

## Florida Beer Wholesalers Association

July 8, 2016

To: FBWA Members

From: Mitch Rubin

Re: Beer Distributor's Use of Vendor's Third Party for Giving Consumer Specialties Prohibited

**Facts:** A vendor sponsors and utilizes the services of a third party that organizes social events, conducts tournaments and provides entertainment to consumers on its premises. A malt beverage distributor wishes to contemporaneously utilize the third party to provide consumer advertising specialties.

**Issue:** Whether a malt beverage distributor may utilize a third party to provide consumer advertising specialties contemporaneously with the vendor utilizing the third party agent for entertainment services?

**Brief Answer:** No. A malt beverage distributor who hires a vendor's entertainer or tournament organizer is not giving the items directly to consumers on the vendor's licensed premises as contemplated by the Beverage Law. Rather, the distributor is giving the items through an agent that is associated with the vendor. The malt beverage distributor remains free to utilize its own third party agent--one unaffiliated with vendors--to give consumer advertising specialties directly to consumers.

**Analysis:** Section 561.42 (1) and Rule 61A-1.010 prohibit direct and indirect assistance to retailers except as otherwise provided in the Beverage Law.

An exception for consumer advertising specialties is provided in section 561.42 (14) (c). These items must be sold by malt beverage distributors, or any sales agent or sales person thereof, to a retailer at a minimum of cost.

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 consumer advertising specialties such as ashtrays, T-shirts, bottle openers, shopping bags, 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, and may be sold without limitation in total value of such items sold to a vendor.

An exception to the selling requirement is provided for malt beverage distributors, or any sales agent or sales person thereof, to give directly to consumers:

(d) A manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any sales agent or sales person thereof, may provide consumer advertising specialties described in paragraph (c) to consumers on any vendor's licensed premises.

Rule 61A-1.01012 implements the statute. The relevant provisions provide:

(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.

The primary difficulty is that the distributor and the vendor are hiring the same third party to conduct activities at the same time. This method of providing consumer advertising specialties is not authorized as it

circumvents the requirement that the "distributor gives the items directly to consumers on the vendor's licensed premises."

**Conclusion:** A malt beverage distributor who hires a vendor's entertainer or tournament organizer to give consumer advertising specialties cannot be said to be giving the items directly to consumers on the vendor's licensed premises as contemplated by Florida's Beverage Law. Rather, the malt beverage distributor is giving the items indirectly through an agent that is associated with the vendor. The malt beverage distributor remains free to utilize its own third party agent--one unaffiliated with vendors--to give consumer advertising specialties directly to consumers.