



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 – MPB022005013dj
Cost of Promotional Items to Retailers

To: Beer Industry

This bulletin is intended to clarify Rule 45.113 (c) (3) as it relates to provisions of promotional items sold to retailers. We have been asked to opine what is meant by “the item manufacturer’s regularly published wholesale price” which is promulgated in Rule 45.113(c)(3).

Prior to 1997, Rule 45.113 (i) allowed manufacturers and distributors to sell promotional items to retailers at a price not less than the acquisition cost to the upper tier member. This practice came under scrutiny as larger upper tier members could potentially gain an unfair competitive advantage over their smaller competitors by exercising their buying power to unlawfully discount the price of promotional items to retailers and thereby creating economic dependence by retailers on specific upper tier members. As a result, the agency reviewed Rule 45.113 in its entirety, and amended the entire Rule.

In December of 1997 Rule 45.113 (i) was replaced with Rule 45.113 (c)(3) with the intention to level competitiveness among upper tier members. A comment period was administered prior to the adoption of the amendment. Currently, Rule 45.113 (c)(3) require upper tier members to sell promotional items at a cost not less than the published wholesale cost of the manufacturer of the item. That is the cost whereby the item manufacturer regularly lists the item for wholesale purchase. Conversely, an item manufacturer certainly may offer and publish a sale price of their goods. If an upper tier member purchases a promotional item at a sale price, the same premise of 45.113(c)(3) would apply, the sale price should have been published by the item manufacturer and offered as a price to all simultaneously and during the same time period.

If you would like additional information or have questions regarding this bulletin, you may contact me in writing at P.O. Box 13127, Austin, TX 78711, by email at marketing.practices@tabc.state.tx.us or by phone at 512-206-3411 and by facsimile 512-206-3449.

Kind Regards,

Dexter K. Jones
Director of Marketing Practices

CC: Alan Steen, Administrator
Jeannene Fox, Assistant Administrator
Executive Management
Regional Personnel