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WHOLESALE BEER DISTRIBUTORS OF TEXAS Suite 1313
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September 23, 2003

Director
Regulations and Procedures Division
Alcohol and Tobacco Tax and Trade Bureau
Box 50221
Washington, DC 20091

REFERENCE: TTB Notice #4

Dear Sir or Madam:

I am writing in favor of the adoption of the proposed Rule that outlines the requirement that Flavored Malt Beverages can be classified as beer provided that the resulting alcohol content of the beverage cannot be derived from more than 0.5% (one-half of one percent) from distilled spirits.

If the TTB adopts the Rule as proposed, we do not believe any statutory or regulatory changes will be required for the product to continue to be marketed in Texas as it is being marketed today; the only change will be that the manufacturers of some of the products will be required to re-formulate the product mixtures to comply with TTB's new Rule.

We are reliably advised that a significant number of manufacturers are willing to re-formulate their products. We are also reliably informed that marketing studies performed by at least one major manufacturer have shown that consumers actually favor the taste of the re-formulated product over previously-produced beverages that contain much higher amounts of distilled spirits added to the product's flavoring.

Further, if the products can continue to be classified as beer, distribution and sale can continue in Texas at the same outlets, the same times of day, and on the same days of the week as beer can be lawfully sold. The products, as beer, can be sold in any area where the people of the community have voted, in a local option election, to allow the sale of beer.

To allow the introduction of large amounts of distilled spirits in these products may result in their being classified under Texas law as "distilled spirits" or "liquor", thereby subjecting them to a reduced number of retail outlets and generally being less available to consumers than if the product is legally classified as "beer."

The government ought not to "blur the lines" between distilled spirits and beer. Should the TTB not adopt the "90/10" or "0.05%" Rule and allow the introduction of higher proportions of distilled spirits into these products, then distinctions between classes of alcoholic beverages are greatly diminished. When these distinctions are diminished or "blurred", the industry's detractors are better able to claim that consumers are being misled and actually being provided an alcoholic beverage that is not beer.

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Also, we have attached a copy of a widely-circulated letter dated a little over a year ago, where it is communicated to the Director of the Bureau of Alcohol, Tobacco and Firearms that a number of both license-state and control-state regulators agreed with the then-BATF's explanations and recommendations on this matter.

The TTB has proposed a rational standard and has done an excellent job in developing its recommendations. We hope you will adopt the Rule as proposed.

Sincerely,

Michael W. McKinney
Executive Vice President

MWM:bjr

Working for Beer Distributors Statewide Since 1939