AT THE BAR WITH BOWDITCH

A Legal Blog for the Craft Brewing Community

Crafty Labels Bring Risks of Litigation

BY JENNIFER L. GARNER • JULY 23, 2018

It's no secret that consumers care about what's in the bottles and cans they're consuming. Bearing that in mind, it's not surprising that there's a growing body of litigation arising out of "false and misleading" labeling claims. Contract brewers, because they often partner with existing brewery facilities and may not have a physical brewery space, are all-too-familiar with navigating the Alcohol & Tobacco Tax & Trade Bureau ("TTB") regulations that prohibit labeling and advertising statements and graphics that are false or create a misleading impression. Contract brewers have to balance building a brand and reputation in the community against accurately communicating the source of their beer and avoiding misleading consumers about where their products are produced. It has proven a delicate balance.

With varying degrees of success, false and misleading labeling claims have crept into other aspects of describing a beer. Blue Moon's claim that its beer was "artfully crafted" landed MillerCoors in a lawsuit over whether its product was misleading in calling itself a "craft" beer. Similarly, Wal-Mart was sued for creating Trouble Brewing, a brand that markets and prices its product as craft beer, even though the facility at which the beer is brewed produces large quantities of beer and did not meet the Brewer's Association definition of "craft brewery." Other products have endured similar challenges – Tito's Vodka was sued for claiming that its vodka was "handmade" or "handcrafted."

It's clear that false and misleading advertising claims are starting to trend away from geographical misidentification and more toward how breweries describe their products to consumers. One hopes that, given the extensive regulation of labeling in this industry, the courts will adopt interpretations of these standards that will allow breweries to describe their products without risk of protracted litigation. Until then, breweries would do well to scrutinize their labels and tread lightly with their descriptions.