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MARKETING PRACTICES BULLETIN – MPB 018
Coupon Offers

To: Alcoholic Beverage Industry

This bulletin is intended to clarify statutory and common practices related to Consumer Coupon Offers sponsored by upper tier members. We have been presented with numerous inquiries from the industry relating to acceptable methods of redemption programs for coupon offers.

Invariably, statutory provisions found in Section 102.07 and 108.06 of the Alcoholic Beverage Code place restrictions on upper tier members from engaging in practices to induce retailers and consumers to purchase their products. More particularly, Section 102.07(d) provides that an upper tier member may not offer a rebate or coupon redeemable by the public for the purchase of alcoholic beverages. There is not statutory reference to what we have come to know as cross merchandise coupon offers, wherein upper tier members partner with non-alcoholic suppliers to cross promote non-alcoholic items. However, it is this Agency's opinion that this activity is governed by areas of the statute which place restrictions on relationships between upper tier members and retailers and/or consumers. Not only does provisions of 16 TAC 45.101 prohibit coupon programs for the purchase of alcoholic beverage, this provision also attempts to restrict upper tier members from inducing retailers and consumers to purchase their products and place limitations on coupon offers for non-alcoholic purchases.

Considering the basis of these regulatory provisions, the Agency has historically maintained that cross merchandise coupon offers for a discount, rebate, or cents off any non-alcoholic beverage item that is not sold by an upper tier member must be solely funded by the non-alcoholic manufacturer. The alcoholic beverage upper tier member may only use the alcoholic beverage product as vehicle to cross promote the offer. For example an alcoholic beverage supplier may utilize its product to carry a neck hanger promoting a discount, rebate, or cents off offer on the purchase of meat, cheese, etc. The coupon should clearly state that no alcoholic beverage purchase is required and must specifically include redemption instructions clearly indicating that the non-alcoholic beverage supplier will solely redeem the offer. This applies to Instant Redeemable Coupons, Mail In Rebates, or any other coupon medium.

An upper tier member or its affiliate may not provide remuneration or any other form of consideration for coupon reimbursement to a third party non-alcoholic beverage supplier (its agent, employees, etc.), coupon clearing house, retailer, consumer, or any other affiliate of the alcoholic beverage industry.

We understand there may be several cross promotion coupon offers for cents off non-alcoholic beverage items, which do not comport to our regulations, circulating throughout the Texas Trade Market. Please take the necessary precaution to remove these items from the marketplace effective immediately.

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,

A handwritten signature in cursive script that reads "Dexter K. Jones". The signature is written in black ink and is positioned below the "Kind Regards," text.

Dexter K. Jones
Director of Marketing Practices

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