

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

IN THE MATTER OF ALLIED BEVERAGE)	SR 2022-08
GROUP'S REQUEST FOR BACK-ORDER)	SPECIAL RULING GRANTING
RELIEF ON COURVOISIER VS 1.75L)	ALLIED BEVERAGE GROUP'S REQUEST
)	FOR BACK-ORDER RELIEF ON
)	COURVOISIER VS 1.75L
_____)	

BY THE DIRECTOR:

I. Background.

By letter dated May 20, 2022, Allied Beverage Group (“Allied”) requested relief pursuant to Section 6(d) of AN 2021-04 based on its inability to fulfill orders of Courvoisier VS 1.75L due to a back order of this product.¹ This request was supplemented by Counsel for Allied in letters dated June 6 and June 21, 2022.

AN 2021-04 provided temporary relief to wholesalers that were unable to fulfill orders of back-ordered products. Specifically, that advisory allowed wholesalers 60 days within which to complete orders at the price and Retailer Incentive Program (“RIP”) in place at the time of the initial order. If wholesalers were unable to complete delivery of a back-ordered product within 60 days, Section 6(d) provided a mechanism for wholesalers to petition the Director of the Division of Alcoholic Beverage Control (“Division” or “ABC”) for further relief, provided the wholesaler followed certain steps preceding the filing of the petition, as described below. AN 2021-04 provided extraordinary relief to the industry, which the Director believed was necessary and appropriate to address the economic uncertainty caused, in part, by the COVID-19 pandemic and related supply

¹ In Mr. Maslin’s letter dated May 20, 2022, he also included a request for relief for back orders of Courvoisier VS 200ML. However, the Supplier Beam Suntory delivered these products to their warehouse in Elizabeth, New Jersey subsequent to the filing of that letter. Therefore, because these back orders have been fulfilled, the Courvoisier VS 200ML products are no longer a part of Allied’s request for relief.

chain problems. AN 2021-04 expired on September 30, 2021, however, it has been extended based on representations by industry that these problems continue to exist. See Advisory Notice 2022-02, signed on the same day as this Special Ruling.

In its petition for relief, Allied provided the following explanation of the extraordinary circumstances it faces. On April 1, 2022, there was a permanent price increase of Courvoisier VS 1.75L, product code 1234020. A number of accounts placed orders with Allied for these products in late March 2022 to “buy in” ahead of the permanent price increase, a customary industry practice. Because of limited stock, many of these orders were taken as back orders. According to a communication from the Beam Suntory (“Supplier”), Allied was confident that it could fill these orders because it had a confirmed purchase order for 747 cases placed on February 17, 2022, with goods expected to ship on April 4, 2022. However, since that time, the Supplier has delayed shipment at least 4 times. Allied submitted this Supplier communication to the Division as part of its petition which also explained that orders were pushed back monthly. The Supplier also informed Allied that they are experiencing a nationwide shortage.

Allied attempted to find solutions including expedited processing and transport, and searching for inventory in other markets. Allied was able to obtain 60 cases from another wholesaler in Connecticut earlier in May 2022, and the Supplier was able to release 216 cases for delivery the week of May 16, 2022, but this fell short of the outstanding number of back orders. Allied provided to the Division the back order customer account list which included 18 separate accounts, totaling 325 cases, across 21 invoices.

In accordance with AN 2021-04, Sections 6(a) to (c), wholesalers facing difficulties with back-ordered goods were required to take the following steps: a) offering retailers substitute goods within the same brand family; b) by honoring small quantity RIPs, if applicable, based on products previously delivered; and c) by allowing retailers to cancel the entire transaction, provided no sales

of the previously delivered product were made. As a last resort, a wholesaler unable to satisfy the delivery of a back-ordered product within 60 days was permitted to petition the Director for relief. See AN 2021-04 Section 6(d).

Allied represented that it could not avail itself of AN 2021-04 Sections 6(a) to (c) because: 1) Courvoisier is a premium global brand for which no replacement or substitute exists; 2) retailers would suffer an opportunity cost and economic harm if they were made to cancel their orders because they would lose the chance to buy in to this premier product at a preferred price and receive a RIP for their purchases before the retail trade price increase; and 3) because none of the product had been delivered to the 18 impacted retailers, no small RIP option was available.

Since Allied was unable to satisfy any of the options set forth in AN 2021-04, Sections 6(a) to (c), it filed the instant petition and must now demonstrate “good cause” justifying the relief sought. Allied represented that the 325 cases were delivered to its warehouse on June 24, 2022. Prior to receiving the goods in their warehouse, Allied sought an additional 60 days within which to complete delivery and honor the price and RIP in the March 2022 CPL for these back orders, or until July 31, 2022, to complete the outstanding orders.

Allied explained that the invoices for these outstanding back orders will reflect the date when the order was originally taken. In this case, the March invoice dates will appear on each delivery invoice thus providing transparency to the Division for these specific back-order purchases.

II. Legal Analysis.

It is the Director’s duty to supervise the manufacture, distribution and sale of alcoholic beverages in a manner that fulfills the public policies and legislative purposes of the Alcoholic Beverage Control Act (“ABC Act”). Of particular relevance to this matter, these policies and purposes include, “to provide a framework for the alcoholic beverage industry that recognizes and encourages the beneficial aspects of competition,” “to maintain trade stability,” and “to prohibit

discrimination in the sale of alcoholic beverages to retail licensees.” See N.J.S.A. 33:1-3.1(b) (6), (7), (10). In exercising this authority, the Director has the explicit, as well as inherent, powers to ensure a stable and well-regulated alcoholic beverage industry. Heir v. Degnan, 82 N.J. 109, 121 (1980).

A. Application of AN 2021-04 6(a) through (d) to Allied’s Request for Relief.

Before addressing whether Allied has demonstrated “good cause” pursuant to AN 2021-04 6(d) to justify the relief sought, the Division is satisfied that the remedies under AN 2021-04 Sections 6(a)-(c) are not appropriate or available under the present circumstances. Allied is seeking relief under AN 2021-04 6(d) because it believes that the current circumstances with Courvoisier VS 1.75L are unique and would create an unfair business situation if the relief sought were not granted. The Division notes that, in other situations involving back-ordered products, Allied has decided to cancel orders and credit a significant number of back orders due to supplier delays.

The Division takes notice that Courvoisier VS is a “major global brand” for which no substitutes exist. When retailers purchased this product in March 2022, Allied believed that it could timely fulfill these orders, and if not, they were afforded relief by AN 2021-04, to deliver the products within 60 days of the order date. Allied has demonstrated the efforts it has made to secure Courvoisier VS 1.75L in order to meet their customers’ orders. Allied is concerned that the 18 customers who “bought in” at the pre-permanent price increase of Courvoisier VS will suffer a serious competitive disadvantage in the marketplace if Allied is unable to honor the price and RIP that existed at the time the initial orders were placed.

In its analysis, the Division considered if granting relief would impact trade stability in the marketplace. The Division reviewed Allied’s customer list and the outstanding number of orders and concluded that they represent a *de minimis* number of licensees and cases. The small impact of this request should have no discernible destabilizing impact on the industry as a whole.

Additionally, the Division found that granting relief would permit the Supplier and Allied to realize their expected sales of the product. Moreover, principles of equity and fairness come into play because the 18 retailers will now have their orders of this premier product filled at the price they reasonably expected when they originally placed their orders and will not suffer a competitive disadvantage in the marketplace.

The Division also considered any possible discriminatory impact on other retailers. While the 18 retailers that made the decision to purchase the product before the price increase will possibly show a greater profit on the sale of the product, this is analogous to industry-wide business practices that occur on a regular basis. But for these unique circumstances and relief sought, this situation is the same as one in which a retailer avails itself of a product and a corresponding RIP deal in a given month while another retailer chooses not to buy in. However, this is not discriminatory provided that all retailers had that opportunity. Here, all retailers had the option to buy-in to the preferred price of Courvoisier VS 1.75L and its corresponding RIP through Allied's posting of the CPL in March 2022.

Thus, nothing in this fact-specific scenario and request for relief appears to undermine the fundamental principles set forth in Title 33, namely to provide a framework for the industry that recognizes and encourages beneficial aspects of competition, to maintain trade stability, and to prohibit discrimination in the sale of alcoholic beverages to retail licensees. Of particular importance, the Division notes that the remedy created by AN 2021-04 (and extended in AN 2022-02) was a response to unforeseen economic conditions resulting from a world-wide global pandemic that affected the supply of alcohol coming into New Jersey.

Therefore, based on the foregoing, the Division finds that Allied has established "good cause" in accordance with AN 2021-04 Section 6(d) to warrant the relief sought.

III. Conclusion.

Based on the foregoing, the Division grants Allied's request for this one-time extraordinary relief to have an additional 60 days to fulfill its outstanding orders for Courvoisier VS 1.75L to July 31, 2022. As required by AN 2022-02 (signed the same day as this Special Ruling), Allied shall submit a report to the Division in a searchable spreadsheet format. This reporting requirement will ensure transparency in the pricing and RIP payments, as required by the ABC Act and regulations.

Please be further advised that this relief granted by the Director is based upon the representations and submissions as set forth in the Petitioner's *ex parte* letters. The relief granted is subject to review and/or modification should the factual circumstances warrant.



JAMES B. GRAZIANO
DIRECTOR

DATED: June 28, 2022
JBG/ABC