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MARKETING PRACTICES BULLETIN – MPB0049

Changes to Current Regulations – Advertising and Labeling

To: Alcoholic Beverage Industry

This bulletin is intended to announce interim changes to the regulation of labeling and advertisement of alcoholic beverage products resulting from the U.S. District Court's decision in *Authentic Beverages Company, Inc. v. Texas Alcoholic Beverage Commission*, No. 1:10-CV-00710-SS (U.S. Dist. Ct. W.D.Tex., Dec.19, 2011).

This bulletin will be superseded by rules to be adopted by the Commission in a formal rulemaking proceeding. The staff of the Commission will conduct a Stakeholders' Meeting to discuss necessary and appropriate changes to the Commission's rules required by the Court's decision. **The meeting will start at 9:30 a.m. on Friday, January 27, 2012 in the Commission's Meeting Room at the Commission's Headquarters Building, located at 5806 Mesa Drive in Austin, Texas.** Following the Stakeholders' Meeting, the staff will prepare recommended rule changes to present to the Commissioners at an Open Meeting. The Commissioners must authorize publication of any proposed rule changes in the *Texas Register* to allow for public comment. At the close of the comment period, staff will recommend the final text of rules to be adopted by the Commissioners at a subsequent Open Meeting.

Manufacturers and/or Brewers may label their malt beverage product in one of the following two ways:

1. Label the product according to the definitions in Texas Alcoholic Beverage Code §1.04 of "beer" (*malt beverage containing one-half of one percent or more of alcohol by volume and not more than four percent of alcohol by weight*) or "ale" or "malt liquor" (*malt beverage containing more than four percent of alcohol by weight*); and/or
2. State on the label the alcohol content of the product in percentage of alcohol by volume, expressed to the nearest 1/10th of a percent. The alcohol content must be displayed in a prominent place on the product label, be clearly legible notwithstanding the label design, and be in a format (e.g., font and type size) that is easily discernible. In this case, the manufacturer or brewer may designate the product by the appropriate class or style that is recognized in the brewing industry. Product labeled 5.1% alc/vol and less will be considered beer in Texas for regulatory purposes, including taxation and compliance with local option elections. Alcohol analysis must confirm the correct regulatory classification and stated alcohol content.

Regarding the issue of secondary packaging for malt beverages, please see Marketing Practices Bulletin No. MPB007 (available at http://www.tabc.state.tx.us/marketing_practices/bulletins/MPB007.pdf), which will continue to be operative during the interim but will be subject to review in the rulemaking process.

Advertising Changes:

1. Manufacturing and wholesale tiers may now refer to alcohol content in advertisements of their products. In addition, manufacturers and wholesalers are no longer prohibited by State law from the use of words that describe product strength on the label or in advertisement (e.g., "strong," "full strength," etc.).
2. Manufacturing and wholesaler tiers may advertise retail locations where their products may be purchased. However, no financial remuneration, incentive, inducement, or compensation for advertising is allowed between a member of one tier and a member of another tier.

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,



Thomas Graham
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cc: Alan Steen, Administrator
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