STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY
AFFAIRS LIQUOR CONTROL COMMISSION

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In the matter of the request of the	)
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 March 3, 2017, meeting of the Michigan Liquor Control Commission (Commission) in Lansing, Michigan.

PRESENT: Andrew J. Deloney, Chairman
Teri L. Quimby, Commissioner

DECLARATORY RULING

The Michigan Spirits Association (MSA), on behalf of all of its members licensed by the Michigan Liquor Control Commission, filed a request for a declaratory ruling on February 10, 2017. At a meeting held on February 16, 2017, the Commission granted the request to issue a declaratory ruling concerning the applicability of MCL 436.1609. Specifically, the MSA requests the Commission to declare whether, as applied to the specific facts presented, MCL 436.1609 prohibits vendors of spirits, vendor representatives, or brokers from going into and placing promotional items on alcoholic beverage bottles already located at the licensed retail premises. The request clearly indicates that the promotional items would not include any items containing alcohol.

Under the Michigan Administrative Procedures Act, MCL 24.263, an interested person may request a ruling as to the applicability of a statute administered by the agency to an actual state of facts. The definition of "person" in MCL 24.205(7) includes an association.

I. Facts Presented

Established in 1967, the MSA represents the vendors, suppliers and distributors of distilled spirit products. According to its website, MSA members provide tens of thousands of jobs for Michigan residents and generate nearly $300 million annually in liquor revenue, making the spirits industry one of the state's largest revenue sources. The MSA members represent more than 74 percent of the more than 7.1 million cases of liquor sold in the state each year.

Members of the MSA desire to place promotional items on products already in retail establishments for the benefit of consumers. The MSA is requesting specific clarification as to whether the aid and assistance provisions in MCL 436.1609 would apply to placing non-alcoholic promotional items on existing alcoholic beverage products already located in retail establishments.

II. Applicable Law

Article IV, Section 40 of the Constitution of Michigan 1963 permitted the Legislature to establish the Commission, which shall exercise complete control of the alcoholic beverage traffic in this state, including retail sales, subject to statutory limitations.

MCL 436.1609(1) provides, in part, that a manufacturer, mixed spirit drink manufacturer, warehouse, wholesaler, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, or vendor of spirits shall not aid or assist any other vendor by gift, loan of money or property of any description, or other valuable thing, or by the giving of premiums or rebates, and a vendor shall not accept the same. A vendor is defined in MCL 436.1113 as a person licensed by the Commission to sell alcoholic liquor. The other provisions of MCL 436.1609 do not concern promotional items attached to alcoholic beverage products for the benefit of consumers.

III. Analysis

The Commission is the wholesaler of spirit products for these items in the state of Michigan. For example, on January 28, 2017, there were 608 value added products approved for sale in Michigan by the Commission and listed in the Commission's Price Book. The request by the MSA would be similar in nature to the value added products already routinely sold in retail establishments. The only difference would be the addition of a non-alcoholic promotional product being added in the retail establishment, rather than prior to actual placement in the retail establishment. The addition of a non-alcohol promotional product in the retail establishment does not change the value or price of the alcoholic beverage product. The retailer has already purchased the products are have them in the licensed retail location, with the intent of selling the alcoholic beverage products to customers of the retail business. Further, the promotional items are intended for the consumer, not the retail licensee.

IV. Conclusion

The provisions of MCL 436.1609 do not apply to non-alcoholic promotional items placed on existing alcoholic beverage products in licensed retail locations. Further, the addition of such promotional items do not constitute a new product for Commission Price Book purposes.

The Commission, therefore, concludes that the Michigan Spirit Association, on behalf of all of its members licensed by the Michigan Liquor Control Commission, may place non-alcoholic promotional items on existing alcoholic beverage products in licensed retail locations.

Further, the Commission concludes that placing such promotional items on alcoholic beverage products already in the inventory of a retail licensee is not aid and assistance to a vendor under MCL 436.1609.

MICHIGAN LIQUOR CONTROL COMMISSION

Andrew J. Deloney, Chairman

Teri L. Quimby, Commissioner

Date: March 3, 2017