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TEXAS ALCOHOLIC BEVERAGE COMMISSION

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MARKETING PRACTICES BULLETIN – MPB032

Bulletin created through the application of the Marketing Practices Policy Decision Process,
Policy #MP-01

Bottle Engraving

To: Alcoholic Beverage Industry

The Texas Alcoholic Beverage Commission has received numerous requests from alcoholic beverage industry members to allow distilled spirits manufacturers and wholesalers to engrave bottles for consumers on a licensed retail premises. This bulletin is intended to clarify agency guidelines for conducting this activity in accordance with state law and agency policy.

Section 102.07(d) of the Texas Alcoholic Beverage Code allows liquor manufacturers and wholesalers to provide consumers with gifts. 16 T.A.C. 45.117(b)(2) states these items gifts must be of limited value. It has always been our opinion that bottle engraving met this definition.

Section 102.07(a)(2) of the Texas Alcoholic Beverage Code prohibits upper-tier members from furnishing, giving or lending an money, service, or thing of value to a retailer. The agency has considered engraving programs on retail premises to be an illegal service to a retailer by steering consumer traffic to a specific permitted location. However, during the 80th legislature, §102.07(g) was amended to allow distilled spirits and wine manufacturers and wholesalers to prearrange and preannounce their promotions with consumers and retailers, thus informing the public where and when they could go to participate in product promotion events. It is our belief that the legislative intent was to broaden the ability of these upper-tier members to legally promote their products on licensed retail premises without being in violation of providing an illegal service [102.07(a)(2)].

In order to avoid prosecution for administrative violation by the agency's enforcement staff for providing an illegal service to a retailer [§102.07(a)(2)] upper-tier members must operate their engraving promotions as follows:

- Event may be no longer than three hours at any one retail location.
- Consumer must have an unopened alcoholic beverage bottle.
- Upper-tier members may only engrave the bottles of products they sell.
- Consumer may not be required to make a purchase to participate in the promotion.
- Upper-tier members must supply the engraving machine and personnel necessary for its operation.
- Retailer personnel may not operate the machine.
- Upper-tier personnel must hold an agent's permit or promotional permit.
- Selection of retail locations must be done in a manner to prevent a violation of 16 T.A.C. 45.110.
- Events may be prearranged and preannounced provided upper-tier members do not do so in an excessive manner that constitutes a violation of 102.07(a)(6).
- Retailer selection may not be discriminatory absent prudent business justification. The promotion must be offered to all retailers in local area markets on similar terms.

If liquor manufacturers and wholesalers operate an engraving promotion in compliance with the above guidelines this agency will not pursue administrative action against upper-tier members for providing an illegal gift or service to retailers and consumers.

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. The commission will continue to monitor this issue and make necessary regulatory changes as statutorily applicable. 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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