



It seems like craft beer is everywhere nowadays. In Cleveland alone, a beer drinker can choose from a plethora of brews from Great Lakes Brewing Company, Platform Beer Co., Market Garden Brewery, or one of many other small breweries. Given the changing landscape of the beer industry, everyone and their uncle seems to want to make and sell craft beer.

The explosion of craft beer may lead to a saturation of the market and the unintentional violation of franchise and distributing laws by fledgling breweries or distributors. We [previously reported](#) on the Sixth Circuit's decision to overturn a preliminary injunction prohibiting Great Lakes Brewing Company from terminating a large distributor relationship under the Ohio Alcoholic Beverages Franchise Act. However, the Franchise Act can affect manufacturers and distributors of all sizes in Ohio.

The Franchise Act encourages manufactures and distributors to enter into written franchise agreements when they begin a working relationship, and any provisions in the written franchise agreement that do not comport with the Franchise Act are considered vague and unenforceable. So, if you and your uncle decide that you want to start a craft brewery and distributor relationship, you should be aware that you must comply with the provisions of the Franchise Act whenever you begin selling and distributing your beer – even if you do not have a written franchise agreement.

If a beer distributor sells beer for 90 days or more (whether directly to consumers or resale stores) without a written contract, a franchise relationship is established between the distributor and the beer manufacturer, and both parties must comply with the provisions of the Franchise Act. Notably, this means that even if you do not have a written franchise agreement, both the manufacturer and distributor of the beer must, among other matters:

- Act in good faith during the course of the manufacturer/distributor relationship.
- Have "just cause" if attempting to terminate the relationship.
- Not award an additional franchise within the same territory.
- Not withhold delivery of ordered beverages without reasonable cause.
- Submit profit and loss statements, balance sheets, or financial records to maintain the franchise.
- Not coerce a distributor to participate in any national advertising fund controlled by a manufacturer.

If these provisions, among other provisions, of the Franchise Act are violated – intentionally or unintentionally – by a business which is subject to the Franchise Act, the manufacturer or distributor's permit from the Ohio division of liquor control may be revoked, and the entity may be left without a legal way to operate the business. The manufacturer or distributor may also be subject to "all reasonable damages" sustained by the other party resulting from the improper action by the manufacturer or distributor. In the Great Lakes case, an alleged violation of the Franchise Act and the related potential damages led to substantial litigation, including an appeal to the Sixth Circuit, over the course of nearly two years.

Therefore, if you are starting a craft brewery business and think you would like to sell the beer – like the rest of the Midwest seems to be doing – it is worthwhile to review the provisions of the Franchise Act, comply with its provisions, and enter into a written franchise agreement to make sure you do not have an unintentional franchise situation in your hands.



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