
GRANY

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October 2010

In Case You Did Not Know – The Bottle Bill

A "dealer" is every person, firm or corporation who engages in the sale of beverages in beverage containers to a consumer for off-premises consumption in New York State.

Dealers must pay deposits to distributors when they purchase beverages and dealers must collect deposits from consumers when they sell beverages.

Dealers must refund the deposit on all containers of the type (brand, size, shape, color and composition) they sell for off-premises consumption, regardless of where the container was originally purchased.

Dealers must accept containers and pay refunds during all normal business hours. A dealer open less than 24 hours does not have to accept returns during the first and last hour of business.

ADA Standards Published

On Wednesday, September 15, 2010 the Department of Justice adopted and published the new 2010 Americans with Disabilities Act Standards in the Federal Register. The 2010 ADA Standards have approximately 750 new standards of which 500 of them will directly impact the convenience store industry. Please visit nacsonline.com/compliance to learn more about the regulations. In general, the regulations will take effect on March 15, 2011. Compliance with the 2010 Standards for Accessible Design is permitted immediately, but not required until March 15, 2012.

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Menthol Cigarette Ban?

The Food and Drug Administration's Center for Tobacco Products is considering a ban on menthol cigarettes under its authority from the Family Smoking Prevention and Tobacco Control Act. The panel will meet to discuss the possible ways to regulate menthol cigarettes and the health impact menthol has on smokers.

Should a ban be enacted we believe there would be many unintended consequences. The most threatening result of such a ban would be creating a black market for these popular products.. "Fanning the flames on a black market economy is something we're very concerned about, not only from a viability of the store perspective, but also from a public health perspective."

Not only will unregulated producers of these products pop up but also criminal sales will skyrocket. All of the sudden you will have menthol cigarettes available to the consumer that are not going through any FDA regulation or abiding by any state or federal laws. The potential for underage consumers to obtain access to these cigarettes will be higher and no black market sellers check identification.

Tobacco manufacturers such as Philip Morris USA, Reynolds American Inc., and Lorillard Inc. agree. They say scientific evidence does not show that menthol cigarettes present a greater health risk than non-menthol cigarettes.

A study released by the Substance Abuse and Mental Health Services Administration found that the share of menthol smokers increased from 31 percent in 2004 to 33.9 percent in 2008. It also showed that among African American smokers 82.6 percent used menthol cigarettes compared to 32.3 percent for Hispanics, and 23.8 percent for Caucasians.

We strongly caution the FDA in making any quick decisions on a menthol ban. The market needs to be reviewed and considerations for criminal activity and the potential for an increase in access to youth must be taken into account.

Caught Red Handed

City Room is reporting something we have been inveighing against for the past fifteen years-the illegal buttlegging being done from Indian reservation smoke shops on Long Island. In fact, the late Ralph Penza did a marvelous undercover story on this back in 2002 when Mayor Bloomberg was calling all of this a, "minor economic issue."

But here's the lowdown-with the mayor now in the role of outraged cuckold: "An undercover investigation disclosed by the city on Thursday showed that vendors on a Long

Island Indian reservation sold large quantities of cigarettes without paying city or state taxes, city officials said. City officials alleged that dealers on the Poospatuck reservation had sold more than four million cartons of untaxed cigarettes this year. They said that a video shot last week showed an undercover agent securing a discount on 60 cartons of cigarettes from two vendors, despite the fact that he announced his intention to resell them in the city."

And Bloomberg, late to the dance, manages to channel his inner Howard Beale-or something like that: "City officials said the 50-acre Poospatuck reservation, in Mastic, N.Y., was depriving state and local governments of sorely needed money. In a statement, Mayor Michael R. Bloomberg said that the law was being abused to "fill the pockets of bootleggers and crooked cigarette dealers."

Here, here. Better late than never-and Mike has been right on the money, who else?-since getting some of our old time religion: "The investigation was the latest clash between Mr. Bloomberg and Indian tribes over cigarette sales. In 2008, the mayor filed a complaint in civil court against eight Long Island businesses, alleging that they had illegally sold cigarettes. Investigators have said that for years, many reservations have sold cigarettes in bulk to bootleggers, who then ship them to the city. Mr. Bloomberg has often criticized state officials, including Gov. David A. Paterson, for not more strictly enforcing state law and moving to recapture billions in lost revenue. The two businesses named in Thursday's investigation were G Talk Smoke Shop and Running Bull Smoke Shop."

The NY Post gives us some more details about the Indian scam: "The investigators, who wore hidden cameras, told two separate sellers they were buying cigarettes to sell in New York City, and were able to purchase 60 cartons of untaxed smokes. "I have to do a re-sale, you know, in Brooklyn," said one investigator who bought 30 cartons of Newports. "I don't want to know any information that you're talking about because our cigarettes are for personal use," the saleswoman told him. "Should I know that you're going to resell them, I can get in trouble. So the less I know the better."

And until the state is finally allowed to stamp all cigarettes at the wholesale source, so that all smokes are sold with tax, we will get the Indians continuing to flout the law. As the NY Times points out: "Under state law, taxes would be charged to wholesalers, who would pass the cost to the tribes, though each would be allowed to buy a certain amount of tax-free cigarettes for members."

The Post dramatizes the breathtaking crookedness of these scofflaws: "Some of the largest shops on the Mastic, N.Y., reservation have been effectively shut down by a federal judge who ordered them to stop selling tax-free cigarettes to customers who weren't members of the tribe. Those stores, however, have been replaced by new shops not covered by the court order. State records show that cigarette

sales on the reservation have dropped, but business continues to be robust. The city has accused several merchants who were covered by the court order of secretly reorganizing and continuing to do business through relatives or front companies."

Now we are waiting for a federal judge to resolve this so that the state can do what it is supposed to do-simply enforce the law without fear or favor.

Legislation To Prevent Retailers From Charging Debit Card Fees Vetoed In CA

A bill to prohibit merchants from charging fees when debit cards are used for purchases stopped short of becoming California law when Governor Arnold Schwarzenegger vetoed it this week. SB 399 sponsored by state Senator Jenny Oropeza (D) aimed to apply a law already in place that keeps retailers from charging fees for accepting credit cards to debit cards.

The bill had narrowly passed California's state House and Senate. It was supported some consumer groups and pushed by Visa. In his veto message Schwarzenegger said, "I am concerned that this bill will shift the burden of paying interchange fees from the holders of debit cards to all consumers regardless of payment type. Instead of charging a customer who chooses to use a debit card, businesses would be forced to increase their prices to all customers, regardless of payment type, to cover the interchange fee. The burden of paying these surcharges should fall on those who use debit cards and not on those who choose to pay with another form of payment."

DOJ Finds Visa, Mastercard Guilty Of Violating The Sherman Act

Small merchants and their customers scored a win today with the Antitrust Division of the Department of Justice's historic enforcement action that found Visa and MasterCard guilty of violating the Sherman Act with their anti-competitive and deceptive credit card pricing policies.

"This is a historic move by the Department of Justice, and a significant step towards a more competitive market," Hank Armour, CEO of NACS, said. "For the first time in history, the Visa and MasterCard stranglehold prohibiting price competition on cards is being broken. With price competition on cards, consumers and small businesses win. After vigorously fighting these reforms on Capitol Hill for years, it is a major breakthrough to have these much needed reforms forced upon the credit card cartels by the Department of Justice."

Visa and MasterCard's current policies prohibit merchants from informing customers about credit card fees or offering them discounts for paying with cheaper payment options. This is the first time that the Department of Justice intervened against the anti-competitive practices to force price competition. With today's decision, merchants will now be able to offer consumers discounts between cards -- which will for the first time ever force the cards to compete

on cost.

"These anti-competitive practices have gone untouched for decades," said Jennifer Hatcher, vice president of government relations, at the Food Marketing Institute. "The Department of Justice deserves credit for taking on the card giants. We look forward to their continued investigations into the bad behavior of the credit card industry."

The Department of Justice action against Visa and MasterCard found the two credit card companies imposed anti-competitive restrictions that hurt consumers and merchants. The DOJ found that restrictive credit card policies had created a market that lacked access to adequate information or choice and prohibited merchants from offering their customers discounts.

The top 10 card issuers now have over 90 percent of the market, and the level of concentration has increased to a level that the Department of Justice Merger Guidelines define as highly concentrated. The current rules prohibit merchants from offering discounts to customers who use less expensive forms of payment and forbid businesses from informing their customers about the real costs of processing credit cards.

Lead Wheel Balancing Weights

This letter is submitted on behalf of our client, the New York State Association of Service Stations & Repair Shops, Inc., in opposition to the above referenced legislation which is currently awaiting executive action. This legislation adds a new section 37-0113 to the Environmental Conservation Law to prohibit the sale or installation of wheel balancing weights which contain lead after 4/1/11. It also prohibits the sale of a new motor vehicle equipped with lead wheel balancing weights after 4/1/12.

The repair shop industry would support legislation banning sale or installation of wheel balancing weights if there was sufficient lead time to insure that there were alternative products available for installation, and if the ban would give repair shops and wholesalers sufficient time to sell through existing wheel balancing weights. It is particularly troublesome that this bill provides auto manufacturers with a compliance date of 4/1/12 while small businessmen who operate repair shops are required to comply a year earlier. There is no sound rationale for this distinction. In fact, Illinois Public Act 096-1296, effective on 7/26/10, applied a 1/1/12 date to all parties -- repair shops, parts wholesalers and auto manufacturers. This statute applies an evenhanded approach to the industry.

The most effective way to ban the use of lead wheel weights is on the federal level so there is uniformity. It is critical to ban the availability of lead wheel weights in the supply chain so repair shops and auto manufacturers cannot obtain them. The Department of Environmental Conservation would be most equipped to enforce this ban on the supply chain as there are a limited number of manufacturers of wheel weights.

Driver safety requires balanced wheels to avoid shimmying which could lead to accidents. Repair shops need to insure consumer safety with appropriately balanced tires.

If only non-lead wheel weights are available in the supply chain from wholesalers, repair shops would be compliant. It is critical to insure that the supply chain has only non-lead wheel balancing weights available.

Pursuant to a petition under the Toxic Substances Control Act, submitted by a number of environmental groups and individuals, to prohibit manufacturing and distribution of lead wheel balancing weights, the Environmental Protection Agency ("EPA") granted the petition to commence rulemaking. As a consequence, the EPA is currently working on regulations. Their nationwide approach, directed at a prohibition on manufacturing and distribution, would be the most effective option to banning lead wheel balancing weights. This pending EPA rulemaking argues for a date extension on a proposed New York law until 2012.

Repair shops that are at the end of the distribution chain for wheel balancing weights and are directly responsible for consumer safety should not be burdened with enforcement.

Based on the foregoing, it is respectfully requested that the effective date on this legislation be extended to 2012 pursuant to a chapter amendment or, failing such agreement, that the subject legislation be vetoed.

IRS Releases Draft Form 8941 For Small Business Health Care Tax Credit

The Internal Revenue Service (IRS) released a draft version of Form 8941 on Sept. 7. The form is available for small businesses and tax-exempt organizations to use in calculating the small business health care tax credit when filing next year's tax returns. Small businesses can claim the tax credit as part of the general business credit on their income tax returns.

According to the release, the tax credit is generally available to small businesses that "contribute an amount equivalent to at least half the cost of single coverage toward buying health insurance for their employees." Enacted as part of this health care reform passed earlier this year, the credit is intended to encourage smaller employers with low-to moderate-income employees to continue offering health insurance, or to offer it for the first time.

For 2011 through 2013, the maximum credit is only available to employers with 10 or fewer full-time equivalent employees with an average income of \$25,000 or less will be 35 percent of premiums paid. Larger companies with higher wages would be eligible to gradually lesser credit amounts until the credit is phased out completely for businesses with 25 or more employees and average wages of \$50,000 or more annually.

Vehicle Manufacturers Group Issue Report Showing Benefits Of Chinese Tire Tariff

The Alliance for American Manufacturing (AAM) has released a report detailing the economic benefits of the Section 421 China-specific safeguard that was implemented by the Obama administration a year ago. The report, *Obama's Bold Economic Move on Chinese Tire Imports is*

Paying Off, showed increased U.S. production, demand and employment as a result of the application of the safeguard. AAM added that increased employment figures could partially result from consolidation of activates at the plants studied, but that the tariff is the likely driving force.

Following the release of the report, United Steelworker president Leo Gerard touted the report and called on the Obama administration to maintain the relief for the full three-year period. Low-end Chinese tire imports to the U.S. are subject to a 35 percent tariff during the first year of the safeguard, 30 percent in the second and 25 percent in the third.

Business Groups Continue Push For 1099 Repeal

Business groups continued to urge lawmakers to vote for a full repeal of the new Form 1099 reporting provisions that were included in this year's health care reform legislation. In a Sept. 9 letter to senators, the U.S. Chamber of Commerce and the Coalition for Fairness in Tax Compliance advised legislators that the only pro-business option available is a vote for full repeal when two key small business bills are considered on Sept. 14.

Effective Jan. 1, 2011, the 1099 provision would require that any company that makes payments of \$600 or more per year to any corporation, to file a 1099 for the payment. Congress included the measure to raise an estimated \$17 billion to fund health care reform, but the provision has received much criticism from the small business community who argue that the reporting will be extremely burdensome.

Environmental Groups Call On Administration To Issue 60 MPG CAFE Standard

A coalition of environmental groups have sent a letter to President Obama calling on him to propose 60 miles per gallon (MPG) Corporate Average Fuel Economy (CAFE) requirements and global warming tailpipe pollution standards of no more than 143 grams per mile by model year 2025. The letter also calls for a reduction in fuel consumption from long-haul trucks pulling standard van trailers by at least 35 percent by model year 2017.

Senate Rejects Effort To Extend Biodiesel Tax Credit

A motion that may have cleared the way for a one-year extension to the \$1 per gallon federal Biodiesel tax credit failed in the Senate yesterday by a vote of 41-58 (click here to see how your Senator voted). The vote was on a motion made by Senator Chuck Grassley (R-IA) to waive Senate rules and allow for an "up or down" vote on his amendment to extend the credit. A 2/3 majority of 67 votes would have been required to pass the motion.

The effort did not fail because of opposition to the biodiesel tax credit, however. It was mainly due to concerns that if the amendment was included in the bill currently before the Senate, the Small Business Jobs and Credit Act (HR5297), it would have either stalled or killed the broader

measure. The amendment would have added an additional \$1 billion to the bill without a way to offset the additional cost, and so would have had a negative deficit impact.

E15 Implemented By EPA

"The Association is extremely disappointed in the EPA decision to allow an E15 waiver for 2007 and newer cars and light trucks. The waiver creates so many liability issues for our members that it simply astounds us that the EPA actually granted the waiver. The belief that consumers will be protected by a label and that the EPA will police the labeling is a fantasy that only an isolated policymaker with no real world experience would concoct. The label does nothing to protect dealers from liability for misfueling incidences and there are the unanswered questions about long-term effects on tanks and lines. The majority of our members don't even have control over what products they sell. If their supplier decides to sell E15 it certainly isn't clear who has legal responsibility for any malfunctions attributable to the E15. The EPA has submitted to the will of the corn/ethanol lobby to the detriment of the citizens and the environment. This is one more sad commentary on the ways of Washington."

Marta Gates

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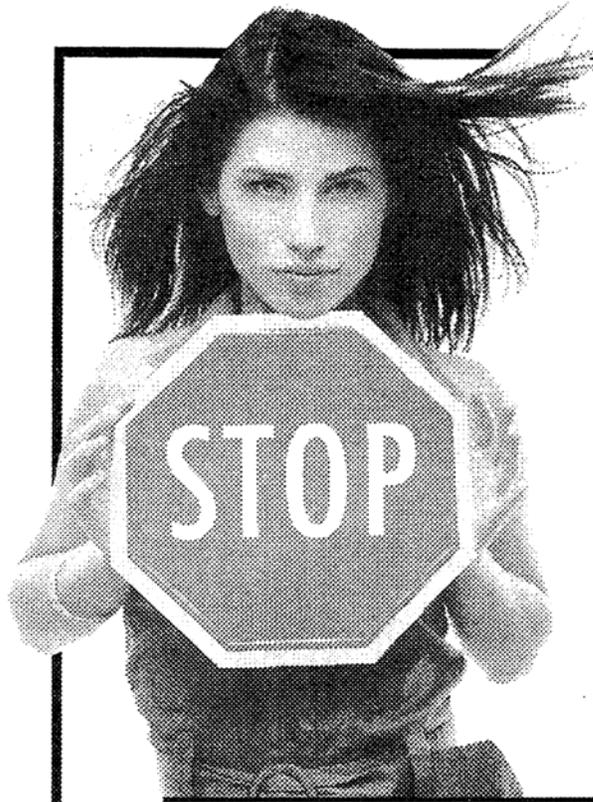
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Covered services available to members include:

- Defense in Small Claims Court if your business is sued or at Department of Motor Vehicles or at any other New York State Administrative Proceeding hearing. (Once per year.)
- Review of leases, supply contracts and franchise agreements to advise you of your obligation under these contracts. The plan does not include actual negotiation on your behalf. (One hour per issue, up to five hours per year.)
- Consultation on legal questions pertaining to your business. (One hour per issue, up to five hours per year.)

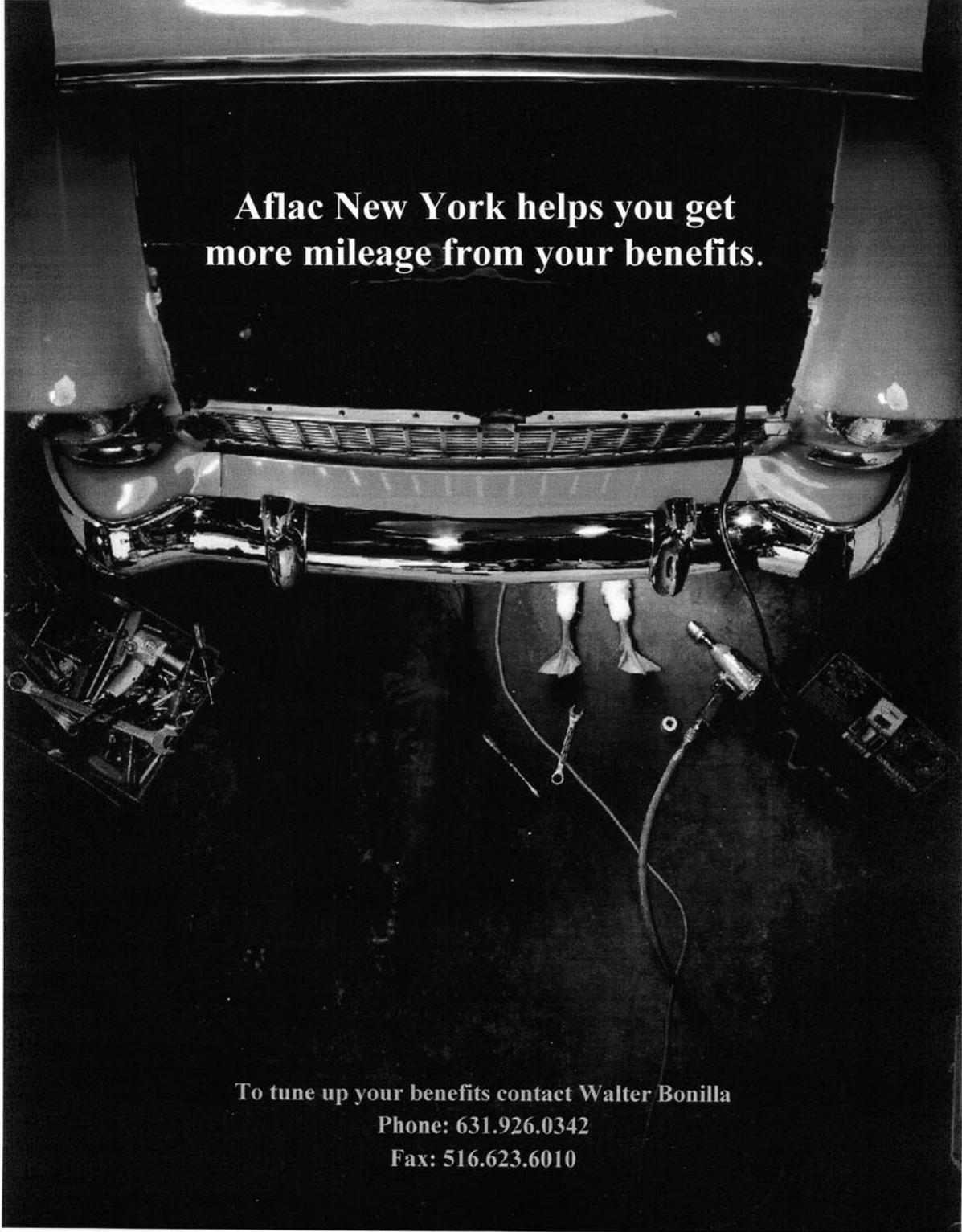
Appeals of judgments against you are not a covered benefit, but are available to members at special contract prices.

Additional legal services will be provided by the designated law firm's standard hourly rate less 15%. Special contract prices have also been negotiated for the following services.

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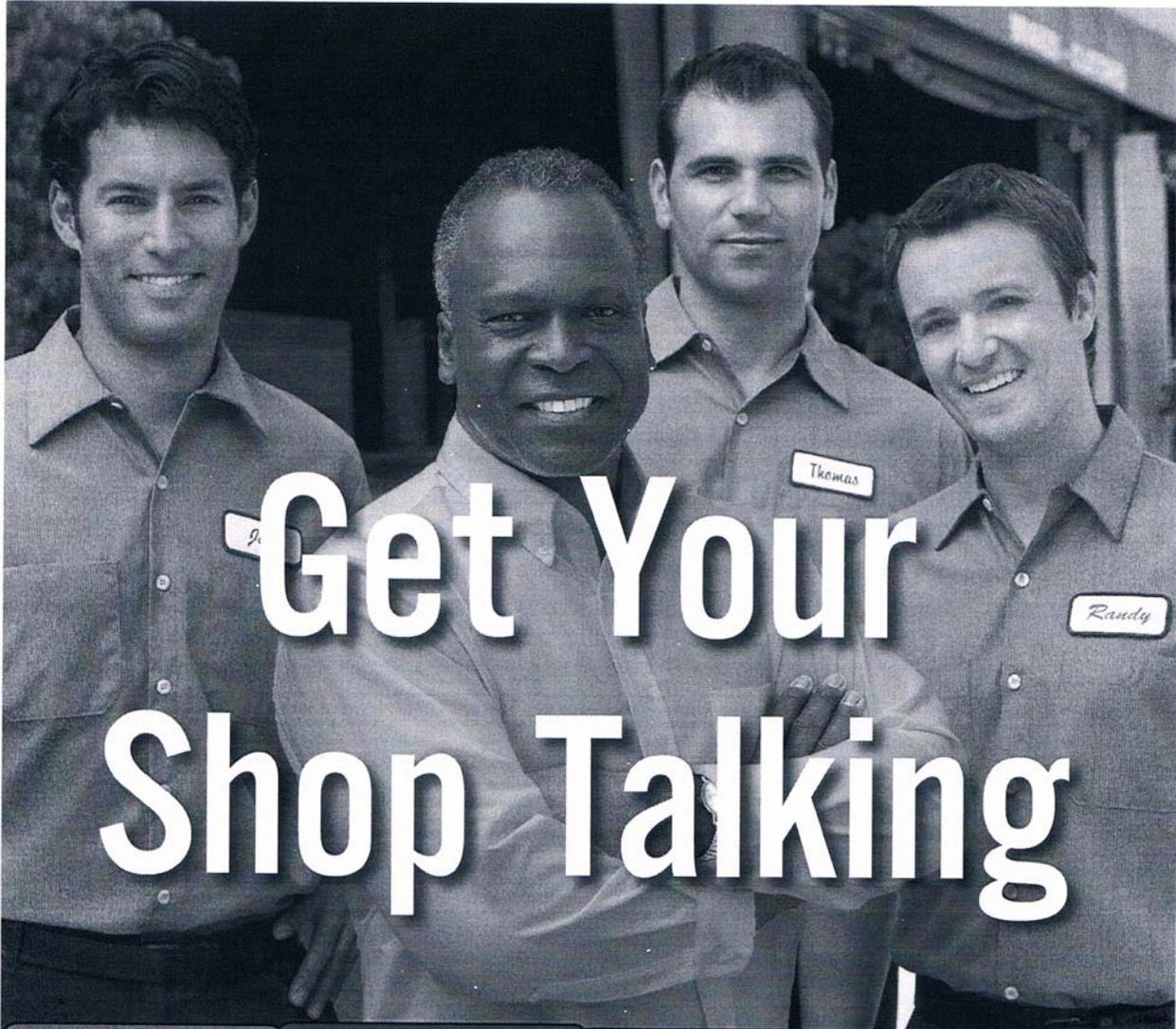
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