NEW YORK STATE LIQUOR AUTHORITY

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

NYS Alcoholic Beverage Control Law

Section 101.1

It shall be unlawful for a manufacturer or wholesalers licensed under this chapter to

(c) Make any gift or render any service of any kind whatsoever, directly or indirectly, to any person licensed under this chapter which in the judgment of the liquor authority may tend to influence such license to purchase the product of such manufacturer or wholesaler.

NYS Alcoholic Beverage Control Law (Cont'd)

The provisions of this paragraph shall not be construed to prevent a manufacturer or wholesaler from entertaining a licensee at lunch or dinner or to prevent a manufacturer or wholesaler from participating in or supporting bona fide retailer association activities.

Exceptions: Rule 83.1 – 83.4 (definition of signage)

Rule 86.1 – 86.17 (product displays, inside signs, retailer advertising specialties, consumer advertising specialties, etc.)

86.1 Gifts and Services Restricted

- In part:
  - No manufacturer or wholesaler shall, directly or indirectly, give any article or thing of value, render and service of any kind, to any retailer, except as permitted by this rule. **No retail licensee shall accept any such gift or service of any kind whatsoever, except as permitted by this rule.**

ATTORNEY GENERAL'S CONSENT ORDERS & JUDGEMENT

Effective dates:

Manufacturers – October 26, 2006

Wholesalers – September 12, 2006

Retailers – January 3, 2007

WHOLESALE CONSENT ORDER

It is acceptable for wholesalers to purchase alcoholic beverages from retailers for consumers in the following instances:

(a) A consumer(s) on an individual or incidental basis;

(b) Alcoholic beverages actually consumed by respondents' employees, private guests or licensees' employee during the following activities conducted by respondents: *bona fide* business meetings or business entertainment, or private invitation-only events closed to the general public;

(c) Promotional events open to the general public, where a respondent spends no more than $500.00 (excluding a wait staff gratuity of not more than 20%) per licensed premises per event and conducts no more than six events per calendar year per licensed premises.

All purchases by a respondent from a licensee permitted pursuant to (a) – (c) shall be at no more than the licensee's regular retail price.

BEER TASTINGS

- ABCL 51(8) - A licensee or his or her employee, or a brewer or manufacturer or its employee or representative, or an importer having a basic permit, may obtain a permit to serve small samples of beer or malt beverages he or she produces or imports at establishments licensed under section fifty-four or fifty-four-a. Furthermore such permit may also be obtained for serving small samples of beer or malt beverages produced or imported by such licensee, brewer, manufacturer or importer at annual fairs sponsored by agricultural and horticultural societies as defined in section fourteen hundred nine of the not-for-profit corporation law, and for sampling at the licensed premises of the holder of a wholesaler's “C” license.
- For purposes of this paragraph, a representative **shall not** include a person licensed under section fifty-three of this article or his or her employees.

WHOLESALE CONSENT ORDER (continued)

Tie-Ins Prohibited:

ORDERED, ADJUDGED AND DECREED that each respondent is permanently barred and enjoined from, directly or indirectly, requiring or compelling retailers to purchase a particular brand in order to be able to purchase another brand.

WHOLESALE CONSENT ORDER (continued)

Restrictions on Payments for Participation in Retailer Advertising:

ORDERED, ADJUDGED AND DECREED that each respondent is permanently barred and enjoined from, directly or indirectly, paying for all or a portion of any advertisement produced by or for a retailer.

Part 83 – Brand Signs and Displays

- Part 83.2 Exterior signs

No sign, as defined in subdivision (a) of section 83.1 of this Part, shall be erected, installed or displayed on the exterior of any retail licensed premises by the retailer; provided, however, that this section shall not apply to premises licensed to sell beer at retail for consumption off the premises.

Part 83 – Brand Signs and Displays

Part 83.3 Interior signs

Signs may be displayed in the interior of:

(a) premises licensed to sell alcoholic beverages for on-premises consumption;

(b) premises licensed to sell liquor or wine for off-premises consumption; or

(c) in the window display of such premises, provided that:

(1) Such signs do not have a utility or secondary use or value aside from their actual advertising value. Signs which have a utility or secondary use or value are covered by Part 86 of this Subtitle.

(2) Such signs shall not contain:

(i) any statement, illustration, design, device or representation that is false or misleading;

(ii) any statement that is disparaging of a competitor's product;

(iii) any statement, design, device, matter or representation which is obscene or indecent or which is obnoxious or offensive to the commonly and generally accepted standard of fitness and good taste;

NOTE: Can contain food & beverage pairings as long as deminimus in value.

Part 83 – Brand Signs and Displays

- Part 83.3 Interior signs (CONT'D)

(iv) the words "bond", "bonded", "bottled in bond", "aged in bond" or phrases containing these or synonymous terms, unless the distilled spirits so advertised were in fact bottled in bond under the Bottling in Bond Act of the United States;

(v) the terms "double distilled", "triple distilled" or any similar term;

(vi) any statement which is inconsistent with the label on the product;

(vii) any statement, design or device which represents or which tends to create or give the impression that the use of alcoholic beverage has curative or therapeutic effects;

(viii) any statement of, or reference to, price which is deceptive or misleading or tends to deceive or mislead;

(ix) any illustration which is not dignified, modest and in good taste;

(x) any scene in which is portrayed a child or objects (such as toys) suggestive of the presence of a child or in any manner portrays the likeness of a child or contains the use of figures or symbols which are traditionally associated with children;

(xi) except as otherwise provided in Part 86 of this Subtitle, any statement, design, device or representation relating to any refund, exchange or money-back guarantee, irrespective of truth or falsity;

Part 83 – Brand Signs and Displays

- Part 83.3 Interior signs (CONT'D)

  (xii) any portrayal of an athlete or athletes or athletic events in such manner as to imply that the consumption of alcoholic beverages improves athletic prowess or physical stamina, or any portrayal or suggestion that athletes recommend drinking alcoholic beverages;

  (xiii) the name of or depiction of any biblical characters;

  (xiv) any reference by name or other identification to any retailer selling the products advertised;

  (xv) any statement, design, device or representation of or relating to analyses, standards or tests irrespective of falsity which the authority finds to be likely to mislead the consumer.

(3) Such signs are not hung or displayed in a manner which obstructs a clear and full view into the interior of said premises from the street.

(4) Such signs, when relating to alcoholic beverages, shall not exceed 1,200 square inches. If the sign is made up of two or more parts, the area of each part shall be included when computing the total of square inches in the sign as a whole. Any increase in the depth of the sign which does not extend beyond the perimeter thereof shall not be included in the size or the area of such sign.

Part 83 – Brand Signs and Displays

- Part 83.4 Signs furnished to retailers

No manufacturer or wholesaler shall furnish, give, rent, lend, sell, install or erect, directly or indirectly, or through a subsidiary or affiliate, or by an officer, director or firm member of such manufacturer or wholesaler:

(a) any sign on the exterior of retail licensed premises; provided, however, that such sign may be installed or erected on the roof or the exterior wall of a building in which retail licensed premises are located, if the retailer is not the owner or the lessee of the entire building and the retailer is not given or promised any fee, gratuity, rebate, credit, discount or service, directly or indirectly, for the erection or maintenance of such sign;

(b) any sign in the interior of retail licensed premises unless it complies with the limitations and restrictions prescribed by this Part, except that the restrictions as to size shall not apply to signs furnished, given or sold to off-premises beer licensees; or

(c) any other sign, brand or otherwise, except as authorized by the Liquor Authority.

Part 86 – Services and Gifts to Retailers

- Part 86.4 Inside signs

  (a) Inside signs include such things as posters, placards, designs, mechanical devices and window decorations which bear advertising matter, and have no secondary value and are of value to the retailer only as advertising.

  (b) A manufacturer or wholesaler may furnish, give, rent, loan or sell inside signs to a retailer, provided that (i) the inside sign shall be used only in the windows or other internal portions of the retail establishment, and (ii) the manufacturer or wholesaler may not directly or indirectly pay or credit the retailer for displaying the inside sign or for any expense incidental to its operation.

Part 86 – Services and Gifts to Retailers

- Part 86.3 Product displays

  (a) A product display means any wine racks, bins, barrels, casks, shelving, and the like, from which alcoholic beverages are displayed and sold, and which bears conspicuous and prominent advertising matter.

  (b) A manufacturer or wholesaler may give, rent, loan or sell product displays to a retail licensee. The total value of all product displays furnished by a manufacturer or wholesaler under this section may not exceed ~~$100~~ $300 per brand, ~~or such other dollar limitation as may be established pursuant to section 86.2(b) of this Part,~~ in use at any one time in any one retail establishment. The value of a product display is the actual cost to the manufacturer or wholesale licensee who initially purchased it. Transportation and installation costs are excluded. The dollar limitation herein shall be adjusted annually in accordance with the CPI index as published by the U.S. Department of Labor.

  (c) Manufacturers and wholesalers may not pool or combine their dollar limitations in order to provide a retailer a product display valued in excess of such dollar limitation.

Part 86 – Services and Gifts to Retailers

- Part 86.5 Retailer advertising specialties

  (a) A retailer advertising specialty is an item which bears advertising matter and is primarily valuable to the retailer as point of sale advertising, but which has some secondary value to the retailer in connection with the operation of the business. Examples of retailer advertising specialties include trays, coasters, mats, menu cards, meal checks, paper napkins, foam scrapers, thermometers, clocks, visors, hats, shirts and calendars. The manufacturer or wholesaler may add the name or address of the retailer to the retailer advertising specialty.

  (b) The total value of all retailer advertising specialties furnished by a manufacturer or wholesaler to a retailer may not exceed ~~$50~~ $200 per brand~~, or such other dollar limitation as may be established pursuant to section 86.2(b) of this Part,~~ in any one calendar year per retail establishment. The value of a retailer advertising specialty is the actual cost of that item to the manufacturer or wholesaler who initially purchased it. Transportation and installation costs are excluded. The dollar limitation herein shall be adjusted annually in accordance with the CPI index as published by the U.S. Department of Labor.

  (c) Manufacturers and wholesalers may not pool or combine their dollar limitations in order to provide a retailer with retailer advertising specialties valued in excess of such dollar limitation.

Part 86 – Services and Gifts to Retailers

- Part 86.6 Consumer advertising specialties

  (a) A consumer advertising specialty is an item which bears advertising matter and which is designed for unconditional distribution by the retailer to the general public. Examples of consumer advertising specialties include ashtrays, bottle or can openers, cork screws, shopping bags, gift bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, postcards, visors, hats, shirts and pencils.

  (b) A manufacturer or wholesaler may furnish, give or sell consumer advertising specialties to ~~[on-premises]~~ retail licensees ~~[and off-premises beer licensees]~~. ~~[The only consumer advertising specialties which may be furnished, given or sold to off-premises retail liquor or wine licensees are recipe books and matchbooks, which cannot contain the name or address of the retail licensee.]~~

  (c) The retail licensee may not be paid or credited in any manner, directly or indirectly, for the distribution of consumer advertising specialties.

  (d) There is no limitation on the amount or value of consumer advertising specialties which may be given to any retail licensee.

Part 86 – Services and Gifts to Retailers

- Part 86.7 Wine, liquor and beer lists

  A manufacturer or wholesaler may furnish, give, rent, loan or sell: wine lists or wine menus; liquor lists or menus; beer lists or menus; or drink lists or menus to retail on-premises licensees. The wine lists or wine menus may contain the name of the retail licensee.

Part 86 – Services and Gifts to Retailers

- Part 86.17 "Stocker" services (pack out)

  The stocking, replenishing, rotating, displaying and price marking of beer, liquor, wine or wine products by manufacturers and wholesalers who are authorized to sell such products in coolers, on shelves, and floor display areas of retail establishments and off-premises establishments licensed under ~~Section 54 of~~ the Alcoholic Beverage Control Law, from stocks of beer, liquor, wine or wine products on hand in such retail premises, or from stocks of beer, liquor, wine or wine products being delivered thereto, shall not constitute a prohibited service within the contemplation of subdivision 1(c) of section 101 of the Alcoholic Beverage Control Law or of this section, provided:

  (a) the services are confined to the beer, liquor, wine or wine products sold by the manufacturer or wholesaler to such retailer; and

  (b) such services are performed by employees of the manufacturer or wholesaler selling the beer or wine products to the retailer, and not by any other persons; and no payment, bonus, gift or other thing of value, shall be given or promised, directly or indirectly, to the retailer, or any of his employees, for such display area, shelves or space in the licensed premises~~.~~; and

  (c) the beer, liquor, wine or wine products are clearly marked with an expiration date and the stocking, replenishing, rotating, displaying and price marking occurs within three months prior to the expiration date of same.

Part 86 – Services and Gifts to Retailers

- Part 86.13 Equipment

  Rods, vents, taps, hoses (rubber or metal), choke or restrictor coil not exceeding 10 feet in length to any one line, washers, couplings, vent tongues, valves, bungs, gauges, regulators, distributors, connectors, cellar thermometers, tap markers, bucks, rod brushes, air cocks, air tees, metal tubing to connect regulators and gauges, necessary parts to faucets including faucet bodies, spigots, unions and bottle openers may be furnished, given or sold to a retailer and installed in his establishment. Picnic pumps, gravity keys, tubs, portable bars, cold plates, gauges, portable cooling units and refrigerated trucks or trailers may be furnished, loaned or rented for temporary use at a particular function, but not for use by a retail licensee in the normal day-to-day operation of his business; carbon dioxide or other propellant may be furnished or sold for use in connection with the operation of such equipment.

NOTE: Complete cooler systems / ceramic bar top tap systems combined with exclusivity of product line may be interpreted as evidence of discriminatory market behavior. Wholesalers are NOT plumbers: you can repair your own lines for your products but you are not allowed to install new lines or tap systems without an inference of improper market behavior.

UNLAWFUL TRADE PRACTICES

1. Credit card swipes
2. American Express cards/checks for shelf space
3. Cash/annual stipend for percentage of sales from alcoholic beverages
4. Manufacturer/wholesaler gaining leverage by offering beer/beer taps running lines, towers, etc. to retailers

UNLAWFUL TRADE PRACTICES (continued)

5. Free goods
   a) Use of samples in free goods
   b) An arrangement to reduce the price by the use of free goods
6. A similar arrangement is made to reduce the price by offering:
   a) Card swipes b) Gift cards
   c) Purchase of account gift certificates

UNLAWFUL TRADE PRACTICES (continued)

7. Paying promotional or advertising costs for retail events / unlawful sponsorship
8. Late reporting – not reporting on COD
9. Unpaid invoices – accounts not being reported in delinquent status appropriately
10. Consignment – long time credit

UNLAWFUL TRADE PRACTICES (continued)

11. Payment towards construction fees for new account openings
12. Payment to block out entire brands and categories - exclusivity of product
13. 180 day violations

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QUESTIONS?

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