

TITLE 4. BUSINESS REGULATIONS
DIVISION 1. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
ARTICLE 16. SIGNS AND NOTICES

§ 106. Advertising and Merchandising of Alcoholic Beverages.

(a) Free Goods. No licensee shall, directly or indirectly, give any premium, gift, free goods, or other thing of value in connection with the sale, distribution, or sale and distribution of alcoholic beverages, and no retailer shall, directly or indirectly, receive any premium, gift, free goods or other thing of value from a supplier of alcoholic beverages, except as authorized by this rule or the Alcoholic Beverage Control Act.

(b) Definitions. Unless the context otherwise requires, the following definitions govern the construction of this rule.

(1) "Supplier" means any manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, blender, broker, distiller, bottler, importer, wholesaler, or any officer, director, agent or affiliate of any such person.

(2) "Retailer" means any on-sale or off-sale licensee or any holder of a temporary retail permit or interim retail permit.

(3) "Sign" means a flat material or a three dimensional unit (other than the advertised product itself) principally bearing a conspicuous notice of the manufacturer's name, brand name, trade name, slogans, markings, trademarks or other symbols commonly associated with and generally used by the manufacturer in identifying the manufacturer's name or product, with or without other graphic or pictorial advertising representations, whether illuminated or mechanized, including but not limited to posters, placards, stickers, decals, shelf-strips, wall panels, shadow boxes, price boards, mobiles, inflatables, dummy bottles, bottle toppers, case wrappers, neck ringers, brand identifying statuettes, tap markers, table tents, mirrored signs, plaques and other similar items.

A sign advertising distilled spirits or wine shall have no secondary value and be of value to the retailer only as advertising.

(4) "Decorations" means material other than permitted signs, displays, promotional material, and the product itself which are used in the interior of retail premises for the embellishment of said signs, displays and promotional materials. "Decorations" include such items as holiday decorations, paintings, pictures, streamers, bunting, corrobuff, inflatables, foil, trimming or other temporary material which need not contain a conspicuous notice of the manufacturer's name, brand name, trade name,

slogans, markings, trademarks or other symbols commonly associated with and generally used by the manufacturer in identifying the manufacturer's name or product. Such decorations shall have no intrinsic or significant utilitarian or secondary value other than as an embellishment. Decorations furnished to a single off-sale retail premises by one supplier in use at one time shall not exceed \$50 original cost to the supplier, or if not purchased by or for the supplier, shall not exceed the total fair retail market value of \$50.

(5) "Promotional materials" means material of any kind other than permitted signs, displays, decorations, and the product itself furnished by a supplier to a retail licensee for advertising purposes. Promotional materials shall have no intrinsic or significant utilitarian or secondary value other than as permitted by this rule.

(6) "Window display" means the exhibition in windows of any or all of the following: permitted signs, promotional material, decorations and the advertised product itself.

(7) "Temporary floor display" means the exhibition of alcoholic beverages in off-sale premises by means of racks, bins, barrels, casks, shelving and similar devices from which alcoholic beverages are displayed and sold. Such displays shall bear conspicuous advertising required of a sign. "Temporary" shall mean a period of time not exceeding four months.

(8) "Sale", "Sales", "Distribution" or "Sales and Distribution" as used in this rule mean the total business of merchandising alcoholic beverages, including the solicitation of customers and the various methods and procedures used in advertising and promoting the sale of alcoholic beverages, as well as the actual transfer of title of alcoholic beverages.

(9) "Furnish" as used in this rule means to supply or make available for use as well as the giving or actual transfer of title of an item.

(c) Signs, Displays and Promotional Materials. A supplier shall not give or furnish signs, displays, or promotional materials advertising alcoholic beverages to a retailer, except as permitted by this rule or the Alcoholic Beverage Control Act.

(1) Interior Signs. A supplier may furnish interior signs advertising alcoholic beverages sold by him to a retailer for use within on-sale or off-sale premises, provided no such sign relating to wine or distilled spirits for use within an on-sale premises shall exceed 630 square inches. A sign shall be deemed to be an interior sign although placed in a window and primarily visible from outside the premises. Interior signs furnished by suppliers which advertise distilled spirits and wine shall

have no secondary value and be of value to the retailer only as advertising. Suppliers may not directly or indirectly or through an arrangement with an affiliate or other person pay or credit the retailer for displaying the interior sign or for any expense incidental to its operation.

(2) Exterior Signs. ~~No supplier shall sell, rent or otherwise furnish an exterior sign to any retail licensee except that any wholesaler may sell or rent such a sign to any licensee at a price not less than the current market price for such sign.~~ (A) Except as provided herein, no supplier shall sell, rent or otherwise furnish an exterior sign to any retail licensee.

(B) Any wholesaler may sell or rent an exterior sign advertising wine or distilled spirits to any licensee at a price not less than the current market price for such sign.

(C) Any wholesaler of beer may sell or rent an exterior sign advertising beer at a price not less than the wholesaler's cost for such sign. Any such sign that is customized for a retailer must be sold by the wholesaler. For purposes of this provision, "cost" shall be as defined in Section 17026 of the Business and Professions Code.

(D) No supplier shall place any sign, banner, display, or other device advertising alcoholic beverages on or over any public sidewalk, street or thoroughfare; nor shall any supplier place such signs on or adjacent to any retail premises or parking lot used in conjunction with any premises; provided however, that a supplier may temporarily furnish non-permanent exterior signs, banners and inflatables to organizations in connection with events described in subsections (h) and (i) of this rule.

"Exterior Signs" include but are not limited to billboards, inflatables, panels and any other device used to advertise a supplier's product.

(3) Displays. A supplier may furnish, install, set up and service signs, promotional materials and decorations as window displays or temporary floor displays in off-sale premises. The supplier shall not, directly or indirectly or through an arrangement with an affiliate or other person, pay or credit the retailer or employees or agents of the retailer for the privilege of placing such advertising materials within the retail premises, or for any expenses incidental to their operation.

(4) Promotional Materials. A supplier may furnish, give, lend, rent or sell promotional materials for alcoholic beverages sold by him to a retailer for use within off-sale premises, so long as the promotional material has no intrinsic value other

than as advertising, in the same manner and under the same terms and conditions as the supplying of signs or displays pursuant to this rule.

(d) Alcoholic Beverage Lists. A supplier shall not furnish wine and/or spirits lists to a retailer except as permitted by this Rule.

A supplier of alcoholic beverages other than beer who is authorized by its license to sell its product to retailers may furnish to retailers authorized by their license to sell such alcoholic beverages other than beer, lists of alcoholic beverages other than beer sold and/or produced by the licensee and/or other suppliers, provided that the material for such lists and all components thereof shall not cost more than \$25 per unit original cost to the supplier. A supplier may not make payment to a retailer for the purchase of wine and/or spirits lists, or reimburse a retailer for payment already made for the purchase of wine and/or spirits lists. Without limitation, the following may appear on said list:

(1) the name (or names) of the producer (or producers) of the wine and/or spirits and address, logo, slogan or other symbols or markings associated with and used by the producer in identifying his name or products;

(2) name of the product (or products), brand name, price, size, vintage date, bin number or other product designation;

(3) product description or identifying information or appellation of origin;

(4) the name of the retail licensee to whom the list is furnished and such retailers address, slogan, logo, etc. associated with and used by the retailer in identifying his name, business or establishment.

(e) Advertising Specialties. No licensee shall give advertising specialties except as permitted by this Rule or upon prior approval of the Department.

(1) Retailer Advertising Specialties. A supplier of wine or distilled spirits may furnish, give, rent, loan or sell advertising specialties to a retailer provided such items bear conspicuous advertising required of a sign and the total value of all retailer advertising specialties furnished by a supplier directly or indirectly, to a retailer shall not exceed \$50 per brand in any one calendar year per retail premises. The value of a retailer advertising specialty is the actual cost of that item to the supplier who initially purchased it. Transportation and installation costs are excluded. The furnishing or giving of any retailer advertising specialty shall not be conditioned upon the purchase of the suppliers product. Retail advertising specialties given or furnished free of charge may not be sold by the retail licensee. Retailer advertising specialties include but are not limited to trays, coasters, coin mats, napkins,

thermometers, jiggers, clocks, stirring spoons, pouring spouts, sponges, towels, menu cards, meal checks, calendars and similar items approved by the Department and which have inconsequential value.

(2) Consumer Advertising Specialties. Consumer advertising specialties such as ash trays, bottle or can openers, litter or shopping bags, matches, recipe cards, pamphlets, pencils, post cards, hats, posters, bottle or can stoppers, and other items approved by the Department, and which bear conspicuous advertising required of a sign may be furnished, given or sold to a retail licensee for unconditional distribution to the general public.

(A) Consumer advertising specialties furnished by a distilled spirits supplier to a retailer or to the general public shall not exceed \$5.00 per unit original cost to the supplier who purchased it.

(B) Consumer advertising specialties furnished by a wine supplier to a retailer or to the general public shall not exceed \$1.00 per unit original cost to the supplier who purchased it.

(C) (i) Except as provided in subdivision (e)(2)(C)(ii), cConsumer advertising specialties furnished by a beer supplier to a retailer or to the general public shall not exceed \$0.25 per unit original cost to the supplier who purchased it, or \$15.00 in the aggregate for all such items given by a single beer supplier to a single retail premises per calendar year.

(ii) Consumer advertising specialties furnished by a beer manufacturer to the general public shall not exceed \$3.00 per unit original cost to the beer manufacturer who purchased it.

(D) A retailer may not be paid or credited in any manner directly or indirectly for distribution service nor shall consumer advertising specialties furnished free of charge by a supplier be sold by a retailer. A retail licensee may give advertising specialties to consumers provided such gifts are not coupled with the purchase of any alcoholic beverage and the original cost per unit to the retailer or the supplier does not exceed \$1.

(E) Coin banks, toys, balloons, magic tricks, miniature bottles or cans, confections, dolls, or other items which appeal to minors or immature persons may not be used in connection with the merchandising of alcoholic beverages.

(3) Records. Suppliers shall keep and maintain records for a three year period of all items furnished to retailers under the provisions of this subsection. Commercial records or invoices may be used to satisfy this record keeping requirement if all required information is shown. These records shall show:

(A) The name and address of the retailer receiving the item;

(B) The date furnished;

(C) The item furnished;

(D) The supplier's cost of the item furnished (determined by manufacturer's invoice price); and,

(E) Charges to the retailer for any item.

(f) Cooperative advertising. No supplier of alcoholic beverages directly or indirectly, shall participate with a retailer in paying for an advertisement placed by the retailer, nor shall any signs, displays, advertising specialties promotional materials or decorations furnished by a supplier as permitted by this rule refer to the retailers name or business, except for exterior signs advertising beer sold pursuant to subdivision (c)(2)(C).

(g) No licensee, in connection with a licensed business, shall give any alcoholic beverage to any person to whom the licensee is authorized to sell except as provided by in Rule 52 and Section 23386 of the Alcoholic Beverage Control Act.

It is not the intent or purpose of this Rule to prohibit an on-sale licensee or any employee of such licensee from giving an incidental drink to a patron.

(h) Public Service Activities. Without violating this rule suppliers may furnish services to communities and bona fide nonprofit organizations in connection with public service or fund raising activities including picnics, parades, fairs, amateur sporting events, agricultural exhibitions, educational clinics, public concerts, and other similar events when approved by the department provided no such services are conditioned, directly or indirectly, upon the purchase of an alcoholic beverage or the exclusive sale of a suppliers product at such events. No such services shall be furnished for the benefit of any permanent retail licensee. Notwithstanding the prohibitions contained in subsection (f) of this rule, suppliers may furnish or share in the cost of advertisements, signs, promotional materials, etc. used in connection with such public service activities. Such advertising material may refer to the name of the temporary retail licensee sponsoring the event.

(i) Contests.

(1) Contests sponsored by retail licensees. Without violating this rule, retail licensees may furnish prizes other than alcoholic beverages, to participants in competitive events held on the licensed premises, provided participation in such events shall not be conditioned on the purchase, sale or consumption of alcoholic beverages and provided that such contest or competitive event does not involve the consumption of alcoholic beverages.

(2) Contest sponsored by suppliers. Without violating this rule, suppliers may sponsor contests, races, tournaments, and other similar activities on or off licensed premises. Sponsorships shall be only in the form of monetary payments to bona fide amateur or professional organizations established for the encouragement and promotion of the activities involved. Sponsorship shall be subject to the following conditions:

(A) There shall be no requirement for the exclusive sale of the sponsor's products nor shall such products be sold exclusively at any such event.

(B) No money or other thing of value other than approved advertising specialties shall be given by a sponsor to anyone other than the organizations conducting the contest.

(C) Participants may be charged an entry fee, but entry shall not be conditioned upon the purchase of any of the sponsor's products.

(j) Limitations.

Nothing in this Rule shall be construed to authorize the giving of any premium, gift or goods of any sort, whether by way of sweepstakes, drawings, prizes, cross-merchandising promotions with a non-alcoholic beverage product or products or any other method if the value of the premium, gift or goods given to an individual exceeds ~~\$0.25 with respect to beer, \$1.00 with respect to wine or \$5.00 with respect to distilled spirits.~~ the limits specified in subdivision (e)(2).

Note: Authority cited: Sections 25006, 25600, 25503.1 and 25750, Business and Professions Code; and Section 22, Article XX, California Constitution. Reference: Sections 23025, 23301, 23386, 25500, 25501, 25502, 25503, 25503.1, 25600, 25611.1, 25611.3, 25612, 25616, 25752 and 25753, Business and Professions Code.

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