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SAAI – ADVICE TO WINE
PRODUCERS IN WESTERN CAPE

Adv. J.G.C. Hamman

Advokaat van die Hooggeregshof van Suid-Afrika / Advocate of the High Court of South-Africa
Lid van die Pretoria Vereniging van Advokate / Member of the Pretoria Society of Advocates

Parc Nouveau Kammers, Kamer 5
Vealestraat 225
Nieuw Muckleneuk, Pretoria
Pretoria, 0002
Tel: (+27) 12 111 0718
Faks: (012) 303-7905
Sel: 084 910 0092
E-pos: hamman@ptlaw.co.za

Parc Nouveau Chambers, Room 5
225 Veale Street
Nieuw Muckleneuk, Pretoria
Pretoria, 0002
Tel: (+27) 12 111 0718
Fax: (012) 303-7905
Cell: 084 910 0092
E-mail: hamman@ptlaw.co.za

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To: **HURTER SPIES INCORPORATED**

Ref: **M. van Schalkwyk**

In re: **SAAI – ADVICE TO WINE PRODUCERS IN WESTERN
CAPE**

OPINION

Writer has been requested to provide an urgent legal opinion in this matter.

2.

As background it can be mentioned that a national state of disaster was published in the Government Gazette of 15 March 2020 and pursuant thereto Government Gazettes were published to enforce the so-called national lockdown.

3.

The most relevant regulations in this regard appear in GG43148 of 25 March 2020 (hereafter referred to as “the regulations”). It appears that this gazette has the intention to amend the earlier publication, being GG43107 of 18 March 2020. There is another amendment in GG43168 of 26 March 2020, which is not highly relevant for current purposes.

4.

Currently it appears that there are various rumours going around into what may or may not continue in terms of the regulations and specifically in relation to the production of wine on wine farms in the Western Cape.

5.

It is generally accepted that alcohol cannot be sold in terms of the regulations and this aspect is not relevant to this opinion and will not be focussed on. It is however worth mentioning that there is a contradiction in this regard in the regulations (after amendment). Regulation 8 of the initial publication of 18 March 2020 has not been deleted by the amendments. It essentially provides that liquor may be sold until 18h00 on weekdays and 13h00 on Sundays. The amendments, to the contrary, prohibit the premises selling liquor from being open. It should however be noted that in this case of inconsistency, the amendments will prevail. I could not in any of the regulations find a prohibition against transporting of liquor, as was announced by the Minister of Police.

6.

The primary question to answer in this opinion is if it would be permissible for the wine farmers to continue their production of wine during the 21 day lockdown period.

THE APPLICABLE LEGAL PRINCIPLES:

7.

The primary document of relevance is the Gazette of 25 March 2020 containing the regulations.

8.

Regulation 11B(1)(a)(i) reads:

“For the period of the lockdown –

Every person is confined to his or her place of residence, unless strictly for the purpose of performing the essential service, obtaining an essential good or service, collecting a social grant, or seeking emergency, life-saving or chronic medical attention.”

9.

Regulation 11B(1)(b) (as amended again on 26 March 2020) adds that:

“During the lockdown all businesses and other entities shall cease operations, except for any business or entity involved in the manufacturing, supply, or provision of an essential good or service....”

10.

In **Annexure “B”** of the regulations the essential goods and services exempted from the lockdown are listed. The bulk of the listed goods and services are not relevant for current purposes.

11.

Point 4 under services exempted includes:

“Production and sale of the goods listed in Category A, above.”

12.

If regard is had to Category A, it defines food as *inter alia*:

“Any food product, including non-alcoholic beverages.” - own emphasis

13.

Since it is clear that “any food” product is included, it is obviously intended to be widely applied. Of extreme importance is that no food products are specifically excluded. Only one specific product, being non-alcoholic beverages, is included. It is thus clear that liquids, such as wine, can also resort under the description of food.

14.

It is clear that the sanction for contravention of the regulations would be criminal sanctions.

See: **Regulation 11G.**

15.

In this regard it is important to note that our criminal law is subject to the principle of legality. In Latin this is also known as the *nullum crimen sine lege*-principle.

16.

This principle, *inter alia*, entails that there should be certainty about what constitutes a crime (and what not).

17.

In this regard since liquor is not specifically excluded from being food, one cannot simply infer that liquor such as wine would be excluded.

18.

The principle *nulla poena sine lege* applies - there is no punishment without a recognised crime.

19.

In general the latest regulations are badly drafted and goods, *inter alia*, can also include “*basic goods*” which are also not defined. This is a very wide term.

20.

The latest amendment to the regulations introduced a new category of essential services that assists the wine farmers, being:-

“Harvesting and storage activities essential to prevent the wastage of primary agricultural goods”

CONCLUSION:

20.

It appears that a prosecution for an individual for conducting business in producing wine on a farm would not be a criminal contravention of the latest regulations.

21.

This will, however, prohibit the authorities from attempting to disrupt such activities and legal action might then be required. It should also be borne in mind that the regulations have been constantly changing in recent times.