Judge orders Anheuser-Busch to halt 'corn syrup' labels

Source: https://www.stltoday.com/

By DEE-ANN DURBIN

September 5, 2019

Big beer is still duking it out over corn syrup.

A federal judge on Wednesday ordered Anheuser-Busch to stop using Bud Light packaging that implies rival brews made by MillerCoors contain corn syrup. The order extends an injunction issued in May that barred Anheuser-Busch from making those claims in television, billboard and print advertising.

The cardboard packaging on Bud Light six-packs, 12-packs and 24-packs says "No Corn Syrup" in bold letters and invites customers to visit a website where it lists its ingredients. Bud Light is brewed with water, barley, rice and hops.

MillerCoors uses corn syrup in the fermentation process for Miller Lite and Coors Lite, but the final product doesn't contain corn syrup. It says Anheuser-Busch's campaign is illegal and bad for the industry.

"With this ruling, we are holding Bud Light accountable for their actions, and we will keep holding their feet to the fire every time they intentionally mislead the American public," MillerCoors CEO Gavin Hattersley said in a statement.

In Wednesday's decision, Milwaukee-based U.S. District Judge William Conley said Anheuser-Busch can use the packaging it has until it runs out or until March, whichever comes first. The decision says that as of June 6, Anheuser-Busch had printed 64 million packages worth $27.7 million with the "No Corn Syrup" icon.

MillerCoors had asked Conley to force Anheuser-Busch to cover the corn syrup icon with a sticker, but Anheuser-Busch claimed those stickers would cost $76 million, an estimate Conley said was "absurdly high."

MillerCoors sued its rival in March, saying Anheuser-Busch had spent as much as $30 million on a "false and misleading" campaign, including Super Bowl ads that showed Bud Light knights delivering a barrel of corn syrup to a Miller Lite castle. Conley said MillerCoors has demonstrated a likelihood of success in its claim that it has been irreparably harmed by Anheuser-Busch's campaign.

"In light of the limited number of beers in the light beer market, with Bud Light, Miller Lite and Coors Light accounting for almost 100% of sales, that same jury could also find a substantial segment of consumers would infer that Bud Light's principal competitors contain corn syrup," Conley wrote in Wednesday's decision.

Anheuser-Busch said Wednesday it looks forward to defending its position in court.

"MillerCoors is resisting consumer demands for transparency in the ingredients used to brew its beers, but those demands are here to stay. We will continue leading this movement in the beer industry," the company said.

But the campaign has come at some cost to Anheuser-Busch. After the Super Bowl, the vice president of the National Corn Growers Association posted a video of himself pouring a can of Bud Light down his drain.

Ironically, Anheuser-Busch, which is owned by Belgium-based Anheuser-Busch InBev SA/NV, brews some of its beers - including Natural Light, Busch Light and Rolling Rock - with corn syrup. MillerCoors, which is owned by Denver-based Molson Coors Brewing Co., brews many of its beers without corn syrup, including Blue Moon Belgian White and Pilsner Urquell.

Photos: https://www.stltoday.com/business/local/judge-orders-anheuser-busch-to-halt-corn-syrup-labels/article_f0893239-5787-571f-ba80-7a6e62e3e172.html#1

Anheuser-Busch Can't Duck Trademark Spat With Patagonia Over Beer

Source: https://www.courthousenews.com/

MARTIN MACIAS JR

September 4, 2019

Global beer giant Anheuser-Busch must face claims it unlawfully appropriated the brand and environmentalist identity of outdoor clothier Patagonia when it produced a beer by the same name, a federal judge ruled Tuesday.

Founded in the 1960s, the California-based Patagonia is a leading developer and retailer of outdoor sports apparel and gear. The company has gained recognition for its work to stem the use of pesticides in conventional cotton production and pledging money for environmentalist causes, including donating $10 million from Black Friday sales in 2016.

Under Patagonia Provisions, a related company launched in 2012, the company also sells environmentally friendly goods such as jerky, granola, salmon and beer.

In April, Patagonia sued Anheuser-Busch claiming the brewer began selling "Patagonia Beer" under the shadow business name Patagonia Brewing Company and in bottles featuring a logo strikingly similar to Patagonia's mountain backdrop design.

Anheuser-Busch launched the beer at a Colorado ski resort, where employees clad in black down jackets handed out Patagonia logo scarves and beanies to customers and said the beer was part of its "tree positive" mission.

"In short, Anheuser-Busch has done everything possible to make it appear as though this Patagonia beer is sold by Patagonia," the complaint says, adding that Anheuser-Busch is trying to "confuse consumers" by claiming to hold similar environmentalist values.

Patagonia also claims Anheuser-Busch submitted false evidence to the U.S Patent and Trademark Office in order to obtain a "Patagonia" trademark previously held - and unused - by German beermaker Warsteiner.

Anheuser-Busch moved to dismiss the lawsuit, arguing the "Patagonia" mark is not sufficiently "famous" or widely disseminated to qualify for federal trademark protections.

But U.S. District Judge Virginia A. Phillips disagreed, writing in a 20-page order Tuesday that Patagonia has - at this stage in the proceedings - sufficiently shown its mark is both "famous and distinctive" and that promotion of its brand has factored in its $10 billion in sales since 1985.

"Assuming these allegations are true and construing the facts in the light most favorable to plaintiffs, plaintiffs have sufficiently alleged that its Patagonia mark is "famous" for purposes of its federal trademark dilution," Philips wrote.

Anheuser-Busch's attorney Bobby Ghajar of the Cooley law firm did not immediately respond to a request for comment. But in a statement, a spokesperson for the brewer said its Patagonia beer came to the United States from Argentina.

"As we've previously shared, Cerveza Patagonia beer was first brewed more than 10 years ago in Argentina. In 2012, Cerveza Patagonia beer was brought to the U.S., and we have owned the trademark since then. We stand behind our brand and we look forward to presenting these facts and defending our trademark rights," the Anheuser-Busch spokesperson said.

Phillips also denied Anheuser-Busch's request to dismiss on grounds that Patagonia failed to show that customers would associate their beer with its clothing and its brand of environmentalism. The brewer likewise failed in its argument that it had not abandoned the Cerveza Patagonia mark from Warsteiner despite not using the mark for five years.

Rob Tadlock, a member of Patagonia's legal team, applauded Phillips' ruling as "a well-reasoned opinion rejecting Anheuser-Busch's effort to avoid defending Patagonia's claims, including that Anheuser-Busch committed fraud on the Trademark Office and has deliberately tried to confuse customers into thinking that Patagonia Cerveza is produced by Patagonia, rather than Anheuser-Busch."

BEER PURCHASERS' INDEX

Source: https://www.nbwa.org/

September 5, 2019

Beer Purchasers' IndexThe NBWA Beer Purchasers' Index (BPI) is an informal monthly statistical release giving distributors a timely and reliable indicator of industry beer purchasing activity.

Similar to the widely recognized Purchasing Managers' Index, the BPI is a net rising index and a leading indicator of industry performance based on surveyed responses from participating beer purchasers.

Looking across the segments: ?

Repeating last months performance, the flavored malt beverage/progressive adult beverage (FMB/PAB) segment saw another significant increase over 2018 with an index reading of 82 compared to 69 in August 2018.

The craft index dropped below 50 for the first time in 2019 with a reading of 49. The last time the craft index dipped below 50 was October 2018.

The index for imports took a significant step down from 2018 highs, but remained in expansion territory with an index reading of 58 compared to the August 2018 reading of 68.

Premium lights and below premiums posted slight increases over 2018 readings, while premium regulars fell by 1 point compared to August 2018. All three segments continue to struggle with below 50 index readings for 2019.

The cider segment continues to show the most variability of any segment in the BPI, falling to 34. Cider orders continue to contract from peak readings in late 2018. This series will continue to play out as regional ciders brands compete aggressively against larger national cider brands.

UK is not the heaviest drinker in Europe as World Health Organization ranks it 20th out of 30 nations while Lithuania tops the chart with an average 15 LITRES of pure alcohol per person (Excerpt)

Europeans - including Britons - are the heaviest drinkers in the world

Some 290,000 deaths on the continent are caused by alcohol every year

The WHO warned progress on cutting down boozing rates is slowing down

It said efforts must continue to protect young people who are targeted by ads

Source: https://www.dailymail.co.uk/

By SAM BLANCHARD

4 September 2019

The UK isn't even close to being one of the heaviest drinking countries in Europe, figures have revealed.

Statistics showing how much each nation drinks every year showed people in Lithuania put away, on average, 15 litres of pure alcohol each.

Meanwhile, the UK drinks 11.4l of pure alcohol, ranking it 20th behind countries including Germany, Bulgaria and France.

Ireland, however, was the fourth worst ranked, with people there drinking an average of 13l of alcohol each, according to the World Health Organization's data.

Europeans drink more alcohol than anywhere else in the world which, researchers warned, kills hundreds of thousands of them every year.

News of the UK's apparently moderate habit comes after a survey earlier this year claimed Britons get drunk more often than any other nation in the world.

'Alcohol consumption has decreased in many European countries, but progress is grinding to a halt,' said the WHO's Dr Zsuzsanna Jakab.

'Policy-makers need to implement the strategies we know are effective, such as increasing prices, limiting availability and banning advertising.

'With as many as 800 people dying every day in parts of the region due to alcohol-attributable harm, we must do more to continue the fight.'

The international health authority compiled the report by gathering data on how many litres of pure alcohol people consume each year in each country.

Pure alcohol is measured as one millilitre for every percentage of the drink's strength if there is a litre of it.

A litre of 37.5 per cent vodka, for example, contains 375ml of pure alcohol. While a pint of five per cent strength lager would contain 28.4ml of pure alcohol.

Other heavy-drinking countries which followed Lithuania included the Czech Republic (14.4l of alcohol), Germany (13.4l), Ireland (13l) and Luxembourg (13l).

At the other end of the scale, Norwegians and Italians drank the least alcohol, consuming 7.5l of alcohol per year - exactly half of what Lithuanians drink.

Malta, the Netherlands, Croatia and Sweden all also recorded less than 10l of alcohol per person.

The WHO said it was important to crack down on heavy drinking because of its devastating health consequences.

Alcohol is to blame for more than 290,000 deaths in Europe every year, with three quarters of those (76.4 per cent) down to cancers, liver cirrhosis and heart disease, the report said.

A further 18.3 per cent of the deaths - more than 50,000 people - are caused by alcohol-related road accidents, suicides and murders.

And one in four deaths among young adults are caused by alcohol, it warned, most often as a result of accidents and injuries sustained after drinking.

The figures come after a report called the Global Drug Survey in May said people in the UK admitted to getting drunk more often than any other nationality.

In a report covering 36 countries, people from the UK admitted to getting drunk 51 times per year on average - almost once a week, The Guardian reported.

In light of today's report the WHO's Dr Carina Ferreira-Borges added: 'When alcohol is one of the biggest killers of our young people, we cannot afford to be complacent.

'This is a product that is repeatedly marketed and made available to youth despite evidence that alcohol consumption has a detrimental effect on brain development and physical health.

'This is the next generation of leaders and we must protect them.'

Charts / tables: https://www.dailymail.co.uk/health/article-7426851/The-heaviest-drinkers-Europe-People-Lithuania-drink-15-LITRES-pure-alcohol-year.html

Related story: https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(19)30174-4/fulltext

Diageo Scotland GMB strike action confirmed

Source: https://www.thespiritsbusiness.com/

by Nicola Carruthers

4th September, 2019

Strike action across all of Diageo's Scottish operations is set to begin on 17 September following a dispute over pay.

On 23 August, 80.5% of GMB Scotland's almost 1,000 members at Diageo supported a move for strike action following "months of pay talks". The UK drinks giant proposed a 2.8% 'final offer' pay increase for more than 3,000 Scottish workers.

Last Friday (30 August), GMB Scotland said that talks mediated through the Advisory, Conciliation and Arbitration Service (Acas) with Diageo have "collapsed" after the Johnnie Walker owner refused to up its offer.

GMB said the vote followed Diageo's fiscal 2019 financial results, which reported pre-tax profits of more than £4.2 billion (US$5.1bn), a share buyback programme worth £4.5bn (US$5.5bn) and a 30% pay increase for chief executive Ivan Menezes, taking his total pay to £11.7 million (US$14.2m).

Yesterday afternoon (3 September), GMB served Smirnoff maker Diageo with statutory notice of the strike action, which will begin on Tuesday 17 September and run until Friday 27 September.

The trade union said the action would "severely" impact Diageo's bottling, maturation and distillery operations across the country, including Lagavulin Distillery, Talisker Distillery, Glenkinchie Distillery, Caol Ila, and Port Ellen maltings.

Industrial action at all of Diageo's maturation sites and distilleries, excluding the Cameronbridge Distillery and Leven, will take place on 17-18 September and 26-27 September, and at the Shieldhall bottling plant on 19-20 September and 26-27 September.

Workers at grain distillery Cameronbridge and Leven will strike on 18-19 September and 26-27 September.

'Corporate greed'

GMB Scotland organiser Keir Greenaway said: "Strike action across Diageo's Scottish operations is a consequence of the insatiable corporate greed within the hierarchy of this company.

"Our campaign for a pay deal that beats the cost of living for our members and their families is a modest proposal against the backdrop of Diageo's absolutely staggering financial results, which workers in Scotland have more than helped to deliver.

"A huge chunk of Diageo's credibility and success is built on the back of Scotland and the working class and rural communities that distil, mature, store and bottle their lucrative range of whiskies and white spirits.

"It begs the question: Why has the company spent months low-balling unions with pay offers that fail to tackle the cost of living? If any business can afford to make work pay for its employees it is Diageo.

"A rising tide should lift all boats but instead we have to suffer the grotesque spectacle of Ivan Menezes and his shareholders carving up the spoils while workers in Scotland get thrown scraps from the fat cats' table.

"It's just not credible and we aren't going to leave this unchallenged. Diageo must get real on pay or they will be hit with a sustained wave of strike action affecting many of their most profitable brands."

A Diageo spokesperson said: "We have well developed contingency plans in the event of industrial action.

"We are a very good employer and remain committed to seeking a resolution and ensuring our employees receive an increase on their pay, alongside maintaining the competitiveness of our operations."

Last month, Unite Scotland workers at Diageo's three Scottish plants voted in favour of strike action.

Unite Scotland workers across the Leven, Cameronbridge and Shieldhall plants will now move forward with strike action, which is expected to take place from September to November.

How Tax Policy Gave Us White Claw

Source: https://nymag.com/

By Josh Barro

September 5, 2019

I'm kind of amazed the White Claw craze didn't happen sooner.

As a gay man in New York with a well-stocked bar, I am used to my friends coming to my apartment and asking for vodka sodas. What people like about a vodka soda is what it doesn't contain. All it has is alcohol, water, and carbonation - no extra flavorings, no caffeine, and no calorie content other than from alcohol. It's the chicken breast of mixed drinks: broadly acceptable, gets the job done, nothing fancy. So, why did it take so long for it to come ready-to-drink in a can?

Part of the answer lies in the fact White Claw, which markets itself as "hard seltzer" and "spiked sparkling water," is not precisely a vodka soda in a can. It doesn't contain vodka or any other distilled spirits. Instead it is made through fermentation, like beer, but starting from a base of sugar instead of cereal grains like barley. Then, carbonated water and flavoring are added.

Because White Claw is brewed like beer, it's taxed like beer, which is important because beer is taxed in the U.S. at a much lower rate than spirits. If you made a product similar to White Claw by mixing vodka with seltzer and putting it in a can, a six-pack would be subject to more than $2 in additional taxes when sold in New York City.

Because of this tax quirk, beverage companies have long sought ways to make flavored cocktail-like beverages for the U.S. market by brewing instead of distilling. Zima, Smirnoff Ice, and Mike's Hard Lemonade are all "malternative" beverages, brewed from grain, like beer. A problem with malternatives has been the need to find ways to mask the beer-like flavor that results from brewing. To that end, these drinks have added sugar and strong citrus flavors, which a lot of consumers like. But they don't serve as a replacement for a vodka soda.

The key advancement with White Claw and its competitors in the "spiked seltzer" market is the use of sugar base for fermentation, which leads to a more neutral flavor than you can get by fermenting barley or other grains. This makes it possible to mix a palatable beverage with little or no added sugar and only subtle flavorings. Unflavored White Claw contains no sugar (all the sugar in the base is converted to alcohol during fermentation) while flavored versions contain just a small amount of sugar: two grams per can.

There's another way White Claw isn't quite like a vodka soda: It contains 5 percent alcohol by volume, similar to many beers. Most vodkas are 40 percent alcohol by volume, so to make an equally strong vodka soda, you'd need to mix one part vodka with seven parts of seltzer. Most people pour with a heavier hand than that, whether at home or at a bar. So if you think White Claw tastes very different from a vodka soda, that might just be because it's weaker.

A friend and I set out to do a taste test: Could we tell the difference between unflavored White Claw and an equally strong vodka soda made with Ketel One? In my case, the answer was no: Presented with three unlabeled glasses of beverage, I was unable to tell which of the three was different. My friend, however, guessed correctly, characterizing the White Claw as having a slight soju flavor. We were able to distinguish Grapefruit White Claw from a vodka soda made with Pamplemousse LaCroix, but we chalked that up to a difference in the styles of grapefruit flavoring.

In my view, the beer-like alcohol content of White Claw is a feature, compared to the hand-mixed vodka sodas you might drink it as a replacement for.

People like vodka soda because it's refreshing and light, as alcoholic beverages go. It's the sort of thing you drink when you don't want to focus on your drink as a culinary experience. It may be the sort of thing you drink several of in a sitting. So it is probably advantageous to you, as a consumer who wants to feel that you made good choices the following day, if it comes in a standardized form where each 12-ounce serving contains the equivalent of just one shot of liquor.

And this gives me reason to suspect "spiked seltzer" is more than just a fad. It's not exactly a novel product. It's a new product that combines positive elements of two extremely well-established products: the low-calorie content, drinkability, and convenience of a light beer, and the neutral flavor and effervescence of a vodka soda. Those beverages have remained very popular for a very long time, and the same consumer preferences should be able to sustain this one, too.

By the numbers: Virginia ranks 3rd highest on alcohol taxes

Source: https://www.thecentersquare.com/

Sep 3, 2019

The state distilled spirits excise taxes in Virginia ranked third highest in the nation, according to a new analysis from the Tax Foundation based on January 2019 data.

The state's effective excise tax on a gallon of distilled spirits in Virginia stood at $19.93, the Tax Foundation study found.

State taxes on distilled spirits - which include whiskey, brandy, rum, gin and vodka - have a higher alcohol percentage than beer and wine. They also tend to have higher tax rates than other alcoholic beverages. State taxes on distilled spirits come in the form of wholesale rates, license fees charged to retailers, bottle fees and additional sales taxes.

The distilled spirits taxes listed, which are based on data from the Distilled Spirits Council of the United States, exclude the states' general sales taxes.

Rank order tax table: https://www.thecentersquare.com/virginia/by-the-numbers-virginia-ranks-rd-highest-on-alcohol-taxes/article_2d62703c-c91e-11e9-a96e-270c4b9df85b.html

Chicago, long a Miller stronghold, has a new top-selling beer: Modelo Especial captures the city's sales crown

Source: https://www.chicagotribune.com/

By ALEXIA ELEJALDE-RUIZ

SEP 04, 2019

After years as a stronghold for Miller Lite, Chicago has become increasingly thirsty for a feisty challenger: Modelo Especial, which this year marked a major local milestone when it surpassed Miller Lite in dollar sales.

The Mexican lager, owned in the U.S. by Constellation Brands, has been growing rapidly as consumers eschew mass-market domestic brews for higher-end alternatives and as the nation's Hispanic population swells.

Miller Lite still sells by far the most cases of beer in the Chicago area, but it has been losing ground while Modelo gains.

And Modelo Especial, which is priced higher, is the top beer in Chicago in terms of dollar sales, which is considered by some industry experts to be a better indicator of a brand's success because it shows where people are willing to spend their money.

Modelo Especial's sales in Chicago were $70.5 million over the 52 weeks that ended Aug. 11, besting Miller Lite's $67.6 million and Bud Light's $41.28 million, according to data from market research company IRI and provided by Constellation.

That's a leap from 2016, when Modelo Especial's annual revenues in Chicago trailed those of Miller Lite by more than $20 million.

Modelo's sales have been particularly strong over the past couple of years, when the brand broadened its target beyond its core Hispanic customer base and started marketing, in English, to a general audience.

"We are not just a Hispanic brand anymore," said Greg Gallagher, head of brand marketing for Casa Modelo at Constellation, whose beer business is based in Chicago. "We still have a ton of loyalty and we stay very true to our Hispanic origins and our core, but we are seeing that crossover happen into the general market ... And that is what is going to propel us into the future."

Grant Foreman, 27, is the type of customer Modelo is attracting more often. Foreman, who is not of Hispanic descent, isn't loyal to one brand. He drinks Corona, Lagunitas, and Revolution, but has started drinking Modelo Especial over the last couple of years as he aimed for better quality beer post-college and "just learned about it more."

"At some point it got mentally moved into the same category as Corona," said Foreman, of Logan Square.

Chicago is the fifth market where Modelo Especial is No. 1 in dollar sales, after Los Angeles, San Francisco, San Diego, and, as of this year, Las Vegas. Gallagher, who monitored the sales growth on a 52-week rolling basis to ensure it wasn't a fluke, says it hit the milestone in the Chicago market - which includes Cook, DuPage, Kane, Will, McHenry, Lake counties plus Lake and Porter counties in Indiana - in June.

Modelo has long been dominant in California, but the beer's rise in Chicago signals its ability to sell well in markets outside of the West, Gallagher said. The brand is No. 2 in dollar sales and gaining in Austin, Houston, Dallas and Raleigh, N.C.

To be sure, despite Modelo's growth, it still sells fewer cases of beer in the Chicago area than Miller Lite and Bud Light. Miller Lite sold 4.2 million cases last year compared with 2.5 million cases by Bud Light and 2.2 million for Modelo Especial.

"Miller Lite is Chicago's favorite beer, hands down," Chicago-based MillerCoors spokesman Marty Maloney said in a statement. Miller Lite, long the leader in Chicago, is No. 3 nationally by volume, behind juggernaut Bud Light and Coors Light, and has been "growing segment share the last 19 consecutive quarters and gaining share of industry this year," Maloney said.

But sales of Modelo cases grew 70% between 2014 and 2018. Miller Lite's case sales fell 9% during the same period.

Modelo's trajectory, if it continues, suggests it could be a threat to the top players. So far this year in Chicago, Modelo Especial has surpassed Bud Light in retail volume sales, according to IRI data provided by Constellation. It is the fastest-growing draft beer brand at Chicago bars, the company said, citing Nielsen.

Nationally, Modelo Especial's volume sales grew 13.6% last year while Miller Lite's dropped 3.8%, and year to date, their dollar sales are neck and neck, said Benji Steinman, president and editor of Beer Marketer's Insights, an industry publication.

"It has become a power brand," Steinman said. "It has reached a level where it has considerable momentum behind it and that feeds on itself to some extent." Dollar sales matter more than volume because "that's what you take to the bank," he said.

Founded in Tacuba, Mex., in 1925, by a group of Spaniards who wanted to brew a "model" European-style lager, hence the name, Modelo Especial has been available in the U.S. since the 1980s.

A pilsner-style lager, it is is benefitting from a trend among beer drinkers to trade up for pricier brews, such as imports and crafts, which is also behind the strong growth of Michelob Ultra. Growth in higher-end beers like Modelo is keeping the overall industry from decline. At some retailers, Modelo sells for roughly $27 for a case of 24 cans, double the price of domestic light beers.

Chicago's growing Hispanic population, which constitutes about a third of the city's residents, is also a factor driving Modelo's rise. About 70% of Modelo Especial sales nationally are to Latinos, who represent just over half of the brand's customer base, Gallagher said.

Historically, its core drinkers were first-generation Latino immigrants or those closely tied to their countries of origin, but the brand is growing fastest now among bicultural households and Hispanic households that have assimilated into American society.

"As we have started to invest in English-language communication, we are now reaching some of the consumers with our messaging who we weren't reaching before," he said.

Those ads are reaching non-Hispanics as well. Since launching English-language ads in 2016, Modelo Especial has seen its awareness among non-Hispanic households rise by 50 percent.

Gallagher attributes Modelo's broadening appeal to the emotional connection people make with the brand, whose "brewed with a fighting spirit" marketing campaign includes the tag line: "It doesn't matter where you came from, it matters what you're made of."

Gallagher said the line rings particularly relevant at a time immigrants feel under attack, but the message is "a universal insight, that's something anybody from any walk of life can relate to."

Its ads feature real people: a smoke jumper who parachutes out of airplanes to battle forest fighters and the first Mexican-American female fighter pilot. The company initially focused on people of Hispanic descent but has recently broadened its scope to include the likes of Melissa Stockwell, a Chicago-based Army veteran who lost a leg in Iraq and later became a competitive triathlete in the Paralympics.

"It's something our brand has stood for over time and so consumers make that more emotional connection, because we represent something that's meaningful to their own lives," Gallagher said.

Modelo also recently became an official sponsor of the White Sox, boosting its exposure to a general audience.

The spreading popularity of Modelo Especial is evident at Tony's Fresh Market, where the brand has been growing for several years and has overtaken Corona as the No. 1 seller, said Vince Gambino, vice president of sales and marketing at the 15-store grocery chain. Miller Lite is No. 3 at the chain.

Though much of the growth has been at its stores in mostly Hispanic communities -the Berwyn store sells the most Modelo - Gambino said he is seeing similar increases in other stores as well, such as in Niles, Plainfield, Countryside and Bridgeview. The chain has given Modelo more prominent placement and shelf space as a result.

"Recently it has gone to the mainstream," said Gambino, who attributes the shift to growing interest in ethnic food and drink generally. "A lot of people are looking for something different to drink."

Shopping the beer aisle at Tony's Fresh Market in Logan Square last week, Danny Rodriguez said he and his wife buy a 12-pack of Modelo Especial every weekend, and it is the preferred beer among his friends.

"It's got a great taste, it doesn't fill you up," said Rodriguez, 41. "In the states a lot of beers are watered down unless you have the IPAs, or some of the newer stuff."

Rodriquez, who is Puerto Rican, said he always buys Mexican beer because of the taste, and with Modelo "you know it's Mexican."

"It's good with some lime, a little bit of salt," he said.

Constellation Brands in 2013 acquired the full U.S. rights to import and market it and several other Mexican beers, including the maltier Modelo Negra and the Corona brand family, and is now the largest beer import company in the U.S. The New York-based company, which also

imports wine and liquor, employs 9,700 people globally, including 4,200 in Mexico where it brews and bottles its beer. Of its 4,900 U.S. employees, 390 are at Constellation's beer headquarters in Chicago's Loop.

While the traditional Modelo Especial has been a big winner, the company plans to launch different product lines from the brand to capitalize on other drinking trends. For example, its platform of canned Modelo Especial cheladas - including the classic recipe that pairs beer with tomato juice and lime, the spicy tamarindo picante and the new limon y sal (lime and salt) - is "on fire," Gallagher said.

"You will see more from us in the chelada business because we think there's a lot of growth potential there," he said.

The biggest barrier to growth, Gallagher said, is shelf space. The explosion of craft beer has crowded shelves and some retailers continue to give prime real estate to the traditionally dominant players even when they're not selling as much, he said.

Another challenge is pursuing new Modelo customers without alienating the core. The company spends a lot of time talking to consumers to ensure it understands what is important to them so that the brand doesn't veer from the values that have made it a staple in many refrigerators.

"There are ways to attract customers, but if the core sees it and says it's not for me, that's for someone else, that will start to erode our loyalty, and that would be a huge problem for us," Gallagher said.

"That's the delicate balance we have to strike, to go after these consumer opportunities but do so in a way that stays really, really true to who we are, and to ensure we do that we have to constantly be talking to our customers and making sure that they are giving us permission to go the places we think we can go," he said.

Pennsylvania: New proposal would relax rules for beer and wine sales in stores

Source: https://www.sharonherald.com/

By John Finnerty

Sep 4, 2019

Legislation that would eliminate many of the requirements that force convenience stores and supermarkets to add restaurant seating to sell beer and wine is getting some stiff opposition from beer distributors and the union representing employees of the state wine and spirit shops.

Under House Bill 1466, introduced in June in the state House by state Rep. Matthew Dowling, R-Fayette County, stores could pay $25,000 a year for a convenience permit to allow them to sell beer and wine without having seating for consumption of the alcoholic beverages on site.

Beer distributors have been getting hammered by the increased competition since the state made it easier for convenience stores and supermarkets to offer beer and wine in 2016, said

Arun Patel, a beer distributor from Centre County, who spoke at a public hearing on the legislation held in Somerset County.

The 2016 changes allowed the stores to offer beer and wine by getting restaurant liquor licenses, that require that the location has 30 seats for dining.

House Bill 1466 would get rid of the requirement for restaurant seating and allow for the stores to sell beer and wine at more cash registers. The legislation would also allow the stores to place the beer and wine anywhere in the store.

The new proposal "basically puts a nail in our coffin," Patel said. He was representing the Malt Beverage Dealers Association, a group representing beer distributors at the legislative hearing.

Wendell Young, president of Local 1776 of the United Food and Commercials Workers, which represents workers in the state-run liquor stores, blasted the plan as another incremental step toward privatizing liquor sales completely.

It's not just the government workers who will suffer, he said. Agreeing with Patel, he said the liquor reforms have benefited the large chain stores at the expense of small restaurant operators who can't compete to acquire restaurant liquor licenses.

The legislation will "only speed up the decline of those mom-and-pop businesses," he said.

Dowling has described the legislation as an effort to improve convenience for shoppers.

"Many of the requirements placed on the holder of a restaurant license, however, are still limiting our constituents the ability to purchase wine and beer in the manner they desire," Dowling said in a memo to other lawmakers looking for support for the bill.

House liquor control committee chairman Rep. Jeff Pyle, R-Armstrong County, agreed that the aim is to make shopping for beer and wine easier for residents.

Pyle said that if the beer distributor nearest his home is closed, he has a 13-mile drive to the next alternative.

Pyle added that the concerns raised about the legislation will be considered and there will likely be changes made to the bill.

"I'm not rubber-stamping anything," Pyle said at the hearing, without explaining when the legislation might come up for a vote.

Pennsylvania: It's time to repeal flexible pricing for liquor | Opinion

Source: https://www.inquirer.com/

Chris Swonger and Matt Dogali, For The Inquirer

September 4, 2019

The 2016 passage of Pennsylvania's landmark liquor modernization legislation, Act 39, resulted in many consumer-friendly changes to the commonwealth's alcohol marketplace. Since its passage, however, we have repeatedly raised concerns about the Pennsylvania Liquor Control Board's implementation of the flexible pricing provision, and the serious negative impact it is having on consumers and spirits sales.

Now come alarming new concerns by international spirits and wine organizations that the LCB's flexible pricing scheme is in violation of World Trade Organization international trade law.

As reported in an Aug. 8 Inquirer article, "Groups warn Pennsylvania about setting liquor prices 'in secret, behind closed doors," eight groups representing spirits and wine producers from Canada, Europe, and New Zealand sent a letter to Gov. Tom Wolf stating, "We understand the PLCB may believe it is easier to raise additional revenues for the citizens of Pennsylvania in secret, behind closed doors, but we believe such an approach is inconsistent with the operation of an open and fair market."

While the legislature passed Act 39 with good intentions, surely it did not intend for the LCB to use flexible pricing to gouge consumers or remove transparency and accountability from the government agency.

Prior to the LCB's flexible pricing authority, the LCB was required to price all products by a strict pricing formula, which treated all spirits suppliers equally. Whenever a wine or spirits supplier offered a discounted price, the LCB was required to pass that discount on to Pennsylvania consumers. Consumers no longer have such protection.

While the LCB claims it has been transparent in its approach and is committed to "productive and collaborative negotiations with suppliers," our companies do not feel that the process has been transparent or collaborative.

Under the "flexible pricing" scheme, the LCB negotiates the cost and markup on every item, keeping the details of the negotiations shrouded in secrecy. The LCB routinely increases its 31 percent markup, confiscating any consumer savings and increasing the LCB's profit margin.

The LCB provides no schedule or justification for the categories or brands it targets for price changes, and gives little lead time to suppliers to respond to the notice of price changes.

Wine and spirits suppliers are left with little room to negotiate. They can accept the arbitrary price increase, which results in higher prices for consumers and lost sales, or remove their product from the Pennsylvania marketplace. Either way, consumers lose.

Pennsylvanians are now witnessing firsthand the shortcomings of flexible pricing. Since 2016, the last year before flexible pricing was implemented, through 2018 the average markup over the Free on Board Shipping Point price for spirits increased from 59.7% to 65.1% -- a 9% increase.

During a recent hearing on the issue, the LCB's director of marketing and merchandising told legislators that in 2018, supplier prices increased on 455 items and decreased on 307. Yet, the

agency increased retail prices on 570 items and decreased them on 167. This demonstrates that the LCB is not passing savings on to Pennsylvania consumers.

In light of new claims by international spirits trade associations that the flexible pricing model is in violation of international trade law, in addition to the numerous negative real-world results of this monopolistic pricing model, we urge the legislature to more closely scrutinize the LCB's flexible pricing authority.

A better alternative is legislation introduced by State Rep. Jesse Topper (R., Bedford) that would repeal flexible pricing and reinstate the proportional pricing formula. It's time to bring transparency back to the process and restore the savings to Pennsylvania consumers.

Chris Swonger is president and CEO of the Distilled Spirits Council of the United States. Matt Dogali is president and CEO of the American Distilled Spirits Association.

Walmart Seeks Full 5th Circuit En Banc Review of Texas Corporate Ownership Ban, Package Stores Seek Rehearing From Panel

Source: https://www.alcohollawreview.com/

September 3, 2019

Walmart has filed a request to have the entire 5th Circuit hear their challenge to the Texas law banning publicly traded corporations from selling liquor. Walmart's en banc petition claims that the panel at the 5th Circuit undercut the recent Supreme Court's Tennessee Wine and Spirits Retailer Association v. Thomas case and committed errors in applying the appropriate tests to evaluate the state law.

And curiously the Texas Package Store Association also filed for a rehearing before this three judge panel seeking to avoid a return to district court. The TSPA petition claims "The Panel should reverse and render judgment in favor of Defendants on the Plaintiffs' claim of an impermissible burden under Pike v. Bruce Church. As the Panel rightly found, the record is "devoid" of evidence in support of the Plaintiffs' claims under Pike. While the Panel correctly reversed the district court's judgment under Pike, no remand on Pike is necessary given the complete absence of evidence that could demonstrate an impermissible burden under Pike."

Perhaps most importantly, the state of Texas has not sought a rehearing either with this panel or the entire 5th Circuit en banc.

8th Circuit to Hold Oral Arguments on First Amendment Challenges to Missouri Tied House Law and Advertising Regulations On September 26

Source: https://www.alcohollawreview.com/

September 3, 2019

The 8th Circuit is scheduled to hear oral arguments on the state's appeal of the district court decision in the Missouri Broadcaster Association case on September 26 in St. Louis. We will try to post a recap after oral argument or a link to the transcript.

Spirit Master: Colonel EH Taylor Jr Bourbon

Source: https://www.thespiritsbusiness.com/

4th September, 2019

As it's National Bourbon Heritage Month, we shine a spotlight on an award-winning expression from Sazerac's EH Taylor Jr collection.

Every week, SB celebrates some of the top-scoring Master medallists from The Global Spirits Masters blind-tasting competitions.

On 2 August 2007, the US Senate declared September as National Bourbon Heritage Month, and as such, every September, the industry celebrates Bourbon's heritage and legacy.

And there is much to celebrate as the Bourbon boom continues. The number of distilleries in Kentucky has more than tripled in 10 years, with Bourbon production contributing US$8.6 billion to the state's economy annually, according to a recent report.

During the American Whiskey Masters blind-tasting competition in July 2019, a total of nine Master medals were awarded to top-quality expressions that were assessed by a panel of independent experts, and chaired by The Spirits Business.

Sazerac Company's Colonel EH Taylor Jr Small Batch Kentucky Straight Bourbon grabbed a Master medal in the ultra-premium leg of the Bourbon round.

The judges enjoyed the expression's aroma of "soft vanilla and fudge", and "complex" palate filled with flavours of "tarte tatin and spice".

The brand is named after Colonel Edmund Haynes Taylor, a historic Bourbon figure from the 1800s.

In October 2017, whisky expert Jim Murray named Colonel EH Taylor 4 Grain Bottled in Bond Aged 12 Years as the 'world's best whisky' in his Whisky Bible 2018.

Sazerac also scored a Master medal for its Elmer T Lee Single Barrel Kentucky Straight Bourbon Whiskey. In addition, the US producer gained eight Gold medals and five Silver medals during the competition.

To see the full list of medallists from The American Whiskey Masters 2019, click here.

If you're interested in entering your brand into The Global Spirits Masters, contact Rhiannon Morris - rhiannon.morris@thespiritsbusiness.com - for more details, or visit this page.

https://www.thespiritsbusiness.com/2019/08/the-american-whiskey-masters-2019-results/

Latest Brexit Headlines

Source: Multiple

September 5, 2019

https://www.dailymail.co.uk/news/article-7428701/Boris-Johnsons-bid-snap-election-CRUSHED.html

https://www.telegraph.co.uk/politics/2019/09/04/hypocrite-jeremy-corbyn-rejects-general-election-break-brexit/

https://www.theguardian.com/politics/live/2019/sep/04/brexit-crisis-boris-johnson-mps-bill-blocking-no-deal-eu-no-deal-parliament-politics-live

https://www.telegraph.co.uk/business/2019/09/04/double-shock-global-recession-no-deal-brexit-may-europe-can/

https://www.telegraph.co.uk/politics/2019/09/04/european-commission-doubles-irish-backstop-no-deal-brexit-plan/

Phylloxera Strikes Walla Walla Vineyards

Phylloxera adults, nymphs and larvae make themselves at home on a rootstock.

The deadly grapevine pest has reared its ugly head in the Pacific Northwest, US editor W. Blake Gray reports.

Source: https://www.wine-searcher.com/

04-Sep-2019

The most feared grapevine pest - phylloxera - has been found for the first time in Washington's Walla Walla Valley.

"It's here for sure, just like it's probably throughout the state," Walla Walla Valley Wine Alliance executive director Robert Hansen told Wine-Searcher. "Now we actually see it and are aware of it. The growers here in Washington are not sure what quarantine means so they're not reporting it openly. I'm not sure how widespread it is."

Vicky Scharlau, executive director of the Washington Winegrowers Association, said phylloxera has been in the state since at least 1910, but no one had ever previously found it in Walla Walla, one of the state's most important premium winegrowing regions.

"It's never really been prevalent [in Washington state]," Scharlau told Wine-Searcher. "The finds we have had have been Concord [grape] vineyards. The fact that somebody happened to find it in Walla Walla, I don't think we've ever really looked."

Many growers last week attended a meeting of the Walla Walla Valley Wine Alliance where the outbreak, and a similar outbreak in Oregon's Willamette Valley, were discussed.

"Right now [the outbreak is] relatively limited," Billo Naravane MW, owner of Rasa Vineyards in Walla Walla Valley, told Wine-Searcher. "We are in the single digits for vineyards that have it. It is more about curtailing the spread and putting safe practices in place to slow down the spread of this as much as possible."

Walla Walla Valley is unusually vulnerable to phylloxera because many growers there chose to plant grapevines on their own roots, rather than graft them onto phylloxera-resistant roots, as is common in most wine-producing regions.

The phylloxera outbreak is another result of climate change. Historically, Walla Walla Valley had hard freezes that not only slowed down phylloxera's reproduction, but also rewarded own-rooted vines because they recover faster from the effects of frost.

"They've been lucky for a long time," Andrew Walker, professor of viticulture at UC Davis, told Wine-Searcher. "Their justification has been that it's been too cold. But they haven't had a hard freeze for a while. It's probably allowed [phylloxera] to have more generations per year, which would intensify things. In California we can have four, five or six generations per year. In Washington they had only had one or two generations."

Ironically, the type of soils that growers think are resistant to phylloxera - dry, sandy soils - increase the speed of the insect's destruction if phylloxera manages to live in it. Walla Walla Valley has a lot of dry, sandy soil.

It also has probably had phylloxera for at least a decade.

"It usually takes anywhere from 10 to 15 years to see any evidence of phylloxera infestation," Walker said. "There's always an amazing blame game about who brought it in. But if it came in 10 years ago, who can tell?"

Phylloxera nearly wiped out wine in France in the 1800s before a solution was discovered. It is a root louse with an 18-stage life cycle and it sucks nutrition from the roots of grapevines.

But Walker said it isn't actually the sucking that kills the vines.

"Phylloxera causes wounds on the roots and the roots begin rotting," Walker said. "It takes a long time for it to show en masse."

Vines infested by the louse will still produce crops of grapes until the vines gradually die. Walker said that in moist conditions, the vines might last 20 years or more, but in dry soils, "they can go down in a couple of years".

The grapes themselves are unaffected. There is no reason to believe that phylloxera-infested vineyards will make better or worse wines, so the louse does not affect consumers.

For growers who had not previously taken precautions, however, phylloxera changes everything. Eventually their vines will die and they will have to replant. Tearing out vines by the roots to replant is very expensive, and young grapevines do not produce a crop for the first two years, increasing the economic harm.

However, because growers have time to respond to an infestation, they can manage the replanting with good planning, says wine industry expert Rob McMillan.

"If you have phylloxera, you're going to have to replace [the vines]," McMillan, executive vice president of Silicon Valley Bank's wine division, told Wine-Searcher. "But it's not a fait accompli, that if you have phylloxera, you want to pull right away. Pulling everything out at the same time means you have to buy grapes or you have no cashflow."

That said, this seems to be a good time for Washington growers to consider replanting. The state in general has a surplus of wine grapes because of a slowdown in the market for $9 wines of the kind Chateau Ste Michelle and Columbia Crest specialize in. If a grapegrower does decide to replant everything now, he could try to sit out the bear market for grapes.

There's a cliche about a crisis also being an opportunity, and that was true when Napa Valley was hit hard by a phylloxera outbreak in the late 1980s and early 1990s. A few years before, Chenin Blanc was the most popular wine in the US and it was still planted all over Napa Valley, along with a wide palette of other grapes. When growers replanted, many chose to replant with Cabernet Sauvignon. Most longtime Napa observers agree that this kicked off the phenomenal growth rate for sales, the reputation, and prices of Napa Cabernet worldwide.

Naravane said that Walla Walla growers similarly could benefit by considering the future and deciding what kind of wine they want to make in 20 years.

"Nobody wants phylloxera," Naravane said. "But using appropriate rootstocks, they can not only help with phylloxera but they can also help ameliorate conditions in the vineyard. For example some rootstocks are better suited to wetter soils, or to drier soils. There are rootstocks that can advance ripening or delay ripening. In Napa, a lot of people didn't do the kind of soil tests to see what would be the optimum rootstock for their site. They planted what their neighbors did. You need to make good decisions."

In the meantime, the most important thing for growers is to try to keep the infestation out of their vineyards, if it's not there already.

"Overall, the message that we've been sharing with the industry is there are best practices when it comes to soil movement," said Scharlau. "Leave the dirt where it started. Don't move it."

Phylloxera usually hitchhikes in on farm equipment, but it also can sneak in on shoes, so don't be surprised if Walla Walla vineyards ask to wash off your shoes before allowing you to visit.

"Make sure everything is thoroughly clean before entering a different vineyard," Naravane said.

North Coast grape harvest shifts into high gear as oversupply looms large

Source: https://www.pressdemocrat.com

September 5, 2019

As chardonnay grapes dropped into the crusher Tuesday morning at Ram's Gate Winery in Sonoma, winemaker Joe Nielsen was hopeful about his first fruit from the 2019 harvest as he watched while it was compressed into juice.

This is his 13th harvest but each year comes with challenges ranging from unpredictable weather to his grapes ripening all at the same time. That forces Nielsen to play a role akin to an air traffic controller at a busy airport to schedule pickup of the premium grapes.

"I just think, 'What can we process in a day comfortably?' That goes by the wayside when we don't have a choice," he said.

Opening day went well for Nielsen and his crew who picked 5 tons of grapes from a Russian River Valley vineyard. "The sun's out. ... I will take it as a good omen," he said.

Wineries across the North Coast are ramping up their picks this week, after the annual grape harvest kicked off three weeks ago with fruit that went specifically into sparkling wine. The grape picking season generates billions for the regional economy and remains Sonoma County's largest cash crop.

Like Ram's Gate, Kendall-Jackson and Mauritson Wines also had their first picks Tuesday of grapes destined for still wine.

For those Sonoma County wineries and many others, work crews began to bring in pinot noir, sauvignon blanc and chardonnay grapes. They will be followed by other later grape varieties in a harvest season expected to stretch into late October or early November.

"So far, so good," said Randy Ullom, the winemaster at Kendall-Jackson, which was picking pinot noir in the Russian River Valley and sauvignon blanc in Lake County. "It is a year almost identical to last year in timing, almost to the day."

Winemakers said they are bullish on the quality of the premium grape crop because late spring rains did not cause the heavy vineyard damage that had been feared since the storms occurred during peak bloom period.

The crop yield this year is expected to be average to above average in terms of grape tonnage as harvest nears its first full month.

That news in past years would have been reason to celebrate, but such an expected output now is causing consternation given the oversupply in the grape market while there is stagnating retail wine sales.

The sector has become a buyer's market, especially after the 2018 grape crop reached a record $2 billion in value with an all-time high 588,864 tons of grapes crushed across Sonoma, Napa, Lake and Mendocino counties.

"We will have a minority of vineyards that won't get picked in the North Coast," said Rob McMillan, executive vice president of Silicon Valley Bank's wine division. "This has happened before and it will happen again."

Most large and medium-sized wineries grow their own grapes on their estate vineyards, though many also contract with independent growers who play a vital role in supplying smaller wineries with their fruit. Typically, 85% of the regional grape crop is under contract with wineries, leaving the rest to be snatched up on the spot market during harvest.

This year, though, that spot market is largely silent, analysts said.

"The need to sell the grapes has become a fever pitch as we come into harvest," said Brian Clements, vice president of Turrentine Brokerage in Novato. Clements said he has taken a few calls a day from growers searching for options for grapes not yet under contract for sale.

In past years, growers could rely on wineries or even themselves taking such excess grapes and making them into wine that would go into the bulk market for sale at a later date. But Clements said that option could be difficult this year to recoup expenses.

His wine brokerage firm has listed 18 million gallons of wine for sale on the bulk market, which indicates a large availability.

"The prices are coming down," he said of the bulk wine market.

In addition, there is greater worry going forward among local growers over the consequences of E. & J. Gallo Winery's $1.7 billion planned acquisition of more than 30 low-price wine and spirits brands as well as six wineries from Constellation Brands Inc.

The pending deal, announced in April, will have a significant effect because many regional growers sell fruit to both companies. The transaction between the two wine giants was expected to be finalized early in 2020, but federal regulators could push back approval until later next year.

Gallo is the country's largest winery, with an estimated 70 million cases sold in 2018, according to Wine Business Monthly.

Meanwhile, at Mauritson, the sauvignon blanc grape crop was lighter this year for the Healdsburg winery, but all other varieties are at least average to above average in tonnage, owner Clay Mauritson said.

Mauritson said he was pleased the weather so far has been cooperating, noting there has been few summer heat spikes that would prompt additional irrigation or threats of shriveling fruit on the vine before grapes are ripe to pick.

"It has been unbelievable," he said. "Literally, you cannot ask for better weather. I feel like I have to knock on wood for saying that."

Why a Wine's Alcohol-by-Volume is Lying to You

Source: https://www.winemag.com/

BY SEAN P. SULLIVAN

September 5, 2019

When you purchase a bottle of wine, there's no doubt that you've noticed certain things on the label, like the producer, appellation and a Surgeon General's warning.

One thing required to be on a label (sort of) is the percent of alcohol by volume, or abv. You might be surprised, however, to learn the alcohol percentage listed is often not entirely true.

The truth is that the alcohol percentage on a wine label is more to serve the Alcohol and Tobacco Tax and Trade Bureau (TTB) than it is to serve you, the consumer. Here's why.

The TTB regulates what's mandatory, permissible and forbidden on wine labels. For alcohol percentages, wineries are allowed a certain amount of variance from what is listed. For a wine with 14% abv or below, for example, the actual alcohol content can differ by as much as 1.5% from what's on the label, though it cannot exceed 14%. For a wine above 14% abv, a 1% variance is allowed.

So, for example, a bottle of wine listed at 12.5% alcohol could actually be anywhere between 11% and 14%.

Why the variance? Wineries need to submit labels to the TTB for approval in advance to ensure the label complies with the law. These approvals take time, and the final alcohol level of a wine might not be established at the time of submission.

Until recently, there was a considerable financial incentive for wineries to fudge the numbers- list the wine at a lower alcohol level, pay less in taxes.

Additionally, for minor label changes, like the vintage, wineries don't need to seek a new approval, as long as the alcohol level is within the allowed variance. To label a red wine at, say, 14.5% abv means a winery doesn't need to submit a new label, and the wine can be anywhere from 14.1% alcohol all the way up to 15.5%.

This is why 14.5% and 13.5% are, by far, the most common numbers you'll see for red wines from the U.S., as they straddle that 14% break point. Wineries are also allowed to put ranges for alcohol levels or just use certain designations, like Red Table Wine, that need to be within a certain specified alcohol range.

Why is 14% the magic number? Historically, wines at 14% abv and below were taxed at a lower rate than those above 14%. Changes in wine laws in 2017 made wines up to 16% taxed at the same level, but the variances did not change.

For this reason, until recently, there was a considerable financial incentive for wineries to fudge the numbers. List the wine at a lower alcohol level, pay less in taxes. It's one of the reasons that alcohol levels could be even less accurate than the allowed variance.

Some wineries also believe there's a stigma associated with higher-alcohol wines. While some may favor "hedonistic" styles of wines higher in alcohol, many winemakers, sommeliers and consumers rebelled against this style.

The fear has been that if a winemaker were to show a wine to a sommelier labeled at 15.4% alcohol, there would be less chance that the wine would be tasted, let alone placed on a wine

list over a bottling labeled 14.4%. Supporting this idea, a 2015 study found a tendency to underreport levels for higher-alcohol wines toward a "desired" percentage, stating that it might be "advantageous for marketing the wine."

A final incentive for wineries to not take the stated alcohol level too seriously is that oversight is light. There are more than 10,000 wineries in the U.S. that make tens of thousands of wines. Only a miniscule fraction of them can be checked.

How small? In 2016, the last year data was reported to the public, the TTB Alcohol Beverage Sampling Program checked a grand total of 118 wines.

This means that, historically, a winery could pay less in taxes, have a better chance to land on store shelves and restaurant lists, and likely no one would be the wiser that the stated alcohol wasn't truthful. Except, of course, for the wine lover at home who wakes up the next morning with a headache, wondering what the hell happened.

Maybe, this could all make some sense from a regulatory point of view. But I find the current approach to alcohol labeling lacking.

As a critic, I couldn't care less what the alcohol level is as long as the wine in balance, whether it's 13% alcohol or 16%. Moreover, at Wine Enthusiast, all wines are reviewed in blind tastings, so any concern that wines listed with a higher alcohol percentage might affect a review is unwarranted.

Off the clock, however, I care a good bit more about the alcohol percentage. If a wine is labeled at, say, 15%, I know I can expect it will be riper in style than it will be at 13.5%. Maybe that style is what I'm in the mood for some evening. Maybe it's not. Wouldn't it be great if the alcohol level could provide something of a guide to wine style?

As a consumer, when I drink a wine that's say, 14% alcohol, I know I can drink a bit more than I can at 16% without feeling the aftereffects. When I see bar menus list the percentage of alcohol in a beer, I sometimes use that information and elect for a lower-alcohol beer as my second pint.

Finally, I believe it sets a bad precedent to put something on a wine label that simply isn't accurate. What's the point of listing alcohol percentages if they aren't reflective of what's in the bottle? Information on wine labels should be useful to consumers. If it isn't, who exactly is it useful to?

So, what's the solution? I would like to see wines labeled within at least a half-percent of their actual level.

Why a half-percent? It's a compromise. There will always need to be some permissible variance to allow for labeling delays and for a wine to fully finish. Additionally, not having to resubmit labels for approval every year is a big deal. A half-percent isn't perfect, but it's a lot more accurate than what's currently allowed. It also aligns with standards in the European Union.

Yes, this change would make things a little harder for wineries. They would have to be more careful when they measure alcohol levels. Wineries might also have to submit more labels to the TTB for approval, which could result in delays.

But right now, the alcohol percentage on a wine bottle serves no one other than the government. Isn't it time that listed alcohol percentages began to serve wine drinkers?

Republic National Distributing Company and O'Neill Vintners & Distillers Expand Partnership in Key States

Source: RNDC

September 4, 2019

Republic National Distributing Company (RNDC) announced today that it has expanded its partnership with O'Neill Vintners & Distillers in four key states - Texas, Louisiana, Oklahoma, and Indiana. RNDC will now represent the full portfolio, including Line 39, Intercept, Robert Hall, Day Owl, Harken, and Exitus, in a total of 17 states.

"Our partnership with RNDC has continued to grow across the U.S. over the last year, and we continue to win together in all channels of trade. The recent partnership with Young's Market Company in the west will only bolster our go-to-market strategies and enable us to drive additional share for our partnership. RNDC's capabilities pair well with our growth strategy, and this expanded partnership will enable us to both be more efficient in the marketplace," said Mark Federighi, Chief Sales Officer for O'Neill Vintners & Distillers. "As we continue to evolve our business to meet consumer demands for our products, RNDC is well positioned to help us grow our market share through their insight and strategic vision. We look forward to what's to come as our relationship grows."

Founded in 2004, O'Neill Vintners & Distillers has become the seventh largest winery in the U.S., with a reputation as one of the premier wine producers in the business. Leveraging its vertically integrated vineyard, winery, and bottling operations, O'Neill Vintners provides the highest quality products. RNDC now represents the O'Neill portfolio in Alaska, California, Colorado, Hawaii, Idaho, Indiana, Kentucky, Louisiana, Michigan, Nebraska, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Washington, and Wyoming.

"RNDC's recently expanded footprint allows us to provide additional support to such a successful and growing company like O'Neill Vintners & Distillers. And with this agreement, O'Neill can capitalize on RNDC's On and Off Premise National Accounts team -- the leading team in the nation," said Bob Hendrickson, RNDC Chief Operating Officer.

Street Cred for Sweet Red

America's Sweet Tooth Hasn't Really Changed, But Acceptance Has

Source: https://www.beveragemedia.com/

By Jeff Siegel

September 5, 2019

Bill Oliver's family has been making wine in Indiana since the state made it legal in 1972. He has seen trends come and go. But one thing has remained remarkably consistent in almost 60 years: Sweet red wine.

"The thing we've noticed in all that time is that people who drink sweet red want to be part of wine culture, but they don't necessarily like anything else," says Oliver, whose Concord-based Soft Red has been the best-selling wine SKU in Indiana supermarkets for almost two decades-some two times more than No. 2 Kendall-Jackson Chardonnay. "And when I say 'we,' I mean it collectively. Not just Oliver, but every producer around the country who makes sweet red," he adds.

These days, when sweet red wine is pushing retail buttons around the country and shows every sign of doing today what White Zinfandel did in the 1980s and 1990s, it's important to note that sweet red wine is nothing new. Riunite, the Italian Lambrusco, was the best-selling import in the U.S. some 40 years ago, selling as many as 12 million cases a year. And regional producers like Oliver, North Carolina's Duplin Winery and St. James in Missouri have sold millions of cases of sweet red over the past couple of decades.

So what's different this time? First, say analysts and producers, there's the sense that younger wine drinkers see sweet red differently than their parents and grandparents. They don't care that it's not "serious" wine; they're willing to drink it when more traditional wine drinkers opt for dry. Second, as alcohol category lines blur, sweet reds don't compete with dry wines, but with hard seltzers, bottled cocktails, ciders and other RTDs.

"Wine trends are constantly changing and evolving," says Collin Cooney, the Marketing Director for Franzia, owned by The Wine Group and one of the biggest sweet wine brands in the country. "But some trends cross over from generation to generation, and that's sweet. We had White Zinfandel, and then we had Moscato, and in the early 2010s, we had sweet reds."

Endorsement of the sweet red wave is seen in the roster of suppliers now offering expressions presented as sweet-Gallo Family, Barefoot, Sutter Home, Bronco Wine Co., Yellow Tail, Cavit, Lindeman's, Stella Rosa, Funf, et al. And perhaps most significant of all, there is the still-burgeoning Red Blend category, whose entries often skew sweet.

Blurred Lines, Soft Wines

What exactly is a sweet red wine? No one is quite sure. Nielsen doesn't track it as such, but does measure what they call a "custom aggregate" for sweet reds. It's a sub-category of red blends and is only published occasionally. Significantly, since sweetness levels are not part of the data for any given UPC, Nielsen manually designates each wine it considers to be "sweet" when measuring the "sweet reds" group. Further complicating the issue is the diversity of sweetness levels in red blends, from traditional dry blends to sweeter wines like E&J Gallo's Apothic and Cupcake's Red Velvet to fully sweet reds like the Oliver product.

What is certain is that red blends remain one of the hottest categories in wine-Nielsen numbers in 2018 said red blends had a larger market share than Moscato, Pinot Noir, Pinot Grigio and Sauvignon Blanc. And the category was 2½ times bigger than White Zinfandel at the beginning of 2018.

Labels themselves provide no consistency in terms of what to expect-even with more wineries apparently eager to put "Sweet Red" front and center. Technical numbers (if known) are no real help either. Off-dry wines generally start to get perceived as sweet at around 1.2% residual sugar (RS), which is measured in grams per 100ml (in this case 1.2 g/100ml) but can also be presented by wineries as grams per Liter (12 g/L). A normal dry Cabernet Sauvignon might be 0.2% RS, or 0.2 g/100ml. A wine of 3% RS-which is also 3 g/100ml and 30 grams per Liter-is definitely sweet. Very sweet wines (Port, stickies, late harvest, etc.) can reach 5% to 15% RS sugar (RS).

But the numbers don't matter much, because consumers don't pay attention or even know how to pay attention to RS. Not that knowing the residual sugar is going to sharpen the line between what one person calls "jammy" and another calls "sweet." To wit: Ménage à Trois's original red blend (1.1% RS) was extended into Silk (1.35% RS) and Midnight (.65% RS), among others. Does someone who likes one like them all? Perhaps, but if so it's not just a function of the residual sugar.

"Sweetness is a continuum rather than binary, and depends partly on the taster's perceptions," says Christian Miller of Full Glass Research, which tracks wine data for a variety of clients. "In consumer research, people will often describe 'sweet reds' as smooth and not even mention sugar or sweetness." No coincidence: the word "soft" has become a code word in the trade for sweet; and it has been appearing with greater frequency on front labels.

Still, sweet red drinkers know what they want. "It's all about the flavor profile that they like," says Eric Schisler with Barrel Chest Wine & Beer in Roanoke, VA, whose store sells mostly upmarket sweet reds like German Dornfelders and labels from long-time California stickie specialist Quady.

Andrew Meggitt, the Executive Winemaker at Missouri's St. James Winery, says he sees the lifestyle factor whenever he goes camping. He'll bring some sweet reds with him to share with other campers he meets, assuming anyone is interested. They want to drink wine, he says, and sweet reds make it possible in a way drier wines may not. And the green light to have it chilled is equally welcome.

The Trade-Up Question

Which raises another important question about sweet red wine. Is it the Holy Grail of the wine business, the gateway wine that will lure younger consumers away from craft beer and spirits to wine? It depends on who you ask.

On the one hand, says Cooney, Nielsen numbers supplied to The Wine Group show that 25% of new wine drinkers buy Moscato or sweet reds. "Those statistics absolutely prove it's a gateway wine," he says, "It's more approachable, if nothing else."

Still, the ongoing marketing mystery is not so much the appeal of sweet wine for novice drinkers, but whether those sweet-tooth-satisfying wines lead drinkers to other types. Bill Oliver's take: "People have been asking me that question for 20 years, and I've never seen it. People drink wine they like, and I've never seen them switch from sweet to dry because they suddenly like dry."

Bill Oliver sees lots of people enjoy sweet red wine, but they are not shifting to dry. Oliver Winery recently pivoted their marketing toward younger LDA drinkers.

Gateway or not, sweet red demographics do seem to skew younger and a little more female, though everyone is quick to say that there are also large number of older sweet red wine drinkers. Still, it's the younger audience that producers like The Wine Group and Oliver see as their target. Bill Oliver is quick to note that his company's marketing has changed dramatically in an attempt to reach those younger consumers, which included hiring younger marketers.

Fifty Shades of Sweet?

The relative power of sweet red becomes even clearer when looking at some successful brands. The Italian Roscato, launched by Palm Bay in 2011, has developed into a veritable franchise. Rosso spawned Bianco (2013), Rosé (2015); a set of sparklers (2016); and last year Dark and Smooth. Perhaps even more significant: Roscato set the stage for this year's launch of Cavit Sweet Red. Director of Brand Development Hal Cashman says Cavit Sweet Red has exceeded expectations; distributors and retailers are eager to embrace the Cavit entry thanks to Palm Bay's track record with Roscato. Interestingly, Cashman notes that the Cavit Sweet Red fan is more likely to slide over from Roscato than from Cavit Pinot Grigio. He also confirmed that starting this September Roscato will be available in two-packes of 250ml cans-a move inspired by 187ml Rossos being the brand's top SKU.

Jeunesse, by Baron Herzog, is another brand that has enjoyed multiple extensions, most recently a sparkling red. Interestingly, Jeunesse has done so with varietal expressions (not just blends) and by putting style front and center ("semi-dry" and "semi-sweet" label descriptors are supported by a graphic sweetness scale); the wines' kosher identity is secondary.

After a decade delivering "sweet shiraz" to large and enthusiastic fan base in just one format, Jam Jar is adding 187ml four-packs this September.

Jam Jar, a Cape Classics brand from South Africa, was an instant hit when launched in 2009. Executive Vice President Molly Choi credits the wine itself, which has always unapologetically targeted "the legion of people who want to drink sweet," and has proved that Shiraz is a grape that can hit that sweet spot while remaining a well-made, balanced wine. Jam Jar added a Moscato-driven white companion, but otherwise has remained steadfastly true to its simple formula-"sweet shiraz"-in one size. Until now, that is: Jam Jar four-packs of 187mls start shipping this September.

Where are sweet reds headed? Younger crowds, perhaps. Frederick Wildman & Sons, which recently took on sweet-red icon Riunite, has also developed a new brand from scratch-Vipra, a light (7% ABV) fizzy red blend tricked out with snakeskin-printed label, Instagram-friendly marketing and provocative "Shed Your Skin" tagline. The thinking behind Vipra: Millennials are ready for their sweet red. "They prefer non-traditional red wine blends and sweeter wines, with sweet and fizzy brands leading the growth," says Derek Blackburn, Senior VP of Marketing. "Vipra, a delicately sweet and slightly fizzy red blend, meant to be served chilled appeals to these tastes."

His point about chilling draws attention to the fact that, along with the stigma of sweet reds wine fading, the idea of how to enjoy them is more flexible than ever. Cans, chilled, with food or

without-even in cocktails. And as the popularity of lightly chilled sweet reds continues to rise, who knows-there may also be a pink elephant in the room when it comes to future trends. Could rosé step over to the Sweet Side?

Moving forward, here are some sweet red developments to watch:

New Hybrids & Old Standards. There are many ways for wine to be sweet. The Wine Group's Cooney believes that innovation will continue to blur category lines. That means not just sweet grape wines, but grape wines that include fruit juice to add different flavors to compete with the hard seltzers. Meanwhile, as far as hybrids go, while classic red sangria is typically not labeled as "sweet," sangria's ripe, fruity flavor profile and chillability suggest it can and should be cross-marketed with sweet reds and blends. National brands such as Reál, Opici, Casal Garcia and Beso del Sol are well positioned.

Mixing It Up. Wine cocktails? Why not? Sweet red wine is not so far stylistically from vermouth, a mixologist staple. Fruity mixed drink recipes abound on the websites of sweet red suppliers. Ultra simple cocktails are a key part of the marketing campaign for Vipra, a new brand of sweet red wine from Italy. "Half of Millennials today consume wine cocktails," notes Frederick Wildman's Blackburn. "Vipra is the ideal cocktail ingredient for a night out with friends-it provides the desired sweetness to the libation while keeping the overall alcohol level of your cocktail from being too stiff, so you can enjoy the whole night." Expect more marketers to serve up wine cocktails moving forward.

Cost-Efficient & Battle-Ready? The future is bright for consumers who like it sweet and cheap. Sweet wine is less expensive to produce than many traditional dry wines since the appellation the grapes don't matter as much. In addition, as bigger producers like Gallo get deeper into the sweet red market, they can use their economies of scale to drive prices down even more-better positioning them to compete with the budget-priced hard seltzers and their ilk.

Spirits Veteran Named President of Medea Vodka Brand

Source: https://www.prnewswire.com/

Sep 04, 2019

Medea, Inc. today announced the appointment of Tyson B. Gomez as President of Medea Spirits, LLC. Mr. Gomez, a seasoned veteran in the world of spirits and marketing, has spent the past two decades building and refining his expertise in the highly competitive industry.

He will be responsible for managing all Medea Vodka business.

In announcing the appointment, Medea Inc., CEO Brandon Laidlaw, said, "We could not have gained a person with more sales, management and fiscal expertise than Tyson Gomez. His relations both on and off premise, coupled with his marketing experience, will provide our company with enhanced value and a competitive edge. Tyson Gomez is the right person to lead the next phase of growth for our company."

Most recently, Mr. Gomez was National Account Manager for Beam Suntory, where he managed relationships, sales and distributors for Costco wholesale nationally. Prior to Beam

Suntory, he served for more than a decade at Costco Wholesale as the Liquor Buyer for Spirits and inventory control supervisor for multiple departments.

2019 Bartenders To Watch (Excerpt)

Source: https://www.beveragemedia.com/

by Jack Robertiello

September 5, 2019

Beverage Media's annual "Bartenders to Watch" issue has charted enormous changes in the bar business since we first started looking for emerging stars in 2008. In those days it was easy to pick out new talent; now, bartenders are being trained and challenged at an unprecedented level, which has created a generation of technically adept, historically schooled and creatively bold bartenders.

Our focus has evolved as well, and this year we decided to check in with seven bar folk with varying levels of experience who have climbed the professional ladder beyond taking shifts at the hottest craft cocktail bar. We did so in order to capture a moment in time of the thinking and concerns of some of the bartenders who have been around a while, who have had a few knocks, discovered that bartending isn't memorizing recipes, and who have a sense of the bar world around them. Folks like these will continue to move bars, cocktails and bartending forward, one way or another.

Bar Convent Brooklyn's second year brought more of everything-more booths, more seminars, more attendees, and 100+ new product debuts. Education was very much at the forefront; new this year, one session each morning was offered in Spanish. Another educational focus was sustainability and green bar initiatives. Tin Roof Community co-founders Claire Sprouse and Chad Arnholt hosted a booth showcasing ways that bars can set up low-waste, recycling and composting programs.

Brooklyn Bound

This year as well, we focused on the latest of the events designed to serve the bartending and spirits world, Bar Convent Brooklyn (BCB), the two-year old off-shoot of the famous Bar Convent held annually in Berlin, and gathered our honorees from bar pros who were either participating in or attending the two-day event.

Not unlike a new bar that opened and needed time to find itself, BCB dug in, retooled and expanded for the event's second American spin. Same Brooklyn neighborhood and space (Brooklyn Expo center), but the vibe was palpable: square footage of exhibit booths was up 35%; attendance was up 30%. Over 100 new products were launched at BCB 2019-a clear sign that suppliers consider it a breeding ground of gatekeepers. We quizzed them all about some of the most important issues facing the on-premise business today. Specifically:

increasing interest in healthy and low- or no-alcohol drinking in bars and restaurants

the need for a more sustainable approach to drink-making and -serving

health and welfare of workers at all levels in a notoriously arduous and hard-partying field

the explosion of imported, craft and unusual spirits now being created, and

how events like BCB can best serve the industry.

Rooftop Backdrop

We arranged to photograph this year's group of bartenders at Lemon's atop the Wythe Hotel in Williamsburg, Brooklyn. The freshly minted rooftop bar checks a lot of the boxes one would expect of a new cocktail-centric locale, circa 2019-starting with it being a seasonal pop-up.

Opened in May 2019 with beverage gurus Jim Kearns (Happiest Hour, Slowly Shirley) and Christine Kang (Soho House), Lemon's focuses on light, refreshing beverages (many topped with bubbles), tailored to summer and complemented by small plates and snacks. Low-ABV offerings (led by Aperol Spritz on tap) are plentiful. And the drinks are playful, from "boozy popsicles" to the namesake punch (Lemon's Squeeze-Absolut Elyx Vodka or Plymouth Gin, lemon, Luxardo Bitter Bianco, lavender, club soda).

These are some highly skilled, diversely experienced and savvy bar pros, and while they come from different backgrounds, regions and points of view, you'll find that there is a real change from the years when bartenders were often seen as snooty defenders of the correct cocktail and have now often become socially-aware and thoughtful participants in a business that continues to evolve.

In that regard, it certainly made sense to gather the group at Bar Convent Brooklyn. There, amid the dozens of seminars, scores of suppliers and thousands of cocktails being samples, like-minded bar folk found a lot of positive energy. As Kellie Thorne, one of this year's featured bartenders, put it: "The brands really brought their 'A' game and set up really engaging booths." It was a backdrop befitting an industry that thrives on convergence of hospitality and networking.

Here, then, Beverage Media's Bartenders to Watch, 2019.

https://www.beveragemedia.com/2019/08/26/2019-bartenders-watch/

INVESTOR PRESSES OUTBACK'S PARENT FOR A SALE OR BREAKUP

Jana Partners is resuming its call for a strategic redirection two years after a truce was struck.

Source: https://www.restaurantbusinessonline.com

By Peter Romeo

Sep. 03, 2019

An activist investor with a 9% stake in Outback Steakhouse parent Bloomin' Brands said it intends to press again for a sale, breakup or redirection of the multibrand casual-dining company.

The effort marks the second time in about two years that hedge fund Jana Partners has pressured the casual-dining giant to seek a sale of the company or its parts. In addition to Outback, Bloomin' owns and operates Carrabba's Italian Grill, Bonefish Grill and Fleming's Prime Steakhouse & Wine Bar. Outback is Bloomin's largest holding by far. Jana has argued that shareholders' returns would be increased by breaking Bloomin' into two companies: one built around Outback, a fairly mature brand, and the other a growth enterprise founded on the smaller, less-developed brands.

A truce was struck in March 2018 when Bloomin' agreed to award a seat on its board of directors to a Jana representative, Wendy Beck. In return, Jana agreed to drop its agitation for change, and began selling shares. Beck is no longer listed as a Bloomin' director.

The new push for a fundamental upheaval of Bloomin' follows Jana's buildup starting July 9 of another large stake in the casual-dining company. The hedge fund said in a securities filing that it has spent $127.7 million to raise its Bloomin' holdings to 7.8 million shares, or 9% of shares outstanding.

In a securities filing, Jana stated that it intends and expects to have discussions with Bloomin's management and board of directors about a "sale, divestitures, capital allocation, operations and board composition."

"We appreciate the views of stockholders and will consider all perspectives shared with us," a Bloomin' spokesperson said in an email to Restaurant Business.

Jana Partners is run by Barry Rosenstein, a former subordinate of the corporate raider Asher Edelman. Past holdings have included a large stake in Whole Foods Market prior to its acquisition by Amazon.

One of the nation's largest full-service restaurant companies, Bloomin' operates 1,045 units and franchises another 81 in the United States. Outback accounts for about 732 of those domestic stores.

For the second quarter, the company posted a net income of $29.8 million, an 8.6% increase from the year-ago quarter, on revenues of $1.02 billion, a slip of less than 1%.

CVS-Aetna Merger Cleared After Unprecedented Court Battle

Source: https://www.law360.com/

By Bryan Koenig

September 4, 2019

A D.C. federal judge on Wednesday approved the U.S. Department of Justice deal clearing CVS' purchase of Aetna, even after elevating what is typically a mundane judicial merger review into an evidentiary proceeding.

Despite a steady stream of antagonism directed at DOJ Antitrust Division lawyers over the course of his Tunney Act review, U.S. District Judge Richard J. Leon ultimately concluded that

the government's settlement was sound and rejected arguments against the deal from outside groups.

"Although amici raised substantial concerns that warranted serious consideration, CVS' and the government's witnesses, when combined with the existing record, persuasively support why the markets at issue are not only very competitive today, but are likely to remain so post-merger," Judge Leon said. "Consequently, the harms to the public interest the amici raised were not sufficiently established to undermine the government's conclusion to the contrary."

The $69 billion deal approved Wednesday - which like all DOJ merger clearance settlements must go through federal court review under the Tunney Act for its public interest implications - required the sale of Aetna's Medicare Part D prescription drug plan, or PDP, business to WellCare Health Plans. CVS Health Corp. and Aetna Inc. have already consummated the merger.

"The divestiture of Aetna's individual PDP business provides a comprehensive remedy to the harms the Justice Department identified," DOJ Antitrust Division head Makan Delrahim said in a statement welcoming Wednesday's ruling. " The entry of the final judgment protects seniors and other vulnerable customers of individual PDPs from the anticompetitive effects that would have occurred if CVS and Aetna had merged their individual PDP businesses."

The PDP business was the one area of direct competitive overlap identified by the DOJ, which drew criticism from outside groups for limiting its concerns to the potential harm of merging "horizontal" competitors. The groups also called for the DOJ to consider possible harm from a "vertical" tie-up of two companies on different points in the supply chain. According to the groups contesting the deal and the underlying merger, the CVS-Aetna combo means that all three of the United States' dominant pharmacy benefit manager service providers are now vertically integrated with an insurer.

Despite that criticism, the Tunney Act gives the DOJ broad discretion to identify and correct harm to competition. That discretion is so broad, in fact, that government merger clearance deals typically sail through the process. No judge has ever rejected a settlement in a Tunney Act review.

Judge Leon, the first judge to order an evidentiary proceeding in a Tunney Act review, indicated Wednesday that he's aware of the Tunney Act's reputation. But he argued that a deal involving such massive companies and impacting millions of Americans deserves a "thorough" public interest inquiry, saying: "Indeed, if the Tunney Act is to mean anything, it surely must mean that no court should rubber-stamp a consent decree approving the merger of 'one of the largest companies in the United States' and 'the nation's third-largest health-insurance company,' ... simply because the government requests it!"

In this case, the DOJ, backed by several state attorneys general, had argued its deal adequately safeguarded PDP competition with a viable, competitive divestiture buyer and that it sufficiently scrutinized the PBM space and rightly concluded that there was still too much competition for the combined company to gain an edge over its rivals. PBMs serve as middlemen between drug companies and benefit plans and other entities paying for therapies

The merger's critics, including the American Medical Association, AIDS Healthcare Foundation and combined amicus filers U.S. PIRG and Consumer Action, argued that the combined entity would be able to disadvantage competitors or that WellCare itself lacked the size and name recognition to fill the PDP gap left by Aetna were not enough for Judge Leon.

On Wednesday, he said CVS and the DOJ offered the more persuasive arguments, with the judge pointing to their assertions that PDP plans can in fact be compared "in granular detail," overriding considerations like brand recognition. WellCare, too, has been shown to be a strong competitor and will continue to be so post-merger, Judge Leon held. He also pointed to DOJ and CVS assertions that the PDP market "has remained quite competitive."

The judge had chafed at DOJ and company arguments that his review was limited only to the competition concerns raised by the government, instead arguing he could broadly look at the merger's public interest implications and not just the PDP issues. He had expressed particular interest in the merger's impacts on PBM markets. But in the end, it didn't matter.

In his ruling, Judge Leon concluded that the tie-up is unlikely to give CVS anticompetitive leverage over its rivals, with the company still competing "vigorously to retain its PBM customers," and thus unlikely to be able to hike its prices without driving those customers away.

Also Wednesday, the judge rejected assertions that the merger will likely harm HIV and AIDS patients by driving them away from the specialty care they need. CVS, he said, is unlikely to be able post-merger to steer patients away from existing providers.

CVS applauded the decision Wednesday.

"CVS Health and Aetna have been one company since November 2018, and today's action by the district court makes that 100 percent clear. We remain focused on transforming the consumer health care experience in America," the company said in a statement.

The AMA expressed disappointment in a deal it continued to argue will reduce competition and harm patients through higher prices.

"For patients and employers struggling with recurrent increases to health insurance premiums, out-of-pocket costs, and prescription drug prices, it's hard to find any upside to a merger that leaves them with fewer choices," AMA president Patrice A. Harris said in a statement Wednesday. "Nothing in the deal guarantees reductions on insurance premiums or prescription drug costs. As for promised efficiency savings, that money will likely go straight to CVS' bottom line. CVS made no commitment to pass much-hyped savings onto consumers through lower premiums or drug costs."

In the underlying proceeding, even the structure of the live witness testimony took on an unusual pallor under Judge Leon. While the judge had indicated he'd permit cross examination, he ultimately allowed questioning only by the party that named the witness and by himself. That meant he essentially shut the DOJ out of its own case, because Judge Leon only accepted witnesses offered by the amicus filers and the companies.

DOJ complaints about its exclusion, and its assertions to the need to counter "inaccurate and unreliable testimony" from the amici's witnesses, fell on antagonistic ears. In closing arguments in July, Judge Leon addressed what he called "misrepresentations" raised by the DOJ. He said the DOJ had its chance to proffer witnesses and one of those it chose provided testimony at the hearing because the individual was also named as a witness by CVS, according to Judge Leon. The agency even had an opportunity to question that witness, the judge said at the time, but the DOJ declined.

When DOJ lawyer Jay D. Owen nevertheless argued that the government needed a chance to rebut the amici's witnesses, Judge Leon cut him off to admonish: "I would strongly suggest you stop digging."

That rebuke was one of a litany the judge delivered to the DOJ over the course of the proceeding, including when he told department lawyers seeking a reprieve during the government shutdown to "roll up their sleeves" and get to work. He has also scolded the DOJ's attorneys for their "unnecessarily defensive" attitudes.

Additionally, Judge Leon had previously said he worried about other competitive aspects of the CVS-Aetna merger that the government might not have addressed with the settlement, only for the DOJ to argue that bringing cases and cutting deals is within the executive branch's sole discretion, and that forcing the review to go beyond the department's concerns was a breach of the separation of powers.

Even in approving the government's deal, Judge Leon continued Wednesday to criticize the DOJ, castigating the agency for its response to public comments on the settlement, early in the review process, that he said "left much to be desired."

"It is rife with conclusory assertions that merely reiterate the government's confidence in its proposed remedy, but shed little light on the reasons for that confidence," he said. "Indeed, the government's perfunctory response to the public comments was particularly disappointing in light of the volume and quality of the comments to which it was responding!"

In fact, according to Judge Leon, it was because of the DOJ's responses, including the "bald assertion that it is right and the AMA is wrong," that prompted him to convene live evidentiary proceedings in the first place, in order to prevent "an uninformed public interest determination."

The settlement did, however, ultimately address what it needed to address, according to the new ruling.

The government is represented by Jay D. Owen, Andrew J. Robinson, Peter J. Mucchetti, Scott I. Fitzgerald, Justin Heipp, Jesus Alvarado-Riviera, Natalie Melada and Shobitha Bhat of the DOJ's Antitrust Division.

CVS and Aetna are represented by Michael G. Cowie, Rani A. Habash and Michael H. McGinley of Dechert LLP and Enu A. Mainigi, Craig D. Singer and Jonathan B. Pitt of Williams & Connolly LLP.

The American Medical Association is represented by Henry C. Quillen of Whatley Kallas LLPand by in-house counsel Henry S. Allen Jr.

The AIDS Healthcare Foundation is represented by Joseph J. Aronica, Christopher H. Casey, Jonathan L. Swichar and Bradley A. Wasser of Duane Morris LLP.

U.S. PIRG and Consumer Action are represented by Andre P. Barlow of Doyle Barlow & Mazard PLLC and David Alan Balto.

The case is U.S. et al. v. CVS Health Corp. et al., case number 1:18-cv-02340, in the U.S. District Court for the District of Columbia.

THE RISE OF PREMIUM PRIVATE LABEL AND ITS IMPACT ON DISCOUNT RETAILERS

Source: https://www.nielsen.com/

September 5, 2019

Stigma and stereotypes have faded for store brands and name brands, respectively. The premium assortment of products in the retailer-branded portfolio continues to expand. And though discount retailers have historically focused on store brands (or, private labels as we often refer to them), many have a renewed interest in name brands amid demand for premiumization. It's an exciting time for all where private labels descend on mainstream retail and name brands resurge as mainstays to discount retail strategy.

From a sales perspective, the rise of private label is clear. Across U.S. outlets, they have amassed over $143 billion in sales over the latest year, a figure that's up nearly $14 billion since 2015. While name brand products have made great inroads this year, up 2% in sales, growth has been constrained by flat consumer spending intentions, which have leveled off relative to store brands.

Today, consumers are much more willing to splurge for store brands than they would for name brands. Forty-percent of surveyed Americans say they would pay the same or more for the right store branded product, while only 26% of those surveyed feel that name brands are worth the extra price. Store brand sentiment in this case has seen substantial improvement from 2014, but consumers remain relatively unchanged in their willingness to splurge for name brands.

The rise of higher-end store brand products has come hand-in-hand with consumers' inclination to spend more on store brands. The premiumization of private label really comes to life when we look at products by price tier. Analyzing individual UPC price points, we created a five-tier distribution that isolates the most premium- and discount-oriented groups of products. Discount products still represent the majority of store brand sales in America, but they have ceded three share points in the last three years. Premium tiers of private-label products have grown in this time, now representing over 19% of sales. And as we saw earlier, consumers are more willing than ever to foot the bill for the right store branded products.

With a premium face-lift on many private-label products, we've seen an interesting impact on discount grocery stores. U.S. value grocery outlets, including the likes of ALDI and Lidl, have collectively seen a 4% decline in private-label share of wallet. Meanwhile, stores with premium

products, such as premier fresh grocery stores like Whole Foods, Sprouts and Fresh Market, have continued to see lifts in private-label sales.

European discount retailers are seeing the same shift away from their store brands. Drawing global comparisons to markets where store brand presence has matured, name brands have driven over twice the CPG growth for discount retailers in Europe compared with store brands. Mature discount retailers in Germany have seen 10% sales growth from name brands in the last two years, far outpacing the 1% in growth experienced by store brands there. In these instances, name brands are a source for differentiation and driving new demand for discount retailers. This could create a new and profitable home for many name brands that have yet to tap the world of discount retail.

Compete for shelf space in your most opportune sector of retail. For retailers and manufacturers that will mean a different destination than it likely has before.