

April 21, 2004 (Rev January 25, 2008)

Michael D. Madigan
Minnesota Beer Wholesaler's Association
701 Fourth Avenue South
Suite 1710
Minneapolis, MN 55415

Re: Trade Practice Questions

Dear Sir,

The Minnesota Department of Public Safety, Alcohol & Gambling Enforcement Division is in receipt of your letter dated April 13, 2004 pertaining to several questions related to trade practice regulations in Minnesota. Our agency will address your questions in the order that they were submitted.

First, you ask whether or not a brewer or their wholesaler may furnish clocks or backlight write on boards with illuminated magic markers to a retailer. In your letter you state that in your opinion our agency would advise these items to be in violation.

- In 2000, a brewer and one of their wholesale distributors challenged our agency's interpretation of MS 340A.308 (a) (1) with regard to placing enhanced display items at retail as inside advertising. The matter was taken to our attorney who ruled in favor of the brewer. This ruling drastically changed how our agency could regulate the placement of signs and other promotional material at retail. So to answer your question, the clocks and light write-on boards could be placed at retail as long as the value of the items are under the \$300.00 inside advertising limits of the cash law. The placement of the items cannot result in the brewer/distributor going over the \$300.00 inside advertising limit of the cash law in the 12 month period.

A&GED Questions

Coasters: - A brewer/distributor may provide or sell brand-identified coasters to retail. If sold they must be sold at a fair market price. The coasters cannot be personalized for the retailer, meaning they cannot name the supplier's name or brand names and the retailer's name.

Glassware: - Minnesota Statute 340A.308 (a)(2). Prohibits a brewer or malt beverage distributor from giving, lending, renting or selling any furnishing or equipment to a retailer.

Furnishing or equipment would be considered an item necessary for the retailer to conduct their business. Glassware may fall under this prohibition if used by the retailer to serve alcoholic beverages.

On and off premise retailers may conduct a promotion where they give consumers a free glass or mug. A retailer providing the mug tied to the purchase of an alcoholic beverage would be permissible under the provisions of Minnesota Rule 7515.0760 subp. 3. **There may be no cooperative glassware given or sold to a retailer.** Cooperative glassware would be glasses containing a brewer's name and/or logo and the name of a retail account.

Off premise liquor stores have been allowed to purchase brand-identified glassware for sale to retail consumers due to the glassware is not considered equipment necessary for the retailer to conduct their business. This may be extended to on premise retailers as long as the glassware is not used for the serving of alcoholic beverages.

Can Coolers: - You may give/sell brand identified can coolers. They cannot be personalized for the retailer meaning you cannot put the retailer's name on them along with your company or brand name or logo.

Tap Systems: - A brewer/distributor cannot order tap equipment for the retailer or bill the retailer. A brewer/distributor is allowed \$100.00 per tap per year to be used towards install/cleaning and the like. Currently distributor man hours (labor) has not counted towards the limit.

Promotional Material: - A \$279.00 water ski could be placed at retail as an enhanced display as long as the brewer/distributor does not go over the \$300.00 per year inside ad limit of the cash law in the 12-month period that includes the water ski placement.

Refrigerated Coolers: - A brewer/distributor cannot give or sell a refrigerated cooler due to the value of the item usually exceeds any promotional material limits of the cash law and the item is viewed as equipment.

Taps: - A brewer/distributor cannot give a retailer tickets to sporting or other types of events or clothing items in return for gaining a tap line at the retail account. This is considered providing the retailer an item of value under the provisions of MN Statute in return for the tap line. This type of violation is what the cash law was intended to prevent.

Draft Boxes: - A brewer/distributor cannot give a retailer a draft box or coop the cost of a draft box beyond the \$100.00 per tap allowance of MN Statute 340A.308.

Monitor/ Golf-Link/ TV Ads: - Please provide more detailed information regarding this form of promotion.

Scorecards: - A brewer/distributor may place a generic ad on a scorecard. They can also print the cards.

Placemats: - Same as scorecards.

Menu: - A brewer/distributor cannot advertise in a retailer's main entrée menu nor can they print the menu due to this menu is considered equipment. Table tents, appetizer menus and the like can be brand identified and printed for the retailer as inside sign/POS.

Golf Tournament: - A brewer/distributor can sponsor a golf tournament that is not directly operated by or for the benefit of a retail account. An example would be it is okay to be a sponsor of a fundraising event for charity or sponsor a PGA tournament.

340A Issues: - A brewer has a limit of providing no more than \$300.00 worth of inside signs and other promotional material to a retailer in a year (12 month period). The brewer may provide a total value of outdoor signs not more than \$400.00 total at any given time. The same is true for the distributor. A distributor is limited to the totals noted above. The limit is \$300.00 and \$400.00 per distributor not per brand. The brewer and wholesaler should keep records of signs placed with the date placed and the brewer/distributor cost for the sign.

Samplings: - Do not confuse beer sampling with wine tasting. There is no provision in Minnesota law for beer tasting. Brewers/distributors must stay within the guidelines set forth in MN Statute 340A.510 (copy attached).

Signs: - The question of how to place a value on items that some brewers and distributors can mass-produce much cheaper than a sign company would charge is currently under review and discussion. If a distributor and brewer is willing to pay the cost of purchasing a printer for such tasks, such a purchase would greatly reduce their cost to produce banners and the like. In the recent past, many distributors created banners and signs by hand for placement at retail. Is the use of a printer any different? Currently Alcohol & Gambling Enforcement is using the actual value/cost to the distributor to produce the sign as its value at retail. Presently Alcohol and Gambling Enforcement is taking the actual cost of the paper/ink production cost to the distributor as the value of the sign/banner.

Alcohol & Gambling: - A brewer/distributor should contact Alcohol & Gambling Enforcement for clarification of the liquor laws and for review and prior approval of promotional activity and/or questions. Our contact information is available on our web page at www.dps.state.mn.us our main telephone line is (651) 296-6979.

Coupons and Rebates: - The former Liquor Control division allowed manufacturer/distributor mail in rebates at retail point of sale only via bottle neck hanger or tear pad. Manufacturer coupons are illegal under the provisions of MN Statute 340A.5071 (copy attached).

Keg Registration: - A brewer/distributor does not have any legal requirement related to this retail issue. There is an Alcohol & Gambling Enforcement publication clarifying the retailer's responsibility in this area that does include allowable brewer/distributor participation. (See attached).

Exterior signs naming Retailer and Brewer: - A brewer/distributor may not put up outdoor signs naming the supplier's name/logo and the retailer's name. Any that are already up should be removed or placed inside the retail establishment. Broken signs, if coop in nature, cannot be replaced with coop. They must be replaced with a non-coop sign.

Neon/Signs/POS: - Alcohol & Gambling Enforcement places a fair market price on neon signs when attempting to place a value. We do take into account the brewers cost. In a case where a location is closed, if all signs had been removed, you would have to start over again with \$300.00 per year. It does not matter how many signs were in a location prior to remodel or closing.

We hope this letter helps you to establish some guidelines. It is extremely difficult to provide you with blanket answers for all of the varied situations you as business people will run into. In most cases, our agency has to review many of these issues on a case by case basis in order to determine whether or not a specific sign, or promotion or the like, is in violation of the law. Your patience and cooperation in these matters is greatly appreciated.

Signed,

The Alcohol & Gambling Enforcement Division
Alcohol Enforcement Staff

The Alcohol & Gambling Enforcement Division Frequently Asked Questions:
<https://dps.mn.gov/divisions/age/alcohol/Pages/enforcement-faq.aspx>