

# Beer Distribution: Getting Your Products into the Hands of Consumers

## Article #10 of Hopping on the Brewery Bandwagon Series

For a craft brewery, getting its beer into the hands of consumers can be a challenging step. The challenge may arise because the brewery has not planned in advance for the distribution of its beer, or because distributors and retailers think the beer has not yet found a place in the market. The three major players in the distribution process are the brewery (supplier), the wholesaler (distributor) and the retailer (restaurant, bar, liquor store, etc.). This article discusses the key considerations that each brewery should weigh in its selection of whether to employ a distributor and, if so, some tips to get the most from the distributor relationship.

## At the Beginning

Most markets contain several major distributors. These major distributors conduct business with and have established relationships with just about every bar, restaurant and liquor store in that market. Just because these major distributors exist, however, does not mean that a small brewery will use them from the start. On the one hand, a distributor may be hesitant to work with a brewery that has only a small presence and place in the market. On the other hand, it is not uncommon for a brewery to begin its distribution efforts through self-distribution (if permitted by state law). This method enables breweries to make initial contact with retailers in their markets, build relationships with these retailers, and retain all control in the branding of its products. When done successfully, a few years of self-distribution can lead to lasting relationships with retailers and good product placement within the stores. While self-distribution cuts out the middleman, the downside of the door-to-door, hands-on approach is that it requires a huge investment of time and access to resources (trucks, equipment, labor, etc.), leading many breweries to look for alternative ways to distribute their products.

## Do Some Homework

Before selecting a distributor, do some homework. Even if a brewery does not have relationships with retailers from its days of self-distribution, retailers may be

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willing to share experiences they have had with the major distributors. In particular, ask retailers for their opinions and insights regarding the professionalism, promptness, reliability, enthusiasm, and general knowledge of the staff in the craft beer space. From there, talk to other craft brewers in the market regarding the pros and cons of their distributors. Lastly, ask each distributor for price sheets to determine which beers it carries. Pay attention to whether a distributor has a large presence in the craft beer space, and whether the beers it carries have the most draft handles and best shelving positions in the retail spaces.

## Beware

In most states, the relationship between a brewery and a distributor is governed by state franchise laws. These laws protect distributors and, in almost all states, make it difficult to terminate a distribution agreement. To protect your interests and limit your exposure to a poorly performing distributor, contact your attorney to draft a written agreement once you have selected a distributor willing to distribute your products. To make the most of your time with your attorney, think about the following in advance of your discussions:

1. the distributor will likely demand exclusivity in a specific territory, so look at your business plan and determine the best way to limit the definition of territory so you have options in the future;
2. the distributor will likely not allow self-distribution, but look at where you have experienced the most success and try to carve out those retailers, or allow self-distribution if the sales figures do not meet your past numbers;
3. based on your discussions with retailers and other craft breweries, figure out the major complaints and include those in the definition of "good cause" termination;
4. whether there are specific performance standards/measures/obligations you want the distributor to meet
5. the distributor will likely define the term "product" very broadly, including future products, but consider whether your products can be put into separate categories (specified brands and packages, etc.) such that a distributor has rights only to a specific set; and
6. whether you have a niche product such that you want to restrict the



distributor from carrying competing products.

If you have questions about how to contact distributors, the distribution of your products, drafting distribution agreements or any other topic discussed in this e-alert, please contact your Reinhart attorney or any member of the firm's [Food and Beverage Law](#) Group.

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