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MARKETING PRACTICES BULLETIN – MPB 082004007dj
“Malt Beverage Secondary Packaging”

To: Beer Industry
All Captains and Compliance Supervisors

Re: Secondary Packaging branded “Beer (Ale in TX)”

We received an inquiry from a manufacturer of Ale & Malt Liquor regarding the legality of branding the **secondary package** of malt beverages containing a malt beverage in excess of 5.0% alcohol by volume as **“Beer with a Parenthetical Ale in TX”**.

Upon careful review it was duly noted that approval of such had been granted by an Agency letter dated April 26, 1996 authorizing secondary packaging containing a malt beverage in excess of 5.0% alcohol by volume to be branded with a designation statement **“Beer (Ale in Tx)”**.

Section 110.41 of the Texas Alcoholic Beverage Code states that *no container, packaging material, or dispensing equipment may bear a label or imprint that by ambiguity, omission or inference tends to create a misleading impression, or causes or is calculated to cause deception of the consumer with respect to the product.*

Texas Alcohol Beverage Code **Section 1.04 (12)** defines *“ale and malt liquor” as a malt beverage containing more than four (4) percent of alcohol by weight* and **Section 1.04 (15)** defines *“beer” as a malt beverage containing one half of one percent or more of alcohol by volume and not more than four percent alcohol by weight and does not include a beverage designated by label or otherwise by a name other than beer. Texas statute requires that beer be clearly demarcated from ale or malt liquor.*

To strike a balance between statute which prohibits Beer and Ale from appearing on the same label and/or **packaging** and precedence established by common practice authorized by Agency letter dated April 26, 1996, **we will continue to allow the secondary package to be branded with a designation statement “Beer (Ale in TX)”**, however such statement shall be limited to the bottom panel of the package and shall be in large print which can be easily recognized. If you should have any questions regarding this correspondence please do not hesitate to contact me at 512-206-3411.

Kind Regards,

Dexter K. Jones
Acting Director of Marketing Practices

CC: Alan Steen, Administrator