Alcohol provisions relating to sponsorship

Trade practices issues for retailers

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Kate Hardy is a Professional Specialist in Nixon Peabody's Beverage and Alcohol team. Kate focuses her practice on providing general assistance to clients in the Beverage Alcohol industry, within the United States and internationally. Kate is an Australian qualified attorney who also worked for a law firm in Adelaide, South Australia, providing general commercial advice to clients, including a number of wine producers and retailers, in the areas of intellectual property, contracts and real estate, licensing, insolvency and bankruptcy, and environmental and water issues.

Before joining Nixon Peabody, Kate worked in Paris, managing legal and economic affairs at the International Vine and Wine Organization (OIV). The OIV is an international, intergovernmental body that aims to achieve harmonized regulations for its many country members, which make up the vast majority of the world wine and vine sector.

Kate has been a judge in a number of international wine competitions, including the Finger Lakes International Wine Competition in the U.S., in both 2008 and 2007. She speaks fluent French and Italian. Kate is a member of the International Wine Law Association, of which she is the past secretary and a member of the board.

Nixon Peabody Beverage Alcohol Group

Hospitality and beverage alcohol suppliers, distributors, and retailers from around the world rely on our Group for practical, comprehensive legal counsel on local, state, national, and international beverage issues. Our experience enables clients in all tiers of the industry to meet their full range of legal challenges—from obtaining regulatory approval to launching new brands to negotiating international trade agreements. Our in-depth industry knowledge is complemented by the broad resources of a full-service, national law firm. Nixon Peabody has sophisticated practices in IP/trademark, tax, environmental, real estate, employment, private equity financing, and M&A law. Our attorneys provide guidance on matters involving the manufacture, licensing, taxation, labeling, advertising, marketing, distribution, and sale of wine, beer, and spirits. Our extensive experience covers:

- Business formation and licensing
- Mergers and acquisitions
- Winery, brewery, and distillery operations
- Trade practices and compliance training
- Franchise law and distributor relations
- Advertising and marketing
- Label and formula approval and brand registration
- Trademark registration and protection
- Clearance of promotions and sponsorships
- Product development/ distribution strategies
- Import, export, and distribution agreements
- Regulatory compliance
- Labor and employment matters

A dedicated group

Our group's attorneys and professional specialists keep a tight focus on current developments that affect the beverage industry's competitive and regulatory environment, and we have a long track record of providing outstanding client service. We are members of, and hold leadership positions in, several of the beverage alcohol industries' most important global and national organizations and associations. Our aim is to provide our clients with creative, effective, and cost-efficient legal solutions that are compatible with their business priorities.

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Table of contents

Summary:

Increasingly, on-site promotions, delivery, and use of POS items and product samples, and sponsorship of costs of businesses, such as beverage lists, are being used as bargaining chips in deals between on-premise retailers, suppliers, and distributors. You need to be aware of potential tied house concerns that can affect you as a retailer when you ask for and accept these things, in order to avoid pay-to-play problems.

I. INTRODUCTION

The prohibition movement really gathered steam in the United States in the early 1900s. The alcohol industry was largely self-regulated and many abuses were occurring between the different players in the sector. In particular, retailers were increasingly being pressured by suppliers and by underworld figures, including the mafia, into selling certain products to the exclusion of others and pursuant to draconian supply terms. The growing concerns within society at large and within the forces of law and order about the influence of these entities, among other things, led to the passing of the Volstead Act and the ratification of the 18th Amendment to the Constitution by 46 states, instituting Prohibition and outlawing the manufacture, sale and transport of alcohol almost completely.

The so-called "Prohibition experiment" was a total failure. Illegal trafficking and organized crime increased dramatically, gangsters like Al Capone made immense fortunes circumventing the ban and there were speakeasies everywhere. It is estimated that in New York city alone there were twice as many speakeasies during Prohibition as there were legal retail outlets prior to its commencement.

Around 13 years after it began, Congress adopted the 21st Amendment to the Constitution, repealing Prohibition and reinstating the sale of alcohol, within parameters to be set largely by the states. The Amendment indeed allowed a state to continue to restrict or ban the sale of alcohol if it so desired or to restrict it however it saw fit. The states each went ahead to either adopt a state monopoly or a defined three tier system, with distinct supply, wholesale and retail levels. The majority of the states chose the three tier option. They created laws which were strongly focused on licensing and regulating all of the various actors in the industry and on minimizing or preventing any downstream pressure within the three tiers. Given that the industry was dominated by large suppliers and smaller, independent retailers generally, the aim was to protect the retailers from any undue influence. At the same time, the federal government also put in place its own restrictions within the scope of the control that was left to it over the sector. These so-called "tied house" laws instituted heavy penalties for any illegitimate inter-tier activities that were discovered. Ongoing case law has further developed and defined the effect of these laws. Many of the practices that are affected are commonplace in the promotion and marketing of other consumer products. In the beverage alcohol sector, however, in light of the societal problems that led to Prohibition, regulators sought to use new laws to prevent vertical integration, and domination of one tier by another. The belief was that manufacturers could return to the pre-Prohibition days of saloons, where they controlled production, distribution and retail sales, and thus fostered overconsumption through consumer price incentives and marketing to underage drinkers and where the states' efforts to regulate for temperance and public welfare were hampered by marketing influences of out of state entities. The prevention of vertical integration was sought by the introduction of not just tied house laws but also laws preventing consignment sales, commercial bribery and exclusive outlets.

Increasingly today, however, more and more pressure is developing upstream. Retailers, and especially large scale retailers, are creating playing fields for the suppliers whose products they carry. In some cases, retailers are setting conditions for prioritized placement of product, such as premium bar display, well space or aisle/shelf space (slotting fees), or beverage or wine list positioning (including by the glass). Often, conditions will include payments to the retailer or

to a nominated third party, or, in the parlance in the trade, "pay to play" amounts. The conditions can also include payment for advertising, supply of various point of sale items, specialties or services to the retailer or to its customers, or payment for business expenses such as printing of beverage or wine lists. If a supplier or wholesaler does not satisfy the retailer's demands, often that means that their product does not go on the shelf at all, let alone in a preferred space.

As we speak, the Alcohol and Tobacco Tax and Trade Bureau (TTB) is in the middle of a significant investigation into this type of practice by retailers. It was announced at the recent meeting of the NCSLA Board that the TTB was looking into pay to play activities by casinos. It has issued subpoenas to entities alleged to have engaged in these activities, for assessment of any contravention of federal laws or regulations and is working closely with relevant states.

To the extent that your business is affected, it is important to understand the stakes for your retail license, and get an idea of federal and state by state restrictions that come into play. The balance of power has shifted since the latter part of the 20th century and retailers are increasingly dictating the terms of supply. You need to be sure that you are not inciting or promoting activities that are illegal at both state and federal level.

II. THE FEDERAL SYSTEM

A. Tied House

The federal regulations on tied house are annexed as Exhibit A. Their form reproduces the classic tied house restrictions, adopted by many states in their own jurisdictions. They apply to transactions between producers and/or wholesalers and retailers. They do not generally apply to relationships between producers and wholesalers directly, although some states have gone further and created tied house restrictions in this relationship as well.[1]

The laws focus on regulating the actions of producers and wholesalers. Indeed, it is arguable whether the TTB has much jurisdiction over the actions of retailers. It requires retailers of beverage alcohol products to register and maintain certain records but does not license them or generally control their actions to any significant extent. The scope of federal jurisdiction when it comes to alcohol regulation is to administer and enforce the:

- Internal Revenue Code of 1986, 26 USC (IRC):
  - Chapter 51 (Distilled Spirits, Wine and Beer),
  - Chapter 52 (Tobacco Products and Cigarette Papers and Tubes), and
  - Sections 4181-4182 (Firearms and Ammunition Excise Taxes);
- Federal Alcohol Administration Act, 27 USC chapter 8 (FAA Act), including the Alcohol Beverage Labeling Act of 1988;
- Alcohol Beverage Labeling Act (Government Warning Labels); and
- Webb-Kenyon Act, 27 USC section 122.

[1] For example in California, a producer of distilled spirits anywhere in the world cannot obtain any other license involving distilled spirits, including a state wholesale license, under California Business and Professions Code section 23771 ("*No distilled spirits license of any kind, except a distilled spirits manufacturer's or a distilled spirits manufacturer's agent's license, shall be issued to any person, or to any officer, director, employee, or agent of any person, who manufactures distilled spirits within or without this State.*")

The FAA Act regulates exclusive outlet, tied house, commercial bribery and consignment sales issues in the following way (giving authority to introduce regulations such as those annexed at Exhibit A):

> *Sec. 205. Unfair competition and unlawful practices*
> *It shall be unlawful for any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly or through an affiliate:*
>
> *(a) Exclusive outlet*
> *To require, by agreement or otherwise, that any retailer engaged in the sale of distilled spirits, wine, or malt beverages, purchase any such products from such person to the exclusion in whole or in part of distilled spirits, wine, or malt beverages sold or offered for sale by other persons in interstate or foreign commerce, if such requirement is made in the course of interstate or foreign commerce, or if such person engages in such practice to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such requirement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce; or*
>
> *(b) ``Tied house''*
> *To induce through any of the following means, any retailer, engaged in the sale of distilled spirits, wine, or malt beverages, to purchase any such products from such person to the exclusion in whole or in part of distilled spirits, wine, or malt beverages sold or offered for sale by other persons in interstate or foreign commerce, if such inducement is made in the course of interstate or foreign commerce, or if such person engages in the practice of using such means, or any of them, to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such inducement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce: (1) By acquiring or holding (after the expiration of any existing license) any interest in any license with respect to the premises of the retailer; or (2) by acquiring any interest in real or personal property owned, occupied, or used by the retailer in the conduct of his business; or (3) by furnishing, giving, renting, lending, or selling to the retailer, any equipment, fixtures, signs, supplies, money, services, or other thing of value, subject to such exceptions as the Secretary of the Treasury shall by regulation prescribe, having due regard for public health, the quantity and value of articles involved, established trade customs not contrary to the public interest and the purposes of this subsection; or (4) by paying or crediting the retailer for any advertising, display, or distribution service; or (5) by guaranteeing any loan or the repayment of any financial obligation of the retailer; or (6) by extending to the retailer credit for a period in excess of the credit period usual and customary to the industry for the particular class of transactions, as ascertained by the Secretary of the Treasury and prescribed by regulations by him; or (7) by requiring the retailer to take and dispose of a certain quota of any of such products; or*

(c) Commercial bribery
To induce through any of the following means, any trade buyer engaged in the sale of distilled spirits, wine, or malt beverages, to purchase any such products from such person to the exclusion in whole or in part of distilled spirits, wine, or malt beverages sold or offered for sale by other persons in interstate or foreign commerce, if such inducement is made in the course of interstate or foreign commerce, or if such person engages in the practice of using such means, or any of them, to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such inducement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such trade buyer in interstate or foreign commerce: (1) By commercial bribery; or (2) by offering or giving any bonus, premium, or compensation to any officer, or employee, or representative of the trade buyer; or

(d) Consignment sales
To sell, offer for sale, or contract to sell to any trade buyer engaged in the sale of distilled spirits, wine, or malt beverages, or for any such trade buyer to purchase, offer to purchase, or contract to purchase, any such products on consignment or under conditional sale or with the privilege of return or on any basis otherwise than a bona fide sale, or where any part of such transaction involves, directly or indirectly, the acquisition by such person from the trade buyer or his agreement to acquire from the trade buyer other distilled spirits, wine, or malt beverages--if such sale, purchase, offer, or contract is made in the course of interstate or foreign commerce, or if such person or trade buyer engages in such practice to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products or if the direct effect of such sale, purchase, offer, or contract is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such trade buyer in interstate or foreign commerce: Provided, That this subsection shall not apply to transactions involving solely the bona fide return of merchandise for ordinary and usual commercial reasons arising after the merchandise has been sold; […]

The FAA Act notably does not give jurisdiction over retailers for these types of activities. To the extent that the TTB wishes to act on retailer actions, it must seek the cooperation of a state where the retailer is located, and which has similar restrictions to the federal ones but with extension to retailers as well.

B. Pay to Play

The federal laws and regulations aim at avoiding any activity by a producer or wholesaler which can be deemed to be an inducement to a retailer to purchase their products, to the exclusion in whole or in part of other products. These restrictions have been construed very broadly. Basically any preferential or targeted activity with a retailer can be considered to fit within the definitions. In fact, the laws are applied more in the exceptions, permission being explicitly granted, at a federal level, for things such as the provision of product displays, point of sale materials or samples, in certain allowable ways.

More and more, however, on-premise retailers in particular are coming up with ways to benefit from these exceptions to the extent possible. They make it a requirement for preferred shelf space for example or positioning as a well or by the glass product, to make certain payments to the retailer or to a nominated third party. In return for paying for the printing and development of alcoholic beverage lists for a retailer, a permissible point of sale item which can be furnished by a producer or wholesaler (under 27 CFR 6.84), a supplier can preference its own products over other suppliers' products.

In January 2009, the TTB Trade Investigation Division of TTB completed a three year investigation of alleged trade practice violations in the Chicago market area. The government alleged that the 10 wholesaler/importers being investigated had violated the conditions of their basic permits by furnishing or giving money or other things of value to a retailer, Skyline Marketing, Inc. and/or Sam's Wine & Spirits, Inc., and/or paying or crediting the retailer for advertising and/or preferred shelf space. Offers-in-Compromise totaling $803,000 were accepted by TTB to settle the alleged violations. No retailers were fined during the federal investigation. However, the TTB cooperated with the state of Illinois in the matter. As an adjunct to the federal investigation, in 2006, the Illinois Liquor Control Board settled claims against Sam's, then the largest wine retailer in the United States, that it had been extorting kickbacks from wholesalers and suppliers, for a record $300,000 and a seven day suspension (of which three were served).

Currently, a similar investigation is underway into an even larger pay to play situation involving a group of on-premise retailers, although, at the time of press, no details are yet publicly available other than it relates to pay to play activities by casinos.

III. THE STATES

A. Example – Illinois

1. "Of value"

It is the stated policy of the Illinois Liquor Control Commission to enforce provisions of the Liquor Control Act in relation to prohibiting manufacturers, distributors and importing distributors from giving anything "of value" to retailers, and simultaneously prohibiting retailers from accepting anything "of value" from manufacturers, distributors and importing distributors, unless such transactions are specifically allowable pursuant to Illinois Statute, Rule, Regulation, case law, or Trade Practice of this Commission.

Notably, in contrast to federal rules, the Illinois Act not only regulates producers and wholesalers but also stops retailers from accepting anything "of value". Indeed, the Act states:

> *(235 ILCS 5/6-5) (from Ch. 43, par. 122)*
> *Sec. 6-5. Except as otherwise provided in this Section, it is unlawful for any person having a retailer's license or any officer, associate, member, representative or agent of such licensee to accept, receive or borrow money, or anything else of value, or accept or receive credit (other than merchandising credit in the ordinary course of business for a period not to exceed 30 days) directly or indirectly from any manufacturer, importing distributor or distributor of alcoholic liquor, or from any person connected with or in any*

way representing, or from any member of the family of, such manufacturer, importing distributor, distributor or wholesaler, or from any stockholders in any corporation engaged in manufacturing, distributing or wholesaling of such liquor, or from any officer, manager, agent or representative of said manufacturer.

It goes on to say that:

The license of any person who violates any provision of this Section shall be subject to suspension or revocation in the manner provided by this Act.

It goes on to provide some exceptions to the prohibition on receiving anything of value but these are limited. They include permanent and temporary inside and outside signs (the full list is contained in Exhibit B). In addition, the Liquor Commission has published a trade practice policy noting further examined exceptions and rules (also part of Exhibit B).

Given that the prohibition in Illinois extends to retailers as well, it is important to bear in mind the types of gifts and services that can be accepted by a retailer without penalty, as laid out in the Act and in the policy.

2. Pay to play

It is worth noting the specific Illinois pay to play provisions of the policy just referred to (and excerpted in the exhibit):

The practice of a retailer charging a distributor or manufacturer for the floor or shelf space upon which its alcoholic beverage products sit is a violation of 235 ILCS 5/6-5 which forbids a retailer from accepting anything "of value" directly or indirectly from any manufacturer or distributor. Likewise, 5/6-5 prohibits any manufacturer or distributor from giving anything "of value" directly or indirectly to any retailer. Thus, both the payment for floor or shelf space and the receipt of such payment are violations of the statute by both the retailer and the supplier.

This Commission will investigate practices in which payment of space for non-alcoholic products is used to ensure placement of alcoholic products in a retailer's premise. In addition, this Commission will consider it to be a violation by both the supplier and retailer if a third-party promotion company is used to pass payment for prominent floor or shelf space from the supplier to the retailer. This Commission believes that an allowance for payment for floor and shelf space would result in" bidding wars" between suppliers, thereby resulting in the discriminatory exclusion of brands in retailer outlets.

This statement covers the situation in the case referred to earlier, where the Liquor Commission issued accusations against a prominent off-premise retailer Sam’s Wine & Spirits, Inc., that it had been accepting money from suppliers and wholesalers in exchange largely for preferred shelf space. The fine issued was the largest ever fine issued by the Liquor Commission, at $300,000, and was coupled with a suspension of the license. It followed a two year investigation into the licensee’s business practices.

The case not only involved accusations against the retailer but also took into account payments that had been made to a third party company on the retailer's behalf. This is becoming quite common practice for a retailer to require certain payments to be made to third party entities instead of directly to the retailer. This is intended generally to try and avoid tied house restrictions. Nonetheless, it is made known to a supplier or wholesaler that a payment to a certain company will be required in exchange for preferred bar space or other benefits not offered to all suppliers. Rather than require a payment to itself, the retailer introduces a supposedly independent third party to receive pay to play money. In this case, that is what had occurred, Sam's had been using a company called Skyline Marketing, requiring suppliers and wholesalers to make payments to that company in return for advertising on its behalf.

B. Example – New York

1. Tied house

Although New York has restrictions similar to those at federal level and in Illinois as cited, they are very hard to navigate as they can be found in a range of different sources.

It is most useful to look at recent developments in the area in the state, through a major trade practices investigation, which was finalized in the state in 2006, and which involved a number of Court petitions against major industry members, and through a recent report issued by the State Law Revision Commission on the whole of the ABC system.

2. Consent orders

Now Chairman of the State Liquor Authority, Dennis Rosen, then a state assistant attorney general, was charged with the trade practice investigation inquiry. Three separate actions were brought, one against suppliers, one against wholesalers and one against retailers.[2]

The respondents in each case included a list of some of the largest operators in each tier in the state. The fines and costs adjudged against these companies, in late 20006 and early 2007, for payment to the state, totaled well over $2 million for the suppliers, well over $1.5 million for the wholesalers and over half a million for the retailers (at between $10,000 and $50,000 each).

In addition, the orders each held that if a respondent was later found to have violated any of the ABC law provisions contained in the order, that respondent would be subject to fines for each offence. Those fines are of up to $10,000 for retailers, up to $100,000 for suppliers, and up to $100,000 for wholesalers, together with the so-called "death penalty" where a subsequently offending industry member is subject to revocation, suspension or cancellation of their license.

The offences by suppliers referred to in the order included:

- payments and gifts to retailers (such as cash, cash equivalents, credit card swipes, AMEX checks, trips, reimbursement of travel expenses, restaurant equipment, and consumer items);

[2] People v. Charmer Industries, Inc., *et al*., Consent Order and Judgment, Index No. I -2006-7562, September 12, 2006; People v. Bacardi U.S.A., Inc., et al., Consent Order and Judgment, Index No. 2006-9782, October 26, 2007; People v. 33 Union Square West, Inc., et al., Consent Order and Judgment, Index No. I-2006012745, January 2, 2007.

- discrimination among retailers;
- tie-ins (requiring or compelling retailers to purchase a brand in order to get another);
- credits, discounts and rebates to retailer;
- payments for wine and drink menus (except under certain conditions);
- buy-backs and bar spend (buying wine or liquor from a retailer for consumers);
- gifts of products to retailers; and
- payments for retailer advertising.

In addition, the order enjoined the supplier respondents from making payments, directly or indirectly, to third parties who performed services for retailers, the situation faced by the Illinois Liquor Commission in the Sam's Wine & Spirits investigation discussed herein. This injunction was to arise where such payments could be deemed to be, in effect, an incentive, reward or rebate for purchasing or featuring products from a respondent. The order restricted its application to third parties that were not independent, i.e. that were controlled by or serviced solely a single retailer or group of retailers or where there were associated parties in control (officers or employees of the retailer or their relatives).

From the retailer perspective, the offences cited were generally mirror images of the supplier offences that were charged:

- soliciting or receiving gifts (as listed above);
- discrimination against retailers (in this case, being the acceptance of a price that the retailer had a good faith belief was not the posted price);
- requiring tie-ins from suppliers/wholesalers (in particular items in limited quantity or at some specific and elevated quantity);
- soliciting or receiving credits or rebates;
- soliciting or receiving free product; and
- accepting payment of advertising funds (except for out of state catalogues)

In addition, a mirror provision was also included as to the acceptance or benefit by a retailer of payments made to a third party on its behalf.

The orders specifically did not contain any admission by any of the respondents as to any wrongdoing or violation of the law. However, given the detailed results of the investigation, each of the respondents agreed to the fines levied against them and to future business conditions. It is notable that the investigation found that, between 2003 and 2005, the aggregate value of the illegal benefits bestowed upon favored liquor stores, restaurants, nightclubs and bars by wholesalers and suppliers in New York state exceeded $59 million.

To date, the SLA seems to have taken the position that the consent orders apply to the whole industry and not just the members who were parties to the decrees. This makes the planning of advertising and promotional programs in the state even more difficult to manage.

3. Law Revision Commission report

On December 15, 2009, a long awaited report was produced by the New York State Law Revision Commission on the Alcohol Beverage Control system in the state. This report was commissioned by the legislature in bills passed in 2007 and 2008, calling upon the Commission

to analyze the law and its administration. A preliminary report, concerning the operation of the New York State Liquor Authority was published in September 2008.

The full report gives a detailed analysis of existing New York tied house laws. It notes that the scheme has not undergone a structured revision in the past 40 years. It currently consists of several statutory provisions, regulations, disseminated and non-published SLA Bulletins and Divisional Orders, and the 2006 and 2007 consent decrees referred to herein.

The report first highlights that the need for consistency and clarity dictates revision to the gifts and services statute. It then goes on to outline a proposed two pronged approach. The first requirement would be to establish rules and regulations that clearly set out impermissible trade practices and permissible exceptions, with some degree of discretion left to the SLA to assess any particular activity. This would also necessitate the SLA retaining authority to respond to changes within the industry to enhance or modify statutory exceptions accordingly. The second requirement would be to develop a solid enforcement bureau that would respond to complaints but also conduct routine and random compliance audits.

An assessment is made of how best to approach this task and the authors indicate a preference for a model based on the adoption of the consent orders into the scheme rather than a model based on the federal system. The final recommendation is to proceed with incorporation of the terms of the orders into the law, together with a more general amendment of the governing regulations, Bulletins and Divisional Orders so that restrictions apply uniformly to all licensed entities, insofar as practicable.

C. Example – California

The state of California also has a detailed set of restrictions on suppliers and wholesalers in their relationships with retailers, and it makes the violation of those provisions a misdemeanor offence. In return, however, a retailer who solicits, accepts, or permits to be accepted on his behalf any prohibited goods or services is immediately equally guilty:

> *§25504. Any person violating any provision of Sections 25500 to 25503, inclusive, is guilty of a misdemeanor, and any holder of any retail on-sale or retail off-sale license who solicits any such violation or accepts or permits to be accepted on his behalf and with his consent any of the prohibited matters, articles, or acts is guilty of a misdemeanor.* […] [3]

The California ABC has been active in investigations of industry members in all tiers when it comes to tied house issues. On the question of pay to play and slotting fees, for example, the following industry advisory was issued (emphasis added):

> ***Supplier Payments to Retail Licensees***
> *In response to recent industry inquiries, the Department is issuing this advisory to remind manufacturers, importers and wholesalers of alcoholic beverages that paying money,*

[3] CA Business and Professions Code Sections, Division 9. Alcoholic Beverages, Chapter 15. Tied-House Restrictions, §25504

directly or indirectly, to retail licensees for stocking and displaying alcoholic beverages, or for other support services, is a violation of the Alcoholic Beverage Control Act. The inquiries submitted to the Department concern payments often referred to as "slotting fees" or "slotting allowances." Retailers who solicit or accept such payments are also in violation of state law and will be subject to the same sanctions as the suppliers.

Paying money or giving free goods or other things of value to retailers for favorable product placement on store shelves or in retailer advertising circulars or coupon books, not only constitute violations of state law, but are considered unfair trade practices which create and foster anti-competitiveness and disorderly markets. Such practices also violate the Federal Alcohol Administration Act, which is administered by the Bureau of Alcohol, Tobacco and Firearms, and could subject violators to Federal sanctions.

During the past several years, the Department has conducted a number of investigations into illegal payment schemes and has taken formal disciplinary action against both suppliers and retailers. In some instances, the parties have agreed to settle their disciplinary matters by paying substantial fines.
Suppliers and retailers alike should be aware that tied-house statutes limit financial relationships between them. In addition to the overall prohibition against the payment or acceptance of slotting fees, payments for other purposes such as the placement of brand advertising and for sponsoring retailer-inspired contests or promotions could also violate the Alcoholic Beverage Control Act.

A recent decision in the Third District Court of Appeal, *Department of ABC v. ABC Appeals Board*,[4] looked at the ABC's interpretations of several tied house statutes, including supplier sponsored contests. In that decision, the Court looked at a situation where a retailer had solicited contributions from a wholesaler (on behalf of a supplier) for a retailer sponsored athletic contest that was described as a "marketing opportunity" for the supplier. The ABC had suspended the supplier's license over the payments made, despite the involvement of a third party "promoter" who accepted the payments.

Originally, the ABC had issued actions against and disciplined a number of suppliers as well as Chevy's Fresh Mex, the on-premise retailer. Three of the suppliers went on to challenge the discipline imposed on them, including Schieffelin (with the Grand Marnier brand). The suppliers in each case had been asked by Chevy's to sponsor the Chevy's Fresh Mex Runs, paying money in return for benefits including having their logo printed on advertising materials. Some of these advertising materials were displayed in the on-premise locations.

In its published decision, the Appeals Court stated that promotions companies whose primary goal is marketing and working on behalf of retail licensees cannot be considered bona fide professional or amateur organizations under Rule 106(i)(2). The ruling means that alcoholic beverage suppliers cannot legitimately pay contest sponsorship money to these marketing companies. The Court also supported the ABC's position on another key provision of

[4] *Dept. of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board (Schieffelin & Somerset Co.)* 2005 Cal. App. 4th 1195, LEXIS 682 (April 29, 2005)

California's tied-house statutes. The court ruled that money or other thing of value that a supplier gives or furnishes indirectly to a retail licensee through an intermediary working on behalf of the retailer is a violation of the law, thus reinforcing the fact that use of a third party company will not assist a retailer in avoiding liability.

IV. CONCLUSION

The most important thing for you is to make sure that your company's name is not in this presentation next year. The extent of the restrictions on dealings between the three tiers should make you very wary of any of your interactions with wholesalers and suppliers, particularly where any benefits are received by you. In addition, remember that the federal exceptions to the tied house laws do not apply uniformly across the country, and each state has its own particularities as to what is and is not acceptable.

Your basic compliance assessment needs to begin with anything that you receive from a supplier or wholesaler or that is done for you which is "of value" to your business. This concept is very broadly construed at all levels. Either you receive a gift or service or some of your ordinary and necessary business expenses are covered by someone else (e.g. where someone else pays for the printing of your beverage lists in return for preferred placement on them) and in return they also receive some benefit (such as preferred placement or advertising).

The use of a third party advertising or promotional company will not protect you. You need to be especially vigilant as the states and the TTB are stepping up their enforcement activities. At the end of the day, you need to remember that your retail license is on the line and you can be subject to significant penalties. Make sure that you know and understand the details of your wholesale and supplier relationships and can assess any potential wrongdoing.

EXHIBIT A – FEDERAL REGULATIONS

From 27 CFR Part 6 – "Tied House"

Subpart A—Scope of Regulations

§ 6.3 Application.

(a) *General.* This part applies only to transactions between industry members and retailers. It does not apply to transactions between two industry members (for example, between a producer and a wholesaler), or to transactions between an industry member and a retailer wholly owned by that industry member.

(b) *Transaction involving State agencies.* The regulations in this part apply only to transactions between industry members and State agencies operating as retailers as defined in this part. The regulations do not apply to State agencies with regard to their wholesale dealings with retailers.

§ 6.4 Jurisdictional limits.

(a) *General.* The regulations in this part apply where:

(1) The industry member induces a retailer to purchase distilled spirits, wine, or malt beverages from such industry member to the exclusion in whole or in part of products sold or offered for sale by other persons in interstate or foreign commerce; and

(2) If: (i) The inducement is made in the course of interstate or foreign commerce; or

(ii) The industry member engages in the practice of using an inducement to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products; or

(iii) The direct effect of the inducement is to prevent, deter, hinder or restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce.

(b) *Malt beverages.* In the case of malt beverages, this part applies to transactions between a retailer in any State and a brewer, importer, or wholesaler of malt beverages inside or outside such State only to the extent that the law of such State imposes requirements similar to the requirements of section 105(b) of the Federal Alcohol Administration Act (27 U.S.C. 205(b)), with respect to similar transactions between a retailer in such State and a brewer, importer, or wholesaler or malt beverage in such State, as the case may be.

Subpart C—Unlawful Inducements

General

§ 6.21 Application.

Except as provided in subpart D, it is unlawful for any industry member to induce, directly or indirectly, any retailer to purchase any products from the industry member to the exclusion, in whole or in part, of such products sold or offered for sale by other persons in interstate or foreign commerce by any of the following means:

(a) By acquiring or holding (after the expiration of any license held at the time the FAA Act was enacted) any interest in any license with respect to the premises of the retailer;

(b) By acquiring any interest in the real or personal property owned, occupied, or used by the retailer in the conduct of his business;

(c) By furnishing, giving, renting, lending, or selling to the retailer, any equipment, fixtures, signs, supplies, money, services or other thing of value, subject to the exceptions contained in subpart D;
(d) By paying or crediting the retailer for any advertising, display, or distribution service;
(e) By guaranteeing any loan or the repayment of any financial obligation of the retailer;
(f) By extending to the retailer credit for a period in excess of the credit period usual and customary to the industry for the particular class of transactions as prescribed in §6.65; or
(g) By requiring the retailer to take and dispose of a certain quota of any such products.

Interest in Retail License

§ 6.25 General.
The act by an industry member of acquiring or holding any interest in any license (State, county or municipal) with respect to the premises of a retailer constitutes a means to induce within the meaning of the Act.

§ 6.26 Indirect interest.
Industry member interest in retail licenses includes any interest acquired by corporate officials, partners, employees or other representatives of the industry member. Any interest in a retail license acquired by a separate corporation in which the industry member or its officials, hold ownership or are otherwise affiliated, is an interest in a retail license.

§ 6.27 Proprietary interest.
(a) *Complete ownership.* Outright ownership of a retail business by an industry member is not an interest which may result in a violation of section 105(b)(1) of the Act.
(b) *Partial ownership.* Less than complete ownership of a retail business by an industry member constitutes an interest in a retail license within the meaning of the Act.

Interest in Retail Property

§ 6.31 General.
The act by an industry member of acquiring an interest in real or personal property owned, occupied, or used by the retailer in the conduct of business constitutes a means to induce within the meaning of the Act.

§ 6.32 Indirect interest.
Industry member interest in retail property includes any interest acquired by corporate officials, partners, employees or other representatives of the industry member. Any interest in retail property acquired by a separate corporation in which the industry member or its officials, hold ownership or are otherwise affiliated, is an interest in retail property.

§ 6.33 Proprietary interest.
(a) *Complete ownership.* Outright ownership of a retail business by an industry member is not an interest that may result in a violation of section 105(b)(2) of the Act.
(b) *Partial ownership.* Less than complete ownership of a retail business by an industry member constitutes an interest in retail property within the meaning of the Act.

§ 6.34 Mortgages.
The acquisition of a mortgage on a retailer's real or personal property by an industry member constitutes an interest in the retailer's property within the meaning of the Act.

§ 6.35 Renting display space.
The renting of display space by an industry member at a retail establishment constitutes an interest in the retailer's property within the meaning of the Act.

Furnishing Things of Value

§ 6.41 General.
Subject to the exceptions listed in subpart D, the act by an industry member of furnishing, giving, renting, lending, or selling any equipment, fixtures, signs, supplies, money, services, or other things of value to a retailer constitutes a means to induce within the meaning of the Act.

§ 6.42 Indirect inducement through third party arrangements.
(a) *General.* The furnishing, giving, renting, lending, or selling of equipment, fixtures, signs, supplies, money, services, or other thing of value by an industry member to a third party, where the benefits resulting from such things of value flow to individual retailers, is the indirect furnishing of a thing of value within the meaning of the Act. Indirect furnishing of a thing of value includes, but is not limited to, making payments for advertising to a retailer association or a display company where the resulting benefits flow to individual retailers.
(b) *Exceptions.* An indirect inducement will not arise where the thing of value was furnished to a retailer by the third party without the knowledge or intent of the industry member, or the industry member did not reasonably foresee that the thing of value would have been furnished to a retailer. Things which may lawfully be furnished, given, rented, lent, or sold by industry members to retailers under subpart D may also be furnished directly by a third party to a retailer.

§ 6.43 Sale of equipment.
A transaction in which equipment is sold to a retailer by an industry member, except as provided in §6.88, is the selling of equipment in within the meaning of the Act regardless of how sold. Further, the negotiation by an industry member of a special price to a retailer for equipment from an equipment company is the furnishing of a thing of value within the meaning of the Act.

§ 6.44 Free warehousing.
The furnishing of free warehousing by delaying delivery of distilled spirits, wine, or malt beverages beyond the time that payment for the product is received, or if a retailer is purchasing on credit, delaying final delivery of products beyond the close of the period of time for which credit is lawfully extended, is the furnishing of a service or thing of value within the meaning of the Act.

§ 6.45 Assistance in acquiring license.
Any assistance (financial, legal, administrative or influential) given the retailer by an industry member in the retailer's acquisition of the retailer's license is the furnishing of a service or thing of value within the meaning of the Act.

Paying for Advertising, Display or Distribution Service

§ 6.51 General.
The act by an industry member of paying or crediting a retailer for any advertising, display, or distribution service constitutes a means to induce within the meaning of the Act, whether or not the advertising, display, or distribution service received by the industry member in these instances is commensurate with the amount paid therefor. This includes payments or credits to retailers that are merely reimbursements, in full or in part, for such services purchased by a retailer from a third party.

§ 6.52 Cooperative advertising.
An arrangement in which an industry member participates with a retailer in paying for an advertisement placed by the retailer constitutes paying the retailer for advertising within the meaning of the Act.

§ 6.53 Advertising in ballparks, racetracks, and stadiums.
The purchase, by an industry member, of advertising on signs, scoreboards, programs, scorecards, and the like at ballparks, racetracks or stadiums, from the retail concessionaire constitutes paying the retailer for an advertising service within the meaning of the Act.

§ 6.54 Advertising in retailer publications.
The purchase, by an industry member, of advertising in a retailer publication for distribution to consumers or the general public constitutes paying the retailer for advertising within the meaning of the Act.

§ 6.55 Display service.
Industry member reimbursements to retailers for setting up product or other displays constitutes paying the retailer for rendering a display service within the meaning of the Act.

§ 6.56 Renting display space.
A promotion whereby an industry member rents display space at a retail establishment constitutes paying the retailer for rendering a display service within the meaning of the Act.

Guaranteeing Loans

§ 6.61 Guaranteeing loans.
The act by an industry member of guaranteeing any loan or the repayment of any financial obligation of a retailer constitutes a means to induce within the meaning of the Act.

Extension of Credit

§ 6.65 General.
Extension of credit by an industry member to a retailer for a period of time in excess of 30 days from the date of delivery constitutes a means to induce within the meaning of the Act.

§ 6.66 Calculation of period.
For the purpose of this part, the period of credit is calculated as the time elapsing between the date of delivery of the product and the date of full legal discharge of the retailer, through the payment of cash or its equivalent, from all indebtedness arising from the transaction.

§ 6.67 Sales to retailer whose account is in arrears.
An extension of credit (for product purchases) by an industry member to a retailer whose account is in arrears does not constitute a means to induce within the meaning of the Act so long as such retailer pays in advance or on delivery an amount equal to or greater than the value of each order, regardless of the manner in which the industry member applies the payment in its records.

Quota Sales

§ 6.71 Quota sales.
The act by an industry member of requiring a retailer to take and dispose of any quota of distilled spirits, wine, or malt beverages constitutes a means to induce within the meaning of the Act.

§ 6.72 "Tie-in" sales.
The act by an industry member of requiring that a retailer purchase one product (as defined in §6.11) in order to obtain another constitutes a means to induce within the meaning of the Act. This includes the requirement to take a minimum quantity of a product in standard packaging in order to obtain the same product in some type of premium package, i.e., a distinctive decanter, or wooden or tin box. This also includes combination sales if one or more products may be purchased only in combination with other products and not individually. However, an industry member is not precluded from selling two or more kinds or brands of products to a retailer at a special combination price, provided the retailer has the option of purchasing either product at the usual price, and the retailer is not required to purchase any product it does not want. See §6.93 for combination packaging of products plus non-alcoholic items.

Subpart D—Exceptions

§ 6.81 General.
(a) *Application.* Section 105(b)(3) of the Act enumerates means to induce that may be unlawful under the subsection, subject to such exceptions as are prescribed in regulations, having due regard for public health, the quantity and value of articles involved, established trade customs not contrary to the public interest, and the purposes of that section. This subpart implements section 105(b)(3) of the Act and identifies the practices that are exceptions to section 105(b)(3) of the Act. An industry member may furnish a retailer equipment, inside signs, supplies, services, or other things of value, under the conditions and within the limitations prescribed in this subpart.
(b) *Recordkeeping Requirements.* (1) Industry members shall keep and maintain records on the permit or brewery premises, for a three year period, of all items furnished to retailers under §§6.83, 6.88, 6.91, 6.96(a), and 6.100 and the commercial records required under §6.101. Commercial records or invoices may be used to satisfy this recordkeeping requirement if all required information is shown. These records shall show:
    (i) The name and address of the retailer receiving the item;
    (ii) The date furnished;

(iii) The item furnished;

(iv) The industry member's cost of the item furnished (determined by the manufacturer's invoice price); and

(v) Charges to the retailer for any item.

(2) Although no separate recordkeeping violation results, an industry member who fails to keep such records is not eligible for the exception claimed.

§ 6.83 Product displays.

(a) *General.* The act by an industry member of giving or selling product displays to a retailer does not constitute a means to induce within the meaning of section 105(b)(3) of the Act provided that the conditions prescribed in paragraph (c) of this section are met.

(b) *Definition.* "Product display" means any wine racks, bins, barrels, casks, shelving, or similar items the primary function of which is to hold and display consumer products.

(c) *Conditions and limitations.* (1) The total value of all product displays given or sold by an industry member under paragraph (a) of this section may not exceed $300 per brand at any one time in any one retail establishment. Industry members may not pool or combine dollar limitations in order to provide a retailer a product display valued in excess of $300 per brand. The value of a product display is the actual cost to the industry member who initially purchased it. Transportation and installation costs are excluded.

(2) All product displays must bear conspicuous and substantial advertising matter on the product or the industry member which is permanently inscribed or securely affixed. The name and address of the retailer may appear on the product displays.

(3) The giving or selling of such product displays may be conditioned upon the purchase of the distilled spirits, wine, or malt beverages advertised on those displays in a quantity necessary for the initial completion of such display. No other condition can be imposed by the industry member on the retailer in order for the retailer to receive or obtain the product display.

§ 6.84 Point of sale advertising materials and consumer advertising specialties.

(a) *General.* The act by an industry member of giving or selling point of sale advertising materials and consumer advertising specialties to a retailer does not constitute a means to induce within the meaning of section 105(b)(3) of the Act provided that the conditions prescribed in paragraph (c) of this section are met.

(b) *Definitions* —(1) *Point of sale advertising materials* are items designed to be used within a retail establishment to attract consumer attention to the products of the industry member. Such materials include, but are not limited to: posters, placards, designs, inside signs (electric, mechanical or otherwise), window decorations, trays, coasters, mats, menu cards, meal checks, paper napkins, foam scrapers, back bar mats, thermometers, clocks, calendars, and alcoholic beverage lists or menus.

(2) *Consumer advertising specialties* are items that are designed to be carried away by the consumer, such as trading stamps, nonalcoholic mixers, pouring racks, ash trays, bottle or can openers, cork screws, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, post cards, pencils, shirts, caps, and visors.

(c) *Conditions and limitations.* (1) All point of sale advertising materials and consumer advertising specialties must bear conspicuous and substantial advertising matter about the product or the industry member which is permanently inscribed or securely affixed. The name and address of the retailer may appear on the point of sale advertising materials.

(2) The industry member may not directly or indirectly pay or credit the retailer for using or distributing these materials or for any expense incidental to their use.

§ 6.85 Temporary retailers.

(a) *General.* The furnishing of things of value to a temporary retailer does not constitute a means to induce within the meaning of section 105(b)(3) of the Act.

(b) *Definition.* For purposes of administering this part, a temporary retailer is a dealer who is not engaged in business as a retailer for more than four consecutive days per event, and for not more than five events in a calendar year.

§ 6.88 Equipment and supplies.

(a) *General.* The act by an industry member of selling equipment or supplies to a retailer does not constitute a means to induce within the meaning of section 105(b)(3) of the Act if the equipment or supplies are sold at a price not less than the cost to the industry member who initially purchased them, and if the price is collected within 30 days of the date of the sale. The act by an industry member of installing dispensing accessories at the retailer's establishment does not constitute a means to induce within the meaning of the Act as long as the retailer bears the cost of initial installation. The act by an industry member of furnishing, giving, or selling coil cleaning service to a retailer of distilled spirits, wine, or malt beverages does not constitute a means to induce within the meaning of section 105(b)(3) of the Act.

(b) *Definition.* “Equipment and supplies” means glassware (or similar containers made of other material), dispensing accessories, carbon dioxide (and other gasses used in dispensing equipment) or ice. “Dispensing accessories” include items such as standards, faucets, cold plates, rods, vents, taps, tap standards, hoses, washers, couplings, gas gauges, vent tongues, shanks, and check valves.

§ 6.91 Samples.

The act by an industry member of furnishing or giving a sample of distilled spirits, wine, or malt beverages to a retailer who has not purchased the brand from that industry member within the last 12 months does not constitute a means to induce within the meaning of section 105(b)(3) of the Act. For each retail establishment the industry member may give not more than 3 gallons of any brand of malt beverage, not more than 3 liters of any brand of wine, and not more than 3 liters of distilled spirits. If a particular product is not available in a size within the quantity limitations of this section, an industry member may furnish to a retailer the next larger size.

§ 6.92 Newspaper cuts.

Newspaper cuts, mats, or engraved blocks for use in retailers' advertisements may be given or sold by an industry member to a retailer selling the industry member's products.

§ 6.93 Combination packaging.

The act by an industry member of packaging and distributing distilled spirits, wine, or malt beverages in combination with other (non-alcoholic) items for sale to consumers does not constitute a means to induce within the meaning of section 105(b)(3) of the Act.

§ 6.94 Educational seminars.

An industry member may give or sponsor educational seminars for employees of retailers either at the industry member's premises or at the retail establishment. Examples would be seminars

dealing with use of a retailer's equipment, training seminars for employees of retailers, or tours of industry member's plant premises. This section does not authorize an industry member to pay a retailer's expense in conjunction with an educational seminar (such as travel and lodging). This does not preclude providing nominal hospitality during the event.

§ 6.95 Consumer tasting or sampling at retail establishments.

An industry member may conduct tasting or sampling activities at a retail establishment. The industry member may purchase the products to be used from the retailer, but may not purchase them from the retailer for more than the ordinary retail price.

§ 6.96 Consumer promotions.

(a) *Coupons.* The act by an industry member of furnishing to consumers coupons which are redeemable at a retail establishment does not constitute a means to induce within the meaning of section 105(b)(3) of the Act, provided the following conditions are met:
   (1) All retailers within the market where the coupon offer is made may redeem such coupons; and
   (2) An industry member may not reimburse a retailer for more than the face value of all coupons redeemed, plus a usual and customary handling fee for the redemption of coupons.

(b) *Direct offerings.* Contest prizes, premium offers, refunds, and like items may be offered by industry members directly to consumers. Officers, employees and representatives of wholesalers or retailers are excluded from particiption.

§ 6.98 Advertising service.

The listing of the names and addresses of two or more unaffiliated retailers selling the products of an industry member in an advertisement of that industry member does not constitute a means to induce within the meaning of section 105(b)(3) of the Act, provided:

(a) The advertisement does not also contain the retail price of the product (except where the exclusive retailer in the jurisdiction is a State or a political subdivision of a State), and

(b) The listing is the only reference to the retailers in the advertisement and is relatively inconspicuous in relation to the advertisement as a whole, and

(c) The advertisement does not refer only to one retailer or only to retail establishments controlled directly or indirectly by the same retailer, except where the retailer is an agency of a State or a political subdivision of a State.

§ 6.99 Stocking, rotation, and pricing service.

(a) *General.* Industry members may, at a retail establishment, stock, rotate and affix the price to distilled spirits, wine, or malt beverages which they sell, provided products of other industry members are not altered or disturbed. The rearranging or resetting of all or part of a store or liquor department is not hereby authorized.

(b) *Shelf plan and shelf schematics.* The act by an industry member of providing a recommended shelf plan or shelf schematic for distilled spirits, wine, or malt beverages does not constitute a means to induce within the meaning of section 105(b)(3) of the Act.

§ 6.100 Participation in retailer association activities.

The following acts by an industry member participating in retailer association activities do not constitute a means to induce within the meaning of section 105(b)(3) of the Act:

(a) Displaying its products at a convention or trade show;
(b) Renting display booth space if the rental fee is the same as paid by all exhibitors at the event;
(c) Providing its own hospitality which is independent from association sponsored activities;
(d) Purchasing tickets to functions and paying registration fees if the payments or fees are the same as paid by all attendees, participants or exhibitors at the event; and
(e) Making payments for advertisements in programs or brochures issued by retailer associations at a convention or trade show if the total payments made by an industry member for all such advertisements do not exceed $300 per year for any retailer association.

§ 6.101 Merchandise.

(a) *General.* The act by an industry member, who is also in business as a bona fide producer or vendor of other merchandise (for example, groceries or pharmaceuticals), of selling that merchandise to a retailer does not constitute a means to induce within the meaning of section 105(b)(3) of the Act, provided:
    (1) The merchandise is sold at its fair market value;
    (2) The merchandise is not sold in combination with distilled spirits, wines, or malt beverages (except as provided in §6.93);
    (3) The industry member's acquisition or production costs of the merchandise appears on the industry member's purchase invoices or other records; and
    (4) The individual selling prices of merchandise and distilled spirits, wines, or malt beverages sold in a single transaction can be determined from commercial documents covering the sales transaction.
(b) *Things of value covered in other sections of this part.* The act by an industry member of providing equipment, fixtures, signs, glassware, supplies, services, and advertising specialties to retailers does not constitute a means to induce within the meaning of section 105(b)(3) of the Act only as provided in other sections within this part.

§ 6.102 Outside signs.

The act by an industry member of giving or selling outside signs to a retailer does not constitute a means to induce within the meaning of section 105(b)(3) of the Act provided that:
(a) The sign must bear conspicuous and substantial advertising matter about the product or the industry member which is permanently inscribed or securely affixed;
(b) The retailer is not compensated, directly or indirectly such as through a sign company, for displaying the signs; and
(c) The cost of the signs may not exceed $400.

Subpart E—Exclusion

§ 6.151 Exclusion, in general.

(a) Exclusion, in whole or in part occurs:
    (1) When a practice by an industry member, whether direct, indirect, or through an affiliate, places (or has the potential to place) retailer independence at risk by means of a tie or link between the industry member and retailer or by any other means of industry member control over the retailer; and
    (2) Such practice results in the retailer purchasing less than it would have of a competitor's product.

(b) Section 6.152 lists practices that create a tie or link that places retailer independence at risk. Section 6.153 lists the criteria used for determining whether other practices can put retailer independence at risk.

§ 6.152 Practices which put retailer independence at risk.

The practices specified in this section put retailer independence at risk. The practices specified here are examples and do not constitute a complete list of those practices that put retailer independence at risk.

(a) The act by an industry member of resetting stock on a retailer's premises (other than stock offered for sale by the industry member).
(b) The act by an industry member of purchasing or renting display, shelf, storage or warehouse space (*i.e.* slotting allowance).
(c) Ownership by an industry member of less than a 100 percent interest in a retailer, where such ownership is used to influence the purchases of the retailer.
(d) The act by an industry member of requiring a retailer to purchase one alcoholic beverage product in order to be allowed to purchase another alcoholic beverage product at the same time.

§ 6.153 Criteria for determining retailer independence.

The criteria specified in this section are indications that a particular practice, other than those in §6.152, places retailer independence at risk. A practice need not meet all of the criteria specified in this section in order to place retailer independence at risk.

(a) The practice restricts or hampers the free economic choice of a retailer to decide which products to purchase or the quantity in which to purchase them for sale to consumers.
(b) The industry member obligates the retailer to participate in the promotion to obtain the industry member's product.
(c) The retailer has a continuing obligation to purchase or otherwise promote the industry member's product.
(d) The retailer has a commitment not to terminate its relationship with the industry member with respect to purchase of the industry member's products.
(e) The practice involves the industry member in the day-to-day operations of the retailer. For example, the industry member controls the retailer's decisions on which brand of products to purchase, the pricing of products, or the manner in which the products will be displayed on the retailer's premises.
(f) The practice is discriminatory in that it is not offered to all retailers in the local market on the same terms without business reasons present to justify the difference in treatment.

EXHIBIT B – ILLINOIS

Illinois Liquor Control Act of 1934 – Extract

(235 ILCS 5/6-6) (from Ch. 43, par. 123)

Sec. 6-6. Except as otherwise provided in this Act no manufacturer or distributor or importing distributor shall, directly, or indirectly, sell, supply, furnish, give or pay for, or loan or lease, any furnishing, fixture or equipment on the premises of a place of business of another licensee authorized under this Act to sell alcoholic liquor at retail, either for consumption on or off the premises, nor shall he or she directly or indirectly, pay for any such license, or advance, furnish, lend or give money for payment of such license, or purchase or become the owner of any note, mortgage, or other evidence of indebtedness of such licensee or any form of security therefor, nor shall such manufacturer, or distributor, or importing distributor, directly or indirectly, be interested in the ownership, conduct or operation of the business of any licensee authorized to sell alcoholic liquor at retail, nor shall any manufacturer, or distributor, or importing distributor be interested directly or indirectly or as owner or part owner of said premises or as lessee or lessor thereof, in any premises upon which alcoholic liquor is sold at retail.

No manufacturer or distributor or importing distributor shall, directly or indirectly or through a subsidiary or affiliate, or by any officer, director or firm of such manufacturer, distributor or importing distributor, furnish, give, lend or rent, install, repair or maintain, to or for any retail licensee in this State, any signs or inside advertising materials except as provided in this Section and Section 6-5. With respect to retail licensees, other than any government owned or operated auditorium, exhibition hall, recreation facility or other similar facility holding a retailer's license as described in Section 6-5, a manufacturer, distributor, or importing distributor may furnish, give, lend or rent and erect, install, repair and maintain to or for any retail licensee, for use at any one time in or about or in connection with a retail establishment on which the products of the manufacturer, distributor or importing distributor are sold, the following signs and inside advertising materials as authorized in subparts (i), (ii), (iii), and (iv):

(i) Permanent outside signs shall be limited to one outside sign, per brand, in place and in use at any one time, costing not more than $893, exclusive of erection, installation, repair and maintenance costs, and permit fees and shall bear only the manufacturer's name, brand name, trade name, slogans, markings, trademark, or other symbols commonly associated with and generally used in identifying the product including, but not limited to, "cold beer", "on tap", "carry out", and "packaged liquor".

(ii) Temporary outside signs shall be limited to one temporary outside sign per brand. Examples of temporary outside signs are banners, flags, pennants, streamers, and other items of a temporary and non-permanent nature. Each temporary outside sign must include the manufacturer's name, brand name, trade name, slogans, markings, trademark, or other symbol commonly associated with and generally used in identifying the product. Temporary outside signs may also include, for example, the product, price, packaging, date or dates of a promotion and an announcement of a retail licensee's specific sponsored event, if the temporary outside sign is intended to promote a product, and provided that the announcement of the retail licensee's event and the product promotion are held simultaneously. However, temporary outside signs may not include names, slogans, markings, or logos that relate to the retailer. Nothing in this subpart (ii) shall prohibit a distributor or importing distributor from bearing the cost of creating or printing a temporary outside sign for the retail licensee's specific sponsored event or from

bearing the cost of creating or printing a temporary sign for a retail licensee containing, for example, community goodwill expressions, regional sporting event announcements, or seasonal messages, provided that the primary purpose of the temporary outside sign is to highlight, promote, or advertise the product. In addition, temporary outside signs provided by the manufacturer to the distributor or importing distributor may also include, for example, subject to the limitations of this Section, preprinted community goodwill expressions, sporting event announcements, seasonal messages, and manufacturer promotional announcements. However, a distributor or importing distributor shall not bear the cost of such manufacturer preprinted signs.

(iii) Permanent inside signs, whether visible from the outside or the inside of the premises, include, but are not limited to: alcohol lists and menus that may include names, slogans, markings, or logos that relate to the retailer; neons; illuminated signs; clocks; table lamps; mirrors; tap handles; decalcomanias; window painting; and window trim. All permanent inside signs in place and in use at any one time shall cost in the aggregate not more than $2000 per manufacturer. A permanent inside sign must include the manufacturer's name, brand name, trade name, slogans, markings, trademark, or other symbol commonly associated with and generally used in identifying the product. However, permanent inside signs may not include names, slogans, markings, or logos that relate to the retailer. For the purpose of this subpart (iii), all permanent inside signs may be displayed in an adjacent courtyard or patio commonly referred to as a "beer garden" that is a part of the retailer's licensed premises.

(iv) Temporary inside signs shall include, but are not limited to, lighted chalk boards, acrylic table tent beverage or hors d'oeuvre list holders, banners, flags, pennants, streamers, and inside advertising materials such as posters, placards, bowling sheets, table tents, inserts for acrylic table tent beverage or hors d'oeuvre list holders, sports schedules, or similar printed or illustrated materials; however, such items, for example, as coasters, trays, napkins, glassware and cups shall not be deemed to be inside signs or advertising materials and may only be sold to retailers. All temporary inside signs and inside advertising materials in place and in use at any one time shall cost in the aggregate not more than $325 per manufacturer. Nothing in this subpart (iv) prohibits a distributor or importing distributor from paying the cost of printing or creating any temporary inside banner or inserts for acrylic table tent beverage or hors d'oeuvre list holders for a retail licensee, provided that the primary purpose for the banner or insert is to highlight, promote, or advertise the product. For the purpose of this subpart (iv), all temporary inside signs and inside advertising materials may be displayed in an adjacent courtyard or patio commonly referred to as a "beer garden" that is a part of the retailer's licensed premises.

A "cost adjustment factor" shall be used to periodically update the dollar limitations prescribed in subparts (i), (iii), and (iv). The Commission shall establish the adjusted dollar limitation on an annual basis beginning in January, 1997. The term "cost adjustment factor" means a percentage equal to the change in the Bureau of Labor Statistics Consumer Price Index or 5%, whichever is greater. The restrictions contained in this Section 6-6 do not apply to signs, or promotional or advertising materials furnished by manufacturers, distributors or importing distributors to a government owned or operated facility holding a retailer's license as described in Section 6-5.

No distributor or importing distributor shall directly or indirectly or through a subsidiary or affiliate, or by any officer, director or firm of such manufacturer, distributor or importing distributor, furnish, give, lend or rent, install, repair or maintain, to or for any retail licensee in this State, any signs or inside advertising materials described in subparts (i), (ii), (iii), or (iv) of this Section except as the agent for or on behalf of a manufacturer, provided that the total cost of

any signs and inside advertising materials including but not limited to labor, erection, installation and permit fees shall be paid by the manufacturer whose product or products said signs and inside advertising materials advertise and except as follows:

A distributor or importing distributor may purchase from or enter into a written agreement with a manufacturer or a manufacturer's designated supplier and such manufacturer or the manufacturer's designated supplier may sell or enter into an agreement to sell to a distributor or importing distributor permitted signs and advertising materials described in subparts (ii), (iii), or (iv) of this Section for the purpose of furnishing, giving, lending, renting, installing, repairing, or maintaining such signs or advertising materials to or for any retail licensee in this State. Any purchase by a distributor or importing distributor from a manufacturer or a manufacturer's designated supplier shall be voluntary and the manufacturer may not require the distributor or the importing distributor to purchase signs or advertising materials from the manufacturer or the manufacturer's designated supplier.

A distributor or importing distributor shall be deemed the owner of such signs or advertising materials purchased from a manufacturer or a manufacturer's designated supplier.

The provisions of Public Act 90-373 concerning signs or advertising materials delivered by a manufacturer to a distributor or importing distributor shall apply only to signs or advertising materials delivered on or after August 14, 1997.

No person engaged in the business of manufacturing, importing or distributing alcoholic liquors shall, directly or indirectly, pay for, or advance, furnish, or lend money for the payment of any license for another. Any licensee who shall permit or assent, or be a party in any way to any violation or infringement of the provisions of this Section shall be deemed guilty of a violation of this Act, and any money loaned contrary to a provision of this Act shall not be recovered back, or any note, mortgage or other evidence of indebtedness, or security, or any lease or contract obtained or made contrary to this Act shall be unenforceable and void.

This Section shall not apply to airplane licensees exercising powers provided in paragraph (i) of Section 5-1 of this Act.

TPP-2 Specific items or activities which have been reviewed by the Commission for "of value" violations

Ed. Note: Descriptions have been shortened or removed to minimize length, see full details at the ILCC website: http://www.state.il.us/lcc/

The following listing captures a large number of trade practices issues which have been submitted to the Commission for determination.

1) "Consumer Specialties"

Items commonly referred to as "consumer specialties" such as, for example, hats, t-shirts, jackets, sweat shirts, mugs, steins, key chains, sunglasses, lighters and the like, which are intended to be given to and received by the consumer, shall be distributed in person by the manufacturer, distributor, importing distributor or foreign importer licensee or by an employee of the manufacturer, non-resident dealer, distributor, importing distributor or foreign importer licensee so as to verify that the items are being received by the consumer.

Generally, a manufacturer, non-resident dealer, distributor, or importing distributor or foreign importer may not provide free items to a retailer, if such items inure to the benefit of the retailer, as such items would be considered something "of value". A retailer may purchase consumer advertising specialties from a manufacturer, distributor or importing distributor. If the retailer pays for the consumer advertising specialties, such items may be retailer specific.
Consumer advertising specialties may be provided for free to a retailer if the retailer gives such items away to the ultimate consumer. If the retailer does not pay for the consumer advertising specialties, then such items may be brand or promotion specific only, but may not be retailer specific.

2) Courtesy Wagons
Retail Licensees
Pursuant to Reg. Sec. 100.210, a distributor or manufacturer may provide a courtesy wagon or coil boxes and pumps, free of charge, one time per year, for a one day period, for picnics held by a retailer. The manufacturer or distributor, however, may not supply free beer, wine or spirits for such event. If the event is held off the retail licensee's premise, the retail licensee must first obtain a special use permit pursuant to 235 ILCS 5/5-1(q).
Special Event Retailers
Pursuant to Trade Practice Policy TPP-4, a manufacturer or distributor may not supply product directly to a special event retailer licensee. Pursuant to 235 ILCS 5/1-3.17.1 a Special Event Retailer is an educational, fraternal, political, civic, religious or non-profit organization which sells or offers for sale beer or wine, or both, only for consumption at the location and on the date(s) designated on a special event retail license. Such organization must obtain a Special Event Retailer's License pursuant to 235 ILCS 5/5-1(e). In addition, a manufacturer or distributor may supply, free of charge, coil boxes and pumps, to any special event licensee. Such services are not considered something "of value" under 235 ILCS 5/6-5 and 5/6-6.

3) Meal and Entertainment Expenses
Distributors, importing distributors and manufacturers may incur reasonable expenses related to meals and entertainment with retailers. This Commission considers reasonable business meal and entertainment expenses as a standard business practice and conduct not in violation of the intent of the "of value" provisions of 235 ILCS 5/6-5 or 5/6-6. The practice of paying for a retailer's meal or entertainment expenses will be permitted so long as the inducement does not result in full or partial exclusion of products sold by other industry members. A manufacturer distributor or importing distributor may incur these expenses so long as it does not provide such meals and entertainment repeatedly to one retailer or a group of retailers, does not exclude other Illinois retailers, and does not violate the purpose or spirit of the federal Tied House Laws.

4) Participation in Retail Association Activities
This Commission shall allow distributors or manufacturers to participate in the following retail association activities:
a) Display of their products at a convention or trade show;
b) Rent display booth space, if the rental fee is not excessive and is the same as paid by all exhibitors;
c) Provide hospitality, where it is done as a separate activity or in conjunction with a banquet or dinner;

d) Purchase tickets to functions and pay registration fees, if the fees paid are not excessive and are the same as paid by all exhibitors;
e) Make payments for advertisements in programs or brochures issued by a retailer or association at a convention or trade show, if the total payment for all such advertisements do not exceed $300 per year for any retail association.

5) Retailers Charging for Floor or Shelf Space

The practice of a retailer charging a distributor or manufacturer for the floor or shelf space upon which its alcoholic beverage products sit is a violation of 235 ILCS 5/6-5 which forbids a retailer from accepting anything "of value" directly or indirectly from any manufacturer or distributor. Likewise, 5/6-5 prohibits any manufacturer or distributor from giving anything "of value" directly or indirectly to any retailer. Thus, both the payment for floor or shelf space and the receipt of such payment are violations of the statute by both the retailer and the supplier.
This Commission will investigate practices in which payment of space for non-alcoholic products is used to ensure placement of alcoholic products in a retailer's premise. In addition, this Commission will consider it to be a violation by both the supplier and retailer if a third-party promotion company is used to pass payment for prominent floor or shelf space from the supplier to the retailer. This Commission believes that an allowance for payment for floor and shelf space would result in" bidding wars" between suppliers, thereby resulting in the discriminatory exclusion of brands in retailer outlets.

6) Assisting in Pricing and Providing Products To Retailers

Pursuant to 235 ILCS 5/6-5, manufacturers, distributors and importing distributors may not provide anything "of value" to a retailer, which includes services provided to a retailer. It is a violation for distributors and manufacturers to perform functions which are usually performed by the retailer in the normal operations of its business. Allowing manufacturers, distributors and importing distributors to perform such functions would be equivalent to the distributors or manufacturers performing employee functions for the retailer, and therefore will not be allowed. This Commission will review the such "services" provided to retailers on a case-by-case basis.
Manufacturers, distributors and importing distributors shall not affix prices to product on behalf of retailers. This prohibition maintains the historic division between manufacturers, distributors and retailers relative to the determination of prices of alcoholic liquor at the retail level. Additionally, this prohibition will avoid even the appearance of any attempt by manufacturers, distributors and importing distributors to obtain control over the operations of retailers. Pricing of product shall include distributors or manufacturers affixing price stickers directly to product or entering prices into retailer computer systems.
Manufacturers, distributors and importing distributors may however after stocking a shelf affix “shelf tags” which identify the product and price of the product; however, at no time shall a manufacturer, distributor or importing distributor delegate or contract this service to a third party. “Shelf tags” shall be considered advertising materials and are subject to the provisions of Section 6-6 of the Liquor Control Act. Therefore, manufacturer shall not directly or indirectly require the distributor or importing distributor to purchase “shelf tags” or directly or indirectly require the distributor or importing distributor to purchase any advertising materials from the manufacturer or the manufacturer’s designated supplier. If the stocking involves movement and a change in the placement of the product on the shelf, the “shelf tags” may be moved to the new position of the product.

7) “No Charge” Products

Recently agents of the Commission have been finding invoices upon retailer premises which appear to be evidence of providing products without payment. These invoice items are usually designated as “N/C.” As you know, Sec. 5/6-5 prohibits manufacturers, distributors and importing distributors from giving and retailers from receiving items “of value” within the meaning of the statute. Rule 100.280 provides that no licensee, shall give away any alcoholic liquor for commercial purposes.

The Commission agents regularly report to the Legal staff marketing practices upon which they observe during regular licensee inspections. Frequently the agents are given the explanation by the retailer and distributor that "this is the way business has always been done," however, Commission agents can only examine whatever documents are available at the retailer's premises when they perform their inspections and base their observations on those documents. If the distributor has advertised price promotions directly to its clients, or the price is based upon oral representations by the distributor's sales personnel, etc., there is no information upon which an agent could come to the conclusion that the "N/C" alcohol represents a product-based price reduction. It is suggested that the confusion created in the minds of our agents is created by bare identifier "N/C" alcohol.

The Commission also understands that distributors usually assign an internal code number to each invoice item reflecting "no charge" merchandise, but such internal coding, without explanation of same to the agent is meaningless. The addition of a legend of "N/C" with a numeric identifier also provides no more information to the agents than does the bare reference to "N/C" alcohol. A legend, such as, for example, "product in lieu of price reduction," or words to that effect, would more properly allow the Commission's agents to prepare reports of their findings after reviewing invoices and other documents, upon which reports the Legal Staff could come to reasoned decisions concerning a particular promotion.

It may turn out that the product is being given "no charge" for a valid reason, i.e. replacement of product broken upon delivery, a product in lieu of a reduction in price, etc.; however, it is incumbent upon the retailer and distributor to advise the agent of the reason for the apparent delivery of product without charge.

8) Retailer Warehousing

It is the policy of the Commission that a retailer may not warehouse alcohol on unlicensed business premises. […]

9) “Buckets”

The practice of distributors "providing" plastic buckets to retailers, which are used in serving multiple bottles of beer to a proper party, in accordance with Sec. 6-28(c)(6) of the Happy Hour law, is governed by the normal "of value" inquiry as well as reference to Sec. 6-6(iv), which provides that items, such as for example, "coasters, trays, napkins, glassware and cups shall not be deemed to be inside signs or advertising materials and may only be sold to retailers." Since these buckets fall within the general category of non-sign, non-advertising materials above, they may only be sold to retailers.

10) “Coolers”

[…] In an attempt to strike a balance between allowable activities and activities absolutely prohibited under 5/6-5 and 5/6-6, the Commission has come to the position that these coolers may be “provided” to retailers, however, they must be sold at fair market value. […]

11) Retailer storage on the licensed premises of wine purchased by a consumer

[…] Therefore, as long as:

(1) the sale of the product is complete before the storage arrangement is undertaken, and capable of objective documentation, which will negate the possibility of a prohibited consignment sale;
(2) the consumer/purchaser has taken legal title to the property;
(3) the product purchased is of a size which would be appropriate for a consumer, such as the two case limitation imposed upon reciprocal shipments of wine under sec. 5/6-29 of the Liquor Control Act, as opposed to a purchase of product which would be appropriate for resale; and
(4) there is a documented payment from the consumer to the retailer for the "storage" fee, pre-paid or at regular intervals, the Commission does not see other prohibitions against the transaction.

12) The listing of retail liquor licensees carrying the products of a manufacturer or distributor, importing distributor or foreign importer on the manufacturer's or distributor, importing distributor or foreign importer's website

[…] It is the Commission's considered opinion that the listing of the names and addresses of all retail liquor licensees who carry the products for sale of a manufacturer or distributor, importing distributor or foreign importer may be listed on the manufacturer's and/or distributor, importing distributor or foreign importer's websites, subject to the following conditions:

1) The retailer contacts the manufacturer, distributor or importing distributor or foreign importer to have its business information included in the retailer listing.
2) The retailer listing shall include only the business name, business address and telephone number. The inclusion of E-mail or website addresses is prohibited.
3) The retailer listing does not provide specific product information, but rather is a general statement that the retailers listed carry the products of the manufacturer or distributor, importing distributor or foreign importer.
4) The retailer listing shall include all retail licensees carrying the manufacturer's or distributor, importing distributor or foreign importer's products, which listing may be on a city, town or village basis, or zip codes, or by any system which assures that all retailers are listed.
5) The listing shall include no retailer information other than referenced in these subsections, and "sales" or "product promotions" or the like are strictly prohibited.
6) The inclusion of any and all retailers on the manufacturer's or distributor, importing distributor or foreign importer's website shall be at no direct or indirect cost to the retailer.
7) The manufacturer's, non-resident dealer's, distributor's, importing distributor's or foreign importer's website may provide a "link" to a website of any retail licensee, provided such linking is made available to all retailers requesting it.

13) "EOM", "EOY" etc. credits or rebates

Suppliers are paying EOM ("end of month") EOY ("end of year") or other variously identified credits ("rebates") for purchases at or in excess of agreed upon quantities. Is this an "of value" violation?

[…] It is the opinion of the Legal Division that this practice is not a violation of Sec. 5/6-5.

14) Carbon Dioxide Filters

EXHIBIT C – NEW YORK

Section 101(1)(c) of the Alcoholic Beverage Control Law:

§ 101. Manufacturers and wholesalers not to be interested in retail places. 1. It shall be unlawful for a manufacturer or wholesaler licensed under this chapter to:
(c) Make any gift or render any service of any kind whatsoever, directly or indirectly, to any person licensed under this chapter which in the judgment of the liquor authority may tend to influence such licensee to purchase the product of such manufacturer or wholesaler. The provisions of this paragraph shall not be construed to prevent a manufacturer or wholesaler from entertaining a licensee at lunch or dinner, or to prevent a manufacturer or wholesaler from participating in or supporting bona fide retailer association activities such as, but not limited to, associate memberships, dinners, conventions, trade shows, product tastings and product education where such participation is in reasonable amounts and does not reach proportions that indicate attempts to influence the purchase of products of contributing manufacturers and wholesalers by the members of such retailer associations.

Title 9. Executive Department – Subtitle B. Division of Alcoholic Beverage Control
Chapter I. Rules of the State Liquor Authority – Subchapter E. Miscellaneous Provisions
Part 86. Services and Gifts to Retailers

Section 86.1. Gifts and services restricted.
Section 101(1)(c) of the Alcoholic Beverage Control Law provides that no manufacturer or wholesaler shall make any gift or render any service of any kind whatsoever, directly or indirectly, to any licensee which, in the judgment of the Liquor Authority, may tend to influence such licensee to purchase the product of such manufacturer or wholesaler. This rule describes the types of services and things of value which the Liquor Authority has determined that manufacturers or wholesalers may furnish to retail licensees. No manufacturer or wholesaler shall, directly or indirectly, give any article or thing of value, or render any service of any kind, to any retailer, except as permitted by this rule. No retail licensee shall accept any such gift or service of any kind whatsoever, except as permitted by this rule.

Section 86.2. Advertising and promotions generally.
(a) Sections 86.3 through and including 86.6 of this Part describe the kinds of advertising and promotional materials that manufacturers or wholesalers may give, sell or install in a licensed retail premises. Unless specifically stated otherwise, such sections apply both to on-premises and off premises licensees.
(b) All of the dollar limitations contained in sections 83.3 through 86.6 will be adjusted annually by a cost adjustment factor, equal to the percentage change in the Bureau of Labor Statistics, Consumer Price Index. By using the cost adjustment factor, it is intended that the dollar limitations will remain identical to the dollar limitations established and adjusted annually by the Director, Federal Bureau of Alcohol, Tobacco & Firearms, and described in 27 Code of Federal Regulations, Part 6.82.

Section 86.3. Product displays.
(a) A product display means any wine racks, bins, barrels, casks, shelving and the like, from which alcoholic beverages are displayed and sold, and which bear conspicuous and prominent advertising matter.

(b) A manufacturer or wholesaler may give, rent, loan or sell product displays to a retail licensee. The total value of all product displays furnished by a manufacturer or wholesaler under this section may not exceed $100 per brand, or such other dollar limitations as may be established pursuant to section 86.2(b) of this Part, in use at any one time in any one retail establishment. The value of a product display is the actual cost to the manufacturer or wholesale licensee who initially purchased it. Transportation and installation costs are excluded.
(c) Manufacturers and wholesalers may not pool or combine their dollar limitations in order to provide a retailer a product display valued in excess of such dollar limitation.

Section 86.4. Inside signs.
(a) Inside signs include such things as posters, placards, designs, mechanical devices and window decorations which bear advertising matter, and have no secondary value and are of value to the retailer only as advertising.
(b) A manufacturer or wholesaler may furnish, give, rent, loan or sell inside signs to a retailer, provided that (i) the inside sign shall be used only in the windows or other internal portions of the retail establishment, and (ii)the manufacturer or wholesaler may not directly or indirectly pay or credit the retailer for displaying the inside sign or for any expense incidental to its operation.

Section 86.5. Retailer advertising specialties.
(a) A retailer advertising specialty is an item which bears advertising matter and is primarily valuable to the retailer as point-of sale advertising, but which has some secondary value to the retailer in connection with the operation of the business. Examples of retailer advertising specialties include trays, coasters, mats, menu cards, meal checks, paper napkins, foam scrapers, thermometers, clocks and calendars. The manufacturer or wholesaler may add the name or address of the retailer to the retailer advertising specialty.
(b) The total value of all retailer advertising specialties furnished by a manufacturer or wholesaler to a retailer may not exceed $50 per brand, or such other dollar limitation as may be established pursuant to section 86.2(b) of this Part, in any one calendar year per retail establishment. The value of a retailer advertising specialty is the actual cost of that item to the manufacturer or wholesaler who initially purchased it. Transportation and installation costs are excluded.
(c) Manufacturers and wholesalers may not pool or combine their dollar limitations in order to provide a retailer with retailer advertising specialties valued in excess of such dollar limitation.

Section 86.6. Consumer advertising specialties.
(a) A consumer advertising specialty is an item which bears advertising matter and which is designed for unconditional distribution by the retailer to the general public. Examples of consumer advertising specialties include ashtrays, bottle or can openers, cork screws, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, postcards and pencils.
(b) A manufacturer or wholesaler may furnish, give or sell consumer advertising specialties to on-premises retail licensees and off-premises beer licensees. The only consumer advertising specialties which may be furnished, given or sold to off-premises retail liquor or wine licensees are recipe books and matchbooks, which cannot contain the name or address of the retail licensee
(c) The retail licensee may not be paid or credited in any manner, directly or indirectly, for the distribution of consumer advertising specialties.
(d) There is no limitation on the amount or value of consumer advertising specialties which may be given to any retail licensee.

Section 86.7. Wine lists.
A manufacturer or wholesaler may furnish, give, rent, loan or sell wine lists or wine menus to retail on-premises licensees. The wine lists or wine menus may contain the name of the retail licensee.

Section 86.8. Educational seminars.
A manufacturer or wholesaler may give or sponsor educational seminars for employees of retailers, either at the manufacturer's or wholesaler's premises or at the retail premises. Examples would be seminars dealing with the use of a retailer's equipment, training seminars for employees of retailers, or tours of a manufacturer's or wholesaler's premises. This section does not authorize a manufacturer or wholesaler to pay a retailer's expenses in connection with an educational seminar.

Section 86.9. Contests and refunds.
A manufacturer or wholesaler may offer contest prizes, premium offers, refunds and like items directly to consumers, as long as officers, employees and representatives of other licensees are excluded from participation. Advertising or promotion of such contests, offers, refunds or the like may include, but need not be limited to, point-of-sale advertising, entry blanks and the like, placed in a retailer's premises.

Section 86.10. Advertising names of retailers.
The names and addresses of retailers selling the products of a manufacturer or wholesaler may be listed in an advertisement of that licensee if (a) the advertisement does not also contain the retail price of the product, and (b) the listing is the only reference to the retailer in the advertisement and is relatively inconspicuous in relation to the advertisement as a whole. Pictures or illustrations of retail establishments or laudatory references to retailers in manufacturer's or wholesaler's advertisements are not hereby authorized.

Section 86.11. Wine service decanters.
Decanters or carafes may be furnished, given or sold to an on-premises retail liquor or wine licensee, to be used only for the service of wine purchased from a manufacturer or wholesaler in containers not less than one gallon or more than 15 gallons. The cost of such decanters or carafes shall be considered together with the articles enumerated in subdivision (a) of section 86.2 of this Part, and included in the total cost prescribed therein. Such decanters or carafes shall have stated thereon the following:
(a) the statement "Wine Service Only", in not less than eight-point Gothic type;
(b) brand name;
(c) type of wine with geographical designation. Such decanters or carafes shall have a content of not less than eight fluid ounces nor more than 32 fluid ounces.

Section 86.12. Dummy display bottles.
Dummy display bottles of liquor or wine may be furnished, given or sold to retail liquor or wine licensees, provided each such bottle does not exceed five gallons in size, and further provided that each such bottle shall conform with the Federal regulations governing display bottles and bears a label identifying that the bottle is for display purposes only.

Section 86.13. Equipment.
Rods, vents, taps, hoses (rubber or metal), choke or restrictor coil not exceeding 10 feet in length to any one line, washers, couplings, vent tongues, valves, bungs, gauges, regulators, distributors, connectors, cellar thermometers, tap markers, bucks, rod brushes, air cocks, air tees, metal tubing to connect regulators and gauges, necessary parts to faucets including faucet bodies, spigots, unions and bottle openers may be furnished, given or sold to a retailer and installed in his establishment. Picnic pumps, gravity keys, tubs, portable bars, cold plates, gauges, portable cooling units and refrigerated trucks or trailers may be furnished, loaned or rented for temporary use at a particular function, but not for use by a retail licensee in the normal day-to-day operation of his business; carbon dioxide or other propellant may be furnished or sold for use in connection with the operation of such equipment.

Section 86.14. Emergency service.
The following kinds of service may be furnished, given or sold to a retailer:
(a) coil cleaning service at a time of emergency, when such retailer is unable to procure the service of the person outside the industry usually performing such work for the retailer;
(b) emergency repairs to tapping equipment and pressure system; and
(c) connecting precoolers in the spring season and disconnecting them in the autumn season.

Section 86.15. Books and records.
(a) Each manufacturer and wholesaler shall keep and maintain on his licensed premises adequate and accurate books and records of all gifts made and services rendered to retailers, which shall include:
(1) the name, address and license number of the retailer to whom such articles have been delivered, or on whose premises such articles have been installed, or any of such services have been rendered;
(2) an adequate description of the particluar article delivered or installed, or of the service rendered;
(3) the unit cost of such article or service; and
(4) the quantity of articles given or service rendered and the date when given or rendered.
(b) Such books and records must be kept on the licensed premises of the manufacturer or wholesaler for a period of two years and must be available for inspection by any authorized representative of the Liquor Authority. Manufacturers and wholesalers must keep such records in such manner that the total cost of the articles given or service rendered to a particular retailer can be readily determined at any time.

Section 86.16. Money gifts prohibited.
No manufacturer or wholesaler shall give or promise, directly or indirectly, to any retailer any fee, gratuity, rebate, credit or discount of any nature whatsoever for any gift or service enumerated in this Part.

Section 86.17. "Stocker" services (pack out).
The stocking, replenishing, rotating, displaying and price marking of beer or wine products by manufacturers and wholesalers who are authorized to sell such products in coolers, on shelves, and floor display areas of retail establishments and off-premises establishments licensed under Section 54 of the Alcoholic Beverage Control Law, from stocks of beer or wine products on

hand in such retail premises, or from stocks of beer being delivered thereto, shall not constitute a prohibited service within the contemplation of subdivision 1(c) of section 101 of the Alcoholic Beverage Control Law or of this section, provided:

(a) the services are confined to the beer or wine products sold by the manufacturer or wholesaler to such retailer; and

(b) such services are performed by employees of the manufacturer or wholesaler selling the beer or wine products to the retailer, and not by any other persons; and no payment, bonus, gift or other thing of value, shall be given or promised, directly or indirectly, to the retailer, or any of his employees, for such display area, shelves or space in the licensed premises.