AT THE BAR WITH BOWDITCH

A Legal Blog for the Craft Brewing Community

Are you paying too much for Blue Moon?

BY CHRISTOPHER MERCURIO • DECEMBER 4, 2015

One man in California thinks you are, but a federal district court has decided that you aren't (yet). As the consolidation of the beer industry continues, one of America's largest brewers—MillerCoors LLC—is being challenged for the way in which it markets one of its popular "craft" beers. In a recent class action lawsuit, Evan Parent, a self-proclaimed "beer aficionado and home brewer" argues that MillerCoors' marketing of Blue Moon creates the false and misleading impression that Blue Moon is a craft beer in violation of California consumer protection and false advertising laws.

Mr. Parent's argument is relatively simple: he contends that Blue Moon clearly does not fit within the American Brewers Association's definition of craft beer because MillerCoors produces over 76 million barrels of beer annually (much more than the 6 million barrels allowed under the current definition), yet Blue Moon's label notes that it is "artfully crafted," it is placed in stores next to craft beers, and is priced like a craft beer. Furthermore, Blue Moon's packaging and website do not clearly disclose MillerCoors' ownership of Blue Moon Brewing Company, or that Blue Moon is manufactured by MillerCoors in the same breweries that it produces its other beers. MillerCoors' own website even lists Blue Moon as a craft beer. Accordingly, Mr. Parent claims, we have all been paying too much money for Blue Moon.

However, Judge Curiel of the Southern District of California recently decided that while these practices may be misleading, they are not illegal. In an unpublished slip opinion, Judge Curiel held that MillerCoors' marketing practices are protected under the "safe harbor" of the California consumer protection laws. In other words, because MillerCoors' use of the trade name "Blue Moon Brewing Company" is permitted under the Federal Alcohol Administration Act, such use cannot be in violation of California consumer protection laws. Judge Curiel also held that members of the public are not likely to be deceived by such marketing, noting that MillerCoors does not control the placement of its products in stores and that no case law suggests that the price of a product may constitute a representation about that product. Judge Curiel did, however, grant leave for Mr. Parent to amend his complaint, noting that it is possible that an actionable claim could be made against MillerCoors on different facts.

Although Mr. Parent's challenge appears headed for defeat (unless any changes to the allegations in his complaint satisfies the court that his case should go forward), similar cases are likely to appear before different courts around the United States. Subtle differences in state consumer protection laws, as well as differing tendencies among federal courts may produce different outcomes in otherwise identical cases.