

TTB Industry Circular - Industry Compliance with Trade Practice Laws and Regulations

Source: TTB

November 8, 2018

To: Proprietors of Bonded Wineries, Bonded Wine Cellars, Beverage Distilled Spirits Plants, Breweries, Importers, Wholesalers, and others concerned:

The Alcohol and Tobacco Tax and Trade Bureau is committed to ensuring a fair and level playing field nationwide for alcohol beverage industry members through a strong regulatory compliance program and active enforcement of the trade practice provisions of the Federal Alcohol Administration Act (FAA Act), Title 27, United States Code, Section 205(a) through (d), and the implementing TTB regulations. Enforcement of the Federal trade practice rules supports a marketplace that is based on consumer preference rather than on an industry member's ability to unlawfully exclude its competitors' products.

The Bureau significantly intensified its trade practice education and enforcement program beginning in 2017 after receiving Congressional appropriations specifically earmarked toward these efforts. The enforcement program is generally aimed at investigating exclusive outlet, tied house, commercial bribery, and consignment sale violations - all violations that involve unfair competition and adversely affect interstate commerce. In appropriate cases, TTB may pursue adverse action against basic permits (suspension or revocation) or may initiate criminal referrals.

Since the beginning of these increased enforcement efforts, TTB has found significant violations of Federal trade practice laws and regulations by some members of the alcohol beverage industry. Such industry members use unlawful trade practices to gain an unfair advantage over law-abiding industry members, which ultimately limits consumer choice. These unlawful trade practice activities are significant and widespread and have contributed to a marketplace wherein compliant industry members and smaller businesses just entering the marketplace are unfairly challenged to compete with the industry members committing these unlawful activities. Some of the violations TTB has found include:

Industry members paying fees or providing other things of value to retailers in exchange for display space or shelf space (including designated tap space), commonly referred to as slotting fees. In some cases, such payments are hidden in the company's books as payments for samplings that never take place.

Industry members offering sponsorship agreements that are tied into product placement or exclusivity arrangements.

Industry members using third-party marketing companies to indirectly provide things of value to retailers continues even after the publication of TTB Industry Circular 2012-1, Guidance Regarding Industry Members' Participation in Retail Programs. Things of value TTB has observed include payments for entertainment at the retail venue and marketing support that includes items or services not specifically excepted under 27 CFR part 6, Subpart D.

Industry members providing items and services listed in Subpart D as exceptions to 27 CFR 6.21(c), when they are used to violate other provisions of the tied-house regulations. For example, industry members

furnishing promotional items such as those covered under the Subpart D exceptions, in exchange for preferential product display space.

Industry members and retailers altering invoices in an effort to conceal the nature of inducement payments.

Industry members paying retailers for "events" that never took place.

Industry members engaging in consignment sales under the pretense of brokerage agreements.

Industry member employees making false statements to TTB Investigators during interviews, even after being provided the opportunity to amend their statements.

Industry members illegally operating without a valid Federal permit due to not timely reporting changes of ownership, management, or control over their operations.

The high incidence of unlawful activities and deliberate concealment of such activities raise serious concerns. These activities are of particular significance because of their nationwide occurrence and their impact on trade and fair competition.

We believe that the industry as a whole has the ability and desire to operate within the law. Accordingly, we are taking this opportunity to request that each industry member review its promotional business practices to assure such activities comply with the letter and spirit of the Federal trade practice laws and regulations. The Federal trade practice laws and regulations may be viewed on the TTB website at: https://www.ttb.gov/trade_practices/index.shtml

We encourage each member of the regulated community to voluntarily disclose its own violations upon discovery. Voluntary disclosure will mitigate what actions we take, if any, in response to violations. See TTB Industry Circular 2004-5, Voluntary Disclosure Program.

Please be assured TTB is always ready to advise you concerning any methods or practices about which you may have questions. You may submit any questions concerning this circular or your promotional programs to our trade practices inbox at TradePractices@ttb.gov. Questions regarding updating your permit information should be directed to the National Revenue Center.

John J. Manfreda

Administrator

Alcohol and Tobacco Tax and Trade Bureau