

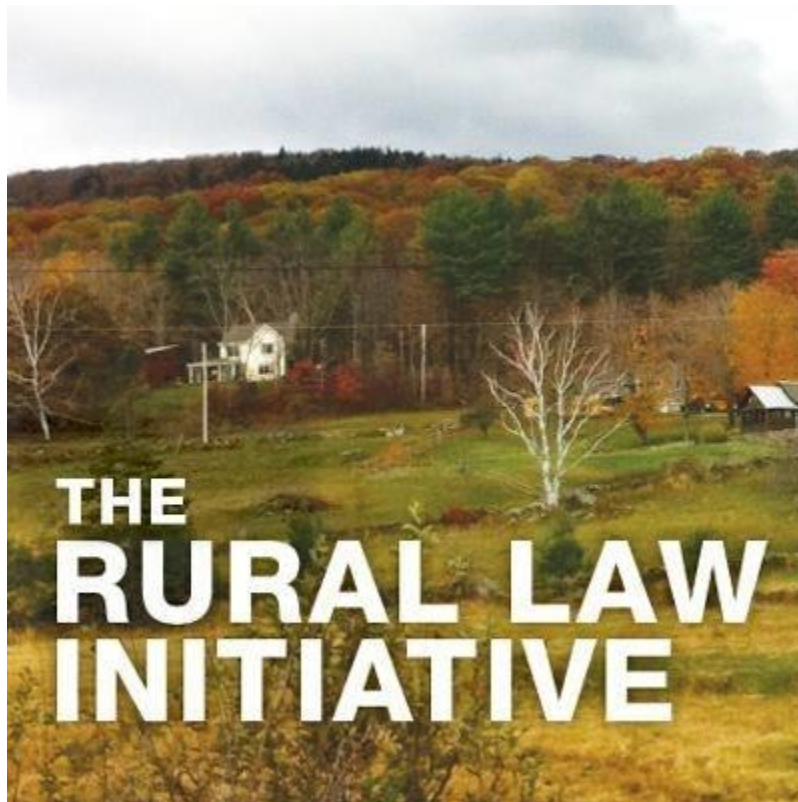
A close-up photograph of hops and barley, which serves as the background for the top half of the slide. The hops are green and bumpy, while the barley has long, thin awns. The text is overlaid on this image.

HOPS, BARLEY, APPLES & LAWS

LAWYERING BASICS FOR CRAFT
BEVERAGE BUSINESSES
WORKSHOP

April 9, 2018

Presented by:



ALBANY LAW SCHOOL
GOVERNMENT LAW CENTER



Hops, Barley, Apples & Laws: Lawyering Basics for Craft Beverage Businesses

April 9, 2018

Agenda

9:30am – 10:00am

Registration

10:00am – 10:05am

Opening Remarks

Taier Perlman, Esq.
Rural Law Initiative

10:00am – 11:00am
(1 hour Prof. Practice)

How to Get and Keep a Liquor License

Thomas J. Donohue, Esq.
Secretary, New York State Liquor Authority

11:00am – 11:30am

The Ups & Downs of Running a Craft Beverage Business

Moderator:

Taier Perlman, Esq.
Rural Law Initiative

Panelists:

Jordan Karp
Adirondack Distilling

Sonya del Peral, Esq.
Nine Pin Ciderworks LLC

11:30am – 12:30pm
(1 hour Prof. Practice)

Put it on the Bottle: Packaging & Labeling Laws

Arielle Albert, Esq.
Danow, McMullan & Panoff, P.C.

12:30pm – 1:15pm

Lunch (provided)

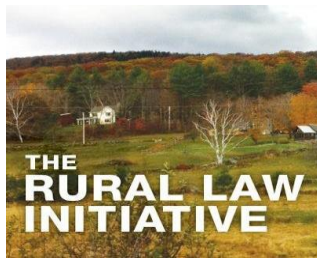
1:15pm – 2:15pm
(1 hour Prof. Practice)

The IP in IPA: Intellectual Property Basics

Devin Morgan, Esq.
Patent & Intellectual Property Attorney
Founder, 3-Blazes Innovation, Inc.

2:15pm – 3:15pm

Networking/Craft Beverage Tasting



Hops, Barley, Apples & Laws: Lawyering Basics for Craft Beverage Businesses

April 9, 2018

SPEAKER BIOGRAPHIES

ARIELLE ALBERT, ESQ., joined Danow McMullan and Panoff, P.C. as an associate attorney in 2013 after serving as a law clerk with the firm throughout law school. Focusing her practice on alcohol beverage control law, Ms. Albert guides clients through the regulatory complexities involved in the manufacture, importation, distribution, and sale of beverage alcohol. Her clients include established industry members as well as emerging companies new to the beverage alcohol industry. Ms. Albert's responsibilities include counseling clients on regulatory matters and legal compliance with federal and state laws, conducting comprehensive national surveys for clients operating in more than one state, and assisting clients in transactional matters involving beverage alcohol. She also counsels clients on navigating the state and federal licensing and permitting process; applying for state and federal label approval; and seeking federal and state approval for distilleries, wineries, breweries, and other facilities. Ms. Albert's practice areas also include residential and commercial real estate, including sales and acquisitions as well as commercial leases, civil litigation, arbitration, and estate planning. She is a Contributing Editor to *Beverage Media Magazine* and co-authors a monthly article alerting readers to trending issues in alcohol beverage control law. Ms. Albert earned a J.D. from the Maurice A. Dean School of Law at Hofstra University and a BS from the University of Vermont. At Hofstra, Ms. Albert was a Notes and Comments editor for the *Journal of International Business and Law*, a publication of the Hofstra University School of Law and the Frank G. Zarb School of Business. She is admitted to practice in New York and New Jersey.

SONYA DEL PERAL, ESQ. '91, is a founding partner of Bowers & del Peral, PLLC, located in Chatham, N.Y., where her practice focuses on intellectual property, real estate, alcohol industry licensing, and wills. She manages and serves as in-house legal counsel for Nine Pin Ciderworks, New York's first farm cidery, in Albany, N.Y. She spent the first five years of her legal practice in large law firms in New York City and Albany. In 1996, she opened her solo practice in Columbia County. Ms. del Peral received a J.D., cum laude, from Albany Law School in 1991, where she served as an Editor of the *Albany Law Review*, was named a Justinian Society Member, and was awarded the Nathan Burkan Memorial Copyright Award and the Selma Mintz Memorial Award. Ms. del Peral received an M.A.T. degree from SUNY Binghamton in 1984, where she was awarded the Outstanding Professional Performance Award, and a B.A. from SUNY Albany, summa cum laude, in 1980. Ms. del Peral is a fluent Spanish speaker and speaks intermediate French. She is admitted to practice in New York.

THOMAS J. DONOHUE, ESQ. '86, serves as Secretary to the New York State Liquor Authority. He has been with the State Liquor Authority since 1999, first serving as the chief prosecutor in the Authority's Albany office. He was Counsel to the Authority from 2006 until 2009 and served as Special Counsel from 2010 until 2016. As Special Counsel, he drafted many of the recent changes to the Alcoholic Beverage Control (ABC) Law, including the revisions to the winery laws in 2011, the farm brewery law in 2012, and the farm cidery law in 2013. Mr. Donohue was also part of the 2016 Chairman's Working Group on revising the ABC Law, and he drafted the resulting legislation that included the changes to the Sunday sales hours for on-premises licensees. In 2016, he was appointed Secretary to the Authority and is responsible for the operations surrounding the Authority's Full Board meetings. Mr. Donohue is a frequent speaker at industry events and has authored numerous training and guidance documents regarding the ABC Law, including the Authority's new "Handbook for Retail Licensees" and "Manual for Law Enforcement." He received a B.P.S. from the State University of New York at Utica and his J.D. from Albany Law School. He is admitted to practice in New York and the U.S. District Court, Northern District of New York.

JORDAN KARP is co-founder at the Adirondack Distilling Company. Mr. Karp left behind his career as a political consultant in Boston and New York City to become Adirondack Distilling Co.'s master distiller. He joins Dr. Bruce Elwell and attorney Steve Cox, who all recognize a growing need for people to reconnect with their food and drink. Adirondack spirits incorporate all-local ingredients, from the upstate corn used to make them right down to the Herkimer diamonds—a rare mineral found only in the foothills of the Adirondack mountains—used to filter them. The building housing Adirondack's stills has deep roots in the area. The former bank was essentially built to handle the finances of the 125-year-old F.X. Matt Brewing Co., located just down the street. It later became a popular concert venue and much later, a rundown shadow of its former self. The three co-founders made a sizable investment in renovations and equipment. Adirondack's German stills produce the flagship vodka, gin, white whisky, and Central New York's first legal bourbon ever. Adirondack products are available throughout Brew Central and New York State. Mr. Karp is a graduate of Tufts University.

DEVIN MORGAN, ESQ., is of counsel at Patent Law Works in Salt Lake City, UT, where his practice focuses on patent strategy and management for startup and growth technology companies. Mr. Morgan grew up in the Finger Lakes and now lives in Cooperstown, N.Y. (despite working for a firm based in Utah). Mr. Morgan has developed a keen interest in craft food and beverages and has been blogging and speaking on legal and startup issues for food and beverage businesses for years (www.eatdrinklaw.com). He has represented many craft beverage businesses and food and beverage startups along the way. Mr. Morgan is also co-founder of Good People Energy Technologies, a clean tech startup that works out of thINCubator. He is a big supporter of local entrepreneurship and gave a TED talk on that topic at TEDxUtica (<https://www.youtube.com/watch?v=mpT5gKWCKb0>). Mr. Morgan received a J.D./M.I.P. from University of New Hampshire School of Law and a B.A. in Engineering Science and Asian Studies from Dartmouth College. He is admitted to practice in New York and registered to practice before the U.S. Patent & Trademark Office.

TAIER PERLMAN, ESQ., leads the Rural Law Initiative at the Government Law Center of Albany Law School, where she combines her passion for counseling entrepreneurs and small businesses with her love for sustainable agriculture and farm-fresh food. A graduate of Brooklyn Law School (located in her hometown), Ms. Perlman focused her studies on dispute resolution and legal counseling, working with diverse NYC-based start-ups. In an unconventional post-bar exam trip, she worked on a biodiverse organic farm, where she developed a deep appreciation for the agrarian lifestyle. After litigating cases in New York City courts, she moved to Albany to pick up the reins of the Rural Law Initiative, where she provides legal support to entrepreneurs, businesses, and farmers in rural New York. Ms. Perlman enjoys meditating, hiking, volunteering on farms, and working on her various art projects. She received a J.D. from Brooklyn Law School and a B.A. in Philosophy, Politics & Law from Binghamton University. Ms. Perlman is admitted to practice in New York.



**State Liquor
Authority**

Hops, Barley, Apples & Laws

How to get and keep a liquor license

Determining the correct license(s) needed

- Manufacturer vs wholesaler vs brand owner
- Type of alcoholic beverages being produced
- Liquor- production method being used
- Amount of alcoholic beverages being produced

Other issues in selecting the correct license(s)

- “Farm” vs “commercial” operation
- Alternating proprietorship
- Combined craft manufacturing license

“Farm” manufacturing licenses

- Must produce alcoholic beverages using specific percentage of NYS ingredients
- Have more retail privileges than “commercial” manufacturers
- Only farm winery has to be on a farm

The application process

- Eligibility to hold license
- Items submitted with application
- Review and approval/disapproval of the application

Approvals needed after the license is issued

- Renewal
- Alterations
- Corporate changes
- Removals

Permits that may be needed

- Solicitor's permit
- Warehouse permit
- Trucking permit

Distribution of products

- Methods of distribution
- NYS brand label registration
- 180 Day Law (for beer)
- Price Posting (for liquor and wine)

Tastings and retail sales at the licensed premises

- No retail privileges for distillers (except farm distillers)
- Brewers and Wineries- own product and that type of NYS labeled product
- Farm manufacturers- all NYS labeled products

Other retail privileges

- Operating food/eating establishment with on-premises license (not for distillers except farm distillers)
- Marketing permit
- Branch offices for farm manufacturers
- Satellite stores for wineries

Compliance issues

- Tied house laws
- Gifts and services law
- Terms of sale/ C.O.D. list
- 2nd businesses at the licensed premises

Disciplinary process

- Investigation by Enforcement Bureau
- Notice of Pleading
- Resolution by plea of hearing



ANDREW M. CUOMO
Governor

VINCENT G. BRADLEY
Chairman

GREELEY FORD
Commissioner

REPRESENTING CRAFT ALCOHOLIC BEVERAGE MANUFACTURERS BEFORE THE STATE LIQUOR AUTHORITY

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Government Law Center
Rural Law Initiative
“Hops, Barley, Apples & Laws: Lawyering Basics for Craft Beverage Businesses”
April 9, 2018 Presentation

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INTRODUCTION

The information provided in this document is intended to assist attorneys who represent New York State craft alcoholic beverage manufacturers. It is not intended to serve as a comprehensive manual with respect to either the Alcoholic Beverage Control Law (“ABCL”), the Rules of the State Liquor Authority (“Rules”), or the other laws and regulations that govern the issuance of licenses or the obligations of licensees with respect to the operation of a licensed business.

Please note that any changes made to the ABCL or the Rules, as well as any new directives or rulings issued by the SLA after the date of this presentation may impact some of the information provided in this document. You are encouraged to visit the State Liquor Authority’s website at www.sla.ny.gov. On that site, you will find a link to the Alcoholic Beverage Control Law and view Advisories and Declaratory Rulings issued by the agency. You can also view archived recordings of meetings of the Members of the Authority.

TYPES OF MANUFACTURING LICENSES

A person cannot manufacture or sell at wholesale or retail alcoholic beverages in New York State without obtaining the appropriate license. [ABCL §100(1)]. Licensed manufacturers can distribute their products through licensed wholesalers and/or sell directly to licensed retailers. As with wholesalers, manufacturers must obtain a federal permit to operate. Certain manufacturers can conduct retail operations at their licensed premises.

Manufacturing licenses are distinguished by the type of alcoholic beverage produced. “Micro” licenses allow for the same privileges as the standard license, but have limits on the amount that can be produced in return for a lower license fee. “Farm” manufacturers are also limited in the amount that can be produced, and are also limited to producing alcoholic beverages made from New York State ingredients.

BREWERY

- ABCL §51
- No limit on type or amount of beer produced

MICRO-BREWERY

- ABCL §51
- Same as brewery license, except production limited to 75,000 barrels

FARM BREWERY

- ABCL §51-a
- Can only produce up to 75,000 barrels of “NYS labeled beer”
- Can also produce “NYS labeled cider”
- Can get permits to operate up to five branch offices

CIDER PRODUCER’S

- ABCL §58
- No limit on type or amount of cider produced
- Can get permits to operate up to five satellite stores to sell NYS labeled cider for off premises consumption

FARM CIDERY

- ABCL §58-c
- Can only produce up to 250,000 gallons of NYS labeled cider

- Can get permits to operate up to five branch offices

WINERY

- ABCL §76
- No limit on type or amount of wine produced

FARM WINERY

- ABCL §76-a
- Can only produce up to 250,000 gallons of wine made exclusively from NYS products
- Must be located on a farm
- Can get permits to operate up to five branch offices

MICRO-WINERY

- ABCL §76-a
- Same as farm winery license, except production limited to 1,500 barrels

DISTILLER

- ABCL §61(1)
- No limit on type or amount of liquor produced
- Allows for production by distilling or rectifying

MICRO-DISTILLER

- ABCL §61(1-a)
- Same as distiller's license, except production limited to 75,000 gallons

RECTIFIER

- ABCL §61(2)
- No limit on type or amount of liquor produced
- Allows for production by rectifying

MICRO-RECTIFIER

- ABCL §61(2-b)

- Same as rectifier's license, except production limited to 75,000 gallons

FRUIT BRAND PRODUCER

- ABCL §61(2-a)
- Limited to production of fruit brandy

FARM DISTILLER

- ABCL §61(2-c)
- Can only produce up to 75,000 gallons of NYS labeled liquor

COMBINED CRAFT MANUFACTURING LICENSE

- ABCL §61-a
- Allows two or more "micro" and/or "farm" manufacturing licenses
- Eliminates multiple filing fees and paperwork

"NEW YORK STATE LABELED" ALCOHOLIC BEVERAGES

"NEW YORK STATE LABELED BEER"

- From January 14, 2013 until December 31, 2018, beer made with no less than 20%, by weight, of its hops grown in New York state and no less than 20%, by weight, of all other ingredients, excluding water, grown in New York state.¹
- From January 1, 2019 until December 31, 2023, beer made with no less than 60%, by weight, of its hops grown in New York state and no less than 60%, by weight, of all other ingredients, excluding water, grown in New York state.²
- From January 1, 2024 and thereafter, beer made with no less than 90%, by weight, of its hops grown in New York state and no less than 90%, by weight, of all other ingredients, excluding water, grown in New York state.³

"NEW YORK STATE LABELED CIDER"

- Must be made exclusively from apples or other pome fruits grown in New York state.⁴

¹ ABCL §3(20-d)(a)

² ABCL §3(20-d)(b)

³ ABCL §3(20-d)(c)

⁴ ABCL §3(20-e)

“NEW YORK STATE LABELED LIQUOR”

- No less than 75%, by volume, of the fruits, vegetables, grain and grain products, honey, maple sap or other agricultural products used must be grown or produced in New York state.⁵

“NEW YORK STATE LABELED WINE”

- No less than 75%, by volume, of the grapes or other fruits used must be grown in New York state.⁶

⁵ ABCL §3(20-c)

⁶ ABCL §3(20-a)

THE APPLICATION PROCESS

ELIGIBILITY TO HOLD LICENSE

Citizenship

- Applicants must meet citizenship requirements.⁷

Criminal History

- Applicants cannot have convictions for felonies or certain misdemeanors.⁸

Police Officers

- Certain police officials cannot hold a license.⁹

ITEMS TO BE SUBMITTED WITH AN APPLICATION

- An application for a craft manufacturing license must include the following:
 - Application Fee (license fee plus filing fee).
 - Application forms with all questions answered accurately and completely.
 - Personal Questionnaire.
 - Proof of citizenship for all principals.
 - Fingerprints for all principals.
 - Contract of Sale (for transfer applications).
 - Lease Agreement or Deed for property.
 - Diagrams and Photographs of the premises.
 - Copies of financial records showing the availability of funds being used for the venture.
 - Filing Receipts for Corporations or LLC's/LLP's and/or Assumed Name Certificate.
- Some information may be provided after approval of the application, but the license will not be issued until the information is received. Following are examples of such items:
 - Certificate of Authority to collect sales tax.
 - Workers Compensation/Disability Insurance- carrier name and policy number.

⁷ See ABCL §126(3) for individual licensees and ABCL §126(4) for partnerships and corporations

⁸ See ABCL §126(1) for individual licensees and ABCL §126(4) for partnerships and corporations

⁹ ABCL §128

- Federal Tax Identification Number.
- TTB permit.

REVIEW OF THE APPLICATION

- Applications are mailed to a post office box in New York City. Checks are deposited into an account held by the agency and images of the application and all supporting documents are scanned into a secured file that can be viewed by the Authority's Licensing Bureau staff.
- Applications are then forwarded to the Albany office of the Authority for data entry and assignment to Licensing Bureau examiners.
 - The examiners review applications in the order they are received. If there are deficiencies in an application, the examiner will prepare a letter detailing any items that need submission, correction or clarification.
 - The applicant is given 20 business days to comply with the deficiency letter.
 - Should the submission of requested items lead to additional questions, the applicant will receive another letter giving them additional time to respond.
 - The examiner will list both items that are needed to complete their review and missing items that have not been submitted but may be submitted later as conditions of approval. These items will be needed prior to the issuance of the license certificate but will not prevent a determination on the application from being made.
- Once the examiner's review is completed the application is forwarded to the Licensing Board for a determination. The Licensing Board consists of senior staff recommended by the Deputy Commissioner to the Members of the Authority. The applicant will receive a letter stating whether the application has been approved, conditionally approved or denied.

TEMPORARY PERMITS

- Only applicants for winery and farm winery licenses can obtain a permit to operate while the application is pending.¹⁰

STANDARDS FOR APPROVAL OF LICENSE

- Generally, any application for a license must be approved unless there is good cause to deny the application.¹¹
- Good cause includes, among other things any statutory prohibition against issuing the license to the location or to the applicant, the character, fitness, experience and financial responsibility of the applicant; the history of violations of the ABCL at the location of the proposed licensed establishment and by the applicant; and fraud, misrepresentation, false

¹⁰ ABCL §76-b

¹¹ ABCL §54(1)

material statements, concealment or suppression of facts, documents and other information regarding the application.

- The “good cause” standard applies to all manufacturing licenses. Certain retail licenses, are subject to additional licensing standards not addressed in this material. If the manufacturing applicant intends to apply for an on-premises license for a food/drinking establishment in or adjacent to the manufacturing site, that retail application may be subject to those restrictions.

CONDITIONAL APPROVAL

- An application may be “conditionally” approved. The license certificate will not be issued until the applicant complies with certain conditions, such as the submission of photographs showing the premises ready to open and operate.

PUBLISHING NOTICE IN NEWSPAPER

- Every applicant obtaining a license must publish a notice of the issuance of the license in a newspaper once week for two weeks.¹²

POSTING LICENSE CERTIFICATE IN PREMISES

- Before starting in business, each licensee must post the original license certificate in the licensed premises. The license certificate must be “enclosed in a suitable wood or metal frame having a clear glass space and a substantial wood or metal back so that the whole of said license may be seen therein, and shall be posted up and at all times displayed in a conspicuous place in the room where such business is carried on, so that all persons visiting such place may readily see the same”.¹³

¹² ABCL §107

¹³ ABCL §114(6)

DISAPPROVAL OF APPLICATION

WRITTEN DECISIONS

- When an application is disapproved, the SLA will issue a written decision.¹⁴

REVIEW OF DISAPPROVAL

- If an application is disapproved, the applicant has two options, a disapproval hearing or a request for reconsideration. Once the applicant has exercised one of the options, it may seek judicial review of the disapproval under Article 78 of the CPLR.¹⁵

DISAPPROVAL HEARING

- A disapproval hearing is limited to determining whether the reasons for the disapproval are supported by the record and the law. The process consists of an administrative hearing followed by a review by the Full Board.

REQUEST FOR RECONSIDERATION

- A request for reconsideration may go beyond the issues addressed in the written disapproval. There is no administrative hearing in this process. Licensing Board decisions are reviewed by one of the Members of the Authority to determine if there is a sufficient reason to have the matter reviewed by the Full Board. A request to reconsider a Full Board disapproval goes directly to the Full Board.

¹⁴ ABCL §54(3)

¹⁵ ABCL §121

APPROVALS NEEDED AFTER LICENSE IS ISSUED

RENEWAL OF THE LICENSE

- ABCL §109
- The term of the license depends on the type of license. For example, a brewer's license is issued for one year while a distiller's license is issued for three years.
- A renewal application must be filed before the expiration of the current license period. The licensee will receive a notice approximately three months prior to the expiration of the current license as a reminder that the renewal application needs to be filed.
- A licensee who files a complete renewal application before the expiration of the current license period is entitled to continue to operate under the expired license until the SLA makes a decision on the renewal application. This is commonly referred to as "operating under SAPA." ¹⁶
- Licensees who do not file a complete application before the expiration of the current license must cease selling (or allowing the consumption of) alcoholic beverages at the premises once the current license expires and await the SLA's decision on the renewal application.

ALTERATIONS

- ABCL §99-d(2)
- A licensee making any renovations to the licensed premises may need to notify, or obtain the approval of, the SLA before going forward with the changes. A minor alteration is anything that costs less than \$10,000 that does not "materially affect the character of the premises or the physical structure that existed at the time of licensing." The licensee must notify the SLA in advance of minor alterations but does not need to obtain the SLA's approval.¹⁷
- If the licensee is making a substantial alteration to the licensed premises, it must file an application in advance and obtain the SLA's approval. Substantial alterations include adding or deleting space (including outside areas) from the licensed premises; physical changes that reduces visibility; physical changes to interior that materially affect the character of premises; relocating the entrance; enlarging or relocating the bar; converting a room for food/beverage service; installing a bandstand, stage, dance floor; and sealing off or creating a public entrance or window.¹⁸
- Wineries and farm wineries are not required to notify/obtain approval for alterations.

¹⁶ State Administrative Procedure Act §401(2)

¹⁷ ABCL §99-d(1)

¹⁸ ABCL §99-d(1)

CHANGES IN INFORMATION CONTAINED IN APPLICATION

- All licensees are required to notify the SLA in writing of any changes to the information that was contained in the original application. This includes any change in your residential address. Such changes must be reported to the SLA within ten days.¹⁹

CORPORATE CHANGES

- If the license has been issued in the name of a corporation or limited liability company, the licensee must obtain the approval of the SLA before making any of the following changes to the corporate structure: (a) adding or removing an officer or director of the corporation; or (b) adding or removing a managing member of a limited liability company.²⁰
- In addition, SLA approval must be obtained before there is a change in the stockholders of the corporation or the members of the limited liability company, or any change in the stock held by an existing stockholder (of the corporation) or the ownership interest of an existing member (of the limited liability company) has in the business. Please note that no approval is needed if there are ten or more stockholders or members and: (a) the change involves less than 10% of the stock or ownership interest; and (b) none of the existing stockholders or members with less than a 10% interest have their interest increased to 10% or more.²¹

FIDUCIARIES

- On occasion, a court may give someone (such as an administrator or executor of an estate, a bankruptcy trustee, or a receiver in a mortgage foreclosure) power to run the licensed business pending the outcome of the court proceeding. In such cases, that person must advise the SLA of the court appointment and that person will become the only person recognized by the SLA to act for the licensee until the court directs otherwise.²²

NAME CHANGES

- If the licensee's name has changed due to marriage, divorce, or any other reason, it must file an endorsement application so that the SLA's records can be updated. The endorsement application may also be used if the licensee is changing the name of the corporation that holds the license if there is no change in ownership and the federal employer information number remains the same.
- If the license is held in an individual's name, the SLA will also allow a change to a corporation or limited liability company using an endorsement application. This can only be done if the individual remains the sole owner of the business.

¹⁹ ABCL §110(4)

²⁰ ABCL §99-d(2)

²¹ ABCL §99-d(2)(a)

²² ABCL §122

PARTNERSHIP CHANGES

- If the license is issued to a partnership, SLA approval must be obtained if partners are being added or removed. SLA approval is also required if the partnership is being dissolved and one partner intends to continue with the license in his/her name only.

REMOVALS (CHANGING LOCATIONS)

- A license may not be moved to another location without the SLA's approval.²³

²³ABCL §99-d(3)

PERMITS THAT MAY BE NEEDED

SOLICITOR'S PERMIT

- ABCL §93
- Sales staff working for brewers, cider producers, distillers, rectifiers, fruit brandy producers and wineries, or any wholesaler must have a solicitor's permit.
- Sales staff of micro-brewers, farm brewers, farm cideries, micro-distillers, farm distillers and farm wineries do not need a solicitor's permit.²⁴
- Principals of the licensed entity and staff accepting orders at licensed premises do not need a solicitor's permit.
- Licensed manufacturers and wholesalers can obtain a "temporary solicitor's permit" to cover newly hired sales staff while they apply for their solicitor's permit.²⁵

WAREHOUSE PERMIT

- ABCL §96
- A warehouse permit is not needed if the licensee is storing its inventory on its own licensed premises.
- A warehouse permit is needed if the licensee is storing its inventory someplace other than the licensed premises.
- The licensee may operate its own warehouse or use the services of a third party's warehouse. In either situation, the warehouse must have a permit.

TRUCKING PERMIT

- ABCL §94
- A licensed manufacturer or wholesaler does not need a separate trucking permit if it is transporting its own product in a vehicle owned/hired and operated by the licensed manufacturer or wholesaler. The license information must be posted on the sides of the vehicle or a copy of the license must be kept in the cab of the vehicle.²⁶
- A trucking permit is needed by a non-licensee that will be transporting alcoholic beverages, or a licensed manufacturer or wholesaler transporting another licensee's product.

²⁴ ABCL §93(1)

²⁵ ABCL §93(2)

²⁶ ABCL §116

- There are three types of trucking permits: single vehicle trucking permit; a “fleet permit” for all the permittee’s vehicles; and a “company permit” for licensed manufacturer’s and beer wholesalers for tractor-trailers hired by permittee to deliver product.

DISTRIBUTION OF PRODUCTS

METHODS OF DISTRIBUTION

- “Self-distribution”
 - All licensed manufacturers have the right to “self-distribute” (act as their own wholesaler) and/or use a licensed wholesaler to distribute their products.
- Franchise agreements with beer wholesalers²⁷
 - Written agreement between brewer and wholesale required.
 - With one exception, agreements between brewers and wholesalers cannot be terminated unless there is good cause. Brewers producing less than 300,000 barrels can terminate without good cause if the brewer makes up 3% or less of wholesaler’s business.
- Licensed manufacturers can sell to out-of-state entities if allowed by the state where the entity is located.

STATE BRAND LABEL REGISTRATION

- All alcoholic beverages sold in New York must have a brand label that has been approval by the Authority.²⁸
- Wine does not require state approval if the label has been approved by TTB.²⁹
- Fee exemptions for beer, cider or liquor produced in small batches.³⁰
- Brand label registration guidance contained in Advisory 2016-3.

PRICE RESTRICTIONS

- Beer
 - 180 Day Law- price charged to a wholesaler or retailer cannot be increased until 180 days after last price decrease.³¹
 - No uniform prices to retailers required- can charge different price to different retailers.
- Liquor & wine subject to price posting.³²

²⁷ ABCL §55-c

²⁸ ABCL §107-a(3)(a)

²⁹ ABCL §107-a(4)(c)(3)

³⁰ ABCL §107-a(4)(e) & ABCL §107-a(4)(f)

³¹ ABCL §55-b

³² ABCL §101-b

- Price posting is the filing of a schedule with the prices at which liquor and wine manufacturers and wholesalers will sell their products.
- Two price schedules: the “wholesale schedule” of prices charged by manufacturers/importers to licensed wholesalers; and the “retail schedule” of prices charged by licensed manufacturers and licensed wholesalers to licensed retailers.³³
- No liquor or wine can be sold at retail unless it is included on both price schedules. Any volume discounts must be set forth in the schedule.³⁴
- All schedules now filed electronically.³⁵
- New price schedule must be posted each month, except that wineries and farm wineries can file once a year. Need to file amendment if prices change.³⁶
- A licensed manufacturer or licensed wholesaler cannot refuse to sell to any retailer who offers to pay cash unless: one retailer owns the brand; or the product has been posted as “limited availability.”³⁷
- The price schedule cannot require purchase of one product to get another, except for permissible combination packages.³⁸
- Combination packages are sealed, pre-wrapped packages containing either: two or more bottles of different liquors or wines; or one bottle of liquor or wine combined with certain other items.³⁹

SALE ON CREDIT AND THE “C.O.D. LIST”

- Manufacturers and wholesalers must sell to any retailer willing to pay “cash.”⁴⁰
 - “Cash” means U.S. currency, certified check, money order, electronic funds transfer, bank officer’s check or draft, or a check drawn on the retailer’s account payable to the manufacturer or wholesaler.
 - Checks cannot be from third parties.
 - Checks drawn on retailer’s account cannot be post-dated.
 - Manufacturers and wholesalers do not have to accept checks drawn on retailer’s account.
- Manufacturers and wholesalers can, but are not required to, allow retailers to pay on credit.⁴¹

³³ ABCL §101-b(3)(a) and §101-b(3)(b)

³⁴ ABCL §101-b(3)(a) and §101-b(3)(b)

³⁵ ABCL §101-b(3)(d)

³⁶ ABCL §101-b(4) and §101-b(5)

³⁷ ABCL §101-b(3)(c) [private labels] and §101-b(4-a)(d) & Advisory 2016-2 [limited availability]

³⁸ ABCL §101-b(4-a)(e)

³⁹ ABCL §101-b(3)(a) & Advisory 2016-9

⁴⁰ ABCL §101-aa(1)(f) and §101-aaa(1)(g)

- Retailers purchasing liquor or wine on credit have 30 days to pay the bill.⁴²
- Retailers purchasing beer on credit have between 12 to 26 days to pay the bill, depending on the date of delivery within the credit cycle.⁴³
- Licensed manufacturers and wholesalers must report retailers who are delinquent in payment.
- “C.O.D. list” contains all the retailers who are delinquent in paying for products purchased on credit from licensed manufacturers and wholesalers.⁴⁴
 - For liquor and wine, if a retailer has a credit equal to, or more than, the outstanding bill, the retailer cannot be reported as delinquent.⁴⁵
 - Licensed manufacturers and wholesalers cannot sell on credit to any retailer on C.O.D. list.⁴⁶

⁴¹ ABCL §101-aa(8) and §101-aaa(7)

⁴² ABCL §101-aa(1)(b)

⁴³ ABCL §101-aaa(3)

⁴⁴ ABCL §101-aa(3) and §101-aaa(3)

⁴⁵ ABCL §101-aa(3)

⁴⁶ ABCL §101-aa(3) and §101-aaa(3)

TASTINGS AND RETAIL SALES

TASTINGS AT THE LICENSED PREMISES

Brewery & Micro- Brewery

- May conduct tastings of beer it produces and any New York state labeled beer without obtaining an additional license or permit.⁴⁷

Farm Brewery

- May conduct tastings of any New York state labeled beer and New York State labeled cider without obtaining an additional license or permit.⁴⁸
- May also conduct tastings of any New York state labeled liquor⁴⁹ and New York state labeled wine⁵⁰ without obtaining an additional license or permit.

Cider Producer

- May conduct tastings of New York State labeled cider manufactured by the licensee without obtaining an additional license or permit.⁵¹

Farm Cidery

- May conduct tastings of any New York state labeled cider without obtaining an additional license or permit.⁵²
- May also conduct tastings of any New York state labeled beer,⁵³ New York state labeled liquor⁵⁴ and New York state labeled wine⁵⁵ without obtaining an additional license or permit.

Winery

- May conduct tastings of wine and wine products it produces and any New York state labeled wine and New York state labeled wine product without obtaining an additional license or permit.⁵⁶

Farm Winery & Micro-Winery

- May conduct tastings of any New York state labeled wine and New York State labeled cider without obtaining an additional license or permit.⁵⁷

⁴⁷ ABCL §51(3-a)

⁴⁸ ABCL §51-a(2)(f)

⁴⁹ ABCL §51-a(2)(k)

⁵⁰ ABCL §51-a(2)(i)

⁵¹ ABCL §58(3-a)(b)

⁵² ABCL §58-c(3-a)(b)

⁵³ ABCL §58-c(2)(h)

⁵⁴ ABCL §58-c(2)(j)

⁵⁵ ABCL §58-c(2)(i)

⁵⁶ ABCL §76(4)

- May also conduct tastings of New York state labeled liquor⁵⁸ and New York state labeled beer without obtaining an additional license or permit.⁵⁹

Distillery, Micro-Distillery, Rectifier, Micro-Rectifier and Fruit Brandy Producer

- Cannot conduct any tastings at its licensed premises.

Farm Distillery

- May conduct tastings of any New York state labeled liquor without obtaining an additional license or permit.⁶⁰
- May also conduct tastings of New York state labeled wine,⁶¹ New York state labeled cider⁶² and New York state labeled beer⁶³ without obtaining an additional license or permit.

OFF-PREMISES SALES AT THE LICENSED PREMISES

Brewery & Micro-Brewery

- May sell by the bottle beer it produces and any New York state labeled beer without obtaining an additional license or permit.⁶⁴

Farm Brewery

- May sell by the bottle any New York state labeled beer and New York State labeled cider without obtaining an additional license or permit.⁶⁵
- May also sell by the bottle any New York state labeled liquor⁶⁶ and New York state labeled wine⁶⁷ without obtaining an additional license or permit.

Cider Producer

- Cannot sell by the bottle at the licensed premises.

Farm Cidery

- May sell by the bottle any New York state labeled cider without obtaining an additional license or permit.⁶⁸

⁵⁷ ABCL §76-a(6)(h) & ABCL §80(1)

⁵⁸ ABCL §76-a(6)(f)

⁵⁹ ABCL §76-a(6)(g)

⁶⁰ ABCL §61(2-c)(c)

⁶¹ ABCL §61(2-c)(a)(vii)

⁶² ABCL §61(2-c)(a)(vi)

⁶³ ABCL §61(2-c)(a)(v)

⁶⁴ ABCL §51(3-a)

⁶⁵ ABCL §51-a(2)(e)

⁶⁶ ABCL §51-a(2)(k)

⁶⁷ ABCL §51-a(2)(i)

- May also sell by the bottle any New York state labeled beer, New York state labeled liquor and New York state labeled wine without obtaining an additional license or permit.⁶⁹

Winery

- May sell by the bottle wine and wine products it produces and any New York state labeled wine and New York state labeled wine product without obtaining an additional license or permit.⁷⁰

Farm Winery

- May sell by the bottle any New York state labeled wine and New York State labeled cider without obtaining an additional license or permit.⁷¹
- May also sell by the bottle New York state labeled liquor⁷² and New York state labeled beer without obtaining an additional license or permit.⁷³

Distillery, Micro-Distillery, Rectifier, Micro-Rectifier and Fruit Brandy Producer

- Cannot sell any alcoholic beverages by the bottle at its licensed premises.

Farm Distillery

- May sell by the bottle any New York state labeled liquor without obtaining an additional license or permit.⁷⁴
- May also sell by the bottle New York state labeled wine,⁷⁵ New York state labeled cider⁷⁶ and New York state labeled beer⁷⁷ without obtaining an additional license or permit.

ON-PREMISES SALES AT THE LICENSED PREMISES

Brewery & Micro-Brewery

- May sell, for on-premises consumption, the beer it produces and any New York state labeled beer without obtaining an additional license or permit.⁷⁸
- May operate a food/drinking establishment in or adjacent to the brewery and can obtain an on-premises license to sell other alcoholic beverages at that establishment.⁷⁹

⁶⁸ ABCL §58-c(2)(f)(i)

⁶⁹ ABCL §58-c(2)(h), ABCL §58-c(2)(i) & ABCL §58-c(2)(j)

⁷⁰ ABCL §76(4)

⁷¹ ABCL §76-a(2)(e)

⁷² ABCL §76-a(6)(e)

⁷³ ABCL §76-a(6)(g)

⁷⁴ ABCL §61(2-c)(a)(iii)

⁷⁵ ABCL §61(2-c)(a)(vii)

⁷⁶ ABCL §61(2-c)(a)(vi)

⁷⁷ ABCL §61(2-c)(a)(v)

⁷⁸ ABCL §51(3-a)

Farm Brewery

- May sell, for on-premises consumption, any New York State labeled beer,⁸⁰ New York state labeled cider,⁸¹ New York state labeled liquor⁸² and New York state labeled wine⁸³ without obtaining an additional license or permit.
- May operate a food/drinking establishment in or adjacent to the brewery and obtain an on-premises license to sell other alcoholic beverages for that establishment.⁸⁴

Cider Producer

- May operate a food/drinking establishment in or adjacent to the cidery and sell, for on-premises consumption, New York state labeled cider that it produces without obtaining an additional license or permit.⁸⁵

Farm Cidery

- May sell, for on-premises consumption, any New York State labeled cider without obtaining an additional license or permit.⁸⁶
- May sell, for on-premises consumption, any New York State labeled beer,⁸⁷ New York state labeled liquor⁸⁸ and New York state labeled wine⁸⁹ without obtaining an additional license or permit.
- May operate a food/drinking establishment in or adjacent to the cidery can obtain an on-premises license to sell other alcoholic beverages for that establishment.⁹⁰

Winery

- May sell, for on-premises consumption, the wine it produces and any New York state labeled wine without obtaining an additional license or permit.⁹¹
- May operate a food/drinking establishment in or adjacent to the winery and obtain an on-premises license to sell other alcoholic beverages for that establishment.⁹²

⁷⁹ ABCL §51(4)

⁸⁰ ABCL §51-a(2)(e)

⁸¹ ABCL §51-a(2)(e)

⁸² ABCL §51-a(2)(e)

⁸³ ABCL §51-a(2)(e)

⁸⁴ ABCL §51-a(2)(g)

⁸⁵ ABCL §58(3)(d)

⁸⁶ ABCL §58-c(2)(f)

⁸⁷ ABCL §58-c(2)(h)

⁸⁸ ABCL §58-c(2)(j)

⁸⁹ ABCL §58-c(2)(i)

⁹⁰ ABCL §58-c(2)(f)

⁹¹ ABCL §76(4)

⁹² ABCL §76(4-a)

Farm Winery

- May sell, for on-premises consumption, any New York State labeled beer, New York state labeled cider, New York state labeled liquor and New York state labeled wine without obtaining an additional license or permit.⁹³
- May operate a food/drinking establishment in or adjacent to the brewery can obtain an on-premises license to sell other alcoholic beverages for that establishment.⁹⁴

Distillery, Micro-Distillery, Rectifier, Micro-Rectifier and Fruit Brandy Producer

- Cannot sell any alcoholic beverages by the glass at its licensed premises.

Farm Distiller

- May sell, for on-premises consumption, any New York State labeled liquor without obtaining an additional license or permit.⁹⁵
- May also sell, for on-premises consumption, any New York State labeled beer,⁹⁶ New York state labeled cider⁹⁷ and New York state labeled wine⁹⁸ without obtaining an additional license or permit.
- May operate a food/drinking establishment in or adjacent to the distillery can obtain an on-premises license to sell other alcoholic beverages for that establishment.⁹⁹

THE “MARKETING PERMIT”

- Advisory 2015-17
- Permit created under the Authority’s powers to issue miscellaneous permits for situations not addressed by, but consistent with the purposes of, the ABCL.¹⁰⁰
- Allows licensed manufacturers to conduct tastings and sell their products by the bottle at certain events.
- Licensed manufacturers can accept orders on behalf of their wholesalers.
- Tastings and bottle sales can be conducted at:
 - An establishment licensed under the ABCL to sell the product at retail;

⁹³ ABCL §51-a(2)(e)

⁹⁴ ABCL §76-a(2)(f)

⁹⁵ ABCL §61(2-c)(e)(i)

⁹⁶ ABCL §61(2-c)(a)(v)

⁹⁷ ABCL §61(2-c)(a)(vi)

⁹⁸ ABCL §61(2-c)(a)(iii)

⁹⁹ ABCL §61(2-c)(e)(ii)

¹⁰⁰ ABCL §99-b(1)(k)

- The State Fair, recognized county fairs and farmers markets operated on a not-for-profit basis;
- Outdoor or indoor gatherings, functions, occasions or events sponsored by a bona fide charitable organization; and
- Other indoor or outdoor events specifically approved by the Authority.
- Permit holder cannot charge for samples.
- Limitations on size of samples, but not the number of samples.
 - Beer, wine products and cider: 3 ounces.
 - Wine: 2 ounces.
 - Liquor: one-quarter ounce.

BRANCH OFFICES AND SATELLITE STORES

- A “branch office” is a separate location where any activity that can be conducted at the licensed premises can be conducted.
- Available to farm breweries,¹⁰¹ farm cideries,¹⁰² farm distilleries¹⁰³ and farm wineries.¹⁰⁴
- A farm brewery, farm cidery or farm winery may operate up to five “branch offices”. A farm distiller can operate one branch office.
- The licensee must file for a permit for each branch office.

¹⁰¹ ABCL §51-a(9)

¹⁰² ABCL §51-a(9)

¹⁰³ ABCL §61(2-c)(g)

¹⁰⁴ ABCL §51-a(9)

COMPLIANCE MATTERS

TIED HOUSE LAWS

- The “tied house” law restricts licensees in one tier of the industry from having an interest in a business in another tier of the industry.
 - Licensed retailers cannot have an interest in a business that manufactures or wholesales alcoholic beverages.¹⁰⁵
 - Licensed manufacturers and wholesalers cannot have an interest in a business that sells alcoholic beverages at retail.¹⁰⁶
- Direct and indirect interests are prohibited. It does not matter whether the interest is significant or insignificant.
 - It does not matter where the other business is located.
 - The ABCL contains exceptions to the tied house law for specific geographic locations.

GIFTS AND SERVICES LAW

- The “gifts and services” law prohibits manufacturers and wholesalers from giving something of value to retailers to induce the retailer into buying the manufacturer’s or wholesaler’s product.¹⁰⁷
 - The Authority presumes that anything a manufacturer or wholesaler gives to a retailer is meant to induce the retailer to buy product.
 - Manufacturers should be familiar with the Consent Orders.
- There are certain things that a manufacturer can do without violating the gifts and services law, for example:
 - Retailer advertising specialties- items with the brand logo intended to be used by the retailer. There is an annual cap on the value that can be given to a retailer.¹⁰⁸
 - Consumer advertising specialties- items with the brand logo intended to be given away to consumers. There is no limit on the amount that can be given to a retailer.¹⁰⁹
 - Contests and rebates (with no retailer participation)- the Authority allows mail-in rebates but not those that can be redeemed immediately at the retail location.¹¹⁰

¹⁰⁵ ABCL §105(16) and §106(13)

¹⁰⁶ ABCL §101(1)(a)

¹⁰⁷ ABCL §101(1)(c)

¹⁰⁸ Rules of the Authority §86.5

¹⁰⁹ Rules of the Authority §86.6

¹¹⁰ Rules of the Authority §86.9

- Advertising the name of retailers who carry the product- the advertisement must include several retailers and the reference to the retailers cannot be the predominant part of the advertisement.¹¹¹

COMMON DISCIPLINARY VIOLATIONS BY LICENSED MANUFACTURERS

Alterations

- Failure to notify or obtain approval for alterations.¹¹²

Availing

- A license issued to one person/entity cannot be transferred to another person/entity.¹¹³
- Allowing someone not disclosed (and approved by the Authority) as a principal of the licensee to use (or avail themselves) of the license is a violation. Failure to have the transfer approved by the Authority is an availing. Availing is considered one of the most serious violations of the ABCL, since it undermines the entire licensing process and constitutes a danger to the public.¹¹⁴

Books & records

- All manufacturing licensees are required to maintain “adequate books and records of all transactions” involving the business conducted by the licensee.¹¹⁵
- The failure of a licensee to keep records regarding employees, even part-time employees, constitutes failure to maintain adequate books and records.¹¹⁶

Brand labels

- No alcoholic beverages can be advertised or offered for sale in this state unless the brand label affixed to the container has been registered with and approved by the Authority.¹¹⁷

Corporate Changes

- Corporate licensees are required to obtain the approval of the Authority before making changes to the corporate principals. Failure to obtain such approval is an unauthorized corporate change.¹¹⁸

¹¹¹ Rules of the Authority §86.10

¹¹² ABCL §99-d(1)

¹¹³ ABCL §111

¹¹⁴ *Hacker v. State Liquor Authority*, 19 NY2d 177 (1967)

¹¹⁵ ABCL §103(7)

¹¹⁶ *Rob Tess Restaurant Corp. v. State Liquor Authority*, 68 AD2d 821 (1st Dept., 1979)

¹¹⁷ ABCL §107-a(4)(a)

¹¹⁸ ABCL 99-d(2)

Extension of premises

- A licensee cannot transfer or extend its license to another premises or to another part of the building containing the licensed premises. The license can be used only in the premises that is licensed by the Authority.¹¹⁹

False material statements

- Fraud, misrepresentation, false material statements, concealment or suppression of facts by a licensee in connection with the original application, a renewal application, or any other application requiring the Authority's approval is grounds for revocation of the license.¹²⁰

Felons

- Manufacturing licensees may not employ a person who has been convicted of a felony of any of the following offenses: illegally using, carrying or possessing a pistol or other dangerous weapon; making or possessing burglar's instruments; buying or receiving or criminally possessing stolen property; unlawful entry of a building; aiding escape from prison; unlawfully possessing or distributing habit forming narcotic drugs; violating provisions of the former Penal Law involving prostitution; vagrancy; prostitution; or ownership, possession, operation, custody or control of a still.¹²¹
- The general prohibition does not apply to:
 - Persons who have received a pardon; certificate of relief from civil disabilities; certificate of good conduct; or other relief from disabilities provided for in the law.
 - Persons who have obtained the approval of the SLA to work in licensed premises.

Improper conduct

- Licensees are subject to disciplinary action for improper conduct by the licensee or its principals, even if the conduct does not take place at the licensed premises. The standard is whether the conduct is of such a nature that if known to the Authority, the license/permit or renewal thereof would have been disapproved because of the unsatisfactory character and/or fitness of the person.¹²²

License certificates

- A licensee is required to display its license certificate in the licensed premises. The certificate must be enclosed in a wood or metal frame with (a) a clear glass front showing the entire certificate space and (b) a substantial wood or metal back. The certificate, as framed, must always be posted and displayed in the licensed premises. It must be posted in a "conspicuous place" so that it may be readily seen by all persons visiting the establishment.¹²³

¹¹⁹ ABCL §111

¹²⁰ Rules of the Authority §53.1(b)

¹²¹ ABCL §102(2)

¹²² Rules of the Authority §53.1(n)

¹²³ ABCL §114

Non Bona Fide

- When a licensed premises ceases to be operated within the contemplation of the license that was issued, it is considered to be non bona fide.¹²⁴
- Put another way, the licensee is no longer operating the business that the Authority licensed, or the business no longer meets the requirements to be eligible for a license.

Notification of changes

- Licensees must notify the Authority of any change if facts in the information submitted in an application within ten days of such change.¹²⁵

Police Officers

- Manufacturing licensees may not employ police officers.¹²⁶

Surety bonds

- The ABCL gives the SLA the power to require licensees and permittees to obtain surety bonds to insure the payment of penalties imposed by the Authority.¹²⁷
- By regulation, the SLA has designated the licensees and permittees that must obtain a bond, as well as the amount of the bond for each type of license or permit.¹²⁸
- Once the Authority makes a claim against a bond, or a portion of a bond, the licensee or permittee has 10 days to file a new bond, or (in the case of a partial bond claim) restore the bond to the full amount required by the regulations. Failure to do so is grounds for revocation of the license or permit.¹²⁹

Trade Names

- Licensees are not permitted to use a trade name that does not appear on the license certificate. Use of the trade name includes having it appear on books, records, stationary, canopies, exterior signs, advertisement, or telephone listings.¹³⁰
- The inclusion by the licensee of the unapproved trade name in a renewal or other application does not constitute approval by the Authority. To obtain approval of new trade name, a licensee needs to submit a letter requesting sale along with a copy of the assumed name certificate. Multiple trade names can be used at the same licensed premises.

Transportation of alcoholic beverages

- Licensees may deliver/ship alcoholic beverages in one of two ways. They may:

¹²⁴ Rules of the Authority §53.1(d)

¹²⁵ ABCL §110(4)

¹²⁶ ABCL §128

¹²⁷ ABCL §112

¹²⁸ Rules of the Authority Part 81

¹²⁹ Rules of the Authority §81.7

¹³⁰ Rules of the Authority §53.1(p)

- use a delivery company with a trucking permit,¹³¹ or
- use vehicles owned (or hired) and operated by the licensee.¹³²
- A licensee using its own vehicle must either have a sign with licensing information on the sides of the vehicle or keep a copy of the licensee certificate in the vehicle.

¹³¹ ABCL §94

¹³² ABCL §116

ADMINISTRATION OF THE ABC LAW

THE STATE LIQUOR AUTHORITY

- The State Liquor Authority (the “Authority”) is the agency responsible for issuing licenses and permits to traffic in alcoholic beverages in New York. It is also responsible for ensuring that licensees and permittees comply with the Alcoholic Beverage Control Law and the Rules of the Authority.
- In addition to those responsibilities, the Authority has other statutory powers, including the following:
 - The Authority can place a moratorium on issuing licensees throughout the state or in any political subdivision of the state.¹³³
 - The Authority can, during a public emergency, prohibit the sale of alcoholic beverages.¹³⁴
 - At the request of a county legislative body, the Authority can restrict the hours of sale of alcoholic beverages within the county.¹³⁵
- The Authority consists of three Commissioners, or Members, appointed by the Governor for three year terms. One of the Commissioners is designated by the Governor to serve as the Chairman.¹³⁶
- Any action of the Members of the Authority must be taken by a majority vote at a public meeting. When the Members meet to consider matters, they are referred to as the “Full Board.”¹³⁷

ENFORCEMENT

- Disciplinary proceedings commenced by the Authority are based on referrals from other law enforcement agencies or investigations conducted by the Authority’s Enforcement Bureau.
- Most investigations of licensed manufacturers and wholesalers are in response to complaints made by retailers and other licensed manufacturers and wholesalers.
- Referrals from other law enforcement agencies and Enforcement Bureau investigation reports are reviewed by the Office of Counsel to determine whether there is evidence of a violation of the ABCL or the Rules of the Authority.
- Disciplinary proceedings result in either: an administrative hearing; a “no contest” plea to the charges; or an offer negotiated between the licensee and the prosecutor that must be reviewed by the Members of the Authority.

¹³³ ABCL §17(2)

¹³⁴ ABCL §17(7)

¹³⁵ ABCL §17(11)

¹³⁶ ABCL §10

¹³⁷ ABCL §14

- Refusal to appear and/or testify at such an interview constitutes grounds for revocation of the license.¹³⁸

THE DISCIPLINARY PROCESS

- A disciplinary proceeding against licensees consists of the issuance of a pleading, followed by the entry of a plea (or a default in responding) by the licensee. The type of plea entered will dictate the next steps that must be taken.

Statute of limitations

- A disciplinary proceeding may be commenced for violations taking place during: the current license period; and the license period immediately before the current license period.¹³⁹
- A license may be renewed on stipulation, with the licensee agreeing to waive the time limitation for bringing violations that took place prior to the renewal.¹⁴⁰
- If a license is surrendered, a disciplinary proceeding should be brought within thirty days of the license certificate being submitted to the Authority for surrender. Failure to bring a proceeding within that time entitles the licensee to a refund of the unused portion of its license fee.¹⁴¹

Content of pleading

- All pleadings must indicate whether the proceeding may result in a revocation or cancellation of the license (a “revocation proceeding”) or a penalty other than revocation or cancellation (a “suspension proceeding”). The caption of the pleading will indicate whether the proceeding involves a revocation or suspension proceeding.¹⁴²
- All pleadings must include a reference to the legal authority and jurisdiction under which the proceeding is being conducted.¹⁴³
- All pleadings must set forth numbered charges against the licensee. Insofar as possible, each charge should allege a separate violation.¹⁴⁴
- A short and plain statement of the matters asserted is required.¹⁴⁵
- The Authority’s finding as to the sufficiency of the statement provided is not subject to judicial review.
- All pleadings must require the licensee to enter a plea to the charges on or before the date specified in the pleading (also known as “the return date”).¹⁴⁶

¹³⁸ Rules of the Authority §53.1(o)

¹³⁹ ABCL §118(2)

¹⁴⁰ *Matter of Pepper & Salt Tavern Inc.*, 99 AD2d 840 (2nd Dept., 1984)

¹⁴¹ ABCL §127

¹⁴² Rules of the Authority §54.1(b)(1)

¹⁴³ SAPA §301(2)(b)

¹⁴⁴ Rules of the Authority §54.1(b)(2)

¹⁴⁵ SAPA §301(2)(d)

¹⁴⁶ Rules of the Authority §54.1(b)(3)

- All pleadings must advise the licensee of its right to counsel.¹⁴⁷
- All pleadings must advise licensee that upon failure to appear or enter a plea, the licensee will be deemed to have entered a “No Contest” plea to the charges and no further hearing will be held.¹⁴⁸
- All pleadings must contain a statement that interpreter services will be made available to deaf persons at no charge.¹⁴⁹
- Pleadings in a suspension proceeding must also: set forth the maximum penalty, including a fine and/or any claim against the licensee’s surety bond, which the Authority may assess if the charges are sustained; and advise the licensee that it may request that (in the Authority’s discretion) a bond forfeiture or fine be imposed in lieu of any suspension of its license.¹⁵⁰
- Pleadings for commonly charged violations (such as sales to minors for first and second time offenders) may include proposed terms of a Conditional No Contest offer.
- The pleading cannot inform the licensee that by entering a No Contest plea it will receive a lesser penalty than if it proceeds to hearing.¹⁵¹
- The Authority must prepare a summary of the disciplinary process in plain language and provide a copy of same to licensees who are the subject of disciplinary actions.

Service of pleadings

- A disciplinary proceeding is commenced with the service of a notice of pleading on the licensee.¹⁵²
- The pleading must be delivered: in person to the licensee; or by registered or certified mail to the licensee addressed to the licensed premises. In addition, a copy of the pleading must be sent by first class mail to the residence of record of the licensee (if any individual) or any officer or director of a corporate licensee, or any general partner of a partnership licensee.¹⁵³
- In a revocation proceeding, a copy of the pleading must also be sent by first class mail to the owner of the property on which the licensed premises is located. If the licensee leases the premises from someone other than the owner, a copy must also be mailed to the lessor.

Amendment of pleadings/withdrawal of charges

- A prosecutor may amend a pleading at any time before the close of the hearing or (if there was no hearing) prior to a determination by the Full Board.¹⁵⁴ Rules §54.4(d).

¹⁴⁷ Rules of the Authority §54.1(b)(4)

¹⁴⁸ Rules of the Authority §54.1(b)(5)

¹⁴⁹ SAPA of the Authority §301(2)(e)

¹⁵⁰ Rules of the Authority §54.2(c)

¹⁵¹ *Costello v. State Liquor Authority*, 17 AD2d 547 (4th Dept., 1963)

¹⁵² Rules of the Authority §54.1(a)

¹⁵³ Rules of the Authority §54.1(a)

¹⁵⁴ Rules of the Authority §54.1(d)]

- The Full Board does not allow prosecutors to withdraw and close a case once a pleading has been issued.

Types of pleas

- A “**Not Guilty**” plea reserves the licensee’s right to have a hearing on the charges contained in the pleading. The licensee may decide later to change its plea to “No Contest” or submit a conditional offer.
- With a “**No Contest**” plea, the licensee gives up the right to have a hearing and the charges are considered sustained.¹⁵⁵
- Licensees may submit a statement with the plea either to explain the circumstances that led to the charges or to present some other information that it wants considered before a penalty is imposed. At any time before the case goes to the Full Board, a licensee may change a Not Guilty plea to a No Contest plea.
- A “**Conditional No Contest**” plea or conditional offer is a No Contest plea made on the condition that a certain penalty is imposed. Conditional Offers are not specifically provided for in the Rules of the Authority. However, State Administrative Procedure Act §301(5) provides that “[u]nless precluded by statute, disposition may be made of any adjudicatory proceeding by stipulation, agreed settlement, consent order, default, or other informal method.” According, the Authority has the power to accept conditional offers.¹⁵⁶
- Some pleadings will have a proposed conditional offer included (usually on a second page attached to the pleading). A licensee automatically reserves its right to a hearing if a conditional offer is rejected by the Full Board.

Defaults

- Failure of the licensee to enter a plea on or before the return date set forth in the pleading is deemed a No Contest plea. The charges are deemed sustained and there is no hearing.¹⁵⁷
- Failure of the licensee to appear for the hearing, or any adjournment of the hearing, is deemed a No Contest plea. The charges are deemed sustained and there is no hearing.¹⁵⁸

Discovery

- The State Administrative Procedure Act provides that “each agency having power to conduct adjudicatory proceedings may adopt rules providing for discovery and deposition to the extent and in the manner appropriate to its proceedings.”¹⁵⁹
- The Authority has not adopted any regulations regarding discovery or depositions in disciplinary proceedings.

¹⁵⁵ Rules of the Authority §54.2(a) & *Mohsin v. State Liquor Authority*, 162 AD2d 203 (1st Dept., 1990)

¹⁵⁶ *Nostima Foods Inc. v. State Liquor Authority*, 71 NY2d 648 (1988)

¹⁵⁷ Rules of the Authority §54.2(b)

¹⁵⁸ Rules of the Authority §54.3(a)

¹⁵⁹ SAPA §305

- In a revocation proceeding, either party must, upon demand and at least seven days prior to the hearing, disclose the evidence that it intends to introduce at the hearing. This includes documentary evidence and identification of witnesses.¹⁶⁰

Subpoenas

- The Authority has the power to issue a subpoena to compel the attendance of a witness at a disciplinary hearing and to compel the production of any books and records at disciplinary hearings. The CPLR governs the issuance of a subpoena issued by the Authority.

HEARINGS

- If a disciplinary proceeding is not resolved by way of a No Contest Plea, Conditional No Contest Plea, or a default, it will proceed to a hearing before an administrative law judge. Once the hearing is concluded, the matter is submitted to the Full Board for its consideration

Notice

- The notice of hearing must set forth the date, time and place of the hearing.¹⁶¹
- The notice of hearing is deemed served by delivering the notice in person or by first class mail to the licensee (at the address of the licensed premises). A copy of the notice must also be sent to the residential address of record of: the licensee for an individual licensee; any officer or director for a corporate licensee; and any general partner for a partnership licensee.¹⁶²

Adjournments

- The Authority's regulations provide that no adjournment of a hearing shall be granted except for good cause shown.¹⁶³
- If the adjournment is granted by the hearing officer, he/she may direct that no further adjournments may be granted.

Conduct of hearing

- Hearings are conducted by an administrative law judge ("ALJ"). The ALJ may be a full or part-time hearing officer employed by the Authority, or a hearing officer from another state agency.¹⁶⁴
- Unless otherwise directed by the ALJ, the prosecutor presents his/her case in support of the charges first, followed by any defense or explanation offered by the licensee.¹⁶⁵
- Licensees are not required to move to dismiss the charges to preserve any rights.¹⁶⁶

¹⁶⁰ SAPA §401(4)

¹⁶¹ Rules of the Authority §54.3(a) & SAPA §301(2)

¹⁶² Rules of the Authority §54.3(b)

¹⁶³ Rules of the Authority §54.3(f)

¹⁶⁴ Rules of the Authority §54.4(a)

¹⁶⁵ Rules of the Authority §54.4(b)(1)

- Even if the licensee moves to dismiss the ALJ has no power to act on the motion.¹⁶⁷
- An ALJ may curtail the testimony of any witness which the ALJ finds to be merely cumulative.¹⁶⁸
- The parties can stipulate as to any facts involved in the proceeding.¹⁶⁹
- Both the licensee and the prosecutor must be afforded an opportunity to present written argument on issues of law and the facts.¹⁷⁰
- Oral argument may be made at the discretion of the ALJ.¹⁷¹
- Upon application by the licensee or the prosecutor before a determination in the matter, the Full Board may reopen the hearing for the presentation of new or additional evidence. On its own motion, the Full Board may reopen the hearing for the presentation of additional evidence.¹⁷²

Evidence

- The regulations direct ALJs that the rules of evidence governing proceedings in judicial proceedings are not to be rigidly enforced.¹⁷³
- Unless there is an objection made on the record, all evidence is deemed to have been validly introduced for the ALJ's consideration.¹⁷⁴

Decision

- After the hearing concludes, the ALJ must issue a written decision of his/her findings as to whether the evidence sustains the charge(s). The ALJ may also include a recommendation of the action that should be taken against the licensee.¹⁷⁵
- The licensee is afforded an opportunity to submit a statement controverting the ALJ's findings.¹⁷⁶

¹⁶⁶ Rules of the Authority §54.4(a)(3)

¹⁶⁷ Rules of the Authority §54.4(a)(4)

¹⁶⁸ Rules of the Authority §54.4(c)(2)

¹⁶⁹ Rules of the Authority §54.4(e)

¹⁷⁰ SAPA §301(2)

¹⁷¹ Rules of the Authority §54.4(f)

¹⁷² Rules of the Authority §54.4(c)(3)

¹⁷³ Rules of the Authority §54.4(c)(1)

¹⁷⁴ Rules of the Authority §54.4(c)(1)

¹⁷⁵ Rules of the Authority §54.4(g)

¹⁷⁶ Rules of the Authority §54.4(g)

CONSIDERATION BY FULL BOARD

No Contest pleas and Defaults

- The Full Board reviews these matters and determines what the appropriate penalty should be, based on the nature of the charges and the licensee's disciplinary history, if any.

Conditional offers

- The Full Board reviews these matters and determines whether the proposed offer should be accepted, based on the nature of the charges and the licensee's disciplinary history, if any.
- If the Full Board rejects the conditional offer, the case is returned to the prosecutor to proceed to hearing. In rejecting a conditional offer, the Full Board may propose a "counter-offer".

Hearings

- The Full Board reviews the hearing record and first determines whether to adopt the ALJ's findings or return the matter for alternative findings based on the facts found by the ALJ.
- If one or more charges are sustained, the Full Board then determines what the appropriate penalty should be, based on the nature of the charges and the licensee's disciplinary history, if any.

PENALTIES

- The SLA has the power to revoke, cancel or suspend a license or permit, as well as to impose a civil penalty for violations of the ABCL or the Rules.¹⁷⁷
- In addition to any other penalty imposed, the Authority may make a bond claim against the surety bond filed with the licensee when the license was issued or renewed.¹⁷⁸

Revocation

- A **revocation** order terminates the license. In addition, a person whose license has been revoked may not obtain another license or permit for two years from the date of the revocation.¹⁷⁹
- A corporation or partnership may not obtain a license or permit if any officer, director or partner has had a license revoked within the last two years.¹⁸⁰

¹⁷⁷ ABCL §17(3), ABCL 118(1) & ABCL 119(1)

¹⁷⁸ ABCL §112 & ABCL §118(2)

¹⁷⁹ ABCL §126(5)(a)

¹⁸⁰ ABCL §126(6)

Cancellation

- A **cancellation** order terminates the license but does not prevent the licensee from filing for a new license any time in the future.

Suspension

- A **suspension** order suspends the privileges of the license up to the maximum period set forth in the pleading.

Civil Penalties

- A **civil penalty** (or fine) may be imposed an alternative to, or in addition to a revocation, cancellation or suspension.¹⁸¹
- The maximum civil penalty for each violation depends on the type of license that has been issued.¹⁸² For example, the maximum civil penalty is: \$30,000 for wineries and farm wineries; and \$100,000 for brewers and distillers.

SUMMARY SUSPENSIONS

- An emergency order of summary suspension is the only tool available to the SLA to take any action against a licensee before a disciplinary proceeding has been resolved.

Standard for issuing order

- An emergency order of summary suspension can be issued when the Authority finds that public health, safety, or welfare “imperatively requires” taking such action.¹⁸³

Time frames

- An emergency order of summary suspension is issued in conjunction with a disciplinary proceeding. The disciplinary proceeding must be promptly commenced and determined.¹⁸⁴
- The order becomes effective on the date specified in the order, or upon service of a certified copy of the order on the licensee, whichever is later.¹⁸⁵

¹⁸¹ ABCL §119(1)

¹⁸² ABCL §17(3)

¹⁸³ SAPA §401(3)

¹⁸⁴ SAPA §401(3)

¹⁸⁵ SAPA §401(3)

HOPS, BARLEY, APPLES & LAWS

Labeling and Packaging Guidance for New York Craft
Beverage Producers

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WHO REGULATES LABELS AND CONTAINERS?

- ☐ The Alcohol and Tobacco Tax and Trade Bureau (“TTB”)
 - ☐ The New York State Liquor Authority (“SLA”)
 - ☐ Food and Drug Administration (“FDA”)
- ✓ **Each state has its own label and packaging laws. Be sure to check before you sell your products into another state.**

TTB: MANDATORY LABEL INFORMATION FOR WINE

The TTB requires the following information on all beverage alcohol containers of distilled spirits, malt beverages and wines which are 7% ABV or more:

- ☐ Brand name
- ☐ Class and type
- ☐ Alcohol content
- ☐ Name and address (*city and state only*)
- ☐ Country of original
- ☐ Net contents
- ☐ FD&C Yellow #5 disclosure
- ☐ Saccharin disclosure
- ☐ Sulfite declaration
- ☐ Health warning statement
- ☐ Percentage of foreign wine (*wine only*)
- ☐ Aspartame disclosure (*malt beverages only*)
- ☐ Presence of coloring materials (*distilled spirits only*)
- ☐ Treatment with wood (*distilled spirits only*)
- ☐ Commodity statement (*distilled spirits only*)
- ☐ Statements of age (*distilled spirits only*)
- ☐ State of distillation (*distilled spirits only*)

WHAT THE WINE LABEL TELLS YOU

As consumers become more adventuresome in their wine selections, they look to the label for more information. What makes one wine different from another? What is the dominant grape in the wine? Where were those grapes grown? Although TTB consumer protection regulations only apply to wine of at least seven percent alcohol by volume, this pamphlet contains enough basic information to assist the consumer in making an informed choice when buying wine. This pamphlet discusses wine made from grapes, although wine may also be made from other types of fruit and agricultural products. TTB regulations can be quite detailed in regard to the production of a wine and the information appearing on the bottle; not every possibility is presented here, but this guide will give you a good grasp of the fundamentals. For more detailed information please see the regulations listed on the back of this pamphlet.

VINTAGE DATE

A vintage date on the label indicates the year in which the grapes were harvested. If a vintage date is shown on the label at all, an appellation of origin must also be shown. If an American or imported wine uses a country, State or county, or the foreign equivalent, as an appellation of origin, 85 percent of the grapes must be from that year; if a viticultural area or the foreign equivalent is used, the percentage is raised to 95 percent.

ESTATE BOTTLED

"Estate Bottled" means that 100 percent of the wine came from grapes grown on land owned or controlled by the winery, which must be located in a viticultural area. The winery must crush and ferment the grapes and finish, age, and bottle the wine in a continuous process on their premises. The winery and the vineyard must be in the same viticultural area.

APPELLATION OF ORIGIN

Appellation of origin is another name for the place in which the dominant grapes used in the wine were grown. It can be the name of a country, State, county or geographic region called a viticultural area, or their foreign equivalents.

A country, State, or county appellation or their foreign equivalent on the label means that at least 75 percent of the wine is produced from grapes grown in the place named.

VITICULTURAL AREA

An American viticultural area is a defined grape-growing region in the U.S. with geographic features (such as soil and climate) that set it apart from the surrounding areas.

A viticultural area appellation on the label indicates that 85 percent or more of the wine was produced from grapes grown in the named area.

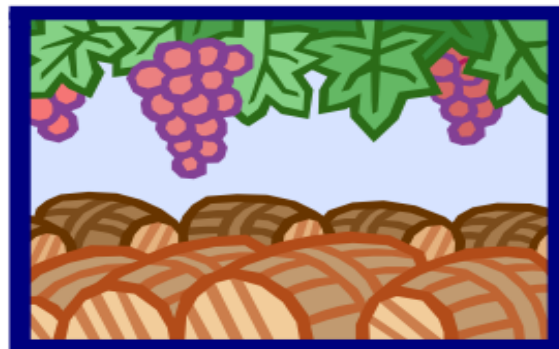
ALCOHOL CONTENT

A statement of alcohol content in percent by volume appears on most labels. As an alternative, some bottlers may label wine with an alcohol content from 7 to 14 percent as "Table Wine" or "Light Wine."

DECLARATION OF SULFITES

Required on any wine intended for interstate commerce that contains 10 or more parts per million of sulfur dioxide. Not required for wines only sold in intrastate commerce.

XYZ Winery



2006
ESTATE BOTTLED
ABC VALLEY
CABERNET SAUVIGNON

PRODUCED AND BOTTLED BY XYZ WINERY, CITY, STATE

12% ALC./VOL.

750 ML

GOVERNMENT WARNING: (1) ACCORDING TO THE SURGEON GENERAL, WOMEN SHOULD NOT DRINK ALCOHOLIC BEVERAGES DURING PREGNANCY BECAUSE OF THE RISK OF BIRTH DEFECTS. (2) CONSUMPTION OF ALCOHOLIC BEVERAGES IMPAIRS YOUR ABILITY TO DRIVE A CAR OR OPERATE MACHINERY, AND MAY CAUSE HEALTH PROBLEMS.

CONTAINS SULFITES

HEALTH WARNING STATEMENT

By law, this statement is required on all alcohol beverages containing 0.5 percent or more alcohol by volume.

BRAND NAME

The brand name is used to identify and market a wine. A brand name may not mislead the consumer about the age, identity, origin, or other characteristics of the wine.

VARIETAL DESIGNATIONS

Varietal designations are the names of the dominant grapes used in the wine. Cabernet Sauvignon, Chardonnay, Zinfandel, and Merlot are examples of grape varieties. A varietal designation on the label requires an appellation of origin and means that at least 75 percent of the grapes used to make the wine are of that variety, and that the entire 75 percent were grown in the labeled appellation (except "Vitis labrusca" grapes, such as Concord, which require at least 51 percent).

OTHER DESIGNATIONS

Wine labels are not required to bear a varietal designation. Other designations may be used to identify the wine, such as Red Wine, Rose Wine, White Wine, Table Wine (if no more than 14% alcohol by volume) or Dessert Wine (if over 14% alcohol by volume).

Some imported wines are designated with a distinctive name which is permissible only on specific wines from a particular place or region within the country of origin, for example, Asti Spumanti from Italy and Bordeaux from France.

COUNTRY OF ORIGIN

Pursuant to regulations issued by U.S. Customs and Border Protection, a Country of Origin statement is required on containers of imported wines. Acceptable statements include "Product of (insert name of country)" or "Produced in (insert name of country)."

NAME AND ADDRESS

The name and address of the bottler or importer must appear on the container. It is also permissible for a bottler/importer to use a duly authorized trade name in place of its usual operating name.

Domestic wines may have this statement further qualified with terms such as "Produced," meaning that not less than 75 percent of the wine was fermented at the stated address, or "Vinted," which means that the wine was subjected to cellar treatment at the stated address.

NET CONTENTS

The net contents of a wine container must be stated in metric units of measure. Wine must be bottled in 50 ml, 100 ml, 187 ml, 375 ml, 500 ml, 750 ml, 1 L, 1.5 L, or 3 L sizes. Containers over 3 L must be bottled in quantities of even liters. No other sizes may be bottled.

WHAT A DISTILLED SPIRITS LABEL TELLS YOU

If you have ever taken a look behind a bar, you have seen rows upon rows of different bottles in a variety of heights, sizes, colors, and flavors. Usually the majority of these bottles are distilled spirits. Distilled spirits are generally produced by first combining various ingredients and fermenting them. The resulting fermented "mash," which has a low alcohol content, is then heated in a still until the alcohol turns into a vapor, which is captured and then turned back into liquid alcohol. This process is called "distillation," and is generally what distinguishes these products from wine and malt beverages. TTB regulations require that many types of distilled spirits, such as vodka, gin, rum, and tequila, must be bottled at no less than 40% alcohol by volume (80° proof). Other products, such as cordials, liqueurs, and specialties, may be bottled at a lower alcohol content. A careful review of the label will help you to understand the product in the bottle, and TTB designed this guide to help consumers make an informed choice when purchasing a distilled spirits product. TTB regulations can be quite detailed in regard to the production of distilled spirits and the information appearing on the bottle; not every possibility is presented here, but this guide will give you a good grasp of the fundamentals. For more detailed information please see the regulations listed on the back of this pamphlet.

BRAND NAME

The brand name is used to identify and market a distilled spirits product. A brand name may not mislead the consumer about the age, identity, origin, or other characteristics of the distilled spirit.

NAME AND ADDRESS

The name and address of the bottler or importer must appear on the container. However, the address of the bottler's principal place of business may be used instead of the actual location where the bottling took place. It is also permissible for a bottler/importer to use a duly authorized trade name in place of its usual operating name.

ALCOHOL CONTENT

A statement of alcohol content expressed in percent by volume must appear on the brand label. An additional alcohol content statement expressed in degrees of proof may be shown in addition to the required alcohol by volume statement.

HEALTH WARNING STATEMENT

By law, this statement is required on all alcohol beverages containing 0.5% or more alcohol by volume.

COUNTRY OF ORIGIN

Pursuant to regulations issued by TTB, as well as requirements of U.S. Customs and Border Protection, a Country of Origin statement is required on containers of imported distilled spirits. Acceptable statements include "Product of (insert name of country)" or "Produced in (insert name of country)."

T.L. Smith's



GIN

DISTILLED FROM GRAIN

BOTTLED BY XYZ DISTILLING CO., CITY, STATE

40% ALC./VOL. (80 PROOF) 750 ML

GOVERNMENT WARNING: (1) ACCORDING TO THE SURGEON GENERAL, WOMEN SHOULD NOT DRINK ALCOHOLIC BEVERAGES DURING PREGNANCY BECAUSE OF THE RISK OF BIRTH DEFECTS. (2) CONSUMPTION OF ALCOHOLIC BEVERAGES IMPAIRS YOUR ABILITY TO DRIVE A CAR OR OPERATE MACHINERY, AND MAY CAUSE HEALTH PROBLEMS.

NET CONTENTS

The net contents of a distilled spirit container must be stated in metric units of measure. Distilled spirits must be bottled in sizes of 1.75 L, 1 L, 750 ml, 375 ml, 200 ml, 100 ml, or 50 ml. A can must be filled to 355 ml, 200 ml, 100 ml, or 50 ml.

CLASS/TYPE DESIGNATION

The brand label of a distilled spirit must contain a designation that accurately identifies the product in the bottle. The regulations are quite specific as to the ingredients and processes used to produce a product of a given class or type. For instance:

Gin must derive its main characteristic flavor from juniper berries. In addition, gin labels must also show the commodity from which the product was distilled (e.g., "Distilled from grain").

Vodka is defined as neutral spirits (alcohol produced from any material at or above 190° proof) so distilled, or so treated after distillation, as to be without distinctive character, aroma, taste, or color. Like gin, vodka labels must also show the commodity from which the product was distilled.

Rum must be made from the fermented juice of sugar cane, sugar cane syrup, sugar cane molasses, or other sugar cane by-products.

Tequila must be derived principally from the Agave Tequilana Weber plant ("blue" variety). Tequila is a distinctive product of Mexico, manufactured in Mexico in compliance with the laws of Mexico.

Cordials and Liqueurs are produced from spirits in combination with fruits, flowers, plants, juices, or natural flavors and with the addition of at least 2.5% by weight of certain sugars.

A distilled spirits product may not fit into any of the classes or types of spirits found in the regulations, usually because of the addition of flavoring materials or because it was made with a non-standard blending or treating material. When this is the case, the product must be labeled with a truthful and adequate statement of composition such as "Rum with natural flavors." These products will also bear a mandatory fanciful name, such as "Spiced Rum."

WHAT A MALT BEVERAGE LABEL TELLS YOU

In recent years, changes in tastes and technologies have led to an increasing variety of malt beverage products available in the marketplace. "Malt Beverage" is the general name given in the Federal alcohol labeling regulations for all products made at a brewery with malted barley and hops. It includes things like beer, ale, lager, flavored malt beverages, and even "near beer." In order for the consumer to understand the type of beverage in the container, a review of the information on the label is essential. TTB has designed this guide to help the consumer make an informed choice when buying a malt beverage by explaining the information that must be present on the label. TTB regulations can be quite detailed in regard to the production of a malt beverage and the information appearing on the bottle; not every possibility is presented here, but this guide will give you a good grasp of the fundamentals. For more detailed information please see the regulations listed on the back of this pamphlet. You may also want to contact your State alcohol beverage authority for information regarding its malt beverage label requirements.

DRAFT/DRAUGHT

The presence of "Draft/Draught" on a label generally means that the product has not been pasteurized and some other method of removing or inhibiting the growth of bacteria has been utilized. However, pasteurized beer may be described as "Draft Brewed" or "Draft Beer Flavor" as long as the label discloses that the beer is pasteurized. The term may also be used if the beer is packaged in containers of one gallon or larger and the contents are to be drawn off through a tap, spigot, faucet, or similar device.

NAME AND ADDRESS

The name and address of the bottler or importer must appear on the brand label. However, the address of the bottler's principal place of business may be used instead of the actual location where the bottling took place. It is also permissible for a bottler/importer to use a duly authorized trade name in place of its usual operating name.

ALCOHOL CONTENT

An optional statement of alcohol content expressed in percent by volume may appear on the label. Federal regulations require the alcohol content to appear on the labels of flavored malt beverages that derive alcohol from added flavors. However, some State laws have their own requirements with regard to alcohol content statements.

LITE/LIGHT/LOW-CARB

A malt beverage may be labeled with a caloric representation (such as "Light" or "Lite") as long as a statement of average analysis appears on the label. This statement must include the amount per serving of calories, carbohydrates, protein, and fat. In addition, a malt beverage may be labeled as "Low-Carbohydrate" if the label includes a statement of average analysis and the product contains no more than 7 grams of carbohydrates per 12-ounce serving.

XYZ Brewery



DRAFT LAGER

XYZ BREWING CO., CITY, STATE

5% ALC./VOL.

12 FL. OZ.

GOVERNMENT WARNING: (1) ACCORDING TO THE SURGEON GENERAL, WOMEN SHOULD NOT DRINK ALCOHOLIC BEVERAGES DURING PREGNANCY BECAUSE OF THE RISK OF BIRTH DEFECTS. (2) CONSUMPTION OF ALCOHOLIC BEVERAGES IMPAIRS YOUR ABILITY TO DRIVE A CAR OR OPERATE MACHINERY, AND MAY CAUSE HEALTH PROBLEMS.

HEALTH WARNING STATEMENT

By law, this statement is required on all alcohol beverages containing 0.5% or more alcohol by volume.

BRAND NAME

The brand name is used to identify and market a malt beverage. A brand name may not mislead the consumer about the age, identity, origin, or other characteristics of the malt beverage.

CLASS DESIGNATION

The brand label of a malt beverage must contain the class designation of the product. Examples of class designations are beer, ale, and lager. Ale, stout, and porter are classes that must be fermented at a comparatively high temperature. Products labeled "Wheat Beer" must be made from a fermentable base that consists of at least 25% by weight malted wheat.

When a malt beverage is made with the addition of spices, fruit, honey, or natural flavors, it requires specific labeling to indicate the class designation. These malt beverages must be labeled with a statement of composition that reflects the base malt product and the added ingredients, unless otherwise known to the trade under a particular designation. Examples of statements of composition that you might see on malt beverage labels include "Premium malt beverage with natural flavors," "Ale fermented with spices," or "Belgian-style Wheat Ale brewed with natural flavors." These products must also bear a distinctive or fanciful name (such as "Tammy's Treat"). A malt beverage must derive at least 51% of its alcohol content from the fermentation of brewing ingredients, with stricter limits for products with an alcohol content of more than 6 percent alcohol by volume.

NET CONTENTS

The net contents of a malt beverage container must be stated in English units of measure (e.g., pints, fluid ounces).

COUNTRY OF ORIGIN

Pursuant to regulations issued by U.S. Customs and Border Protection, a Country of Origin statement is required on containers of imported malt beverages. Acceptable statements include "Product of (insert name of country)" or "Produced/Brewed in (insert name of country)."

PROHIBITED LABEL STATEMENTS

- ☐ Disparaging statements about competitors
- ☐ Obscene or indecent statements
- ☐ False or misleading statements
- ☐ Misleading statements regarding tests, analyses, standards
- ☐ Misleading statements regarding guarantees – **NOTE:** money back guarantees offered to consumers are not prohibited
- ☐ A false connection with an individual/organization
- ☐ Health related statements
- ☐ Statement, design or representation that create impression that a wine or malt beverage contains distilled spirits, is comparable to a distilled spirit or has intoxicating qualities (*wine and malt beverages only*)
- ☐ Any word in the brand name or class and type designation which is the name of a distilled spirits product or which creates the impression that the wine or malt beverage is, or is similar to, a product customarily made with a distilled spirits base. For example, daiquiri. (*wine and malt beverages only*)
- ☐ Government seals, flags or insignia (*distilled spirits only*)
- ☐ Pure, bond/bonded (usually) (*distilled spirits only*)

PROHIBITED STATEMENTS & ADVERTISING

- ☐ You may not use the prohibited statements on beverage alcohol containers, labels, individual coverings, cartons, or other wrapper of such container, or any written, printed, graphic, or other matter accompanying such containers to the consumers.
- ☐ Prohibited statements may not be included in advertising for the products.
- ☐ Your advertising may not be inconsistent with the product labels.
- ☐ Your advertising must include mandatory information based on product type. *Please see next slide.*

TTB & ADVERTISING: MANDATORY INFORMATION

ALCOHOL BEVERAGE ADVERTISING

The Federal Alcohol Administration Act (FAA Act) gives the Alcohol and Tobacco Tax and Trade Bureau (TTB) its authority to regulate the advertising of alcohol beverage products. It provides for the regulation of those engaged in the alcohol beverage industry and for the

protection of consumers. The FAA Act authorizes regulatory action to prevent deception of the consumer and to provide the consumer with adequate information on the identity of the product. The regulations for each commodity outline mandatory information that must

appear in advertisements. Below are examples of advertisements for each beverage alcohol commodity regulated by TTB – wine, distilled spirits, and malt beverage – as well as a list of the mandatory information that must appear in an advertisement for those products.

Wine Advertisement



- Responsible advertiser (27 CFR 4.62(a))
- Class, type, and distinctive designation (27 CFR 4.62(b))

Distilled Spirits Advertisement



- Responsible advertiser (27 CFR 5.63(a))
- Class and type (27 CFR 5.63(b))
- Alcohol content (27 CFR 5.63(c))
- Percentage of neutral spirits and name of commodity (27 CFR 5.63(d)) – *If applicable*

Malt Beverage Advertisement



- Responsible advertiser (27 CFR 7.52(a))
- Class designation (27 CFR 7.52(b))

TTB: CERTIFICATE OF LABEL APPROVAL (“COLA”)

COLAs authorize the certificate holder to bottle and remove or import alcohol beverages that bear labels identical to those shown on the certificate of label approval. It is required for the following products:

- ☐ Wine Labels
- ☐ Distilled Spirits Labels
- ☐ Malt Beverage Labels



COLA NOT REQUIRED

COLAs are not required for the following products:

- ☐ Wines which are less than 7% ABV including wine products and wine specialty items
- ☐ Cider with an alcohol content that is less than 7% ABV
- ☐ Mead (honey wine) with an alcohol content that is less than 7%
- ☐ Wine which will not be sold in interstate or foreign commerce.

Labels for these items are governed by the FDA and NYSLA. *We will discuss this later on in the presentation.*

- ✓ **IMPORTANT**, if your wine is 7% ABV or more, but will not be sold, shipped or otherwise introduced in interstate or foreign commerce you must apply to the TTB for a Certificate of Exemption from label requirements (*not available for distilled spirits or malt beverages*)

TTB: COLAS ONLINE

Most producers apply for COLAs using the TTB portal, COLAs Online. In general, the following information is required:

- ☐ Product Type: wine, distilled spirits, malt beverage
- ☐ Source of Product: domestic or imported
- ☐ Information regarding the producer/production facility (plant registry, basic permit, brewers notice, brand name, fanciful name)
- ☐ TTB formula ID
- ☐ Sulfite analysis submission ID
- ☐ Net contents
- ☐ Alcohol content
- ☐ Wine vintage
- ☐ Grape varietal(s) (if any) (if shown on label)
- ☐ Wine appellation (if shown on label)
- ☐ You will have to upload images of the product labels (which will show whether all mandatory information is included)
- ☐ You must state whether any wording is embossed on the container and whether the net contents are blown, branded or embossed in or on the container instead of appearing on the label.

Embossed



TTB: ALLOWABLE REVISIONS TO APPROVED LABEL:

ONCE A LABEL RECEIVES TTB APPROVAL, YOU CAN MAKE CERTAIN CHANGES TO THAT LABEL WITHOUT OBTAINING A COLA FROM TTB.

- Delete any non-mandatory label information, including text, illustrations, graphics, etc.
- Reposition any label information, including text, illustrations, graphics, etc.
- Change the color(s) (background and text), shape and proportionate size of labels. Change the type size and font, and make appropriate changes to the spelling (including punctuation marks and abbreviations) of words, in compliance with the regulations. Change from an adhesive label to one where label information is etched, painted or printed directly on the container and vice versa.
- Change the stated percentages for blends of grape varietals and appellations of origin for wine labels.
- Add, change or delete a vintage date for wine labels.
- Change the optional "produced" or "made" by statements on wine labels to "blended", "vinted", "cellared" or "prepared" by statements.
- Add, change or delete the stated amount of acid and/or the pH level for wine labels.
- Change the stated amounts of sugar at harvest and/or residual sugar for wine labels.
- Add or delete bonded winery or taxpaid wine bottling house number for wine labels.
- Change the net contents statement.
- Change the mandatory statement of alcohol content, as long as the change is consistent with the labeled class and type designation and all other labeling statements.
- Add, delete, or change an optional statement of alcohol content for malt beverage labels.
- Change the statement of percentage of neutral spirits and the name of the commodity from which a distilled spirit is produced.
- Change the mandatory age statement, or delete or change an optional age statement for distilled spirits labels.
- Delete or change an optional age statement, including a barrel aging statement, for wine and malt beverage labels.
- Add, delete, or change statements or information in order to comply with the requirements of the State in which the malt beverage is to be sold.
- Change the numerical values for calories, carbohydrates, protein, and fat contained in a statement of average analysis.
- Add, delete, or change stated bottling date, production date (day, month, and/or year) or freshness information including bottling, production or expiration dates or codes.
- Change the name or trade name to reflect a different name already approved for use by the responsible bonded wine cellar, taxpaid wine bottling house, distilled spirits plant, brewery, or importer. Change the address where it is within the same State.
- Add, delete, or change the name and/or address of the foreign producer, bottler, or shipper.
- For a complete list visit the TTB website at: https://www.ttb.gov/labeling/allowable_revisions.shtml#completeList

CIDER, WINE PRODUCTS AND WINE SPECIALTY ITEMS

the TTB classifies cider, apple wine and fruit wine as wine. Therefore, if it is 7% ABV or more, it must have a COLA. **If the product is less than 7% ABV, it is not considered a “wine” for the purpose of TTB label requirements.** Instead, the FDA rules apply and the label must include:

- ☐ Name and address of the wine premises;
- ☐ Brand name;
- ☐ Alcohol content;
- ☐ Net contents of the container; and
- ☐ Kind of wine, which means - Class or type or a statement of composition for wines (in order to determine tax class)
- ☐ Health warning statement
- ☐ FDA nutritional fact panel

Sample Items Required on Nutritional Fact Panel

1. Ingredients statement, containing a list of the common or usual names of the ingredients in the product in descending order of predominance by weight;
2. Nutrition Facts Panel listing nutrients and vitamins including calories from fat, saturated fat, trans fat, cholesterol, dietary fiber, sugars, Vitamins A and C, calcium, and iron;
3. Statement of Identity or the name of the food, as established by law or regulation or, in absence of such, the common or usual name of the food. The Statement of Identity must appear on the front label in bold text and must generally be at least one half of the size of the most predominant text on the front label;
4. Net quantity of contents in weight, measure, or numeric count in the lower 30% of the front label in lines generally parallel to the base of the container;
5. Name and address of the manufacturer, packer, or distributor; and
6. Declaration of major allergens including but not limited to milk, egg, fish, and peanuts, as defined in the Food Allergen Labeling and Consumer Protection Act.*

* Not an exhaustive list and does not explore exceptions.

NEW YORK

- ☐ New York requires Brand Label Registration for all liquor, beer, wine products, and wine specialties sold in NY. It is also required for wines containing 7% alcohol or less.
- ☐ The SLA does not require label registration for wine over 7% ABV, it does require submission of an appointment letter and Federal label approvals.
- ☐ Please visit the Brand Labeling page on the New York State Liquor Authority website for the required forms and additional information regarding Brand Label Registration. Here is the link: <https://www.sla.ny.gov/brand-labeling-1> . **You should check this page regularly for changes to laws and registration procedures.**
- ☐ New York requires FDA nutritional facts panel for items which do not require COLAs.15

NEW YORK: REQUIREMENTS FOR BRAND LABELS

- New York ABCL §107-a requires that brand labels contain the following information:
- The brand or trade name
- The class and type of alcoholic beverage
- The net contents of the container
- All other labeling information required by TTB for the type of product specified
- Label registration for products with TTB COLAs will be deemed approved by the SLA if submitted to the SLA by certified mail return receipt requested, registered mail return receipt requested, or overnight delivery service with proof of mailing, with a copy of the TTB COLA approval **and the Authority does not deny such registration within 30 days after receipt. (You still must renew the registrations!)**

NEW YORK: “SMALL BATCH” FEE EXEMPTIONS

New York provides an exemption from the fee for brand label registration for liquor, beer and cider produced in “small batches.”

- For liquor, “small batches” means 1,000 gallons or less.
- For beer and cider, “small batches” means 1,500 barrels or less.

In determining whether the product has been manufactured in a “small batch,” please note that:

- The fee exemption applies to product under the same state brand label registration number. If the total annual amount manufactured for a product, or products, under one brand label registration number exceeds (or is anticipated to exceed) the limitations stated above, a fee will be required to register the label.
- The total amount manufactured includes not only the amount of product manufactured for sale in this state, but the entire annual amount of the product that is manufactured, regardless of where it will be sold.

Please note an application for registration of the brand label must still be filed and approved

NEW YORK: SEPARATE BRAND LABELS

- ❑ Separate brand label registration is required for all products when there is any difference in either: (1) the brand or trade name; or (2) the class and type of alcoholic beverage. **The SLA does not consider the following to constitute separate brand names:**
 - Cordial and liqueur brand names that differ only with respect to flavor description;
 - Wine brand names that differ only with respect to vintage year;
 - Gin brand names that differ only with respect to the addition of the designation “dry”; and
 - Rum brand names that differ only with respect to the addition of the designation “white,” “light,” “dark,” “gold” or “silver.”
- ❑ Separate brand label is required when a “private brand label” is placed on a container
- ❑ **Vintage Year vs. Product Age:** the vintage year or age of an alcoholic beverage is considered to be part of the brand name. However, a separate brand registration is not required for a change to vintage year. Liquor labels that vary in product age do require separate brand labels.

NEW YORK: PROHIBITED ITEMS ON BRAND LABELS

New York ABCL §107-a prohibits the following items on brand labels:

- ☐ Any false or untrue statement;
- ☐ Any statement disparaging of a competitor's product;
- ☐ Any statement, design, device or representation that may mislead a consumer; or
- ☐ Any statement or claim that the product has any health benefits.

Applications for approval of brand label registration will be reviewed to determine whether any prohibited statements are contained in a brand label. In addition, if a change is made to any approved brand label, the inclusion of any prohibited statement will subject the brand owner (if licensed), or the licensee filing the application on behalf of the brand owner, to disciplinary action.

NEW YORK: WINE PRODUCTS, WINE SPECIALTY & LOW ALCOHOL WINE

The SLA requires label registration for wine products, wine specialty items and low alcohol wine. The following definitions and rules apply:

Wine Product: Beverage containing “Wine” which must contain the following: concentrated or unconcentrated juice, flavoring material, water, citric acid, sugar and carbon dioxide. May not contain more than 6 % alcohol by volume, and nothing other than such “Wine” may be added to increase the alcoholic content of such beverage. **The word Wine Product must be clearly indicated on the label and the list of ingredients must also be listed on the label.**

Wine Specialty: “Wine” containing less than 7% alcohol by volume that includes ingredients not permitted in “Wine” as defined in ABCL §3(36) and does not meet the definition of a “Wine Product.” **The designation “Wine Specialty” must be clearly indicated on the label.**

Low Alcohol Wine: “Wine” containing less than 7% alcohol by volume.

ONLY WINE PRODUCTS CAN BE SOLD IN SUPERMARKETS.

“NEW YORK STATE LABELED”

New York State labeled is a term of art that is based upon the amount of New York ingredients in the product. New York State labeled is not dependent upon the label and is not part of the labeling process.

When an item qualifies as New York State Labeled privileges attach as to when, where, who and how the item may be sold.

These items are defined as follows:

“New York state labelled wine” means wine made from grapes or other fruits, at least seventy-five percent the volume of which were grown in New York state.

“New York state labelled liquor” means liquors made from fruit, vegetables, grain and grain products, honey, maple sap or other agricultural products, at least seventy-five percent the volume of which were grown or produced in New York state.

“New York state labelled cider” means cider made exclusively from apples or other pome fruits grown in New York state.

“New York state labelled beer” means: (a) from the effective date of this subdivision until December thirty-first, two thousand eighteen, beer made with no less than twenty percent, by weight, of its hops grown in New York state and no less than twenty percent, by weight, of all of its other ingredients, excluding water, grown in New York state; (b) from January first, two thousand nineteen until December thirtyfirst, two thousand twenty-three, beer made with no less than sixty percent, by weight, of its hops grown in New York state and no less than sixty percent, by weight, of all of its other ingredients, excluding water, grown in New York state; and (c) from January first, two thousand twenty-four and thereafter, beer made with no less than ninety percent, by weight, of its hops grown in New York state and no less than ninety percent, by weight, of all of its other ingredients, excluding water, grown in New York state.

TTB: PACKAGING REQUIREMENTS

- ❑ The design of the container may not be visually misleading as to the container's actual capacity.
- ❑ Any materials used in the construction or manufacture of containers must be approved by the U.S. Food and Drug Administration (FDA) for use in the packaging of beverage alcohol products.
- ❑ The container size must conform to an approved standard of fill based on the type of product.
- ❑ The TTB will be concerned with containers

which are not “standard” and scrutinize whether they will deceive the public. Non standard containers are those in which the contents are not visible through the container OR the shape or design of the container is distinctive, i.e., unusual, nontraditional, etc.

Here is an example of non-standard container:



STANDARDS OF FILL: WINE

- STANDARDS

Wine bottled on or after January 1, 1979 must be bottled in one of the following sizes:

3 Liters	375 ml
1.5 Liters	187 ml
1 Liter	100 ml
750 ml.	50 ml
500 ml	

For wines bottled and packaged in containers of 4-18 liters, the net contents must be expressed in even liters.

STANDARDS OF FILL: DISTILLED SPIRITS

CURRENT

■ For containers other than cans:

1.75 Liters	200 ml
1 Liter	100 ml
750 ml	50 ml
375 ml	

NOTE: 500 ml was an authorized standard of fill for bottling until June 30, 1989

■ For cans:

355 ml
200 ml
100 ml
50 ml

STANDARDS OF FILL: MALT BEVERAGES

FORM OF STATEMENT

CONTENTS OF CONTAINER	NET CONTENTS MUST BE SHOWN IN...	EXAMPLES	
		CONTAINER SIZE	LABEL NET CONTENTS STATEMENT MUST BE...
Less than 1 pint	Fluid ounces or fractions of a pint	8 ounces	8 fluid ounces (fl. oz.) or ½ pint (pt.) or 0.5 pint (pt.)
1 pint	Pints	16 ounces	1 pint (pt.)
More than 1 pint but less than 1 quart	Pints and fluid ounces or fractions of a quart	20 ounces	1 pint (pt.), 4 fluid ounces (fl. oz.) or 5/8 quart (qt.) or 0.63 quart (qt.)
1 quart	Quarts	32 ounces	1 quart (qt.)
More than 1 quart but less than 1 gallon	Quarts, pints and fluid ounces or fractions of a gallon	60 ounces	1 quart (qt.), 1 pint (pt.), 12 fluid ounces (fl. oz.) or 15/32 gallon (gal.) or 0.47 gallon (gal.)
1 gallon	Gallons	128 ounces	1 gallon (gal.)
More than 1 gallon	Gallons and fractions of gallons	166 ounces	1 ¼ gallons (gals.) or 1.25 gallons (gals.)

NEW YORK: PACKAGING REQUIREMENTS

- ❑ The New York SLA considers a “container” to mean the bottle or other vessel containing the liquor or wine as well as any container into which the individual bottle or vessel is placed.
- ❑ Generally, the same brand and size must be sold at the same price. Special containers of the brand can be sold at the same or at a different price.
- ❑ If you intend to charge a different price or if you are uncertain as to whether the container has a secondary value, you should get SLA approval. You may be dealing with a value added pack rather than a special container. Value added packs require SLA approval.

“ORNAMENTAL,” “ENHANCED,” OR “SPECIAL” CONTAINERS

Containers with a secondary value or after-use are not permissible except for containers of an ornamental or decorative nature.

“Ornamental,” “enhanced,” or “special” containers include the following: containers of crockery, ceramic material, crystal, tin or other metal, plastic or wood; and decanters of any type. Ultimately the SLA determines what is standard and what is a special container. **Here is an example:**



PERSONALIZED LABELS

- The New York SLA permits manufacturers to add personalization to a container.
- Personalization includes engraving, stamping, writing (including language commemorating an event or person) or otherwise adding the name of one or more persons to a container of an alcoholic beverage.
- The personalization may not include any restricted language (prohibited by the TTB or SLA).
- Manufacturers may provide this service free of charge to retailers, but **if it offers to one retailer, it must offer to all!**

TTB: PERSONALIZED LABELS

- ❑ The TTB will allow you to apply for a COLA that will act as a template and will include a label or labels that, at a minimum, contain all mandatory information as well as a description of the specific personalized information that may change.
- ❑ The TTB provides the following example: “The graphics, salutations, dates, and artwork presented on this label may be changed to personalize this label.” The application must also state whether personalized information will be etched on the bottle.
- ❑ Applications for personalized labels are approved with qualifications which cover the template label and any additions, deletions or changes in graphics, salutations, congratulatory dates and names, and artwork to personalize the label as indicated on the application. It does not permit the addition of any information that discusses either the alcohol beverage or characteristics of the alcohol beverage.

THANK YOU!

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STATE OF NEW YORK
LIQUOR AUTHORITY

To: All brand owners, manufacturers, wholesalers and retailers

Subject: Brand Label Registration guidance

In light of recent amendments to the Alcoholic Beverage Control Law ("ABCL"), this Advisory is being issued to provide guidance to licensees in complying with requirements for brand label registration. Please read this Advisory carefully – as a result of the amendments there are many changes being made to expedite and simplify the registration process. For example, in almost all cases, the need to file amended, "supplemental" or separate registrations is being eliminated.

All alcoholic beverages sold in this state must have an approved brand label affixed or imprinted upon the container. The only exceptions to this requirement are privately held wines and liquors being sold pursuant to ABCL §85 or ABCL §99-g. Manufacturers, wholesalers and retailers may be subject to disciplinary action for advertising or offering for sale any alcoholic beverage that does not have an approved brand label. While the changes discussed in this Advisory eliminate or reduce filing requirements, brand labels must still comply with the requirements set forth in this Advisory. Failure to comply with these requirements may subject licensees to disciplinary action.

Compliance with Part 84 of the Rules of the Authority

ABCL §107-a and Part 84 of the Rules of the Authority govern the registration and approval of brand labels. Chapter 354 of the Laws of 2013 amended §107-a. As a result of the amendments, certain provisions of the regulations in Part 84 are now inconsistent with the statutory provisions. To avoid confusion until such time as the Authority issues new regulations consistent with the amended ABCL §107-a, brand owners and licensees should be guided by the information contained in this Advisory instead of the regulations in Part 84. Licensees who comply with the provisions of this Advisory will not be subject to disciplinary action if their conduct would otherwise be considered a violation of Part 84.

Required information on brand labels

Effective March 26, 2014, ABCL §107-a requires that brand labels contain:

- The brand or trade name (see "Brand or Trade Names" section in this Advisory);
- The class and type of alcoholic beverage (see "Class and Type of Alcoholic Beverage" section in this Advisory);
- The net contents of the container (see "Net Contents" section in this Advisory); and
- All other labeling information required by TTB (see "Information Required by TTB" section in this Advisory).

Except as explained in this Advisory (see "When is a separate brand label approval required?" section), a separate brand label registration is required when there is any difference in either: the brand or trade name; or the class and type of alcoholic beverage.

Brand Names

The “brand or trade name” is the name under which the product is marketed. It is usually the most prominent information on the label and the name used by consumers to identify the product. The Authority considers the brand name to include any statement regarding: flavor description; vintage; age; and geographic designation or appellation. Generally speaking, any difference in the brand name is considered a separate brand label.

In most cases, the Authority considers any difference in the brand name as a different brand name and, therefore, a separate brand label approval will be required. For example, the addition of designations such as “kosher” or “organic” would be a different brand name from a brand label that was otherwise the same except for that designation. With respect to beer, the designations “IPA,” “ale” and “pale ale,” for example, would all be considered separate brand names. A whiskey that is marketed with different ages is considered to have a separate brand name for each age.

However, as discussed later in this Advisory under the “When is a separate brand label approval required?” section, certain differences in the brand name are not considered separate brand labels and, therefore, a separate approval is not required. Please note that these are long standing exceptions to the general rule that any difference in the brand name requires a separate brand label approval.

Class and Type of Alcoholic Beverage

Brand labels must use TTB’s categories for the class and type of the alcoholic beverage.

For cider

As a result of changes made to the ABCL, the permissible alcohol content of cider has been increased from 7% to 8.5%. If the product meets the ABCL definition of wine and cider, the manufacturer will have the choice of marketing the product either as wine or cider. However, if the alcohol content exceeds 7%, TTB will require that the product be brand label approved as a wine even if the manufacturer intends to market the product in this state as cider. TTB will allow the brand label to identify the product as cider. In the event the brand owner intends to market the product in New York State as a wine, that label approval will be sufficient and no state registration is required.

If the product will be marketed as a cider in New York State, it must be brand label registered with the Authority as a cider. The designation of the type of pomme fruit used is considered to be part of the class and type information and must be set forth on the label.

For wine specialties

The designation “wine specialty” is considered to be part of the class and type information and must be set forth on the label. For purposes of this advisory, a “wine specialty” shall mean wine containing less than 7% alcohol by volume that: includes ingredients not permitted in “wine” as defined in ABCL §3(36); and does not meet the definition of “wine product” set forth in ABCL §3(36-a).

Net Contents

The Authority does not require that the net contents statement be included on the actual label. The information may be imprinted or otherwise set forth on the bottle/container. If the information is not included on the brand label, the application must include a photograph of the bottle/container clearly showing where the information will be displayed. For refillable kegs, in lieu of photographs, stickers featuring net contents may be added to the actual label for purposes of compliance with this section.

Information Required by TTB

As noted above, in addition to the brand or trade name, the class and type of alcoholic beverage, and the net contents, a brand label must contain any other labeling information required by TTB. If the label sets forth this information in accordance with TTB regulations, the label will be considered in compliance with this state's brand label registration laws. Following is a list of the information currently required by TTB regulations. Please note that this information is provided only for guidance, and reference should be made to TTB regulations to assure compliance.

For liquor:

- The alcohol content;
- The name and address of the bottler and/or the manufacturer or importer;
- The country of origin (for imported alcoholic beverages);
- A statement with respect to the presence of coloring materials (if applicable);
- A statement with respect to treatment with wood (if applicable);
- A statement with respect to FD&C Yellow #5 (if applicable);
- A statement regarding the presence of sulfur dioxide (if applicable);
- A statement regarding the percentage of neutral spirits (if applicable);
- A statement of age (if applicable);
- The state of distillation for whiskeys produced in the United States; and
- A health warning statement.

For beer:

- The alcohol content;
- The name and address of the bottler and/or the manufacturer or importer;
- A statement with respect to FD&C Yellow #5 (if applicable);
- A statement regarding the presence of saccharin (if applicable);
- A statement regarding the presence of sulfur dioxide (if applicable);
- A statement regarding the presence of aspartame (if applicable);
- The country of origin (for imported alcoholic beverages); and
- A health warning statement.

For wine:

- The alcohol content;

- The name and address of the bottler and/or the manufacturer or importer;
- A statement regarding the presence of sulfur dioxide (if applicable);
- The appellation of origin (when required);
- The country of origin (for imported alcoholic beverages); and
- A health warning statement.

Items prohibited on brand labels

Effective March 26, 2014, ABCL §107-a brand label may not contain any of the following:

- Any false or untrue statement;
- Any statement disparaging of a competitor's product;
- Any statement, design, device or representation that may mislead a consumer; or
- Any statement or claim that the product has any health benefits.

Applications for approval of brand label registration will be reviewed to determine whether any prohibited statements are contained in a brand label. In addition, if a change is made to any approved brand label, the inclusion of any prohibited statement will subject the brand owner (if licensed), or the licensee filing the application on behalf of the brand owner, to disciplinary action.

The application process

An application for registration of a brand label shall include:

- A completed registration application form;
- In the event the applicant is not the brand owner, a letter from the brand owner appointing the applicant as its exclusive agent for purposes of submitting the application;
- A legible photocopy or photograph of the brand label that is being registered with each required item clearly identified. If the net contents are not set forth on the brand label, the application must include a photograph of the bottle/container clearly showing where the information will be displayed;
- In the case of wine products, and kombucha, an analysis by a laboratory accredited by either the ANSI-ASQ National Accreditation Board ("ANAB") or the American Association for Laboratory Accreditation ("A2LA") stating the alcohol content and ingredients of the alcoholic beverage; and
- A check or money order for the required fee.

The failure of an applicant to submit any of the above items will result in disapproval of the application. Applicants are urged to read the instructions provided to insure that all required information is included in the application. If items, such as the net contents, are not on the brand label but appear elsewhere on the container, a photograph showing the location of that item on the container must also be submitted.

All applications for registration and approval of brand labels must be submitted by: certified mail, return receipt requested; registered mail, return receipt requested; or overnight

delivery service with proof of mailing. A brand label approved by TTB will be deemed approved thirty days after the Authority receives the application unless the Authority issues a decision disapproving the application before that time. In light of changes at the TTB, a copy of the actual TTB approval will not have to be submitted with the application. The TTB identification number will be sufficient.

When is a separate brand label approval required?

A separate brand label registration is required when there is a difference in: the brand or trade name; or the class or type of alcoholic beverage. A separate brand label registration is also required when a “private brand label” is being placed on the container. A “separate brand label registration” requires a separate application and fee (unless the fee is otherwise waived by ABCL §107-a).

As noted in the “Brand Name” section of this Advisory, a brand name includes any statement regarding: flavor description; vintage; age; and geographic designation or appellation. Therefore, except as set forth below, any difference in any of those items creates a separate brand label requiring separate registration and approval. The following are not considered by the Authority to constitute separate brand names:

- Cordial and liqueur brand names that differ only with respect to flavor description;
- Wine brand names that differ only with respect to vintage year;
- Gin brand names that differ only with respect to the addition of the designation “dry”; and
- Rum brand names that differ only with respect to the addition of the designation “white,” “light,” “dark,” “gold” or “silver.”

In Advisory 2016-4, the Authority stated that the placement of stickers bearing the words “Direct,” “Reserve” or similar permutations thereof on bottles or cases does not create a separate brand or trade name. This Advisory does not, in any way, change the guidance provided in Advisory 2016-4.

As noted above, each brand label must include the class and type of alcoholic beverage. With one exception, any difference in the class or type of alcoholic beverage constitutes a separate brand label. Beer brand names that differ only with respect to the use of the designation “beer,” “lager beer” or “lager” do not constitute separate brand names.

Vintage year and age of an alcoholic beverage

As noted above in the “Brand Name” section, the vintage year or age of an alcoholic beverage is considered to be part of the brand name. However, under Part 84 of the Rules of the Authority, a change in the vintage year did not require a separate brand label registration. Liquor labels that differed with respect to the age of the product did require separate brand label registrations. This treatment of vintage years and age of the product remains in effect.

Duration of approval

An approval of a registration shall be valid for one year. Current brand label registration approvals shall remain in effect until they expire. New applications and renewals of existing applications will be issued for one year on the following schedule:

- Liquor- October 1st through September 30th.
- Beer- July 1st through June 30th.
- Wine products- March 1st through February 28th/29th.
- Cider- March 1st through February 28th/29th.
- Wine requiring state approval, including wine specialties- March 1st through February 28th/29th.

In the case of a new registration approval to take effect before the above dates, the initial approval will be prorated to the appropriate date. Thereafter, any renewal will be issued for one year.

Changes in brand label agent

In the event that an unlicensed brand owner changes the licensee designated as the exclusive agent for a particular item, the new exclusive agent shall file an application for approval of the brand label. The registration approved under the former brand agent shall be deemed surrendered and the former brand agent may apply for a refund of the unused portion of the registration fee.

Designation of brand agents and licensing requirements for brand owners

If the brand owner is licensed under the ABCL, it must file the application for brand label registration approval (as well as the price schedule required by ABCL §101-b(3)(a), except in the case of a private label). A brand owner, whether located in this state or elsewhere, that is not licensed under the ABCL must designate a wholesaler licensed in this state as its exclusive agent for purposes of filing the application for brand label registration approval as well as the price schedule required by ABCL §101-b(3)(a).

In the case of an alcoholic beverage produced in this state, the brand owner (except in the case of a private label) shall be a manufacturer licensed in this state. However, if the licensed manufacturer intends to distribute the product in this state exclusively through one licensed wholesaler (with no sales being made by the manufacturer to any other licensed wholesaler or any licensed retailer in this state), the manufacturer may designate such exclusive wholesaler as the brand owner of the label.

In the case of an alcoholic beverage produced outside of this state, an unlicensed entity doing business in this state may be the brand owner. However, the unlicensed New York entity whose alcoholic beverage is produced out-of-state may not be the importer of the product into this state or solicit purchases of the product within this state by licensed wholesalers and retailers.

In the case of a brand owner not licensed in this state, an "appointment letter" must be submitted by the brand owner identifying the licensed wholesaler who is designated as the

exclusive agent to file the application for brand label approval. Please note that a separate appointment letter from the brand owner is not required for each brand name. One letter may be used to list all the brand names for which the licensed wholesaler has been appointed as exclusive agent.

"Ornamental," "enhanced," or "special" containers

The marketing of alcoholic beverages in "ornamental," "enhanced" or "special" containers is addressed in Advisory 2014-23.

"Supplemental" brand labels

As a result of the amendments made to ABCL §107-a, it is no longer necessary to file separate, or "supplemental," brand label registrations. As noted above, a separate brand label registration will only be required when there is a change in: 1) the brand or trade name; or 2) the class or type of the alcoholic beverage.

Although the brand label must set forth the net contents and the labeling information required by TTB, if a change is made to those items it is not necessary to file an application to amend or supplement the existing approved label or obtain approval for a separate label. In addition, a second label that differs from the approved label does not require a separate registration as long as the brand or trade name and the class or type of the alcoholic beverage remains the same.

However, even if an amended, supplemented or separate brand label registration is not required, any brand label being used must comply with the provisions of ABCL §107-a and this Advisory. In particular, any brand labels changed after approval of the Authority must contain the information required by ABCL §107-a and must not include the items prohibited by ABCL §107-a. Violations will result in disciplinary action by the Authority.

Private labels

A "private brand label" is a brand label owned by a licensed retailer. It does not have to contain the retailer's name. An alcoholic beverage with a private brand label can only be sold by the licensed retailer who owns the brand label. The licensed retailer must own the brand name or otherwise have the legal right to use a brand or trade name belonging to another entity. However, in no case can the brand name be owned by a manufacturer or wholesaler. Manufacturers and wholesalers may not allow retailers to use their brand or trade name on a retailer's private brand label, except to identify the manufacturer, importer or bottler as may be required under TTB regulations. The use of phrases such as "exclusively bottled for" or "exclusive to" the retailer on a brand label owned by the manufacturer or another party does not constitute a private brand label. Such practices constitute an illegal gift or service in violation of ABCL §101(1)(c). Hotels, which operate under a common trademark, may sell beer or cider under a private brand label where a hotel chain or a hotel management company, which owns or otherwise has the legal right to use the brand or trade name, is listed on the license and the beer or cider is only sold in hotels owned in part or managed by the owner of the brand, or an affiliate of such owner.

Applications for approval of private brand labels must include proof that the retailer owns, or has the legal right to use, the brand or trade name set forth on the label. If the brand label is otherwise in compliance with ABCL §107-a and this Advisory, a retailer does not have to obtain a separate brand label registration approval when there is a difference in the manufacturer, importer or bottler.

Wine

An application for registration approval does not have to be submitted for wine brand labels that have been approved by TTB. A wine brand label without TTB approval must be registered and approved by the Authority.

Cider

Effective January 15, 2014, the definition of cider contained in the ABCL was amended. Among other changes, the maximum alcohol content by volume was increased from 7% to 8.5%. In addition, an alcoholic beverage that meets the definition of cider and wine may be marketed either as a cider, or as a wine. If the brand owner decides to market the product as a cider, it must be brand label registered as a cider. That product may be offered for sale by any licensed retailer. If the brand owner decides to market the product as a wine, the brand label must be approved (as a wine) by TTB or the Authority. The product must also be price posted and sold only by retailers who are licensed to sell wine.

Deviations or changes in alcohol content

Except for cider and wine products, the Authority will allow a deviation of no more than 1.5% between the alcohol content stated on the label and the actual alcohol content of the product as shown in the laboratory analysis. In the case of cider and wine products: the Authority will allow a deviation of no more than 0.5%; and the actual alcohol content cannot exceed the statutory limit set forth in the ABCL.

If the alcohol content stated on the label or container is changed after the brand label has been approved, a new, amended or supplemental registration is not required. As long as the brand label otherwise conforms to the requirements set forth in this Advisory, the change will be deemed part of the approved label. Please note that this applies if the alcohol content is being changed. If two products have brand labels that are identical in all other ways, with the only difference being the alcohol content, each product will require its own brand label approval.

Nutrition Facts Sheet

Brand labels that do not require TTB approval (such as wine products, wine specialties and cider under 7% alcohol content) must include the Nutrition Facts Sheet required by the FDA. If the FDA has granted an exemption from this requirement, or if the FDA does not require the inclusion of the facts sheet, an affirmation to that effect must be included with the application.

“Small batch” fee exemptions

ABCL §107-a provides for exemptions from the fee for brand label registration for liquor, beer and cider produced in “small batches.” For liquor, “small batches” means 1,000 gallons or less. For beer and cider, “small batches” means 1,500 barrels or less. While there is a fee exemption, an application for registration of the brand label must still be filed and approved.

In determining whether the product has been manufactured in a “small batch,” please note that:

- The fee exemption applies to product under the same state brand label registration number. If the total annual amount manufactured for a product, or products, under one brand label registration number exceeds (or is anticipated to exceed) the limitations stated above, a fee will be required to register the label.
- The total amount manufactured includes not only the amount of product manufactured for sale in this state, but the entire annual amount of the product that is manufactured, regardless of where it will be sold.

Beer and wine products sold in “soft pouches”

As noted above, brand labels cannot contain any statement, design, device or representation that is likely to mislead the consumer. In the view of the Authority, beer and wine products sold in “soft pouches” (whether or not intended to be frozen prior to consumption) can be mistaken for non-alcoholic products sold by off-premises beer retailers. Therefore, to avoid consumer deception and confusion, as well as to assist in preventing sales of these products to underage persons, the Authority requires that the front label of any such container, as well as the case or pack for such containers, include the following statement: “CONTAINS ALCOHOL – NO SALES UNDER 21.”

Personalized Bottles and Containers

The addition of personalized engraving, stamping, writing, etc., to a bottle or other container in compliance with the Authority’s “Containers, packaging and personalization of bottles” Advisory does not require a separate brand label registration approval.

“Use Up” Period For Non-Complying Labels

The Authority anticipates that manufacturers and wholesalers will have an inventory of labels on hand that may not comply with the amendments made to ABCL §107-a and the guidance provided by this Advisory. Such labels may continue to be used until the current registration period for the label expires and for an additional six month period.

STATE OF NEW YORK
LIQUOR AUTHORITY

To: All suppliers¹ and wholesalers of liquor and wine

Subject: Containers, packaging and personalization of bottles

Section 101-b of the Alcoholic Beverage Control Law provides that there may be only one price listed for an item in the price schedule filed with the Liquor Authority, unless permission is first obtained from the Authority for good cause shown when not inconsistent with the purposes of the statute. It has come to the Authority's attention that under current marketing practices, suppliers seek to create "ornamental," "enhanced," or "special" containers to address consumers' desire for special gift products. In addition, suppliers and wholesalers have requested direction with respect to: how they may package containers of liquor and wine for delivery to retailers; and whether they can supply bottles and containers personalized for consumers. The Authority has, from time to time, issued bulletins addressing the conditions under which such products may be distributed. In light of the passage of time since the issuance of those directives, and after recent discussions with industry members, the Authority has determined that it is appropriate to revisit the guidance set forth in those directives and states the following:

Prior Bulletins

Bulletin No. 343 (issued on August 11, 1961), Bulletin No. 440 (issued on February 3, 1969), Bulletin 440-a (issued on July 16, 1971), Bulletin 440-b (issued on August 11, 1971) Advisory 2012-5 (issued on August 29, 2012) and Advisory 2014-6 (issued on April 22, 2014) are hereby rescinded.

Containers of liquor or wine

1. The term "container" as used herein is intended to mean the bottle or other vessel containing the liquor or wine as well as any container into which the individual bottle or vessel is placed. No such container shall be permitted which has any secondary value or after-use, except of an ornamental or decorative nature.
2. The terms "ornamental," "enhanced," or "special" containers, as used herein, are intended to mean: containers of crockery, ceramic material, crystal, tin or other metal, plastic or wood;

¹ For purposes of this advisory, "supplier" means entities licensed in this state to manufacture alcoholic beverages, as well as: other domestic and foreign manufacturers of alcoholic beverages, importers, and other entities that sell alcoholic beverages, directly or indirectly, to licensed wholesalers for distribution in this state.

and decanters of any type. The Authority retains the sole discretion to determine which containers are properly considered "standard" versus "ornamental," "enhanced," or "special."

3. Brand owners or brand agents may offer items in the "standard" container and/or "ornamental," "enhanced," or "special" containers.
4. The "ornamental," "enhanced," or "special" containers may be sold at the same price, or a higher price than the "standard" container.
5. Items in "ornamental," "enhanced," or "special" containers must be price scheduled separately from items in "standard" containers.
6. Where any "ornamental," "enhanced," or "special" types of containers are distributed as limited availability items, the brand owner or brand agent must comply with the provisions of Advisory 2014-4.
7. Where any "standard" container is distributed as a limited availability item, any and all "ornamental," "enhanced," or "special" containers bearing the same brand or trade name must also be sold as limited availability items.
8. Brand owners or brand agents wishing to sell items sharing the same brand or trade name at different prices for a reason other than an "ornamental," "enhanced," or "special" container (such as a different label, for example) must obtain prior permission from the Authority to do so. All such requests should be addressed to the Wholesale Bureau in writing or via electronic mail at: wholesale@sla.ny.gov. In all such instances the Authority retains the sole discretion to determine which items sharing the same brand label may properly be sold at a different price.

Packaging of liquor or wine

9. Suppliers and wholesalers may pack their containers of alcoholic beverages in cardboard, paper or wooden boxes.
10. Baskets, boxes or other packages having a value to the retailer or consumer distinct from their value as packages for alcoholic beverages may not be used to pack containers of alcoholic beverages and may not be furnished, given or sold to retailers by suppliers and wholesalers.
11. Nothing hereinabove set forth shall be construed as excluding the use of paper, canvas, cloth, straw, simulated leather and plastics as wrapping material for packaging, provided that such wrapping material has no secondary value or use aside from its use as a wrapping for alcoholic beverages.

12. Cardboard or paper boxes for use in packing containers of alcoholic beverages may be furnished, given or sold to retailers by suppliers and wholesalers apart from the cases in which containers of alcoholic beverages were originally packed in a quantity not to exceed an amount required for the number of containers of such brands that the retailer has in inventory.

Personalization of bottles and other containers

13. The term “personalize” as used herein means engraving, stamping, writing or otherwise adding the name of one or more persons to a bottle or other container of an alcoholic beverage. Such personalization may also include language commemorating an event, special occasion, etc.
14. A supplier may personalize a bottle or another container of an alcoholic beverage for a retail consumer. Such service may be provided to the retailer by the supplier or by the supplier’s wholesaler, at the request of the supplier.
15. A supplier may charge the retailer for such services or provide same at no cost. In any event, the supplier must make such services available to any retailer upon the same terms.

“Barrel Programs”

16. For purposes of this Advisory, a “barrel program” is a program in which a particular barrel of a manufacturer’s liquor is selected by or for a particular retailer. The manufacturer then designates, or sets aside, that barrel for the entire contents to be bottled and sold to that retailer via one invoice and one delivery.
17. In designating, or setting aside, a barrel for a retailer, the manufacturer may place the retailer’s name on the barrel or otherwise label the barrel with the retailer’s name.
18. Upon bottling the contents of the barrel, the manufacturer may include the name, trademark or other information identifying the name of the retailer on hang tags to be affixed to the bottles, which shall include a statement to the effect that such alcoholic beverage was selected by or for the retailer. The manufacturer may also provide the retail licensee with the portion of the barrel from which the bottles were filled containing the retailer’s name.
19. A manufacturer may offer a barrel program to retail licensees provided that:
 - a. The program is made available to all retail licensees;
 - b. The barrel is posted as an individual item on the wholesale and retail price schedules. The posted price for a barrel shall not be less than the price (including any quantity discounts offered) for the same number of cases (contained in the barrel) posted for the same

alcoholic beverage outside the barrel program applicable for the month in which the alcoholic beverages are sold and delivered to the retailer.

20. The expression of interest by a retailer in a barrel program, and the selection and setting aside of a particular barrel for such retailer, shall not be considered an order for or delivery of the alcoholic beverage within the meaning of section 101-b of the Alcoholic Beverage Law or Part 65 of the Rules of the Authority.
21. The selection of a particular barrel by or for a retailer shall not require the retailer to purchase the alcoholic beverage once it is ready for distribution. However, if a retailer has refused to purchase a product that has been set aside under a barrel program for that retailer, the manufacturer or wholesaler may refuse to consider future expressions of interest by that retailer in another product that is part of a barrel program.

All suppliers and wholesalers are hereby cautioned that any violation of the directives contained in the above Advisory may subject them to disciplinary action by the Authority pursuant to ABCL §119 and/or an action for injunctive relief pursuant to ABCL §123.

CHAPTER 1

MANDATORY LABEL INFORMATION

1. BRAND NAME

- GENERAL FEATURES

- Usually, the most prominent piece of information on the label

- Name under which a distilled spirits or line of distilled spirits is marketed

NOTE: If the distilled spirits is not sold under a brand name, the name of the distiller, bottler, importer, etc., [shown on the front of the container] becomes the brand name

- MISLEADING BRAND NAME

A name that describes the age, origin, identity or other characteristics of the distilled spirits is prohibited **UNLESS** the name, whether standing alone or in combination with other printed or graphic material:

- Accurately describes the distilled spirits **AND**

- Conveys no erroneous impression about the distilled spirits

OR

- Is qualified with the word "BRAND"

- TYPE SIZE

There are no established type size requirements for BRAND NAME

- LEGIBILITY

- Must be readily legible

- Must appear on a contrasting background

- PLACEMENT

Must appear on the FRONT of the container

2. CLASS AND TYPE DESIGNATION

- DEFINITION

The specific identity of the distilled spirits

- SEE ALSO CHAPTER 4, CLASS AND TYPE DESIGNATION

- TYPE SIZE

- Minimum 2 mm for containers larger than 200 ml

- Minimum 1 mm for containers of 200 ml or less

- LEGIBILITY

- Must generally appear parallel to the base of the container

- Must be readily legible

- Must appear on a contrasting background

- Must appear separate and apart from any other descriptive or explanatory information

- PLACEMENT

Must appear on the FRONT of the container

3. ALCOHOL CONTENT

- REQUIRED

- Alcohol content must be stated in % alcohol by volume, i.e.,
“_____ % ALCOHOL (ALC) BY VOLUME (VOL)”

- For products containing solid material, the alcohol content must be stated as
“BOTTLED AT _____ % ALCOHOL (ALC) BY VOLUME (VOL).” (“Rock and Rye” is an example of a product containing solid material. It contains rock candy or sugar syrup and often fruit)

- **OPTIONAL**

Alcohol content may be expressed in degrees proof in addition to the required alcohol by volume statement. If the proof is shown it must appear at least once on the **FRONT** of the container with the alcohol by volume statement **AND:**

- Be set off by parentheses, brackets, dots or otherwise distinguished from the alcohol by volume statement

- May not be more prominent than the alcohol by volume statement

- **TOLERANCES**

The labeled alcohol content must accurately reflect the actual alcohol content of the product. Losses occurring during bottling will not affect the labeled alcohol content provided the loss does not exceed:

- 0.25% alcohol by volume for spirits containing solids in excess of 600 mg per 100 ml

- 0.25% alcohol by volume for spirits bottled in 50 ml and 100 ml containers

- 0.15% alcohol by volume for all other spirits

- **TYPE SIZE**

- Minimum 2 mm for containers larger than 200 ml

- Minimum 1 mm for containers of 200 ml or less

- **LEGIBILITY**

- Must generally appear parallel to the base of the container

- Must be readily legible

- Must appear on a contrasting background

- Must appear separate and apart from any other descriptive or explanatory information

- **PLACEMENT**

Must appear on the **FRONT** of the container

4. NAME AND ADDRESS

- REQUIRED

- For domestic distilled spirits

The name(s) and address(es) of the:

Bottler or
Packer or
Filler

AND/OR

Distiller or
Blender or
Maker or
Preparer or
Manufacturer or
Producer

must appear on the label preceded by an appropriate explanatory phrase such as "BOTTLED BY," "DISTILLED BY," "DISTILLED AND BOTTLED BY," etc.

- For imported distilled spirits

For spirits bottled, packed or filled prior to importation

The name and address of the importer must appear on the label preceded by an appropriate explanatory phrase such as "IMPORTED BY," "SOLE AGENT" or "SOLE U. S. AGENT"

For spirits bottled, packed or filled after importation

The name and address of the importer and/or bottler, packer or filler must appear on the label preceded by an appropriate explanatory phrase such as "BOTTLED BY," "IMPORTED AND BOTTLED BY," "IMPORTED BY AND BOTTLED FOR" or "IMPORTED BY _____ AND BOTTLED BY _____"

NOTE: When spirits are bottled in the U.S., it must be indicated by the required preceding explanatory phrase, e.g., "IMPORTED BY ABC IMPORTS AND **BOTTLED BY** XYZ SPIRITS COMPANY"

- DEFINITIONS

- Name

- The company or corporate name or trade name identical to that shown on the basic permit

- Address

- For domestic distilled spirits

- The city and state where bottling, packing, filling and/or production operations occurred

- NOTE:** The address must be identical to that shown on the basic permit

- OR**

- The city and state of the bottler's, packer's, filler's, distiller's, etc., principal place of business (see PRINCIPAL PLACE OF BUSINESS section of CHAPTER 5, NAME AND ADDRESS)

- NOTE:** The principal place of business address must be identical to that shown on the basic permit

- For importer distilled spirits

- The city and state of the importer's principle place of business (see PRINCIPAL PLACE OF BUSINESS section of CHAPTER 5, NAME AND ADDRESS)

- NOTE:** The principal place of business address must be identical to that shown on the basic permit

- SEE ALSO CHAPTER 5, NAME AND ADDRESS

- TYPE SIZE

- Minimum 2 mm for containers larger than 200 ml
 - Minimum 1 mm for containers of 200 ml or less

- **LEGIBILITY**

- Must generally appear parallel to the base of the container
- Must be readily legible
- Must appear on a contrasting background
- Must appear separate and apart from any other descriptive or explanatory information

- **PLACEMENT**

May appear on the FRONT, BACK or SIDE of the container

5. COUNTRY OF ORIGIN

- **APPLICATION**

Required for all imported spirits whether bottled, packed or filled prior to or after importation

- **FORMAT**

- "PRODUCT/PRODUCE OF _____"
(Fill in blank with name of country in which spirits were produced)
- "PRODUCED IN/PRODUCED AND BOTTLED IN _____"
(Fill in blank with name of country in which spirits were produced/produced and bottled)
- "PRODUCED BY/PRODUCED AND BOTTLED BY _____"
(Fill in blank with name of producer/producer and bottler and address [country or city and country] in which spirits were produced/produced and bottled)
- "_____ BRANDY"
(Fill in blank with name of country in which brandy was produced), i.e., name of country with class and type designation

- **TYPE SIZE**

- Minimum 2 mm for containers larger than 200 ml
- Minimum 1 mm for containers of 200 ml or less

- LEGIBILITY

- Must generally appear parallel to the base of the container
- Must be readily legible
- Must appear on a contrasting background
- Must appear separate and apart from any other descriptive or explanatory information

- PLACEMENT

May appear on the FRONT, BACK or SIDE of the container

6. NET CONTENTS

- REQUIRED

Distilled spirits must be bottled, packed or filled in a metric standard of fill

- SEE ALSO CHAPTER 6, STANDARDS OF FILL

- TYPE SIZE

- Minimum 2 mm for containers larger than 200 ml
- Minimum 1 mm for containers of 200 ml or less

- LEGIBILITY

- Must generally appear parallel to the base of the container
- Must be readily legible
- Must appear on a contrasting background
- Must appear separate and apart from any other descriptive or explanatory information

- PLACEMENT

- Net contents may be blown or branded into the bottle in lieu of or in addition to stating net contents on the label **EXCEPT THAT** if the net contents are not shown on the label of foreign bottled distilled spirits, a sample of the container must be submitted with the application for certificate of label approval (COLA)

- May appear on the FRONT, BACK or SIDE of the container

7. PRESENCE OF COLORING MATERIALS

- DISCLOSURE

- The coloring material(s) may be specified on the label

Examples: "COLORED WITH CARAMEL"

"CERTIFIED COLOR ADDED"

"COLORED WITH GRAPESKIN EXTRACT"

"CARAMEL AND CERTIFIED COLOR ADDED"

"COLORED WITH CARAMEL, ANNATTO AND GRAPESKIN EXTRACT"

OR

- "ARTIFICIALLY COLORED" may be used to indicate the presence of any one or a combination of coloring materials **EXCEPT THAT** FD&C Yellow #5 requires specific disclosure. (See Item 9, "FD&C YELLOW #5 DISCLOSURE" of this chapter)

NOTE: Coloring material is **NOT** permissible in every class and/or type of distilled spirits. Additionally, the coloring material caramel may be added to certain types of distilled spirits without label disclosure. See CHAPTER 7, COLORING/FLAVORING/BLENDING MATERIALS for more specific information

- TYPE SIZE

- Minimum 2 mm for containers larger than 200 ml

- Minimum 1 mm for containers of 200 ml or less

- LEGIBILITY

- Must generally appear parallel to the base of the container

- Must be readily legible

- Must appear on a contrasting background

- Must appear separate and apart from any other descriptive or explanatory information

- PLACEMENT

- May appear on the FRONT, BACK or SIDE of the container **EXCEPT THAT**

- For distilled spirits specialties, the coloring material disclosure must appear on the FRONT of the container (as part of the statement of composition). (See CLASSES AND TYPES chart in CHAPTER 4, CLASS AND TYPE DESIGNATION)

8. TREATMENT WITH WOOD

• DISCLOSURE

“COLORED AND FLAVORED WITH WOOD _____” (insert chips, slabs, extracts, etc., as appropriate) is required on labels to indicate treatment with wood

• APPLICATION

Applies only to whisky and brandy treated – **other than through contact with oak containers** – with wood:

- In any manner or form, either directly or indirectly, e.g., chips, slabs, extracts, etc.
- At any point during the production or storage process, up to and including the time of bottling

• EXCEPTION

No disclosure is required on labels of brandy treated with an oak chip infusion that:

- Has been determined by TTB analysis to be harmless coloring, flavoring or blending material (confirmation of harmless coloring, flavoring or blending material status has already been made for French brandies including Armagnac, Cognac, etc.) **AND**
- Does not exceed 2½% by volume of the finished brandy

NOTE: See CHAPTER 7, COLORING/FLAVORING/BLENDING MATERIALS

• TYPE SIZE

- Minimum 2 mm for containers larger than 200 ml
- Minimum 1 mm for containers of 200 ml or less

• LEGIBILITY

- Must generally appear parallel to the base of the container
- Must be readily legible
- Must appear on a contrasting background
- Must appear separate and apart from any other descriptive or explanatory information

- **PLACEMENT**

Must appear on the **FRONT** of the container (as part of the class and type designation)

9. FD&C YELLOW #5 DISCLOSURE

- **REQUIRED**

"CONTAINS FD&C YELLOW #5" must appear on the label of any distilled spirits containing FD&C Yellow #5

- **TYPE SIZE**

- Minimum 2 mm for containers larger than 200 ml
- Minimum 1 mm for containers of 200 ml or less

- **LEGIBILITY**

- Must generally appear parallel to the base of the container
- Must be readily legible
- Must appear on a contrasting background
- Must appear separate and apart from any other descriptive or explanatory information

- **PLACEMENT**

May appear on the **FRONT, BACK or SIDE** of the container

10. SACCHARIN DISCLOSURE

- **REQUIRED**

"USE OF THIS PRODUCT MAY BE HAZARDOUS TO YOUR HEALTH. THIS PRODUCT CONTAINS SACCHARIN WHICH HAS BEEN DETERMINED TO CAUSE CANCER IN LABORATORY ANIMALS." is required on distilled spirits containing saccharin

- TYPE SIZE

- Minimum 2 mm for containers larger than 200 ml
- Minimum 1 mm for containers of 200 ml or less

- LEGIBILITY

- Must generally appear parallel to the base of the container
- Must be readily legible
- Must appear on a contrasting background
- Must appear separate and apart from all other label information

- PLACEMENT

May appear on the FRONT, BACK or SIDE of the container

11. SULFITE DECLARATION

- REQUIRED

“CONTAINS SULFITES” or “CONTAINS (A) SULFITING AGENT(S)” or identification of the specific sulfiting agent(s) is required on distilled spirits containing 10 or more parts per million (ppm) sulfur dioxide

- TYPE SIZE

- Minimum 2 mm for containers larger than 200 ml
- Minimum 1 mm for containers of 200 ml or less

- LEGIBILITY

- Must generally appear parallel to the base of the container
- Must be readily legible
- Must appear on a contrasting background
- Must appear separate and apart or substantially more conspicuous than any other descriptive or explanatory information

- PLACEMENT

May appear on the FRONT, BACK or SIDE of the container

12. COMMODITY STATEMENT

• DEFINITION

- For the distilled spirits identified below, the commodity statement is a statement disclosing the percentage of neutral spirits and the commodity from which the neutral spirits were distilled:

GROUP 1

Neutral Spirits/Alcohol produced by redistillation
Vodka produced by redistillation
Grain Spirits produced by redistillation
Blended Whisky
Blended Bourbon Whisky
Blended Wheat Whisky
Blended Rye Whisky
Blended Malt Whisky
Blended Rye Malt Whisky
Blended Corn Whisky
Spirit Whisky
Compounded Gin
Redistilled Gin
Blended Applejack

- For the distilled spirits identified below, the commodity statement is a statement disclosing the commodity from which the neutral spirits were distilled:

GROUP 2

Neutral Spirits/Alcohol produced by original distillation
Vodka produced by original distillation
Grain Spirits produced by original distillation
Distilled Gin

NOTE: For definitions of all listed products, see CLASSES AND TYPES chart in CHAPTER 4, CLASS AND TYPE DESIGNATION

- **FORMAT**

- For distilled spirits listed in GROUP 1 above:

- “ _____ % NEUTRAL SPIRITS DISTILLED FROM _____ ”

- (Fill in first blank with specific percentage and second blank with name of commodity. The commodity can be identified specifically or by general class, e.g., in the case of corn either “corn” or “grain” may be used)

- OR**

- “ _____ % _____ NEUTRAL SPIRITS ”

- (Fill in first blank with specific percentage and second blank with name of commodity. The commodity can be identified specifically or by general class, e.g., in the case of grapes either “grape” or “fruit” may be used)

- For distilled spirits listed in GROUP 2 above:

- “DISTILLED FROM _____ ”

- (Fill in blank with name of commodity. The commodity can be identified specifically or by general class, e.g., in the case of rye either “rye” or “grain” may be used)

- **TYPE SIZE**

- Minimum 2 mm for containers larger than 200 ml

- Minimum 1 mm for containers of 200 ml or less

- **LEGIBILITY**

- Must generally appear parallel to the base of the container

- Must be readily legible

- Must appear on a contrasting background

- Must appear separate and apart from any other descriptive or explanatory information

- **PLACEMENT**

- May appear on the FRONT, BACK or SIDE of the container

13. STATEMENTS OF AGE

- REQUIRED

A statement of age is required for:

- All types of whisky aged less than 4 years
- Grape lees brandy or grape pomace/grape marc brandy aged less than 2 years
- Distilled spirits labeled with miscellaneous age references or representations
- Distilled spirits labeled with a distillation date

NOTE: Statements of age, miscellaneous age references/representations and distillation dates are not permissible on all distilled spirits. See USE OF AGE/STORAGE STATEMENTS AND DATES ON LABELS chart in CHAPTER 8, STATEMENTS OF AGE to verify whether a particular class and/or type of distilled spirits may be labeled with a specific statement of age, miscellaneous age reference/representation or distillation date.

- SEE ALSO CHAPTER 8, STATEMENTS OF AGE

- TYPE SIZE

- Minimum 2 mm for containers larger than 200 ml
- Minimum 1 mm for containers of 200 ml or less

- LEGIBILITY

- Must generally appear parallel to the base of the container
- Must be readily legible
- Must appear on a contrasting background
- Must appear separate and apart from any other descriptive or explanatory information

- PLACEMENT

- For whisky that has not been blended with neutral spirits:
may appear on the FRONT, BACK or SIDE of the container

■For whisky blended with neutral spirits:
must appear with the commodity statement (see Item 12, "COMMODITY STATEMENT" of this chapter)

■For grape lees brandy and grape pomace/grape marc brandy:
may appear on the FRONT, BACK or SIDE of the container

■For distilled spirits labeled with miscellaneous age references or representations:
must appear on the same side of the container as the age reference or representation

NOTE: The requirement for placement of a specific statement of age on the same side of the container as the miscellaneous age reference or representation does not apply to:

- Whisky aged not less than 4 years
- Brandy **other than** grape lees brandy and grape pomace/grape marc brandy aged less than 2 years or immature brandy
- Rum aged not less than 4 years
- Tequila aged not less than 4 years

PROVIDED the miscellaneous age reference or representation is general in nature and inconspicuous (e.g., contained in back label text) on the label. No statement of age is required for these four classes/types of distilled spirits if these conditions are met

■For distilled spirits labeled with a distillation date:
must appear with the distillation date

14. STATE OF DISTILLATION

· APPLICATION

■Applies only to whisky produced in the U.S.

■Applies to the following specific types of whisky:

Bourbon Whisky
Rye Whisky
Wheat Whisky
Malt Whisky
Rye Malt Whisky
Corn Whisky
Straight Bourbon Whisky
Straight Rye Whisky

Straight Wheat Whisky
Straight Malt Whisky
Straight Rye Malt Whisky
Straight Corn Whisky
Straight Whisky
Whisky Distilled From Bourbon Mash
Whisky Distilled From Rye Mash
Whisky Distilled From Wheat Mash
Whisky Distilled From Malt Mash
Whisky Distilled From Rye Malt Mash

• **REQUIRED**

The State of distillation must be specifically identified on the label **IF**:

- The whisky was not distilled in the State identified in the required name and address statement (see Item 4, "NAME AND ADDRESS" of this chapter)

OR

- The whisky was distilled in the State identified in the required name and address statement **BUT**

- The required name and address statement does not appear on the front of the container

OR

- The label is in any way misleading or deceptive as to the actual State of distillation

NOTE: Other explanatory language may be permitted in lieu of the State of distillation as a dispelling statement

• **FORMAT**

The State of distillation may appear:

- As a separate statement, e.g., "DISTILLED IN _____"
(Fill in blank with name of specific State)

OR

- With the class and type designation, e.g., "_____ STRAIGHT BOURBON WHISKY"
(Fill in blank with name of specific State)

- TYPE SIZE

- Minimum 2 mm for containers larger than 200 ml
- Minimum 1 mm for containers of 200 ml or less

- LEGIBILITY

- Must generally appear parallel to the base of the container
- Must be readily legible
- Must appear on a contrasting background
- Must appear separate and apart from any other descriptive or explanatory information

- PLACEMENT

May appear on the FRONT, BACK or SIDE of the container

15. HEALTH WARNING STATEMENT

- REQUIRED

The statement below must appear on all alcohol beverages for sale or distribution in the U.S. containing not less than 0.5% alcohol by volume, intended for human consumption and bottled on or after November 18, 1989:

GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.

- FORMAT

- The words "GOVERNMENT WARNING" must appear in capital letters and in bold type
- The remainder of the statement may not appear in bold type
- The statement must appear as a continuous paragraph

- TYPE SIZE

- Minimum 3 mm for containers larger than 3 liters (101 fl. oz.)
- Minimum 2 mm for containers larger than 237 ml (8 fl. oz.) to 3 liters (101 fl. oz.)
- Minimum 1 mm for containers of 237 ml (8 fl. oz.) or less

- LEGIBILITY

- Must be readily legible under ordinary conditions and appear on a contrasting background
- Must appear separate and apart from all other label information
- May not exceed maximum number of characters per inch:

<u>Minimum Type Size Requirement</u>	<u>Maximum Characters Per Inch</u>
1 mm	40
2 mm	25
3 mm	12

- PLACEMENT

May appear on the FRONT, BACK or SIDE of the container

CHAPTER 1

MANDATORY LABEL INFORMATION

1. BRAND NAME

- GENERAL FEATURES

- Usually, the most prominent piece of information on the label

- Name under which a malt beverage or line of malt beverages is marketed

NOTE: If the malt beverage is not sold under a brand name, the name of the bottler, packer or importer [shown on the front of the container] becomes the brand name

- MISLEADING BRAND NAME

A name that describes the age, origin, identity or other characteristics of the malt beverage is prohibited **UNLESS** the name, whether standing alone or in combination with other printed or graphic material:

- Accurately describes the malt beverage **AND**

- Conveys no erroneous impression about the malt beverage

OR

- Is qualified with:

- The word "BRAND" **OR**

- A statement that dispels any erroneous impression created by the brand name

- TYPE SIZE

- Minimum 2 mm for containers larger than ½ pint

- Minimum 1 mm for containers of ½ pint or less

- LEGIBILITY

- Must be readily legible

- Must appear on a contrasting background

- Must appear separate and apart from or be substantially more conspicuous than descriptive or explanatory information

- **PLACEMENT**

Must appear on the **FRONT** of the container

2. CLASS AND TYPE DESIGNATION

- **DEFINITION**

The specific identity of the malt beverage

- **SEE ALSO CHAPTER 4, CLASS AND TYPE DESIGNATION**

- **TYPE SIZE**

- Minimum 2 mm for containers larger than ½ pint

- Minimum 1 mm for containers of ½ pint or less

- **LEGIBILITY**

- Must be readily legible

- Must appear on a contrasting background

- Must appear separate and apart from or be substantially more conspicuous than descriptive or explanatory information

- **PLACEMENT**

Must appear on the **FRONT** of the container

3. NAME AND ADDRESS

- **REQUIRED**

- For domestic malt beverages

The name and address of the producer/bottler or packer must appear on the label optionally preceded by an appropriate explanatory phrase such as "BREWED AND BOTTLED/PACKED BY," "BREWED BY" or "BOTTLED/PACKED BY"

NOTE:

- "BOTTLED BY" is used for malt beverages bottled in containers of 1 gallon or less
- "PACKED BY" is used for malt beverages packed in containers of over 1 gallon

■ For imported malt beverages

The name and address of the importer must appear on the label preceded by an appropriate explanatory phrase such as "IMPORTED BY," "SOLE AGENT" or "SOLE U.S. AGENT"

· DEFINITIONS

■ Name

The company or corporate name or trade name identical to that shown on:

Brewer's notice for domestic malt beverages
Basic permit for imported malt beverages

■ Address

For domestic malt beverages

- City and state where malt beverage is bottled or packed

NOTE: The bottling/packing location may be contained within a listing of all the brewer's locations **PROVIDED:**

- 1) The place of actual production/bottling or packing is given no less prominence than other locations listed
- 2) The actual location (address) where the malt beverage is produced/bottled or packed is indicated by printing, coding or other markings on the label or container
- 3) The brewer files, prior to use, a notice explaining the coding system with:

Chief, National Revenue Center
8002 Federal Office Building
550 Main Street
Cincinnati, Ohio 45202-3263

OR

- City and state of the bottler's/packer's principal place of business (see "PRINCIPAL PLACE OF BUSINESS" section of this item)

NOTE: The address must be identical to that shown on the brewer's notice

For imported malt beverages

City and state of importer's principle place of business (see "PRINCIPAL PLACE OF BUSINESS" section of this item)

NOTE: The principal place of business address must be identical to that shown on the basic permit

▪ **PRINCIPAL PLACE OF BUSINESS**

■ **Use**

For domestic malt beverages

The principal place of business address may be used on labels in lieu of the address of the premise where the malt beverage was produced/bottled or packed

For imported malt beverages

The principal place of business address must be used on the label

■ **Conditions for use**

The principal place of business address must be a location where production/bottling or packing operations occur

The actual location (address) where the malt beverage is produced/bottled or packed must be indicated by printing, coding or other markings on the label or container

AND

The brewer must file, prior to use, a notice explaining the coding system with:

Chief, National Revenue Center
8002 Federal Office Building
550 Main Street
Cincinnati, Ohio 45202-3263

NOTE: These conditions for use apply only to domestic breweries; they do not apply to U.S. importers

- TYPE SIZE

- Minimum 2 mm for containers larger than ½ pint
- Minimum 1 mm for containers of ½ pint or less

- LEGIBILITY

- Must be readily legible
- Must appear on a contrasting background
- Must appear separate and apart from or be substantially more conspicuous than descriptive or explanatory information

- PLACEMENT

- For domestic malt beverages

Must appear on the FRONT of the container

OR

May be BURNED or BRANDED into the container

- For imported malt beverages

May appear on the FRONT, BACK or SIDE of the container

4. NET CONTENTS

- GENERAL

- There are no standards of fill for malt beverages
- Malt beverages may be bottled or packed in any size container
- Net contents must be expressed in American measure but may also be expressed in metric measure

- **FORM OF STATEMENT**

If the net contents of the container are:

- Less than 1 pint, the net contents must be shown in fluid ounces or fractions of a pint
- 1 pint, 1 quart or 1 gallon, the net contents must be shown exactly that way
- More than 1 pint but less than 1 quart, the net contents must be shown in pints and fluid ounces or fractions of a quart
- More than 1 quart but less than 1 gallon, the net contents must be shown in quarts, pints and fluid ounces or fractions of a gallon
- More than 1 gallon, the net contents must be shown in gallons and fractions thereof

- **SEE ALSO CHAPTER 5, NET CONTENTS**

- **TYPE SIZE**

- Minimum 2 mm for containers larger than ½ pint
- Minimum 1 mm for containers of ½ pint or less

- **LEGIBILITY**

- Must be readily legible
- Must appear on a contrasting background
- Must appear separate and apart from or be substantially more conspicuous than descriptive or explanatory information

- **PLACEMENT**

- Must appear on the **FRONT** of the container

OR

- May be **BLOWN, BRANDED** or **BURNED** into the container

5. ALCOHOL CONTENT

• GENERAL

■ A statement of alcohol content is optional unless

It is required by State law

OR

It is prohibited by State law

■ Unless otherwise prescribed by State law, the optional statement of alcohol content must be expressed in percent by volume. See "FORM OF STATEMENT" section of this item

• FORM OF STATEMENT

■ Alcohol content must be shown as:

"ALCOHOL (ALC) ____% BY VOLUME (VOL)" **or**
"ALCOHOL (ALC) BY VOLUME (VOL) ____%" **or**
"____% ALCOHOL (ALC) BY VOLUME (VOL)" **or**
"____% ALCOHOL (ALC)/VOLUME (VOL)"

■ Alcohol content must be expressed to the nearest 0.1% **EXCEPT THAT** for malt beverages containing less than 0.5% alcohol by volume, the alcohol content may be expressed to the nearest 0.01%

• MISCELLANEOUS

THE TERM	MAY BE USED TO DESCRIBE A MALT BEVERAGE CONTAINING...
Low alcohol	less than 2.5% alcohol by volume
Reduced alcohol	less than 2.5% alcohol by volume
Non-alcoholic	less than 0.5% alcohol by volume NOTE: The statement "CONTAINS LESS THAN 0.5% ALC BY VOL" must appear with "NON-ALCOHOLIC" on the label
Alcohol free	no alcohol (0.0% alc by vol) NOTE: The alcohol content statement "0.0% ALC BY VOL" may not appear on the label unless the malt beverage is labeled "ALCOHOL FREE"

- TOLERANCES

- For malt beverages containing 0.5% or more alcohol by volume –

- A tolerance of 0.3% above or below the alcohol content stated on the label is permissible **EXCEPT THAT** regardless of this tolerance:

- A malt beverage labeled as containing 0.5% or more alcohol by volume may not contain less than 0.5% alcohol by volume

- A malt beverage labeled as “LOW ALCOHOL” may not contain 2.5% or more alcohol by volume

- A malt beverage labeled as “REDUCED ALCOHOL” may not contain 2.5% or more alcohol by volume

- For malt beverages containing less than 0.5% alcohol by volume –

- The actual alcohol content may not exceed the labeled alcohol content

- TYPE SIZE

- Unless otherwise required by State law:

- Minimum 2 mm for containers larger than ½ pint

- Minimum 1 mm for containers of ½ pint or less

- Maximum 3 mm for containers of 40 fl. oz. or less

- Maximum 4 mm for containers larger than 40 fl. oz.

- LEGIBILITY

- All portions of the alcohol content statement must be:

- Of the same kind and size of lettering

- Of equally conspicuous coloring

- PLACEMENT

- May appear on the FRONT, BACK or SIDE of the container

6. FD&C YELLOW #5 DISCLOSURE

- **REQUIRED**

"CONTAINS FD&C YELLOW #5" must appear on the label of any malt beverage containing FD&C Yellow #5

- **TYPE SIZE**

- Minimum 2 mm for containers larger than ½ pint
- Minimum 1 mm for containers of ½ pint or less

- **LEGIBILITY**

- Must be readily legible
- Must appear on a contrasting background
- Must appear separate and apart from or be substantially more conspicuous than descriptive or explanatory information

- **PLACEMENT**

May appear on the FRONT, BACK or SIDE of the container

7. SACCHARIN DISCLOSURE

- **REQUIRED**

"USE OF THIS PRODUCT MAY BE HAZARDOUS TO YOUR HEALTH. THIS PRODUCT CONTAINS SACCHARIN WHICH HAS BEEN DETERMINED TO CAUSE CANCER IN LABORATORY ANIMALS." must appear on the label of any malt beverage containing saccharin

- **TYPE SIZE**

- Minimum 2 mm for containers larger than ½ pint
- Minimum 1 mm for containers of ½ pint or less

- **LEGIBILITY**

- Must be readily legible
- Must appear on a contrasting background
- Must appear separate and apart from all other label information

- **PLACEMENT**

May appear on the FRONT, BACK or SIDE of the container

8. SULFITE DECLARATION

- **REQUIRED**

“CONTAINS SULFITES” or “CONTAINS (A) SULFITING AGENT(S)” or identification of the specific sulfiting agent(s) must appear on the label of any malt beverage containing 10 or more parts per million (ppm) sulfur dioxide

- **TYPE SIZE**

- Minimum 2 mm for containers larger than ½ pint
- Minimum 1 mm for containers of ½ pint or less

- **LEGIBILITY**

- Must be readily legible
- Must appear on a contrasting background
- Must appear separate and apart from or be substantially more conspicuous than descriptive or explanatory information

- **PLACEMENT**

May appear on the FRONT, BACK or SIDE of the container

9. ASPARTAME DISCLOSURE

- **REQUIRED**

“PHENYLKETONURICS: CONTAINS PHENYLALANINE.” must appear on the label of any malt beverage containing aspartame

- **TYPE SIZE**

- The entire statement must appear in capital letters
- Minimum 2 mm for containers larger than ½ pint
- Minimum 1 mm for containers of ½ pint or less

- LEGIBILITY

- Must be readily legible
- Must appear on a contrasting background
- Must appear separate and apart from all other label information

- PLACEMENT

May appear on the FRONT, BACK or SIDE of the container

10. HEALTH WARNING STATEMENT

- REQUIRED

The statement below must appear on all alcohol beverages for sale or distribution in the U.S. containing not less than 0.5% alcohol by volume, intended for human consumption and bottled on or after November 18, 1989:

GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.

- FORMAT

- The words "GOVERNMENT WARNING" must appear in capital letters and in bold type
- The remainder of the statement may not appear in bold type
- The statement must appear as a continuous paragraph

- TYPE SIZE

- Minimum 3 mm for containers larger than 3 liters (101 fl. oz.)
- Minimum 2 mm for containers larger than 237 ml (8 fl. oz.) to 3 liters (101 fl. oz.)
- Minimum 1 mm for containers of 237 ml (8 fl. oz.) or less

- **LEGIBILITY**

- Must be readily legible under ordinary conditions and appear on a contrasting background
- Must appear separate and apart from all other label information
- May not exceed maximum number of characters per inch:

<u>Minimum Type Size Requirement</u>	<u>Maximum Characters Per Inch</u>
1 mm	40
2 mm	25
3 mm	12

- **PLACEMENT**

May appear on the FRONT, BACK or SIDE of the container

11. COUNTRY OF ORIGIN

- **APPLICATION**

Required under U.S. Customs Service regulations for any imported malt beverage

- **FORMAT**

- "PRODUCT/PRODUCE OF _____"
(Fill in blank with name of country in which malt beverage was produced/brewed)
- "PRODUCED/BREWED IN" or "PRODUCED/BREWED AND BOTTLED OR PACKED IN _____"
(Fill in blank with name of country in which malt beverage was produced/brewed or produced/brewed and bottled or packed)
- "PRODUCED/BREWED BY" or "PRODUCED/BREWED AND BOTTLED OR PACKED BY _____"
(Fill in blank with name of producer/brewer or producer/brewer and bottler or packer and address [country or city and country] in which malt beverage was produced/brewed or produced/brewed and bottled or packed)

■“_____ ALE”

(Fill in blank with name of country in which ale was produced/brewed), i.e.,
name of country with class and/or class and type designation

- TYPE SIZE

There are no specific type size requirements

- LEGIBILITY

There are no specific legibility requirements

- PLACEMENT

May appear on the FRONT, BACK or SIDE of the container

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MANDATORY STATEMENTS- WINE

§4.32 Mandatory label information.

(a) There shall be stated on the brand label:

(1) Brand name, in accordance with §4.33.

(2) Class, type, or other designation, in accordance with §4.34.

(3) [Reserved]

(4) On blends consisting of American and foreign wines, if any reference is made to the presence of foreign wine, the exact percentage by volume.

(b) There shall be stated on any label affixed to the container:

(1) Name and address, in accordance with §4.35.

(2) Net contents, in accordance with §4.37. If the net contents is a standard of fill other than an authorized metric standard of fill as prescribed in §4.72, the net contents statement shall appear on a label affixed to the front of the bottle.

(3) Alcohol content, in accordance with §4.36.

(c) There shall be stated on the brand label or on a back label a statement that the product contains FD&C Yellow No. 5, where that coloring material is used in a product bottled on or after October 6, 1984.

(d) *Declaration of cochineal extract or carmine.* There shall be stated on a front label, back label, strip label, or neck label a statement that the product contains the color additive cochineal extract or the color additive carmine, prominently and conspicuously, using the respective common or usual name ("cochineal extract" or "carmine"), where either of the coloring materials is used in a product that is removed on or after April 16, 2013. (For example: "Contains Cochineal Extract" or "Contains Carmine" or, if applicable, "Contains Cochineal Extract and Carmine").

(e) *Declaration of sulfites.* There shall be stated on a front label, back label, strip label or neck label, the statement "Contains sulfites" or "Contains (a) sulfiting agent(s)" or a statement identifying the specific sulfiting agent where sulfur dioxide or a sulfiting agent is detected at a level of 10 or more parts per million, measured as total sulfur dioxide. The provisions of this paragraph shall apply to:

(1) Any certificate of label approval issued on or after January 9, 1987;

(2) Any wine bottled on or after July 9, 1987, regardless of the date of issuance of the certificate of label approval; and,

(3) Any wine removed on or after January 9, 1988.

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(Paragraph (e) approved by the Office of Management and Budget under Control Number 1512-0469)

[T.D. 6521, 25 FR 13835, Dec. 29, 1960]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §4.32, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

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PROHIBITED STATEMENTS- WINE

§4.39 Prohibited practices.

(a) *Statements on labels.* Containers of wine, or any label on such containers, or any individual covering, carton, or other wrapper of such container, or any written, printed, graphic, or other matter accompanying such container to the consumer shall not contain:

(1) Any statement that is false or untrue in any particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific or technical matter, tends to create a misleading impression.

(2) Any statement that is disparaging of a competitor's products.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the appropriate TTB officer finds to be likely to mislead the consumer.

(5) Any statement, design, device or representation of or relating to any guarantee, irrespective of falsity, which the appropriate TTB officer finds to be likely to mislead the consumer. Money-back guarantees are not prohibited.

(6) A trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, or any graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization; *Provided*, That this paragraph shall not apply to the use of the name of any person engaged in business as a producer, blender, rectifier, importer, wholesaler, retailer, bottler, or warehouseman of wine, nor to the use by any person of a trade or brand name that is the name of any living individual of public prominence or existing private or public organization, provided such trade or brand name was used by him or his predecessors in interest prior to August 29, 1935.

(7) Any statement, design, device, or representation (other than a statement of alcohol content in conformity with §4.36), which tends to create the impression that a wine:

(i) Contains distilled spirits;

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(ii) Is comparable to a distilled spirit; or

(iii) Has intoxicating qualities.

However, if a statement of composition is required to appear as the designation of a product not defined in these regulations, such statement of composition may include a reference to the type of distilled spirits contained therein.

(8) Any coined word or name in the brand name or class and type designation which simulates, imitates, or which tends to create the impression that the wine so labeled is entitled to bear, any class, type, or permitted designation recognized by the regulations in this part unless such wine conforms to the requirements prescribed with respect to such designation and is in fact so designated on its labels.

(9) Any word in the brand name or class and type designation which is the name of a distilled spirits product or which simulates, imitates, or created the impression that the wine so labeled is, or is similar to, any product customarily made with a distilled spirits base. Examples of such words are: "Manhattan," "Martini," and "Daquiri" in a class and type designation or brand name of a wine cocktail; "Cuba Libre," "Zombie," and "Collins" in a class and type designation or brand name of a wine specialty or wine highball; "creme," "cream," "de," or "of" when used in conjunction with "menthe," "mint," or "cacao" in a class and type designation or a brand name of a mint or chocolate flavored wine specialty.

(b) *Statement of age.* No statement of age or representation relative to age (including words or devices in any brand name or mark) shall be made, except (1) for vintage wine, in accordance with the provisions of §4.27; (2) references relating to methods of wine production involving storage or aging in accordance with §4.38(f); or (3) use of the word "old" as part of a brand name.

(c) *Statement of bottling dates.* The statement of any bottling date shall not be deemed to be a representation relative to age, if such statement appears in lettering not greater than 8-point Gothic caps and in the following form: "Bottled in ____" (inserting the year in which the wine was bottled).

(d) *Statement of miscellaneous dates.* No date, except as provided in paragraphs (b) and (c) of this section with respect to statement of vintage year and bottling date, shall be stated on any label unless in addition thereto and in direct conjunction therewith in the same size and kind of printing, there shall be stated an explanation of the significance thereof such as "established" or "founded in". If any such date refers to the date of establishment of any business or brand name, it shall not be stated, in the case of containers of a capacity of 5 liters or less, in any script, type, or printing larger than 2 millimeters, and shall be stated in direct conjunction with the name of the person, company, or brand name to which it refers if the appropriate TTB officer finds that this is necessary in order to prevent confusion as to the person, company, or brand name to which the establishment date is applicable.

(e) *Simulation of Government stamps.* (1) No labels shall be of such design as to resemble or simulate a stamp of the United States Government or any State or foreign government. No label, other than stamps authorized or required by the United States Government or any State or foreign government, shall state or indicate that the wine contained in the labeled container is produced, blended, bottled, packed, or sold under, or in accordance with, any municipal, State or Federal Government authorization, law, or regulation, unless such statement is required or specifically authorized by Federal, State or municipal law or regulation, or is required or specifically authorized by the laws or regulations of a foreign country. If the municipal, State, or Federal Government permit number is stated upon a label, it shall not be accompanied by any additional statement relating thereto.

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(2) Bonded wine cellar and bonded winery numbers may be stated but only in direct conjunction with the name and address of the person operating such wine cellar or winery. Statement of bonded wine cellar or winery numbers may be made in the following form: "Bonded Wine Cellar No. __", "Bonded Winery No. __", "B. W. C. No. __", "B. W. No. __". No additional reference thereto shall be made, nor shall any use be made of such statement that may convey the impression that the wine has been made or matured under Government supervision or in accordance with Government specifications or standards.

(3) If imported wines are covered by a certificate of origin and/or a certificate of vintage date issued by a duly authorized official of the appropriate foreign government, the label, except where prohibited by the foreign government, may refer to such certificate or the fact of such certification, but shall not be accompanied by any additional statements relating thereto. The reference to such certificate or certification shall be substantially in the following form:

This product accompanied at the time of the importation by a certificate issued by the

(Name of government)

government indicating that the product is

(Class and type as stated on the label)

and (if label bears a statement of vintage date) that the wine is of the vintage of

(Year of vintage stated on the label)

(f) *Use of the word "Importer", or similar words.* The word *Importer*, or similar words, shall not be stated on labels on containers of domestic wine except as part of the bona fide name of a permittee for or by whom, or of a retailer for whom, such wine is bottled, packed or distributed: *Provided*, That in all cases where such words are used as part of such name, there shall be stated on the same label the words "Product of the United States", or similar words to negative any impression that the product is imported, and such negative statement shall appear in the same size and kind of printing as such name.

(g) *Flags, seals, coats of arms, crests, and other insignia.* Labels shall not contain, in the brand name or otherwise, any statement, design, device, or pictorial representation which the appropriate TTB officer finds relates to, or is capable of being construed as relating to, the armed forces of the United States, or the American flag, or any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any label contain any statement, design, device, or pictorial representation of or concerning any flag, seal, coat of arms, crest or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

(h) *Health-related statements—(1) Definitions.* When used in this paragraph (h), terms are defined as follows:

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(i) *Health-related statement* means any statement related to health (other than the warning statement required by §16.21 of this chapter) and includes statements of a curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of alcohol, wine, or any substance found within the wine, and health benefits or effects on health. The term includes both specific health claims and general references to alleged health benefits or effects on health associated with the consumption of alcohol, wine, or any substance found within the wine, as well as health-related directional statements. The term also includes statements and claims that imply that a physical or psychological sensation results from consuming the wine, as well as statements and claims of nutritional value (e.g., statements of vitamin content). Statements concerning caloric, carbohydrate, protein, and fat content do not constitute nutritional claims about the product.

(ii) *Specific health claim* is a type of health-related statement that, expressly or by implication, characterizes the relationship of the wine, alcohol, or any substance found within the wine, to a disease or health-related condition. Implied specific health claims include statements, symbols, vignettes, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between wine, alcohol, or any substance found within the wine, and a disease or health-related condition.

(iii) *Health-related directional statement* is a type of health-related statement that directs or refers consumers to a third party or other source for information regarding the effects on health of wine or alcohol consumption.

(2) *Rules for labeling*—(i) *Health-related statements*. In general, labels may not contain any health-related statement that is untrue in any particular or tends to create a misleading impression as to the effects on health of alcohol consumption. TTB will evaluate such statements on a case-by-case basis and may require as part of the health-related statement a disclaimer or some other qualifying statement to dispel any misleading impression conveyed by the health-related statement.

(ii) *Specific health claims*. (A) TTB will consult with the Food and Drug Administration (FDA), as needed, on the use of a specific health claim on a wine label. If FDA determines that the use of such a labeling claim is a drug claim that is not in compliance with the requirements of the Federal Food, Drug, and Cosmetic Act, TTB will not approve the use of that specific health claim on a wine label.

(B) TTB will approve the use of a specific health claim on a wine label only if the claim is truthful and adequately substantiated by scientific or medical evidence; sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks. This information must appear as part of the specific health claim.

(iii) *Health-related directional statements*. A statement that directs consumers to a third party or other source for information regarding the effects on health of wine or alcohol consumption is presumed misleading unless it—

(A) Directs consumers in a neutral or other non-misleading manner to a third party or other source for balanced information regarding the effects on health of wine or alcohol consumption; and

(B)(1) Includes as part of the health-related directional statement the following disclaimer: “This statement should not encourage you to drink or to increase your alcohol consumption for health reasons;” or

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(2) Includes as part of the health-related directional statement some other qualifying statement that the appropriate TTB officer finds is sufficient to dispel any misleading impression conveyed by the health-related directional statement.

(i) *Geographic brand names.* (1) Except as provided in subparagraph 2, a brand name of viticultural significance may not be used unless the wine meets the appellation of origin requirements for the geographic area named.

(2) For brand names used in existing certificates of label approval issued prior to July 7, 1986:

(i) The wine shall meet the appellation of origin requirements for the geographic area named; or

(ii) The wine shall be labeled with an appellation of origin in accordance with §4.34(b) as to location and size of type of either:

(A) A county or a viticultural area, if the brand name bears the name of a geographic area smaller than a state, or;

(B) A state, county or a viticultural area, if the brand name bears a state name; or

(iii) The wine shall be labeled with some other statement which the appropriate TTB officer finds to be sufficient to dispel the impression that the geographic area suggested by the brand name is indicative of the origin of the wine.

(3) A name has viticultural significance when it is the name of a state or county (or the foreign equivalents), when approved as a viticultural area in part 9 of this chapter, or by a foreign government, or when found to have viticultural significance by the appropriate TTB officer.

(j) *Product names of geographical significance (not mandatory before January 1, 1983).* The use of product names with specific geographical significance is prohibited unless the appropriate TTB officer finds that because of their long usage, such names are recognized by consumers as fanciful product names and not representations as to origin. In such cases the product names shall be qualified with the word "brand" immediately following the product name, in the same size of type, and as conspicuous as the product name itself. In addition, the label shall bear an appellation of origin under the provisions of §4.34(b), and, if required by the appropriate TTB officer, a statement disclaiming the geographical reference as a representation as to the origin of the wine.

(k) *Other indications of origin.* Other statements, designs, devices or representations which indicate or infer an origin other than the true place of origin of the wine are prohibited.

(l) *Foreign terms.* Foreign terms which: (1) Describe a particular condition of the grapes at the time of harvest (such as "Auslese," "Eiswein," and "Trockenbeerenauslese"); or (2) denote quality under foreign law (such as "Qualitätswein" and "Kabinett") may not be used on the labels of American wine.

(m) *Use of a vineyard, orchard, farm or ranch name.* When used in a brand name, a vineyard, orchard, farm or ranch name having geographical or viticultural significance is subject to the requirements of §§4.33(b) and 4.39(i) of this part. Additionally, the name of a vineyard, orchard, farm or ranch shall not be used on a wine label, unless 95 percent of the wine in the container was produced from primary winemaking material grown on the named vineyard, orchard, farm or ranch.

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(n) *Use of a varietal name, type designation of varietal significance, semi-generic name, or geographic distinctive designation.* Labels that contain in the brand name, product name, or distinctive or fanciful name, any varietal (grape type) designation, type designation of varietal significance, semi-generic geographic type designation, or geographic distinctive designation, are misleading unless the wine is made in accordance with the standards prescribed in classes 1, 2, or 3 of §4.21. Any other use of such a designation on other than a class 1, 2, or 3 wine is presumed misleading.

[T.D. 6521, 25 FR 13841, Dec. 29, 1960]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §4.39, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

MANDATORY STATEMENTS DISTILLED SPIRITS

§5.32 Mandatory label information.

There shall be stated:

(a) On the brand label:

(1) Brand name.

(2) Class and type, in accordance with §5.35.

(3) Alcoholic content, in accordance with §5.37.

(4) In the case of distilled spirits packaged in containers for which no standard of fill is prescribed in §5.47, net contents in accordance with §5.38(b) or §5.38a(b)(2).

(b) On the brand label or on a back label:

(1) Name and address, in accordance with §5.36.

(2) In the case of imported spirits, the country of origin, in accordance with §5.36.

(3) In the case of distilled spirits packaged in containers conforming to the standards of fill prescribed in §5.47 or §5.47a, net contents in accordance with §5.38(a), §5.38a(a), or §5.38a(b)(1).

(4) Coloring or flavoring, in accordance with §5.39.

(5) A statement that the product contains FD&C Yellow No. 5, where that coloring material is used in a product bottled on or after October 6, 1984.

(6) A statement that the product contains the color additive cochineal extract or the color additive carmine, prominently and conspicuously, using the respective common or usual name (“cochineal extract” or “carmine”), where either of the coloring materials is used in a product that is removed on or after April 16, 2013. (For example: “Contains Cochineal Extract” or “Contains Carmine” or, if applicable, “Contains Cochineal Extract and Carmine”). The statement that the product contains the color additive cochineal

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extract or the color additive carmine may appear on a strip label or a neck label in lieu of appearing on the brand label or back label.

(7) *Declaration of sulfites.* There shall be stated, the statement “Contains sulfites” or “Contains (a) sulfiting agent(s)” or a statement identifying the specific sulfiting agent where sulfur dioxide or a sulfiting agent is detected at a level of 10 or more parts per million, measured as total sulfur dioxide. The sulfite declaration may appear on a strip label or neck label in lieu of appearing on the front or back label. The provisions of this paragraph shall apply to:

(i) Any certificate of label approval issued on or after January 9, 1987;

(ii) Any distilled spirits bottled on or after July 9, 1987, regardless of the date of issuance of the certificate of label approval; and,

(iii) Any distilled spirits removed on or after January 9, 1988.

(8) Percentage of neutral spirits and name of commodity from which distilled, or in the case of continuously distilled neutral spirits or gin, the name of the commodity only, in accordance with §5.39.

(9) A statement of age or age and percentage, when required, in accordance with §5.40.

(10) State of distillation of domestic types of whisky and straight whisky, except light whisky and blends, in accordance with §5.36.

(c) In the case of a container which has been excepted under the provisions of §5.46(d), the information required to appear on the “brand label,” as defined, may appear elsewhere on such container if it can be demonstrated that the container cannot reasonably be so designed that the required brand label can be properly affixed.

(Paragraph (b)(7) approved by the Office of Management and Budget under Control No. 1512-0469)

[T.D. 7020, 34 FR 20337, Dec. 30, 1969]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §5.32, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

PROHIBITED STATEMENTS DISTILLED SPIRITS

§4.39 Prohibited practices.

(a) *Statements on labels.* Containers of wine, or any label on such containers, or any individual covering, carton, or other wrapper of such container, or any written, printed, graphic, or other matter accompanying such container to the consumer shall not contain:

(1) Any statement that is false or untrue in any particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific or technical matter, tends to create a misleading impression.

(2) Any statement that is disparaging of a competitor's products.

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(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the appropriate TTB officer finds to be likely to mislead the consumer.

(5) Any statement, design, device or representation of or relating to any guarantee, irrespective of falsity, which the appropriate TTB officer finds to be likely to mislead the consumer. Money-back guarantees are not prohibited.

(6) A trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, or any graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization; *Provided*, That this paragraph shall not apply to the use of the name of any person engaged in business as a producer, blender, rectifier, importer, wholesaler, retailer, bottler, or warehouseman of wine, nor to the use by any person of a trade or brand name that is the name of any living individual of public prominence or existing private or public organization, provided such trade or brand name was used by him or his predecessors in interest prior to August 29, 1935.

(7) Any statement, design, device, or representation (other than a statement of alcohol content in conformity with §4.36), which tends to create the impression that a wine:

(i) Contains distilled spirits;

(ii) Is comparable to a distilled spirit; or

(iii) Has intoxicating qualities.

However, if a statement of composition is required to appear as the designation of a product not defined in these regulations, such statement of composition may include a reference to the type of distilled spirits contained therein.

(8) Any coined word or name in the brand name or class and type designation which simulates, imitates, or which tends to create the impression that the wine so labeled is entitled to bear, any class, type, or permitted designation recognized by the regulations in this part unless such wine conforms to the requirements prescribed with respect to such designation and is in fact so designated on its labels.

(9) Any word in the brand name or class and type designation which is the name of a distilled spirits product or which simulates, imitates, or created the impression that the wine so labeled is, or is similar to, any product customarily made with a distilled spirits base. Examples of such words are: "Manhattan," "Martini," and "Daquiri" in a class and type designation or brand name of a wine cocktail; "Cuba Libre," "Zombie," and "Collins" in a class and type designation or brand name of a wine specialty or wine highball; "creme," "cream," "de," or "of" when used in conjunction with "menthe," "mint," or "cacao" in a class and type designation or a brand name of a mint or chocolate flavored wine specialty.

(b) *Statement of age*. No statement of age or representation relative to age (including words or devices in any brand name or mark) shall be made, except (1) for vintage wine, in accordance with the provisions of §4.27; (2) references relating to methods of wine production involving storage or aging in accordance with §4.38(f); or (3) use of the word "old" as part of a brand name.

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(c) *Statement of bottling dates.* The statement of any bottling date shall not be deemed to be a representation relative to age, if such statement appears in lettering not greater than 8-point Gothic caps and in the following form: "Bottled in ____" (inserting the year in which the wine was bottled).

(d) *Statement of miscellaneous dates.* No date, except as provided in paragraphs (b) and (c) of this section with respect to statement of vintage year and bottling date, shall be stated on any label unless in addition thereto and in direct conjunction therewith in the same size and kind of printing, there shall be stated an explanation of the significance thereof such as "established" or "founded in". If any such date refers to the date of establishment of any business or brand name, it shall not be stated, in the case of containers of a capacity of 5 liters or less, in any script, type, or printing larger than 2 millimeters, and shall be stated in direct conjunction with the name of the person, company, or brand name to which it refers if the appropriate TTB officer finds that this is necessary in order to prevent confusion as to the person, company, or brand name to which the establishment date is applicable.

(e) *Simulation of Government stamps.* (1) No labels shall be of such design as to resemble or simulate a stamp of the United States Government or any State or foreign government. No label, other than stamps authorized or required by the United States Government or any State or foreign government, shall state or indicate that the wine contained in the labeled container is produced, blended, bottled, packed, or sold under, or in accordance with, any municipal, State or Federal Government authorization, law, or regulation, unless such statement is required or specifically authorized by Federal, State or municipal law or regulation, or is required or specifically authorized by the laws or regulations of a foreign country. If the municipal, State, or Federal Government permit number is stated upon a label, it shall not be accompanied by any additional statement relating thereto.

(2) Bonded wine cellar and bonded winery numbers may be stated but only in direct conjunction with the name and address of the person operating such wine cellar or winery. Statement of bonded wine cellar or winery numbers may be made in the following form: "Bonded Wine Cellar No. ____", "Bonded Winery No. ____", "B. W. C. No. ____", "B. W. No. ____". No additional reference thereto shall be made, nor shall any use be made of such statement that may convey the impression that the wine has been made or matured under Government supervision or in accordance with Government specifications or standards.

(3) If imported wines are covered by a certificate of origin and/or a certificate of vintage date issued by a duly authorized official of the appropriate foreign government, the label, except where prohibited by the foreign government, may refer to such certificate or the fact of such certification, but shall not be accompanied by any additional statements relating thereto. The reference to such certificate or certification shall be substantially in the following form:

This product accompanied at the time of the importation by a certificate issued by the

(Name of government)

government indicating that the product is

(Class and type as stated on the label)

and (if label bears a statement of vintage date) that the wine is of the vintage of

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(Year of vintage stated on the label)

(f) *Use of the word “Importer”, or similar words.* The word *Importer*, or similar words, shall not be stated on labels on containers of domestic wine except as part of the bona fide name of a permittee for or by whom, or of a retailer for whom, such wine is bottled, packed or distributed: *Provided*, That in all cases where such words are used as part of such name, there shall be stated on the same label the words “Product of the United States”, or similar words to negative any impression that the product is imported, and such negative statement shall appear in the same size and kind of printing as such name.

(g) *Flags, seals, coats of arms, crests, and other insignia.* Labels shall not contain, in the brand name or otherwise, any statement, design, device, or pictorial representation which the appropriate TTB officer finds relates to, or is capable of being construed as relating to, the armed forces of the United States, or the American flag, or any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any label contain any statement, design, device, or pictorial representation of or concerning any flag, seal, coat of arms, crest or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

(h) *Health-related statements—(1) Definitions.* When used in this paragraph (h), terms are defined as follows:

(i) *Health-related statement* means any statement related to health (other than the warning statement required by §16.21 of this chapter) and includes statements of a curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of alcohol, wine, or any substance found within the wine, and health benefits or effects on health. The term includes both specific health claims and general references to alleged health benefits or effects on health associated with the consumption of alcohol, wine, or any substance found within the wine, as well as health-related directional statements. The term also includes statements and claims that imply that a physical or psychological sensation results from consuming the wine, as well as statements and claims of nutritional value (e.g., statements of vitamin content). Statements concerning caloric, carbohydrate, protein, and fat content do not constitute nutritional claims about the product.

(ii) *Specific health claim* is a type of health-related statement that, expressly or by implication, characterizes the relationship of the wine, alcohol, or any substance found within the wine, to a disease or health-related condition. Implied specific health claims include statements, symbols, vignettes, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between wine, alcohol, or any substance found within the wine, and a disease or health-related condition.

(iii) *Health-related directional statement* is a type of health-related statement that directs or refers consumers to a third party or other source for information regarding the effects on health of wine or alcohol consumption.

(2) *Rules for labeling—(i) Health-related statements.* In general, labels may not contain any health-related statement that is untrue in any particular or tends to create a misleading impression as to the effects on health of alcohol consumption. TTB will evaluate such statements on a case-by-case basis and may require as part of the health-related statement a disclaimer or some other qualifying statement to dispel any misleading impression conveyed by the health-related statement.

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(ii) *Specific health claims.* (A) TTB will consult with the Food and Drug Administration (FDA), as needed, on the use of a specific health claim on a wine label. If FDA determines that the use of such a labeling claim is a drug claim that is not in compliance with the requirements of the Federal Food, Drug, and Cosmetic Act, TTB will not approve the use of that specific health claim on a wine label.

(B) TTB will approve the use of a specific health claim on a wine label only if the claim is truthful and adequately substantiated by scientific or medical evidence; sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks. This information must appear as part of the specific health claim.

(iii) *Health-related directional statements.* A statement that directs consumers to a third party or other source for information regarding the effects on health of wine or alcohol consumption is presumed misleading unless it—

(A) Directs consumers in a neutral or other non-misleading manner to a third party or other source for balanced information regarding the effects on health of wine or alcohol consumption; and

(B)(1) Includes as part of the health-related directional statement the following disclaimer: “This statement should not encourage you to drink or to increase your alcohol consumption for health reasons;” or

(2) Includes as part of the health-related directional statement some other qualifying statement that the appropriate TTB officer finds is sufficient to dispel any misleading impression conveyed by the health-related directional statement.

(i) *Geographic brand names.* (1) Except as provided in subparagraph 2, a brand name of viticultural significance may not be used unless the wine meets the appellation of origin requirements for the geographic area named.

(2) For brand names used in existing certificates of label approval issued prior to July 7, 1986:

(i) The wine shall meet the appellation of origin requirements for the geographic area named; or

(ii) The wine shall be labeled with an appellation of origin in accordance with §4.34(b) as to location and size of type of either:

(A) A county or a viticultural area, if the brand name bears the name of a geographic area smaller than a state, or;

(B) A state, county or a viticultural area, if the brand name bears a state name; or

(iii) The wine shall be labeled with some other statement which the appropriate TTB officer finds to be sufficient to dispel the impression that the geographic area suggested by the brand name is indicative of the origin of the wine.

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(3) A name has viticultural significance when it is the name of a state or county (or the foreign equivalents), when approved as a viticultural area in part 9 of this chapter, or by a foreign government, or when found to have viticultural significance by the appropriate TTB officer.

(j) *Product names of geographical significance (not mandatory before January 1, 1983).* The use of product names with specific geographical significance is prohibited unless the appropriate TTB officer finds that because of their long usage, such names are recognized by consumers as fanciful product names and not representations as to origin. In such cases the product names shall be qualified with the word “brand” immediately following the product name, in the same size of type, and as conspicuous as the product name itself. In addition, the label shall bear an appellation of origin under the provisions of §4.34(b), and, if required by the appropriate TTB officer, a statement disclaiming the geographical reference as a representation as to the origin of the wine.

(k) *Other indications of origin.* Other statements, designs, devices or representations which indicate or infer an origin other than the true place of origin of the wine are prohibited.

(l) *Foreign terms.* Foreign terms which: (1) Describe a particular condition of the grapes at the time of harvest (such as “Auslese,” “Eiswein,” and “Troockenbeerenauslese”); or (2) denote quality under foreign law (such as “Qualitätswein” and “Kabinett”) may not be used on the labels of American wine.

(m) *Use of a vineyard, orchard, farm or ranch name.* When used in a brand name, a vineyard, orchard, farm or ranch name having geographical or viticultural significance is subject to the requirements of §§4.33(b) and 4.39(i) of this part. Additionally, the name of a vineyard, orchard, farm or ranch shall not be used on a wine label, unless 95 percent of the wine in the container was produced from primary winemaking material grown on the named vineyard, orchard, farm or ranch.

(n) *Use of a varietal name, type designation of varietal significance, semi-generic name, or geographic distinctive designation.* Labels that contain in the brand name, product name, or distinctive or fanciful name, any varietal (grape type) designation, type designation of varietal significance, semi-generic geographic type designation, or geographic distinctive designation, are misleading unless the wine is made in accordance with the standards prescribed in classes 1, 2, or 3 of §4.21. Any other use of such a designation on other than a class 1, 2, or 3 wine is presumed misleading.

[T.D. 6521, 25 FR 13841, Dec. 29, 1960]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §4.39, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

MANDATORY STATEMENTS MALT BEVERAGE

§7.22 Mandatory label information.

There shall be stated:

(a) On the brand label:

(1) Brand name, in accordance with §7.23.

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(2) Class, in accordance with §7.24.

(3) Name and address (except when branded or burned in the container) in accordance with §7.25, except as provided in paragraph (b) of this section.

(4) Net contents (except when blown, branded, or burned, in the container) in accordance with §7.27.

(5) Alcohol content in accordance with §7.71, for malt beverages that contain any alcohol derived from added flavors or other added nonbeverage ingredients (other than hops extract) containing alcohol.

(b) On the brand label or on a separate label (back or front):

(1) In the case of imported malt beverages, name and address of importer in accordance with §7.25.

(2) In the case of malt beverages bottled or packed for the holder of a permit or a retailer, the name and address of the bottler or packer, in accordance with §7.25.

(3) Alcoholic content, when required by State law, in accordance with §7.71.

(4) A statement that the product contains FD&C Yellow No. 5, where that coloring material is used in a product bottled on or after October 6, 1984.

(5) A statement that the product contains the color additive cochineal extract or the color additive carmine, prominently and conspicuously, using the respective common or usual name ("cochineal extract" or "carmine"), where either of the coloring materials is used in a product that is removed on or after April 16, 2013. (For example: "Contains Cochineal Extract" or "Contains Carmine" or, if applicable, "Contains Cochineal Extract and Carmine"). The statement that the product contains the color additive cochineal extract or the color additive carmine may appear on a strip label or a neck label in lieu of appearing on the brand label or back label.

(6) *Declaration of sulfites.* The statement "Contains sulfites" or "Contains (a) sulfiting agent(s)" or a statement identifying the specific sulfiting agent where sulfur dioxide or a sulfiting agent is detected at a level of 10 or more parts per million, measured as total sulfur dioxide. The sulfite declaration may appear on a strip label or neck label in lieu of appearing on the front or back label. The provisions of this paragraph shall apply to:

(i) Any certificate of label approval issued on or after January 9, 1987;

(ii) Any malt beverage bottled on or after July 9, 1987, regardless of the date of issuance of the certificate of label approval; and,

(iii) Any malt beverage removed on or after January 9, 1988.

(7) *Declaration of aspartame.* The following statement, in capital letters, separate and apart from all other information, when the product contains aspartame in accordance with Food and Drug Administration (FDA) regulations:

"PHENYLKETONURICS: CONTAINS PHENYLALANINE."

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(Paragraph (b)(6) approved by the Office of Management and Budget under Control No. 1512-0469)

[T.D. 6521, 25 FR 13859, Dec. 29, 1960]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §7.22, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

PROHIBITED STATEMENTS MALT BEVERAGES

§7.29 Prohibited practices.

(a) *Statements on labels.* Containers of malt beverages, or any labels on such containers, or any carton, case, or individual covering of such containers, used for sale at retail, or any written, printed, graphic, or other material accompanying such containers to the consumer, must not contain:

(1) Any statement that is false or untrue in any particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific or technical matter, tends to create a misleading impression.

(2) Any statement that is disparaging of a competitor's products.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the appropriate TTB officer finds to be likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guarantee, irrespective of falsity, which the appropriate TTB officer finds to be likely to mislead the consumer. Money-back guarantees are not prohibited.

(6) A trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, or any graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization: *Provided*, That this paragraph shall not apply to the use of the name of any person engaged in business as a producer, importer, bottler, packer, wholesaler, retailer, or warehouseman, of malt beverages, nor to the use by any person of a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, provided such trade or brand name was used by him or his predecessors in interest prior to August 29, 1935.

(7) Any statement, design, device, or representation that tends to create a false or misleading impression that the malt beverage contains distilled spirits or is a distilled spirits product. This paragraph does not prohibit the following on malt beverage labels:

(i) A truthful and accurate statement of alcohol content, in conformity with §7.71;

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(ii) The use of a brand name of a distilled spirits product as a malt beverage brand name, provided that the overall label does not present a misleading impression about the identity of the product; or

(iii) The use of a cocktail name as a brand name or fanciful name of a malt beverage, provided that the overall label does not present a misleading impression about the identity of the product.

(b) *Simulation of Government stamps.* No label shall be of such design as to resemble or simulate a stamp of the United States Government or of any State or foreign government. No label, other than stamps authorized or required by the United States Government or any State or foreign government, shall state or indicate that the malt beverage contained in the labeled container is brewed, made, bottled, packed, labeled, or sold under, or in accordance with, any municipal, State, Federal, or foreign government authorization, law, or regulation, unless such statement is required or specifically authorized by Federal, State, or municipal, law or regulation, or is required or specifically authorized by the laws or regulations of the foreign country in which such malt beverages were produced. If the municipal or State government permit number is stated upon a label, it shall not be accompanied by an additional statement relating thereto, unless required by State law.

(c) *Use of word “bonded”, etc.* The words “bonded”, “bottled in bond”, “aged in bond”, “bonded age”, “bottled under customs supervision”, or phrases containing these or synonymous terms which imply governmental supervision over production, bottling, or packing, shall not be used on any label for malt beverages.

(d) *Flags, seals, coats of arms, crests, and other insignia.* Labels shall not contain, in the brand name or otherwise, any statement, design, device, or pictorial representation which the appropriate TTB officer finds relates to, or is capable of being construed as relating to, the armed forces of the United States, or the American flag, or any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any label contain any statement, design, device, or pictorial representation of or concerning any flag, seal, coat of arms, crest or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

(e) *Health-related statements—(1) Definitions.* When used in this paragraph (e), terms are defined as follows:

(i) *Health-related statement* means any statement related to health (other than the warning statement required by §16.21 of this chapter) and includes statements of a curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of alcohol, malt beverages, or any substance found within the malt beverage, and health benefits or effects on health. The term includes both specific health claims and general references to alleged health benefits or effects on health associated with the consumption of alcohol, malt beverages, or any substance found within the malt beverage, as well as health-related directional statements. The term also includes statements and claims that imply that a physical or psychological sensation results from consuming the malt beverage, as well as statements and claims of nutritional value (e.g., statements of vitamin content). Statements concerning caloric, carbohydrate, protein, and fat content do not constitute nutritional claims about the product.

(ii) *Specific health claim* is a type of health-related statement that, expressly or by implication, characterizes the relationship of the malt beverage, alcohol, or any substance found within the malt beverage, to a disease or health-related condition. Implied specific health claims include statements,

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symbols, vignettes, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between malt beverages, alcohol, or any substance found within the malt beverage, and a disease or health-related condition.

(iii) *Health-related directional statement* is a type of health-related statement that directs or refers consumers to a third party or other source for information regarding the effects on health of malt beverage or alcohol consumption.

(2) *Rules for labeling*—(i) *Health-related statements*. In general, labels may not contain any health-related statement that is untrue in any particular or tends to create a misleading impression as to the effects on health of alcohol consumption. TTB will evaluate such statements on a case-by-case basis and may require as part of the health-related statement a disclaimer or some other qualifying statement to dispel any misleading impression conveyed by the health-related statement.

(ii) *Specific health claims*. (A) TTB will consult with the Food and Drug Administration (FDA), as needed, on the use of a specific health claim on a malt beverage label. If FDA determines that the use of such a labeling claim is a drug claim that is not in compliance with the requirements of the Federal Food, Drug, and Cosmetic Act, TTB will not approve the use of that specific health claim on a malt beverage label.

(B) TTB will approve the use of a specific health claim on a malt beverage label only if the claim is truthful and adequately substantiated by scientific or medical evidence; sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks. This information must appear as part of the specific health claim.

(iii) *Health-related directional statements*. A statement that directs consumers to a third party or other source for information regarding the effects on health of malt beverage or alcohol consumption is presumed misleading unless it—

(A) Directs consumers in a neutral or other non-misleading manner to a third party or other source for balanced information regarding the effects on health of malt beverage or alcohol consumption; and

(B)(1) Includes as part of the health-related directional statement the following disclaimer: “This statement should not encourage you to drink or to increase your alcohol consumption for health reasons;” or

(2) Includes as part of the health-related directional statement some other qualifying statement that the appropriate TTB officer finds is sufficient to dispel any misleading impression conveyed by the health-related directional statement.

(f) *Use of words “strong,” “full strength,” and similar words*. Labels shall not contain the words “strong,” “full strength,” “extra strength,” “high test,” “high proof,” “pre-war strength,” “full oldtime alcoholic strength,” or similar words or statements, likely to be considered as statements of alcoholic content, unless required by State law. This does not preclude use of the terms “low alcohol,” “reduced alcohol,” “non-alcoholic,” and “alcohol-free,” in accordance with §7.71 (d), (e), and (f), nor does it preclude labeling with the alcohol content in accordance with §7.71.

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(g) *Use of numerals.* Labels shall not contain any statements, designs, or devices, whether in the form of numerals, letters, characters, figures, or otherwise, which are likely to be considered as statements of alcoholic content, unless required by State law, or as permitted by §7.71.

(h) *Coverings, cartons, or cases.* Individual coverings, cartons, cases, or other wrappers of containers of malt beverages, used for sale at retail, or any written, printed, graphic, or other matter accompanying the container shall not contain any statement or any graphic pictorial, or emblematic representation, or other matter, which is prohibited from appearing on any label or container of malt beverages.

[T.D. 6521, 25 FR 13859, Dec. 29, 1960, as amended by T.D. ATF-66, 45 FR 40552, June 13, 1980; T.D. ATF-180, 49 FR 31674, Aug. 8, 1984; T.D. ATF 280, 54 FR 3594, Jan. 25, 1989; T.D. ATF-339, 58 FR 21232, Apr. 19, 1993; T.D. TTB-1, 68 FR 10105, Mar. 3, 2003; T.D. TTB-21, 70 FR 234, Jan. 3, 2005]

NEW YORK ABCL § 107-a. Labeling containers of alcoholic beverages. 1. The liquor

authority is hereby authorized to promulgate rules and regulations governing the labeling and offering of alcoholic beverages bottled, packaged, sold or possessed for sale within this state.

Such regulations shall be calculated to prohibit deception of the consumer; to afford him or her adequate information as to quality and identity; and to achieve national uniformity in so far as possible.

2. The bottling, packaging, sale or possession by any licensee of any alcoholic beverage not labelled or offered in conformity with this section shall be ground for suspension, revocation or cancellation of the license.

3. No alcoholic beverage shall be offered or advertised for sale in this state unless:

(a) there is a brand or trade name label affixed to or imprinted upon the container of such alcoholic beverage;

(b) such label is registered with and approved by the authority and contains the information required in this section; and

(c) the appropriate fee has been paid as provided for in this section.

4. An application for registration of a brand or trade name label shall be filed by (1) the owner of the brand or trade name if such owner is licensed by the authority, or (2) a wholesaler selling such brand who is appointed as exclusive agent, in writing, by the owner of the brand or trade name for the purpose of filing such application, if the owner of the brand or trade name is not licensed by the authority, or (3) any wholesaler, with the approval of the authority, in the event that the owner of the brand or trade name does not file or is unable to file such application or designate an agent for such purposes, or (4) any wholesaler, with the approval of the authority, in the event that the owner of the brand or trade name is a retailer who does not file such application, provided that the retailer shall consent to such filing by such wholesaler. Such retailer may revoke his consent at any time, upon written notice to the authority and to such wholesaler.

Unless otherwise permitted or required by the authority, the

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application for registration of a liquor or wine brand or trade name label filed pursuant to this section shall be filed by the same licensee filing schedules pursuant to section one hundred one-b of this article.

Cordials and wines which differ only as to fluid content, age, or vintage year, as defined by such regulations, shall be considered the same brand; and those that differ as to type or class may be considered the same brand by the authority where consistent with the purposes of this section.

(a) (1) The application for registration of a brand or trade name label shall be filed by certified mail return receipt requested, registered mail return receipt requested, or overnight delivery service with proof of mailing, on a form prescribed by the authority, and shall contain such information as the authority shall require. Such application shall be accompanied by the appropriate fee prescribed by paragraph (b) of this subdivision.

(2) Provided, however, where a brand or trade name label has been approved by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of Treasury, it shall be deemed registered and approved by the authority if:

(i) the applicant submits on a form prescribed by the authority, by certified mail return receipt requested, registered mail return receipt requested, or overnight delivery service with proof of mailing, a true copy of the brand or trade name label approval issued by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of Treasury along with the appropriate fee as established in paragraph (b) of this subdivision; and

(ii) the authority does not deny such application within thirty days after receipt.

(3) Provided, however, that where a brand or trade name label for wine has been approved by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of Treasury, it shall be deemed registered and approved by the authority and no application, application fee, or annual registration fee shall be submitted to the authority.

(b) The annual fee for registration of any brand or trade name label for liquor shall be two hundred fifty dollars; the annual fee for registration of any brand or trade name label for beer or cider shall be one hundred fifty dollars; the annual fee for registration of any brand or trade name label for wine or wine products shall be fifty dollars. Such fee shall be in the form of a check or draft. No annual fee for registration of any brand or trade name label for wine shall be required if it has been approved by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of Treasury pursuant to this section.

Each brand or trade name label registration approved pursuant to this section shall be valid for a term of one year as set forth by the authority and which shall be pro-rated for partial years as applicable.

Each brand or trade name label registration approved pursuant to this section shall be valid only for the licensee to whom issued and shall not be transferable.

(c) If the authority shall deny the application for registration of a brand or trade name label pursuant to this section, it shall return the registration fee to the applicant, less twenty-five per centum of such fee and shall notify the applicant, in writing with the specific reasons for its denial.

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(d) The authority may at any time exempt any discontinued brand from such fee provisions where a manufacturer or wholesaler has an inventory of one hundred cases or less of liquor or wine and five hundred cases or less of beer, and certifies to the authority in writing that such brand is being discontinued. The authority may also at any time exempt any discontinued brand from such fee provisions where a retailer discontinuing a brand owned by him has a balance of an order yet to be delivered of fifty cases or less of liquor or wine, or two hundred fifty cases or less of beer, wine products or cider.

(e) The authority shall exempt from such fee provisions the registration of each brand or trade name label used for beer or cider that is produced in small size batches totaling fifteen hundred barrels or less of beer or cider annually.

(f) The authority shall exempt from such fee provisions the registration of each brand or trade name label used for spirits or liquor that is produced in small size batches totaling one thousand gallons or less of spirits or liquor annually.

5. (a) Each brand or trade name label shall contain the following information:

(i) the brand or trade name;

(ii) the class and type (if applicable) of alcoholic beverage in accordance with the labeling regulations promulgated by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of Treasury; and

(iii) the net contents of the container.

(b) The brand or trade name label, or a separate label on the front or back of the container shall contain information consistent with the labeling regulations promulgated by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of Treasury.

(c) No brand or trade name label, or any separate label on the front or back of the container shall contain:

(i) any statement that is false or untrue in any particular manner;

(ii) any statement that is disparaging of a competitor's product;

(iii) any statement, design, device or representation that is likely to mislead the consumer; or

(iv) any statement or claim of health benefits to be derived from consumption by the consumer.

(d) A separate label registration shall be required in connection with the registration of a brand or trade name label used where there is a difference in any of the following information:

(i) the brand or trade name;

(ii) the class and type (if applicable) of alcoholic beverage in accordance with federal label regulations; or

(iii) a private label owned and sold exclusively by one retailer, where the alcoholic beverage is manufactured, bottled, or imported by a different manufacturer, bottler, or importer, provided all other information appearing on the label is the same.

CHAPTER 1

MANDATORY LABEL INFORMATION

1. BRAND NAME

- GENERAL FEATURES

- Usually the most prominent piece of information on the label

- Name under which a wine or line of wines is marketed

NOTE: If the wine is not sold under a brand name, the name of the bottler, packer or importer [shown on the front of the container] becomes the brand name

- MISLEADING BRAND NAME

- A name that describes the age (see “Exceptions relating to age” below), origin, identity or other characteristics of the wine is prohibited **UNLESS** the name, whether standing alone or in combination with other printed or graphic material:

- ☐ Accurately describes the wine **AND**

- ☐ Conveys no erroneous impression about the wine

OR

- ☐ Is qualified with the word “BRAND”

NOTE: Qualification with the word “BRAND” is **not** an option in the case of a geographic brand name. (See CHAPTER 4, GEOGRAPHIC BRAND NAMES)

- Exceptions relating to age

No statement of age or representation relating to age may appear in or as part of the brand name **EXCEPT:**

- ☐ For vintage wine

- ☐ References relating to methods of wine production involving storage or aging

Example: "AGED (or MATURED) 6 MONTHS IN OAK CASTS"

☐ Use of the word "OLD" as part of a brand name

■ Examples

The chart below provides examples of acceptable and unacceptable brand names

BRAND NAME & CLASS AND TYPE DESIGNATION	BRAND NAME ACCEPTABLE IF	BRAND NAME UNACCEPTABLE BECAUSE
Cuvee Mature Dessert Wine		It implies age
Old Veil White Wine	It includes the word "OLD"	
Japan Gold Sake	1) Not less than 75% of the volume of the wine is derived from rice grown in Japan AND 2) The wine conforms to the laws and regulations of Japan OR 3) "JAPAN GOLD" is qualified with the word "BRAND"	
Simple Red Table Wine	1) The wine is red wine OR 2) "Simple Red" is qualified with the word "BRAND"	

● BRAND NAME INCLUDING A VINEYARD, ORCHARD, FARM OR RANCH NAME

A brand name that includes a vineyard, orchard, farm or ranch name is acceptable:

■ Provided not less than 95% of the volume of the wine is derived from the commodity used to make the wine grown in the vineyard, orchard, farm or ranch named in the brand name

OR

■ Without qualification if the company name or trade name shown in the mandatory name and address statement on the label is identical to the brand name that includes a vineyard, orchard, farm or ranch name

OR

■ Without qualification if the brand name is qualified with the word "BRAND"



NOTE: If a brand name including a vineyard, orchard, farm or ranch name has viticultural significance (Example: "TEMECULA VINEYARD"), it is considered a geographic brand name and subject to the requirements for use of a geographic brand name (see CHAPTER 4, GEOGRAPHIC BRAND NAMES)

- SEE ALSO CHAPTER 4, GEOGRAPHIC BRAND NAMES

- TYPE SIZE

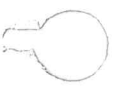
- Minimum 2 mm for containers larger than 187 ml
- Minimum 1 mm for containers of 187 ml or less

- LEGIBILITY

- Must be readily legible
- Must appear on a contrasting background
- Must appear separate and apart from or be substantially more conspicuous than descriptive or explanatory information

- PLACEMENT

Must appear on the FRONT of the container



2. CLASS AND TYPE DESIGNATION

- DEFINITION

The specific identity of the wine

- SEE ALSO CHAPTER 5, CLASS AND TYPE DESIGNATION

- TYPE SIZE

- Minimum 2 mm for containers larger than 187 ml
- Minimum 1 mm for containers of 187 ml or less

- LEGIBILITY

- Must be readily legible
 - Must appear on a contrasting background
- 

■ Must appear separate and apart from or be substantially more conspicuous than descriptive or explanatory information

- PLACEMENT

Must appear on the FRONT of the container

3. ALCOHOL CONTENT

- DISCLOSURE OPTIONS

■ "TABLE WINE" or "LIGHT WINE" may be used as the alcohol content statement **IF** the wine contains 7%-14% alcohol by volume

NOTE: If table wine or light wine is made from any commodity other than grapes, "TABLE WINE" or "LIGHT WINE" must be qualified with the specific or general class of the commodity from which the wine was made. (See CLASSES AND TYPES chart in CHAPTER 5, CLASS AND TYPE DESIGNATION)

Example: "CHERRY TABLE WINE," "LIGHT FRUIT WINE"

OR

■ Alcohol content may be stated as a specific percentage with a tolerance of:

☐ Plus or minus 1% for wines containing over 14% alcohol by volume

Example: A wine is labeled with the alcohol content statement "16% ALC BY VOL." Provided the actual alcohol content does not exceed 17% or fall below 15%, the label alcohol content statement "16% ALC BY VOL" is permissible

☐ Plus or minus 1.5% for wines containing 7%-14% alcohol by volume

Example: A wine is labeled with the alcohol content statement "12% ALC BY VOL." Provided the actual alcohol content does not exceed 13.5% or fall below 10.5%, the label alcohol content statement "12% ALC BY VOL" is permissible

OR

■ Alcohol content may be stated as a range. The range may not exceed:

☐ 2% for wines containing over 14% alcohol by volume

Example: "15%-17% ALC BY VOL"

□ 3% for wines containing 7%-14% alcohol by volume

Example: "9%-12% ALC BY VOL"

NOTE: Regardless of the prescribed tolerances, the label alcohol content statement may not cross tax categories (7%-14% alcohol by volume; over 14%-21% alcohol by volume; over 21%-24% alcohol by volume)

Example: A wine is labeled with the alcohol content statement "13.5% ALC BY VOL." Provided the actual alcohol content does not exceed 14% or fall below 12%, the label alcohol content statement "13.5% ALC BY VOL" is permissible

- **FORMAT**

- For statements of the specific percentage of alcohol:

- "ALCOHOL (ALC) ____% BY VOLUME (VOL)" or

- "____% ALCOHOL (ALC) BY VOLUME (VOL)"

- For alcohol content statements shown in a range:

- "____% TO ____% ALCOHOL (ALC) BY VOLUME (VOL)" or

- "ALCOHOL (ALC) ____% TO ____% BY VOLUME (VOL)"

- **TYPE SIZE**

For containers of 5 liters or less:

- Minimum 1 mm

- Maximum 3 mm

- **LEGIBILITY**

- Must be readily legible

- Must appear on a contrasting background

- May not be set off with a border or otherwise accentuated

- PLACEMENT

Must appear on the FRONT of the container

4. PERCENTAGE OF FOREIGN WINE

- APPLICATION

A statement of the percentage and origin of foreign wine (Example: "30% GRAPE WINE FROM ITALY") is required on blends of American and foreign wines if any reference to the presence of foreign wine is made on the label

- TYPE SIZE

- Minimum 2 mm for containers larger than 187 ml

- Minimum 1 mm for containers of 187 ml or less

- LEGIBILITY

- Must be readily legible

- Must appear on a contrasting background

- Must appear separate and apart from or be substantially more conspicuous than descriptive or explanatory information

- PLACEMENT

Must appear on the FRONT of the container

5. NAME AND ADDRESS

- REQUIRED

- For American wine

The name and address of the bottler or packer must appear on the label

- For imported wine

- ☐ The name and address of the importer must appear on the label **AND**

☐ If the wine is bottled or packed after importation:

- The name and address of the bottler or packer must also appear on the label **OR**
- Other indication of bottling or packing in the U.S. must appear on the label

AND

☐ The name and address of the blender or bottler or packer for wine blended or bottled or packed outside the country of origin and labeled with a reference to the country of origin

■ The name and address statement must be preceded by an explanatory phrase (see PRECEDING EXPLANATORY PHRASE section of CHAPTER 6, NAME AND ADDRESS (OPTIONAL STATEMENTS AND PRECEDING EXPLANATORY PHRASES))

- **DEFINITIONS**

■ **Name**

The company or corporate name or trade name identical to that shown on the basic permit

■ **Address**

☐ The city and state of the named winery identical to that shown on the basic permit

NOTE: Other geographic references, e.g., county names, may be included in the address **ONLY IF** the geographic reference appears on the basic permit as part of the permit address

☐ The city and state of the importer's principle place of business identical to that shown on the basic permit

■ **Bottled By (or For)**

This phrase is required for wine bottled in containers of 4 liters or less

■ **Packed By (or For)**

This phrase is required for wine packed in containers of over 4 liters

- SEE ALSO CHAPTER 6, NAME AND ADDRESS (OPTIONAL STATEMENTS AND PRECEDING EXPLANATORY PHRASES)

- TYPE SIZE

- Minimum 2 mm for containers larger than 187 ml
 - Minimum 1 mm for containers of 187 ml or less
-

- LEGIBILITY

- Must be readily legible
- Must appear on a contrasting background
- Must appear separate and apart from or be substantially more conspicuous than descriptive or explanatory information

- PLACEMENT

May appear on the FRONT, BACK or SIDE of the container

6. NET CONTENTS

- REQUIRED

Wine must be bottled or packed in a metric standard of fill

- SEE ALSO CHAPTER 7, STANDARDS OF FILL

- TYPE SIZE

- Minimum 2 mm for containers larger than 187 ml
- Minimum 1 mm for containers of 187 ml or less

- LEGIBILITY

- Must be readily legible
- Must appear on a contrasting background
- Must appear separate and apart from or be substantially more conspicuous than descriptive or explanatory information

- PLACEMENT

- Net contents may be blown or branded into the bottle in lieu of or in addition to stating net contents on the label **EXCEPT THAT** if the net contents are not shown on the label of foreign bottled wine, a sample of the container must be submitted with the application for certificate of label approval (COLA)

- May appear on the FRONT, BACK or SIDE of the container

7. FD&C YELLOW #5 DISCLOSURE

- REQUIRED

"CONTAINS FD&C YELLOW #5" must appear on the label of any wine containing FD&C Yellow #5

- TYPE SIZE

- Minimum 2 mm for containers larger than 187 ml

- Minimum 1 mm for containers of 187 ml or less

- LEGIBILITY

- Must be readily legible

- Must appear on a contrasting background

- Must appear separate and apart from or be substantially more conspicuous than descriptive or explanatory information

- PLACEMENT

May appear on the FRONT, BACK or SIDE of the container

8. SACCHARIN DISCLOSURE

- REQUIRED

"USE OF THIS PRODUCT MAY BE HAZARDOUS TO YOUR HEALTH. THIS PRODUCT CONTAINS SACCHARIN WHICH HAS BEEN DETERMINED TO CAUSE CANCER IN LABORATORY ANIMALS." must

appear on the label of any wine containing saccharin

- TYPE SIZE

- Minimum 2 mm for containers larger than 187 ml
- Minimum 1 mm for containers of 187 ml or less

- LEGIBILITY

- Must be readily legible
- Must appear on a contrasting background
- Must appear separate and apart from all other label information

- PLACEMENT

May appear on the FRONT, BACK or SIDE of the container

9. SULFITE DECLARATION

- REQUIRED

- For wine containing 10 or more parts per million (ppm) of sulfur dioxide – the statement “CONTAINS SULFITES” or “CONTAINS (A) SULFITING AGENT(S)” or identification of the specific sulfiting agent(s) is required

- For a wine not labeled with a sulfite declaration - sample analysis by ATF or an ATF certified laboratory is required to verify that the wine contains less than 10 ppm sulfur dioxide. Evidence of analysis must be submitted with the application for certificate of label approval (COLA)

- TYPE SIZE

- Minimum 2 mm for containers larger than 187 ml
- Minimum 1 mm for containers of 187 ml or less

- LEGIBILITY

- Must be readily legible
- Must appear on a contrasting background
- Must appear separate and apart from or be substantially more conspicuous than descriptive or explanatory information

- PLACEMENT

May appear on the FRONT, BACK or SIDE of the container

10. HEALTH WARNING STATEMENT

- REQUIRED

The statement below must appear on all alcohol beverages for sale or distribution in the U.S. containing not less than 0.5% alcohol by volume, intended for human consumption and bottled on or after November 18, 1989:

GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.

- FORMAT

- The words "GOVERNMENT WARNING" must appear in capital letters and in bold type

- The remainder of the statement may not appear in bold type

- The statement must appear as a continuous paragraph

- TYPE SIZE

- Minimum 3 mm for containers larger than 3 liters (101 fl. oz.)

- Minimum 2 mm for containers larger than 237 ml (8 fl. oz.) to 3 liters (101 fl. oz.)

- Minimum 1 mm for containers of 237 ml (8 fl. oz.) or less

- LEGIBILITY

- Must be readily legible under ordinary conditions and appear on a contrasting background

- Must appear separate and apart from all other label information

- May not exceed maximum number of characters per inch:

<u>Minimum Type Size Requirement</u>	<u>Maximum Characters Per Inch</u>
1 mm	40
2 mm	25
3 mm	12

- PLACEMENT

May appear on the FRONT, BACK or SIDE of the container

11. COUNTRY OF ORIGIN

- APPLICATION

Required under U.S. Customs Service regulations for any imported wine

- FORMAT

- "PRODUCT/PRODUCE OF _____"

(Fill in blank with name of country in which wine was produced)

- "PRODUCED IN" or "PRODUCED AND BOTTLED OR PACKED IN
_____"

(Fill in blank with name of country in which wine was produced or produced and bottled or packed)

- "PRODUCED BY" or "PRODUCED AND BOTTLED OR PACKED BY
_____"

(Fill in blank with name of producer or producer and bottler or packer and address [country or city and country] in which wine was produced or produced and bottled or packed)

- TYPE SIZE

There are no specific type size requirements

- LEGIBILITY

There are no specific legibility requirements

- PLACEMENT

May appear on the FRONT, BACK or SIDE of the container

Putting the IP in IPA

An Overview of Intellectual Property Law for Craft Beverage Businesses



EAT
DRINK
LAW



Food
Matters.



Do It
Right.



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eatdrinklaw.com

Tech Guy Who Backs Beverage Entrepreneurship

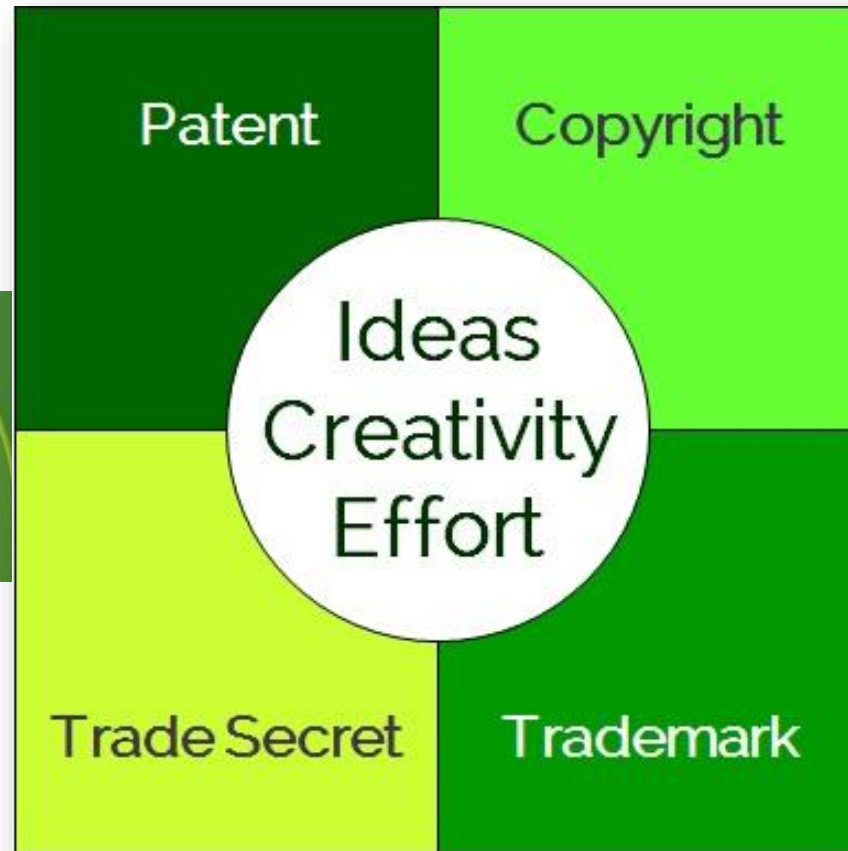


- **Entrepreneur**
- **Patent Attorney**
- **Advocate**

...and I like beer



What is Intellectual Property?

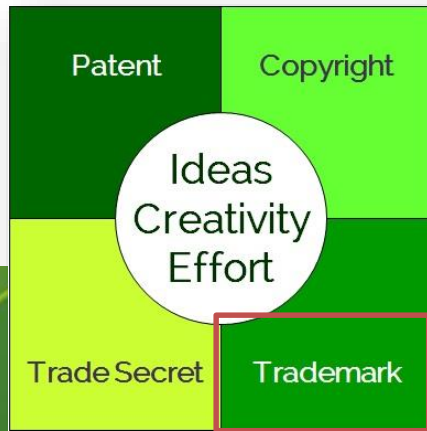


Everyone has some...

Uncomfortable Truth #1

Beer is Brand

Same goes for cider, wine, spirits,
etc.



Trademark

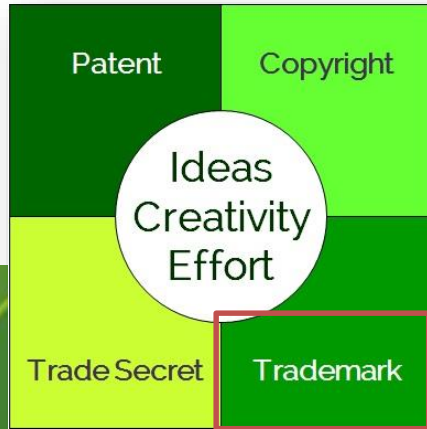


Registered Trademark:

TM



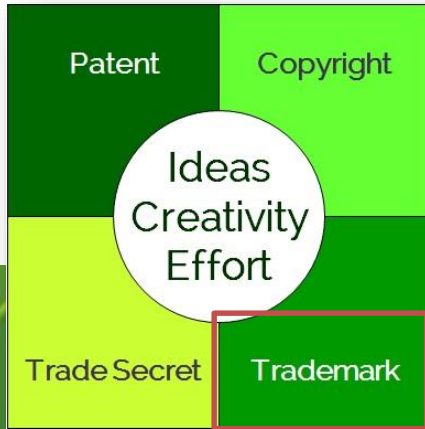
Prevents confusion and
damage to goodwill



Brand Conflicts Happen

Gazpacho Bros. Wine receives a cease
& desist letter from Gazpacho Brewing
Co. in Florida based on a Registered
U.S. Trademark

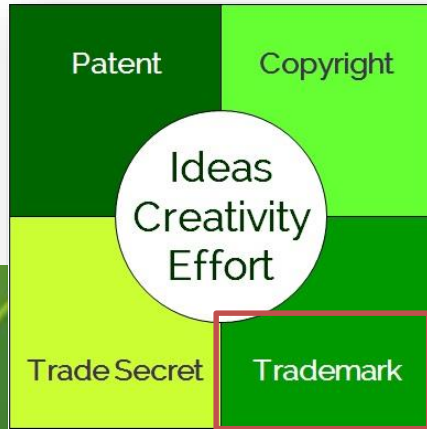
Now what?



What if...

- Gazpacho Bros. Wine Inc. has been incorporated and licensed in NY
- Gazpacho Bros. has a Federal Certificate of Label Authority for Gazpacho Hard Cider
- Gazpacho Bros. is rebranding as Gas-Patch-O Hard Cider

Bonus: Can Gazpacho Bros. apply for a U.S. Trademark?



Trademark Take-Aways

1. Use is king, registration is a good idea
2. First, do no harm (stay away from famous trademarks)
3. Understand your visibility and how to respond to threats

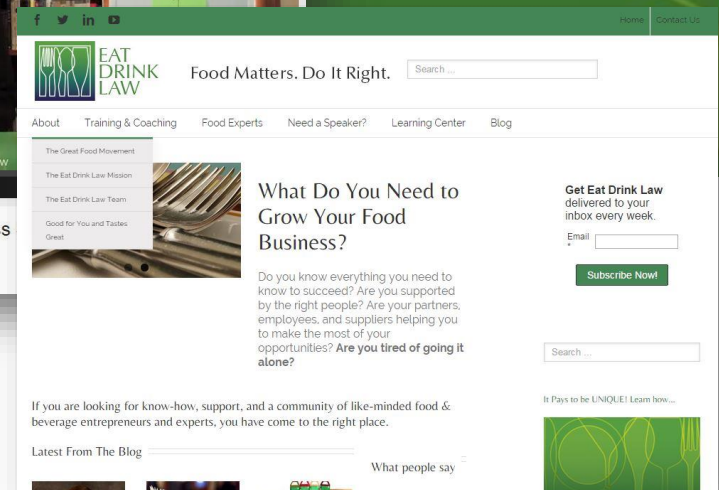
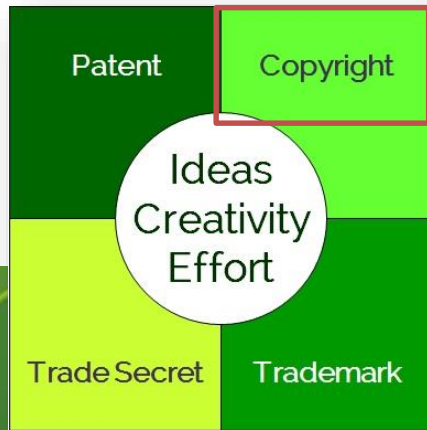


Cheap strategy: house mark and generic style names (e.g.

Uncomfortable Truth #2

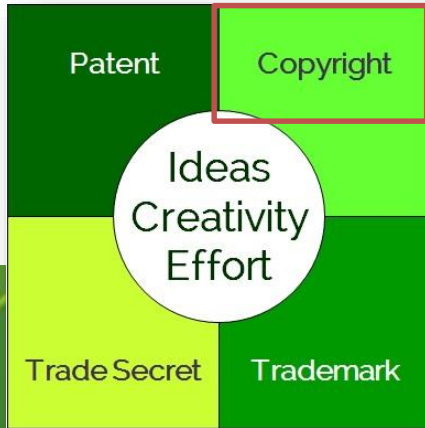
Every Company is a
Media Company

Copyright



Controls copying,
display, and
derivative works

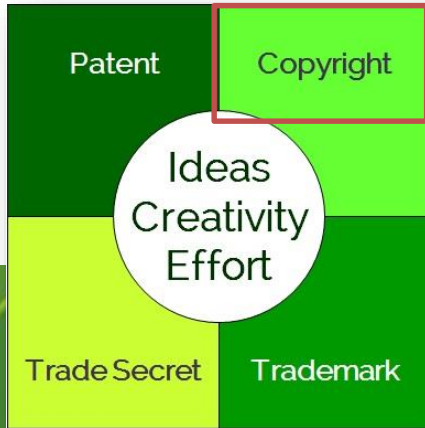




Who Owns It?

Your intern made this great
YouTube video of your
business last summer and now
you want to use it as a TV ad.
Is that OK?

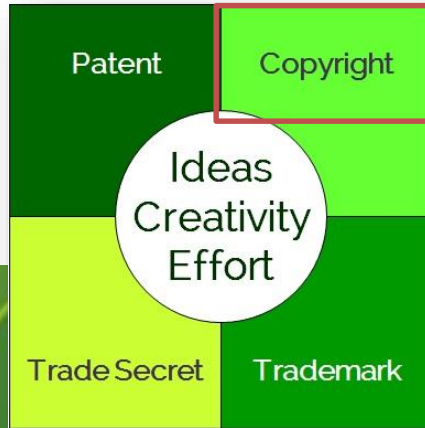
Hint: There will be a copyright
indemnification clause in the TV
advertising contract



What if...

- The intern did it on her own time, camera, and computer
- The video includes an added music track
- The video includes client testimonials read by some unknown person

Bonus: Does it matter if the video needs to be further edited to use?



Copyright Take-Aways

1. Creation is king, registration is a good idea
2. Don't use other people's stuff without clear permission
3. Understand web and social media visibility and enforcement



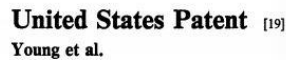
Cheap Strategy: Use employee contracts and create your own

Uncomfortable Truth #3

TECHNOLOGY REALLY,
REALLY, REALLY,
REALLY...
REALLY HARD TO
PROTECT

Patent	Copyright
Trade Secret	Trademark

Ideas
Creativity
Effort



- [54] **CONTROL OF BROWNING REACTIONS
BAKED GOODS BY ADDITION OF SODIUM
AND AN EMULSIFIER**
- [75] **Inventors:** Jerry D. Young, Springfield; Paul
Seiden, Cincinnati, both of Ohio
- [73] **Assignee:** The Procter & Gamble Company,
Cincinnati, Ohio
- [21] **Appl. No.:** 722,926
- [22] **Filed:** Apr. 12, 1985
- [51] **Int. Cl.⁴** A21D 2/02; A21D 2/16;
A21D 3/08
- [52] **U.S. Cl.** 426/321; 426/553;
426/560; 426/613; 426/653
- [58] **Field of Search** 426/94, 103, 549, 560;
426/601, 653, 654, 553, 321, 613
- [56] **References Cited**
- U.S. PATENT DOCUMENTS
- 2,394,791 2/1946 Lloyd et al. .
2,689,797 9/1954 Joffe

Cole, "The Maillard Reaction in Food Products: Carbon Dioxide Production", *J. Food Science*, vol. 32, No. 3, pp. 245-250, (1967).

Prouty, W. W., "pH—Some Theoretical and Practical Considerations", *The Baker's Digest*, vol. 41, No. 2, pp. 48-53, (1967).

Keagy, P. M., Connor, M. A. and Schatzki, T. F., "Regression Analysis of Thiamine and Color Changes in Enriched Cookies Using Factorial Design", *Cereal Chemistry*, vol. 56, No. 6, pp. 567-573, (1979).

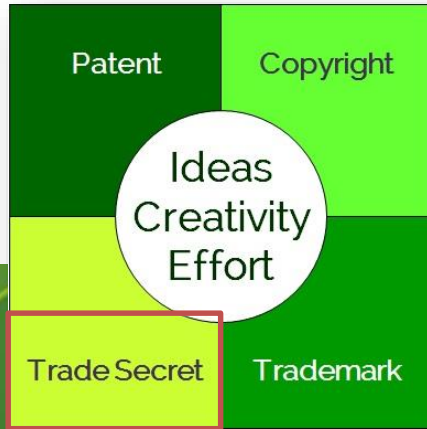
Primary Examiner—Robert Vonskokie
Attorney, Agent, or Firm—Gary M. Sutter; Rose Ann Dabek; Richard C. Witte

[57] ABSTRACT
A method for reducing excessive browning in a baked good containing reducing sugars is described. The method comprises adding to the dough of the baked good about 0.15% to about 0.65% baking soda and

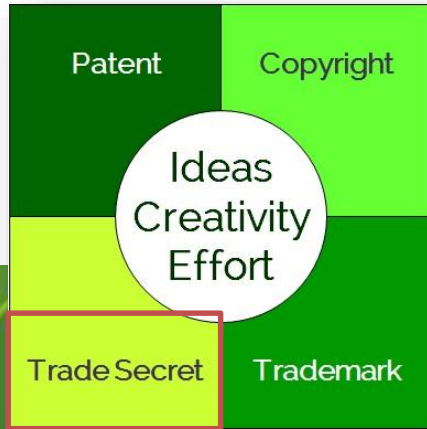
Patents protect inventions



Trade Secrets



Trade Secrets protect
know-how



A Common Tale

I had a falling out with one of my brewers. He copied my recipe files and now my competitor has hired him as a consultant to duplicate my signature brew. How do I stop them?

Hint: You probably can't.



Even More Take-Aways

12 Things Every Business Should DO About Intellectual Property



Video Intros
Available on
YouTube



Questions?

dsm@eatdrinklaw.com

3Blazes



Legal References

Trademarks

15 U.S.C. § 1125 - False designations of origin, false descriptions, and dilution forbidden

(a) Civil action

(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities,

shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

Copyright:

17 U.S.C. SS 101-102, 106, 408, 501

Trade Secret:

18 U.S.C. SS 1839



The IP in IPA: Intellectual Property Basics
CLE Supplement

Trademark Statute:

15 U.S.C. § 1125 – False designations of origin, false descriptions, and dilution forbidden

(a) Civil action

(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

Copyright Statute:

17 U.S.C. § 101- Definitions

Except as otherwise provided in this title, as used in this title, the following terms and their variant forms mean the following:

An “anonymous work” is a work on the copies or phonorecords of which no natural person is identified as author.

An “architectural work” is the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features.

“Audiovisual works” are works that consist of a series of related images which are intrinsically intended to be shown by the use of machines, or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.

The “Berne Convention” is the Convention for the Protection of Literary and Artistic Works, signed at Berne, Switzerland, on September 9, 1886, and all acts, protocols, and revisions thereto. The “best edition” of a work is the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes.

A person's “children” are that person's immediate offspring, whether legitimate or not, and any children legally adopted by that person.

A “collective work” is a work, such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.

A “compilation” is a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term “compilation” includes collective works.

A “computer program” is a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result.

“Copies” are material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term “copies” includes the material object, other than a phonorecord, in which the work is first fixed.

“Copyright owner”, with respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular right.

A “Copyright Royalty Judge” is a Copyright Royalty Judge appointed under [section 802](#) of this title, and includes any individual serving as an interim Copyright Royalty Judge under such section.

A work is “created” when it is fixed in a copy or phonorecord for the first time; where a work is prepared over a period of time, the portion of it that has been fixed at any particular time constitutes the work as of that time, and where the work has been prepared in different versions, each version constitutes a separate work.

A “derivative work” is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a “derivative work”.

A “device”, “machine”, or “process” is one now known or later developed.

A “digital transmission” is a transmission in whole or in part in a digital or other non-analog format.

To “display” a work means to show a copy of it, either directly or by means of a film, slide, television image, or any other device or process or, in the case of a motion picture or other audiovisual work, to show individual images nonsequentially.

An “establishment” is a store, shop, or any similar place of business open to the general public for the primary purpose of selling goods or services in which the majority of the gross square feet of space that is nonresidential is used for that purpose, and in which nondramatic musical works are performed publicly.

The term “financial gain” includes receipt, or expectation of receipt, of anything of value, including the receipt of other copyrighted works.

A work is “fixed” in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is “fixed” for purposes of this title if a fixation of the work is being made simultaneously with its transmission.

A “food service or drinking establishment” is a restaurant, inn, bar, tavern, or any other similar place of business in which the public or patrons assemble for the primary purpose of being served food or drink, in which the majority of the gross square feet of space that is nonresidential is used for that purpose, and in which nondramatic musical works are performed publicly.

The “Geneva Phonograms Convention” is the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, concluded at Geneva, Switzerland, on October 29, 1971.

The “gross square feet of space” of an establishment means the entire interior space of that establishment, and any adjoining outdoor space used to serve patrons, whether on a seasonal basis or otherwise.

The terms “including” and “such as” are illustrative and not limitative.

An “international agreement” is--

- (1) the Universal Copyright Convention;
- (2) the Geneva Phonograms Convention;
- (3) the Berne Convention;
- (4) the WTO Agreement;
- (5) the WIPO Copyright Treaty;
- (6) the WIPO Performances and Phonograms Treaty; and
- (7) any other copyright treaty to which the United States is a party.

A “joint work” is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.

“Literary works” are works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cards, in which they are embodied.

The term “motion picture exhibition facility” means a movie theater, screening room, or other venue that is being used primarily for the exhibition of a copyrighted motion picture, if such exhibition is open to the public or is made to an assembled group of viewers outside of a normal circle of a family and its social acquaintances.

“Motion pictures” are audiovisual works consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

To “perform” a work means to recite, render, play, dance, or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible.

A “performing rights society” is an association, corporation, or other entity that licenses the public performance of nondramatic musical works on behalf of copyright owners of such works, such as the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.

“Phonorecords” are material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term “phonorecords” includes the material object in which the sounds are first fixed.

“Pictorial, graphic, and sculptural works” include two-dimensional and three-dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, diagrams, models, and technical drawings, including architectural plans. Such works shall include works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned; the design of a useful article, as defined in this section, shall be considered a pictorial, graphic, or sculptural work only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.

For purposes of [section 513](#), a “proprietor” is an individual, corporation, partnership, or other entity, as the case may be, that owns an establishment or a food service or drinking establishment, except that no owner or operator of a radio or television station licensed by the Federal Communications Commission, cable system or satellite carrier, cable or satellite carrier service or programmer, provider of online services or network access or the operator of facilities therefor, telecommunications company, or any other such audio or audiovisual service or programmer now known or as may be developed in the future, commercial subscription music service, or owner or operator of any other transmission service, shall under any circumstances be deemed to be a proprietor.

A “pseudonymous work” is a work on the copies or phonorecords of which the author is identified under a fictitious name.

“Publication” is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication.

To perform or display a work “publicly” means--

- (1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered;
- or

(2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.

“Registration”, for purposes of [sections 205\(c\)\(2\), 405, 406, 410\(d\), 411, 412, and 506\(e\)](#), means a registration of a claim in the original or the renewed and extended term of copyright.

“Sound recordings” are works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.

“State” includes the District of Columbia and the Commonwealth of Puerto Rico, and any territories to which this title is made applicable by an Act of Congress.

A “transfer of copyright ownership” is an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license.

A “transmission program” is a body of material that, as an aggregate, has been produced for the sole purpose of transmission to the public in sequence and as a unit.

To “transmit” a performance or display is to communicate it by any device or process whereby images or sounds are received beyond the place from which they are sent.

A “treaty party” is a country or intergovernmental organization other than the United States that is a party to an international agreement.

The “United States”, when used in a geographical sense, comprises the several States, the District of Columbia and the Commonwealth of Puerto Rico, and the organized territories under the jurisdiction of the United States Government.

For purposes of [section 411](#), a work is a “United States work” only if--

(1) in the case of a published work, the work is first published--

(A) in the United States;

(B) simultaneously in the United States and another treaty party or parties, whose law grants a term of copyright protection that is the same as or longer than the term provided in the United States;

(C) simultaneously in the United States and a foreign nation that is not a treaty party; or

(D) in a foreign nation that is not a treaty party, and all of the authors of the work are nationals, domiciliaries, or habitual residents of, or in the case of an audiovisual work legal entities with headquarters in, the United States;

(2) in the case of an unpublished work, all the authors of the work are nationals, domiciliaries, or habitual residents of the United States, or, in the case of an unpublished audiovisual work, all the authors are legal entities with headquarters in the United States; or

(3) in the case of a pictorial, graphic, or sculptural work incorporated in a building or structure, the building or structure is located in the United States.

A “useful article” is an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. An article that is normally a part of a useful article is considered a “useful article”.

The author's “widow” or “widower” is the author's surviving spouse under the law of the author's domicile at the time of his or her death, whether or not the spouse has later remarried.

The “WIPO Copyright Treaty” is the WIPO Copyright Treaty concluded at Geneva, Switzerland, on December 20, 1996.

The “WIPO Performances and Phonograms Treaty” is the WIPO Performances and Phonograms Treaty concluded at Geneva, Switzerland, on December 20, 1996.

A “work of visual art” is--

- (1) a painting, drawing, print, or sculpture, existing in a single copy, in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author, or, in the case of a sculpture, in multiple cast, carved, or fabricated sculptures of 200 or fewer that are consecutively numbered by the author and bear the signature or other identifying mark of the author; or
- (2) a still photographic image produced for exhibition purposes only, existing in a single copy that is signed by the author, or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author.

A work of visual art does not include--

- (A)(i) any poster, map, globe, chart, technical drawing, diagram, model, applied art, motion picture or other audiovisual work, book, magazine, newspaper, periodical, data base, electronic information service, electronic publication, or similar publication;
- (ii) any merchandising item or advertising, promotional, descriptive, covering, or packaging material or container;
- (iii) any portion or part of any item described in clause (i) or (ii);
- (B) any work made for hire; or
- (C) any work not subject to copyright protection under this title.

A “work of the United States Government” is a work prepared by an officer or employee of the United States Government as part of that person's official duties.

A “work made for hire” is--

- (1) a work prepared by an employee within the scope of his or her employment; or
- (2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. For the purpose of the foregoing sentence, a “supplementary work” is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes, and an “instructional text” is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.

In determining whether any work is eligible to be considered a work made for hire under paragraph (2), neither the amendment contained in section 1011(d) of the Intellectual Property and Communications Omnibus Reform Act of 1999, as enacted by section 1000(a)(9) of [Public Law 106-113](#), nor the deletion of the words added by that amendment--

(A) shall be considered or otherwise given any legal significance, or

(B) shall be interpreted to indicate congressional approval or disapproval of, or acquiescence in, any judicial determination, by the courts or the Copyright Office. Paragraph (2) shall be interpreted as if both section 2(a)(1) of the Work Made For Hire and Copyright Corrections Act of 2000 and section 1011(d) of the Intellectual Property and Communications Omnibus Reform Act of 1999, as enacted by section 1000(a)(9) of [Public Law 106-113](#), were never enacted, and without regard to any inaction or awareness by the Congress at any time of any judicial determinations.

The terms “WTO Agreement” and “WTO member country” have the meanings given those terms in paragraphs (9) and (10), respectively, of section 2 of the Uruguay Round Agreements Act.

17 U.S.C. § 102 – Subject matter of copyright: In general

(a) Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

- (1) literary works;
- (2) musical works, including any accompanying words;
- (3) dramatic works, including any accompanying music;
- (4) pantomimes and choreographic works;
- (5) pictorial, graphic, and sculptural works;
- (6) motion pictures and other audiovisual works;
- (7) sound recordings; and
- (8) architectural works.

(b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

17 U.S.C. § 106 – Exclusive rights in copyrighted works

Subject to [sections 107](#) through [122](#), the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and

(6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

17 U.S.C. § 408 – Copyright registration in general

(a) Registration Permissive.--At any time during the subsistence of the first term of copyright in any published or unpublished work in which the copyright was secured before January 1, 1978, and during the subsistence of any copyright secured on or after that date, the owner of copyright or of any exclusive right in the work may obtain registration of the copyright claim by delivering to the Copyright Office the deposit specified by this section, together with the application and fee specified by [sections 409](#) and [708](#). Such registration is not a condition of copyright protection.

(b) Deposit for Copyright Registration.--Except as provided by subsection (c), the material deposited for registration shall include--

- (1) in the case of an unpublished work, one complete copy or phonorecord;
- (2) in the case of a published work, two complete copies or phonorecords of the best edition;
- (3) in the case of a work first published outside the United States, one complete copy or phonorecord as so published;
- (4) in the case of a contribution to a collective work, one complete copy or phonorecord of the best edition of the collective work.

Copies or phonorecords deposited for the Library of Congress under [section 407](#) may be used to satisfy the deposit provisions of this section, if they are accompanied by the prescribed application and fee, and by any additional identifying material that the Register may, by regulation, require. The Register shall also prescribe regulations establishing requirements under which copies or phonorecords acquired for the Library of Congress under [subsection \(e\) of section 407](#), otherwise than by deposit, may be used to satisfy the deposit provisions of this section.

(c) Administrative Classification and Optional Deposit.--

(1) The Register of Copyrights is authorized to specify by regulation the administrative classes into which works are to be placed for purposes of deposit and registration, and the nature of the copies or phonorecords to be deposited in the various classes specified. The regulations may require or permit, for particular classes, the deposit of identifying material instead of copies or phonorecords, the deposit of only one copy or phonorecord where two would normally be required, or a single registration for a group of related works. This administrative classification of works has no significance with respect to the subject matter of copyright or the exclusive rights provided by this title.

(2) Without prejudice to the general authority provided under clause (1), the Register of Copyrights shall establish regulations specifically permitting a single registration for a group of works by the same individual author, all first published as contributions to periodicals, including newspapers, within a twelve-month period, on the basis of a single deposit, application, and registration fee, under the following conditions:

- (A) if the deposit consists of one copy of the entire issue of the periodical, or of the entire section in the case of a newspaper, in which each contribution was first published; and
- (B) if the application identifies each work separately, including the periodical containing it and its date of first publication.

(3) As an alternative to separate renewal registrations under [subsection \(a\) of section 304](#), a single renewal registration may be made for a group of works by the same individual author, all first published as contributions to periodicals, including newspapers, upon the filing of a single application and fee, under all of the following conditions:

(A) the renewal claimant or claimants, and the basis of claim or claims under [section 304\(a\)](#), is the same for each of the works; and

(B) the works were all copyrighted upon their first publication, either through separate copyright notice and registration or by virtue of a general copyright notice in the periodical issue as a whole; and

(C) the renewal application and fee are received not more than twenty-eight or less than twenty-seven years after the thirty-first day of December of the calendar year in which all of the works were first published; and

(D) the renewal application identifies each work separately, including the periodical containing it and its date of first publication.

(d) Corrections and Amplifications.--The Register may also establish, by regulation, formal procedures for the filing of an application for supplementary registration, to correct an error in a copyright registration or to amplify the information given in a registration. Such application shall be accompanied by the fee provided by [section 708](#), and shall clearly identify the registration to be corrected or amplified. The information contained in a supplementary registration augments but does not supersede that contained in the earlier registration.

(e) Published Edition of Previously Registered Work.--Registration for the first published edition of a work previously registered in unpublished form may be made even though the work as published is substantially the same as the unpublished version.

(f) Preregistration of works being prepared for commercial distribution.--

(1) Rulemaking.--Not later than 180 days after the date of enactment of this subsection, the Register of Copyrights shall issue regulations to establish procedures for preregistration of a work that is being prepared for commercial distribution and has not been published.

(2) Class of works.--The regulations established under paragraph (1) shall permit preregistration for any work that is in a class of works that the Register determines has had a history of infringement prior to authorized commercial distribution.

(3) Application for registration.--Not later than 3 months after the first publication of a work preregistered under this subsection, the applicant shall submit to the Copyright Office--

(A) an application for registration of the work;

(B) a deposit; and

(C) the applicable fee.

(4) Effect of untimely application.--An action under this chapter for infringement of a work preregistered under this subsection, in a case in which the infringement commenced no later than 2 months after the first publication of the work, shall be dismissed if the items described in paragraph (3) are not submitted to the Copyright Office in proper form within the earlier of--

(A) 3 months after the first publication of the work; or

(B) 1 month after the copyright owner has learned of the infringement.

17 U.S.C. § 501 – Infringement of Copyright

(a) Anyone who violates any of the exclusive rights of the copyright owner as provided by [sections 106](#) through [122](#) or of the author as provided in [section 106A\(a\)](#), or who imports copies or phonorecords into the United States in violation of [section 602](#), is an infringer of the copyright or right of the author, as the case may be. For purposes of this chapter (other than [section 506](#)), any reference to copyright shall be deemed to include the rights conferred by [section 106A\(a\)](#). As used in this subsection, the term “anyone” includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State,

and any such instrumentality, officer, or employee, shall be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity.

(b) The legal or beneficial owner of an exclusive right under a copyright is entitled, subject to the requirements of [section 411](#), to institute an action for any infringement of that particular right committed while he or she is the owner of it. The court may require such owner to serve written notice of the action with a copy of the complaint upon any person shown, by the records of the Copyright Office or otherwise, to have or claim an interest in the copyright, and shall require that such notice be served upon any person whose interest is likely to be affected by a decision in the case. The court may require the joinder, and shall permit the intervention, of any person having or claiming an interest in the copyright.

(c) For any secondary transmission by a cable system that embodies a performance or a display of a work which is actionable as an act of infringement under [subsection \(c\) of section 111](#), a television broadcast station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that television station.

(d) For any secondary transmission by a cable system that is actionable as an act of infringement pursuant to [section 111\(c\)\(3\)](#), the following shall also have standing to sue: (i) the primary transmitter whose transmission has been altered by the cable system; and (ii) any broadcast station within whose local service area the secondary transmission occurs.

(e) With respect to any secondary transmission that is made by a satellite carrier of a performance or display of a work embodied in a primary transmission and is actionable as an act of infringement under [section 119\(a\)\(5\)](#), a network station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that station.

(f)(1) With respect to any secondary transmission that is made by a satellite carrier of a performance or display of a work embodied in a primary transmission and is actionable as an act of infringement under [section 122](#), a television broadcast station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local market of that station.

(2) A television broadcast station may file a civil action against any satellite carrier that has refused to carry television broadcast signals, as required under [section 122\(a\)\(2\)](#), to enforce that television broadcast station's rights under section 338(a) of the Communications Act of 1934.

Trade Secret Statute:

18 U.S.C. § 1839 – Definitions

As used in this chapter--

(1) the term “foreign instrumentality” means any agency, bureau, ministry, component, institution, association, or any legal, commercial, or business organization, corporation, firm, or entity that is substantially owned, controlled, sponsored, commanded, managed, or dominated by a foreign government;

(2) the term “foreign agent” means any officer, employee, proxy, servant, delegate, or representative of a foreign government;

(3) the term “trade secret” means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if--

(A) the owner thereof has taken reasonable measures to keep such information secret; and

(B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information;

(4) the term “owner”, with respect to a trade secret, means the person or entity in whom or in which rightful legal or equitable title to, or license in, the trade secret is reposed;

(5) the term “misappropriation” means--

(A) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(B) disclosure or use of a trade secret of another without express or implied consent by a person who--

(i) used improper means to acquire knowledge of the trade secret;

(ii) at the time of disclosure or use, knew or had reason to know that the knowledge of the trade secret was--

(I) derived from or through a person who had used improper means to acquire the trade secret;

(II) acquired under circumstances giving rise to a duty to maintain the secrecy of the trade secret or limit the use of the trade secret; or

(III) derived from or through a person who owed a duty to the person seeking relief to maintain the secrecy of the trade secret or limit the use of the trade secret; or

(iii) before a material change of the position of the person, knew or had reason to know that--

(I) the trade secret was a trade secret; and

(II) knowledge of the trade secret had been acquired by accident or mistake;

(6) the term “improper means”--

(A) includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means; and

(B) does not include reverse engineering, independent derivation, or any other lawful means of acquisition; and

(7) the term “Trademark Act of 1946” means the Act entitled “An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes¹, approved July 5, 1946 ([15 U.S.C. 1051 et seq.](#)) (commonly referred to as the “Trademark Act of 1946” or the “Lanham Act”)”¹.