

January 7, 2013

To: FBWA Members

From: Mitch Rubin

RE: Dry Tastings

Facts: For the purposes of this Memorandum, "dry tasting" means giving directly to a consumer a sealed container of beer for the purpose of the consumer taking the container away from the vendor's establishment and, presumably, tasting it. Often the practice is to include a sealed beer sample in a bag containing "consumer advertising specialties" and product information. This practice is not to be confused with beer tastings of open containers at vendor establishments licensed for on-premise consumption.

Issue: Whether dry tasting of beer at an off-premises establishment is authorized under the Tied House Evil Law.

Brief Answer: No. Providing sealed containers of beer to a consumer is not an exception to the general prohibition against assisting a vendor.

Analysis: Section 561.42(1), Florida Statutes, implemented by Rule 61A-1.010, F.A.C., prohibits manufacturers, distributors and other industry members from assisting vendors.

Section 561.42 (12)(c), Florida Statutes, authorizes manufacturers, distributors and other industry members to sell to vendors certain "consumer advertising specialties."

Section 561.42(12) (d), Florida Statutes, authorizes manufacturers, distributors and other industry members to give these same consumer advertising specialties directly to consumers on a vendor's licensed premises. Section 561.42 (12) (d) is implemented by Rule 61A-1.01012 Consumer Advertising Specialties Exception, F.A.C., which provides:

(1) When the specialties advertise wine or spirituous beverages, wine or spirituous beverages industry members may give or sell to a vendor consumer advertising specialties of nominal value bearing substantial brand or industry member advertising designed to be carried away by the consumer, including trading stamps, nonalcoholic mixers, pouring racks, ashtrays, bottle or can openers, cork screws, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, post cards, pencils, T-shirts, caps, visors, and similar specialties.

(2) When the specialties advertise malt beverages, malt beverage industry members may sell to a vendor consumer advertising specialties of nominal value bearing substantial brand advertising designed to be carried away by the consumer, including trading stamps, nonalcoholic mixers, pouring racks, ashtrays, bottle or can openers, cork screws, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, post cards, pencils, T-shirts, caps, visors, and similar specialties to vendors at no less than the actual cost of the industry member who initially purchased them, unless the manufacturer or distributor gives the items directly to consumers on the vendor's licensed premises.

(3) Industry members shall not provide assistance to a vendor for allowing the industry member to give specialties directly to consumers on the vendor's licensed premises.

(4) The vendor's name, business name, website address, logo, and business address may be printed on these specialties.

Sealed beer product is not listed as a consumer advertising specialty and is not like any of the other consumer advertising specialties listed.

Conclusion: Dry tastings of sealed beer containers at off-premise establishments are not authorized.