

June 14, 2017

Bob Pease  
President and CEO  
Brewers Association  
1327 Spruce Street  
Boulder, CO 80302

Dear Bob,

I write this letter in follow up to our discussions about the Brewers Association's announcement that it is going to crack down on offensive beer labels.

The BA refers to this crackdown in various ways: a marketing code...an initiative...a policy. Regardless of what you wish to call it, it is an attempt by the BA to censor beer names that offend the sensibilities of some at the BA, primarily by trying to intimidate breweries into censoring themselves. Self-censorship may seem less awful than direct censorship, but bullying people into self-censorship is a particularly vicious tyranny of silence.

The BA is not attempting to ban the sale of any beers. It cannot do that. Nor is the BA going to try to limit membership only to breweries whose beer names the BA finds agreeable. (Though it seems you would like to do so.) You are quoted as saying "Excluding companies from being members of the Association is fraught with all sorts of implications. . . . So at this point, [*italics mine*] are we prepared to deny breweries with offensive names of being members of the BA? No, we're not."

Instead, the BA is going to publicly shame breweries who win GABF medals if the names of the winning beers are too naughty for the BA to say in public. "There's absolutely no black and white in this world," according to Julia Herz, but that is not going to deter the BA from being judge and jury as to what is a proper beer name in their personal opinion.

The BA has also formed a tribunal called the "Advertising Complaint Review Panel." BA members can go online and effortlessly file formal complaints with the tribunal



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against other members (their competitors) if they don't like their competitors' brands.

A section of the BA's lengthy official policy states:

"If a brewer [who a competitor filed a complaint against] notifies the Brewers Association that it permanently discontinued dissemination of the advertising or marketing material at issue more than 30 days prior to receipt of the complaint filed, and that all reasonable efforts have been taken to withdraw or adjust the advertisement or marketing material to satisfy the Advertising and Marketing Code guidelines, the Brewers Association shall notify the member brewery who filed the complaint and the matter shall be considered resolved without the need for further review."

If, however, the "offending" brewer doesn't change its ways, then the censorship tribunal will be convened and the tribunals findings will be published on the BA's website.

Geez, Bob. You can't tell me this isn't just plain creepy.

So, no, the BA isn't prohibiting breweries from selling beers with names the BA finds disagreeable. The BA is just creating the most chilling effect on freedom of expression that it thinks it can get away with, so as to make those beers disappear from the market.

For those of us dedicated to a free society, individual liberty, and human dignity, freedom of thought is not a mere initiative or policy. It is a value. It is the master value that is the foundation for all freedoms – intellectual freedom, political freedom, and economic freedom.

In response to my challenging the BA's intention to censor breweries, you told me that "not all members agree with every policy" and that "we'll just have to agree to disagree." What you're suggesting is that the choice between freedom of expression and censorship is just a matter of taste, as if we are agreeing to disagree about whether a red or white Pinot Noir will pair best with a crab and avocado salad.

It's clear that Flying Dog has a fundamental disagreement with the BA regarding the core value of freedom of expression. We believe that the essence of freedom rests in freedom of thought and that the most basic and fundamental human right is the free expression of thoughts, ideas and beliefs – including the right of entrepreneurs to name their products whatever they wish.

For decades, liquor commissions across the country repeatedly violated the right of freedom of expression for breweries, wineries and distilleries. Liquor

commissioners rejected labels because they found some aspect of a label disagreeable based on whim and their personal preferences. In 2009, Flying Dog sued the Michigan Liquor Control Commission, alleging that the commissioners cannot reject a label just because they don't like it. After 6 years in federal courts, Flying Dog won that suit, setting a federal precedent that freedom of speech applies to beer, wine and spirits labels, a landmark constitutional victory for every winery, distillery and brewery in America.

As I previously stated, freedom of expression is the foundation for all freedoms, including economic freedom (free enterprise). That is why Flying Dog pursued its case up to the federal court of appeals level, rather than settle early (as many others would have).

To people like us who believe in a free society and who trust that consumers are intelligent enough to make the best choices for themselves, the BA's revised marketing code is nothing more than a form of censorship by a self-appointed guardian who doesn't believe that consumers are intelligent enough to think for themselves.

In the spirit of dialogue that is at the core of freedom of expression, what follows is a more detailed explanation of our disagreement with the BA's revised marketing code.

#### **"Offensive" cannot be defined**

The insurmountable problem with what the BA is attempting to do is that the term "offensive" is not definable in any objective way or with any precision. Offensive to whom? Everyone finds something offensive. So who decides what might be offensive to the tens of millions of craft beer drinkers? You? No one can. Each of the tens of millions of craft beer drinkers are the only persons who know what is offensive to them. For the last century and right up to the present, Supreme Court justices, some of the most brilliant legal and philosophical minds in the world, have affirmed over and over again that is impossible to define in any precise way what is offensive, and even if it could be defined, it is absolutely and unequivocally protected speech under the Constitution.

Offensiveness is entirely subjective and depends on many factors including context and tone as well as an individual's unique life experiences. There is no person on the planet who is "unbiased;" no one has superhuman powers to define what Supreme Court justices have declared is undefinable. The right to freedom of thought and expression cannot be denied to any persons based on some subjective standard. What is right for some is not necessarily right for everyone. Even a minority of one has a right to his or her freedom of thought and expression.

#### **Freedom of expression and free enterprise are inextricably linked**

Entrepreneurs create distinctive brands through branding and marketing messages. In the craft beer industry, the marketing message is usually built into the product via catchy beer names and label art. In fact, creativity and free expression have been the hallmarks of our craft industry. If there is any suppression of an entrepreneur's ability to communicate and express his or her marketing message, that necessarily suppresses free enterprise. Free enterprise cannot exist without free expression.

### **Government regulations and approvals are sufficient**

The federal government reviews every beer label and rejects anything that does not conform to TTB standards, including any beer label that is obscene. And many states also do a second review of beer labels after the TTB approves them.

Governmental approval should be sufficient for the BA. Instead, the BA is fretting about what some at the BA feel are naughty beer names and bad words on beer labels. And so, the BA is appointing itself as the guardian for consumers. Basically, the BA doesn't trust that each individual consumer is intelligent enough to decide for themselves what is right for them. We, on the other hand, absolutely trust that people are smart enough to think for themselves, that each individual is the only person who knows what is right for himself or herself, and that they don't need a self-appointed guardian or nanny. So who decides what is offensive? Each and every one of us, for ourselves. That's who.

### **The consumer is sovereign**

Free enterprise puts decisions in the hands of the consumer. Consumers vote with their hard-earned dollars billions of times every day. It's called a free market. We believe that each individual consumer knows what is right for himself or herself regarding what books to read, movies to watch, music to listen to, beer to purchase, and so on. We believe that an individual should have the maximum freedom to choose what is right for himself or herself. The BA believes consumers need a nanny.

The marketplace is as much a marketplace of ideas and messages as it is products. Successful entrepreneurs make more of what consumers want, discontinue products they don't want, and continually create new products that they hope will delight consumers. Bad ideas die out over time. Good ideas succeed. It's a continuous process, and we trust that process.

We believe in free markets, consumer choice, and – most of all – that consumers are sovereign and that the freedom to choose is their right. Consumers don't need the BA to decide for them what choices they should have.

A very short summary of the evils of censorship now seems relevant, especially the story of how censorship destroyed one man's career and resulted in his death at a young age.

Censorship has been attempted for millennia. And every time it has been practiced, it has destroyed careers, ruined lives, and resulted in the torture, imprisonment, and murder of tens of millions of people. Tragically, censorship is still practiced today, even though it has never, ever proved to be an effective means to an end, no matter how noble that end might be.

Political correctness is nothing more than a side-door to censorship and a more subtle way of undermining freedom of expression than direct censorship. And it's not a new concept. Political correctness has been around since the 1700s in America. However, it grew into a truly deadly concept with the Communist Party led by Lenin and Stalin in the early 1900s. At the start of their programs, they couldn't very well say "if you speak out against the party we're going to torture and kill you," so they refined the concept of "political correctness" and made it a crime against society to speak out against the poverty and starvation that was the norm under communist rule. Political correctness relied on flowery language about the "good of society" and used vague and seemingly harmless words like "pacification" of the peasants, "transfer of population," "rectification of frontiers," and "elimination of unreliable elements" as the justification for sending tens of millions of people to die of starvation and disease, or by freezing to death in slave-labor camps across the Arctic.

Communism, Leninism, Marxism, Stalinism, socialism, and all the other concepts that some people believed were freshly discovered 'truths' were in fact disastrously false theories that, by any standard of human welfare, have been utter and complete failures. However, during the experimentation with these political philosophies, millions of people were murdered for simply questioning the truth of what turned out to be obscene falsehoods. 94 million died for ideological reasons from 1900 to 2000. And the deaths continue today. The evilness of that is beyond comprehension.

In spite of the fact that in every instance, censorship has been both a human and social tragedy, it is still practiced here in the United States. The worst example during my youth was during the 50s and early 60s.

In the 1950s, federal and state governments, colluding with private trade associations (such as the Motion Picture Alliance for the Preservation of American Ideals), and hateful, politically-motivated individuals such as Hedda Hopper, blacklisted and destroyed the lives and careers of thousands of actors and writers. Why? Because those actors and writers joined the Communist Party during the 1940s when the U.S. and the Soviet Union were actually allies. As a result, peoples'

lives were ruined for committing no crime except for thinking and expressing the thought that communism might not be such a bad system. Communism is arguably an evil system. However, it is just as evil to destroy someone's life, wreck their families, imprison them, prevent them from working, force them into poverty, and drive them to suicide for simply thinking politically incorrect thoughts.

The individual story that I referred to earlier is that of Lenny Bruce. Many people have heard his name, but most people don't know how the government and the thought police of his time destroyed his life because of some words he used to make his audiences laugh.

Lenny Bruce was a stand-up comic in the 50s and 60s who was known for his free-style of comedy that touched on politics, religion, sex, and censorship. Vulgarity was part of Lenny's act. Unfortunately for Lenny, the moral authorities of his time didn't like some of the words he used. It didn't matter that Lenny spoke those words at late-night shows, in comedy clubs, which people had to pay to see. To the thought police of that era, vulgarity was simply wrong.

Lenny was constantly harassed by the police and he had been arrested numerous times. In 1964, police were in the audience at the Café Au Go Go in the Village and arrested him after he left the stage around midnight. He was convicted and sentenced to four months in prison for nothing more than uttering some vulgar words during his late night act. Even though artists, writers, and educators such as Woody Allen, Bob Dylan, Norman Mailer, and Allen Ginsberg provided testimony and petitions in support of Lenny's right to freedom of expression, his conviction stood. Tragically, Lenny's life had been so wrecked by years of harassment and arrests, he died of a drug overdose in 1966 at age 40...while his conviction was being appealed.

Looking back on the history of censorship, it has only destroyed lives and it has never been the solution to any issue in society. Someday we'll look back on the political correctness of our day, and it will be as appallingly tragic and evil as what we're looking back on from our perspective today.

The BA's crackdown on beer labels is just as awful as the crackdown on Lenny Bruce for, well, being funny and making people laugh. Craft breweries are having some fun with beer names and labels. Beer is an adult beverage. Not everyone liked Lenny's act, so they didn't pay to go see him. Some people don't like some beer labels, so they don't buy those beers. What the BA is doing by appointing itself the guardians of beer labels would be laughable, were it not for the reality that it's just plain, ugly, thought-policing.

You said to me that the BA's censorship program is "leadership" on the part of the BA. I disagree. It isn't leadership. Authoritarians, petty tyrants, and thought police

practice censorship. In a free society, leaders protect and practice freedom of expression and free enterprise and respect the intelligence and rights of consumers to make decisions for themselves.

We will never support, contribute to, or in any way sanction any organization that is so averse to freedom of expression that it resorts to some form of censorship. Everybody finds something offensive. That's just part of life. People have the right to choose what they like and to reject what they find offensive. To us, the BA's anti-free expression stance is offensive, and we are exercising our freedom to choose by rejecting the BA.

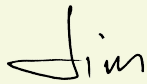
In follow up to our conversation on June 1st, this letter confirms that we terminated our membership with the Brewers Association, effective June 1, 2017.

There's always a silver lining, and in this situation it's a win for those fighting to defend and protect freedom of expression. Flying Dog is contributing an amount equal to double the tens of thousands of dollars spent on its BA membership and BA-related events annually to the 1st Amendment Society.

Sometimes it is a matter of principle.

This is one of those times.

In defense of good beer, no censorship,

A handwritten signature in black ink that reads "Jim". The signature is stylized with a large, looped 'J' and a simple 'im'.

Jim Caruso  
CEO

*"Every group, every system has a set of values and morals and when you get outside those, then the alarms ring. I was politically incorrect to 95% of the country; luckily my 5% had the bread to come see me."*

~ Lenny Bruce