

§317. Regulation IX—Prohibition of Certain Unfair Business Practices

A. Definitions

Alcoholic Beverages—any fluid or any solid capable of being converted into fluid, suitable for human consumption, and containing more than 1/2 of 1 percent alcohol by volume, including malt, vinous, spiritous, alcoholic or intoxicating liquors, beer, porter, ale, stout, fruit juices, cider, or wine.

Beverages of High Alcoholic Content—alcoholic beverages containing more than 6 percent alcohol by volume.

Beverages of Low Alcoholic Content—alcoholic beverages containing not more than 6 percent alcohol by volume.

Brewer—any person who, directly or indirectly, personally or through any agency, engages in the making or production of malt beverages.

Bureau—the Bureau of Alcohol, Tobacco and Firearms of the United States Treasury Department.

Commissioner—the Louisiana Commissioner of Alcohol and Tobacco Control.

Cost to Industry Members—the invoice cost, or the replacement cost, of the merchandise to the industry member, whichever is lower:

a. less all trade discounts except customary discounts for cash and discounts from the state or any governmental agency allowed for the payment of collection of any taxes;

b. plus, in the following order:

i. freight charges not otherwise included in the invoice cost or the replacement cost of the merchandise;

ii. cartage cost which shall be 3/4 of 1 percent of the cost to the industry member after adding freight charges but before adding cartage, any existing tobacco stamp excise tax, and markup;

iii. any existing tobacco stamp excise tax;

iv. a markup to cover a proportionate part of the cost of doing business which markup, in the absence of proof of a lesser cost, shall be 2 percent of the cost to the industry member after adding freight charges, cartage, and any existing tobacco stamp excise tax.

Enhancer—an item used as part of a display and which may be awarded to a customer who shops in a retail outlet voluntarily participating in a contest, offer, promotion, sweepstakes, or advertising or marketing campaign, the object of which is to award the enhancer to a winner thereof.

Exclusive Outlet—the requirement, by agreement or otherwise, that any retail dealer engaged in the sale of distilled spirits, wine, malt beverages, or malt liquors purchase any such products from such person to the exclusion in whole or in part of distilled spirits, wine, malt beverages, or malt liquors sold or offered for sale by other persons.

Handle—sell, use, distribute, store, consume, or otherwise handle.

Importer—any dealer who imports alcoholic beverages from any state, territory, possession, or foreign country for handling in Louisiana.

Industry Member—any person engaged in business as a distiller, brewer, rectifier, blender or other producer, or as an importer or wholesaler, of distilled spirits, wine, malt beverages, or malt liquors, or as a bottler, or warehouseman and bottler, of distilled spirits, but shall not include an agency of a state or political subdivision thereof, or an officer or employee of such agency.

Malt Beverages or Malt Liquors—beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption.

Manufacturer—any person who, directly or indirectly, personally or through any agency, engages in the making, blending, rectifying, or other processing of alcoholic beverages in Louisiana or outside the state for shipments to licensed wholesale dealers within the state.

Person—any individual, municipality, industry, public or private corporation, partnership, firm, or any other entity.

Retail Dealer or Retailer—any person who offers for sale, exposes for sale, has in his possession for sale or distribution, or sells alcoholic beverages in any quantity to persons other than licensed wholesale or retail dealers.

Sweepstakes—any program which employs any enhancer(s) that exceed \$155 in value as part of a retail display for any contest, offer, promotion, or advertising or marketing campaign.

Tied House—when any retail dealer engaged in the sale of distilled spirits, wine, malt beverages, or malt liquors is induced to purchase any such products from such person to the exclusion in whole or in part of distilled spirits, wine, malt beverages, or malt liquors sold or offered for sale by other persons through any of the following means:

- a. by acquiring or holding after the expiration of any existing license any interest in any license with respect to the premises of the retail dealer;
- b. by acquiring any interest in real or personal property owned, occupied, or used by the retail dealer in the conduct of his business;
- c. by furnishing, giving, renting, lending, or selling to the retail dealer, any equipment, fixtures, signs, supplies, money, services, or other thing of value, subject to such exceptions as the commissioner of alcohol and tobacco control shall by regulation prescribe, having due regard for public health, the quantity and value of articles involved, established trade customs not contrary to the public interest and the purposes of this Section;
- d. by paying or crediting the retail dealer for any advertising, display, or distribution service;
- e. by guaranteeing any loan or the repayment of any financial obligation of the retail dealer;
- f. by extending to the retail credit; or
- g. by requiring the retail dealer to take and dispose of a certain quota of any of such products.

Wholesale Dealer or Wholesaler—any person who sells alcoholic beverages to licensed wholesale dealers or licensed retail dealers exclusively within the state or to any person for delivery beyond the borders of the state and who conducts a bona fide wholesale business and maintains a warehouse or warehouses for the storage and warehousing of alcoholic beverages in the area where domiciled and licensed by the state, and conducts and maintains systematic and regular solicitations, distribution, deliveries, and sales of the alcoholic beverages to licensed retail dealers located within the boundary of each parish and municipality in which the wholesale dealer makes any sale or delivery.

B. Prohibition against Certain Business Practices in the Alcoholic Beverage Industry

1. The Bureau of Alcohol, Tobacco and Firearms of the United States Treasury prohibits exclusive outlet and tied house arrangements with respect to the marketing and sale of beverages of both high and low alcoholic content as authorized by the Federal Alcohol Administration Act (FAA Act), 27 U.S.C., §205.

2. The bureau's enforcement of this federal law requires Louisiana to have a similar law that imposes similar requirements for similar transactions.

3. The bureau enforces the provisions of the FAA Act prohibiting exclusive outlets and tied house arrangements in the marketing and sale of alcoholic beverages in Louisiana under the authority of R.S. 51:422, the Louisiana Unfair Sales Law, and R.S. 26:287.A(9) and (10), which provide for additional causes for suspension and revocation of permits.

4. Prohibitions against exclusive outlets and tied house arrangements with respect to the marketing and sale of alcoholic beverages in Louisiana has stabilized the industry and prevented unlawful and unfair inducements for the retail purchase of alcohol and unlawful coercion, bribery, kickback demands, and other unfair and unlawful business practices.

5. It is in the best interest of the state's citizens that fair business dealings and unfettered competition govern the alcohol beverage industry in Louisiana, that it remain an industry dominated by fairness and integrity, and that it be safeguarded against the threat of corrupt and unfair business practices.

C. Marketing and Sale of Alcoholic Beverages in Louisiana

1. Exclusive outlet and tied house arrangements are unfair inducements to purchase goods or services by wholesalers or retailers, and it is unlawful for any person engaged in business as a distiller, brewer, rectifier, blender, manufacturer, or other producer, or as an importer or wholesaler of distilled spirits, wine, malt beverages or malt liquors, directly or indirectly or through an affiliate, to have exclusive outlet or tied house arrangements.

2. Exceptions

a. Equipment

i. In order to provide proper dispensing of alcoholic beverages by retail dealers, industry members may provide, without charge, coil cleaning service, tap markers which show brand, and tapping equipment such as rods, vents, taps, hoses, washers, couplings, vent tongues, and check valves.

ii. Accessories such as carbon dioxide gas tanks, regulators, and other draught equipment accessories with a reasonable open market price of more than \$5 but less than \$200 per item must be sold to retailers at a price no less than the cost to the industry member as defined herein. Such sales shall be made for cash only.

iii. Draught equipment accessories with a reasonable open market value of \$200 or more per item are not included under this exception.

b. Inside Signs

i. An industry member may furnish, give, rent, loan, or sell to a retailer inside signs that bear advertising matter. Inside signs include such things as mechanical devices, illuminated devices, clocks, neon signs, and other devices that are designed for permanent use in a retail account. These items may be furnished to an industry member if the total value of each sign in use at any one time does not exceed \$350 to any one retail establishment, including all expenses incurred directly or indirectly by any industry member in connection with the purchase, manufacture, transportation, and assembly of such items and accessories. The industry member shall not directly or indirectly pay or credit the retailer for displaying such material or any expense incidental to their operation. In determining the value of these items for purposes of the limitation, value shall be the cost attributable to them at the time of their installation in the retail establishment. No retail establishment shall exclusively display inside signs from the same industry member.

ii. Display stackers, pricing cards, shelf talkers, rail strips, posters, and other such items constructed of paper, cardboard, and similar materials and which are designed and installed as point-of-sale material for temporary use in a retail account are not included under this Section and may be provided without limitation. Prior approval of point-of-sale material is not required and will not be given.

iii. Product displays may be furnished by an industry member to a retailer, provided that the total value of all product displays furnished by an industry member may not exceed \$155 per brand in use at any one time in any one retail establishment. Product display are racks, bins, barrels, casks, shelving, and the like from which alcoholic beverages are displayed or sold. Product displays shall bear conspicuous and substantial advertising matter.

c. Outside Signs. The furnishing of outside signs by an industry member to licensed retail dealers is prohibited.

d. Advertising Specialties, Utility Items, Merchandise, and Supplies

i. Trays, coasters, paper napkins, clothing, groceries, snack foods, paper and plastic bags, cups, pitchers, glasses, menu covers, menu sheets, meal checks, match books, ash trays, ice, and other items that are primarily of utility value to a retailer cannot be given away but may be sold to retailers by industry members and the price charged for such items must be no less than the cost to the industry member as defined herein.

ii. Other retailer advertising specialties and novelty items, such as foam scrapers, thermometers, litter bags, pencils, bottle openers, balloons, lapel pins, and key rings that bear advertising matter, and are primarily valuable to the retailer as point-of-sale advertising media but have no utility value to the retailer, may be furnished, given, or sold to a retailer if the total cost to any industry member of the retailer advertising specialties furnished, given, or sold in connection with any one retail establishment in any one calendar year does not exceed \$50.

iii. After the delivery of the retailer advertising specialties with a total cost to an industry member of \$50 has been made by the industry member to a retail establishment during any one calendar year, any future deliveries of such items to that particular retail establishment by such respective industry member during the remainder of the calendar year must be effected only by the sale of the items at their reasonable open market price in the locality where sold. Any items sold, furnished, or given away under this Section must be itemized separately on the industry member's invoice and other records.

iv. Carbon dioxide gas or ice may be sold to a retailer only if sold at a reasonable open market price in the locality where sold.

e. Sponsorships

i. Wholesalers and manufacturers may sponsor events relating to or on the premises of retail dealers if nothing of value is given to retail dealers except as allowed elsewhere in this Section.

ii. T-shirts, caps, and similar items may be given to event contestants or patrons of the retail establishment but the total cost of these items may not exceed \$250 per event.

iii. An industry member shall not sponsor an event on the premises of a retail dealer within 60 days of their last sponsored event.

iv. Alcoholic beverage sales must be incidental to the event being sponsored.

v. Industry members shall not directly or indirectly require that the sponsor's product be the exclusive product offered for sale at the event.

vi. A manufacturer or wholesaler may donate alcohol and trophies of nominal value to unlicensed civic, religious, or charitable organizations.

vii. In conjunction with events held on regular licensed retail premises, all restrictions on advertising and signage will remain in full force and effect, except that temporary paper signs and posters may be used inside the premises to advertise the event for not more than 21 days.

f. Trade Calls

i. Bar spending during trade calls, where the alcohol purchased by a manufacturer or wholesaler for a consumer is consumed on retail licensed premises in the presence of the giver, shall be lawful so long as the state's

laws regulating retail establishments such as the legal drinking age, etc., are observed and not more than \$250 is expended during the trade call.

- ii. No trade calls may occur on college campuses.
- iii. Manufacturers and wholesalers may be accompanied by entertainers, sports figures, and other personalities during trade calls.
- iv. The trade calls may be pre-announced to consumers in the retail account through table tents, posters, and other inside signs.
- v. No outside advertising of such events through signs or any media is allowed.
- g. Except as otherwise provided by law, the gift of beer, wine or beverage alcohol as a purely social courtesy to unlicensed persons by a manufacturer or wholesaler is not prohibited.

h. Sampling. Beer, wine, or beverage alcohol sampling for the purpose of allowing a customer to taste a brand of beverage alcohol must be conducted on any premises holding a permit as designated in R.S. 26:75.C.(1) and 275.B.(1) in accordance with the following restrictions.

i. A retail dealer, wholesaler or manufacturer may furnish the beer, wine, or beverage alcohol to be sampled and the cups to hold the beverages. The wholesaler or manufacturer may also provide and display point-of-sale material in an amount not to exceed \$150 in value. The display materials shall only be placed inside of the facility and shall not block the aisles or other entrances or exits.

ii. No retail dealer, wholesaler, or manufacturer shall furnish a sampling of beverage alcohol in a greater quantity than two ounces per brand of beverage alcohol to each individual and no individual shall consume more than two ounces of each brand of beverage alcohol provided at the sampling. The sampling of a beverage alcohol having an alcoholic content of more than 23 percent by volume shall be limited to one-half ounce per serving per individual.

iii. All samplings shall be limited in duration to one day.

iv. No more than two samplings per brand of beverage alcohol shall be conducted on the same licensed premises in any month.

v. The retail dealer, wholesaler, or manufacturer shall provide the Office of Alcohol and Tobacco Control with written notice of the date, time, place, permit number and brand of beverage alcohol to be sampled at least one week prior to the date of the sampling.

i. Tubs and Other Single Containers. Tubs, ice chests, and other containers designed to hold single units of product and display them for sale in retail establishments may be furnished by manufacturers and wholesalers, provided that no more than two containers per retail location may be furnished by an industry member and the value of the items furnished shall not exceed \$155.

j. Consignment Sales and Returns

i. It is unlawful for an industry member to sell, offer for sale, or contract to sell to any retailer, or for any retailer to purchase or contract to purchase any products under the following circumstances:

- (a). on consignment;
- (b). under conditional sale;
- (c). with the privilege of return;
- (d). on any basis other than a bona fide sale;
- (e). if any part of the sale involves, directly or indirectly, the acquisition of other products from the trade buyer or the agreement to acquire other products from the trade buyer; or
- (f). if the return or exchange of a product is solely because it overstocked or slow-moving.

ii. Transactions involving the bona fide return of products for ordinary and usual commercial reasons arising after the product had been sold are not prohibited, but the industry member is under no obligation to accept such returns. "Ordinary and usual commercial reasons" include:

(a). the exchange of product for products that are unmarketable because of product deterioration, leaking containers or damaged labels;

(b). the correction of any discrepancy between products ordered and products delivered within a one-week period; or

(c). products on hand at the time a retail dealer closes a business or terminates business operations, in which case the return may be for cash or credit against outstanding indebtedness. This also includes a temporary seasonal event or temporary shutdown or slowdown where the industry member is able to show that the products are likely to spoil during the off season.

iii. Out-dated product or product that is within 30 days of date code expiration may be exchanged for other products. Products for which there is only a limited seasonal demand, such as holiday decanters and distinctive containers, may only be exchanged for non-distinctive like products.

k. **Coupons and Rebates. Alcoholic Beverages of High Alcoholic Content, excluding Malt Beverages.** Except as otherwise provided by law, coupon and rebate offers, promotions or marketing campaign of alcoholic beverages of high alcoholic content, excluding malt beverages, are allowed in accordance with the following restrictions.

i. Any coupon or rebate offer, promotion, or marketing campaign must be redeemable directly by the manufacturer or a third-party, including but not limited to, a clearinghouse retained by the manufacturer at its sole expense.

ii. No retailer can be required to participate in any offer, promotion, or marketing campaign.

iii. No retailer can be required to bear any of the costs associated with any offer, promotion, or marketing campaign.

iv. No one under the legal drinking age during the time of the offer, promotion or marketing campaign may participate in any offer, promotion, or marketing campaign.

v. All coupon or rebate offers, promotions, and marketing campaigns must be for a specified time not to exceed 90 days from the first date on which such offers may be redeemable.

vi. No coupon or rebate offer, promotion, or marketing campaign may result in any sale of alcoholic beverages for a price of less than 6 percent above the invoice cost.

l. **Coupons and Rebates: Malt Beverages of Not More than or More than 6 Percent Alcohol by Volume.** Except as otherwise provided by law, coupon and rebate offers, promotions or marketing campaigns of malt beverages of not more than or more than 6 percent alcohol by volume are allowed with the following restrictions.

i. Instantly Redeemable Coupons (IRCs) shall be prohibited. Coupons and rebates shall only be redeemable by mail.

ii. When marketing more than one product, "cross-merchandising" or "cross-promotion", mail-in rebates ("MIRs") shall only be redeemable upon the providing of proof of purchase of all products involved in the coupon or rebate marketing, "cross-merchandising" or "cross-promotion" offer.

iii. Coupon and rebate values shall be equal to or less than the following:

(a). packages containing no less than 6 and no more than 11 single units, \$1;

(b). packages containing no less that 12 and no more than 17 single units, \$2;

(c). packages containing no less that 18 and no more than 23 single units, \$3;

(d). packages containing no less that 24 or more single units, \$4.

iv. Wholesale or retail dealers of malt beverages shall not incur any cost in connection with any coupon or rebate offers, promotions or marketing campaigns.

m. Enhancers, as defined in this Chapter, may be used as part of a contest, offer, promotion, sweepstakes, or advertising or marketing campaign.

i. Items may include ice chests, grills, rafts, and other items not to exceed \$155 in value.

ii. Industry members utilizing enhancers must provide either entry forms and a drop box in which all entries must be placed, a mailing address to which entries may be sent, or an Internet or other electronic address where entries may be accepted, and post the date of the official prize drawing.

n. Sweepstakes. Sweepstakes, as defined in this Chapter, may be used as part of a contest, promotion, or advertising or marketing campaign with the following restrictions.

i. Enhancers that exceed \$155 in value, such as four-wheel all-terrain vehicles, trips, etc., may be utilized as part of a sweepstakes.

ii. Industry members and wholesalers must offer the opportunity to participate in any sweepstakes conducted to the entire retail base which the participating wholesalers serve.

iii. Participation by retailers must be voluntary.

iv. Enhancers cannot be displayed within any retail outlet.

v. Photographs or models of enhancers may only be displayed, provided the photographs or models do not exceed \$155 in value.

vi. Industry members conducting sweepstakes must provide entry forms and a drop box in which all entries must be placed, a mailing address to which entries may be sent, or an Internet or other electronic address where electronic entries may be accepted, and post a date on which the official prize drawing will occur.

vii. Industry members are prohibited from purchasing enhancers from any retail outlet participating in the display or sweepstakes.

viii. Retail owners, industry members, and their employees and family members are not eligible to participate in any display or sweepstakes drawing allowed under provisions of this Section.

D. As part of an original and each permit renewal application, every manufacturer, wholesaler and retailer shall certify in writing that the applicant and all persons acting on behalf of the applicant understands and agrees to comply with the market practices regulations provided for by law and these regulations. Specifically, every manufacturer, wholesaler and retailer shall certify in writing that:

1. the applicant understands that manufacturers and/or wholesalers are prohibited from providing a retailer with anything of value unless explicitly enumerated as an exception in the Alcoholic Beverage Control Law or these regulations;

2. manufacturers and wholesalers are prohibited from inducing or otherwise influencing, directly or indirectly, a retailer from selling and/or serving its products to the exclusion, in whole or in part, of products of other manufacturers and/or wholesalers including but not limited to illegally influencing the retailer in any way regarding the quantity or brand of alcoholic beverages bought or sold by a retailer; and retailers are prohibited from accepting or requiring any such inducement or other influence; and

3. if anyone violates the market practices laws and regulations of the state of Louisiana, the United States or any other state, their permit(s) is subject to suspension, revocation and/or assessment of a fine or other penalty provided for by law.

E. Penalty. The commissioner of the Office of Alcohol and Tobacco Control may seek suspension or revocation of the permit or permits of a violator and may impose such other penalties or administrative remedies against violators as are prescribed by law for violations of the Alcoholic Beverage Code.

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