

Kombucha (kuhm·boo·chuh) is on the Rise

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Kombucha is on the rise, and why shouldn't it be? The low alcohol by volume, fermentation bubbles of a good brew, and added fruit juice of a flavored seltzer leave more than just Supreme Court Justice Brett Kavanaugh saying, "I like beer." Along with millennials popularization of quinoa, boba, kratom, and açai, we induct another contender into our repertoire of words we all struggle to pronounce the first time around. From sitting at a mere \$0.6 billion in 2015, the global kombucha market is estimated to grow to \$10.45 billion by 2027 and has been popularized by some of the biggest names in both the non-alcohol beverage and alcohol beverage spaces.¹

But what is kombucha? Originating in Northeast China more than two centuries ago, kombucha was largely classified as a non-alcoholic functional beverage associated with numerous health benefits.² Today, kombucha typically refers to a type of beverage derived from a mixture of steeped tea, sugar, a culture of yeast strains, and bacteria.³ However, the combination of sugar and yeast triggers fermentation similar to beer, which may produce a kombucha with an alcohol content. Kombucha at or above 0.5% alcohol by volume at any time is considered an alcoholic beverage and is regulated by the Tobacco Tax and Trade Bureau ("TTB").⁴ Kombucha that is never at or above 0.5% alcohol by volume (during production, at time of bottling, or after bottling) is not subject to regulation by the Alcohol and TTB but must comply with all applicable Food and Drug Administration ("FDA") regulations, as well as any applicable state and local requirements.⁵

Kombucha itself is not a recognized classification of alcohol beverage, so its classification under the Internal Revenue Code depends on its formulation and method of production.⁶ Although both the TTB and IRC generally classify kombucha as "beer" or "malt beverage," it is possible to produce a kombucha that would fall into the classification of "wine" or "spirits."⁷ How your kombucha is classified will determine the required licensure. For example, if your kombucha is classified as a beer, you would require licensure as a brewer.⁸ It is therefore essential that producers consult with an alcohol beverage attorney to determine how its specific product will be regulated on a case-by-case basis.

¹Food & Beverages Press Release, *Kombucha Market to Soar at 23.2% CAGR till 2027; Speedy Expansion of Online Food & Beverage Retail Channels to Foster Healthy Market Growth*, Fortune Business Insights (Dec. 8, 2020), <https://www.globenewswire.com/news-release/2020/12/10/2142753/0/en/Kombucha-Market-Size-to-Hit-USD-10-45-Billion-by-2027-Soaring-Popularity-of-Low-Alcohol-Beverages-Worldwide-to-Boost-Market-Growth-Says-Fortune-Business-Insights.html>.

²Christina Troitino, *Kombucha 101: Demystifying The Past, Present And Future Of The Fermented Tea Drink*, Forbes (Feb. 1, 2017), <https://www.forbes.com/sites/christinatroitino/2017/02/01/kombucha-101-demystifying-the-past-present-and-future-of-the-fermented-tea-drink/?sh=391a56ff4ae2>.

³Alcohol and Tobacco Tax and Trade Bureau, Kombucha, <https://www.ttb.gov/kombucha> (last visited Jan. 19, 2021).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

Producers of kombucha containing at least 0.5% ABV are required to keep records of each products alcohol content.⁹ To avoid liability, it is strongly encouraged that producers on non-alcoholic kombucha test their product's alcohol content to ensure it does not exceed 0.5% ABV. TTB generally uses the distillation-specific gravity method using a densitometer to measure alcohol content.¹⁰

Kombucha that reaches 0.5% ABV *at any time* during or after production must abide by all TTB requirements including (1) being produced on a TTB qualified premises; (2) complying with all labeling, formula and tax requirements; and (3) complying with all container requirements, including health warning statements.¹¹ This includes kombucha that may have been shelved for retail sale at .2% ABV but, due to storage conditions, rose up to 0.5% ABV during secondary fermentation. Both TTB and FDA have been known to launch investigations into the improper labeling of kombucha as an alcoholic beverage, opening up industry members to liability and class action lawsuits. Those looking to become involved in the kombucha industry are encouraged to seek out counsel to better navigate the nuances of alcohol beverage law.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*