WEST VIRGINIA MALT BEVERAGE PRODUCT LABEL APPROVAL

In order to effectively enforce the provisions of Chapter 11, Article 16 of the West Virginia State Code, specifically the regulation of the three tier system, the below procedures are promulgated by the West Virginia Alcohol Beverage Control Administration.

CONCEPT

West Virginia operates in a three tier distribution system for the beer industry. The laws, rules and regulations of the State of West Virginia provide for protection for each tier of the distribution system: brewer, distributor and retailer. Fairness and equality are the overriding principles of the laws and regulations of the State of West Virginia.

Brewers are free to select distributors and must assign exclusive territories. After the brewer makes the distributor designations, the brewer must treat each distributor equally. W.Va. Code §11-16-21(a) states in part "...having entered into an equitable franchise agreement with such distributor…(such agreement) shall be identical as to terms and conditions with all other franchise agreements and any amendment between such brewer and its other distributors in this state…"

Therefore, if a brewer offers a new brand to one distributor through a franchise amendment, then the brewer must offer the same brand to all distributors within that franchised network. Further, if a brewery or brand is acquired by another brewer, the distributors that hold the distribution rights to the selling brewer's products or in the case of a brand being sold, those distributors will continue to distribute under the existing franchise agreements entered into by the selling brewer.

W.Va. Code §11-16-21(a)(3) states in part, "Whenever the manufacturing, bottling or other production rights for the sale of nonintoxicating beer at wholesale of any brewer is acquired by another brewer, the franchised distributor of the selling brewer shall be entitled to continue distributing the selling brewer's beer products as authorized in the distributor's existing franchise agreement and the acquiring brewer shall market all the selling brewer's beer products through said franchised distributor as though the acquiring brewer had made the franchise agreement and the acquiring brewer may terminate said franchise agreement only in accordance with subdivision (2), subsection (b) of this section: *Provided*, That the acquiring brewer may distribute any of its other beer products through its duly authorized franchises in accordance with all other provisions of this section:..."

The approval of new product labels by the Commissioner is a mechanism by which the agency can enforce the law with respect to the assignment of brands.

POLICY

It is the policy of the West Virginia Alcohol Beverage Control Administration that before a label is approved for a new product, ***the following items must be submitted for review*** by the brewer/importer or resident brewer to the WVABCA, to determine if the brewer/importer or resident brewer is in compliance with the provisions of W. Va. Code §11-16-1 *et seq*.:

- Color labels in duplicate (***affixed or printed on 8½ by 11 sheet***). Please state if labels reference cans or bottles.
- Copy of Federal Label Approval (COLA) referencing the proposed label if being transported across state lines from place of manufacture.
- In the case of those products that don't require COLA's but fall under the federal definition of beer (e.g., Seltzers), please supply a copy of the formula approval, more specifically the "Formula Online" approval. Do not submit the recipe or formula, only the approval which defines the product as an IRC Beer, or does so within the statement of class and type to reflect that determination. The name of the product must be listed on the document. In the case of an import that does not require COLA or Formula Approval, a copy of US Customs documentation with determination is required.
- Proof of ownership of the product is necessary. If the submitting brewer is not the owner of the product, include an appointment letter from the brand owner on their company letterhead.
- Lab Analysis regarding the contents of the proposed product declaring the percentage of alcohol by volume (*may not exceed 15% by volume*). Note: A tolerance of 0.3% above or below the alcohol content stated on the label is allowable. However, if the product is below .5% ABV, the actual content may not exceed that which is stated on the label.
- Copies of all distributor franchise agreements with initial brewer entry into West Virginia, or amendments to the franchise agreements thereafter for the proposed products, executed by the brewer and offered to each of the brewer's distributors within that franchise network. Each product must be listed individually and specifically. Blanket statements such as "family of brands" or similar declaration cannot be accepted.
- 12-Digit UPC Codes for each and retail package configuration. *(Example: 12-Digit UPC Code from 12-pack)*
- Prices including WV State Excise Tax for each label and their retail packages configurations *(Example: 2/12/12 bottles, 4/6/12 cans, 1/6 keg…).* Note: WV State Excise Tax ($5.50 per barrel).
- In the case of products being submitted to be sold only in a variety pack, please state that fact in the cover letter. These products must be submitted in the same manner as all others, with the following exceptions: price will not be included, and the 12-Digit UPC Code should be from the bottle/can.
- Variety Packs must be submitted for review and approval. Include a color graphic of the variety pack, list all products contained in the package, state the package configuration *(Example: 6-pack, 12-pack…)*, provide the price including WV State Excise Tax as it will be shipped *(Example: 4/6/12 oz., 2/12/12 oz….)*, and the 12-Digit UPC Code from the variety pack. Note: All products included in the variety pack must follow the same franchise network.
- Products that are under .5% ABV must be submitted for review to determine if in fact the product falls outside of the West Virginia definition of Nonintoxicating Beer (.5% ABV - 15% ABV). A specific form is available for submission upon request.