



STATE OF INDIANA
ALCOHOL AND TOBACCO COMMISSION

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Advisory Opinion 22-01: Revitalyte

I. Background

Revitalyte is a beverage that its website characterizes as “an advanced rehydration solution designed to replenish vital fluids and minerals. With an optimal balance of sodium, potassium, and glucose, Revitalyte is proven to prevent dehydration more effectively than alternatives.” <https://www.drinkrevitalyte.com/> (last visited Nov. 30, 2021). Their website explains the origins of its product as follows:

Revitalyte was created by adults who were tired of inconvenient and embarrassing trips to the baby aisle (we’ve all been there). We created Revitalyte using the same medically-proven formula commonly found in “over the counter” electrolyte solutions but we improved the flavor systems to provide a better experience for adults. Revitalyte tastes less “medicinal” and “syrupy” than competing products found in the baby aisle.

<https://www.drinkrevitalyte.com/about> (last visited Nov. 30, 2021).

Their website contains examples demonstrating that Revitalyte is marketed to consumers to help alleviate hangovers:

The screenshot shows the Revitalyte website header with the logo and navigation links: Home, About, Nutrition, Barstool Black Label, Shop, Find, Contact. Social media icons for Instagram, Twitter, and Facebook are also present. The main content area features a large heading: "Did we mention we've all been there?". Below this heading are six social media posts arranged in a 2x3 grid, each showing a user's profile picture, name, and handle, followed by a conversation snippet:

- MoganLuse** (@Low_Gainz): CVS employee: damn is your baby sick or something? Me: *holding 4 pedialytes and sweating pure vodka* Yes the baby is in grave danger
- girl with a truck** (@hairicaaa): was just in the baby food aisle and this mom said "how old is your little one?" and i was like oh i'm just buying pedialyte for my hangover
- Lucas Marquez** (@Lukie_Oso): To all those wonderful women giving me the pitty look as I aimlessly wonder through the baby aisle, no another life doesn't depend on me yet. Just trying to get some pedialyte.
- KJ** (@MGKailey): When u bump into a stranger in the baby aisle at Walmart and they ask if you're expecting and u have to awkwardly say no I'm just lookin for pedialyte to cure my hangovers
- N.T.L.B** (@RoberdsDusty): Cashier: You know pedialyte is for dehydrated babies right? Me: Yes ma'am, that's pretty much what I'll be later
- Taylor Wickett** (@xXLiLFooTXX): @Wrestlerprblms the awkward look you get from the grocery store employee when you ask where the pedialyte is.



Id.

On November 3, 2021, Revitalyte co-founder Ryan Leonard submitted an Advisory Opinion request seeking a determination that Revitalyte be treated as a permissible commodity under Ind. Code § 7.1-3-10-5 for sale at package liquor stores as a bar supply used in the preparation for consumption of alcoholic beverages. Mr. Leonard's message included a one-page document with the file name "BARSHEET.pdf" and containing suggested cocktail mixes such as a "Revitarita," consisting of four parts Mixed Fruit Revitalyte, one part tequila, and one part lime juice." The message also included what appear to be five smartphone screenshots ("Screenshots") of marketing materials for the product. *See* attachment.

On November 5, 2021, The Alcohol and Tobacco Commission requested additional information from Mr. Ryan Leonard of Revitalyte whether he could provide any examples of bars in Indiana where cocktails containing Revitalyte are being served. Mr. Leonard was unable to produce any examples.

II. Analysis & Conclusion

Ind. Code § 7.1-3-10-5 provides that "[a] package liquor store's exclusive business shall be in the selling of the following commodities only" and includes the following:

- (1) Liquor in its original package.
- (2) Beer in permissible containers, if the permittee has the proper permit.
- (3) Wine in its original package.
- (4) Bar supplies used in the preparation for consumption of alcoholic beverages and in their consumption.
- (5) Tobacco products.
- (6) Uncooled and uniced charged water, carbonated soda, ginger ale, mineral water, grenadine, and flavoring extracts.
- (7) Printed materials.
- (8) Lottery tickets as provided in IC 4-30-9.
- (9) Cooled or uncooled nonalcoholic malt beverages.
- (10) Flavored malt beverage in its original package.

As noted above, Revitalyte requests that its product be considered an allowable commodity for sale at package liquor stores pursuant to number (4), bar supplies used in the preparation for consumption of alcoholic beverages and in their consumption.

For the following reasons, it is the position of the Indiana Alcohol and Tobacco Commission that Revitalyte does not fall under Ind. Code § 7.1-3-10-5(4), or any other category of that statute and therefore may not be sold at package liquor stores in Indiana.



First, Revitalyte’s public-facing website makes clear that the beverage is intended to be ingested to prevent dehydration and specifically to ameliorate the aftereffects of overconsumption (aka hangovers). It is specifically marketed as an “adult” version of the rehydration product Pedialyte, commonly stocked in a store’s infant aisle. Indeed, nowhere on Revitalyte’s website is there any mention of using the product as a cocktail mixer or marketing of the product to bars for such a purpose.

Revitalyte submitted with its advisory opinion request an attachment containing sample recipes for cocktails using the product as an ingredient. However, if it were true that Ind. Code § 7.1-3-10-5(4) could be satisfied by the mere suggestion that a product may be used in the preparation for consumption of an alcoholic beverage, then the statute would effectively be rendered null. To the extent that Revitalyte submitted Screenshots as evidence that bars are serving alcoholic beverages containing the product, the ATC finds the attachments unpersuasive. Moreover, upon the request of the ATC, Mr. Leonard was unable to provide specific evidence that alcoholic beverages containing Revitalyte are being served anywhere in the state of Indiana.

Second, among the general purposes of Title 7.1 is to protect the health of the people of the state of Indiana. Ind. Code § 7.1-1-1-1(1). This includes promoting drinking responsibly. By its own marketing, Revitalyte is intended to be used to “Rehydrate. Recover. Repeat.” The examples from Revitalyte's website for marketing the product talk about “holding 4 pedialytes and sweating pure vodka,” and explaining that a person was in the baby aisle to “just buy[] pedialyte for my hangover” and that such seemingly awkward situations may be avoided by purchasing Revitalyte in a different aisle or in a package liquor store. Thus, the ATC believes that permitting Revitalyte to be sold in package liquor stores would encourage citizens to overconsume alcohol, against the express purpose of Indiana law.

DISCLAIMER: Opinions expressed in this advisory opinion are fact-sensitive and based on the 2021 Indiana Code. Every advisory opinion is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the Commission or the public.



ATTACHMENT



ELECTROLYTE SOLUTION

Rehydrate. Recover. Repeat.

Revitalyte is fantastic addition to your bar program. Serve it over ice as a recovery option for your brunch crowd or get creative with refreshing cocktails!



1 REVITAYLTE BOTTLE = 4 PINT GLASSES OVER ICE

REVITARITA



4 parts
Mixed Fruit
Revitalyte
1 part
Tequila
1 part
lime juice

GRAPE APE



4 parts
Grape
Revitalyte
1 part
Vodka
1 part
Water/Sprite

REVITALYTE SPRITZ



4 parts
Strawberry
Revitalyte
1 part
Vodka
1 part
lime Juice
Splash of
Club Soda

REVITALYTE ELECTROLYTE LEMONADE



3 Parts
Barstool
Black Label
Berry Frost
1 part
Deep Eddy
Lemonade
Vodka





10:44

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