NABCA COMMENTARY: The Mississippi Ruling: Lynn Fitch v Wine Express

NABCA
Written by Neal Insley, Sr. VP General Counsel
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March 2, 2020 – The Mississippi Supreme Court issued its decision in Lynn Fitch v Wine Express this past Thursday, unanimously reversing the chancery court’s decision. In doing so, the Court stated that Mississippi’s jurisdiction over the retail wine shippers “comports with fair play and substantial justice and does not violate their constitutional due process rights.”

This case began with an investigation by Mississippi ABC agents into illegal, online shipments of alcohol into the state. Under existing state law, all direct-to-consumer sales of alcohol are prohibited. Despite this prohibition, the online merchants charged in this case sold and shipped alcoholic products into dry counties, to underage buyers, and even to the Commissioner of the Department of Revenue—without paying taxes or utilizing age verification software.

While the chancery court deemed the “sale” to have occurred outside of the state of Mississippi due to a contractual provision, the Mississippi Supreme Court did not accept this argument, noting, “were it that simple to defeat jurisdiction, almost no entity that engages in the interstate sale of goods and products would be amenable to suit outside of that entity’s principle state of business—regardless of their purposeful contact(s) with the other state.”
In its amicus brief, NABCA highlighted similar concerns—namely, that “permitting online alcoholic beverage sellers to circumvent constitutionally-sound state laws moots Mississippi’s policy choices, undermines the Twenty-First Amendment, and invites the proliferation of bad actors.”

The decision is now remanded to the chancery court for further proceedings. The state of Mississippi may enter additional pleadings identifying the back taxes and illegal profits due to the state in a legal process known as disgorgement.

The oral arguments can be found here.

CONTROL STATE NEWS

UT: Utah bill aims to increase penalties for driving while using marijuana

Daily Herald
By Tim Vandenack, Special to the Daily Herald
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SALT LAKE CITY — Utah Rep. Steve Waldrip, as promised, has introduced a measure aimed at beefing up the potential penalties faced by those convicted of driving after using marijuana.

The measure, motivated by deadly car crashes in Utah and Weber counties, received a 10-0 favorable recommendation on Wednesday from the House Law Enforcement and Criminal Justice Committee. Now House Bill 350 has reached the full Utah House for consideration.

“This is a start. The challenge with marijuana is it doesn’t act like alcohol and other drugs,” said Waldrip, a Republican from Eden. That is, measuring use and impairment among marijuana users isn’t as advanced or definitive as with alcohol use.

As is, driving with a measurable amount of a controlled substance in your body — a typical charge against those charged with driving while high on marijuana — is a class B misdemeanor, punishable by up to six months in jail.

Waldrip’s proposal would increase the severity of the offense to a third-degree felony, punishable by up to five years in prison, if the offender is involved in an accident stemming from negligent driving that kills someone or causes “serious bodily injury.” It would also elevate the offense, regardless of the other circumstances, to a third-degree felony on a third conviction.

The potential penalty is “enhanced now whereas before it wasn’t,” Waldrip said, and brings the punishment more in line with sanctions for parallel offenses committed while under the influence of alcohol. “(It) steps it up from a misdemeanor to a felony,” he said.

The controlled-substance offense would become a class A misdemeanor if the offender causes an accident due to negligent driving that lead to fatalities and he sees the measure as a means to make Utah roads safer.

Indeed, Waldrip pursued HB 350 in part because of two fatal crashes involving drivers who authorities say had tetrahydrocannabinol, or THC, in their system: one in Weber County and one in Utah County. THC is the active ingredient in marijuana.

In the Weber County crash, Krystal Sly was convicted of a misdemeanor count of driving with a measurable amount of a controlled substance in her body, THC, stemming from a Nov. 21, 2018, crash that killed Brittany Zoller. Zoller was walking across U.S. 89 in Harrisville at the time and Sly, who wasn’t deemed to be negligent though she had THC in her system, was fined $680 and received a suspended six-month jail sentence.

In the Utah County case, Kali Hardman was deemed to have been driving negligently when involved in a July 22, 2018, crash near Birdseye that killed Baylor Stout of West Jordan. She was convicted of driving negligently and causing a death, a third-degree felony, while another charge was dismissed of possession of a controlled substance, though investigators said Hardman had THC in her system.

HB 350 differentiates between the presence of “active THC” in the system of offenders, which can cause impairment, versus “inactive metabolites,” which don’t cause impairment. Still, crafting legislation can be complicated, in part because of the limited study of marijuana’s effects relative to alcohol and the challenges in pinpointing impairment caused by pot use, according to Waldrip.
“It’s incredibly complicated,” he said. Even so, he thinks penalties related to driving on drugs should be on par with the tougher, parallel penalties for drunk driving. He and Stoddard are pushing for a closer look over the summer at the state’s laws governing drug and alcohol use and misuse with an eye to ironing out inconsistencies between penalties that vary depending on the drug involved in a particular offense.

**LICENSE STATE NEWS**

LA: Alcohol delivery in Louisiana is 'in limbo.' This recent Waitr decision was a factor.

The Advocate
By Sam Karlin | Staff Writer
March 1, 2020

Since Louisiana legalized the delivery of alcohol to consumers’ homes last year, about 50 companies have received the necessary paperwork to do so, mainly grocers and liquor stores.

But one of the main intended beneficiaries of the law — the food delivery startup Waitr — never applied for a permit to deliver alcohol. And while Waitr pushed for a provision in the law that only allowed deliveries by services, like it, that employ hourly workers instead of contractors, Waitr is now reclassifying its employees as contractors and won’t even be allowed to deliver alcohol if it wants to.

The result is no major third-party delivery company is currently offering alcohol delivery throughout the state, though some stores with hourly employees are.

“I think what’s going to happen now is, if no third-party delivery service wants to have W-2 employees, there will nobody satisfying that consumer request” to deliver alcohol, said Thomas Carmody, the former state representative who carried legislation to legalize alcohol delivery last year.

“It sounds to me like right now it’s just in limbo,” he added.

The Legislature took up alcohol delivery in 2018, ultimately killing the legislation and creating a task force to study the issue. That task force, which included representatives from Waitr, lobbying groups, several lawmakers and others, issued a set of recommendations that turned into legislation that passed last year.

Among the recommendations was that alcohol delivery should be limited to only companies with hourly employees, as opposed to the types of independent contractors used by most third-party delivery services like Instacart, Shipt, UberEats and others. Waitr was a rare case of a third-party delivery service that used hourly workers, until it laid off all 2,300 Louisiana drivers and told them to reapply to be independent contractors.

Carmody said the decision to require hourly workers was aimed at providing a clear line of liability. For instance, if a driver failed to follow the rules and dropped off alcohol for someone underage, lawmakers thought allowing independent contractors to deliver the beverages could muddy the waters for who is responsible.

“That was the linchpin in it,” he said, adding the bill would not have passed if it allowed independent contractors to deliver.

That excluded third-party delivery services like Instacart, which was already partnered with some Louisiana grocers, from selling alcohol. The company said it delivers alcohol in 20 states and Washington, D.C., through its independent contractors, but not in Louisiana because its business model is not allowed through the state’s alcohol delivery laws.

Louisiana Speaker Pro Tem Rep. Tanner Magee, a Houma Republican, filed a bill for the upcoming legislative session that would allow companies to use contractors — workers who file a 1099 form with the IRS — to deliver alcohol, an effort he said is aimed at reducing red tape on businesses to deliver alcohol. The bill, HB175, would also loosen several other restrictions currently in place for alcohol delivery.

Rouses Supermarket, a major regional grocery chain based in Magee’s district, is expanding into the delivery market but aren’t able to make a profit under the current alcohol delivery laws, which require using hourly wage employees.

"What the bill seeks to do is allow existing grocery stores and restaurants to deliver alcohol to
capture the burgeoning food delivery market,” Magee said. “This is the future of food service in the United States, not just in Louisiana. We wanted to make sure our businesses can compete. You don’t want them being left out.”

There are ways to get alcohol delivered in Louisiana, even if companies like Waitr can’t bring it to customers.

Drizly, a delivery service specifically aimed at shipping alcohol to customers, does operate in Louisiana, but a spokeswoman said the service doesn’t deliver alcohol. Instead, the firm connects customers with retailers who deliver it with their own employees. The firm has partnered with several retailers, including Brady’s Wine Warehouse in New Orleans, as well as Shop Rite and Tobacco Plus stores across the state.

“All partner retailers make their own deliveries using their personnel,” said Alessandra Forero, a Drizly spokeswoman. “Drizly is a marketplace that connects consumers with local retailers. Those retailers handle all order fulfillment, payment, ID verification and delivery.”

Patrick Brady, the owner of Brady’s Wine Warehouse, said alcohol delivery has gone well for his store since being legalized. He’s hired several drivers who work part time making deliveries, and he said the company delivers alcohol to customers’ doorsteps about every day.

Fifty-one retailers have permits to deliver alcohol, and another 24 companies — including one small third-party delivery service in Leesville — have pending applications.

Ernie Matherne, owner of Matherne’s Market, which has four locations, said he was intrigued by alcohol delivery, mainly as a way to sell drinks to people tailgating on LSU’s campus during game days who want to order from his store. But when he saw the rules, they prohibited alcohol delivery to universities, as part of a list of regulations created by the Office of Alcohol and Tobacco Control.

While Matherne said he understands why some of the rules are in place, it’s too “demanding” to make delivering alcohol worth it, even though he is permitted to do so.

“I have some stores I have not delivered one bottle,” he said.

Ernest Legier, deputy commissioner of the Office of Alcohol and Tobacco Control, said the agency does not track the volume of alcohol sales in the state, only the businesses permitted to do so. It does require those companies to keep logs of its deliveries, however, in case it needs to investigate.

The agency’s rules require the alcohol be manufacturer sealed, prohibiting mixed drinks. Retailers can’t deliver outside of the parish they are located, or outside the hours the store is open. They can’t deliver to schools, including colleges, or churches, and they must retain records of all deliveries for three years.

Matherne said while alcohol delivery hasn’t taken off, online shopping is slowly but surely becoming a viable part of his business.

INTERNATIONAL NEWS

United Kingdom: Alcohol: Wales minimum pricing law comes into force

BBC News
February 2, 2020

A new law introducing a minimum alcohol price in Wales has come into force.

As of Monday, retailers and any outlets serving alcohol must charge at least 50p a unit, meaning a typical bottle of wine costs no less than £4.69.

Health Minister Vaughan Gething said it would tackle "harmful and damaging" drinking of cheap, strong alcohol.

A report found alcohol sales in Scotland dropped after a similar system started there in May 2018, while sales rose slightly in Wales and England.

The Public Health Minimum Price for Alcohol Wales Act 2018 forces retailers to use a formula for working out minimum pricing.

Mr Gething said there had been "lots of debate" when the change was first announced, with some "deeply sceptical and unhappy" about price rises, but the evidence of the health benefits was "so clear".

"It's not about making alcohol unaffordable, it is addressing the most harmful and damaging alcohol - high-strength, cheap alcohol. We have already seen the impact it will have," he said.
"And I really do think, in a few years' time, people in Wales will wonder why there was ever a fuss about doing this."

The Welsh Government said most people would not notice a change in the price of most alcoholic drinks, but "high-strength, low-cost" products, such as white cider, would be significantly more expensive.

Prof Sir Ian Gilmore, chair of the Alcohol Health Alliance, said he was "delighted" by Wales' change and said England risked being "left behind" in the race to tackle alcohol harm.

Mr Gething added: "If we also see a change in behaviour and a real health gain being made that reduces alcohol-related admissions that helps to avoid alcohol-related deaths as well, then I think we will see a change being made across England and... Northern Ireland too."

The Home Office said there were currently no plans to introduce minimum pricing for alcohol in England.

The change was delayed because of objections from Portugal.

Nigeria: NAFDAC, Wine Producers to Tackle Underage Drinking

allAfrica
By Raheem Akingbolu
March 2, 2020

The National Agency for Food and Drug Administration and Control (NAFDAC), has stressed the need for distillers and blenders of alcohol in the country to control the distribution of drinks to address the public health concerns resulting from under-aged drinking and excessive alcohol consumption.

Director-General, NAFDAC, Prof. Christianah Adeyeye, stated this recently in Lagos, at the kick-off of the second phase of the campaign against irresponsible and under-age drinking by Distillers and Blenders Association of Nigeria (DIBAN).

Adeyeye, who was represented by the Director, Food Safety and Applied Nutrition, Mr. Sherif Olagunju, said the NAFDAC Act empowered the agency, among other functions, to regulate the import, export, manufacture, advertisement, distribution, sale and use of foods, drugs, cosmetics, medical devices, bottled water and chemicals.

Also, at the event, DIBAN leadership also announced a six-month campaign to tackle irresponsible and underage drinking among the Nigerian populace.

The Chairman of the association, Chief Patrick Anegebe, disclosed this while introducing the campaign to journalists and other stakeholders.

He noted that underage and irresponsible drinking were serious issues that must be tackled headlong even if it would affect the bottom line of the members.

According to him, this was the second phase of the campaign, which would cost the association N170 million.

Anegebe, said the advocacy would be multi-pronged, covering radio, bus branding, billboards, social media and television commercials, among others.

He added, "Underage and irresponsible drinking are issues of concern to the association. In 2019, our deep value for corporate social responsibility necessitated that we should respond with a strong advocacy platform to drive responsible drinking and zero-alcohol consumption for minors and underage."

"The campaign has been broken into three phases for smooth execution and the evaluation of our set objectives."

"On the first phase, we spent N90 million. We are on the second phase, which is a continuation of our consumer education programme, to which we have committed a total of N170 million."

"Our concern is that anyone below the age of 18 years must not drink alcohol and even the adults who want to drink must drink responsibly. We are socially responsible and that is why we are saying the underage must be protected, even if our bottom line is affected."

Anegebe, said for the campaign to reach a wider audience, commercial buses plying Lagos roads, Abuja and inter-state routes would be branded, adding that the campaign would be pan-Nigeria, touching Kano, Port Harcourt, Onitsha and Aba. He said the association would continue to collaborate with regulatory agencies such as National Agency for Food and Drug Administration and Control, Federal Ministry of Health and other government agencies.
Number of UK distilleries rise by 22%, England overtakes Scotland

FoodBev Media
Posted By: Emma Upshall
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The total number of distilleries registered in the UK has risen by 22%, from 361 in 2018 to at least 441 in 2019, according to figures from HMRC.

Last year reportedly saw a record number of UK distillery openings as numbers were boosted by at least 80.

For centuries, Scotland had dominated the spirit industry due to the popularity and heritage of Scotch Whisky, HMRC said.

However, in 2018, the number of distilleries in England overtook those in Scotland for the first time. England now operates 228 distilleries, adding at least another 62 to its total since the year before.

Scotland, meanwhile, saw an increase of 26 distilleries, taking their total up to 186 distilleries.

While Scotland operates some of the largest distilleries in the UK, an increasing number of smaller distilleries have emerged across England.

The latest figures show that English spirit makers continue to dominate the UK spirits map.

Growth over the last few years has been put down to the popularity of artisan gin as well as consumer demand for craft rum.

According to HMRC, the gin boom – also called the ginaissance – saw the total number of UK distilleries more than double in the last five years from 184 to 441 with figures in England more than tripling.

The Wine and Spirit Trade Association (WSTA) end of year market report showed a surge in gin sales in 2019 with over 82 million bottles sold in the UK worth £2.6 billion.

WSTA CEO Miles Beale said: “It’s fantastic to see a growing number of British distilleries up and down the country, year on year, providing jobs and boosting their local economies.

“A freeze at the last Budget has certainly helped our innovative British distillers to invest and boost exports. And because we also know that an increase in wine duty has reduced Exchequer revenue, we are asking the Chancellor to take the time to consider a clear win/win. A cut to excise duty would boost both British Business and Treasury coffers.”

The latest HMRC figures do not reveal the total number of distillery openings in Wales and Northern Ireland as the applicants were fewer than 5 and the actual number has been withheld by officials to protect the confidentiality of HMRC’s customers.

INDUSTRY NEWS

How will coronavirus affect the spirits industry?

The Spirits Business
by Nicola Carruthers
March 2, 2020

The window to contain a dangerous new strain of coronavirus seems to be almost entirely shut. With traveller numbers to China down, The Spirits Business investigates the impact the illness could have on the long-term health of the spirits sector.

The Chinese Grand Prix, the Mobile World Congress and the Asia leg of rapper Stormzy’s tour are just a few events that have been cancelled or postponed because of the potentially fatal coronavirus (Covid-19) outbreak, which has grossly impacted Asia.

In the drinks world, wine and spirits fair ProWine Asia has rescheduled its Singapore show due to the illness. Originally scheduled to take place at the end of March, it will now be held from 13 to 16 July.

Over the weekend (29 February), ProWein organiser Messe Düsseldorf announced its flagship 2020 show has also been postponed. ProWein had been arranged to take place from 15-17 March in Düsseldorf, Germany. The company added it will “promptly discuss” an alternative date for the show.

Concerns over coronavirus has also prompted trade fair Vinexpo Hong Kong to move its show from May to 8-10 July following feedback from its exhibitors.

The coronavirus outbreak began in Wuhan, capital of the Hubei province, in China, last December, and has since spread to more than 20 countries. The situation has been declared a Public Health
Emergency of International Concern by the World Health Organization (WHO) and to date, the death toll has reached more than 2,700, the majority of which have been in China.

Covid-19 has triggered memories of the 2003 Sars epidemic in Southeast Asia, which was also caused by a coronavirus and killed around 800 people. IWSR Drinks Market Analysis looked back at data from this period and found spirits volumes in travel retail in the Asia Pacific region fell by 1.6% in 2003. However, by 2004, sales had rebounded and rose by 5.9%, and again by 5.2% in 2005.

“The number of cases [of Covid-19] dwarfs Sars, and the number of deaths is already more than double,” says Tommy Keeling, research director, Asia Pacific for IWSR Drinks Market Analysis. “China’s economy is much larger, more complex and better connected than it was in 2003.”

Spiros Malandrakis, head of alcoholic drinks research at Euromonitor, echoes the severity of Keeling’s comments. “We’re dealing with something far more serious than the Sars epidemic,” he warns. “Back then, China was just a large growing market. Now it’s one of the top economies in the world. It’s a major driver of premiumisation.” The coronavirus outbreak continued during the Lunar New Year celebrations, a time when a lot of premium spirits are sold in China. “It will have a major impact,” Malandrakis insists.

The disease has caused significant concern for the travel retail industry. China put Wuhan on lockdown and closed several railway stations and airports in the country until further notice in an effort to stem the spread. The Foreign and Commonwealth Office has advised against all travel to the Hubei province, and against “all but essential” visits to the rest of mainland China.

“There is no hiding the fact that the short-term impact of this crisis is significant,” says Alain Maingreaud, president of Tax Free World Association (TFWA). “Travel to and from China and within the Asia Pacific region is down, as is spending among key nationalities.” However, Maingreaud believes Chinese travellers “will return, and in large numbers”.

To reassure its members, the TFWA and the Asia Pacific Travel Retail Association (APTRA) released a joint statement to confirm they will be working closely to support retailers, brands, airports, food and beverage, and inflight operators while the coronavirus outbreak continues.

Maingreaud said the association is “monitoring the situation in Singapore, where there are currently major events in preparation”. The TFWA Asia Pacific Exhibition and Conference in Singapore, set to take place from 10-14 May at the Marina Bay Sands Expo and Convention Centre, will continue as planned, Maingreaud confirms.

Extra precautions will be implemented for the show, including the installation of thermal scanners to carry out temperature screenings of guests, and public areas will be thoroughly cleaned, organisers assure.

SEVERE IMPACT

Keeling also believes the impact of coronavirus on travel retail will be “severe”, particularly in Asia Pacific, which is “now heavily reliant on Chinese consumers. Scotch, Cognac and baijiu are the categories most purchased by Chinese tourists, and will struggle as people go out less, celebrate less and get together less,” Keeling notes. “Proportionally, baijiu will probably suffer the largest impact because it is mainly bought by Chinese consumers.”

A number of major drinks groups are also understandably concerned about coronavirus. Johnnie Walker owner Diageo has already cut its full-year 2020 profit forecast by up to £200 million (US$260m) as bars and restaurants in Greater China remain empty. The firm expects disruption in the market to last until at least March but says it will take until the end of fiscal 2020 for consumption levels to return to normal.

Beam Suntory also said the “coronavirus situation is creating challenges in key Asia markets” in its 2019 full-year results.

Pernod Ricard paints a similar picture, and anticipates the outbreak will have a “severe” impact on its China and travel retail business. In China, the firm expects a “gradual recovery” from March, returning to normal in June. As a result, the French drinks group cut its guidance for organic growth in profit from recurring operations for fiscal 2020 to 2%-4%, from previous expectations of 5%-7%.

Malandrakis calls Pernod Ricard’s statement that recovery will start from March a “very optimistic
scenario”. He says: “I don’t see any signs of the epidemic being under control in China or across the world. If we add the trade dispute with China, I am quite pessimistic about the next quarter at the very least, potentially going beyond that, even.”

Malandrakis believes the recovery from coronavirus “will be more gradual” than equity analysts are predicting. He says the Sars epidemic took between six months to a year for tourist levels to go back to normal. “It will definitely be worse,” he warns. “There will always be a lagging effect until confidence levels go back”. Nonetheless, he acknowledges a number of forecasters have suggested Pernod’s assumption is “too pessimistic and that it should all be over soon”.

However, the number of infected individuals continues to rise, with a recent surge in confirmed cases in Italy and Iran’s vice president and deputy health minister testing positive for the virus. As the figures stack up, uncertainty around coronavirus shows little sign of ending anytime soon.

“It is still too early to speculate about how long the negative impact on our market will last and about how long it will take for consumer confidence to recover,” stresses Maingreaud. “The post-Sars recovery was relatively swift; but making forecasts and comparisons is not necessarily useful. The most important thing is to be ready for the rebound when it comes, as it certainly will.”

**DAILY NEWS**

Why You Need To Stop Drinking Vodka Red Bull Immediately

Gent Side.
By the editors
March 1, 2020

UNITED KINGDOM - Even if you don’t fancy vodka or Red Bull, you’ve surely tried the combination of the two during a night out. When looking to combat fatigue as the night rages on, the mix of the energy drink and a shot or two of vodka is a potent one and will leave you absolutely wasted by the end. We’re sure it will surprise absolutely no one, but one Canadian study recently uncovered that – wait for it – the drink is not good for you.

It looks like it may be time to find a new go-to cocktail when out at the club. The Centre for Addictions Research in Victoria, British Columbia examined 13 various studies conducted between 1981 and 2016 which studied the effects of mixing alcohol and energy drinks. It turns out that adding vodka to your Red Bull for a bit of spice is not exactly great for your body - but not for the reason you might expect.

Rather than just sending your heart into overdrive when you indulge in this risky beverage, you’re actually also more likely do something really stupid. The results published in the Journal of Studies on Drugs and Alcohol suggest that alcohol consumption in conjunction with energy drinks increases the risk of injury and falls when compared to alcohol alone. So, you actually end up getting a little more legless when mixing the two.

When we drink alcohol by itself, we’re hit with an immediate moment of euphoria which, in turn, is followed by fatigue. When we add our little friend Red Bull to the equation, we get that great moment at the beginning with none of the fatigue at the end since the energy drink effectively masks it. So we stupidly continue drinking as we’ve essentially quieted the reasonable part of our brain that’s telling us “listen mate, I think we should probably call it quits here”.

Audra Roemer, author of the study, states that this cocktail may cause a less than desirable “awake-drunk” state: “Usually when you’re drinking alcohol, you get tired and you go home...people may underestimate how intoxicated they are, end up staying out later, consume more alcohol, and engage in risky behavior and more hazardous drinking practices.”

According to another study published in the science journal Plos One, this isn't the only risk-factor when it comes to drinking caffeinated booze. In fact, researchers at Purdue University in Indiana found that consuming alcohol-mixed energy drinks causes long-term effects on the brain similar to those caused by taking cocaine. After conducting the experiment on mice who were given the alcohol-energy drink concoction, the scientists find increased locomotor activity - an effect which is similarly reached after consuming cocaine: “It seems the two substances together push them over a limit that causes changes in their behaviour and changes the neurochemistry in
their brains,” explains Richard van Rijn, assistant professor at the university, “We are clearly seeing effects of the combined drinks that we would not see if drinking one or the other.”

Among the studies, three of them suggest that the choice of a Vodka-Redbull instead of just alcohol could depend on the personality of the drinker. Those with more impulsive personalities tend to lean more towards the combination of alcohol and energy drink. This thrill-seeking demeanour could also be linked to the higher instances of fights featuring consumers of the mixed drink.