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FW: Duncan Liquor Law Letter - July 2015

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Tue, Jul 28, 2015 at 10:11 AM

To: Eric Herman <emherman@sebago.net>



**Duncan's Liquor Law Letter
July, 2015**

News for clients regarding the Kansas alcoholic beverage market

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YOU DEEM
APPROPRIATE**

July, 2015

**New proposal would
redefine who gets
overtime**

Source: NRA
June 30, 2015

The Labor Department today released a 295-page proposed revision to federal overtime laws that greatly increases the salary level that dictates which employees

"Lawyers can look up jurors on social media but can't connect with them, ABA ethics opinion says"

New York bar section releases social media guidelines for lawyers
By Martha Neil
Jun 17, 2015, 03:15 pm CDT

Corrected: They're suggestions, rather than requirements. But new legal ethics guidelines developed by the Commercial and Federal Litigation Section of the New York State Bar Association say lawyers need to develop appropriate social media skills and

must be paid overtime.

Under the proposed revisions, the threshold would increase from the current \$23,660, or \$455 a week, to \$50,440, or \$970 a week. This means most salaried employees earning below \$50,440 a year would be eligible for overtime pay if they work more than 40 hours in a week. The DOL has proposed automatically adjusting the threshold after that, according to inflation or wage growth. About 5 million individuals would become eligible for overtime pay under the proposed revisions, according to the White House.

"While we are still reviewing the Department of Labor's proposed overtime regulations, at first sign, it seems as if these proposed rules have the potential to radically change industry standards and negatively impact our workforce," said Angelo Amador, NRA senior vice president of labor and workforce policy and regulatory counsel. "Supporters of these regulations say they want to increase Americans' take-home pay, but these sweeping changes to the rules could mean anything but."

NRA research shows that more than 80 percent of restaurant owners and 97 percent of restaurant managers start their careers in non-managerial positions and move up, often with performance-based incentives.

President Obama ordered the DOL to make the revisions more than a year ago and has made it one of his priorities. The revisions are expected to be published in the Federal Register within the next

recommend appropriate social media practices.

"A lawyer cannot be competent absent a working knowledge of the benefits and risks associated with the use of social media," state the guidelines. The report is informational in nature, and does not call for specific action from the state bar's house of delegates.

The guidelines in the report encourage lawyers to keep copies of communications with clients on social media, and say lawyers should consider themselves responsible for correcting inaccurate or misleading information posted by others on the attorneys' online biographies, the New York Law Journal (sub. req.) reports.

The guidelines also give a green light to lawyers to do online research on public portions of social media profiles.

"The competence is put up front because it has been lurking that lawyers have to know, when they are using social media, the pros and the cons, the pitfalls and the benefits," Mark Berman told the New York Law Journal. A partner of Ganfer & Shore, he served as co-chair of the panel that developed the guidelines.

"And if you don't know," Berman said, "that's when you get into trouble with your clients and with the disciplinary committees."

FIND THE GUIDELINES HERE:

<http://www.nysba.org/workarea/DownloadAsset.aspx?id=47547>

Supreme Court boosts privacy rights in hotel case

By JOSH GERSTEIN

6/22/15 11:27 AM EDT

A sharply-divided Supreme Court boosted privacy rights Monday by striking down as unconstitutional a Los Angeles city ordinance requiring hotel operators to show a list of registered guests to the police on demand.

In a 5-4 decision, the court held that the guest-registry law violated the Fourth Amendment's protection against unreasonable searches because the legislation gave hotel managers no chance to seek a ruling from a judge or magistrate before complying with a police request.

Story Continued Below

few days, and a 60-day comment period will follow. The White House indicated that final regulations are expected in 2016. The NRA will be submitting comments.

Wineries, craft breweries experience growth in Kansas

Associated Press
July 5, 2015

TOPEKA - The thirst for Kansas-produced alcoholic beverages is growing, with wineries multiplying and the state's largest craft beer brewer moving into a larger facility.

"Both the wineries and the breweries are exploding," said Scott Kohl, director of viticulture and oenology, the sciences of growing grapes and making wine, at Highland Community College.

He said the number of wineries in Kansas has grown from about a dozen in 2010 to about 35 today, The Topeka Capital-Journal reported.

In Manhattan, Tallgrass Brewery experienced a revenue boost of about 50 percent after moving into a 60,000-square-foot call center. Tallgrass founder Jeff Gill said the brewery is producing more than twice as much as it did in its former facility and eventually will produce even more. Much of Tallgrass' beer is distributed in other states with more developed markets for craft beer, but Gill said in-state interest is growing.

"We would expect quite a lot of growth in the Kansas craft beer market," he said.

Kohl attributed the growth to several factors: immigrants

The court's liberals joined with Justice Anthony Kennedy to control the outcome of the case. All the court's conservative justices aside from Kennedy dissented.

Writing for the majority, Justice Sonia Sotomayor said the guest-registry measure opened hotel and motel owners and their guests to potentially limitless harassment by the authorities.

"A hotel owner who refuses to give an officer access to his or her registry can be arrested on the spot," Sotomayor noted. "Even if a hotel has been searched 10 times a day, every day, for three months, without any violation being found, the operator can only refuse to comply with an officer's demand to turnover the registry at his or her own peril."

Sotomayor said it was unlikely that insisting on a subpoena or warrant in most cases would disrupt logical police investigations.

"The City has cited no evidence suggesting that without an ordinance authorizing on-demand searches, hotel operators would regularly refuse to cooperate with the police," she wrote.

Justice Antonin Scalia, who is sometimes a hawk for Fourth Amendment rights on the court, took a notably different tack Monday.

"The law is constitutional in most, if not all, of its applications," Scalia wrote in a dissent joined by Chief Justice John Roberts and Justice Clarence Thomas that called "minor" the intrusion on hotel operations. Scalia said hotels and motels fit the definition of closely-regulated businesses where the courts have traditionally allowed authorities to enter and examine business records without probable cause or a warrant.

"Reflecting the unique public role of motels and their commercial forebears, governments have long subjected these businesses to unique public duties, and have established inspection regimes to ensure compliance," Scalia wrote. He noted that, under current law in effect in Los Angeles, "hotels must change bed linens between guests...and they must offer guests the option not to have towels and linens laundered daily."

Scalia dismissed Sotomayor's suggestion that police get a subpoena and allow motel owners to challenge it. "This proposal is equal parts 1984 and Alice in Wonderland," he wrote, insisting that the requirement the court's majority insisted upon would disrupt investigations into migrant smuggling and child sex trafficking.

Sotomayor noted that police would still be authorized to inspect or seize a guest registry without a subpoena or warrant in such circumstances because of exceptions the courts have applied for "exigent circumstances."

More than 100 cities and counties have a registry-inspection requirement similar to the one in Los Angeles, according to Scalia's opinion. The court's decision Monday does not disturb any city's right to require hotel proprietors to maintain a guest register - something Los Angeles forces such businesses to maintain for 90 days. The ruling only affects how and when police can access those records.

Justices Boost Corporate Data Rights In Hotel Records Case

Source: Law360 By Emily Field June 22, 2015

who brought their traditions of making beer or wine (and continued to practice them after the state went dry), changes in liquor laws and the local foods movement. Many of today's wine- and beer-makers had grandparents who made their own during Prohibition, and kept it up as a hobby even after the state allowed alcohol sales again, he said.

"There's an awful lot of folks that have been home brewers and home winemakers for years," he said. "Prior to Prohibition, Kansas and Missouri were the top two wine-producing states." The local foods movement also drove interest around the region, and both Oklahoma and Missouri saw their wine industries grow, with Missouri reaching close to 150 wineries. Kohl said he thinks that illustrates that Kansas hasn't yet saturated its market for local beverages.

"I think there's still some room for growth," he said. David Bahre, owner of Wheat State Distilling in Wichita, said he also thinks there is room for craft spirits to grow, though distilleries face more legal hurdles than wineries and breweries do in Kansas. Microdistilleries weren't legalized until 2012, he said, and they have to buy an insurance bond for their tax obligations and go through a licensing process that takes at least a year, before even beginning the process of distilling. Some liquors then have to sit for multiple years to develop the flavor before the distiller can start bringing in revenue.

The U.S. Supreme Court on Monday empowered companies to protect customer records from government searches, ruling that only a small number of industries intrinsically dangerous to the public are subject to a warrantless examination of their business records.

In a 5-4 decision written by Justice Sonia Sotomayor, the high court upheld a Ninth Circuit decision that struck down a Los Angeles law that enabled law enforcement officers to drop in unannounced at motels and hotels to inspect guest registries at any time, without a warrant or a subpoena.

The city of Los Angeles argued that the Ninth Circuit decision had reached totally different conclusions than a divided 9-5 decision by the Sixth Circuit over whether that type of ordinance could be challenged on its face under the Fourth Amendment. However, the high court's ruling made it clear that facial challenges to the Fourth Amendment aren't categorically barred or otherwise disfavored.

Monday's ruling means that businesses will be better able to protect their customers' information from government searches, Eric Miller, partner at Perkins Coie said. The Supreme Court held that a hotel owner must have the opportunity for judicial review of an officer's demand to search the registry before facing penalties for not complying. Under the Los Angeles law, hotel owners could have been arrested on the spot if they refused a search.

"That part of the decision closes what could have been a significant loophole allowing searches of business records," Miller said.

Municipalities in more than 40 states have similar laws and eight states have their own laws authorizing inspections of hotel registers, according to court documents.

Miller noted that, had the Supreme Court upheld Los Angeles' hotel registry ordinance, cities, states, "even the federal government" could have enacted similar laws for other industries "under the reasoning that the government offered."

The ruling will allow for more frequent and broader challenges - including those on privacy grounds - to laws seen as unconstitutional, attorneys said.

"The court very emphatically said just as in certain other contexts, such as the First Amendment, one can challenge an ordinance on its face," said Harold Krent, a dean and law professor at the Chicago-Kent College of Law at the Illinois Institute of Technology, noting that few courts have allowed these facial challenges against an ordinance or a practice.

The high court has sided with privacy advocates over law enforcement in recent years, with last June's ruling that police officers can't search suspects' cell phones without a warrant and a 2012 decision barring law enforcement from attaching a GPS device to a suspect's car without a warrant, although the appeal brought by the city of Los Angeles didn't involve personal privacy interests or new technology.

"Building a whiskey brand is a decades-long commitment," he said.

The public has become more interested in small-scale, craft producers for many of the things they eat and drink, Bahre said. While there aren't nearly as many small distilleries as breweries or wineries, they are proliferating in recent years, he said.

"The same thing that happened in beer, where people turned to craft, is happening in spirits," he said.

Lawrence businessman faces federal indictment in connection with operation of local liquor store 6.24.15

...

A Lawrence businessman was indicted in federal court on one count on conspiracy to commit offenses against the United States, three counts of mail fraud and one count of shielding an undocumented immigrant from government detection, according to a federal indictment unsealed Wednesday.

Nitin B. Patel, who co-owns Roy's Wines & Spirits, 721 Wakarusa Drive, is accused of scheming with business partner Satishkuma V. Patel, of McPherson, who allegedly immigrated illegally to the U.S. from India, "to operate a retail liquor store even though not legally qualified to do so,"

Despite the factual differences of the cases, attorneys saw Monday's decision as part of the court's growing awareness of the public's privacy concerns and government violations of the Fourth Amendment.

"The concept is the same, I think that to the extent that people are concerned about government intrusion, this is another signal that the Supreme Court is receptive to those concerns," said Grant Fondo, a former federal prosecutor and partner in Goodwin Procter's privacy and data security practice.

The court's decision was divided along ideological lines, with the majority shooting down the city's contention - shared by Justice Antonin Scalia in his dissent - that the hotel industry is a "closely regulated industry" for which warrantless searches are permissible under that more relaxed standard.

In the majority opinion, Sotomayor noted that only four industries - car junkyards, liquor sales, gun sales and mining- have been identified by the high court as being so regulated by government that there's no reasonable expectation of privacy for them.

While hotels and motels can attract criminal activity, from drug dealers to prostitution and human trafficking, Sotomayor wrote that hotels aren't intrinsically dangerous and that nothing inherent in the hotel industry poses a clear and significant risk to public welfare.

Scalia blasted that reasoning in his dissent, saying that lower courts, who don't have the luxury of picking and choosing the cases they hear, have identified more industries as closely regulated, such as massage parlors and jewelers.

The justice also derided the majority's proposal that the police could guard a hotel registry to prevent it from being tampered with pending judicial review of a request as "equal parts 1984 and Alice in Wonderland."

"The five-justice majority and four dissenting justices posit very different views of both the Fourth Amendment and the law in question: where the majority sees the opportunity for the city to inspect hotel records without required precompliance review as an opening for police abuse, the dissent sees an unnecessary added layer of review that would thwart a much needed tool for criminal investigations of prostitution and trafficking," M.C. Sungaila, partner in Haynes and Boone LLP's appellate practice, noted.

However, attorneys expressed doubt that the decision will substantially hamper law enforcement's ability to collar criminals, noting that the court has carved out exceptions for emergency situations.

"It's not like law enforcement is suddenly going to be handicapped in their activities," said Peter Zeidenberg, a former federal prosecutor and partner in Arent Fox's white collar and investigations practice, noting that hotel owners would likely want to stay on good terms with local police and cooperate anyway.

Anything that makes law enforcement get a warrant is "essentially

according to the indictment. Nitin Patel co-owns Maruti Enterprises, LLC, with Satishkuma Patel, according to the indictment. Maruti Enterprises, which was formed in 2008, operates the Lawrence liquor store. Nitin Patel, a United States citizen, is accused of knowingly providing false information on a liquor license renewal application through the Kansas Department of Revenue's Alcohol Beverage Control Division. U.S. Attorney Barry Grissom alleges that Nitin Patel knew Satishkuma Patel was not a U.S. citizen but said otherwise in government documents.

In Kansas, foreign nationals may not obtain retail liquor licenses, and recent immigrants must have been a U.S. citizen for at least 10 years before obtaining one, according to Grissom. Despite the legal requirements, Satishkuma allegedly maintained 30 percent of Roy's Wines & Spirits "at least through December 2014," the indictment said.

The two co-owners allegedly "notified the Kansas ABC Licensing Unit in writing" in a May 2010 filing that Nitin Patel owned 70 percent of the company, while Satishkuma Patel owned 30 percent.

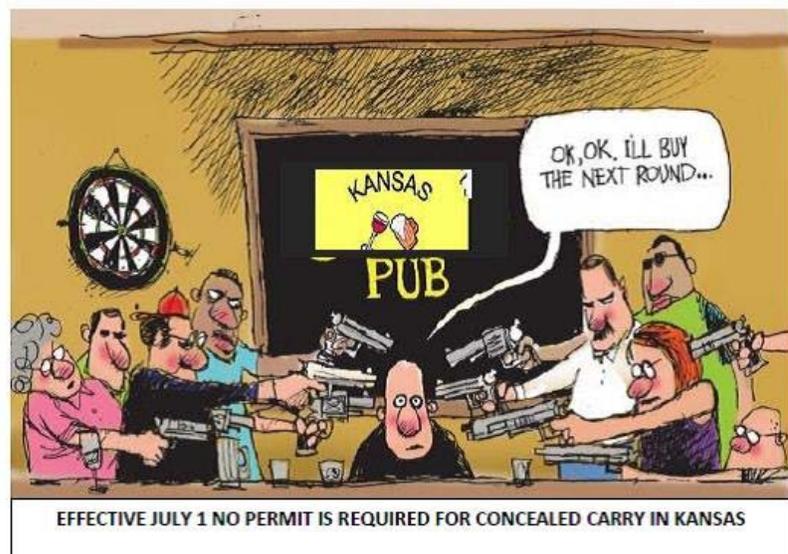
In that filing, the Patels allegedly indicated that both co-owners were U.S. citizens for at least 10 years, but in fact, Satishkuma had never been a U.S. citizen at all. The filing was dated and submitted to the state licensing agency on the 10th anniversary of Nitin Patel's naturalization date, according to the affidavit. The business had first opened in 2008. Satishkuma Patel is charged with 26 counts in connection with not only the Lawrence liquor store operation, but also illegal immigration and falsifying government documents, the illegal operation of a McPherson convenience store and

harder, but not prohibitive," Fondo agreed.

The motel owners are represented by Frank Alan Weiser.

The city of Los Angeles is represented by City Attorney Michael N. Feuer and James P. Clark, Thomas H. Peters and Gregory P. Orland of the Los Angeles city attorney's office.

The case is City of Los Angeles v. Naranjibhai Patel et al., case number 13-1175, in the U.S. Supreme Court.



A-B reaches settlement in Beck's beer label lawsuit

Source: Post Dispatch
By Lisa Brown
June 23, 2015

Anheuser-Busch has reached a settlement in a lawsuit that alleged the brewer misled customers to believe Beck's beer sold in the United States is brewed in Germany.

employment and harboring fellow undocumented immigrants. If convicted of the charges, Nitin Patel could face up to 25 years in prison and forfeiture of profits made through the illegal operation of Roy's Wine & Spirits.

Satishkuma also faces decades in federal prison if convicted of all charges, plus forfeiture of his profits from both the McPherson and Lawrence businesses.

Roy's Wine & Spirits remained open Wednesday, despite being closed Tuesday evening as the state Alcoholic Beverage Control and other law enforcement agencies were on site, according to Douglas County dispatch and witnesses at the scene. It was unclear what the agencies were doing at the business Tuesday evening.

The Journal-World is awaiting comment from Alcoholic Beverage Control.

TABC investigation finds cheap booze served as top-shelf at bars

Posted: Jul 10, 2015 12:18 PM CDT
Updated: Jul 10, 2015 12:18 PM CDT

By: Mark Norris

CONNECT

A state investigation found the top-shelf drinks you are ordering could actually be

Francisco Rene Marty, Seth Goldman, and Fernando Marquet sued A-B in federal court in Florida in October 2013, alleging Beck's advertising and packaging misled customers to pay more for beer they incorrectly believed was an import. The lawsuit contended that Beck's produced in St. Louis used Missouri water that differs from water from German rivers. Belgium-based A-B InBev's U.S. headquarters is in St. Louis.

While the lawsuit was pending, A-B changed Beck's beer labels and packaging brewed in the U.S. to prominently say "Brewed in the U.S.A." or "Product of U.S.A."

A federal judge Tuesday gave preliminary approval for a proposed class action settlement that includes a refund for Beck's customers. A final approval hearing is set for Oct. 20.

As part of the settlement, A-B denied any wrongdoing but agreed to issue refunds to customers who bought Beck's beer brewed in the U.S. beginning May 1, 2011.

Those who submit receipts from Beck's beer purchases will be able to receive a refund of 50 cents per six-pack, up to a maximum of \$50 per household. Reimbursement for those without receipts is capped at \$12. Claims can be submitted via a website that will be created, according to court documents.

Each of the three plaintiffs will receive up to \$5,000 for representing the class. Additionally, A-B agreed to pay attorney's fees in the case up to \$3.5 million.

"We're pleased that the plaintiffs were able to resolve this dispute and we look forward to the final approval hearing and getting these benefits to the class of Beck's beer consumers," said Tucker Ronzetti, an attorney with Miami law firm Kozyak Tropin & Throckmorton who represents the customers who sued A-B.

A-B says it reached a compromise in the labeling case.

"We believe our labeling, packaging and marketing of Beck's have always been truthful, transparent and in compliance with all legal requirements," Jorn Socquet, vice president of marketing at A-B, said in a press release. "A-B brews Beck's to the highest-quality standards, and is proud to employ some of the finest American brewmasters to produce Beck's for the U.S. market."

Ronzetti's law firm also represented plaintiffs in another recent lawsuit that alleged A-B deceived consumers by not clearly stating on its packaging that Kirin Ichiban and Kirin Light Japanese-style pilsners sold in the U.S. were brewed domestically instead of Japan. That class action lawsuit also resulted in a settlement that included a refund for customers.

made with cheaper liquor. A Texas Alcoholic Beverage Commission sting operation found some bars licensed to serve alcohol replaced high-end liquor with the cheaper off-brands usually used for well drinks. Operation Bottoms Up found 21 out of 68 establishments sampled were caught using the cheaper liquor, including five in North Texas. Violators could be fined, or lose their liquor license. TABC officials were able to use new technology to test the validity of the liquor being served.

TOP 20 WINE FAUX PAS

- Putting red wine in the fridge
- Using a corkscrew on a screwcap
- Drinking from the bottle
- Asking for ice in your wine
- Serving in a wine glass with old lipstick stains
- Chipped glasses
- Trying to unscrew a cork
- Taking a cheap bottle to a party
- Gulping wine rather than sipping it
- Not bringing a bottle but drinking everyone else's
- Drinking it out of a tumbler
- Pouring yourself a glass before pouring others on the table
- Asking for a slice of lemon
- Shaking the bottle before serving
- Asking the waiter to pour you more when they were intending you to taste it
- Putting lemonade with red wine
- Complaining the red wine isn't cold
- Pronouncing the 't' in Pinot Noir



Anheuser-Busch Inks Uncapped Settlement In False Ad Suit

Source: Law360 By Jody Godoy June 19, 2015

Anheuser-Busch LLC agreed to an uncapped settlement to partially refund Beck's beer buyers and change the beer's labels in a proposal filed in Florida federal court on Thursday asking the court to finish off a putative class action claiming the brewer misled consumers into thinking the suds were a German import.

The settlement allows those who bought Beck's Pilsner, Dark, Light and Oktoberfest beers since May 2011 to claim refunds depending on the size of the pack they bought, ranging from .10 per individual bottle or can to \$1.75 for a 20-pack of bottles. Class members will have four months from settlement notification to claim up to \$50 per household for purchases with receipts and \$12 for those without. The company also agreed to include the words "Brewed in USA" or "product of USA" on the beer's packaging for five years.

The settlement reached via mediation allows four firms representing the plaintiffs to ask the court to award \$3.5 million in attorneys' fees, and lets the three named plaintiffs apply for \$5,000 each for their contribution to the class.

"We are pleased that the parties were able to resolve this dispute and achieve its benefits for Beck's beer consumers throughout the U.S.," class counsel Tucker Ronzetti of Kozyak Tropin & Throckmorton PA said in a statement on the settlement.

The suit was originally filed in October 2013. In a September amended complaint, the plaintiffs said that Beck's had been brewed in Germany with European ingredients for 225 years. In 2002, the brand was bought

Taking a bottle home with you after it wasn't opened at the host's party
Pronouncing the 't' in Merlot



Effective July 1 self service wine machines are approved for use in drinking establishments.

Do airlines limit how many drinks I can have on a flight?

By Michael Gebicki

June 22, 2015, 5:24 p.m.

Scandinavian carrier SAS recently attracted attention when it imposed a three-drinks limit on passengers on flights within Europe.

This follows a move by the International Air Transport Association last year which called for action to reduce the number of unruly passengers who disrupt flights through excessive alcohol consumption, but as a general rule it seems cabin

by a Belgian company and became a part of Anheuser-Busch InBev SA/NV after a series of sales and mergers, according to the complaint.

The plaintiffs allege the brewer started producing the beer in the U.S. in 2012 to save \$9 million annually in shipping costs. Even after beginning to produce the beer in St. Louis, Missouri, Anheuser-Busch sold the beer in packages that said "Originated in Germany" and "German Quality" to fetch premium import prices, the plaintiffs claim.

The plaintiffs claimed that the only change to the packaging indicating the beer is brewed stateside is fine print on the labels, which can't be seen until after purchase in most cases. The proposed settlement requires Anheuser-Busch to add "Brewed in USA" or "product of USA" on the front and back of packs containing the bottles or cans.

The company moved to dismiss the suit in April 2014, arguing that the plaintiffs' claim that they paid an import price for a domestic beer should have been directed at retailers who actually sold the beer.

Anheuser-Busch also argued that the plaintiffs weren't entitled to an injunction for corrective advertising because they claimed to have stopped buying Beck's after learning it was brewed in Missouri, and therefore can't be harmed in the future.

In September, Judge O'Sullivan agreed to dismiss the plaintiffs' claim for an injunction, but found that they'd sufficiently pled their claims that they overpaid for the beer, allowing them to proceed with their claims alleging unjust enrichment and violations of consumer protection statutes in Florida, New York and California.

The Beck's case is very similar to another class action against Anheuser-Busch - litigated by the same plaintiffs counsel - that claimed the brewer misled consumers into thinking that Kirin beer is still produced in Japan, when it's now brewed in California and Virginia.

Anheuser-Busch agreed to alter its labels as part of a settlement in that case in January, and also agreed to pay up to \$50 per household to compensate drinkers who thought the beer was imported.

Counsel and representatives from Anheuser-Busch did not respond to requests for comment.

The plaintiffs are represented by Lance A. Harke and Howard Mitchell Bushman of Harke Clasby & Bushman LLP, T. Tucker Ronzetti, Tal J. Lifshitz and Adam M. Moskowitz of Kozyak Tropin & Throckmorton PA, John Campbell of Campbell Law LLC and Robert William Rodriguez of Robert W. Rodriguez PA.

Anheuser-Busch is represented by Edward M. Crane, Brandon R. Keel and David R. Pehlke of Skadden Arps Slate Meagher & Flom LLP and by Stanley H. Wakshlag of Kenny Nachwalter PA.

The case is Marty et al. v. Anheuser-Busch Cos. LLC, case number 1:13-cv-23656, in the U.S. District Court for the Southern District of Florida.

crew will continue to serve alcohol to passengers who request it.

On a Qantas flight from Sydney to Darwin in mid-2014, the man in the next seat requested and was served five airline size bottles of white wine. That's five bottles of 187ml each, for a total of 935ml, more than nine standard drinks. The man showed no ill effects, was not noisy or in any noticeable way affected by alcohol. There was no logical reason to refuse his request but I was surprised that cabin crew were prepared to serve drinks with no questions asked.

The problem is, cabin crew will rarely know that a passenger has had too much to drink until they've had that one too many.

By which time an inebriated passenger could be abusive, threatening, vomiting and possibly violent.

In the worst cases, drunk passengers have lit up cigarettes in aircraft toilets, fought with other passengers and aircrew and caused aircraft to make emergency landings.

See your ad here

A cut-off limit would be unfair to those who can hold their liquor but if it makes for safer skies it's an idea worth considering.

Alleged Booze Knockoff 'Kahfua' Cut Off By Judge

Source: Law 360

By Kevin Penton

The Brooklyn-based importers of Kahfua - a new coffee liqueur that Pernod Ricard unit Absolut Co. claims bears too much of a resemblance to its popular coffee liqueur, Kahlua - agreed on Tuesday to temporarily stop using the alleged knockoff label.

Happy Hearts Wine LLC consented to the preliminary injunction signed by U.S. District Judge Edward R. Korman as it responds to a suit that seeks at least \$2 million in statutory damages for its alleged violations of the Lanham Act through claims of infringement, dilution, unfair competition and trademark counterfeiting.

Happy Hearts also consented to not destroy any documents, records or products that relate to Kahfua and to prepare and file a report with the New York district court within 30 days that details how it has complied, according to the order.

Happy Hearts caught Absolut's attention when it filed a Certificate of Label Approval in February, a process required by the federal Alcohol and Tobacco Tax and Trade Bureau for every new alcohol label. Since it noticed the filing, Absolut says it's sent multiple cease-and-desists, to no avail.

Kahfua's label contains fonts, colors and design that is similar to that of Kahlua, Absolut alleges.

"There can be no credible argument that defendant's copying was not intended to capitalize on the fame and equity of [Absolut's] Kahlua brand, and to trick consumers into purchasing defendant's inferior competing product," the company wrote in its injunction request.

On the bottles, Kahlua is identified as a "rum and coffee liqueur," while Kahfua is identified as a "coffee espresso liqueur."

Trademarks and COLAs are both big parts of the booze industry, and

Did This Federal Study Just Imply That Marijuana Is Safer Than Alcohol?

Is marijuana really safer than alcohol when you're behind the wheel? That's the question three federal agencies attempted to answer in this study.

Source: The Motley Fool
July 5th

Not many issues can fully harness the attention of the American public at the moment, but marijuana might just be one of them.

In just two decades the United States has gone from having zero states in which marijuana was legal for medical purposes and recreational use, to 23 states (as well as Washington, D.C.) passing legislation for medical marijuana and four states (plus Washington, D.C.) enacting laws to allow the drug to be sold for adult recreational use. This is truly remarkable considering that the federal government and the Drug Enforcement Administration still hold marijuana to be a Schedule 1 drug. By definition, Schedule 1 drugs have no medically defined benefit and are considered illicit.

This bifurcation between the federal government and 23 states -- and even between jurisdictions within states that have legalized marijuana across the board, such as Colorado -- have made for a dicey clash between supporters and opponents of marijuana's expansion.

Proponents and opponents square off

Supporters of marijuana see a twofold benefit for legalization. First, it represents freedom for many individuals. More importantly, though, it could give terminally ill and chronic disease patients

Absolut's lawsuit isn't the first time COLAs have played a major role in a trademark dispute.

A few years back, North Carolina's WoodMill Winery found itself in a dispute with rival Tassel Ridge Winery over which company had trademark priority to use the phrase "Red, White & Blue" for selling table wine.

WoodMill had begun promoting its wine several months earlier, but in October 2013, the federal judge overseeing the case ended up ruling for Tassel Ridge, anyway, because WoodMill didn't apply for its COLA until after Tassel Ridge. The court said any use of the name before the regulatory requirements had been completed didn't count as "lawful commercial use" for priority purposes.

Counsel for Happy Hearts and for Absolut could not be reached Tuesday for comment. Absolut is represented by Monica Susan Asher, Robert Zelnick and Mary D. Hallerman of McDermott Will & Emery. Happy Hearts is represented by Max Moskowitz and Alan Federbush of Ostrolenk Faber LLP.

The case is The Absolut Company Aktiebolag v. Happy Hearts Wine, LLC, case number 1:15-cv-03224, in the U.S. District Court for the Eastern District of New York.

ALLIED LOMAR, INC. Plaintiff, vs. DIAGEO NORTH AMERICA, INC.; and Defendants. (Excerpt)

Source: Law 360
July 3, 2015

COMPLAINT FOR FEDERAL TRADEMARK INFRINGEMENT [15 U.S.C., § 1114 et seq., AND 15 U.S.C. § 1125(a)] AND DECLARATORY RELIEF

DEMAND FOR JURY TRIAL

Plaintiff ALLIED LOMAR, INC. ("Plaintiff"), for its Complaint for Trademark Infringement and Declaratory Relief, alleges as follows against Defendant DIAGEO NORTH AMERICA, INC. ("Diageo") and DOES 1-10 (hereinafter collectively, "Defendants"):

This is an action to redress violations of the federal trademark and unfair competition laws under the Lanham Act (15 U.S.C. § 1114 et seq., and § 1125 et seq.), as the result of Defendants' willful and unauthorized use of Plaintiff's registered trademark and trade name,

access to a therapy that has demonstrated benefits in a number of clinical studies.

States and even the federal government could also benefit from marijuana legalization through tax collection. NerdWallet estimated last year that a sweeping legalization of marijuana could net \$3.1 billion in state and local tax revenue. Although such an amount would not close a large federal budget deficit, imagine what \$3.1 billion could do for America's education system, or how many jobs that could create. For select states that's an intriguing proposition. Investors are also closely monitoring that figure, because the marijuana market could be enormous, and it could lead to substantial gains if the drug were legalized.

Opponents, on the other hand, will point to the many unanswered questions that surround marijuana usage. There are concerns marijuana could negatively affect a person's health and/or brain function, or that it could lead to an increased crime rate. Because so many studies for the last few decades focused on the negative effects of marijuana, these skeptics have a large amount of data to make their case.

However, a new study released last week could be a shot in the arm for the marijuana proponents camp.

Did this federal study just side with marijuana?

One of many concerns cited by legalization opponents is that marijuana can dangerously impair a driver's ability to operate a motor vehicle.

With that in mind, the National Institute on Drug Abuse, the Office of National Drug Control Policy, and the National Highway Traffic Safety

as more fully set forth herein. Plaintiff seeks declaratory and injunctive relief restraining Defendants' infringement of Plaintiff's trademarks and trade names, as well as ongoing damages that are the direct and proximate result of the continued infringement. In addition to the foregoing relief, Plaintiff seeks the express abandonment of Diageo's applications for trademark protection for the trademarks containing "Stitzel" or "Stitzel-Weller.

Plaintiff Allied Lomar, Inc., is a California corporation organized and existing under the laws of California with a principal place of business at 401 California Drive, Suite 500, Burlingame, California 94010. Plaintiff is in the business of selling, marketing, and distributing distilled spirits, including bourbon whiskey under the federally registered trademark "STITZEL."

Download the case: <http://inudocs.buffalotrace.com/Stitzel.pdf>

Courts Are Distilling The Essence Of 'Handmade' Spirits

Source: Law360
Christine A. Scheuneman
June 22, 2015

The recent, explosive popularity of goods described as "handmade," "handcrafted," "small-batch" and the like has prompted makers of liquors to take advantage of the positive associations consumers have with these descriptors and emphasize those qualities in their products by including them on their labels. Consumers - and the plaintiffs' bar - have noticed: Within the last year, at least eight liquor makers have been sued in multiple consumer class actions across the country. Maker's Mark, Jim Beam, Tito's Vodka, Templeton Rye, WhistlePig, Tincup, Angel's Envy and Breckenridge Bourbon all face suits in district courts in California, Illinois and Florida. These suits allege deceptive advertising and unfair competition under state laws[1] for defendants' use of the language on their labels, such as "handmade," "handcrafted" and "small-batch." While most of these cases are still pending, a few recent decisions indicate how courts are considering the issues and defining the terms.

TTB Label Approval Would Not Likely Entitle Defendants to Protection of State Safe Harbor Provisions

When filing their motions to dismiss the claims against them, liquor makers have argued that they are protected from consumer claims under state safe harbor provisions because the Alcohol and Tobacco Tax and Trade Bureau has preapproved their labels.

TTB is charged with regulating the alcohol industry and preapproves all labels on liquor. This argument, however, has been struck down by both the California and Illinois district courts at the motion to dismiss stage. First, in *Hofmann v. Fifth Generation Inc.*,[2] brought against the maker of Tito's Vodka, the court ruled that California safe harbor provisions may not extend to "informal agency action" such as TTB approval of labels, and it is unclear if the meaning of the word "handmade," which is

Administration funded a test to see how well 19 adult volunteers using a driving simulator were able to stay within their lane and drive the speed limit while under the influence of alcohol, vaporized marijuana, or a placebo. Specifically, users were taken to a peak breath alcohol concentration of 0.065% and a THC concentration of 13.1 micrograms per liter. Additionally, the test was comprised of occasional marijuana users who used the drug more often than twice monthly but less than three times weekly.

As noted by the researchers, "Alcohol, but not marijuana, increased the number of times the car actually left the lane and the speed of the weaving." It could be that users understood they were "high" and they overcompensated for this feeling by driving more cautiously than normal. However, some might argue that people under the influence of alcohol tend to take more risks because they underestimate their level of impairment.

Of course, marijuana wasn't completely without side effects. Researchers noted it reduced the peripheral vision and/or awareness of those under its influence, leading to an increase in intra-lane weaving, which is consistent with what you might see with an individual who is legally impaired by alcohol. Also, the researchers noted that the combination of alcohol and marijuana, even if both were within the legal limit, increased the number of times the simulated car left the lane or weaved within the lane.

In other words, drivers under the influence of marijuana are still impaired, but they would appear to be at a lesser risk of driving erratically than people under the influence of alcohol.

prominently displayed on the label, is even within the purview of the TTB.

Similarly in *Aliano v. WhistlePig LLC*[3], brought against the maker of WhistlePig whiskey, the Northern District of Illinois was not convinced that TTB approval was stringent enough to warrant dismissing the case. There was no evidence presented that the terms in dispute (that WhistlePig was "handbottled at WhistlePig Farm") were expressly reviewed and approved or that the TTB affirmatively investigated or confirmed the validity of the "handbottled" representation. It was also not clear to the court that TTB even has criteria for evaluating the term.

Courts Are Split on Whether "Reasonable Consumer" Could Be Deceived by "Handmade"

While Tito's argued in *Hofmann* that no reasonable consumer could be deceived by the word "handmade" on its label because vodka, by definition, is created by heating neutral spirits and distilling vapors that any reasonable person would know must be done by using some sort of equipment, the Southern District of California did not agree and found that at the motion to dismiss stage, there is still the possibility that a reasonable consumer could be misled.

On the other hand, the Northern District of Florida in *Salters v. Beam Suntory Inc.*,[4] involving Maker's Mark Bourbon, granted Maker's motion to dismiss, in part because it definitively found that "nobody could believe a bourbon marketed this widely at this volume is made entirely or predominantly by hand."

Burden Is Likely on Plaintiff to Meet Difficult Task of Defining "Handmade"

In dismissing the *Salters* case, the Florida district court clearly put the burden on the plaintiffs to define "handmade" as a necessary part of alleging reliance on the term. The court considered various definitions of "handmade" and found each lacking or inapplicable. To the Oxford English Dictionary definition of "handmade" as "distinguished from work of nature," the court said that bourbon, like coffee or orange juice, cannot be grown in the wild. The plaintiffs proposed definitions of "made by scratch" and "made in small units." The court found no evidence that Maker's Mark bourbon did not fit those requirements. To plaintiffs' alternative definition of "connotes greater value and trades on current fashion that also brought us craft beer," the court ruled that "a general, undefined statement that connotes greater value, detached from factual representation, is not actionable." Such a definition is just a "statement of puffery."

Just as with cases involving use of the term "all natural" (e.g., *Pelayo v. Nestle USA Inc.* (C.D. Cal. Oct. 25, 2013), where the plaintiff's claim was dismissed for failure to provide enough detail as to why the offending ingredients are unnatural), the burden is likely on the plaintiffs to define "handmade" or similar terms - a difficult task, as demonstrated by the *Salters* case.

Individual Characteristics of Product May Make a Difference

Good news for proponents, but still a baby step forward

This federal study also follows recent data in and around the County of Denver that marijuana hasn't led to a societal upheaval, as once feared. As reported by online site Mic, property crime rates fell slightly in 2014 from the prior year, while traffic fatalities remain unchanged on a year-over-year basis. It's a small sample size, but the initial data would appear to suggest marijuana isn't a gateway drug to societal ruin.

But, even with a federal study suggesting marijuana could be safer than alcohol when attempting to operate a motor vehicle, this represents nothing more than a baby step forward for legalization. The marijuana movement is still a metaphorical mile away from getting true change enacted on a federal level.

For starters, marijuana just isn't a high priority for Congress or President Barack Obama. While Obama has suggested that states like Colorado and Washington are providing a great experiment for the nation, including lawmakers, to monitor, it will be years before data on crime rates, taxes, and other areas is mature enough for federal leaders to even consider legislation that would reschedule or decriminalize marijuana.

To that same end, we also have decades' worth of studies on marijuana's adverse effects and a relatively short history highlighting its benefits. Expect this research to take time to mature before any serious comparisons can be made, and fully expect Congress to hold off on taking up the rescheduling of marijuana until all data is present.

Even in context to the aforementioned federal study, 19 people is hardly representative of

Considerations such as whether a reasonable consumer would be deceived and whether a consumer actually relied on the label at issue may be affected by the individual characteristics of the product. For example, the term at issue is displayed prominently on some labels, such as "handmade" on the label of Tito's Vodka, whereas on others, it is only printed on the side of the label, such as "handcrafted" on the label of Jim Beam Whiskey.

Depending on how a liquor is actually made, a maker may have a better chance at qualifying as "handmade" under certain definitions. Because Maker's Mark was able to claim that its product is made from scratch and in small, carefully tended batches, it was able to overcome two of the definitions of "handmade" offered by the plaintiffs in *Salters*.

-By Christine A. Scheuneman and Elaine Y. Lee, Pillsbury Winthrop Shaw Pittman LLP

Walmart Battle Heats Up in Texas

Dear Client: WINE AND SPIRITS DAILY

Following the death of a bill that would allow Wal-Mart (and other public companies) to sell spirits in Texas, Wal-Mart and the Texas Alcoholic Beverage Commission (TABC) are back in court. The TABC has motioned to dismiss Wal-Mart's lawsuit that challenges the provision in the TABC code that prevents public companies from holding a package store permit and ultimately selling distilled spirits. Wal-Mart has issued a response to the motion.

BACKGROUND: In Texas, Wal-Mart can sell wine and beer, but is forbidden from owning a package store permit and therefore from selling spirits. As such, the retailer is challenging four sections of the TABC code:

- (1) The one that prevents a public corporation from holding a package store permit.
- (2) The one that limits the number of package store permits one person may hold to five.
- (3) The one that allows the consolidation of package store permits into a

the American population. The margin for error in such a small study is likely high, meaning it represents a stepping stone for additional research, rather than the concrete answer that proponents want.

In reality, real change is probably a long ways off, meaning more waiting for marijuana supporters, and possible disappointment for investors expecting marijuana stocks to be the next great thing.

Server Training

The Duncan Law Office facilitates server training. email

us @
tuckduncanlaw@yahoo.com

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9 Cheap Ways to Guard Your Personal Data You don't have to spend a lot to keep your ID, credit information safe

by Sid Kirchheimer, AARP Bulletin, April 2015

single entity if one or two relatives have a majority of the ownership in two or more venues with package store permits.

(4) The one that prohibits any person who holds a package store permit or owns an interest in a package store from having a direct or indirect interest in a wine and beer retailer's off-premise or mixed beverage permit.

TABC MOTIONS TO DISMISS: The state claims Wal-Mart's constitutional challenges (Equal Protection, Commerce Clause, Privileges and Immunities) are invalid and "do little more than describe what Wal-Mart believes to be the optimal retail model for selling liquor in Texas."

"At bottom, Wal-Mart is asking this Court to second-guess the judgment of the State's legislators, and find a constitutional problem where none exists. This policy debate is best addressed by the Legislature, and Wal-Mart should seek redress in that forum, not before this Court," writes the commission.

WAL-MART FIRES BACK: Wal-Mart again emphasized that the code is protectionist and discriminates against out-of-state businesses.

In regards to the Commerce Clause argument, Wal-Mart claims supporters of the public corporation ban pushed for it "expressly to circumvent a Fifth Circuit decision striking down a predecessor statute that banned out-of-state entities from holding package store permits, arguing that the 'need' for a discriminatory scheme 'still remain[ed].'"

Moreover, Wal-Mart says their legislative efforts have failed because "entrenched local package store interests" have told the state legislature the laws are "necessary to ensure that 100% of package store permits continue to be held by Texas Entities, a constitutionally illegitimate goal."

The retailer claims at minimum, the Equal Protection and Commerce Clause arguments require more analysis than is given on a motion to dismiss.

Getting a locked mailbox can help safeguard your personal information. - Istock

En español | Guarding your identity and credit doesn't have to be expensive. While pricey ID protection services may be useful for some - for example, if you've been a past victim and want some peace of mind, or if you have reason to fear you'll be targeted - many consumer advocates say their \$100 to \$300-plus annual price tag usually isn't worth it. Credit monitoring won't work against fraud on existing accounts, such as bogus charges on a credit card. Rather, it alerts you to fraudulent new accounts opened in your name.

And in any case, you can replicate many of their services yourself - for free or at very low cost, says Paul Stephens of the Privacy Rights Clearinghouse, a California nonprofit.

Some of the ways include:

AARP Discounts

Discover great deals and savings with AARP membership.

1. Credit report check

For the best protection, go to AnnualCreditReport.com and check your credit report for suspicious activity - such as new accounts being opened in your name - from each of the three major credit reporting bureaus, says Susan Grant of the Consumer Federation of America. The service is free. Only 25 percent of Americans do that with any of the three major companies (Equifax, Experian and TransUnion); only 45 percent check theirs every few years. A fourth, smaller company, Innovis, also provides free reports.

2. Security freeze

Usually provided free by the credit

Supreme Court decision on federal raisin rules likely to reshape industry JUNE 22, 2015

BY MICHAEL DOYLE
McClatchy Washington Bureau

The Supreme Court has pruned a long-running federal raisin supply management program and called its future into question, with a ruling that the government must pay for raisins kept out of the marketplace. In a victory for Fresno County grower Marvin Horne and other dissident California raisin producers, the court said Monday the program that compels some raisins to be held back in a reserve is subject to the just compensation commands of the Fifth Amendment.

"Raisins are private property, the fruit of the growers' labor, not public things subject to the absolute control of the state," Chief Justice John Roberts, Jr. wrote. "Any physical taking of them for public use must be accompanied by just compensation."

The decision will reshape the contours of the decades-old raisin program. While part of a long-running challenge to federal regulation of various agricultural markets, the ruling Monday also broadens the government's responsibilities to private property owners.

"The government has a categorical duty to pay just compensation when it takes your car, just as when it takes your home," Roberts wrote, adding that the Fifth Amendment "protects 'private property' without any distinction between different types."

The Fifth Amendment states that private property cannot be taken "for public use without just compensation." It is frequently a subject of dispute, leading the National Federation of Independent Business on Monday to call the new decision "a very important case for small business owners."

The most immediate impact, though, will be felt in the raisin program. One of Horne's attorneys, Clovis, Calif.-based Brian Leighton, has launched many related legal fights against marketing orders and promotion programs. The attorney who successfully argued Horne's case at the Supreme Court, Stanford Law School Professor Michael McConnell, is a former federal appellate judge who has represented Horne pro bono. "I'm elated," Horne said in a telephone interview Monday morning. "The monkey is off my back. I think it's a great ruling for everybody; if you want my raisins, pay for them."

Attorney John C. O'Quinn, who is also with McConnell's firm of Kirkland & Ellis, likewise praised what he called a "great decision."

Officials with the Fresno-based Raisin Administrative Committee declined to comment Monday morning, referring calls to the Agriculture Department, which had no immediate reaction.

Concentrated in California's San Joaquin Valley, raisin production spanned more than 200,000 acres and reached a value of over \$725 million in 2012.

A federal marketing order has governed the raisin industry since 1949. Initiated by industry members and authorized by Congress, marketing orders in general are designed to help maintain quality standards and provide stable markets. They cover crops from almonds to walnuts.

Only some marketing orders authorize volume control. The raisin order is among them, and until now it has been supported by a majority of farmers who believe it helps the industry.

The raisin order regulates handlers, who pack and process the raisins.

The order says handlers may have to withhold part of their crop for a

bureaus for those over 65 or past ID theft victims, this restricts access to your report. If businesses can't see the report, they won't approve new financial or service accounts in your name.

See also: Your personal data, up for grabs

3. Fraud alert

This is always free but less secure than a freeze. It means that an institution opening a new account in your name is supposed to verify your identity directly with you.

4. Locking mailbox

Only 4 in 10 homeowners have key-operated mailboxes to thwart scammers from stealing mail with personal and account information. Cost: \$18 and up.

5. An unlisted phone number

At \$20 to \$60 a year, it should keep you off public directories used by name-citing scammers calling with feigned "official business."

6. Prepaid debit card

If your debit card is used fraudulently, you could be out a lot of money. Prepaid debit cards are safer, limiting your potential losses. "But beware of high usage fees," warns Stephens. (AMEX's Serve and Bluebird and Walmart's cards are known for low-cost fees.) For \$10 a month, the True Link Prepaid Visa card blocks specific purchases and alerts adult children should elders go in for sweepstakes or other potential scams.

7. External storage

Computer-crippling ransomware and other malware can hijack your computer or block access to its content, so back up important files off-device. A portable, encryption-enabled USB thumb drive starts at about \$5.

"reserve tonnage" managed by the Raisin Administrative Committee. The set-aside raisins may be sold for purposes such as federal nutrition programs.

The raisin supply management system is designed to keep prices steady even in times of surplus. The growers may be paid for the reserve supplies if they're sold to government programs, but at less than fair-market value.

Raisin handlers set aside 47 percent of their crop during the 2002-03 season and 30 percent for 2003-04, but they were paid for only part of what they surrendered.

Horne and his allies formed the Raisin Valley Farms Marketing Association, which took care of the packing. By identifying themselves as producers rather than handlers, the group's members reasoned, they were exempt from the set-aside requirement.

The Obama administration termed this a "scheme" and the Agriculture Department ordered Horne and his coalition to pay more than \$650,000 in fees and penalties. Horne, in turn, calls the program a "taking" of his property, and the court on Monday agreed.

"The reserve requirement imposed by the Raisin Committee is a clear physical taking," Roberts wrote. "Actual raisins are transferred from the growers to the government."

Roberts added that "the Hornes should simply be relieved of the obligation to pay the fine and associated civil penalty they were assessed when they resisted the government's effort to take their raisins."

Four other justices joined Roberts' majority opinion, while several justices dissented in part and concurred in part. Only Justice Sonia Sotomayor opposed the entire decision, noting that the raisin program allows for at least some payment in exchange for set-aside raisins.

"A reduction in the value of property is not necessarily equated with a taking," Sotomayor wrote.

Two years ago, the court unanimously gave him an important procedural green light to pursue his case in conventional federal court.

Even without the high court's latest ruling, the raisin supply management program could be drying up.

The Legal Lowdown on Starting a Brewery or Distillery

June 30, 2015 11:30 AM

The Legal Lowdown on Starting a Brewery or Distillery

In Start Your Own Microbrewery, Distillery, or Cidery, the staff of Entrepreneur Media Inc. and writer Corie Brown with Zester Daily Contributors explain how you can get started in the craft alcoholic beverage industry, whether you want to start your own microbrewery, distillery or cidery. In this edited excerpt, the authors take a look at some of the state laws regulating the craft alcoholic beverage industry.

With the repeal of Prohibition, the federal government got out of the business of regulating alcohol distribution and gave it to the states. Each of the 50 states and the District of Columbia has

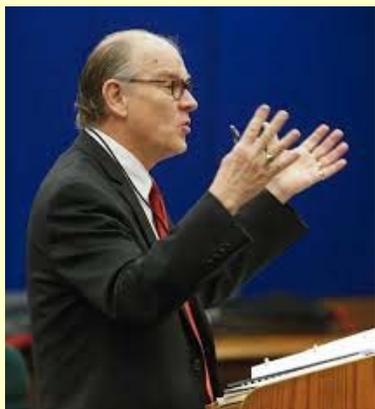
8. Free monitoring

Many banks and credit card companies provide free, real-time alerts of any suspicious activity. Credit Karma offers free, no-strings credit monitoring of your TransUnion credit report; Credit Sesame does the same with Experian. At TrustedID.com, you can get alerts if your Social Security and credit card numbers show up on scammers' black market websites. Monthly reports on public-record and commercial-database activity are available at AllClearID.com/enroll.

9. Protection software

Recommended freebies come from Malwarebytes, Panda Free, AVG, Avast and Bitdefender. These are basic packages, but some Internet providers offer full-strength freebies to customers.

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its own distinct set of rules for each kind of alcoholic beverage. The resulting state-specific regulations means a production facility may meet the requirements of its home state, yet fall short of the requirements necessary to sell products in the state next door. Below, we've detailed the ways in which a few states do business to show you how diverse the business environment can be for the craft industry.

Texas

"We still had Prohibition marketing laws [in Texas] when we opened in 1994," says Brock Wagner, founder of Saint Arnold Brewing Company in Houston. "You couldn't have a pre-arranged promotion at a bar or restaurant. You could have a promotion, but you couldn't tell anyone you were going to have it. It was like throwing a party without inviting anyone," says Wagner. "If you opened a brewery, you couldn't sell beer there. Taprooms are critical for a small brewery to survive.

"The legislature was in the pocket of the beer wholesalers. [As head of the state association representing the beer distributors,] Mike McKinney was the most powerful lobbyist in Texas." After he passed away a few years ago, the taproom law was finally changed in 2014.

Ron Extract, founder of Jester King Brewery in Austin, adds, "A lot of work still needs to be done to make Texas competitive with the rest of the country. But it's gotten better. When we started four years ago, there were only 25 breweries in Texas. Now there are more than 100, and lots more are planned."

In general, direct sales, brewery tours, brewpubs, microbreweries, excise taxes, packaging, and franchising regulations are more stringent throughout the southern half of the country; progressive states have been more willing to roll back Prohibition-era laws, even when those rollbacks upset the interests of companies reliant on those established regulatory hierarchies. New York State is among the most aggressive states in this regard.

New York State

Undoubtedly, New York is the most craft-friendly state. Each year for the past four years, Governor Andrew Cuomo has taken further steps to support the state's craft breweries, distilleries, cideries, and wineries. He's made on-site sales of both by-the-glass and packaged goods legal, simplified or eliminated state permitting, enacted tax cuts, abolished bond requirements, and provided grants for marketing support and self-distribution. "They leap-frogged everyone," says James Rodewald, author of *American Spirit: An Exploration of the Craft Distilling Revolution* (Sterling Epicure, 2014). "It's smart. They don't have an industrial liquor industry, and they elevated their local grain and produce production out of the commodity market."

"With things like self-distribution, we've carved out exemptions

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to the three-tier system for small producers," says New York State Liquor Authority chairman Dennis Rosen. "Generally, those tiers have to be independent of each other. We can't extend the exemptions too far without getting sued for violating the commerce clause." At this point, Rosen says the state has gone as far as it believes it can to support craft producers. The push back from large producers and distributors, he says, has become significant.

New York's approach to nurturing the craft sector is having an impact. Between 2011 and 2014, the number of New York microbreweries increased 175 percent to 109 breweries; brewpubs increased 230 percent to 33; cider producers increased five-fold to 28; farm distilleries increased from 10 to 51; other small distilleries increased 164 percent to 37. There are 70 new farm breweries since that license was approved in 2012. Rosen points to New York City residents' new awareness of the rest of the state and support for what's happening outside the city as a positive result.

This progressive approach to supporting craft is spreading, particularly in the area of self-distribution and direct sales. Small breweries, distilleries, and cider houses in more and more states are able to sell directly to customers, not just in their taprooms, but also by delivering kegs and packaged goods to restaurants and convenience stores.

California

In California, spirits producers are gearing up to fight for a New York-style regulatory overhaul. Currently, they're limited to selling a thimbleful of a maximum of six different products to distillery visitors. "We need to be able to sell from our distillery tasting room. It's the only way to tell your story to consumers and know they understand what you're doing," says Cris Steller, executive director of the California Artisanal Distillers Guild and founder of Dry Diggings Distillery in El Dorado, California. "Distributors are fighting back hard. California is one of the top five markets for spirits in the world, and they think they're going to give up market share if we can sell out of our distilleries. New York, Colorado, Washington, and Oregon all leapfrogged us. California is down at the bottom with Alabama and Kansas," says Steller, noting that when he lobbied Governor Jerry Brown on the issue, "he didn't even know about the rules and called it 'ridiculous.' We'll have this in another year."

State Distribution Laws

States regulate the relationship between alcoholic beverage producers and distributors through franchise laws. You can enter a franchise relationship with a simple verbal agreement to move a single shipment through a distributor. But if your distributor turns out to be a disappointment, you may be stuck in a loveless relationship.

Franchise laws were designed to correct a perceived imbalance

in bargaining power between powerful, national brewers, and the smaller state-specific wholesalers who serve them. In reality, consolidation has made both sides of that equation evenly balanced. The mice in the room are craft producers. Cancellations, failures to renew, attempts to modify a distribution agreement are all restricted by franchise laws written to protect the distributor.

Worse, franchise laws vary by state. The BA has created a database of U.S. beer franchise laws governing beer sales in each state. Before entering a contract with a wholesaler, you should learn how specific states regulate this relationship because state laws may trump contract terms. With spirits, there are two types of state regulatory environments. Open states allow alcoholic beverages to be sold through private entities; control states sell through state liquor control boards. State franchise laws trump distribution contracts for spirits in open states just as they do for beer.

Eugene Pak, an attorney with the law firm of Wendel, Rosen, Black & Dean specializing in brewery law, suggests getting professional help before entering any distribution arrangements. Mistakes here are critical. "Set a term for your distribution agreements to expire. Most states prohibit termination without cause," he says. And if they do allow you to walk away from an unhappy relationship, you will pay dearly—one to five times your net profits.

State Taxes

There's great disparity and volatility in state taxation rates. For beer, Tennessee has had the highest state excise tax at \$1.17 per gallon followed by Florida and Georgia at 48 cents per gallon. Wyoming has the lowest at two cents per gallon. The U.S. average rate is about 19 cents per gallon.

State and local excise taxes on spirits are equally random. The taxes can include fixed-rate per volume taxes; wholesale taxes that are usually a percentage of the value of the product; distributor taxes (usually structured as license fees but are often a percentage of revenues); retail taxes, in which retailers owe an extra percentage of revenues; case or bottle fees (which can vary based on size of container); and additional sales taxes (note that this measure does not include general sales tax, only those in excess of the general rate). In other words, always check with your state tax authority first—and don't count on continuity.

