

## Florida Beer Wholesalers Association

January 7, 2015

To: FBWA Members

From: Mitch Rubin

Re: Glassware

**Facts:** A retailer wishes to offer free branded glassware when consumers purchase the requisite packages of beer. (Not an integrated package ready for sale to consumer. Nor a premium offer as a premium offer cannot be displayed on the premises.) A manufacturer, distributor or importer (herein after "industry member") wishes to provide the branded glassware without charge to the retailer.

**Issue:** Whether an industry member may provide glassware to a retailer for giving to consumers when the requisite beer packages are purchased?

**Brief Answer:** No. Glassware must be sold to the retailer at industry member cost and must be intended for use on the premises. The exceptions for co-packs and premium offers do not apply. (An industry member could co-pack the beer and glassware into an integrated off-premise package, but apparently does not want to go to the trouble.) The exception for industry members to provide consumer advertising specialties does not apply as it requires the consumer specialties to be given by the industry member directly to the consumer.

**Analysis:** Section 561.42 (1) and Rule 61A-1.010 prohibit assisting a retailer unless there is an exception elsewhere in statute or rule. (Federal law also requires glassware to be sold.)

Section 561.42 (14)(a) provides an exception for expendable retailer advertising specialties.

If a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any sales agent or sales person thereof, provides a vendor with expendable retailer advertising specialties such as trays, coasters, mats, menu cards, napkins, cups, glasses, thermometers, and the like, such items may be sold only at a price not less than the actual cost to the industry member who initially purchased them, without limitation in total dollar value of such items sold to a vendor.

Rule 61A-1.01010 implements section 561.42(14)(a) concerning expendable retailer advertising specialties and provides in relevant part:

**61A-1.01010 Expendable Retailer Advertising Specialties Exception.**

If a manufacturer or distributor provides a vendor with glassware, pitchers, carafes or similar containers made of other materials, such containers are not expendable retailer advertising specialties, and shall be sold at a cost not less than the actual cost of the industry member who purchased them.

(2) The specialties may advertise a brand or industry member. The vendor's name, business name, website address, logo, and business address may be printed on these specialties, which shall be intended for use by the vendor or consumers on the vendor's licensed premises.

Because of different treatment between non-glassware expendables for wine and spirits (may be given) versus beer (must be sold), the Rule defines glassware as not an expendable but nonetheless requires it to be sold whether concerning beer, wine or spirits. (The FBWA does not agree with the difference in treatment between wine/spirits and beer related expendable and would not exclude glassware from the expendable category, but that is not what the Rule provides.)

**Conclusion:** Whether designed for beer, wine or spirits, glassware may not be given, but may be sold to a retailer at the industry member's cost, and must be intended for use on the retailer's premises.