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MARKETING PRACTICES BULLETIN – MPB006 - Amended

This Bulletin replaces the original Bulletin MPB 082004006dj aka MPB006
released August 12, 2004

Classification of Cooler Door Racks, Shelf Glides, and Spring-Loaded Shelf Glides

To: Alcoholic Beverage Industry

The Commission's classification of cooler door racks, shelf glides and spring-loaded shelf glides has come under review at the request of various Industry Members. These items have in the past been classified as equipment rather than promotional items or advertising specialties. In an effort to stabilize the market place consistent with the Texas Alcoholic Beverage Code and Administrative Rules, the Commission has withdrawn the original opinion of August 12, 2004 and updated its position with this release. Taking into account new product packaging and current advertising specialties used in the market, the Commission has reclassified Cooler Door Racks, Shelf Glides, and Spring-Loaded Shelf Glides to items that can be furnished to the retailer as advertising specialties for liquor brands and promotional items for beer brands.

Statute Sections 102.07 for a manufacturer/wholesaler of malt liquor/ale, wine and distilled spirits and Section 102.14 & 102.15 for a distributor of beer, state respectively that an upper tier member shall not furnish anything of value including equipment, fixtures or supplies to persons engaged in the retail sale of alcoholic beverages.

Ale/Malt Liquor (Malt Beverages with greater than 4% ABW) Wine and Distilled Spirits

Section 102.07(b) allows a distiller, brewer, rectifier, wholesaler, class B wholesaler, winery, or wine bottler permittee to furnish a retailer without cost, advertising specialties showing the name of the product advertised. Administrative Rule 45.117(c)(1) defines advertising specialties as things designed to advertise or promote a specific product or brand. Such items may have a utilitarian function in addition to product promotion. The Commission will classify cooler door racks, shelf glides and spring-loaded shelf glides branded with liquor products (ale/malt liquor, wine and distilled spirits) to be advertising specialties. As stated in the definition of advertising specialties in Rules 45.117, the total cost of all advertising specialties furnished to a retailer shall not exceed \$101 per brand per calendar year.

Beer (Malt Beverages Less than 4%ABW)

Rule 45.113 promulgated pursuant to Section 108.04 of the Alcoholic Beverage Code, relaxes certain restrictions and prohibitions set forth in Sections 102.14, 102.15 and 108.06 of the Code. Administrative Rule 45.113(c) defines promotional items sold to retailers. Promotional items are things designed to promote a specific product or brand and are further designed for use by the consumer, either on or off the retailer's premises. Promotional items sold must bear a manufacturer's logo, brand or product name. Promotional items may not be sold for less than the item manufacturer's regularly published wholesale price. Finally, payment must be in cash, paid on or before delivery. The Commission will classify cooler door racks, shelf glides, and spring-loaded shelf glides branded with beer products to be sold as promotional items.

This opinion is of the staff of the Commission. 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,



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cc: Alan Steen, Administrator
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