



1<sup>st</sup> Amendment: February 15, 2024  
March 16, 2007

## MARKETING PRACTICES ADVISORY – MPA022

# Retailer Advertising Specialties

To: Liquor Manufacturers, Wholesalers, and Retailers

## Scope of the Advisory

This advisory is intended to clarify the application of the “per brand” cost limitation to advertising specialties. Specifically, the legality of a liquor manufacturer or wholesaler providing an advertising specialty item that advertises multiple brands (rather than a single brand) with an aggregate value in excess of the authorized limit, but equal to or less than the authorized amount multiplied by the number of brands advertised.

## Authorized Advertising Specialties

Pursuant to section 102.07(b) of the Alcoholic Beverage Code (“Code”), a person who owns or has an interest in the business of a distiller, rectifier, wholesaler, class B wholesaler, winery, or nonresident seller, including the person’s agent, servant, or employee, may furnish to a retailer advertising specialties showing the name of the product advertised.<sup>1</sup> Advertising specialties are items designed to advertise or promote a specific product or brand and may also have an utilitarian function in addition to product promotion.<sup>2</sup> Common examples of advertising specialties include branded coolers that do not require electricity to operate, display barrels, and umbrellas. Advertising specialties do not include items manufacturers and wholesalers are prohibited from providing to retailers such as equipment, fixtures, or supplies to be used in the selling or dispensing of alcoholic beverages.<sup>3</sup>

## Dollar Limitations

The total value of all advertising specialties for any one brand furnished to a retailer in a calendar year may not exceed the amount set in an agency order issued by the executive director.<sup>4</sup> For example, if the limit is set at \$100.00, an authorized permittee may furnish a retailer with an advertising specialty advertising only one brand valued at \$100.00 once per calendar year; or five separate advertising specialties advertising the same brand throughout a calendar year, each with a value of \$20.00.

<sup>1</sup> See also 16 Tex. Admin. Code § 45.117(c).

<sup>2</sup> 16 Tex. Admin. Code § 45.117(c)(1).

<sup>3</sup> See Tex. Alco. Bev. Code § 102.07(a)(5).

<sup>4</sup> 16 Tex. Admin. Code § 45.117(c)(2).

Two or more permittees may not pool or combine their dollar limitations to provide a retailer with advertising specialties valued in excess of the maximum amount set by the executive director.<sup>5</sup> However, a single permittee may include more than one of its brands on the same advertising specialty with a total value greater than the maximum amount as long as the item's aggregate value does not exceed the maximum amount *per brand* advertised. For example, if the limit is set at \$100.00 and an authorized permittee furnishes a retailer a single advertising specialty item advertising five different brands on the item, the total value of the item may not exceed \$500.00 (e.g. 5 brands x \$100.00 or less per brand).

## **Statement From TABC**

This advisory is issued pursuant to Alcoholic Beverage Code § 5.57. It has been approved by Andrea Maceyra, Chief of Regulatory Affairs, and represents 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 advisory, you may contact TABC in writing at P.O. Box 13127, Austin, TX 78711; by email at [advisories@tabc.texas.gov](mailto:advisories@tabc.texas.gov); or by phone at 512-206-3411.

Sincerely,



Matthew Cherry  
Senior Counsel

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<sup>5</sup> Tex. Alco. Bev. Code § 102.07(b).