

BEFORE THE LIQUOR CONTROL COMMISSION  
OF THE STATE OF OREGON

In the Matter of the Certificate of Approval Held by:	)	<b>NOTICE OF PROPOSED</b>
	)	<b>CERTIFICATE REVOCATION</b>
	)	
Copper Cane, LLC	)	
Joseph Wagner, Manager	)	
Attn: Comp Services of America	)	
54476 Mariah Road	)	
Myrtle Point, OR 97458	)	
	)	
dba <b>COPPER CANE</b>	)	
1960 St. Helena Hwy	)	
Rutherford, CA 97573	)	

Pursuant to ORS 471.244(1) and 471.327(1), the Oregon Liquor Control Commission (OLCC or Commission) may revoke or suspend your Certificate of Approval (Certificate) or assess a civil penalty for a failure to abide by your agreement to faithfully comply with all laws of the State of Oregon pertaining to the traffic of malt beverages, cider, or wine. The Commission has jurisdiction pursuant to ORS 471.040(1) over any person who buys, sells, manufactures, imports, or transports any alcoholic liquor within the state and may exercise its regulatory authority as set forth in ORS 471.730(1).

As stated in 845-010-0910, the Commission sets rigorous labeling standards for wine produced or bottled in Oregon to ensure accurate presentation of the product and encourage Oregon's wine industry by enhancing the quality, image, and marketability of Oregon wine.

Commission staff proposes that the Commission revoke your Certificate for the following violations:

Violation Number One

Copper Cane, LLC (Copper Cane) or Copper Cane's employees, agents, servants, or representatives used labels that improperly claimed or implied an appellation of origin in an American Viticultural Area (AVA) within the State of Oregon on its Elouan Klamath's Kettle 2016 Pinot Noir bottles of wine, which are sold or available for purchase by Oregon consumers, when the back label made reference to "the Rogue Basin" and discussed the attributes of pinot noir from that region, despite the wine not meeting the requirements for claiming an appellation of origin in the Rogue Valley AVA because it was not finished in the State of Oregon. This is a violation of 27 CFR § 4.25(e)(3)(iv), incorporated by reference by OAR 845-010-0280.

### Violation Number Two

Copper Cane or Copper Cane's employees, agents, servants, or representatives used labels that improperly claimed or implied an appellation of origin in an AVA within the State of Oregon on its Willametter 2017 Pinot Noir bottles of wine, which are sold or available for purchase by Oregon consumers, when the back label made reference to "the Willamette region" and discussed the attributes of a pinot noir from that region, despite the wine not meeting the requirements for claiming an appellation of origin in the Willamette Valley AVA because it was not finished in the State of Oregon. This is a violation of 27 CFR § 4.25(e)(3)(iv), incorporated by reference by OAR 845-010-0280.

### Violation Number Three

Copper Cane or Copper Cane's employees, agents, servants, or representatives used labels that improperly claimed or implied an appellation of origin in an AVA within the State of Oregon on its Elouan Reserve Rogue Valley 2015 Pinot Noir bottles of wine, which are sold or available for purchase by Oregon consumers, when the front and back labels included multiple references to the Rogue Valley, despite the wine not meeting the requirements for claiming an appellation of origin in the Rogue Valley AVA because it was not finished in the State of Oregon. This is a violation of 27 CFR § 4.25(e)(3)(iv), incorporated by reference by OAR 845-010-0280.

### Violation Number Four

Copper Cane or Copper Cane's employees, agents, servants, or representatives engaged in advertising that contained false or misleading information when it utilized display cartons, shipping cartons, and/or wine labels that stated that the grapes were from the Oregon Coast or a coastal area in Oregon when there are no grape-producing areas on the Oregon Coast for the following wine sold or available for purchase by Oregon consumers:

- 1) Willametter 2017 Pinot Noir
- 2) Elouan 2017 Rosé
- 3) Elouan 2016 Rosé
- 4) Elouan 2016 Pinot Noir

This is a violation of 845-007-0020(1)(a).

### Violation Number Five

Copper Cane or Copper Cane's employees, agents, servants, or representatives improperly used a product name with specific geographical significance without a finding that the name would be recognized by consumers as a fanciful product name and not a representation as to origin for its product Willametter 2017 Pinot Noir, which is sold or available for purchase by Oregon consumers and references the Willamette

Valley AVA. This is a violation of 27 CFR § 4.39(i), incorporated by reference by OAR 845-010-0280.

#### Violation Number Six

Copper Cane or Copper Cane's employees, agents, servants, or representatives improperly claimed or implied an appellation of origin in an AVA within the State of Oregon on its bottle cartons or containers for its Elouan Pinot Noir when those bottle cartons or containers made reference to the Willamette Valley AVA, Umpqua Valley AVA, and Rogue Valley AVA, because wine cannot claim an appellation of origin from more than one AVA due to the requirement under 27 CFR § 4.25(e)(3)(ii) that 85 percent of the grapes used to make the wine have to be from an AVA to claim an appellation of origin from that AVA. A single bottle of wine cannot be made from grapes grown in three different AVAs, each making up 85% of the composition of the wine. This is a violation of 27 CFR § 4.38a and 27 CFR § 4.25(e)(3)(ii), incorporated by reference by OAR 845-010-0280.

#### Violation Number Seven

Copper Cane or Copper Cane's employees, agents, servants, or representatives improperly claimed or implied an appellation of origin in an AVA within the State of Oregon on its bottle cartons or containers for its Elouan Rosé when those bottle cartons or containers made reference to the Willamette Valley AVA, Umpqua Valley AVA, and Rogue Valley AVA, because wine cannot claim an appellation of origin from more than one AVA due to the requirement under 27 CFR § 4.25(e)(3)(ii) that 85 percent of the grapes used to make the wine have to be from an AVA to claim an appellation of origin from that AVA. A single bottle of wine cannot be made from grapes grown in three different AVAs, each making up 85% of the composition of the wine. This is a violation of 27 CFR § 4.38a and 27 CFR § 4.25(e)(3)(ii), incorporated by reference by OAR 845-010-0280.

### **DETERMINING THE PENALTY**

ORS 471.244 prohibits any person licensed by the Commission to resale any wine unless the wine manufacturer has first obtained a CERA from the Commission. The Commission shall grant a CERA only to a manufacturer who has entered into an agreement with the Commission to faithfully comply with all laws of the State of Oregon pertaining to traffic in wine. The Commission may, in its discretion, suspend or revoke the CERA if the holder of the certificate, or any officer, agent or employee of such holder, violates any term or provision of the agreement.

The Commission, in accordance with its broad regulatory authority in ORS 471.244 and ORS 471.730(1), determines an appropriate penalty in consideration of the totality of the circumstances surrounding the violations. Those circumstances in this matter include Copper Cane's repeated failure to comply with laws and rules, the intentionality

of Copper Cane's actions, the volume of the sales of unlawful products sold within the State of Oregon, and the number of violations committed by Copper Cane, which indicate a disregard for the law.

### **PROPOSED PENALTY**

Commission staff recommends that the Commission revoke your certificate.

If a certificate holder's interest in a certificate expires or is surrendered before a Final Order is issued, Commission staff recommends that under the authority of ORS 471.318, the Commission issue the certificate holder a Letter of Reprimand. This reprimand will become a permanent part of the certificate holder's Commission file and may be considered in any future application for any certificate or license by the certificate holder.

### **HEARINGS RIGHTS**

You have the right to a hearing to dispute the charges or the proposed revocation. If you want a hearing, please sign and date the enclosed Request for Hearing form and return it to the address listed on the form by **5:00 PM on December 20, 2018**. In order for your request for hearing to be timely, it must be postmarked on or before that date, if mailed, or received by that exact time and date, if delivered in person or by fax. **Per OAR 137-003-0550, corporations, partnerships, and limited liability companies must be represented at hearing by an attorney.** Legal aid organizations may be able to assist a party with limited financial resources.

Hearings are conducted by the Office of Administrative Hearings under the jurisdiction of the Oregon Liquor Control Commission, according to the Administrative Procedures Act (ORS Chapter 183), Attorney General's Rules for the Office of Administrative Hearings (OAR Chapter 137) and Commission Administrative Rules (OAR Chapter 845 Division 03).

If you do not request a hearing within the time specified above, you will have waived the right to a contested case hearing. If you do not submit a timely request for a hearing, if you request a hearing and then withdraw your request, or if your hearing request is later deemed invalid (for example, under OAR 137-003-0550(4)), a final order by default will be issued by the Commission Administrator. If you fail to appear at a scheduled hearing, a final order by default will be issued by either the Administrative Law Judge or the Commission Administrator, as authorized by OAR 845-003-0670. In each of these instances, the Commission will designate its file or files in this matter, including all materials you have submitted, as part or all of the record supporting its final order by default.

NOTICE TO ACTIVE DUTY SERVICEMEMBERS: Active duty servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information, contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-7500 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

Once a final order by default is issued, your Certificate will be revoked.

Dated this 20<sup>th</sup> day of November, 2018.



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Steven Marks  
Executive Director  
OREGON LIQUOR CONTROL COMMISSION

If you have any questions call 503-872-5131 or 800-452-6522 extension 25131.



OREGON LIQUOR CONTROL COMMISSION

REQUEST FOR HEARING

Copper Cane

Trade Name

Copper Cane, LLC

Name of Corporation/LLC

Additional licensee names

Joseph Wagner, Manager

Name of Attorney

Lawfirm

Attorney's Address

City

State

Zip

Attorney's Phone Number

Attorney's Fax Number

Attn: Comp Services of America

54476 Mariah Road

Address

Myrtle Point

City

OR

State

97458

Zip

1960 St. Helena Hwy, Rutherford, CA 94573

Premises Address (if applicable)

I request a hearing regarding the Commission's Notice of Proposed Certificate Revocation, Cancellation or Letter of Reprimand dated November 20, 2018.

In order to obtain a hearing, this form must be RECEIVED at the address or fax number below by 5:00 p.m. on December 20, 2018. In order for your request for hearing to be timely, it must be postmarked on or before that date, if mailed, or received by that exact time and date, if delivered in person or by fax.

Mail or fax your request to: OLCC
Administrative Policy and Process Division
P.O. Box 22297
Milwaukie, OR 97269-2297
FAX: 503-872-5110

NOTICE: Per OAR137-003-0550, corporations, partnerships, and limited liability companies must be represented at hearing by an attorney. A non-attorney licensee may submit a request for hearing, but an attorney must ratify the hearing request, in writing, within 28 days of the date the hearing request was received by the OLCC to avoid a Final Order by Default. A non-attorney licensee may also negotiate a settlement with the Administrative Policy and Process Division, but this must be completed before the hearing request is due, or, if a hearing has been requested by a non-attorney licensee, then before the hearing request ratification deadline.

Certain charging documents require filing a written answer in addition to this hearing form. Please consult OAR 845-003-0220(2) and -0270(2), (3), (4), (5).

Licensee's or Attorney's Signature

Phone Number

Print Name

Email Address

## CERTIFICATE OF SERVICE

I certify that on November 20, 2018, I served the attached Notice of Proposed Certificate Revocation by certified mail, in a sealed envelope, with first class postage prepaid and by regular mail, in a sealed envelope, with first class postage prepaid, addressed as follows:

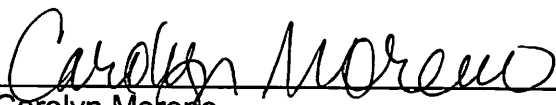
Copper Cane, LLC  
Joseph Wagner, Manager  
Attn: Comp Services of America  
54476 Mariah Road  
Myrtle Point, OR 97458

On the same date, I also served Copper Cane LLC's registered agent by regular mail, in a sealed envelope, with first class postage prepaid, addressed as follows:

Copper Cane, LLC  
c/o Shawn Simons, **Registered Agent**  
18631 Kristi Way  
Lake Oswego, OR 97035

On the same date I also served a courtesy copy by regular mail, in a sealed envelope, with first class postage prepaid, addressed as follows:

Copper Cane, LLC  
1960 St Helena Hwy  
Rutherford, CA 94573



Carolyn Moreno  
Compliance Specialist  
Administrative Policy & Process Division  
OREGON LIQUOR CONTROL COMMISSION