

## WINE, BEER & SPIRITS

By understanding the complex legal and regulatory hurdles facing beer, wine and spirits producers, wholesalers and retailers, the attorneys at Hodgson Russ are trusted advisors to all sectors of the industry, from entrepreneurs and small craft brewers to large retailers and producers, family-owned start-ups and large corporations. Our experienced, business-focused counsel has benefited breweries, distilleries and wineries when addressing the challenges of formation, capitalization, financing, corporate governance, distribution and franchising matters. From assisting the hops farmer and grape grower with land use and zoning issues to protecting the intellectual property of brands and unique packaging, navigating the licensing and labeling requirements to dealing with the labor and tax challenges of the producer, distributor and retailer at every step of the way, our lawyers help our clients succeed.

While these industries are undergoing a strong growth period, long-term prosperity in the wine, beer and spirits arena requires strategic business planning and a clear understanding of the regulatory and tax regimes. Just as important is having counsel that can provide solutions when state and federal compliance agencies make inquiries or commence enforcement actions, or intellectual property rights are threatened. As one of the country's top law firms with multiple offices in both the U.S. and Canada, we have the breadth and depth to navigate the myriad of issues relating to the success of businesses associated with brewing, distilled spirits and wine including:

### State and Federal Licensing Requirements, and Response to Enforcement Actions

- Federal and State Tax, including property tax, excise tax, and sales tax
- Defense of Enforcement Actions
- Alleged failures in regulatory compliance, underage drinking, dram shop violations and a range of other regulatory and judicial forum proceedings

### Intellectual Property Issues

- Clearance of brands for company and product names
- Protection of trademarks and trade dress (bottle designs and packaging) with the U.S. Trademark Office and abroad
- Review and clearance of advertising copy and can or bottle designs
- Consulting on product portfolios for maximum protection of brands
- Enforcement of intellectual property rights against infringers

### Professionals

#### Attorneys

Reetuparna Dutta  
George Eydt  
Amy Fitch  
Neil Friedman  
John Godwin  
Charles Malcomb  
Ryan McGonigle  
Adam Perry  
Rafael Pignataro  
Daniel Spitzer  
James Thoman  
James Zawodzinski Jr.

## WINE, BEER & SPIRITS

- Defense of claims of trademark or copyright infringement from third parties

### Compliance with Marketing Rules

- E-commerce and Internet marketing
- Interstate and international trade and shipping
- Marketing and advertising compliance
- Franchise sponsorships and pouring rights arrangements

### Dispute resolution

Alcohol industry firms must frequently deal with the potential for litigation. Industry members should face disputes with experienced counsel on their team, from administrative forums to arbitration to state and federal judicial actions. Hodgson Russ attorneys have successfully mediated, arbitrated or litigated every type of dispute, including employee relations disputes, product liability, trademark and intellectual property disputes, regulatory proceedings, distributorship disputes, general and liquor liability, commercial real estate actions and general commercial conflicts.

### State Liquor Authority Enforcement

The New York State Liquor Authority takes seriously its mandate to inspect and investigate licensees – including via undercover “sting” investigators. Liquor law violations by employees can carry criminal charges for the employee and can be imputed to their employers, leading to SLA disciplinary proceedings for licensees. SLA charges often carry serious penalties, including revocation of liquor licenses or suspension of the sale of alcohol for certain time periods. Hodgson Russ attorneys have experience counseling restaurants and bars both in preventing violations of the Liquor Law and in dealing with the SLA when violations occur.

### Insurance Coverage Issues

From Dram Shop Liability to Property Damage to Farm Crop Insurance, proper insurance coverage is an essential element of the industry. We advise manufacturers, importers, wholesalers and retailers of liquor, wine and beer, including hotels and resorts, restaurants, bars and clubs and venues with concessionaire, liquor, catering and special event licenses on legal issues related to insurance coverage. Our attorneys are adept at handling coverage disputes, including litigation when necessary.

- Capitalization and financing
- Corporate formation and governance
- Labor and employment, including Wage and Hour Law, DOL, EEOC, and OSHA compliance
- Real estate transactions, including for production and retail facilities, as well as vineyard leases and grape contracts
- Distribution Agreements
- Cross-Border Licenses and Taxes

## WINE, BEER & SPIRITS

We represent businesses in the growing **Agritourism sector**, such as establishments that offer on-site lodging, including wineries and breweries that offer weddings, tours, and tastings. Learn more about how we assist those in this evolving and highly-regulated area of agribusiness by visiting our Agriculture Law Practice page.

### Contractual Transactions

The wine, beer and spirits industry has its own unique state and federal contractual obligations. Hodgson Russ has the experience needed to help these businesses maximize profit opportunities while mitigating their risk exposure. We can assist you with:

- Commercial contracts
- Vendor contracts
- Breach of contract claims
- Contract negotiations
- Trade secret, nondisclosure and non-compete agreements

Our attorneys also recognize that when drafting commercial agreements, especially with respect to the importation and distribution of these types of products, we must take into consideration international, federal and state laws that regulate the industry. Please visit our International-U.S. Cross Border Practice to learn more about our services in this area.

### **Experience**

Represented a national brewery in the negotiation of construction contracts for the expansion of the brewery at an approximately value of \$5,330,000.

Handled importation issues, brokerage agreements, distribution agreements and keg handling agreements for a Canadian-based brewing company.

Hodgson Russ attorneys litigated a case for a client that operated two locations in Penn Station where customers could purchase food items and alcoholic beverages. The Tax Department initially assessed the client over \$700,000. We were able to have the assessment canceled.

Handled copyright (protect product packaging and artwork) and trademark (brand name and packaging designs) for a major international wine company and a large kosher food company.

Ralph Pignataro has represented numerous hospitality, entertainment, and sports clients, including restaurants, bars, apartment complexes, hotels, sports arenas, ski resorts, golf course clubhouses, and other venues that serve or want to serve alcohol, on all aspects of New York State liquor licensing. He understands the legal, business, and practical issues involved with the New York State Liquor Authority and how to avoid potential pitfalls and roadblocks a client may encounter.

## WINE, BEER & SPIRITS

Ralph works to help clients obtain a license efficiently in order to keep their business objectives on track. He counsels clients on the types of liquor licenses they require, new application submissions, remediating suspended and disapproved applications, license renewals, corporate changes, license alterations, and additional bar applications.

Whether a client is applying for a full on-premises liquor license, a temporary/special event catering permit, or an outdoor patio approval, Ralph has the experience to deliver the desired results.

Hodgson Russ attorneys helped a large beer garden facility located in Queens defend an audit where we were able to reduce the sales tax assessment by over \$400,000 and helped the taxpayer avoid an income tax assessment and a criminal referral.

Hodgson Russ attorneys helped a restaurant client in another sales tax audit that turned into a criminal investigation. We were able to help the client avoid significant criminal prosecution and reduced the tax assessment by over \$300,000.

Hodgson Russ attorneys are providing ongoing assistance to one of Canada's most successful micro-breweries with respect to expansion into the United States and U.S. contractual relationships.

Hodgson Russ attorneys were brought in to resolve a NYS sales and use tax audit that wasn't going well for the client, a large wine store and banquet center operator in Manhattan. The taxpayer also had a unique facility where it taught classes about wine and spirits and paired them with certain foods and meals. The state was contesting whether the taxpayer paid the proper amount of sales tax on both its purchases and sales. They were able to get the liability down to a nominal amount.

Coordinated directly with high-level officials at the New York State Liquor Authority (SLA) and appeared before the SLA to obtain liquor licenses for various sports entertainment venues and hotels.

Represented a large kosher wine company in connection with a trademark acquisition agreement.

### **In the News**

'Survive on spirits alone!' Liquor store owner decries move to sell wine in grocery stores  
May 18, 2023

Reetuparna Dutta Named to Class of 2022 "40 Under 40"  
*Buffalo Business First*, September 14, 2022

Thought Leaders: Craft beverages  
*Buffalo Business First*, June 21, 2019

Albany Business Review - Industry Roundtable: Wine, Beer, Cider & Spirits  
*Albany Business Review*, March 22, 2019

WINE, BEER & SPIRITS

## Press Releases

Reetuparna Dutta Named to *Buffalo Business First* Class of 2022 “40 Under 40”  
September 16, 2022

## Publications

New York State Liquor Authority Moves to Tackle Backlog of Items  
*Hodgson Russ Wine, Beer & Spirits Practice*, November 29, 2023

Wine and Spirit Companies Trademark Alert: Check your Trademarks to Ensure they are not “Deceptive”  
*Hodgson Russ Food & Beverage Alert*, March 9, 2021

Federal Court Rules Against Emotional Distress Claims for COVID-19 Exposure in Decision Favorable to Gathering Places, Hospitality Industry  
*Hodgson Russ COVID-19 Litigation and Employment Action Team Alert*, July 28, 2020

Re-tooling Your Business to Respond to the Coronavirus Pandemic? Here’s What You Need to Know  
*Hodgson Russ Business Litigation Alert*, April 9, 2020

California Amends Proposition 65 Notification Requirements  
*Hodgson Russ Litigation Alert*, April 6, 2020

Salaried Distiller Sues Brewery Claiming Entitlement to Overtime  
*Wine Beer & Spirits Alert*, June 18, 2018