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December 11, 2007

MARKETING PRACTICES BULLETIN – MPB025  
Retail Sale of Liquor Co-Packs

To: Alcohol Beverage Industry

We have received inquiries relating to the distribution and sale of co-packs of liquor designed by upper tier members and intended for resale to the ultimate consumer. Pursuant to § 102.07 (a)(5) of the Alcoholic Beverage Code [Code], a co-pack is defined as a combination package comprised of liquor and additional items e.g., glassware, decanter, etc., designed to be delivered intact to the ultimate consumer whereby the additional items have no value or benefit to the retailer other than that of having the potential of attracting purchases and promoting sales. It has come to our attention that some retailers are increasing the retail mark up of the co-packs despite price alignment of co-packs and naked bottles by the supplier. Thus, benefitting from the additional value thereby causing a pricing disparity between the co-pack and a naked bottle. As we understand, in other cases, the retailer has broken apart the co-pack and sold the additional items separately.

In accordance with 16 TAC 45.120 and §102.07 (a)(5) of the Code, it shall be unlawful for a retailer to increase the price of a co-pack or break apart the co-pack and sell the additional items separately. Co-packs must remain intact and be priced at the retail baseline price of a naked bottle and offered for sale accordingly. In contrast, nothing shall preclude a retailer from offering at its sole discretion a discounted price of either a naked bottle or co-pack provided that such discount does not violate inducement or other provisions of the Alcohol Beverage Code.

The Commission recognizes that this issue may have flown under the radar and has not been at the forefront of our regulatory efforts. Therefore, it is our intention to restore industry compliance. We regret any economic and/or operational impact this may have on the affected industry. We ask that you immediately review your business practices to ensure you are in compliance with provisions that govern co-packs. Effective March 1, 2008, we will begin regulating provisions relating to this matter.

In addition, we were asked to address the legality of a supplier differentiating in the price of a naked bottle and co-pack during the packaging phase of a co-pack by adding cost to the co-pack and increasing the baseline price of the co-pack offered to wholesalers, whereby the cost is proportionately passed on to the retailer and consumer. Historically, it has been the Commission's position to allow all tiers to set the price of their products with discretionary business justification, provided that the pricing method does not violate statutory provisions. Hence, it is our belief that nothing shall preclude the supplier from differentiating in the price of a naked bottle and co-pack by increasing the cost of a co-pack offered to wholesalers, whereby the cost is proportionately passed on to the retailer and consumer.

We will be compelled to take regulatory action against all involved parties in cases where the supplier's or wholesaler's action relating to co-packs conflict with Section 102.07 (a)(5) and causes the retailer to receive economic benefit thereof. Finally, be mindful a retailer may not be forced, induced or persuaded to purchase a set number of co-packs in order to purchase naked bottles and vice versa.

Texas Alcoholic Beverage Commission

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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](mailto:marketing.practices@tabc.state.tx.us), by phone at 512-206-3411 or by facsimile at 512-206-3203.

Kind Regards,

A handwritten signature in blue ink that reads "Dexter K. Jones". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

Dexter K. Jones  
Director of Marketing Practices

CC: Alan Steen, Administrator  
Jeannene Fox, Assistant Administrator  
Executive Management  
Regional Personnel