



TEXAS ALCOHOLIC BEVERAGE COMMISSION

Texans Helping Businesses & Protecting Communities

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April 27, 2005

2nd Amendment: January 28, 2021

1st Amendment: October 12, 2007

MARKETING PRACTICES ADVISORY – MPA012

Using Media to Advertise Alcoholic Beverages

To: Media Outlets and Members of the Alcoholic Beverage Industry

Scope of the Advisory

This advisory provides guidance to industry members and other interested parties on how they may advertise and promote alcoholic beverages using various media formats such as print publications, radio or television broadcasts, the internet (including social media), or any other media.

The term “media advertising” includes any written or verbal statement, illustration, or depiction that is calculated to induce sales of an alcoholic beverage in Texas. It does not include forms of “outdoor advertising” as used in the Texas Alcoholic Beverage Code (“Code”) § 108.51 (such as outdoor signs, displays, billboards, and vehicle stickers or magnets). Guidance regarding the promotions advertised by a private club retailer can be found in marketing practices advisory ([MPA019](#)) [Private Club Advertisement](#).

Source of Law

All media advertisements funded, initiated, published, or disseminated by, or at the behest of an industry member in any tier must adhere to the general advertising provisions in Texas Alcoholic Beverage Code Chapter 108, Subchapter A, as well as the Chapter 102 provisions governing intra-industry relationships. These provisions are applicable even if there is no exchange of money, goods, or services for the publishing, placement, or dissemination of an alcoholic beverage advertisement.

Liability for Agents’ Activities

TABC views anyone that develops and/or disseminates alcoholic beverage advertisements on behalf of an industry member (such as advertising agencies, media outlets, and others) as agents of the industry member.

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Accordingly, the industry member will be held accountable for advertisements that fail to provide mandatory information or that convey prohibited information.

All industry members should inform their advertising agencies and anyone else developing and disseminating advertisements on their behalf of the requirements and limitations of Chapter 45 of TABC's Administrative Rules.

Advertising Rebates and Coupons (16 Tex. Admin. Code § 45.101)

No industry members may offer a rebate or coupon redeemable by the public for the purchase of or for a discount on the purchase of any alcoholic beverage.

A retailer, manufacturer, or wholesaler may offer a discount, rebate, or cents-off coupon on any non-alcohol product (e.g., branded t-shirts, glassware, bottle openers) so long as it does not require the purchase of any alcoholic beverage. Coupons for non-alcohol products may only be redeemed directly through the coupon issuer (i.e., a retailer cannot redeem a coupon for a manufacturer's t-shirt; the coupon must be redeemed directly through the manufacturer).

Retailers may offer a complimentary drink or drink discount as part of a meal package, a hotel package or any airline frequent flier program or in conjunction with any airline ticket purchase, provided, however, that no discount or complimentary beverage shall be brand identified or redeemed by a wholesaler or manufacturer.

Advertisements by Permittees Authorized to Sell for On-Premise Consumption

Permit holders who are authorized to sell alcoholic beverages for on-premise consumption may conduct media advertisements for the sale and service of alcoholic beverages as long as they adhere to the on-premises requirements in Rule § 45.103.

General promotions may contain, but are not limited to, the following:

- Drink prices (e.g., "\$2 well drinks all day")
- Brand names
- Happy hour (prices, times, and brand), etc. (e.g., "reduced drink prices between 4p and 7p")

General promotions may NOT contain the following:

- Offering an undetermined quantity of alcohol for a fixed price (e.g., "all you can drink")
- Offering reduced drink prices after 11 p.m. (e.g., "half off after 11:00 p.m.")
- Offering reduced drink prices to consumers paying a fixed "buy-in" price (e.g., mug club)
- Offering two or more drinks for a total price that is less than the total price of those drinks if sold individually (e.g., "two for the price of one")

Advertisements by Permittees Authorized to Sell for Off-Premise Consumption

General promotions may contain, but are not limited to, the following:

- Drink prices (e.g., “case of beer for \$25”)
- Quantity Discounts (e.g., “save 10% when you buy 6 or more bottles of wine”)

General promotions may NOT contain the following:

- Illegal Inducements, such as requiring the purchase of alcoholic beverages to receive an alcoholic beverage item at a discount. (e.g., giving a free bag of ice with a purchase of an alcoholic beverage).
- Coupons for alcoholic beverages
- See Rule § 45.101

Advertisements for Sweepstakes and Novelty Items by Upper Tier Businesses

Wholesalers of wine and spirits, and all alcoholic beverage manufacturers, may participate in and/or sponsor radio contests giveaways.

Content and advertisement of a contest and sweepstake promotions are governed by Rule § 45.106. Advertisements must adhere to the following:

- The upper tier may sponsor a sweepstakes contest provided that such a contest is lawfully conducted.
- The sweepstake prizes may not include alcoholic beverages.
- The purchase of alcoholic beverages may not be required to enter the contest.
- The sweepstake winner must be at least 21 years of age.

Media outlets who advertise consumer giveaways or call-in contests or sweepstakes on behalf of a member of the alcoholic beverage industry cannot conduct contests or giveaways that do not meet the criteria set forth in Rule § 45.106, regardless of whether the station has paid for the prizes.

Advertising/Promoting Retail Locations

Members of the manufacturing and distribution tiers may advertise the retail location where consumers can buy their products only if:

1. The advertisement contains two or more unaffiliated retailers;
2. There is no cooperation with or benefit to those retailers; and
3. The advertisement does not mention prices.

Intra-Industry Relations

The Code prohibits cooperative advertising between a member of the manufacturing and/or wholesale tier and a retailer. As stated in Code § 102.01, members of the upper tier are restricted from furnishing, giving, or lending money or any other thing of value, directly or indirectly, to a retail licensee or their employees. Upper-tier member prohibited dealings with the retailer or consumer can be found in Code §§ 102.07, 102.14, and 102.15. The following practices are restricted between an upper-tier member and retailer for advertisement services as provided in Code §§ 108.05 and 108.06.

- Upper tier members may not pay or make an allowance to a retailer for an advertising or distribution service.
- Upper tier members may not offer a prize, premium, gift, or other inducements to a retailer or consumer of brewery products.
- A retailer may not use free spots or advertising credits that have been accumulated by a member of the manufacturing or wholesale tier stemming from other contractual or non-contractual agreements with media outlets.
- The retailer is responsible for all activities at their licensed premises, even if a media outlet indicates they are “hosting” the event.
- Upper-tier members may not pay for or advertise concerts or other special events to take place at a retailer’s premises or arrange to have their brand in the title of a retailer’s event, as a result of a purchase, trade, sponsorship, or other arrangements.

Members of the manufacturing, wholesale, and retail tier may conduct the following promotional activities:

- Prearrange/preannounce promotional activities held at the retailer’s premises per Code §§ 102.07(g) and 102.15(b).
- A retailer may include the brand name of a beer, wine, or distilled spirits in its advertising provided that the retailer has not been compensated in any way, directly or indirectly, by the manufacturer or wholesale tier, or an affiliated third party of that particular alcoholic beverage.
- Advertisements that reference specific retailers should be confined to promoting the alcoholic beverage and may not include advertising unique aspects of a specific retailer’s business.

Statement From TABC

This advisory is issued pursuant to Alcoholic Beverage Code § 5.57. It 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 me in writing at P.O. Box 13127, Austin, TX 78711; by email to advisories@tabc.texas.gov; or by phone at 512-206-3411.

Sincerely,



Thomas Graham
 Director of Tax & Marketing Practices