



TAP CONTRACTS BY DOMINANT BREWERS

Beer from independent breweries, called craft beer by some, can be innovative, experimental and creative. But those independent brewers have expressed concern that the two dominating brewers are using their wallets and market muscle to pressure venues into not allowing new beers.

The big two brewers each have corporate histories going back over 100 years, the backing of global conglomerates with annual revenue in the tens of billions of dollars each and over a dozen beer brands each.

[An article in the SMH](#) discussed the different landscape overseas:

Cooper points to the thriving craft beer market in the US, saying "In the USA it's illegal to do what has occurred in Australia ... you can't buy 50-60 per cent of the taps."

Industry sources say that life is hard for pubs that don't sign the contracts.

In fact the Australian Competition and Consumer Act 2010 outlaws the misuse of market power for "eliminating or substantially damaging a competitor" or deterring or preventing competition. It contains a right to compensation for damaged caused by that behaviour.

However, for that prohibition to have any effect someone has to take action to enforce the law, and even then enforcement is challenging. Mounting and conducting a competition law case is complex, expensive and contains inherent risks. An ACCC investigation was started in 2014, scheduled for a decision in 2016, but remains outstanding. In any event, while ACCC activity is important and potentially very worthwhile, it rarely results in compensation for affected businesses and persons.

Many independent brewers have expressed interested in legal action to stop the threat to their futures and to consumer's access to a competitive beer industry. For example, the SMH article reports that CUB went as far as to propose using a glass smaller than a schooner, but keeping a schooner price! Consumer exploitation like that is precisely the type of conduct which competition laws are designed to prevent.

The independent brewers in touch with Adley Burstyner want to take a stand against what is occurring because they believe it goes beyond legitimate business behaviour. Because of the unique financial muscle, and near 90% market share of the two major brewers, developing a new beer alongside tap contracts and similar restrictive trade practices by such powerful forces is – in the words of an independent brewer – "not a game I can play". It may also be illegal, and capable of being stopped.

Having tested the appetite of independent brewers for action, it is clear that there is significant dissatisfaction and frustration, and a willingness of many brewers to take part in collective action, pursuing compensation for the past losses suffered by each of the registered participants.

At this stage, Adley Burstyner is:

- investigating the viability of legal action, and developing strategies for a potential legal claim against the CUB and/or Lion; and
- recording interest in that claim so we can make sure that there are brewers who want it, and so that those brewers financial claims (if any) are accounted for in the compensation calculations.

You can register your interest below and follow us on [Facebook - restrictive tap contracts](#).

At this stage, registration does not create any obligation, or any need to pay. But it increases the chances of a case proceeding, of registrants being included in any case, and means we can keep registrants in the loop.

Assessing the legal and factual theories of the case is ongoing, at least until proceedings are formally commenced (if at all), so we cannot guarantee that any case will be brought or that any case which is brought will be exactly as described above.

EXPRESSING YOUR INTEREST

To express your interest in this claim please complete the form below.

Registering your interest does not create any commitment, or any obligation to pay.

To express your interest in this claim please complete the form below.

Name*

First Name

Last Name

Email Address*

Phone

Mobile*

ADDRESS

Street*

Suburb*

State*

Postcode*

Website

Facebook page

Have you or your business suffered financial loss because of Dominant Brewers' Tap Contracts? Yes No

If yes, what is your estimate for the financial loss:

Please supply a brief statement explaining the loss (or feel free to make other comments relevant to the matter):

What year was your brewery established?

How many litres of beer did you sell in preceding 12 months (or last financial/calendar year?

How much of that was draught beer?

What is your estimate of your potential draught beer sales if Dominant Brewer restrictive contracts were not in place?

Can you provide any evidence which may be useful to the case? Please state below:
(i.e. venue refusals / existence of tap contracts. Emails, texts, messages, notes of conversations is all helpful.)

Please feel free to email us any relevant documents, for example communications such as email or text messages refusing to purchase your beer because of tap contracts. Our email address is info@adleyburstyner.com.au