

Mayer Brown NY Tax Partner's 'Idiotic' Path To Bourbon Maker

By Tracey Read

Law360 (July 10, 2023, 4:44 PM EDT) -- When Mayer Brown LLP New York-based tax partner Russell Nance was approached at a family gathering during the 2008 financial crisis about investing in a bourbon distillery, he didn't take the request too seriously.

Nance's childhood friend and brother-in-law, Alex Toomy, had a real estate and development business, and times were a little slow.

"He was looking for something to do with his crew during the winters and came up with this idea of making whiskey," Nance recalled. "So he came to me and said, 'Hey, I want to start a bourbon distillery and I want you to invest in it.'"

"And my reaction was, 'Sure, yep. You do that. And I'll invest in that when it never happens,'" Nance said. "And then, wouldn't you know it, the guy's tenacious."

In late 2009, Toomy decided to cold call Dave Pickerell, the now-deceased corporate vice president and master distiller of Maker's Mark bourbon, for advice. Pickerell told Toomy he had recently retired from Maker's Mark to start a craft distillery consultancy and that he would be willing to add Toomy to his handful of clients.

Toomy brought in Nance and Chris Sarpy, a mutual friend and a New Orleans real estate attorney, as partners.

The trio had virtually no knowledge of how to go about owning a craft distillery but decided to proceed anyway, with Pickerell's help. They bought 92 acres of land in Charlottesville, Virginia, where Nance and Toomy were born and raised, and a 500-gallon copper still.

But it took nearly eight years for the business to officially open.

The Ragged Branch Distillery company — named after the area's Ragged Mountains — was formed in 2010 and started distilling in July 2014. But because straight bourbon has to be aged at least two years, the company wasn't able to offer a full product line until 2019, although in April 2017, it had a small



New York-based Mayer Brown partner Russell Nance, left, and John Foster, Ragged Branch Distillery's head of sales and marketing, at a recent event in New York City. (Photo courtesy of Russell Nance)

release of a two-year aged bourbon.

"We put all this money on the front end without any real source of revenue for years," Nance said. "It takes a while just to deal with everything, and then it took us a while to make it and have it age to the point it was salable. That's a significant amount of time. So it was hard. We did it the most difficult way. You might say the most idiotic way, which would not be incorrect."

An Inauspicious Start

Today, Ragged Branch produces between 90,000 and 100,000 bottles of bourbon a year and sells them in 23 states, mainly in the Southeast. The partners now have a second location where they're putting in a 2,000-gallon still and a production facility.

"We can produce four times as much in a single run, and we're doing it so we can do two runs a day," Nance said of the second still. "So we will have the capacity to make up to about 900,000 bottles a year."

Pickerell helped the partners develop the foundation of their bourbon process: the mash. Every drop of bourbon comes from their own grain that is milled and mashed-in daily.

But that process takes time. Lots of time.

"Nobody does it like that because it is so hard," Nance said. "What craft stores typically do is they source their whiskey before they start making it. They go buy whiskey from somebody else, but it's their bottle and their marketing. They sell it that way with the hook to transition to their own stuff that they've made themselves at some point in the future. But we have never sourced. We've made every single drop. And that, it turns out, gives us a fair amount of legitimacy. It was really hard and maybe idiotic. But it turned out well."

Another pothole on Ragged Branch's path to success was an armed raid by state police in the early days of the business following a tip that the partners were running an illegal moonshine operation.

"Having some cars roll up with state police getting out and telling us that we're committing a felony — that will definitely light a fire underneath you," Nance said with a laugh.

The issue had to do with paperwork to get their state license. Nance said the partners had just received the still and were about to assemble it when they were surprised by officials.

"I don't think it was unreasonable for us to think, 'Well, we do not possess a still in the state of Virginia. What we possess are 20,000 pieces that could be turned into a still on the concrete floor of the still barn,'" he said.

The police gave them until the end of the week to get the permit, and the partners completed the paperwork to make the still legal within hours, Nance said.

An Award-Winning Taste

Today, the business has three more partners in addition to the three founders. Nance's wife, Chrissy, meanwhile, handles much of the sales and marketing.

Nance said Ragged Branch is winning accolades for its good taste. In March 2020, for example, its products went six-for-six in medals at the San Francisco World Spirits Competition, the first time the distillery had entered a large contest.

"We submitted six different expressions, and we got a silver, gold or double gold for everything we submitted," he said. "What I didn't realize in 2020 was that the World Spirits Competition was like the Oscars of spirits competitions. And winning that many medals is highly unusual. And winning that many medals for a craft distillery is extremely unusual. And for a few of the bottles, we didn't curate them. We just grabbed one off the shelf and submitted it. That's another instance of us maybe being a little naive, but it worked out well."

Nance said the distillery's other claims to fame are that, in addition to never sourcing its bourbon, it also grows its own corn, wheat and rye. Workers mash — with water from a spring-fed well adjacent to the still — distill, age and bottle on the property. The business also has a nearby farm, Pounding Branch, with 800 acres of crops and cattle that support the distillery.

The water is recycled for cooling tanks and the spent mash is fed to the cattle to create a bourbon-flavored beef that is also sold at the distillery's tasting room and retail area.

On top of his busy legal career, Nance said he squeezes in distillery-related work on nights and weekends, but the amount of time he has needed to devote to his passion has waned as the business has become more established.

"I get to go do events from time to time, which is really fun," he said. "It's very different, of course, than being a lawyer. You're going to, for example, a dinner at the University Club in D.C. where they are serving our bourbon and our beef for dinner, and we're getting up and we're the guest of honor and we're saying some things, and it's fun. [People] are excited about this product that you've created."

Nance said the bourbon business has given him a fresh viewpoint on what it's like to be on the business side rather than the legal side.

"I'm not acting as a lawyer for this company," he said. "It's given me insight for my law job to better relate to my clients and what they're going through, what they're feeling, what their anxieties are, and how to respond to them in a way that's meaningful to them as a businessperson rather than a lawyer."

A Supportive Law Firm

Nance admits it was a little awkward at first to tell Mayer Brown that he was planning to open a craft distillery as a side gig.

"So it's a little weird, right? A little unorthodox," he said. "At first, I think the firm was a bit of 'Wait, what? You're doing what?' But they have been surprisingly supportive. Any BigLaw job like this is a significant job. It takes a lot of time and a lot of effort. But the firm knew it was important to me. I anticipated pushback from the firm. I anticipated potential pushback from long-standing clients. What I found was maybe some initial eyebrow raising from the firm's perspective, but then they were very supportive. On the client side, I got some questions at first. And then very quickly, once everyone could see that my work product had not changed, it was a big nothing."

In fact, now, it's what everyone in the legal world wants to talk to Nance about — at least for the first few minutes of every conference call.

"It's great. It gives me a built-in thing to talk to clients about," he said. "We have done a couple tastings for clients. We'll go to where the client is located, and we'll bring some whiskey with us, and I'll do a tasting and explain what's going on. It helps in marketing me and the firm as well, because people are interested in it."

Mayer Brown Chair Jon Van Gorp said he is proud of the diverse interests the firm's lawyers and staff pursue outside of work.

"It makes us a well-rounded team of professionals who are able to build many and varied connections with our clients," Van Gorp said. "Russell has always been known for creative and thoughtful tax advice that makes any deal better, and now he is increasingly known for distilling a smooth bourbon that makes any drink better."

Firm partner Haukur Gudmundsson said he has enjoyed following along as Ragged Branch has gotten off the ground and become more and more successful.

"For Mayer Brown, it's presented a unique opportunity to connect with our clients at a more personal level," Gudmundsson said. "Russell's expertly curated bourbon tastings are always a big hit, and his business is a great topic for conversation that people tend to be interested in. It's been fascinating to taste the improvement in quality, from good to outstanding, as the company and its products have matured."

Nance said he was more of a beer drinker rather than a spirit drinker before the Ragged Branch venture. However, he was attracted to the aura that surrounds bourbon.

"I'm a bit of a history buff, and there's an American history to this," he said. "It's this interesting craft thing that takes a long time to make, and it takes a fair amount of expertise. And it's something that people can really enjoy and savor."

Until he became a bourbon aficionado, Nance said he didn't realize all the nuances of spirit drinking.

"When you take a sip of fine whiskey, you may have this explosion out of the gate on your tongue, and then it ramps up a little bit, and then it cools off, but there's a long tail to it," he said. "You can get maybe some cinnamon notes, maybe some notes of something else. And it's something to be discovered."

As for the future, Nance hasn't ruled out the possibility of combining the law and his side business in different ways.

"Who knows, maybe we'll do some sort of cross marketing between the firm and the distillery," he said. "We'll see."

--Editing by Haylee Pearl and Jill Coffey.