

The Trend of Organic Alcoholic Beverages: What Craft Brewers and Craft Distillers Need to Know About Labeling Requirements



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Over the past decade, sophisticated consumers wanting control over the foods and beverages they consume have demanded transparency from producers. This demand for knowledge about food and drink has been fueled, in part, by public health and the desire for nutritious diets. Socially-conscious consumers are mindful that ingesting more categorically “healthy” food reduces some of the public health epidemics like diabetes and obesity, as well as the economic and ecological impact of mass-produced food and the power of Big Agriculture. This movement has spawned significant changes in the food and beverage industry, including fast-food establishments offering healthier choices, nutrition/calorie disclosure requirements on menus, and the “locavore” movement of eating food grown from a known source to support local farms. The organic movement encapsulates these trends.

The leading organic trade organization’s market analysis reports that the sale of organic products totaled nearly \$50 billion in 2017, a yearly increase of almost \$3.5 billion in sales compared to the 2016 sales figures. Organic food now accounts for more than 5% of total food sales in the United States. Most significantly, organic food sales increased by 6.4% from last year, drastically exceeding the 1.1% growth rate of the overall food market.

Over the past few years, as both start-up and existing alcohol beverage and distilled spirits companies have experimented with new production techniques and marketing initiatives, these companies have promoted their products to capture the health-conscious and discerning consumers’ demand for information about what they are consuming. Alcohol beverage companies have used language on their product labels and in their marketing that suggest that their beverages are “natural,” “handmade,” “craft,” and “artisanal.” These descriptors may be considered puffery—vague, exaggerated, and subjective language used solely to grab a customer’s attention—although, increasingly, they result in claims that they are deceptively

misleading. Within the past couple of years, there has been an explosion in this area leading to consumer-based, class-action litigation in an attempt to force companies to correctly identify the source and character of their products.

While these terms, including the use of “[natural](#),” are not expressly defined by law, there is a labeling term that is regulated by federal law: “organic.” In contrast to the imprecise verbiage surrounding the use of the word “natural” and other puffery terms, the use of “organic” is a legal term of art with a precise definition based on federal certification criteria. Alcohol beverage companies, including craft brewers and craft distillers, can capitalize on the organic market trend by producing organic beer, flavored malt beverages, and spirits products, but this business decision comes with significant regulatory compliance obligations, including esoteric alcohol beverage labeling requirements.

Alcohol beverage labels are generally required to have a federal certificate of label approval (“COLA”) from the United States Alcohol and Tobacco Tax and Trade Bureau (“TTB”)—the federal agency responsible for licensing and regulating the alcoholic beverage industry. While federal alcohol beverage laws require certain mandatory statements and information, the use of an “organic” statement is optional. Nevertheless, if an alcohol beverage company chooses to label a product as “organic,” specific regulations must be followed.

An organic product is based on organic farming practices that require farmers to rely on traditional farming methods without the use of chemicals, pesticides, or growth hormones. Licensed industry members who decide to participate in the organic and locavore movement can collaborate with local farmers to produce the agricultural commodities that are the indispensable ingredients of alcohol beverage products, rather than using mass-produced barley, wheat, rye, corn or other fermentable grains. Federal law permits four organic labeling categories, which can be used for alcohol beverage products that comport with these federal requirements:

- 1) “**100% Organic**” contains only organic ingredients and processing aids with no chemically added sulfites;
- 2) “**Organic**” contains at least 95% organic ingredients with no chemically added sulfites;
- 3) “**Made with Organic [ingredients]**” contains at least 70% organic ingredients and may contain up to 100 ppm of sulfites from sulfur dioxide; or
- 4) **Ingredient statements** – products containing less than 70% organic ingredients may only identify each organically produced ingredient in an ingredient statement.

The United States Department of Agriculture (“USDA”) has jurisdiction over the National Organics Program (NOP), which defines these standards for organic labeling and the certification process for verifying that production methods are, in fact, organic, to justify the organic labeling seal. The TTB and USDA work together to regulate organic alcoholic beverages, so the area of organic labeling law is well defined. Alcohol beverage labeling compliance is easily achievable because the TTB and USDA-NOP labeling requirements work in conjunction to permit labeling of organic alcohol beverages that comply with the unique rules administered by both agencies. Additionally, the federal regulatory structure preempts state law, meaning there are no state-specific organic labeling laws or regulations.

The business decision to use organic labeling claims could reap significant rewards as it would differentiate products from competitors and cater to the growing organic market share. Understanding the organic production and labeling process will enable your company to participate in this growing trend. Moreover, proactively designing marketing and promotional campaigns can reduce the risk of lawsuits for deceptive labeling. The alcohol beverage industry, and craft beverage producers in particular, should be following these legal and regulatory developments for guidance on how to ensure labels are accurate and transparent. Ultimately, if your company decides to pursue the commercialization of organic or other novel alcohol beverage products, then ensuring regulatory compliance is critical to success. In addition to achieving overall regulatory compliance, reviewing and assessing product labels using natural or organic claims can help mitigate the risk of civil liability for misleading or deceptive marketing. Experienced alcohol beverage and food counsel can help navigate through the federal labeling process to ensure that your business and products comply with all federal laws governing the labeling of organic alcohol beverage products.

For more information, please contact one of the professionals in GrayRobinson's Nationwide [Alcohol Industry Team](#).