

Chapter Ag 129

**SODA WATER BEVERAGE INDUSTRY
UNFAIR TRADE PRACTICES**

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Ag 129.01 Definitions. (1) "Soda water beverage" means all beverages commonly known as soft drinks, including soda water, carbonated or uncarbonated or sweetened or flavored, and bases, fountain syrups, concentrates and powders intended to be reconstituted by wholesalers or retailers to produce soft drinks. It does not include strong spirituous, vinous, malt, ardent or intoxicating liquors.

(2) (a) "Retailer" means every person making sales of soda water beverages for consumption or use other than resale or further processing or manufacturing. In the case of a person making both sales at wholesale and retail, such term shall apply to only the retail portion of such sales. "Retailer" does not include the United States, the state, any municipality as defined in section 345.05(1) (a) Wis. Stats., or any agency thereof, or any religious, charitable or educational organization or institution, but does include any other person engaged in the business of making retail sales wholly or in part for profit at an institution or facility operated by such an exempt party.

(b) Any subsidiary or affiliate corporation, cooperative, partnership or association, and any officer, director or partner of a corporation, cooperative, partnership, association or any other business unit which owns, controls or franchises any retailer or which has any retailer as an affiliate, member or subsidiary, is deemed to be a retailer of soda water beverages.

(3) (a) "Wholesaler" means every person making sales of soda water beverages for purposes of resale or further processing or manufacturing. In the case of a person making both sales at retail and wholesale, such term shall apply only to the wholesale portion of such business.

(b) Any subsidiary or affiliate corporation, cooperative, partnership or association, and any officer, director or partner of a corporation, cooperative, partnership or association which is a wholesaler of soda water beverages is deemed to be a wholesaler of soda water beverages.

(4) "Broker" means any person engaged in negotiating sales or purchases of soda water beverages for or on behalf of a retailer or wholesaler or both.

History: Cr. Register, February, 1977, No. 254, eff. 3-1-77.

Ag 129.02 Prohibited trade practices. No wholesaler of soda water beverages shall, in the sale or distribution of soda water beverages, engage in the following unfair methods of competition or unfair trade practices:

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(1) Discriminate, directly or indirectly, in the price at which soda water beverages are sold to customers by selling or offering to sell such beverages at a special price or discount, or with special allowances, rebates, or commissions, or under other price or credit terms or conditions not offered or made available to all customers, where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly, or otherwise injure, destroy or prevent competition between wholesalers of soda water beverages or any of their customers.

(2) Furnish, sell, give, lend or rent any equipment, after the effective date of this chapter, for the refrigerated or heated storage or display, or mechanical dispensing of soda water beverages to a retailer, but this shall not prevent:

(a) The sale of such equipment to a retailer under a written agreement describing the equipment sold, specifying the price and other terms and conditions under which it is to be sold and providing that the wholesaler shall recover, within 5 years after date of agreement, the wholesaler's cost for the equipment, including all costs for the servicing and repair of the equipment. Such costs and charges may be recovered by advance payment in full, or equal monthly installment charges within a period not to exceed 5 years. Copies of such agreements shall be kept on file by the wholesaler for at least 2 years after final payment has been received. Cost of equipment which has been returned or repossessed shall be based on fair market value of such equipment, whether or not cost was recovered in whole or in part under a previous rental or sale agreement. No agreement for the sale of equipment under this paragraph shall contain any provision that prohibits the use of the equipment for the storage, display, or dispensing of the products of competing wholesalers or reserves any part of the available capacity of such equipment for the products of the wholesaler selling the equipment.

(b) The furnishing of equipment to a retailer, for the storage, transportation or display of soda water beverages for not more than a total of 20 days in a calendar year for use at fairs, exhibitions, expositions or other events for agricultural, industrial, charitable, educational, religious or recreational purposes.

(c) The rental of coin-operated vending machines under a written agreement specifying the terms and conditions under which they are to be rented, and providing that the wholesaler shall recover, within 8 years after date of agreement, cost of the equipment, including all costs for the servicing and repair of the equipment. Rentals may be charged in equal periodic installments or on a volume basis, and shall be collected at least once each year in an amount sufficient to recover all such costs within the life of the agreement.

(3) Discriminate, directly or indirectly, between customers in furnishing of advertising, promotional or other services or facilities to them, or in compensating customers for services or facilities to be rendered or furnished by or through them in connection with the sale or distribution of soda water beverages, under terms or conditions not available to all customers on proportionally equal terms, where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly, or otherwise injure, destroy or prevent competition between wholesalers of soda water beverages or

any of their customers. This does not apply to the sale, rental or furnishing of equipment under subsection (2).

History: Cr. Register, February, 1977, No. 254, eff. 3-1-77.

Ag 129.03 Prohibited acts of retailers. No retailer or any officer, director, employe or agent thereof shall solicit or receive, directly or indirectly, from or through a wholesaler, broker, or another retailer, anything which is prohibited by section Ag 129.02, where it is known, or in the exercise of reasonable prudence should be known that it is prohibited.

History: Cr. Register, February, 1977, No. 254, eff. 3-1-77.

Ag 129.04 Prohibited acts of brokers. (1) No broker, or any officer or agent thereof, shall participate, directly or indirectly, in any trade practice prohibited by section Ag 129.02.

(2) No wholesaler shall engage or offer to engage in any trade practice prohibited by section Ag 129.02, directly or indirectly, through a broker.

History: Cr. Register, February, 1977, No. 254, eff. 3-1-77.

Ag 129.05 Exceptions. (1) Nothing in section Ag 129.02(1) and (3) shall apply to the sale or offering for sale of soda water beverages:

(a) At a price different from that charged other customers, if such price differential merely allows for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such soda water beverages are sold or delivered, or if made in good faith to meet an equally low price of a competitor, or the terms or conditions under which they are sold by a competitor.

(b) With differences in services or facilities under section Ag 129.02(3), if made in good faith to meet services or facilities, or any compensation therefor, furnished by a competitor.

(c) Which are imperfect, damaged, subject to immediate loss because of obsolescence or perishability, or discontinuance from sale.

(d) In the final liquidation of a soda water beverage business.

(e) To customers other than wholesalers or retailers as defined in section Ag 129.01.

(f) Under the order or direction of any court.

(2) Equipment furnished, sold, given, lent, or rented prior to the effective date of this chapter shall, within 18 months after the effective date of this chapter, be either removed from the retailer's premises or brought into compliance with the requirements of sections Ag 129.02(2) and (3).

History: Cr. Register, February, 1977, No. 254, eff. 3-1-77.

Ag 129.06 Reporting requirements. (1) In any investigation under this chapter, any wholesaler shall on request of the department furnish to it price lists, accounting records and data used in determining cost, and such other information as requested concerning the terms or conditions of any agreement, transaction, or offer related to the sale of soda water beverages.

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(2) Cost data shall to the extent permitted by law be accorded confidentiality by the department and not opened to the public inspection without 10 days prior notice to the wholesaler concerned.

History: Cr. Register, February, 1977, No. 254, eff. 3-1-77.