UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

MISSOURI BROADCASTERS ASSOCIATION, on its own behalf and on behalf of its members; ZIMMER RADIO OF MID-MO, INC., MEYER FARMS, INC., and UNCLE D'S SPORTS BAR & GRILL, LLC,	)	
Plaintiffs,	)	
v.	)	No. 2:13 CV 4034
LAFAYETTE E. LACY, State Supervisor of Liquor Control, in his official capacity, and CHRIS KOSTER, Attorney General of the State of Missouri, in his official capacity,	)	JURY TRIAL DEMANDED
Defendants.	)	

COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTIVE AND OTHER RELIEF

Plaintiffs state as follows:

INTRODUCTION

1. This is an action for declaratory judgment and injunctive relief related to three separate Missouri restrictions on truthful commercial speech in the advertising of alcoholic beverages.

2. Missouri regulation 11 C.S.R. 70-2.240(5)(G) (the "Discount Advertising Prohibition Regulation") prohibits any statement offering a coupon or discount as an inducement to purchase alcohol.

3. Missouri regulation 11 C.S.R. 70-2.240(5)(I) (the "Below Cost Advertising Prohibition Regulation") prohibits any advertisement of alcohol at a price below the retailer's actual cost.

4. Missouri statute RSMo. § 311.070.4(10) (the "Single Retailer Advertising Prohibition Statute") prohibits advertisements of alcohol by wholesalers and others referring to only one retail business or two affiliated retailers, and additionally prohibits the inclusion of the product's retail price in any advertisement listing the names of retailers.

5. Each of these restrictions (collectively, the "Challenged Advertising Regulations") prohibits the "dissemination of information as to who is producing and selling what product, for what reasons, *and at what price*." *Va. State Bd. of Pharm. v. Va. Citizens Consumer Council*, 425 U.S. 748, 765 (1976) (emphasis added). As the Supreme Court has recognized, "So long as we preserve a predominant free enterprise economy, the allocation of our resources in large measure will be made through numerous private economic decisions. It is a matter of public interest that those decisions, in the aggregate, be intelligent and well informed. To this end, the free flow of commercial information is indispensible." *Id.*

6. Plaintiffs pray for a permanent injunction to restrain and enjoin Defendants from enforcing the Challenged Advertising Regulations, as well as for a declaratory judgment declaring each to be unconstitutional, in violation of the First Amendment of the United States Constitution, as interpreted by the U.S. Supreme Court in its "commercial speech" doctrine.

PARTIES

7. Plaintiff Missouri Broadcasters Association ("MBA") is a non-profit corporation existing under the laws of the State of Missouri, with its principal place of business in Jefferson City, Missouri. MBA's objects and purposes include promoting the interests and welfare of the broadcasting industry in the State of Missouri. MBA, therefore, has standing in its own right.

8. MBA's members include persons, firms, institutions, or corporations operating licensed commercial broadcasting stations, or non-commercial educational stations, who earn revenues

from advertising and who would accept advertising of alcoholic beverages at discounts, at prices below cost, and referencing only a single retailer, but for the challenged regulations. These members, and others, have suffered harm by their inability to generate revenues from the advertising of alcoholic beverages at discount, at prices below cost, and referencing only a single retailer. MBA thus has associational standing to sue on behalf of its members.

9. Plaintiff Zimmer Radio of Mid-MO, Inc. ("ZIMMER RADIO"), is a corporation existing under the laws of the State of Missouri, with its principal place of business in Columbia, Missouri. It operates radio stations KCLR, KTXY, KCMQ, KTGR, KATI, KWOS, and KFAL in Missouri, and generates revenues from paid advertisements on those stations.

10. Plaintiff Meyer Farms, Inc. ("MEYER FARMS") is a corporation existing under the laws of the State of Missouri, with its principal place of business in Springfield, Missouri. It grows wine grapes at its Missouri farm, arranges with a Missouri winery for them to be made into wine, and sells the wine through a distributor to retail outlets in Missouri and elsewhere.

11. Plaintiff Uncle D's Sports Bar & Grill, LLC, ("UNCLE D's") is a limited liability corporation organized under the laws of the State of Missouri, with its principal place of business in St. Joseph, Missouri. UNCLE D'S operates a commercial food and drink establishment licensed by the State of Missouri to serve alcoholic beverages.

12. Defendant Lafayette E. Lacy is the State Supervisor of Liquor Control (the "Supervisor"), for the Department of Public Safety, Division of Alcohol and Tobacco Control (the "Division"). Under RSMo. § 311.660 and 11 C.S.R. 70-1.010, he is charged with power to enforce the state's liquor laws and regulations promulgated thereunder. The Supervisor is also authorized to enact regulations within his authority under RSMo. § 311.660. The Supervisor is sued in his official capacity.

13. Defendant Chris Koster is the Attorney General for the State of Missouri (the "Attorney General"). Under RSMo. § 311.800, the Attorney General may, in his discretion, direct prosecutions under RSMo. Ch. 311. The Attorney General is sued in his official capacity.

JURISDICTION AND VENUE

14. This action arises under federal law, including under the First Amendment of the United States Constitution and the provisions of 42 U.S.C. § 1983, which addresses the deprivation of rights, privileges, and immunities under color of state law. This Court, therefore, has jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3). Declaratory relief is also sought pursuant to the provisions of 28 U.S.C. § 2201.

15. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1) and L.R. 3.1(b) in the Central Division of the Western District of Missouri because Defendants reside in said Division and District for purposes of the venue statute.

COLOR OF LAW

16. Plaintiffs are informed and believe, and thereon allege, that at all times relevant to this action, the State of Missouri has acted through its lawfully elected committees and the General Assembly and through actions of the Governor, and all the acts alleged herein—including the Challenged Advertising Regulations, and decisions to enforce or not enforce these regulations—were done within the course and scope of Defendants' agency as officials of the State of Missouri.

17. The conduct of Defendants or their agents, as well as the threatened conduct of each as herein alleged, was and is performed under color of law of the State of Missouri, and all such conduct constitutes "acts of the state" within the meaning of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

FACTS COMMON TO ALL COUNTS

18. The Discount Advertising Prohibition Regulation prohibits any statement offering a coupon or discount as an inducement to purchase alcohol. Specifically, it provides:

> No advertisement of intoxicating liquor or nonintoxicating beer shall contain … [a]ny statement offering any coupon, premium, price, rebate, sales price below cost or discount as an inducement to purchase intoxicating liquor or nonintoxicating beer except, manufacturers of intoxicating liquor other than beer or wine shall be permitted to offer and advertise consumer cash rebate coupons and all manufacturers of intoxicating liquor may offer and advertise coupons for nonalcoholic merchandise … .

11 C.S.R. 70-2.240(5)(G). A copy of the challenged Discount Advertising Prohibition Regulation is attached to this Complaint as Exhibit A and is incorporated by reference.

19. The Below Cost Advertising Prohibition Regulation prohibits any advertisement of alcohol at a price below the retailer's actual cost. Specifically, it provides:

> No advertisement of intoxicating liquor or nonintoxicating beer shall contain … [a] price that is below the retailer's actual cost.

11 C.S.R. 70-2.240(5)(I). A copy of the challenged Below Cost Advertising Prohibition Regulation is attached to this Complaint as Exhibit B and is incorporated by reference.

20. The Single Retailer Advertising Prohibition Statute prohibits advertisements of alcohol by wholesalers and others referring to only one retail business or two affiliated retailers, and additionally prohibits the inclusion of the product's retail price in any advertisement listing the names of retailers. Specifically, it provides:

> The distiller, wholesaler, winemaker or brewer may in an advertisement list the names and addresses of two or more unaffiliated retail businesses selling its product if all of the following requirements are met:
>
> (a) The advertisement shall not contain the retail price of the product;
>
> (b) The listing of the retail businesses shall be the only reference to such retail businesses in the advertisement;

(c) The listing of the retail businesses shall be relatively inconspicuous in relation to the advertisement as a whole; and

(d) The advertisement shall not refer only to one retail business or only to a retail business controlled by the same retail business.

RSMo. § 311.070.4(10). A copy of the challenged Single Retailer Advertising Prohibition Statute is attached to this Complaint as Exhibit C and is incorporated by reference.

21. The Challenged Advertising Regulations prohibit commercial speech, which the U.S. Supreme Court has held is protected under the First Amendment, observing that a "consumer's interest in the free flow of commercial information … may be as keen, if not keener by far, than his interest in the day's most urgent political debate." *Va. State Bd. of Pharm. v. Va. Citizens Consumer Council*, 425 U.S. 748, 763 (1976).

22. The Discount Advertising Prohibition Regulation prohibits the dissemination of such truthful information as that regarding a two-for-one special on beer at the local grocery store, a going-out-of-business sale at a specialty wine shop, or a coupon for one free drink with the purchase of an entrée at a neighborhood bar and grill, despite the legality of these promotions and the economic interest of consumers in receiving this truthful information.

23. The Below Cost Advertising Prohibition Regulation likewise prohibits the dissemination of such truthful information as that regarding a two-for-one special on beer at the local grocery store, a going-out-of-business sale at a specialty wine shop, or a coupon for one free drink with the purchase of an entrée at a neighborhood bar and grill, where those sales or promotions have the effect of pricing the alcohol product below the retailer's actual cost, again despite the legality of these promotions and the economic interest of consumers in receiving this truthful information.

24. The Single Retailer Advertising Prohibition Statute prohibits the dissemination of truthful information regarding the names and addresses of retailers where consumers can lawfully

purchase the advertised alcoholic beverages or, alternatively, compels speech regarding additional retailers. The Single Retailer Advertising Prohibition Statute also prohibits the inclusion of an alcoholic beverage's retail price in advertisements listing the names of retail businesses, despite the economic interest of consumers in receiving this truthful information.

25. The Challenged Advertising Regulations have a chilling effect on speech by manufacturers and retailers of alcoholic beverages, such as UNCLE D'S.

26. The restriction on the free flow of truthful information to potential customers of manufacturers and retailers, such as MEYER FARMS and UNCLE D'S, and listeners of ZIMMER RADIO and other MBA members further infringes on the rights of those who would be the intended recipients of the prohibited advertising. As the U.S. Supreme Court has observed, "If there is right to advertise, there is a reciprocal right to receive the advertising." *Va. State Bd. of Pharm. v. Va. Citizens Consumer Council*, 425 U.S. 748, 757 (1976).

27. In addition to the weighty but non-tangible First Amendment interests at issue, tangible injury flows from the Challenged Advertising Regulations in the form of threatened enforcement. Violations may result in the suspension or revocation of licenses issued under RSMo. Ch. 311, fines and penalties, and/or misdemeanor criminal prosecutions under RSMo. §§ 311.660, 311.868, 311.880 and other enforcement statutes and regulations. Moreover, broadcasting stations, which are licensed by the Federal Communications Commission, and which must periodically renew their broadcast licenses, must take special care not to engage or assist in violations of law.

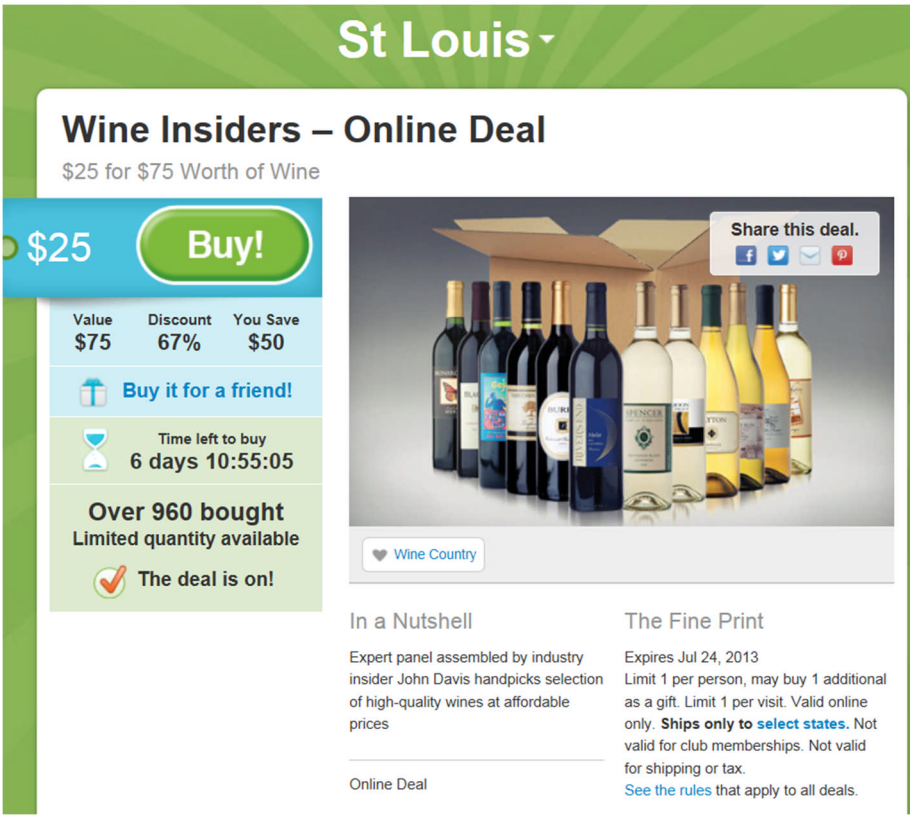
28. Beyond the injury to the prospective speakers and intended recipients of the prohibited advertisements, the Challenged Advertising Regulations have also injured potential broadcasters of the prohibited advertisements. Specifically, they have successfully prevented advertisements

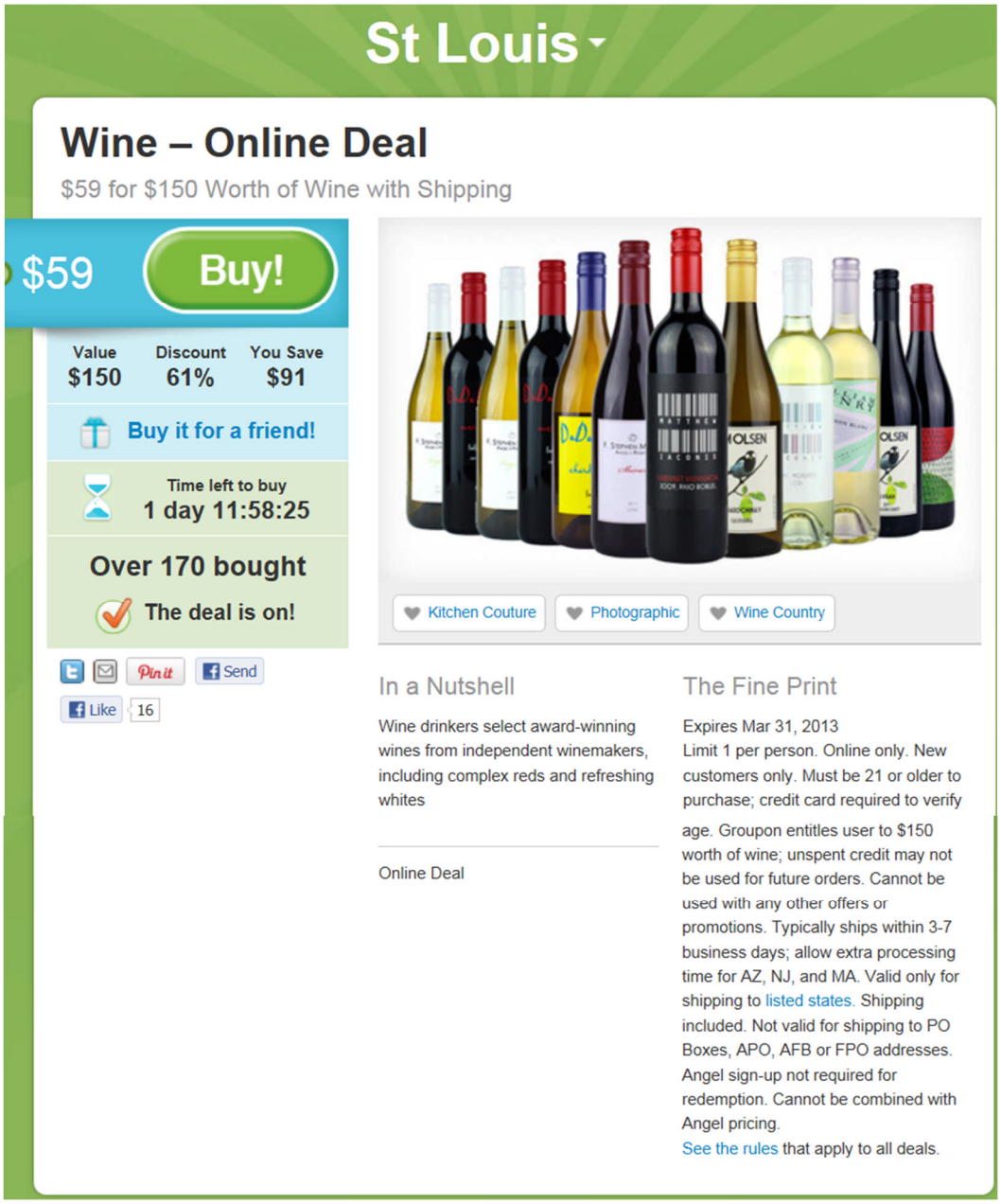
of alcohol over radio and television broadcasts in Missouri on the broadcasts of MBA members including, but not limited to, ZIMMER RADIO, that contain truthful information regarding: sales or other discounts; prices below cost; a single retailer; or retail price information in advertisements including the names of multiple retailers.

29. Manufacturers and retailers of alcoholic beverages are customers and/or potential customers of MBA members. The chilling effect on the speech of these manufacturers and retailers has thus resulted in the loss of advertising revenue to MBA members.

30. Despite the lack of radio and television advertising, manufacturers and retailers of alcoholic beverages have begun with increasing frequency to advertise discounts in Internet content, including on coupon sites, such as Groupon.

31. For example, in January 2013, Groupon featured the following advertisements for coupons for use solely on alcoholic beverages to be purchased in Missouri:





Groupon, and other entities offering online coupons, regularly offer discount coupons featuring sales of wine, beer, and spirits, either alone, or in connection with restaurant meals. Following are examples of various such offers made through Groupon, directed specifically at Missouri residents:



Half Off Gourmet Bar Food and Drinks at Van Goghz

Van Goghz

Tower Grove East

~~$30~~ $15 View



Half Off Food and Wine at Noboleis Vineyards

Noboleis Vineyards

Augusta

~~$20~~ $10 View



Up to 61% Off at La Gra Italian Tapas & Wine Bar

La Gra Italian Tapas & Wine Bar

Clayton-Tamm

~~$61~~ $25 View



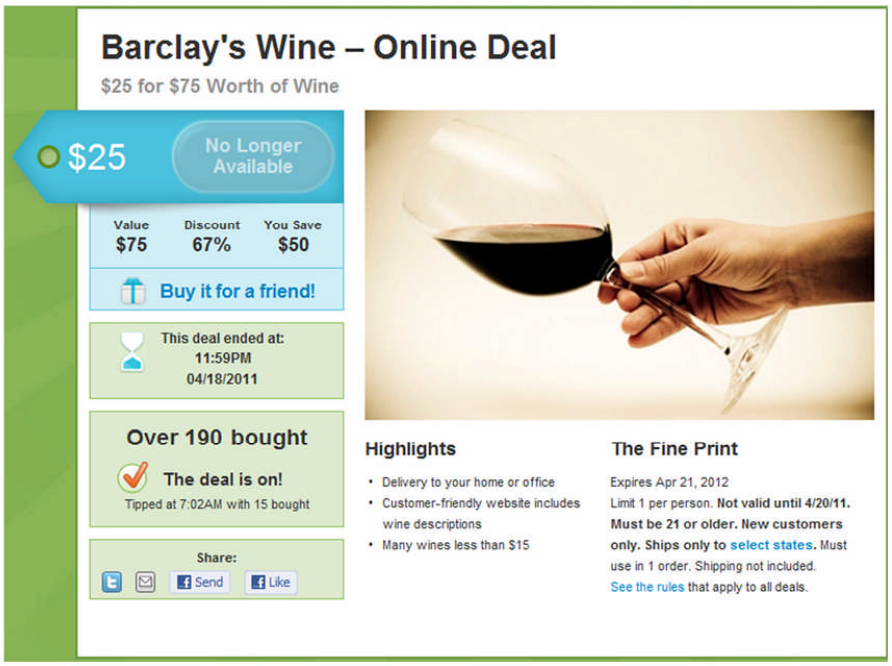
Up to 54% Off at Copia Restaurant & Wine Garden

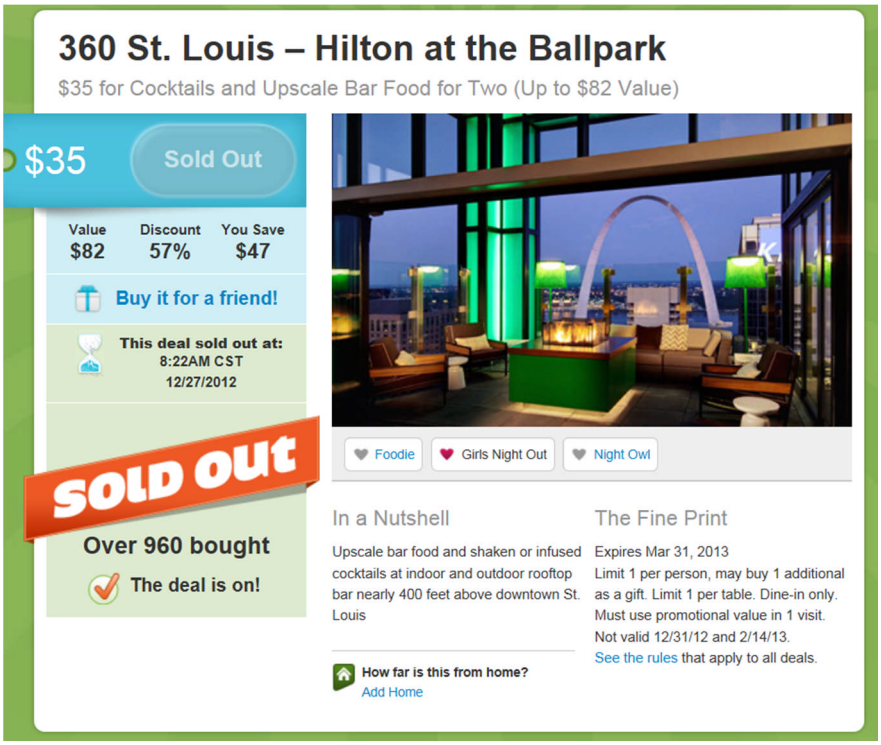
Copia Restaurant & Wine Garden

Downtown St. Louis

~~$50~~ $25 View


GROUPON
Featured Deal
All Deals
Now! Deals
Getaways
Goods
NEW
Kansas City
Get Deals By Email
Falldo Waldo Crawldo Pub Crawl – Multiple Locations
Falldo Waldo Crawldo Pub Crawl for Two or Four on September 15 (Up to Half Off)
from $7
Buy!
Value $13
Discount 46%
You Save $6
Buy it for a friend!
Time left to buy
2 days 13:51:03
Over 130 bought
Limited quantity available
The deal is on!
Pin it
Send
Like
0
Happy Hour
In a Nutshell
Pub crawl spans seven close-proximity bars with live music, DJs, contests, and world-record attempts
The Fine Print
Expires Sep 15, 2012
Limit 1 per person, may buy 1 additional as a gift. Valid only for option purchased. Must be 21 or older. Must bring photo ID. Valid only for pub crawl on 9/15/12.
See the rules that apply to all deals.


Barclay's Wine – Online Deal
$25 for $75 Worth of Wine
$25
No Longer Available
Value $75
Discount 67%
You Save $50
Buy it for a friend!
This deal ended at:
11:59PM
04/18/2011
Over 190 bought
The deal is on!
Tipped at 7:02AM with 15 bought
Share:
Send
Like
Highlights
• Delivery to your home or office
• Customer-friendly website includes wine descriptions
• Many wines less than $15
The Fine Print
Expires Apr 21, 2012
Limit 1 per person. Not valid until 4/20/11. Must be 21 or older. New customers only. Ships only to select states. Must use in 1 order. Shipping not included.
See the rules that apply to all deals.


360 St. Louis – Hilton at the Ballpark
$35 for Cocktails and Upscale Bar Food for Two (Up to $82 Value)
$35
Sold Out
Value
$82
Discount
57%
You Save
$47
Buy it for a friend!
This deal sold out at:
8:22AM CST
12/27/2012
SOLD OUT
Over 960 bought
The deal is on!
Foodie
Girls Night Out
Night Owl
In a Nutshell
Upscale bar food and shaken or infused cocktails at indoor and outdoor rooftop bar nearly 400 feet above downtown St. Louis
The Fine Print
Expires Mar 31, 2013
Limit 1 per person, may buy 1 additional as a gift. Limit 1 per table. Dine-in only. Must use promotional value in 1 visit. Not valid 12/31/12 and 2/14/13.
See the rules that apply to all deals.
How far is this from home?
Add Home


GROUPON
Featured Deal
All Deals
Now! Deals
Getaways
Goods
NEW
Kansas City
Get Deals By Email
Monetti's Taste of Italy – Lee's Summit
Italian Dinner with Wine for Two or Four (Up to 59% Off)
from
$22
Buy!
Value
$48
Discount
54%
You Save
$26
Buy it for a friend!
Time left to buy
2 days 13:47:22
Over 380 bought
Limited quantity available
The deal is on!
Send
Like
0
Foodie
In a Nutshell
Three generations of the Monetti family cook up wood-fired pizzas and homemade lasagna
The Fine Print
Expires Feb 27, 2013
Limit 2 per person, may buy 1 additional as a gift. Limit 1 per table, 2 for tables of 4 or more. Valid only for option purchased. No substitutions. Dine-in only. Valid for dinner only. Must use promotional value in 1 visit. Additional charge for Lobster Shrimp Blush and Frutti Di Mare entrees.
See the rules that apply to all deals.


GROUPON
Featured Deal
All Deals
Now! Deals
Getaways
Goods
NEW
St Louis
Sam's Steakhouse – Grantwood Village
$40 for Dinner for Two with Wine (Up to $89.90 Value)
$40
Buy!
Value $89
Discount 55%
You Save $49
Buy it for a friend!
Time left to buy
3 days 13:42:30
Over 830 bought
Limited quantity available
The deal is on!
Send
Like 0
BYO
In a Nutshell
Old World steak-house atmosphere; fireside dinners feature tenderloin fillets, lobster tails, and wine
The Fine Print
Expires in 1 year
Limit 1 per person, may buy 1 additional as a gift. Limit 1 per table. Reservation required. Dine-in only. Not valid on holidays. Extra fee for Filet and Shrimp, Filet and Lobster, Lobster Tail, and Fried Lobster Tail entrees. Extra fee for Oberon cabernet and Wildhorse merlot glass of wine.
See the rules that apply to all deals.


St Louis
Flaco's Cocina – University City
Modern Latin Fusion Cuisine and Drinks (Up to 60% Off). Two Options Available.
from $10
Buy!
Value $25
Discount 60%
You Save $15
Buy it for a friend!
Limited time remaining!
Over 1,000 bought
Limited quantity available
The deal is on!
In a Nutshell
Fresh ceviche, lobster tacos, and specialty margaritas headline a menu filled with tropical flavors at this colorful Caribbean haven
The Fine Print
Expires Mar 20, 2013
Limit 2 per person, may buy 1 additional as a gift. Limit 1 per table. Valid only for option purchased. Dine-in only. Must use promotional value in 1 visit. Valid only for house-made margaritas and sangria for alcoholic drinks.
See the rules that apply to all deals.

32. On information and belief, the Supervisor and Attorney General have not enforced the Discount Advertising Prohibition Regulation against manufacturers and retailers who have advertised coupons or discounts on online media, including Groupon, despite the Discount Advertising Prohibition Regulation's purporting to regulate advertisements "through the media of radio, television, motion pictures, newspapers, magazines *or similar publications*." 11 C.S.R. 70-2.240(2) (emphasis added).

33. On information and belief, to the extent that these Internet coupons result in sales prices below the retailer's cost, the Supervisor and Attorney General have not enforced the Below Cost Advertising Prohibition Regulation against manufacturers and retailers who have advertised these coupons or discounts on online media, including Groupon, despite the Below Cost Advertising Prohibition Regulation's purporting to regulate advertisements "through the media of radio, television, motion pictures, newspapers, magazines *or similar publications*." 11 C.S.R. 70-2.240(2) (emphasis added).

34. MBA's members, including ZIMMER RADIO, have therefore not only experienced a loss of potential revenues caused by the chilling effect of the Challenged Advertising Regulations, but also suffered a competitive disadvantage in relation to certain of its competitors—namely online purveyors of advertising—as a result of Defendants' decision not to enforce the Discount Advertising Prohibition Regulation and the Below Cost Advertising Prohibition Regulation with respect to online advertisements.

35. The Challenged Advertising Regulations fall under the First Amendment's intermediate scrutiny test for restrictions on "commercial speech" created by the U.S. Supreme Court, which has recognized that "when a State entirely prohibits the dissemination of truthful, non-misleading commercial messages for reasons unrelated to the preservation of a fair bargaining process, there

is far less reason to depart from the rigorous review that the First Amendment generally demands." *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 501 (1996) (invalidating a statutory prohibition against advertisements that provided the public with accurate information about retail prices of alcoholic beverages).

36. Defendants cannot show that the Challenged Advertising Regulations directly advance a substantial governmental interest, nor that they regulate no more extensively than necessary to serve that substantial interest.

37. The Challenged Advertising Regulations violate the freedom of speech protected by the First Amendment of the Constitution of the United States, which protects commercial speech as providing consumers "vital information about the market." *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 495 (1996).

38. Enforcement of the Challenged Advertising Regulations results in irreparable injury to Plaintiffs. As the Supreme Court has recognized, "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). With respect to UNCLE D'S, and MEYER FARMS, their free speech rights have been suppressed. With respect to potential customers of UNCLE D'S and MEYER FARMS, and listeners of MBA's members, including ZIMMER RADIO, enforcement results in their inability to learn relevant and accurate information about lawful products that will assist them in making economic decisions.

39. Enforcement of the Challenged Advertising Regulations also results in irreparable injury based on the inability of money damages to compensate Plaintiffs for their economic injuries. With respect to MBA and its members, including ZIMMER RADIO, the lost advertising revenues caused by enforcement of the Challenged Advertising Regulations cannot be accurately

assessed, and are therefore not susceptible to money damages. Similarly, UNCLE D'S and MEYER FARMS's lost sales caused by enforcement of the Challenged Advertising Regulations cannot be accurately assessed, and are therefore not susceptible to money damages.

40. The injury to Plaintiffs outweighs any damage that an injunction against enforcement of the Challenged Advertising Regulations will cause Defendants because Defendants have no cognizable interest in enforcing unconstitutional laws.

41. The public interest in general would be served by enjoining enforcement of the Challenged Advertising Regulations in that, unless the relief is granted, the public's right to receive Constitutionally-protected speech relevant to their economic decisions and "vital information about the market" may be permanently extinguished, in violation of the First Amendment to the United States Constitution." *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 495 (1996).

COUNT I
DECLARATORY RELIEF AGAINST
FACIALLY UNCONSTITUTIONAL DISCOUNT
ADVERTISING PROHIBITION REGULATION / 42 U.S.C. § 1983

42. Plaintiffs repeat and reallege paragraphs 1 through 41 above as if fully set forth herein.

43. The Discount Advertising Prohibition Regulation is facially unconstitutional under the First Amendment to the Constitution.

44. The challenged Discount Advertising Prohibition Regulation is an unconstitutional infringement upon the free speech rights of manufacturers and retailers of alcoholic beverages, including UNCLE D'S and MEYER FARMS, to disseminate truthful information about their products to consumers.

45. The challenged Discount Advertising Prohibition Regulation is also an unconstitutional infringement upon the free speech rights of MBA members, including ZIMMER RADIO, and

MBA's members are precluded from earning revenues on advertisements containing this prohibited speech.

46. The challenged Discount Advertising Prohibition Regulation is also an unconstitutional infringement upon the free speech rights of consumers and potential consumers of alcoholic beverages, including listeners of MBA's member stations. Adults who desire to obtain information concerning the prices of alcoholic beverages for purchase or consumption are prohibited from obtaining that information through the enactment and enforcement of the Discount Advertising Prohibition Regulation.

47. An actual controversy of a justiciable nature now exists concerning the constitutionality of the Discount Advertising Prohibition Regulation.

48. This controversy is definite and concrete, in that the parties' positions are adverse and Defendants' enforcement of the Discount Advertising Prohibition Regulation causes direct legal injury to Plaintiffs.

49. This controversy is real and substantial, and ripe for adjudication. A judicial declaration as to the constitutionality of the Discount Advertising Prohibition Regulation will resolve the present controversy, and provide conclusive relief.

50. Plaintiffs therefore seek a declaratory judgment pursuant to 28 U.S.C. § 2201(a), declaring that the Discount Advertising Prohibition Regulation is unconstitutional, in violation of the First Amendment to the United State Constitution.

51. Defendants, under color of law of the State of Missouri, caused Plaintiffs to be subjected to the deprivation of rights, privileges, or immunities secured them by the First Amendment of the United States Constitution.

52. An award of attorneys' fees is thus justified under 42 U.S.C. § 1988.

COUNT II
DECLARATORY RELIEF AGAINST FACIALLY UNCONSTITUTIONAL BELOW COST ADVERTISING PROHIBITION REGULATION / 42 U.S.C. § 1983

53. Plaintiffs repeat and reallege paragraphs 1 through 41 above as if fully set forth herein.

54. The Below Cost Advertising Prohibition Regulation is facially unconstitutional under the First Amendment to the Constitution.

55. The challenged Below Cost Advertising Prohibition Regulation is an unconstitutional infringement upon the free speech rights of manufacturers and retailers of alcoholic beverages, including UNCLE D'S and MEYER FARMS, to disseminate truthful information about their products to consumers.

56. The challenged Below Cost Advertising Prohibition Regulation is also an unconstitutional infringement upon the free speech rights of MBA members, including ZIMMER RADIO, and MBA's members are precluded from earning revenues on advertisements containing this prohibited speech.

57. The challenged Below Cost Advertising Prohibition Regulation is also an unconstitutional infringement upon the free speech rights of consumers and potential consumers of alcoholic beverages, including listeners of MBA's member stations. Adults who desire to obtain information concerning the prices of alcoholic beverages for purchase or consumption are prohibited from obtaining that information through the enactment and enforcement of the Below Cost Advertising Prohibition Regulation.

58. An actual controversy of a justiciable nature now exists concerning the constitutionality of the Below Cost Advertising Prohibition Regulation.

59. This controversy is definite and concrete, in that the parties' positions are adverse and Defendants' enforcement of the Below Cost Advertising Prohibition Regulation causes direct legal injury to Plaintiffs.

60. This controversy is real and substantial, and ripe for adjudication. A judicial declaration as to the constitutionality of the Below Cost Advertising Prohibition Regulation will resolve the present controversy, and provide conclusive relief.

61. Plaintiffs therefore seek a declaratory judgment pursuant to 28 U.S.C. § 2201(a), declaring that the Below Cost Advertising Prohibition Regulation is unconstitutional, in violation of the First Amendment to the United State Constitution.

62. Defendants, under color of law of the State of Missouri, caused Plaintiffs to be subjected to the deprivation of rights, privileges, or immunities secured them by the First Amendment of the United States Constitution.

63. An award of attorneys' fees is thus justified under 42 U.S.C. § 1988.

COUNT III
DECLARATORY RELIEF AGAINST FACIALLY UNCONSTITUTIONAL SINGLE RETAILER ADVERTISING PROHIBITION STATUTE / 42 U.S.C. § 1983

64. Plaintiffs repeat and reallege paragraphs 1 through 41 above as if fully set forth herein.

65. The Single Retailer Advertising Prohibition Statute is facially unconstitutional under the First Amendment to the Constitution.

66. The challenged Single Retailer Advertising Prohibition Statute is an unconstitutional infringement upon the free speech rights of manufacturers and wholesalers of alcoholic beverages to disseminate truthful information about their products to consumers. Additionally, the Single Retailer Advertising Prohibition Statute unconstitutionally compels speech where an advertiser lists the name of a single retailer.

67. Among other things, the Single Retailer Advertising Prohibition Statute (a) prohibits retailers such as UNCLE D'S and wine producers such as MEYER FARMS from advertising in the way they believe is most effective, and (b) forces them to essentially subsidize advertising of third parties against their will.

68. The challenged Single Retailer Advertising Prohibition Statute is an unconstitutional infringement upon the free speech rights of MBA members, including ZIMMER RADIO, and MBA's members are precluded from earning revenues on advertisements containing this prohibited speech.

69. The challenged Single Retailer Advertising Prohibition Statute is also an unconstitutional infringement upon the free speech rights of consumers and potential consumers of alcoholic beverages, including listeners of MBA's member stations. Adults who desire to obtain information concerning the prices of alcoholic beverages for purchase or consumption and/or the names and addresses of retailers are prohibited from obtaining that information through the enactment and enforcement of the Single Retailer Advertising Prohibition Statute.

70. An actual controversy of a justiciable nature now exists concerning the constitutionality of the Single Retailer Advertising Prohibition Statute.

71. This controversy is definite and concrete, in that the parties' positions are adverse and Defendants' enforcement of the Single Retailer Advertising Prohibition Statute causes direct legal injury to Plaintiffs.

72. This controversy is real and substantial, and ripe for adjudication. A judicial declaration as to the constitutionality of the Single Retailer Advertising Prohibition Statute will resolve the present controversy, and provide conclusive relief.

73. Plaintiffs therefore seek a declaratory judgment pursuant to 28 U.S.C. § 2201(a), declaring that the Single Retailer Advertising Prohibition Statute is unconstitutional, in violation of the First Amendment to the United State Constitution.

74. Defendants, under color of law of the State of Missouri, caused Plaintiffs to be subjected to the deprivation of rights, privileges, or immunities secured them by the First Amendment of the United States Constitution.

75. An award of attorneys' fees is thus justified under 42 U.S.C. § 1988.

COUNT IV
DECLARATORY RELIEF AGAINST UNAUTHORIZED REGULATIONS
(Against the Supervisor only)

76. Plaintiffs repeat and reallege paragraphs 1 through 41 above as if fully set forth herein.

77. The Discount Advertising Prohibition Regulation and the Below Cost Advertising Prohibition Regulation are unenforceable as outside the Supervisor's authority to promulgate under the enabling statute, RSMo. § 311.660.

78. The Supervisor may promulgate regulations regarding certain specific subject matters, which are set forth in RSMo. §§ 311.660(1)-(9).

79. Additionally, in *Milgram Food Stores, Inc. v. Ketchum*, 384 S.W.2d 510, 513 (Mo. 1964), the Missouri Supreme Court interpreted § 311.660(10) to require that any regulation promulgated under §§ 311.660(1)-(9) be "necessary and feasible for carrying out the provisions of this chapter, as are not inconsistent with this law," as well as reasonable.

80. The Discount Advertising Prohibition Regulation and the Below Cost Advertising Prohibition Regulation are neither necessary to carry out the provisions of RSMo. Ch. 311 nor reasonable, because, among other reasons, they violate the protections guaranteed by the First Amendment to the United States Constitution.

81. An actual controversy of a justiciable nature now exists concerning the enforceability of the Discount Advertising Prohibition Regulation and the Below Cost Advertising Prohibition Regulation.

82. This controversy is definite and concrete, in that the parties' positions are adverse and Defendants' enforcement of the Discount Advertising Prohibition Regulation and the Below Cost Advertising Prohibition Regulation causes direct legal injury to Plaintiffs.

83. This controversy is real and substantial, and ripe for adjudication. A judicial declaration as to the enforceability of the Discount Advertising Prohibition Regulation and the Below Cost Advertising Prohibition Regulation will resolve the present controversy, and provide conclusive relief.

84. Although the Missouri Supreme Court has previously upheld a predecessor regulation to the Discount Advertising Prohibition Regulation as within the Supervisor's authority to promulgate under RSMo. § 311.660, MBA presents a non-frivolous argument for modifying or reversing existing law.

85. Plaintiffs therefore seek a declaratory judgment pursuant to 28 U.S.C. § 2201(a), declaring that the Discount Advertising Prohibition Regulation and the Below Cost Advertising Prohibition Regulation are unenforceable as outside the Supervisor's authority to promulgate under the enabling statute.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Missouri Broadcasters Association, ZIMMER RADIO, MEYER FARMS, and UNCLE D'S respectfully pray for judgment against Defendants as follows:

A. A declaration that 11 C.S.R. 70-2.240(5)(G) is unconstitutional under the First Amendment to the United States Constitution;

B. A declaration that 11 C.S.R. 70-2.240(5)(I) is unconstitutional under the First Amendment to the United States Constitution;

C. A declaration that RSMo. § 311.070.4(10) is unconstitutional under the First Amendment to the United States Constitution;

D. A declaration that 11 C.S.R. 70-2.240(5)(G) and 11 C.S.R. 70-2.240(5)(I) are unenforceable as outside the Supervisor's authority to promulgate under RSMo. § 311.660;

E. A permanent injunction enjoining Defendants, their agents, servants, and employees from enforcing 11 C.S.R. 70-2.240(5)(G);

F. A permanent injunction enjoining Defendants, their agents, servants, and employees from enforcing 11 C.S.R. 70-2.240(5)(I);

G. A permanent injunction enjoining Defendants, their agents, servants, and employees from enforcing RSMo. § 311.070.4(10);

H. A judgment for attorneys' fees and court costs pursuant to 42 U.S.C. § 1988, the Civil Rights Attorneys Fees Award Act of 1976, and/or 28 U.S.C. § 2202; and

I. Such other and further relief that the Court deems just and proper under the circumstances.

PLAINTIFF DEMANDS TRIAL BY JURY AS TO ALL ISSUES TRIABLE TO A JURY.

Respectfully submitted,
THOMPSON COBURN LLP

By ***/s/ Mark Sableman***

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Attorneys for Plaintiffs

JS 44 (Rev 09/10)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

CIVIL COVER SHEET

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Western District of Missouri.

The completed cover sheet must be saved as a pdf document and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s):

First Listed Plaintiff:
Missouri Broadcasters Association ;
County of Residence: Cole County

Additional Plaintiff(s):
Zimmer Radio of Mid-MO, Inc. ;
Meyer Farms, Inc. ;
Uncle D's Sports Bar and Grill, LLC ;

Defendant(s):

First Listed Defendant:
Lafayette E. Lacy ;
County of Residence: Cole County

Additional Defendants(s):
Chris Koster ;

County Where Claim For Relief Arose: Cole County

Plaintiff's Attorney(s):

Mark Sableman (Missouri Broadcasters Association)
Thompson Coburn LLP
One US Bank Plaza
St. Louis, Missouri 63101
Phone: 314 552-6103
Fax: 314 552-7103
Email: msableman@thompsoncoburn.com

Defendant's Attorney(s):

CHALLENGE TO THE CONSTITUTIONALITY OF A FEDERAL OR STATE STATUTE (SEE FRCP 5.1)

Basis of Jurisdiction: 3. Federal Question (U.S. not a party)

Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff: N/A

Defendant: N/A

Origin: 1. Original Proceeding

Nature of Suit: 440 All Other Civil Rights

Cause of Action: Declaratory judgment as to unconstitutionality of advertising regulations; U.S. Const., Amend. I and 42 U.S.C. sec. 1983

Requested in Complaint

Class Action: Not filed as a Class Action

Monetary Demand (in Thousands):

Jury Demand: Yes

Related Cases: Is NOT a refiling of a previously dismissed action

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Signature: Mark Sableman

Date: Feb. 6, 2013

If any of this information is incorrect, please close this window and go back to the Civil Cover Sheet Input form to make the correction and generate the updated JS44. Once corrected, print this form, sign and date it, and submit it with your new civil action.

by licensed wholesalers and at which intoxicating liquors so owned by a person, firm or corporation may be stored.

(3) Any person, firm or corporation defined in section (1) owning and storing intoxicating liquors in a central warehouse as provided in section (1) may transfer all or any part of the intoxicating liquors so stored from the central warehouse to any premises licensed to sell intoxicating liquors at retail which is owned and operated by the same person, firm or corporation and which is located in the same county in which the central warehouse is located, or is located in a county adjoining and contiguous to the county in which the central warehouse is located, but not otherwise; except that private brands of intoxicating liquor owned and sold exclusively by only one (1) person, firm or corporation as set forth in section (1) and brands not privately owned but sold exclusively by only one (1) person, firm or corporation may be transferred from the warehouse to any licensed premises in the state owned by a person, firm or corporation, who is the exclusive retail dealer of the brand; provided, however, that no malt liquor shall be transferred from the central warehouse to another licensed premises unless the licensed premises is located in the same designated geographic area of the wholesaler from whom the malt liquor was purchased. The City of St. Louis shall be deemed to be a county for the purposes of this regulation.

(4) Any person, firm or corporation defined in section (1) desiring to transfer intoxicating liquor from a premises licensed to sell intoxicating liquors at retail owned and controlled by a person, firm or corporation to another premises so licensed and owned and controlled by the same person, firm or corporation, shall first notify the supervisor of liquor control in writing describing the type, brand, size containers and amount of intoxicating liquors to be so transferred, the license numbers of the premises from which and to which the transfer is to be made, and the true reason for the transfer and shall not make the transfer until the supervisor of liquor control shall have assented to the transfer or until three (3) full days (not counting Saturdays, Sundays and holidays) shall have elapsed after the receipt of the notice by the supervisor of liquor control during which time the supervisor of liquor control shall not have refused to allow transfer.

AUTHORITY: section 311.660, RSMo Supp. 1989. This version of rule filed Feb. 8, 1973, effective Feb. 18, 1973. Amended: Filed May 15, 1987, effective Aug. 13, 1987.*

**Original authority: 311.660, RSMo 1939, amended 1989.*

11 CSR 70-2.240 Advertising of Intoxicating Liquor and Nonintoxicating Beer

PURPOSE: This rule allows manufacturers of intoxicating liquor to offer consumer rebate coupons and clarifies the advertising regulation as it applies to the advertising of sales price below cost.

(1) No person engaged in business as a producer, manufacturer, brewer, bottler, importer, wholesaler or retailer of intoxicating liquor or nonintoxicating beer, directly or indirectly, shall publish or disseminate or cause to be published or disseminated in any newspaper, magazine or similar publication any advertisement of intoxicating liquor or nonintoxicating beer, unless the advertisement is in conformity with the regulations.

(A) These provisions shall not apply to the publisher of any newspaper, magazine or similar publication, unless the publisher is engaged in business as a producer, manufacturer, brewer, bottler, importer, wholesaler or retailer of intoxicating liquor or nonintoxicating beer, directly or indirectly.

(2) The term advertisement includes any advertisement through the media of radio, television, motion pictures, newspapers, magazines or similar publications or any sign or outdoor billboard or other printed or graphic matter, except that the term shall not include:

(A) Any label affixed to any container of intoxicating liquor or nonintoxicating beer or any individual covering, carton or other wrapper of a container; and

(B) Any editorial or other reading matter in any periodical or publication or newspaper for the preparation or publication of which no money or other valuable consideration is paid or promised, directly or indirectly, by any person subject to these regulations.

(3) Mandatory Statements.

(A) The advertiser shall state the name and address of the producer, manufacturer, bottler, brewer, importer, wholesaler or retailer responsible for its publication.

(B) The advertisement shall contain a conspicuous statement of the class and type or other designation of the product, corresponding with the complete designation which appears on the brand label of the product.

(C) The alcoholic content shall be stated in the manner and form in which it appears on the labels of intoxicating liquor or nonintoxicating beer advertised.

(D) In the case of distilled spirits (other than cordials, liqueurs and specialties) produced by blending or rectification, if neutral spirits have been used in the production of distilled spirits, there shall be stated in the advertisement the percentage of neutral spirits so used and the name of the commodity from which the neutral spirits have been distilled in substantially the manner and form in which these statements appear on the labels of the distilled spirits advertised. In the case of neutral spirits or of gin produced by a process of continuous distillation, there shall be stated in the advertisement the name of the commodity from which the neutral spirits or gin have been distilled substantially in the manner and form in which this statement appears on the labels of the distilled spirits advertised.

(E) Where an advertisement does not mention a specific product but merely refers to a class of intoxicating liquor or nonintoxicating beer (such as whiskey or beer) and the advertiser markets more than one (1) brand of intoxicating liquor or nonintoxicating beer of that class, or where the advertisement refers to several classes of intoxicating liquor or nonintoxicating beer (such as whiskey, brandy, rum, gin, liqueur, wine, beer, etc.) marketed under a single brand, the only mandatory information prescribed by section (1) applicable to advertisement would be the name and address of the responsible advertiser.

(F) Advertisements by retail establishments which merely refer to the availability of intoxicating liquor or nonintoxicating beer in these establishments, but which otherwise make no reference to a specific brand of intoxicating liquor or nonintoxicating beer shall be subject only to the prohibited statements provisions of section (5) of this rule.

(4) Statements required by these regulations to be stated in any written, printed or graphic advertisement shall appear in lettering or type of a size, kind and color sufficient to render them both conspicuous and readily legible. In particular—

(A) Required information shall be stated against a contrasting background and in type or lettering which is at least the equivalent of eight (8)-point type;

(B) Required information shall be so stated as to appear to be a part of the advertisement and shall not be separated in any manner from the remainder of the advertisement;

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(C) Where an advertisement relates to more than one (1) product, the required information shall appear in a manner as to clearly indicate the particular products to which it is applicable; and

(D) Required information shall not be buried or concealed in unrequired descriptive matter or decorative designs.

(5) No advertisement of intoxicating liquor or nonintoxicating beer shall contain:

(A) Any statement that is false or misleading in any material particular;

(B) Any statement that is disparaging of a competitor's products;

(C) Any statement, design, device or representation which is obscene, indecent, in poor taste or conveys a derogatory connotation;

(D) Any statement design, device or representation of or relating to analyses, standards, or tests, irrespective of falsity, which is likely to mislead the consumer;

(E) Any statement, design, device or representation of or relating to any guarantee, irrespective of falsity, which is likely to mislead the consumer. Nothing in this subsection shall prohibit the use of any enforceable guarantee in substantially the following form: "We will refund the purchase price to the purchaser if s/he is in any manner dissatisfied with the contents of this package";

(F) Any statement that the product is produced, blended, brewed, made, bottled, packaged, sold under or in accordance with any authorization, law or regulation of any municipality, county, state, federal or foreign government unless the statement is required or specifically authorized by the laws or regulations of the government; and, if a municipality, county, state or federal permit number is stated, the permit number shall not be accompanied by an additional statement relating to it;

(G) Any statement offering any coupon, premium, prize, rebate, sales price below cost or discount as an inducement to purchase intoxicating liquor or nonintoxicating beer except, manufacturers of intoxicating liquor other than beer or wine shall be permitted to offer and advertise consumer cash rebate coupons and all manufacturers of intoxicating liquor may offer and advertise coupons for nonalcoholic merchandise in accordance with section 311.355, RSMo;

(H) Any statement offering free delivery or credit terms to consumers, as an inducement to purchase intoxicating liquor or nonintoxicating beer; and

(I) A price that is below the retailer's actual cost.

(6) The advertisement shall not contain any statement concerning a brand or lot of intoxicating liquor or nonintoxicating beer that is inconsistent with any statement on the labeling.

(7) The advertising shall not contain any statement, design or device representing that the use of any intoxicating liquor or nonintoxicating beer has curative or therapeutic effects or tending to create an impression that it does have curative or therapeutic effects.

(8) No advertisement shall contain any statement, design, device or pictorial representation of or relating to, or capable of being construed as relating to the armed forces of the United States or of the American flag, any state flag, or of any emblem, seal, insignia or decoration associated with any such flag or the armed forces of the United States; nor shall any advertisement contain any statement device, design or pictorial representation of or concerning any flag, seal, coat of arms, crest or other insignia, likely to falsely lead the consumer to believe that the product has been endorsed, made or used by or produced for or under the supervision of or in accordance with the specifications of the government, organization, family or individual with whom the flag, seal, coat of arms, crest or insignia is associated.

(9) An advertisement for distilled spirits shall not contain:

(A) The words bond, bottled in bond, aged in bond, or phrases containing these or synonymous terms, unless these words or phrases appear upon the labels of the distilled spirits advertised and are stated in the advertisement in the manner and form in which they appear upon the label;

(B) Any statement, design or device, directly or by implication concerning age or maturity of any brand or lot of distilled spirits unless a statement of age appears on the labels of the advertised product. When any statement, design or device concerning age or maturity is contained in any advertisement, it shall include (in direct conjunction with the advertisement and with substantially equal conspicuousness) all parts of the statement concerning age and percentages, if any, which appear on the label. However, an advertisement for any whiskey or brandy, which does not bear a statement of age on the label or an advertisement for rum which is four (4) years or more old, may contain general inconspicuous age, maturity or other similar representations, for example aged in wood, mellowed in fine oak cask; and

(C) A representation that intoxicating liquor or nonintoxicating beer was manufactured in or imported from a place or country other than of its actual origin or was produced or processed by one who was not in fact the actual producer or processor.

(10) An advertisement for wine shall not contain:

(A) Any statement of bonded winecellar or bonded winery numbers unless stated in direct conjunction with the name and address of the person operating the winery or storeroom. Statement of bonded wineceller and bonded winery numbers may be made in the following form: "Bonded Winecellar No.. .," "Bonded Winery No . . . .," "B.W.C. No . . . .," or "B.W. No . . . .," No additional reference to numbers shall be made, nor shall any use be made of a statement that may convey the impression that the wine has been made or matured under United States government or any state government supervision or in accordance with United States government or any state government specifications or standards.

(B) Any statement, design, device or representation which relates to alcoholic content or which tends to create the impression that a wine is unfortified or has been fortified or has intoxicating qualities or contains distilled spirits except for a reference to distilled spirits in a statement of composition where the statement is required by these regulations to appear as a part of the designation of the product.

(11) No statement of age or representation relative to age (including words or devices in any brand name or mark) shall be made, except that—

(A) In the case of vintage wine, the year of vintage may be stated if it appears on the label; and

(B) Truthful references of a general and informative nature relating to methods of production involving storage or aging, for example "This wine has been mellowed in oak casks," "Stored in small barrels" or "Matured at regulated temperatures in our cellars," may be made.

(12) The statement of any bottling date shall not be deemed to be a representation relative to age, if the statement appears without undue emphasis in the following form: "bottled in ….," (inserting the year in which the wine was bottled).

(13) No date, except as provided in this section and section (12) of this rule with respect to statement of vintage year and bottling date, shall be stated unless, in addition to the year

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by licensed wholesalers and at which intoxicating liquors so owned by a person, firm or corporation may be stored.

(3) Any person, firm or corporation defined in section (1) owning and storing intoxicating liquors in a central warehouse as provided in section (1) may transfer all or any part of the intoxicating liquors so stored from the central warehouse to any premises licensed to sell intoxicating liquors at retail which is owned and operated by the same person, firm or corporation and which is located in the same county in which the central warehouse is located, or is located in a county adjoining and contiguous to the county in which the central warehouse is located, but not otherwise; except that private brands of intoxicating liquor owned and sold exclusively by only one (1) person, firm or corporation as set forth in section (1) and brands not privately owned but sold exclusively by only one (1) person, firm or corporation may be transferred from the warehouse to any licensed premises in the state owned by a person, firm or corporation, who is the exclusive retail dealer of the brand; provided, however, that no malt liquor shall be transferred from the central warehouse to another licensed premises unless the licensed premises is located in the same designated geographic area of the wholesaler from whom the malt liquor was purchased. The City of St. Louis shall be deemed to be a county for the purposes of this regulation.

(4) Any person, firm or corporation defined in section (1) desiring to transfer intoxicating liquor from a premises licensed to sell intoxicating liquors at retail owned and controlled by a person, firm or corporation to another premises so licensed and owned and controlled by the same person, firm or corporation, shall first notify the supervisor of liquor control in writing describing the type, brand, size containers and amount of intoxicating liquors to be so transferred, the license numbers of the premises from which and to which the transfer is to be made, and the true reason for the transfer and shall not make the transfer until the supervisor of liquor control shall have assented to the transfer or until three (3) full days (not counting Saturdays, Sundays and holidays) shall have elapsed after the receipt of the notice by the supervisor of liquor control during which time the supervisor of liquor control shall not have refused to allow transfer.

AUTHORITY: section 311.660, RSMo Supp. 1989. This version of rule filed Feb. 8, 1973, effective Feb. 18, 1973. Amended: Filed May 15, 1987, effective Aug. 13, 1987.*

**Original authority: 311.660, RSMo 1939, amended 1989.*

11 CSR 70-2.240 Advertising of Intoxicating Liquor and Nonintoxicating Beer

PURPOSE: This rule allows manufacturers of intoxicating liquor to offer consumer rebate coupons and clarifies the advertising regulation as it applies to the advertising of sales price below cost.

(1) No person engaged in business as a producer, manufacturer, brewer, bottler, importer, wholesaler or retailer of intoxicating liquor or nonintoxicating beer, directly or indirectly, shall publish or disseminate or cause to be published or disseminated in any newspaper, magazine or similar publication any advertisement of intoxicating liquor or nonintoxicating beer, unless the advertisement is in conformity with the regulations.

(A) These provisions shall not apply to the publisher of any newspaper, magazine or similar publication, unless the publisher is engaged in business as a producer, manufacturer, brewer, bottler, importer, wholesaler or retailer of intoxicating liquor or nonintoxicating beer, directly or indirectly.

(2) The term advertisement includes any advertisement through the media of radio, television, motion pictures, newspapers, magazines or similar publications or any sign or outdoor billboard or other printed or graphic matter, except that the term shall not include:

(A) Any label affixed to any container of intoxicating liquor or nonintoxicating beer or any individual covering, carton or other wrapper of a container; and

(B) Any editorial or other reading matter in any periodical or publication or newspaper for the preparation or publication of which no money or other valuable consideration is paid or promised, directly or indirectly, by any person subject to these regulations.

(3) Mandatory Statements.

(A) The advertiser shall state the name and address of the producer, manufacturer, bottler, brewer, importer, wholesaler or retailer responsible for its publication.

(B) The advertisement shall contain a conspicuous statement of the class and type or other designation of the product, corresponding with the complete designation which appears on the brand label of the product.

(C) The alcoholic content shall be stated in the manner and form in which it appears on the labels of intoxicating liquor or nonintoxicating beer advertised.

(D) In the case of distilled spirits (other than cordials, liqueurs and specialties) produced by blending or rectification, if neutral spirits have been used in the production of distilled spirits, there shall be stated in the advertisement the percentage of neutral spirits so used and the name of the commodity from which the neutral spirits have been distilled in substantially the manner and form in which these statements appear on the labels of the distilled spirits advertised. In the case of neutral spirits or of gin produced by a process of continuous distillation, there shall be stated in the advertisement the name of the commodity from which the neutral spirits or gin have been distilled substantially in the manner and form in which this statement appears on the labels of the distilled spirits advertised.

(E) Where an advertisement does not mention a specific product but merely refers to a class of intoxicating liquor or nonintoxicating beer (such as whiskey or beer) and the advertiser markets more than one (1) brand of intoxicating liquor or nonintoxicating beer of that class, or where the advertisement refers to several classes of intoxicating liquor or nonintoxicating beer (such as whiskey, brandy, rum, gin, liqueur, wine, beer, etc.) marketed under a single brand, the only mandatory information prescribed by section (1) applicable to advertisement would be the name and address of the responsible advertiser.

(F) Advertisements by retail establishments which merely refer to the availability of intoxicating liquor or nonintoxicating beer in these establishments, but which otherwise make no reference to a specific brand of intoxicating liquor or nonintoxicating beer shall be subject only to the prohibited statements provisions of section (5) of this rule.

(4) Statements required by these regulations to be stated in any written, printed or graphic advertisement shall appear in lettering or type of a size, kind and color sufficient to render them both conspicuous and readily legible. In particular—

(A) Required information shall be stated against a contrasting background and in type or lettering which is at least the equivalent of eight (8)-point type;

(B) Required information shall be so stated as to appear to be a part of the advertisement and shall not be separated in any manner from the remainder of the advertisement;

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(C) Where an advertisement relates to more than one (1) product, the required information shall appear in a manner as to clearly indicate the particular products to which it is applicable; and

(D) Required information shall not be buried or concealed in unrequired descriptive matter or decorative designs.

(5) No advertisement of intoxicating liquor or nonintoxicating beer shall contain:

(A) Any statement that is false or misleading in any material particular;

(B) Any statement that is disparaging of a competitor's products;

(C) Any statement, design, device or representation which is obscene, indecent, in poor taste or conveys a derogatory connotation;

(D) Any statement design, device or representation of or relating to analyses, standards, or tests, irrespective of falsity, which is likely to mislead the consumer;

(E) Any statement, design, device or representation of or relating to any guarantee, irrespective of falsity, which is likely to mislead the consumer. Nothing in this subsection shall prohibit the use of any enforceable guarantee in substantially the following form: "We will refund the purchase price to the purchaser if s/he is in any manner dissatisfied with the contents of this package";

(F) Any statement that the product is produced, blended, brewed, made, bottled, packaged, sold under or in accordance with any authorization, law or regulation of any municipality, county, state, federal or foreign government unless the statement is required or specifically authorized by the laws or regulations of the government; and, if a municipality, county, state or federal permit number is stated, the permit number shall not be accompanied by an additional statement relating to it;

(G) Any statement offering any coupon, premium, prize, rebate, sales price below cost or discount as an inducement to purchase intoxicating liquor or nonintoxicating beer except, manufacturers of intoxicating liquor other than beer or wine shall be permitted to offer and advertise consumer cash rebate coupons and all manufacturers of intoxicating liquor may offer and advertise coupons for nonalcoholic merchandise in accordance with section 311.355, RSMo;

(H) Any statement offering free delivery or credit terms to consumers, as an inducement to purchase intoxicating liquor or nonintoxicating beer; and

(I) A price that is below the retailer's actual cost.

(6) The advertisement shall not contain any statement concerning a brand or lot of intoxicating liquor or nonintoxicating beer that is inconsistent with any statement on the labeling.

(7) The advertising shall not contain any statement, design or device representing that the use of any intoxicating liquor or nonintoxicating beer has curative or therapeutic effects or tending to create an impression that it does have curative or therapeutic effects.

(8) No advertisement shall contain any statement, design, device or pictorial representation of or relating to, or capable of being construed as relating to the armed forces of the United States or of the American flag, any state flag, or of any emblem, seal, insignia or decoration associated with any such flag or the armed forces of the United States; nor shall any advertisement contain any statement device, design or pictorial representation of or concerning any flag, seal, coat of arms, crest or other insignia, likely to falsely lead the consumer to believe that the product has been endorsed, made or used by or produced for or under the supervision of or in accordance with the specifications of the government, organization, family or individual with whom the flag, seal, coat of arms, crest or insignia is associated.

(9) An advertisement for distilled spirits shall not contain:

(A) The words bond, bottled in bond, aged in bond, or phrases containing these or synonymous terms, unless these words or phrases appear upon the labels of the distilled spirits advertised and are stated in the advertisement in the manner and form in which they appear upon the label;

(B) Any statement, design or device, directly or by implication concerning age or maturity of any brand or lot of distilled spirits unless a statement of age appears on the labels of the advertised product. When any statement, design or device concerning age or maturity is contained in any advertisement, it shall include (in direct conjunction with the advertisement and with substantially equal conspicuousness) all parts of the statement concerning age and percentages, if any, which appear on the label. However, an advertisement for any whiskey or brandy, which does not bear a statement of age on the label or an advertisement for rum which is four (4) years or more old, may contain general inconspicuous age, maturity or other similar representations, for example aged in wood, mellowed in fine oak cask; and

(C) A representation that intoxicating liquor or nonintoxicating beer was manufactured in or imported from a place or country other than of its actual origin or was produced or processed by one who was not in fact the actual producer or processor.

(10) An advertisement for wine shall not contain:

(A) Any statement of bonded winecellar or bonded winery numbers unless stated in direct conjunction with the name and address of the person operating the winery or storeroom. Statement of bonded wineceller and bonded winery numbers may be made in the following form: "Bonded Winecellar No.. .," "Bonded Winery No . . . .," "B.W.C. No . . . .," or "B.W. No . . . .," No additional reference to numbers shall be made, nor shall any use be made of a statement that may convey the impression that the wine has been made or matured under United States government or any state government supervision or in accordance with United States government or any state government specifications or standards.

(B) Any statement, design, device or representation which relates to alcoholic content or which tends to create the impression that a wine is unfortified or has been fortified or has intoxicating qualities or contains distilled spirits except for a reference to distilled spirits in a statement of composition where the statement is required by these regulations to appear as a part of the designation of the product.

(11) No statement of age or representation relative to age (including words or devices in any brand name or mark) shall be made, except that—

(A) In the case of vintage wine, the year of vintage may be stated if it appears on the label; and

(B) Truthful references of a general and informative nature relating to methods of production involving storage or aging, for example "This wine has been mellowed in oak casks," "Stored in small barrels" or "Matured at regulated temperatures in our cellars," may be made.

(12) The statement of any bottling date shall not be deemed to be a representation relative to age, if the statement appears without undue emphasis in the following form: "bottled in ….," (inserting the year in which the wine was bottled).

(13) No date, except as provided in this section and section (12) of this rule with respect to statement of vintage year and bottling date, shall be stated unless, in addition to the year

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Missouri Revised Statutes

Chapter 311
Liquor Control Law
Section *311.070*

August 28, 2012

Financial interest in retail businesses by certain licensees prohibited, exceptions--penalties--definitions--activities permitted between wholesalers and licensees--certain contracts unenforceable--contributions to certain organizations permitted, when--sale of Missouri wines only, license issued, when.

311.070. 1. Distillers, wholesalers, winemakers, brewers or their employees, officers or agents shall not, except as provided in this section, directly or indirectly, have any financial interest in the retail business for sale of intoxicating liquors, and shall not, except as provided in this section, directly or indirectly, loan, give away or furnish equipment, money, credit or property of any kind, except ordinary commercial credit for liquors sold to such retail dealers. However, notwithstanding any other provision of this chapter to the contrary, for the purpose of the promotion of tourism, a distiller whose manufacturing establishment is located within this state may apply for and the supervisor of liquor control may issue a license to sell intoxicating liquor, as in this chapter defined, by the drink at retail for consumption on the premises where sold; and provided further that the premises so licensed shall be in close proximity to the distillery and may remain open between the hours of 6:00 a.m. and midnight, Monday through Saturday and between the hours of 11:00 a.m. and 9:00 p.m., Sunday. The authority for the collection of fees by cities and counties as provided in section 311.220, and all other laws and regulations relating to the sale of liquor by the drink for consumption on the premises where sold, shall apply to the holder of a license issued under the provisions of this section in the same manner as they apply to establishments licensed under the provisions of section 311.085, 311.090, or 311.095.

2. Any distiller, wholesaler, winemaker or brewer who shall violate the provisions of subsection 1 of this section, or permit his employees, officers or agents to do so, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as follows:

(1) For the first offense, by a fine of one thousand dollars;

(2) For a second offense, by a fine of five thousand dollars; and

(3) For a third or subsequent offense, by a fine of ten thousand dollars or the license of such person shall be revoked.

3. As used in this section, the following terms mean:

(1) "Consumer advertising specialties", advertising items that are designed to be carried away by the consumer, such items include, but are not limited to: trading stamps, nonalcoholic mixers, pouring racks, ash trays, bottle or can openers, cork screws, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, postcards, pencils, shirts, caps and visors;

(2) "Equipment and supplies", glassware (or similar containers made of other material), dispensing accessories, carbon dioxide (and other gasses used in dispensing equipment) or ice. "Dispensing accessories" include standards, faucets, cold plates, rods, vents, taps, tap standards, hoses, washers, couplings, gas gauges, vent tongues, shanks, and check valves;

(3) "Permanent point-of-sale advertising materials", advertising items designed to be used within a retail business establishment for an extended period of time to attract consumer attention to the products of a distiller, wholesaler, winemaker or brewer. Such materials shall only include inside signs (electric, mechanical or otherwise), mirrors, and sweepstakes/contest prizes displayed on the licensed premises;

(4) "Product display", wine racks, bins, barrels, casks, shelving or similar items the primary function of which is to hold and display consumer products;

(5) "Promotion", an advertising and publicity campaign to further the acceptance and sale of the merchandise or products of a distiller, wholesaler, winemaker or brewer;

(6) "Temporary point-of-sale advertising materials", advertising items designed to be used for short periods of time. Such materials include, but are not limited to: banners, decorations reflecting a particular season or a limited-time promotion, or paper napkins, coasters, cups, or menus.

4. Notwithstanding other provisions contained herein, the distiller, wholesaler, winemaker or brewer, or their employees, officers or agents may engage in the following activities with a retail licensee licensed pursuant to this chapter:

(1) The distiller, wholesaler, winemaker or brewer may give or sell product displays to a retail business if all of the following requirements are met:

(a) The total value of all product displays given or sold to a retail business shall not exceed three hundred dollars per brand at any one time in any one retail outlet. There shall be no combining or pooling of the three hundred dollar limits to provide a retail business a product display in excess of three hundred dollars per brand. The value of a product display is the actual cost to the distiller, wholesaler, winemaker or brewer who initially purchased such product display. Transportation and installation costs shall be excluded;

(b) All product displays shall bear in a conspicuous manner substantial advertising matter on the product or the name of the distiller, wholesaler, winemaker or brewer. The name and address of the retail business may appear on the product displays; and

(c) The giving or selling of product displays may be conditioned on the purchase of intoxicating beverages advertised on the displays by the retail business in a quantity necessary for the initial completion of the product display. No other condition shall be imposed by the distiller, wholesaler, winemaker or brewer on the retail business in order for such retail business to obtain the product display;

(2) Notwithstanding any provision of law to the contrary, the distiller, wholesaler, winemaker or brewer may provide, give or sell any permanent point-of-sale advertising materials, temporary point-of-sale advertising materials, and consumer advertising specialties to a retail business if all the following requirements are met:

(a) The total value of all permanent point-of-sale advertising materials provided to a retail business by a

distiller, wholesaler, winemaker, or brewer shall not exceed five hundred dollars per calendar year, per brand, per retail outlet. The value of permanent point-of-sale advertising materials is the actual cost to the distiller, wholesaler, winemaker or brewer who initially purchased such item. Transportation and installation costs shall be excluded. All permanent point-of-sale advertising materials provided to a retailer shall be recorded, and records shall be maintained for a period of three years;

(b) The provider of permanent point-of-sale advertising materials shall own and otherwise control the use of permanent point-of-sale advertising materials that are provided by any distiller, wholesaler, winemaker, or brewer;

(c) All permanent point-of-sale advertising materials, temporary point-of-sale advertising materials, and consumer advertising specialties shall bear in a conspicuous manner substantial advertising matter about the product or the name of the distiller, wholesaler, winemaker or brewer. The name, address and logos of the retail business may appear on the permanent point-of-sale advertising materials, temporary point-of-sale advertising materials, or the consumer advertising specialties; and

(d) The distiller, wholesaler, winemaker or brewer shall not directly or indirectly pay or credit the retail business for using or distributing the permanent point-of-sale advertising materials, temporary point-of-sale advertising materials, or consumer advertising specialties or for any incidental expenses arising from their use or distribution;

(3) A distiller, wholesaler, winemaker, or brewer may give a gift not to exceed a value of one thousand dollars per year to a holder of a temporary permit as defined in section 311.482;

(4) The distiller, wholesaler, winemaker or brewer may sell equipment or supplies to a retail business if all the following requirements are met:

(a) The equipment and supplies shall be sold at a price not less than the cost to the distiller, wholesaler, winemaker or brewer who initially purchased such equipment and supplies; and

(b) The price charged for the equipment and supplies shall be collected in accordance with credit regulations as established in the code of state regulations;

(5) The distiller, wholesaler, winemaker or brewer may install dispensing accessories at the retail business establishment, which shall include for the purposes of beer equipment to properly preserve and serve draught beer only and to facilitate the delivery to the retailer the brewers and wholesalers may lend, give, rent or sell and they may install or repair any of the following items or render to retail licensees any of the following services: beer coils and coil cleaning, sleeves and wrappings, box couplings and draft arms, beer faucets and tap markers, beer and air hose, taps, vents and washers, gauges and regulators, beer and air distributors, beer line insulation, coil flush hose, couplings and bucket pumps; portable coil boxes, air pumps, blankets or other coverings for temporary wrappings of barrels, coil box overflow pipes, tilting platforms, bumper boards, skids, cellar ladders and ramps, angle irons, ice box grates, floor runways; and damage caused by any beer delivery excluding normal wear and tear and a complete record of equipment furnished and installed and repairs and service made or rendered must be kept by the brewer or wholesalers furnishing, making or rendering same for a period of not less than one year;

(6) The distiller, wholesaler, winemaker or brewer may furnish, give or sell coil cleaning service to a retailer of distilled spirits, wine or malt beverages;

(7) A wholesaler of intoxicating liquor may furnish or give and a retailer may accept a sample of distilled spirits or wine as long as the retailer has not previously purchased the brand from that wholesaler, if all the following requirements are met:

(a) The wholesaler may furnish or give not more than seven hundred fifty milliliters of any brand of distilled spirits and not more than seven hundred fifty milliliters of any brand of wine; if a particular product is not available in a size within the quantity limitations of this subsection, a wholesaler may furnish or give to a retailer the next larger size;

(b) The wholesaler shall keep a record of the name of the retailer and the quantity of each brand furnished or given to such retailer;

(c) For the purposes of this subsection, no samples of intoxicating liquor provided to retailers shall be consumed on the premises nor shall any sample of intoxicating liquor be opened on the premises of the retailer except as provided by the retail license;

(d) For the purpose of this subsection, the word "brand" refers to differences in brand name of product or differences in nature of product; examples of different brands would be products having a difference in: brand name; class, type or kind designation; appellation of origin (wine); viticulture area (wine); vintage date (wine); age (distilled spirits); or proof (distilled spirits); differences in packaging such a different style, type, size of container, or differences in color or design of a label are not considered different brands;

(8) The distiller, wholesaler, winemaker or brewer may package and distribute intoxicating beverages in combination with other nonalcoholic items as originally packaged by the supplier for sale ultimately to consumers; notwithstanding any provision of law to the contrary, for the purpose of this subsection, intoxicating liquor and wine wholesalers are not required to charge for nonalcoholic items any more than the actual cost of purchasing such nonalcoholic items from the supplier;

(9) The distiller, wholesaler, winemaker or brewer may sell or give the retail business newspaper cuts, mats or engraved blocks for use in the advertisements of the retail business;

(10) The distiller, wholesaler, winemaker or brewer may in an advertisement list the names and addresses of two or more unaffiliated retail businesses selling its product if all of the following requirements are met:

(a) The advertisement shall not contain the retail price of the product;

(b) The listing of the retail businesses shall be the only reference to such retail businesses in the advertisement;

(c) The listing of the retail businesses shall be relatively inconspicuous in relation to the advertisement as a whole; and

(d) The advertisement shall not refer only to one retail business or only to a retail business controlled directly or indirectly by the same retail business;

(11) Distillers, winemakers, wholesalers, brewers or retailers may conduct a local or national sweepstakes/contest upon a licensed retail premise. The sweepstakes/contest prize dollar amount shall not be limited and can be displayed in a photo, banner, or other temporary point-of-sale advertising

materials on a licensed premises, if the following requirements are met:

(a) No money or something of value is given to the retailer for the privilege or opportunity of conducting the sweepstakes or contest; and

(b) The actual sweepstakes/contest prize is not displayed on the licensed premises if the prize value exceeds the permanent point-of-sale advertising materials dollar limit provided in this section;

(12) The distiller, wholesaler, winemaker or brewer may stock, rotate, rearrange or reset the products sold by such distiller, wholesaler, winemaker or brewer at the establishment of the retail business so long as the products of any other distiller, wholesaler, winemaker or brewer are not altered or disturbed;

(13) The distiller, wholesaler, winemaker or brewer may provide a recommended shelf plan or shelf schematic for distilled spirits, wine or malt beverages;

(14) The distiller, wholesaler, winemaker or brewer participating in the activities of a retail business association may do any of the following:

(a) Display, serve, or donate its products at or to a convention or trade show;

(b) Rent display booth space if the rental fee is the same paid by all others renting similar space at the association activity;

(c) Provide its own hospitality which is independent from the association activity;

(d) Purchase tickets to functions and pay registration or sponsorship fees if such purchase or payment is the same as that paid by all attendees, participants or exhibitors at the association activity;

(e) Make payments for advertisements in programs or brochures issued by retail business associations if the total payments made for all such advertisements are fair and reasonable;

(f) Pay dues to the retail business association if such dues or payments are fair and reasonable;

(g) Make payments or donations for retail employee training on preventive sales to minors and intoxicated persons, checking identifications, age verification devices, and the liquor control laws;

(h) Make contributions not to exceed one thousand dollars per calendar year for transportation services that shall be used to assist patrons from retail establishments to his or her residence or overnight accommodations;

(i) Donate or serve up to five hundred dollars per event of alcoholic products at retail business association activities; and

(j) Any retail business association that receives payments or donations shall, upon written request, provide the division of alcohol and tobacco control with copies of relevant financial records and documents to ensure compliance with this subsection;

(15) The distiller, wholesaler, winemaker or brewer may sell or give a permanent outside sign to a retail business if the following requirements are met:

(a) The sign, which shall be constructed of metal, glass, wood, plastic, or other durable, rigid material, with or without illumination, or painted or otherwise printed onto a rigid material or structure, shall bear in a conspicuous manner substantial advertising matter about the product or the name of the distiller, wholesaler, winemaker or brewer;

(b) The retail business shall not be compensated, directly or indirectly, for displaying the permanent sign or a temporary banner;

(c) The cost of the permanent sign shall not exceed five hundred dollars; and

(d) Temporary banners of a seasonal nature or promoting a specific event shall not be constructed to be permanent outdoor signs and may be provided to retailers. The total cost of temporary outdoor banners provided to a retailer in use at any one time shall not exceed five hundred dollars per brand;

(16) A wholesaler may, but shall not be required to, exchange for an equal quantity of identical product or allow credit against outstanding indebtedness for intoxicating liquor with alcohol content of less than five percent by weight that was delivered in a damaged condition or damaged while in the possession of the retailer;

(17) To assure and control product quality, wholesalers at the time of a regular delivery may, but shall not be required to, withdraw, with the permission of the retailer, a quantity of intoxicating liquor with alcohol content of less than five percent by weight in its undamaged original carton from the retailer's stock, if the wholesaler replaces the product with an equal quantity of identical product;

(18) In addition to withdrawals authorized pursuant to subdivision (17) of this subsection, to assure and control product quality, wholesalers at the time of a regular delivery may, but shall not be required to, withdraw, with the permission of the retailer, a quantity of intoxicating liquor with alcohol content of less than five percent by weight in its undamaged original carton from the retailer's stock and give the retailer credit against outstanding indebtedness for the product if:

(a) The product is withdrawn at least thirty days after initial delivery and within twenty-one days of the date considered by the manufacturer of the product to be the date the product becomes inappropriate for sale to a consumer; and

(b) The quantity of product withdrawn does not exceed the equivalent of twenty-five cases of twenty-four twelve-ounce containers; and

(c) To assure and control product quality, a wholesaler may, but not be required to, give a retailer credit for intoxicating liquor with an alcohol content of less than five percent by weight, in a container with a capacity of four gallons or more, delivered but not used, if the wholesaler removes the product within seven days of the initial delivery; and

(19) Nothing in this section authorizes consignment sales.

5. (1) A distiller, wholesaler, winemaker, or brewer that is also in business as a bona fide producer or vendor of nonalcoholic beverages shall not condition the sale of its alcoholic beverages on the sale of its nonalcoholic beverages nor combine the sale of its alcoholic beverages with the sale of its nonalcoholic beverages, except as provided in subdivision (8) of subsection 4 of this section. The distiller, wholesaler, winemaker, or brewer that is also in business as a bona fide producer or vendor of nonalcoholic beverages may sell, credit, market, and promote nonalcoholic beverages in the same manner in which

the nonalcoholic products are sold, credited, marketed, or promoted by a manufacturer or wholesaler not licensed by the supervisor of alcohol and tobacco control;

(2) Any fixtures, equipment, or furnishings provided by any distiller, wholesaler, winemaker, or brewer in furtherance of the sale of nonalcoholic products shall not be used by the retail licensee to store, service, display, advertise, furnish, or sell, or aid in the sale of alcoholic products regulated by the supervisor of alcohol and tobacco control. All such fixtures, equipment, or furnishings shall be identified by the retail licensee as being furnished by a licensed distiller, wholesaler, winemaker, or brewer.

6. Distillers, wholesalers, brewers and winemakers, or their officers or directors shall not require, by agreement or otherwise, that any retailer purchase any intoxicating liquor from such distillers, wholesalers, brewers or winemakers to the exclusion in whole or in part of intoxicating liquor sold or offered for sale by other distillers, wholesalers, brewers, or winemakers.

7. Notwithstanding any other provisions of this chapter to the contrary, a distiller or wholesaler may install dispensing accessories at the retail business establishment, which shall include for the purposes of distilled spirits equipment to properly preserve and serve premixed distilled spirit beverages only. To facilitate delivery to the retailer, the distiller or wholesaler may lend, give, rent or sell and the distiller or wholesaler may install or repair any of the following items or render to retail licensees any of the following services: coils and coil cleaning, draft arms, faucets and tap markers, taps, tap standards, tapping heads, hoses, valves and other minor tapping equipment components, and damage caused by any delivery excluding normal wear and tear. A complete record of equipment furnished and installed and repairs or service made or rendered shall be kept by the distiller or wholesaler furnishing, making or rendering the same for a period of not less than one year.

8. Distillers, wholesalers, winemakers, brewers or their employees or officers shall be permitted to make contributions of money or merchandise to a licensed retail liquor dealer that is a charitable, fraternal, civic, service, veterans', or religious organization as defined in section 313.005, or an educational institution if such contributions are unrelated to such organization's retail operations.

9. Distillers, brewers, wholesalers, and winemakers may make payments for advertisements in programs or brochures of tax-exempt organizations licensed under section 311.090 if the total payments made for all such advertisements are the same as those paid by other vendors.

10. A brewer or manufacturer, its employees, officers or agents may have a financial interest in the retail business for sale of intoxicating liquors at entertainment facilities owned, in whole or in part, by the brewer or manufacturer, its subsidiaries or affiliates including, but not limited to, arenas and stadiums used primarily for concerts, shows and sporting events of all kinds.

11. For the purpose of the promotion of tourism, a wine manufacturer, its employees, officers or agents located within this state may apply for and the supervisor of liquor control may issue a license to sell intoxicating liquor, as defined in this chapter, by the drink at retail for consumption on the premises where sold, if the premises so licensed is in close proximity to the winery. Such premises shall be closed during the hours specified under section 311.290 and may remain open between the hours of 9:00 a.m. and midnight on Sunday.

12. For the purpose of the promotion of tourism, a person may apply for and the supervisor of liquor control may issue a license to sell intoxicating liquor by the drink at retail for consumption on the premises where sold, but seventy-five percent or more of the intoxicating liquor sold by such licensed person shall be Missouri-produced wines received from manufacturers licensed under section 311.190. Such premises may remain open between the hours of 6:00 a.m. and midnight, Monday through

Saturday, and between the hours of 11:00 a.m. and 9:00 p.m. on Sundays.

(RSMo 1939 § 4879, A.L. 1984 S.B. 441, A.L. 1986 S.B. 444, A.L. 1987 H.B. 62 & 70, A.L. 1995 S.B. 43, A.L. 1996 S.B. 933, A.L. 2000 H.B. 1631, A.L. 2002 S.B. 834, A.L. 2005 S.B. 262, A.L. 2007 S.B. 299 & S.B. 616, A.L. 2009 H.B. 132)

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