



## Massachusetts Package Stores Association, Inc.

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Wednesday, February 26, 2020

### Written Testimony of the Massachusetts Package Stores Association Submitted to the ABCC for the Listening Session for amending 204 CMR 2.08.

Dear Attorney Kris Foster, General Counsel of the ABCC,

The Massachusetts Package Stores Association (MPSA) represents locally owned retailers of beer, wine and spirits across Massachusetts. In Massachusetts, off-premises retail sales of alcohol beverages equate to almost \$3 billion in total economic impact, tens-of-millions in collected excise taxes and 18,233 direct jobs. It is no secret that the state of the alcohol beverages industry in Massachusetts is disruption and instability. The adverse situation continues as the regulatory system in MA is assailed from every direction. It is in this context that MPSA offers suggestions to further understand how best to implement "Substantial Value" of an inducement as defined within the newly amended 204 CMR 2.08.

An inducement in general is understood to be a thing that persuades or influences someone to do something and may include goods, property, financial obligation, interest in a license with respect to premises of a retailer, or the paying for advertising or display space. 204 CMR 2.08 is a three-tier regulation that prohibits wholesalers and producers from inducing retailers to buy or not buy, and position or not position, brands in exchange for something of "substantial value." The regulation is intended to maintain marketplace competitiveness and prevent harm to public safety.

There is little dispute within the MPSA membership that inducements can be harmful to public safety and the marketplace, and that they must be rigorously regulated by the ABCC. Indeed, marketplace disruption and displacement historically result in compromised public safety when inducements are not adequately policed. Therefore, the issue is what exactly should equate to "Substantial Value" as defined within 204 CMR 2.08.

In anticipation of the listening session, MPSA's Board met to discuss and deliberate how "Substantial Value" should be enforced. The Board focused on enforcement, because the diverse membership of large, small, single and multi-store owners could not reach consensus on a definitive definition in such a short time. Indeed, fractious infighting resulted after the posting of the listening session. Furthermore, it is anticipated that the wholesalers will seek another definition, manufacturers will want something else and multi-store out of state chains will advocate what meets their interests.

Consequently, the ABCC should make its determination and then apply it equally across the three-tiers. Whatever is to be concluded should also be posted explicitly to all Section 15 licensees. It is further suggested that the agreed upon definition of "Substantial Value" be applicable and applied to each individual license.

Another area where there is consensus pertains to the issue stocking on the day of delivery. Delivery and placement on the scheduled "day of delivery" should be a practical exclusion from the scope of "Substantial Value," when it is applied equally to all retailers. Realistically, it is not in the best interests of public safety to simply drop inventory outside or in the middle of a store during operating hours. Distinguishable, would be stocking and placement on non-delivery days. This is not a service of incidental value because one license is benefiting over others. It can lead to marketplace disruption.

Thank you again to the ABCC for the opportunity to offer suggestions. Please reach out with any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert A. Mellion".

Robert A. Mellion, Esq.  
Executive Director | General Counsel

*The Massachusetts Package Stores Association (MPSA) is a non-profit trade organization representing the interests of the thousands of locally owned retail stores of beer, wine and spirits across Massachusetts. Contact MPSA with any questions at (800) 322-1383, or email [info@masspack.org](mailto:info@masspack.org). Visit the MPSA website at: [www.masspack.org](http://www.masspack.org)*

Thank the members of the ABCC for addressing this issue.

My family and I have been raising the crops necessary for wine and beer since 1986. Over the many years we had thought that growing a crop like vinifera grapes in an unknown climate would prove the greatest challenge to our endeavor.

We were wrong.

The greatest challenge we've met in the marketplace has been the sheer mountain of money that finds its way into our Massachusetts marketplace to induce retailers and restaurants in favor of one brand over another.

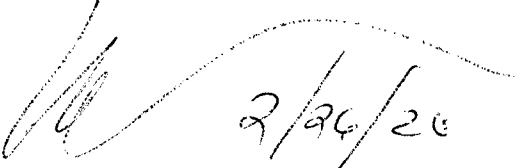
Over the past 3 decades we've experienced endless examples of potential or current customers saying things like "Love the wine, but can you print our menus because our distributor does that for us and we can't..." blah blah blah. Even last summer, a customer that we're quite friendly with asked us if we could supply her with umbrellas. "Unnamed brand will give us umbrellas." What happened? We lost her business for the summer while a beer produced by a brewery 100,000 times our size was poured. Why? Because she was induced by umbrellas.

I have no question that umbrellas are NOT an item of substantial value to the brewing company that bought their way into my friend's account. But they are an item of substantial value for my friend. Some would say, step up and invest in umbrellas for your accounts. Umbrellas are an item of substantial value to me and my farm. It's a matter of perspective and scale. It can be umbrellas, new draft systems, menu printing, store signage, marketing dollars, etc. You name it, you know it, all these and more are used throughout our state to induce new sales.

The folks who wrote the state laws that regulate alcohol used the term "substantial value" as a way of saying that they did not want anyone in the alcohol beverage business to be able to induce a sale based on the exchange of money or goods. Yet this is the exact behavior that continues.

If this remains the desire of the ABCC and the state of Massachusetts then this is indeed a time to either simply remove the term "substantial value" and let every single item, from a napkin or coaster to a pool table or draft system, be invoiced...invoice at cost if desired but invoice none the less... So, I suggest either remove the term completely, which to me is preferred, or define it in a way that creates a fair marketplace for small family farms like my own.

As a small family farm, we believe that the recipe for success is an excellent product, grown in Massachusetts soil, malted by Massachusetts malt houses... basically a superb example of authentic local flavor... combine that with wine and beer with excellent service, executed in a neighborly way. That is a recipe for success. There's no reason for any sale to be induced, or bought, let great products in the company of great service define our marketplace.

  
2/26/20  
BUZZARD BAY BREWERY  
Westport River Winery