STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LIQUOR CONTROL COMMISSION

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In the matter of the request of	)
MICHIGAN SPIRITS ASSOCIATION,	)
on behalf of its licensed members,	)
	)
For a declaratory ruling on the applicability of	)
MCL 436.1609 to certain promotional items	)
	)

At the Michigan Liquor Control Commission's (Commission) June 9, 2017 meeting in Lansing, Michigan.

PRESENT: Andrew J. Deloney, Chairman
Dennis Olshove, Commissioner

ORDER RESCINDING DECLARATORY RULING

Based on the following, the Commission rescinds its March 3, 2017 declaratory ruling addressing the Michigan Spirits Association's (MSA) request concerning placing promotional items on alcoholic beverage bottles at licensed retail establishments.

Facts

The MSA filed a request for declaratory ruling on behalf of its members on February 9, 2017. The request asked "whether MCL 436.1609 prohibits vendors of spirits, vendor representatives, or brokers from placing promotional items on alcoholic beverage bottles at the licensed retail premises." The request further noted that the

"promotional items would not include items containing alcohol." The request contained no additional information regarding the promotional items involved or the terms under which they would be placed on beverage bottles.

The Commission granted the MSA's request on February 16, 2017, and issued a declaratory ruling on March 3, 2017. Specifically, the Commission concluded that MCL 436.1609 does not prohibit the MSA from placing promotional items on alcoholic beverage bottles in a retailer's inventory.

Analysis

Section 63 of the Administrative Procedures Act, MCL 24.263, authorizes the Commission to "issue a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency." MCL 24.263; see also Mich Admin Code, R 436.1971(1). Similarly, the Commission's administrative rules require a written request for declaratory ruling to include "the relevant and material facts, along with a reference to the statute, rule or order applicable." Mich Admin Code, R 436.1971(2).

Upon further review of the request, the Commission concludes that it erred in granting the MSA's request for a declaratory ruling. The request failed to present an "actual state of facts," including all relevant and material facts, as required by the APA and the Commission's administrative rules. Accordingly, the Commission issued the declaratory ruling without a sufficient factual basis. Although MCL 24.263 precludes an agency from retroactively changing a declaratory ruling, it does not "prevent[] an agency

from prospectively changing a declaratory ruling." MCL 24.263. Thus, the Commission may prospectively change the declaratory ruling by rescinding it.

Conclusion

For the reasons stated above, the Commission rescinds its March 3, 2017 declaratory ruling. As a result, the ruling's analysis and holding no longer have force or effect. This rescission will take effect seven days from the date of this Order.

IT IS SO ORDERED.

MICHIGAN LIQUOR CONTROL COMMISSION

Andrew J. Deloney, Chairman

Dennis Olshove, Commissioner

Date of Mailing: June 9, 2017