

# ( M C B R A Y E R )

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August 12, 2014

Mr. Frederick A. Higdon  
Commissioner  
Kentucky Department of Alcoholic Beverage Control  
1003 Twilight Trail  
Frankfort, Kentucky 40601-8400

Mr. Tony Dehner  
Distilled Spirits Administrator  
Kentucky Department of Alcoholic Beverage Control  
1003 Twilight Trail  
Frankfort, Kentucky 40601-8400

Ms. Stephanie Stumbo  
Malt Beverage Administrator  
Kentucky Department of Alcoholic Beverage Control  
1003 Twilight Trail  
Frankfort, Kentucky 40601-8400

Ms. Dana Coomes  
Alcoholic Beverage Control Administrator  
101 East 4<sup>th</sup> Street  
P.O. Box 10003  
Owensboro, Kentucky 42302-9003

Re: Protest of Application of Anheuser-Busch, LLC for Malt Beverage Distributor's License

Dear Commissioner Higdon and Administrators Stumbo, Dehner and Coomes,

As reflected in the MESSENGER-INQUIRER advertisement enclosed herewith, on Saturday, August 2, 2014, Anheuser-Busch, LLC ("Anheuser Busch") published notice of its intent to apply for a Kentucky Malt Beverage Distributor's license to be located at 4221 Airpark

Mr. Frederick A. Higdon  
Ms. Stephanie Stumbo  
Mr. Tony Dehner  
Ms. Dana Coomes  
August 12, 2014  
Page - 2 -

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Drive, Owensboro, Kentucky. Please accept this letter, pursuant to KRS 243.360, as a protest of Anheuser Busch's application on behalf of:

Kentucky Eagle, Inc.  
2440 Innovation Drive  
Lexington, Kentucky 40511

Golden Eagle Distributing, Inc.  
5235 Charter Oak Drive  
Paducah, Kentucky 42001

Chas. Seligman Distributing Co., Inc.  
10885 Clydesdale Court  
Walton, Kentucky 41094

Perry Distributors, Inc.  
540 Oakhurst Ave.  
Hazard, Kentucky 41701

J.B. Distributors, Inc.  
P. O. Box 51085  
Bowling Green, Kentucky 42101-4385

Edward Utley Jr., Inc.  
P. O. Box 382  
Henderson, Kentucky 42419-0382

Under KRS 243.450 the state or local administrators may refuse to issue the license if **either**, the application does not comply fully with state or local alcoholic beverage control statutes and regulations, or for any reason, in the exercise of an administrators' sound discretion, he or she deems sufficient. In this circumstance the issuance of the license sought in the Anheuser Busch application would violate the spirit of Kentucky's entire system of alcohol regulation, fixed squarely upon the foundation of a robust three (3) tier system for the distribution of alcoholic beverages.

Mr. Frederick A. Higdon  
Ms. Stephanie Stumbo  
Mr. Tony Dehner  
Ms. Dana Coomes  
August 12, 2014  
Page - 3 -

---

For many decades Kentucky law has adhered to and valued a three (3) tier system for alcohol distribution - a system adopted by most states after prohibition in order to prevent the pre-prohibition ills of direct manufacturer/supplier distribution. The key to the three (3) tier system is the protection and success of local distributors, independent from malt beverage and distilled spirits manufacturers/suppliers. Local independent distributors are accountable to local retailers, consumers, and their communities at large, and are responsible for the safe, transparent, and responsible distribution of alcoholic beverages. They are accountable for local implementation and compliance with laws that preserve public safety and enhance consumer value and choice. They provide access to the consumer market for all brands, large and small, to promote responsible competition in the marketplace. They are easily monitored by local administrators and the communities for which they serve and in which they live, work, shop, attend church and local events. Local independent distributors ensure the collection and payment of local and state taxes on the sale of alcoholic beverages. Local independent distributors provide jobs, make local and energy efficient capital investments, and contribute to strong local economic stimulus. The protection of Kentucky's three (3) tier system through local distributors ensures business income produced by a community remains in the community in the form of jobs, investment, commerce, taxes, philanthropic activity and support of state and local governments. Kentucky's three (3) tier system was designed to ensure all of these benefits are safely in place, and Kentucky's independent local distributors make sure these protections are implemented and sustained to promote the health, welfare, and public safety of our communities.

Kentucky's General Assembly, reaffirming the importance of the three (3) tier system, has, in recent enactments expressed its continued commitment to this system. For example, in 2004, the General Assembly enacted a comprehensive system protection for beer distributors in the context of their relationships with suppliers, stating:

The General Assembly finds that KRS 244.602 to 244.606 are necessary in order to:

- (1) Provide an orderly **three (3) tier** system for the distribution and sale of quality malt beverages in the Commonwealth of Kentucky; (emphasis added)
- (2) Promote the public health, safety, and welfare of the people of the Commonwealth; and

Mr. Frederick A. Higdon  
Ms. Stephanie Stumbo  
Mr. Tony Dehner  
Ms. Dana Coomes  
August 12, 2014  
Page - 4 -

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(3) Provide a distribution system of malt beverages that will facilitate the collection and accountability of state and local taxes.

Again in 2013, the General Assembly re-affirmed its commitment to the three (3) tier system when it enacted KRS 243.157. In clarifying its microbrewery licensing statute, the General Assembly provided, in pertinent part:

(8) Nothing in this section shall be construed to vitiate the policy of this Commonwealth, as set forth in KRS 244.167 and 244.602, supporting an orderly **three (3) tier** system for the production and sale of malt beverages. (emphasis added)

These statements of legislative intent are a clear directive that Kentucky's alcoholic beverage laws are premised on the continued existence of a strong three (3) tier system of alcohol distribution. Anheuser Busch's application proposing the expansion of supplier "branch" distribution violates this clear intent and directive.

Recognizing the clear directives of the legislature, Kentucky's ABC Administrators have also historically supported its three (3) tier system. In 2007, then Distilled Spirits Administrator, Steven A. Edwards, refused to grant Anheuser Busch a Kentucky Wholesale Distilled Spirits and Wine License. Citing his authority under KRS 243.450(2), Administrator Edwards determined that if Anheuser Busch were to decide to perform the distilling and distribution of the products proposed in the application, "there would be no question that such an arrangement would violate both the letter and spirit of Kentucky's laws relating to the three-tier system." Anheuser Busch certainly brews its own malt beverages. Therefore, their distribution of those products would also certainly violate both the letter and spirit of Kentucky's laws relating to the three (3) tier system. Continuing his concern, Edwards also stated that "the Kentucky consumer is definitely better served by having retailers supplied by companies that wholesale alcoholic beverages and do nothing else...If such wholesalers don't meet the high standard of service, they fail as a business. That wouldn't necessarily be the case in a situation where Anheuser Busch wholly owns a wholesale operation..."

It is patently against the interests of the community, the business members of the alcoholic beverage industry and the citizens of the Commonwealth of Kentucky to permit Anheuser Busch to eliminate the protections afforded the community by the three (3) tier system and to be permitted to self-distribute its products. In accordance with KRS 243.450, we request

Mr. Frederick A. Higdon  
Ms. Stephanie Stumbo  
Mr. Tony Dehner  
Ms. Dana Coomes  
August 12, 2014  
Page - 5 -

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that Administrator Coomes deny the license, or in the alternative, to schedule a hearing to allow the protest to be aired before a decision on the license is granted. In the event the license is approved locally notwithstanding this protest, the Kentucky Department of Alcoholic Beverage Control and its Board are hereby requested to deny the license and/or schedule a hearing to review the decision of Administrator Coomes. Thank you for your consideration.

Sincerely,



STEPHEN G. AMATO