



John T. Steen, Jr.
Chairman-San Antonio

Jose Cuevas, Jr.
Member - Midland

Gail Madden
Member-Dallas

Alan Steen
Administrator

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MARKETING PRACTICES BULLETIN – MPB 122004010dj
Malt Beverage Labels

To: Malt Beverage INDUSTRY
ALL CAPTAINS & COMPLIANCE SUPERVISORS

In an effort to address industry concerns regarding statutory restrictions which purportedly limit malt beverage manufacturers from properly designating their product, we have adopted an amendment to rule 45.77 and 45.90. A comment period was administered and all comments were considered and acted upon prior to adoption.

Effective October 24, 2004, nothing shall prevent a beer or malt liquor from also bearing a class or style designation that is recognized in the brewing industry such as but not limited to porter, stout, or lager, provided such beer or malt liquor has the characteristics of such class or style. Conversely, every malt beverage label shall bear in legible and easily viewed writing its correct classification as beer or malt liquor. The word *ale* may be substituted for the words *malt liquor*. Further, NO malt beverage containing 4.0 of alcohol by weight or less shall be designated in any advertisement as an ale or malt liquor. While these amendments allow manufacturers some latitude in classifying their products, the amendments duly serve to ensure proper taxation and prevent consumer confusion.

If you placed product in the Texas market prior to October 24, 2004 which does not comply with the aforementioned amendments, please take the necessary action "submit new label application(s)" to ensure your product is in compliance within 6 months from the publication date of this bulletin. All other product submitted to the commission for label approval after October 24, 2004 shall immediately adhere to the aforementioned amendments. In rare cases whereby meeting the requirements of these rule changes will cause an undue hardship, we will review inquiries on a case by case basis for a compliance extension. A copy of Rule 45.77 and Rule 45.90 is attached for your reference. If you have any questions or would like additional information please do not hesitate to contact me at 512-206-3411.

Kind Regards,

Dexter K. Jones
Director of Marketing Practices

Encl/Rule 45.77 & Rule 45.90

CC: Executive Management

Rule

§45.77. Class and Type.

(a) Every malt beverage label shall bear, in legible and easily viewed writing, its correct classification as "beer" or "malt liquor." The word "ale" may be substituted for the words "malt liquor."

(b) No product containing less than 0.5% of alcohol by volume shall bear the class designation "beer," "lager," "lager beer," "ale," "porter," or "stout," or any other class or type designation commonly applied to malt beverages containing 0.5% or more of alcohol by volume.

(c) No beer shall bear the class designation of ale or malt liquor, and no malt liquor shall bear the class designation of beer. Nothing shall prevent a beer or malt liquor from also bearing a class or style designation that is recognized in the brewing industry, such as, but not limited to, "porter," "stout," or "lager," provided such beer or malt liquor has the characteristics of such class or style.

(d) Geographical names for distinctive types of malt beverages (other than names found by the commission or administrator under subsection (3) of this section to have become generic) shall not be applied to malt beverages produced in any place other than the particular region indicated by the name unless: in direct conjunction with the name there appears the word "type" or the word "American," or some other statement indicating the true place of production in lettering substantially as conspicuous as such name; and the malt beverages to which the name is applied conform to the type so designated. The following are examples of distinctive types of beer with geographical names that have not become generic: Dortmund, Dortmunder, Vienna, Wien, Wiener, Bavarian, Munich, Munchner, Salvator, Kulmbacher, Wartzburger.

(e) Only such geographical names for distinctive types of malt beverage as the commission or administrator finds have by usage and common knowledge lost their geographical significance to such an extent that they have become generic shall be deemed to have become generic. Pilsen beer (Pilsenor, Pilsner) is a distinctive type of beer with a geographical name which has become generic.

(f) Except as provided in §45.75 of this title (relating to Mandatory Label Information for Malt Beverages), geographical names that are not names for distinctive types of malt beverages shall not be applied to malt beverages produced in any place other than the particular place or region indicated in the name.

Note: Amendment Adopted: September 27, 2004; Effective: October 24, 2004

RULE

§45.90. Prohibited Statements.

- (a) General. An advertisement of malt beverages shall not contain the following:
- (1) any statement that is false or misleading in any material particular;
 - (2) any statement that is disparaging of a competitor or his products;
 - (3) any statement, design, device or representation which is obscene or indecent;
 - (4) any statement, design, device, or representation of or relating to analyses, standards, or tests irrespective of falsity, which the administrator finds to be likely to mislead the consumer;
 - (5) any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which the administrator finds to be likely to mislead the consumer;
 - (6) any statement that the malt beverages are brewed, made, bottled, labeled, or sold under, or in accordance with, any municipal, state, or federal authorization, law or regulation; and if a municipal or state permit number is stated, the permit number shall not be accompanied by any additional statement relating thereto;
 - (7) the words "bonded," "bottled in bond," "aged in bond," "bonded age," "bottled under customs supervision," or phrases containing these or synonymous terms which imply governmental supervision over production, or bottling.
- (b) Statements inconsistent with labeling. The advertisement shall not contain any statement concerning a brand or lot of malt beverages that is inconsistent with any statement on the labeling thereof.
- (c) **Class.**
- (1) **No product containing less than 0.5% of alcohol by volume shall be designated in any advertisement as "beer," or by any other class or type designation commonly applied to fermented malt beverages containing 0.5% or more of alcohol by volume.**
 - (2) **No malt beverage containing 4.0% of alcohol by weight or less shall be designated in any advertisement as an "ale" or "malt liquor."**
- (d) Curative and therapeutic effect. The advertisement shall not contain any statement, design, or device representing that the use of any malt beverage has curative or therapeutic effects if such statement is untrue in any particular, or tends to create a misleading impression.
- (e) Confusion of brands. Two or more different brands or lots of malt beverages shall not be advertised in one advertisement (or in two or more advertisements in one issue of a periodical or newspaper or in one piece of other written, printed, or graphic matter) if the advertisement tends to create the impression that representations made as to one brand or lot apply to the other or others, and if as to such latter the representations made as to one brand or lot applied to the other or others, and if as to such latter the representations contravene any provision of this subchapter or are in any respect untrue.
- (f) Statements, seals, flags, coat of arms, crests, or other insignia, or graphic or pictorial or emblematic representations thereof, likely to mislead the consumer to believe that the product has been endorsed, made, or used by or produced for or under the supervision of or in accordance with, the specifications of the government, organization, family, or individual with whom such statement, seal, flag, coat of arms, crest, or insignia is associated, are prohibited.

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