

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF SEPTEMBER 23, 2014
REFERRED FROM: EXECUTIVE OFFICE

2014-02367F

REASON FOR REFERRAL
REQUEST FOR DIRECTION

CONAINERS, PACKAGING & PERSONALIZATION OF BOTTLES

(PROPOSED ADVISORY 23)

The Members of the Authority at their regular meeting held at the Zone I New York City office on SEPTEMBER 23, 2014 determined:

STATE OF NEW YORK
LIQUOR AUTHORITY

To: All suppliers¹ and distributors² of liquor and wine
Subject: Containers, packaging and personalization of bottles

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 filed with the Liquor Authority, unless permission is first obtained from the Authority for good cause shown when not inconsistent with the purposes 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. In addition, suppliers and distributors have requested direction with respect to: how they may package containers of liquor and wine for delivery to retailers; and whether they can supply bottles and containers personalized for consumers. The Authority has, from time to time, issued bulletins addressing the conditions under which such products may be distributed. In light of the passage of time since the issuance of those directives, and after recent discussions with industry members, the Authority has determined that it is appropriate to revisit the guidance set forth in those directives and states the following:

Prior Bulletins

Bulletin No. 343 (issued on August 11, 1961), Bulletin No. 440 (issued on February 3, 1969), Bulletin 440-a (issued on July 16, 1971), Bulletin 440-b (issued on August 11, 1971) and Advisory 2012-5 (issued on August 29, 2012) and Advisory 2014-6 (issued on April 22, 2014) are hereby rescinded.

Containers of liquor or wine

1. The term "container" as used herein is intended to mean the bottle or other vessel containing the liquor or wine as well as any container into which the individual bottle or vessel is placed. No such container shall be permitted which has any secondary value or after-use, except of an ornamental or decorative nature.
2. The terms "ornamental," "enhanced," or "special" containers, as used herein, are intended to mean: containers of crockery, ceramic material, crystal, tin or other metal, plastic or wood;

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.

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and decanters of any type. The Authority retains the sole discretion to determine which containers are properly considered "standard" versus "ornamental," "enhanced," or "special."

3. Brand owners or brand agents may offer items in the "standard" container and/or "ornamental," "enhanced," or "special" containers.
4. The "ornamental," "enhanced," or "special" containers may be sold at the same price, or a higher price than the "standard" container.
5. Items in "ornamental," "enhanced," or "special" containers must be price scheduled separately from items in "standard" containers.
6. Where any "ornamental," "enhanced," or "special" types of containers are distributed as limited availability items, the brand owner or brand agent must comply with the provisions of Advisory 2014-4.
7. Where any "standard" container is distributed as a limited availability item, any and all "ornamental," "enhanced," or "special" containers bearing the same brand or trade name must also be sold as limited availability items.
8. Brand owners or brand agents wishing to sell items sharing the same brand ~~label~~ label or trade name at different prices 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 sharing the same brand label may properly be sold at a different price.

Packaging of liquor or wine

1. Suppliers and distributors may pack their containers of alcoholic beverages in cardboard, paper or wooden boxes.
2. Baskets, boxes or other packages having a value to the retailer or 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 suppliers and distributors.
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 packaging, provided that such wrapping material has no secondary value or use aside from its use as a wrapping for alcoholic beverages.

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4. Cardboard or paper boxes for use in packing containers of alcoholic beverages may be furnished, given or sold to retailers by suppliers and distributors 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 containers of such brands that the retailer has in inventory.

Personalization of bottles and other containers

1. The term “personalize” as used herein means engraving, stamping, writing or otherwise adding the name of one or more persons to a bottle or other container of an alcoholic beverage. Such personalization may also include language commemorating an event, special occasion, etc.
2. A supplier may personalize a bottle or another container of an alcoholic beverage for a retail consumer. Such service may be provided to the retailer by the supplier or by the supplier’s wholesaler, at the request of the supplier.
3. A supplier may charge the retailer for such services or provide same at no cost. In any event, the supplier must make such services available to any retailer upon the same terms.

“Barrel Programs”

1. For purposes of this Advisory, a “barrel program” is a program in which a particular barrel of a manufacturer’s alcoholic beverage is selected by or for a particular retailer. The manufacturer then designates, or sets aside, that barrel for the contents to be bottled and sold to that retailer.
2. In designating, or setting aside, a barrel for a retailer, the manufacturer may place the retailer’s name on the barrel or otherwise label the barrel with the retailer’s name.
3. Upon bottling the contents of the barrel, the manufacturer may include the name, trademark or other information identifying the name of the retailer on the bottle or other container, as well as a statement to the effect that such alcoholic beverage was selected by or for the retailer. The manufacturer may also provide the retail licensee with the portion of the barrel from which the bottles were filled containing the retailer’s name.
4. A manufacturer may offer a barrel program to retail licensees provided that:
 - a. The program is made available to all retail licensees;
 - b. The barrel is posted as an individual item on the wholesale and retail price schedules. The posted price for a barrel shall not be less than the price (including any quantity discounts offered) for the same number of cases

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(contained in the barrel) posted for the same alcoholic beverage outside the barrel program applicable for the month in which the alcoholic beverages are sold and delivered to the retailer.

5. The expression of interest by a retailer in a barrel program, and the selection and setting aside of a particular barrel for such retailer, shall not be considered an order for or delivery of the alcoholic beverage within the meaning of section 101-b of the Alcoholic Beverage Control Law or Part 65 of the Rules of the Authority.
6. The selection of a particular barrel by or for a retailer shall not require the retailer to purchase the alcoholic beverage once it is ready for distribution. However, if a retailer has refused to purchase a product that has been set aside under a barrel program for that retailer, the manufacturer or wholesaler may refuse to consider future expressions of interest by that retailer in another product that is part of a barrel program.

All suppliers and distributors are hereby cautioned that any violation of the directives contained in the above Advisory may subject them to disciplinary action by the Authority pursuant to ABCL §119 and/or an action for injunctive relief pursuant to ABCL §123.

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