

Chapter ATCP 107

SODA WATER BEVERAGE INDUSTRY  
UNFAIR TRADE PRACTICES

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Note: Chapter Ag 129 was renumbered chapter atcp 107 under s. 13.93 (2m) (b) 1, Stats., Register, April, 1993, No. 448.

Note: This chapter is adopted under authority of s. 100.20 (2), Stats., and is administered by the Wisconsin department of agriculture, trade and consumer protection. Violations of this chapter may be prosecuted under s. 100.20 (6), 100.26 (3) or (6), Stats. A person who suffers a monetary loss because of a violation of this chapter may sue the violator directly under s. 100.20 (5), Stats., and may recover twice the amount of the loss, together with costs and reasonable attorneys' fees.

**ATCP 107.01 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 spiritous, 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 s. 345.05 (1) (a) 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.

**ATCP 107.02 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:

(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 or rental of such equipment to a retailer under a written agreement describing the equipment sold or rented, and specifying the price and other terms and conditions under which it is to be sold or rented. Copies of agreements shall be kept on file by the wholesaler for at least 3 years after final payment has been received. No agreement for the sale or rental of equipment other than agreements for the rental of coin-operated vending machines 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 the equipment for the products of the wholesaler selling or renting the equipment.

1. Terms for the sale of equipment shall provide that the wholesaler shall recover at least the wholesaler's cost for the equipment, including all costs for transportation and installation of the equipment, either by advance payment in full or by equal monthly installment payments over a period not to exceed 5 years.

2. Terms for the rental of equipment, other than coin-operated vending machines, shall provide that minimum monthly rental charges shall be no less than one-sixtieth (1/60) of the total cost to the wholesaler, including all costs for transportation and installation of the equipment.

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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 a period of 60 months.

3. Terms for the rental of coin-operated vending machines shall provide that the minimum monthly rental charge shall be no less than one ninety-sixth (1/96) of the total cost to the wholesaler, including all costs for transportation and installation. 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 a period of 96 months.

4. Cost of equipment which has been returned or repossessed or on which rental contracts are renewed shall be based on fair market value of the equipment, whether or not cost was recovered in whole or in part under a previous sale or rental agreement.

(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.

(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 furnishing of equipment under sub. (2) (b).

History: Cr. Register, February, 1977, No. 254, eff. 3-1-77; am. (2) (a) and (3), r. (2) (c), Register, August, 1979, No. 284, eff. 9-1-79.

**ATCP 107.03 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 s. ATCP 107.02, 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.

**ATCP 107.04 Prohibited acts of brokers.** (1) No broker, or any officer or agent thereof, shall participate, directly or indirectly, in any trade practice prohibited by s. ATCP 107.02.

(2) No wholesaler shall engage or offer to engage in any trade practice prohibited by s. ATCP 107.02, directly or indirectly, through a broker.

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

**ATCP 107.05 Exceptions.** (1) Nothing in s. ATCP 107.02 (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 s. ATCP 107.02 (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 s. ATCP 107.01.

(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 s. ATCP 107.02 (2) and (3).

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

**ATCP 107.06 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.

(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.