

## Kona Brewing Company the Latest Brewery Sued for False-Labeling

By Spencer Hazan, J.D. Candidate 2020 | October 25, 2017

Kona Brewing Company, owned by the Craft Brew Alliance, is the latest brewery to find out just how much consumers value where their beer is brewed. In a class action lawsuit filed against Craft Brew Alliance, plaintiffs allege they were deceived by Kona's Hawaiian-themed brand. The brewery's motto on its website is "Liquid Aloha – Hawaii," beers it markets include the "Lemongrass Luau" and "Wailua Wheat," and its cans feature volcanos, surfers, and other symbols consumers associate with Hawaii.

While Kona does have a brewery in Hawaii, the beer sold in the continental United States is brewed in Oregon, Washington, New Hampshire and Tennessee. Kona argues that its marketing strategy is "puffery" and would not confuse the average consumer. The plaintiffs contend they paid a premium to drink beer they thought was brewed in Hawaii.

The U.S. District Court for the Northern District of California denied Craft Brew Alliance's motion to dismiss. This court, known for being plaintiff-friendly in class action litigation, has earned a reputation as the nation's "food court." Approximately 20% of the country's food-related class action litigation takes place in the Northern District of California.

Litigation over the last few years has generally been favorable to beer drinkers. In 2015, a court ruled in favor of beer drinkers who thought Kirin Ichiban brewed its beer in Japan. Soon after, Beck's reached a settlement with consumers who thought their German-style beer was actually brewed in Germany. However, in 2016, a court held that it was unreasonable for consumers to assume that Red Stripe beer was brewed in Jamaica. Beer drinkers who thought Coors brewed its beer in the Rocky Mountains have yet to have their case resolved.

Those who support the class action lawsuit against Kona are interested to see whether courts start to place an emphasis on the craft of beer. Wine law ensures consumers know exactly where wine is made, and where ingredients used to make that wine are from. Surely, craft beer advocates would prefer similar laws in order to give the industry more credibility.

However, critics are quick to point out that the plaintiffs only seek damages, and do not have the standing to seek an injunction. Hence, it is unlikely beer law will derive any benefit from the lawsuit. These same critics believe the lawsuit is meritless and poses an unnecessary financial burden to a small brewery like Kona.