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MARKETING PRACTICES ADVISORY – MPA052

Distinguishing Between Illegal Outdoor Advertising and Content Neutral Illustrations

To: Alcoholic Beverage Industry

The Commission's classification of outdoor advertising has come under review at the request of various Industry Members. The Commission has been asked to reconsider its interpretation of Section 108.51 and the definition of outdoor advertising with regard to illustrations used in windows and permitted building exteriors. In the past, depictions of generic wine glasses, beer mugs, bottles, etc., have been considered outdoor advertising of alcoholic beverages and have thus been prohibited for use at certain retail locations per Section 108.52 of the Code. In an effort to clarify how the Commission will enforce these Code provisions with regard to the above the Commission issues this advisory.

Section 108.51 defines outdoor advertising as, "any sign bearing a word, mark, description, or other device that is used to advertise an alcoholic beverage or the business of a person who manufactures, sells, or distributes an alcoholic beverage if the sign is displayed outside the walls or enclosure of a building or structure where a license or permit is issued or if it is displayed inside a building but within five feet of an exterior wall facing a street or highway so that it is visible by a person of ordinary vision from outside the building."

The Commission will not consider content neutral depictions such as generic illustrations or pictures of glassware, wine barrels or beer glasses, etc., to meet the definition of outdoor advertising as defined in Section 108.51 of the Code. The content neutral depictions may not contain any brand, logo or trademark of a manufacturer.

However, these depictions used on the outside of buildings permitted to sell alcoholic beverages cannot be utilized in violation of Sections 108.55 or 104.02 of the Code.

Sec. 108.55. LOCAL REGULATION OF BILLBOARDS, ELECTRIC SIGNS.

No person may erect or maintain a billboard, electric sign, or any outdoor advertising in violation of an ordinance of an incorporated city or town.

Sec. 104.02. BLINDS AND BARRIERS. (a) No person may install or maintain a blind or barrier in the opening or door of a retail alcoholic beverage establishment or paint the windows, at or above a point 54 inches above the ground or sidewalk beneath the window, in a manner that will obstruct the view of the general public.

(b) No person may install or maintain a curtain, hanging, sign, or other obstruction that prevents a clear view of the interior of a package store or wine only package store, except a drug store that holds one of those permits may display drug merchandise notwithstanding this subsection.

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,



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