

**STATE OF VERMONT
DEPARTMENT OF LIQUOR AND LOTTERY
DIVISION OF LIQUOR CONTROL
BOARD OF LIQUOR AND LOTTERY**

IN RE: VERMONT VERMOUTH

DOCKET NO. 2020-002

DECLARATORY RULING

Vermont Vermouth (“Applicant”) seeks a declaratory ruling regarding the correct classification of their Products under Vermont law. The Board of Liquor and Lottery (“Board”) held a hearing on March 11, 2020 and considered the arguments and filings of Applicant’s owner, Mr. Kobey Shwayder, and Department of Liquor and Lottery (“DLL”) Counsel Assistant Attorney General Jacob Humbert. The Board specifically considered whether Applicant’s Products are “vinous beverages,” “fortified wines” or “spirits.” We conclude that Applicant’s Products are best classified as a “fortified wines” for the reasons below:

Applicant markets its products as vermouth. Its products, named “Boreas,” “Zephyr,” and “Harvest” (“Products”), begin as wines fermented from fruit juices with “flavoring essences made from spirits” added to them. Before the addition of spirits, Boreas and Zephyr begin as wines fermented from grape juice; Harvest begins as a wine fermented from apple juice. The Legislature defines “vinous beverages,” generally known as “wine,” as “all fermented beverages of any name or description manufactured or obtained for sale from the natural sugar content of fruits or other agricultural product, containing sugar, the alcoholic content of which is not less than one percent nor more than 16 percent by volume at 60 degrees Fahrenheit [“ABV”].” *See* 7 V.S.A. §(41). Applicant asserts that the total ABV for each Product is less than 16%.

Applicant adds spirits to the “vinous” portion of each of its Products in an amount that just exceeds 1% ABV. The Legislature’s definition of “vinous beverages” does not allow for the addition of spirits (or other ingredients, such as herbs or botanicals) in any quantity, even if the total ABV of the finished product with the addition of spirits is less than 16%. Once a spirit is added, it ceases to be a solely “vinous beverage,” or wine. Therefore, as an initial matter, we conclude that Applicant’s Products cannot be classified as a “vinous beverage.”

That leaves this Board with a determination of whether the Products are “fortified wines” or “spirits:”

- “Fortified wines” are defined as “vinous beverages, including those to which spirits have been added during manufacture, containing at least 16 percent alcohol but not more than 23 percent alcohol by volume at 60 degrees Fahrenheit, and all vermouths containing not more than 23 percent alcohol by volume at 60 degrees Fahrenheit.” *See* 7 V.S.A. §(18) (emphasis added).

- “Spirits” are defined as beverages that contain more than one percent alcohol obtained by distillation, by chemical synthesis, or through concentration by freezing; vinous beverages containing more than 23 percent alcohol; and malt beverages containing more than 16 percent alcohol by volume at 60 degrees Fahrenheit. *See* 7 V.S.A. §(39).

Vermouth is not defined in Title 7. Based on the above definitions, the Products’ total ABV is too low to qualify as a “fortified wine,” yet they contain “more than one percent alcohol obtained by distillation” potentially placing it the “spirit” category. We note, however, that the “fortified wines” definition specifically includes vermouths that could contain substantially more than an additional 1% ABV from the addition of spirits. This category, “fortified wines,” is relatively new to Vermont’s liquor laws, having become effective on January 1, 2016. It is also the only definition that specifically includes “all vermouths.” The term “vinous beverages” has existed in Vermont since at least the repeal of prohibition. As DLL noted in its March 11, 2020 memorandum of law, the Board may look to general rules of statutory construction whenever any two statutory provisions, such as the definitions of “fortified wines” and “spirits,” cannot be readily harmonized. One such general rule is that a later enactment will control over an earlier enactment. *See* IA Sutherland Statutory Construction §22:34 (7th ed.) (“If the new provisions and the reenacted or unchanged portions of the original section cannot be harmonized, the new provisions should prevail as the latest declaration of legislative will.”). DLL notes another such rule of statutory construction, applicable here: that a specific enactment will control over a general enactment. *See* 2B Sutherland Statutory Construction §51:5 (7th ed.)

It seems counter to the Legislature’s intent to deem the Products as “spirits” when the total ABV of the Products is less than 16% ABV and a vermouth with a substantially higher ABV (up to 23%) could still be a “fortified wine.” The “fortified wine” category appears to be an ingenious and specific merging of the “vinous beverages” and “spirits” categories of beverage alcohol, though a definition of “vermouth” would be most ideal. Although no statutory definition fits the Products exactly, the Products are most similar to and will be treated as “fortified wines.”

Therefore, the Board concludes that Vermont Vermouth’s Products “Boreas,” “Zephyr” and “Harvest” are and should be classified as “fortified wines.”

DATED at Montpelier, Vermont this 7th day of April 2020.

VERMONT BOARD OF LIQUOR AND LOTTERY



Board Chair