



STATE OF WASHINGTON

WASHINGTON STATE LIQUOR CONTROL BOARD

3000 Pacific Ave SE • PO Box 43075 • Olympia WA 98504-3075 • (360) 664-1600

April 20, 2003

To: Liquor Manufacturers, Importers, Distributors, and Licensed Agents

Subject: Retailer Promotions Involving Third Parties

Dear Manufacturers, Importers, Distributors and Licensed Agents:

Liquor Control Board agents have encountered retailer promotions involving liquor manufacturers, importers, distributors and third parties. In response to questions regarding these promotions I have written the following advisory bulletin for your assistance.

A third party may be a radio station, party equipment supply company, event planner, event insurer, or promoter. Per RCW 66.28.010(1) and WAC 314-12-140, manufacturers, importers, and distributors are prohibited from providing moneys or moneys' worth either directly or indirectly to retailers. This includes loaning or renting equipment to retailers. Therefore, manufacturers, importers and distributors are prohibited from paying or contracting with a third party to; conduct a retailer event, advertise a retailer event, rent equipment to a retailer, or assist the retailer with the event in any way that a liquor supplier or distributor would be prohibited from doing.

Examples of prohibited activities by manufacturers, importers and distributors;

- Leasing tapping or cooling equipment to a third party that in turn leases this same equipment to a retailer.
- Paying a promoter to conduct retailer events.
- Paying a radio station to advertise their events.
- Contracting with a radio station to appear at or broadcast from retailer premises.
- Paying money to a company to insure or indemnify retailer events.
- Giving a promoter or a radio station novelty items that are in turn given to retailers or retailer customers.

The Board's advertising coordinator is Sherry Frederick. She is available to review promotions and provide assistance. Ms. Frederick may be contacted at: scf@liq.wa.gov or (360) 664-1725. Ms. Frederick developed a guide for the Washington State Association of Broadcasters regarding the most often asked questions about liquor advertising. I am providing this guide for your assistance.

Sincerely,

Randy Reynolds
Supervisor, Manufacturers, Importers & Wholesalers Section



Liquor Licensee Radio Advertising Guidelines

By Sherry Frederick, Advertising Coordinator, April 2003

The Liquor Control Board Regulates the Conduct of Its Licensees

- ◆ Radio stations are not licensed by the Board and are therefore not regulated by the WSLCB.
- ◆ Retail licensees, as well as liquor manufacturers, importers and wholesalers, (referred to as *non-retail* licensees), are regulated by the Board.
- ◆ If there were a conflict with Board regulations in regard to advertising on behalf of retail licensees or non-retail licensees, the radio station is not answerable to the Board, however, its clients, our licensees, are answerable.

Common Issues Relating to Retail Liquor Licensees

- ◆ Price, Items/"Happy Hour." Retail licensees may advertise the sale and service of liquor. They may advertise drink prices (any price provided it is not below their cost of acquisition), brand names (provided they are paying entirely for the ad), promotions, and "happy hour" information (prices, times, brands).
- ◆ Free/Complimentary Liquor. Retailers cannot offer complimentary or free liquor, but may offer packages that *include* alcoholic beverages, provided the total charge to the customer covers their liquor cost of acquisition.
- ◆ "2 for 1" "Buy 1, Get 1 Free." Retailers cannot offer any liquor for on-premises consumption at "two for the price of one", "buy one get one free", or under any slogan where the express or implied meaning is that a customer, in order to receive a reduced price, would be required to purchase more than one drink or quantity of liquor at one time.
- ◆ Retailer Responsibility. The retail licensee is responsible for all activities at their location, whether or not a radio station indicates that they are "hosting" an event at the licensed location.

Common Issues Relating to Non-Retail Licensees (Liquor Manufacturers, Importers, & Distributors)

- ◆ Non-Retailer Advertising Permitted. Liquor manufacturers, importers and distributors of beer, wine and distilled spirits may advertise their products on the radio.
- ◆ Retailer/Non-Retailer "Joint Promotions" Not Permitted. Liquor manufacturers, importers and distributors may advertise their brands within the guidance of liquor regulations. *They are prohibited from advertising in conjunction with retail licensees and from co-paying for any ad with a retail licensee.*
- ◆ "Tied-House" Statute. There is a state statute that is referred to as the "tied-house" law (RCW 66.28.010), which prohibits "moneys or moneys' worth" from being advanced from the non-retail tier to the retail tier.

- ◆ Use of Retailer Name in Non-Retailer Spot Prohibited. WAC 314-52-090, referred to as the “joint advertising” rule, prohibits the name of a retail licensee from appearing in any advertising of a liquor manufacturer, importer or distributor. This rule prohibits the liquor entity from paying directly or indirectly, or a part of, any advertising that mentions the name of a retail licensee.
- ◆ Radio stations affiliated in any way with a liquor manufacturer, importer or distributor, acting in conjunction or on behalf of the liquor manufacturer, importer or distributor, directly or indirectly, by verbal or written arrangement, and/or are being compensated in *any* way by the liquor entity, are considered to be *agents* of the liquor entity.
- ◆ As agents of a liquor manufacturer, importer or distributor, whatever activity a radio station does in relation to a retail licensed premises, is considered to be the same as if the liquor entity were doing that activity.
- ◆ Brand Name May Be Included in a Retail Licensee’s Spot. A retail licensee may include the brand name of liquor in its advertising, provided such advertising is upon the retailer’s free initiative and no “moneys or moneys’ worth” has been offered as an inducement to secure such mention.
- ◆ Event Promotion by a Non-Retail Licensee. Liquor manufacturers, importers or distributors cannot purchase the title of a retailer’s event from a radio station, or arrange to have their brand in the title of a retailer’s event as a result of a purchase, trade, or *other arrangement*. *Other arrangement* would include “promo” mentions promised the liquor manufacturer, importer or distributor as part of an ad buy.
- ◆ If a liquor manufacturer, importer or distributor, or its media branch, directs a station to tie its brand name to a retailer event, the station is acting as an agent of the liquor entity, even if no money exchange or trade has occurred; this would be considered “joint advertising”.
- ◆ Event Sponsorship by Non-Retail Licensee at Retail Licensee Premises. Liquor manufacturers, importers or distributors cannot sponsor events at retail locations. Advertising in conjunction with retail locations cannot say “Brought to you by *brand name*”, or “Sponsored by *brand name*”.
- ◆ Sponsorship of Station concert Hotlines by Non-Retail Licensees. Liquor manufacturers, importers and distributors cannot buy title sponsorship of “Hot Lines” or “Event Lines” from radio stations, which listeners call to hear a listing of events at retail locations, or may they be referenced as a sponsor of such “Lines”.
- ◆ Non-Retail Licensee Sponsored Contests. Liquor manufacturers, importers and distributors may advertise their own contest or sweepstakes promotions, noting that entry forms “are available wherever their product is displayed”, or in other generic terms.

Issues Relating to Giveaways

- Prizes to Stations for On-Air Giveaway. Liquor manufacturers, importers and distributors may give radio stations merchandise and other gifts, to be awarded over the air.
- ◆ Merchandise Obtained by Station via Trade-Out. Liquor manufacturers, importers or distributors may trade merchandise for airtime, however that airtime must be for the manufacturers, importers or distributors own advertising, and not for tie-in with a retailer advertisement.
- ◆ Station May Not Purchase or Trade-Out Merchandise for Giveaway at Retail Licensee Premises. Liquor manufacturers, importers or distributors cannot give, sell or trade to radio stations merchandise or any novelty items with the intention or result of such merchandise being given to a retail licensee or distributed to consumers at a retail location.
- ◆ How Retailers Must Obtain Novelty Items. Retail licensees must purchase novelty items from the liquor manufacturer, importer or distributor, regardless as to whether a radio station is involved in any way.

I suggest that radio stations contact me with any liquor advertising questions, particularly if the advertisements in question potentially tie-in a retail licensee and liquor manufacturer, importer or wholesaler.

Sherry Frederick, Advertising Coordinator, (360) 664-1725, scf@liq.wa.gov