

March 31, 2004

To: All LCLB Staff
All Industry Associations
All Local Governments, First Nations and Police Agencies
All Liquor Manufacturers and Agents
All Liquor Licensees
Liquor Distribution Branch

Re: Trade Practices

This policy directive replaces Policy Directive 03-14 which is repealed. This policy directive sets out new rules for trade practices between liquor suppliers and licensed establishments.

The term liquor supplier, as used throughout this document, refers to a liquor manufacturer or their agent.

New Trade Practice Rules

The Liquor Control and Licensing Regulations (new section 50.1) and the general manager's policies have been amended to allow certain trade practices between liquor suppliers and licensees that would otherwise be prohibited under section 45 of the *Liquor Control and Licensing Act*. Section 50.1 provides a framework within which legitimate trade practices between liquor suppliers and licensees can be distinguished from practices that are intended as inducements to the licensee.

Highlights of these changes, which are now in effect, are as follows:

- Liquor suppliers may enter into agreements with licensees (called Buy-Sell Agreements) whereby the liquor supplier may promote their products to the consumer via a licensed establishment.
- Promotional activity must be documented in a Buy-Sell Agreement and promotional items must be provided to, or be for the principal benefit of, patrons.
- Theme night rules including frequency and time of day restrictions, pre-reporting requirements, the value and types of prizes, and the requirement that the liquor supplier award prizes have been eliminated.
- Consumer tastings (taste trials) pre-reporting requirements have been eliminated.
- Contests are now permitted in liquor-primary and food-primary establishments and liquor suppliers may run contests in selected establishments or licensee retail stores (LRSs).

- Liquor suppliers may host licensees for meals and other hospitality to a maximum of \$1000 per establishment per year.
- Liquor suppliers may pay legitimate travel and entertainment costs for licensees to attend educational events to learn about the liquor supplier's products.

Details of the terms and conditions of all trade practice rules (new and continuing) are set out below.

Liquor suppliers are still prohibited from offering or giving money, gifts, reward or remuneration to the licensee and licensees are still prohibited from demanding or accepting such items for furthering the sale of a particular manufacturer's product. Liquor suppliers are, as noted below, now able to provide certain benefits to licensees.

Licensees must ensure all promotional items, such as 50 ml on-pack miniatures, are given to a consumer and are prohibited from keeping any promotional items or giving them to their staff.

Buy-Sell Agreement

Except for the provision of promotional items identified by the general manager as being of nominal value, all promotional activity between a liquor supplier and a licensee must be documented in a Buy-Sell Agreement. A Buy-Sell Agreement must not exclude, restrict or otherwise prohibit a licensee from carrying or selling the products of any other liquor supplier.

A sample Buy-Sell Agreement format is attached for reference. While there is no requirement that this format be used, a Buy-Sell Agreement must include the following:

- Name and licence number of the manufacturer, agent, or representative.
- Name and licence number of the licensee.
- Start and end date of the agreement with a term no longer than 3 years.
- Terms of agreement as agreed to by the licensee such as the purchase of product including brands and quantities and/or the display of point-of-sale or promotional materials.
- Promotional activities and items, including retail value, which are supplied by the liquor supplier.

For example a liquor supplier and a licensee may enter into a 3 month Buy-Sell Agreement where the licensee agrees to purchase a certain quantity of product in exchange for the liquor supplier running a contest with a prize of a weekend ski getaway to a ski resort. In the case of a Buy-Sell Agreement with an LRS licensee the LRS operator may also agree to allow the liquor supplier to install a temporary product display structure in exchange for running a similar contest.

Attached to this directive is a table that illustrates which promotional activities and items must be recorded in a Buy-Sell Agreement and those that do not have to be recorded.

Record Keeping Requirements

The liquor supplier and the licensee must both retain a copy of the Buy-Sell Agreement for two years following the agreement's expiry date. A copy of the Buy-Sell Agreement must be retained at each of the licensed establishments to which the agreement applies and in the provincial office of the liquor supplier. Both parties must be able to produce a copy of the Buy-Sell Agreement to the general manager immediately upon request. The recipients of prizes over \$100 in value must be recorded and retained with the associated Buy-Sell Agreement.

Liquor suppliers are required to provide the general manager, immediately upon request, with a summary of the type, quantity, and value of promotional items that have been provided to specific licensees including a list of recipients of prizes that are greater than \$100 in value.

Both liquor suppliers and licensees will be subject to random auditing to ensure compliance with the trade practices rules and the terms and conditions of their licence.

THE FOLLOWING PROMOTIONAL ACTIVITIES AND ITEMS ARE NOT REQUIRED TO BE DOCUMENTED IN A BUY-SELL AGREEMENT

Promotional Items of Nominal Value

Liquor suppliers may provide licensees with promotional items of a nominal value. Items such as tent cards, posters, coasters, product brochures, ceiling danglers, shelf talkers or other similar brand or corporately identified items may be provided by liquor suppliers.

Consumer Tastings (Taste Trials)

Liquor suppliers may conduct consumer tastings in food-primary establishments or LRSs. Liquor suppliers are no longer required to notify the Liquor Control and Licensing Branch (LCLB) of their intention to conduct consumer taste trials. Both the liquor supplier and the licensee may advertise consumer tastings.

Manufacturer Hospitality of Nominal Value

Liquor suppliers may engage in hospitality with licensees without a Buy-Sell Agreement if the cost of the hospitality is less than \$25. Receipts must be provided on demand.

Manufacturer Sponsored Contests – Liquor Distribution Branch (LDB) Approved

Liquor suppliers may offer contests. Contests are permitted in government liquor stores (GLSs), LRSs, licensed establishments, and through the media. Where a contest has been approved for GLSs the identical contest and promotional materials may also be used in a licensed establishment or LRS for the same promotion period. Both the liquor supplier and the licensee may advertise LDB approved contests.

Value-Added Promotions – LDB Approved

Liquor suppliers or agents may provide value-added promotional items as an added value to customers who purchase a particular brand of liquor. For example, a liquor supplier may attach a corkscrew onto the outside of a bottle of wine or include a t-shirt inside a case of beer. The retail value of the on-packs, in-packs, and near-packs may not exceed 20% of the retail price of the liquor item being promoted.

Where a value-added promotion has been approved for GLSs the identical on-pack, in-pack, or near-pack may also be placed in an LRS for the same promotion period. Both the liquor supplier and the licensee may advertise LDB approved value-added promotions.

Manufacturer Samples to Licensees

Liquor suppliers may occasionally give a product sample to licensees to introduce a product. Only the licensee may consume this product. It is not intended for the patrons of the establishment and must not be purchased or consumed by them. Samples provided by a liquor supplier must be recorded in the licensees' liquor register.

Liquor suppliers must not provide a licensee with more than one standard size bottle per year which is:

- Distilled spirits – smallest available size per product (750 ml or greater).
- Wine – smallest available size per product (not exceeding two litres).
- Beer, domestic cider or coolers – one dozen smallest available size bottles or cans (total not exceeding four litres).

Notwithstanding the above, if a new wine vintage is released within the same year that an earlier vintage was provided as a sample, a liquor supplier may provide a sample of the new vintage within the same year.

THE FOLLOWING PROMOTIONAL ACTIVITIES AND ITEMS MUST BE DOCUMENTED IN A BUY-SELL AGREEMENT

More Expensive Promotional Items

Liquor suppliers may provide licensees with more expensive promotional items however the liquor supplier must retain ownership of these items. Items such as mirrors, ceramic draft beer towers, menu boards, patio umbrellas, or other more expensive brand or corporately identified items may be provided by liquor suppliers for an identified term.

LRS licensees may be provided with temporary product display structures and related promotional displays or items or other similar material. The liquor supplier must retain ownership of these items and they must be removed at the end of the promotion.

Manufacturer's Dinners

Liquor suppliers may enter into a joint promotion with a licensed establishment to feature their products during a special event such as a winemaker's dinner or other similar such promotion in food-primary and liquor-primary licensed establishments

where any type of liquor is permissible. A full meal must be offered and an agent or representative, such as the wine maker, must be present at the event. Both the liquor supplier and the licensee may advertise manufacturer's dinners.

Manufacturer's Theme Night Promotions

Liquor suppliers may conduct theme night promotions in liquor-primary establishments and are no longer required to notify the LCLB of their intention to conduct these promotions. The restrictions placed on the number of theme nights, the value and types of theme night prizes, and the requirement that the liquor supplier award prizes have been eliminated. An agent or representative of the manufacturer must be present for at least part of the event and the recipient of prizes over \$100 must be recorded. Both the liquor supplier and the licensee may advertise theme night promotions.

Liquor suppliers may not provide or pay for entertainment that is part of a theme night promotion other than entertainment of a nominal value, such as games, unless otherwise authorized by the general manager.

Manufacturer Sponsored Contests

Liquor suppliers may offer non-LDB approved contests in licensed establishments and LRSs. These contests may be licensee specific or may involve numerous licensed establishments and do not require the prior approval of the LDB or the LCLB. The contest must, however, be conducted in accordance with the requirements as described in the LDB publication "The Beverage Alcohol Promotions Program for BC Liquor Stores". The recipient of prizes over \$100 must be recorded and all related point-of-sale material must be installed and removed by the liquor supplier. Non-LDB approved contests may be advertised by both the liquor supplier and the licensee.

Disposable Glassware in Stadiums

Liquor suppliers may provide branded disposable glassware at no charge or at less than market value to licensed stadiums.

Value-Added Promotions

Liquor suppliers may offer non-LDB approved value-added promotional items in LRSs provided they do not include liquor. These value-added on-packs, in-packs, or near-packs may be LRS specific or may involve numerous LRSs and do not require the prior approval of the LDB or the LCLB. The value-added promotion must, however, be included in the buy-sell agreement and conducted in accordance with the requirements as described in the LDB publication "The Beverage Alcohol Promotions Program for BC Liquor Stores". Non-LDB approved on-packs, in-packs, or near-packs may be advertised by both the liquor supplier and the licensee.

Manufacturer Educational Events and Activities

Liquor suppliers may invite licensees to educational events or activities related to improving a licensee's product knowledge or ability to sell a product. Where the primary

purpose of the event or activity is to educate the licensee, a liquor supplier may pay for legitimate travel, meal, accommodation, and entertainment expenses associated with the educational event. Manufacturer educational events or activities must be recorded in a Buy-Sell Agreement.

Liquor suppliers may pay legitimate travel and entertainment expenses of \$1,000 per licensee location per year. Where a licensee has multiple licensed establishments, such as a chain restaurant, travel and entertainment expenses of \$1,000 per person to a maximum of \$3,000 per licensee head office are also permitted each year.

For example a licensee attending an all day “beer school” in Vancouver could have their travel expenses, meals, and evening entertainment paid for by the liquor supplier.

Where the primary purpose or the majority of time spent at the event or activity is entertainment, recreational, or sporting in nature and not educational, it must follow the rules outlined below under “manufacturer hospitality”.

Manufacturer Hospitality

Liquor suppliers may engage in hospitality with licensees to a maximum of \$1000 per establishment per year. Additional in-province travel expenses, which are appropriate and related to the event, are also permitted.

Prohibited Inducements

Liquor suppliers must not provide any item that is necessary to the operation of a licensed establishment as these are prohibited inducements. This includes, but is not limited to, any item, product or service to a licensee such as money, credit or other forms of financial assistance, fixtures, furnishings, product, repair and maintenance costs, draught lines, glassware (other than disposable glassware in stadiums), games (pool tables, dart boards, etc), fridges, shelving, preferential shelf space or permanent display structures.

Advertising is deemed to be a prohibited inducement where a liquor supplier pays any portion of the costs of a licensee’s advertising or vice versa. While a liquor supplier is permitted to advertise where their products are available they would not be permitted to advertise the entertainment line-up, drink specials, or menu items of a licensee.

Provided prior permission has been received to use a liquor supplier’s (or licensee’s) logo this may be used in an advertisement. However the party whose logo is being used cannot provide or demand any kind of financial compensation or other consideration, as this would then be deemed to be a prohibited inducement.

Suppliers are also prohibited from providing market research for a licensee or limited number of licensees. If research is undertaken by a supplier, the findings must be available to all licensees.

Enforcement Actions

Schedule 4 of the Liquor Control and Licensing Regulations has been amended and the following contravention item has been added:

| Item | Contravention | Period of Suspension (Days) | | | Monetary Penalty |
|-----------------------------|---|-----------------------------|----------------------|---------------------|-------------------|
| | | First Contravention | Second Contravention | Third Contravention | |
| PROMOTIONAL ACTIVITY | | | | | |
| 40.1 | A breach of section 50.1 (3) (d) of this regulation by engaging in promotional activity if that promotional activity is required to be, but is not, documented in an appropriate buy-sell agreement | 1-3 | 3-6 | 6-9 | \$1 000 - \$3 000 |

Contravention item 40.1 applies to both the liquor supplier and the licensee when there is a breach of section 50.1 (3) (d) of the regulations. For example, if a liquor inspector enters a licensed establishment and a theme night promotion is taking place that is not recorded in an appropriate Buy-Sell Agreement, both the licensee and the liquor supplier must be issued a contravention notice.

The relevant sections of the Licensing Policy Manual, Compliance and Enforcement Policy and Procedures Manual, and Licensee and Manufacturer Terms and Conditions Guides will be amended to reflect these changes.

Further Information

Further information regarding liquor control and licensing in British Columbia is available on the Liquor Control and Licensing Branch website at www.pssq.gov.bc.ca/lclb. If you have any questions regarding this change, please contact the Liquor Control and Licensing Branch toll free at 1-866-209-2111 or 387-1254 if calling from the Victoria area.



Mary Freeman
A/General Manager

BUY-SELL AGREEMENT

Between

Parties: _____ and _____
 (Liquor Supplier) (Licensee)
 _____ and _____
 (Licence Number) (Licence Number)

Purpose: The contractual obligations stated below are agreed to and will be adhered to by both Parties throughout the duration of this agreement.

Duration: Start Date: _____
 End Date: _____

Terms:

1. _____ hereby agrees to the following:
 (Licensee)

A. Purchase or order over the duration period mentioned above

| Product Name | UPC | Size | Quantity / Volume |
|--------------|-----|------|-------------------|
| | | | |
| | | | |
| | | | |

B. Placement of product displays, promotional displays or items, point-of-sale or other similar material

2. In return for the considerations noted above _____ agrees to:
 (Liquor Supplier)

A. Provide _____

 RETAIL VALUE: _____

B. Conduct _____

 RETAIL VALUE: _____

C. Value-Added Promotions _____

 RETAIL VALUE: _____

D. Other (specify) _____

 RETAIL VALUE: _____

Conditions and Understanding:

Promotional activities must be directed to the consumer and promotional items must be provided to or be for the principal benefit of patrons.

This Agreement shall not exclude, restrict or otherwise prohibit the licensee from carrying, selling, or displaying the products of any other liquor supplier.

Both Parties agree to maintain, on site, certifiable copies of this Buy-/Sell Agreement and any related documents for two years after their expiry date. All such documents must be available and provided, without delay, when requested by the general manager of the Liquor Control and Licensing Branch.

Buy-Sell Agreements must not exceed 36 months in duration.

Value added items may not exceed 20% of the retail price of the liquor item being promoted.

Recipients of prizes over \$100 must be recorded and retained with this agreement.

Despite any provision in this agreement to the contrary, the Parties agree not to engage in any promotional activity that is not, or that ceases to be, authorized under one or more of:

- a. The Liquor Control and Licensing Act
- b. The Liquor Control and Licensing Regulation
- c. The terms and conditions to which one or more of the parties are subject to under licence from the Liquor Control and Licensing Branch.

This Agreement and its contents have been read and are fully understood.

Authorized Signatory:

_____ and _____
 (Liquor Supplier) (Licensee)

_____ _____
 (Position or Title) (Position or Title)

Dated this _____ day of _____ 2_____

at , _____ British Columbia.

Promotional Activity and Items Documented in a Buy-Sell Agreement

| Promotional Activity Promotional Item | Permitted Trade Practice | Must be Documented in a Buy-Sell Agreement | Licensee Permitted to Advertise | Liquor Supplier Permitted to Advertise |
|--|-------------------------------------|--|--|---|
| Promotional Items of Nominal Value | Yes | No | N/A | N/A |
| More Expensive Promotional Items | Yes | Yes | N/A | N/A |
| Manufacturer Samples to Licensee | Yes | No | N/A | N/A |
| Items Necessary for the Operation of the Establishment | NO | Liquor suppliers must not provide any item that is necessary to the operation of a licensed establishment as these are prohibited inducements. | | |
| Consumer Tastings | Yes | No | Yes | Yes |
| LDB Approved Manufacturer Contests | Yes | No | Yes | Yes |
| LDB Approved Value-Added Promotions | Yes | No | Yes | Yes |
| Manufacturer's Dinners | Yes | Yes | Yes | Yes |
| Manufacturer's Theme Nights | Yes | Yes | Yes | Yes |
| Non-LDB Approved Manufacturer Contests | Yes | Yes | Yes | Yes |
| Non-LDB Approved Value-Added (non-liquor) Promotions | Yes | Yes | Yes | Yes |
| Manufacturer Educational Events and Activities | Yes | Yes | N/A | N/A |
| Manufacturer Hospitality | Yes | Yes | N/A | N/A |