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Beyond Brewing – Business Basics Bulletin



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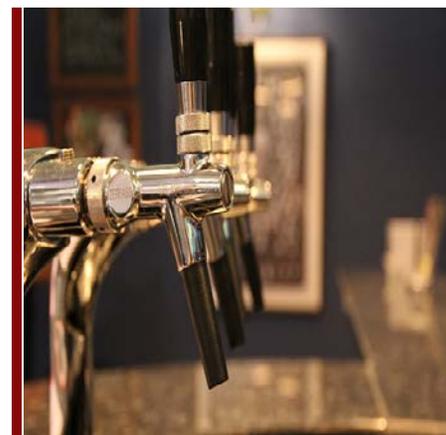
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WELCOME to B5

The who, what, when, and why...

Brewing is an art, but breweries are not museums. Breweries are businesses and, like all businesses, that means in order to thrive there are a number of, shall we say, less artistic endeavors that need doing. But what are they, how do you do them, who can you go to with questions, how do you discover the unknown unknowns? Welcome to Beyond Brewing – Business Basics Bulletin (affectionately known in the office as B5) because we are here to help. Candace Moon started her career in music but quickly fell in love with the craft beer scene emerging in San Diego while bartending at a craft beer establishment called Hamilton's. After noticing that she knew countless craft brewers but no attorneys who were

dedicated to working with them, she created a law practice focused *exclusively* on brewery law, and, to the best of my knowledge, she is the only attorney who does this. But brewery law is only one facet of an effective brewing business plan. There are also employment issues, financing concerns, insurance considerations, tax implications, and so many other thoughts that are better had sooner than later. But with so many areas to explore, the beginning brewers are apt to feel a little overwhelmed in the hustle. You just want to get back to brewing and, as fellow beer lovers, so do we! So we are bringing the experts to you in a handy newsletter to be published quarterly and circulated to new breweries. We will provide you



with just enough information to know what you need to track down and who you can call in case of questions.

Like the lupulin effect in our beloved hops, this newsletter is meant to put you at ease and get you back to the important things in life – beer! So crack one open, lean back, and enjoy because we are here to get you back to brewing. Cheers!



INSURANCE AUDITS

by John Hoefler

Breweries run on cash flow. Purchasing raw materials, new equipment, and making payroll are top of mind, but one often neglected item can put a serious crimp in your cash flow for a couple months. And a crimp in cash flow makes brewing life more difficult. So let's talk about insurance audits. Below is an outline on how to best avoid big audits and keep your cash flow flowing.

The first issue is to understand how your liability (general and liquor) and worker's compensation premiums are calculated. Your liability policy premium is based on your brewery's revenue and your work comp policy premium is based on your brewery's payroll. At the start of the policy year, the premium is based on

the annual estimate of these figures. At year-end however, an audit is performed to obtain the true cost of coverage. If the estimated revenue and payroll was lower than the audited actual figures, you will owe the carrier additional premium dollars. On the other end of the spectrum, if it was higher then you will get a refund.

In the current craft beer environment where revenue and payroll are growing as fast as can be, there are rarely refunds. Craft beer is booming, that translates into increased brewery revenue and increased payroll as more production time is needed and tasting room hours are expanded. This frequently means audits that result in you owing your carrier more money, sometimes big money.

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EMPLOYEE FORMS

by Jessica M. Hardacre-Gianas

So you have decided not to go it alone and are in the process of hiring employees, a team to make your business boom. Below is a handy list of documents that you will need when hiring:

I-9 – Most business owners remember being asked to complete an I-9 as employees during new hire orientation. Or maybe you have even been the hiring supervisor who made the mistake of telling a new hire to “just bring their Driver's License and Social Security card for copying at the office” (*which violates the very first paragraph of the Form I-9 under the Anti-Discrimination Notice by the way*). While this form seems simplistic in nature, the U.S. Department of Homeland Security publishes a guidebook on how to complete the I-9 that is 69 pages long! Admittedly, it can be tempting as an employer to disregard the Form I-9 for an employee you believe is a U.S. citizen. However, if the Department of Homeland Security audits you, penalties can begin accruing for every employee on the payroll that does not have an I-9 on file.

Fines, ranging from \$110 *per error* to tens of thousands of dollars, can also be assessed simply for using an outdated form, listing incorrect dates, missing signatures, accepting expired documents, or failing to complete all required spaces.

To download the current Form I-9 for use in your business (which was recently updated in May 2013), visit: www.uscis.gov/sites/default/files/files/form/i-9.pdf. Lastly, note that while a Spanish I-9 is listed on the USCIS website, it can only be used in Puerto Rico.

W-4 – The next form employees need to complete for purposes of adding an employee to payroll is the W-4. Keep in mind that a new W-4 is issued each tax year by the IRS. To download the latest Form W-4 for 2014, visit: www.irs.gov/pub/irs-pdf/fw4.pdf. Also be aware that the IRS recommends that an employee should be encouraged to recomplete a new W-4 each tax year or whenever their personal or financial situation changes (i.e. marriage, children, etc.).

Most companies tend to stop after those two forms are completed. However, California requires a few more:

Labor Code §2810.5 Notice – Effective January 1, 2012, all employers in California must provide each employee a notice containing the information specified in Labor Code §2810.5 at the time of hire. Luckily, the Department of Industrial Relations has a handy downloadable template that can be found at www.dir.ca.gov/dlse/LC_2810.5_Notice.pdf. This template can even be downloaded in a variety of languages.

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FUN FACT:

Presidents brew too! George Washington, Thomas Jefferson, James Madison, and Barack Obama were all craft brewers at some point.



TRADEMARK CLEARANCE

By Candace M. Moon and Stacy Allura Hostetter

Step one: you made some darn good beer. But here is the kicker: that (relatively speaking) was the easy part. Beer is your passion, which is why of course you started a brewery. But what do you call it? Naming your brewery and your beer is a vital part of your business because those names will be how your customers find you, recommend you to their buddies, and rave about you online; that name is how you develop a following and a customer base that sustains the dream. But developing the brand idea is only step two; step three is making sure you can protect that brand. Which brings us to the importance of trademarking.

Trademarking shows ownership and validity of a brand, it provides protection against counterfeiting and infringing imports, it promotes settlement if someone else starts using your brand, and, if need be, makes for great evidence in court should it go that far. And that protection can be nationwide if done correctly. Importantly though, researching your potential brands *before* investing time, money, and emotional attachment can be key, and that is what we call trademark clearance. To begin, trademarks can be acquired in three ways: informally through use in commerce, or formally either by filing the appropriate paperwork at a national or state level. What that means for you is that before investing in a trademark you need to

check all three. Remember though that there is no 100% guarantee that what you find is what you get; even the best research sometimes has things fall through the cracks. But trademark clearance is like a risk assessment tool, by completing a thorough trademark clearance you can get a good feeling for your level of risk in having your trademark denied by the powers that be and what future liabilities you could face (i.e. potential lawsuits).

So, the informal use in commerce trademark first. This is what we call gaining rights through the common law and it is established by actual use of the mark on the goods you want to protect that are for sale. This is where that TM sign comes into play because there is no need to register the mark to gain these rights. Unfortunately, that means if you want to clear the mark at this level there is no set database to browse. Instead go to the internet, start with Beeradvocate and Ratebeer to see if anyone else is using the name you like in the beer industry specifically. In terms of risk assessment, the use of same or similar marks on the same type of product has an increased risk of being confused by consumers since they are used for the same

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Insurance Audits Continued...

So how do you get ahead of this? You have two options:

1. Update your insurance broker on revenue and payroll estimates for the year about 6 months into the policy. If this results in an increase in premium, you can make the increased payments for the remainder of the policy, as opposed to one big chunk after the policy ends.
2. Halfway through the year, have the broker calculate what the additional premium will be and accrue for the additional expense in your financials.

Moral of the story...work with your insurance broker when you know your revenue is increasing or your production time is expanding. It is better to pay for the additional premium you owe during the policy year (or accrue for it) than be surprised at the end of the year with a substantial bill you didn't know was coming. Questions? Feel free to contact us:

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Trademark Clearance Continued...

product. Risk in this situation is much higher than, say, if you had a mark similar to a brand of office supplies. Since consumer confusion is less likely, your trademark is more easily defended. But there is a lot of grey area between beer and office supplies, think energy drinks, teas, soda, spirits, and wine, which means that a good old fashioned Google search is in order. The risk in these areas is higher than that of office supplies but lower than with another beer. This common law protection is awarded first come, first served but is also limited to the geographic area in which the mark has been used (or in some cases areas that are deemed a "natural area of expansion") and will not protect the markholder if someone in a completely different area starts using the mark. And remember, brand dilution can affect your business' success heavily in the long term so try to think ahead distribution wise.

Another option is to apply for a trademark at the state level. In California, for example, your mark will be protected throughout the entire state if used on or in connection with your goods. This paperwork comes with a registration fee, and must be renewed every 5 years. Federal registration is also available and will protect your mark within all of the United States. Renewal at the national level is completed every 10 years (with a statement of continued use after 5 years). In this case, protection can be established, like before, by use in commerce or by filing an intent-to-use application that guarantees your place in line. For the federal protection, you can check the USPTO database (www.uspto.gov/trademarks). For state protection there are a variety of databases that you can look through. In any event, be sure to check, not just for your particular class of goods

(i.e. beer), but also the sections for wine, spirits, bars, restaurants, soda, energy drinks, apparel, glassware, tap handles, paper goods (think coasters), etc. For both filings the powers that be will examine your mark and decide if consumer confusion is likely (and they will look at all of the above mentioned areas so be sure you do as well). If the answer is no, then your mark will be protected against anyone looking to use the same or a similar mark later on; if the answer is yes, then your mark will be denied and you need to start the process over. Granted, you may oppose a rejection if you like and in many cases it is even advisable (we would recommend some legal counsel in that situation).

If this all sounds like a terrible amount of work or you simply have questions about any of the above, please feel free to contact us. And with that, cheers and happy brewing!

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Quotes

“Work is the curse of the drinking classes.”

Oscar Wilde

“I am a firm believer in the people. If given the truth, they can be depended upon to meet any national crisis. The great point is to bring them the real facts, and beer.”

Abraham Lincoln

The Importance of Record Keeping

by Troy Faris

So you own a brewery and now you just want to brew. If only it were that easy. Brewing beer may be your passion and owning a brewery may be your dream come true, but at the end of the day it comes down to business. As a business (and a heavily regulated one) there are certain requirements that you must adhere to, not the least of which is record keeping. Record keeping is required by the TTB (Alcohol and Tobacco Tax and Trade Bureau) and the penalties can be severe for failure to maintain accurate records.

Just some of the records you are required to maintain include:

1. Each kind of material used in the production of beer
2. Amount of beer produced
3. Beer transferred for bottling or removed from brewery
4. Beer used for samples at brewery
5. Beer consumed at brewery
6. Beer returned to brewery
7. Beer lost due to breakage, theft, casualty, or other unusual cause
8. Record tests of measuring devices
9. Beer purchased from and sold to other brewers

10. Inventory records. Physical inventories must be maintained on a monthly basis and include:
 - a. Date taken
 - b. Quantity of beer on hand
 - c. Losses, gains, and shortages
 - d. Signature of brewer or person taking inventory

These records will help you comply with the TTB regulations but will also be used in preparing the required Brewers Report of Operations (BROP). Remember BROP reports are due by the fifteenth day after the end of the reporting period. Have questions, need help, and just want to get back to brewing? Call or email us. We are here to help!

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Disclaimer –

The information you obtain in this newsletter is not, nor is it intended to be, legal advice. You should consult an attorney for advice regarding your individual situation. We invite you to contact us and welcome your calls, letters and electronic mail. Contacting us does not create an attorney-client relationship. Please do not send any confidential information to us until such time as an attorney-client relationship has been established.



Employee Forms Continued...

Posters and Pamphlets - The last of the state mandated paperwork includes a stack of pamphlets and postings regarding employee protections that were both created and are enforced by the State of California. A complete list of pamphlets and posting can be found at: www.taxes.ca.gov/Payroll_Tax/postingreqbus.shtml.

Employers can be mostly covered by requesting a poster from their payroll provider that complies with both federal and state law in the language of the workforce. Should your payroll provider not provide posters as part of your service, compliant posters can be ordered through the California Chamber of Commerce. In addition to

the posting requirements, employees also need to be physically handed each of the 5 required notices at some point during their employment. These also can be ordered through the California Chamber of Commerce or various third party providers and include: For Your Benefit - DE 2320; Paid Family Leave - DE 2511; State Disability Insurance - DE 2515; Sexual Harassment/Discrimination (which meets requirements of the Department of Fair Employment and Housing); Notice of Worker's Compensation (which meets the requirements of the Labor Code and Division of Workers' Compensation).

There are also a variety of other forms that are optional, but highly

recommended, including:

- Employee Contact Forms
- Job Descriptions
- Employee Handbooks & Acknowledgement
- Agreements on how to handle proprietary information
- Medical Provider Notices and Physician Designations

Questions? Concerns? Contact:

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