

TTB: Get Your House in Order

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The U.S. Tax and Trade Bureau (TTB), which is the federal agency charged with regulating and taxing interstate bev-alc sales and distributors, issued an industry circular last week basically saying, in our words, "Hey guys, after 75 years, we woke up and are shocked, shocked to find that there are a lot of trade practice violations going on out there, and we're starting to open up cans of whoopass." Or something to that effect.

The circular goes on to chronicle the most common offenses, mostly tied-house stuff regarding the prohibition of giving stuff of value to retailers, no consignment sales, no slotting fees, and the like.

We know all of these things to be no-no's, and the beer industry -- while there are lapses -- has stuck to the spirit of the law for the most part (more than wine and spirits, I would submit).

However, the very last bullet point the TTB put forward in the circular as an example of a violation is the very one beer distributors, as holders of a federal basic permit, need to pay very much attention to:

"-Industry members illegally operating without a valid Federal permit due to not timely reporting changes of ownership, management, or control over their operations."

This one, while seemingly arcane and technical and not really part of contributing to an "unlevel playing field" like the other violations, is the one that beer distributors in particular need to get on top of, because the TTB has and can and will get you on it if you are not prepared.

All beer distributors must have a federal permit. Many beer distributors obtained these permits decades ago, or in some cases many decades ago, but have not updated those permits as stock or ownership in their companies have changed hands, even if the change in ownership is within the family. That is still a violation, folks.

IT HAPPENED THIS YEAR. We've already seen at least one beer distributor slapped for an invalid federal permit. Recall back in September the TTB sent notice to Illinois' Skokie Valley Beverage Company informing them that they do not currently hold a valid wholesaler basic permit "due to unreported changes in ownership and control, and that continued operations without a valid permit may constitute a criminal offense."

Apparently, the permit violation came to light during an unrelated trade practice investigation, TTB spokesperson Tom Hogue told BBD at the time. "One thing leads to another, [we] come up with leads, it develops into another investigation... this particular case started getting worked in March."

HOW DO YOU STAY ON TOP OF IT? What's the easiest way wholesalers can update their federal permits?

"They can use our permits online system to provide the additional information," said Tom. "We'd strongly encourage anyone who thinks they've got unreported changes, to go ahead try to resolve those issues. Our goal is, we want to promote voluntary compliance. We want people to fix whatever issues they've got. But if you have a permit issue on top of other issues -- you probably want to consider fixing all of that at once."

TTB GETTING SERIOUS. We've seen a flurry of increased enforcement actions by the TTB in recent months, and this circular seems to point to more aggressive enforcement. In their own words:

"Since the beginning of these increased enforcement efforts, TTB has found significant violations of Federal trade practice laws and regulations by some members of the alcohol beverage industry. Such industry members use unlawful trade practices to gain an unfair advantage over law-abiding industry members, which ultimately limits consumer choice.

"The high incidence of unlawful activities and deliberate concealment of such activities raise serious concerns. These activities are of particular significance because of their nationwide occurrence and their impact on trade and fair competition."

OUR TAKE. While I know some suppliers and distributors are very nervous about this new verve in TTB enforcement, particularly because there are still many uncertainties as to what is legal and what isn't, on a whole this is a good thing. Having an orderly market with rules consistently applied for a highly regulated product is appropriate. Most bev-alc rules are applied at the state level, but there are very specific exceptions where the federal regulators have jurisdiction, and all players need to:

1. Know those rules
2. Play by those rules

The first step is knowing the rules, and that is where BBD will work with federal regulators to help communicate what is acceptable, and more importantly, what is not.

If you have questions, let me know and we can try to help to answer them: hs@beernet.com