

Beverage Breakdown

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Welcome to Nutter's *Beverage Breakdown*, a periodic legal update on 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.

Industry News

According to reports, Bacardi was temporarily blocked from exporting Patron tequila out of Mexico earlier this year. The Tequila Regulatory Council (CRT) briefly revoked Patron's export certificate in response to Patron's U.S. advertising campaign that described the tequila as "**additive-free**," but the ban was allegedly rescinded when Bacardi removed the phrase from Patron's website. Bacardi announced it was in constructive conversations with CRT on the topic of additives in tequila. Our last edition of Beverage Breakdown highlighted the litigation filed by CRT against the "Additive Free Alliance, Inc."

American Beverage Licensees (ABL) (members include package store owners, bars, etc.) published a policy memo regarding state regulation of **intoxicating THC products**. The memo acknowledged the existing and growing markets for intoxicating THC products but recommends that states "draw upon the proven structures and practices used to regulate beverage alcohol" when building regulatory frameworks for these products. ABL joins a growing list of industry groups, regulators, and lawmakers looking to the alcohol regulatory scheme in trying to regulate THC products.

Texas Roadhouse has overtaken longtime leader Olive Garden as the U.S. systemwide sales leader according to data from Technomic on the 500 **largest restaurant chains** in the country. Texas Roadhouse's sales were \$5.5 billion, up 14.7% last year. Olive Garden's sales rose 0.8% to \$5.2 billion.

Federal/State Regulatory Updates

Federal Updates

The Federal Trade Commission (FTC) and the Office of Management and Budget (OMB) are seeking public comment on ideas for **deregulation**. OMB specifically requested that commenters "identify rules to be rescinded and provide detailed reasons for their rescission." FTC invited public comment on "how federal regulations can harm competition in the American economy."

TTB has extended the public comment period for its proposed rulemakings on allergen and alcohol facts labeling to **August 15, 2025**.

TTB reminded the industry to be mindful of **type size requirements** when changing container sizes. TTB authorized 13 new standards of fill for wine containers and 15 new standards of fill for distilled spirits containers, and while changing the net contents statement on a product label is an allowable revision to an approved label, simply decreasing the size of the label to fit the new container may result in a font size that is below the minimum type size requirements. Be mindful of these requirements when updating labels for new container sizes.

TTB announced its **Tax Simplification Pilot Program** for brewers. Those participating in the program will submit their excise tax returns and operation data using “new simplified and consolidated forms.” Eligible brewers interested in participating may submit a request on brewery letterhead to TTB using the agency’s Tax Simplification Contact Us webpage.

TTB reminded the industry that FDA’s revocation of the authorization for the use of brominated vegetable oil (BVO) in food and FD&C Red No. 3 applies to alcohol beverage suppliers. Those with existing approved formulas that have changed or will change to remove BVO and Red No. 3 must apply for **new TTB formula approval** prior to the applicable compliance dates (August 2, 2025 for BVO and, as of now, January 15, 2027 for Red No. 3).

FDA has determined that the microbial control agent **dimethyl decarbonate** (DMDC) may be used in the production of certain beer and distilled spirits products under specific limitations as part of FDA’s Food Contact Substance program.

Congress introduced the Sarah Katz Caffeine Act that if passed would require products containing 150mg or more of caffeine to bear a **warning label**. It would also consider a food (or dietary supplement) product misbranded unless it identifies the milligrams of caffeine it contains, a statement of whether the caffeine is an additive or naturally occurring, and an advisory statement about the recommended daily caffeine intake for healthy individuals.

Health and Human Services (HHS) Secretary Robert F. Kennedy Jr. announced a directive to food manufacturers asking that they voluntarily phase out the use of six **synthetic food dyes** by the end of 2026, including FD&C Green No. 3, FD&C Red No. 40, FD&C Yellow No. 5, FD&C Yellow No. 6, FD&C Blue No. 1, and FD&C Blue No. 2. Notably, this is **not a ban** on the use of these food dyes, and the agency has taken no steps to initiate rulemaking that would prohibit the use of the dyes. However, HHS did announce that it plans to revoke the authorization for Citrus Red No. 2 and Orange B, and its intention to accelerate the timeline for removal of FD&C Red No. 3 sooner than the previously imposed deadline.

FDA announced that it had granted three **new color additive petitions** to “expand the palette of available colors from natural sources for manufacturers to safely use in food” and has positioned the additives as potential substitutes for the synthetic dyes FDA seeks to phase out: galdieria extract blue, butterfly pea flower extract, and calcium phosphate. Note that each additive is approved only for specified uses.

FDA announced it would expand **unannounced inspections** at foreign manufacturing facilities that produce food intended for American consumers. In the past, foreign facilities would receive advance notice prior to facility inspections while domestic FDA-regulated facilities could be subject to an unannounced inspection. FDA offered no further details about implementation of this plan.

The Trump Administration has **closed a Centers for Disease Control and Prevention office** that produced data on alcohol-related harms and worked on policies to reduce them. The program had been in place for almost 25 years and provided funding, data assistance, and guidance to at least 11 states.

The CHEERS Act (Creating Hospitality Economic Enhancement for Restaurants and Servers Act) was reintroduced in Congress. The bill would provide **tax relief** to bars, restaurants, and other on-premise businesses that use energy-efficient draft beer systems.



State Updates

Alaska

Alaska has become the first state that will require retailers to add a **cancer warning** to the warnings that are already mandated about the dangers of consumption while pregnant. The law goes into effect on August 1.

Colorado

- Colorado's Liquor Enforcement Division issued Bulletin 25-01 regarding **shipment** of malt and spirituous liquor products. "It is illegal to ship malt liquors or spirituous liquors directly to a Colorado consumer, regardless of whether the shipment is from the inside or outside of the State of Colorado." Direct to consumer shipments of wine are permitted in Colorado, for properly licensed shippers. The issuance of the bulletin could potentially reflect an uptick in enforcement on illegal DTC shipments into the state.
- SB 33 has been signed into law. The law prevents **grocery stores** from obtaining new licenses to sell distilled spirits. A legislative initiative last session would have limited the sale of distilled spirits just to liquor retailers and added new restrictions on how grocery stores sell beer and wine failed, but this paired down version does not alter the rules around beer and wine sales in grocery stores.



Maryland

Maryland's legislature has approved an Extended Producer Responsibility (EPR) law. This is the sixth state to approve an **EPR program**.

Michigan

The Michigan Liquor Control Commission (MLCC) issued a reminder to the industry regarding alcoholic beverage **brand-logoed refrigerators** and other items. MLCC reminded retailers that the state prohibits licensed retailers from possessing refrigerators with the brand name or brand logo of alcoholic beverage brands on their licensed premises, even if the retailers purchased the items themselves. MLCC also prohibits suppliers or wholesalers from selling, giving, or loaning an alcoholic beverage brand-logoed refrigerator to a licensed retailer. The alert advised that any retailers with alcoholic beverage branded-logoed refrigerators on their premises should remove them or face violation.

Montana

HB 211 was signed into law last month that will allow for **third-party delivery** of beer and wine to consumers. The law creates a third-party delivery license and allows off-premise retail licensees to use delivery services, subject to strict compliance requirements.

Utah

HB No. 402 was signed into law and prohibits food items containing certain **food additives** from being provided in public school. The banned additives are Blue No. 1, Blue No. 2, Red No. 3, Red No. 40, Yellow No. 5, Yellow No. 6, Green No. 3, potassium bromate, and propylparaben. The law goes into effect for the 2026-2027 school year but does not apply to items sold in vending machines or concession stands at school events or extracurricular activities.

Texas

- The Texas Senate advanced SB 2225 that would allow spirits-based ready-to-drink cocktails (10% ABV or less) to be sold in **grocery and convenience stores** where beer and wine beverages are currently sold. The legislation as currently drafted would create a "ready-to-drink spirit beverage" definition. Importantly, the bill would also include ready-to-drink spirit beverages within the definition of "malt beverage" as used in the Malt Beverage Industry Fair Dealing Law (i.e., Texas' beer franchise law).
- Attorney General Ken Paxton announced his investigation into Kellogg, claiming that the company potentially violated consumer protection laws by advertising cereals with **artificial dyes** as healthy. This investigation is part of a wider trend of states taking action, both legislatively and now via the law enforcement arm state governments, related to food additives.

West Virginia

HB 2354 was signed into law banning the sale and distribution of food products with specific **artificial food dyes and chemicals**. The bill prohibits the use of the following dyes and preservatives in food products sold in West Virginia: Red Dye No. 3, Red Dye No. 40, Yellow Dye No. 5, Yellow Dye No. 6, Blue Dye No. 1, Blue Dye No. 2, Green Dye No. 3, Butylated hydroxyanisole, and propylparaben. Effective August 1, 2025, schools in the state are prohibited from distributing products with banned food dyes. Effective January 1, 2028, the bans will apply to all food products. West Virginia and Utah represent a growing trend of states independently regulating the use of food additives or dyes, creating a patchwork of regulatory requirements for brands to comply with.

Hemp/Cannabis Updates

Arizona

Arizona's Attorney General sent letters to retailers and law enforcement over the sale of THC products by **unlicensed stores**. "We recognize that some retailers may have misunderstood the law due to provisions related to hemp products in the Federal Farm Bill. However, Prop 207 is clear that THC products must be sold at establishments specifically licensed to do so..." The letter to retailers stated that the Farm Bill does not preempt any Arizona law, but because of the confusion, the AG's office would wait until the end of April to begin enforcement action against retailers selling THC-infused products without proper licensure.

Kentucky

SB202 to **regulate intoxicating hemp-derived beverages** is now law. The bill adds regulation of intoxicating hemp-derived beverages to the state laws that regulate alcoholic beverages, giving the Kentucky Department of Alcoholic Beverage Control the authority to oversee the products' distribution and sale. It also includes a cap of 5mg of THC on cannabis-derived drinks.

Ohio

SB 86 was approved by the Ohio Senate and now heads to the House for consideration. The bill would ban intoxicating hemp products from being sold in gas stations, convenience stores or any location that is not a licensed **recreational-use dispensary**.

Pennsylvania

A legal memorandum commissioned by Pennsylvania's medical marijuana industry provided that a proposal to implement **state-run retail marijuana stores** in PA similar to how the state regulates wine and spirits sales would likely be preempted by federal law. The opinion found that while the federal illegality of marijuana has not preempted other states from legalizing recreational marijuana, if the Pennsylvania Liquor Control Board—a public entity—were to directly operate and manage marijuana stores, it would trigger preemption issues: "unlike many de-criminalization statutes which merely refuse to take state action in furtherance of the CSA [Controlled Substances Act], an LCB role requires state action that plainly violates the CSA...it would require the LCB and its employees to directly 'distribute, or dispense, or possess with intent to...distribute, or dispense' cannabis in violation of the CSA." Pennsylvania's House of Representatives approved the bill to legalize recreational adult-use marijuana and regulate its sale through state-run stores, but it was later rejected by the Senate.

Tennessee

SB 1413/HB 1376 was passed in the Tennessee legislature which bans the manufacture, cultivation, production, or sale of products containing THCa, a precursor to delta-9 THC, in a concentration in excess of 0.3% on a dry weight basis. The law also transfers licensing, regulation, and enforcement from the Tennessee Department of Agriculture to the **Tennessee Alcoholic Beverage Commission**, effective January 1, 2026. In addition, the bill bans DTC sales of hemp-derived cannabinoid products, requires brand registration, assesses taxes on the products and makes other changes to the hemp-derived cannabis regulatory scheme.

Texas

The Texas House took up SB 3, the Senate bill that would **ban THC products** in Texas. Although an earlier House version would have allowed retailers to continue selling THC-infused products, subject to strict regulatory requirements, the version that ultimately passed the House bans Delta 8, Delta 9, and all other forms of intoxicating THC, including in beverages. The House's version will head back to the Senate for approval before submission to Governor Greg Abbott. Governor Abbott has not shared his stance on the legislation, but assuming it is not vetoed, the ban would take effect September 1.

Virginia

Governor Youngkin **vetoed** legislation that would have taxed and regulated the sale of adult-use cannabis.



Noteworthy Litigation

Tiz, Inc. d/b/a Provi v. Southern Glazer's Wine and Spirits, LLC et al.: A joint notice and request for stay of discovery was filed in early April notifying the court that the parties **"reached an agreement** in principle to resolve this suit... subject to negotiation and execution of a definitive agreement." Provi and RNDC also announced their own agreement in principle in their antitrust dispute.

Veronika Ward v. Pepperidge Farm Inc.: In a classic class action claim, a judge held that Pepperidge Farm's labeling of its Goldfish crackers as containing no artificial flavors or preservatives when the ingredient list identifies the products as having **citric acid** could be deceptive to reasonable consumers. The judge denied Pepperidge Farm's motion to dismiss the suit, finding that the plaintiff sufficiently pled that citric acid is an artificial preservative in the products. A similar claim was also recently filed against Target related to its no-artificial preservatives labeled pasta sauce that allegedly contains synthetically manufactured citric acid (that case is *Jennifer Deforest v. Target Corp.*).

Kimberly Banks et al. v. R.C. Bigelow Inc.: A class of tea buyers were awarded \$2.36 million in damages in a suit against R.C. Bigelow that alleged Bigelow committed fraud and violated California's Consumer Legal Remedies Act by labeling some of its teas as **"Manufactured in the USA 100%."** A prior ruling in the case found that the label at issue was "literally false" because a significant majority of the tea used by the company was imported. The jury was left to decide if Bigelow acted intentionally to mislead consumers or was reckless, and what damages should be awarded, if any. Bigelow's attorneys had argued that "Manufactured in the USA" was meant to reference Bigelow's facilities in the U.S. where the company's products are blended and packaged, not where the tea leaves are grown.

Federal Trade Commission v. Southern Glazer's Wine and Spirits LLC: U.S. District Judge Fred Slaughter **refused to dismiss** the FTC's case against Southern, rejecting the distributor's argument that the activities at issue did not constitute interstate commerce and finding that FTC had adequately alleged unfair treatment of smaller retailers for the case to proceed. Southern had argued that the fact that alcohol sits in an in-state warehouse before it is sold on to a retailer means its sales were not in interstate commerce, but Judge Slaughter was "unpersuaded" by that argument.

BBSR LLC v. Anheuser-Busch LLC: A judge ruled that parts of a **contract dispute** between Anheuser-Busch (AB) and BBSR related to AB's acquisition of SpikedSeltzer from Boathouse Beverage LLC must go before a jury. According to the complaint, the contract that contemplated the sale of the brand required AB to pay royalties to the sellers based on SpikedSeltzer's sales for a fixed period, but if

AB launched a competitive product, AB would have to pay the sellers a cut of the competing product sales. AB would later launch Bon & Viv, alleging it was an extension, evolution, or rebrand of the Boathouse product line. This designation resulted in a cap applying to the payouts under the contract. The judge ruled that a jury must decide whether Bon & Viv was a Boathouse product or a competing product. BBSR estimated damages at \$75 or up to \$90 million.

Major Brands Inc. v. Mast-Jägermeister US Inc. et al.: SGWS issued a statement announcing that the lawsuit filed by Major Brands against Mast-Jägermeister and SGWS had been **resolved**. In November, the Eighth Circuit overturned a jury's verdict that Jägermeister must pay Major Brands \$11.75 million after terminating their distribution agreement. The ruling held that the jury was mis-instructed and a new trial is required. The jury was instructed to decide whether Major Brands' investments in the Jägermeister deal were "substantially specific to the brand," but according to the ruling, the right test of whether there is a community of interest between the supplier and the distributor is whether Major Brands made "substantial investments not recoverable upon termination." The jury's instruction "failed to require consideration of the distributor's degree of economic dependence on this particular supplier relationship and whether, if the supplier ended the relationship, the distributor would suffer 'severe economic consequences.'" Major Brands request for en banc rehearing/panel rehearing was denied.



Out of State Retailer/Producer Shipping Litigation

- *Jean Paul Weg, LLC v. Director of New Jersey Division of Alcohol Control*: In the last edition of Beverage Breakdown, we outlined the Third Circuit's holding in this case but noted that the decision was quickly pulled down by the court. The Third Circuit **reissued the opinion**, changing only the names of the attorneys who represented the parties. The remainder of the originally published opinion was unchanged. As a reminder, the decision upheld a New Jersey law that allows only in-state retailers with a physical presence in New Jersey to ship wine directly to New Jersey consumers. The judges found that the law does not violate Commerce Clause and is within the state's authority over alcohol regulation granted by the 21st Amendment. The panel cited *Tennessee Wine & Spirits Retailers Association v. Thomas* in finding for the state, "Tennessee Wine clarified that it is not a standard dormant commerce clause inquiry that controls when a state's alcohol regulations are challenged, but instead a 'different inquiry' that asks of discriminatory regulations 'whether the challenged requirement can be justified as a public health or safety measure or on some other legitimate nonprotectionist ground...' New Jersey's law was justifiable on public health grounds, according to the judges.
- *Dwinell, LLC et al. v. Joseph McCullough et al.*: A judge **dismissed** a lawsuit challenging California's law allowing in-state wineries to self-distribute, arguing it unfairly discriminated against out-of-state producers. In granting summary judgement for California, the judge found that the wineries failed to demonstrate injury and neither winery had made actual business arrangements or provided convincing evidence of specific plans to sell wine directly to California retailers.
- *Shady Knoll Orchards & Distillery LLC et al. v. Washington Liquor and Cannabis Commission*: U.S. District Judge Thomas Rice **rejected** a New York distillery's challenge to a Washington regulation that requires distilleries have a physical in-state location to sell to Washington consumers online. The ruling held that the plaintiffs "have not demonstrated that Washington law creates an exception to Washington's regulatory scheme for in-state distilleries that out-of-state distilleries must otherwise be subjected to... Washington's licensing requirements for distilleries functioning as retailers applies evenhandedly to in-state and out-of-state actors."
- *The Obscure Distillery v. Lily M. Fan*: California craft distiller The Obscure filed suit against the New York State Liquor Authority (SLA) alleging New York's DTC spirits shipping law that allows out-of-state distillers to ship their products into New York if the distiller's home state reciprocally allows interstate shipping from New York distillers **violates the dormant Commerce Clause**.
- *Derek Block, et al. v. Jim Canepa, et al.*: U.S. District Judge Sarah Morrison ruled **in favor of the state** in a challenge by an out-of-state retailer to Ohio's restrictions on out-of-state retailer shipment of alcohol. The court found that Ohio produced "concrete evidence that the Direct Ship Restriction and the Transportation Limit are essential components of Ohio's three-tier system, and operate with the predominant purpose and effect of promoting public health and safety."



Hemp/Cannabis Litigation

Al Qadomi et al. v. Lamont et al.: A group of hemp companies are seeking to maintain their suit against the state of Connecticut, claiming the state's laws regulating hemp are unconstitutionally vague and in violation of the 2018 Farm Bill. The companies argued that although the 2018 Farm Bill allows states to create stricter regulations on hemp, it prohibits states from **redefining hemp** which the litigants say Connecticut's regulations do. The latest brief was filed in response to Connecticut's motion to dismiss the suit.

Cocroft et al. v. Graham et al.: The Supreme Court declined to hear a case challenging Mississippi's policy outlawing medical marijuana advertisements as violative of the **First Amendment**. This leaves a Fifth Circuit ruling in place that held that marijuana dispensaries do not have First Amendment protections because selling marijuana is illegal at the federal level.

Wholesaler Transactions

- Hand Family Companies announced its planned acquisition of Stone Distributing Co. and Classic Beverage, which will sit under the newly formed Sunset Distributing subsidiary (California).
- Carenbauer Distributing announced its planned acquisition of Waldorf Distributing (West Virginia).
- Johnson Brothers announced its planned acquisition of Albemarle Distributing Company's wine business (North Carolina).
- KEG 1 announced its planned acquisition of Iowa Beverage (Iowa).
- Johnson Brothers announced its planned acquisition of Maverick Beverage Company (Texas, Arizona, Colorado, and Florida).
- KEG 1 Missouri announced its planned acquisition of Folsom Distributing's non-alc portfolio (Missouri).
- Andrews Distributing announced its planned acquisition of Southern Distributing (Texas).



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