



José Cuevas, Jr.
Presiding Officer-Midland

Steven M. Weinberg, MD, JD
Member-Colleyville

Melinda S. Fredricks
Member-Conroe

Alan Steen
Administrator

March 1, 2012

MARKETING PRACTICES BULLETIN – MPB0050

Promotional Activity Prearrangement / Preannouncement and Advertising Product Location

To: Alcoholic Beverage Industry

This bulletin is intended to announce the Commission staff's initial understanding of requirements related to prearrangement / preannouncement of alcoholic beverage promotions following 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 This bulletin will be superseded by rules to be adopted by the Commission in a formal rulemaking proceeding.

As a result of the judgment, 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.

Section 102.07(g) of the Texas Alcoholic Beverage Code (Code) authorizes LIQUOR manufacturers and wholesalers to pre-arrange *promotional activities* designed to promote liquor products with retailers and pre-announce such events to the consumer (See MPB023). Further, the law authorizes LIQUOR manufacturers and wholesalers to preannounce the *purchase* of distilled spirits and wine for consumer consumption.

The Code does *not* provide authorization for BEER manufacturers and/or distributors to either prearrange or preannounce beer *promotional activities or purchases* of beer for consumer consumption. Thus such activities or purchases related to beer must be spontaneous and neither pre-arranged with the retailer nor pre-announced to the consumer.

As a result of the December 2011 District Court ruling, beer manufacturers and distributors may pre-announce/advertise to the consumer where their products may be legally purchased, including a specific date, time and location. However, beer manufacturers and distributors may not pre-announce/advertise promotional activities or purchases at retail locations. Examples of promotional activities include, but are not limited to bar spending, sampling, novelty item give-aways, agent or promotional permit holder appearances, or any other activity beyond just the product's availability for sale.

This bulletin is the opinion 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
Marketing Practices Supervisor

cc: Alan Steen, Administrator
Sherry Cook, Asst. Administrator
Emily Helm, General Counsel
Joel Moreno, Chief of Field Operations
Steve Greinert, Director of Tax and Marketing Practices
Executive Management
Regional Personnel