

A GUIDE TO THE ALCOHOL AD BAN

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NOTE: Draft legislation
withdrawn December 2007.
New draft pending.
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Recently the Thai government has expressed its intent to enforce a total ban on alcohol advertising in the Kingdom. The ban, which was originally introduced by the Thai Food and Drug Administration (“FDA”), was scheduled to take force on December 3, 2006. However, the bill provoked considerable debate regarding its scope and the FDA’s legitimacy to institute such restrictions. This debate, including the Council of State’s December 2006 ruling that the FDA lacked authority to implement the ban, resulted in a decision to withdraw the draft law.

Despite growing commercial opposition, the Thai government has been resolute in its desire to impose a comprehensive advertising ban and, in early 2007, the Public Health Ministry introduced a modified Alcohol Control Bill, which contains specific provisions banning nearly all forms of alcohol advertising. The bill,

which was passed by the Cabinet and is undergoing continued debate and scrutiny with the National Legislative Assembly, could become law in 2007, with significant effect.

While much of the discussion focuses on how this will affect major liquor producers and advertisers, there has been little analysis of the impact on other business sectors, such as restaurants, hoteliers and operators of entertainment venues. This is partly the result of the broad draft of the advertising ban, which has been criticized for lacking clarity. By providing a basic analysis of how we believe the proposed law will affect these operators, we hope to assist in planning for its inevitable arrival.

Statutory Prohibitions

The Alcohol Control Act provides, in part, that advertising alcohol products is prohibited by all means of advertising media or by any

other methods. This extremely broad prohibition extends, but is not limited, to all forms of traditional and non-traditional electronic and print media, as well as to advertising through sponsorships, promotions or in the staging of public events and displays. In addition, the use of established logos or branding, or those confusingly similar, in the promotion of non-alcoholic brands is strictly prohibited. Further, advertisements containing the names or trademarks of alcohol manufacturers, importers or distributors are prohibited. The only exceptions to these strict prohibitions are for print media and live television broadcasts originating abroad and not intended for specific distribution in Thailand.

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Practical Implications of Statutory Provisions

Retail stores will be allowed to display alcoholic products on their shelves. When the ban takes effect, however, these stores will no longer be allowed to display alcohol at or near the cashier's counter. Instead, products must be stocked on shelves having no greater prominence than any other products. Further, displays of alcohol must not be visible outside the establishment in which alcohol is sold. Consequently, measures must be taken to avoid the alcohol being viewed by the public, such as by installing tinted or frosted windows.

It will be possible, however, to publicly represent alcohol products using color, provided the brand or logo is not displayed. Therefore, uniforms worn by salespersons in colors associated with a particular brand will be allowed, as will bar decorations, but the brand name or logo must not be used. One example of use of color without brand or logo is the Bangkok "Greenspace" beer garden, sponsored by Heineken.

Those business operators seeking to advertise using print or electronic media may do so, but such advertisements may not contain alcohol brand names or logos. In addition, the proposed ban prohibits the use of

alcohol-related words such as liquor, brewery and winery.

It is also clear from the draft ban that any person in violation of the ban may be prosecuted without advance warning and subject to punishment of imprisonment of up to three months and/or a fine of Baht 30,000. It is our expectation, however, that actual enforcement will be less aggressive, particularly in the initial phases of the ban.

Legal Uncertainties

While advertising strategies of alcohol producers are at the forefront of the debate, there has been little effort to adequately explain to other affected business operators how they may safely advertise their alcohol products. For example, it is uncertain whether external advertisements for reduced price drinks will be allowed if they do not refer to specific brands.

The rules are also ambiguous on whether the ban extends to advertisements inside restaurants and bars if they cannot be seen from outside. However, legislative comment points to the intent to prohibit the advertising of products, in all forms, both inside and outside public venues. This means that the prohibition will extend to any and all form of product logos or branding within restaurants, bars and retail establishments.

Although it is uncertain how strict

enforcement of the law will be, particularly with respect to signage or logos within retail establishments, it is expected that restaurants are more likely to face enforcement than bars or entertainment venues, since they are also frequented by the non-drinking public, including children.

It also remains to be seen whether the ban will be interpreted as applying to the signage of an establishment if its name includes a word associated with alcohol, such as "beer," "spirits" or "wine," as this is technically descriptive alcohol advertising.

Conclusion

Although the new law was passed in principle by the Cabinet, it did advise certain amendments. The advised amendments include a grace period allowing business operators time to plan for and adapt to implementation of the law. In addition, there has been significant comment and debate from alcohol producers and lawmakers over implementation of a consistent, industry-wide taxing scheme. Details will become clearer as efforts to modify the bill continue, but we suggest that specific operating and advertising strategies be discussed with legal counsel to prepare for the inevitable restrictions on advertising, whatever form they may take. ❖