

December 22, 2008

Via Electronic and U.S. Mail

Mr. Kyle Sullivan
Account Manager
Oak Solutions Group
2557 Napa Valley Corporate Dr.
Suite D
Napa, California 94558

Re: FDA Status and Related Issues Regarding Tru/Tan Blend for Use in Wine Production

Dear Kyle:

The purpose of this letter is to respond to your request for a legal opinion regarding the status of Oak Solutions Group's (OSG's) Tru/Tan blend under the laws and regulations administered by the Federal Food and Drug Administration (FDA), when used as a food additive in wine production. We understand that Tru/Tan is a proprietary blend of spray dried oak powder and tannic acid, and that the blend will be sold to wine-producers to impart flavors to wine that is not aged in oak barrels. It is our opinion that the blend may be used as intended and that such use may be said to comply fully with the relevant FDA regulations. The basis of our opinion is described in detail below.

I. FDA Status of Tru/Tan Blend

Tru/Tan is a blend of 62-90% tannic acid (CAS # 1401-55-4, also known as gallo tannin) and 10-38% oak powder (also known as ellagitannin).¹ The blend is intended to be used to impart flavor to wine that will not be aged in oak barrels. As a substance that is intentionally added to food, it is properly considered to be a food additive.² Any food containing an unapproved food additive is considered "unsafe" and, thus, adulterated. A food additive is

¹ OSG has conducted an analysis of the blend under standards set by Codex Alimentarius and has confirmed that it meets such standards; thus, the blend as a whole is understood to be food grade.

² A food additive is defined in Section 201(s) of the Federal Food, Drug, and Cosmetic Act as a substance that is reasonably expected to become a component of food under the intended conditions of use.

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unapproved unless it has a suitable status under the Federal Food, Drug, and Cosmetic Act (“the Act”) (e.g., there is an applicable food additive regulation or statutory exemption). Thus, we have reviewed the status of tannic acid and oak powder below to determine whether their use in wine production complies with the Act.

A. Tannic Acid

Tannic acid has been affirmed as a “generally recognized as safe” (GRAS) food additive in 21 CFR § 184.1097 (“Tannic acid”). This regulation clears the use of tannic acid in various food applications, including alcoholic beverages. It is cleared for use in alcoholic beverages as a flavoring agent, adjuvant, or processing aid at a maximum level of use of 0.015%. OSG’s supplier has conducted an analysis of this product to determine that it is of a purity suitable for use in food. Thus, the use of tannic acid in Tru/Tan blend for wine production, as set forth in the GRAS provision, complies with the Act and relevant FDA regulations.

We also note that the use of tannic acid in wine production is approved by the Alcohol and Tobacco Tax and Trade Bureau (“TTB”), the agency that shares jurisdiction with FDA over alcoholic beverages. TTB regulation 27 C.F.R. § 24.246 (“Materials authorized for the treatment of wine and juice”) approves the use of tannic acid “as being consistent with good commercial practice in the production, cellar treatment, or finishing of wine, and where applicable in the treatment of juice” for purposes of clarifying or adjusting the tannin content of wine. Section 24.246 places a limit of 0.8 g/L in white wine and 3.0 g/L in red wine for residual tannin, calculated in gallic acid equivalents; furthermore, wine producers may not increase total tannin by more than 150 mg/L. The regulation stipulates that only tannin which does not impart color may be used in the cellar treatment of wine. The use of tannic acid in Tru/Tan complies with TTB regulations.

We note that it is the responsibility of OSG’s customers, as wine manufacturers, to use the Tru/Tan blend in accordance with FDA and TTB regulatory criteria.

B. Oak Powder or Ellagitannin

Oak is cleared as a food additive for flavoring in 21 CFR § 172.510 (“Natural flavoring substances and natural substances used in conjunction with flavors”). Specifically, *Quercus robur* (listed as “Oak, English, wood”) and *Quercus alba* (“listed as Oak, white, chips”) are cleared for use as flavorings in alcoholic beverages. You have confirmed that your supplier’s oak powder is derived from *Quercus robur*. There is no specific use limitation in the regulation *per se*; however, this additive must be used according to current good manufacturing practices (cGMPs), that is, the minimum amount necessary to achieve the desired effect.³ Like tannic

³ 21 C.F.R. § 172.510a. Again, this duty falls on OSG’s customers.

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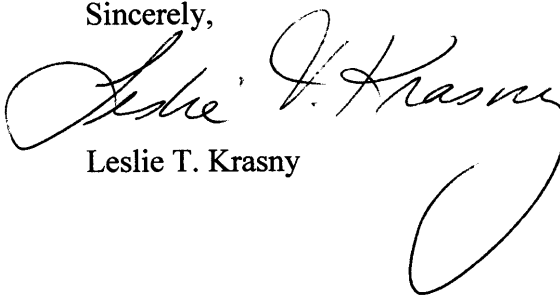
acid, TTB also clears the use of oak in the production of wine. Section 24.246 clears the use of “oak chips or particles, uncharred and untreated” to “smooth wine” and references the cGMP use-limitation in 21 CFR § 172.510. Thus, oak powder has a suitable status under both FDA and TTB regulations, and may be used as intended in the production of wine.

II. Conclusion

The components of Tru/Tan are approved for their intended use under FDA and TTB regulations, and may be marketed to wine producers. We trust that this letter is fully responsive to your request for a legal opinion.

If you have any further questions regarding this matter, or if we can assist you in any other way, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Leslie T. Krasny". The signature is fluid and cursive, with a large loop at the end.

Leslie T. Krasny