



K A N S A S

JOAN WAGNON, SECRETARY

DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL

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August 22, 2003

POLICY MEMORANDUM 2003 – 5

Subject: Guidelines on the Use and Distribution of Point of Sale (POS) Advertising Materials and Consumer Advertising Specialties (CAS)

1. Purpose: The purpose of this memorandum is to provide clarification of the statutes and regulations as they pertain to industry members and retailers and the provision for point of sale (POS) advertising or consumer advertising specialties (CAS).

2. Applicability: All industry members and retailers. For the purposes of this policy memorandum, retailers include retail liquor stores, cereal malt beverage retailers, clubs, drinking establishments, caterers and hotels; industry member means any distributor, supplier, manufacturer or any agent, salesperson or representative thereof.

3. Discussion: There are frequent questions to the Alcoholic Beverage Control Division on what are permissible items for use as POS advertising materials or CAS. There are also questions as to what role industry members can have in the distribution of these items. The following discussion attempts to clarify this issue by defining POS materials and CAS, identifying proper uses of such items and clarifying industry member roles.

a. K.S.A. 41-702 strictly prohibits licensed retailers, clubs, drinking establishments and caterers, and officers, associates, members, representatives and agents thereof, from accepting, receiving or borrowing money or anything else of value from a distributor or anyone connected with or representing a distributor, “except to the extent permitted pursuant to K.S.A. 41-703 and amendments thereto.” K.S.A. 41-703, in turn, strictly prohibits distributors from: selling, supplying, furnishing, giving, paying for, loaning or leasing any furnishings, fixtures or equipment on the licensed premises of any club, drinking establishment, caterer or retailer; paying for or assisting with the payment of any licensee’s licensing fees; purchasing or becoming owner of any note, mortgage or other evidence of indebtedness of any licensee; being interested in the ownership, conduct or operation of the business of any licensee; or having any interest in the licensed premises of any licensee. However, the statute does allow distributors to furnish things of value to licensed retailers, clubs, drinking establishments and caterers “to the extent permitted by rules and regulations.” The focus of the restrictions is to ensure an even playing field where industry members are **not inducing retailers to purchase alcoholic products sold or offered for sale by the industry member.**

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b. K.A.R. 14-10-6 (b) states: “Subject to the exceptions provided in this article, industry members are prohibited from inducing the purchases of a retailer, club, drinking establishment or caterer by furnishing, giving, renting, lending or selling to the retailer, club, drinking establishment or caterer any equipment, fixtures, signs, supplies, money, services **or any other things of value.**” (emphasis added) POS materials and CAS are qualified exceptions to the prohibitions on inducements. Therefore, the act by an industry member of furnishing, giving or selling POS materials and CAS to retailers does not constitute a means to induce, provided the definitions are understood and specific conditions are met as laid out in paragraph 3d of this policy memorandum.

c. Additional restrictions on retail liquor stores. K.A.R. 14-13-13(g) states: “A retailer (retail liquor store) shall not, directly or indirectly, offer or furnish any gifts, prizes, premiums, rebates or similar inducements with the sale of any alcoholic liquor . . . , except that, (2) a retailer may distribute consumer advertising specialties, subject to the limitations imposed by this regulation.”

d. Definitions, general guidance, conditions and limitations.

(1) Definitions

(a) **POS advertising materials are items designed to be used within a retail establishment** to attract customers’ attention to the products of the industry member. Such materials include, but are not limited to: posters, placards, designs, inside signs (electric, mechanical or otherwise), window decorations, trays, coasters, menu cards, paper napkins, foam scrapers, back bar mats, thermometers, clocks, calendars, banners, display cards, ceiling danglers, table tents and alcoholic beverage lists or menus dealing with alcoholic beverages¹.

(b) **CAS are items that are designed to be carried away by the consumer such as, but not limited to:** ash trays, bottle or can openers, can insulators, shot glasses, cork screws, matches, printed recipes, informational pamphlets, cards and leaflets, blotters, post cards, posters, printed sports schedules, pens, pencils, trading stamps, nonalcoholic mixers, pouring racks, shopping bags, shirts, caps and visors.

(2) Other POS or CAS items. Items other than those listed above may qualify as POS and CAS provided the conditions and limitations listed below are met.

(3) Conditions and limitations

(a) **All industry member POS advertising materials and CAS must bear conspicuous and substantial advertising matter about the product or the industry**

¹ Industry member payments for menus, menu cards, table tents or alcoholic beverage lists are limited to those costs directly related to the portion used for advertising alcoholic beverages.

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member, which is permanently inscribed or securely affixed to the items. The name and address of the retailer may appear on the POS materials only.

(b) The industry member may not directly or indirectly pay or credit the retailer for using or distributing these materials or for any expense incidental to their use.

(c) The industry member may either sell or give these materials to retailers. However, if the decision is made to give the materials, they should be given or offered to all retailers. If the industry member decides to sell the materials at cost to retailers, the materials should be provided at the same cost to all retailers. The issue here is the industry member may not give the materials to some retailers and sell them to others.

(d) There is no requirement for industry members to: 1) request or notify ABC of new items, or 2) keep and maintain records on these items.

(e) The industry member may not classify and provide items as POS advertising materials when the items fall under other regulatory guidelines. Examples of such items may include supplies and equipment, product displays or signs.

(4) **Retail generated CAS.** Both on- and off- premise retail licensees may generate and distribute CAS. As such, the CAS may contain advertising material relating to the operation of the retail establishment, including but not limited to, the name, address or business logo. Retail generated CAS may not be provided by industry members.

e. General Questions Relevant to this Topic

(1) Can retail liquor stores give away items with their store logos on them?

Yes, provided certain guidelines are followed. These types of items are considered retail generated CAS. These CAS items are designed to be carried away by the consumer. As such, no charge may be made for any CAS or any purchase required in order to receive any retail generated CAS item. Each retail generated CAS shall contain advertising material relating to the operation of the retail liquor store distributing the CAS. (K.A.R. 14-13-13(g)(2)) Additionally, on-premise retail licensees may also provide retail generated CAS at their establishments.

(2) What if an industry member or retailer would like permission to use items other than those included in the definitions of POS materials and CAS?

There is no requirement to obtain permission for additional CAS or POS items provided they meet the definitions of CAS or POS and the conditions and limitations on distribution identified in this memorandum.

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(3) Can retailers give POS materials away to consumers?

No, these items are designed to be used only within retail establishments and are not to be given away or sold to consumers.

(4) Can retail licensees give away CAS on or off their licensed premises?

CAS are designed for being carried away from the licensed retailers' premises. Therefore, they can **not** be given away off the licensed premises.

(5) Can retail licensees purchase POS materials or CAS through an industry member?

Yes. K.A.R.14-10-10 (c) states: "Consumer advertising specialties, ... , which bear advertising matter **may be furnished, given or sold** to a retailer, club, drinking establishment or caterer **for unconditional distribution by the retailer, club, drinking establishment or caterer to the general public**. The retailer, club, drinking establishment or caterer shall not be paid or credited in any manner, directly or indirectly, for this distribution service." Therefore, CAS may be given or sold to retailers.

(6) Can the cost of CAS or POS materials be shared?

Yes. The industry member may give or sell CAS or POS materials to retailers. As such, the costs may also be shared. However, if the decision is made to give the materials, they should be given or offered to all retailers. If the industry member decides to sell the materials at cost to retailers, the materials should be provided at the same cost to all retailers. The issue here is the industry member may not give the materials to some retailers and sell them to others. If the costs are to be shared with retailers, the cost sharing formula should apply to all retailers.

(7) Can industry members give the same item to some retailers and then sell them at costs to other retailers?

Industry members may not discriminate between retailers on how they provide POS materials and CAS. If the industry member chooses to give an item to one retailer, they must provide the item under the same circumstances to all other retailers depending on availability of the materials.

(8) Can items not classified as POS materials or CAS be provided by industry members to a third party, such as an industry association for further distribution to retailers?

No, K.A.R. 14-10-7 prohibits furnishing things of value, other than approved POS materials and CAS by industry members, to third parties, including retail associations or display companies, where the benefits resulting from the things of value flow to individual retailers.

4. Additional Comments:

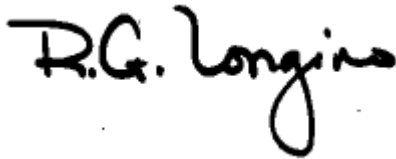
a. Failure to comply with the applicable statutes, regulations and/or this policy memorandum, may result in administrative action for violation of the liquor laws.

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b. Agents will verify compliance with the provisions of the applicable statutes, regulations and this policy memorandum.

5. Clarification of Policy: All requests for clarification of this policy should be directed *in writing* to this office via mail, fax, or email.

6. Effective date of this Policy: This policy is effective from the date of signature until further notice.

A handwritten signature in black ink that reads "R.G. Longino". The signature is written in a cursive, slightly slanted style.

R.G. Longino

cc: Assistant Attorney General
Chief of Enforcement
Licensing Supervisor
Compliance Supervisor
Administration Supervisor
Enforcement Agents

Table 1: POS and CAS Quick Reference Table

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Table 1: Point of Sale (POS) and Consumer Advertising Specialties (CAS) Quick Reference Table

Type of Materials	Purpose	Provide to Consumers	Advertising Material	Cover Costs	Maintain Records	Notify ABC of New Items
Industry Member POS	Industry member materials for use with a retail establishment to attract customers' attention to the products.	NO	Industry member or product. May include name and address of retailer.	Industry member or retailer. *	NO	NO
Industry Member CAS	Industry member materials designed to be carried away by consumers that advertise products.	YES	Industry member or product.	Industry member or retailer. *	NO	NO
Retail Generated CAS	Materials generated by retailers that are designed to be carried away by consumers that advertise the retail business.	YES	Retail Establishment	Retailer	NO	NO

* Items may be sold or given to retailers at no cost. However, if the decision is made to *give* the items, they should be given or offered to all retailers. If the industry member decides to sell the materials at cost to retailers, the items should be provided at the same cost to all retailers. The issue here is that the industry member may not give the materials to some retailers and then sell them to others.