



Alcoholic Beverages

Overview

Tucker Ellis has a dedicated team of attorneys providing experienced, multidisciplinary counsel to dozens of clients across various tiers, including wineries, breweries, distilleries, rectifiers, bottlers, wholesalers and retailers, bars, and restaurants. Our team advises and represents clients in state and federal courts and before governmental bodies, including the Food and Drug Administration (FDA), Alcohol and Tobacco Tax and Trade Bureau (TTB), and Federal Trade Commission (FTC), as well as state and local agencies and commissions.

We report to clients on a regular basis on issues raised in policy concerns from related beverage products and competitors and competing trade groups. For our clients, this work regularly involves reporting on issues such as suits related to Prop 65 matters, false advertising lawsuits related to health claims and ingredient and source claims, challenges to state and federal regulatory restrictions and trade practices, assertions related to personal injury and mass tort, and National Beer Wholesalers Association (NBWA) affiliate actions and injury claims.

Areas of Emphasis

Our multidisciplinary team collaborates to serve our alcoholic beverage clients in every aspect of their businesses, including:

- Entity formation
- Financing
- Legal and regulatory compliance
- State and federal licensure and permitting
- Branding
- Advertising and marketing
- Trademarks
- Trade secrets
- Contract negotiations
- Wholesaler and distributor agreements
- Alternating proprietorship and contract brewing agreements
- Equipment leasing and purchasing
- Import and export issues
- International sourcing, licensing, and food import compliance agreements
- Labeling
- Formula approval

Speaking Engagements

- “Craft Brewers – Risk Management Series,” Arthur J. Gallagher & Co. Webinar (July 2013)
- “The Future of Food Safety,” Mettler Toledo Food Safety Exchange (June 2012)

Publications

- *Libation Law Blog*, Ashley Brandt, author and publisher

Media

- “Goose Island’s Bourbon County Beers Hit Shelves on Black Friday – but Some Small Shops Say They’re Unfairly Denied Access to the Most-Coveted Brands,” *Chicago Tribune* (November 2021)
- “Silence Is Golden – Lack of Answers, Oversight Keeps Beer Box Shipments Legally Opaque,” *Good Beer Hunting* (August 2021)
- “Tucker Ellis Adds Liquor, Cannabis, Regulatory Pro in Chicago,” *Law360* (October 2020)
- “New Proposed State Distribution Rules Would Choke the Growth of Chicago’s Biggest Craft Brewers,” *Chicago Reader* (May 2014)
- “Should Powdered Alcohol Be on the Market? Critics Say No Way,” *The Christian Science Monitor* (April 2014)

Experience

- Negotiated multiple alcohol distribution and brokerage agreements for manufacturers and wholesalers
- Counseled retailers, festivals, and not-for-profits in promotional and advertising campaigns and sponsorship deals
- Advised alcoholic beverage companies on regulatory compliance for various online and traditional media campaigns involving sweepstakes, coupons, volume discounting, partnerships with artists and venues, and charity/nonprofit events and relationships
- Advised craft brewers in responding to state liquor control board actions regarding promotional activities in partnering with entertainment venues and artists
- Reviewed and audited winery website and marketing campaigns regarding compliance with national and multi-state trade practice statutes and regulations
- Counseled alcoholic beverage manufacturers on federal and state food safety status regarding ingredients and production methods and in developing plans and sourcing strategies to achieve USDA “organic” status
- Defended alcoholic beverage companies in a variety of product liability/personal injury actions and advised on liability risks associated with beverage formulations incorporating known allergens and other non-traditional ingredients

- Provided auditing and consulting services to multiple craft breweries on labeling and advertising content related to state and federal prohibitions on advertising to minors
- Negotiated and performed a compliance review for an alcoholic beverage manufacturer's charity and fund-raising efforts and partnering with not-for-profit entities
- Advised nonalcoholic (NA) beverage manufacturers on state and federal concerns regarding CBD additives and emplaced multi-state strategy for production and sales of CBD-containing beverages
- Worked with state trade organizations on legislative agendas and multi-year strategy related to changes in taxation, franchise matters, and alternating premises laws
- Assisted alcoholic beverage manufacturers in navigating regulations related to caffeinated alcoholic beverages and issues concerning formula approval, advertising, and labeling
- Performed compliance reviews and established contractual and regulatory best practices for third-party warehousing and shipping for breweries related to shipping samples, POS, and advertising materials
- Defended a multi-state brewing entity in assertions related to alcohol content labeling and advertising under charges by TTB of the Federal Alcohol Administration Act
- Worked with an international wine importer to contest TTB assertions that the designation "prosecco" could not be used on Moldovan-made prosecco wine; argued against Italian and EU attempts at reclassifying the varietal as "glera" to protect Italian prosecco manufacturers; the matter turned on the Moldovan recognition of prosecco as a varietal, and we were successful before the TTB in obtaining an allowance for labeling and importation of "prosecco" branded wines from Moldova despite pressure from the EU and U.S. to forestall importation and designation
- Prosecuted a strategy for state regulatory challenges to restrictive state distribution standards related to Commerce Clause violations allowing in-state producers to self-distribute but denying that right to out-of-state producers
- Helped a craft brewery through an FTC investigation involving assertions of false advertising and improper disclosure of use of funds related to partnership with a national charity
- Advised an importer of popular European beer in bulk shipment and packaging requirements and trade channel issues with retail outlets and trade practice issues related to partnerships with retail outlets
- Successfully advised and defended multiple breweries in suits alleging violations of state franchise laws in termination of distribution rights
- Assisted breweries in the transfer and change in distribution relationships in multiple states and defended charges brought in state regulatory actions
- Advised a winery producing wines below 7% alcohol in FDA compliance matters
- Assisted an international nonalcoholic (NA) beer manufacturer with labeling and advertising issues for the U.S. market involving a 50-state review and analysis of advertising, labeling,

licensing, and distribution rules regarding operations for both distribution and direct-to-consumer sales of NA beer; analysis involved compliance reviews for health-related claims and vetting assertions and abidance with FDA/TTB nutritional information guidelines; our work informed the development and adoption of the client's labeling and advertising processes

- Report to clients on a regular basis regarding issues raised in policy concerns from related beverage products, competitors, and competing trade groups
- Advised beverage companies on Prop 65 matters, false advertising lawsuits related to health claims and ingredient and source claims, challenges to state and federal regulatory restrictions and trade practices, and NBWA-affiliate actions
- Worked with an international spirits manufacturer on its logistics issues to ensure compliance with French and EU regulations for the sourcing of French cognac and the authorization of production at reduced costs in Bulgaria; navigated the EU and Bureau National Interprofessionnel du Cognac (BNIC) regulations to successfully defend claims against the BNIC at both the trademark and regulatory level in the U.S. to allow for importation and sale under the cognac designation
- Counseling a winery regarding labeling and regulations pertaining to low-alcohol wines
- Assisting a winery in a panoply of corporate matters, including the acquisition of real property and facility construction, permitting, label approvals, employment, and intellectual property matters, as well as in litigation
- Assisting several spirits manufacturers in establishing their craft cocktail canning operations through formulation, labeling, and distribution
- Representing craft distillers and spirits manufacturers in TTB enforcement actions and with state licensing and trade practice violation matters