

Legal Experts: Provi Suit Against Distributors ‘A Major Antitrust Case’

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Two of America’s largest wine and spirits distributors are facing a [lawsuit](https://www.brewbound.com/news/provi-files-lawsuit-against-southern-glazers-and-rndc-alleges-violations-of-sherman-antitrust-act?__hstc=188376631.04a201b5bc7043d08440a71dc0136fa4.1642456152072.1650049897921.1650059730087.34&__hssc=188376631.4.1650059730087&__hsfp=2126110079)

[https://www.brewbound.com/news/provi-files-lawsuit-against-southern-glazers-and-rndc-alleges-violations-of-sherman-antitrust-act?](https://www.brewbound.com/news/provi-files-lawsuit-against-southern-glazers-and-rndc-alleges-violations-of-sherman-antitrust-act?__hstc=188376631.04a201b5bc7043d08440a71dc0136fa4.1642456152072.1650049897921.1650059730087.34&__hssc=188376631.4.1650059730087&__hsfp=2126110079)

[__hstc=188376631.04a201b5bc7043d08440a71dc0136fa4.1642456152072.1650049897921.1650059730087.34&__hssc=188376631.4.1650059730087&__hsfp=2126110079](https://www.brewbound.com/news/provi-files-lawsuit-against-southern-glazers-and-rndc-alleges-violations-of-sherman-antitrust-act?__hstc=188376631.04a201b5bc7043d08440a71dc0136fa4.1642456152072.1650049897921.1650059730087.34&__hssc=188376631.4.1650059730087&__hsfp=2126110079)) that beverage attorneys say could cause them a painful lesson, and possibly create room for more competition in the wholesale alcohol industry.

Last week, e-commerce beverage-alcohol platform Provi filed a complaint against Southern Glazer's Wine and Spirits and Republic National Distributing Company (RNDC), alleging that the companies have unlawfully stifled the growth of its platform. The [complaint \(https://www.provi.com/hubfs/Provi%20-%20Filed%20Complaint.pdf\)](https://www.provi.com/hubfs/Provi%20-%20Filed%20Complaint.pdf) filed March 29 in U.S. District Court for the Northern District of Illinois Eastern Division, alleges that the defendants have acted together and individually to “boycott, disparage and tortiously interfere with Provi’s business.”

“It’s a major antitrust case. And that alone makes it unique and important,” said John Hinman, the founder and partner of Hinman & Carmichael LLP in San Francisco, who started out as an antitrust lawyer prior to diving into beverage law.

The complaint is the first of its kind to use a report by the [U.S. Department of Treasury \(https://www.brewbound.com/news/treasury-report-on-alcohol-industry-competition-lists-concerns-offers-remedies-trade-groups-critical-of-report/?__hstc=188376631.04a201b5bc7043d08440a71dc0136fa4.1642456152072.1650049897921.1650059730087.34&__hssc=188376631.4.1650059730087&__hsfp=2126110079\)](https://www.brewbound.com/news/treasury-report-on-alcohol-industry-competition-lists-concerns-offers-remedies-trade-groups-critical-of-report/?__hstc=188376631.04a201b5bc7043d08440a71dc0136fa4.1642456152072.1650049897921.1650059730087.34&__hssc=188376631.4.1650059730087&__hsfp=2126110079) assessing the state of competition in the beverage-alcohol industry following an [executive order \(https://www.brewbound.com/news/white-house-executive-order-calls-for-increased-competition-to-protect-vibrancy-of-beer-industry?__hstc=188376631.04a201b5bc7043d08440a71dc0136fa4.1642456152072.1650049897921.1650059730087.34&__hssc=188376631.4.1650059730087&__hsfp=2126110079\)](https://www.brewbound.com/news/white-house-executive-order-calls-for-increased-competition-to-protect-vibrancy-of-beer-industry?__hstc=188376631.04a201b5bc7043d08440a71dc0136fa4.1642456152072.1650049897921.1650059730087.34&__hssc=188376631.4.1650059730087&__hsfp=2126110079) President Joe Biden signed last summer.

“I’m sure the Justice Department is watching this case because they’ve announced that they’re going to crack down on anti-competitive activity in the alcohol industry. That’s the whole purpose of the executive order, whether it takes place by boycotts or concentration of market power,” Hinman said.

The Treasury report cited consolidation within the middle-tier of alcohol distribution as a threat to competition and market access for smaller producers. As of 2019, Southern Glazer’s and RNDC combined controlled more than 80% of the spirits distribution market in 10 different states, and more than 50% of the market in nine more states.

With their commanding market share in numerous states and exclusive contracts with “must-have” brands, Provi’s lawsuit paints a picture of the two distributors taking actions to intentionally “foreclose competition and maintain and extend their market power,” according to the filing.

“It ultimately could be a painful lesson for the big three, in terms of how they manage their businesses,” said Hinman, referring to the two defendants and Breakthru Beverage Group.

Provi stands to gain damages that are tripled in antitrust cases – and could force the distributors to work with the platform again.

“The ultimate remedy that Provi is asking for is, ‘Let me compete. And by the way, pay my attorneys’ fees,’” Hinman said.

Prior to their shunning of Provi, both defendants fulfilled more than 120,000 orders from retailers through Provi, worth almost \$200 million in revenue, according to the lawsuit. But the e-commerce platform alleges that Southern Glazer’s and RNDC organized boycotts of its platform in favor of their own e-commerce, B2B ordering services that were introduced in April 2019.

The complaint alleges that the defendants shifted their retailers “through coercion” and “effectively threatened to withhold — and in fact withheld — their respective distribution services from customers who chose to use Provi to submit orders to Southern and RNDC.”

In its complaint, Provi alleges that this “group boycott” by Southern Glazer’s and RNDC and vertical boycotts violate the Sherman Antitrust Act in some markets by creating monopolies in online alcohol marketplaces, advertising on online alcohol marketplaces, and data analytics services.

For Hinman, following the case provides an interesting glimpse into the development of information technology and ordering systems, and a preview of how other e-commerce platforms might continue to work with distributors. When Provi launched in 2016, alcohol e-commerce was in its infancy.

“What it means is there may be room for new competitors to come into the marketplace and succeed,” Hinman said.

While the lawsuit will work its way through the legal system, both Hinman and liquor attorney Sean O’Leary, president of O’Leary Law and Policy Group, LLC in Chicago, said the complaint is one of the strongest written cases they’ve seen.

“The thing about this complaint, and why I think Southern Glazer’s and RNDC should be very worried, is one, the lawyers are excellent, two, the complaint is really well-written, and three, is they have some evidence of emails and voice messages that are basically saying don’t use Provi, cut them out of the marketplace,” O’Leary said.

The question remains if the Treasury report could lead to more lawsuits against major wholesalers, O’Leary said. The report recommended that states examine whether state regulations, including franchise laws and distribution models, impede the ability of small producers to compete in the

market. O'Leary suspects that challenges to state franchise laws, which can make it difficult for small brands to switch distributors, might be coming next.

"I think you're going to see lawyers get creative, and I think you're going to see a franchise suit come down one of these days," O'Leary said.