

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

IN THE MATTER OF APPLICATION TO)
RELAX N.J.A.C. 13:2-33.1 TO ALLOW)
ALLIED BEVERAGE GROUP TO AMEND)
BRAND REGISTRATIONS)

SR 2022-1
SPECIAL RULING GRANTING
RELAXATION OF N.J.A.C. 13:2-33.1

BY THE DIRECTOR:

The Division of Alcoholic Beverage Control (“Division”) has received a petition from licensed wholesaler Allied Beverage Group (“Allied”) seeking relaxation of N.J.A.C. 13:2-33.1, the regulation governing brand registrations of alcoholic beverages. In New Jersey, every alcoholic beverage product must be brand-registered before it is sold, and a brand-registered product cannot be sold below cost unless the licensee applies for and receives a closeout permit through POSSE, the Division’s online licensing system. Of particular relevance, the brand registration regulations require the brand owner or authorized brand registrant to list (among other things) the vintages of standard packaging for each alcoholic beverage product registered.

According to representations made by Allied, a number of its suppliers have failed to include specific vintages in their products’ brand registrations, preventing Allied from applying for a closeout permit to sell these particular vintages below cost. Allied is requesting access to the suppliers’ brand registrations so it can remedy the omissions. As explained below, the Division is denying the request for access, although it will remedy the problem and facilitate and update the specific vintages listed in Allied’s petition.

As noted, every alcoholic beverage product must be brand-registered, and the brand

registration must be renewed every year. N.J.S.A. 33:1-2(c). A brand registration must include any and all vintages of the brand. N.J.A.C. 13:2-33.1(a)(3), (4). Whenever any change occurs to a brand registration, including the addition of a vintage to a product line, the brand registrant must amend the product's brand registration and add the new vintage within 10 days. N.J.A.C. 13:2-33.1(c). The brand registrant, typically the product's supplier, is legally responsible for ensuring that a brand registration is accurate, complete, and timely updated with all vintages. Fortunately, the Division's online licensing system allows a brand registrant to add a vintage without difficulty or expense. N.J.A.C. 13:2-33.1(c).¹

Wholesalers who want to close out product (i.e., sell below cost) must apply for and receive a closeout permit. N.J.A.C. 13:2-24.8. In October 2021, the Division issued a Special Ruling ([SR 2021-10](#)) introducing closeout permits for brand-registered and "historic" products² through the POSSE system. POSSE connects a closeout permit application to the product's brand registration, enabling the applicant to select a particular vintage for closeout while remaining authorized to sell other vintages of that product. However, if the brand registrant fails to include the vintage in the product's brand registration, that vintage will not appear in POSSE and therefore the wholesaler cannot close it out. This means that if a wholesaler applies for and receives a closeout permit without selecting a particular vintage, the entire brand will be closed out by default and the wholesaler cannot reintroduce it into the marketplace for at least a year.

According to Allied's petition and supporting exhibit, 26 of its suppliers have filed brand

¹ With the exception of adding vintages, the fee for amending a brand registration is \$10 per brand. N.J.A.C. 13:2-33.2.

² [SR 2021-10](#) authorized the closeout of alcoholic beverage products with expired brand registrations, i.e., "historic" products, in order to facilitate the timely liquidation and clearance of these products from inventory.

registrations without including all vintages, or failed to amend the brand registration to add vintages, or submitted brand registrations with vintage-related errors. Consequently, Allied has been unable to close out certain vintages through no fault of its own. Allied has provided evidence that it contacted these suppliers and asked them to amend their brand registrations, without success. The company states that this regulatory “impasse”—the inability to close out vintages or remedy the vintage omissions on its own—has caused it economic harm and “resulted in the intentional destruction of the subject products as no longer saleable.”

Pursuant to N.J.A.C. 13:2-33.1(b)(2), a wholesaler cannot file, amend or renew a brand registration unless it has been appointed by the brand owner for that purpose.³ Allied is requesting the regulation be relaxed so it can access and amend its suppliers’ brand registrations, add the missing vintages, and secure a permit to close out those vintages. In conjunction with this request, Allied has contacted its affected suppliers by email on December 20, 2021, attaching its petition, explaining its predicament, and requesting them to submit any objection to the Division within five business days. To date, the Division has not received any objections by suppliers to Allied’s request to close out the particular vintages listed in its pending petition.

The Division has the authority to waive or relax a regulation upon a showing of undue hardship on a licensee, provided the waiver would not unduly burden any affected parties and is consistent with the Alcoholic Beverage Control Act (“ABC Act”), N.J.S.A. 33:1-1 to -4-1, and its regulations. N.J.A.C. 13:2-9.1. The Division has carefully reviewed Allied’s petition and FINDS that Allied will suffer economic hardship due to its inability to close out product vintages through

³ A brand owner may authorize a third party agent (e.g., attorney, compliance company, wholesaler) to file, renew, or amend a product’s brand registration. Separately, a brand owner may permit a third party agent to have access to its ABC online licensing system (POSSE) account by submitting to the Division an Affidavit of Representation. Notably, this would give the agent unrestricted access to the brand owner’s POSSE account.

no fault of its own. The Division further FINDS that the affected suppliers will not be unduly burdened by the relief granted in this Special Ruling. Indeed, the suppliers bear the burden of ensuring their products' brand registrations are complete, accurate, timely renewed, and timely amended. Finally, the Division FINDS that granting relief is not inconsistent with the ABC Act and its regulations. Allied has endeavored to comply with the Division's regulations and the closeout permitting process by applying for a permit to close out particular vintages—and had the suppliers at issue complied with the brand registration regulation, this Special Ruling would not be necessary.

The ABC online licensing system does not enable the Division to give Allied limited access to the suppliers' brand registrations, and it would be inappropriate to give unlimited access to the suppliers' POSSE accounts without their authorization. Therefore, by way of this Special Ruling, the Division will remedy the vintage omissions, bring the suppliers into conformity with the brand registration regulations, and facilitate the permitting process so Allied can apply for and receive a permit and close out the vintages in its supporting exhibit. Because this is an issue of first impression, the Division will absorb the costs associated with this remedy at this time.

Going forward, for six months only following the date of this Special Ruling, any wholesaler facing the same predicament as Allied may take the following actions. First, the wholesaler should contact the supplier and urge it to amend the brand registration immediately and add the missing product vintage as required by regulation. If the supplier does not comply and the wholesaler wants to close out a particular vintage rather than the entire brand, the wholesaler may file a petition and explain the circumstances and the justification for relaxing the regulation in conformity with N.J.A.C. 13:2-9.1. The petition must be certified and supported with documentation. It must also be submitted with proof of five business days' notice to the affected

suppliers (giving them an opportunity to object) and a list or spreadsheet with the following information: name of supplier; name of brand registrant; name of brand; brand registration number; and vintage(s) to be added.⁴ If any objection is received by the Division, a formal proceeding before the Director may be necessary. If the petition is granted, the Division reserves the right to seek reimbursement from the wholesaler for expenses related to implementing this remedy. The Division also reserves the right to take appropriate action against brand registrants who fail to comply with the brand registration requirements. Such action may include prohibiting improperly brand-registered products from being sold in New Jersey.

The Division's expectation is that, within the next six months, wholesalers will work with their suppliers to ensure that all products are properly brand-registered, meaning that *all* vintages are included in the brand registration application or amendments thereto. *See* N.J.A.C. 13:2-33.1(a), (c). If these brand-registration requirements are not adhered to, particular vintages and sizes of products will not be eligible for closeout, and therefore, will not be able to be sold below cost. Suppliers are obligated to ensure their products' brand registrations are complete and accurate, but wholesalers are also obligated to ensure the products they purchase from suppliers are properly brand-registered and updated. Failure to comply may impede the closeout of the product, or worse, the ability to sell that product in New Jersey.

The relaxation granted herein is based upon the specific facts in the petition and is subject to further review and modification or withdrawal should the factual circumstances warrant.

⁴ Notice to supplier(s) may be served by email with a copy to Counsel to the Director of the Division (care of DAG Ray Lamboy, ray.lamboy@njoag.gov), 140 E. Front St., P.O. Box 087, Trenton, NJ 08625-0087. A supplier may submit an objection by email to Counsel to the Director with a copy to the petitioner. If an objection to the petition is timely received, the parties may be directed to submit formal briefs in support of their respective positions.


JAMES B. GRAZIOPLENE
DIRECTOR

Dated: January 28, 2022

APW/RL/GS