

Division of
**ALCOHOLIC
BEVERAGE
CONTROL**

Bulletin

140 E. Front Street, CN 087, Trenton, New Jersey 08625-0087

BULLETIN 2471

NOVEMBER 25, 1996

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New Jersey Department of Law & Public Safety

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1. NOTICE TO PLENARY AND LIMITED RETAIL DISTRIBUTION LICENSEES FOR NEXT SCHEDULED PACKAGE STORE EDUCATION TRAINING PROGRAM.

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
CN-087, TRENTON NJ 08625

NOTICE TO PLENARY AND LIMITED RETAIL DISTRIBUTION LICENSEES

Dear Licensee:

On January 13, 1997 and January 21, 1997, the Division of Alcoholic Beverage Control will be offering two Package Store Education Training Programs. Pursuant to N.J.S.A. 33:1-12.40 et. Seq., N.J.A.C. 13:2-22, owners, partners, stockholders or on-site managers of Plenary and Limited Retail Distribution licensed businesses are required by New Jersey law to complete this training program. The purposes of this training is to assist licensees in maintaining compliance with Alcoholic Beverage Control laws and regulations. If you have not attended, or if you wish to send other employees to the program, this is an excellent opportunity to fulfill the training requirements.

Classes will be offered on the following dates:

Monday - January 13, 1997
Hughes Justice Complex, Trenton
9:00 am to 4:30 pm

Tuesday - January 21, 1997
124 Halsey Street, Newark
9:00 am to 4:30 pm

The cost of the program is \$75 per person which includes registration and training materials. The fee for each additional employee you send from your licensed premise will be \$50 per person.

If you wish to attend please contact Marietta Garton of the Licensing Bureau at (609)984-1990 for a registration form.



New Jersey Department of Law & Public Safety

2. NOTICE OF NEW CPL RULES.

October 28, 1996

Michael Roth, President EDC
Electronic Distribution Corporation
477 Main Street
Hackensack, New Jersey 07601

Re: **New Rules for CPL**

Dear Mr. Roth:

The Division is in receipt of your recent letter concerning your questions on the recent amendments to N.J.A.C. 13:2-24.6 entitled "Required Records".

For your convenience, I have attached this regulation in its amended form. (See Exhibit A). Please be advised that this regulation in its amended form became effective June 17, 1996. Thus, commencing August 1996, price filings must comply with the revised regulation. You are correct that the CPL must reflect the cost of a discounted case divided by the pack count. In addition, the CPL must reflect any additional costs incurred for offering "split cases." Further, you ask if the unit price can be rounded up to reflect the case price. (Apparently, the cost of an individual unit within a case price would reflect a cost equivalent to three decimal points).

Please be advised that Division regulations do not contemplate allowing the price for a unit of a case to be rounded off to the highest decimal point. However, the request to round off a bottled price to the highest two decimal points does not appear to be inconsistent with Division regulations. However, if rounding off the price of a unit within a discounted case will be the practice of a specific wholesaler, the wholesaler must reflect that the individual unit price will be rounded off to the highest decimal point in its CPL and invoices.

Concerning your question about the Division's format for CPL filings, please be advised that at this time the Division has not issued a format.

Thank you for contacting the Division. Please feel free to contact me if you have any further questions.

Very truly yours,

/s/Analisa Sama Holmes
ANALISA SAMA HOLMES
DEPUTY ATTORNEY GENERAL

ASH/em/vc
Attachment

3. NOTICE OF DIVISION DETERMINATION FOR BRAND REGISTRATION OF BAD FROG BEER.

September 23, 1996

James Waldron, President
Bad Frog Brewery Co.
2644 M-33N
Box 310
Rose City, Michigan 48654

RE: **Bad Frog Beer**
Application for Brand Registration

Dear Mr. Waldron:

The Division of Alcoholic Beverage Control ("ABC") has received your application for brand registration to sell three products under the Bad Frog label in New Jersey; Bad Frog Beer, Bad Frog Malt Liquor and Bad Frog Lemon Lager Beer. After reviewing the application for each product, including the labels submitted by your company and other promotional material, I have made a determination that your request for brand registration is not approved for the reasons set forth below.

The labels submitted to the ABC for the Bad Frog Beer and Bad Frog Lemon Lager Beer contain a green frog with elongated fingers. One arm of the frog is raised upright and one finger on that arm is raised in a gesture that is universally known as "flipping the bird" or "giving the finger." The label also contains several phrases including "He just don't care," "an amphibian with an attitude: and "turning bad into good." The depiction of the frog with the one finger "flipping the bird" is on each of the labels affixed to each bottle of beer. The label for Bad Frog Malt Liquor is virtually identical except with respect to the color of the label and its use of the phrases "attitude beer" and "who's afraid of the big bad 40" instead of "an amphibian with and attitude" and "turning bad into good."

The ABC also examined a color print of a side view of a six-pack carrying case for the Bad Frog product. This color print also shows three bottles of beer in the carrying case. The carrying case has a large picture of a frog "flipping the bird." The case contains the phrases "He just don't care," "No more Mr. Nice Guy" and "There goes the neighborhood" among other phrases. Along its border, the carrying case also has one dozen other phrases including "Amphibian with an attitude," "Flip the bird, get a frog," "Banned in Ohio," and "Do it froggy style." The color print also shows that the carrying case is designed in such a way as to show the top half of the upper label of those bottles of beer thereby exposing the picture of a frog "flipping the bird." The carrying case is also designed to expose the "flipping the bird" gesture on each side of the handle of the carrying case. When viewed from the side, there are six pictures of a frog "flipping the bird," including one very large picture on the side of the carrying case.

The ABC is also in possession of several promotional materials of the applicant. A table tent contains the picture of a frog "flipping the bird" with a picture of a bottle of beer (and its label as described above). In addition, the table tent contains the phrase "The beer so goods it's bad" and in two locations includes the phrase "flip the bird, get a frog." The ABC also examined a 5-1/2 by 3 feet promotional banner. One half of the banner contains a picture of a green frog flipping the bird with a large picture of a bottle of beer with the bad frog labels and the phrase "Do It Froggy Style" in 1-1/2 inch letters. The other half of the banner contains Bad Frog Beer and in 1-1/2 inch letters the phrase "Flip the bird, get a frog."

The New Jersey Alcoholic Beverage Control Act ("Act") requires that the ABC "strictly regulate alcoholic beverages to protect the health, safety and welfare" of the people of New Jersey. N.J.S.A. 33:1-3.1. The Act also authorizes the ABC to promulgate those rules and regulations as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages in the State. N.J.S.A. 33:1-39. In accordance with that provision, a regulation was adopted prohibiting any advertising that is "obscene" or "lewd." Specifically, N.J.A.C. 13:2-24.10(a)(2) provides:

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

* * *

2. Is obscene or lewd

The ABC has examined the labels in addition to the color print of the six-pack carrying case, table tent and banner and has concluded that the label is both obscene and lewd and therefore in violation of N.J.A.C. 13:2-24:10. Accordingly, the application to brand register these three products is disapproved.

There is no question that the gesture depicted by the green frog on the labels for the Bad Frog products is intended to represent the action of "flipping the bird" or "giving the finger." Indeed, the labels on the product and other sales and promotional materials refer to "flip the bird, get a frog." This language simply confirms the obvious intent of the frog's gesture. The gesture of "flipping the bird" has been defined, and is commonly understood, as having the negative statement of "F--- you" or "Up yours." "Flipping the bird" is the equivalent of giving someone the finger. New Dictionary of American Slang, (Harper & Row, New York 1986, p. 133 and 144). This gesture is not only obscene but it also represents a negative sexual comment.

In addition, the gesture is provocative in a negative sense and can directly result in violent and unruly behavior. This negative effect on behavior can be heightened among those who have consumed alcoholic beverages. Obscene, lewd or sexual remarks or gestures have in many instances caused physical and violent confrontations in and around licensed premises. The label of each product suggests that the product can be ordered simply by "flipping the bird." Even without the phrase "flip the bird, get a frog," the label itself could encourage the use of such a gesture when consuming these products. The potential for violent behavior as a result of this conduct is quite apparent.


The ABC also cannot find any redeeming artistic, communicative or informational value to the Bad Frog label. To the contrary, it is obscene, lewd and confrontational; there is no reason those seeking to purchase alcoholic beverages should be exposed to such expression. In fulfilling its obligation to protect the public health, safety and welfare, the ABC will not permit this label to be affixed to alcoholic beverage sold in New Jersey. N.J.S.A. 33:1-3.1 The ABC will not place its imprimatur on a label that is obscene, lewd and confrontational or which could create a hostile or combative environment in a licensed premises. Therefore, the application to brand register these three products is disapproved.

Very truly yours,

/s/John G. Holl
John G. Holl
Director

JGH/GNR/vkc

Publication of Bulletin 2471 is hereby directed this
25th Day of November, 1996



JOHN G. HOLL, DIRECTOR
DIVISION OF ALCOHOLIC BEVERAGE CONTROL