

**November 15, 2010**

**To: Ed Koontz, The Lewis Bear Company**

**From: Mitch Rubin, Executive Director**

**RE: Distributor Moving Vendor Product To Another Location**

**Facts:** A large retail chain owns multiple stores in an area. Each retail store is licensed as a vendor to sell malt beverages to consumers. One licensed location has malt beverage inventory that it would like the distributor to move to a nearby store.

**Issue:** Whether a distributor may move malt beverages sold and delivered to another nearby store?

**Brief Answer:** No. Moving inventory from one store to another is a prohibited form of assistance.

**Analysis:** Under the Beverage Law, distributors are prohibited from having a financial interest in or assisting vendors unless the statutes or rules provide an exception. This general prohibition against financial interest and assistance is found in section 561.42 (1), Florida Statutes and in Rule 61A-1.010, Florida Administrative Code.

**Section 561.42(1)**

No manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant of any of the beverages herein referred to, whether licensed or operating in this state or out-of-state, nor any broker, sales agent, or sales person thereof, shall have any financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the Beverage Law; 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, importer, primary American source of supply, brand owner or brand registrant, or any broker, sales agent, or sales person thereof; provided, however, that this does not apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages or to advertising materials and does not apply to the extension of credit, for liquors sold, made strictly in compliance with the provisions of this section. A brand owner is a person who is not a manufacturer, distributor, importer, primary American source of supply, brand registrant, or broker, sales agent, or sales person thereof, but who directly or indirectly owns or controls any brand, brand name, or label of alcoholic beverage. Nothing in this section shall prohibit the ownership by vendors of any brand, brand name, or label of alcoholic beverage.

**61A-1.010 Approved Advertising and Promotional Gifts.**

(1) 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. In addition, vendors and their employees or agents acting within the scope of employment are prohibited from accepting such forms of assistance. This prohibition against assisting any vendor includes engaging in cooperative advertising – participating in or paying for any advertising in cooperation with a vendor.

(2) As used in Rules 61A-1.010 through 61A-1.0108, F.A.C., "industry member" means manufacturer; distributor; importer; primary American source of supply; brand owner or registrant; and any broker, sales agent, or sales person of any of the aforementioned licensees.

(3) For purposes of Rules 61A-1.010 through 61A-1.0108, F.A.C., a licensee is categorized based on its license, type of beverages it is dealing in, conduct, and the form of assistance being provided. For example, a wine distributor who is selling a malt beverage product must comply with the malt beverage restrictions in Rules 61A-1.010 through 61A-1.0108, F.A.C., and Section 561.42, F.S.

Moving alcoholic beverages from a licensed establishment to another place--whether an off-site warehouse or other licensed location owned by the same company--is a prohibited form of assistance in the form of a moving service.

Once the malt beverages are delivered, a distributor may move the product inside the store. The distributor is allowed to do so because of the in-store servicing statute for malt beverages. See section 561.423, Florida Statutes, (authorizing, for example, rotation on vendor's shelves).

**Conclusion:** A distributor may not move malt beverages that have been sold and delivered from one store to another.