

Florida Beer Wholesalers Association

January 24, 2011

To: FBWA Members

From: Mitchell Rubin, Executive Director

RE: Coupons Furnished Directly to Selected Vendors--Consumers Unaware

Facts: A brewer issues instant redeemable coupons (IRCs) to a distributor for distribution in the market. Rather than affixing the coupons to the package or placing them on the shelf, the distributor provides them to the back offices of selected vendors. The distributor produces signage for the vendor that advertises a price that reflects the reduction. The consumer is not made aware of the coupon.

Issue: Whether a distributor may provide coupons to selected vendors and implement the program as described?

Brief Answer: No. Because the coupon is going to selected back offices and because consumers are unaware, the distributor has converted the coupon program into an unlawful rebate. This program is a violation of federal regulations Part 6, adopted pursuant to section 105 of the Federal Alcohol Administration Act (27 U.S.C. 205), section 561.42(1), Florida Statutes, and Rule 61A-1.010, Florida Administrative Code, which all prohibit any rebates or accumulated rebates to vendors.

Analysis: The first problem with the program is that it is not being offered to consumers and is not being offered to all vendors in the market. Federal **Tied House Evil Regulation 6.96, Consumer promotions**, provides:

- (a) Coupons. The act by an industry member of furnishing to consumers coupons which are redeemable at a retail establishment does not constitute a means to induce within the meaning of section 105(b)(3) of the Act, provided the following conditions are met:
- (1) All retailers within the market where the coupon is made may redeem such coupons; and
 - (2) An industry member may not reimburse a retailer for more than the face value of all coupons redeemed, plus a usual and customary handling fee for the redemption of coupons.

A coupon is a piece of paper that states the terms and conditions under which a consumer may seek a discount or rebate from the brewer. The typical coupon is a "mail-in." The brewer publishes the coupon and a consumer must purchase the specified product and mail in the coupon and proof of purchase to the brewer in order to receive the rebate. Since a mail-in coupon is a transaction between a consumer and brewer, it is not the subject of regulation.

An "instant redeemable coupon" is a piece of paper issued by the brewer that states the terms and conditions under which a vendor may accept the coupon from the consumer, give an instant rebate to the consumer and receive reimbursement plus a nominal processing fee for administration. Since the brewer is providing assistance to a vendor in the form of the coupon program and the handling fee, it is "assistance" and subject to regulation.

In addition to not complying with the federal rule because it is not being furnished to consumers and not all vendors may participate, the rebate is not a coupon because the consumer is not aware of the rebate. The

transaction is between the brewer and the vendor whereby the vendor receives a rebate for packages sold.

The coupon program is being converted to a rebate program. This conversion is evidenced by the following:

- the distributor produces and places inside signs, which make no mention of the coupon requirement, advertising only a single lower retail price, which price is only achievable if the amount of the coupon rebate is included,
- neither the distributor nor the vendor attach the coupons to the beer packages and/or tear pads are not provided anywhere in the vicinity,
- the coupons are provided to the vendor's back office, and
- the vendor submits the coupon to the redemption center based on internal sales reports of a particular package, not by virtue of a consumer producing a coupon at point of purchase in compliance with its conditions.

Section 561.42(1), Florida Statutes, expressly prohibits manufacturers, distributors and other industry members from providing any rebates to vendors and prohibits vendors from accepting any rebates.

Section 561.42(1) provides:

“nor shall such manufacturer, distributor, importer, primary American source of supply, brand owner or brand registrant, or any broker, sales agent, or sales person thereof, assist any vendor by any gifts or loans of money or property of any description or by the giving of any **rebates** of any kind whatsoever. No licensed vendor shall accept, directly or indirectly, any gift or loan of money or property of any description or any **rebates** from any such manufacturer, distributor...”

Rule 61A-1.010, Approved Advertising and Promotional Gifts, Florida Administrative Code, reinforces and clarifies the statutory prohibition against assistance. It provides in relevant part:

Industry members are prohibited from furnishing, supplying, giving, renting, or lending, to a vendor, any equipment, fixtures, furniture, furnishings, signs, supplies, credit, **money, compensation, rebates, accumulated rebates, fees of any kind** including slotting fees, services, property, **or other thing of value of any description not included in the exceptions** specified in Chapter 61A-1, F.A.C., or specifically authorized by Florida Statutes, to vendors or their employees or agents acting within their scope of employment.

Rebates are prohibited unless there is a statute or rule which authorizes them. There is no such authorizing statute or rule.

In addition to violating the prohibition against rebates, the conduct circumvents the purpose of price posting. Product is being posted at one price but favored vendors are receiving a rebate.

Conclusion: Coupons are only permitted as an exception if they do not provide assistance to the vendor or provide an inducement. The federal rule requires that the coupons be furnished to consumers and redemption must be available to all vendors in the market. Here the coupons are being given directly to selected vendors only. This program converts a coupon program into a rebate program. Manufacturers and distributors are prohibited from offering vendors rebates for the sale of product under the federal rule, section 561.42(1) and in Rule 61A-1.010.