FROM SELTZER AND STATE LAWS TO PANDEMICS – LEGAL AND GOVERNMENT AFFAIRS UPDATE FOR SMALL BREWERS

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ROADMAP FOR DISCUSSION

- Relief available from COVID-19 legislation
- Applying the principles of the *Tennessee Wine & Spirits Retailers Association* case
- What the next Supreme Court alcohol decision might address?
- The legal underpinnings and policy implications of the hard seltzer boom
- Updates on
  - Distribution law
  - The Craft Beverage Modernization and Tax Reduction Act ("CBMTRA")
  - TTB trade practice investigations
  - TTB Notice 176 to "modernize" its labeling and advertising regulations

RELIEF FOR SMALL BREWERS UNDER THE CARES ACT

- The **COVID-19 virus** has put the United States, like most of the world, on something akin to a **wartime footing**
- Most notably for small brewers, the federal government has enacted a massive piece of legislation, the **Coronavirus Aid, Relief, and Economic Security Act** (the so-called **CARES Act** or "COVID 3") to address the economic fallout of the virus, such as the loss of business caused by stay-at-home orders
- Like the virus itself, the federal response is fast-moving and will evolve further in the months ahead
- Indeed, Democrats in the House and the Trump Administration already have agreed in principle to the need for further relief, so-called "**COVID 4**," legislation

RELIEF FOR SMALL BREWERS UNDER THE CARES ACT

- A key component of the CARES Act relief for small brewers (and small businesses generally) is the **Paycheck Protection Program** ("**PPP**")
- Through the PPP, small businesses that employ up to 500 employees (for breweries the number is 1,250) are eligible for loans through the federal **Small Business Administration** ("**SBA**")
- Loans are calculated based on the business' payroll costs
  - PPP loans are capped at **$10 million** per business
  - Loans can cover expenses from **February 15 through June 30, 2020**
  - Covered expenses include payroll, interest payments on mortgages, rent, and utilities
  - Covered expenses do not include payroll for employees making $100,000 per year or more

RELIEF FOR SMALL BREWERS UNDER THE CARES ACT

- PPP loans are forgiven to the extent that businesses retain employees making less than $100,000 per year during the covered period (Feb. 15 through June 30)
- Those portions of PPP loans that are not forgiven are payable for up to a maximum of 10 years at a maximum interest rate of 4%
- Another feature of the CARES Act expands the **Economic Injury Disaster Loan** ("**EIDL**") program to cover COVID-19 related losses
- The EIDL program provides loans to small businesses, with a cap of 1,250 employees for breweries (a 500 employee cap is the default)

RELIEF FOR SMALL BREWERS UNDER THE CARES ACT

- The CARES Act authorizes EIDL loans on specific terms:
  - Loan amount based on the amount of loss suffered by the business, **up to $2 million**
  - For small businesses, a **3.75% interest rate**
  - Payments terms **up to 30 years**
- The CARES Act also waives a number of eligibility criteria normally required for EIDL assistance
  - No one-year in business minimum prior to applying for the loan
  - No need to provide tax returns as part of the application
- The EIDL program also provides for a **$10,000 emergency grant** available within three days
- **Money from an EIDL loans cannot be used for the same purpose as a PPP Loan**
- The CARES Act authorizes small businesses with an existing SBA lender to obtain **bridge loans** of up to $25,000 to cover COVID-19 losses

RELIEF FOR SMALL BREWERS UNDER THE CARES ACT

- The CARES Act establishes an **employee retention tax credit** on wages paid, up to $10,000 per employee, during the crises
- Brewers that can show they were disrupted due to stay-at-home requirements and similar virus-related restrictions, and brewers that experience a decrease in gross receipts of 50% or more (compared to the same quarter last year), can take the tax credit
- The CARES Act **defers employers' Social Security payroll tax payments**, with catch-up payments due in 2021 and 2022
- The CARES Act **increases the net interest deduction limitation**, from 30% of EBITDA to 50% of EBITDA for 2019 and 2020

OTHER COVID-19 RELIEF

- TTB has announced a **ninety-day deferment of excise tax payments due**
- TTB will also view COVID-19 caused delays as grounds to waive excise tax penalties
- TTB has relaxed its consignment sale regulations (more later) and streamlined the approval process required to produce hand sanitizer
- States, too, have announced a host of relief under their respective alcohol beverage laws in light of the crises, such as **relaxing**
  - **Tied-house rules** in order to permit brewers and distributors to provide assistance to retailers;
  - **Consignment sale rules** to permit brewers and distributors to take back beer in situations where they ordinarily could not;
  - **Credit rules** to permit retailers to defer payment for beer that cannot be sold due to stay-at-home orders and similar restrictions

APPLYING *TENNESSEE WINE & SPIRITS RETAILERS ASSOCIATION*

- Last year's *Supreme Court decision in Tennessee Wine & Spirits Retailers Association v. Thomas* could (as in maybe) have a significant impact on state laws mandating an in-state three-tier system
- The scope and nature of the changes will play out in the courts and state legislatures over the next several years
- Here's why . . .

COMMERCE CLAUSE v. 21ST AMENDMENT RECAP

- The Constitution's **Commerce Clause** gives Congress the power to regulate interstate (between states) and international (between the U.S. and other countries) commerce
- Since the late 1800s, the U.S. Supreme Court has applied the so-called "**dormant Commerce Clause**" to strike down state laws deemed inconsistent with the commerce-regulating powers granted to Congress
- Today, courts recognize three ways state law can violate the dormant Commerce Clause
  1. By **discriminating** against out-of-state interests in favor of in-state interests
  2. By regulating in an **extraterritorial** manner (*i.e.*, trying to regulate conduct outside the state)
  3. By placing an **unreasonable burden** on interstate commerce

COMMERCE CLAUSE v. 21ST AMENDMENT RECAP

- But the Twenty-first Amendment to the Constitution, in addition to repealing Prohibition, also gives states some additional authority to regulate the distribution and sale of alcohol beverages
- The **tension between the dormant Commerce Clause and the 21st Amendment** has received Supreme Court attention since the 1930s
- That tension, determining how much additional authority states have to regulate alcohol, lies at the heart of the *Tennessee Wine & Spirits Retailers Association* case

COMMERCE CLAUSE v. 21ST AMENDMENT RECAP

- Early Supreme Court cases in the 1930s suggested that the 21st Amendment gave each state virtually unlimited authority to regulate the sale and distribution of alcohol within its borders
  - These early cases suggested that state laws, even those discriminating against out-of-state interests, were immune from dormant Commerce Clause scrutiny
- But beginning with the 1965 case of ***Hostetter v. Idlewild Bon Voyage Liquor Corp.*** the Supreme Court ruled that state laws regulating alcohol were not immune from legal challenges for conflicting with congressional powers to regulate commerce
- Relying on *Idlewild* and several later cases, in 2005 the Supreme Court decided ***Granholm v. Heald***

GRANHOLM v. HEALD (2005)

- *Granholm* held that if a state gave in-state wineries the right to bypass the three-tier system by selling and shipping directly to consumers, that state could not then discriminate against out-of-state wineries by prohibiting them from shipping directly to consumers' homes
  - The combined effect of *Granholm* and advocacy by the country's 10,000+ wineries means that **U.S. wineries today can ship wine directly to consumers in 46 states**
- But in the years after *Granholm*, some U.S. courts of appeal held that the 21st Amendment limited the reach of the Commerce Clause's non-discrimination principle to state laws **regulating producers and products only**, not laws regulating wholesalers or retailers

TENNESSEE WINE & SPIRITS RETAILERS ASSOCIATION v. THOMAS (2019)

- Last year's *Tennessee Wine & Spirits Retailers Association* ("*TWSRA*") decision emphatically rejected the notion that Commerce Clause non-discrimination principles were limited to laws regulating producers and products
  - In short, a litigant can try to challenge any state law regulating alcohol on dormant Commerce Clause grounds
  - But how likely such legal challenges will succeed remains unknown
- In *TWSRA*, the Supreme Court instructs federal courts to examine any state law challenged as discriminatory (and presumably those challenged as placing an unreasonable burden on interstate commerce) on a **case-by-case basis**

TENNESSEE WINE & SPIRITS RETAILERS ASSOCIATION v. THOMAS (2019)

- Going forward, courts will scrutinize state alcohol laws challenged as discriminatory to determine if they can be justified as a **legitimate public health or safety measure**
- States must justify laws by presenting **concrete evidence**, not mere speculation
- Courts will strike down laws with a predominant effect of protectionism, and not protecting public health or safety
- In effect, *TWSRA* appears to establish a form of "**intermediate scrutiny**" for state laws regulating alcohol – with such laws receiving more scrutiny than a "rubber stamp" but something less than virtually *per se* unconstitutionality
- How this standard plays out will require more court decisions (precedent)

IMPLICATIONS OF *TWSRA*

- The laws struck down in *TWSRA* involved "**durational residency**" requirements (*i.e.*, only a company owned by persons who were residents of Tennessee for at least two years could receive an off-premise retail license)
- But the ability to challenge any state law on Commerce Clause grounds implicates many other laws . . .
- Most states **permit in-state retailers** to sell and deliver alcohol (sometimes all commodities, sometimes limited to wine and/or beer) to consumers' homes
- At the same time, most states **prohibit out-of-state retailers** from selling or shipping directly to the state's consumers
- Does this violate the dormant Commerce Clause?

IMPLICATIONS OF *TWSRA*

- The Supreme Court Justices unquestionably recognized these implications when they were considering *TWSRA*, with Justice Gorsuch asking at oral argument whether a *TWSRA* plaintiff (Total Wine) wanted to become "**the Amazon of liquor**"
  - Notably, Gorsuch dissented in *TWSRA*, perhaps hinting that other Justices were less concerned with the prospects of opening up the country to interstate shipping by wholesalers and retailers
- Plaintiffs represented by the same attorneys that brought many of the cases leading up to *Granholm* have challenged state laws on retailer wine shipping in many states
  - One U.S. Court of Appeals (the Seventh Circuit, with jurisdiction over federal appeals from Illinois, Indiana, and Wisconsin) already has held that state shipping laws discriminating between in- and out-of-state retailers are unconstitutional under the Commerce Clause
- Temporary changes to authorize more direct-to-consumer deliveries by restaurants and other business with retail privileges (often including brewers and brewpubs) in response to the COVID-19 crises may influence the outcome of these cases

IMPLICATIONS OF *TWSRA*

- Although the current retailer shipping cases focus on wine, assuming the same discriminatory laws exist for beer **courts would not likely draw different conclusions based solely on the differences between beer and wine**
- A broad application of *TWSRA* could give rise to much more legal
  - **Direct-to-consumer sales and shipments by retailers** employing centralized warehousing to cover multiple states, much like Amazon distributes most goods today
  - **Cross-border distribution by wholesalers**, with multi-state territories serviced by vehicles operating from a central warehouse
- BUT, at least until "temporary" changes were announced in the wake of COVID-19, few states allow breweries (even in-state breweries) to sell and ship directly to consumers' homes; consequently, activity in the courts alone will not substantially open direct-to-consumer opportunities for U.S. breweries

THE NEXT SUPREME COURT CASE?

- The Supreme Court will likely allow the issues raised by *TWSRA* to "percolate" for years before agreeing to consider its next dormant Commerce Clause case involving a state law regulating alcohol
  - Having clarified how to examine such cases, the Court wants to give "lower" courts the opportunity to apply the clarified standard to particular state laws
  - Since the 1930s the Supreme Court has agreed to hear dormant Commerce Clause cases involving the sale or distribution of alcohol infrequently; *i.e.*, decisions in 1985 (discriminatory tax), 1986 (extraterritoriality), 1989 (extraterritoriality), 2005 (discriminatory law), and 2019 (discriminatory law)
- But that does not necessarily mean that the Supreme Court will not consider another issue involving the intersection of alcohol and the law . . .

POSSIBLE ISSUE – THE FIRST AMENDMENT

- The **First Amendment** to the Constitution (among other things) prevents Congress (and the states by way of the **Fourteenth Amendment**) from making laws that suppress free speech
- Since the 1970s, courts have extended First Amendment protection to so-called "**commercial speech**" – speech seeking to promote a commercial transaction, such as labeling and advertising
- Some of the most important commercial speech precedents involve alcohol
  - ***Rubin v. Coors*** (1995) – Striking down the federal ban on alcohol content labeling for malt beverages (beer) contained in the Federal Alcohol Administration Act
  - ***44 Liquormart v. Rhode Island*** (1996) – Striking down a Rhode Island law prohibiting price advertising of alcohol beverages

POSSIBLE ISSUE – THE FIRST AMENDMENT

- For many years, courts have applied a four-part test (the "***Central Hudson* test**") to examine laws restricting commercial speech
  1. To be protected, the speech must involve a lawful activity and be truthful

  Then, to survive scrutiny, the challenged law must

  2. Concern a substantial governmental interest;
  3. Directly advance the achievement of that substantial interest; and
  4. Be no more restrictive than reasonably necessary to achieve its goal
- Some have interpreted case law of the past decade (*e.g.*, *Sorrell v. IMS Health* (2011)) to limit the application of the *Central Hudson* test
  - Where a restriction on commercial speech discriminates based on the identity of the speaker or the content of the speech, then the law receives "strict" and not "intermediate" scrutiny, meaning that the courts are more likely to find the law unconstitutional

POSSIBLE ISSUE – THE FIRST AMENDMENT

- A current looming issue involves the intersection of the First Amendment and federal and state **"tied-house" laws and regulations**
- Many tied-house provisions prohibit or restrict advertising and promotion, such as
  - Prohibiting a brewer or wholesalers from paying for an advertisement placed by a retailer
  - Prohibiting or severely restricting the ability of a brewer or wholesaler to mention a retailer in its advertisements
  - Prohibiting "cooperative advertising" between a brewer or wholesaler (on the one hand) and a retailer
- Since all such restrictions limit or prohibit truthful commercial speech about a lawful product, a court might find that they violate the First Amendment

POSSIBLE ISSUE – THE FIRST AMENDMENT

- ***RDN v. Prieto*** (9th Circuit, 2017)
- Plaintiff Retail Digital Network's business model was to install television monitors in retail locations, paying rent to the retailer and getting revenue by selling advertising on those monitors
- Alcohol beverage producers would not signup due to concerns that the business model would violate California's tied-house laws
- After lengthy litigation and several decisions, the full ("*en banc*") 9th Circuit Court of Appeals upheld California's tied-house laws as constitutional
- The 9th Circuit relied heavily on a 1987 First Amendment challenge to California's tied-house laws

- ***Missouri Broadcasters Ass'n v. Schmitt*** (8th Circuit, 2020)
- Plaintiff trade association challenged Missouri laws prohibiting suppliers and wholesalers from advertising at retail, out-of-store retail price advertisement, and in-store advertisement of below-cost sales
- After lengthy litigation involving two trips to the 8th Circuit Court of Appeals, the Court of Appeals held that the laws were unconstitutional
- Some of the provisions struck were almost identical to certain TTB tied-house regulations

POSSIBLE ISSUE – EXTRATERRITORIALITY

- In addition to prohibiting discrimination against out-of-state interests, **the Commerce Clause does not allow state laws to operate extraterritorially**
- An extraterritorial law is one that has the "practical effect" of regulating conduct outside of its borders
- And because the 21st Amendment, by its very language, only gives states the power to regulate the consumption, sale and use of alcohol within its borders, it does not provide any authority for a state to pass laws with an extraterritorial effect
  - ***Brown-Forman v. New York State Liquor Authority*** (1986) – New York could not require suppliers to sell to New York wholesalers at a price as lower or lower than the price offered to wholesalers nationwide
  - ***Healy v. Beer Institute*** (1989) – Connecticut could not require out-of-state shippers of beer to affirm that their prices were no higher than the prices offered in the states bordering Connecticut

POSSIBLE ISSUE – EXTRATERRITORIALITY

- In spite of *Brown-Forman* and *Healy*, in the past decade alcohol regulators in several states have become increasingly bold in asserting their ability to regulate extraterritorially
  - New York, for example, claims that it as part of the licensing process for a retailer or brewpub in the state, it can examine whether brewpub operations in other states are restricted in a manner similar to the way New York restricts brewpub operating within the state
  - In California, the state views licensed wholesaler operations in any state – operations that do not operate in or sell into California – as creating cross-tier obstacles to retail licensing under its tied-house laws

THE LEGAL UNDERPINNINGS AND IMPLICATIONS OF THE HARD SELTZER BOOM

- Most of the new "**hard seltzers**" operate under different federal regulations than conventional beer products
- Some of those differences may at least partially explain the **phenomenal success** of the hard seltzer category
- Moreover, the success of products operating under a substantially different regulatory regime may point the way towards more far-reaching legal changes in the future . . .

MALT BEVERAGES v. HARD SELTZERS UNDER FEDERAL LAW

MALT BEVERAGE

- Most conventional beers are TTB-regulated "**malt beverages**"
- Requires at least some malted barley and hops (hop extracts count)
- Requires fermentation, but with no lower or upper alcohol threshold
- Includes de-alcoholized "N/A" beers
- To TTB, an "**FMB**" is simply a malt beverage with flavors – everything from mike's hard lemonade to a raspberry stout

IRC/FDA "BEER"

- Most hard seltzers are so-called "**IRC beer**" / "**FDA beer**"
- Only requires fermented malt or "substitutes for malt"
  - Substitutes for malt include sugar
- Requires 0.5 ABV or higher
- Would not include de-alcoholized N/A beers
- Includes sake and non-barley beers

MALT BEVERAGES v. HARD SELTZERS UNDER FEDERAL LAW

- TTB regulates malt beverages under the authority of the **Federal Alcohol Administration Act** ("**FAA Act**")
- The FAA Act includes
  - Regulation of malt beverage labeling and advertising (27 C.F.R., Part 7)
  - Regulation of trade practices, with specific provisions on exclusive outlet, tied-house, commercial bribery, and consignment sales (27 C.F.R., Parts 6, 8, 10 and 11)
  - "Basic permit" requirements for wholesalers and importers of malt beverages (27 C.F.R., Part 1)
- These provisions do not apply to a "beer" product that does not meet the FAA Act's definition of a malt beverage

MALT BEVERAGES v. HARD SELTZERS UNDER FEDERAL LAW

- A non-malt beverage can still qualify as beer (like most hard seltzers do) if they do not contain any malted barley, yet still derive their alcohol from a fermented "substitute for malt" like sugar
- As such, federal law
  - Taxes these products under the federal excise tax on beer
  - Regulates the domestic production of such products under TTB's brewery regulations (27 C.F.R, Part 25)
  - Requires a government warning statement on the label (27 C.F.R., Part 16)
  - Regulates the labeling of such products primarily under the federal **Food, Drug and Cosmetic Act** ("**FD&C Act**") administered by the federal **Food & Drug Administration** ("**FDA**")

SUMMARIZING THE DIFFERENCES

- Hard seltzers bear labels that look like the labels for most non-alcohol food and beverage products
- Hard seltzer labels disclose basic nutritional information (calories, carbohydrates, etc.) and include an ingredient statement
- Hard seltzer labels do not require a Certificate of Label Approval ("COLA") or other federal government pre-approval
- Some claims permitted by FDA are banned as "health statements" by TTB
- Hard seltzers enjoy this status even though they also benefit from the favorable (when compared to distilled spirits) beer excise tax rate

HARD SELTZERS UNDER STATE LAW

- **States employ a variety of statutory definitions** for fermented grain products – "beer," "malt beverage," "malt liquor," etc.
- But states generally do not recognize the same malt v. non-malt distinction that federal law does
  - Some states require hops, which hard seltzer producers meet through a *de minimis* hop addition
  - Some states require "grain," raising the question of whether sugar cane (a type of grass) qualifies
  - Florida changed its law to eliminate the malt requirement
- As a matter of practice, all states now appear to accept hard seltzers as the equivalent of beer for purposes of their state alcohol codes

POLICY IMPLICATIONS OF THE HARD SELTZER BOOM

- For years, the industry, including brewers, have resisted calls for
  - Mandatory nutritional labeling;
  - Mandatory ingredient labeling;
  - Moving towards FDA-style labeling; and
  - Folding TTB labeling functions into FDA
- Given the success of hard seltzers and, to a lesser degree, other primarily FDA-regulated products like hard cider, **these old positions are open to question**
- Indeed, comments from consumers and retailers suggest that transparency on the subjects of calories and ingredients plays a key role in hard seltzer's success

POLICY IMPLICATIONS OF THE HARD SELTZER BOOM

- Hard seltzer also further **blurs the lines between beer and other alcohol beverages**, notably distilled spirits
  - Indeed, hard seltzers appear to appeal to the same consumer as a vodka-and-soda, yet doing so with substantial tax and distribution advantages
- Should the beer industry embrace this category as the long-sought antidote to spirits' growing popularity among consumers?
- Or should the beer industry fear that the continued blurring of lines will eventually lead down the path of tax and regulatory "**equivalency**" among beverage types?
- Is there a middle ground?

DISTRIBUTION LAW DEVELOPMENTS

- The COVID-19 crises has prompted many states to **temporarily** relax rules on to-go and direct-to-consumer delivery of alcohol beverages by in-state retailers
  - While stay-at-home orders have shuttered most on-premise establishments, state and local governments also have recognized food production and sale (including of alcohol beverages) as "essential" and allowed on-premise retailers to stay in business to engage in to-go and delivery sales
  - Most states have included brewers with retail privileges within these new on-premise delivery rights
    - Notable exception: Nevada required beer to be accompanied by a meal, limiting retail privileges to brewers with a full kitchen
- Key questions:
  - When will these "temporary" measures end? (Perhaps we face a "**new normal**"?)
  - How will consumers' experience with more direct-to-consumer buying and retailers' experience with making such sales affect the political balance of forces on the subject of DTC sales generally?

DISTRIBUTION LAW DEVELOPMENTS

- In **California** – a state without a comprehensive beer "franchise" law to date – distributor interests are backing comprehensive franchise legislation over the objection of the state's craft brewers
  - To date, no hearing has been set on the measure, and it has not made significant progress in the legislature
  - In March the federal **Department of Justice** and **Federal Trade Commission** provide a California legislator with a joint letter explaining the negative competitive implications of the bill
- **Franchise reform** legislation was introduced in several states
  - Florida
  - Kentucky
  - Georgia
  - Massachusetts

CRAFT BEVERAGE MODERNIZATION & TAX REDUCTION ACT ("CBMTRA") UPDATE

- In late December Congress extended CBMTRA by one year – through the end of 2020
- Legislative sponsors of the bill to make CBMTRA permanent, as of April 7, 2020
  - **House H.B. 1175** (Kind) – 342 co-sponsors
  - **Senate S.B. 362** (Wyden) – 73 co-sponsors
- "COVID 4" relief legislation expected in the next several months may provide a favorable vehicle for enacting CBMTRA permanently

TRADE PRACTICE ENFORCEMENT UPDATE

- TTB "**Offer-in-Compromise**" **settlements** in the past year
  - **Stern Beverage** (an Illinois beer wholesaler; Dec. 2019) – $350,000 accepted for alleged exclusive outlet and tied-house violations
  - **Carisam Samuel-Meisel** (a ship chandler based in Florida; Dec. 2019) – $450,000 for alleged tied-house violations related to Heineken's "BrewLock" draught system
  - **Crown Imports** (Constellation Beer; May 2019) – $420,000 for alleged tied-house violations involving payments to a third-party promotional company
  - **Heineken USA** (March 2019) – $2,500,000 for alleged exclusive outlet and tied-house violations involving payments to retailers, payments to offset costs of the BrewLock system, and other factual allegations

TRADE PRACTICE ENFORCEMENT UPDATE

- TTB also continues to accept one-day suspensions from small wineries for alleged **consignment sale violations**, all involving the same wholesaler
  - TTB delayed bringing an "Order to Show Cause" administrative action against the wholesaler, reportedly the only "deep pocket" with the resources to contest TTB's consignment sale allegations
  - The case against the wholesaler is now pending
- But the anticipated "big one" involving big brewer **sponsorships of sports and entertainment venues** has yet to materialize
  - Did Anheuser-Busch call TTB's bluff and refuse to settle?

TRADE PRACTICE ENFORCEMENT UPDATE

- While TTB certainly had ramped up its trade practice enforcement (powered by an additional $5 million per year from Congress), that may be coming to an end
- COVID-19 has prompted TTB to **relax its consignment sale prohibition**
  - Brewers and beer wholesalers can take back beer that has become superfluous due to cancellation of events due to the crises
  - TTB also has advised The Brewers Association and others that brewers and wholesalers can take back beer that has become un-sellable due to the COVID-19 crises as long as the original sale was legitimate and did not involve an agreement or understanding that the buyer could return the beer
- In its "Budget Justification" to Congress, TTB recently indicated plans to shift enforcement resources away from trade practices and towards other areas, such as excise tax compliance

TTB LABELING AND ADVERTISING "MODERNIZATION" UPDATE

- **TTB Notice 176** proposed a re-write of the labeling and advertising regulations for malt beverages (beer), wine, and distilled spirits
  - Comment period closed in June of 2019
- The Notice proposed extensive changes to the organization and language of these regulations
- BUT the proposed changes were **notably timid** by avoiding controversial pending proposals (*e.g.*, mandatory alcohol facts labeling) and failing to acknowledge new issues (*e.g.*, regulations on claims like "natural" and "GMO free")
- Earlier this month TTB published its first "**Final Rule**" arising from Notice 176
- In the Final Rule TTB moves ahead with "non-controversial" changes and promises to address many "controversial" proposals at a later time

TTB LABELING AND ADVERTISING "MODERNIZATION" UPDATE

- The Final Rule, published on April 2, does the following for malt beverage (beer) labels and advertisements
  - Repeals the blanket prohibition on "strength claims" on beer labels and in beer advertisements
  - Relaxes the rules on using the terms "draft" and "draught" to allow brewers to freely use those terms on labels and in advertisements
  - Authorizes the use of a phone number, website, or email address to meet the advertising regulations' mandatory contact information requirement
  - Relaxes the rules on listing alcohol content by weight (in addition to listing alcohol content by volume) to permit uniform alcohol content labeling throughout the nation
- The new rules **become effective May 4, 2020**

THANK YOU / QUESTIONS?

Marc Sorini