State of Tennessee
Department of State
Administrative Procedures Division
312 Rosa L. Parks Avenue
William R. Snodgrass Tower
Nashville, Tennessee 37243-1102
Phone: (615) 741-7008/Fax: (615) 741-4472

January 15, 2026

Samantha Dotson, Esq.
Tennessee Alcoholic Beverage Commission
Davy Crockett Tower, 3rd Floor
500 James Robertson Parkway
Nashville, TN 37243
Sent via email only to:
samantha.dotson@tn.gov

Coleman Braun, Esq.
Adams and Reese LLP
1600 West End Avenue, Suite 1400
Nashville, TN 37203
Sent via email only to: cole.braun@arlaw.com

Will Cheek III, Esq.
Adams and Reese LLP
1600 West End Avenue, Suite 1400
Nashville, TN 37203
Sent via email only to: will.cheek@arlaw.com

RE: TENNESSEE ALCOHOLIC BEVERAGE COMMISSION V. ZERO LINK MARKETS, INC. D/B/A WINSTON WINERY - VINOSHIPPER, APD Case No. 33.04-245975J

Enclosed is an *Initial Order,* including a *Notice of Appeal Procedures,* rendered in this case.

Administrative Procedures Division
Tennessee Department of State

Enclosure(s)

BEFORE THE TENNESSEE ALCOHOLIC BEVERAGE COMMISSION

IN THE MATTER OF: **TENNESSEE ALCOHOLIC BEVERAGE COMMISSION,** ***Petitioner,*** ***v.*** **ZERO LINK MARKETS, INC. D/B/A WINSTON WINERY - VINOSHIPPER,** ***Respondent.***	**APD Case No. 33.04-245975J**

INITIAL ORDER

This matter is set to be heard by Administrative Judge Alexander S. Rieger, sitting on behalf of the Tennessee Alcoholic Beverage Commission. Respondent, Zero Link Markets, Inc. d/b/a Winston Winery – Vinoshipper ("Vinoshipper"), is licensed as a winery direct shipper for direct-to-consumer sales in Tennessee. Since 2015, Vinoshipper has held license no. RTLDSP-OTN-1807964. Vinoshipper sought renewal of its license in 2024, which was denied by Petitioner, the Tennessee Alcoholic Beverage Commission ("TABC"). The denial resulted in this contested case hearing.

The parties have both moved for summary judgment. Vinoshipper's motion seeks an order requiring TABC to approve the renewal application for the license and attorneys' fees and costs. TABC's motion seeks an order upholding the denial of the renewal application for Vinoshipper's license and assessing Vinoshipper the costs of this action. After careful consideration of the pleadings and arguments of the parties in this matter, Vinoshipper's motion for summary judgment is respectfully **DENIED**. TABC's motion for summary judgment is respectfully **GRANTED**. Vinoshipper's application for renewal of its winery direct shipper license is **DENIED**.

UNDISPUTED MATERIAL FACTS[1]

1. Vinoshipper timely submitted its application for the renewal of its winery direct shipper license (License No. RTLDSP-OTN-1807964) with the TABC on May 31, 2024 (the "Renewal Application").

2. Vinoshipper timely remitted payment to the TABC for the license fee required for the Renewal Application.

3. A true and correct copy of the electronically submitted Renewal Application is attached to the Stipulated Uncontested Facts as Exhibit A (Bates No. Vinoshipper_000002 to 000013).

4. True and correct copies of all the records and documents submitted by Vinoshipper to TABC in support of its Renewal Application from May 31, 2024 through October 29, 2024 are attached to the Stipulated Uncontested Facts as Exhibit B (Bates No. Vinoshipper_000025 to 000093; Vinoshipper_000095 to 000096; Vinoshipper_000100 to 000139; Vinoshipper_000146 to 000311), Exhibit C (Print Out of Excel File – 2024 07 TN License COLA(97492292.1); Exhibit D (Print Out of Excel File – 2024 07 TN License URL(97492294.1).

5. True and correct copies of the email communications between Vinoshipper and TABC concerning the Renewal Application from July 2, 2024 to October 29, 2024 are attached to the Stipulated Uncontested Facts as Exhibit E.

6. True and correct copies of the summary of Vinoshipper shipping activity through common carrier UPS reflecting shipments into the State of Tennessee from October 2024 through December 2024 are attached to the Stipulated Uncontested Facts as Exhibit F (PDF ZeroLink Common Carrier Information).

[1] These undisputed material facts are taken from the parties' stipulated uncontested facts.

7. True and correct copies of the business overview of Vinoshipper provided by counsel are attached to the Stipulated Uncontested Facts as Exhibit H (PDF ZLM Overview).

8. Vinoshipper produced true and correct copies of all the agreements for each and every brand Vinoshipper makes available for shipment directly to consumers in Tennessee (Bates Nos. Vinoshipper_000312 to Vinoshipper_014638).

APPLICABLE LAW

The following statutes and regulations govern Tennessee's winery direct shipper's licensure and are provided before a factual recitation for clarity:

To start, TENN. CODE ANN. § 57-3-104(c) empowers the TABC to administer and monitor the licensure process:

> (c) The commission shall have and exercise the following functions, duties and powers:
>
> > (1) Issue all licenses in respect to, or for the manufacture, importation, bottling, keeping, giving away, furnishing, possession, transportation, sale, and delivery of alcoholic beverages, and to revoke any license whatsoever, the issuance of which is authorized by this chapter;
> >
> > > (A) Any revocation of any license shall be made by the commission only on account of the violation of, or refusal to comply with, any of this chapter or any rule or regulation of the commission, after not less than ten (10) days' notice to the holder of the license proposed to be revoked, informing such licensee of the time and place of the hearing to be held in respect thereto, and all further procedure with reference to the revocation of any license shall be fixed and prescribed in the rules and regulations adopted and promulgated by the commission, which may be repealed or amended from time to time;
> >
> > > (B) No person has a property right in any license issued hereunder, nor shall the license itself, or the enjoyment thereof, be considered a property right;
> >
> > > . . .

> (2) Refuse to issue a license or permit if, upon investigation, the commission finds that the applicant for a license or permit has concealed or misrepresented in writing or otherwise any material fact or circumstance concerning the operation of the business or employment, or if the interest of the applicant in the operation of the business or employment is not truly stated in the application, or in case of any fraud or false swearing by the applicant touching any matter relating to the operation of the business or employment. If a license or permit has been issued, the commission shall issue a citation to the licensee or permittee to show cause why the license or permit should not be suspended or revoked. All data, written statements, affidavits, evidence or other documents submitted in support of an application are a part of the application.

Winery direct shippers are governed by TENN. CODE ANN. § 57-3-217, which provides, in relevant part:

> (a) Any person, firm or corporation that holds a federal basic permit pursuant to the Federal Alcohol Administration Act (27 U.S.C. § 201 et seq.), and is in the business of manufacturing, bottling or rectifying wine may apply to the commission for a winery direct shipper's license under this section. Applicants for a winery direct shipper's license shall submit to the commission a copy of the federal basic permit and a permit for the manufacturing, bottling, or rectification of wine from the state where such wine is produced.
>
> (b) A winery direct shipper, meeting the requirements of this section, may make sales and delivery of wine, as defined in § 57-3-101, by common carrier to the citizens of this state over twenty-one (21) years of age who have purchased the wine directly from the winery direct shipper, subject to the limitations and requirements imposed by this section; provided, that a winery direct shipper may only ship wine sold under a brand name owned by or licensed to the winery or farm winery, which is either:
>
> (1) Produced by the winery or farm winery, including manufactured in a manner authorized pursuant to § 57-3-207;
>
> (2) Produced exclusively for the winery or farm winery under an existing written contract with the winery or farm winery; or

> (3) Produced and bottled exclusively for the winery or farm winery.

The general procedure for license renewal is set forth by TENN. CODE ANN. § 57-3-213(b)-(c), which provides, in relevant part:

> (b) Each license issued pursuant to this chapter may be renewed upon application therefor by the licensee. The renewal application shall be accompanied by the payment of the annual fee for such license. Each license shall automatically expire twelve (12) months from the date of its issuance unless the licensee has filed a renewal application and paid the annual license fee or privilege tax required by this title.
>
> (c) The commission shall consider the application with all other evidence which it may obtain by investigation or otherwise in determining whether the license is to be renewed. The commission shall make such order, as the entire record justifies, granting or refusing the renewal application, and such order shall be effective from its date. If the license is not renewed, the applicant is entitled to the hearing and notice requirements as set out in § 57-3-214.

Winery direct shipper licenses also have additional renewal criteria at TENN. CODE ANN. § 57-3-217(c):

> (c) As a condition to the issuance or renewal of a winery direct shipper's license as authorized in this section, an applicant for the license must satisfy the following conditions:
>
> > (1) Pay to the commission a one-time nonrefundable fee in the amount of three hundred dollars ($300) when the application is submitted for review. A winery direct shipper's license under this section shall not be issued until the applicant has paid to the commission the annual license fee of one hundred fifty dollars ($150);
> >
> > (2) Execute a consent to jurisdiction and venue of all actions brought before the commission, any state agency or the courts of this state, such that any and all hearings, appeals and other matters relating to the license of the winery direct shipper shall be held in this state;
> >
> > (3) Acknowledge, in writing, that it will contract only with common carriers that agree that any delivery of wine made in this state shall be by face-to-face delivery and that deliveries will only be made to individuals who

> demonstrate that the individuals are over twenty-one (21) years of age and the individuals sign upon receipt of the wine.

TABC has promulgated rules to effectuate the application process for winery direct shipper license applicants, two of which are applicable to this case. First, the application requirements are detailed by TENN. COMP. R .& REGS. 0100-10-.01, which provides, in relevant part:

> A winery direct shipper license applicant is required to submit a complete application in a manner specified by the Commission . . . . [and] must provide the Commission with the following information:
>
> . . .
>
> (2) A list of all wine brands that Applicant intends to sell under the license. Only wine brands that are included in the application and accepted by the Commission may be sold and shipped to Tennessee consumers by the winery direct shipper and/or its agent, the licensed fulfillment house. Winery direct shippers are prohibited from selling brands associated with another winery direct shipper license. If TABC determines that there is an absence of sufficient proof that a listed brand is produced pursuant to this paragraph, TABC has discretion to remove the brand from the list of accepted brands from the application and the winery direct shipper is prohibited from selling the removed brand under its winery direct shipper license.
>
> (3) Proof that wine brands intended to be sold in Tennessee are owned by or licensed to the winery and are either:
>
> (a) Produced by the winery;
>
> (b) Produced exclusively for the winery under an existing written contract with the winery or farm winery; or
>
> (c) Produced and bottled exclusively for the winery.
>
> Brand names and authorized trade names that are disclosed on the federal basic permit may be used to establish that the brand is owned by or licensed to the winery. A Certification/Exemption of Label/Bottle Approval (COLA) reflecting the permittee's name or authorized trade name may also establish that the brand is owned by or licensed to the winery. This is a non-exhaustive list the

> Commission shall consider in making this determination. If TABC determines that there is an absence of sufficient proof that a listed brand is produced pursuant to this paragraph, TABC retains the discretion to remove the brand from the list of brands provided on the application and the winery direct shipper is prohibited from selling the removed brand under its winery direct shipper license
>
> . . .
>
> (10) An exhaustive list of website addresses on which Applicant will sell wine for shipment into Tennessee. Applicants are required to notify the Commission of any changes throughout the license year in a manner specified by the Commission.[2]

And finally, TENN. COMP. R. & REGS. 0100-10-.04 governs winery direct shipper license expiration and renewal:

> Each direct shipper permit will expire twelve (12) months after the date of issuance. It is the responsibility of the direct shipper licensee to submit a complete application and payment of the annual license fee prior to the expiration of the license. The expiration date printed on the license serves as notice of the need to seek the renewal of the license by such expiration date, and no additional notice is required. Direct shipper licenses will be closed on the business day after expiration if both an application and a license fee have not been received. If the Commission receives an application and license fee prior to the expiration date, the closing of the license will be tolled, and the license will remain valid until the Commission reviews the application. The Commission will approve and renew or otherwise close the expired license for which renewal is sought no more than 45 days after its expiration date. Licenses that the Commission does not renew will be closed and void after those 45 days regardless of the date of closure.

FINDINGS OF FACT

Much of the information necessary to decide this matter is incorporated into the parties' Stipulated Uncontested Facts via reference to exhibits. After an extensive review of the relevant documents, the following narrative emerges:

[2] This rule has a number of other requirements that are not at issue here. Vinoshipper has undisputably complied with the unlisted requirements, but for reference, evidence of its compliance can be found on the Direct Shipper License Renewal application appended to the Stipulated Uncontested Facts.

Vinoshipper operates a winery that produces wines under the name Winston Winery. It is located in California. Under the name Winston Winery, Vinoshipper has maintained a Winegrower Alcoholic Beverage License issued by California since 2015. Vinoshipper has concurrently maintained a Federal Basic Permit issued by the U.S. Department of the Treasury – Alcohol and Tobacco, Tax, and Trade Bureau. And also since 2015, Vinoshipper has maintained a winery direct shipper license (License No. RTLDSP-OTN-1807964) with TABC.

Vinoshipper does business in three general ways. First, it is a winery under the name of Winston Winery. Second, it contracts with smaller wineries for the manufacture and production for direct-to-consumer sales in specific states including Tennessee. Last, it provides license compliance management and reporting to smaller wineries. It is the second business practice that is at issue here.

For its direct-to-consumer sales, Vinoshipper licenses brands from contracting wineries for production and manufacture of wines. Vinoshipper then sells those wines in markets where they are not currently sold at retail. These arrangements provide for brand registration, licensing, payment of state taxes, and other compliance based on the requirements of each state. All shipments are made by Vinoshipper pursuant to the agreements between it and the contracting winery. Wine is shipped by common carrier, usually UPS or FedEx.

Vinoshipper requires three separate agreements for its contracting wineries. First, a Wine Production Agreement states that the contracting winery will produce the authorized brand wine exclusively for Vinoshipper for shipment. Second, a Trademark License Agreement states that the contracting winery will license the wine brand to Vinoshipper. The licensing is exclusive for the shipping of wine into the contractually authorized states (including Tennessee), but non-exclusive as to other non-authorized states. Third, the Bottling Agreement demonstrates that the contracting winery has authorized Vinoshipper to use the trade name. After all three are

executed, Vinoshipper lists the authorized brands on its Federal Basic Permit. Vinoshipper's brand list includes 1,156 brands of wine.

In June 2022, TABC audited Vinoshipper's license and determined that it met the requirements as a winery direct shipper. TABC therefore renewed Vinoshipper's license.

On May 31, 2024, Vinoshipper timely submitted its application for license renewal with the TABC and timely remitted payment. But this time renewal went differently. During the audit, TABC flagged alleged issues with the license. Specifically, TABC noted that the license file only contained the Federal Basic Permit and brand lists. In an email dated July 2, 2024, TABC communicated the issue of missing information to Vinoshipper and asked them to supply the following: 1) an updated brand list, 2) Certification/Exemption of Label/Bottle Approval (COLA) documents for each brand shipped by Vinoshipper into Tennessee, 3) exclusive production documents showing that each brand is produced exclusively for Vinoshipper (for each brand shipped by Vinoshipper into Tennessee and that is not directly produced by Vinoshipper), and 4) a list of each website service utilized to make shipments into Tennessee.

Vinoshipper produced documentation in response to TABC's request. On August 19, 2024, Vinoshipper sent TABC copies of sample Trademark License Agreements and Wine Production Agreements with Vinoshipper's contracting wineries, updated brand lists, a copy of a sample Bottling Agreement, listings of wine brands offered by Vinoshipper along with active URL addresses for each brand, and a list of all brands shipped by Vinoshipper, including the active COLA identification number.

On October 21, 2024, TABC emailed Vinoshipper that it intended to deny the renewal application and close the license. Vinoshipper provided notice requesting a contested case hearing with an administrative judge assigned by the Tennessee Secretary of State, Administrative Procedures Division, to sit for the TABC.

ANALYSIS and CONCLUSIONS OF LAW

Summary Judgment Standard

The Tennessee Rules of Civil Procedure provide that summary judgment should be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Tenn. R. Civ. P. 56.04."

The party moving for summary judgment bears the burden of showing "there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law." *Martin v. Norfolk S. Ry. Co.*, 271 S.W.3d 76, 83 (Tenn. 2008) (citing *Byrd v. Hall*, 847 S.W.2d 208, 215 (Tenn.1993)). To satisfy this burden, "the moving party must produce evidence that, if uncontroverted at trial, would entitle it to a directed verdict at trial." *TWB Architects, Inc. v. Braxton*, LLC, 578 S.W.3d 879, 888 (Tenn. 2019). Once the moving party satisfies its burden, "[t]he nonmoving party must demonstrate the existence of specific facts in the record which could lead a rational trier of fact to find in favor of the nonmoving party." *Rye v. Women's Care Ctr. of Memphis, MPLLC*, 477 S.W.3d 235, 265 (Tenn. 2015).

A trial court must "accept the evidence presented by [] the nonmoving party[] as true; allow all reasonable inferences in its favor; and resolve any doubts about the existence of a genuine issue of material fact in favor of [the non-moving party]." *TWB Architects, Inc. v. Braxton, LLC*, 578 S.W. 3d 879, 887 (Tenn. 2019) (citing *Martin v. Norfolk S. Ry.*, 271 S.W.3d 76, 84 (Tenn. 2008); *Staples v. CBL & Assocs., Inc.,* 15 S.W.3d 83, 89 (Tenn. 2000); *McCarley v. W. Quality Food Serv.*, 960 S.W.2d 585, 588 (Tenn. 1998); *B & B Enters. of Wilson Cnty., LLC v. City of Lebanon*, 318 S.W.3d 839, 844-45 (Tenn. 2010)).

Principles of Interpretation and Construction

This matter turns on the construction and interpretation of statutory rules and regulations concerning the renewal of a winery direct shipper license. Statutory interpretation is an issue of law, "which may be properly addressed and resolved on summary judgment." *See Najo Equip. Leasing, LLC v. Comm'r of Revenue*, 477 S.W.3d 763, 766 (Tenn. Ct. App. 2015), *perm. app. denied*, Oct. 16, 2015.

A number of principles regarding statutory construction are implicated here. First, and most important, "is to ascertain and give effect to the [ ] intent without unduly restricting or expanding [the enactment's] coverage beyond its intended scope." *In re Kaliyah S.*, 455 S.W.3d, 552 (Tenn. 2015) (quoting *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995)). To accomplish this, "we begin with the actual words of the [enactment], to which we accord their natural and ordinary meaning." *Martin v. Powers*, 505 S.W.3d 512, 518 (Tenn. 2016) (citing *Baker v. State*, 417 S.W.3d 428, 433 (Tenn. 2013)).

Each enactment is interpreted "as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same [enactment] inconsistent, meaningless or superfluous." *Culbreath v. First Tenn. Bank Nat'l Ass'n*, 44 S.W.3d 518, 524 (Tenn. 2001) (quoting *Cafarelli v. Yancy*, 226 F.3d 492, 499 (6th Cir. 2000)). When multiple enactments "relate to the same subject matter or have a common purpose," they are to be considered *in pari materia*. *In re Kaliyah S.*, 455 S.W.3d 533, 552 (Tenn. 2015). Enactments with common cause should be construed "together" and "to give intended effect to both." *Id*. at 548, 552. Under this guidance, it is appropriate to ascertain "the most 'reasonable construction which avoids statutory conflict and provides for harmonious operation of the laws.'" *Id*. at 552 (quoting *Carver v. Citizen Utils. Co.*, 954 S.W.2d 34, 35 (Tenn. 1997)); *see also Falls v. Goins*, 673 S.W.3d 173, 180 (Tenn. 2023).

In this case, the question calls for consideration of not only the interplay between statutes, but between statutes and rules as well. Tennessee has recently legislatively abrogated the long-standing deference accorded to an agency's interpretation of its own rules in certain contexts. *See* TENN. CODE ANN. § 4-5-326 (abrogating *Jackson Express, Inc. v. Tenn. Pub. Serv. Comm'n,* 679 S.W.2d 942, 945 (Tenn. 1984) (*Envtl. Def. Fund, Inc. v. Tenn. Water Quality Control Bd.,* 660 S.W.2d 776, 781 (Tenn.Ct. App. 1983) *perm. app. denied*, July 25, 1983).[3]

But Tennessee has not abrogated its appellate guidance that "[r]egulations should be construed in harmony with concomitant statutes and not in contradiction to them." *Vodafone Americas Holdings, Inc. & Subsidiaries v. Roberts*, 486 S.W.3d 496, 529 (Tenn. 2016) (citing *Tidwell v. RCA Corp.*, 528 S.W.2d 179, 181 (Tenn. 1975); *Wright v. Tenn. Peace Officer Standards & Training Comm'n*, 277 S.W.3d 1, 15 (Tenn. Ct. App. 2008)).

However, should a regulation and statute clash irreconcilably, the statute controls, as "[g]enerally, rules and regulations promulgated pursuant to statutory directive *and not inconsistent with such statutes* have the force of law." *Kogan v. Tenn. Bd. of Dentistry*, No. M2003-00291-COA-R3-CV, 2003 WL 23093863, at *5 (Tenn. Ct. App. Dec. 30, 2003) (citing *Houck v. Minton*, 212 S.W.2d 891 (Tenn. 1948); *Parkridge Hosp., Inc. v. Califano*, 625 F.2d 719 (6th Cir. 1980)) (emphasis added).

Moreover:

> It is a fundamental rule of law that the departments, agencies, and commissions of government have no inherent or common-law power of their own. They are purely creatures of statute.

[3] Interestingly enough, TENN. CODE ANN. § 4-5-326 is only applicable to "a court presiding over the appeal of a judgment in a contested case." By its express terms, the statute would not apply here. This creates a wrinkle where an administrative judge may be required to give potentially-determinative deference to an agency interpretation of a statute or rule that a reviewing chancery or circuit court would be required by statute to reverse.

Thankfully, the applicable statutes and regulations are not ambiguous, and faithful application of the plain-language rule mirrors TABC's interpretations of its rules and statutes. Accordingly, no deference to TABC's interpretations is required or given here. Moreover, agency deference is inherently problematic anyway. *See, e.g., Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) (overruling agency deference created by *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)).

> Accordingly, governmental agencies only have those powers expressly granted by statute and those powers required by necessary implication to enable them to fulfill their statutory mandate.

State ex rel. Comm'r of Transp. v. Med. Bird Black Bear White Eagle, 63 S.W.3d 768-69 (Tenn. Ct. App. 2001 (citations omitted); *see also McFarland v. Pemberton*, 530 S.W.3d 76, 91 (Tenn. 2017); *In re Sentinel Trust Co.*, 206 S.W.3d 501, 519 (Tenn. Ct. App. 2005).

Analysis

This is, at its heart, a license renewal action. It is not particularly relevant that Vinoshipper has been previously licensed by the TABC for a number of years, including once after the statutory scheme changed for winery direct shipper licenses. What is relevant is whether Vinoshipper has met the legal requirements to be entitled to a renewal of its license.

Those requirements for renewal are in a number of places, as discussed above. To start, TENN. CODE ANN. § 57-3-217(c) requires payment of a license fee, execution of a consent to jurisdiction and venue for all license-related hearings, and an acknowledgement that a prospective licensee "will contract only with common carriers that agree that any delivery of wine made in this state shall be by face-to-face delivery" to recipients who demonstrate they are of legal age.

Vinoshipper argues in its motion for summary judgment that because it has met the requirements of TENN. CODE ANN. § 57-3-217(c), it is entitled to renewal. Vinoshipper's argument fails because TENN. CODE ANN. § 57-3-217(c)'s express language characterizes enumerated requirements as conditions without reference to exclusiveness:

> (c) As a condition to the issuance or renewal of a winery direct shipper's license as authorized in this section, an applicant for the license must satisfy the following conditions:

To be sure, these conditions must be fulfilled as a condition to license renewal. But the statute does not characterize them as exclusive. Nor does it expressly state that completion of all three conditions entitles an entity to license renewal. The statute operates in the "negative" requirement form, not the "positive" entitlement form. *See Falls v. Goins*, 673 S.W.3d 181 (Tenn. 2023). Thus, TENN. CODE ANN. § 57-3-217(c)'s requirements apply but can be supplemented with other requirements. Accordingly, the statute does not occupy the field such that it cannot be supplemented with other regulations not inconsistent with the statute's express language.

Moreover, given that TABC is permitted to review the application and either approve or deny it, were TENN. CODE ANN. § 57-3-217(c) to be construed as the end of the necessary requirements, it may well obviate the provisions of TENN. COMP. R. & REGS. 0100-10-.04 concerning review of the application. The canons of superfluity and absurdity counsel against such a disharmonious construction of the interplay between statute and rule.

Now that we know that TENN. CODE ANN. § 57-3-217(c) is not the whole picture, we must look into any supplementary provisions. TABC has promulgated some additional requirements by rule. TENN. COMP. R. & REGS. 0100-10-.04 mirrors the statutory requirement to submit a complete application and pay the annual license fee:

> Each direct shipper permit will expire twelve (12) months after the date of issuance. It is the responsibility of the direct shipper licensee to submit a complete application and payment of the annual license fee prior to the expiration of the license.

The application requirements are detailed by TENN. COMP. R. & REGS. 0100-10-.01, which provides:

> A winery direct shipper license applicant is required to submit a complete application in a manner specified by the Commission . . . . [and] must provide the Commission with the following information:

. . .

(2) A list of all wine brands that Applicant intends to sell under the license. Only wine brands that are included in the application and accepted by the Commission may be sold and shipped to Tennessee consumers by the winery direct shipper and/or its agent, the licensed fulfillment house. Winery direct shippers are prohibited from selling brands associated with another winery direct shipper license. If TABC determines that there is an absence of sufficient proof that a listed brand is produced pursuant to this paragraph, TABC has discretion to remove the brand from the list of accepted brands from the application and the winery direct shipper is prohibited from selling the removed brand under its winery direct shipper license.

(3) Proof that wine brands intended to be sold in Tennessee are owned by or licensed to the winery and are either:

(a) Produced by the winery;

(b) Produced exclusively for the winery under an existing written contract with the winery or farm winery; or

(c) Produced and bottled exclusively for the winery.

Brand names and authorized trade names that are disclosed on the federal basic permit may be used to establish that the brand is owned by or licensed to the winery. A Certification/Exemption of Label/Bottle Approval (COLA) reflecting the permittee's name or authorized trade name may also establish that the brand is owned by or licensed to the winery. This is a non-exhaustive list the Commission shall consider in making this determination. If TABC determines that there is an absence of sufficient proof that a listed brand is produced pursuant to this paragraph, TABC retains the discretion to remove the brand from the list of brands provided on the application and the winery direct shipper is prohibited from selling the removed brand under its winery direct shipper license

. . .

(10) An exhaustive list of website addresses on which Applicant will sell wine for shipment into Tennessee. Applicants are required to notify the Commission of any changes throughout the license year in a manner specified by the Commission.

The regulations also require the TABC to review the application:

> If the Commission receives an application and license fee prior to the expiration date, the closing of the license will be tolled, and the license will remain valid until the Commission reviews the application. The Commission will approve and renew or otherwise close the expired license for which renewal is sought no more than 45 days after its expiration date. Licenses that the Commission does not renew will be closed and void after those 45 days regardless of the date of closure.

TENN. COMP. R. & REGS. 0100-10-.04. And finally, TABC is statutorily permitted to take a broad look when evaluating an application:

> (c) The commission shall consider the application with all other evidence which it may obtain by investigation or otherwise in determining whether the license is to be renewed. The commission shall make such order, as the entire record justifies, granting or refusing the renewal application, and such order shall be effective from its date. If the license is not renewed, the applicant is entitled to the hearing and notice requirements as set out in § 57-3-214.

TENN. CODE ANN. § 57-3-213(c).

To summarize, in order to meet the requirements of each applicable statute and rule, Vinoshipper must:

1) Remit a license fee (TENN. CODE ANN. § 57-3-217(c); TENN. COMP. R. & REGS. 0100-10-.04).

2) Execute a consent to jurisdiction and venue for all license-related hearings (TENN. CODE ANN. § 57-3-217(c)).

3) Acknowledge that "it will contract only with common carriers that agree that any delivery of wine made in this state shall be by face-to-face delivery" to recipients who demonstrate they are of legal age. (TENN. CODE ANN. § 57-3-217(c)).

4) Submit a complete application.

5) Submit a list of all wine brands that it intends to sell under the license. (TENN. COMP. R. & REGS. 0100-10-.01(2)).

6) Submit proof that wine brands intended to be sold in Tennessee are owned by or licensed to the winery and are either produced by the winery, produced exclusively for the winery under an existing contract, or produced and bottled exclusively for the winery. (TENN. COMP. R. & REGS. 0100-10-.01(2)).

7) Submit an "exhaustive" list of website addresses on which it will sell wine for shipment into Tennessee. (TENN. COMP. R. & REGS. 0100-10-.01(10)).[4]

Vinoshipper meets many of these requirements. The Direct Shipper License Renewal application appended to the Stipulated Uncontested Facts demonstrates that Vinoshipper paid its fee (1), acknowledged that it would only conduct business with common carriers that agree that delivery of wine will be face-to-face with recipients who demonstrate they are of legal age (3), and consented to jurisdiction and venue of all actions concerning this license brought by the TABC (2). Vinoshipper has supplied a current brand list including 1,156 brands of wine (5).

That satisfies (1), (2), (3), and (5), leaving (4), (6), and (7).

In case it was unclear up to this point, the statute and rules are not a model of clarity. It is uncertain whether satisfying (5), (6), and (7) is required to "complete" the application required by (4) or not. However, since the absence of even one of these requirements is grounds for denial of a renewal application, it will make little difference.

Now for the requirements in controversy. First is submission of an "exhaustive" list of website addresses on which Vinoshipper will sell wine for shipment into Tennessee. On one hand, the record does not seem to contain this list. On the other, the parties do not discuss it in any significant detail other than requesting it as part of the audit. As it cannot be determined from the record on summary judgment that this provision has been affirmatively complied with, Vinoshipper's motion for summary judgment must be respectfully **DENIED** because the record

[4] Again, there are other requirements, but they are not at issue here as it is undisputed that Vinoshipper has satisfied them.

does not demonstrate that it has met all the requirements for license renewal. Accordingly, (7) is unresolved.

That brings us to (6), the point of greatest contention by the parties: proof that wine brands intended to be sold in Tennessee are owned by or licensed to the winery and are either produced by the winery, produced exclusively for the winery under an existing contract, or produced and bottled exclusively for the winery.

Vinoshipper has submitted COLA numbers for each of its brands. But that alone may not be enough. The rule warns of this possibility: "[a] Certification/Exemption of Label/Bottle Approval (COLA) reflecting the permittee's name or authorized trade name *may* also establish that the brand is owned by or licensed to the winery." TENN. COMP. R. & REGS. 0100-10-.01(2) (emphasis added). A COLA is listed as an option to help satisfy this requirement, but it is neither required by the rule nor constitutes conclusive proof.

To be sure, in some instances, a COLA could be enough on its own. A COLA has boxes showing the winery name and address and the trade name on the label (at Box 8 of the COLA) and showing the plant registry number of the applying winery (at Box 2). If those all match the Federal Basic Permit, that would almost certainly be conclusive proof that the requirement is met based upon a showing that the wine is "produced by the winery."[5] However, a COLA by itself is insufficient to show the exclusivity required by parts (b) and (c) of TENN. COMP. R. & REGS. 0100-10-.01(3) (produced exclusively for the winery under existing contract or produced and bottled exclusively for the winery).

In isolation, this lack of a showing of exclusivity would not be sufficient to grant TABC's motion for summary judgment. After all, they must affirmatively produce evidence that they would be entitled to a directed verdict at trial. *See TWB Architects, Inc. v. Braxton*, LLC, 578

[5] Examples of a COLA and Vinoshipper's Federal Basic Permit are appended to the parties' Stipulated Uncontested Facts.

S.W.3d 879, 888 (Tenn. 2019). Vinoshipper has asserted in the parties' Stipulated Uncontested Facts that it has submitted to TABC copies of all of the agreements for every brand Vinoshipper makes available for shipment directly to consumers in Tennessee. TABC must show that these agreements, if submitted at trial, would not satisfy the requirements for license renewal in order to be entitled to summary judgment.

TABC has done so. The sample agreements appended to the parties' Stipulated Uncontested Facts tell the story. Vinoshipper affirmatively states that these samples are common among all of its brands. None of these agreements contain exclusivity clauses that satisfy the applicable statutes and rules. Notably, the sample Trademark License Agreement's terms expressly state that the license to use the trademark is a "non-exclusive, non-transferable [ ] license." It is limited to a licensed territory of "all states listed under 'VinoShipper Permit States.'" The sample Wine Production Agreement has no exclusivity terms. These contracts, on their face, do not prevent the suppliers from marketing/selling their brands in non-Tennessee jurisdictions.

The term "exclusively" is of much debate here. Vinoshipper argues that its contracting wineries "exclusively engage with Vinoshipper to sell and ship the brand to customers in Tennessee." Vinoshipper Resp. in Opp., p. 11. In essence, Vinoshipper asserts that "exclusively" should be construed as "exclusively to Tennessee" and "allow[] the contracting winery to pursue alternative methods of sale and distribution in other states." *Id*. Respectfully, nothing in the applicable rules or statutes suggest that the term "exclusively" is cabined to Tennessee. The plain and ordinary meaning of "exclusive" is defined as "limited to a particular person, group, entity, or thing;" "unable to be true if something else is true;" and "whole; undivided." *Exclusive*, Black's Law Dictionary (12th Ed. 2024). Without additional qualifying language modifying the

normal scope of the term "exclusively," restricting the term to Tennessee is a forced and unnatural construction contrary to the plain and ordinary meaning and will not be adopted.[6]

As Vinoshipper has held these agreements out as examples of their agreements across all brands, and these sample agreements do not have sufficient exclusivity provisions, TABC has sufficiently shown that Vinoshipper cannot prove that wine brands intended to be sold in Tennessee are owned by or licensed to the winery and are either produced by the winery, produced exclusively for the winery under an existing contract, or produced and bottled exclusively for the winery. *See* TENN. COMP. R. & REGS. 0100-10-.01(2). TABC has met its burden on summary judgment to show that Vinoshipper is not entitled to renewal of its license application.[7]

Lastly, Vinoshipper argues that TABC has violated the rule publication requirements under the Uniform Administrative Procedures Act (UAPA) and that TABC's interpretation and application of the statute and rules violates the Dormant Commerce Clause.

As to the improperly promulgated rule argument, the exclusivity rules are clearly promulgated. TABC's application of these rules does not constitute an unpromulgated rule. To be sure, the audit email could have been clearer and better tracked the license renewal framework, and it is troubling that TABC did not identify and address these issues in the prior permit renewal after the change of the statutory scheme—creating a superficial appearance of uneven application of the rules. But it is not arbitrary or capricious to apply the rules as promulgated, even if inconsistent with prior practice. After all, good government requires that promulgated rules and applicable laws be faithfully applied. And mistakes should be corrected once discovered.

[6] Vinoshipper's argument that this construction violates the Dormant Commerce Clause is addressed below.

[7] TABC's motion for summary judgment also raises the issue that Vinoshipper's actions are inconsistent with a winery direct shipper. It bases that claim on various documents from common carriers and questions as to where the shipments of wine were shipped from. Respectfully, this issue presents a disputed and uncertain issue of fact. Summary judgment is appropriate, but not on this argument.

Vinoshipper also argues that TABC's denial violates the Dormant Commerce Clause. The separation of powers prohibits the undersigned from entertaining this argument because—having determined that the plain and express language of the applicable statutes and rules do not cabin the term "exclusively" to Tennessee (and thus do not reach the canon of constitutional avoidance)—it directly challenges the validity of a rule and/or implicates serious constitutional issues in the form of a facial challenge. *See Richardson v. Tenn. Bd. of Dentistry*, 913 S.W.2d 446, 454 (Tenn. 1995).

Lastly, Vinoshipper argues that wholesale denial of its license would not be the appropriate remedy should TABC succeed on summary judgment. The rules do give TABC the *option* of delisting brands that do not comport with the applicable rules, but given the more than 1,150 brands and no indication that the deficiencies presented here are not present in the majority of brands, license denial is the only appropriate and reasoned remedy.

Accordingly, TABC's motion for summary judgment is respectfully **GRANTED**. Vinoshipper's application for renewal of its winery direct shipper license is respectfully **DENIED**. TABC's motion for summary judgment includes a request for costs. Should TABC wish to pursue that relief, TABC should submit a motion pursuant to TENN. COMP. R. & REGS. 1360-04-01-.16.

POLICY STATEMENT

The policy reasons for this decision are to protect the safety and wellbeing of citizens of the State of Tennessee as well as to ensure that individuals adhere to Tennessee's laws and regulations relative to winery direct shipper licensing requirements.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the **15th day of January 2026**.



ALEXANDER S. RIEGER
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the **15th day of January 2026**.

IN THE MATTER OF: **APD CASE No. 33.04-245975J**
TENNESSEE ALCOHOLIC BEVERAGE COMMISSION V.
ZERO LINK MARKETS, INC. D/B/A WINSTON WINERY - VINOSHIPPER

NOTICE OF APPEAL PROCEDURES

REVIEW OF INITIAL ORDER

The Administrative Judge's decision in your case **BEFORE THE TENNESSEE ALCOHOLIC BEVERAGE COMMISSION** (**COMMISSION)**, called an Initial Order, was entered on **January 15, 2026.** The Initial Order is not a Final Order but shall become a Final Order unless:

1. **A Party Files a Petition for Reconsideration of the Initial Order:** You may ask the Administrative Judge to reconsider the decision by filing a Petition for Reconsideration with the Administrative Procedures Division (APD). A Petition for Reconsideration should include your name and the above APD case number and should state the specific reasons why you think the decision is incorrect. APD must **receive** your written Petition no later than 15 days after entry of the Initial Order, which is no later than **January 30, 2026**. A new 15 day period for the filing of an appeal to the **COMMISSION** (as set forth in paragraph (2), below) starts to run from the entry date of an order ruling on a Petition for Reconsideration, or from the twentieth day after filing of the Petition if no order is issued. Filing instructions are included at the end of this document.

   The Administrative Judge has 20 days from receipt of your Petition to grant, deny, or take no action on your Petition for Reconsideration. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing (as discussed in paragraph (2), below) will be adjusted. If no action is taken within 20 days, the Petition is deemed denied. As discussed below, if the Petition is denied, you may file an Appeal, which must be **received** by APD no later than 15 days after the date of denial of the Petition. *See* TENN. CODE ANN. §§ 4-5-317 and 4-5-322.

2. **A Party Files an Appeal of the Initial Order:** You may appeal the decision to the **COMMISSION** by filing an Appeal of the Initial Order with APD. An Appeal of the Initial Order should include your name and the above APD case number and state that you want to appeal the decision to the **COMMISSION**, along with the specific reasons for your appeal. APD must **receive** your written Appeal no later than 15 days after the entry of the Initial Order, which is no later than **January 30, 2026**. The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317.

3. **The COMMISSION decides to Review the Initial Order:** In addition, the **COMMISSION** may give written notice of the intent to review the Initial Order, within 15 days after the entry of the Initial Order.

   If either of the actions set forth in paragraphs (2) or (3) above occurs prior to the Initial Order becoming a Final Order, there is no Final Order until the **COMMISSION** renders a Final Order.

   If none of the actions in paragraphs (1), (2), or (3) above are taken, then the Initial Order will become a Final Order. **In that event, YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER.**

IN THE MATTER OF: **APD CASE No. 33.04-245975J**
TENNESSEE ALCOHOLIC BEVERAGE COMMISSION V.
ZERO LINK MARKETS, INC. D/B/A WINSTON WINERY - VINOSHIPPER

NOTICE OF APPEAL PROCEDURES

STAY

In addition, you may file a Petition asking the Administrative Judge for a stay that will delay the effectiveness of the Initial Order. A Petition for Stay must be **received** by APD within 7 days of the date of entry of the Initial Order, which is no later than **January 22, 2026**. *See* TENN. CODE ANN. § 4-5-316. A reviewing court also may order a stay of the Final Order upon appropriate terms. *See* TENN. CODE ANN. §§ 4-5-322 and 4-5-317.

REVIEW OF A FINAL ORDER

When an Initial Order becomes a Final Order, a person who is aggrieved by a Final Order in a contested case may seek judicial review of the Final Order by filing a Petition for Review "in the Chancery Court nearest to the place of residence of the person contesting the agency action or alternatively, at the person's discretion, in the chancery court nearest to the place where the cause of action arose, or in the Chancery Court of Davidson County," within 60 days of the date the Initial Order becomes a Final Order. *See* TENN. CODE ANN. § 4-5-322. The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317.

FILING

Documents should be filed with the Administrative Procedures Division by email *or* fax:

Email: APD.filings@tnsos.gov

Fax: 615-741-4472

In the event you do not have access to email or fax, you may mail or deliver documents to:

Secretary of State
Administrative Procedures Division
William R. Snodgrass Tower
312 Rosa L. Parks Avenue
Nashville, TN 37243-1102