

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

ADVISORY NOTICE TO CEASE AND DESIST PROHIBITED ACTIVITIES DURING
SUPPLIER BRAND PROMOTIONS (“PARTY NIGHTS”) AT RETAIL CONSUMPTION
LICENSED PREMISES AND SPECIAL CONCESSIONAIRE PERMITTED PREMISES

BY THE ACTING DIRECTOR:

The purpose of this Advisory Notice is to remind the industry during the holiday season about the parameters for conducting limited supplier brand promotional activity on the premises of a plenary retail consumption license and special concessionaire permit. Former Director John G. Holl issued a Notice to the Industry on May 30, 1997 (“1997 Notice”), appended below,¹ that conditionally permitted limited supplier brand promotional activity at plenary retail consumption license premises.² While the Alcoholic Beverage Control Act generally prohibits such activities, Director Holl acknowledged an exception in the tied house statute. In pertinent part, N.J.S.A. 33:1-43(c)(1) provides that, “nothing . . . shall prohibit the exercise of limited retail privileges by Class A or Class B licensees conferred . . . by Special Permit issued by the Director.”

Director Holl considered the history, purpose and marketing goals of limited supplier brand promotional activity on a licensed premises – namely, for brand promotion – and the conditions under which such activity would not undermine the legislative policy of fostering moderation and responsibility in the use and consumption of alcoholic beverages. N.J.S.A. 33:1-3.1.b(2). The Director concluded that some limited activity should be allowed and enumerated guidelines. To engage in the limited supplier brand promotional events, licensees must adhere to the permitting provisions and fee schedules pursuant to N.J.S.A. 33:1-43(c)(1), N.J.A.C. 13:2-5.6 (marketing agent permit), N.J.A.C. 13:2-16.1 to -16.3 (solicitor’s permit), and N.J.A.C. 13:2-37.1(b)5a to -b(6) (consumer tastings and samplings).

Members of the alcoholic beverage industry have requested the Division to amend the 1997 Notice to allow a supplier to purchase alcoholic beverages for patrons by paying the licensed retailer directly for the drinks. They also wish to allow a supplier to serve the drinks to the patrons. These two practices are expressly prohibited in points 6 and 9 of the 1997 Notice because they create an impermissible relationship between a supplier and a retailer.

¹ A.B.C. Bull. 2473, Item 4 (May 30, 1997) (“Notice of Special Permits to Allow Class A and Class B Licensees to Engage in Limited Retailing Activity Known as ‘Party Nights’ Pursuant to N.J.S.A. 33:1-43(c)(1)”).

² While the 1997 Notice only permitted such limited supplier brand promotional activity on plenary retail consumption license premises, the scope of the Notice is now expanded to include special concessionaire permitted (SCP) premises because of the similar retail privileges concerning on-premise consumption of alcoholic beverages afforded to holders of both a retail consumption license and an SCP pursuant to N.J.A.C. 13:2-5.2.

In addressing the industry's proposed amendments to the 1997 Notice, I have reviewed supplier brand promotional activity in general and the guidelines outlined in that Notice. Following my review, I conclude that additional privileges beyond those enumerated in the 1997 Notice shall not be granted at this time.

It has, however, come to the Division's attention that practices beyond those expressly permitted in the 1997 Notice may be occurring in the industry today. Please be advised that any industry member who is engaging in these prohibited practices must cease and desist immediately. Further, those licensees and permittees engaging in these practices may be subject to disciplinary action to the extent permitted by law.

The Division's May 30, 1997 Notice to the Industry addressing limited supplier brand promotional activity at licensed establishments remains in force with no additional privileges.



James B. Graziano
Acting Director

DATED: December 18, 2019

ABC

Division of
**ALCOHOLIC
BEVERAGE
CONTROL**

Bulletin

140 E. Front Street, CN 067, Trenton, New Jersey 08625-0087

BULLETIN 2473

MAY 30, 1997

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contingent upon a closing taking place in the future would not be acceptable. On the other hand, a resolution approving a transfer of a license, effective on a specific future date would be acceptable. However, the transfer will automatically become effective on that date certain unless the issuing authority takes some affirmative action to rescind its resolution before then.

You should also be advised that no transfer of any license may take place before receipt of a Tax Clearance Certificate from the Division of Taxation. Resolutions which approve an issuance or transfer before receipt of the Certificate are null and void.

4. NOTICE OF SPECIAL PERMITS TO ALLOW CLASS A AND CLASS B LICENSEES TO ENGAGE IN LIMITED RETAILING ACTIVITY KNOWN AS "PARTY NIGHTS" PURSUANT TO N.J.S.A. 33:1-43(C)(1). *NOTE

"Supplier Party Nights" are promotional events that take place on the premises of a Retail Consumption License. A supplier (holder of a Class A or B License) of a particular brand arranges with the Retail Licensee to feature that brand on a specific date or dates. The supplier may work with the retailer to decorate the premises with point of sale materials before the event and may provide some form of entertainment during the event such as a Disc Jockey. Suppliers may use their own employees or independent contractors to conduct the event. Such persons usually attend the event and "talk up" the featured brand. Recently, the Division of A.B.C. advised some suppliers to cease and desist unless they received a Special Permit for this activity.

Generally, such activity is prohibited by the licensing statutes which define the privileges accorded to each license, as well as N.J.S.A. 33:1-43 which makes it unlawful for a supplier to engage in retail activity unless specifically permitted by the Director. In pertinent part, N.J.S.A. 33:1-43(c)(1) states "nothing . . . shall prohibit the exercise of limited retail privileges by Class A or Class B licensees conferred . . . by Special Permit issued by the Director." Shiflin and Somerset Company, thorough its attorney, William MacKnight, Esq. has proposed that it be permitted to participate in a "Party Night" in a controlled manner.

The Division of A.B.C. has considered the history of these events, the marketing goals that suppliers hope to achieve and the policies underlying those statutes which restrict the contact that

*NOTE: This item does not pertain to suppliers' promotions at retail distribution licensed premises.

suppliers and their representatives may have with consumers. We have considered the Conditions under which such activity will not undermine the legislative policy of fostering moderation and responsibility in the use and consumption of alcoholic beverages (N.J.S.A. 33:1-3.1(2)). We believe that some limited activity of the kind proposed should be permitted. Henceforth, the Division will issue a Special Permit pursuant to N.J.S.A. 33:1-43(C)(1) for this type of activity so long as the following guidelines are adhered to:

1. Each event must be held at the premises of a Plenary Retail Consumption Licensee.
2. Supplier/Representatives may greet consumers at the entrance and appropriately identify themselves at that time.
3. Supplier/Representatives may place signage and other point of sale material in and about the premises for the event.
4. Supplier/Representatives may wear apparel with logo identifying the supplier's products.
5. Supplier/Representatives may discuss with retailer's staff the features of supplier's products and how to use them.
6. Supplier/Representatives may not make drinks for consumers, take drink orders or serve drinks to a consumer on behalf of the retailer.
7. Supplier/Representatives may discuss with consumers the features of supplier's products and how they might be used. However, no supplier/representative may discuss specific retail prices for such products or the specific location where such products may be purchased.
8. Supplier/Representatives or employees of the participating retailer may give specialty items (such as tee shirts) with logos identifying the supplier's products to customers on a "no purchase necessary" basis.
9. Supplier/Representatives may not purchase complimentary drinks for customers.

10. No alcoholic beverages may be given by a supplier to the participating retailer or as a prize to any customer.
11. Suppliers shall include in their point of sale materials which are displayed at the participating retailers premises, an appropriate moderation message encouraging consumers to be responsible in their use and consumption of alcoholic beverages.
12. All such events must be included in the supplier's marketing manual as described by N.J.A.C. 13:2-24.5.
13. All such events shall be offered by suppliers to retailers in such a manner as not to violate N.J.A.C. 13:2-24.2.

Applicants for this permit must be a Class A or B licensee and should submit their request to the Division of A.B.C. at least two weeks prior to the proposed event. The request should state the time and place of the event, the name of the product or products being featured and briefly describe the moderation message that will be part of the materials displayed. The fee for such permit shall be \$25. Any permittee shall be responsible for the acts of their agents and that such agents are not otherwise disqualified under N.J.S.A. 33:1-26.

5. REQUEST TO RECEIVE DIVISION REVIEW OF THE PROPOSED GOURMET WINE AND GIFT SHOP FOR W.L. GOODFELLOWS, INC.

April 7, 1997

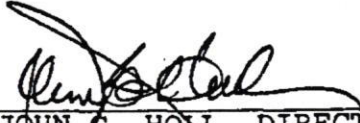
James Cicarelli
General Manager
W.L. Goodfellows and Company
310 E. White Horse Pike
Absecon, New Jersey 08201

RE: Request to Receive Division Review of the
Proposed Gourmet Wine and Gift Shop for
W.L. Goodfellows, Inc.

Dear Mr. Cicarelli:

Thank you for your letter of November 22, 1996, regarding your request to receive Division review of the proposed gourmet wine and gift shop for W.L. Goodfellows and Co. W.L. Goodfellows and Co.

Publication of Bulletin 2473 is hereby directed this
30th Day of May, 1997



JOHN E. HOLL, DIRECTOR
DIVISION OF ALCOHOLIC BEVERAGE CONTROL