

Beverage Breakdown

Welcome to Nutter's *Beverage Breakdown*, a periodic legal update on noteworthy developments related to the alcohol beverage industry, including industry news, federal and state updates, and more. We look forward to sharing our insights with you as we cover everything that's brewing across the sector.

For questions or help navigating these topics, please reach out to Nutter's Alcohol Beverage team members [Nichole Shustack](#) or [Isabelle Cunningham](#).

Industry News

PFAs: PFAS, or per- and polyfluoroalkyl substances, are synthetic chemicals used in a wide array of consumer products. Although widely used, exposure to PFAS has been linked to multiple negative health effects. This has caused many states to pass regulations to phase out or ban these substances in a variety of products, including alcohol beverages. The focus on this issue has led to an uptick in litigation which is only expected to increase. Recently, several industry members, including vendors and wholesalers, have started incorporating language regarding these substances into agreements with suppliers. As such, suppliers should review their current policies around PFAS and ensure they are doing their due diligence to comply with contractual obligations and any applicable state regulations.

TikTok: Historically, TikTok's advertising policies prohibited the promotion of alcohol in ads and on landing pages. However, sources are reporting that TikTok's audience may now meet the LPA Compliance Standard (at least 73.8% of the users are of the legal purchase age) and therefore a change to TikTok's ban on alcohol may be forthcoming. If the ban is lifted, suppliers should ensure that they have robust policies for advertisement and the use of social influencers on TikTok (and other platforms) to ensure any ads are properly targeted to LPA audiences.

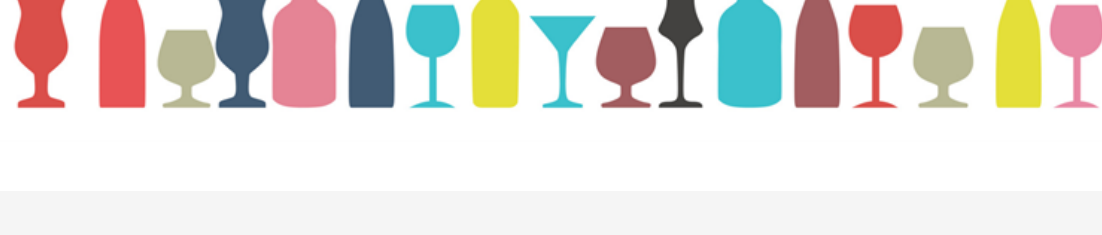
Crossover Beverages: Major industry trade organizations including the Distilled Spirits Council, The Food Industry Association, and the National Association of Convenience Stores, issued a joint commitment to the responsible marketing and merchandising of so-called "crossover" alcohol products. Crossover alcohol products are alcohol beverages that use the intellectual property or are similar to an existing non-alcohol beverage. The commitments include obligations for suppliers, wholesalers, and retailers alike to ensure that crossover products are being responsibly marketed and sold across the country. Some of the commitments include:

- Compliance with responsible advertising codes to ensure crossover products are packaged and marketed appropriately to those of legal purchase age.
- Crossover product packaging and branding that is clearly and easily distinguishable from non-alcohol beverage counterparts.
- Labels and packaging that makes it clear the crossover product contains alcohol.
- Responsible merchandising and marketing of crossover products in a manner that avoids consumer confusion.
- Crossover products placed in the same locations utilized for other alcohol beverage products and not in places that may primarily appeal to children.
- Employee training about responsibly selling crossover products to only legal drinking age adults.

Wholesaler Transactions: DET Beverages LLC, a Reyes Beverage Group subsidiary, will acquire approximately 1.6 million cases from Cherokee Distributing Company in Tullahoma and Pulaski counties in Tennessee. The transaction is expected to close in mid-August. As part of the transaction, DET will pick up the distribution rights to brands from Molson Coors, Constellation, Heineken, Diageo, Mark Anthony, and Boston Beer.

DTC: States are picking up enforcement in the **direct-to-consumer** shipping of alcoholic beverages. Tennessee's widely publicized penalties issued to five liquor stores for illegally shipping alcohol to consumers without the proper licensing was just one example of how state regulatory agencies are taking action to curb what they claim are illicit shipments of alcohol arriving in their states. In addition to Tennessee, there are enforcement efforts in Pennsylvania and New Jersey. These enforcement efforts have been targeted at both retail direct-to-consumer shipping as well as inquires targeted at suppliers and third party platforms that facilitate direct-to-consumer sales of alcohol.

- Ensuring that suppliers and retailers have robust compliance policies related to direct-to-consumer and other e-commerce sales models is critical, as is carefully negotiating new contracts, or revisiting already executed contracts, with third parties that are intended to help facilitate those types of sales to mandate compliance and provide some recourse in the event of a compliance issue.



Federal and State Updates

TTB Newsletters offer a window into what the agency is focusing on or what questions they are fielding from industry. The two most recent newsletters reminded suppliers about the use of term "clean" in the labeling and advertising of alcoholic beverages and highlighted the evaluation criteria for determining when a frozen dessert containing spirits is regulated as an alcohol beverage.

With respect to use of the word "clean," TTB regulations do not define the word "clean," nor does it have standards for use of the term on labels or in advertisements. The agency reminded consumers that an alcohol beverage label or advertisement that uses the word "clean" should not be intended to mean that the beverage is organic or has met other standards affixed by TTB. Labeling and advertising of alcohol beverages should be truthful and not misleading. TTB reviews labels and advertisements in their totality to determine if they create a misleading impression. Taking a "totality" approach when reviewing use of terms like "clean" can mitigate risk of receiving a "needs correction" on a COLA submission and mitigate other regulatory or class action exposure that putting out products with misleading labels or advertisements with misleading statements may create.

As summer begins, more **frozen dessert offerings that contain alcohol** are popping up in the market. TTB's June 21 Newsletter outlined the criteria that TTB uses in making case-by-case determinations on whether or not a frozen product made with spirits is an alcoholic beverage or a nonbeverage product. Evaluation criteria include:

1. alcohol content of the product;
2. the purpose served by the alcoholic ingredients in the product;
3. whether other features of the product's composition constrain its consumption as a beverage; and
4. other relevant factors.

In our experience, formulation, packaging, method of consumption, and labeling/advertising of a frozen dessert product are weighed when a company is seeking a nonbeverage designation from TTB. A nonbeverage designation has a host of regulatory impacts. Determining whether getting a nonbeverage designation is important to a business early in the formulation and ideation stage because of how impactful that designation is in making, distributing, marketing, and selling a frozen dessert product.

Massachusetts' Alcohol Beverage Control Commission (ABCC) issued an advisory on beverages and food with hemp-derived CBD or THC on licensed premises. It said that consumables with hemp-derived CBD or THC are unlawful for sale or manufacture in the state and that such products must be taken off the shelf immediately. "Any licensee found in violation of importing, manufacturing, transporting, selling, and/or possessing on its licensed premises food and/or beverages containing hemp derived CBD and/or THC faces potential suspension or revocation of its license..."

Delaware's Alcohol Beverage Commissioner issued Rule 911 that allows Delaware breweries to directly distribute their products to stores, bars, and restaurants. The rule was published as a final order in the June 2024 Delaware Register of regulations.

New York passed a law that will allow New York craft spirits and cider producers to ship directly to interstate and intrastate consumers, similar to wine and beer.

Florida's Department of Business and Professional Regulation (DABT) entered into a consent order with Kroger requiring it to revise some of its e-commerce sales protocols. The consent order essentially obligated the grocer to amend its e-commerce fulfillment practices to align with the way in which alcohol sales are made at brick and mortar stores. For example, it requires Kroger to fulfill, package, and prepare delivery orders exclusively within the licensed place of business. As e-commerce and delivery options for alcohol purchases become more prevalent, the desire to streamline and consolidate certain processes, often in the same manner that retailers do for e-commerce sales of non-alcohol merchandise, can be attractive, but understanding whether those streamlined and simplified processes are compliant with applicable alcohol beverage regulatory requirements is critical before implementing updated protocols.

The **Washington** State Liquor & Cannabis Board issued a violation to a retailer for selling alcohol to a minor. The violation stemmed from a third-party delivery app driver's sale to a minor during a sting operation at a hotel. Licensees are reminded that they are responsible for the actions taken on their behalf by third parties. We recommend that licensees carefully review what a third party's obligations with respect to regulatory compliance, as well as outline the licensee's recourse in the event of noncompliance on the part of the third party.



This advisory was prepared by [Nichole Shustack](#) and [Isabelle Cunningham](#), Alcohol Beverage attorneys, in Nutter's [Food and Beverage](#) practice group. If you would like additional information, please contact any member of our team or your Nutter attorney at 617.439.2000.

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