



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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MARKETING PRACTICES BULLETIN – MPB028

Distinguishing Between a Sign and an Illegal Improvement

To: Alcoholic Beverage Industry

The Texas Alcoholic Beverage Commission has received numerous inquiries as to what upper-tier members may provide to retailers as legal signage governed by 16 TAC 45.113(d). This provision states, “a sign is a thing whose primary purpose is the advertisement of a brand or product or the price thereof.” Section 45.113(d)(4) of the Rules state that no distributor or manufacturer may paint, improve or remodel a retailer’s buildings or parts of buildings, inside or out, or finance any improvements thereto. The purpose of this bulletin is to describe the agency’s criteria for determining what constitutes legal signage versus a prohibited remodel or improvement to a retail premises. The following criteria were created through the application of the Marketing Practices Policy Decision process, Policy #MP-01.

This agency will use the following criteria when determining whether the actions or materials supplied by an upper-tier member constitute the provision of a retailer with an improvement or remodel.

Is its primary purpose to advertise a product?

- Does it meet the definition of a sign?
- Does it communicate a brand, trademark or price?

Is it a permanent fixture?

- What is it attached to?
- Is the item detachable or is it permanently affixed to any wall or structure?
- Is it a structural part of the building? Does it serve the purpose of a wall or floor, etc.?
- Can it be removed from the structure of the building without damaging the building’s structural integrity or appearance?
- Does it physically alter any existing wall or structure?

Can it be considered equipment or a thing of value?

- Is it logoed to a unique brand or purpose? Can the logo or brand be removed leaving the background (or thing itself) to allow for another brand or logo to replace it? (equipment)
- Does it serve the purpose of necessary illumination?

If it can be reasonably determined that an upper-tier member has in fact provided an improvement or remodel as determined from the above criteria to a retailer, the agency will pursue appropriate administrative action.

This agency will not pursue administrative action for improvement or remodels provided to retailers as defined above in place or existing prior to the publication date of this bulletin. Those improvements or remodels may remain in place until deemed necessary for update by upper-tier personnel in compliance with the above standards.

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. The commission will continue to monitor this issue and make necessary regulatory changes as statutorily applicable. We hope this opinion will assist you in your endeavors. 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 512-206-3349.

Sincerely,



Thomas Graham
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