

TTB Clarifies Trade Practice Enforcement for COVID-19-Related Activities

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The Federal Alcohol and Tobacco Tax and Trade Bureau (“TTB”) published a May 8, 2020 [Industry Circular #2020-3](#) titled, “Trade Practice Enforcement During COVID-19 Pandemic”, which provides helpful insight into the agency’s current stance on various trade practice issues during the COVID-19 pandemic.

The Industry Circular addresses five main categories of activity:

1. Product Returns;
2. Extension of Credit Terms;
3. Furnishing Gift Cards to Consumers;
4. Donations to Charities that Support Alcohol Beverage Retailers and Their Employees; and
5. Hand Sanitizer.

Product Returns

TTB reinforces the position it initially announced in its [March 13, 2020 newsletter](#), lifting the general prohibition against consignment sales by allowing returns of alcohol beverage products under two different scenarios:

1. Return of alcohol beverages purchased to sell during events that were subsequently cancelled due to COVID-19; and
2. Return of alcohol beverages by wholesalers and retailers who have closed or “substantially reduced operations” due to COVID-19.

Returns can be made for cash or credit against outstanding indebtedness as long as the original sale was not made with the privilege of return. However, the selling manufacturing or wholesaler is under no obligation to accept returns.

Extension of Credit Terms

In light of state-level mandated closures for alcohol beverage retailers, TTB is raising the time limit on wholesaler credit extensions from the 30-day limit set forth in See 27 CFR 6.21(f) and 27 CFR 6.65 to a new 120-day limit. TTB makes it clear, however, consignment sales are still prohibited.

Furnishing Gift Cards to Consumers

TTB’s advisory addresses consumer-focused charitable/relief efforts subsidized by alcohol beverage manufacturers or wholesalers, allowing these industry members to purchase pre-paid gifts cards for people in need so long as the gift cards are not tied to a particular alcohol beverage retailer, retailer group, or

restaurant. This means a manufacturer could not buy \$30,000 worth of gift cards redeemable only at the top restaurant selling its brands, and hand those cards out to consumers in need. However, the manufacturer could buy \$30,000 worth of Visa gift cards and merely suggest (instead of mandate) the card-holders use the cards at a particular restaurant. In any event, the manufacturer or wholesaler is still prohibited from giving the gift cards to wholesaler and retailer officers, employees, or representatives.

Donations to Charities that Support Alcohol Beverage Retailers and Their Employees

Similar to the guidance provided regarding gift cards, the Industry Circular clarifies manufacturers and wholesalers cannot provide monetary donations to alcohol beverage retailers or their employees directly. However, TTB states it “will not initiate investigations” relating to donations to charities that support retailers or their employees during the effective period of this Industry Circular. Of course, those donations cannot be a “quid pro quo,” or in other words “conditioned” on purchases of, or shelf space for, the industry member’s products.

Hand Sanitizer

The Industry Circular further clarifies alcohol beverage manufacturers and wholesalers are allowed to sell or donate hand sanitizer to consumers without violating trade practice laws, and also allows combo packs containing both beverage and non-beverage items like hand sanitizer.

Note the May 8th Industry Circular is only in effect from March 1, 2020 through September 30, 2020, with the possibility for extension as TTB may deem appropriate.

If you have any questions about the above, please do not hesitate to reach out to our [Nationwide Alcohol Beverage Practice Group](#).