

June 16, 2014

To: FBWA Members

From: Mitch Rubin

Re: Fees Paid to Vendors or Their Third Parties

Issue: Whether distributors may pay, and vendors may directly or indirectly accept, fees associated with reports of non-compliant service such as out-of-stock product, late deliveries or failure to pick up damaged product?

Brief Answer: No. Distributors may not pay, and vendors may not accept directly or indirectly, fees for various services. Such fees are considered a form of prohibited financial assistance.

Beverage Law: Section 561.42 (1) Florida Statutes prohibits distributors from providing and vendors from accepting financial assistance.

561.42 Tied house evil; financial aid and assistance to vendor by manufacturer, distributor, importer, primary American source of supply, brand owner or registrant, or any broker, sales agent, or sales person thereof, prohibited; procedure for enforcement; exception.—

(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;,, distributor, importer, primary American source of supply, brand owner or brand registrant, or nor shall such manufacturer 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.

Rule 61A-1.010 (1), Florida Administrative Code, implements section 561.42 and specifically prohibits "fees."

61A-1.010 Tied House Evil Prohibition Against Vendor Assistance.

(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.

Analysis: Section 561.42 and Rule 61A-1.010 prohibit fees as a form of financial assistance to vendors, whether directly or indirectly. Such fees are prohibited regardless of the name given.

Conclusion: Florida's Beverage Law prohibits distributors from paying, and vendors from accepting, whether directly or indirectly, fees regardless of the name given to such payments.