

HOPS, BARLEY, APPLES & LAWS

Labeling and Packaging Guidance for New York Craft
Beverage Producers

DANOW McMULLAN & PANOFF, P.C.
Arielle Albert, *Associate*
275 Madison Avenue, Suite 1711
New York, NY 10016
aalbert@dmppc.com
(212) 370-3744

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.

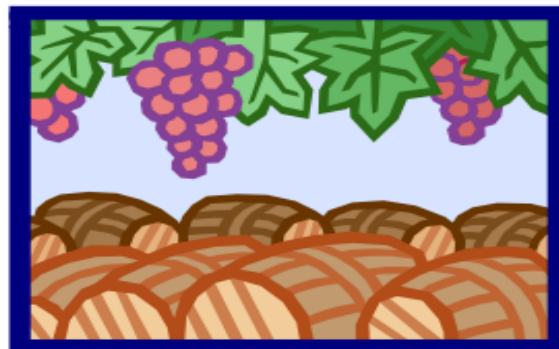
ALCOHOL CONTENT

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 unconsecrated 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!

DANOW McMULLAN & PANOFF, P.C.

Arielle Albert, Associate

275 Madison Avenue, Suite 1711

New York, NY 10016

aalbert@dmppc.com

(212) 370-3744