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The Legal Implications of Restaurant-Designed House Brand Craft Beers

June 21, 2016

The craft beer industry has been growing at an unprecedented clip in the last few years. Breweries are opening up at an increasing pace throughout the United States as consumers skew more towards locally produced products and unique experiences. Not only is there a paradigm shift in consumer preference when it comes to beer, craft beer is having a profound impact on the culinary world.

Chefs and restaurateurs are designing restaurant concepts and menus around craft beer and locally sourced products. Restaurants are now offering food and beer pairings in the same manner as they have historically offered food and wine pairings. Some restaurants are even employing bartenders and servers who have achieved some level of cicerone certification, the beer equivalent of attaining sommelier status in the wine world.

Restaurants are not only embracing and enhancing consumer education as it relates to beer; a growing trend with everyone from chef-driven restaurants to larger scale franchises is designing proprietary private label beverage products to offer patrons. The chef, in collaboration with a local brewery, specifically designs these house brand craft beers in order to provide the optimal pairing with the restaurant's food.

So, what exactly is a private label product? A private label product is generally some retail owned brand placed on a particular product that is manufactured by a third party. Traditionally, it has been a strategy implemented by large retailers and grocery store chains in order to gain access to a product market without having to incur the cost of manufacturing the product.

Large retailers and grocery stores have offered private label products in just about every imaginable product line as a means to compete with more premium products from a price perspective. Retailers such as Kroger and Trader Joe's have even started offering private label craft beers a few years ago.

Witnessing consumers trading up from more macro-produced beverage products to more craft-oriented products has provided the perfect opportunity for Kroger and Trader Joe's to move into the craft segment. Both have created house brand beers and contracted the manufacturing to a third-party beverage manufacturer with capacity. This white label structure has granted Kroger and Trader Joe's a relatively clear path to the craft beer consumer segment.

While the grocery store motivation behind white labeling craft beer is motivated more by providing a product at a competitive price, the white labeling of craft beer by restaurants is driven more by consumer experience.

The most prevalent example of white labeling craft beer by a restaurant is the manufacture of some seasonal or one-off beers, like a beer for an anniversary party or celebration. However, many restaurants are beginning to offer more regular house brands on a rotating tap.

Evil Twin Brewing Company partnered with the Chef Daniel Humm of NoMad in Manhattan for a private label beer called NoMader Weisse. Chef Bryan Voltaggio, the proprietor of eight restaurants in the Washington, D.C., Maryland, and Virginia area, partnered with Flying Dog Brewery on a smoked beer called Backyard Ale.

Even here in the Southeastern United States, restaurants are collaborating with local breweries. James Beard-nominated Chef Jesse Houston, collaborated with Lucky Town Brewing Company to brew an oyster stout for his restaurant Saltine in Jackson, Mississippi.

So, what does the legal relationship look like when a retailer such as a restaurant wants to offer a house beer that is brewed by a brewery? You may be surprised to learn that due to regulatory reasons, the brewery manufacturing the house beer cannot sell it directly to the restaurant.

Generally, a private label manufacturing agreement governs the relationship between the restaurant and the brewery. Pursuant to this agreement, the brewery agrees to brew a proprietary beer for the restaurant. The parties need to address intellectual property issues, manufacturing quality control processes, brewing capacity, and other federal and state regulatory matters.

In most circumstances, the restaurant owns the intellectual property associated with the beer, but cannot take possession of the product until it passes through the three-tier system, the standard regulatory distribution system for almost every state in the United States.

So, the chef or restaurateur needs to understand that there is usually another party to the transaction that is not necessarily a party to the private label manufacturing agreement and that is the brewery's distributor.

Creating house brand craft beers is a sound strategy for chefs and restaurateurs that want to stay on the front end of the craft beer curve, but these relationships trigger meaningful legal consequences. Before undertaking the process of collaborating with a local brewery, the restaurant owner should consider the myriad of related issues and make sure the agreement is reduced to an executed contract.