



California Lawyers Association

presents

The ABC's of Beer, Spirits, and Wine Law in California

1.0 Hours MCLE

Friday, September 22, 2023

3:15 PM - 5:00 PM

Speakers:

Albert Ubieta

Mark Kersey

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Conference Reference Materials

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ALCOHOL BEVERAGE LAW 101

Presented by
Bahaneh Hobel

Partner and Head of Alcohol Beverage Law & Compliance
Dickenson Peatman & Fogarty

CALIFORNIA LAWYERS ASSOCIATION

SAN DIEGO / SEPTEMBER 21- 23

ANNUAL MEETING

BREAKING BARRIERS

CALIFORNIA
LAWYERS
ASSOCIATION

#CLAAnnual

AGENDA

- ❑ Origins of Alcohol Beverage Regulation
- ❑ Current Day Tied House Laws
- ❑ Tied House Laws in The Real World
 - ❑ Restrictions on Multi-Tier Ownership
 - ❑ Social Media
 - ❑ Consumer Promotions/Contests & Sweepstakes
 - ❑ Advertising Specialties
 - ❑ Sponsorships & Events



This handout is made available for general informational purposes only and none of the information provided herein should be considered to constitute legal advice.

THE ORIGINS OF ALCOHOL BEVERAGE REGULATION

❑ *Pre-Prohibition:*

- ❑ By 1900, Saloons were identified with political corruption, gambling, crime, poverty, and family destruction.”
- ❑ Alcohol sold in bars (saloons) owned by large manufacturers. Many of these were tied houses, i.e., they were “tied” to the manufacturer, so they would only sell the manufacturers product. Each manufacturer had its own saloon, causing overcrowding.
- ❑ Also led to intense competition and aggressive behavior to beat out competition
 - ❑ – inducements, promotion of heavy drinking, etc.
- ❑ US was viewed by many as a “a nation of drunkards”:
- ❑ *“By 1830, the average American over fifteen years old consumes nearly seven gallons of pure alcohol a year, three times as much as we drink today.*
- ❑ *Alcohol abuse, mostly perpetrated by men, wreaks havoc on the lives of many families, and women, with few legal rights or protection, are utterly dependent on their husbands for sustenance and support.” –Ken Burns’ Prohibition*
- ❑ **1784-1930: Large push for temperance in the US = Prohibition.**



PROHIBITION (18TH AMENDMENT, 1920-1933)

The manufacture, sale or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States for beverage purposes is hereby prohibited.

THE AMERICAN ISSUE
A Saloonless Nation and a Stainless Flag

Volume XXVI WESTERVILLE, OHIO, JANUARY 20, 1919 Number 4

U.S. IS VOTED DRY

36th STATE RATIFIES DRY AMENDMENT JAN. 16

Nebraska Noses Out Missouri for Honor of Completing Job of Writing Dry Act Into the Constitution; Wyoming, Wisconsin and Minnesota Right on Their Heels

JANUARY 16, 1919, MOMENTOUS DAY IN WORLD'S HISTORY

Ratification Accomplished in a Little Less Than Thirteen Months with Three States More Than the Required Three-Fourths. Resolution Gave Period of Seven Years for the Completion of Task Remaining Ones Expected to Join Their Sister States in This Act, With Possible Exception of New Jersey. United States Takes Initial Step in World-Wide Drive for Prohibition. State and National Leagues Now Give Earnest Attention to Law Enforcement Legislation

TWENTY-THREE STATES APPROVED ACT IN FIRST SIXTEEN DAYS OF 1919; IN 1918, 15; 9 IN CALLED SESSIONS

MAJORITY OF APPROVING VOTES OF LEGISLATURES

TOTAL VOTE "FOR" ON DRY ACT APPROVED, 3,376 WITH TOTAL OF 822 VOTES AGAINST MEASURE

REWARD OF TWENTY-FIVE YEARS PAID FOR WORK ACCORDING TO ANTI-SALOON LEAGUE PLANS AND METHODS BY THE TEMPERANCE-LOVING CITIZENS OF THE NATION

FIRST 36 RATIFYING STATES HAVE TOTAL POPULATION OF 62,433,518

THIS WITH 7,848,868 POPULATION OF ADDITIONAL STATES RATIFYING TO DATE GIVES A TOTAL OF 70,282,386 WHO, THROUGH THEIR LEGISLATURES, HAVE DECLARED FOR A DRY NATION

The long sought-for, prayed-for, looked-for day is here! It takes its place on the calendar as January 16, 1919 and its place in American history as a day second to none in importance as an epoch marker in progress of world reform. On this day the Prohibition amendment was written into the Constitution of the United States when Nebraska House of Representatives ratified by a vote of 96 to 14, following favorable action by the Senate, and thus completing the required number of thirty-six approving states.

The liquor interests are disappointed at the speed with which the states have approved the amendment and the dry amendment was scarcely made that the long battle to win the United States dry in won. There was a veritable lull in jumping out of the ranks while since the first of the year to have the honor of being counted among the first thirty-six. The evening of January 13 found the thirty-sixth state, New Hampshire, in line. The honor of becoming number thirty-six, the state to cast the determining vote, could easily have gone to any one of four or five states. There was a last second chance as the Senate had already ratified by a vote of 75 to 2, and January 13. Her House acted at 10:35 on the morning of January 15 by a unanimous vote and thereby closed Missouri out of the thirty-sixth place by less than an hour. Wyoming was right after Missouri and took her place at twenty-third night, but distinguished herself as becoming the sixth state in the Union to adhere to the amendment simultaneously in both branches.

A Well Won Honor
The majority refused to consider the amendment, should it give the necessary majority to deliver the blow that Missouri had refused to strike from one. The state of the Great Council of John Badger, however, it was passed by the Nebraska House (Journal) on January 13. Missouri, however, was not ready to ratify the amendment. It is a sort of party that this state where State has been at a special session, after the House had settled by an overwhelming majority of the state that they

As early as 1914, a Prohibition amendment had been introduced in the 63rd session of the National Congress. It was introduced by Representative Henry W. Steiwer of Ohio. The amendment was introduced in the House by Representative James H. Doolittle of Wisconsin. The amendment was introduced in the Senate by Senator James H. Doolittle of Wisconsin. The amendment was introduced in the House by Representative James H. Doolittle of Wisconsin. The amendment was introduced in the Senate by Senator James H. Doolittle of Wisconsin.

HIS NEW MOUNT

"Top of the World to You!"

FACTS YOU'D LIKE TO KNOW ABOUT PROHIBITION

The amendment was voted January 16, 1919.

The date for submission of the amendment to the states was fixed by the President's message to Congress on August 1, 1919.

The amendment was introduced in the House by Representative James H. Doolittle of Wisconsin on January 13, 1919.

The amendment was introduced in the Senate by Senator James H. Doolittle of Wisconsin on January 13, 1919.

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WINE DURING PROHIBITION

- ❑ Prohibition outlawed the liquor trade, not the possession or consumption of intoxicating liquor.
- ❑ Exceptions did exist under the Volstead (National Prohibition) Act:
 - Wine tonics
 - Medicinal Wine,
 - Sacramental Wine
 - Home Brew
 - Private dwellings by family



BOOK NO. **B 80463** **TREASURY DEPARTMENT** BLANK NO. **18**
U.S. INTERNAL REVENUE
FORM NO. 1403 - REVISED FEB. 1922
~~PRESCRIPTION BLANK - NATIONAL PROHIBITION ACT~~

Rx *Post-Wine*
10y 3 in a day

PERMIT NO. *4081*
NOV 20 1923 (DATE)

FOR: *Mr. A. J. Murphy*
(GIVE FULL NAME OF PATIENT)
409 - Naperville Ave
(STREET AND NO.)
Allegan (CITY) *Pa* (STATE)

FOR USE OF DRUGGIST OR PHARMACIST ONLY
PERMIT NO. *4781a*
CANCELLED NOV 20 1923 (DATE DELIVERED)

WALTER A. CORDON
(SIGN FULL NAME AS ON PERMIT)
184 Brighton Ave.
(STREET AND NO.)
ROCHESTER, PA (CITY) (STATE)

Sordan Pharmacy
(NAME OF DRUGGIST OR PHARMACIST UPON WHOM DRAWN)
184 Brighton Ave
(STREET AND NO.)
Rochester Pa (CITY) (STATE)

James P. Gorman M.D.
(SIGN FULL NAME)
1008 Fern Ave
(STREET AND NO.)
Monaca Pa (CITY) (STATE)

THIS PRESCRIPTION MUST NOT BE REFILLED SEE REGULATIONS FOR PENALTIES IMPOSED

PROHIBITION REPEALED IN 1933 – 21ST AMENDMENT



□ Principal Reasons for Repeal

- Enforcement problems.
- Underground crime and lawlessness.
- Desire to create jobs and tax revenue.

21ST AMENDMENT – CONCURRENT STATE AND FEDERAL POWER



- ❑ **Federal:** Commerce Clause grants Congress the power to regulate commerce "among the several states."
- ❑ **State:** Section 2 of 21st Amendment gives states the right to regulate within their own borders:
"The transportation or importation into any state for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

COMMON OBJECTIVES OF STATE ALCOHOLIC BEVERAGE LAWS

- ❑ **21st Amendment provides states power to regulate alcohol within their own borders. This means state by state regulation!**

- ❑ **Common objectives coming out of Prohibition:**
 - ❑ Promote temperance
 - ❑ Control vertical and horizontal integration
 - ❑ Generate tax revenue
 - ❑ Exclude criminals from the industry
 - ❑ Encourage local agriculture / economy

- ❑ **How do they achieve these objectives?**
 - ❑ Tied House Laws, Three Tier System



CURRENT-DAY TIED HOUSE LAWS

- ❑ **Three Tier System**
- ❑ **Goal of Tied House**
 - ❑ Prevent vertical integration and undue influence by suppliers over retailers.
- ❑ **Methods**
 - ❑ Prevent cross-ownership interests, including direct and indirect interests.
 - ❑ Prohibit certain practices that could indicate undue control (no free goods, no things of value, etc).
- ❑ **General Tied House Approach**
 - ❑ If not specifically permitted, likely prohibited!



TIED HOUSE LAWS

FEDERAL LAW



- ❑ ***Federal Tied House Laws:***
 - ❑ **General Rule:** Unlawful for an alcohol beverage manufacturer or supplier to “induce” directly or indirectly, any alcohol beverage retailer (such as a bottle store, bar or restaurant) to purchase any products from that supplier to the “exclusion,” in whole or in part, of other suppliers’ products.
 - ❑ **Inducements include, but are not limited to, furnishing, giving, renting, lending, or selling to the retailer anything of value (subject to various exceptions).**
 - ❑ **Inducements are things that persuade or influence someone to do something or take a particular action.**
 - ❑ **A violation of federal law only occurs if the inducement leads to “exclusion” of a competitor’s product. Mere showing that a retailer purchased less of a rival’s product not enough to find “exclusion.**
 - ❑ **Exclusion only if “direct action” by supplier “bars the rival” in whole or in part. As such, very hard to prove**

TIED HOUSE LAWS

FEDERAL LAW – TYPES OF INDUCEMENTS

- ❑ **Four prohibited trade practices considered illegal inducements:**
 - ❑ *Exclusive Outlet*
 - ❑ *Commercial Bribery*
 - ❑ *Tied House*
 - ❑ *Consignment Sales*



TIED HOUSE LAWS

FEDERAL INDUCEMENTS - EXCLUSIVE OUTLET

- ❑ Exclusive Outlet
 - ❑ Directly or indirectly requiring a **retailer**, to purchase alcohol from that industry member to the exclusion of alcohol sold or offered for sale in interstate or foreign commerce by others.
 - ❑ XYZ Wine Distributor and new restaurant enter into an oral agreement whereby restaurant agrees to purchase all of its wine only from XYZ, and XYZ offers to, in exchange, offer restaurant deep discounts.
 - ❑ **Requires showing of exclusion.**



TIED HOUSE LAWS

FEDERAL INDUCEMENTS - COMMERCIAL BRIBERY

- ❑ **Commercial Bribery**
 - ❑ Inducing any “trade buyer” (**wholesaler/retailer**) to purchase from the industry member to the exclusion of those sold by others (1) by commercial bribery or (2) by offering or giving any bonus, premium or compensation to employees, officers, or representatives of trade buyer.
 - ❑ Winery contacts the wine buyer for a restaurant group, offers them \$500 in cash if it can get restaurant to purchase more of Winery’s wines. Wine buyer agrees, restaurant starts buying Winery’s wines, and stops buying competitor’s wines.
 - ❑ **TTB regulations prohibit both Requires showing of exclusion.**



TIED HOUSE LAWS

COMMERCIAL BRIBERY- WHOLESALER INCENTIVE PROGRAMS

- Wholesaler Incentive Programs:
 - Federal: TTB Industry Circular 77-9: Supplier (winery) can give a wholesaler (“trade buyer”) a bonus, premium or compensation to help or incentivize promotions and sales, and such actions are not a violation of tied house laws if done properly.
 1. Must be given outright to trade buyer: Can be no restrictions or conditions placed on the bonus/payment by the winery;
 2. Cannot give to specific employees or officers, must be given to trade buyer/wholesaler itself;
 3. Records of wholesaler reflect it as asset of wholesaler (not of an individual that received it))
 - CA ABC: Wholesaler incentive programs permitted under consumer contests provision (Section 25600.1(a)(9)):
 - Contests conducted by an authorized licensee as part of a sales incentive program for wholesale licensees or their employees or an authorized licensee’s employees are permitted.



*****Need to wary of what is provided: “[C]ertain bonuses, etc., such as trips, because of their very nature will be regarded as being offered or given to an officer, employee, or representative of a trade buyer even though initially given directly to the trade buyer entity. Since the entity itself (other than a sole proprietor) cannot take a trip, a passing through to the officers, employees, or representatives of the trade buyer who take the trip is clearly contemplated; and thus, would be considered an inducement within the meaning of section 5(c)(2).” Industry Circular 77-9***

****No bonus, compensation or incentive programs can be given by suppliers in any form to retailers.**

TIED HOUSE LAWS

FEDERAL INDUCEMENTS— TIED HOUSE

- ❑ **Tied House**
 - ❑ Directly or indirectly inducing (by one of seven enumerated means of inducement) a **retailer** to purchase alcohol from the industry member to exclusion of alcoholic beverages offered for sale by others. persons. (exceptions apply)
 - ❑ Inducements:
 1. Acquiring / holding interest in license w/ respect to premises of a retailer.
 1. NO ownership in multiple tiers unless there is an exception
 2. Acquiring interest in real or personal property of retailer's business.
 3. Providing retailer with equipment fixtures, supplies, "things of value."
 4. Paying / crediting retailer for advertising display or distribution service.
 5. Guaranteeing any loan or repaying retailer's financial obligation.
 6. Extending credit for a period in excess of 30 days.
 7. Requiring retailer to take / dispose of certain quota of alcohol.
 - ❑ **Requires showing of exclusion**



TIED HOUSE LAWS

TIED HOUSE INDUCEMENTS – SLOTTING FEES

Wholesaler or Producer pays a retailer for specific “prime” shelf or display space



TIED HOUSE LAWS

TIED HOUSE INDUCEMENTS – SHELF SCHEMATICS AND CATEGORY MANAGEMENT



DEPARTMENT OF THE TREASURY
Alcohol and Tobacco Tax and Trade Bureau

TTB Ruling

Number: 2016-1 February 11, 2016

The Shelf Plan and Shelf Schematic Exception to the “Tied House” Prohibition, and Activities Outside Such Exception

Under 27 U.S.C. 205(b), the “Tied-house” provisions of the Federal Alcohol Administration Act (FAA Act), and 27 CFR part 6, the provision of services by an industry member to a retailer is in certain circumstances prohibited. Section 6.99(b) provides that the act by an industry member of providing a retailer with a recommended shelf plan or shelf schematic for distilled spirits, wine, or malt beverages, however, is not an inducement within the meaning of the FAA Act’s “Tied-house” prohibition. The Alcohol and Tobacco Tax and Trade Bureau (TTB) does not consider § 6.99(b) ambiguous. The plain language of the regulation removes only the act of providing a recommended shelf plan or shelf schematic from the prohibited means to induce enumerated in section 105(b)(3) of the FAA Act. Additional services or items of value do not fall within the § 6.99(b) exception. Therefore, providing such services may constitute a prohibited inducement and, depending on the circumstances, may be deemed to place retailer independence at risk. This Ruling further explains the § 6.99(b) exception and why such additional services or items of value are not entitled to its safe harbor.

Inducements that warrant add’l scrutiny:

- (1) Assuming, in whole or in part, a retailer’s purchasing or pricing decisions, or shelf stocking decisions involving a competitor’s products;
- (2) Receiving and analyzing, on behalf of the retailer, confidential and/or proprietary competitor information;
- (3) Furnishing to the retailer items of value, including market data from third party vendors;
- (4) Providing follow-up services to monitor and revise the schematic where such activity involves an agent or representative of the industry member communicating (on behalf of the retailer) with the retailer’s stores, vendors, representatives, wholesalers, and suppliers concerning daily operational matters (such as store resets, add and delete item lists, advertisements and promotions);
- (5) Furnishing a retailer with human resources to perform merchandising or other functions, with the exception of stocking, rotation or pricing services of the industry member’s own product, as permitted in § 6.99(a) of the TTB regulations.

TIED HOUSE LAWS

TIED HOUSE INDUCEMENTS – TIE IN SALES



DEPARTMENT OF THE TREASURY
Alcohol and Tobacco Tax and
Trade Bureau

Industry Circular
Number: 2012-02
Date: February 1, 2012

To download a PDF file, you must have Adobe Acrobat Reader software installed on your system. To download a free copy of Adobe Reader, [click here](#).

Tie-In Sales – An Unlawful Trade Practice

To: Distilled Spirits Plants, Breweries, Wineries, Taxpaid Wine Bottling Houses, Wholesale Liquor Dealers, Importers, Retailers, and Others Concerned.

What is the purpose of this circular?

Our purpose in publishing this circular is to remind alcohol industry members and others that tie-in sales of alcohol beverage "products," as defined in 27 CFR 6.11, and hereafter referred to as "products," are prohibited inducements under the "Tied-House" provisions of the Federal Alcohol Administration Act (FAA Act).

This Industry Circular supersedes Industry Circular 2003-3.

What is a Tie-in Sale?

A tie-in sale occurs when an industry member requires a retailer to purchase a product that the retailer did not want to purchase, in order to obtain the product the retailer wants. Tie-in sales are a form of unlawful quota sales covered by the FAA Act in 27 U.S.C. 205(b)(7). Tie-in sales are also one of the unlawful means to induce covered under the "Tied-House" regulations promulgated under the FAA Act, which are contained in 27 CFR part 6, "Tied-House."

TIED HOUSE LAWS

FEDERAL INDUCEMENTS— CONSIGNMENT SALES



- ❑ **Consignment Sales**
 - ❑ Selling, offering to sell, or contracting to sell alcohol beverages to **wholesaler or retailer** (or for any such wholesaler or retailer to purchase, offer to purchase or contract to purchase) on consignment, or under conditional sale, or with the privilege of return or on any basis other than a bona fide sale (exceptions apply for ordinary / usual commercial reasons).
 - ❑ Consignment defined as: arrangements wherein the wholesaler or retailer is under no obligation to pay for distilled spirits, wine, or malt beverages until they are sold by the wholesaler or retailer.
 - ❑ Unlike all other federal trade practices, **NO EXCLUSION REQUIRED TO SHOW CONSIGNMENT SALES**
 - ❑ **Examples:**
 - ❑ Wholesaler only charges retailer for wine when it is sold by retailer to the end customer.
 - ❑ Winery and Wholesaler agree that wine will be shipped to Wholesaler, and Wholesaler will only have to pay Winery once wines have been sold to retailers.

TIED HOUSE LAWS

FEDERAL INDUCEMENTS— CONSIGNMENT SALES

TTB Accepts Offer in Compromise for Trade Practice Violations



We have accepted an offer in compromise from [Park Street Imports, LLC](#) for allegedly violating the Federal Alcohol Administration Act's trade practices provisions by contracting to purchase, and/or purchasing, products on consignment from multiple entities.

You may view all [TTB administrative actions](#) on [TTB.gov](#).

[TTB Offers in Compromise](#)

TIED HOUSE LAWS

DIFFERENCES BETWEEN FEDERAL & STATE LAW

- ❑ **California Tied House Laws:**
 - ❑ **General Rule: “No licensee shall directly or indirectly give any premium, gift or free goods in connection with the sale or distribution of any alcoholic beverage...” .**

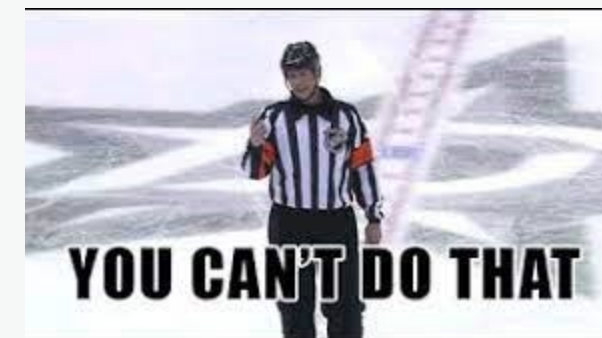
****GENERAL RULE: NO GOODS OR THING OF VALUE UNLESS AN EXCEPTION ALLOWS IT.****
 - ❑ **No need for actual exclusion of competitor for violation. Supplier’s intent does not play any role in evaluating if a tied house violation has occurred. Per se standard (like many other states)**
 - ❑ **For this reason, trade practice analysis is often done under state, not federal law, since state law has a stricter standard that does not require exclusion of a competitor.**
 - ❑ **One Exception is Consignment Sales:**
 - ❑ **Federal law prohibits consignment to retailers or wholesalers and does not require exclusion.**
 - ❑ **CA law technically only prohibits consignment to retailers (although arguably consignment to retailers is a prohibited thing of value)**
 - ❑ **Either way, don’t do it!**



TIED HOUSE IN THE REAL WORLD

RESTRICTIONS ON INVESTMENTS & BUSINESS ACTIVITIES

- **Restriction on Multi-Tier Ownership**
 - Strict tied house does not allow ownership in multiple tiers (supplier, wholesaler, retailer).
 - Unless there is an exception, ownership or investment limited to one tier
 - Varies by state.
- **Advertising and Social Media**
 - Restrictions as to how and when retailers can be advertised or mentioned by suppliers or wholesalers. Varies by state.
- **Contests, Sweepstakes, Coupons & Rebates**
 - Only where explicitly permitted by statute and in accordance with restrictions. Varies by state.
- **Free Gifts**
 - Advertising specialties only permitted where explicitly permitted by statute and often have restrictive dollar limits. Varies by state.
- **Sponsorships and Events**
 - Sponsorships of retailer or specific venues or promoters not permitted unless exception permits it.
 - Events at retailers by suppliers typically allowed but subject to restrictions in state-specific codes.



THANK YOU

BAHANEH HOBEL

PARTNER

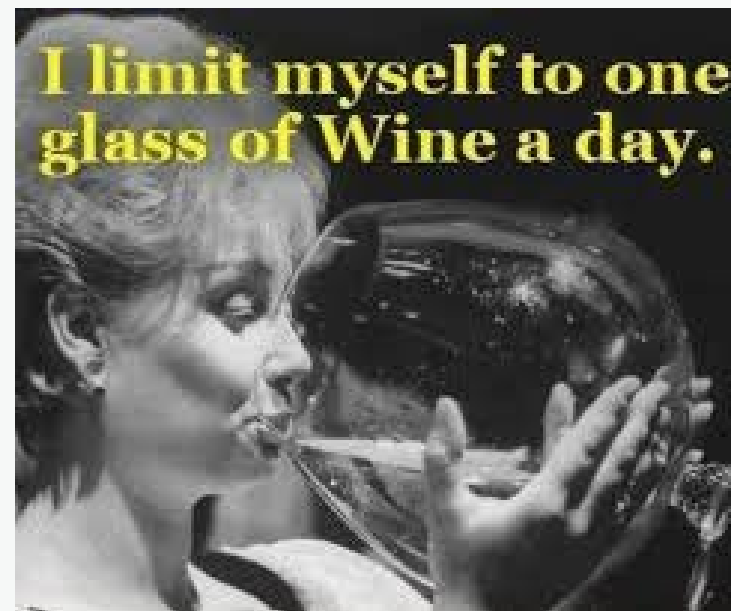
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LAW

The Intersection of Alcohol Beverage and Intellectual Property

Albert Ubieta, General Counsel,
Ballast Point Brewing Company

CALIFORNIA LAWYERS ASSOCIATION

SAN DIEGO / SEPTEMBER 21- 23

ANNUAL MEETING

BREAKING BARRIERS

CALIFORNIA
LAWYERS
ASSOCIATION

#CLAAnnual

The Classical View – Newtonian / Post-Prohibition

	Beer	Wine	Spirits
Supplier			
Wholesaler			
Retailer			

The Modern View – General Relativity



The Modern View – General Relativity

Seltzers



The Modern View – General Relativity

Seltzers:

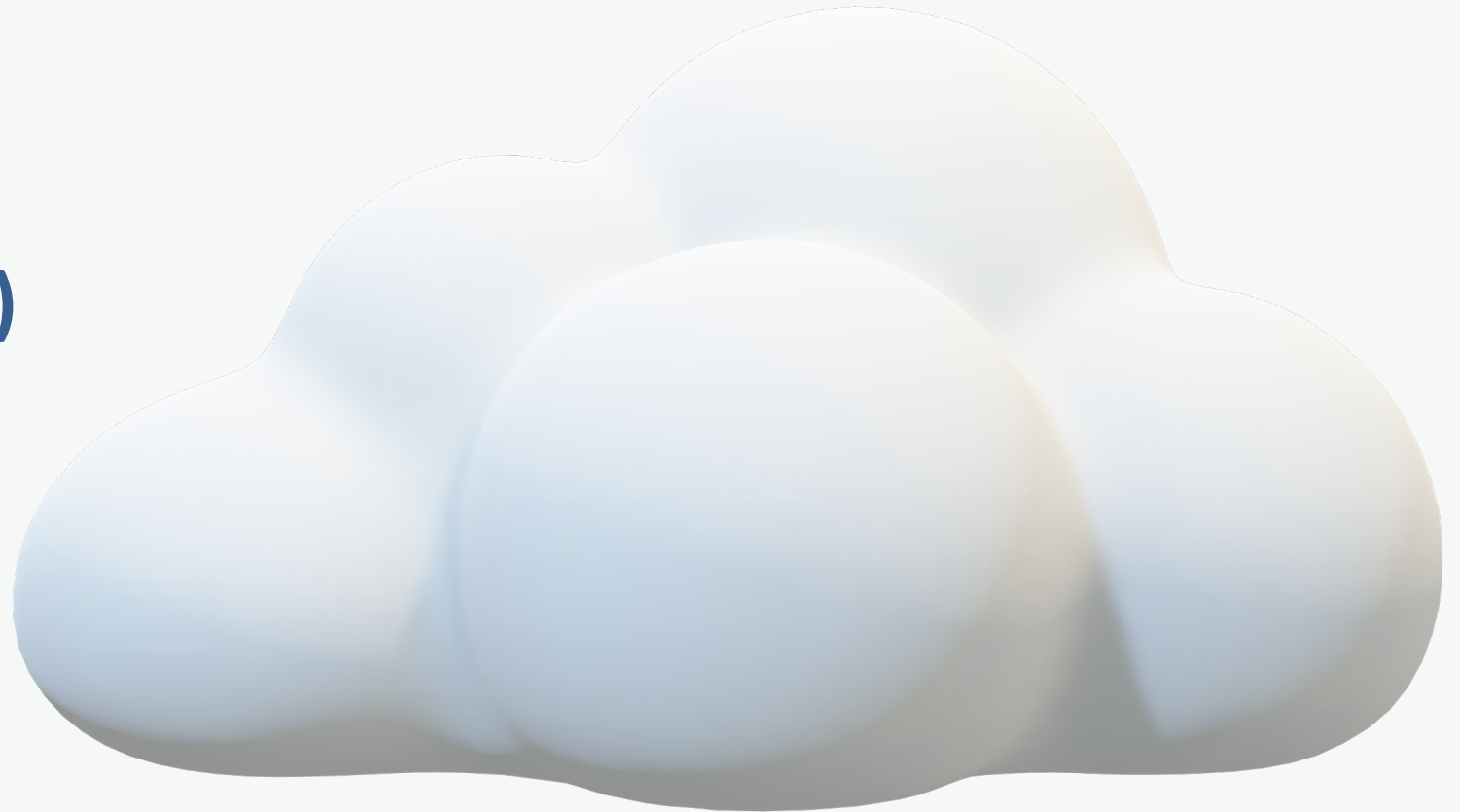
Malt (“beer”)

Non-malt (“IRC beer”)

Spirits

Wine

Kombucha?



The Modern View – General Relativity

Retailers deliver.

(Or do they?)

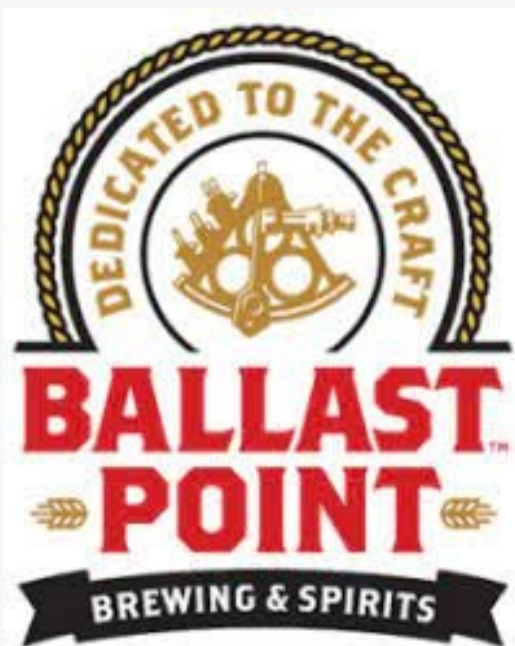
Retailer is an e-tailer.

(Or is it brick-and-mortar?)



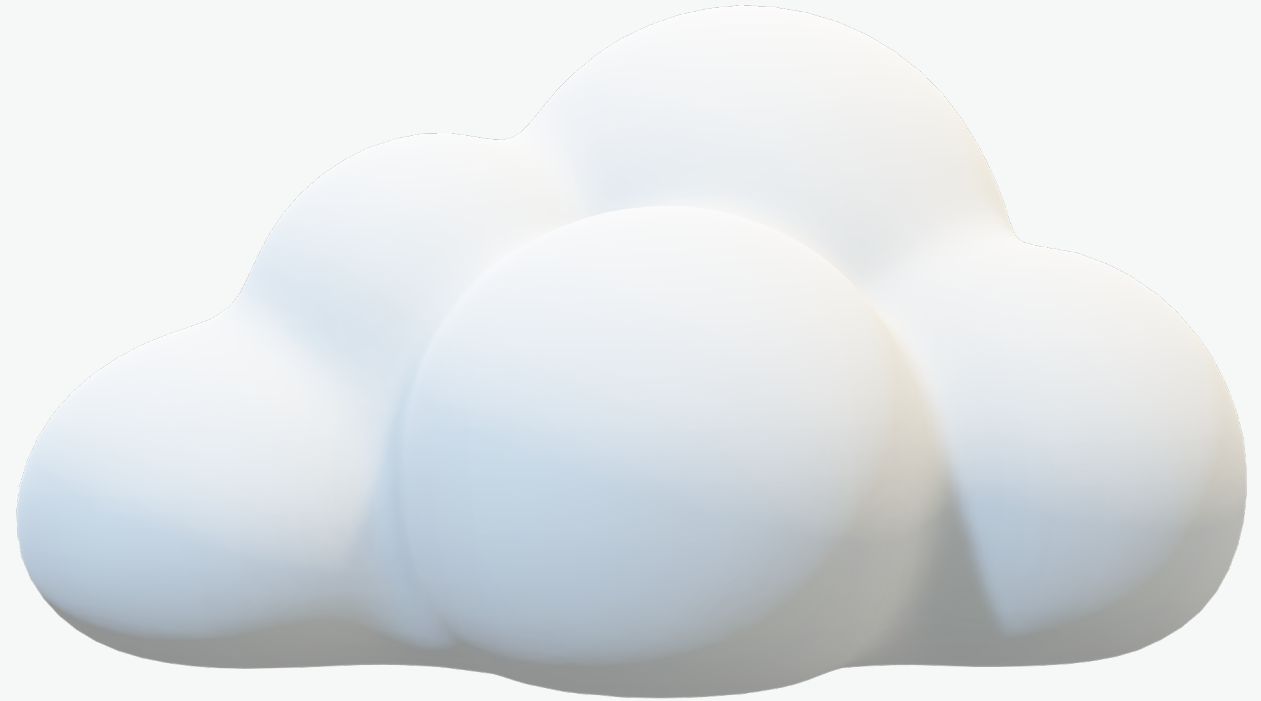
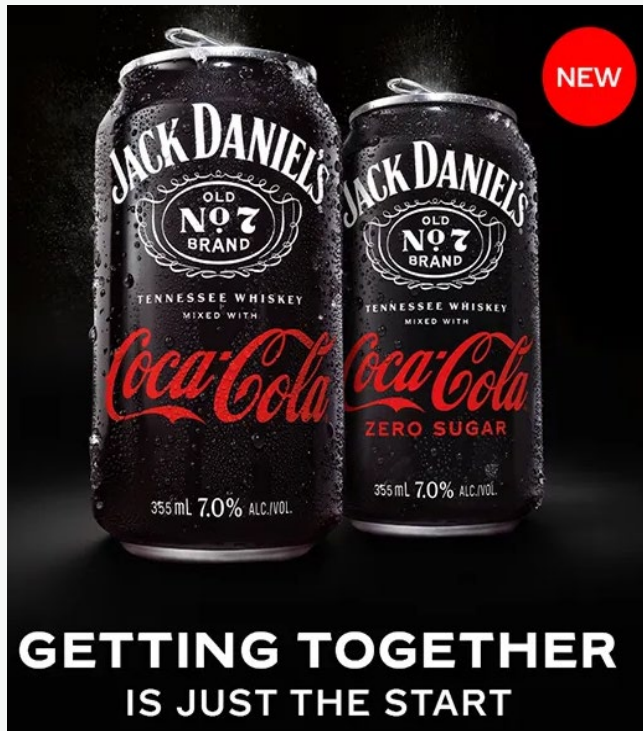
The Modern View – General Relativity

Brew-Stilleries



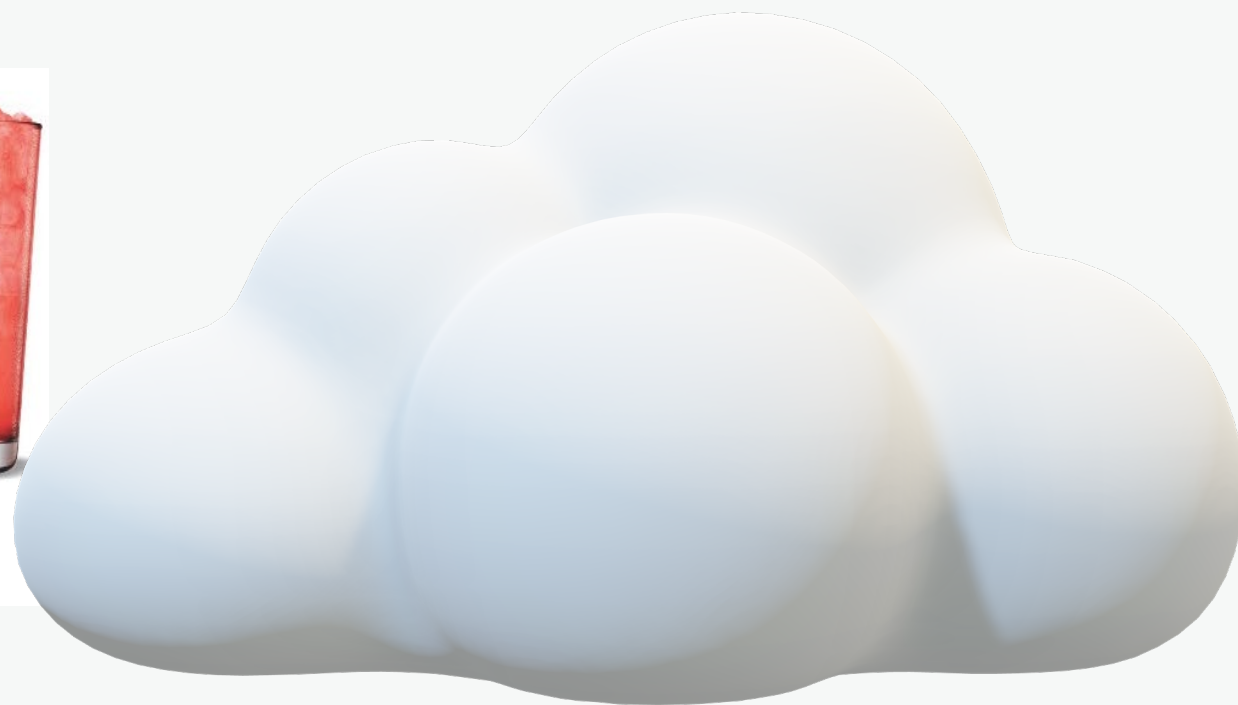
The Modern View – General Relativity

Non-Alcoholic or Alcoholic?



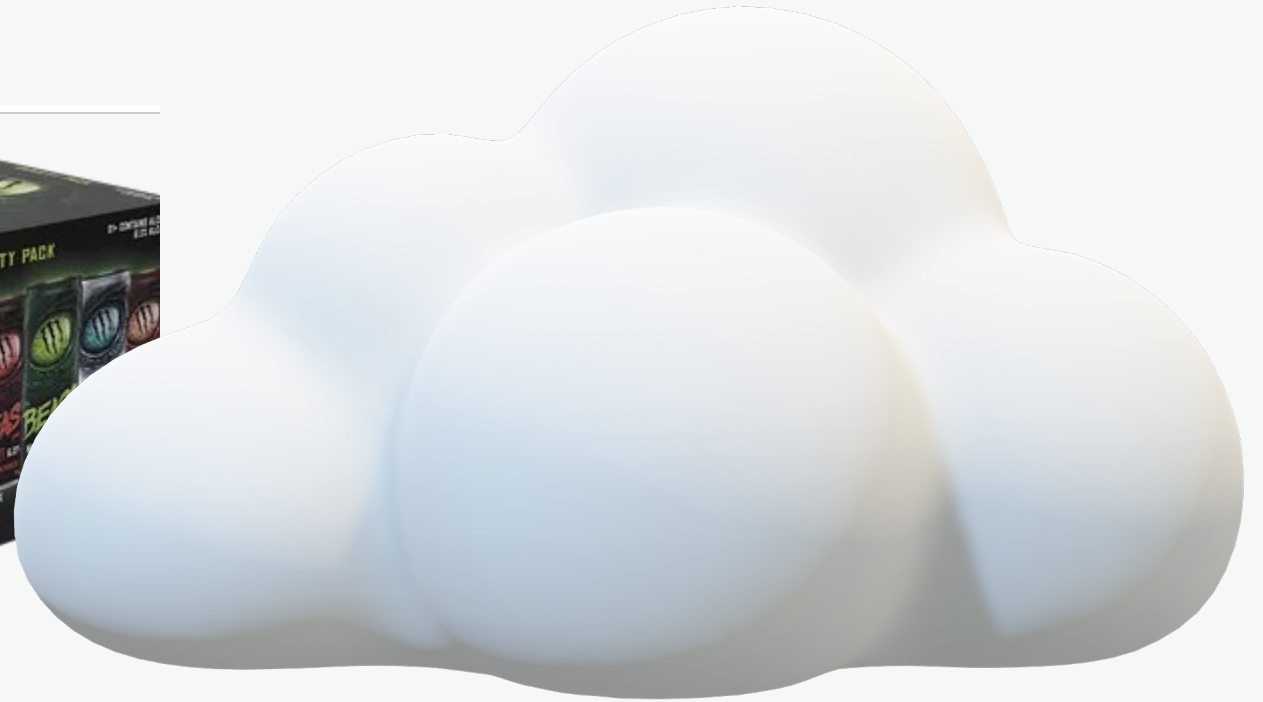
The Modern View – General Relativity

Non-Alcoholic or Alcoholic?



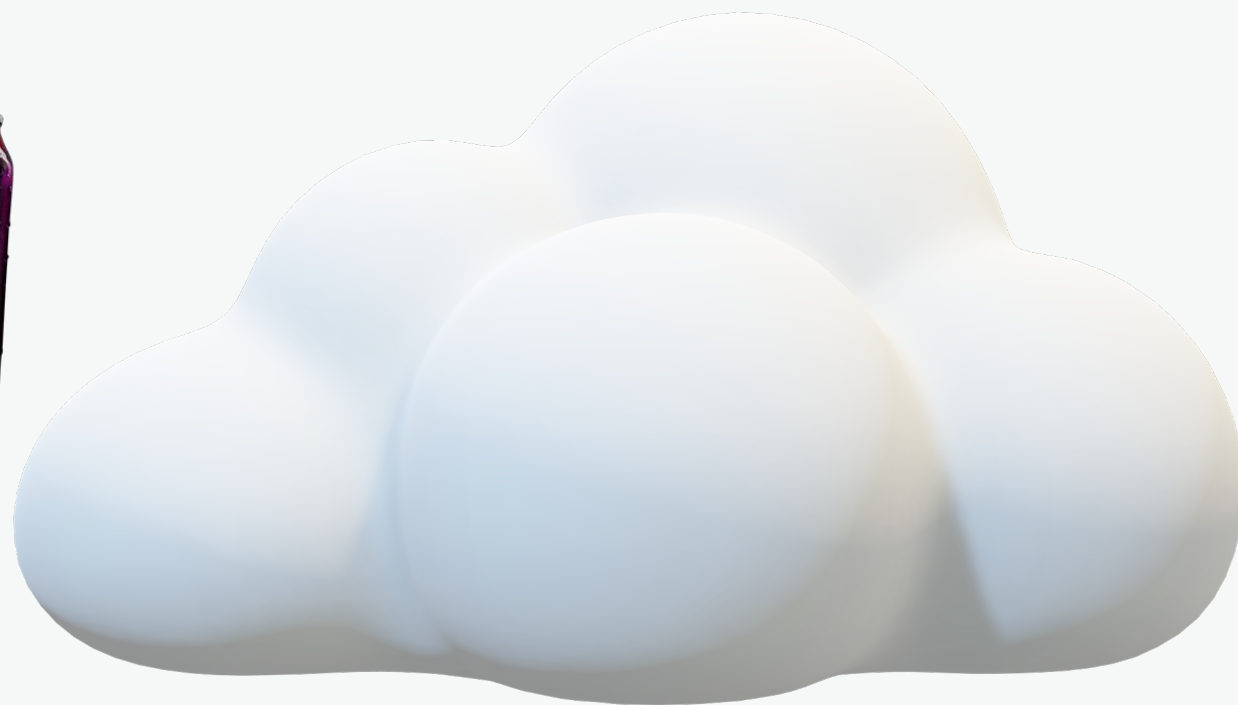
The Modern View – General Relativity

Non-Alcoholic or Alcoholic?



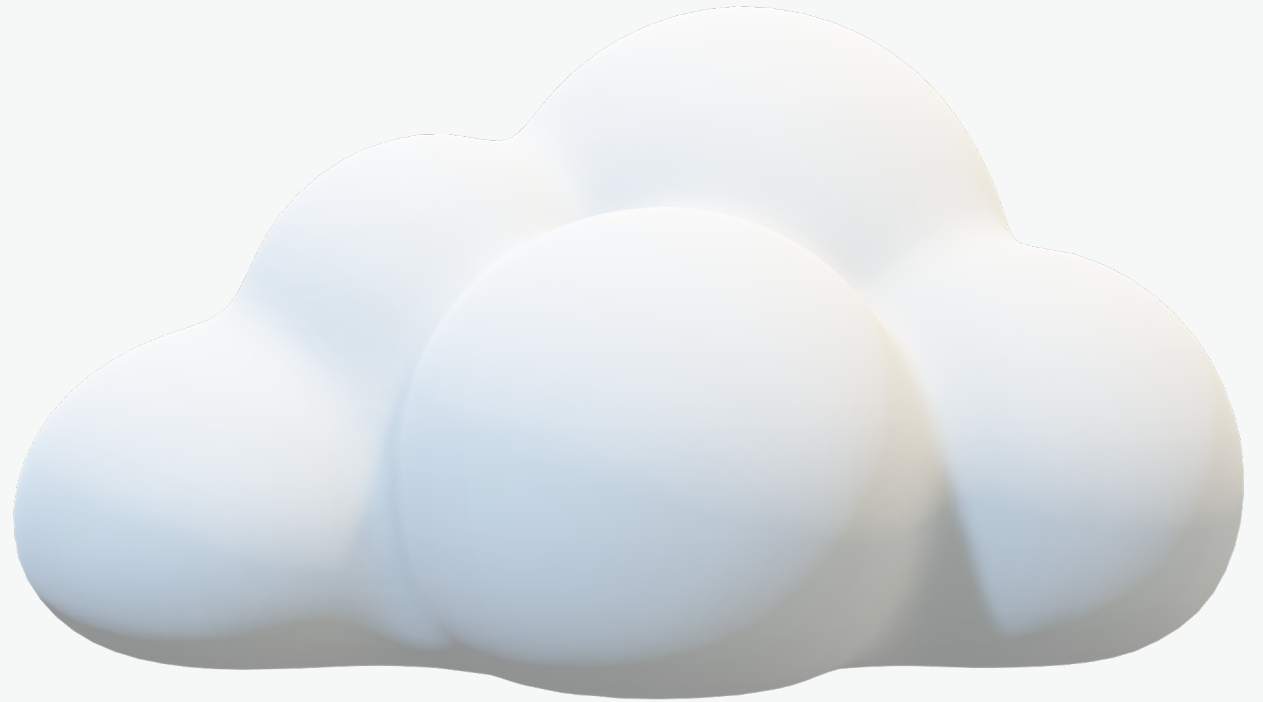
The Modern View – General Relativity

Non-Alcoholic or Alcoholic?



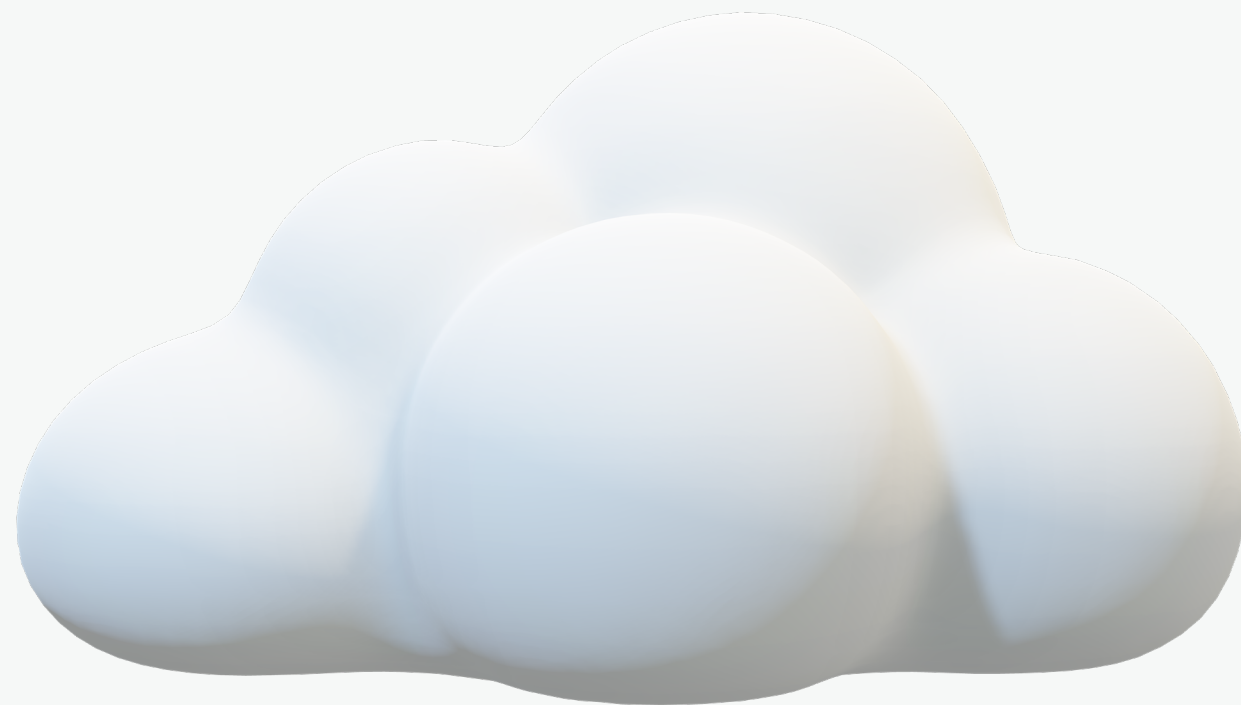
The Modern View – General Relativity

Non-Alcoholic or Alcoholic?



The Modern View – General Relativity

Non-Alcoholic or Alcoholic?



In TM world:

Class 32

Beers;
non-alcoholic beverages;
mineral and aerated waters;
fruit beverages and fruit juices;
syrups and other preparations for making non-alcoholic beverages.

Explanatory note

Class 32 includes mainly non-alcoholic beverages, as well as beer.

This Class includes, in particular:

- de-alcoholised beverages;
- soft drinks;
- rice-based and soya-based beverages, other than milk substitutes;
- energy drinks, isotonic beverages, protein-enriched sports beverages;
- non-alcoholic essences and fruit extracts for making beverages.

In TM world:

Class 33

Alcoholic beverages, except beers;
alcoholic preparations for making beverages.

Explanatory note

Class 33 includes mainly alcoholic beverages, essences and extracts.

This Class includes, in particular:

wines, fortified wines;

alcoholic cider, perry;

spirits, liqueurs;

alcoholic essences, alcoholic fruit extracts, bitters.

In TM world:

Beer vs. Wine
Wine vs. Beer
Spirits vs. Wine
Wine vs. Spirits
Beer vs. Spirits
Spirits vs. Beer

- No “*per se*” rule...

In TM world:

Class 43

Services for providing food and drink;
temporary accommodation.

Explanatory note

Class 43 includes mainly services provided in relation to the preparation of food and drink for consumption, as well as services for providing temporary accommodation.

Class 25

Clothing, footwear, headwear.

Explanatory note

Class 25 includes mainly clothing, footwear and headwear for human beings.

In TM world:

Licensing of trademarks can present an opportunity across categories.



THE OFFICIAL CRAFT BEER OF THE SAN DIEGO PADRES!

To help our hometown toast the San Diego Padres, we brewed a hoppy pale ale that would make any San Diegan proud. This 100% Simcoe hopped brew has aromas of citrus, peach, mellow berry, pine and grapefruit, complemented by a biscuity malt backbone and crisp finish. Named for the Padres' iconic Friar mascot, this beer is sure to be a home run during baseball season and beyond.

BALLASTPOINT.COM

Ballast Point Brewing Company
San Diego, California

But ensure that your marketing partners understand the limitations imposed on marketing and advertising of alcoholic beverage products – this is likely very different from their experience:

“legal drinking age / 21+” (73.8%) – Social Media Influencers – Age Gating Website

In TM world:

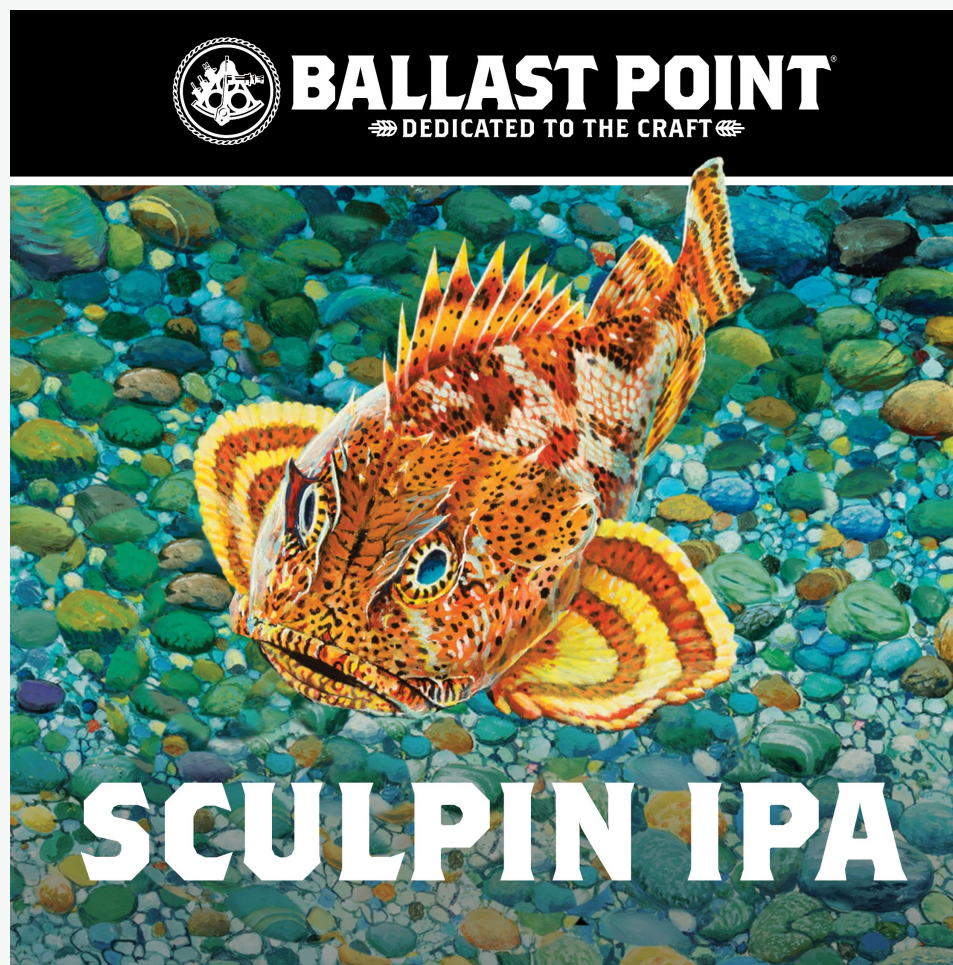
The question on everyone's mind:
Spirits vs. Dog Chew Toys...



Trademark Trial and Appeal Board

- Any trends from recent decisions (almost all are non-published) involving at least one alcohol trademark?
 - Examination phase / rejections
 - Oppositions
 - Cancellations

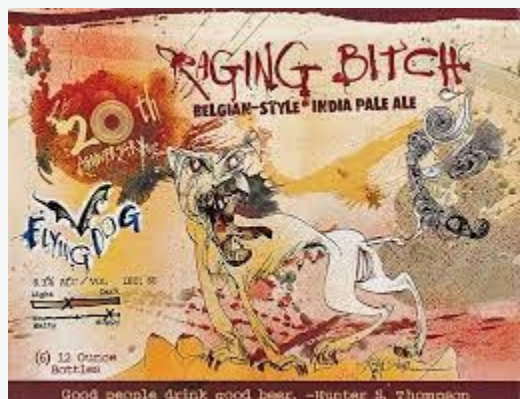
Label Art and Copyright



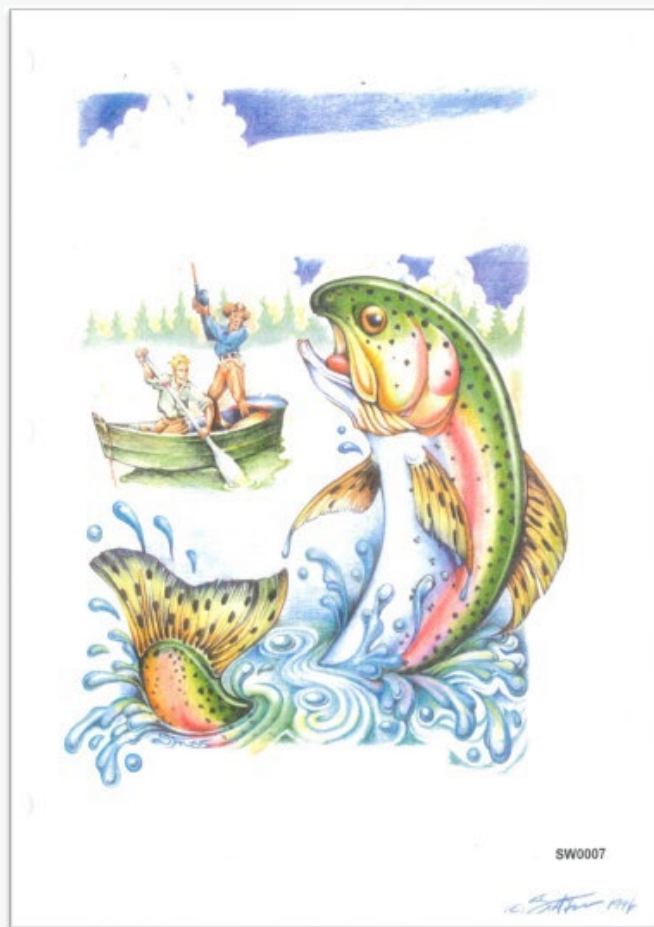
Label Art and Copyright



Label Art and Copyright



Label Art and Copyright



Ray Scott Fuss v. Frederick M. Bensch, *et al.*
U.S. District Court GAND, Atlanta Division
(Motion on the Pleadings denied 9/15/2023).

Patents...?

(12) **United States Patent
De Schütter**

(10) **Patent No.: US 11,725,166 B2**
(45) **Date of Patent: Aug. 15, 2023**

(54) **METHOD FOR TREATING A WORT IN A
BOILING KETTLE**

(71) Applicant: **Anheuser-Busch InBev S.A.**, Brussels
(BE)

(72) Inventor: **David De Schütter**, Leuven (BE)

(73) Assignee: **ANHEUSER-BUSCH INBEV S.A.**,
Brussels (DE)

(*) Notice: Subject to any disclaimer, the term of this
patent is extended or adjusted under 35
U.S.C. 154(b) by 365 days.

(21) Appl. No.: **15/033,880**

(22) PCT Filed: **Nov. 7, 2014**

(86) PCT No.: **PCT/EP2014/074010**

§ 371 (c)(1),
(2) Date: **May 2, 2016**

(87) PCT Pub. No.: **WO2015/067737**

PCT Pub. Date: **May 14, 2015**

(65) **Prior Publication Data**

US 2016/0251604 A1 Sep. 1, 2016

(30) **Foreign Application Priority Data**

Nov. 7, 2013 (EP) 13191922

(51) **Int. Cl.**
C12C 7/22 (2006.01)

C12C 13/08 (2006.01)

(52) **U.S. Cl.**
CPC **C12C 7/22** (2013.01); **C12C 13/08**
(2013.01)

(58) **Field of Classification Search**

CPC .. **C12C 7/00**; **C12C 13/00**; **C12C 7/20**; **C12C**
7/22

USPC **426/592**, **11**, **330.4**, **16**, **29**
See application file for complete search history.

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(Continued)

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(Continued)

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dog No Boil Experiment Dr.Reddog (Year: 2013).*

(Continued)

Primary Examiner — Vera Stulii

(74) *Attorney, Agent, or Firm* — Klintworth & Rozenblat
IP LLP

(57) **ABSTRACT**

A method for treating a wort in a kettle provides a kettle with an inlet for feeding a wort into the kettle and with an outlet for flowing the wort out of the kettle. A heating means for bringing the wort contained in the kettle close to or at boiling temperature, as well as for controlling the temperature. A gas sparging system for sparging an inert gas into said wort. Feeding wort from a lautering step into said boiling kettle through the inlet, the wort at a temperature below its boiling temperature. During sparging, heating the wort and maintaining it at a treatment temperature below the boiling temperature of the wort for a duration between 15 and 90 min, and no longer than required to evaporate at most 4 wt. % of water initially in the wort. Transferring the treated wort to a trub separation step through the outlet.

9 Claims, 4 Drawing Sheets

Plant Patents

(12) **United States Plant Patent**
Probasco et al.

(10) **Patent No.:** US PP21,289 P3

(45) **Date of Patent:** Sep. 14, 2010

(54) **HOP PLANT NAMED ‘HBC 394’**

Related U.S. Application Data

(50) Latin Name: *Humulus lupulus*
Varietal Denomination: **HBC 349**

(60) Provisional application No. 61/062,531, filed on Jan. 24, 2008.

(75) Inventors: **Eugene G. Probasco**, Yakima, WA (US);
Jason Perrault, Toppenish, WA (US)

(51) **Int. Cl.**
A01H 5/00 (2006.01)

(73) Assignee: **Hop Breeding Company, L.L.C.**,
Yakima, WA (US)

(52) **U.S. Cl.** **Plt./236**
(58) **Field of Classification Search** **Plt./236**
See application file for complete search history.

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

Primary Examiner—Susan B McCormick Ewolddt
(74) *Attorney, Agent, or Firm*—Ballew Law

(57) **ABSTRACT**

(21) Appl. No.: **12/321,653**

A new hop plant named ‘HBC 394’ is disclosed. The cones of ‘HBC 394’ mature in early September, and yield a crop of 1200 to 1600 pounds per acre. ‘HBC 394’ is used in brewing for its bittering and aromatic properties.

(22) Filed: **Jan. 23, 2009**

(65) **Prior Publication Data**
US 2009/0193555 P1 Jul. 30, 2009

6 Drawing Sheets

1

2

Genus and species: *Humulus lupulus*.
Variety denomination: HBC 394.

TABLE 1

STATEMENT REGARDING FEDERALLY
SPONSORED RESEARCH OR DEVELOPMENT

5

None.

BACKGROUND OF THE INVENTION

10

Comparison of ‘HBC 394 to ‘8801-02’		
	‘HBC 394	‘8801-02’
Alpha Acids %	11-13	9-11
Beta Acids %	3.4-4.5	2.5-3.5
Cohumulone %	22-24	NA
Maturity	Mid Season	Early Season

Citra® Brand

HBC 394 ALPHA ACIDS: 10 - 16%

Developed by Hop Breeding Company and released in 2007, Citra® HBC 394 features high alpha acid and total oil content with a low percentage of co-humulone. It is one of the top ten aroma varieties for craft brewers imparting distinct citrus and tropical fruit flavors.



**AROMA PROFILE: CITRUS, STONE FRUIT,
TROPICAL, WOODY**

Trade Secrets

TMs are generally the most valuable IP asset of alcohol beverage producers.

But the “secret recipes” should be protected as they offer a significant competitive advantage.

Take proper steps to secure the full recipe including all procedural steps.

Special consideration for protecting IP when addressing contract production by another manufacturer.

But in the end, the customer wants to know what is in the glass – exceptionally important to wineries and craft breweries.

And yet, sometimes ...

Trade Secrets

Sometimes the recipe is on a t-shirt.



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