

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

IN THE MATTER OF THE)
APPLICATION TO PERMIT THE)
RELAXATION OF N.J.A.C. 13:2-)
27.2 WHICH PROHIBITS THE)
SALE OF MALT ALCOHOLIC)
BEVERAGES IN CONTAINERS)
MARKED FOR DEPOSIT)
)
)
)
DIAGEO BEER COMPANY USA)

SR 2023-06
SPECIAL RULING GRANTING
RELAXATION OF N.J.A.C. 13:2-27.2

Patrick Murphy, on behalf of Diageo Beer Company USA

BY THE DIRECTOR:

Petitioner, Diageo Beer Company USA (“Petitioner” or “Diageo”), filed a petition requesting relaxation of N.J.A.C. 13:2-27.2(a), which prohibits the sale of malt alcoholic beverages in containers marked for deposit from another state. N.J.A.C. 13:2-9.1 provides that the rules of the Division of Alcoholic Beverage Control (the “Division”) may be relaxed by the Director upon the showing of undue hardship, economic or otherwise, on a licensee, that the waiver of the rule would not unduly burden any affected parties, and that the waiver is consistent with the underlying purposes of Title 33 and their implementing regulations.

The Division reviewed the submission from the Petitioner and considered all of the facts and circumstances related to this matter. The Petitioner requests a temporary relaxation from N.J.A.C. 13:2-27.2(a) to allow for the sale of approximately 20,000 deposit marked 14.9 ounce cans of Guinness Draught Stout. Petitioner states that this waiver is requested due to a supply issue as Diageo’s supply chain is unable to immediately produce the typical New Jersey packaging and Diageo’s inventory of the product is currently depleted. Absent grant of a waiver, Petitioner would be unable to provide its brand to New Jersey wholesalers for their distribution, which would make the product unavailable for retailers and consumers.

Petitioner states that, absent a temporary relaxation, Diageo would suffer economic hardship. Specifically, Petitioner estimates a loss of \$690,000 in sales revenue. Further, Petitioner estimates that wholesalers would lose approximately \$850,000 in revenues, and retailers would lose approximately \$1,100,000 in revenues.

Petitioner asserts that if their request is granted, their standard business operations would proceed in the normal course. Petitioner’s product would still proceed through the three-tier system, be fully compliant with taxes owed, contain the same Federal and State approvals as the typical New Jersey packaged products and contain the same malt alcoholic beverage. Based on the

representations, the Division is not concerned that the product will come into New Jersey through unlawful transshipping.

The Division has reviewed the Petitioner's submission and finds that the Petitioner has established good cause in accordance with the requirements of N.J.A.C. 13:2-9.1 to warrant relaxation of the provisions of N.J.A.C. 13:2-27.2(a). The relaxation does not impact the purposes of the regulation or adversely affect competition in the marketplace, but does, however, alleviate the economic hardship to Petitioner relating to the distribution of this product to New Jersey wholesalers, and the economic hardship to Petitioner, its prospective New Jersey wholesalers and retailers who wish to sell Petitioner's brand.

Accordingly, for the reasons set forth herein, the Division will grant the relief requested and will authorize Petitioner to distribute the product to New Jersey wholesalers with a label marked for deposit in another state until March 31, 2023. Please note that the approval granted herein is conditional and based upon the representations set forth in the Petitioner's petition and subsequent submissions. Should the actual facts differ from the representations made by the Petitioner, the Division reserves the right to rescind or modify this relaxation.


JAMES B. GRAZIANO
DIRECTOR

DATED: February 21, 2023

APW/MES