



## Food & Beverage ADVISORY ■

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### Closing Time: Court Approves Proposed Classwide Settlement in Cocktail-Themed Drinks Suit

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Last May, we wrote about the federal district court decision that [denied Anheuser-Busch's bid to dismiss](#) class claims challenging the packaging and advertising of its "Ritas" line of malt beverage products. Possibly seeing the court's order as last call, the defendant agreed to mediate the case, in which it brokered a consolidation of the case with two other putative class actions in New York and California federal courts.

Now, in a significant development in the increasingly active alcohol labeling litigation space, the federal district court has raised its glass as a preliminary toast to the parties' agreement to settle the case on a classwide basis.

#### **Turn All the Lights On: The Backstory**

In November 2020, two plaintiffs filed suit in the Western District of Missouri (the *Browning* action discussed in our May advisory) alleging that the defendant's Ritas line of cocktail-themed malt beverages mislead consumers into believing that the drinks actually contain distilled spirits or wine. In reality, the drinks are flavored malt beverages. The *Browning* case joined two other putative class actions filed in the Southern District of New York and the Central District of California, all three of which were brought by the law firm of Faruqi & Faruqi LLP.

All three lawsuits alleged that using the names "Margarita," "Mojito," and "Rosé" on the Ritas beverages, along with imagery of cocktail and wine glasses and a tongue-in-cheek ad campaign featuring a woman in a wine cellar, mislead consumers to believe that the drinks actually contain tequila, rum, or wine. The lawsuits also claimed that the packaging's disclaimer that the drinks are "malt beverages" was an ineffective party foul because it was placed on the *bottom* of the packaging.

The defendant pursued a failed bid to dismiss the *Browning* action, leaving the lawsuit largely intact. In rejecting the dismissal argument, the district court found that it was plausible that the "overall appearance" of the Ritas beverages could deceive reasonable consumers into believing the products contain distilled spirits or wine.

The court next rejected the defendant's argument that whether the drinks contain distilled spirits or wine is not material to reasonable consumers—it was plausible that the type of alcohol base matters to consumers and affects

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how much they are willing to pay. (Otherwise, the middle shelf would be quite long indeed). The district court upheld the breach of warranty claims for similar reasons, noting that the beverages' packaging and advertisements could plausibly constitute a promise that the beverages contain distilled spirits or wine. The court also upheld the plaintiffs' unjust enrichment claim and rejected arguments that the plaintiffs did not have standing for injunctive relief.

## One Last Call: Mediation and Settlement

Following the court's ruling, the parties in all three lawsuits agreed to attend mediation and reached a settlement in principle on the terms for a settlement class. In March 2022, the parties executed a memorandum of understanding (MOU) regarding the proposed settlement.

In accordance with the MOU, the parties agreed that the New York and California actions would be dismissed and that the plaintiffs in those cases would be added in an amended complaint in the *Browning* action. A first amended complaint was filed in the *Browning* action on May 5, 2022, and the parties executed the settlement agreement on July 18. The settlement agreement was preliminarily approved by the court the next day.

The settlement agreement proposes to certify *two nationwide classes*—a settlement class and an injunctive relief class—for “all persons who purchased for personal consumption, and not for resale, any of the Products in the U.S., during the Class Period.” Under the terms of the settlement agreement, the class period is just over four and a half years, running from January 1, 2018 until July 19, 2022.

The agreement provides that members of the settlement class may seek \$.10 – \$.85 per product purchased during the class period (depending on the size or unit type purchased), up to a potential maximum refund of \$21.25 per household with proof of purchase or \$9.75 without. The settlement agreement also provides for injunctive relief, requiring the defendant to change the marketing, labeling, and packaging of the Ritas product line: adding the words “Malt Beverage” in a more prominent place on the product and packaging and including clear and conspicuous disclaimers on the company's website noting that each of the products “Does not contain distilled spirits.”

Finally, the settlement agreement allows the plaintiffs to petition the court for an award of up to \$2.1 million in attorneys' fees and costs and up to \$2,500 awards to each the named plaintiffs to serve as class representatives.

## Takeaways

The Ritas settlement is one of the first significant class settlements in the ready-to-drink alcohol beverage space. Additionally, the agreed-to terms are far from watered down. The defendant agreed to changes in its labeling, disclosures, and marketing; a potential award of up to \$21.25 *per household*; and up to a \$2.1 million award in attorneys' fees.

The case and settlement serve as important reminders for alcohol beverage producers to:

- Assess *all* express and implied claims that the product packaging, labeling, and marketing may convey to consumers, particularly if producers seek to position products as “premium” or having premium characteristics.
- Substantiate all express or implied claims that may be taken from a product's labeling or advertising.
- Consider the overall appearance of a product when assessing product claims and do not rely exclusively on defenses based on technical accuracy or small and out-of-the-way disclosures.

While it may be closing time for this case, every new beginning comes from some other beginning's end.

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