

**STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

LIC. NO. 3402-23-272-002

IN THE MATTER OF THE)
APPLICATION TO RELAX THE)
PROVISION OF N.J.A.C. 13:2-24.6 TO)
PERMIT AN AMENDED CURRENT)
PRICE LIST FILING FOR NOVEMBER)
2019)

ALLIED BEVERAGE GROUP, LLC)
_____)

SPECIAL RULING CONCERNING
AMENDED
CURRENT PRICE LIST

Jon Maslin, Senior Vice President, for the Applicant

BY THE ACTING DIRECTOR:

Applicant, Allied Beverage Group, LLC. (“Allied”), filed an application requesting relaxation of N.J.A.C. 13:2-24.6(a)(5) so it could amend its otherwise timely filed December 2019 Current Price List (“CPL”). Relaxation of this regulation is permitted pursuant to N.J.A.C. 13:2-9.1, which authorizes the Director of the Division of Alcoholic Beverage Control (“Division”) to waive N.J.A.C. 13:2-24.6(a)(5) if the Applicant satisfies the criteria described below. In the absence of this relief, the Applicant is not permitted to amend any of its currently filed prices, or to add any new products to its CPL.

This matter arises from Allied’s offering of Combination Packs (“Combos”) in its December 2019 CPL. Combos are authorized by N.J.A.C. 13: 2- 24.9, which provides, in part, that:

(c) The holder of a Class A or B license authorized to sell to retailers, may sell any combination of distilled spirits, malt alcoholic beverages and wine, provided that the combined products offered for sale are all within one of the three noted categories.

“Combination” means “something that results from combining two or more things.” Webster’s II New College Dictionary at 223 (1995). This definition presupposes that the “two or more things” are different products, or at least, different sizes of the same products

because a product cannot be combined with itself. There is a clear difference between an offering combining two distinct items as opposed to offering more of the same.

It is well established that:

The use of the term “free goods” or “free merchandise” is disapproved. A wholesaler may not sell below “cost” nor provide free merchandise, except for authorized samples. [In re: Opinion Letter, A.B.C. Bull. 2464, Item 4 (August 22, 1994), referring to N.J.S.A. 13:2-24.8 (which has since been amended)].

N.J.A.C. 13:2-24.10(a) provides, in pertinent part, that:

No manufacturer, importer, registrant, wholesaler, distributor or retailer shall include in any advertising material or in any advertisement, directly or indirectly, any statement, illustration, design, device, name, symbol, sign or representation that:

1. Is false or misleading; ...

The Enforcement Bureau reviewed Allied’s December 2019 CPL Combination Page (“Combo”) and identified several instances in which it was offering a Combo Pack that appeared to be offering free product. For example, Allied offered Combo Crown Royal XR CMB (SKU# 387645) for \$864.00, at a saving of \$349.08. The Combo Pack included:

1 case of Crown Royal XR Blue (SKU# 387641), best case price: \$864.00; and

1 case of Crown Royal Deluxe (SKU# 387040), best case price \$349.08

Thus, a retailer can purchase one case of Crown Royal XR Blue (SKU# 387641) for the best case price of \$864.00, or it could purchase the same product and receive one case of Crown Royal Deluxe (SKU# 387040) at no additional cost. Clearly, regardless of semantics, by purchasing this Combo the retailer acquires one case of Crown Royal Deluxe at no additional cost and, therefore, this offering is the equivalent of offering “free goods.” “No additional cost” is the same as “no cost.” As former Director John G. Holl explained that:

Former Director Catherine Costa, in a Notice to all wholesalers dated November 1, 1991, noted that many current price list filings by wholesalers were at that time reflecting a quantity discount in terms or language which were effectively synonyms of “free goods” such as, “one case no charge on five cases” or “buy ten cases, receive eleven cases.” Other New Jersey licensed wholesalers were alleged

to be submitting current price list filings which were directly offering “free goods” on quantity purchases in contravention of ABC Bulletin 2342, Item #3. Former Director Costa wrote that filings that are synonymous with a “free goods” promotion, or are the functional equivalent of a “free goods” promotion, are equally similar in their ability to mislead a retailer into assuming that additional cases were being provided without charge. As a result there would be no “cost” base for such “free goods” as mandated by N.J.A.C. 13:2-24.8. [In re: Opinion Letter, A.B.C. Bull. 2464, Item 4.]

Moreover, Director Lerner’s concerns were that the information provided on the new Current Price List provided by wholesalers would otherwise be misleading to retailers without such restrictions. Under former Director Lerner’s reasoning, to suggest that a product is being received for “free” results in a misleading statement that was contrary to the prohibition on licensees selling “below cost.” See, In re: Opinion Letter, A.B.C. Bull. 2464, Item 4.

On November 22, 2019, Enforcement Bureau Chief, Senior Deputy Attorney General Kevin Marc Schatz wrote to Allied President Jeffrey Altschuler and suggested Allied take remedial action. See November 22, 2019 letter from SDAG Schatz to Mr. Altschuler attached as Exhibit A to this Special Ruling. Specifically, Allied should petition to amend its December 2019 CPL to void all of the Combo offerings that were specifically referenced by him in the letter as well as all similar offerings. Absent such relief, Allied would proceed at its own risk.

After receiving this letter Jon Maslin, Allied’s Senior Vice President, along with Mr. Altschuler and Robert C. Williams, Esq., Allied’s counsel contacted SDAG Schatz. Allied explained it has been long standing practice to submit its Combo offerings in this manner. Mr. Maslin also advised that its CPL filing contained “a high number of Combos that are old and no longer active.” In its November 2019 CPL filing it submitted a total of 1,714 “combos” of which only 495 are active, published and for sale. In other words, Allied’s November 2019 CPL listed in excess of more than 1,200 Combos which it claims were not available for retailers to purchase despite their inclusion in the CPL. A CPL is required to contain “[p]rices, inclusive of per unit costs, all discounts, allowances and differentials and other terms of sale, at which all products are offered for sale to retailers during the calendar month following filing (emphasis added). N.J.A.C. 13:2-24.6(a)3.i.

Allied submitted a petition to amend the December CPL on November 26, 2019. Its papers seek to amend the CPL to remove combination offerings for exclusive products as well as removal of multiple combos that are not similarly filed by other New Jersey wholesalers. Its submission also included portions of CPLs filed by other wholesalers offering combos structured similar to the ones identified by the Enforcement Bureau in Allied’s CPL. Allied represented to the Division that allowing other wholesalers to offer these similar combos will create trade instability and place it at a competitive disadvantage. Allied also claimed its harm would be exacerbated because December is its busiest month of the year.

N.J.A.C. 13:2-9.1 allows me to relax N.J.A.C. 13:2-24.6(a)(5) upon a showing by a petitioner of undue hardship (economic hardship or otherwise) on a licensee, that the waiver of the regulation does not unduly burden any affected parties, and that the waiver is consistent with the underlying purposes of Title 33 and the implementing regulations. A petitioner seeking this relief must submit its request in writing and must include all documentation which supports its request for the waiver. This is an extraordinary remedy, which I do not grant lightly.

I have reviewed Allied's certification in support of its request to amend its December 2019 CPL and all supplemental documentation. Based on this review, I am satisfied that Allied's combo offerings as outlined in SDAG Schatz's November 22, 2019 letter would result in Allied offering free products in violation of N.J.A.C. 13:2-24.8. Allied's application suggests that Allied is not the only wholesaler engaging in these unlawful combo promotions. Therefore, in order to avoid disruption to the industry during its busiest month, I will not require the CPL be amended. However, I am referring this matter to the Enforcement Bureau to review and take action as it deems appropriate. Furthermore, the February 2020 CPL filings which are due by January 15, 2020, cannot contain combination offerings which result in free goods to retailers as discussed herein. I am placing Allied, and by circulation of this Special Ruling, the industry in general on notice that such future filings will be referred to the Enforcement Bureau for appropriate action.

Finally, Allied must immediately cease its practice of listing what it classifies as "inactive" listings in its CPL. To the extent other wholesalers file CPLs in this manner, they must stop as well. The CPL is an objective measuring stick for all of a wholesaler's monthly offerings. A CPL which lists products that are not in fact available for retailers to purchase is problematic. First, it has the potential for abuse. A wholesaler at its discretion can provide the listed offering to favored accounts under cover of it being in the CPL, but turn away other retailers interested in the combo by claiming it is not an "active" listing. Secondly, the Division relies on the CPL to ensure a wholesaler is complying with Title 33's mandate of maintaining a level playing field for the industry and prohibiting discrimination. Both of these interests are necessary to maintain trade stability. When the CPL on its face does not accurately describe a wholesaler's offerings, the CPL becomes meaningless. Simply put, if something is listed in the CPL, it must be available for sale to all interested retail customers.

Accordingly, it is on this 27 day of November, 2019,

ORDERED that the Allied's December CPL as initially filed is accepted subject to the direction and instruction as set forth in the body of this Special Ruling and;

IT IS FURTHER ORDERED that to alleviate these problems, wholesalers should use either a numerical percentage reduction off the "best case price" or allocate the specific dollar cost for each item in a combination offering.



JAMES B. GRAZIANO
ACTING DIRECTOR



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November 22, 2019

VIA EMAIL: JAltschuler@alliedbeverage.com

Jeffrey Altschuler, President
Allied Beverage Group
700 Kapkowski Road
Elizabeth, New Jersey 07021

Re: Allied Beverage Group's December 2019 Current Price List

Dear Mr. Altschuler:

The Division of Alcoholic Beverage Control ("ABC") has reviewed the December 2019 Current Price List ("CPL") filed by Allied Beverage Group ("Allied") on or about November 15, 2019. This CPL is rife with combination sale packages ("Combo Packs") offered by Allied that are (sometimes when combined with RIPs) transparent offers of free goods to its customers. The attached spreadsheet illustrates only a few of the violative Combo Packs discovered by ABC that violate the Alcoholic Beverage Control Act ("ABC Act").

It is well established that:

The use of the term "free goods" or "free merchandise" is disapproved. A wholesaler may not sell below "cost" nor provide free merchandise, except for authorized samples. [In re: Opinion Letter, A.B.C. Bull. 2464, Item 4 (August 22, 1994), referring to N.J.S.A. 13:2-24.8 (which has since been amended)].

Moreover, as former Director John G. Holl noted:

Former Director Catherine Costa, in a Notice to all wholesalers dated November 1, 1991, noted that many current price list filings by wholesalers were at that time reflecting a quantity discount in



terms or language which were effectively synonyms of “free goods” such as, “one case no charge on five cases” or “buy ten cases, receive eleven cases.” Other New Jersey licensed wholesalers were alleged to be submitting current price list filings which were directly offering “free goods” on quantity purchases in contravention of ABC Bulletin 2342, Item #3. Former Director Costa wrote that filings that are synonymous with a “free goods” promotion, or are the functional equivalent of a “free goods” promotion, As a result there would be no “cost” base for such “free goods” as mandated by N.J.A.C. 13:2-24.8. [Ibid.].

Thus, these types of offerings have been a violation of the rules and regulations governing CPLs since deregulation in 1980.

I am sending this warning now, instead of waiting until Allied has implemented these prohibited offerings, to allow Allied the opportunity to: (1) amend its CPL by withdrawing its Combo Packs page and re-submitting a new one that is entirely void of these and *all* similar Combo Packs before December 1, 2019; (2) to notify its customers that it will not fill any pre-orders of these violative Combo Packs; and (3) permanently discontinue this practice. Of course, this amendment will require Allied to petition the Director for a Special Ruling before the amendment can become effective and Allied can offer the new Combo Packs items to its customers. In support of the application, Allied will have to submit an affidavit explaining the reason for its application.

However, if Allied persists with these offerings, it will likely face formal administrative prosecution by the Enforcement Bureau for multiple administrative violations. Because I am sending this warning prior to December 1, 2019, the Enforcement Bureau will view continuation of these Combo Packs to be intentional violations of the ABC Act. In such event, any settlement of disciplinary action will include, but not be limited to, restitution to ABC of all proceeds received by Allied from these sales, unless the Director decides otherwise. Moreover, Allied’s customers that purchase these Combo Packs will likely also be administratively charged. ABC will provide a copy of this letter as part of the discovery packet.

Allied is directed to maintain a hardcopy and electronic file of every December 2019 invoice related to all Combo Pack sales, in chronological order, segregated by Licensee, for immediate production in January 2020. It is also directed to prepare an EXCEL spreadsheet listing its customer purchasers (of Combo Packs) in alphabetical order, license number, invoice date, invoice number, combination sale purchased, quantity purchased, and all other information provided on the Combo Packs page of the CPL template. It must also repeat this process for January and February 2020.

The offering of a Combo Pack is a deliberate act made in consultation with, or at least with the knowledge of, its suppliers. Thus, even if the Enforcement Bureau did not move to suspend the registration of the brands involved, the brand owners could reasonably expect ABC to inform them that their field representatives and wholesaler are marketing their products in violation of the ABC Act. I hope that this undertaking will not be necessary.

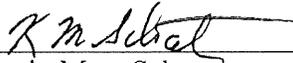
Whether it be Operation Dolus, the “Wives Club,” no-show solicitors or the ongoing trade practices investigation, for the past 30 years, Allied and its constituent member licensees have been at the center of almost every trade practices investigation conducted by ABC. Always, Allied promised to become compliant and abide by the rules, only to become the focal point of the next investigation.

That Allied would offer these prohibited promotions while it is under scrutiny in the on-going trade practices investigation not only raises questions of judgment, but also whether Allied is either beyond the control of its officers or it has intentionally charted a course of outright non-compliance. This CPL filing will influence any resolution of the on-going trade practices investigation.

As the December 1 effective date is rapidly approaching, Allied must take immediate action or risk the consequences. Your prompt attention to this matter is appreciated.

Very truly yours,

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: 
Kevin Marc Schatz
Senior Deputy Attorney General
Chief, Enforcement Bureau

c: Robert C. Williams, Esquire
via email: rcwsqlaw@attyabc.com

Allied Beverage Group December 2019 CPL Analysis

COMBO SKU# / ID Number	FROM DATE (MM/DD/YYYY)	TO DATE (MM/DD/YYYY)	Combo Pack Description	SKU/ ID Number of Each Product Included In Combo Pack (If no SKU use brand No.)	Regular (Non-Combo) Unit Price of Each Item	Combo Pack Price	Total Saving by Purchasing Combo Pack	COMMENTS INSTRUCTIONS EXPLANATIONS
4476850	12/1/2019	12/31/2019	MONTES CAB/SYRAH 7CS	4476846	\$240.00	\$1,439.28	\$420.66	CONTAINS: 750ML-6CS MONTES ALPHA CAB & 1CS FOLLY SYRAH
4476850	12/1/2019	12/31/2019	MONTES CAB/SYRAH 7CS	4477342	\$419.94	\$1,439.28	\$420.66	CONTAINS: 750ML-6CS MONTES ALPHA CAB & 1CS FOLLY SYRAH
			Cases	Product SKU	Non-Combo Price	Total	Combo Price	Savings Comment
			6	4476846	\$240.00	\$1,440.00	\$1,439.28	\$420.66 Equals 1cs of 4477342 for FREE
			1	4477342	\$419.94	\$419.94		\$380 RIP equals additional 1.5 cs of 4476846 for free PLUS 4380 RIP
						\$1,859.94		

COMBO SKU# / ID Number	FROM DATE (MM/DD/YYYY)	TO DATE (MM/DD/YYYY)	Combo Pack Description	SKU/ ID Number of Each Product Included In Combo Pack (If no SKU use brand No.)	Regular (Non-Combo) Unit Price of Each Item	Combo Pack Price	Total Saving by Purchasing Combo Pack	COMMENTS INSTRUCTIONS EXPLANATIONS
4476650	12/1/2019	12/31/2019	MONTES 13CS COMBO	4476646	\$159.99	\$1,438.56	\$961.26	CONTAINS: 750ML 6CS EA MONTES CLS CAB & MAL & 1CS ALPHA M
4476650	12/1/2019	12/31/2019	MONTES 13CS COMBO	4477844	\$159.99	\$1,438.56	\$961.26	CONTAINS: 750ML 6CS EA MONTES CLS CAB & MAL & 1CS ALPHA M
4476650	12/1/2019	12/31/2019	MONTES 13CS COMBO	4476543	\$479.94	\$1,438.56	\$961.26	CONTAINS: 750ML 6CS EA MONTES CLS CAB & MAL & 1CS ALPHA M
			Cases	Product SKU	Non-Combo Price	Total	Combo Price	Savings Comment
			6	4476646	\$159.99	\$959.94	\$1,438.56	\$961.26 Equals 6cs of 446646 or 4477844 for free or 3cs of 446646 or 4477844 plus 1cs of 4476543 for FREE
			6	4477844	\$159.99	\$959.94		RIP on 446646 or 4477844 is \$216/6cs
			1	4476543	\$479.94	\$479.94		RIPs on 4476543 are \$30/1cs, \$120/2cs, \$300/3cs
								RIP of \$246 (\$716 + \$30) equals additional 2cs of 4476646 or 4477844 for FREE (at best unit price of \$9.99)

COMBO SKU# / ID Number	FROM DATE (MM/DD/YYYY)	TO DATE (MM/DD/YYYY)	Combo Pack Description	SKU/ ID Number of Each Product Included In Combo Pack (If no SKU use brand No.)	Regular (Non-Combo) Unit Price of Each Item	Combo Pack Price	Total Saving by Purchasing Combo Pack	COMMENTS INSTRUCTIONS EXPLANATIONS
387645	12/1/2019	12/31/2019	CROWN ROYAL XR CMB	387641	\$864.00	\$864.00	\$349.08	CONTAINS: 750ML-1CS EA CROWN ROYAL XR & DELUXE
387645	12/1/2019	12/31/2019	CROWN ROYAL XR CMB	387040	\$349.08	\$864.00	\$349.08	CONTAINS: 750ML-1CS EA CROWN ROYAL XR & DELUXE
			Cases	Product SKU	Non-Combo Price	Total	Combo Price	Savings Comment
			1	387641	\$864.00	\$864.00	\$864.00	\$0.00
			1	387040	\$349.08	\$349.08		\$349.08 Equals 1 cs of 387040 for FREE

COMBO SKU# / ID Number	FROM DATE (MM/DD/YYYY)	TO DATE (MM/DD/YYYY)	Combo Pack Description	SKU/ ID Number of Each Product Included In Combo Pack (If no SKU use brand No.)	Regular (Non-Combo) Unit Price of Each Item	Combo Pack Price	Total Saving by Purchasing Combo Pack	COMMENTS INSTRUCTIONS EXPLANATIONS
4938050	12/1/2019	12/31/2019	NOZZLE CHIANTI 6CS	4938048	\$240.00	\$1,079.40	\$402.60	CONTAINS: 750ML 5CS NOZZLE CHIANTI RISERVA & 1CS CABREO
4938050	12/1/2019	12/31/2019	NOZZLE CHIANTI 6CS	9689147	\$282.00	\$1,079.40	\$402.60	CONTAINS: 750ML 5CS NOZZLE CHIANTI RISERVA & 1CS CABREO
			Cases	Product SKU	Best Non-Combo Price	Total	Combo Price	Savings Comment
			5	4938048	\$215.88	\$1,079.40	\$1,079.40	\$0.00 Best Case Price for 4938048 Includes RIP of \$72 for 2 cs purchase
			1	9689147	\$282.00	\$282.00		\$282.00 Equals 1 cs of 9689147 for FREE