

**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO**

IN RE:

PETITION FOR DECLARATORY
STATEMENT ON BEHALF OF
MARK ANTHONY BRANDS, INC.,

DABT CASE NO.: 2021-038604

Petitioner.

DS 2021-045

FINAL ORDER ON PETITION FOR DECLARATORY STATEMENT

The Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco (the "Division"), pursuant to section 120.565, Florida Statutes, and rule 28-105.003, Florida Administrative Code, hereby issues this Final Order on Petition for Declaratory Statement (the "Petition") requested on behalf of Mark Anthony Brands, Inc. (the "Petitioner").

ISSUE PRESENTED

1. Petitioner requests a declaratory statement regarding the interpretation of section 565.17, Florida Statutes, as it pertains to consumer tasting events for spirituous liquors that are conducted by authorized exclusive agents, brand registrants, and importers or their third-party representative or agent on the premises of licensed vendors.

FINDINGS OF FACT¹

2. Petitioner filed its Petition with the Division on August 13, 2021. A copy of the Petition is attached hereto as **Exhibit A**.

3. On August 23, 2021, the Division published notice of its receipt of the Petition in Volume 47, Number 163 of the Florida Administrative Register.

¹ The Division takes no position as to the accuracy of the facts and accepts them as submitted solely for the purpose of issuing this Final Order

4. The notice provided that motions for leave to intervene must be filed within 21 days after the date the notice was published. *See* Fla. Admin. Code R., 28-105.0027. The Division did not receive any motions to intervene.

5. Petitioner is registered with the Division as the Primary Source of American Supply (hereinafter referred to as a “brand registrant”) for a number of unnamed malt beverage and spirits brands which are registered in Florida. *See* Ex. A, at 1.

6. Petitioner is the legally authorized exclusive agent for these brands and registers them in the state of Florida as an importer. *Id.*

7. Petitioner is interested in promoting its spirits brands by “conducting, or assisting in, tasting events on the premises of licensed vendors.” *Id.*

8. Specifically, Petitioner is requesting the Division’s interpretation of section 565.17, Florida Statutes, as it pertains to consumer tasting events conducted by authorized exclusive agents/importers, and to issue a declaratory statement regarding the following:

- a. “May an authorized exclusive agent (brand registrant/importer) conduct, attend, or otherwise participate in a tasting of their own spirituous liquor products on the premises of a licensed on-sale or off-sale vendor?”
- b. “Alternatively, may an authorized exclusive agent (brand registrant/importer) hire a third party representative or agency to conduct, attend, or otherwise participate in tastings of their spirituous liquor products on their behalf?”

Id.

9. The conclusions of law set forth in this Final Order are based on factual assertions described in the Petition and described herein. All of the facts presented in the Petition were duly considered and form the basis of this Final Order. For the following reasons, the Petition is granted in part and denied in part as set forth below.

CONCLUSIONS OF LAW

10. The Division has jurisdiction over this matter pursuant to sections 120.565 and 561.02, Florida Statutes. The Division is responsible for the administration, regulation, and enforcement of chapters 561 through 568, Florida Statutes, commonly referred to as the “Beverage Law.” *See* § 561.02, Fla. Stat.

11. Section 565.17(1), Florida Statutes, provides that:

A licensed distributor of spirituous beverages, a craft distillery as defined in s. 565.03, or any vendor is authorized to conduct spirituous beverage tastings upon any licensed premises authorized to sell spirituous beverages by package or for consumption on premises without being in violation of s. 561.42, provided that the conduct of the spirituous beverage tasting shall be limited to and directed toward the general public of the age of legal consumption.

12. On its face, section 565.17(1) does not authorize importers, primary American sources of supply, or brand owners or registrants to conduct such tastings.

13. Section 561.42, Florida Statutes, prohibits certain relationships and conduct between licensed vendors and importers, primary American sources of supply, and brand owners or registrants. Specifically, section 561.42(1), Florida Statutes, provides, in part, that:

No manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant of any of the beverages herein referred to, whether licensed or operating in this state or out-of-state, nor any broker, sales agent, or sales person thereof, shall have any financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the Beverage Law; nor shall such manufacturer, distributor, importer, primary American source of supply, brand owner or brand registrant, or any broker, sales agent, or sales person thereof, assist any vendor by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever.

(emphasis added).

14. Section 565.17(1) creates an exception to the foregoing prohibition only for licensed distributors, craft distilleries, and vendors. Accordingly, importers, primary American

sources of supply, and brand owners or registrants (and their third-party representatives or agents) remain subject to section 561.42(1)'s prohibition against conducting alcoholic beverage tastings on a vendor's licensed premises.


15. Furthermore, for purposes of a petition for a declaratory statement, a petitioner must state with particularity the circumstances of its proposed course of action. § 120.565(2), Fla. Stat. In this case, the Petitioner has failed to describe with particularity how importers, primary American sources of supply, and brand owners or registrants would "attend, or otherwise participate in" a tasting. Ex. A, at 1. Consequently, the Division denies the Petition to the extent it asks whether Petitioner can "attend or otherwise participate in" such tastings. *See MB Doral, LLC v. Fla. Dept. of Bus. & Prof'l Regulation*, 298 So. 3d 132, 134-135 (Fla. 1st DCA 2020) (affirming Division's decision to not address portions of a petition for declaratory statement without particularized facts).

CONCLUSION

Having considered the facts and circumstances set forth in the Petition, it is ORDERED that the Division hereby GRANTS in part and DENIES in part Petitioner's Petition for Declaratory Statement as described herein. These conclusions have no application in the event that the factual circumstances and/or relationships among the entities described herein are incorrect or change, or in the event the law or rules pertinent to Petitioner's petition are modified in the future.

DONE and ORDERED in Tallahassee, Florida on this 1st day of December, 2021.





R. Sterling Whisenhunt, Director
Division of Alcoholic Beverages and Tobacco

NOTICE OF RIGHT TO APPEAL UNLESS WAIVED

Unless expressly waived, any party substantially affected by this final order may seek judicial review by filing an original Notice of Appeal with the Clerk of the Department of Business and Professional Regulation, and a copy of the notice, accompanied by the filing fees prescribed by law, with the clerk of the appropriate District Court of Appeal within thirty (30) days of rendition of this order, in accordance with Rule 9.110, Florida Rules of Appellate Procedure, and section 120.68, Florida Statutes.

CERTIFICATE OF SERVICE

I hereby certify that the preceding FINAL ORDER ON PETITION FOR DECLARATORY STATEMENT has been provided via e-mail to the following party on this 2nd day of December, 2021.

Jenna Castro, Compliance Coordinator
Mark Anthony Services, Inc.
jcastro@markanthony.com
(312) 477-8663



RONDA BRYAN, AGENCY CLERK
Department of Business & Professional Regulation

Copies furnished to:
R. Sterling Whisenhunt, Director
David Axelman, General Counsel
Ross Marshman, Deputy General Counsel
Megan Kachur, Chief Attorney



MARK ANTHONY SERVICES INC.

FILED	
Department of Business and Professional Regulation	
Senior Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	8/13/2021
File #	

August 10, 2021

Via USPS
Agency Clerk
Division of Alcoholic Beverages and Tobacco
1940 N. Monroe Street
Tallahassee, Florida 32399-2217

RE: Petition for Declaratory Statement

DS 2021-045

To Whom It May Concern:

I am contacting you on behalf of Mark Anthony Brands Inc., which seeks to obtain a declaratory statement regarding interpretation of Title XXXIV §565.17 with regards to consumer tasting events. Mark Anthony Brands Inc. is the Primary Source of American Supply for a number of malt beverage and spirits brands which are registered in Florida. Mark Anthony Brands Inc. is the legally authorized exclusive agent for these brands, and registers them in the state of Florida as an importer.

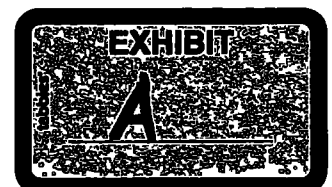
The statute referenced above specifically permits licensed distributors and vendors to conduct consumer tasting events for spirituous liquors on any licensed premises authorized to sell such beverages. Authorized exclusive agents and importers are not addressed. Mark Anthony Brands Inc. is interested in promoting its spirits brands by conducting, or assisting in, tasting events on the premises of licensed vendors. Therefore, I am requesting an interpretation of the statute as it pertains to consumer tasting events conducted by authorized exclusive agents/importers. Specifically, we would appreciate your answers on the following:

1. May an authorized exclusive agent (brand registrant/importer) conduct, attend, or otherwise participate in a tasting of their own spirituous liquor products on the premises of a licensed on-sale or off-sale vendor?
2. Alternatively, may an authorized exclusive agent (brand registrant/importer) hire a third party representative or agency to conduct, attend, or otherwise participate in tastings of their spirituous liquor products on their behalf?

Your advice in this matter is greatly appreciated.

Sincerely,

Jenna Castro
Compliance Coordinator
jcastro@markanthony.com
(312) 477-8663





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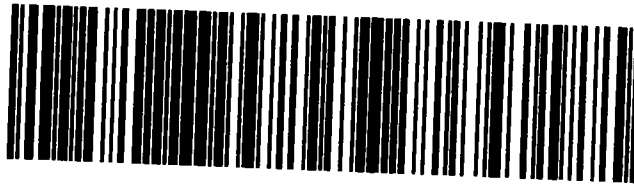
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