



Beyond Brewing

Business Basics Bulletin Newsletter

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A Legal Guide to Beer Festivals

Festival season is right around the corner and often includes issues around who to hire, how much to pay them, and who gets to be in charge. This brief article is intended as a guide only. Any specific questions should be directed to a lawyer familiar with employment law and events production.

First of all, only nonprofits, meaning an organization which has federal tax-exempt 501(c) status may obtain an ABC one-day special event license to sell alcohol. That means if a brewery wants to donate beer to a festival put on to support a nonprofit, the brewery should be sure to check the nonprofit status of the organization. This can be done via the IRS website (see the link on page five). The nonprofit may hire an event management company to run the event and oversee suppliers and employees, but the license is still in the nonprofit's name, and the management company may only be paid a set fee for their services. The nonprofit is the only entity at the philanthropic festival that may receive any portion

of the alcohol sales as per the ABC. Additionally, the nonprofit must receive a minimum of 50% of the overall event profits as per California nonprofit law. For-profit events may be put on by events management companies or other businesses, but that business must have the appropriate retail license and must purchase the beer the same as any other retailer.

If a legitimate nonprofit is organizing the festival, the nonprofit should bring on volunteers to staff the event. Employees of the brewery are welcome to volunteer for the nonprofit during the event, but the brewery may not require attendance at the event and may not pay the employee for time spent volunteering. There are two reasons for this. The first is that under California alcohol beverage laws, the nonprofit is the licensee for the event which means it needs to take responsibility for the service of any alcoholic beverages it is selling under its one-day retail license. The second reason is that the one-



Craft Beer July 1st Deadlines

As of July 1st, two new requirements will go into effect.

CA Healthy Workplace Healthy Family Act of 2014 (AB 1522)

Beginning on July 1, 2015, employees have the right to accrue and take sick leave under the Healthy Workplace Healthy Family Act of 2014. Employees can use this paid time off for preventive care or care of an existing health concern for either themselves or their family members (including parents, children, spouses, and registered domestic partners).

Read our [one-sheet on the Paid Sick Leave Act](#)

CA Industrial Storm Water Permits

Everyone will have to file something, whether it be the Notice of Intent, No-Exposure, or the Notice of Non-Applicability. Most people will file the No-Exposure which only requires submitting an application with a site-map and the NEC checklist. This also will require yearly re-certification and fees.

Read the [one-sheet on the Industrial Storm Water Permit](#) provided by SCS Engineers.

Does The News Have You On Tap This Summer?



Summer is here! Now is the time of year when national magazines and websites start running feature stories on the best beers for summer, and your local media outlets are writing about all the great outdoor festivals, brewery events and everything else that is good in the land of hops and grains.

So why aren't you in the news?

We hear that question all the time... and not just in the craft beer industry. Brand So-And-So just got featured in Maxim / the local news / Hipster Tastemaker Blog and you didn't.

Why?

The easy answer is you're not putting yourself out there (see my older columns in B5 for advice on that [here](#).) And the unpopular answer is that if you are spending time engaging in PR/media activities and not seeing a benefit, you're probably not executing correctly. It doesn't take a full-time PR person, consultant or even a highly paid marketing firm to secure steady media attention, but it does take planning and adjusting to the modern news climate so you hit the right media with relevant news ideas at the right time.

Here are some basic things to consider if you're looking

to start or grow your media coverage.

Start by planning and developing your story. What makes you or your news special to anyone besides your friends, family and existing group of supporters? Are you opening your doors for the first time? Leading a new trend? Hosting an event? Summarize it in a way that's easily presentable for the journalists/bloggers/etc, you're reaching out to. These people are the gatekeepers you need to convince to tell your story to the masses.

Make sure your news is understandable to the layperson. A reporter at a national magazine who covers beer may also cover anything real estate. They may be knowledgeable, but don't assume they're an expert.

Keep in mind that the news climate, just like the consumer's taste, changes over time. What the media was interested in last year, or even last week, may not be of interest today. Five years ago, raising funds for a brewery on Kickstarter would have been big news. I know firsthand that's not the case now, at least in San Diego right this second. Kickstarter can help drive media interest, but don't rely on Kickstarter alone to drive coverage of your brand.

...never simply blanket email a press release to a broad list of journalists...

Here's an easy example. Your local newspaper may have different reporters that cover weekend events, local business happenings and maybe even someone that covers beer specifically. They each have different subject areas and the person who covers weekend events probably doesn't want to know that you just extra upped your production capabilities unless that's going to fit into their "fun things to do this weekend" column.

A huge part of securing PR coverage is simply executing at the right time. Print magazines work further in advance than websites, but even some online publications work on stories weeks or months out. I'd bet you a pint that a magazine such as Playboy (yes, it has articles, [even some on beer](#) or Outside will eventually be doing a story on the best beers for summer and

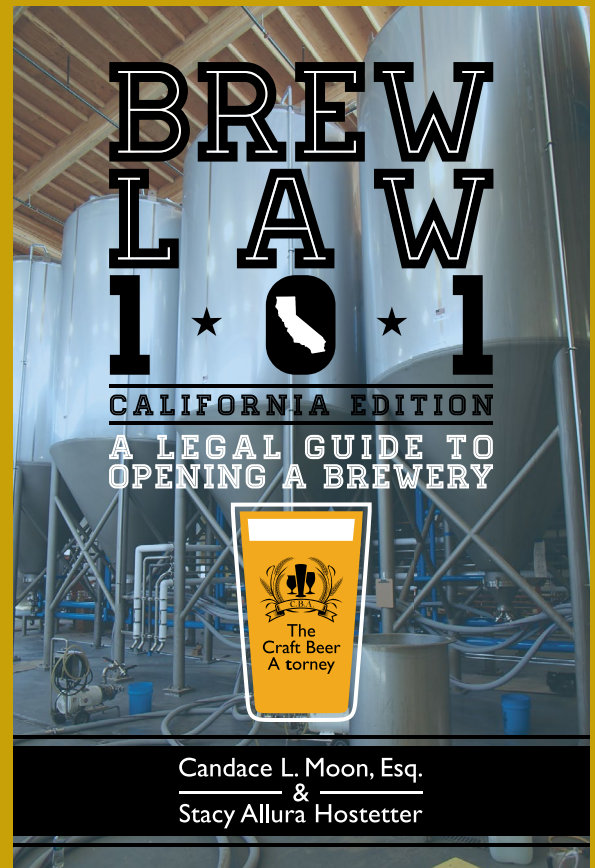
they probably have already done a few [featuring your competitors](#). Not every article will be on a brand with national distribution either. At the end of the day, they just want a good story for their readers, so if you have a good story, reach out to them!

The last thing you need to keep in mind is securing consistent media coverage takes consistent effort. It's the same as sales or social media. You need to be in the right place at the right time and then follow-up.

To succeed at PR, just like in brewing and business, it takes trial, some error and a whole lot of tenacity to start getting the coverage you deserve.

Bill Byrne is a director at Remedy Communications, a full-service public relations and social media agency in San Diego.

[Remedy](#) offers complimentary, hour-long PR and social media audits for clients of The Craft Beer Attorney, in addition to its more comprehensive PR and social media training programs. Audits can take place via phone, online or face-to-face in the greater San Diego area. Interested? Email info@remedypr.com to learn more.



It's HERE!

NOW SHIPPING

This comprehensive text deftly explains both the federal and California specific laws governing the manufacture of craft beer. Brew Law 101: California Edition walks the start-up craft brewery and breweries-in-planning through every step of the process from business formation and capital raising to location and licensing to labeling and intellectual property to employment law and common craft beer contracts. The original Craft Beer Attorney brings together years of craft beer focused knowledge and expertise to help you successfully navigate the sudsy industry.

[BUY IT NOW HERE!](#)

www.brewlaw101.com



Photo:
© Brewers Association

Insurance Coverage and Beer Festivals – What You Need to Know.

The summer beer festival season is upon us and there are literally hundreds of events your brewery can participate in locally and statewide. How does your insurance cover you to, from and at these events? Let's discuss and make sure you have everything you need to protect your business.

Getting There and Back Safely

Driving is any business' largest exposure, even those businesses that don't own their own vehicles. It is critical to make sure this exposure is covered. If you own vehicles, this exposure is easily covered on your auto

insurance, but since there are more beer fests than breweries have vehicles, I find that many of my clients end up renting a van or have staff using their personal vehicles during this busy season.

If you find yourself in this situation, you need make sure you have Hired & Non-Owned Auto coverage on your auto or general liability policy. My clients have also found that having hired auto property damage on their auto insurance policy saves them money on the cost of renting vehicles because this allows them to decline the rental company's insurance on the vehicle, saving them about \$50-

\$70 per day.

A quick call to your broker to ensure you have these coverages can give you peace of mind that you are not putting your business at risk and save you money during your busiest season.

At The Event

A brewery's General and Liquor Liability policies should cover any property damage or bodily injury that could occur while at the beer festival. If you are serving your own beer or responsible for the setup of your booth, making sure that all

Brewery Safety Essentials Workshop

Brewery Safety Essentials is a day-long class developed to educate craft brewers on the safety and health practical and regulatory needs for breweries. Every topic covered in the class is a safety program requirement—essential.

Injury prevention should be a core value of each craft brewery... It is the way to keep employees safe and costs down. It's also a regulatory requirement to have a written and implemented safety program with proper records.

Drown Consulting, LLC has been providing safety consulting and training for the California craft brewing industry for over 6 years. The Brewery Safety Essentials class has been attended by dozens of craft brewery employees and owners since being introduced in 2013. This is your chance to get a practical education on what you need to have in place in a brewery safety program and get answers to your questions.

The class is being held from 9-5:00 on June 23rd at the White Labs Training Facility (9495 Candida Street San Diego, CA 92126).

Follow the link and have a look at the course description—it's just what you need for a first time or refresher education in Brewery Safety Essentials. http://www.drownehs.com/Brewery_Safety.html



DROWN
CONSULTING, LLC

Environmental Health and Safety

Legal Guide continued...

day license for nonprofits was meant to allow beer manufacturers to assist legitimate organizations to raise money, and was not meant to allow breweries, event management companies, or individuals to benefit from the event.

Workers' compensation coverage is required for any business that employs even one employee. It is intended to cover anyone that is in the service of the business, but does not automatically extend to volunteers. A volunteer for a nonprofit event may not necessarily be covered by workers' compensation, so any agreement regarding workers/volunteers should spell out whether the nonprofit is getting workers' compensation insurance, what the amount is, and include some sort of indemnity in case a volunteer gets hurt (particularly if that volunteer happens to be your brewery employee volunteering on their own personal time). If an accident does happen, each party will want to be sure that the accident is either covered, or that everyone knows whose responsibility it will be to take care of the issue.

It is also recommended that your brewery have a general release on file for each employee for any events they choose to participate in within that industry that are not required of them as part of their duties.

Paid employees of a festival can come in a variety of positions. The festival could be hiring independent contract workers for set-up or specialized jobs, short-term employees might be hired to fill out the ranks of people needed to move things around, serve food, pick up trash, or direct festival attendees. Each of these workers will have different needs, requirements and pay structures.

Independent contractors are generally companies and/or workers that can be given free rein to accomplish a goal the employer has set. These could be a caterer hired to serve food or the security guards hired to control traffic. Independent contractors are different from employees in that the event producer does not generally control HOW the independent contractor achieves a goal, whereas employees can be told not only what goal the event producer is attempting to achieve but the process to get there as well. Because of this freedom, independent contractors do not generally receive benefits or overtime. As an event producer, just make sure that if you are having independent contractors assist, that you are not micromanaging. Also be sure to check that the independent contractor is properly licensed. If not, you could end up taking on liabilities for accidents or negligence that you did not expect.

If the event is being run by a for-profit production company, where the proceeds are not intended for a 501(c), a brewery's participation is substantially limited given the ABC requirement that a brewery may not provide anything of value to a retailer.

In closing, it is important that a brewery only participate in festivals which have been properly vetted to avoid ABC violations, personal injury claims and/or employment law violations.

To verify an organizations non-profit status, you can go on the [IRS website and search for the charity.](#)

Upcoming Craft Beer Webinars

2015 CA Craft Beer Law Part II - Industrial Storm Water Permits

On Tuesday June 16, 2015, we conducted a webinar on the upcoming changes to the CA Industrial Storm Water Permits.

If you missed, you still have time to get up to date and purchase our webinar recording - email tanya@craftbeerattorney.com

Cost: \$45*

*Clients contact us for your discount code

Employment Law for the Craft Beer Industry Part II: Festivals, Events, Networking & Social Media

Thurs., July 23, 2015
10:00-11:15am

This webinar will cover employment law for those with employees at festivals, events, networking and social media.

Agenda:

- What employee conduct can you control when they are out of the office and/or off the clock (NLRB regulations)
- More details about specialized comp plans for sales staff or production/sales bonuses
- Liabilities associated with self-distribution
- Travel for staff when they go to events
- What your staff can and can't say on social media (NLRB/ABC regulations)
- Issues that can arise when staff move to a competitor

[Sign up HERE!](#)

Insurance Coverage continued...

public walkways around your booth are clear of kegs and spills which will help keep the slip, trip and fall hazards around your space low. Also, be sure that any servers you have participate have the proper alcohol service training, so that patrons are not over-served at your booth.

If the event is set-up for a 501(c) organization, i.e. one that can accept donated beer, all staff at the event must also be volunteers to the non-profit. Therefore any injuries to your staff that would've been covered by worker's comp by your brewery should be covered by the 501(c)'s worker's comp, as again, the server performing volunteer service for the non-profit is not your brewery.

Additional Insured Requests

The better run beer festivals will ask for proof of insurance and to be named as an "additional insured" on your General Liability policy. Any insurance carrier should easily allow you to name them as an additional insured, but this requirement must also be in any contract you sign with the beer festival organizer. Always be sure to read the language of the contract and send it to your insurance broker for clarification to be sure you are not being contractually obligated to cover risks that your policy doesn't cover.

If a claim does arise that involves your brewery and the festival organizer, your insurance policy should then cover the organizer and their legal fees in addition to your brewery. While this is not ideal, it is one of the major reasons your brewery should also have additional limits of liability on an Umbrella or Excess Liability policy.

It's all fun and games until someone gets sued. Stay safe, have fun and always be sure the proper coverage is in place. If you aren't sure, give your insurance broker a call for clarification. We are here to help.

*By John Hoefer,
Brewery Insurance Program
Milestone Risk Management & Insurance Services*





Adding a Tasting Patio to Your Brewery

Summer is coming and what's better than enjoying your favorite suds under the sun, and the extra revenue of additional tasting room area? An outdoor patio is a great addition to almost any brewery tasting room. But there are a number of things to consider before diving into the project.

In many municipalities, the tasting room component of the brewery is limited to 25% of gross floor area of the brewery. This ensures that the tasting room is an accessory use to the brewery and not considered a bar. A patio for additional tasting area is considered part of that 25%. Check with your local planning department and make sure you plan for approval before you build something that isn't legal.

When it comes to fire safety, two exits are required for occupant capacity over 49. For a tasting room, the occupant load factor is 5 square feet per person for standing area, and 15 square feet per person for areas with tables and chairs. If you are over 49

occupants, you need two exits that are 50% of the diagonal distance across the space from each other. Going from one space through another combines the occupant capacity of both spaces. If your indoor tasting room exits through your outdoor tasting room, the occupant capacity is compounded. Make sure you have the required number of exits.

Another thing to consider is an ADA accessible path of travel and required accessible seating. You must maintain 36" clear distance to maneuver around the tasting room. And, 5% of all seating types, minimum of 1, must meet ADA requirements for height, width and knee space.

Are you considering a Sidewalk Café permit for your patio that is beyond your property line? Be careful as most municipalities require a kitchen to be considered an Eating & Drinking Establishment to be allowed a Sidewalk Café without a Special Use Permit.

Don't forget that the ABC will

need to approve the additional licensed area. They will want to see approval by your local zoning department that what you are doing is legal before they increase your licensed area. Want that patio to wrap around your brewery? The ABC will require the patio to be visible by the tasting room staff. If the patio wraps around a blind corner, be prepared to hire additional staff to keep an eye on your patrons.

An outdoor patio is a great addition for your guests and your revenue streams. Just make sure you know the rules before you get too far down that road and waste money on something that isn't legal.



9350 guild avenue
san diego, california, usa 92123-2616
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DISTRIBUTION INSIGHT

for the
Craft Brewer



Craft Beer Distribution: Laying the Groundwork (Part I)

Having looked at the when and why of distribution in the previous newsletter, we now move forward to preparing for distribution. Many of these steps make sense whether your company is planning to distribute or not, and they are critical elements of maximizing your success in the world of distribution.

Three of these components are your identity or branding, the ability to finance the change in your business, and deciding where you would like for your product to be sold. Let's approach each of these in turn and work through them.

Your identity is the most important factor in distribution success beyond the liquid in the bottle. Sounds simple, doesn't it? It can be, and it can also be incredibly complex and challenging. You need to know who you are as a business and decide how to tell your story.

Once determined, you need to internally ensure that every member of your brewery team lives, breathes, eats, sleeps, and drinks your image and personality. Select people that you can trust to uphold the standards that you set for representing your brewery and believe in your brand and your success. On or off duty, these people will be associated with your business. This is especially true in new territories with a new distributor.

When you make the decision to sell your products outside

of your hometown area, the image you create will be the sole representation of your business in this new territory. You no longer can count on your personal connections to create interest and support for your products. They stand alone and must withstand ruthless scrutiny. Your story, your image, your passion, and your personality need to jump off the shelf and connect with your future customers.

Keep in mind that your story and your image need to be positive, universally appealing and easily conveyed, especially with goals of expanding outside of your home area. Using imagery that will be unfamiliar or confusing, language that is not universally acceptable, an attitude or approach that can be a turn-off, considered snobbery or belittling, can significantly damage your potential success. However, if done exceptionally well, some of these characteristics can serve to be differentiating points. Think carefully.

Ultimately, the outside packaging should enhance and complement the liquid inside the bottle or can – not detract from it. You want to maximize the chance that people of all ages, backgrounds, and walks of life will try your beer, love it, share with their friends and come back to purchase more.

When you approach a distributor to sell your product line, you will also need to sell them your identity. This includes everything from your logo and tag line to your story, packaging, language

used, attitude and thematic approach incorporated, marketing and POS style, the type of people on your team, etc. Everything needs to tie together into one personality that shows your passion for what you do, and this includes the types of beer that you brew and the names of your individual beers.

The distributor knows that their team will be representing you and needs to feel comfortable that their staff can present a compelling reason for retail buyers (and then consumers) to purchase your product. This is most easily accomplished with unique, interesting, eye-catching packaging that then rewards the purchaser with (consistently) high quality beer inside. Your story and the overall message you convey are your bridge from the brewery to your new customers.

To be continued.....stay tuned for "Craft Beer Distribution: Laying the Groundwork (Part II)"

Laura Lodge - Distribution Insight
<http://www.distributioninsight.com/distributioninsight@hotmail.com>