



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, noteworthy litigation, 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

EPA granted a petition asking it to address PFAS in containers. The petition asks EPA to take action under the Toxic Substances Control Act to prohibit the manufacture, process, use, distribution, and disposal of certain chemicals formed during the fluorination of plastic containers. EPA's press release stated that the agency intends to request information, including the number, location, and use of fluorinated containers in the United States and measures to address risk from certain chemicals formed during that process.

Rhode Island joined California, Maine, New York, Colorado, Minnesota, and Washington in banning the manufacture, sale, and distribution of various products that contain PFAS. Tracking legislation in other states, effective January 1, 2027, no person may legally manufacture, sell, offer for sale, or distribute in Rhode Island any "covered product" that contains "intentionally added" PFAS.

Labeling, Marketing, and Advertising

SC Johnson filed a NAD challenge to, among other things, the "simple" claims on certain Native products. SC Johnson argued in the action that the "simple" claim will convey to consumers that the products are not complex or minimally processed. In response, Native argued that "simple" means that Native just uses fewer ingredients. In siding with Native, NAD determined that because the "simple" statement was visually separate from the product's ingredient list, a reasonable consumer would understand the term to be referring to the product as a whole and not the individual ingredients. Using a word like "simple," or other words that don't have clear meanings, can be difficult to substantiate—this makes the context in which such terms are used critical when it comes to substantiation. The context of an ambiguous word or phrase's use is often material when it comes to making a determination about whether something is misleading or not.

BrewDog is winding down its "carbon negative" claim. The brewer had pledged to remove "twice as much carbon from the air than it emits." The costs associated with living up to the "carbon negative" claim have "gone through the roof" according to the brewer. The company has decided to move away from buying carbon credits and has said it will refocus on reducing its own emissions. Although many "green" claims are the subject of "greenwashing" accusations that can create monetary exposure from class action litigation or regulatory enforcement agencies, BrewDog's decision indicates that sometimes substantiation of certain "green" claims can also be incredibly costly.

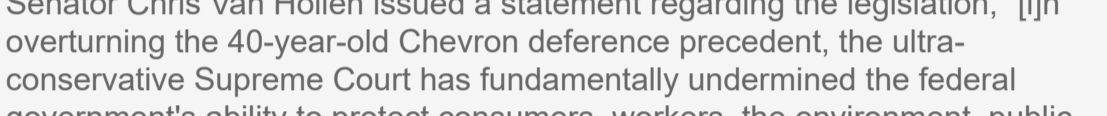
Gopuff launched its own in-house advertising platform, Gopuff Ads. The platform will leverage its data along with other factors including the time of day and localized product popularity to serve targeted ads to users. It is not clear from publicly available information whether Gopuff Ads is available for alcohol suppliers, but as with any such ad platform, *alcohol suppliers should be prepared to fully vet the company's compliance model before making a decision to sign on to it.*

With the continued growth of crossover beverages, there has been an increase in scrutiny from states in relation to the labeling and advertising of these products. Most notably, states are questioning, and in some cases rejecting, labels and claiming as the reason for denial a potential appeal to minors. Companies launching crossover products should ensure, among other things, that their labels are clearly and easily distinguishable from non-alcohol beverage counterparts to avoid consumer confusion or an allegation that a label appeal to those under the legal drinking age.

Non-Alcoholic Products

Reports about the safety of non-alcoholic beer continue to circulate as sales of the category explode. A statement from the Brewers Association said that there is not enough evidence to understand the safety risks involved with draft NA beer specifically and highlighted that a lack of knowledge or experience prevents the association from recommending best practices that could guarantee the safety of draft NA beer. Although some studies have made headlines recently regarding the ability of certain bacteria to survive in nonalcoholic beer, industry reminded consumers that the possibility of this danger is different from an actual consumer safety threat. As brewers continue to expand into the non-alcoholic space, understanding food safety considerations that aren't necessarily salient for alcohol products is critical.

Athletic Brewing's Director of Quality Assurance said in a statement that pasteurization, vendor management, routine site inspections, process validation, and end-to-end tracing are essentials parts of the safety picture for draft NA beer.



Federal/State Regulatory Updates

Federal Updates

In July, Senators introduced a bill that would codify the so-called "Chevron Deference." The legal doctrine struck down by the Supreme Court in June had held that, in the absence of specific laws passed by Congress, federal judges should defer to federal agency expertise on a matter before them. Senator Chris Van Hollen issued a statement regarding the legislation, "[I]n overturning the 40-year-old Chevron deference precedent, the ultra-conservative Supreme Court has fundamentally undermined the federal government's ability to protect consumers, workers, the environment, public health, and so much more." For the alcohol beverage industry, heavily regulated by a federal agency, this could have a range of implications. Some industry observers have flagged certain areas that they see as ripe for challenge without Chevron Deference (assuming Congress fails to codify the legal doctrine). For example, positions put forth in TTB's Industry Circulars could be at risk. The Industry Circulars are TTB's interpretation of statute, meaning that if a business is aggrieved or harmed by TTB's enforcement of these interpretations, they could challenge TTB's actions. Without Chevron Deference, judges would not be required to defer to the agency's alcohol industry expertise as they have historically been obligated to. Ultimately, this just means more uncertainty for those that operate in an industry as heavily regulated by a federal agency as alcohol.

The TTB has accepted an offer in compromise from KrushWerks, LLC for allegedly failing to report a change in control resulting in the termination of its basic permit. This made KrushWerks, LLC ineligible for the reduced rate of tax on wine, which it paid/claimed, and resulted in the imposition of tax at the full rate. *Clients should ensure that any change in control, ownership, or officers and directors are reported within the requisite time period to the TTB and applicable state licensing agencies.*

The TTB has continued to focus efforts on auditing industry members for compliance with single taxpayer rules of the Craft Beverage Modernization Act (CBMA). *Clients, specifically those who co-manufacture products, should ensure they have a firm understanding of their single taxpayer status and how it impacts their eligibility to claim credits or reduced rates.*

State Updates

Oklahoma: Total Wine and More appealed a denial from the Oklahoma ABLE Commission that said they could not operate in the state as the owners aren't Oklahoma residents. The commission had previously approved the store's application earlier this year, then changed its mind, denying the application after saying the applicants weren't Oklahoma residents. Only Oklahoma residents are allowed to get a retail spirits license. Counsel for Total Wine cited a similar case surrounding residency requirements for a liquor license in Tennessee, which was deemed unconstitutional by the U.S. Supreme Court, and an opinion from the Oklahoma attorney general from 2019 that said Oklahoma's residency requirement for obtaining liquor licenses would likely be in violation of the U.S. Constitution. An administrative law judge ultimately sided with the state, but Total Wine can appeal the decision.

Michigan: Consent decree and final judgements were filed against several wineries requiring them to immediately cease illegally selling and shipping intoxicating liquor to consumers in Michigan, to train and educate its employees, and modify their ordering systems. Wineries were also assessed fines ranging from \$4,500-\$10,000 as part of illegal sales and shipment enforcement activities.

Pennsylvania: SB 688 expanded the availability of spirits-based ready to drink products. RTD cocktails are defined as beverages that contain spirits and are premixed and packaged in original containers by the manufacturer, no larger than 16oz, and containing between 0.5% and 12.5% ABV. This legislation allows spirits RTDs to be sold alongside similar beer and wine-based products in some 13,000 private outlets in Pennsylvania.

North Carolina: SB 527 was signed into law which has a host of implications of the alcohol industry. The legislation removes the mixed beverage tax for canned cocktails (note this does not remove the 30% excise tax for spirits products), allows properly licensed on-premise retailers to sell single-serving wine or mixed beverages for off premises consumption, makes line cleaning the responsibility of the retailer (wholesalers can clean draft lines but retailers must pay fair market value for the service), and allows North Carolina to have distribution centers where imported beer and wine can be brought into the state and then transported to other states, which was previously prohibited.

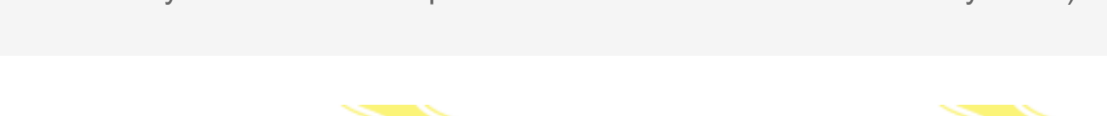
Nebraska: Governor Jim Pillen proposed a 287% tax increase on distilled spirits. The proposal was met with swift condemnation and the plan was pulled after lawmakers received more than 1,500 letters in opposition.

New York: Governor Kathy Hochul signed SB 2852-A that will allow craft spirits and cider producers to ship directly to in state and out of state consumers. Certain licensees can now ship up to 36 cases annually. New York is the ninth state to expand direct-to-consumer shipping privileged for small distillers.

A proposed expansion of New York's Bottle Bill is getting some alcohol industry pushback. The expansion aims to add wine and liquor bottles to the list of redeemable containers and is trying to increase the 5-cent deposit to encourage more consumers to recycle. Some independent liquor stores have pushed back saying they don't have the space to accommodate this change, and that taking on more containers would require them to devote even more real estate to accepting containers than they already do.

Virginia: Virginia has proposed regulations, "Requirements for Product Approval" that address the "labeling of alcoholic products for nonalcoholic products" and "update the rules to comport with modern practices for label approval while maintaining the mission of preventing misleading advertising, advertising that encourages overconsumption, and advertising that is otherwise improper." It would allow the Virginia ABC to withhold approval of any wine or beer label that is an "imitation of a spirits product or is a complete facsimile of a spirits product, excluding low alcohol beverage coolers." The VA ABC would be allowed to withhold approval of any wine or beer label that is not "clearly distinguishable from a nonalcohol product, or which minimizes, fails to identify, or disguises the product's alcohol contents."

Vermont: One of many states picking up enforcement in the DTC shipment space, Vermont recently piloted a program to crack down on illicit shipments of alcohol into the state. The agency reported that it attempted to place 116 online orders, 40 of which were delivered, none of which were completed lawfully. The agency's press release stated that "results of the pilot program will serve as a baseline survey of lawful shipments of beverage alcohol to consumers in Vermont and will inform DLL of the necessary regulatory framework should DTC shipping of spirits be permitted in Vermont."



Noteworthy Litigation

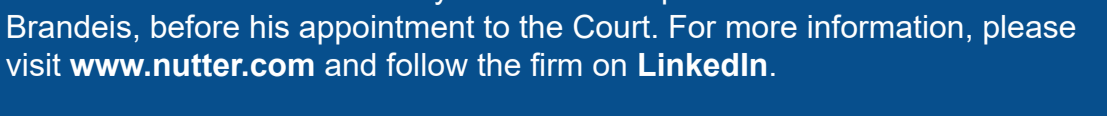
Sava et al. v. 21st Century Spirits et al.: a federal judge denied 21st Century Spirits motion to dismiss a proposed class action alleging that several social media influencers made misleading health and fitness claims to market the company's vodka. 21st Century Spirits' argument that social media advertising guidelines from the FTC are inapplicable because they are "advisory" failed. *This is a reminder to industry adherence to FTC's advertising guidelines should be taken seriously, as a failure to can result in more than a regulatory slap on the wrist.*

Hobby Distillers Association et al. v. Alcohol and Tobacco Tax and Trade Bureau et al.: a federal judge held that federal laws banning making liquor at home are unconstitutional and granted the Hobby Distillers a permanent injunction. The judge held that the ban goes beyond Congress' enumerated powers, "Congress did nothing more than statutorily ferment a crime — without any reference to taxation, exaction, protection of revenue, or sums owed to the government." Currently, the government cannot enforce the ban on home distillation against the 1,300 members of the Hobby Distillers Association. The injunction remains in place, but the Department of Justice filed a notice of appeal in mid-August.

Joseph Lurenz v. The Coca-Cola Co.: Lurenz revised a previously filed class action alleging Coke **deceptively market** their Simply line of juices as pure, healthy, and all-natural when they actually contain PFAS. A judge previously dismissed Lurenz's complaint without prejudice, holding that his claims were based on test results not adequately connected to his own purchases of Simply juice products.

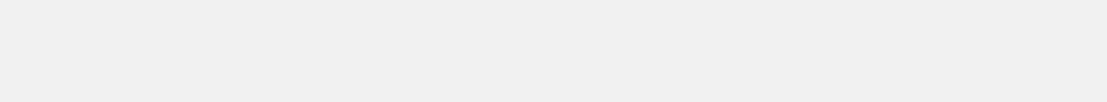
Urban Artifact v. Col. Christopher Paris: the lawsuit alleges that Pennsylvania's rules around **online DTC beer sales** discriminates against out-of-state brewers, putting them at an economic disadvantage in the state.

McKay et al. v. Sazerac Co. Inc.: Sazerac asked a federal judge not to grant class certification to buyers that claim the single-serving Fireball malt beverage misled them into thinking they were buying Fireball Cinnamon Whisky. Sazerac claimed that the surveys proposed by the class's expert do not show **deception**, arguing they do not accurately target Fireball buyers and do not account for factors such as product availability (i.e., the malt-based Fireball may be available in a place where Fireball Cinnamon Whisky is not).



Wholesaler Transactions

- Prestige-Ledroit Distributing Company acquired The Craft Coalition (HRI LLC).
- Frank B. Fuhrer Wholesale Co. purchased the beverage division from local food distributor Alber & Leff, representing the wholesaler's foray into non-alcoholic beverages.
- Southern Glazer's acquired Horizon Beverage. SGWS will operate under the Southern Glazer's Wine & Spirits of Massachusetts and Rhode Island names.
- Shangy's is selling distribution rights for 31 craft brands to L.T. Verrastro (Pennsylvania).
- Columbus & Delmar Distributing Co. is acquiring The House of LaRose (Ohio).
- AB One is being taken over by Martignetti-owned Quality Beverage in Massachusetts.
- AB's wholly owned distributor in Canton is being acquired by Erik Jenkins, president of The Columbus Distributing Co.
- Reyes is acquiring Cherokee's southern middle territory in Tullahoma and Pulaski, Tennessee.
- Hayden Beverage (RNDC) acquired Idaho Wine Merchant.



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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