

STATE OF NEW YORK  
LIQUOR AUTHORITY

To: All suppliers<sup>1</sup> and distributors<sup>2</sup> 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 Bulletin No. 583 (issued on November 1, 1999) is hereby rescinded.

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”<sup>3</sup> lists the price at which licensed wholesalers may buy the product. The “retail schedule”<sup>4</sup> 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.

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:

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<sup>1</sup> 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.

<sup>2</sup> For purposes of this advisory, “distributor” means a licensed wholesaler or a licensed manufacturer distributing product to licensed retailers.

<sup>3</sup> ABCL §101-b(3)(a)

<sup>4</sup> ABCL §101-b(3)(b)

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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. 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.
4. The sealed, pre-wrapped package must contain only one bottle or liquor or wine in combination with the non-potable and non-edible merchandise.
5. The scheduled item price for the sealed, pre-wrapped package may be higher than the scheduled price for the single bottle of liquor or wine.
6. 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.
7. 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@sla.ny.gov](mailto:limited.availability@sla.ny.gov)) setting forth the method of allocation.

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

8. The sealed, pre-wrapped package containing two or more bottles of liquor and/or wine must be posted as an item on both the schedule of prices to licensed wholesalers and the schedule of prices to licensed retailers.

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9. The sealed, pre-wrapped package must contain only brands of liquor and/or wine from a single brand owner<sup>5</sup> 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 which is posted must be no lower than the sum of the lowest individual bottle prices for each bottle contained in the sealed, pre-wrapped package. No charge may be imposed for the packaging itself by any distiller, winery, wholesaler or retailer selling or offering for sale any combination package.
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.
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.
15. The sealed, pre-wrapped package may be assembled by the supplier or by the distributor on behalf of the supplier using product either sold by the supplier for this purpose or from the distributor's inventory. A commercially reasonable charge shall 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.
16. No more than one of each sealed, pre-wrapped package price posted for the month may be offered to any licensed retailer in any month. This limitation shall not apply to sealed, pre-wrapped packages: (a) assembled and packaged by the supplier and not by its agent distributor; (ii) clearly intended to be sold to the end consumer by the licensed retailer as a complete package; and (iii) not to be disassembled by the licensed retailer prior to sale to the consumer. If such a sealed, pre-wrapped package is limited in availability, it shall

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<sup>5</sup> 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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be reported to the Authority in the same manner as other limited availability items, by email to the Wholesale Bureau ([limited.availability@sla.ny.gov](mailto:limited.availability@sla.ny.gov)) setting forth the method of allocation.

17. A distributor selling such a sealed, pre-wrapped package may not refuse to sell one such sealed, pre-wrapped package 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.

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