

185—16.1(123) Definitions.

“*Alcoholic liquor*” means “alcoholic liquor” as defined in Iowa Code section 123.3(5). For the purposes of this chapter, “alcoholic liquor” includes “native distilled spirits” as defined in Iowa Code section 123.3(34).

“*Beer*” means “beer” as defined in Iowa Code section 123.3(7). For the purposes of this chapter, “beer” includes “canned cocktail” as defined in Iowa Code section 123.3(11) and “high alcoholic content beer” as defined in Iowa Code section 123.3(22).

“*Brand*” means each alcoholic liquor, wine, or beer packaged and sold under a separate name, class, type, or kind designation (wine appellation of origin, wine vintage date, alcoholic liquor age, percentage of alcohol, etc.).

“*Department*” means the department of revenue.

“*Equipment*” includes, but is not limited to, mechanized and nonmechanized refrigeration units and devices used in the storage, dispensing, and cooling of alcoholic liquor, wine and beer, tap boxes, “party wagons,” dispensing systems, and shelving. Equipment does not include tapping accessories (including faucets, rods, vents, taps, hoses, washers, couplings, gas gauges, vent tongues, shanks, check valves and “picnic” pumps) which are used in dispensing wine or beer from kegs or bulk packaging.

“*Exclusion,*” in whole or in part, means a practice by an industry member, whether direct, indirect, or through an affiliate, that places (or has the potential to place) retailer independence at risk by means of a tie or link between the industry member and retailer or by any other means of industry member control over the retailer, and such practice results in the retailer’s purchasing less than it would have of a competing industry member’s product. The following criteria are indications that a particular practice places retailer independence at risk. A practice need not meet all of the criteria specified below in order to place retailer independence at risk.

1. The practice restricts or hampers the free economic choice of a retailer to decide which products to purchase or the quantity in which to purchase them for sale to consumers.

2. The industry member obligates the retailer to participate in a promotion to obtain the industry member’s product.

3. The retailer has a continuing obligation to purchase or otherwise promote the industry member’s product.

4. The retailer has a commitment not to terminate its relationship with the industry member with respect to purchase of the industry member’s products.

5. The practice involves the industry member in the day-to-day operations of the retailer. For example, the industry member controls the retailer’s decisions on which brand of products to purchase, the pricing of products, or the manner in which the products will be displayed on the retailer’s premises.

6. The practice is discriminatory in that it is not offered to all retailers in the local market on the same terms without business reasons present to justify the difference in treatment.

“*Fixtures*” includes, but is not limited to, bar sinks, bars, light fixtures, and indoor or outdoor signs used to identify the retail establishment.

“*Furnishings*” includes, but is not limited to, money, services, chairs, tables, lamps, pictures, remodeling costs, bar sinks, carpeting, bar stools, display cabinets and curios, linens, linen services, china and silver or stainless steel eating and other utensils, decorations, and sound systems used by a retailer. (Durable and disposable glassware is addressed in rule 185—16.5(123).)

“*Furnishings, fixtures and equipment*” does not include the items identified in rule 185—16.2(123), subrules 16.3(1) and 16.3(2), rule 185—16.5(123), rule 185—16.6(123), rule 185—16.7(123), or paragraph 16.13(2)“a.”

“*Industry member*” means an alcoholic beverages manufacturer, including a distiller, vintner or brewer, bottler, importer, wholesaler, representative, broker, agent, officer, director, shareholder not considered an institutional investor as defined in Iowa Code section 123.3(27), partner or employee of each of the above.

“*Product*” means alcoholic liquor, wine, or beer as defined in Iowa Code chapter 123.

“*Retailer*” means the holder of an alcoholic beverages license or permit, agents, officers, directors, shareholders not considered institutional investors as defined in Iowa Code section 123.3(27), partners,

and employees who sell alcoholic liquor, wine or beer to consumers for consumption on or off the premises of the licensee or permittee.

“Sampling” means the practice of industry members giving product to a retailer for the purpose of market research, education, promotion of the product, or determination of the flavor of the product.

“Tasting” means the presentation and serving of a product by industry members or retailers to consumers for the purpose of market research, education, promotion of the product, or determination of the flavor of the product.

“Trade buyer” means a person who is a wholesaler or retailer of alcoholic liquor, wine, or beer.

“Trade spending” means the practice of industry members promoting their brand by purchasing alcoholic beverages for consumers where alcoholic beverages are sold and served for on-premises consumption.

“Wine” means “wine” as defined in Iowa Code section 123.3(53). For the purposes of this chapter, “wine” includes “native wine” as defined in Iowa Code section 123.3(36).

This rule is intended to implement Iowa Code sections 123.45 and 123.186.

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