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State and Federal Alcohol Compliance Update: TTB Enforcement and Related Matters

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**THE ^{HL}HOSPITALITY LAW
^{HL}CONFERENCE SERIES 2.0**

What is Happening

- Rigorous Trade Practice Education and Enforcement Program at TTB
- State Cooperation and Participation
- Visits and Document Requests (informal and subpoenas)





Areas of Legal Inquiry

- Tied House
- Exclusive Outlet
- Commercial Bribery
- Consignment Sales
- Slotting Fees
- Sponsorship Agreements Tied to Exclusive Arrangements
- Use of Third Parties to provide things of value to retailers





Tied House

- Suppliers may not exert undue influence over retailers
- Suppliers may not give retailers “things of value” – limited exceptions exist
- Suppliers may not practice “exclusion”
- Suppliers may not pay or credit the retailer for any advertising, display, or distribution service

*Items Given By Suppliers Which Are Not
Specific Exceptions = Prohibited Inducements*

A cityscape with various buildings and greenery is visible in the background. A prominent brown banner with a black border is overlaid on the image, containing the title 'Exclusive Outlet'.

Exclusive Outlet

- Prohibited Requirements
- Paying or influencing a retailer, through some means, to carry one supplier's product over others
- Preventing a retailer from purchasing one product so as to coerce the purchase of another

*A Prohibited Inducement or Requirement
Resulting in Exclusion =
A Tied House Violation*

A cityscape with various buildings and greenery is visible in the background. A prominent brown banner with a black border is overlaid on the image, containing the title 'Commercial Bribery'.

Commercial Bribery

- ❖ Inducements to purchase products to the exclusion of others in interstate/foreign commerce
- ❖ Inducements to restrain or prevent transactions in interstate/foreign commerce
- ❖ Offering/Giving any bonus, premium, or compensation to any officer, employee, or representative of any trade buyer
- ❖ Compromises retailer independence

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Consignment Sales

- ❖ Prohibited conditional sales with the right of return
- ❖ Sales conditioned on the sale of other products
- ❖ Sales “other than a bona fide sale” including sales in connection with which the industry member purchases or rents the display, shelf, storage or warehouse space to be occupied by such products at premises owned or controlled by the retailer.

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Slotting Fees – Issues Under Scrutiny

- ❖ Participation in promotional programming where the furnishing of “Subpart D exception” items is tied to preferential shelf/display/tap space
- ❖ Participating in or managing a retailer’s purchasing/pricing decisions/shelf stocking decisions involving competing products
- ❖ Furnishing human resources to perform merchandising services beyond stocking, pricing, or rotation of the supplier’s own product



Sponsorship Agreements Tied to Exclusive Arrangements

- ❖ Payments for Entertainment and Marketing Support at a Retail Venue outside of tied house exception guidelines.
- ❖ Supplier presence/sponsorship at events directed at excluding other brands.
- ❖ Purchase of convention or meeting space on different terms than other sponsors and/or with benefits flowing back to the retailer.



Use of Third Parties to Provide Things of Value to Retailers

- Retailers may engage third party promotions agencies to manage supplier marketing support
- Laws regulate the type and amount of support retailers may receive from licensed suppliers of alcohol beverages, and having the agency does not change those laws
- Do not use ad agencies to get things for you from the suppliers that you can't get directly from them



QUESTIONS?



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