



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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Repealed Date: January 27, 2021

December 14, 2010

MARKETING PRACTICES BULLETIN – MPB042
TABC Authorizations for Credit Exchange of Caffeinated Malt Beverages

To: Alcoholic Beverage Industry

After implementation of the statewide voluntary removal of caffeinated malt beverage products, the Texas Alcoholic Beverage Commission (TABC) received numerous inquiries from industry members asking the Agency to reconsider its position on industry reimbursement alternatives. The agency met with affected industry members and discussed options to recuperate financial losses resulting from the voluntary efforts. This bulletin is intended to provide guidance to the industry for seeking reimbursement.

First, TABC will not prohibit Texas distributors and wholesalers from exercising contractual rights relating to the guarantee of merchantable products in accordance with a distribution agreement with an affected manufacturer that existed prior to the FDA ruling on November 17, 2010.

Secondly, a distributor/wholesaler not bound by a contractual distribution agreement with the manufacturer may negotiate an agreement for reimbursement with the manufacturer.

Thirdly, an agreement for reimbursement between manufacturer and distributor/wholesaler may be proportionately passed on to the retailer provided the retailer can demonstrate the product for which it is being reimbursed was either lawfully destroyed, returned to the distributor, or is retained at the retailers place of business. An agreement for reimbursement must not be designed or executed in a manner that violates State inducement or incentive laws and rules, including section 45.110 of the Texas Alcoholic Beverage Commission Administrative Rules. Otherwise, the terms of such agreement may be negotiated at the discretion of the affected parties.

TABC encourages all affected industry members to work together to reach reasonable agreements to recover financial losses associated with the voluntary removal of caffeinated malt beverage products. Only caffeinated malt beverage products identified in Agency Bulletin MPB 040 are subject to the above commission authorizations. No other alcoholic beverage products may be credited or exchanged.

The Commission will continue to monitor this issue and make necessary regulatory changes as applicable. This guidance should be considered an exception and not the rule. 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 fax at 512-206-3349.

Sincerely,

Dexter K. Jones
Assistant Chief of Field Operations
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cc: Executive Management
Regional Personnel

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