



February 2016 NEWSLETTER

The Difficulty of Enforcing Fair Trade Practice Regulations

By Pamela S. Erickson

Recently, a major case of illegal payments was uncovered in Boston. According to a Boston Globe article, “The owners of some of the most popular bars in Boston received tens of thousands of dollars in illegal cash payments from a beer distributor to stock its craft brews and exclude those of competitors.”

These violations were uncovered almost by accident. A craft brewer complained on Twitter about demands for payments from his company. The state liquor authority found out about it and began an investigation. They obtained documents that revealed payments by the wholesaler/distributor to several popular bars. The complaining party is no longer in the craft beer business. Despite the rumors that more companies are involved in these practices, no one is talking.

As a regulator, I got periodic complaints about favors being given to bars for carrying a particular product or line of products. There were rumors of gifts such as TVs, furniture, trips to resort areas, and

expensive seats at sports events. Usually, the complainant would demand that something be done, but in the next breath would say, “You can never say where you got this information!” It is quite difficult to launch an investigation when no one will testify or put a complaint in writing for fear of reprisals.



So what can be done?

1. **Publicly recognize the importance of these laws, why they exist and indicate a clear intent to enforce them.** A few years ago, the Attorney General of Nevada wrote “An Open Letter to all Retailers, wholesalers and Suppliers of Intoxicating Liquors in Nevada”. The letter was a reminder about the trade practice laws of that state. It listed the laws and noted that the Attorney General’s Office is charged with enforcing them. Also noted was the policy of the Legislature which included insuring that businesses and investors have the “freedom to manage their businesses without economic and coercive control by others in the industry.”
2. **Offer training and regular communication to encourage voluntary compliance:** Licensees must clearly understand what is legal and what is not in

order to be compliant. Trade practice laws can be complicated and confusing. A program designed to educate industry members with regular updates and refreshers can be very cost-effective. And, by keeping the issue visible, the temptation to cheat may be reduced. Regulators should consider approaching industry trade groups in all three tiers to conduct education programs. Sales forces are especially in need as they may not know about restrictions or may be under such pressure that they push the envelope.

3. Experiment with various kinds of Compliance Checks. Regulatory agencies may need to devise new ways of enforcing these laws. For example, random checks of financial records might be worth trying. Agencies would need to be sure they have the legal authority to check such records and they might need training on what to look for and how to analyze financial documents. Agencies could consider hiring auditors, contracting for forensic accounting expertise when needed and add financial analysis to enforcement training. Licensees should be informed of the results of any audits or compliance checks even if no violations are found. If licensees know they could be audited, they may be less tempted to cheat.

4. Make the case for more resources. Most states have few resources devoted to fair trade practice regulation. But strong arguments can be made for greater enforcement including protecting the public and preserving competitive local markets where local and national companies can both be successful. It may be possible to create a special fee for dedicated trade practice enforcement. And, it may be possible to get industry support as most

industry members support a level playing field where enforcement is fair and consistent.

5. Encourage staff by emphasizing the impact on the honest licensee. When industry members ignore the law, the honest licensee is at a disadvantage. As the Nevada Attorney General noted, "...some may attempt to gain a competitive edge by offering incentives or terms that are illegal. Agreeing to such terms would be a disservice to all that honor the law."

Finally, I recommend that liquor law enforcement leaders actively engage in discussions with colleagues from other states to share ideas.

Sources:
<https://www.bostonglobe.com/business/2015/09/02/boston-bars-charged-with-violating-pay-play-prohibitions/GsTnMJPiC8ZZyNvU70PoqL/story.html>

"An Open Letter to all Retailers, Wholesalers, and suppliers of Intoxicating Liquors in Nevada," Catherine Cortez Masto, Office of the Attorney General (letter not dated).

Correction to January Newsletter: The January newsletter included an incorrect cost of excessive alcohol use. That figure is \$249 billion, not \$2.9 billion (result of a "typo"). Thank you to David Jernigan for noting this error. These costs are enormous, but they are within our ability to reduce! (A corrected version of the monthly newsletter is now on the website, www.healthyalcoholmarket.com.)