



Three Tier Crisis? Naw, There's an Easy Fix

July 9, 2003

Dear Client:

After careful consideration of the FTC's staff report on the consumer benefits of direct shipping of alcoholic beverages (see [BBD 07-07-03](#) for full text of FTC release), Beer Business Daily spoke with several industry politicians and distributors about the crucial, bare boned issues the report raises on 3-tier.

We came up with these observations:

If we are honest with ourselves, it is difficult to argue against the notion that Internet wine sales are bad for the consumer. Setting aside the underage drinker and tax collection elements for the moment, consumers simply want this to happen. And consumers are voters, so eventually they shape the law of the land. I predict that Internet direct wine sales will be legal in some fashion in all 50 states in a matter of years, if not sooner if the feds get involved.

The issue with the courts, including Texas, Indiana, NY, Virginia, etc., is not one of the merits or lack thereof of the three tier system per se, but rather one of treating in-state and out-of-state wineries differently with regard to whether they are permitted to direct ship or not.

These in-state exemptions are killing the three-tier system in the courts more than anything else. The Commerce Clause to the Constitution is clear on this, and it's an easy fix. State politicians need to clean up their in-state vs. out-of-state exemptions in their statehouses, or the courts will do it for them, and the courts typically throw the baby out with the bathwater. Better to distinguish which producers (wineries or brewers or distillers) can go through three-tier or ship direct based ON VOLUME, not their physical geographic location.

Noted industry attorney Drew Jaglom of Tannenbaum Helpert Syracuse & Hirschtritt LLP tells Beer Business Daily that the "solution seems clear to me. Beer and wine wholesalers should seek legislation eliminating the protectionist exemptions for in-state wineries and brewers that are the real threat to maintaining the three-tier system, and replacing them with exemptions for the small-scale producers that are most likely to have difficulty obtaining distribution.

"The Commerce Clause problem goes away, most local producers remain protected, but in a constitutionally permitted manner, and consumers benefit from a broader range of choices while maintaining the three-tier system for substantial brands..... I fear the loss of the three-tier system from the fatally flawed laws that exist now, with their constitutionally defective in-state exemptions, far more than I do the consequences of a limited direct shipment right for small producers." That's why they pay Drew the big bucks.

ONE READER FROM VIRGINIA writes to BBD: "Wonder where they (FTC) got their pricing info. Our experience in Virginia, as relates to our new direct shipping law, etc., would indicate that prices wineries charge over the Internet are almost identical to what the consumer pays at retail through the three tier system. Wonder who is pocketing the margin?" Ed. Note: The winery? Shocking!

ANALYSTS CUT RATINGS. Morgan Stanley said on Tuesday it cut its rating on Coors to "underweight" from "equal-weight," saying it sees business fundamentals deteriorating in the US and an increasingly competitive environment in the UK.

BBVA Securities said Tuesday it has lowered its recommendation on shares in Grupo Modelo to Hold from Market Outperform. The new rating was based on recent guidance from the brewer, which expects its export sales to grow by 6% in 2003 rather than the 10% growth it previously forecasted. Modelo derives more than 25% of its revenue from exports.

Until tomorrow, Harry

MTD Sell Day: 7 Sell Days This Month: 23 Sell Days This Month Last Year: 23 YTD Over/Under Sell Days: 0 .. This Month Ends on a: Thur .. Last Year This Month Ended on a: Wed.

© 2003 BeerNet Communications, Inc. - All rights reserved.