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GROWERS

Be a Smart Marketer

A special publication brought to you by
CAWG's Member Services & Communications Committee

2006 Workshops

Editor's Note: CAWG's 2006 Smart Marketer Workshops featured the topics of producer's lien and marketing strategies. These sessions are popular with attendees and free to members of CAWG and other sponsoring organizations.

The February workshop in Paso Robles was done in collaboration with the Joseph W. Ciatti Company LLC as part of its series of "Grape Crush Forums." Co-sponsored with Paso Robles Wine Country Alliance, a closing panel of Bryan Osborn (Diageo), Dennis Collins (Treana Winery) and John Crossland (Vineyard Professional Services) offered marketing tips and lessons learned for growers.

An early March workshop in Santa Rosa was co-sponsored by Sonoma County Grape Growers Association and North Coast Grape Growers and featured Jay Behmke (Carle, Mackie, Power & Ross) with the topic "Assuring Payment for your Grapes." Nancy Light (Wine Institute) and Honore Comfort (Sonoma County Vintners) provided insights on Wine Institute's U.S. Market Development program and how the consumer research could be applied by regional associations. Barbara Insel (MKF Research) presented research on high-end wine sales volume and growth.

An April workshop in Hopland also featured Jay Behmke speaking about payment for grapes. Jeff Bitter (Allied Grape Growers) provided an in-depth analysis of the 2005 crush figures and current market signals. Rodger Wasson (Rodger Wasson & Associates) made the case for why growers need to focus on marketing and tips for developing a marketing plan for your vineyard. The Hopland workshop was co-sponsored with Allied Grape Growers, Mendocino Winegrowers Alliance, and North Coast Grape Growers.

This publication features excerpts from the Lodi workshop which was co-sponsored with Turrentine Brokerage and Lodi District Grape Growers Association. Featured speakers were Dale Stern (Stern, Van Vleck & Ruehmann, LLP), Bill Turrentine (Turrentine Brokerage), and Rodger Wasson.

A June workshop in Temecula featured Dale Stern on contract issues. It was co-hosted with Temecula Valley Winegrowers Association.

The Producer's Lien

Is a producer's lien the perfect solution for a winegrape grower who wants to make sure that he or she receives payment for grapes that are delivered to a buyer? According to Dale Stern, a producer's lien is a very useful tool, but there's a limit to the level of protection it provides to growers. A lot depends on how the grape purchase contract is worded and applied by the grower and winery.

In order to protect your position under the producer's lien, it is important to do the following:

- Identify the buyer.
- Don't waive your lien rights.
- Stay in touch with your grapes.
- Understand the producer's lien law.
- Don't dally with a delinquency.
- Understand that custom crush is a different breed.

Identify the Buyer

"I can't believe how many growers don't understand who they have a contract with and whether that processor holds a buyer's license from the state. If you are selling to someone who isn't a licensed processor, you may lose your producer's lien rights," Stern admonished. The Processor's (Buyer's) license is issued by the Department of Food and Agriculture's Market Enforcement Branch. In response to a question about grape sales to out-of-state wineries, Stern responded, "Selling to an out-of-state buyer can be problematic unless the buyer or the buyer's agent holds a California license or guarantees that you will be paid."

It is important that growers deliver their grapes to a licensed California processor who is the same person with whom they have a contract. It is not uncommon to see a winery use several different business names or brand names for their grower contracts, which are different than the correct corporate name under which the winery holds its Processor's license. To confirm that a buyer is licensed in California, Stern advised growers to call the California Department of Food and Agriculture's Market Enforcement Branch in Sacramento at (916) 341-6276.

"Be sure that the name on your contract is the same as on the winery's license. The producer's lien may not help you if you have a dispute with an unlicensed buyer. A grower's lien rights don't apply to a custom crush arrangement; nor if you are selling to a broker, your neighbor or anyone else who isn't a licensed buyer," advises Stern.

Don't Waive Your Lien Rights

Stern cautioned that many winery contracts include various paragraphs, often required by the winery's bank, that states the grower waives the producer's lien. "Make sure you don't sign a contract with such a paragraph, because if you do you may be out of luck should the winery not pay," says Stern.

Another potentially troublesome paragraph that is found in many contracts reads something like: "Grower warrants that all grapes are grower's sole property and are not and will not be subject to any sale or contract to sell or to any lien or other encumbrance except the following, _____." Growers typically fill in the blank with fertilizer liens, bank liens and any other security interest that applies to their crop. If such a paragraph is in your contract, be sure to also insert the words "producer's lien" in the blank to avoid any argument that you have waived your lien rights.

Stay in Touch with Your Grapes

Stern noted that the producer's lien is perfected (takes effect) from the moment of the last delivery of a grower's grapes to the buyer. The lien stays in force as long as the grapes or the wine made from those grapes remains in the possession or under the

control of the processor who purchased them from the grower.

"So keep track of your grapes," Stern says. This can be helpful immediately after final delivery by taking advantage of Section 55609 of the California Food and Agricultural Code, which provides, in effect: Not later than five days after demand, the processor shall give to every such producer so requesting a full and complete statement of such producer's account, which shows all of the following:

- The entire quantity of the grapes which have been delivered by the producer.
- The grades of the grapes which have been delivered by the producer.
- The amount owed for every lot and for the total amount of the grapes which have been delivered by the producer.

This section of law will assist you in confirming that your grapes are, in fact, in the possession of the winery to which you delivered them. "It is against the law for a processor to re-sell your grapes or sell the wine made from your grapes without paying you first," Stern explained. Your lien gives you a secured position as long as the product is still in the possession or control of the processor who bought the grapes.

Stern recommends that contracts include language to the effect that: "Winery shall give notice to Grower of the tanks, barrels or other locations where the juice or wine made from the Grower's grapes is stored. Winery shall update this notice whenever said juice or wine is moved."

Understand Lien Law

It is important that growers understand the producer's lien law. Key points include:

- Lien attaches automatically.
- Superior to all but wages and warehouseman's liens.
- Lien follows products made from your grapes so long as product remains in Processor's ownership, possession or control.
- May extinguish if products are transferred to a bona fide purchaser.
- Unlawful for a Processor to remove

products to avoid the lien.

- Producer's lien is not perfect.

Don't Dally with a Delinquency

Stern noted that over the years he has heard from a number of growers who haven't been paid on time. The wineries may have made a number of verbal promises but were hesitant to put a commitment in writing.

Stern advised that as soon as a winery's payment due date has passed, growers should contact them. He advises growers to send the winery a simple, non-adversarial letter that covers the following:

- You are past due.
- I'm not waiving the terms of our contract.
- The Producer's Lien is attached and you may not sell or transfer the wine made from my grapes. If you have any question about the law and penalties for violations, contact the CDFR Market Enforcement Branch at (916) 341-6276.
- Please inform me where the wine made from my grapes is currently located and provide me with your assurance that it won't leave your possession or control until I'm paid in full.
- What is your plan for payment? Please reply in writing.

Growers who have not been paid for their grapes have nine months from the payment's due date to file a complaint with the CDFR Market Enforcement Branch. They have two years to file suit if the contract was verbal and four years if it was written.

Stern noted that he has had reasonably good success with the Market Enforcement route. "The reason I like Market Enforcement is that they have a lot of tools at their disposal and they are a lot less expensive than paying an attorney," he said. Taking advantage of the Branch's availability does not preclude a grower from retaining counsel if the need arises, or where the amount of money owed is substantial enough to justify the expense of legal counsel.

Custom Crush Is a Different Breed

In a typical custom crush arrangement, the winery does not buy the grapes, but simply agrees to crush and process them on the grower's behalf and for a fee. In order for growers to protect their interest in their grapes, Stern encourages them to include a provision in their custom crush contracts with the wineries that the grapes shall remain the property of the grower and not the winery. For example, the provision could state: "The grapes and all juice, must and wine made therefrom are, and shall remain the property of the Grower and are not an asset of Winery. Winery is merely providing a service and warehousing the product made from the grapes on the Grower's behalf. Winery shall not cause or permit liens or encumbrances of any kind to interfere with Grower's ownership of the grapes and products made there from." This approach has been successful when wineries have filed for bankruptcy protection with custom crushed wine in their tanks. Without solid evidence in the form of the suggested contract language, growers could find themselves in the position of competing against the winery's bank and other creditors to establish that the wine is not part of the winery's assets and should be delivered to the grower and not sold so the proceeds can be divided to pay a portion of all bankruptcy claims.

To contact Stern: Dale Stern, Stern, Van Vleck & Ruehmann, LLP, 925 L Street, Suite 850, Sacramento, CA 95814; phone (916) 442-1298; email dstern@dvbsr.com.

Many of these same issues were covered by Jay Behmke, Carle, Mackie, Power & Ross, and LLP. He may be reached at: 100 B Street, Suite 400, Santa Rosa, CA 95401 (707) 526-4200; e-mail jmbehmke@cmprlaw.com.

The Four P's

When it comes to the marketing of winegrapes, Bill Turrentine of Turrentine Brokerage says it's all about the four "P's"—Product, Price, Promotion, and Place. "When it comes to growing winegrapes, there are a lot of parts to a vineyard operation, but ultimately like any business, it is marketing that really drives the operation," he said. "Marketing has been undervalued over the years, but that is beginning to change."

The First P—Product

In this case the product is winegrapes and growers would much prefer to sell their grapes before they have matured on the vine. “It’s not a lot of fun trying to sell grapes when they have reached 25 brix. Most people would much rather sell their grapes before they are ripe, in fact, long before they are ripe. A lot of grapes are sold with multi-year contracts, so you might be selling grapes today that you will be delivering 10 years from now,” Turrentine said.

When selling with multi-year contracts, growers are selling more than just grapes. They are selling the site and the service to work that site in order to produce the contracted quality product.

The Second P—Price

“Price is very interesting,” Turrentine asserted. “I’ve talked to growers who say they have very little control over price—that price is determined by the season, by the expected size of the crop and the needs of the wineries. Growers may be left with weighing competing offers, but that is about all.

“In some ways that is true, but the greatest amount of control comes with timing. It is important to understand the current season and even more important to understand the supply cycle,” says Turrentine. Growers then know what the hot markets are and where the opportunities are to make long-term decisions.

The Third P—Promotion

Turrentine analyzed the promotion aspect of marketing by describing four elements—advertising, sales promotion, publicity and personal selling.

“In my 29 years in this business, I’ve never seen a case where advertising of grapes in trade magazines has resulted in any significant grape sales,” he said. “Publicity is important, and growers should be involved in their own communities. Growers need to be noticed and if they are identified as leading edge, it helps even more.”

Most important is making personal contact with potential grape buyers. This is a way of leveraging to gain insight on who is active in the market. When acting on behalf of growers, firms like Turrentine Brokerage, never replace a grower’s personal contact with the wineries because that personal relationship is so important, Turrentine told the audience.

The Fourth P—Place

The place where the grapes are grown is obviously very important, and the way a grower markets that site does a great deal in determining his or her success. Turrentine suggested that growers visit wineries that are potential buyers and provide them with details about their site and the quality of the grapes they grow.

“How you present your site is absolutely critical, as is your appellation,” he said. “What really works is to be doing things that are focused on quality and sustainability. Winery buyers will pay attention if you are doing something that is really connected to improved quality.”

Turrentine said good marketing focuses on a combination of the client and the product. “It is important to understand who is buying the winegrapes, their personalities and what they are looking for,” he says.

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Focus on Your Story

“If you are not a good marketer, you are out of business or soon will be,” agricultural consultant Rodger Wasson observed. “As farmers, everyone has thought about how to produce more and more and more—to produce bigger and better crops. But to talk about marketing is something that just hasn’t been done as much,” he says. “It’s not a luxury anymore to just tend to production when there are so many other things going on.”

Go to your local Starbucks and you will see “stories” about the people who grow their coffee. Winegrape growers should also start telling their stories. “More and more consumers want to know the stories behind their food and their wine,” he said. “I saw the same thing years ago when I visited in Japan where the stores would display placards next to the produce that gave a description of the farmers and told their stories.”

Wasson pointed out the story of sustainability and the programs the wine community has to advance sustainable winegrowing practices is important. “Every major food company is finding the power of these stories, so to honor the farms and vineyards that exhibit good husbandry and stewardship is just sound business,” he said.

The Grower Does Matter

It is important that a grower has a good marketing program in place. Wasson says that from his own experience and conversations with growers and their customers, he suggests the following:

- **You are a brand.** This begins with production practices and extends to the way you treat people—customers, community and employees.
- **Your vineyard is a brand.** It should be attractive and project an image that is consistent with the wine brands you supply.
- **Be curious.** Constantly research consumer trends.
- **Know the market.** This includes prices, specifications and considerations, both locally and worldwide.
- **Create trust.** An open relationship between you and your customers – the buyers of your grapes – is the basis of a successful long-term relationship.
- **Communication.** Talk regularly with your customers’ representatives.
- **Identify future buyers.** Every year someone goes out of business and you need to be continually looking ahead for your next buyer.
- **Show off your vineyard.** Bring the people you want to do business with to your farm, show them around, walk through the vineyard with them. Be proud of your farm.
- **Offer a taste.** You have a product that is

fantastic. Have your visitors sit down and try some wine. Whether you have your own label or not, make some wine. Several growers I have talked with tell me this has worked very well for them.

- **Develop alternatives.** Have some other options in your pocket because things don’t always work out according to plan. You need to be ready for those bumps in the road.
- **Be selective.** There will be wines that are truly not good enough for your image. You will be judged by the bottles your grapes fill.
- **Create a positive buzz.** Get people talking about your vineyard in a positive way. The best advertising is word of mouth advertising. More than a fourth of all personal discussions include talk about products and services.
- **Network.** You simply must attend industry events and work the crowds. If you can’t do this sort of thing, you must designate someone who can.
- **Carry the story.** A business card with all of the pertinent contact information is a must. Additionally, you might carry a card that has key production information, grape varieties, accomplishments, and so on that will serve as a helpful pocket reference.
- **Write your plan.** Whether your marketing plan is short and simple or long and involved, it should be written annually. Start with an honest look at where you are today as a grower and where you want to be. In between is the gap that your plan will fill.

Your Marketing Plan

Wasson points out there are a number of marketing plan models available and easy to find on the internet. One that he likes follows this format:

- **Situation analysis**—Where are you now? Describe your operation, marketplace, competition, customers, and market potential.
- **Objectives**—Where are you going? List some specific measurable objectives that you want to achieve.
- **Strategies**—How will you get there? List some ideas for increasing your business

through marketing.

- **BAM**—budget, action plan and measurement.

Promote Your State

As winegrape growers, you need to look out for your state, Wasson said. California faces competition from foreign producers who have the American wine drinking population in their sights.

“Working together, members of the wine industry in California can make the pie bigger, but if there isn’t an effort to promote California, your competition will just take a bigger piece of the pie. It is important that you get involved through organizations like the **California Association of Winegrape Growers** to develop a plan to fight for market share. This means going to the meetings and speaking out. When a plan is developed, it means you have to help sell the idea to your fellow

growers. Set high standards and stick to them,” he said. “You have to dedicate enough time to marketing your industry, your state, your local area, your vineyard and yourself,” he concluded.

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