

The Nitty Gritty of Listings

BOTH Wholesale and Retail Schedules Need to be Filed to Sell Brands Legally in New York State

BY KEVEN DANOW

The Alcoholic Beverage Control Law requires brand owners and wholesalers to file with the Liquor Authority the prices at which each brand of beverage alcohol will be sold or purchased. The price schedule filed by the brand owner or its New York brand agent is called the “wholesale schedule” and sets forth the prices at which the wholesaler may purchase each brand. The schedule filed by the wholesaler is called the “retail schedule” and sets forth the prices at which retailers may purchase the brand. With emphasis added, section 101-a provides in part:

3. (a) *No brand of liquor or wine shall be sold to or purchased by a wholesaler, irrespective of the place of sale or delivery, unless a schedule, as provided by this section, is transmitted to and received by the liquor authority, and is then in effect.... Such brand of liquor or wine shall not be sold to retailers except at the price and discounts then in effect unless prior written permission of the authority is granted for good cause shown and for reasons not inconsistent with the purpose of this chapter.*

(b) *No brand of liquor or wine shall be sold to or purchased by a retailer unless a schedule, as provided by this section, is transmitted to and received by the liquor authority, and is then in effect. Such brand of liquor or wine shall not be sold to retailers except at the price and discounts then in effect unless prior written permission of the authority is granted for good cause shown and for reasons not inconsistent with the purpose of this chapter. Such schedule shall be transmitted by each manufacturer selling such brand to retailers and by each wholesaler selling such brand to retailers.*

4. (a) *A schedule of prices to wholesalers filed by the brand owner or its agent with the authority, pursuant to this section, may limit the distribution or resale of a brand to wholesalers by the filing by the brand owner or its agent with the authority of the names, addresses and license numbers of such wholesalers. Such list shall be filed each month together with the schedule of prices, and no name shall be added thereto or removed therefrom after filing except with permission of the authority.*

(b) *Only those wholesalers listed, pursuant to paragraph (a) of this subdivision, may schedule the price to retailers for such brand, except that when not inconsistent with the purpose of this section, the authority may authorize any other wholesaler to schedule a price after furnishing the quantity, source of purchase and any other information the authority may require.*

(c) *When distribution or resale of a brand has been restricted, pursuant to paragraph (a) of this subdivision, such brand shall not be sold or purchased by any wholesalers who are not listed in accordance with paragraph (a) of this subdivision.*

Some attorneys, practicing beverage alcohol law, are of the opinion a wholesaler which is the only wholesaler that will sell the brand in New York State may file a retail schedule, purchase and resell brands of beverage alcohol without a filed wholesale schedule. I disagree. The statute clearly states, “No brand of liquor or wine shall be sold to or purchased by a wholesaler, irrespective of the place of sale or delivery.” Moreover, in its price posting instructions, the New York State Liquor Authority warns:

NYS licensed manufacturers/wholesalers that are the brand owner or the exclusive brand agent are responsible for filing the brand on the wholesale schedule. The brand must be filed on the wholesale schedule if the brand is for sale to other NYS licensed wholesalers or to NYS licensed retailers.

All NYS licensed manufacturers/wholesalers that are selling to retailers must complete and submit a retail schedule. (Emphasis in original.)

The underline of the words “must” and “or” clearly indicate the Authority’s requirement that both the wholesale and retail schedule be filed before a brand of beverage may be legally sold to retailers in New York State.

There are two additional noteworthy points. The wholesale price posting is the place in which a brand owner limits the wholesalers that are authorized to sell its brands. Unless a brand owner lists specific wholesalers who are authorized to sell the brand in its wholesale posting, all wholesalers are permitted to sell the brand. While brand owners and wholesalers are required to file prices each month, NYS wineries, farm wineries and micro-wineries may file for the entire calendar year, if they certify by the 25th of November for the wholesale schedule and the 5th of December for the retail schedule. Changes can be made and schedules recertified during any month in that calendar year (to become effective in the appropriate month based on the ABC Law). ■

Keven Danow is an attorney representing members of all three tiers of the beverage alcohol industry and member of the firm of Danow, McMullan & Panoff, P.C. 275 Madison Ave, NY, NY 10022. t/ 212-370-3744, e/ kdanow@dmppc.com.