



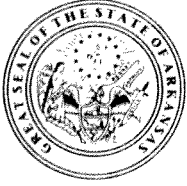
State of Arkansas
Bureau of
Legislative Research

David Ferguson., Director
Kim Arnall, Assistant Director
for Fiscal Services
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Memorandum

TO: House and Senate Interim Committees on Public Health, Welfare & Labor
FROM: Kim Baxter, Senior Legislative Analyst *KB*
DATE: November 5, 2008
RE: Information Requested

At the October 20, 2008 meeting of the House & Senate Interim Committees on Public Health, Welfare & Labor, information was requested on exactly how "alcopops" are classified and taxed. Attached is the response that was received from the Department of Finance and Administration. If you need additional information, please do not hesitate to let me know.



STATE OF ARKANSAS
**Department of Finance
and Administration**

Assistant Commissioner of Revenue
POLICY AND LEGAL
1800 West Seventh Street, Suite 2440
Post Office Box 1272
Little Rock, Arkansas 72203-1272
Phone: (501) 682-7000
Fax: (501) 683-1161
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October 31, 2008

Kim Baxter
Senior Legislative Analyst
Arkansas Bureau of Legislative Research
Room 315, State Capitol
Little Rock, AR 72201

Dear Ms. Baxter:

This is in response to your letter dated October 22, 2008 to Mr. Tim Leathers, Deputy Director of the Arkansas Department of Finance and Administration. Your letter explains that the House and Senate Interim Committees on Public Health, Welfare, and Labor received testimony that a product known as "Alcopops" was light spirituous liquor and should be taxed and regulated as distilled spirits. However, the testimony indicated that these products were instead being taxed and regulated as beer or malt liquor. The committees requested that you contact the Department of Finance and Administration seeking written clarification concerning how Alcopops are taxed and justification for the way they are classified in the Arkansas code.

Alcohol beverage products are subject to a wholesale level tax. This tax is imposed in Ark. Code Ann. § 3-7-104 and the tax rates are based on the product's identification as either "spirituous liquor", "premixed spirituous liquor", "light spirituous liquor", "vinous liquor", "light wine", "beer", or "malt liquor". Items identified as spirituous liquor, premixed spirituous liquor, and light spirituous liquor are all defined to include liquor distilled from the fermented juices of grain, fruits or vegetables and any mixture containing liquor distilled from these items. The tax rate and identification as spirituous liquor, premixed spirituous liquor, or light spirituous liquor, depends on the alcohol content of the item.

Similarly, vinous liquor and light wine are identified as products containing the fermented juice of grapes, berries, and other fruits or any mixture containing the fermented juices of grapes, berries, or other fruits. Again, the identification of the particular item and the tax rate of each item is dependent upon the alcohol content of the product. Finally, "beer" is defined as any fermented liquor made from malt and having an alcohol content of not more than five percent while "malt" means liquor made from fermented juices of grain and containing more than five percent alcohol by weight.

The term "Alcopops" is not used in state law with regard to the taxation of alcoholic beverages. Instead, these products are subject to tax based on their classification as one of the products described above. The wholesale level taxes are imposed at the same rate regardless of whether the item is sold in a liquor store, a grocery store, or a convenience store. In addition to the wholesale level taxes, additional state and local taxes are imposed on the retail sale of alcohol for off-premises consumption. State and local sales taxes are due on all retail sales of alcohol. In addition, a 3% liquor excise tax is imposed on all sales of spirituous liquor and a 1% beer excise tax is imposed on all retail sales of beer for off-premises consumption. These retail taxes are due regardless of where the alcohol is sold.

Kim Baxter
October 31, 2008
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In our telephone conversations, you indicated that Alcopops included products that tend to contain fruit flavors or other types of flavoring and packaged much the same way as a soft drink. These items are usually located near the area where beer is sold in many grocery stores. While it is impossible to make a final determination concerning the appropriate tax to be collected, our review of these items indicate that these items are beer and malt products containing less than five percent alcohol by weight. Consequently, state law provides that these items would be taxed as beer.

State laws concerning the licensing, classification, sale and distribution of alcoholic beverages are administered by the Alcohol Beverage Control Division. Attached is a document prepared by representatives of ABC addressing the proper classification of products referred to as "Alcopops". You may wish to contact that agency concerning issues related to the marketing of these products in retail outlets.

Please contact me if you have questions.

Sincerely,



John H. Theis
Assistant Commissioner of Revenue
Policy and Legal

JHT/wms

Cc: Richard A. Weiss, Director
Arkansas Department of Finance and Administration

Tim Leathers, Deputy Director
Arkansas Department of Finance and Administration

Michael Langley, Director
Alcoholic Beverage Control - Administration

TO: MICHAEL W. LANGLEY, DIRECTOR
ABC DIVISION

FROM: DONALD R. BENNETT, STAFF ATTORNEY
ABC DIVISION



RE: FLAVORED MALT BEVERAGES -
CLASSIFICATION AND TAX ISSUES
APPLICABLE FEDERAL LAW
APPLICABLE STATE LAW

DATE: OCTOBER 28, 2008

M E M O

At your request I have prepared the following memo on the treatment of flavored malt beverages as they are currently classified by the ABC Division. The memo will also lightly touch upon tax issues but it will not do so extensively because the ABC Division has no jurisdiction in the setting or the collecting of various excise taxes that may be assessed by the Arkansas State Dept. of Revenue on any alcoholic beverage category. Indeed, as will be shown in this memo, the ABC Division has no authority in taxing issues whatsoever per an Act of the Arkansas General Assembly.

I apologize in advance for the extreme length of this memo and the number of attachments that are being sent to you but the question that has been posed, which follows a meeting of the House and Senate Interim Committees on Public Health, Welfare & Labor, cannot be

answered by simply telling you what time it is, rather I must tell you how the watch is built.

INTRODUCTION

At the beginning of this memo we should outline some very basic problems in terminology which are used in the letter of October 22, 2008, authored by Ms. Kim Baxter of the BLR, as attached. The letter, addressed to Mr. Tim Leathers, and subsequently passed to us for comment, memorializes the fact that the above noted joint interim committee met on October 20, 2008, and the committee heard testimony on a product classified, in the letter, as "alcopops".

I contacted Ms. Baxter by telephone this morning and she and I both agree that there is no Arkansas code citation which defines the term "alcopops". It is rather a term that has been used by persons who are concerned about malt beverages, and perhaps other intoxicating liquors, that have been sweetened or that some how or another been packaged to be attractive to a certain segment of the alcohol buying market.

Also inherent in the controversy is whether "alcopops" should be taxed and regulated as distilled spirits [see ACA 3-7-104] rather than taxed and regulated as beer or malt liquor.

I am going to take the position in this memo that regulation of the product is left to the ABC Division, with some interesting problem areas being noted, but taxation, of course, is reserved to the Revenue Department.

A. OLD HISTORY

Malt beverages have been flavored with various ingredients for decades. For example, there is a flavored malt beverage that has great favor in Great Britain, and which has subsequently migrated to the United States, known as a shandy. A shandy is generally thought of as being a summer time beer drink and it is flavored with orange juice or other such products that will create the orange flavor or citrus taste. It is also common knowledge that there are various malt beverage products that are flavored with cranberries and various other flavorings to mimic fruit that are distributed on a seasonal basis. The fact that beer has been sold with flavors is nothing new.¹ The event that first got the ball really rolling on flavored beer products, hereinafter referred to as flavored malt beverages [FMBs], began some five to ten years ago when the malt beverage industry began packaging products for sale in the market that were comprised mainly of beer but which also plainly advertised on the label of the product that a real distilled spirits product, such as Bacardi

¹ Beer is defined at ACA 3-5-1202(2). No prohibition on "flavors" is mentioned.

Rum, or such as Smirnoff Vodka, was contained within the mixture placed inside the bottle or can. References would be made on the label such as "includes Bacardi Rum" or other words to that effect. It quickly became apparent to the Federal Government that they had made an error on these particular combination products where alcohol derived from brewing and alcohol derived from a beverage grade distilled spirits had been combined, which they had approved to be sold as a malt beverage. These types of products have not been in the market for some years. If they were to be in the market then they would be properly classified, by both the ABC Division and any other agency that cared to look at it, as premixed spirituous or light spirituous liquors, depending upon the alcohol content. These liquors are defined at Ark. Code 3-7-104. More will be said about this particular definition when we reach the observations that I make on taxation issues.

B. MORE RECENT ACTIONS

The Federal Government quickly retreated from authorizing the malt beverage companies to combine drinkable distilled spirits products with beer products and instituted, through a various number of steps, a new malt beverage category called FMBs. The current standards for FMBs are found at 27 CFR §7.11 in which the Federal Government outlines its standards by stating which flavoring ingredients may be used in the

formulation of a malt beverage product. Please notice that the key words in 27 CFR §7.11 are the words **“nonbeverage ingredients”**. 27 CFR §7.11(a)(1) states that flavors and other **nonbeverage ingredients containing alcohol** may be used in producing a malt beverage. What is clearly meant here is that you can have some sort of additive or some sort of flavoring agent, such as vanilla extract, lemon extract, banana extract or many of the other various types of flavoring agents that one finds in a grocery store everyday, or other such items, in producing a malt beverage. The Federal Government does not consider a FMB to contain distilled spirits as long as the alcohol being used, other than from brewing malt or substitutes therefore, is not classified as beverage grade alcohol. 27 CFR §7.11, a copy of which I have attached to this memo, firmly sets the chemical composition of the finished product and sets limits on how much alcohol can be derived from **“nonbeverage ingredients containing alcohol”**. There are two different classifications for FMB tolerances as far as the Federal Government is concerned. I am attaching to this memo and copy of DOT-TTB Industry Circular No. 2008-3, dated July 23, 2008, which is addressed to the industry on the subject on non-compliant FMBs. The industry circular gives a complete, as far as I can tell, background on the TTB’s standards in deciding what would be a proper FMB. The second page and third page of the industry circular shows how the Federal Government will calculate limitations on the use of **“flavorings and other nonbeverage**

ingredients containing alcohol in the manufacture of flavored malt beverages (FMBs.)” Standards for beer are also repeated in 27 CFR §25.15, a copy of which I have attached. It states that beer must be brewed from certain sources and that the manufacturer may use **“flavors and other nonbeverage ingredients containing alcohol”** in producing beer.

I also note for your information that under 27 CFR §7.22(a)(5), a copy of which attached, FMBs must carry a mandatory declaration of alcohol content where any portion of the alcohol is derived from **“added flavors or other added nonbeverage ingredients ... containing alcohol.”** It is obvious, from reading the TTB materials, that nonbeverage ingredients includes items that have alcohol but are not classified as beverage grade alcohol, e.g., lemon extract, vanilla flavoring, et al.

C. CLASSIFICATION ISSUES

Since the Federal Government under 27 CFR §25.15, and other relevant portions of the Federal code has authorized “beer” and presumably, based on alcohol content malt liquor², as defined in the Arkansas Code, to contain flavoring ingredients that may be composed of alcohol in part as long as it is nonbeverage grade alcohol products, we have followed in

²ACA 3-1-102(a)(3)

allowing these products to be classified as beers and/or malt liquors for ABC purposes rather than light spirituous liquors. There is no declaration on the labels that the products contain beverage grade distilled spirits products which would carry them, for ABCD classification purposes, into the light spirituous category, or other classification in which they could only be sold at liquor stores.

In support of the thought process used by the ABC Division in the classifying of alcoholic beverages as to being wine products, distilled spirits products, or malt beverage products, which includes both beer and malt liquors as defined in the Arkansas Code, I am supplying to you as an exhibit, a copy of a certificate of label approval [COLA] submitted by the Miller Brewing Company on a product called Sparks Light. It is noted that on the middle of the TTB form reference is made to TTB TD-21, the standard for FMBs. A review of the Sparks label plainly shows that this is being sold and advertised as a premium malt beverage with various ingredients such as caffeine, taurine, "natural flavors", certified color and other such items. At no place on the Sparks label is this shown to be a beer that has been mixed with or blended with consumable grade distilled spirits product. If you will note on the TTB form, block number four, the TTB, by its approval, classified this product as a malt beverage. Based on the alcohol content of 6% alcohol by volume, which is less than 5% alcohol by weight, this product has been,

in my estimation, properly classified and allowed to be sold as a beer product. There is nothing on the label to tell me or any other person examining the label that “natural flavors” includes consumable distilled spirits grade alcohol.

Also, on the classification issue I am submitting a copy of a TTB COLA form for Mike’s Screwdriver Premium Malt Cocktail. It is plain, from reviewing the TTB COLA form, that per block number five, the type of product being approved is not a wine product and it is not a distilled spirits product but it is rather a malt beverage product. The front of the label indicates that the product contains 8% alcohol by volume and for this reason it will be classified by the state of Arkansas as a malt liquor, which may only be sold for off premises consumption at retail liquor stores. See ACA 3-5-101. Eight percent alcohol by volume exceeds the state’s standard for beer products which are limited to 5% alcohol by weight or less. A review of the front body label shows that the product is being offered as a premium malt beverage with natural flavors and artificial colors. There is not one word on the label about the product containing consumable grade distilled spirits alcohol. In fact, the neck label advertises the product as a “flavored ale”.

Based on this label and based on these representations I believe the ABCD has properly classified this product as a malt liquor, and not as a light spirituous liquor.

I finally submit for your consideration the TTB COLA form submitted by Mark Anthony Brewing Company on a product called Mike's Hard Pomegranate Lemonade, which is a beer product as it contains less than 5% alcohol by weight. A review of the TTB COLA form shows that this product is submitted to and approved by the Federal government as a malt beverage and not any other product category. See block number five of the TTB COLA. A review of the body label shows that this is a premium malt beverage with natural flavors and artificial colors. The label, to comply with Federal rules, contains a declaration of alcohol content which would not otherwise be necessary under Arkansas' own regulations. On the neck label the product is identified as a flavored beer. Based on the materials received and approved by the Federal Government, and based on the contents of the label, I believe the ABC Division has properly classified this product as a beer product that may be sold under a retail beer permit.

I do want to make one other observation which I consider to be of more than passing interest and that is the lack of authority of the ABC Division to regulate flavoring ingredients meant for use in food

preparation. Act 108 of 1935 provides in part at Ark. Code 3-1-103 that flavoring products, which contain alcohol, are not part of the jurisdiction of the ABC Division. I call to your attention the provisions of Ark. Code 3-1-103(c)(5) which contains a provision that the Thorne Liquor Act shall not apply to “pure, ethyl, or denatured alcohol intended for use or used for ...culinary purposes...” We, as a state agency, do not license or have jurisdiction over lemon extract, banana flavoring, or vanilla extract, [culinary] as found in the spice section of any grocery store in the state of Arkansas. It is a very fair question as to whether we would have jurisdiction to classify flavoring ingredients [culinary] which under Federal law are not beverage grade alcohol. We do not have jurisdiction over lemon extract on the grocer’s shelf. How do we bootstrap ourselves, for classification purposes, if an FMB uses lemon extract? I understand “beer” is exempt from Act 108 of 1935, but nothing in the beer definition prevents none beverage grade flavoring agents.

D. TREATMENT OF “ALCOPOPS” IN OTHER JURISDICTIONS

I note in this section of my memo that “alcopops”, which has a broad number of definitions depending on who you talk to, are currently making the news and are being treated in various manners by different states. I attach for your review a copy of an item that I have taken from a blog on the alcohol beverage industry wherein the state of Utah has

“tightened the rope” on where FMBs may be sold. According to the October 1, 2008, item the state of Utah has now taken the position that FMBs must be classified as spirits drinks instead of being classified as a beer and that the same cannot be sold in grocery stores or convenience stores. I suppose if the Arkansas Legislature wants to take this step they are free to do so but it would be very helpful to this agency if the definition is crystal clear as to what the state would consider to be an FMB, as opposed to the Federal definition of FMBs.

I also attach to this memo another article from the blog, which is dated October 23, 2008, which states that Nebraska, along with the vast majority of other states, continues to classify FMBs as malt beverage products rather than distilled spirits products. According to the item from the blog FMBs are regulated and taxed as beer in 48 states in the nation.

E. TAX ISSUES

As I pointed out in the beginning of this memo while ABCD has the power to classify alcoholic beverages and to issue permits and licenses for the sale of alcoholic beverages, the ABC Division has absolutely no powers over the collection or the levying of taxes. In this regard see Ark. Code 3-2-205(e)(1). It is very clear that the power to collect permit and

license fees and “taxes imposed on alcoholic beverages” are exempted from the powers of the ABC Division or the ABC Enforcement Division. Per the paragraph found at Ark. Code 3-2-205(e)(2) the collection of all such taxes and permit or license fees shall be by the Director of the of the Dept. of DFA and his agents or employees, meaning the Revenue Dept. If the Arkansas Dept. of Revenue decides to classifies FMBs as light spirituous liquors because they contain flavoring agents that may contain nonbeverage grade distilled alcohol then I believe that would in their power to do so as taxation is different from classification. I note that there is a separate tax rate in the Arkansas code [ACA 3-7-104] for beer products, for malt liquor, for premixed spirituous liquor and light spirituous liquor. It will be up to the Arkansas Revenue Dept. to decide how they wish to classify FMBs for tax purposes. I note that the language found in ACA 3-7-104(3)(B) is very broad in that it states that “light spirituous liquor” means any liquor distilled from the fermented juices of grains, fruits or vegetables and **“any mixture containing liquor distilled from the fermented juice of grain, fruits or vegetables...”**. I suppose that if we had an alcoholic beverage that was flavored with banana extract, which might contain beverage grade alcohol, then that would be cause for the Dept. of Revenue to say that this now should be taxed as a spirituous liquor of some type or grade. I leave that to them as that is within their jurisdiction and not the ABCD.

By my calculations if FMBs, for taxation purposes, are flipped from the beer rate to the light spirituous rate then the effective gallonage tax would double.

F. SUMMARY

In summary, I believe that the ABC Division, on classification matters, has properly classified, in accordance with the regulations promulgated by the Federal Government, malt beverage products containing nonbeverage grade alcohol flavoring agents as beers or malt liquors depending upon the final alcohol content. At the same time the taxation issues, which are an entirely separate topic, must be decided by the Arkansas State Dept. of Revenue.

DRB/kh

Attch: Letter of 10/22/08 – Bureau of Legislative Research

27 CFR §7.11

DOT-TTB Industry Circular No. 2008-3

27 CFR §25.15

27 CFR §7.22

TTB COLA Form – Sparks Light

TTB COLA Form – Mike’s Screwdriver

TTB COLA – Mike’s Hard Pomegranate Lemonade

Blog item of October 1, 2008 – Utah

Blog item of October 23, 2008 - Nebraska



State of Arkansas
Bureau of
Legislative Research

David Ferguson, Director

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October 22, 2008

Mr. Tim Leathers
Deputy Director/Revenue Commissioner
Division of Revenue - DFA
401 DFA Building
1509 West 7th Street
Little Rock, AR 72201

Dear Mr. Leathers:

At the October 20, 2008 meeting of the House & Senate Interim Committees on Public Health, Welfare & Labor, the committees heard testimony that alcopops were classified as "light spirituous" and should be taxed and regulated as distilled spirits. However alcopops are currently being taxed and regulated as beer (malt).

As a result the committees have instructed me to contact you and ask for a clarification (in writing) on how alcopops are taxed and the justification for the way they are classified as defined in the Arkansas Code.

If you have any questions or need additional information, please do not hesitate to let me know.

Sincerely,

Kim Baxter
Senior Legislative Analyst

KB:jw

part by TTB Order 1336-7. Delegation of the Administrator's Authorities in 27 CFR Part 7, Labeling and Advertising of Malt Beverages.

Brand label. The label carry (b) in the use a distinctive design, the brand name of the malt beverage.

Bottle. Any person who places malt beverages in containers of a capacity of one gallon or less.

Container. Any can, bottle, barrel, keg or other closed receptacle, irrespective of size or of the material from which made, for use for the sale of malt beverages at retail.

Gallon. A U.S. gallon of 231 cubic inches of malt beverages at 39.1 °F (4 °C). All other liquid measures used are subdivisions of the gallon as defined interstate or foreign commerce.

Commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

Malt beverage. A beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption. Standards applying to the use of processing methods and flavors in malt beverage production appear in § 7.11.

Other terms. Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the same meaning assigned to it by the Act.

Packer. Any person who places malt beverages in containers of a capacity in excess of one gallon.

Person. Any individual, partnership, joint-stock company, business trust,

association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent, and including an officer or employee of any agency of a State or political subdivision thereof.

United States. The several States, the District of Columbia, and Puerto Rico; the term "State" includes the District of Columbia and Puerto Rico.

[T.D. ATF-48, 43 FR 13534, Mar. 31, 1978, 44 FR 55639, Sept. 28, 1979, as amended by T.D. ATF-66, 45 FR 40550, June 13, 1980, T.D. ATF-64, 46 FR 56097, Nov. 6, 1981; T.D. ATF-344, 58 FR 40354, July 28, 1993, T.D. ATF-425, 65 FR 11892, Mar. 7, 2000, TTB T.D.-21, 70 FR 234, Jan. 3, 2005, T.D. TTB-44, 71 FR 16023, Apr. 4, 2006].

§ 7.11 Use of ingredients containing alcohol in malt beverages; processing of malt beverages.

(a) *Use of flavors and other nonbeverage ingredients containing alcohol.*

(1) *General.* Flavors and other nonbeverage ingredients containing alcohol may be used in producing a malt beverage. Except as provided in paragraph (a)(2) of this section, no more than 49% of the overall alcohol content of the finished product may be derived from the addition of flavors and other nonbeverage ingredients containing alcohol. For example, a finished malt beverage that contains 5.0% alcohol by volume must derive a minimum of 2.55% alcohol by volume from the fermentation of barley malt and other materials and may derive not more than 2.45% alcohol by volume from the addition of flavors and other nonbeverage ingredients containing alcohol.

(2) In the case of malt beverages with an alcohol content of more than 6% by volume, no more than 1.5% of the volume of the malt beverage may consist of alcohol derived from added flavors and other nonbeverage ingredients containing alcohol.

(b) *Processing.* Malt beverages may be filtered or otherwise processed in order to remove color, taste, aroma, bitterness, or other characteristics derived from fermentation.

[TTB T.D.-21, 70 FR 234, Jan. 3, 2005].

Subpart C—Labeling Requirements for Malt Beverages

§ 7.20 General.

(a) *Application.* This subpart shall apply to malt beverages sold or shipped or delivered for shipment, or otherwise introduced into or received in any State from any place outside thereof, only to the extent that the law of such State imposes similar requirements with respect to the labeling of malt beverages not sold or shipped or delivered for shipment or otherwise introduced into or received in such State from any place outside thereof.

(b) *Marking, branding, and labeling.* No person engaged in business as a brewer, wholesaler, or importer of malt beverages, directly or indirectly, or through an affiliate, shall sell or ship, or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or receive therein, or remove from Customs custody any malt beverages in containers unless the malt packages are packaged, and the labeled in conformity with this subpart.

(c) *Alteration of labels.* (1) It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon malt beverages held for sale in interstate or foreign commerce or after shipment therein, except as authorized by Federal law. The appropriate TTB officer may, upon written application, permit additional labeling or relabeling of malt beverages in containers if, in his judgment, the facts show that the additional labeling or relabeling is for the purpose of compliance with the requirements of this subpart or of State law.

(2) Application for permission to relabel shall be accompanied by two complete

sets of the old labels and two complete sets of any proposed labels together with a statement of the reasons for re-labeling, the quantity and the location of the malt beverages, and the name and address of the person by whom they will be relabeled.

[T.D. 6521, 25 FR 13649, Dec. 29, 1960, as amended by T.D. ATF-66, 45 FR 40551, June 13, 1980, T.D. ATF-425, 65 FR 11892, Mar. 7, 2000].

§ 7.21 Misbranding.

Malt beverages in containers shall be deemed to be misbranded:

(a) If the container fails to bear on it a brand label (or a brand label and other permitted labels) containing the mandatory label information as required by §§ 7.20 through 7.25 and conforming to the general requirements specified in this part.

(b) If the container, cap, or any label on the container, or any carton, case, or other covering of the container used for sale at retail, or any written, printed, graphic, or other matter accompanying the container to the consumer buyer contains any statement, design, device, or graphic, pictorial, or emblematic representation that is prohibited by §§ 7.20 through 7.29.

(c) If the container has blown, branded, or burned therein the name or other distinguishing mark of any person engaged in business as a brewer, wholesaler, bottler, or importer of malt beverages, or of any other person, except the person whose name is required to appear on the brand label.

§ 7.22 Mandatory label information. There shall be stated:

(a) On the brand label:

(1) Brand name, in accordance with § 7.23.

(2) Class, in accordance with § 7.24.

(3) Name and address (except when branded or burned in the container) in accordance with § 7.25, except as provided in paragraph (b) of this section.



DEPARTMENT OF THE TREASURY
Alcohol and Tobacco Tax and
Trade Bureau

Industry Circular
Number: 2008-3
Date: July 23, 2008

Non-Compliant Flavored Malt Beverages

To: Brewers, Importers, and Others Concerned.

PURPOSE

This circular reminds brewers, importers, and others of the strict limitations that apply to the use of flavors and other nonbeverage ingredients containing alcohol in the manufacture of flavored malt beverages (FMBs). The Alcohol and Tobacco Tax and Trade Bureau (TTB) also wishes to advise industry members of TTB's position regarding non-compliant FMBs and the serious consequences that will result from failure to comply with the regulations that govern the manufacture of FMBs.

BACKGROUND

On March 24, 2003, TTB published a notice of proposed rulemaking in the Federal Register, TTB Notice No. 4, concerning beer and malt beverages (see 68 FR 14292). Among other things, TTB Notice No. 4 addressed the issue of whether certain products marketed as FMBs should be classified as distilled spirits and taxed accordingly. Notice No. 4 proposed regulations to permit the addition of flavorings and other ingredients containing alcohol to beer and malt beverage products within specific limitations.

On January 3, 2005, TTB published a final rule, TTB T.D.-21, which amended the regulations governing the production, taxation, composition, labeling, and advertising of beer and malt beverages (see 70 FR 194). The new regulations allow for the addition of flavors and other nonbeverage ingredients containing alcohol to products classified and taxed as beers and malt beverages but, in general, limit the alcohol contribution from such flavors and other nonbeverage ingredients to not more than 49% of the alcohol content of the product. In addition, if a beer or malt beverage contains more than 6% alcohol by volume, not more than 1.5% of the volume of the finished product may consist of alcohol derived from flavors and other nonbeverage ingredients that contain alcohol. These standards were incorporated into the regulations in 27 CFR parts 7 (Labeling and Advertising of Malt Beverages) and 25 (Beer), and became effective on January 3, 2006.

Since the new regulations went into effect, TTB has determined that some brewers have manufactured products that exceed the 49% or the 1.5% limitation on the addition of flavors and other nonbeverage ingredients containing alcohol. Accordingly, TTB wishes to remind brewers of the strict limitations that apply to the addition of flavors and other nonbeverage ingredients to beers and malt beverages. We also wish to advise brewers of the serious consequences that may result from non-compliance with these manufacturing standards for FMBs and of TTB's policy regarding the treatment of non-compliant products.

FLAVOR LIMITATIONS FOR FMBs

The regulations at 27 CFR 7.11 and 25.15 provide that a brewer may add flavors and other nonbeverage ingredients containing alcohol to malt beverages and beer within certain limitations. For practical purposes, the regulations provide two distinct standards for FMBs:

- **6% or Less ABV.** If the alcohol content of the finished product is 6% or less by volume, it is subject to the general rule whereby not more than 49% of the alcohol content of the finished product may consist of alcohol derived from flavors and other nonbeverage ingredients that contain alcohol.
- **Over 6% ABV.** If the alcohol content of the finished product is more than 6% by volume, not more than 1.5% of the volume of the finished product may consist of alcohol derived from flavors and other nonbeverage ingredients that contain alcohol.

TTB will review the brewer's batch records to determine whether products are in compliance with the above rules. The following are examples of batch records for FMB products that illustrate how the above rules apply to FMB products.

Example A – Batch Record for 6% or Less Alcohol by Volume FMB Product

Ingredients:	Barrels	U.S. Gallons	% Alcohol by Volume	Gallons of Alcohol
Malt Base	1,200.00	37,200.00	9.60%	3,571.20
Total Malt Base Additions	1,200.00	37,200.00	-----	3,571.20
Alcoholic Flavor Blender # 1	34.00	1,054.00	90.00%	948.60
Alcoholic Flavor Blender # 2	6.00	186.00	70.00%	130.20
Total of All Flavors and Nonbeverage Ingredients Containing Alcohol	40.00	1,240.00	-----	1,078.80
Non-alcoholic Flavor # 5	360.00	11,160.00	-----	-----
Water	1,400.00	43,400.00	-----	-----
Total of Non-Alcoholic Additions	1,760.00	54,560.00	-----	-----
Grand Totals	3,000.00	93,000.00	-----	4,650.00

1. In this example, the calculated alcohol by volume of the finished product is 5.00%. (4,650.00 gallons of alcohol divided by 93,000.00 total gallons of finished product = 5.00%.)
2. Because the alcohol by volume of the finished product is in the "6% or less"

category, the alcohol contribution from flavors and other nonbeverage ingredients containing alcohol may not be more than 49% of the overall alcohol content of the finished product. In other words, a maximum of 49% of 4,650.00 gallons (2,278.5 total gallons of alcohol) would be allowed.

- In this example, the alcohol contribution from flavors is 1,078.80 gallons. This represents 23.2% of the overall alcohol content of the finished product and the product is in compliance with the 49% limitation. (1,078.80 gallons of alcohol from flavors divided by 4,650.00 total gallons of alcohol in the finished product = 23.2%.)

Example B - Batch Record for Over 6% Alcohol by Volume FMB Product

Ingredients:	Barrels	U.S. Gallons	% Alcohol by Volume	Gallons of Alcohol
Malt Base	1,525.00	47,275.00	13.00%	6,145.75
Total Malt Base Additions	1,525.00	47,275.00	-----	6,145.75
Alcoholic Flavor Blender # 1	40.00	1,240.00	90.00%	1,116.00
Alcoholic Flavor Blender # 2	10.00	310.00	58.70	181.97
Total of All Flavors and Nonbeverage Ingredients Containing Alcohol	50.00	1,550.00	-----	1,297.97
Non-alcoholic Flavor # 5	355.00	11,005.00	-----	-----
Water	1,070.00	33,170.00	-----	-----
Total of Non-Alcoholic Additions	1,425.00	44,175.00	-----	-----
Grand Totals	3,000.00	93,000.00	-----	7,443.72

- In this example, the calculated alcohol by volume of the finished product is 8.00%. (7,443.72 gallons of alcohol divided by 93,000.00 total gallons of finished product = 8.00%.)
- Because the alcohol by volume of the finished product is in the "over 6%" category, no more than 1.5% of the volume of the finished product may consist of alcohol derived from added flavors and other nonbeverage ingredients containing alcohol. In other words, a maximum of 1.5% of 93,000 gallons of finished product (1,395 total gallons of alcohol) is allowed.
- In this example, the alcohol contributed by added flavors is 1,297.97 gallons. This represents 1.40% of the volume of the finished product and the product is in compliance with the 1.5% limitation. (1,297.97 gallons of alcohol divided by 93,000.00 gallons of finished product = 1.40%.)

TTB POLICIES REGARDING NON-COMPLIANT PRODUCTS

The regulations at 27 CFR 7.11 and 25.15 provide specific limitations on the use of flavorings and other nonbeverage ingredients containing alcohol in the manufacture of beer and malt beverage products. There are no tolerances that allow a producer to exceed those limitations. Products that exceed those limitations are classified as distilled spirits products and the following provisions of law will apply.

Unauthorized Production and Bottling

Distilled spirits may only be produced, bottled, and removed from a registered and permitted distilled spirits plant (26 U.S.C. 5171). Therefore, the production of distilled spirits at a brewery is not authorized and is a violation of the Internal Revenue Code of 1986 (IRC) and may result in penalty or other appropriate enforcement action.

Rate of Tax

Distilled spirits are taxed at the rate of \$13.50 per proof gallon (26 U.S.C. 5001). Therefore, products that exceed the limits in §§ 7.11 and 25.15 are distilled spirits and will be taxed at the distilled spirits rate.

Date Taxes Are Due

The IRC provides that the tax on any distilled spirits produced in the United States at any place other than a qualified distilled spirits plant shall be due and payable immediately upon production (26 U.S.C. 5006(c)(2)). Therefore, the distilled spirits tax will be due on the date that the finished non-compliant product batch is produced, and all taxes, penalties, and interest will be calculated and assessed by TTB based upon that date.

Mislabeling

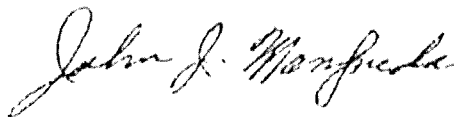
The TTB regulations issued under the labeling provisions of the Federal Alcohol Administration Act (FAA Act, 27 U.S.C. 205(e)) require that alcohol beverage labels provide the consumer with adequate information about the identity of a product and prohibit deceptive information on the label. Distilled spirits products that are labeled as beer or malt beverages are mislabeled under the FAA Act and therefore may not be introduced into interstate or foreign commerce.

QUESTIONS

If you have questions about the information contained in this circular, please contact TTB's Regulations and Rulings Division at:

By Mail: Regulations and Rulings Division
Alcohol and Tobacco Tax and Trade Bureau
1310 G Street NW, Suite 200 East
Washington, DC 20220

Phone: 202-927-8210.



John J. Manfreda
Administrator
Alcohol and Tobacco Tax and Trade Bureau



27 CFR Sec. 25.15
TITLE 27--ALCOHOL, TOBACCO PRODUCTS AND FIREARMS
CHAPTER I--ALCOHOL AND TOBACCO TAX AND TRADE BUREAU, DEPARTMENT OF THE TREASURY
SUBCHAPTER A--ALCOHOL
PART 25--BEER
Subpart B--Definitions

Standards for Beer

Sec. 25.15 Materials for the production of beer.

(a) Beer must be brewed from malt or from substitutes for malt. Only rice, grain of any kind, bran, glucose, sugar, and molasses are substitutes for malt. In addition, you may also use the following materials as adjuncts in fermenting beer: honey, fruit, fruit juice, fruit concentrate, herbs, spices, and other food materials.

(b) You may use flavors and other nonbeverage ingredients containing alcohol in producing beer. Flavors and other nonbeverage ingredients containing alcohol may contribute no more than 49% of the overall alcohol content of the finished beer. For example, a finished beer that contains 5.0% alcohol by volume must derive a minimum of 2.55% alcohol by volume from the fermentation of ingredients at the brewery and may derive not more than 2.45% alcohol by volume from the addition of flavors and other nonbeverage ingredients containing alcohol. In the case of beer with an alcohol content of more than 6% by volume, no more than 1.5% of the volume of the beer may consist of alcohol derived from added flavors and other nonbeverage ingredients containing alcohol.

[TTB T.D.-21, 70 FR 235, Jan. 3, 2005, eff. Jan. 3, 2006]

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27 CFR Sec. 7.22

TITLE 27 --ALCOHOL, TOBACCO PRODUCTS AND FIREARMS
CHAPTER I--ALCOHOL AND TOBACCO TAX AND TRADE BUREAU, DEPARTMENT OF THE TREASURY
SUBCHAPTER A--ALCOHOL
PART 7--LABELING AND ADVERTISING OF MALT BEVERAGES
Subpart C--Labeling Requirements for Malt Beverages

Sec. 7.22 Mandatory label information.

There shall be stated:

- (a) On the brand label:
 - (1) Brand name, in accordance with Sec. 7.23.
 - (2) Class, in accordance with Sec. 7.24.
 - (3) Name and address (except when branded or burned in the container) in accordance with Sec. 7.25, except as provided in paragraph (b) of this section.
 - (4) Net contents (except when blown, branded, or burned, in the container) in accordance with Sec. 7.27.
 - (5) Alcohol content in accordance with Sec. 7.71, for malt beverages that contain any alcohol derived from added flavors or other added nonbeverage ingredients (other than hops extract) containing alcohol.
- (b) On the brand label or on a separate label (back or front):
 - (1) In the case of imported malt beverages, name and address of importer in accordance with Sec. 7.25.
 - (2) In the case of malt beverages bottled or packed for the holder of a permit or a retailer, the name and address of the bottler or packer, in accordance with Sec. 7.25.
 - (3) Alcoholic content, when required by State law, in accordance with Sec. 7.71.
 - (4) A statement that the product contains FD&C Yellow No. 5, where that coloring material is used in a product bottled on or after October 6, 1984.
 - (5) [Reserved]
 - (6) Declaration of sulfites. The statement "Contains sulfites" or "Contains (a) sulfiting agent(s)" or a statement identifying the specific sulfiting agent where sulfur dioxide or a sulfiting agent is detected at a level of 10 or more parts per million, measured as total sulfur dioxide. The sulfite declaration may appear on a strip label or neck label in lieu of appearing on the front or back label. The provisions of this paragraph shall apply to:
 - (i) Any certificate of label approval issued on or after January 9, 1987;
 - (ii) Any malt beverage bottled on or after July 9, 1987, regardless of the date of issuance of the certificate of label approval; and,
 - (iii) Any malt beverage removed on or after January 9, 1988.
 - (7) Declaration of aspartame. The following statement, in capital letters, separate and apart from all other information, when the product contains aspartame in accordance with Food and Drug Administration (FDA) regulations: "PHENYLEETONURICS: CONTAINS PHENYLALANINE."

(Paragraph (b) (6) approved by the Office of Management and Budget under Control No. 1512-0469)

[T.D. 6521, 25 FR 13859, Dec. 29, 1960, as amended by T.D. ATF-94, 46 FR 35097, Nov. 6, 1981; T.D. ATF-150, 48 FR 45557, Oct. 6, 1983; T.D. ATF-320, 50 FR 51852, Dec. 20, 1985; T.D. ATF-236, 51 FR 34710, Sept. 30, 1986; T.D. ATF 282, 54 FR 7162, Feb. 16, 1989; T.D. ATF-312, 56 FR 31077, July 9, 1991; T.D. ATF-339, 58 FR 21231, Apr. 19, 1993; T.D. ATF-347, 58 FR 44132, Aug. 19, 1993; T.D. TTB-12, 69 FR 33574, June 16,

2004; TTH T.D. 21, 70 FR 234, Jan. 3, 2005]

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TTB ID: 05256-000-000284		DEPARTMENT OF THE TREASURY ALCOHOL AND TOBACCO TAX AND TRADE BUREAU APPLICATION FOR AND CERTIFICATION/EXEMPTION OF LABEL/BOTTLE APPROVAL <i>(See instructions and Paperwork Reduction Act Notice on Back)</i>	
1 REF ID: T220 (if any)	CT: 902	OR: 18	PART I - APPLICATION
2 PLANT REGISTRY/BASIC PERMIT/BREWER'S NO. (Required): BR-CA-MIL-I, BR-GA-MIL-I, BR-NC-MIL-I, BR-OH-MIL-I, BR-TX-MIL-I, BR-WI-MIL-I		7 NAME AND ADDRESS OF APPLICANT AS SHOWN ON PLANT REGISTRY, BASIC PERMIT OR BREWER'S NOTICE INCLUDE APPROVED DBA OR TRADENAME IF USED ON THE LABEL (Required) Miller Brewing Company dba The Steel Brewing Co Milwaukee, WI 53208	
3 SERIAL NUMBER (Required): YEAR: 0 5 - 1 1 9 C	4 TYPE OF PRODUCT (Required) <input type="checkbox"/> WINE <input type="checkbox"/> DISTILLED SPIRITS <input checked="" type="checkbox"/> MALT BEVERAGE		7a MAILING ADDRESS, IF DIFFERENT Barabara A. Whitehead Miller Brewing Company 3939 West Highland Boulevard Milwaukee, WI 53208
5 BRAND NAME (Required): Sparks Light	6 FANCIFUL NAME (if any): Sparks Light	8 EMAIL ADDRESS: whitehead.barbara@mtbco.com	9 FORMULA/SOP NO (if any): 05221-000-000285
10 LAB. NO. & DATE/PRE-IMPORT NO. & DATE (if any)	11 TYPE OF APPLICATION (Check applicable box(es)) a <input checked="" type="checkbox"/> CERTIFICATE OF LABEL APPROVAL b <input type="checkbox"/> CERTIFICATE OF EXEMPTION FROM LABEL APPROVAL "For sale in _____ only" (Fill in State abbreviation) c <input type="checkbox"/> DISTINCTIVE LIQUOR BOTTLE APPROVAL TOTAL BOTTLE CAPACITY BEFORE CLOSURE (Fill in amount) d <input type="checkbox"/> RESUBMISSION AFTER REJECTION TTB ID		
11 NET CONTENTS: 16 oz Can	12 ALCOHOL CONTENT: 6.0%	13 WINE APPELLATION (if on label)	
14 WINE VINTAGE DATE (if on label)	15. PHONE NUMBER: (414) 931-4962	16. FAX NUMBER: (414) 931-3732	
18 SHOW ANY WORDING (a) APPEARING ON MATERIALS FIRMLY AFFIXED TO THE CONTAINER (e.g., caps, collars, corks, etc.) OTHER THAN THE LABELS AFFIXED BELOW, OR (b) BLOWN, BRANDED OR EMBOSSED ON THE CONTAINER (e.g., neck contours, etc.) THIS WORDING MUST BE NOTED HERE EVEN IF IT DUPLICATES PORTIONS OF THE LABELS AFFIXED BELOW. ALSO, PROVIDE TRANSLATIONS OF FOREIGN LANGUAGE TEXT APPEARING ON LABELS. Reduced 75%			

PART II - APPLICANT'S CERTIFICATION

Under the penalties of perjury, I declare that all statements appearing on this application are true and correct to the best of my knowledge and belief, and that the representations on the labels attached to this form, including supplemental documents, truly and correctly represent the content of the containers to which these labels will be applied. I also certify that I have read, understood and complied with the conditions and instructions which are attached to an original TTB F 5100.31, Certificate/Exemption of Label/Bottle Approval.

19 DATE OF APPLICATION: 09/14/2005	20 SIGNATURE OF APPLICANT OR AUTHORIZED AGENT: <i>Barbara A. Whitehead</i>	21 PRINT NAME OF APPLICANT OR AUTHORIZED AGENT: Barbara A. Whitehead, Regulatory Affairs Specialist
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PART III - TTB CERTIFICATE

This certificate is issued subject to applicable laws, regulations and conditions as set forth in the instructions portion of this form.

22 DATE ISSUED: SEP 23 2005	23 AUTHORIZED SIGNATURE, ALCOHOL AND TOBACCO TAX AND TRADE BUREAU: <i>Judy Harmon</i>
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FOR TTB USE ONLY

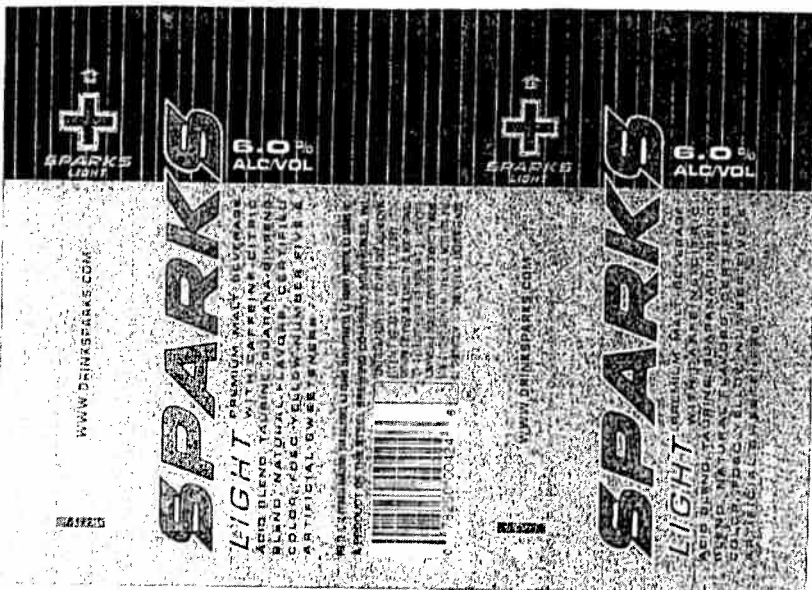
QUALIFICATIONS

By 01/03/2006, the label and corresponding formula must comply with TTB TD-21. This final rule places limits on the quantity of alcohol in a malt beverage that may be derived from flavors and other nonbeverage ingredients, and requires an alcohol content statement on the brand label if the product contains any alcohol derived from added flavors or other nonbeverage ingredients (other than hops extract) containing alcohol.

Approved pending rulemaking on light (lite) and carbohydrate representations.
See TTB Ruling 2004-1

EXPIRATION DATE (if any)

AFFIX COMPLETE SET OF LABELS BELOW (See General Instructions 4, 6 and 7)



FOR TTB USE ONLY			DEPARTMENT OF THE TREASURY ALCOHOL AND TOBACCO TAX AND TRADE BUREAU APPLICATION FOR AND CERTIFICATION/EXEMPTION OF LABEL/BOTTLE APPROVAL (See Instructions and Paperwork Reduction Act Notice on Back)
TTB ID 07050001000155			
1. REP. ID. NO. (If any)	CT 906	OR 22	

PART I - APPLICATION

2. PLANT REGISTRY/BASIC PERMIT/BREWER'S NO. (Required) BR-KY-MAR-15000	3. SOURCE OF PRODUCT (Required) <input checked="" type="checkbox"/> Domestic <input type="checkbox"/> Imported	8. NAME AND ADDRESS OF APPLICANT AS SHOWN ON PLANT REGISTRY, BASIC PERMIT OR BREWER'S NOTICE. INCLUDE APPROVED DBA OR TRADENAME IF USED ON LABEL (Required) Mike's Hard Lemonade Co., Mark Anthony Brewing Inc. 2921 DIXIE HWY SHIVELY KY 40216 MIKE'S HARD LEMONADE CO. (Used on label)
4. SERIAL NUMBER (Required) 07SD01	5. TYPE OF PRODUCT (Required) <input type="checkbox"/> WINE <input type="checkbox"/> DISTILLED SPIRITS <input checked="" type="checkbox"/> MALT BEVERAGE	

6. BRAND NAME (Required) MIKE'S	8a. MAILING ADDRESS, IF DIFFERENT
7. FANCIFUL NAME (If any) MIKE'S SCREWDRIVER	

9. EMAIL ADDRESS AHILTON@MARKANTHONY.COM	10. FORMULA/SOP NO. (If any) MAB-MBSD-1	11. LAB. NO. & DATE / PREIMPORT NO. & DATE (If any)	18. TYPE OF APPLICATION (Check applicable box(es)) a. <input checked="" type="checkbox"/> CERTIFICATE OF LABEL APPROVAL b. <input type="checkbox"/> CERTIFICATE OF EXEMPTION FROM LABEL APPROVAL "For sale in _____ only" (Fill in State abbreviation.) c. <input type="checkbox"/> DISTINCTIVE LIQUOR BOTTLE APPROVAL TOTAL BOTTLE CAPACITY BEFORE CLOSURE _____ (Fill in amount) d. <input type="checkbox"/> RESUBMISSION AFTER REJECTION TTB ID. NO. _____
12. NET CONTENTS 8 FL OZ	13. ALCOHOL CONTENT 8	14. WINE APPELLATION IF ON LABEL	
15. WINE VINTAGE DATE IF ON LABEL	16. PHONE NUMBER (604) 264-4014	17. FAX NUMBER (604) 263-9097	

19. SHOW ANY WORDING (a) APPEARING ON MATERIALS FIRMLY AFFIXED TO THE CONTAINER (e.g., caps, celoseals, corks, etc.) OTHER THAN THE LABELS AFFIXED BELOW, OR (b) BLOWN, BRANDED OR EMBOSSED ON THE CONTAINER (e.g., net contents etc.). THIS WORDING MUST BE NOTED HERE EVEN IF IT DUPLICATES PORTIONS OF THE LABELS AFFIXED BELOW. ALSO, PROVIDE TRANSLATIONS OF FOREIGN LANGUAGE TEXT APPEARING ON LABELS.
 "MIKE'S" INSIDE LEMON DESIGN EMBOSSED ON BOTTLE SHOULDER AND PRINTED ON CAPS. STIPPLE EFFECT EMBOSSED ON BOTTLE SHOULDER

PART II - APPLICANT'S CERTIFICATION

Under the penalties of perjury, I declare: that all statements appearing on this application are true and correct to the best of my knowledge and belief; and, that the representations on the labels attached to this form, including supplemental documents, truly and correctly represent the content of the containers to which these labels will be applied. I also certify that I have read, understood and complied with the conditions and instructions which are attached to an original TTB F 5100 31, Certificate/Exemption of Label/Bottle Approval

20. DATE OF APPLICATION 02/19/2007	21. SIGNATURE OF APPLICANT OR AUTHORIZED AGENT (Application was e-filed)	22. PRINT NAME OF APPLICANT OR AUTHORIZED AGENT ANGELA HILTON
---------------------------------------	---	--

PART III - TTB CERTIFICATE

This certificate is issued subject to applicable laws, regulations and conditions as set forth in the instructions portion of this form

23. DATE ISSUED 02/22/2007	24. AUTHORIZED SIGNATURE, ALCOHOL AND TOBACCO TAX AND TRADE BUREAU TTB Specialist (electronically approved signature)
-------------------------------	--

OMB No. 1513-0020 (01/31/2009)

FOR TTb USE ONLY			DEPARTMENT OF THE TREASURY ALCOHOL AND TOBACCO TAX AND TRADE BUREAU APPLICATION FOR AND CERTIFICATION/EXEMPTION OF LABEL/BOTTLE APPROVAL (See Instructions and Paperwork Reduction Act Notice on Back)
TTB ID 07309001006222			
1. REP. ID. NO. (If any)	CT 906	OR 02	

PART I - APPLICATION

2. PLANT REGISTRY/BASIC PERMIT/BREWER'S NO. (Required) BR-NY-MAR-15000		3. SOURCE OF PRODUCT (Required) <input checked="" type="checkbox"/> Domestic <input type="checkbox"/> Imported		8. NAME AND ADDRESS OF APPLICANT AS SHOWN ON PLANT REGISTRY, BASIC PERMIT OR BREWER'S NOTICE. INCLUDE APPROVED DBA OR TRADENAME IF USED ON LABEL (Required) Mike's Hard Lemonade Co., MARK ANTHONY BREWING INC 445 SAINT PAUL ST ROCHESTER NY 14605 MIKE'S HARD LEMONADE CO. (Used on label)	
4. SERIAL NUMBER (Required) 07PL01		5. TYPE OF PRODUCT (Required) <input type="checkbox"/> WINE <input type="checkbox"/> DISTILLED SPIRITS <input checked="" type="checkbox"/> MALT BEVERAGE			
6. BRAND NAME (Required) MIKE'S			8a. MAILING ADDRESS, IF DIFFERENT		
7. FANCIFUL NAME (If any) MIKE'S HARD POMEGRANATE LEMONADE					
9. EMAIL ADDRESS AHILTON@MARKANTHONY.COM		10. FORMULA/SOP NO. (If any) MAB-PL-1	11. LAB. NO. & DATE / PREIMPORT NO. & DATE (If any)	18. TYPE OF APPLICATION (Check applicable box(es)) a. <input checked="" type="checkbox"/> CERTIFICATE OF LABEL APPROVAL b. <input type="checkbox"/> CERTIFICATE OF EXEMPTION FROM LABEL APPROVAL "For sale in _____ only" (Fill in State abbreviation.) c. <input type="checkbox"/> DISTINCTIVE LIQUOR BOTTLE APPROVAL TOTAL BOTTLE CAPACITY BEFORE CLOSURE _____ (Fill in amount) d. <input type="checkbox"/> RESUBMISSION AFTER REJECTION TTB ID. NO. _____	
12. NET CONTENTS 11.2 FL OZ		13. ALCOHOL CONTENT 5	14. WINE APPELLATION IF ON LABEL		
15. WINE VINTAGE DATE IF ON LABEL		16. PHONE NUMBER (604) 264-4014	17. FAX NUMBER (604) 263-9097		
19. SHOW ANY WORDING (a) APPEARING ON MATERIALS FIRMLY AFFIXED TO THE CONTAINER (e.g., caps, celloseals, corks, etc.) OTHER THAN THE LABELS AFFIXED BELOW, OR (b) BLOWN, BRANDED OR EMBOSSED ON THE CONTAINER (e.g., net contents etc.) THIS WORDING MUST BE NOTED HERE EVEN IF IT DUPLICATES PORTIONS OF THE LABELS AFFIXED BELOW. ALSO, PROVIDE TRANSLATIONS OF FOREIGN LANGUAGE TEXT APPEARING ON LABELS. "MIKE'S" INSIDE LEMON DESIGN PRINTED ON CAPS AND EMBOSSED ON BOTTLE SHOULDER					

PART II - APPLICANT'S CERTIFICATION

Under the penalties of perjury, I declare; that all statements appearing on this application are true and correct to the best of my knowledge and belief; and, that the representations on the labels attached to this form, including supplemental documents, truly and correctly represent the content of the containers to which these labels will be applied. I also certify that I have read, understood and complied with the conditions and instructions which are attached to an original TTB F 5100.31, Certificate/Exemption of Label/Bottle Approval.

20. DATE OF APPLICATION 11/05/2007	21. SIGNATURE OF APPLICANT OR AUTHORIZED AGENT (Application was e-filed)	22. PRINT NAME OF APPLICANT OR AUTHORIZED AGENT ANGELA HILTON
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PART III - TTB CERTIFICATE

This certificate is issued subject to applicable laws, regulations and conditions as set forth in the instructions portion of this form.

<p>23. DATE ISSUED 11/09/2007</p>	<p>24. AUTHORIZED SIGNATURE, ALCOHOL AND TOBACCO TAX AND TRADE BUREAU <i>Kent B. Nutter</i></p>
---------------------------------------	---

FOR TTB USE ONLY

<p>QUALIFICATIONS</p> <p>STATUS THE STATUS IS APPROVED.</p> <p>CLASS/TYPE DESCRIPTION MALT BEVERAGES SPECIALTIES - FLAVORED</p>	<p>EXPIRATION DATE (if any)</p>
---	---------------------------------

AFFIX COMPLETE SET OF LABELS BELOW
Image Type: Brand (front)
Actual Dimensions: 4.88 inches W X 2.81 inches H



Image Type: Neck
Actual Dimensions: 4.63 inches W X 1.88 inches H



Diageo slams new alcohol law in Utah

1 October 2008

Source: just-drinks

Smirnoff Ice "no longer available" in Utah

Supplies of flavoured malt beverages to Utah may cease, following new state laws restricting access to the drinks, Diageo and other drinks firms have said.

A new law in Utah means flavoured malt beverages (FMBs) must be classified as spirit drinks, instead of beer, and can only be sold in state-controlled alcohol stores, not grocery and convenience stores.

Many drinks distributors believe the law, which is effective from today (1 October), makes it no longer cost-effective to supply the drinks to the market, just-drinks understands.

Utah is well-known in the US for its restrictive alcohol policy, a stance largely attributed to its strong Mormon influence.

A US spokesperson for Diageo told just-drinks today that the new law was a "lose-lose for everyone".

The drinks giant said: "Thanks to the legislature, Smirnoff Ice is no longer available in Utah.

"By effectively killing this segment of the beer category, it's not only consumers and retailers who suffer, it is also the state, which will lose revenue. In the meantime, this does absolutely nothing address the real issue of underage drinking."

In addition to new sales restrictions, the Utah authorities have ruled that all labels for FMBs must receive state clearance before products can be put on shelves. Labels must also state clearly that the product is an alcoholic drink.

Diageo Applauds Nebraska Liquor Control Commission's Decision to Follow Federal Alcohol Regulations

Last update: 5:53 p.m. EDT Oct. 23, 2008

Source: PRNewswire

Commission Upholds Compliance with Federal Standards for Classifying Beer

Diageo, the world's leading spirits, wine and beer company applauds the Nebraska Liquor Control Commission (NLCC) for adopting a rule that codifies Nebraska's longstanding practice of following federal standards when it comes to classifying beer.

After a public comment period that began on July 31, 2008, the Commission upheld Nebraska's logical classification of flavored malt beverages as beer. Flavored malt beverages, which are malt based and contain the same alcohol as traditional beer, are regulated and taxed as beer in 47 other states across the country. The U.S. Treasury's Alcohol and Tobacco Tax and Trade Bureau ("TTB"), the federal agency responsible for regulating alcohol, decided to affirm the longstanding classification of flavored malt beverages as beer in 2005, after an extensive investigation and comment period.

"The Liquor Control Commission's decision to continue regulating flavored malt beverages as beer aligns Nebraska with the Federal Government and nearly every other state," said Winn Atkins, Senior Director of State Government Relations, Diageo North America. "This ruling allows our flavored malt beverages to continue to be sold at a reasonable price and enjoyed responsibly by adult consumers in Nebraska. We do not want to be the business of anyone under 21, period."

Some groups in Nebraska, like Project Extra Mile, advocated raising taxes on flavored beer products in a misplaced attempt to reduce underage drinking. Raising taxes on flavored beer, which represents less than 2% of all alcohol beverages sold, will not effectively combat underage drinking.