

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF AUGUST 7, 2012
REFERRED FROM: COUNSEL'S OFFICE

2012-02077A

REASON FOR REFERRAL
REQUEST FOR DIRECTION

CONTAINERS, PACKAGING AND
RELATED UP-CHARGES

(ADVISORY)

The Members of the Authority at their regular meeting held at the Zone I New York City Office on AUGUST 7, 2012 determined:

To: Manufactures & Wholesalers of Liquor and Wine

Subject: Containers, packaging and related up-charges
(Rescinds and replaces Bulletin#343 issued August 11, 1961; Bulletin #440 issued February 3, 1969; Bulletin #440-a issued July 16, 1971; and Bulletin #440-b issued August 11, 1971)

Section 101-b of the Alcoholic Beverage Control Law provides that there may be only one price listed for an item in the price schedule unless permission is first obtained from the Liquor Authority for good cause shown when not inconsistent with the purpose of the statute. It has come to the Authority's attention that under current marketing practices, suppliers seek to create "ornamental," "enhanced," or "special" containers to address consumers' desire for special gift products and that Bulletin 440 (issued February 3, 1969) imposes certain restrictions on suppliers' ability to do so for certain alcoholic beverages. Suppliers have asked the Authority for permission to up charge when they develop special packages for this purpose.

The Members of the Authority hereby rescind Bulletin 343 (issued August 11, 1961); Bulletin 440 (issued February 3, 1969); Bulletin 440-a (issued July 16, 1971); and Bulletin 440-b (issued August 11, 1971) and set forth the following:

A. CONTAINERS OF LIQUOR AND WINE

1. No container shall be permitted which has any secondary value or after-use, except of an ornamental or decorative nature.
2. No object, item or thing having any secondary value or after-use shall be attached to the container, or to the stopper of the container or incorporated in or used as part of the stopper of the container except that a jigger cap or other similar closure shall be permissible. Clocks, cigarette lighters, or similar contrivances may not be utilized as part of or as a complement to containers.
3. A stopper accompanying a decanter type container which is used to replace the original closure is not prohibited if in conformance with paragraph 2 above.
4. The brand owner or brand agent may file separate brand label registration applications for items bearing the same brand or trade name in different "ornamental," "enhanced," or "special" containers. Such separately brand registered items may be price scheduled at different prices than "standard" packaged items. For alcoholic beverage products which do not require New York brand label approval, a request for permission to price post the "ornamental," "enhanced" or "special" container at a different price should be addressed to the Wholesale Bureau in writing or via electronic mail at: wholesale@sla.ny.gov. In all such instances the Authority retains the sole discretion to determine which

packages are properly considered "standard" versus "ornamental," "enhanced," or "special."

Where any "ornamental," "enhanced," or "special" types of packages are distributed as limited availability items, the brand owner or brand agent must develop a method of allocation that is nondiscriminatory in nature and same must be submitted via electronic mail prior to commencing sales in this state at: limited.availability@sla.ny.gov. Where any "standard" package is distributed as a limited availability item, any and all "ornamental," "enhanced," or "special" packaged items bearing the same brand or trade name must also be sold as limited availability items and all corresponding allocations must be properly filed via electronic mail prior to commencing sales in this state.

5. In regard to cordials, liqueurs and wines, different items featuring the same brand or trade name, as well as different styles of containers, may be scheduled under the same registration as in the past. However, where a registration for a brand of cordials or liqueurs has been approved, there may be no sale of a new type nor use of a new "ornamental," "enhanced," or "special" container, until a no-fee supplementary application has been submitted and approved.
6. Photographs of "ornamental," "enhanced," or "special" containers together with a statement of cost must be submitted by the brand owner or brand agent to the Authority for approval before distribution in New York State at a price which is different than the price for the product in the standard container.
7. Brand owners or brand agents wishing to sell items featuring the same brand or trade name at a different price for a reason other than an "ornamental," "enhanced," or "special" container (such as a different label, for example) must obtain prior permission from the Authority to do so. All such requests should be addressed to the Wholesale Bureau in writing or via electronic mail at: wholesale@sla.ny.gov. In all such instances the Authority retains the sole discretion to determine which items featuring the same brand or trade name may properly be sold at a different price.
8. The words "ornamental," "enhanced," or "special" as used herein, are intended to cover containers of crockery, ceramic material, crystal, tin or other metal, or plastic, and decanters of any type.

B. PACKAGING

1. Manufacturers and Wholesalers may pack their containers of alcoholic beverages in cardboard, paper or wooden boxes.

2. Baskets, boxes or packages having a value to the consumer distinct from their value as packages for alcoholic beverages may not be used to pack containers of alcoholic beverages and may not be furnished, given or sold to retailers by manufacturers or wholesalers.
3. Nothing hereinabove set forth shall be construed as excluding the use of paper, canvas, cloth, straw, simulated leather and plastics as wrapping material for the container, provided that such wrapping material has no secondary value or use aside from its use as a wrapping for alcoholic beverages.
4. Cardboard or paper boxes for use in packing containers of alcoholic beverages may be furnished, given or sold to retailers by manufacturers and wholesalers apart from the cases in which containers of alcoholic beverages were originally packed in a quantity not to exceed an amount required for the number of bottles of such brands that the retailer has in inventory

All Manufacturers and Wholesalers of alcoholic beverages in this State are hereby cautioned that any violation of the directives contained in the above Advisory may subject their licenses to disciplinary action by the Authority. Nothing in this Advisory authorizes the sale of an "ornamental," "enhanced," or "special" item at a price below that charged for the standard packaged item - regardless of quantity discounts the "ornamental," "enhanced," or "special" item must always be sold at an equal or higher price than the standard package - unless prior written permission from the Authority has been obtained.

STATE OF NEW YORK
LIQUOR AUTHORITY

TO: MANUFACTURERS AND WHOLESALERS OF LIQUOR AND WINE

SUBJECT: CONTAINERS AND PACKAGING
(Supersedes Bulletin No. 329 dated August 18, 1960, which is hereby rescinded.)

During the past year the Authority has held a number of conferences with the industry relative to containers and packaging and attendant problems. As a result, the conditions set forth in Bulletin No. 329, dated August 18, 1960, are amended as follows: (New matter is capitalized.)

A. CONTAINERS OF LIQUOR AND WINE

1. No container shall be permitted which includes any item having any after-use or secondary value except for a proper closure or stopper.

2. No object, item or thing having any after-use or secondary value shall be attached to the container, or to the stopper of the container, or incorporated in or used as part of the stopper or container except that the use of an ordinary jigger cap shall be permissible.

3. Ordinary glass stoppers accompanying decanter type containers which are used to replace corks are not prohibited if in conformity with Paragraph 2 above.

4. No container shall be included in any case of liquor or wine sold at a case price unless such container is available to and sold to retailers in case lots at the same price as the case containing one or more of such containers.

CONTAINERS OR ATTACHMENTS WHICH DO NOT FALL SQUARELY WITHIN THE ABOVE-MENTIONED PROVISIONS OR WHERE THE CONTAINER ITSELF HAS ANY AFTER-USE OR SECONDARY VALUE MUST BE SUBMITTED TO THE AUTHORITY FOR APPROVAL BEFORE BEING DISTRIBUTED IN THE STATE OF NEW YORK. A STATEMENT OF THE COST OF THE CONTAINER SHOULD ACCOMPANY SUCH SUBMISSION.

WHOLESALERS MAY NOT SELL ANY LIQUOR OR WINE IN NEW YORK STATE IN CONTAINERS WHICH DO NOT CONFORM IN FULL WITH PARAGRAPHS 1 TO 4 ABOVE, INCLUSIVE, OR WHICH HAVE AN AFTER-USE OR SECONDARY VALUE UNLESS THEY ARE IN RECEIPT OF PROOF FROM EITHER THE OWNER OF THE BRAND OR THE PRIME DISTRIBUTOR OF SUCH BRAND THAT WRITTEN PERMISSION HAS BEEN OBTAINED FROM THE AUTHORITY SUBSEQUENT TO AUGUST 18, 1960 TO DISTRIBUTE SUCH ITEMS IN THIS STATE.

B. PACKAGING

1. Manufacturers and Wholesalers may pack their containers of alcoholic beverages in cardboard, paper or wooden boxes.

2. Baskets, boxes or packages having a value to the consumer distinct from their value as packages for alcoholic beverages may not be used to pack containers of alcoholic beverages and may not be furnished, given or sold to retailers by manufacturers or wholesalers.

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3. Nothing hereinabove set forth shall be construed as excluding the use of paper, canvas, cloth, straw, simulated leather and plastics as wrapping material for the container, provided that such wrapping material complies with Rule 4 in relation to labels and further provided that such wrapping material has no secondary value or use aside from its use as a wrapping for alcoholic beverages.

4. Cardboard or paper boxes for use in packing containers of alcoholic beverages may be furnished, given or sold to retailers by manufacturers and wholesalers apart from the cases in which containers of alcoholic beverages were originally packed subject to the following conditions:

Manufacturers and wholesalers may purchase cardboard or paper containers and furnish them to the retailer at the time of sale and may furnish empty cardboard or paper containers to retailers in a quantity not to exceed an amount required for the number of bottles of such brands that the retailer has in inventory, provided:

- a. The cost of the cardboard and paper containers is limited to not more than 20¢ per container, if one bottle and 30¢ for containers of more than one bottle.
- b. The cardboard or paper containers will be submitted to the Industrial Services Section at the New York Office of the State Liquor Authority for prior approval.

All manufacturers and wholesalers of alcoholic beverages in this State are hereby cautioned that any violation of the directives contained in the above bulletin will subject their licenses to action by the Authority.

STATE LIQUOR AUTHORITY

D. S. Hostetter
D. S. HOSTETTER
CHAIRMAN

STATE OF NEW YORK
LIQUOR AUTHORITY

TO: MANUFACTURERS AND WHOLESALERS OF LIQUOR AND WINE

SUBJECT: CONTAINERS AND PACKAGING
(Supersedes Bulletin No. 343 issued August 11, 1961
and reissued October 17, 1963.)

Sections 61, 63, 77 and 104 of the Alcoholic Beverage Control Law prohibit licensees from engaging in any other business on the licensed premises. Section 101 of the Alcoholic Beverage Control Law and Rule 11 of the Rules of the State Liquor Authority relate to the gifts and services and advertising specialties which manufacturers and wholesalers may give to retailers. To effectuate the foregoing provisions, and the price scheduling portions of Section 101-b as well as to prevent circumvention of the affirmation law where applicable, the following shall take effect March 1, 1969:

A. CONTAINERS OF LIQUOR AND WINE

1. No container shall be permitted which has any secondary value or after-use, except of an ornamental or decorative nature.
2. No object, item or thing having any secondary value or after-use shall be attached to the container, or to the stopper of the container or incorporated in or used as part of the stopper of the container except that a jigger cap or other similar closure shall be permissible. Clocks, music boxes, cigarette lighters, or similar contrivances may not be utilized as part of or as a complement to containers.
3. A stopper accompanying a decanter type container which is used to replace the original closure is not prohibited if in conformance with paragraph 2 above.
4. Photographs of ornamental containers together with a statement of cost must be submitted by the brand owner or brand agent to the Authority for approval before distribution in New York State.
5. Rule 16 provides that only one price may be listed for an item in the price schedule. With respect to liquor items, (including brandies, cocktails and specialties, as apart from cordials, liqueurs and wines), there may be no price differential for the same item in different styles of containers; and in addition to an ordinary non-decorative container, no more than one style of ornamental container may be scheduled under the same registration. However, the brand owner or brand agent may file separate brand label registration applications for the same item in different ornamental containers, in which event each separately registered item may be price scheduled at a different price. Bulletin No. 434 is applicable to such registrations.
6. If an item, other than a wine, which bears the same or a similar brand label, is sold in non-ornamental bottles in any other State or the

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District of Columbia, no registration application relating to use of an ornamental bottle will be approved unless the item is also offered in New York in a non-ornamental bottle. The terms "same or a similar brand label" shall cover any labels which, because of the name or the design of the label, may be regarded by the general public as the same brand, even though the proof, formula or age may be different.

7. In regard to cordials, liqueurs and wines, different types of the same brand, as well as different styles of containers, may be scheduled under the same registration as in the past. However, where a registration for a brand of cordials or liqueurs has been approved, there may be no sale of a new type nor use of a new ornamental container, until a supplementary application has been submitted and approved. The wholesaler must comply with the provisions of Bulletin #434 except that no additional fee will be required.
8. The word "ornamental" as used herein, is intended to cover containers of crockery, ceramic material, crystal, and decanters of any type. Any container of tin or other metal is prohibited.

B. PACKAGING

1. Manufacturers and Wholesalers may pack their containers of alcoholic beverages in cardboard, paper or wooden boxes.
2. Baskets, boxes or packages having a value to the consumer distinct from their value as packages for alcoholic beverages may not be used to pack containers of alcoholic beverages and may not be furnished, given or sold to retailers by manufacturers or wholesalers.
3. Nothing hereinabove set forth shall be construed as excluding the use of paper, canvas, cloth, straw, simulated leather and plastics as wrapping material for the container, provided that such wrapping material complies with Rule 11 and has no secondary value or use aside from its use as a wrapping for alcoholic beverages.
4. Cardboard or paper boxes for use in packing containers of alcoholic beverages may be furnished, given or sold to retailers by manufacturers and wholesalers apart from the cases in which containers of alcoholic beverages were originally packed subject to the following conditions:

Manufacturers and wholesalers may purchase cardboard or paper containers and furnish them to the retailer at the time of sale and may furnish empty cardboard or paper containers to retailers in a quantity not to exceed an amount required for the number of bottles of such brands that the retailer has in inventory, provided;

- a. The cost of the cardboard and paper containers of one quart or less is limited to not more than 30¢ per single container and 60¢ for containers of more than one. For containers larger than one quart the cost is limited to not more than 60¢.

- b. The cardboard or paper containers will be submitted to the Industrial Services Section at the New York Office of the State Liquor Authority for prior approval.

All Manufacturers and Wholesalers of alcoholic beverages in this State are hereby cautioned that any violation of the directives contained in the above bulletin will subject their licenses to action by the Authority.

STATE LIQUOR AUTHORITY



D. S. Hostetter
Chairman

(Series 1971)
Bulletin #440-a
July 16, 1971

STATE OF NEW YORK
LIQUOR AUTHORITY

TO: Manufacturers & Wholesalers of Liquor and Wine

SUBJECT: CONTAINERS AND PACKAGING
(Amends Bulletin #440 issued February 3, 1969)

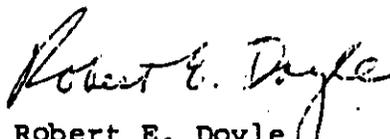
The Members of the Authority on July 14, 1971 lifted a restriction on the sales and distribution in this state of alcoholic beverages packaged in metal containers.

For purposes of administration and control, the Authority shall require a separate Brand Label Registration be submitted for any alcoholic beverages that are to be offered for sale packaged in metal containers. Under such circumstances, the items shall be separately listed on price schedules, with appropriate notation to indicate the metal container.

The Members of the Authority also have under consideration the use of plastic for the packaging of alcoholic beverages. No determination has been reached.

Bulletin #440 is being revised and will be reissued in the near future.

STATE LIQUOR AUTHORITY


Robert E. Doyle
Acting Chairman

(Series 1971)
Bulletin #440-b
August 11, 1971

STATE OF NEW YORK
LIQUOR AUTHORITY

TO: Manufacturers & Wholesalers of Liquor and Wine

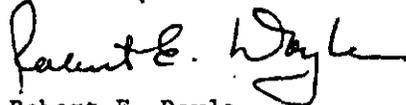
SUBJECT: CONTAINERS AND PACKAGING
(Amends Bulletin #440 issued February 3, 1969)
(See also Bulletin #440-a issued July 16, 1971)

The Members of the Authority on July 28, 1971 lifted the restriction on the sale and distribution in this state of alcoholic beverages packaged in containers with built-in music boxes.

At the same time they also approved the sale and distribution in this state of alcoholic beverages packaged in plastic containers.

Application for the use of the above items must be submitted by the brand owner or brand agent to the Authority for approval before distribution in this State.

STATE LIQUOR AUTHORITY



Robert E. Doyle
Acting Chairman