

A vertical strip on the left side of the page shows a close-up of several whiskey bottles. The bottles are filled with a golden-brown liquid, and the glass is highly reflective, showing highlights and shadows. The focus is sharp on the bottles in the foreground, with those in the background slightly blurred.

Beverage Breakdown

January 2025 Edition

Authors

Nichole Shustack | Isabelle Cunningham

Welcome to Nutter's *Beverage Breakdown*, a periodic legal update on developments related to the alcohol beverage industry, including industry news, federal and state updates, noteworthy litigation, and more. We look forward to sharing our insights with you as we cover everything that's brewing across the sector.

Industry News

The alcohol industry has expressed concern over President Trump's plans to impose steep **tariffs on Canada and Mexico**. The Distilled Spirits Council of the United States issued a statement urging President Trump to work with other governments to reach an agreement that ensures tariffs are not imposed on spirits products, in light of the sector's continued slowdown. "[T]ariffs on spirits products from our neighbors to the north and south are going to hurt U.S. consumers and lead to job losses across the U.S. hospitality industry just as these businesses continue their long recovery from the pandemic."

Amcor PLC agreed to purchase Berry Global Inc. in a deal valued at more than \$8.4 billion. The companies say the merger bolsters their respective containers, closures, and packaging solutions across sectors, including in the food and beverage space. Closing of the transaction is targeted for the middle of 2025.

Federal/State Regulatory Updates

Federal Updates

Surgeon General Vivek Murthy issued an advisory **calling for alcohol to carry warnings about cancer risks**, but experts were quick to weigh in that alcohol is unlikely to become the new tobacco. Critically, alcohol and tobacco do not pose the same health risks—the health risks associated with moderate or occasional alcohol consumption are hotly debated and tobacco is much more addictive than alcohol. Additionally, the presidential administration change brings new priorities. Whether the new administration will favor such a warning remains unclear.

President Trump selected **Tim Bessent to head the U.S. Department of the Treasury**. The TTB is one of seven bureaus within the Treasury.

TTB amended its distilled spirits standards of identity regulations to include **"American single malt whisky"** as a type of whisky that is produced in the United States and meets certain other criteria. The product must be a type of whisky that is mashed, distilled, and aged in the U.S.; is distilled entirely at one U.S. distillery; is distilled to a proof of 160 or less; is distilled from a fermented mash of 100 percent malted barley; is stored in oak barrels (used, uncharred new, or

charred new) with a maximum capacity of 700 liters; and is bottled at not less than 80° proof. The criteria allow for the use of caramel coloring so long as its use is disclosed on the label, and use of the term “Straight” for American single malt whisky aged for at least two years. The final rule is effective January 19, 2025.

TTB has amended its regulations to **authorize 13 additional standards of fill for wine** containers and **15 standards of fill for distilled spirits** containers. TTB has also eliminated the distinction between standards of fill for distilled spirits in cans and those for distilled spirits in containers other than cans. The final rule is effective January 10, 2025.

- Wine industry members may now use the following new standards of fill, in addition to those already approved and listed in 27 CFR 4.72: 180, 300, 330, 360, 473 (16 oz.), 550, 568 (19.2 oz.), 600, 620, 700, and 720 milliliter sizes and 1.8 and 2.25 liter sizes.
- Distilled spirits industry members may now use the following new standards of fill, in addition to those already approved and listed in 27 CFR 5.203: 87, 250, 331, 350, 355, 475, 500, 570, 700, 710, and 945 milliliter sizes and 1.5, 2, 3, and 3.75 liter sizes. All standards of fill for distilled spirits are now approved for cans and containers other than cans.

TTB expanded the list of exemptions from formula requirements for brewery products made with certain ingredients. TTB regulations require brewers to obtain formula approval under certain circumstances, including when “any fruit, fruit juice, fruit concentrate, herbs, spices, honey, maple syrup, or other food materials will be added.” See 27 CFR 25.55(a)(4). TTB may exempt ingredients from this requirement based on a finding that they are traditionally used in the production of fermented beverages designated as beer, ale, porter, stout, lager, or malt liquor. See 27 CFR 25.55(f). **TTB has added 24 new ingredients that are now exempted from formula requirements.** The newly added ingredients are denoted with an asterisk in Attachment 1 to TTB Ruling 2015-1 available on TTB’s website.

TTB announced the sentence of an Indiana man to 48 months in prison, one year of supervised release, and over \$40,000 in restitution who was **operating an unlicensed still**. The man used an unregistered still to illegally produce a product that contained toxic levels of methanol and resulted in the deaths of at least three people.

TTB published Notices of Proposed Rulemakings that would **require the disclosure of allergen** as well as **“Alcohol Facts” information on labels of alcoholic beverages** under TTB’s jurisdiction. Under the proposed rule on allergens, unless an exception applies, TTB would require labels declare milk, eggs, fish, Crustacean shellfish, tree nuts, wheat, peanuts, soybeans, and sesame, as well as ingredients that contain protein



derived from these foods, if used in the production of the alcohol beverage. Under the proposed rule on nutrient information, TTB would require disclosure of per-serving alcohol, calorie, and nutrient content information in an “Alcohol Facts” statement on all alcohol beverage labels subject to TTB’s regulatory authority. The rule also proposes mandatory alcohol content statements for certain types of malt beverages, beer, and wine that are not currently required to be labeled with an alcohol content statement. For each rule, TTB has proposed a compliance date of five years from the date that a final rule is published.

The DEA has **cancelled** planned hearings on potentially loosening federal restrictions on marijuana. This cancellation is intended to allow pro-rescheduling parties an opportunity to bring allegations of agency bias to the administrator of the DEA. Six weeks of hearings on the rescheduling proposal had been scheduled to begin January 21.

Congress **reauthorized the Agriculture Improvement Act of 2018** (the 2018 Farm Bill) for an additional year, leaving open the so-called “loophole” that has allowed many operators to sell products with intoxicating levels of hemp-derived THC.

The FDA issued a final rule **updating the definition of “healthy”** claims on food labels. To meet the updated criteria for the claim, a food product needs to (1) contain a certain amount of food from at least one of the food groups or subgroups (such as fruit, vegetables, grains, fat-free and low-fat dairy and protein foods) recommended by the Dietary Guidelines for Americans, and (2) meet specific limits for added sugars, saturated fat, and sodium. The FDA is also continuing to explore development of a symbol that manufacturers could use on food labeling to show that a product meets the definition of “healthy.”

The FDA has **banned the use of Red No. 3 food dye**. The FDA revoked the authorization for the use of FD&C Red No. 3 and is amending its color additive regulations to no longer allow the dye in food and ingested drugs. The FDA cited, among other data and information, two studies that showed cancer in laboratory male rats exposed to

high levels of FD&C Red No. 3 but pointed out that the way the dye causes cancer in male rats does not occur in humans. “[C]laims that the use of FD&C Red No. 3 in food and in ingested drugs puts people at risk are not supported by the available scientific information.” Manufacturers who use the dye in food have until January 15, 2027 to reformulate their products. California passed a law banning the use of the dye in food in 2023 (that law is also slated to go into effect in 2027). Ten other states have introduced similar legislation.

The FDA announced a proposal to require **front-of-package (FOP) nutrition labels** for most packaged foods. The proposed FOP nutrition label, also called the “Nutrition Info box,” would provide information on saturated fats, sodium, and added sugars in a simple format showing whether the food has “low,” “med,” or “high” levels of the nutrients. This would complement the Nutrition Facts label. The proposal provides that the rule would apply to all food covered under 21 CFR 101.9 that is marketed for people ages four and older unless a specific exemption applies. Comments on the proposed rule can be submitted until May 16, 2025.

The FDA has **removed coconut** (and several other less common ingredients) **from its list of ingredients considered tree nuts**. Accordingly, brands are no longer required to include coconut (and several other ingredients) in their “contains” label statements as there is not a “robust body of evidence to support inclusion as a major food allergen.”

The FTC and the Illinois Attorney General announced a **\$25 million settlement with a large food delivery service** to resolve claims that it charged customers hidden junk fees, listed restaurants on its app without their permission, and misled drivers about how much money they could make. Although no evidence of this was presented as part of the investigation or settlement, for alcohol retailers, the prospect that their business may be listed on a third-party delivery service platform without their knowledge or consent is particularly concerning given strict and complex alcohol delivery regulatory rules. Retailers should monitor third-party delivery platforms to ensure the platforms are not claiming to offer delivery of alcohol products without their knowledge.



State Updates

Maryland

After coming out in favor of allowing beer and wine sales in grocery stores, Governor Wes Moore signaled that he is **no longer planning to pursue this change** in light of both political resistance from some lawmakers and disinterest from others. "This is not going to be one of my administration's priorities," Governor Moore told reporters on the first day of the General Assembly's session.

Massachusetts

- Governor Healey signed into law a measure that would **allow alcohol-serving establishments to accept all out-of-state motor vehicle licenses and Global Entry cards** issued by the United States Customs and Border Protection. "Massachusetts has been the only state in the entire United States that did not permit retailers of alcohol beverages to rely on a valid out-of-state ID for the purchase of alcoholic beverages," according to the Massachusetts Package Stores Association.
- A Massachusetts attorney was charged with forgery for allegedly creating a **fake liquor license** for a Boston restaurant. The restaurant had purchased the license and hired the attorney to transfer it to them, which the Boston Licensing Board approved in February. That approval was forwarded to the Massachusetts Alcoholic Beverage Control Commission, which also needed to sign off on the transfer. Instead of waiting for the approval, a police report alleges the attorney emailed a counterfeit license to the City of Boston on April 3.

Tennessee

- The Tennessee Alcoholic Beverage Commission (TNABC) issued a notice to direct shippers regarding the "agent of the consumer" shipping theory, whereby a company alleges that they are acting on behalf of the consumer when they **ship alcohol interstate**: "Tennessee Code § 57-3-217 mandates that every winery shipping to consumers in Tennessee must hold its own direct shipper license. Certain marketing entities have promoted a misleading strategy suggesting that contractual language identifying the winery or shipper as the 'agent of the consumer' after a payment is received could exempt businesses from this requirement. This is categorically false. Compliance with Tennessee's licensure rules cannot be waived through contracts. Violating this provision could lead to cease-and-desist orders, financial penalties, or criminal charges."
- A Tennessee winery was able to successfully **throw out a fine** associated with an allegation that the winery sold to a minor in a TNABC sting operation. The winery alleged that the TNABC failed to follow its own internal procedures required to execute a compliant sting operation, and the Administrative Procedures Division

agreed. Many states have very specific rules when executing sting operations, and as direct to consumer sales become more prevalent, as do new means of getting product to consumers (e.g., at-home delivery), knowing those rules can be valuable in fighting any administrative or criminal proceeding resulting from such a sting.

Texas

Texas Lieutenant Governor Dan Patrick announced in December that the state Senate would move to **ban all forms of THC in Texas**. Patrick designated the proposed ban as Senate Bill 3, signaling it is among his top priorities for the legislative session.

Michigan

Michigan House Bill 6037 aims to **ban retailers with a sales floor exceeding 2,500 square feet from displaying alcohol adjacent to certain products** (soft drinks, fruit juices, bottled water, candy, toys, or snack foods if the snack foods portray cartoons or youth-oriented images). A retailer with a sales floor equal to or less than 2,500 square feet must either "(1) not display co-branded alcoholic beverages immediately adjacent to soft drinks, fruit juices, bottled water, candy, toys, or snack foods if the snack foods portray cartoons or youth-oriented images; or (2) post signage that is clearly visible to consumers, is not less than 8.5 x 11 inches, and states the following: 'THIS PRODUCT IS AN ALCOHOLIC BEVERAGE AVAILABLE ONLY TO PERSONS WHO ARE 21 YEARS OF AGE OR OLDER.' on any display that contains co-branded alcoholic beverages and is immediately adjacent to soft drinks, fruit juices, bottled water, candy, toys, or snack foods if the snack foods portray cartoons or youth-oriented images." The bill defines "co-branded alcoholic beverages" as "any alcoholic liquor that has the same or similar brand name, logo, or packaging as a nonalcoholic beverage."

Alaska

Legislation has been pre-filed that would revise alcohol warning signs that retailers are currently required to post to include language indicating that alcohol use can cause certain types of cancer. Alaska legislators already approved this change in 2024 but Governor Dunleavy vetoed the bill based on a procedural issue. The bills are HB 37 and SB 15.

Connecticut

- Legislation was introduced in Connecticut that would require alcoholic liquor containers to bear labels warning consumers that alcohol consumption increases the risk of certain cancers. The bill is SB 341.
- Lawmakers also introduced a bill that would ban sales of alcohol in containers of 50mL or less.

Noteworthy Litigation

Major Brands Inc. v. Mast-Jägermeister US Inc. et al.: In November, the Eighth Circuit **overturned** a jury's verdict that Jägermeister must pay Major Brands \$11.75 million after terminating their distribution agreement. The ruling held that the jury was mis-instructed and a new trial is required. The jury was instructed to decide whether Major Brands' investments in the Jägermeister deal were "substantially specific to the brand," but according to the ruling, the right test of whether there is a community of interest between the supplier and the distributor is whether Major Brands made "substantial investments not recoverable upon termination." The jury's instruction "failed to require consideration of the distributor's degree of economic dependence on this particular supplier relationship and whether, if the supplier ended the relationship, the distributor would suffer 'severe economic consequences.'" Major Brands' request for an en banc rehearing/panel rehearing was denied. This leaves the state of Missouri's franchise law in a bit of a lurch again.

Mark Anthony International SRL et al. v. Prime Hydration LLC: In October, Mark Anthony sued influencer Logan Paul's Prime Hydration seeking a declaration that Mark Anthony's collaboration product with Lionel Messi, Más+ by Messi, **does not infringe Prime's trademarks**. Mark Anthony alleged that Prime had threatened legal action over the product, but Mark Anthony asserted that their product design features were "commonplace in the hydration beverage industry." In November, Prime filed counterclaims against Mark Anthony and Lionel Messi, alleging that Más+ by Messi infringes on the trade dress of Prime.

NAD Kreyol Essence Decision: NAD found that Kreyol Essence failed to properly disclose a material connection to an influencer in posts that promoted Kreyol Essence products on TikTok, Facebook, and YouTube. Although the decision was straightforward, it represents a reminder that while FTC's enforcement in the social media influencer space has been limited, **NAD represents a useful venue to challenge competitors failing to comply with FTC guidelines**.

Hemp Litigation

- *Northern Virginia Hemp and Agriculture LLC et al. v. The Commonwealth of Virginia et al.*: The Fourth Circuit affirmed the lower court's October 2023 decision that the federal farm bill, which legalized hemp nationwide, **does not preempt Virginia's law regulating products containing hemp-derived THC products**. A group of hemp companies and customers sued Virginia arguing that Senate Bill 903 was preempted by the 2018 Farm Bill, but the Fourth Circuit disagreed. The opinion states that the 2018 Farm Bill explicitly gave states the right to enact their own stricter policies regarding hemp, "[i]f anything, the 2018 Farm Bill expressly sanctions state regulation." The court also

rejected the plaintiffs' Dormant Commerce Clause argument, holding that the plaintiff did not present evidence that the law "seeks to or does advantage in-state entities by disadvantaging out-of-state entities."

- *Bio Gen LLC et al. v. Sanders et al.*: The state of Arkansas cited the Fourth Circuit's decision in *Northern Virginia Hemp and Agriculture LLC et al. v. The Commonwealth of Virginia et al.* as the Eighth Circuit's judges consider a challenge to an order from a U.S. District Judge granting Bio Gen's request for a **preliminary injunction halting enforcement of Arkansas' ban on hemp-derived intoxicants**. The state told the court that the hemp companies in the Virginia case were making the same arguments that Bio Gen made in this case and urged the Eighth Circuit to consider the Fourth Circuit's holding.
- *Hemp Association of Louisiana et al. v. Landry et al.*: Cannabis industry members in Louisiana **sued to block Louisiana from enforcing new restrictions on consumable products infused with hemp-derived THC**. Louisiana's Attorney General said in their motion to dismiss that efforts to lean on the federal legalization of industrial hemp and the commerce clause have failed for most other companies trying to stop the enforcement of regulations by state legislatures and should not work in this case either. "They complain primarily that Louisiana's law is either preempted by the 2018 Farm Bill or unconstitutional given its interstate effects on the consumable THC market...they do not say that such claims have been tried and failed, elsewhere."
- *Loki Brands LLC et al. v. Platkin et al.*: A group of hemp manufacturers have appealed to the Third Circuit asking for it to review an order that **blocked part of New Jersey's law regulating the sale of intoxicating hemp products**. In October, a federal judge struck down a portion of the law that criminalized out-of-state hemp and hemp products, saying it violated the Dormant Commerce Clause since Congress explicitly permitted interstate sales of hemp in the 2018 Farm Bill. Although a favorable ruling for the plaintiffs, the rest of New Jersey's law was left untouched by the lower court ruling, which the plaintiffs claim impermissibly narrows the definition of hemp and hemp product, excluding certain hemp that is legal under federal law.

Stone Brewing Co. LLC v. Molson Coors Beverage Company USA LLC: The Ninth Circuit **affirmed** a \$56 million verdict for Stone Brewing in its trademark dispute with Molson Coors. The verdict represents one of the largest trademark verdicts ever. The court rejected Molson Coors' arguments about the speculative nature of the future lost profits damages, that the evidence did not support a finding of consumer confusion, and the timeliness of Stone's suit.



Wilbert Andrews et al. v. Sazerac Co. Inc.: A New York U.S. District Judge partially **granted the plaintiff's motion for class certification** in a suit accusing Sazerac of deceiving consumers by selling mini bottles of malt beverages that looked like the full-proof Southern Comfort whiskey product. The judge rejected Sazerac's arguments that individualized inquires rendered class treatment inappropriate and that there was no class-wide proof that the labeling was significantly misleading.

Federal Trade Commission v. Southern Glazer's Wine and Spirits LLC: The FTC sued Southern Glazer's Wine and Spirits in California federal court in December under the **Robinson-Patman Act**, alleging that Southern charged small, independent wine and spirits retailers prices that are "drastically higher" than what Southern charges large chains. In announcing the suit, the FTC alleged that the price differences "are not derived from differences in Southern's cost of distributing products, nor do they reflect legitimate attempts to meet prices offered to chain retailers by competing distributors." The FTC's suit claims that Southern utilized a variety of mechanisms, such as quantity discounts and rebates, to effectuate the price discrimination. Southern responded to the suit by arguing that volume discounts are commonplace in the industry, and pointing to the fact that alcohol distributors are heavily regulated in how they price and discount products. The future of the litigation remains unclear as a new presidential administration takes over. Although President Trump has tapped one of the FTC's current Republicans, Andrew Ferguson, as the next chair, an agency official indicated that it is rare for the FTC to withdraw a filed case. Currently, the parties are in a dispute over Southern's request to seal portions of the FTC's complaint.

Anvar v. Dwyer: The First Circuit **dismissed** a challenge to a Rhode Island law that allows local retailers to deliver alcohol but prohibits out-of-state retailers from delivering wine directly to Rhode Island consumers. Unlike similar retailer DTC complaints, the plaintiff in this case was not an out-of-state retailer but relied on Rhode Island consumers allegedly aggrieved by the law. The case had previously been dismissed by the District Court but was appealed to the First Circuit before being sent back to the District Court where it was again dismissed at the plaintiffs' request. This followed the District Court's request for arguments on whether the plaintiffs had standing to challenge the constitutionality of Rhode Island's law. The American Beverage Licensees applauded the dismissal, "[t]his Rhode Island case, which is in the First Circuit, now joins decisions in similar cases in the 2nd, 4th, 5th, 6th and 8th Circuit Courts that confirm the legitimacy of state alcohol laws designed to ensure public safety, revenue collection, fair competition and a vibrant marketplace for consumers."

Applejack Wine & Spirits LLC et al. v. State of Colorado Department of Revenue Liquor Enforcement Division et al.: Three Colorado liquor store chains have sued the state of Colorado alleging that it allows investors in big-box retailers and grocery stores to **ignore limits on liquor licenses** while exerting significant pressure on liquor retailers. The complaint alleges that state regulators allow corporate entities to violate state law barring any owner of a “liquor-licensed drugstore” from having an interest in more than eight such entities, while enforcing a three-license limit for owners of retail liquor stores. The lawsuit argues that ownership limits apply to “any owner, part owner, shareholder or person interested directly or indirectly in a liquor-licensed drugstore” but the state is not requiring that liquor-licensed drugstores submit this information. The complaint alleges by way of example that “the Vanguard Group Inc. currently has ownership interests in at least 29 different liquor-licensed drugstores operated by multiple publicly traded companies, including eight Costco liquor-licensed drugstores, seven King Soopers/Kroger liquor-licensed drugstores, six Sam’s Club liquor-licensed drugstores, four Safeway liquor-licensed drugstores and four Target liquor-licensed drugstores...”

House of LaRose Transaction Litigation: House of LaRose announced its intention to **sell to Columbus Distributing Co.** in August 2024, but Constellation, Mark Anthony, and Rhinegeist have allegedly declined to approve the transaction. House of LaRose sued Rhinegeist, claiming it unreasonably withheld its consent to the transaction in violation of Ohio franchise law. Publicly available information also identified a recent suit filed by Mark Anthony against House of LaRose, but the basis and nature of that suit is unknown.

Wholesaler Transactions

Vehrs Distributing acquired Prime Wine & Spirits of Washington.

Update on Nutter’s Alcohol Practice

Nutter’s Alcohol Practice is excited to welcome [Helen C. Plunkett](#), a Corporate and Regulatory Specialist, to the team. Helen assists clients on corporate governance, regulatory compliance and securities-related matters.

About Nutter

Nutter is a Boston-based law firm that provides legal counsel to industry-leading companies, early stage entrepreneurs, institutions, foundations, and families, across the country and around the world. The firm’s business and finance, intellectual property, litigation, real estate and land use, labor and employment, tax, and trusts and estates practice are national in scope. The firm was co-founded in 1879 by former U.S Supreme Court Justice Louis D. Brandeis, before his appointment to the Court. For more information, please visit www.nutter.com and follow the firm on [LinkedIn](#).

This advisory was prepared by [Nichole Shustack](#) and [Isabelle Cunningham](#), attorneys in Nutter’s [Alcohol Practice](#). If you would like additional information, please contact any member of our team or your Nutter attorney at 617.439.2000.

This update is for information purposes only and should not be construed as legal advice on any specific facts or circumstances. Under the rules of the Supreme Judicial Court of Massachusetts, this material may be considered as advertising.

