



# **ALCOHOL AND GAMING COMMISSION OF ONTARIO**

## **ADVERTISING GUIDELINES**

### **FERMENT ON PREMISE AND LIQUOR DELIVERY LICENCE HOLDERS AND SPECIAL OCCASION PERMIT HOLDERS**

December 2007

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## **INTRODUCTION**

The regulations enacted pursuant to the *Liquor Licence Act* allow holders of ferment on premise and liquor delivery licences as well as special occasion permit holders to advertise liquor, the availability of liquor or other services they provide in relation to liquor where the advertising contains certain specified information. All other advertising by holders of ferment on premise and liquor delivery licences and special occasion permit holders requires the prior approval of the Registrar of Alcohol and Gaming.

These guidelines set out the type of advertising which is permissible without the prior approval of the Registrar, the process by which to seek approval of advertising as well as the appeal process, and finally, the principles that will guide the Registrar in determining whether or not to approve proposed advertising are specified. These principles have been developed to assist those seeking approval of advertising. The notes, which follow some of the guidelines and principles, are meant for assistance in interpretation and are by no means exhaustive in their scope.

Advertising will be evaluated on the basis of the message, which is conveyed, both express and implied. The standards apply to all aspects of the advertisement such as the more obvious copy, graphics, lyrics, script and video, as well as the less obvious but influential aspects such as background music, voice inflection, etc.

Interpretations of the guidelines may be published from time to time.

**DEFINITIONS**

**"Advertising" means any public notice, representation, or activity, including promotional and marketing activities, that is intended to attract attention to liquor, the brand name of liquor, the name of the premises where liquor is available or the opportunity to make liquor is available, the name under which the holder of the licence carries on business or that liquor may be delivered and "advertise" and "advertisement" have corresponding meanings.**

**"Public Service Advertising" means any advertising carrying a strong message against irresponsible use of liquor where the message does not contain any direct or indirect endorsement of a liquor, the brand name of a liquor, or of the consumption of liquor.**

- (i) For the purpose of these guidelines "advertising" refers to the act of making the company or service generally or publicly known. This will include categories previously known as public service advertising, corporate advertising, brand advertising, promotional activities, media buys, and general marketing practices.
- (ii) References to products, manufacturers, licensed establishments, services etc. in editorial material will not be viewed as advertising.

**"Liquor" means beer, wine and/or spirits or any combination thereof.**

**"Registrar" means Registrar of Alcohol and Gaming.**

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**1. PRIOR APPROVAL REQUIREMENTS****LICENSED FERMENT ON PREMISE FACILITIES**

- (1) Except as set out in subsection (2), the holder of a licence to operate a ferment on premise facility shall not, without the prior approval of the Registrar, advertise beer or wine, the availability of beer or wine, the price on a per bottle basis for making beer or wine, or any promotions relating to the making of beer or wine.**
- (2) In an advertisement, the holder of a licence to operate a ferment on premise facility may, without the prior approval of the Registrar:**
  - (a) state the licensee is licensed to operate a ferment on premise facility where equipment for the making of beer or wine is provided for customers,**
  - (b) state the name of the licensed premises and its address,**
  - (c) provide a list of the goods and services available and their prices, and,**
  - (d) advertise the availability of various types of materials, beer wort, wine juices, wine juice concentrates or other juices or juice concentrates.**
- (3) Where prior approval is not required, advertising must still comply with all the guidelines.**
- (4) Where an advertisement has been submitted for approval to the Registrar and approval has been denied this section does not permit the use of the advertisement.**
- (5) No advertisement may promote immoderate consumption of liquor or indicate that beer or wine is available for sale or exchange on the licensed premises. The licensee must ensure that no customer advertises, on the licensed premises, beer or wine for sale or exchange.**

**LIQUOR DELIVERY LICENSEES**

- (1) Except as set out in subsection (2), the holder of a liquor delivery licence shall not advertise liquor or the availability of liquor without the prior approval of the Registrar.**
- (2) In an advertisement, a holder of a liquor delivery licence may, without the prior approval of the Registrar:**
  - (a) state that the licence holder is licensed by the Alcohol and Gaming Commission to deliver liquor from government stores operated by the Liquor Control Board of Ontario or Brewers Retail Inc. to a person's residence,**
  - (b) state the name of the delivery service, its address, telephone number, facsimile number, and e-mail address or the name under which the licence holder is carrying on business and its delivery fees, and;**
  - (c) refer in general terms to the types of liquor available for delivery.**
    - (i) The use of terms such as beer, light beer, wine, imported wine, liquor, spirits, cocktail, etc., are permitted.**
- (3) Where prior approval is not required, advertising must still comply with all the guidelines.**
- (4) Where an advertisement has been submitted for approval to the Registrar and approval has been denied this section does not permit the use of the advertisement.**
- (5) No advertisement shall promote immoderate consumption, convey that liquor is offered for sale by the licence holder or target a person under 19 years of age.**

**SPECIAL OCCASION PERMIT HOLDERS**

- (1) Except as set out in (2), a permit holder shall not advertise liquor or the availability of liquor without prior approval of the Registrar.**

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- (2) In an advertisement, a permit holder (other than the holder of a permit holder for an event that is a reception) may, without the prior approval of the Registrar:
- (a) state that the permit holder has a permit,
  - (b) state the name of the establishment where liquor is available or the name under which the permit holder is conducting the event,
  - (c) refer in general terms to the types of liquor available on the premises to which the permit applies, and
    - (i) The use of terms such as beer, light beer, wine, imported wine, liquor, spirits, cocktail, etc., are permitted.
  - (d) state the name of a manufacturer who donates liquor for a fundraising event for the advancement of charitable, educational, religious or community objects conducted by a charitable organization that is registered under the *Income Tax Act* (Canada), or a non-profit association or organization for the advancement of charitable, educational, religious or community objects.
- (3) In an advertisement for an auction, the holder of the auction permit may, without the prior approval of the Registrar, also include the name of the brands of liquor and the source of the liquor that will be offered for sale by auction.
- (4) A permit holder authorized to conduct a lottery event in accordance with paragraph 207(1)(b) of the Criminal Code (Canada) may, without the prior approval of the Registrar of Alcohol and Gaming, advertise that liquor is a prize to be awarded at the event and state the type and brand of liquor to be awarded, the name of the manufacturer donating the liquor and any rules and restrictions governing the event.
- (5) Subsection (2), (3) and (4) do not apply to a permit holder for an event that is a reception.
- (6) Where prior approval is not required, advertising must still comply with all the guidelines.
- (7) Where an advertisement has been submitted for approval to the Registrar and approval has been denied this section does not permit the use of the advertisement.

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## 2. APPROVAL PROCEDURES

- (1) **Any advertising submitted for approval shall be submitted on a form supplied by the Registrar at least 14 days prior to the date that a response is required.**
- (i) To apply for approval the following procedures must be adhered to:
- (a) Applications for approval must be submitted with a completed "Request for Approval of Advertising" form.
  - (b) All material submitted for approval must be submitted in duplicate.
  - (c) Submissions of radio commercials in script form or television commercials in script and storyboard form may be given approval in principle. Approval and the issuance of an approval number will not be assigned until the produced commercial has been submitted. However, when possible, the approval number will be assigned within five days following the submission of the produced message if the script and storyboard have already received prior approval in principle. (Tapes will be retained by the Registrar.)
- (ii) The Registrar (or a designate) may review and recall any approval from time to time as he or she may deem appropriate, based on the *Liquor Licence Act* and regulations. The Registrar (or a designate) will take into consideration a licensee's or permit holder's commitments to placement of the advertisement and will attempt to provide as much advance notice as possible.
- NOTE: Applications received less than fourteen (14) days prior to the date of the intended display of the advertisement or promotional activity may not be reviewed or approved prior to the date required.
- It is the responsibility of the licensee or permit holder to ensure that all advertising complies with any existing federal, provincial, or municipal laws.
- (iii) Approval of advertising by the LCBO does not guarantee compliance with these guidelines.

- (2) The Registrar, or staff of the Commission designated by the Registrar for such purpose, may:**
- (i) approve an advertisement that complies with the regulations and guidelines,**
  - (ii) attach conditions to an approval to give effect to the purposes of the regulations and guidelines,**
  - (iii) refuse to approve an advertisement submitted that does not comply with the regulations and guidelines.**

### **3. APPEAL PROCEDURES**

**Where approval for an advertisement is refused or granted with conditions and the applicant objects and files written reasons within 15 days to the Registrar, the Registrar will review the matter and may approve, approve with conditions, or refuse to approve the advertisement.**

- (i)** Staff of the Commission designated by the Registrar processes the initial review of a submission for approval of advertising. If an applicant is dissatisfied with the decision of staff the applicant may appeal the decision.
- (ii)** Prior to the Registrar's review the applicant shall provide written submissions succinctly outlining the basis for their appeal and may request to meet with the Registrar to present these submissions.
- (iii)** The Registrar will review the applicant's and staff's submission together with the appropriate regulations, guidelines and policies. The Registrar's decision will be communicated to the applicant following the meeting.
- (iv)** The process may require more than 10 working days.

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4. **GUIDING PRINCIPLES FOR ADVERTISING BY HOLDERS OF FERMENT ON PREMISE AND LIQUOR DELIVERY LICENCES AND SPECIAL OCCASION PERMIT HOLDERS**

When considering requests for prior approval the following principles will be considered, as applicable:

Except for public service advertising, the holder of a ferment on premise or liquor delivery licence or special occasion permit must ensure that any proposed advertising:

- (1) is consistent with the principle of depicting responsibility in use or service of liquor;**
  - (i) An advertisement cannot promote excessive consumption or depict excessive or prolonged consumption, or excessive quantity of liquor, or occasions of use or drinking situations, which are likely to involve risk to those present. An example of excessive consumption, which cannot be implied, is consumption of more than three drinks on an occasion.
- (2) promotes a general brand or type of liquor and not the consumption of liquor in general;**
  - (i) Advertisements may not promote the merits of consumption.
  - (ii) Advertisements may not make claims, direct or implied, of healthful, nutritive, curative, dietetic, stimulative or sedative benefits of the liquor product. However, factual attributes of the liquor product which are commonly accepted by recognized authorities (such as the Centre for Addiction and Mental Health, Health & Welfare Canada, or national or provincial medical associations) may be stated in the advertisement provided the attributes relate to the particular brand or type of liquor and does not promote the consumption of liquor in general.
- (3) does not imply that consumption of liquor is required in obtaining or enhancing:**
  - (a) social, professional or personal success,**
  - (b) athletic prowess,**
  - (c) sexual prowess, opportunity or appeal,**
  - (d) enjoyment of any activity,**
  - (e) fulfilment of any goal, or**
  - (f) resolution of social, physical or personal problems.**

- (i) Endorsement of a liquor product by well-known personalities shall not directly or indirectly suggest that the consumption of any liquor has contributed to the success of their particular endeavours.
- (4) does not appeal, either directly or indirectly, to persons under the legal drinking age, or is not placed in media that are targeted specifically at people under that age;**
- (i) No well-known personality may be used in liquor advertising who may reasonably be expected to appeal, either directly or indirectly, to persons under the legal drinking age if the advertisement contains any direct or indirect endorsement of liquor or the consumption of liquor. This may include historical, political, religious and cultural figures as well as celebrities and sports figures. (This would not apply to public service advertisements provided there is no direct or indirect endorsement of liquor or consumption of liquor by the well-known personality.)
  - (ii) Children's songs, fictional characters etc., or the imitation thereof, may not be used in advertising.
  - (iii) A holder of a licence or a special occasion permit may donate corporate or brand identified scholarships, bursaries and scholastic prizes to be awarded to post secondary school students.
  - (iv) The use of a medium that is targeted at persons under the legal drinking age is not permitted. For example advertisements may not appear in magazines targeted specifically at people under the legal drinking age. Advertisements may run in conjunction with movies in movie theatres or on videos which have a "Restricted to persons 18 or older" (R) rating and may not run in conjunction with movies which have a "Suitable for All" (G) rating. Subject to the Ontario Film Review Board guidelines, movies with "Parental Guidance Recommended" (PG), "Persons younger than 14 must be accompanied by an adult" (14<sup>A</sup>) and "Persons younger than 18 must be accompanied by an adult" (18<sup>A</sup>) ratings will have to be dealt with cautiously to ensure the movie itself is not targeted specifically at persons under the legal drinking age. Stationary outdoor advertising should not be placed within 200 metres of a primary or secondary school.
  - (v) Advertisements should not be placed within areas which are specifically targeted at persons under the legal drinking age if the

advertisement directly or indirectly endorses liquor or the consumption of liquor. Statistics indicating that 51% of the audience are above the legal drinking age may not in itself avoid the targeting restriction since a medium or venue may be targeted at persons under the legal drinking age and still have an audience which is predominantly above the legal drinking age. An example of this would be a children's concert which is attended by a large number of parents.

- (vi) Songs, which have a specific appeal to persons under the legal drinking age, shall not be used for advertising.
- (vii) Portrayals of well-known personalities which would generally be prohibited due to the potential that the personality may appeal to persons under the legal drinking age may be used provided the use of the personality is incidental to the advertisement and the use of the personality does not make the advertisement appealing to persons under the legal drinking age.
- (viii) Notwithstanding this subsection, any advertising, which does not refer to the availability of liquor, may appeal to persons under the legal drinking age and may be placed in media targeted specifically at people under the legal drinking age.

**(5) does not associate consumption of liquor with driving a motorized vehicle, or with any activity that requires care and skill or has elements of danger;**

- (i) Persons should not be depicted with liquor prior to, in anticipation of, or while engaging in any activities which involve care and skill or elements of physical danger. (An activity includes work, sports, recreation, crafts, and hobbies.) Some examples of activities, which are considered to be activities, which involve care and skill or elements of physical danger, are:

skiing	swimming	hockey	child care	hunting
football	baseball	working	volleyball	racing
studying	boating	carving	surfing	etc.

- (ii) Consumption should not be associated with the performance of any aspect of any activity, which calls for a high degree of skill if imitation by the unskilled or underage could be considered dangerous.

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- (iii) The depiction of an activity which involves care and skill or elements of physical danger must clearly establish that the individuals shown with liquor are merely spectators or have completed that activity for the day and are then depicted with the product.
  - (iv) Vehicles involved in races, competitions, contests, exhibitions, or public displays may be used as a medium for liquor advertising; however, graphics of the product (i.e. bottles, cans, glasses, etc.) and specific references to alcohol content (% alcohol / volume) are not permitted.
- (6) does not depict motorized vehicles in motion in advertising showing consumption of liquor, unless the motorized vehicle is a form of public transportation;**
- (i) Persons should not be depicted with liquor prior to, in anticipation of, or while operating a motorized vehicle. There cannot be any indication, direct or implied, that an individual who has been depicted with liquor will then be operating a motorized vehicle.
  - (ii) Motorized vehicles should not be shown in motion in an advertisement, which includes a consumption scenario unless the vehicle is a form of public transportation. Parked vehicles, or vehicles such as buses, trains, planes, taxicabs, licensed boats, etc., in motion, may appear in advertisements with consumption scenarios.
  - (iii) Motorized vehicles involved in races, competitions, contests, exhibitions, or public displays may be used as a medium for liquor advertising, however, graphics of the product (i.e. bottles, cans, glasses, etc.) and specific references to alcohol content (% alcohol / volume) are not permitted.
- (7) does not suggest any illegal sale, illegal purchase, illegal gift, illegal handling or illegal consumption of liquor.**
- (i) An advertisement may not depict a licensee gifting any patron with liquor, or an individual gifting a person under the legal drinking age with liquor.
  - (ii) The illegal handling of liquor may not be depicted. For example smuggling liquor across a border may not be depicted.

- (iii) The consumption of liquor may not be depicted or implied in settings where this would not be legal in Ontario such as public beaches, public parks, private boats without sleeping accommodations, etc.
- (iv) Liquor may be depicted in a setting where consumption is not permitted provided it is clearly a beauty shot with no evidence of people or of previous or imminent consumption.

**5. The holder of a licence to operate a ferment on premise or liquor delivery service or special occasion permit shall not offer a gift or the opportunity to receive a gift that requires the purchase of liquor.**

- (i) Offers linked to a single purchase of services or ingredients are permitted but not linked to multiple purchases such as a frequent buyer's club.