

September 10, 2002

Telephone: (717) 783-9454
FAX: (717) 787-8820

Brian Murphy
murphymrsi@hotmail.com

RE: Free Drink Coupon

Dear Mr. Murphy:

ISSUE: This office is in receipt of your e-mail of August 1, 2002. You have asked whether a coupon could be distributed to prospective customers that would be redeemable for one (1) free alcoholic or non-alcoholic beverage. Second Floor Food Services, Inc. holds Restaurant Liquor License No. R-03415 (LID 0045650).

OPINION: Section 493(24) of the Liquor Code [47 P.S. § 4-493(24)] prohibits retail licensees from offering anything of value to induce the purchase of alcoholic beverages. While there is an exception pertaining to coupons, such coupons may only be issued by manufacturers or their agents. Allowable coupons are only those offered on licensed premises and redeemable for monetary rebates on purchases of wine, spirits, malt or brewed beverages with proof of purchase. In addition, the Board's Advisory Notice No. 10 (6th Revision) provides that retail licensed establishments may give to or purchase only one (1) alcoholic beverage for each patron on their licensed premises, if the giving of the alcoholic beverage is not contingent upon the purchase of any other alcoholic beverage. [PLCB Advisory Notice No. 10 (6th Revision) copy included]. A promotion limited to one (1) complimentary alcoholic beverage per patron would be permissible so long as participation is not limited to those who acquire a coupon. The coupon for the non-alcoholic beverage would also be permissible provided it was not contingent on the purchase of any alcoholic beverage.

Should you have any further questions, please do not hesitate to contact this office.

THIS OPINION APPLIES ONLY TO THE FACTUAL SITUATION DESCRIBED HEREIN AND DOES NOT INSULATE THE LICENSEE OR OTHERS FROM CONSEQUENCES OF CONDUCT OCCURRING PRIOR TO ITS ISSUANCE. THE PROPRIETY OF THE PROPOSED CONDUCT HAS BEEN ADDRESSED ONLY UNDER THE LIQUOR CODE AND REGULATIONS. THE

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LAWS AND POLICIES ON WHICH THIS OPINION IS BASED ARE SUBJECT TO CHANGE BY THE LEGISLATURE OR THE PENNSYLVANIA LIQUOR CONTROL BOARD.

Very truly yours,

FAITH S. DIEHL
CHIEF COUNSEL

Attachment

cc: Pennsylvania State Police,
Bureau of Liquor Control Enforcement

LCB Advisory Opinion No. 02-341

June 1, 2000

ADVISORY NOTICE NO. 10 (6TH REVISION)

SUBJECT: Trade Practices

TO: All Retail and Wholesale Licensees; Manufacturers; Importers and Holders of Vendor's Permits

NOTE: This notice is issued to replace in its entirety previous PLCB Advisory Notice #10 dated August 18, 1999.

The purpose of this notice is to summarize the more pertinent information relating to trade practices for retail and wholesale licensees, manufacturers, importers and holders of vendor's permits as formerly contained in previous PLCB Bulletins and as affected by current provisions of the Liquor Code and Board Regulations.

A. Things of Value - In Pennsylvania it is generally unlawful to give, solicit or receive things of value as direct inducements to purchase alcoholic beverages. Licensees may not request favors or considerations as conditions of purchase. Exceptions to this general rule are enumerated below:

1. **Samples** - Samples for market research and for the purpose of educating consumers may be provided as follows:
 - a. Malt Beverage Manufacturers, Distributors (D's) and Importing Distributors (ID's) - Samples may be provided by manufacturers' representatives and D and ID licensees to licensed and unlicensed customers. Samples must be in unopened containers of the smallest commercially available size and the providing of such samples cannot be conditional upon any purchase requirement. Samples may not be opened or consumed on Distributor or Importing Distributor licensed premises. Samples are limited to one container per patron in any offering.
 - b. Liquor and Wine Manufacturers, Vendors and Vendors' Agents - Samples may be provided to licensees and non-licensees subject to Board Regulations as contained in Title 40 Pa. Code, Chapter 13, Subchapter B, Promotion of Sale of Liquor by Vendors. Such samples must be procured and marked in accordance with Board Regulations and may not be left on retail licensed premises.

2. **Tastings** - Product tastings for market research and for the purpose of educating consumers as to the qualities and availability of wines, spirits or malt/brewed beverages may be conducted by manufacturers, their representatives, D's, ID's or retail licensees on unlicensed premises or on retail licensed premises (hotels, restaurants and clubs) provided they adhere to the following:
 - a. Products used are legally procured, properly registered and tax paid.
 - b. There is no purchase requirement associated with the tasting.
 - c. There is no cooperative advertising associated with the tasting event.
 - d. Wine and spirits manufacturers or their agents are registered pursuant to Board Regulations.
 - e. No more than one standard size alcoholic beverage of each product shall be provided to each tasting participant.

3. **Bar Spending/Giving Free Drinks** - Representatives of manufacturers and retail licensees may give to or purchase an alcoholic beverage for consumers in retail licensed premises (hotels, restaurants, clubs) provided the giving of the alcoholic beverage is not contingent upon the purchase of any other alcoholic beverage. Bar spending or free drinks are limited to one alcoholic beverage per patron in any such offering.

4. **Educational Seminars** - Licensees of any class may conduct educational seminars for other licensees or groups of licensees providing only instruction to participants. Licensees conducting seminars may not assume the costs for food, alcoholic beverages, lodging or transportation for attendees.

5. **Interior Displays** - Retail licensees may utilize signs and displays which have been approved by the Board in accordance with Title 40 Pa. Code Section 13.42 or 13.43 (Board Regulations), as applicable, advertising the brands produced by any one manufacturer of liquor or malt/brewed beverages subject to the following conditions:
 - a. Window and Doorway Displays -
 1. May be furnished at no charge by manufacturers or malt/brewed beverage distributors or importing distributors.
 2. May not exceed 600 square inches.
 3. Individual signs or placards may contain more than one brand produced by an individual manufacturer.
 4. There is no cost limit for window and doorway displays.

- b. Interior Point of Sale Displays -
 1. May be furnished at no extra charge by manufacturers or malt/beer beverage distributors or importing distributors.
 2. The total cost of all point-of-sale advertising material relating to any one brand of any one manufacturer displayed at any one time may not exceed \$300, whether one item or several items.
 3. There is no size limit for interior displays.
 - c. Signs or displays used in a window and/or doorway and in the interior shall meet the requirements for both maximum area and maximum value.
6. **Advertising Novelties** - Novelty items bearing advertising matter such as matches, disposable lighters, bottle or can openers, tee shirts, caps, corkscrews, pens and pamphlets may be distributed with or without proof of purchase by any class of licensee to trade (licensee) or consumer buyers. Advertising novelty items are limited to a wholesale cost of \$15 or less each. Licensees are cautioned that the Liquor Code deems it unlawful for any licensee to provide equipment or fixtures to other classes of licensee [47 P.S. §493(17)]. Thus, advertising novelties to be used in a licensed business, such as beer buckets, coasters or ashtrays, which may be construed as equipment, should not be distributed to trade buyers.

Advertising Banners/Signs – Advertising banners/signs for exterior use are considered advertising novelties by the Board if the banner/sign conspicuously advertises the products sold by the licensee or the name of the manufacturer of products sold by the licensee. The wholesale cost of such banner/sign must be \$15 or less each. Outside advertising banners/signs must comply with the provisions of section 498 of the Liquor Code. Advertising and banners/signs that are used for interior display are not subject to the \$15 advertising novelty cost limit, but are subject to the \$300 per brand point of sale advertising limit set forth in section 493(20)(i).

7. **Wine Lists/Menus** - Manufacturers or importers may furnish, give, rent, loan or sell wine lists or menus to retail licensees. Such wine lists/menus may involve cooperative endeavors related to cost sharing and advertisement between manufacturers/importers and retail licensees. Wine lists/menus for on-premises use may contain preprinted prices.
8. **Routine Business Entertainment** - Manufacturers and licensees may give or receive meals and/or tickets to entertainment events. The donor or a representative must accompany the recipient during the entertainment, which is limited to \$800 per licensee per year. [40 Pa. Code §§13.1; 13.51].

B. Promotional Items - Licensees of any class may sell promotional items advertising their own business only, such as tee-shirts, mugs, caps, etc. to the general public.

C. Manufacturer's Rebate Coupons - In accordance with the provisions of the Liquor Code [47 P.S. §493(24)], which permits the offering of monetary rebates on purchases of wines, spirits and malt/brewed beverages by manufacturers or their agents, the Board has established the following conditions for coupon offers:

1. Malt/Brewed Beverages -

- a. All malt/brewed beverage monetary rebate coupons must be directed to retail customers only. No licensee of the Board is permitted to directly or indirectly participate as the recipient of a coupon monetary rebate. Because instant refunds are not permitted, rebates must be redeemed only by mail.
- b. All monetary rebate coupons for malt/brewed beverages shall only be available on licensed premises and must contain the following:
 1. Initiation and expiration date of the coupon.
 2. The rebate value.
 3. Provision for the name and address of the individual redeeming the coupon.
 4. The identity of the manufacturer or manufacturer's agent.
 5. A description of the product including, but not limited to, the brand name and size.
 6. A warning statement that the purchase of the product and the rebate offer is restricted to persons of 21 years or older.
- c. All malt/brewed beverage monetary rebate coupon offers must require submission of proof of purchase in the form of sales slip or cash register receipt. Malt/brewed beverage coupon rebate offers may also require additional product related proofs of purchase.
- d. Manufacturers must maintain complete records of each coupon offering available for inspection for a period of at least two years following the expiration date of each offering.

2. Wines and Spirits - Wine and spirit monetary rebate coupons must be pre-approved and coordinated for use through Pennsylvania Wine and Spirits Shoppes. The following is applicable to wine and spirit monetary rebate coupons:

- a. They may be offered on licensed premises or at wine and spirit shoppes.
- b. Proof of purchase is required for redemption.
- c. They may only be redeemed by mail.

Additional details regarding the use of such coupons in conjunction with Pennsylvania Liquor Store sales can be obtained from Pennsylvania Liquor Control Board, Bureau of Logistics, Room 219, Northwest Office Building, Harrisburg, PA 17124.

D. Brand Name Cooperative Advertising Between Malt/Brewed Beverage Manufacturers and Importing Distributors or Distributors - Pursuant to Liquor Code Section 493(20)(ii) [47 P.S. §493(20)(ii)], after prior written agreement, manufacturers may reimburse importing distributors or distributors for the cost of painting the manufacturer's beer brand logos on importing distributors' or distributors' delivery vehicles.

E. Sweepstakes- Manufacturers may conduct sweepstakes promotions under the following conditions:

1. No purchase is necessary to enter.
2. Entrants must be 21 years of age or older.
3. Winners are chosen by random drawing.
4. Retail licensed premises (restaurants, hotels, clubs) may only be involved as pick-up or drop-off points for entry forms and not for the conducting of drawings or the awarding of prizes.
5. Alcoholic beverages may not be a prize.

It should be noted that trade practices are further regulated by the Federal Bureau of Alcohol, Tobacco and Firearms. In this regard, it is advisable to consult Title 27 of the Code of Federal Regulations.

The provisions of this Advisory Notice are effective immediately. Please govern your operations accordingly.

**BY ORDER OF:
THE PENNSYLVANIA LIQUOR CONTROL BOARD
John D. W. Reiley
Secretary to the Board**