



Opening a Brewery- who's your (regulatory) daddy?

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Topics

Legal Basics of Breweries

- ▀ Three tier system
- ▀ Licensing
 - ▀ Federal, local, state
 - ▀ State License types
 - ▀ Timeline
- ▀ Distribution
- ▀ Growlers
- ▀ Beer with Cannabis?

If there's time:

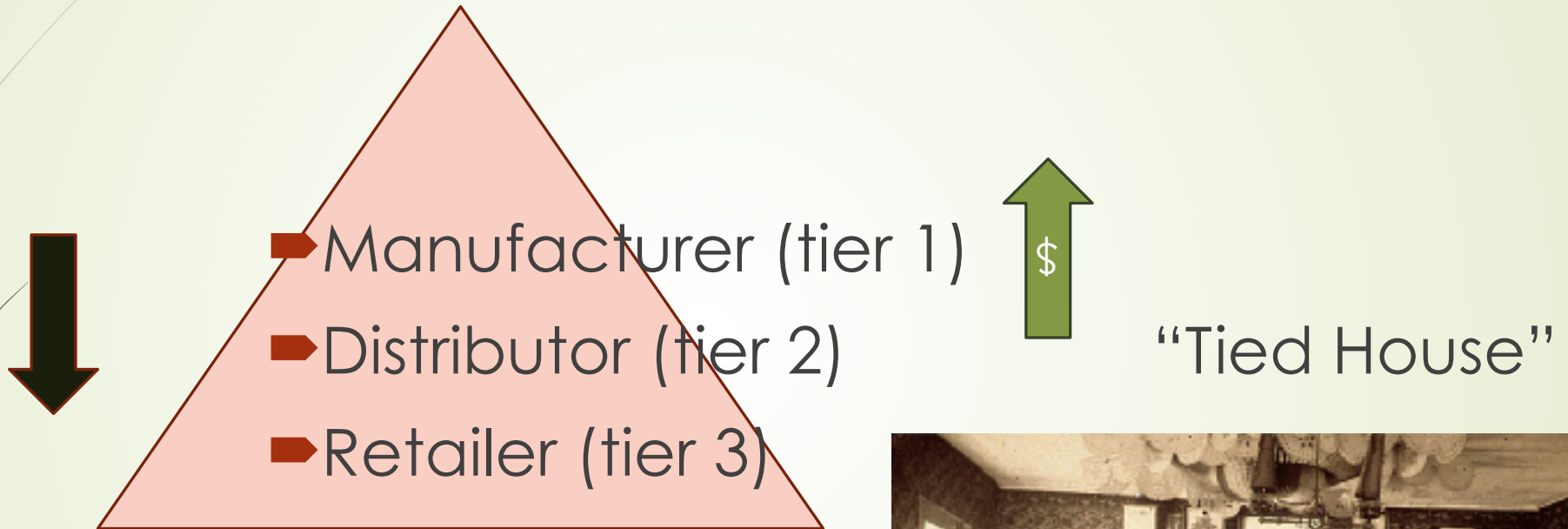
- ▀ Non-profit events
- ▀ Trademarks
- ▀ Trade Practices



Ways a Brewery is like any business

- 
- Business Name
 - Entity type (LLC, corp)
 - Trademark
 - Lease
 - Financing
 - Securities laws
 - Employee agreements
 - Trade secrets?

Unique to Beer: 3 Tier System



Unique to Beer: 3 Licensors

- Big Daddy--Federal: Tax and Trade Bureau (TTB)
 - Brewer's Notice
 - Brewer's Bond
 - Possible inspection and background checks < 12 months!
 - *Ongoing regulation:*
 - *Formula/Certificate Of Label Approvals ("COLA 😊)*
 - *Excise tax, records*
- Annoying uncles-- State and local licenses
 - City inspections
 - State ABC license

TTB: No licenses to Felons, Retailers

- Have to disclose to TTB anyone with 10% stock or interest

- Fingerprints
- Background check
- Financing
- Proof of lease
- Premises drawing

∞ No owner may also have interest in an **alcohol retail licensee** anywhere.

No restaurant, hotel, nail salon, etc.

There can be exceptions, but it takes a fight.

Location: Lease that permits use and location is not a “dwelling house”, but a detached garage could be ok.

[Mike Hess laid out all the question he was asked on his blog: <http://www.mikehessbrewing.com/2010/01/ttb-brewery-approval/>]



Federal: TTB COLAs, Formulas

- You need every label to get approved by TTB if it will be sold out of state



- Formula is for any non-traditional ingredients or processes (coconut, fruit, etc.)
- Beer Institute encourages including calorie, Alcohol, and "freshness" dates

Local Inspections



From a brewer:

- Sewage, garbage, fire department, building permit, electrical service, water service, fire sprinkler certification.
- These city permits can be the hardest thing to get. PgE can refuse power and requiring upgrades to the building
- Our original layout was also shot down by the fire department and had to get changed. Sewage requires volume measurement, ph measurements and a space to treat waste water as necessarily.

State License Types



- Beer Manufacturer license (Type 1) \$1537
 - Sampling allowed, may sell beer & wine on and off premises
 - may operate additional stores/pubs where no brewing occurs

- Small Beer Manufacturer licenses (Type 23) \$98
 - Up to 60,000 barrels per year [no cider]
 - Same privileges as 01- can distribute, but no retail privileges
 - If you have a bona fide eating place, you can serve guest beer and wine

- On-Sale General Brewpub license (Type 75- retail) \$876
 - Allows wine, beer and *spirits* at a bona fide eating place
 - Must produce at least 100 barrels and under 5,000 per year
 - No growlers or other off premises sales. No minors on site.
 - Must buy all alcohol (not its own) from a wholesaler or winegrower. CANNOT buy from friend's pub or retailer or from a type 23.

Timeline



■ **7-8 months out:**

- Business Setup: Form your entity, obtain an Employer Identification Number, Open a Business Bank Account
- draft an Operating Agreement
- clear your brewery name as a Trademark.

5-6 months out:

- Begin seeking out space, negotiate a lease (with an escape if no permit).
- When you have lease, apply for Brewer's Notice & Bond, and FDA food facility registration.
- Order equipment.

1-2 months out:

- Prepare your local and state licensing materials so that when federal comes in, you can submit.
- Obtain federal approval and submit to state.
- Submit label (COLA) and formula approvals to TTB, if required.
- Clear and protect all important brand material, such as the brewery logo and flagship beer names.

Distribution Models

Self Distribute

- No one cares about you as much as you do.
- Brand control
- Product control
- Retain more gross profit

Contract Distribute

- Better reach
- Volume
- Need written agreement and cannot easily change distributors



Distribution: beware



- **Do not sign the first contract** a distributor hands you!
 - You must be able to terminate
 - Do not agree to termination only for “**just cause**” [legalese for you are stuck]
Distributor could stop selling your product and you are stuck with him!
 - Better, if you must, to pay to terminate
- Register written agreement and territory with state agency
 - Small brewers need to be careful in their emails and in their words not to create the implication that wholesaler has an implied right to a long-term contract. They should set brand standards.
 - Otherwise, you hand your brand over to the distributor.
 - Brewers can sell from wagons and trucks to retailer directly. CBP 23388.

Growlers

- Label must be registered with ABC
- Container must be sealable
- All prior beer manufacturer info must be obscured
- No CRV
- Retailers (including type 75) cannot fill growlers
- Clean?



Beer with THC

- Illegal under federal and state law
- One can make a non-alcohol beer (which is not “beer”) and add THC
 - Has to be sold in cannabis dispensary
 - Currently can be manufactured at an alcohol facility, but not on the licensed/bonded part.
 - can add Hemp to beer with formula approval

-No alcohol licensee can serve or sell cannabis on the licensed premise.





Trade Practices

- Rule 106: Supplier can give nothing “of value” to a retailer.
 - Except.....glassware, point of sale, signage, Umbrellas?
 - “I’m pouring at the SaveMart Grape Escape!”



Non Profit Events

Can we donate a keg of beer to a nonprofit organization that is holding a athletic competition?

Yes, if all revenue goes to non-profit (A caterer is a retailer and cannot make the money)

They will be giving beer free of charge to participants on private property. Do they need a permit for this?

Yes, a 1 day special permit

Will there be beer sold at Emerald Cup?

No sale or consumption of alcohol where a cannabis event occurs.

Can people consume cannabis at Homebrew World Cup?

Technically no. Enforcement depends on the city.

Trademarks

TM



- Search on USPTO.gov
 - Think both defensively and offensively
 - Is the field so crowded, I can use name too (without registration)?
 - Is name so unique, I can seek trademark protection and stop others' use?
- Unprotectable marks:
 - Descriptive ("creamy", "pale ale")
 - Misleading geographic names
 - Surname, sometimes

If anyone is interested in Label rules..



Helpful links

- Ttb.gov
- Abc.ca.gov
- Brewers association
- Californiacraftbeer.com
- <http://www.mikehessbrewing.com/2010/01/ttb-brewery-approval/>
- And: VineLegalGroup.com

