



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 – MPB 09092005017dj
Consumer Events Sponsored by Upper Tier Members at Non-Licensed Venues

To: Alcoholic Beverage Industry

Current industry practices indicate a trend by upper tier members to target specific consumers. We have seen this in the form of upper tier members identifying targeted consumers and notifying them through various mediums (e.g. e-mail, 800 dial in numbers, internet posting, etc.) that a brand event will be conducted at a specific licensed retail account. In our view, such activity is in violation of statutory provisions governing pre-announced promotional activity found in Section 102.07 (g) of the Alcoholic Beverage Code. We are pursuing the necessary administrative action on these functions. The Commission interprets the restrictions of 102.07 (g) as a legislative intent to eliminate the risk of an upper tier member directing consumer traffic to a specific licensed retailer whereby the retailer would ultimately benefit from such activity at the competitive disadvantage of the retailer's competitors.

In light of the preceding circumstances, we have been petitioned to provide a staff opinion on the legality of upper tier members coordinating and hosting sponsored events at 1). non-licensed venues and/or 2). unlicensed areas of a hotel, versus licensed retail accounts, in order to interact with targeted consumers about their brands while providing consumer novelty items, food and alcoholic beverages, educational material, and/or other entertainment.

We have concluded that events held at non-licensed venues, notwithstanding certain limitations, may not violate statutory provisions governing pre-arranged and pre-announced promotional activity found in Section 102.07 (g) of the Alcoholic Beverage Code. Conversely, other regulatory concerns stem from consumer inducement. Provisions of Rules 45.113 and 45.117 allow upper tier members to provide alcoholic beverages to consumers provided such beverages are consumed on licensed premises. Considering the intent of relaxations found in Rule 45.113 and 45.117, it is this same premise by which we will not consider the giving of alcoholic beverages to an adult consumer by an upper tier member away from a licensed premise to be in violation of provisions of statutes 102.07 and 108.06 of the Alcoholic Beverage Code which governs gifts to consumers. If an upper tier member arranges, organizes, sponsors and/or hosts an event at a non-licensed venue whereby alcoholic beverages will be dispensed or served to consumers, the following criteria must prevail in order to avoid violations of other provisions of our Code and Rules:

- 1) The sponsoring upper tier member must purchase all alcoholic beverages from a licensed off-premise retailer at ordinary retail cost, and transport such product to the non-licensed venue. (A distributor or wholesaler may not deliver product to an unlicensed venue.)
- 2) There may not be a sale or indirect monetary transaction of an alcoholic beverage at the event held at the non-licensed venue.
- 3) They may not hire a licensed retailer who also holds a caterer's permit to serve alcoholic beverages or food at the event.
- 4) If a non-licensed caterer or bartending server, who does not hold a promotional permit or manufacturer's agent's permit with the Commission, is hired to facilitate the event, they may not purchase or transport alcohol for the event. Further they may not be paid or receive remuneration to purchase or deliver alcoholic beverages. (Note: Upper tier members or their employees and/or agents hosting the event must purchase the product at retail and transport the beverages.)
- 5) The amount of alcoholic beverages purchased from a retailer should not exceed the amount of alcoholic beverages expected for use at the event. (Note: Any unused product should be either disposed or removed from the venue. The upper tier member, its employees or agents, may not lawfully commerce or use that product to sample with retailers.)
- 6) Announcement of the event should be limited in scope (e.g. invitation and RSVP through e-mail, direct mail, internet or by phone) and may not include exterior notification such as by billboards, or media publication in magazines, newspapers, radio, handbills, etc.
- 7) The upper tier member must retain all records associated with the event and make readily available to the Commission upon request.
- 8) The event may not be excessive in nature, and must be limited to adult consumers.
- 9) The sponsoring upper tier member must provide written notification and program overview inclusive of date, time and location of event to the Commission at least 14 business days prior to the event. (Note: This is not intended to construe that Commission approval is required, but is intended to identify when and where activity will take place.)
- 10) All persons representing the sponsoring upper tier member in any capacity must hold the applicable manufacturer's agent's permit or promotional permit.

Further, some areas of a licensed hotel may be diagrammed whereby certain party rooms are unlicensed. However, we believe that functions held in the unlicensed portion of a diagrammed licensed hotel retailer and catered by the licensed hotel retailer would ultimately have the same effect as if the function was held at an ordinary licensed retailer. Therefore, such activity to be held in an unlicensed portion of a licensed hotel retailer would be construed as providing something of value to a retailer {Section 102.07 (a)(2) Alcoholic Beverage Code} at the competitive disadvantage of other similar retailers. Thus, an upper tier member may not arrange, organize, sponsor or

otherwise host a consumer event at an unlicensed portion of a licensed hotel retailer whereby mass or targeted consumers would be notified by any pre-announcement {Section 102.07(g) Alcoholic Beverage Code}.

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 512-206-3449.

Kind Regards,



Dexter K. Jones
Director of Marketing Practices

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