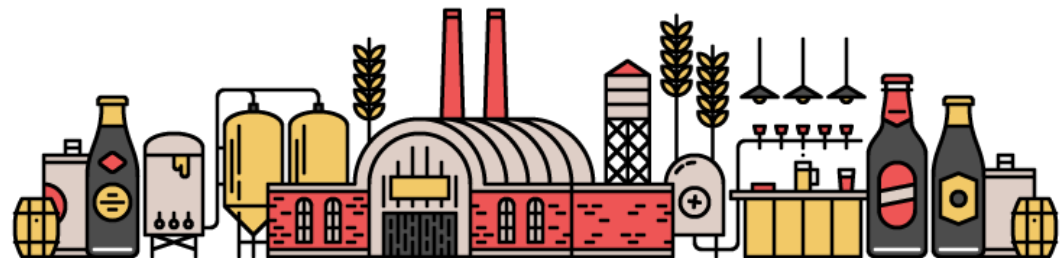




Creative Licensing: What Can I Do With My License?

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Creative Licensing – Road Map

■ What We'll Cover

- The Basics (“ABCs of ABC”)
- CWCs (“Creativity w/Caveats”)
- Q&A

■ What We Won't Cover

- Distribution Issues
- Food Processing Requirements
- Type 75 Brewpubs (Retailers)



Creative Licensing – The Basics

- **Highly Regulated Industry**
 - Affects all four tiers
- **Highly Competitive Industry**
 - How to stay cutting edge & become “go-to” source for consumer discretionary spending?



Creative Licensing – The Basics

- You're subject to ABC's rules and regulations - *like it or not*
- Risks are very real
- Compliance should be your #1 priority
- When in doubt, just say no...or call a competent attorney/CCBA



Creative Licensing – ABCs of ABC

Type 01/23 Manufacturers

■ What Can I Do?

- Brew beer;
- Sell to any authorized beer seller;
- Sell to consumers for consumption on/off licensed premises (& expanded premises);
- Hold duplicates (but only up to six w/retail privileges);
- Sell beer & wine (any source) to consumers at bona fide eating place on/contiguous to licensed premises;



Creative Licensing – The Basics

■ What Can I Do (cont'd.)?

- Sell/serve beer & wine (any source) to private event guests at licensed premises;
- Hold multiple license types (i.e., Type 02 winery & Type 74 craft distillery), but with conditions;
- Have a common area with a Type 02 winery (contiguous and consumption only – no sales);
- Conduct beer tastings at on-sale & off-sale retailers' premises/beer dinners/farmer's markets;
- Donate or sell to nonprofits (beer festivals);
- Promote your brand(s) through social media; and
- Hold consumer contests & sweepstakes.



Creative Licensing – The Basics

■ What Can't I Do?

- Just about anything else you can think of!
- ABC generally doesn't permit activities not covered by its Code/Regs.
- Takes Legislative action to approve novel approaches/activities.



Creative Licensing – Creativity with Caveats

■ On-Sale (Tasting Rooms)

- Don't open w/o local approvals. Zoning for brewing doesn't mean your tasting room is OK.
- No sales to minors/obviously intoxicateds.
- Get ready for “Responsible Beverage Service Training Act” (eff. 7/1/2021). L.E.A.D. training won't suffice.

■ Off-Sale (Growlers)

- Strictly adhere to labeling requirements.
- You're NOT obligated to fill a growler from another brewery.

Creative Licensing – Creativity w/ Caveats

■ On/Off Sale @ Expanded Premises

- Need an ABC Type 77 Event Permit.
- Can sell on property “contiguous & adjacent” to licensed premises for special events (e.g., anniversaries, new release parties, etc.). Need local law enforcement & landowner approval.
- No more than 4 events at licensed location per calendar year.
- Can only sell/serve your beer, even if have a bona fide eating place.
- Expect ABC to require perimeter fencing w/designated entry point(s).

Creative Licensing – Creativity w/ Caveats

■ Duplicate Licenses

- Originally for brewers' satellite storage warehouses w/o need for additional manufacturing license.
- When retail privileges added, were added to duplicates by default.
- You can still can hold unlimited # of duplicates w/o retail privileges.



Creative Licensing – Creativity w/ Caveats

- **Dupes w/Retail Privileges (aka Branch Offices)**
 - Capped at six non-contiguous locations, no matter what.
 - Of the six, only two can be Bona Fide Eating Places.
 - Retail privileges = any sale or tasting to consumers.
 - Only same privileges afforded under your “master” 01/23 license, except you can't brew.
 - Branch Offices that aren't BFEPs – can only sell/serve your own beer.

Creative Licensing – Creativity w/ Caveats

■ BFEPs (General Public)

- Meals regularly served from suitable kitchen. Sandwiches and salads not enough!
- Can “sublet” meal service, but rare. You’re still on hook for alcohol sales/service requirements.
- Can sell own beer and others’ beer & wine (but that beer & wine must be purchased through an independent, licensed wholesaler).



Creative Licensing – Creativity w/ Caveats

■ Private Events

- Can sell/serve beer & wine (any source) to guests at private events held at your licensed premises.
- Others' beer & wine must be produced by licensed manufacturer, and must be purchased from an independent, licensed wholesaler (Type 17).
- Event can't be open to general public or advertised.
- Control access to private party space; no commingling!
- OK to charge a fee to host event.



Creative Licensing – Creativity w/ Caveats

■ Events @ On-sale Retailer Premises (BPC 25503.55):

- Can hold educational or instructional event/tasting at on-sale retailer's premises.
- Rep of host must be present at event; distributor's rep doesn't qualify if host a manufacturer.
- Max of 8 oz. taste per individual.
- Tasting can't > one hour! No original containers may be used; cups/glasses only. Beer must be served by retailer.
- No more than 6 events at single retailer per year.
- No beer may be given away, and all beer must meet standard sales/distribution requirements. All beer must be purchased from the retailer from its inventory at retail price.
- Only advertising = interior signs w/in retailer premises where event held.

Creative Licensing – Creativity w/ Caveats

- **“Beer Maker Dinners” (BPC 25503.45)**
 - Can hold educational or instructional event/tasting at on-sale retailer’s premises.
 - Must have your rep present at event; distributor’s rep does not qualify. Statute doesn’t specify size/time limitations.
 - Food isn’t required...but be careful of overserving!
 - Orders may be taken, but can only be filled at your licensed premises (not retailer’s premises).
 - No beer may be given away, and all beer must meet standard sales/distribution requirements.
 - Be careful on how you advertise, especially on social media; can’t promote or “laud” retailer, nor list price of your beers.

Creative Licensing – Creativity w/ Caveats

- **BPC 25503.55 vs. 25503.45: What's the difference?**
 - Both exceptions to tied-house restrictions. ABC's position = must be construed narrowly. If particular activity is allowed under the statute, then it can be carried out...otherwise it can't.
 - BPC 25503.55 allows beer & wine wholesalers to conduct beer tastings; BPC 25503.45 doesn't.
 - If event fits within either 25503.55 or 25503.45, then you must pick & choose; can't take provisions from each and apply them to single event.

Creative Licensing – Creativity w/ Caveats

■ Farmers' Markets

- Need a Type 84 permit from ABC.
- “Certified” FMs only, and activity must be approved by FM’s management. Only one brewery at a time can host FM tasting.
- Max of 8 oz. taste per individual per day.
- Barrier needed, and must ensure that no one leaves tasting area with open container.



Creative Licensing – Creativity w/ Caveats

■ Other Instructional Events

- Can conduct instructional tastings at Type 86 premises (issued to Type 20 or 21 off-sale retailer).
- Tastings of single type of alcohol (beer, wine or DS) available for sale from retailer. No charges allowed, and tastings only allowed b/n 10:00 a.m. and 9:00 p.m.
- Similar restrictions on amounts, physical barriers and rep participation as with FMs.
- Can't supply own beer; must purchase from retailer at original invoiced cost!
- Beware of tied-house issues -- can't pay, reimburse or assist retailer to obtain/maintain Type 86.

Creative Licensing – Creativity w/ Caveats

■ Beer Festivals

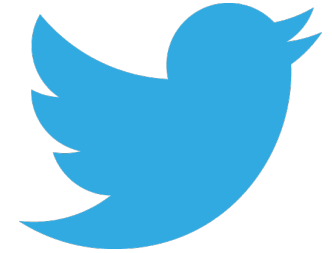
- Big topic, but in general can donate or sell (at any price) your beer to a 501(c) nonprofit w/a Special Daily License from ABC. Can also donate cash, but nothing else (e.g., no merch/gift card donations).
- Can donate packaged beer for nonprofit's DOJ-registered raffle, but nonprofit must have ABC license.
- Your staff can pour, and you can provide jockey boxes, tables, pop-ups/other shade, signage & marketing materials. Can't provide cups or ice.
- Consumer giveaways valued < \$3.00 per item OK.
- Can sell (but not donate) merch at FMV (cost + 10% markup).

Creative Licensing – Creativity w/ Caveats

■ Beer Festivals (cont'd.)

- ALWAYS ask for a copy of nonprofit's ABC license!
- ALWAYS be wary if event to be held at a licensed premises (even your own)! License surrender/suspension may be required.
- NEVER donate/sell your beer to anyone other than nonprofit! Only nonprofit allowed to sell beer. Only nonprofit can collect revenues from beer sales.
- CAN'T donate if licensed caterer/concessionaire is involved. Be wary of 3rd party management companies.
- CAN donate to nonprofit w/o Special ABC Permit IF it's for a private event.

Creative Licensing – Creativity w/ Caveats



■ Social Media Advertising

- Complex area of law.
- Considered a thing of value by ABC for tied-house purposes.
- CAN'T promote ANY event at retailer on your website, in your brewery or on SM. Can only list where your beer is sold at retail IF:
 - You list two or more unaffiliated retail locations w/equal prominence (names, addresses, phone #s, e-mail addresses and/or URLs only);
or
 - You're hosting a 'beer dinner'.
- Still can't promote/laud the retailers or list retail prices. Includes your staff.
- Be careful of food trucks (may be connected to retailer).
- Be careful of supporting other breweries, as they may have additional retail licenses.

Creative Licensing – Creativity w/ Caveats



■ Contests & Sweepstakes

- Also complex. Contests = skill-based; Sweeps = games of chance. No cost limits & beer may be included as “incidental” part of gift package. Retailer involvement even more complicated. Try to avoid them.
- CAN’T tie entries to purchase of your beer, whether immediately or over period of time (e.g., accumulation of points).
- CAN’T involve beer consumption (e.g., no chugging contests) or require visit to your licensed premises.
- CAN’T be connected to permanent retail licensee.
- NO instant/immediate awards permitted.
- Advertising MUST comply with usual rules.
- No licensees or their immediate families can win awards.

Creative Licensing – Anything Else?

■ Collaboration Beers

- Separate batches only; each brewery must price post & register brand for batch it produces.
No cost splitting/revenue sharing.

■ Private Label/Contract Beers

- Must charge retailer FMV for brewing & cost of label development, per a contract.
- Retailer owns beer, label & brand.
No cost/revenue sharing.



Creative Licensing – Anything Else?

■ Giveaways

- You can give licensed retailer giveaway items valued 25¢ or less per item, up to cap of \$15.00 per calendar year.
- You can give consumers giveaway items valued at \$3.00 or less per unit original cost to you. Can't be items targeted to minors, but can be done at retailer account's premises.
- No limits on what you can give wholesalers.

Creative Licensing – Anything Else?

■ Apply for Other License Types?

- Type 02 Wine Grower's License
- Type 74 Craft Distiller's License
- Licenses CAN'T overlap, but both ABC/TTB permit licensee to create footprint within (or adjacent to) Type 01/23 premises.
- Winery/Distillery can be under same roof & have same address, but MUST be separated by a wall/fence/other physical barrier that's secure (e.g., with locks) to prevent free access.

Creative Licensing – Anything Else?

■ Other License Types (cont'd.)

– Impact on Your Retail Branch Offices

- Type 02 Wine Grower's Licensees can only hold 1 dupe on-sale license.
- Type 74 Craft Distiller's Licensees can only hold 2 dupe on-sale licenses.
- CAN'T aggregate # of allowable dupes. ABC takes position that multiple licenses held by same licensee only permits smallest number of branch offices associated with all license types.
- So a Type 23/02 combo can only have 1 dupe/on-sale branch office, and a Type 23/74 combo can only have 2 dupes/on-sale branch offices.

Creative Licensing – Anything Else?

■ Common Areas: Impact of A.B. 997

- CA Assembly Bill (became law on 1/1/18) allow holder(s) of Type 01/23 and Type 02 to share “common area” at their production facilities where on-sale consumption permitted.
- CAN’T be branch offices.
- MUST be space that’s contiguous & immediately adjacent to one another, & that’s readily accessible from both licensed premises w/o use of public street, alley or sidewalk.
- Consumption only; NO sales in common area.
- All alcohol consumed in common area MUST be purchased at licensee(s)’ premises (other than common area), and licensee(s) jointly responsible for compliance with ABC Act/Regs.

Creative Licensing – Anything Else?

- **Common Areas (cont'd.): Potential Impact of A.B. 1890**
 - Still in CA Legislature (Senate Appropriations Committee), so outcome unclear.
 - If passes, would add Type 74 Craft Distilleries to common areas covered by A.B. 997.
 - Same restrictions would apply.

Questions?

- **Thanks for listening, Cheers!**



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