

The Many Aspects of Alcohol-Related E-Commerce

US Perspective

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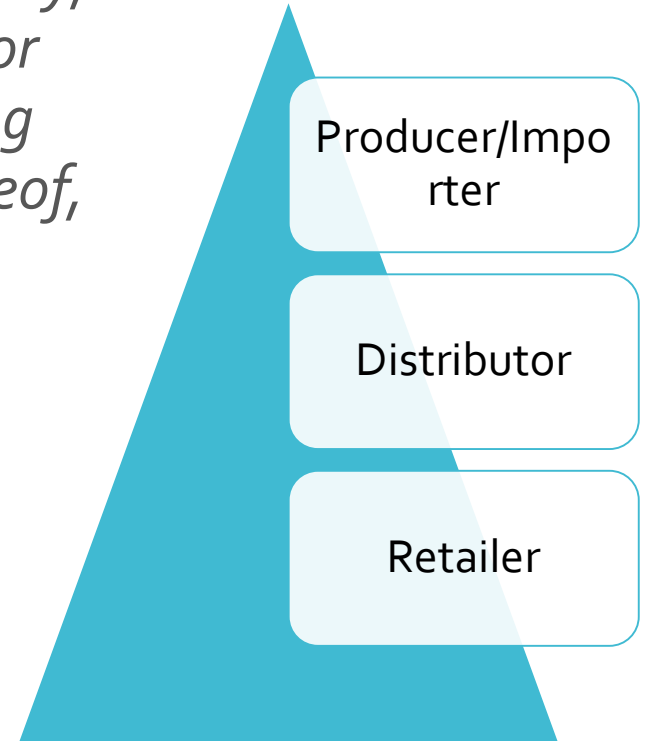
Introduction

- Commerce in general
 - Sale and purchase
 - Licensing
- E-commerce specifics
- Case law
- Comparison with obligations in the European Union and the WTO
- Evolution ahead



US alcohol commerce

- Three tier system and control states
- 21st Amendment – *"The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."*



Limits on commerce

- Restrictions on sale
 - Who can sell wine?
 - Where from?
- Restrictions on purchase
 - Who can buy wine?
 - Where from?



Sale and shipment interstate

- Dormant commerce clause
- Producer exceptions – *Granholm v. Heald* 544 U.S. 460 (2005)
- Retailer discrimination issues – *Tennessee Wine and Spirit Retailers Ass’n v. Thomas* No. 18-96; *Arnold’s Wines Inc. v. Boyle* 515 F. Supp. 2d 401



International non- discrimination provisions

- European Union – Articles 28/30 of the EC Treaty – example of *Gourmet* advertising case and subsequent (C-405/98) – proportionality principle (Article 5.3) – cannot go “beyond what is necessary” and no other less restrictive alternatives
- World Trade Organization – Article III of the GATT treaties – Canada – Dispute Settlements 520/531/537, GATT Panel dispute *DS23/R - 39S/206, 1992* – treatment “no less favorable”

Evolution ahead

- New cases filed
- Expansion of licensing categories
- Third party provider model development (CA ABC Advisory 11/11)
- Efforts to keep up with consumer demand

