



Circular Letter  
23-01 (Revised)

**To:** Manufacturers

**Subject:** Label approval of cross-over products

**Purpose:** Section 3 VAC 5-20-10 of the Virginia Administrative Code prohibits advertising that is false or misleading in any material aspect or which may tend to induce minors to drink. In July of 2023, the Virginia Alcoholic Beverage Control Authority (“Virginia ABC”) deemed it necessary to issue guidance with regard to what may be viewed as “false or misleading” or as “tend[ing] to induce minors to drink” as it pertains to its label approval process pursuant to 3 VAC 5-40-20 and products in the marketplace. As a result of legislation which placed additional requirements on product placement of alcoholic beverages, and after receiving input from industry members as part of its regulatory review process, Virginia ABC has determined that modifications to its label review process are again necessary. *See* Va. Code § 4.1-209.

**Background:** Many manufacturers are creating alcoholic versions of non-alcoholic beverages already in the market (“cross-over products”). Virginia ABC previously received reports of consumer confusion and illegal sales to minors with regard to these products, which generated public safety concerns. In 2022, Virginia ABC began reviewing its regulations as part of its state-mandated regulatory review process, which included its product labeling regulations. During that time, Virginia ABC received input from the general public as well as industry members, and as a result, began the process of modifying its existing regulations. At the same time, new legislation placing parameters on alcoholic beverage placement has gone into effect, which directly addressed some of Virginia ABC’s public safety concerns regarding consumer awareness and potential confusion of cross-over products. *See* Va. Code § 4.1-209.

To continue to support current public safety needs and to align with the course of applicable legislation and proposed regulations, Virginia ABC has deemed it necessary and beneficial to circulate this revised guidance document.

**Held:** Section 4.1-103(19) of the Code of Virginia (“Code”) grants Virginia ABC authority to determine the nature, form, and capacity of all containers used for holding alcoholic beverages to be kept or sold under the ABC Act as well as prescribe the form and content of all labels and seals to be placed thereon.

Cross-over products must be clearly distinguishable from the original product so as to avoid misleading consumers or inducing minors to drink, and should not minimize, fail to identify, or otherwise disguise the product’s alcoholic contents.

Virginia ABC will review all crossover product labels based upon a totality of the circumstances of each product, taking into account:



- a) the number, location, size, and clarity of references to the alcohol content therein;
- b) whether the labeling or container emphasizes features that are more commonly associated with nonalcoholic consumable products;
- c) any and all differences between the label and the label for the non-alcoholic product, including but not limited to color palette, font type, imagery, placement of words, images or descriptions, backgrounds, and;
- d) any other relevant factor, including but not limited to, whether the non-alcoholic product is clearly marketed as a non-alcoholic beverage alternative to an alcoholic beverage product.

In order to evaluate a label's compliance, Virginia ABC will still require each cross-over product submission to include:

- a) Both a copy of the proposed label and a picture of the container, which must include the complete product packaging (showing the container and label together as it would be packaged for retail sale, as well as any and all secondary packaging). Virginia ABC may request a physical sample of the single sale label, container, and secondary packaging for additional review.
- b) Manufacturers should also submit the same label review items for the original versions of beverages which were already in the marketplace so that Virginia ABC may determine whether the new product is compliant with applicable legislation and regulations.

Virginia ABC intends to undertake a review of cross-over products already in the marketplace, and those products which are non-compliant may be issued a disapproval letter with details regarding next steps, which may include the opportunity for resubmission of a revised label or a formal hearing, negotiation, or mediation. *Virginia ABC strongly encourages manufacturers to review their products and to make changes voluntarily to ensure that their products are compliant and to address the underlying concerns raised in this circular.*

This guidance shall remain in effect until such time as there is a statutory or regulatory update that addresses this matter. Should you have questions regarding the provisions of this Circular Letter, please contact the Special Agent in Charge located at your regional ABC office.

