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MARKETING PRACTICES BULLETIN – MPB 022
“Retailer Advertising Specialties”

To: Alcoholic Beverage Industry

This bulletin is intended to clarify the application of the “per brand” cost limitation to Advertising Specialties. We have been petitioned to consider the legality of a liquor manufacturer providing an advertising specialty item that advertises multiple brands [rather than a single brand], having an aggregate value in excess of \$101.00, but equal to or less than that amount [\$101.00] multiplied by the number of brands advertised on or by it.

Pursuant to 102.07 (b) of the Alcoholic Beverage Code (“Code”) & 16 TAC 45.117 (c), a permittee [inclusive of a distiller, brewer, rectifier, wholesaler, class B wholesaler, winery, or wine bottler, and the agent, servant, or employee of such a person] covered by subsection (a) of 102.07 of the Code, may furnish to a retailer without cost advertising specialties showing the name of the product advertised. The total value of all advertising specialties for any one brand furnished to a retailer in any one calendar year may not exceed \$101.00. Permittees covered by subsection (a) of this section may not pool or combine their dollar limitations to provide a retailer with advertising specialties valued in excess of the maximum permitted.

Upon thorough consideration, it is our opinion that the legislative phrase “may not pool or combine” was intended to restrict upper tier members [permittees covered by subsection (a) of 102.07 of the Code] from joining together to combine their financial resources in an effort to provide a retailer with an advertising specialty with a value in excess of the maximum amount permitted. However, we believe that this language was not intended to prevent a single upper tier member from advertising a number of its brand on or by way of a single advertising item that may have a value of up to \$101.00 per brand advertised. Thus, it is the Commission’s opinion that nothing shall preclude a permittee covered by subsection (a) of 102.07 of the Code from furnishing, in a calendar year, an advertising specialty that advertises multiple brands provided the aggregate value of the advertising specialty does not exceed \$101.00 per brand advertise on the advertising specialty item. For example a Liquor Manufacturer may furnish a retailer with an advertising specialty, that advertises exactly one brand, not exceeding \$101.00, per calendar year, or the Liquor Manufacturer may furnish a retailer an advertising specialty that advertises multiple brands [e.g., six brands] so long as the aggregate value of this advertising specialty item does not exceed \$101.00 per brand advertised [e.g., for six brands advertised on a single advertising specialty item, the value of the item may not exceed \$606.00 (6 brands x \$101.00 or less per brand)].

Nothing in this opinion shall be construed as authorizing a permittee covered by subsection (a) to combine its dollar limitations with another permittee’s dollar limitations to provide a retailer with an advertising specialty in excess of \$101.00. Finally, an advertising specialty does not include equipment, fixtures or supplies to be used in the selling or dispensing of alcoholic beverages [such items are prohibited by 102.07 (a)(5)].

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This opinion is of the staff of the Commission, and it should be noted that any permittee/licensee may pursue a different opinion through administrative proceedings with the State Office of Administrative Hearings. We hope this opinion will assist you in your promotional endeavors. Please feel free to contact us at any time should other questions arise. We will monitor these events and make necessary regulatory changes as applicable. 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, by phone at 512-206-3411 or by facsimile at 512-206-3203.

Kind Regards,

A handwritten signature in blue ink, appearing to read "Dexter K. Jones". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

Dexter K. Jones
Director of Marketing Practices

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