

Florida Division of Alcoholic Beverages & Tobacco Declaratory Statement Regarding Spirits Tastings

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On December 2, 2021, the Florida Division of Alcoholic Beverages and Tobacco (DABT) issued Declaratory Statement #2021-45 relating to spirits tastings, clarifying the agency's position on which levels of the three-tier alcohol beverage system can "conduct" spirits tastings at a retailer's (bar, restaurant, nightclub, liquor store, etc.) licensed premises.

As a brief background, Mark Anthony Brands, Inc. petitioned the DABT for a Declaratory Statement regarding the agency's interpretation of Section 565.17, Florida Statutes, which states:

"565.17 Beverage tastings by distributors, craft distilleries, and vendors. —

- (1) A licensed distributor of spirituous beverages, a craft distillery as defined in s. 565.03, or any vendor is authorized to conduct spirituous beverage tastings upon any licensed premises authorized to sell spirituous beverages by package or for consumption on premises without being in violation of s. 561.42, provided that the conduct of the spirituous beverage tasting shall be limited to and directed toward the general public of the age of legal consumption.
- (2) Craft distilleries may conduct tastings and sales of distilled spirits produced by the craft distilleries at Florida fairs, trade shows, farmers markets, expositions, and festivals. The division shall issue permits to craft distilleries for such tastings and sales. A craft distillery must pay all entry fees and must have a distillery representative present during the event. The permit is limited to the duration and physical location of the event."

Mark Anthony Brands also asked the agency whether it or its third party representative/agency could "conduct, attend, or otherwise participate in a tasting" of its own spirits products at a retailer's licensed premises.

In its Declaratory Statement, DABT addressed the very narrow issue of whether a spirits importer, primary American source of supply, brand owner or registrant (and their third-party representatives or agents) could "conduct" a spirits tasting at a retailer's licensed premises. In short, the agency interpreted Section 565.17, Florida Statutes to only allow spirits tastings be "conducted" by a wholesale distributor, Florida craft distillery, or retailer. The agency's position is Section 565.17 does not "on its face" allow spirits importers, primary American sources of supply, or brand owners or registrants to "conduct" these tastings, and such activity would be prohibited by the broad tied-house provisions set forth in Section 561.42(1), Florida Statutes. This tied-house law prohibits these licensees from "assisting" a retailer by way of "any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever."

The agency did not address the issue of whether a spirits importer, manufacturer, or brand owner could “attend or otherwise participate in” these tastings, arguing that Mark Anthony Brands had not provided sufficient specificity in its petition regarding its proposed attendance or participation.

This Declaratory Statement leaves open many questions, including:

What specific functions comprise “conducting” a tasting? Is “conducting” the tasting limited to the physical act of pouring the product and handing it to a sampling consumer? Does “conducting” include scheduling the date and time of the tasting with the licensed retailer? Can the brand be physically present at the tasting to talk to consumers about the product being sampled? Or, are these companies/representatives banned from even being on the licensed premises at the time of the tasting? What about so called “bar spends,” which generally consist of a spirits manufacturer or its third-party agency opening up a tab and buying full drinks of its own brand for consumers at the bar? Can bar spends now only be paid for/initiated by a spirits wholesaler, craft distiller, or the retailer itself?

These are important open issues for spirits importers and manufacturers in Florida, and also for the sampling agencies these companies hire to assist with spirits tastings at licensed retail premises. As with most tied-house issues, the devil will be in the details – in the specific type and degree of participation being proposed, and how that participation is communicated to the retailer. Also, spirits wholesalers will have to carefully consider ramping up their own tasting budgets or activities to fill in for the activities/spends previously done by the supplier tier. Third-party sampling agencies hired by spirits manufacturers/importers in Florida will also need to consider if or how this Declaratory Statement affects their day-to-day client servicing, and whether any existing contractual obligations may be in jeopardy as a result.



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