

INDUSTRY CIRCULAR

OFFICE OF THE COMMISSIONER OF INTERNAL REVENUE
ALCOHOL AND TOBACCO TAX DIVISION



WASHINGTON 25, D. C.

Industry Circular No. 62-32

October 8, 1962

UNFAIR COMPETITION AND UNLAWFUL PRACTICES UNDER THE FEDERAL ALCOHOL ADMINISTRATION ACT.

Proprietors of Distilled Spirits Plants,
Wine Producers, Brewers, Wholesale Dealers,
Importers, and others concerned:

Purpose. The purpose of this Industry Circular is to direct the attention of top executive management and all individuals responsible for the sales promotion practices of firms engaged in the production, importation, and wholesale distribution of distilled spirits, wines, and malt beverages to the scope of the trade practice provisions of the Federal Alcohol Administration Act and the penalties provided by that Act for violations thereof.

An apparent disregard of these provisions on the part of the sales staffs of many permittees is indicated by the increasing number of investigations required to have been made by Alcohol and Tobacco Tax. In many instances those primarily responsible for the sales practices of their companies have, in an attempt to avoid or mitigate liability, claimed either (1) an ignorance of the requirements of the law, or (2) an ignorance of their firm's marketing practices.

General Comment. The provisions of the Federal Alcohol Administration Act, having been in effect since 1935, should be familiar to all persons ultimately responsible for sales promotion and management. Such persons should also be aware of the penalties provided by that Act for violations thereof, including the permit suspension and revocation sanctions.

Moreover, it can be assumed that a person who is ultimately responsible for his company's merchandising and management policies would have to be familiar with the nature and scope of his company's marketing practices and would know whether they are contrary to any of the provisions of the Federal Alcohol Administration Act, so that his company would not jeopardize its privilege of doing business under its basic permit.

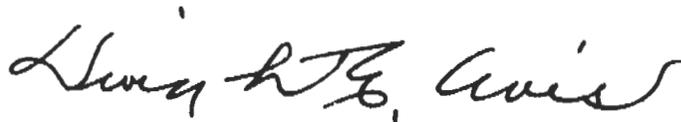
Background. Excerpts of the pertinent provisions of the Federal Alcohol Administration Act, of the penalties which may be imposed thereunder, and of regulations issued pursuant to Section 5(b) of that Act, are attached for convenient reference. It should

be noted that while the regulations permit the furnishing of certain items to retail dealers, the regulations specify that such furnishing may not be conditioned, directly or indirectly, on the retailer's purchases of alcoholic beverages.

As will be noted, the Federal Alcohol Administration Act does not prohibit bona fide discounts or price concessions.

Conclusion. In the past, cases involving violations of the trade practice provisions of the Federal Alcohol Administration Act have resulted in permit suspensions and the acceptance of offers in compromise in substantial amounts. In addition, as a condition of such a negotiated settlement, the companies involved have frequently been required to stipulate with the Internal Revenue Service that in the event of repetitious violations, the United States may cause a consent decree to be entered enjoining the repetition of such violation. The recurrence of questionable trade practices in some areas (whether initiated by the wholesaler or his supplier) leads to the impression that past regulatory action by the Government has not constituted an adequate deterrent and that more stringent action may have to be taken with respect to such violations in the future.

Inquiries. Any inquiry in response to this Circular, or any inquiry concerning the propriety of a promotional scheme or device (whether originating with the wholesaler or his supplier), should refer to the number of this Circular and should be addressed to the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington 25, D. C. (Attention: CP:AT:B).



Dwight E. Avis

Director, Alcohol and Tobacco Tax Division

Attachment

FEDERAL ALCOHOL ADMINISTRATION ACT

Section 5(b)(3)

UNFAIR COMPETITION AND UNLAWFUL PRACTICES

SEC. 5. 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:

(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:

(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;

In the case of malt beverages, the provisions of subsections (a), (b), (c), and (d) shall apply to transactions between a retailer or trade buyer in any State and a brewer, importer, or wholesaler of malt beverages outside such State only to the extent that the law of such State imposes similar requirements with respect to similar transactions between a retailer or trade buyer in such State and a brewer, importer, or wholesaler of malt beverages in such State, as the case may be. In the case of malt beverages, the provisions of subsections (e) and (f) shall apply to the labeling of malt beverages sold or shipped or delivered for shipment or otherwise introduced into or received in any State from any place outside thereof, or the advertising of malt beverages intended to be sold or shipped or delivered for shipment or otherwise introduced into or received in any State from any place outside thereof, only to the extent that the law of such State imposes similar requirements with respect to the labeling or advertising, as the case may be, of malt beverages not sold or shipped or delivered for shipment or otherwise introduced into or received in such State from any place outside thereof.

PERMITS

Section 4

(d) A basic permit shall be conditioned upon compliance with the requirements of section 5 (relating to unfair competition and unlawful practices) and of section 6 (relating to bulk sales and bottling), with the twenty-first amendment and laws relating to the enforcement thereof, and with all other Federal laws relating to distilled spirits, wine, and malt beverages, including taxes with respect thereto.

(e) A basic permit shall by order of the Secretary of the Treasury, after due notice and opportunity for hearing to the permittee, (1) be revoked, or suspended for such period as the Secretary of the Treasury deems appropriate, if the Secretary of the Treasury finds that the permittee has willfully violated any of the conditions thereof, provided that for a first violation of the conditions thereof the permit shall be subject to suspension only; or (2) be revoked if the Secretary of the Treasury finds that the permittee has not engaged in the operations authorized by the permit for a period of more than two years; or (3) be annulled if the Secretary of the Treasury finds that the permit was procured through fraud, or misrepresentation, or concealment of material fact. The order shall state the findings which are the basis for the order.

PENALTIES

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SEC. 7. The District Courts of the United States, the District Court of the United States for the District of Columbia, and the United States court for any Territory, of the District where the offense is committed or threatened or of which the offender is an inhabitant or has his principal place of business, are hereby vested with jurisdiction of any suit brought by the Attorney General in the name of the United States, to prevent and restrain violations of any of the provisions of this Act. Any person violating any of the provisions of section 3 or 5 shall be guilty of a misdemeanor and upon conviction thereof be fined not more than \$1,000 for each offense.

The Secretary of the Treasury is authorized, with respect to any violation of this Act, to compromise the liability arising with respect to such violation (1) upon payment of a sum not in excess of \$500 for each offense, to be collected by the Secretary of the Treasury and to be paid into the Treasury as miscellaneous receipts, and (2) in case of repetitious violations and in order to avoid multiplicity of criminal proceedings, upon agreement to a stipulation that the United States may, on its own motion upon five days' notice to the violator, cause a consent decree to be entered by any court of competent jurisdiction enjoining the repetition of such violation.¹²

EXCEPTIONS

§ 6.21 General.

An industry member may furnish to a retailer, under the conditions and within the limitations prescribed, the equipment, signs, supplies, services, or other things of value specified in §§ 6.22-6.31: *Provided*, That such furnishing is not conditioned directly or indirectly on the purchase of distilled spirits, wine, or malt beverages.

§ 6.22 Equipment.

Tapping accessories, such as rods, vents, taps, hoses, washers, couplings, vent tongues and check valves may be sold to a retailer and installed in his establishment if such tapping accessories are sold at a price not less than the cost thereof to the industry member selling the same, and if the price thereof is collected within 30 days of the date of sale.

§ 6.23 Inside signs: wine and malt beverages.

Signs, posters, placards, designs, devices, decorations or graphic displays, bearing advertising matter and for use in the windows or elsewhere in the interior of a retail establishment, may be given, rented, loaned, or sold to a retailer by an industry member engaged in business as a rectifier, blender, producer, bottler, importer or wholesaler, of wine, or as a brewer, importer or wholesaler, of malt beverages, if they have no value to the retailer except as advertisements and if the total value of all such materials furnished by any industry member and in use at any one time in any retail establishment does not exceed \$10, including all expenses incurred directly or indirectly by any industry member in connection with the purchase, manufacture, transportation, assembly, and installation of such materials and of accessories thereto: *Provided*, That the industry member shall not directly or indirectly pay or credit the retailer for displaying such materials or for any expense incidental to their operation.

§ 6.23a Inside signs: distilled spirits.

Signs, posters, placards, designs, devices, decorations or graphic displays, bearing advertising matter and for use in the windows or elsewhere in the interior of a retail establishment, may be given, rented, loaned, or sold to a retailer by an industry member engaged in business as a distiller, rectifier, blender, producer, importer, wholesaler, bottler, or warehouseman and bottler, of distilled spirits, (a) if they have no value to the retailer except as advertisements, (b) if the total value of all such materials furnished by any industry member and in use in any one retail establishment at any one time does not exceed \$15 in the case of materials used in window displays, or does not exceed \$30 in the case of materials used elsewhere than in the windows, and (c) if the cost of installation of such materials does not exceed that which is usual and customary in that locality: *Provided*, That the industry member shall not directly or indirectly pay or credit the retailer for displaying such materials or for any expense incidental to their operation.

§ 6.24 Supplies.

Carbonic acid gas or ice may be sold to a retailer, if sold in accordance with the reasonable open market price thereof in the locality where sold, and if the price thereof is collected within 30 days of the date of sale.

§ 6.25 Coil cleaning service.

Coil cleaning service may be furnished, given, or sold to a retailer of malt beverages.

§ 6.26 Advertising service.

The names and addresses of retailers selling the products of any industry member may be listed in an advertisement of such industry member, if such listing is the only reference to any retailer in the advertisement and is relatively inconspicuous in relation to the advertisement as a whole.

§ 6.27 Consumer advertising specialties.

Consumer advertising specialties, such as ash trays, bottle or can openers, corkscrews, paper shopping bags, matches, printed recipes, wine lists, leaflets, blotters, post cards, and pencils, which bear advertising matter, may be furnished, given, or sold to a retailer for unconditional distribution by him to the general public, if the retailer is not paid or credited in any manner directly or indirectly for such distribution service.

§ 6.28 Retailer advertising specialties.

Retailer advertising specialties, such as trays, coasters, beer mats, menu cards, meal checks, paper napkins, foam scrapers, back bar mats, tap markers, thermometers, clocks, and calendars, which bear advertising matter, and which are primarily valuable to the retailer as point of sale advertising media, may be furnished, given, or sold to a retailer if the aggregate cost to any industry member of such retailer advertising specialties furnished, given, or sold in connection with any one retail establishment in any one calendar year does not exceed \$10.

§ 6.29 Samples.

Not more than 2 gallons of any brand of malt beverages, not more than 1 pint of any brand of distilled spirits, and not more than 1 gallon of any brand of wine, may be furnished or given as a sample to a retailer who has not previously purchased that particular product: *Provided*, That 2 quarts of any brand of distilled spirits may be furnished or given as a sample to any agency of a State or political subdivision thereof which has not purchased that particular product.

§ 6.30 Newspaper cuts.

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

§ 6.31 Merchandise.

Merchandise, such as groceries and drugs, may be sold to a retailer, without limit as to quantity or value, by an industry member who is also engaged in business as a bona fide vendor of such merchandise, if such merchandise is sold in accordance with the reasonable open market price thereof in the locality where sold, and if such merchandise is not sold in combination with distilled spirits, wine, or malt beverages and is itemized separately on the industry member's invoices and other records: *Provided*, That equipment, fixtures, signs, supplies, and consumer and retailer advertising specialties may be furnished only as provided elsewhere in this part.