA, and the regulations promulgated pursuant thereto, because St. Regis, although de-alcoholized, is nevertheless a "wine" and so is not a "beverage" within said statute and regulation. Seagram's argument that St. Regis be classified as a "wine" is one which should not be decided herein, because this Department's authority to issue rulings is confined to rulings having to do with the applicability of statutes and/or regulations which the Department enforces.³ Moreover, that issue is one which need not be

³ The question of whether St. Regis is a wine should be resolved by the State Liquor Authority under the provisions of the Alcoholic Beverage Control Law.

decided herein, because the instant matter is capable of resolution by a determination of what St. Regis is not, without the necessity of reaching the question of what it is.

The RCA, and the regulations implementing it, require a deposit on and redemption of empty beverage containers used to contain a "beverage". A drink is a "beverage" only if it falls within one of five categories, namely: carbonated soft drinks; mineral water; soda water; beer; and other malt beverages.⁴

The term "mineral water" is defined at 6 NYCRR 367.2(n) to mean "water which is naturally or artificially impregnated with mineral salts or gases such as carbon dioxide or which is sold as a mineral water."

The term "soda water" is defined at 6 NYCRR 367.2(v) to mean "water charged with a gas, such as carbon dioxide, to cause effervescence."

The term "beer" is not defined in the RCA or regulations. However, the term is commonly understood to mean a fermented beverage manufactured from malt or a substitute therefor.⁵

4 ECL Section 27-1003 and 6 NYCRR 367.2(b) state "'Beverage' means carbonated soft drinks, mineral water, soda water, beer and other malt beverages."

5 Under Section 3.3 of the Alcoholic Beverage Control Law, the term "beer" "means and includes any fermented beverages of any name or description manufactured from malt, wholly or in part, or from any substitute therefor."

The term "malt beverages" is defined at ECL 27-1003(1) and 6 NYCRR 367.2(m) to mean "any beverage obtained by the alcoholic fermentation or infusion or decoction of barley, malt, hops, or other wholesome grain or cereal and water including, but not limited to ale, stout, or malt liquor."

It is clear that Seagram's St. Regis is not a mineral water, soda water, beer or other malt beverage. Accordingly, St. Regis is a "beverage" only if it is a carbonated soft drink.

The term "carbonated soft drinks" is not defined in the RCA or current regulations. However, the term has been construed in previous Declaratory Rulings so as to exclude natural fruit juices, whether carbonated or noncarbonated. In the Matter of the Petition of S. Martinelli & Company, DEC 27-10 (October 27, 1983); In the Matter of the Petition of National Grape Co-operative Assoc., Inc. and Welch Foods, Inc., a Co-operative, DEC 27-11 (November 15, 1983).

In Martinelli the question was whether sparkling apple juice or cider was a beverage, i.e., whether they were "carbonated soft drinks." The Department found that the intent of the legislature was to selectively subject particular containers to regulation, thereby leaving unregulated other products such as fruit juices, milk products, still and sparkling wines and other drinks. The Martinelli ruling held that a natural fruit juice, carbonated, does not become a soft drink, and that had the legislature wished to include fruit juices, whether carbonated or not, it would have

expressly included that class of drinks in the definition of "beverage."

In National Grape Co-operative Assoc., Inc., this Department ruled that the term "carbonated soft drinks" does not include a natural grape juice which has not been diluted nor artificially sweetened (except by the addition of natural grape juice concentrate), notwithstanding that the juice contains artificial carbonation and preservatives. Those rulings were issued in late 1983. The legislature has not subsequently acted to amend the RCA to change the result of the rulings.⁶

Both of these previous rulings focused on the fact that traditional drinks (such as apple or grape juice) not commonly thought to be "carbonated soft drinks" are not transformed into carbonated soft drinks by changes in their nature. These drinks still fall within the category of "juices" in spite of the fact that they are changed in some manner (even by carbonation). Essentially, these changes are not substantial enough to transform the product into a carbonated soft drink and they remain "juices". They are not transformed into a flavoring for a water-based carbonated soft drink.

⁶ It should be noted that various bills were introduced to expand the definition of beverage, particularly to include wine and liquor, but none were enacted into law. The enabling legislation for the RCA also provided for a Temporary State Commission on Returnable Beverage Containers to study the implementation of the RCA and report to the legislature by March 31, 1985. This report may be the foundation of future amendments.

Similarly, St. Regis, based on the facts set forth in the petition, initially falls into the traditional category of wine, and subsequent alterations, such as the removal of substantially all the alcohol and the minor addition of carbonation, do not transform it into a carbonated soft drink, which is essentially a water-based drink to which is added a flavored extract and carbonation.⁷ Accordingly, without deciding whether de-alcoholized fermented grape juice is still a "wine", it is clear that Seagram's St. Regis is not a carbonated soft drink as that term has been interpreted by this Department.⁸

In conclusion, Seagram's St. Regis is not subject to regulation by this Department under authority of ECL Article 27,

7 Although no definition of "carbonated soft drinks" appears in the RCA or the regulations, the Department has proposed a definition as part of a recent series of amendments to the regulations:

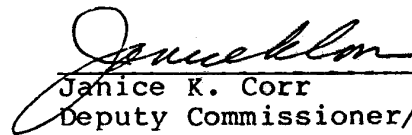
'Carbonated soft drink' means carbonated water with added flavored syrup and edible acids, including carbonated fruit drinks which contain less than seventy percent of natural fruit juice.

This proposal would essentially implement the conclusions in Martinelli and National Grape. Under such a definition, St. Regis would not be considered a carbonated soft drink.

8 This ruling is thus consistent with rulings from five other states (Connecticut, Massachusetts, Vermont, Maine and Oregon), three of which are contiguous New England states, and promotes a uniform interpretation and application of these laws regardless of the differences in the definition of beverage between the states.

Title 10 and 6 NYCRR Part 367 because St. Regis is not a "beverage" within the meaning of the RCA.

DATED: Albany, New York
March 31, 1985



Janice K. Corr
Deputy Commissioner/General Counsel