



# TEXAS ALCOHOLIC BEVERAGE COMMISSION

*Texans Helping Businesses & Protecting Communities*

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December 11, 2007

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## MARKETING PRACTICES ADVISORY – MPA025

### **Co-Packs: (aka Alcoholic Beverage Gift Packages)**

To: Members of the Manufacturing, Wholesale, and Retail Tiers

#### **Scope of the Advisory**

This advisory provides guidance on how alcoholic beverages may be legally co-packed with an upper-tier business's nonalcoholic beverage item(s) into one package, distributed by members of the upper tier, and sold by retailers.

#### **General Rule**

A co-pack is a package that (1) is originally bundled and supplied by an alcoholic beverage producer; (2) contains an alcoholic beverage and another item; and (3) is designed to be delivered intact to the ultimate consumer. The included nonalcoholic beverage item(s) may not have any value or benefit to the retailer other than the potential of attracting purchases and promoting sales. These nonalcoholic beverage item(s) may include, but are not limited to, items such as glassware, a decanter, etc. Lastly, items co-packed with malt beverage products must be branded. See TABC Administrative Rule 45.120.

#### **Upper Tier Pricing of Co-Packs**

It has come up as to whether a supplier may differentiate the price of a "naked bottle" and co-pack during the packaging phase by adding a cost to the co-pack that increases the co-pack's baseline price offered to wholesalers, whereby the cost is then proportionately passed on to the retailer and ultimately the consumer. As defined in Rule § 45.120(b)(2), a "naked bottle" is an alcoholic beverage sold by a wholesaler that is similar in all regards to the alcoholic beverage contained in a co-pack sold by that wholesaler, except that it is not packaged with any other item. Industry members in all tiers have the discretion to set the price of their products, provided that the pricing method does not violate any statutory provisions. Nothing prevents the supplier from differentiating the prices between a naked bottle and a 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.

Finally, upper-tier members may not force, induce, or persuade a retailer to purchase a set number of co-packs in order to purchase naked bottles and vice versa.

**Retailers Pricing of Co-Packs**

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 limits provided in Rule § 45.101 or other provisions of the Alcoholic Beverage Code.

**Retailers Breaking Apart Co-Packs**

Co-packs must generally remain intact. Retailers may not increase the price of a co-pack disproportionately or remove the non-alcoholic item from the co-pack and sell it separately. However, the retailer may remove the branded items from the co-pack with the intent to give away the branded item to the consumer as a free gift with no alcoholic beverage purchase required.

**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 interpretation 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](mailto:advisories@tabc.texas.gov); or by phone at 512-206-3411.

Sincerely,



Thomas Graham  
Director of Excise Tax & Marketing Practices