IN THE MATTER OF

COCA-COLA BOTTLING COMPANY OF NEW YORK, INC.

DISMISSAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND CLAYTON ACTS

Docket 8992. Complaint, Sept. 10, 1974 — Final Order, Jan. 23, 1979

This order dismisses a complaint issued against a New York City producer and marketer of various products, including soft drinks and wine, for alleged violations of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. The Commission, in dismissing the complaint, held that evidence failed to establish that the firm's merger with Franzia Bros. Winery would substantially lessen competition.

Appearances

For the Commission: *Joseph S. Brownman, John F. Stephens, Jr., Charles G. Brown* and *Elizabeth M. Brown.*

For the respondent: *Christopher Crowley, Arthur F. Golden, Michael Mills* and *Susan K. Jackson, Davis, Polk & Wardwell,* New York City.

COMPLAINT

The Federal Trade Commission having reason to believe that Coca-Cola Bottling Company of New York, Inc. (hereafter New York Coca-Cola), a corporation and the respondent herein, has violated the provisions of Section 7 of the amended Clayton Act (15 U.S.C. 18) and Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) by its acquisition of Franzia Brothers Winery (hereafter Franzia), hereby issues this complaint stating its charges as follows.

I. ACQUIRING COMPANY

PARAGRAPH 1. Respondent New York Coca-Cola is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 425 East 34th St., New York, New York.

PAR. 2. New York Coca-Cola is a major industrial corporation engaged in three lines of business: (i) the production and sale of soft drinks, (ii) the production and sale of wines, and (iii) the manufacture and marketing of picnic chests, beverage coolers and extruded plastic sheet. New York Coca-Cola sales doubled during the last five years. Net sales for its fiscal years ending December 31 were:

$211,584,000 in 1972; $189,698,000 in 1971; $141,549,000 in 1970; $117,730,000 in 1969; and $103,421,000 in 1968.

PAR. 3. New York Coca-Cola is engaged primarily in the production and marketing of Coca-Cola, Fresca, Tab, Sprite and Fanta flavors in bottles, cans and bulk containers. In 1970 and 1971 New York Coca-Cola further expanded its line of soft drinks when it obtained franchises from Dr. Pepper Company to produce and market bottled and canned Dr. Pepper [2] and Sugar Free Dr. Pepper. In 1972 New York Coca-Cola acquired the Igloo Corporation which manufactures and markets on a national basis picnic chests, beverage coolers and extruded thermoplastic sheet.

PAR. 4. New York Coca-Cola entered the wine industry with its acquisition of Mogen David Wine Corporation (hereafter Mogen David) in 1970. Recently, New York Coca-Cola expanded its wine business with the acquisition of Tribuno Wines, Inc. (hereafter Tribuno) in 1973. With these acquisitions New York Coca-Cola became one of the leading producers of wine in the United States. The wine products of both of these wholly-owned subsidiaries are marketed throughout the United States. The Franzia acquisition represents the third such acquisition in the wine industry by New York Coca-Cola.

PAR. 5. New York Coca-Cola is the fifth largest producer of wine in the country. In 1972 Mogen David and Tribuno accounted for 3.9 percent of wine sales in the United States and 4.6 percent of the sales of domestically produced wine in the United States. 1972 was an excellent year for Mogen David. The company enjoyed a sales growth of 32 percent, far outstripping the wine industry's 10 percent average growth. Mogen David has begun marketing three new products, Cold Bear, Mogen David Concord, and MD 20 20, each of which have sold over one million cases in their second year of distribution. This represents a sales level attained by only a handful of brands in the American wine industry.

PAR. 6. As a result of its Tribuno acquisition, New York Coca-Cola is the largest producer of vermouth in the United States. Tribuno holds a 12.3 percent share of the total vermouth market, and its share of domestically produced vermouth is 24 percent. Thus, Tribuno ranks first among all domestic sellers of vermouth and second among all producers of vermouth.

PAR. 7. Advertising in various media is relied upon extensively by New York Coca-Cola in the marketing of soft drinks, wine, picnic chests and beverage coolers. New York Coca-Cola has the third largest advertising budget in the wine industry.

PAR. 8. In 1972 Mogen David wines and Tribuno vermouths were marketed nationally through over 300 independent distributors. In addition Mogen David has a staff of over 45 salesmen. New York Coca-Cola has begun to consolidate Tribuno with Mogen David distribution in order to strengthen its market position. [3]

PAR. 9. At all times relevant herein, New York Coca-Cola sold and shipped its products in interstate commerce and engaged in "commerce" within the meaning of Section 7 of the amended Clayton Act and Section 5 of the Federal Trade Commission Act.

II. ACQUIRED COMPANY

PAR. 10. Franzia is a corporation organized and existing under the laws of the State of California, with its principal place of business located at 1700 East Highway 120, Ripon, California.

PAR. 11. Franzia is now and for many years has been engaged in the production, distribution and sale of wines of all types including table wines, sparkling wines, dessert wines and vermouth.

PAR. 12. Franzia is one of the principal producers of generic table wines in the United States. Ranking eighth among all wine producers in 1972, Franzia accounted for approximately 3 percent of wine products produced and sold in the United States and 2.4 percent of all wine products sold in the United States. Franzia has been experiencing a strong growth trend with dollar sales increasing from approximately $8 million in 1968 to approximately $29 million for its fiscal year ending July 31, 1973. Franzia's assets exceed $20 million. In its fiscal year ending July 31, 1973, Franzia's sales in gallons and dollars increased 32 percent and 38 percent, respectively, over the previous year. The rate of growth for Franzia for the past three years was substantially greater than that recorded by the wine industry as a whole. Franzia has relied primarily on price competition in expanding its sales, maintaining a low level of advertising expenditures.

PAR. 13. Franzia distributes its wine directly to retail outlets in California and through independent distributors in 40 other states and the District of Columbia. In addition to Franzia's own products, Franzia distributes wine products for Gibson Wine Company, Charles Krug and Robert Mondavi.

PAR. 14. At all times relevant herein Franzia sold and shipped its products in interstate commerce and engaged in "commerce" within the meaning of Section 7 of the amended Clayton Act and Section 5 of the Federal Trade Commission Act. [4]

III. Acquisition

Par. 15. On December 14, 1973, New York Coca-Cola finalized its acquisition of Franzia. The transaction was cast as an acquisition of the assets of Franzia by a New York Coca-Cola subsidiary in exchange for common stock of New York Coca-Cola in such manner as to qualify as a tax-free reorganization.

IV. Trade and Commerce

Par. 16. The United States wine industry is in the midst of a period of exceptional growth as reflected by a dramatic increase in sales and consumption. Between 1967 and 1972 sales of wine products have increased from approximately 203 million gallons to 337 million gallons, representing an increase of more than 65 percent. During that period per capita consumption has increased from 1.0 gallons to 1.6 gallons, representing an increase of approximately 60 percent. According to reliable forecasts an estimated 650 million gallons will be distributed in 1980.

Par. 17. Unlike sales of other sweet wines (over 14 percent alcohol) which have declined, sales of vermouths have increased.

Par. 18. The wine industry is marked by increasing concentration. E & J Gallo Winery and United Vintners are the two largest wineries in the U.S. The largest four firms accounted for approximately 55 percent of all wine products sold in the United States in 1972. This represents an increase of 7 percent over the 1968 four firm concentration ratio of 48 percent The ten largest wineries accounted for approximately 70 percent of the wine sold in the United States. The remainder is shared among over 300 wineries.

Par. 19. Over the past ten years there has been a noticeable trend toward mergers and acquisitions involving wine producers.

Par. 20. There are major barriers to entry to any firm wishing to make a significant entrance into the wine business. The high cost of advertising presents a barrier to any winery wishing to sell on a national or even regional basis. Consumer appeal, created by advertising, is an important element in the marketing of wine products. Obtaining the services of independent wholesale distributors continues to be an important requirement for the successful marketing of wine products on a national, regional, and state level. The number of such distributors is closely regulated by state laws. [5]

V. Effect of Merger

Par. 21. The effect of the acquisition of Franzia by New York Coca-

Cola may be substantially to lessen competition or to tend to create a monopoly in the production, distribution and/or sale of wine products in the United States, in violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 18, 45, in the following ways, among others:

a. Substantial actual and potential competition between Franzia and New York Coca-Cola will be eliminated, prevented or lessened;

b. Franzia will be eliminated as a substantial independent factor in the production, distribution and sale of wine;

c. Independent distributors and sales representatives of Franzia products have been or may be, and potential independent distributors and sales representatives may be foreclosed from a high volume, fast moving account.

d. Concentration in the wine industry will be increased to the detriment of actual as well as potential competition;

e. An acceleration of the trend toward mergers and acquisitions will be encouraged and may contribute to further increases in concentration in the wine industry;

f. Barriers to entry into the production, distribution and sale of wine will be increased;

g. Franzia will no longer be able to adhere to its policy of price competition to expand sales and prices will be increased. **[6]**

PAR. 22. The merger of Franzia into New York Coca-Cola, in Paragraph 15, constitutes a violation of Section 7 of the Clayton Act, as amended, and an unfair method of competition and an unfair act and practice in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 18, 45.

INITIAL DECISION BY LEWIS F. PARKER, ADMINISTRATIVE LAW JUDGE

JUNE 26, 1978

I. HISTORY OF THE PROCEEDING

The Commission issued its complaint in this case on September 10, 1974. The complaint challenges the acquisition of Franzia Brothers Winery ("Franzia") by the Coca-Cola Bottling Company of New York ("Coke-New York") as a violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

The complaint alleges that Franzia is one of the principal producers of generic table wines in the United States, and that its acquisition by Coke-New York, which had previously acquired two other wine producers, Mogen [2] David Wine Corporation ("Mogen David") and Tribuno Wines Inc. ("Tribuno"), may substantially lessen competition or tend to create a monopoly in the production, distribution and/or sale of wine products in the United States. The alleged effects of the acquisition are that:

a. Substantial actual and potential competition between Franzia and Coke-New York will be eliminated, prevented or lessened;

b. Franzia will be eliminated as a substantial independent factor in the production, distribution and sale of wine;

c. Independent distributors and sales representatives of Franzia products have been or may be, and potential independent distributors and sales representatives may be foreclosed from a high volume, fast moving account.

d. Concentration in the wine industry will be increased to the detriment of actual as well as potential competition;

e. An acceleration of the trend toward mergers and acquisitions will be encouraged and may contribute to further increases in concentration in the wine industry;

f. Barriers to entry into the production, distribution and sale of wine will be increased;

g. Franzia will no longer be able to adhere to its policy of price competition to expand sales and prices will be increased.

Coke-New York denied that its acquisition of Franzia would have the alleged effects. Several prehearing conferences were held in this case and the parties engaged in extensive discovery, including the issuance of subpoenas to many wine producers. The parties filed exhibit and witness lists and submitted trial briefs. [3]

Complaint counsel's case began on November 7, 1977 and concluded on December 16, 1977. Coke-New York's defense began on January 16, 1978 and concluded on January 27, 1978. Complaint counsel presented rebuttal evidence on February 27, 1978.

Complaint counsel called the following witnesses:

John W. Anderson	Sonoma Vineyards President
Robert H. Arnold	California Wine Association Vice President-Marketing
Saul Ben-Zeev	Creative Research Associates President
J. Kenneth Borders	Franzia Brothers Winery Former National Sales Coordinator

Arthur A. Ciocca	Franzia Brothers Winery President
Frederick DePompei	Pompei Winery, Inc. President
Angelo Fantozzi	Fantozzi & Trucco Company, Inc., Owner
John G. Franzia, Jr.	Bronco Wine Company Vice President-Production
Joseph S. Franzia	Bronco Wine Company Vice President-Sales
Ernest C. Haas	East-Side Winery General Manager
Robert Ivie	Guild Wineries and Distilleries, President
Marvin B. Jones	Gibson Wine Company General Manager
David Painter	Federal Trade Commission Staff Accountant
[4]Mario Perelli-Minetti	California Wine Association Vice President-Marketing
Meyer H. Robinson	Monarch Wine Company Secretary-Treasurer and General Manager
Marvin Sands	Canandaigua Wine Company President
Robert Setrakian	California Growers Winery, Inc., President
John E. Simon	Bardenheier's Wine Cellars Director of Marketing
William J. Sullivan	The Coca-Cola Bottling Company of New York, Inc. Executive Vice President
Fred E. Weibel	Weibel, Inc. President

Coke-New York called the following witnesses:

Michael A. Bernstein	Mt. Veeder Winery & Vineyards, Owner and General Manager

Harold Binstein	Gold Standards Liquors President
Michael T. Gelven	Big D Liquors Owner
Louis P. Martini	Louis M. Martini, Inc. President
Edmund A. Mirassou	Mirassou Vineyards Co-Owner
John Pearson	C & C Distributing Company Owner
Gary P. Raden	G. Raden & Sons Owner
Jack Robinson	Argonaut Liquors Co-Owner
[5]August Sebastiani	Sebastiani Vineyards President
Terry C. Whitney	Franzia Brothers Winery Former President

The record was closed on March 20, 1978 and the parties, who were given a two-week extension of time to do so, filed their proposed findings of fact and conclusions of law on May 2, 1978. Replies were filed on May 16, 1978. Oral argument on the proposed findings was held on May 22, 1978. At my request, the Commission granted me an extension of time to July 3, 1978 to file this initial decision.

This decision is based on the transcript of testimony and exhibits received in evidence, and the proposed findings of fact and replies filed by the parties. I have adopted several findings proposed by complaint counsel and counsel for Coke-New York verbatim. Others have been adopted in substance. All other findings are rejected either because they are not supported by the record or because they are irrelevant.

II. Findings of Fact

A. Coke-New York's Business

1. Coke-New York is primarily a bottler and distributor of various carbonated soft drinks, including Coca-Cola, Fresca, Tab, Sprite, and Fanta flavors under franchise from the Coca-Cola Company; Dr. Pepper and Sugar Free Dr. Pepper under franchise from Dr. Pepper Company; and, Welch's Grape Soda under franchise from Welch's Foods, Inc. (CX 12Z3-5; Tr. 1101).[1] Approximately [6] two-thirds of its sales and earnings are derived from its soft drink business (CX 5C).

2. Coke-New York is a corporation organized, existing and doing business under and by virtue of the laws of Delaware (Ans., ¶ 1) and its home office and principal place of business is located at 411 Hackensack Ave., Hackensack, New Jersey (CX 12A). It first began bottling Coca-Cola in 1910 and is now the largest soft drink bottling company in the United States (Tr. 1101-02).

3. Coke-New York is also engaged in the manufacture of picnic chests, beverage coolers and extruded plastic sheet, the operation of the Delta Queen Steamboat Company (through the Igloo Corporation which was acquired in 1972) and the production and sale of wine (CX 12Z2; Tr. 1099). Its net sales for the fiscal year ending December 1972 were $211,584,000, and they were $189,698,000 in 1971 and $141,549,000 in 1970 (Ans., ¶ 2).

B. Coke-New York's Wine Acquisitions

4. Until 1970, Coke-New York was engaged only in the business of bottling and distributing carbonated soft drinks (CX 12Z2). The company's opportunities for growth in that business were strictly limited by the boundaries of its franchised territories. Thus Coke-New York was faced with the choice of growing by acquisition or not growing at all. In early 1969, therefore, the company decided to investigate acquisitions outside the soft drink business (Tr. 1103). As a result of this decision, Coke-New York acquired Mogen David in 1970, Vermouth Industries of America, Inc. in February 1973 (whose name was changed to Tribuno Wines, Inc.), and Franzia in December 1973 (CX's 5B, 12Z2-3, 6; Tr. 1117).

(1) Mogen David

[1] The following abbreviations are used in this decision:

CX	- Commission Exhibit
RX	- Respondent's Exhibit
Tr.	- Transcript of testimony
Cplt.	- Complaint
Ans.	- Answer
CPF	- Complaint counsel's proposed findings
RPF	- Respondent's proposed findings
CRF	- Complaint counsel's reply to respondent's proposed findings
RRF	- Respondent's reply to complaint counsel's proposed findings

5. Mogen David was Coke-New York's first venture outside the soft drink business. In 1970 it was approached by an investment banking firm and was told that Mogen David was for sale (Tr. 1103). Coke-New York retained two consultants to investigate Mogen David (Tr. 1103–07). [7]

6. In October 1970, Booz-Allen & Hamilton ("Booz-Allen") recommended the acquisition of Mogen David as a "logical first step" in the wine industry:

> The acquisition of Mogen David would be a logical first step for Coca-Cola of New York in positioning itself as a major competitor in the wine industry. Mogen David is the tenth largest firm in the industry and its Concord product line and sweetened wine image should continue to provide steady sales growth and generate attractive after-tax income. The apparent absence of sales problems and financial troubles would permit Coca-Cola of New York to become familiar with the wine industry while earning a reasonable return on its investment (CX 19Z20–21).

7. Both Booz-Allen and Louis Gomberg, a wine industry consultant, recognized the advantages of Mogen David's national reputation and sales force.

> Because of Mogen David's national reputation and product acceptance, existing distributors and retailers would be more likely to handle additional brands and/or products marketed through the firm's sales force as illustrated by the successful entry of MD Double 20 (CX 19Z21) . . . .
>
> . . .the advantages of good sister lines are many – and obvious. Not the least would be more effective use of shipping, distribution and warehousing facilities. Another, improved selling efforts thanks to a larger and stronger sales force. And third, the sales leverage that comes with a demand brand or item.
>
> Because Mogen David itself is a demand item, it in turn could help to move other merchandise in related lines, as well as be helped by some of the other demand items. [8]
>
> Mogen David's present distribution system is among the better setups in the wine industry, exceeded only by Gallo and United Vintners, and pretty much on a par with Taylor and Almaden. It is now served by some of the best wine wholesalers in the country, yet there is room for further improvement in certain markets. One or more other good lines definitely could help in this area (CX 18Z37).

Coke-New York acquired Mogen David in November 1970 (Ans., ¶ 4; CX 55A) by paying $16,750,000 in cash (CX 3R).

(2) Tribuno

8. In February 1973, Coke-New York acquired manufacturing and distribution rights for Tribuno Vermouth from Vermouth Industries of America, Inc., subsequently known as Tribuno Wines, Inc. Distribution of Tribuno Vermouth had previously been handled by Twenty-One Brands, Inc. (CX 5B; Tr. 1116–21; Ans., ¶ 4). Tribuno

Vermouth was then the largest vermouth producer in the United States (CX 11Z7). At the time of the acquisition, Coke-New York ranked fifth in the wine industry (CX's 991, 992).

9. Tribuno Vermouth is produced by Franzia (Tr. 1811–12) and distributed by Mogen David to distributors located throughout the United States (CX's 71B–Z7, 764H; Tr. 1120, 1127).

10. Tribuno Wines, Inc. was acquired by Coke-New York in an exchange of 712,497 shares of Coke-New York common stock. The distribution rights to Tribuno's products were acquired from Foremost-McKesson, the parent of Twenty-One Brands, Inc. for 62,500 shares (CX 11Z1).

(3) Franzia

11. In late 1971 or early 1972, Coke-New York's management concluded that California table wines were "one of the outstanding growth opportunities" and began to look for an attractive acquisition in this business (Tr. 1129–32, 1139, 1182–84). One reason for this search was the belief that Mogen David's business in sweetened and kosher wines was not growing (CX 18H; [9] Tr. 1133). In fact, despite the great increase in wine sales during the past 10 years, its sales of sweet kosher wines have actually declined (RX's 378J, 501).

12. An internal memorandum explains Coke-New York's reasons for seeking the acquisition of a California wine producer.

The most important reason for Franzia is to enter the growing table wine market and use the quality California premium and generic lines to move across the country market by market to augment the Mogen David universe first and then to complete full national coverage of this line. The obvious reasons for this are to get as much volume into the open states and as many listings in the control states for maximum leverage (CX 680C).

* * * * * * *

The nature of selling through distributors and/or direct in California can reap great benefit for the existing Mogen David lines. It should be possible to use the existing direct sales force to quickly move into the regular Mogen David line, and 20/20 line, the Bear line, and the Jug line. The volume of beverage wine on the West Coast is far greater than we have seen in the balance of the country. Information received indicates that the Gallo and Italian Swiss beverage lines are doing tremendous volumes in major markets within the state of California (CX 680D).

13. In December 1973, Coke-New York acquired Franzia for approximately $40 million worth of Coke-New York stock (Ans., ¶ 15; Tr.1150). At the time of the acquisition, Mogen David was the nation's fourth largest winery, and Franzia ranked seventh. Together, Franzia, Mogen David, and Tribuno made Coke-New York the

third largest wine producer in the United States in 1973 (CX's 991, 992, 996). At the time of the acquisition, Franzia sold and shipped its wine to customers in 41 states and the District of Columbia (CX 12Z14). **[10]**

14. Franzia is a corporation organized and existing under the laws of the State of California, with its principal place of business located at 1700 East Highway 120, Ripon, California (Ans., ¶ 10).

C. Wine Production and Distribution

(1) Wine

15. Wine is a drink made from the fermented juice of a fruit, usually a grape, although any fruit that contains sugar can be fermented, and if it is fermented, it becomes wine. Fermentation is the chemical change in fruit juice which changes its sugar into alcohol. The sweeter the juice which is fermented, the higher the potential alcohol content of the wine produced. A wine that is bone dry is a wine that has had all of the residual sugar fermented out (Tr. 31–37, 264, 279).

16. Over 90 percent of all wine produced in the nation comes from grapes. Some other fruits which are used to produce wine are peaches, cherries, blackberries and apples (RX 374, pp. 43–45; Tr. 487).

(2) Types Of Wine

17. There are hundreds of different wines sold in the United States (Tr. 325–26, 1339) and, between one year and another, even the same types of wine show significant differences (Tr. 2182–84). The federal government defines wine according to alcohol content for tax purposes. Under this system of classification there are five wine categories:

Still wine with 14 percent or less alcohol ("table wine")

Still wine with over 14 percent and not exceeding 21 percent alcohol ("dessert wine")

Still wine with over 21 percent and not exceeding 24 percent alcohol

Champagne and other sparkling wine

Artificially carbonated wine

(26 U.S.C. § 6041 (b); RX's 378A–Z12, 380A–S; Tr. 561–64)

[11] 18. Table wines (less than 14 percent alcohol) are generally consumed with meals (Tr. 33–34). Dessert wines (over 14 percent alcohol) are generally, but not necessarily, sweet to the taste (Tr. 232), and although table wines are generally thought of as "dry," some, such as rosé, are sweet to the taste (Tr. 32–33); in fact, some dessert wines are actually drier than table wines (Tr. 34).

19. Sparkling wines are standard table wines which have undergone fermentation by the addition of sugar or grape concentrate. This fermentation produces carbon dioxide which remains in the bottle under pressure and which is the cause of effervescence when the bottle is uncorked (Tr. 39, 561).

20. A separate category of wines is "special natural," that is, herb wines which contain natural flavoring components and non-grape sugar (Tr. 279–80, 561, 596).

21. Wines may also be classified according to the grape from which they are produced. "Varietal" wines, by law, must be made from 51 percent or more of the grape variety whose name they bear. Some varietals are made from 100 percent of the grape variety whose name they bear (Tr. 44–45). Concord wine, which is made from 51 percent or more of the Concord grape is, therefore, a varietal wine (Tr. 471). Varietal wines are considered to have more distinctive characteristics than other wines (Tr. 270).

22. Generic wines are blends of different types of grapes, and are often named after European wine regions. Some generic wines are Burgundy, Chablis, Sauterne (CX's 17H, 19J, 24F, 80B; Tr. 213).

23. Some varietal wines are very distinctive. Louis M. Martini produces a high sugar and low alcohol wine called Moscato Amabile which he believes is different from most other wines (Tr. 2189–90). Canandaigua produces a Scuppernong wine from South Carolina with a sweet, sherry-nutty taste (Tr. 1352–53). Muscatel, produced from the muscat grape, has a sweet, distinct fruity and flowery taste (Tr. 494, 584, 599, 1353–54). Zinfandel has a distinctive berry taste [12] (Tr. 59, 598). Gewurztraminer has a spicy taste (Tr. 2978). Concord wine, such as Mogen David Concord, has a very distinctive, "foxy" or grapy taste (CX 964K; Tr. 297, 1320).

24. So-called "pop" wines have enjoyed a recent vogue. These wines (such as Gallo's Thunderbird) made with flavorings (wines made from fruit and berries are not pop wines), may have small quantities of carbon dioxide added to them, have varied alcohol content, and are intended for the young adult market (CX 52Z118–22; Tr. 37, 234–35, 503–04, 595). Often these wines are heavily advertised and promoted as beverage wines, to be consumed other than with meals (CX 52Z118–22; Tr. 546).

25. Kosher wines are prepared under rabbinical supervision and must meet certain standards of cleanliness (CX 18Z22; Tr. 52, 1349,

1423). Otherwise, they are identical to non-kosher wine, both in chemical analysis and taste (Tr. 1349–51, 1423). Vermouth, an aperitif wine, is a blend of neutral white wine and an extract of herbs and botanicals. The extract gives vermouth its distinctive flavor and aroma. Vermouth may be drunk straight or used as a mix in such drinks as a manhattan (CX's 33L, 91R; Tr. 4).

26. Wines are also classified by producers according to their retail price. The industry generally recognizes three price categories: premium and popular priced (Tr. 64) and, in between these, a so-called "mid-premium" (CX 18Z10).

27. Premium wines are priced higher than the popular priced wines. Normally, premium wines come with corks in the bottle and contain expensive labels with art work and high quality paper. Premium wines are usually of a higher quality than popular priced wines (Tr. 341). Premium wines produced in California normally come from grapes grown in its North Coast counties, which include Alameda, Napa, Sonona, and Mendocino (Tr. 38). Eastern wineries such as Taylor, Widner and Gold Seal also produce premium wines (CX 18Z19). The major sources of premium wines are California, New York, France, Portugal, Italy, Germany and Spain (CX 27I).

28. Popular priced wines are sold by such firms as Gallo, United Vintners (Heublein), Franzia, Guild, California Growers, Bear Mountain, East-Side Winery, California Wine Association and Canandaigua (Tr. 64). [13]

29. Mid-premium wines are varietal wines produced from grapes often grown in the San Joaquin Valley. Both producers that specialize in popular priced wines and producers that specialize in premium wines make mid-premiums. Popular price oriented companies that also produce these wines include Gallo, Franzia, California Growers, Guild and California Wine Association. Premium oriented companies that produce mid-premium wines include Almaden, Inglenook, Beringer (with its Los Hermanos brand), Sebastiani (jug[2] wines), Charles Krug (its C. K. Brand) (Tr. 65). Mogen David's wines have been classified as "mid-premium" because of the price range in which they fall (CX 18Z10).

(3) Wine Production, Grape Supply and Land Use

30. Approximately 90 percent of all wine consumed in the United States is domestically produced and about 99 percent of all domestically produced wine is made from grapes (CX 973, p. 42).

31. Wine is produced in the United States from grapes belonging

[2] The term jug wine refers to wines which are bottled in half gallon or gallon sizes, and there is a trend to better quality wines being bottled in these sizes (Tr. 62).

to two families, the vitis labrusca, which is the native American grapevine and the vitis vinifera, the European grapevine (Tr. 46–47, 278–79, 1345–46).

32. The labrusca family of grapes–of which the Concord grape is a member (42 F. R. 30, 517 (1972)) –is grown mostly in the Northeastern United States, and in particular, in New York, Michigan and Pennsylvania. Grapes from the vinifera family are grown in California, France, Italy and Germany. Although some New York State wineries are experimenting with the vinifera grape, the labrusca grape is more practical in that area because it tolerates colder weather than the vinifera grape (Tr. 1345–46).

33. Hybrid grapes are also grown in the United States, primarily in New York and Michigan. These so-called French-American hybrids are crosses between [14] vinifera and labrusca grapes and represent an effort to produce better quality table wines in cold climates (CX 964K; Tr. 1345–56, 1383–84). Mogen David uses both California vinifera and eastern labrusca grapes and concentrate in the production of its wines (CX's 716Z19, 1041B–C).

34. Wines are produced in every state in the nation (CX 1004F, G, I; Tr. 1370–71); however, California dominates the industry, with some 85 percent of domestic wine output. New York accounts for approximately 8.4 percent of domestic production. Other wine producing states of some significance are Illinois, New Jersey, Virginia, Michigan, Ohio, Washington, Georgia, Arkansas, South Carolina, Missouri, Oregon and Florida (CX 972J).

35. The principal California wineries are E & J Gallo Winery, United Vintners (Heublein), Franzia (Coke-New York), Almaden (National Distillers), Christian Brothers, California Wine Association and Guild Wineries and Distillers (CX 991A). The principal New York wineries are Taylor Wine Company, Monarch Wine Company, Canandaigua Wine Company, Gold Seal Vineyards and Widmer's Wine Cellars (CX 991A; Tr. 1371).

36. Wine producers may grow their own grapes, but they are not limited to that source of supply. Many producers offer bulk wine–that is, wine sold by one winery to another, generally shipped in tank trucks or tank cars (Tr. 331). Producers of popular priced wines are undoubtedly the major customers for bulk wines; however, premium producers may also use them. Sebastiani, a producer of premium wines, converted from bulk sales of premium wines to bottle production beginning in the 1950's (Tr. 2284), as did Mirassou in 1966 (Tr. 2028–30).

37. While most wine makers do not produce every kind of wine, and some specialize in the production of a limited group of wines,