



STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
LIQUOR CONTROL COMMISSION

ADMINISTRATIVE ORDER

The Michigan Liquor Control Commission (Commission) has before it a certain matter involving transactions between retail licensees holding brewpub licenses and manufacturers holding brewer or microbrewer licenses. In order to respond to industry inquiries as to when, and under what circumstances, “contract brewing” is allowed by brewers or micro brewers on behalf of brewpubs, the Commission is prepared to issue the following order.

A “brewer” is defined in MCL 436.1105 (11) as “a person located in this state that is licensed to manufacture and sell to licensed wholesalers beer produced by it.”

A “micro brewer” is defined in MCL 436.1109 (2) as “a brewer that produces in total less than 30,000 barrels of beer per year and that may sell the beer produced to consumers at the licensed brewery premises for consumption on or off the licensed brewery premises. In determining the 30,000-barrel threshold, all brands and labels of a brewer, whether brewed in this state or outside this state, shall be combined and all facilities for the production of beer that are owned or controlled by the same person shall be treated as a single facility.”

A “brewpub” is defined in MCL 436.1105 (12) as “a license issued in conjunction with a class C, tavern, class A hotel, or class B hotel license that authorizes the person licensed with the class C, tavern, class A hotel, or class B hotel to manufacture and brew not more than 5,000 barrels of beer per calendar year in Michigan and sell at those licensed premises the beer produced for consumption on or off the licensed brewery premises in the manner provided for in sections 405 and 407.”

Contract brewing means an arrangement whereby a brewer or a micro brewer contracts with a brewpub for the brewing of a particular beer the formula for which is owned by, or licensed by, that brewpub.

A “brewpub” is a “retailer” as that term is defined at MCL 436.1111(5) (“a person licensed by the commission who sells to the consumer in accordance with the rules promulgated by the commission.”). A “brewpub” is not a “brewer” or “micro brewer” as those terms are defined in the

Michigan Liquor Control Code. A brewer or micro brewer may not have a direct or indirect financial interest in a retailer, MCL 436.1603, and may not give aid or assistance, MCL 436.1609, to a retailer, such as a brewpub. See, *Borman's, Inc. v Michigan Liquor Control Commission*, 37 Mich. App. 738 (1972) and *Traffic Jam & Snug, Inc., v Michigan Liquor Control Commission*, 194 Mich. App. 640 (1992).

A brewer or micro brewer may not allow a brewpub to use the brewer's or micro brewer's license for the brewpub's benefit. MCL 436.1603, MCL 436.1609 and R 436.1041(1) ("A licensee...shall not obtain...a license for the use or benefit of another person whose name does not appear on the license. In addition, a licensee shall not allow a person whose name does not appear on the license to use or benefit from the license.") It should also be noted that since a brewpub is a retailer, it is not eligible to participate with a brewer or microbrewer in an alternating proprietor operation.

However, brewer's and micro brewer's are in the business of brewing beer and a brewpub may enter into an "arms length" agreement with a brewer or micro brewer for the brewing of brands of beer owned by, or licensed by, the brewpub, provided the brewer or micro brewer controls the brewing process, the brewer or micro brewer only sells that beer to licensed wholesalers, and the brewer or micro brewer receives all of the proceeds from the sale of that beer. No party to such an agreement may violate the "anti-tied house" provisions of MCL 436.1603 or the "aid and assistance" prohibitions of MCL 436.1609. The beer brewed by a brewer or micro brewer pursuant to a contract with a brewpub must always be sold and delivered through a licensed wholesaler, including beer brewed by the brewer or micro brewer for resale at the brewpub by the Class C, Tavern, Class A hotel, or Class B hotel licensee.

If, pursuant to a contract between a brewer or micro brewer and a brewpub, beer is brewed for a brewpub which owns the intellectual property rights for that brand of beer, the brewer or micro brewer may agree to pay the brewpub a commercially reasonable licensing fee or pay commercially reasonable royalties for the rights to brew that beer. If those license payments or royalties are for fair market value, and the provisions of this order are complied with, such arms length transactions, which respect the requirements of MCL 436.1603, MCL 436.1609 and R. 436.1401, will not be deemed to violate the Michigan Liquor Control Code.

NOW, THEREFORE, BASED UPON THE FOREGOING, IT IS THE ORDER OF THE COMMISSION THAT A BREWER OR MICRO BREWER MAY ENTER INTO A CONTRACT WITH

A RETAIL LICENSEE THAT HOLDS A BREWPUB LICENSE UNDER THE FOLLOWING CONDITIONS:

1. THE BREWER OR MICRO BREWER CONTROLS THE BREWING PROCESS.
2. THE BREWER OR MICRO BREWER ONLY SELLS THAT BEER TO A LICENSED WHOLESALER.
3. THE BREWER OR MICRO BREWER RECEIVES ALL OF THE PROCEEDS FROM THE SALE OF THAT BEER.
4. THE BEER BREWED BY A BREWER OR MICRO BREWER PURSUANT TO A CONTRACT WITH A BREWPUB MUST ALWAYS BE SOLD AND DELIVERED THROUGH A LICENSED WHOLESALER.
5. A BREWER OR MICRO BREWER MAY AGREE TO PAY THE BREWPUB A COMMERCIALY REASONABLE LICENSING FEE OR PAY COMMERCIALY REASONABLE ROYALTIES FOR THE RIGHTS TO BREW THAT BEER.

Dated: January 19, 2011

Nida R. Samona, Chairperson

Pat Gagliardi, Commissioner

Donald B. Weatherspoon, Commissioner