

Title 11—Department of Public Safety
Division 70—Division of Alcohol and Tobacco Control
Chapter 2—Rules and Regulations

ORDER OF RULEMAKING

11 CSR 70-2.240 Advertising of Intoxicating Liquor. The division is amending sections (1) and (5), removing sections (7), (17), and (18), and amending and renumbering the remaining sections as necessary.

PURPOSE: This amendment adjusts ATC regulations to be consistent with the Eighth Circuit's holding in Missouri Broadcasters Association v. Supervisor of Alcohol and Tobacco Control.

(1) No person engaged in business as a producer, manufacturer, brewer, bottler, importer, wholesaler, or retailer of intoxicating liquor, directly or indirectly, may publish or disseminate or cause to be published or disseminated any advertisement of intoxicating liquor[,] unless the advertisement is in conformity with [the regulations] **this regulation.**

[(A) These provisions do not apply to the publisher of any newspaper, magazine, or similar publication, unless the publisher is engaged in business as a producer, manufacturer, brewer, bottler, importer, wholesaler, or retailer of intoxicating liquor, directly or indirectly.]

...

(5) No advertisements of intoxicating liquor may contain—

(A) Any statement, **design, device, or representation** that is false or misleading [*in any material particular*] including any false or misleading statement that creates an impression about the effects of alcohol consumption on health, and any false or misleading statement that explicitly or implicitly disparages a competitor's product. This does not prevent truthful and accurate comparisons between products or statements of opinion;

(B) Any statement, design, or device representing that the use of any intoxicating liquor has curative or therapeutic effects or tending to create an impression that it has curative or therapeutic effects;

[(B) Any statement that is disparaging of a competitor's products];

(C) Any statement, design, device, or representation which is obscene, indecent, [*in poor taste,*] or conveys a derogatory connotation;

[(D) Any statement design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which is likely to mislead the consumer;

(E) Any statement, design, device, or representation of or relating to any guarantee, irrespective of falsity, which is likely to mislead the consumer. Nothing in this subsection prevents the use of any enforceable guarantee in substantially the following form: "We will refund the purchase price to the purchaser if s/he is in any manner dissatisfied with the contents of this package";]

[(F)] (D) Any statement that the product is produced, blended, brewed, made, bottled, packaged, sold under or in accordance with any authorization, law, or regulation of any municipality, county, state, federal or foreign government unless the statement is necessary or specifically authorized by the laws or regulations of the government[;] and, if a municipality, county, state, or federal permit number is stated, the permit number shall not be accompanied by an additional statement relating to it;

[(G) Any statement offering any coupon, premium, prize, rebate, sales price below cost, or discount as an inducement to purchase intoxicating liquor except, manufacturers of intoxicating liquor other than beer or wine shall be permitted to offer and advertise consumer cash rebate coupons and all manufacturers of intoxicating liquor may offer and advertise coupons for nonalcoholic merchandise in accordance with section 311.355, RSMo;

(H) Any statement offering free delivery or credit terms to consumers, as an inducement to purchase intoxicating liquor; and

(I) A price that is below the retailer's actual cost.]

[(7) No advertisement may contain any statement, design, or device representing that the use of any intoxicating liquor has curative or therapeutic effects or tending to create an impression that it has curative or therapeutic effects.]

[(8)] (7) No advertisement may contain any statement, design, device, or pictorial representation of or relating to, or capable of being construed as relating to the armed forces of the United States or of the American flag, any state flag, or of any emblem, seal, insignia, or decoration associated with any such flag or the armed forces of the United States; nor may any advertisement containing any statement device, design,

or pictorial representation of or concerning any flag, seal, coat of arms, crest, or other insignia, likely to falsely lead the consumer to believe that the product has been endorsed, made or used by, or produced for or under the supervision of or in accordance with the specifications of the government, organization, family, or individual with whom the flag, seal, coat of arms, crest, or insignia is associated.

[(9)] (8) No advertisement for distilled spirits may contain—

(A) The words bond, bottled in bond, aged in bond, or phrases containing these or synonymous terms[,] unless these words or phrases appear upon the labels of the distilled spirits advertised and are stated in the advertisement in the manner and form in which they appear upon the label;

(B) Any statement, design, or device, directly or by implication concerning age or maturity of any brand or lot of distilled spirits unless a statement of age appears on the labels of the advertised product. When any statement, design, or device concerning age or maturity is contained in any advertisement, it shall include (in direct conjunction with the advertisement and with substantially equal conspicuousness) all parts of the statement concerning age and percentages, if any, which appear on the label. However, an advertisement for any whiskey or brandy, [which] **that** does not bear a statement of age on the label or an advertisement for rum which is four (4) years or more old[,] may contain general inconspicuous age, maturity or other similar representations, for example aged in wood, mellowed in fine oak cask; and

[(C) A representation that intoxicating liquor was manufactured in or imported from a place or country other than of its actual origin or was produced or processed by one who was not in fact the actual producer or processor.]

[(10)] (9) No [A]vertisement for wine may contain—

(A) Any statement of bonded winecellar or bonded winery numbers unless stated in direct conjunction with the name and address of the person operating the winery or storeroom. Statement of bonded [wineceller] **winecellar** and bonded winery numbers may be made in the following form: “Bonded Winecellar No. . . .,” “Bonded Winery No,” “B.W.C. No,” or “B.W. No[,]”. No additional reference to numbers shall be made, or any use be made of a statement that may convey the impression that the wine has been made or matured under United States government or any state government supervision or in accordance with United States government or any state government specifications or standards; and

(B) Any statement, design, device, or representation which relates to alcoholic content or which tends to create the impression that a wine is unfortified or has been fortified or has intoxicating qualities or contains distilled spirits except for a reference to distilled spirits in a statement of composition where the statement is required by these regulations to appear as a part of the designation of the product.

[(11)] (10) No statement of age or representation relative to age (including words or devices in any brand name or mark) may be made, except that—

(A) In the case of vintage wine, the year of vintage may be stated if it appears on the label; and

(B) Truthful references of a general and informative nature relating to methods of production involving storage or aging, for example “This wine has been mellowed in oak casks,” “Stored in small barrels,” or “Matured at regulated temperatures in our cellars,” may be made.

[(12)] (11) The statement of any bottling date is not deemed to be a representation relative to age, if the statement appears without undue emphasis in the following form: “bottled in[,]” (inserting the year in which the wine was bottled).

[(13)] (12) No date, except as provided in this section and section [(12)] (11) of this rule with respect to statement of vintage year and bottling date, may be stated unless, in addition to the year and date, and in direct conjunction with the year and date, in the same size and kind of printing an explanation of the significance of the date is stated. If any date refers to the date of establishment of any business, this date is to be stated without undue emphasis and in direct conjunction with the name of the person to whom it refers.

[(14)] (13) No advertisement may represent that the wine was manufactured in, or imported from, a place or country other than that of the actual origin or produced or processed by one who was not in fact the actual producer or processor.

[(15)] (14) No retail licensee may advertise for sale any brand of intoxicating liquor unless s/he has the particular brand and size of container or package of intoxicating liquor in his/her licensed premises for sale.

[(16)] (15) No wholesale licensee may allow any sign owned by him/ her or advertising his/her product to be placed or allowed to remain on or upon any building unless the building has an occupant holding a license issued by the supervisor.

[(17) No wholesale or retail licensee may use any loudspeaker or public address system to advertise intoxicating liquor.]

[(18) No producer, manufacturer, brewer, bottler, importer, or wholesaler of intoxicating liquor may advertise the retail price or suggested retail price of intoxicating liquor.]