



## Four Year Dogfight over Right to Distribute Dogfish in Six Virginia Jurisdictions Continues

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Written decisions by the Virginia ABC Board or Virginia courts under the Beer Franchise Act, Va. Code § 4.1-500, *et seq.*, or the Wine Franchise Act, Va. Code §--- 4.1-400, *et seq.* are infrequent. Because the Acts are almost identical, any Beer Franchise Act decision has implications not only for breweries, beer importers and beer distributors in Virginia, but also for wineries, wine importers and wine wholesalers in the Commonwealth. So a recent circuit court decision under the Beer Franchise Act should be noted by both industries.

The fight began in October 2008. At the request of wholesale distributor, Hop and Wine Beverages, the Virginia ABC Board changed its online records to strike six authorized jurisdictions for sale of Dogfish beer by wholesale distributor Specialty Beverage Co. and added them to the authorized jurisdictional listing for Hop and Wine. Both Dogfish Head Craft Brewery, Inc., the brewery, and Specialty Beverage objected based on:

- (1) a 2004 agreement between Dogfish and Specialty for that wholesaler's distribution of Dogfish beer in the six jurisdictions; and
- (2) a 2004 exchange of correspondence between Dogfish and Hop and Wine wherein Hop and Wine listed, at Dogfish's request, the Virginia jurisdictions where it was authorized to sell Dogfish beer, and Hop and Wine's listing did not mention the six jurisdictions in issue.

The distribution rights in these jurisdictions, which include the City of Richmond and surrounding counties of Henrico and Hanover, are obviously extremely valuable because the litigation has reached the four year mark, and it is not over yet! Both an ABC three-person hearing panel and the Virginia ABC Board, on appeal from the panel, decided, in detailed opinions, in favor of Specialty Beverage. However, Hop and Wine took the next appellate step and appealed the ABC Board's decision to the Circuit Court of Fairfax County. That Court recently issued its own extensive opinion and order, but did not definitively rule for either party. Instead the Court remanded the case to the Virginia ABC Board with instructions to consider its findings for Specialty in light of a presumption favoring Hope and Wine that was not addressed in the ABC Board's opinion. Hop and Wine Beverage v. Virginia Dept. of Alcoholic Beverage Control, et al., CL-2011-9788.

Hop and Wine's adamant refusal to accept defeat in the dispute is grounded upon ABC forms – Attachments A and B – filed in 1997 when Dogfish and Hop and Wine established their commercial relationship. By Attachment A, Dogfish appointed Hop and Wine as its authorized importer of Dogfish brand beer into Virginia with authority, on Dogfish's behalf, to appoint wholesale distributors in the Commonwealth for sale to retail customers. By Attachment B, Dogfish, as importer, appointed itself as wholesale distributor in designated jurisdictions, including the six disputed counties and cities. Hop and Wine contends that its appointment has never been changed, despite its own communication to Dogfish in 2004 that it was then authorized to sell Dogfish beer in jurisdictions other than the ones in dispute.

So the litigation saga continues as the fight returns to the ABC Board on remand by the Circuit Court to reconsider the matter applying a presumption, based on the 1997 form filings, that “not only an agreement existed between Hop and Wine and Dogfish, but also that the counties listed on Attachment B accurately reflected the terms of that agreement with respect to the designated sales territory.”

There are two take-away points here for any client in the wine or beer business in Virginia; whether such client is a winery, brewery, importer or wholesale distributor:

(1) Accurate information in Attachments A and B filed with the ABC Board is very important, and changes or updates should be documented properly and promptly; and

(2) the Virginia ABC Board website showing registered wineries, breweries, importers, authorized wholesale distributors and designated sales jurisdictions should be monitored for accuracy from time to time.

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