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American Association of Wine Economists

## Vienna 2019 Abstract Submission

**Title**
Do Wine Consumers Need Regulatory Protection from Fraudulent Marketing by Sellers in the “Flash” Market? Follow-up After Settlement of a Lawsuit Alleging Fraudulent Marketing

**I want to submit an abstract for:**
Conference Presentation

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**Keywords**
flash sales, asymmetric information, fraud, market failure, regulation

**Research Question**
New Jersey “flash” seller practices analyzed in 2011 AAWE paper was later sued for fraud. Case settled out of court. Did the settlement have any measurable effect on retailer behavior?

**Methods**
Regression analysis using methods first used in the paper delivered at AAWE 2011, Bolzano-Bozen. Primary data from New Jersey “flash” seller email offers.

**Results**
To be determined. Data analysis is underway.

**Abstract**
The original U.S. “flash” sale was the Blue Light Special™ offered by retailer Kmart from 1965-91. This marketing strategy consisted of an audible within-store announcement of a very short-term discount on a selected item, accompanied by a flashing blue light mounted on the display. It has been reported that Kmart shoppers avidly participated in Blue Light specials.

The internet has dramatically expanded technological options for flash-sale marketing, and a number of wine vendors have adopted the strategy in whole or in part. Flash sales have the potential to extract supernormal profits because they take advantage of informational asymmetries about price and quality, and wine is a product in which informational asymmetries often are substantial.

Data from one New Jersey-based wine vendor with an exclusively flash sale marketing strategy were examined to determine the extent to which supernormal profits were being extracted through the provision of disinformation about price and/or misinformation about quality. The study obtained data on offering prices and ratings reports from over 2,500 flash sales from 5 July 2009 through 30 November 2009. These data were supplemented by release price and ratings data from the three main ratings authorities: Wine Spectator, Wine Advocate (Robert Parker), and International Wine Cellar (Stephen Tanzer); and producers’ web sites. Complete data were obtained for 260 offers. The analysis controlled for several confounders for which data were generally available. Results were presented at the 2011 AAWE Conference in Bolzano-Bozen, Italy.

Disinformation about price was defined as representing a baseline price before flash-sale discount that was higher than the release price and was quantified as the difference in price per 750 ml bottle between the advertised and release price reported by a major rater or the winery. Regression analysis revealed that for every dollar that the vendor overstated “yesterday’s best web price” (obtained from Wine-Searcher.com), it captured an estimated $0.72. For every dollar by which the vendor overstated the release price, the vendor captured an additional $0.15 (both estimates statistically significant at $p < .001$).

Misinformation about quality was defined as selectively reporting ratings data from the three dominant ratings authorities (e.g., reporting the highest rating but not the others). It was quantified as the difference between the reported rating (in points on a 100-point score) and the average rating across the three dominant raters. For every one-point difference between the reported rating and the average rating, the vendor extracted almost $3 (significant at $p < .001$).

In March 2016, the vendor was sued alleging that it had engaged in various deceptive marketing practices, including providing disinformation about original prices and the true magnitude of the offered discount (Cannon, et al. v. Ashcroft, et al., USDC NJ) but not including misinformation about quality. Plaintiffs sought and obtained class certification. On or about 2 November 2016, the defendant vendor initiated a change in the presentation of price information, replacing “original price” with “comparable price,” which it defined as defined as ”the price at which the same or a similar wine with the same primary grape varietal and appellation or sub-appellation has been offered for sale to consumers directly by a producing winery or through retailers").

A proposed settlement was reached in June 2017 in which the vendor would have provided credits for future purchases. Proposed credits ranged from $1.75 (for listed bottles sold for $12.99 or less) to $0.75 (for listed bottles sold for $20.00 or more). The motive for the schedule is not known, but these values are consistent with the hypothesis that informational asymmetries are greatest at the low end of the market.

The total potential value of the proposed settlement was reported to the court as $10.8 million. Class members would be able to use credits at the rate of $2.00 per bottle on “redemption wines.” In addition, the proposed agreement would have awarded $1.8 million in attorney’s fees and costs.

In April 2018, several objectors succeeded in scuttling the proposed settlement on the ground that it enriched plaintiffs’ attorneys while offering trivial benefits to class members putatively harmed by the defendant vendor’s conduct. The matter was privately settled in August 2018 with undisclosed terms and the civil action was voluntarily terminated with prejudice. There is no public record of settlement terms. (Full disclosure: The author received $78.40 in class credits. The manner in which these credits were calculated was not disclosed, and credits were paid at the rate of about $2 per bottle.)

The case offers a natural experiment with respect to whether the vendor continues to profit from disinformation and misinformation, as documented in the 2011 analysis. It is assumed that the terms of the private settlement match the terms of the proposed but quashed settlement. It is further assumed that the purpose of settling privately was to deny the objectors any further role in the case.

For AAWE 2019, the regression models used in 2011 will be updated and applied to the original sales data and sales data subsequent to the class action settlement. In addition, the updated analysis will look for changes that may have occurred at various points during the litigation period. The null hypothesis is that vendor behavior has not changed.

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