

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF FEBRUARY 27, 2013
REFERRED FROM: COUNSEL'S OFFICE

2013-00467

REASON FOR REFERRAL
REQUEST FOR DIRECTION

SEALED, PREWRAPPED COMBINATION PACKAGES

(ADVISORY)

The Members of the Authority at their regular meeting held at the Zone I New York City Office on FEBRUARY 27, 2013 determined:

STATE OF NEW YORK
LIQUOR AUTHORITY

To: All suppliers¹ and distributors² of liquor and wine
Subject: Sealed, pre-wrapped combination packages

In November 1999, the Authority issued Bulletin No. 583, which provided guidance to the industry regarding the ability of suppliers and distributors to sell to retailers sealed pre-wrapped packages containing: (1) different kinds of scheduled alcoholic beverages; and (2) individual bottles of a scheduled alcoholic beverage and other merchandise. In light of inquiries from, and discussions with, suppliers and distributors regarding permissible conduct under Bulletin No. 583, the Authority has determined that certain modifications to the existing practices allowed by that directive are in order. Therefore, this Advisory is being issued. Bulletin No. 583 (issued on November 1, 1999) is hereby rescinded. To the extent that any provision of this Advisory conflicts with a provision of the Consent Orders, suppliers, distributors and retailers should be guided by the provisions of this Advisory.

Discussion

Alcoholic Beverage Control Law ("ABCL") §101-b requires that liquor and wine sold in New York State be "price posted". There are two required price postings. The "wholesale schedule"³ lists the price at which licensed wholesalers may buy the product. The "retail schedule"⁴ lists the price at which licensed retailers may buy the product. Each of these schedules must contain the bottle and case price that the buyer must pay for the "item." In each instance, the price posted must "be individual for each item and not in "combination" with any other item." The term "item" is not defined in this statute or in the Act.

The Authority interprets an "item" to be a bottle or case of a particular liquor or wine. Pursuant to ABCL §101-b(3)(a), an item can also be a bottle of liquor or wine combined with certain non-alcoholic products in a pre-wrapped package. In addition, the Authority, under Bulletin 583, has allowed a licensed distiller, winery or wholesaler that owns more than one brand to combine two or more of those different brands of a single brand owner into a pre-wrapped package. That package then became an "item" that could be price posted.

¹ For purposes of this advisory, "supplier" means entities licensed in this state to manufacture alcoholic beverages, as well as: other domestic and foreign manufacturers of alcoholic beverages, importers, and other entities that sell alcoholic beverages, directly or indirectly, to licensed wholesalers for distribution in this state.

² For purposes of this advisory, "distributor" means a licensed wholesaler or a licensed manufacturer distributing product to licensed retailers.

³ ABCL §101-b(3)(a)

⁴ ABCL §101-b(3)(b)

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As noted above, in the time since Bulletin No. 583 was issued, industry members have sought guidance from the Authority regarding whether certain conduct is permissible under ABCL §101-b and that directive. In an effort to provide such guidance, the Authority hereby adopts the following policy with respect to the sale of sealed pre-wrapped packages:

With respect to sealed, pre-wrapped packages containing an individual bottle of a scheduled alcoholic beverage and other merchandise:

1. As set forth in ABCL §101-b(3)(a), an “item” includes “a sealed, pre-wrapped package consisting of a sealed container of liquor, wine or wine product and other merchandise reasonably used in connection with the preparation, storage or service of liquor, wine or wine products provided that such other merchandise shall not be potable or edible.”
2. The sealed, pre-wrapped package must contain only one container of a brand of liquor or wine which has been registered or authorized in accordance with the provisions of ABCL §107-a. Where a label has been issued a brand label registration number, the number must be set forth in the price schedule listing pertaining to such sealed pre-wrapped combination package.
3. The sealed, pre-wrapped package must contain only one bottle of liquor or wine in combination with the non-potable and non-edible merchandise.
4. The scheduled item price for the sealed, pre-wrapped package may be different than the scheduled price for the single bottle of liquor or wine.
5. The sealed, pre-wrapped package must be posted as an item on both the schedule of prices to licensed wholesalers and the schedule of prices to licensed retailers.
6. If such a sealed, pre-wrapped package is limited in availability, it shall be reported to the Authority in the same manner as other limited availability items, by email to the Wholesale Bureau (limited_availability@slab.ny.gov) setting forth the method of allocation.

With respect to sealed, pre-wrapped packages containing different scheduled alcoholic beverages:

7. In addition to the sealed, pre-wrapped packages provided for in ABCL §101-b(3)(a), the Authority, subject to the provisions of this advisory, will allow the following sealed, pre-wrapped packages containing two or more bottles of liquor and/or wine to be sold to licensed retailers: (a) those assembled and packaged by the supplier (or a third party on

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behalf of the supplier) and not by its distributor; and intended to be disassembled by the licensed retailer for resale; (b) those assembled and packaged by the supplier (or a third party on behalf of the supplier) and not by its distributor; and clearly intended to be sold to the end consumer by the licensed retailer as a complete package and not to be disassembled by the licensed retailer prior to sale to the consumer; (c) those assembled and packaged by the distributor of the supplier with the approval of the supplier.

8. Except for those assembled and packaged by the supplier's distributor pursuant to paragraph 7(c) above, all such packages must be posted as an item on both the schedule of prices to licensed wholesalers and the schedule of prices to licensed retailers. Those assembled and packaged by the supplier's distributor must be posted as an item on the schedule of prices to licensed retailers.
9. The sealed, pre-wrapped package must contain only brands of liquor and/or wine from a single brand owner⁵ which have been registered or authorized in accordance with the provisions of ABCL §107-a. Where a label has been issued a brand label registration number, the number must be set forth in the price schedule listing pertaining to such sealed, pre-wrapped package.
10. Each bottle contained in such sealed, pre-wrapped package must be separately available to licensed retailers in accordance with the bottle and case price posted in the schedule.
11. The scheduled item price for any such sealed, pre-wrapped package must be: no greater than the sum of the individual bottle prices for each bottle contained in the package; and no lower than the sum of the lowest volume discount prices for each bottle contained in the package. No quantity discounts can be posted for the item.
12. No sealed, pre-wrapped package may contain more than the equivalent of 12 liters. Such a combination package shall constitute an item.
13. Where one or more bottles of liquor are packaged with one or more bottles of wine in a sealed, pre-wrapped package, the item price for the sealed, pre-wrapped package must be listed on both the schedules of liquor prices and the schedules of wine prices.

⁵ For the purposes of this advisory, "brand owner" shall mean the person who would be authorized to appoint an agent to file: (a) an application for brand label approval under ABCL §107-a(4)(b); or (b) a schedule of prices to licensed wholesalers under ABCL §101-b(3)(a). A brand owner who is not licensed by the Authority must designate an appropriately licensed wholesaler to act as its exclusive brand agent for the purpose of filing the required schedules. The licensed wholesaler thus designated as brand agent must be a true agent of the brand owner, and the licensed wholesaler acting as agent may not pay the brand owner for the right to exercise control over the brand. Where the brand owner or the brand owner's exclusive agent does not register the brand, the brand must be registered, and schedules must be filed, by one of the persons listed in ABCL §107-a(4)(b).

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14. The inclusion of each sealed, pre-wrapped package on the schedule of prices to wholesalers shall signify the brand owner and/or brand owner agent's approval of such item. For items assembled and packaged by the supplier's distributor, the distributor shall obtain the supplier's written approval of such item.
15. For those items assembled and packaged by the supplier and not by its distributor and intended to be disassembled by the licensed retailer for resale, all such items shall be price posted as limited in availability and reported to the Authority in the same manner as other limited availability items, by email to the Wholesale Bureau (limited_availability@sl.ny.gov) setting forth the method of allocation.
16. For those items assembled and packaged by the supplier and not by its distributor and intended to be disassembled by the licensed retailer for resale, if the distributor's inventory of such items has been depleted, the distributor shall, at the request of any licensed retailer seeking to purchase such item, assemble and package one such item for such retailer. Any such licensed retailer must meet the criteria set forth in the distributor's method of allocation submitted to the Authority and the distributor may not refuse to sell one such item to any licensed retailer who agrees to pay for it in cash or credit upon terms which conform to the statute and are satisfactory to the distributor.
17. For those items assembled and packaged by the supplier's distributor pursuant to paragraph 7(c) above, no more than one of each item may be offered to any licensed retailer in any month, and the distributor may not refuse to sell the item to any licensed retailer who agrees to pay for it in cash or credit upon terms which conform to the statute and are satisfactory to the distributor.
18. For those items assembled and packaged by the supplier's distributor, a commercially reasonable charge may be assessed by the distributor and paid by the supplier for the additional work performed by the distributor on assembling the sealed, pre-wrapped package.
19. For those items assembled and packaged by the supplier and clearly intended to be sold to the end consumer by the licensed retailer as a complete package and not to be disassembled by the licensed retailer prior to sale to the consumer, any such item may be, but does not have to be, posted as limited in availability. If such item is posted as such, it must be reported to the Authority in the same manner as other limited availability items, by email to the Wholesale Bureau (limited_availability@sl.ny.gov) setting forth the method of allocation.

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2013-00570

REASON FOR REFERRAL
REQUEST FOR DIRECTION

APPLICATION OF 200 FOOT LAW
FOR PROPERTY LOCATED AT:

780 WASHINGTON AVENUE, BROOKLYN

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City Office on FEBRUARY 27, 2013 determined: