

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of:)

Bill Thomas)

Order No.: 2017-619

Advisory Opinion)

2007 18th Street, N.W.)
Washington, D.C. 20009)

Advisory Opinion)

BEFORE:

Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
• James Short, Member
Jake Perry, Member
Donald Isaac, Sr., Member

**ADVISORY OPINION ON DETERMINING WHETHER A LICENSEE IS
ENGAGING IN THE MANUFACTURE OF ALCOHOLIC BEVERAGES
UNDER A MANUFACTURER'S LICENSE OR PUB ENDORSEMENT**

INTRODUCTION

Under a Manufacturer's License or Retail License with a pub endorsement that allows for manufacturing, various privileges and rights accrue to products manufactured by the license holder. The Alcoholic Beverage Control Board issues the following advisory opinion to clarify how to determine whether a licensee is engaging in the manufacture of alcoholic beverages or merely acting as a reseller under Title 25 of the District of Columbia (D.C.) Official Code, and thus qualifies for these rights and privileges.

This Board issues this advisory opinion in response to the letter submitted by Bill Thomas on October 14, 2017. In his letter, Mr. Thomas, the owner of Jack Rose Dining Saloon, asked whether District of Columbia Official Code § 25-125 imposes any requirements on the minimum amount of time that an alcoholic beverage must age before it can be "blended, rectified, or bottled." *Letter from Bill Thomas to the Donovan Anderson, Chairperson, Alcoholic Beverage Control Board, 1-2 (Oct. 14, 2017)*. The Board will respond to Mr. Thomas' question by answering the larger question posed above.

In determining whether an alcoholic beverage is manufactured by a licensee under Title 25, any of the following activities are sufficient: blending, bottling, distilling, using fermentation to turn nonalcoholic ingredients into an alcoholic beverage, mixing, purifying, or rectifying. As a result, the Board does not consider merely reselling a product produced by another manufacturer in the same container that it was received to be manufacturing. Also, the Board does not find that merely adding, changing, or removing the label of a product to be deemed manufacturing under Title 25.

Finally, in response to Mr. Thomas' question, the Board determines that there is no minimum aging requirement under D.C. law; therefore, licensees may blend, rectify, or bottle an alcoholic beverage immediately upon receipt of the product on the licensed premises so long as they are authorized to manufacture alcoholic beverages by their license and the manufacturing activity occurs on the licensed premises.

DISCUSSION

In the District of Columbia, only two types of licenses are authorized to manufacture alcoholic beverages. First, manufacturers are authorized to manufacture alcoholic beverages. D.C. Code § 25-110(a)(1)(A)(i)-(ii), (a)(1)(B)(2)(A)-(B), (3)(A)(B). Second, an on-premise retailer with a pub endorsement may also manufacture alcoholic beverages depending on the type of pub endorsement approved by the Board. D.C. Code §§ 25-117, 25-124, 25-125.

Under a Manufacturer's license or pub endorsement many rights and privileges accrue to the license holder based on whether the product is manufactured by the license holder. The holder of a Manufacturer's License may sell and distribute products "manufactured under the license" to other licensees, licensed dealers outside the District of Columbia, and consumers. D.C. Code § 25-110(a)(1)(A)(i)-(ii), (a)(1)(B)(2)(A)-(B), (3)(A)(B). The beer, wine, or distillery pub endorsements allow the holder to manufacture beer, wine, or spirits for on-premise consumption or sale to licensed wholesalers to engage in resale to other licensees. D.C. Code §§ 25-117(a), 25-124(a), 25-125(a). A brew pub permit holder may also "transport beer manufactured at one brew pub facility to another brew pub facility" owned by the license holder. D.C. Code § 25-117(e).

Whether a product qualifies for these rights and privileges depends on whether it is brewed or manufactured by the licensee. The definition of the term "Manufacture" found at D.C. Official Code § 25-101(32) "includes any purification or repeat distillation processes or rectification." D.C. Code § 25-101(32). The Board interprets § 25-101(32) as not excluding other manufacturing processes, as purification, distillation, and rectification are processes that generally only apply to products classified as spirits, not beer and wine.

The dictionary provides several definitions of the term "manufacture." To manufacture is to "make or process (a raw material) into a finished product"; "make or

process (a product)”; and to “concoct.” *Webster’s New College Dictionary* (2001) (“manufacture”).

Based on the broad scope of the term “manufacture,” the Board interprets the term manufacture to encompass a large range of activities. A manufacturer or pub endorsement holder engages in manufacturing (1) by distilling, purifying and rectifying various ingredients to create alcoholic beverage products; (2) by fermenting nonalcoholic ingredients so that they subsequently become an alcoholic beverage (e.g., fermenting grape or apple juice); (3) by blending alcoholic beverages produced by another manufacturer with other alcoholic beverages, whether produced by the licensee or not, or nonalcoholic ingredients (e.g., blended whiskeys, premade cocktails); or (4) by opening large barrels, casks, and other large containers containing an alcoholic beverage, whether produced by the licensee or another manufacturer and dividing the contents into smaller bottles (e.g., bottling). The Board further finds that a licensee’s efforts to age a product (e.g., barrel aging) may be used as evidence of manufacturing, but is not necessary to show that he or she engaged in manufacturing.

The Board notes that some activities would not constitute manufacturing because the activity does not entail concocting, making, or processing, or the activity otherwise constitutes wholesale or retail activity rather than manufacturing activity. For example, a product is not manufactured by a licensee when the licensee merely resells a product created by another manufacturer in the same container that it was received. *See* D.C. Code §§ 25-111(a), 25-112(a), (b). In addition, the Board would not consider merely adding, changing, or removing the label on a container to constitute manufacturing.

ORDER

Accordingly, the Board, on this 13th day of December 2017, hereby **ORDERS** that the above represents the **ADVISORY OPINION** of the Board pursuant to 23 DCMR § 1902.

District of Columbia
Alcoholic Beverage Control Board

Donovan Anderson, Chairperson



Nick Alberti, Member



Mike Silverstein, Member



James Short, Member

Jake Perry, Member



Donald Isaac, Sr., Member

Pursuant to 23 DCMR § 1902.6, if the requestor disagrees with the Board's advisory opinion in any respect, he or she may, within twenty (20) calendar days after issuance of the opinion file a petition with the Board in writing to reconsider its opinion, setting forth in detail the reasons and legal argument which support the requestor's points of disagreement, or may request the Board to issue a declaratory order, pursuant to § 1903. Advisory opinions of the Board may not form the basis of an appeal to any court in the District of Columbia.