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### Belgian Abbey Renovations Spur State Beer Distribution Controversy

Most arguments about the best anything are essentially unsolvable, and arguments about the best beer often break down into individual palates and geographic affinities. But the beer Westvleteren 12 is one name that almost always appears in these discussions, and that many critics have argued is the best beer in the world.

Despite its reputation, most American beer lovers, however, have never had a chance to taste “Westy.” Westy 12 is a true microbrew, which is brewed only in very small quantities by a tiny group of Belgian Trappist monks. That will, for a short time, change. To fund long overdue repairs to the monastery, the monks are increasing production and are creating special packs that include six bottles of Westy and two commemorative cups. In November, these first appeared in Europe and in April, the monks will export 7,760 boxed sets to the United States. Prices are expected to be north of \$100 for each six-pack set, if you can get a hold of one.

While there will be a long line and tremendous demand for the beer, Pennsylvanians may miss out entirely because of the extreme distribution rules in the state and a dispute over the

validity of a two-paragraph distribution agreement that would grant Pennsylvania distribution rights to a single distributor who has no access to the beer coming into the United States.

#### PERPETUAL RIGHTS OF BEER DISTRIBUTORS

In Pennsylvania, beer can be sold only through limited retail channels. Specifically, bars and restaurants with liquor licenses can sell beer by the six-pack and beer distributors can sell only by the case or keg. While Pennsylvania breweries have a few more rights, beer coming in from out of state cannot get to retail outlets without going through a distributor under an exclusive distribution agreement.

These distribution contracts are required by state law to be on an exclusive basis and for a specific geographic region, which can be statewide, and they are governed by an arcane set of laws and the Pennsylvania Liquor Control Board. The importance and permanency of Pennsylvania distribution agreements are often not understood by less sophisticated brewers who are looking to get their foot into a new marketplace.

The LCB requires that Pennsylvania beer distribution agreements must be in writing and must be substantially similar to other distribution agreements between the grantor and other distributors. Distribution agreements can be terminated only for “good cause” shown, which is defined as failure by a party to substantially comply with an essential, reasonable and commercially reasonable term of the agreement. All distributors must file a certified copy of the distribution agreement with the LCB and conspicuously post at all times a schedule designating the territorial

areas to which the distribution agreement applies.

Breweries generally find these terms noxious, but they tend only to complain about them once their brand is established and they become more sophisticated about the Pennsylvania market. Disputes will arise about prioritization between brands and marketing exposure and in those fights, the breweries are often at a disadvantage when compared to how manufacturers in any other industry deal with what they perceive to be underperforming distributors.

Pennsylvania beer distributors argue that building a brand in Pennsylvania takes an enormous investment from the distributors, who have historically served as the primary marketing forces behind their brands.

Policy arguments aside, however, the liquor fights are incredibly tough legislative fights and the distributors have prevailed in the political realm. Once a distribution agreement is signed, in the absence of severe breach by distributors that is not cured after notice, a brewery essentially has two unhappy options — working through the distributor on the terms set by the distributor or choosing not to sell at all into the covered geographic territory. Most brewers, obviously, are hesitant to walk away from a market with significant demand.

#### WESTVLETEREN 12

For over a decade, the two leading beer websites, BeerAdvocate.com and RateBeer.com, have rated Westy 12 as the number one or number two most enjoyable beer. But the beer’s aura is heightened by its unusual backstory.

The Westvleteren Brewery was founded in 1838 within the Trappist Abbey of St. Sixtus of Westvleteren in Vleteren, Belgium. It is the only Trappist

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monastery where the monks still do all of the brewing. Of the 26 monks at the abbey, five run the brewery and an additional five assist during bottling. Although its other brews are also well-respected, Westy 12 is the brewery's crown jewel.

For half a century, the Westvleteren monks have sold only enough beer to financially support monastery operations and the abbey's philanthropic efforts, limiting production to 60,000 cases of all of its beers.

Other than a small sign outside the abbey, Westy's beers are not advertised. As one monk explained in a published interview, "We make beer to live but we do not live for beer." Despite the lack of advertising or pursuit of traditional commercial success, demand still vastly outpaces supply. The monks have compensated by placing incredibly onerous restrictions on sales. Westy 12 must be ordered by phoning the monastery's "beer phone," which is only open for a single two-hour period per week. If available, buyers can reserve one 24-bottle case and make an appointment for pick-up at the abbey. The buyer's phone number and license plate number are taken at the time of reservation and the same buyer cannot make another purchase for 60 days. The monks actively seek to eliminate any secondary market sales, even printing the words *Niet Verder Verkopen* (Do Not Resell) on every receipt.

#### **WESTY'S 1999 'DISTRIBUTION'**

Although the special packages are being promoted by the monks and their two chosen U.S. importers as the first sale of Westy 12 in the United States, some Westy beer was imported in the late 1990s. At the time, Westy was distributed in the Commonwealth by Shangy's, a beer distributor based in Emmaus, Pa.

Shangy's sold the beer pursuant to an October 1999 agreement that is shorter than 100 words in length. This agreement, which appears on the letterhead from the brewery, facially grants Shangy's distribution rights for Westy 12 and was filed with the LCB.

The substantive terms in the 1999 agreement on file with the LCB are that Westy distribution rights are granted statewide to Shangy's and that the agreement remains in effect unless it is termi-

nated for nonperformance on 90 days' prior written notice. Shangy's claims the brewery has never terminated the agreement and that it remains valid and enforceable.

The validity of this agreement is apparently disputed by the importers for the 2012 sets, Massachusetts' Shelton Brothers, pointing to the monks' long history of active prohibition on after-market sales. In published reports, Daniel Shelton of Shelton Brothers maintains that he is "quite certain" the monastery has not granted importation rights to anyone else and that any 1999 importing was after-market "gray market" importing not authorized by the brewery.

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Shangy's and Shelton Brothers have been in contact regarding the potential distribution controversy. Unfortunately for Pennsylvania consumers, we are likely to only get access to the beer if Shangy's and Shelton Brothers are able to work through their differences.

While closing the door on the entire Pennsylvania market may be a ludicrous business decision in other contexts, Shelton Brothers could easily justify it in this unique situation.

Shelton Brothers likely will have no problem selling the entire release in other markets, as the demand for the "world's greatest beer" vastly outpaces the small announced U.S. volume. For example, Shangy's alone estimates that they have gotten 4,000 advance inquiries from consumers since word of a Westy 12 release in the United States started. Shelton clearly will not need the Pennsylvania market to move its Westy 12 supply.

And while "special editions" are usually repeated, given the monks' history and the fact that repairs, if well-made, will last decades, Shelton Brothers will have no incentive to pump up the demand much beyond what it can easily satisfy with its capacity — a demand that clearly already exists.

#### **THE OTHER DISTRIBUTION PROBLEM**

Even if Shangy's and Shelton Brothers find their way to a solution, other Pennsylvania restrictions on beer importation and distribution will complicate the chance of Westy 12 finding its way into the state. Pennsylvania distributors essentially can receive beer only by the case. The Westy 12 release is broken into separately packaged gift packs containing six bottles. For "distributor" sales, even retail distributors, in Pennsylvania, Shelton Brothers would need to bundle four of those packs together. The added time and expense of specially bundling the gift packs for Pennsylvania may not be worth the effort.

Even if the gift packs make it into the state, the Pennsylvania distributor can only sell the packs by the case, which dramatically reduces the distributor's ability to spread the packs around among its customers. Alternatively, it could sell the "cases" to restaurant licensees, which could then break them up and sell them by the six-pack. If Pennsylvania received only a few hundred cases, however, the logistics of putting together that kind of supply chain may not be worth the effort.

The "World's Best Beer" is coming to America. Hopefully, the various obstacles will be overcome and a lucky few beer lovers will be able to purchase it in Pennsylvania. If you find yourself among the lucky few, invite us over for one. We are dying to taste what all the buzz is about. •