INDUSTRY CIRCULAR

DEPARTMENT OF THE TREASURY
Bureau of Alcohol, Tobacco and Firearms
Washington, D. C. 20226
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Product Displays

Proprietors of Distilled Spirits Plants, Bonded Wine Cellars, Breweries, and Wholesalers/Importers of Distilled Spirits, Wine and Malt Beverages:

Purpose. This circular is issued to inform the above proprietors of the Bureau of Alcohol, Tobacco and Firearms' policy concerning product displays.

Background. Things of value supplied by industry members to retailers are prohibited, both by law (26 USC § 205 (b)(3)) and regulation (27 CFR § 6.41) under the Federal Alcohol Administration (FAA) Act, if the other elements of the statute can be established. Only those things of value specifically listed under Subpart D of 27 CFR Part 6, as exceptions, are allowable. However, there appears to be some confusion among industry members concerning those things of value which are prohibited by 27 CFR 6.41 and those which are allowable as exceptions under Subpart D, specifically those allowable as product displays under 27 CFR § 6.83.

According to 27 CFR § 6.83, product displays are "any wine racks, bins, barrels, casks, shelving, and the like from which distilled spirits, wine, or malt beverages are displayed and sold." The key words in this definition are "from which." All of the examples given are items on which products either rest or are stacked. Each of these items possess the capability of storing or containing products. Therefore, the fact that an item has the capability to hold or contain distilled spirits, wine or malt beverages is the major determining factor in our decision to allow an item as a "product display."

In addition, we take into consideration other factors such as the direct physical contact of the item with the product, the current per brand dollar limitation and the fact that the item bears conspicuous and substantial advertising matter.

Finally, the similarity which exists between the item and those acceptable product displays specified in 27 CFR § 6.83 is also considered. The phrase "and the like," which is contained in 27 CFR § 6.83, is interpreted to mean that those items most similar to "wine racks, bins, barrels, casks [or] shelving," are allowable as "product displays." On the other hand, those items which bear little or no physical or functional resemblance to those displays specified in 27 CFR § 6.83 are not allowable.

Some examples of items which are <u>not</u> allowable as "product displays" under 27 CFR § 6.83 are blenders, motorcycles, bicycles which contain baskets filled with products, televisions and videocassette recorders. These examples bear little, if any, physical or functional resemblance to those displays enumerated in 27 CFR § 6.83.

Also, the trade practice regulations which were revised and finalized in 1980 increased the dollar limitation set by 27 CFR § 6.83. The preamble to these regulations (T.D. ATF-74) specifically addressed the reason why the dollar limitation on product displays was increased. According to this preamble, the Bureau liberalized the dollar limitation to enable industry members to furnish better product displays (e.g. displays made of wood instead of cardboard). The Bureau did not intend for this liberalization to allow "items of obvious value such as boats, televisions, or the like," as stated in the preamble. Accordingly, product displays must possess both physical and functional resemblance to the examples specified in 27 CFR § 6.83.

Industry should note that 27 CFR § 6.81 prohibits an industry member from providing a "product display" to a retailer if the furnishing of the item is "conditioned on the purchase of distilled spirits, wine or malt beverages." Therefore, a determination as to whether an item qualifies as a "product display" is not necessary, if it is found that the item was provided conditionally on the purchase of the industry member's product.

In summary, product displays are allowable if they meet the requirements of 27 CFR § 6.83. Product displays must possess the capability of storing or containing distilled spirits, wine or malt beverages, as well as maintain direct physical contact with the product itself. Finally, those items which bear little or no physical or functional resemblance to those displays specified in 27 CFR § 6.83 are not allowable. Those displays which are not allowable will be considered a means to induce and could lead to tied-house violations under the FAA Act, if the other elements of exclusion and interstate or foreign commerce (similar state law must exist for malt beverage products) can be established.

Inquiries. Inquiries concerning this circular should refer to the circular number and be addressed to the Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington DC 20226, ATTN: Tax and Trade Compliance Branch.

Stephen E. Higgins
Director

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Bureau of Alcohol, Tobacco and Firearms
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