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HOSPITALITY HAZARDS: LIQUOR LICENSES AND SUPPLIER SPONSORED EVENTS

PRESENTER



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- **Practices in the beer, wine and spirits sector, for supply and retail clients, in the Beverage Alcohol Team at Nixon Peabody LLP**
- **Worked for the International Wine Organization in Paris and regularly participates as a judge at international wine competitions**
- **Admitted in New York and current applicant for the California Bar in addition to being Australian qualified and admitted**

LEGACIES OF PROHIBITION



- Saloons and supplier dominance led to Prohibition
- Rockefeller report promoting control or clear separation under a license system
- Three tier system
 - Exclusive outlets/consignment sales
 - Tied house
 - Trade practices
- Limited federal retail and beer jurisdiction

TIED HOUSE

- No common ownership of licensees at different tiers
- Can be as little as 1%
- Difficulty in structuring private equity deals in particular and difficult to manage with large chains with many owners
- No financial interest



TRADE PRACTICES

- **Examples of prohibited activities:**
 - **Furnishing things of value (including indirectly)**
 - **Advertising or display services**
- **Some of the exceptions**
 - **Product displays**
 - **Point of sale and specialties**
 - **Beverage lists**
 - **Equipment and supplies**
 - **Samples, education and tastings**
 - **Coupons and rebates**
 - **Stocking, pricing and rotating**
 - **Outside signs**



TTB LAS VEGAS CASINOS INVESTIGATION - 2011

- Looked at pay to play activities at Harrah's casinos in NV
- Slotting allowances
- Third party marketing agency issue
- Biggest ever fines - \$1.9 million
 - › Diageo \$650,000
 - › Pernod Ricard \$300,000
 - › Moet Hennessey \$275,000
- Inducements including permitted exceptions
- No retailer penalties



SAMPLES, EDUCATION AND TASTINGS – FEDERAL RULES

- Educational seminars
 - Supplier/wholesaler may give or sponsor educational seminars for employees of retailers, either at the industry member's premises or at the retail establishment
 - Examples: use of retailer's equipment, training seminars for employees, tours of plant premises
 - Cannot pay retailer's expenses in attending (travel/lodging)
 - Nominal hospitality
- Tasting/sampling
 - Supplier/wholesaler may conduct tasting or sampling activities at a retail establishment
 - May purchase products to be used from retailer, but not for more than the ordinary retail price
- Events

NEW YORK

- Educational seminars
 - Uses federal language
- Tastings
 - Various tasting and sampling rules for licensees and permittees
- Events
 - Some considerable confusion
 - Various sources
 - In state of flux



NY – TASTINGS RULES

■ Licensees:

- A winery or farm winery may conduct tastings of NY wine at on-premise locations without having to obtain a permit.
- A cider producer or wholesaler may conduct tastings of NY cider at on-premise locations without having to obtain a permit.

■ Supplier/marketing permit:

- Manufacturers and importers, as well as wholesalers licensed in NY
- Can provide samples to consumers; manufacturers can accept retail orders for wholesaler, and sell bottles to consumers during tastings
- Individual function must be reported 15 days before the event
- No fee can be charged to a consumer
- Samples limited
- Permit holder provides all alcohol for event and shall remove all remaining product at the conclusion of the event.

NY – STATE INVESTIGATION

- New York AG Investigation – Consent orders – 2006
- AG’s office led investigation into the industry
- Found more than \$59 million in illegal benefits paid to retailers between 2003 and 2005
- Charges brought in three separate cases against suppliers, wholesalers and retailers – cream of the industry



- Consent orders filed
 - Fines of over \$2 million for suppliers
 - Fines of over \$1.5 million for wholesalers
 - Fines of over \$0.5 million for off premise retailers
- Current SLA Chairman
- Applied universally
- “Death penalty”

NY – CONSENT ORDER EVENTS

- Issue of payments to retailers, AMEX checks, credit card swipes
- No payments unless expressly legal
- Restricts ability to pay retailer for any type of supplier event
- Supplier cannot buy alcohol from a retailer except:
 - Consumers on an individual or incidental basis
 - Wine or liquor actually consumed by supplier's employees, private guests or retailer's employees during the following activities: *bona fide* business meetings or business entertainment, or private invitation-only events closed to the general public at locations of on-premise licensees
 - Promotional events open to general public, no more than \$500 (excluding gratuity of 20% or less) per licensed premises per event, and no more than six events per calendar year per retail premises (must notify SLA)
 - Cannot pay more than retailer's regular retail price

NY – DRAFT EVENTS ADVISORY

- Initiative in 2011 to develop an advisory concerning events
- For some time, the SLA was enforcing on the basis of the draft advisory
- Industry consultation has been unsuccessful so far and industry is recommended to follow consent orders
- Some major benefits in draft over the consent orders:
 - Increase from \$500 to \$600 on promotional event spend and maximum six increased to ten events
 - Clarification on what is meant by “private event” and “invitation”
 - Advice for sponsorship of product by supplier to non-licensees
 - Unrestricted private events at unlicensed premises

CALIFORNIA

- Educational seminars
 - Permitted in line with federal rules
- Tastings
 - May engage in consumer instruction and sampling
 - Limited samples
 - Must remove unfinished products
 - Limited advertisement
- Events
 - Trade spending and sampling not permitted
 - Cannot give free alcohol at promotion night or otherwise
 - No free entertainment at bar nights
 - Can give coupons (not full value)



CA CASE – SCHIEFFELIN

- On-premise retailer solicited sponsorship for an athletics contest – runs and bathtub regattas
- Regulations provide that suppliers may sponsor contests, races, tournaments, and other similar activities on or off licensed premises. Sponsorships can only be payments of money to bona fide amateur or professional organizations established for the encouragement and promotion of the activities involved
- Suppliers' logos were displayed on advertising, including promotions in store
- Disciplinary proceedings issued by ABC against suppliers and the retailer, supplier's sales permit suspended for two weeks
- Confirmed that third party promotional payments were equally illegal



- Educational seminars
- Tasting/sampling
 - Retailer:
 - not to exceed 3 liters
 - retailer may not sample the product on the premises, unless wholesaler is present
 - Consumer:
 - supplier may participate in and conduct product tastings at retail premises and may open, touch and pour alcoholic beverages, make a presentation and answer questions
 - alcohol tasted must be purchased from retailer on whose premises tasting is held;
 - limited samples
 - specific guidelines for tastings must be followed
- Events

TX – SUPPLIER HOSTED EVENTS

- Can hold a promotional consumer activity on retailer's premises
- **HOWEVER**, cannot pre-announce it to consumers
- Considered to be driving business
- Can purchase alcohol for consumers provided that beverages consumed on retailer premises in the presence of the purchaser
- Such purchases shall not be excessive
- Supplier reps must have permits



TX – HAPPY HOUR LAWS

- Introduced in 2000
- Prohibits:
 - no two for one deals
 - no more than one free drink to an “identifiable segment of the population” per day
 - increasing the volume of a drink without proportionate price increase
 - selling unlimited number of drinks during set period for fixed price
 - no “buy in” price and no price contingent on amount consumed
 - no reduction of drink prices after 11:00 p.m
 - no more than two drinks to one person at one time
 - no entry fee or cover to recover losses because of reduced or low drink prices
 - encouraging or permitting any game or contest, involving drinking or the awarding of drinks as prizes

TX – HAPPY HOUR LAWS (CONT.)

- Private party exception
- Permits:
 - can give a free birthday drink (without advertising)
 - can offer free or reduced-price food or entertainment, provided the offer is not based on purchase of alcohol
 - can include alcohol as part of a meal or hotel/motel package
 - can sell bottle to individual consumers during service of a meal
 - can sell, serve or deliver alcohol in pitchers, carafes, buckets or similar containers to two or more consumers at one time



MASSACHUSETTS

- Educational seminars
 - Permitted under federal rules
- Special tastings rules (for supplier involvement, wine only)
 - Run by retailer. Suppliers may participate, handle, serve or dispense wine, but do so under authority and supervision of the retailer
 - Supplier may provide wine to retailer, free of charge for use in conducting *bona fide* tastings
 - No more than 9 liters during 30 days and must be accompanied by an invoice
 - Wine not used must be removed by the supplier and accompanied by an invoice stating amount not used
 - A Certificate of Compliance Holder may lawfully provide a licensed wholesaler with wine at no charge for use at such tastings
- Events



MA – HAPPY HOUR LAWS

- Dates back to 1984
- Prohibits:
 - free drinks or more than two drinks to one person at one time
 - selling at price less than price regularly charged
 - selling unlimited number of drinks during set period for fixed price
 - selling beer or mixed drinks in pitcher except to two or more persons
 - increasing the volume of a drink without proportionate price increase
 - encouraging or permitting any game or contest, involving drinking or the awarding of drinks as prizes
- Exception for “private functions”
- Debate has started again
- Casino bill passed in 2011 but without happy hour



ILLINOIS

■ Educational seminars

■ Tastings

- if retailer has purchased product, manufacturer or distributor may pay for product at retailer's cost
- limited samples
- supplier may furnish, free of charge to the retailer, cups and napkins in conjunction with product tastings, samplings and test marketing
- any product remaining after the tasting or testing must be taken away



■ Events

- Suppliers may sponsor an event at a live entertainment venue provided no payment made to the retailer, and any reference to the retailer in any advertising is incidental
- Special conditions for retail events

IL – SUPPLIER HOSTED EVENTS

- Supplier must pay all advertising and promotion costs (can use third party promoter under special conditions)
- Retailer may not restrict other alcohol liquor
- Retailers must be given equal opportunities to host
- Suppliers may not repeatedly sponsor events for one retailer or group of retailers
- Affidavits must be filed
- Prior approval for advertising and promotion over \$500 and no more than \$2,500 in total for each location



IL – HAPPY HOUR LAWS

- Dates from 1989, revised November 2011
- Prohibits:
 - more than two drinks to one person at one time, and two for one deals
 - pitchers to person alone but bottle/carafe/flight of wine OK
 - selling unlimited number of drinks during set period for fixed price
 - selling at price less than price regularly charged
 - increasing the volume of a drink without proportionate price increase
 - note that can increase drink prices in lieu of cover charge if special entertainment, which is not regularly scheduled (like house band)
 - game or contest, involving drinking or awarding of drinks as prizes
- Special “meal package” and “hotel package” options
 - Incidental to meal or hotel stay
 - Cannot describe as “free” or “complimentary”

IL – PRIVATE FUNCTIONS

- **“Private function” exception**
 - **Must be “pre-arranged”**
 - **Predetermined finite guest list of invitees**
 - **For specific social or business occasion**
 - **Cannot advertise to general public or on social media**
 - **Note that if there is a door entry fee or ticket for the event, it will be evidence that the event is not private**
 - **Must be physically separate, wristbands not sufficient**



KEY TAKEAWAYS

- Talk to counsel
- State by state analysis needs to be done
- Be careful in any supplier relationship



QUESTIONS?

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