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Deborah A. Rossi  
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**RE: Trade Practice Questions**

Dear Ms. Rossi:

ISSUE: This office is in receipt of your e-mail containing seventeen (17) multiple-part questions pertaining to trade practice activities.

OPINION: Responses to your questions follow:

*1. Is there a dollar limitation on Retailer Advertising Specialties given by a supplier to a retailer?*

Section 493(24) of the Liquor Code [47 P.S. § 4-493(24)] provides, in part, that it shall be unlawful for any licensee, manufacturer or other person to offer or give to trade or consumer buyers any prize, premium, gift or other inducement to purchase liquor or malt or brewed beverages, except advertising novelties with the wholesale value of fifteen dollars (\$15.00) or less. [Board Advisory Notice No. 10 (6<sup>th</sup> Revision)].

In addition, Section 13.51 of the Board's Regulations [40 Pa. Code § 13.51] prohibits licensees of one (1) class from offering anything of value to, or accepting anything of value from, a licensee of another class. There is an exception for advertising novelties of nominal value, which bear advertising matter. [40 Pa. Code § 13.52]. "Nominal

value” currently is interpreted as fifteen dollars (\$15.00) each, wholesale cost, or less. [Board Advisory Notice No. 10 (6<sup>th</sup> Revision)].

Further, interior point-of-sale displays (other than window and door displays) may be furnished by manufacturers or malt/brewed beverage distributors or importing distributors to wholesale and retail licensees at no charge. The cost may not exceed three hundred (\$300.00) dollars per brand at one (1) time. [Board Advisory Notice No. 10 (6<sup>th</sup> Revision); 47 P.S. § 4-493 (20); 40 Pa Code §§ 13.42, 13.43].

*2. Is it permissible for a Supplier to give product displays to retail licensees? If so,*

- a. What are examples of product displays?*
- b. Is there a dollar limitation?*
- c. Is there a section or regulation covering the above?*
- d. If not, is there a section or regulation covering this?*

Section 493(20)(i) of the Liquor Code [47 P.S. § 4-493(20)(i)] provides that it shall be unlawful:

For any retail liquor or retail malt or brewed beverages licensee, to display or permit the display in the show window or doorways of his licensed premises, any placard or sign advertising the brands of liquor or malt or brewed beverages, if the total display area of any such placard or sign advertising the product or products exceeds six hundred square inches. Nothing herein shall prohibit a licensee from displaying inside his licensed premises point of sale displays advertising brand names of products sold by him, other than a window or door display: Provided, that the total cost of all such point of sale advertising matter relating to any one brand shall not exceed the dollar amount set forth by the board through regulation. All such advertising material, including the window and door signs, may be furnished by a manufacturer, distributor or importing distributor.

Items which qualify as point-of-sale (POS) advertising material may be provided by a supplier to a retail licensee. The total cost of all POS advertising material relating to any one (1) brand of any one (1) manufacturer displayed at any one (1) time may not exceed three hundred dollars (\$300.00) on retail licensed premises. [Board Advisory Notice No. 10 (6<sup>th</sup> Revision)].

The Liquor Code and Board Regulations do not provide examples of acceptable product displays.

*3. Is there a dollar limitation on the giving of inside signs? If so, what section/regulation covers this?*

Equipment, including signs, may not be provided to a licensee by another licensee unless such qualifies as point-of-sale advertising material [42 P.S. 4-493(12); 40 Pa. Code 13.51]. Section 493(20)(i) of the Liquor Code allows retail licensees to place point-of-sale on their licensed premises so long as the total cost of the point-of-sale does not exceed three hundred dollars (\$300.00) per any brand of alcoholic beverages. [47 P.S. § 4-493(20)(i); Board Advisory Notice No. 10 (6<sup>th</sup> Revision)]. Further, retail licensees are permitted to display in show windows or doorways, placards or signs advertising brands of liquor or malt or brewed beverages if the total display area of such placard or sign is six hundred (600) square inches or less.

- 4. Can a Supplier give or sell outside signs to a retail licensee? If so,*
- a. Is there a dollar limitation?*
  - b. Is there a section or regulation covering the above?*
  - c. If not, is there a section or regulation covering this?*

Section 13.51 of the Board's Regulations provides that no manufacturer, licensee or group of licensees, their servants, agents or employees, may directly or indirectly contribute to or accept from another licensee or group of licensees of a different class, anything of value by means of advertisements, contributions, purchase, sale of tickets, donations or by any device, for any purpose. [40 Pa. Code § 13.51(a)]. There is an exemption for advertising novelties of nominal value. [40 Pa. Code § 13.52]. "Nominal value" currently is interpreted as fifteen dollars (\$15.00) each, wholesale cost, or less. [Board Advisory Notice No. 10 (6<sup>th</sup> Revision)]. However, painted signs affixed to a building are not construed as advertising novelties and, therefore, may not be provided to a licensee by another licensee of a different class.

In contrast, advertising banners for exterior use are construed to be advertising novelties by the Board, if the banner conspicuously advertises a product sold by the licensee or the name of the manufacturer of products sold by the licensee and they meet the wholesale cost limits. A manufacturer or distributor may provide

such banners to a retail licensee. These rules apply even if nonalcoholic brands are also advertised on the same banner.

As to both banners and affixed painted signs, section 498(e)(3) of the Liquor Code prohibits print advertisements of alcoholic beverages of any type within three hundred (300) feet of any church, school, or playground. [47 P.S. § 4-498(e)(3)]. Print advertisements prohibited within three hundred (300) feet of a church, school, or public playground include written advertisements on posted signs such as billboards or banners which advertise the availability or prices of alcoholic beverages. Outside advertisements simply indicating the name of the licensed establishment or the availability or prices of products other than alcoholic beverages are also permitted regardless of the three hundred (300) foot rule.

Signs and banners produced and displayed by the retail licensee itself are subject only to the foregoing proximity limitations, and the Board's Regulations on print advertising. Section 498(a) of the Liquor Code permits establishments, manufacturers and shippers to advertise their products and prices in the Commonwealth. [47 P.S. § 4-498(a)]. No advertisement of products or prices, however, may contain the following: (1) any statement that is false, deceptive or misleading; (2) any statement that is disparaging of the products of a competitor; or (3) any statement referring to monetary comparisons between brands. [47 P.S. § 4-498(b)(1)-(3)]. The entity responsible for the advertisement shall be clearly identified in the advertisement. [47 P.S. § 4-498(e)(1)]. No advertisement may use any subject matter, language or slogan directed to minors to promote the consumption of alcoholic beverages by minors. [47 P.S. § 4-498(e)(4)]. No advertisement that is obscene is allowed. [47 P.S. § 4-498(e)(6)]. Advertisements shall not be inconsistent with the spirit of safety or safe driving programs. [47 P.S. § 4-498(f)].

*5. Can a Supplier sample retail licensees?*

- a. Are there any limitations?*
- b. Is there a section or regulation covering the above?*
- c. If not, is there a section or regulation covering this?*

Section 13.211 of the Board's Regulations provides that tastings may be conducted by licensed brokers, distributors, importing distributors and manufacturers or their agents upon licensed or unlicensed premises. [40 Pa. Code § 13.211]. Such tastings must be conducted as follows: 1) Products used shall be legally procured

and properly registered and taxes on the products shall be paid; 2) Purchase requirements may not be associated with the tasting; and 3) No more than one (1) standard-size alcoholic beverage of each product shall be provided to each tasting participant. A “standard-size alcoholic beverage” is defined by section 13.201 of the Board’s Regulations as “twelve (12) fluid ounces of malt or brewed beverage, four (4) fluid ounces of wine (including fortified wine) or one and one half (1½) fluid ounces of liquor.” [40 Pa. Code § 13.201].

There are no forms that must be completed in order to conduct a tasting, and prior permission from the Board is not necessary.

Please be aware that a tasting is different from a sampling promotion. A sampling promotion is intended to introduce consumers to the manufacturer’s product. Samplings must adhere to the following criteria: (1) samples may be provided by the manufacturer’s representatives and distributor or importing distributor licensees to licensed and unlicensed customers; (2) samples must be in unopened containers of the smallest commercially available size; (3) the providing of such samples cannot be conditioned upon any purchase requirement; (4) samples may not be opened or consumed on State Liquor Store premises or distributor or importing distributor licensed premises; (5) samples are limited to one (1) container per patron in any offering. [40 Pa. Code § 13.231 and Board Advisory Notice No. 10 (6<sup>th</sup> Revision)].

The Liquor Code and the Board’s Regulations are silent on the time length of a tasting or a sampling. On a licensed premises, such an event could only occur during the hours and on the days the premises is licensed to operate. [47 P.S. 4-493(16)]. There is nothing in the Board’s Regulations that would prohibit a supplier from offering such a tasting or sampling promotion to its retail licensees and their employees, provided they adhere to the aforementioned rules.

6. *Can a Supplier provide tastings/samplings to consumers?*
- a. *Are there any limitations?*
  - b. *Is there a section or regulation covering the above?*
  - c. *If not, is there a section or regulation covering this?*

See response to Question 5. Please also be advised that if access to the tasting requires payment of any kind of fee, it would be considered a sale, and the above prohibition of any purchase requirement being associated with the tasting would be

violated and could, depending on the particulars of the promotion, result in the issuance of a citation against a license if the tasting is being held on licensed premises.

*7. Can a Supplier send mailings to consumers, either by mail or by Internet? If so, is there a section or regulation covering this?*

Section 498 of the Liquor Code permits the advertisement of alcoholic products and their prices in the Commonwealth, subject to certain restrictions. One (1) such restriction is found in section 498(e)(2), which provides that no licensee may distribute, by mail, personally or through its servants, agents or employees, price lists, circulars or handbills off the licensed premises to the general public as a means of advertising liquor, wine or malt or brewed beverages. [47 P.S. § 4-498(e)(2)]. As previously indicated in this office's June 15, 2004 response to your May 26, 2004 inquiry, the e-mailing of product information by a manufacturer or licensee is included in the general prohibitions on distribution of circulars and handbills off the licensed premises. [See Advisory Opinion No. 04-317].

Board Advisory Notice No. 15 provides for circumstances under which a manufacturer or licensee may provide circulars or mailings off the licensed premises. If a circular or mailing does not advertise the availability of alcoholic beverages or their prices, such mailings would be permissible without restriction. If a circular or mailing does advertise the availability of alcoholic beverages and/or their prices, such publications may not be provided to the general public off the licensed premises. However, it would be permissible for a supplier to send mailings or circulars to a distinct group of individuals of legal drinking age who have specifically requested to receive such mailings from the company.

*8. Can a Supplier sponsor special events, i.e., trade shows, concerts and is there a law or regulation covering this?*

Section 5.32(e) of the Board's Regulations [40 Pa. Code § 5.32] permits a retail licensee to hold, or permit to be held, on its licensed premises an event, tournament, or contest, but only under certain conditions. One (1) of these conditions is that, except under certain circumstances not relevant herein, it must be self-sponsored, i.e., paid for and carried out by the licensee itself. [40 Pa. Code § 5.32(e)(5)]. Therefore, a supplier cannot sponsor an event on licensed premises.

However, there is nothing in the Liquor Code or Board regulations that would prohibit a supplier from sponsoring an event off of licensed premises.

*9. I believe it is permissible to advertise in the print media, television and radio. Is it permissible to advertise on the Internet and is there any particular section/regulation covering this?*

Section 498 of the Liquor Code [47 P.S. § 4-498] (discussed above), permits a manufacturer to advertise its products and prices in the Commonwealth, subject to all federal and state laws and regulations. Section 498 also lists the restrictions on such lawful advertising. Internet information about alcoholic beverages is considered advertising under section 498.

*10. Can a Supplier provide alcoholic beverages to a charitable/religious/civic or educational organization for that organization to auction off at its event? If so,*

*a. Are there any limitations?*

*a. Is there a section or regulation covering the above?*

*b. If not, is there a section or regulation covering this?*

Section 13.51 of the Board's Regulations provides that no licensee or group of licensees, their servants, agents or employees, may directly or indirectly, in person, individually or through a trade organization, contribute to or accept from another licensee or group of licensees of a different class, their servants, agents or employees, or a trade organization of licensees of a different class, anything of value by means of advertisements, contributions, purchase, sale of tickets, donations or by any device for any purpose. [40 Pa. Code § 13.51]. Accordingly, a retail licensee would be prohibited from accepting donations from other supplier or distributor licensees. However, nothing in the Liquor Code or the Board's Regulations would prohibit a supplier from donating liquor, wine or beer to non-licensee patrons or organizations, who may then bring it onto licensed (or unlicensed) premises and consume it.

Section 491(11) of the Liquor Code prohibits any person, other than the Board or a licensed importer, from importing liquor, including wine, into the Commonwealth. [47 P.S. § 4-491(11)]. All liquor shipped into the Commonwealth must therefore be consigned to the Board or to the principal place of business or authorized place of storage maintained by a licensed importer. Suppliers are permitted, however, to make donations of liquor to non-profit charitable organizations registered with the

Pennsylvania Department of State, so long as the necessary paperwork has been completed, filed with and approved by the Board. This paperwork can be obtained by contacting Deidre Costello in the Board's Bureau of Product Management at (717) 783-8237. In addition, an amount equal to all taxes that would be paid on such alcohol, if it were purchased from a Pennsylvania wine and spirits store, together with a twenty-five cent (\$0.25) handling charge per gallon, must be paid to the Board.

The non-profit charitable organization would be prohibited from auctioning off the donated alcohol unless it held a license or permit from the Board to do so. Certain entities as enumerated in section 408.4 of the Liquor Code [47 P.S. § 4-408.4] may apply for a special occasion permit that is generally issued for a period of not more than six (6) consecutive or non-consecutive days during a calendar year. The holder of such a permit is authorized to sell liquor and/or malt or brewed beverages to persons of legal age on any day for which the permit is issued and in any municipality in which the electorate has approved the sale of liquor and/or malt or brewed beverages. The permit may be used for special events at which the permittee is raising funds for itself. A permit holder may sell alcoholic beverages during the hours of 7:00 a.m. until 2:00 a.m. the following day.

In addition, certain entities, as enumerated in section 408.12 of the Liquor Code [47 P.S. § 4-408.12], may apply for a wine auction permit. This permit is issued for a period for not more than four (4) consecutive or non-consecutive days per calendar year and authorizes the permittee to sell wine by auction, by the bottle or case, to any person on any day for which the permit is issued provided that the permit is issued in a municipality in which the sale of liquor and malt or brewed beverages has been approved by the electorate. Wine auction permits are issued to eligible entities for use at an event that is used for the permittee as a means for raising funds for its operation. Wine auction permittees may sell wine between the hours of 7:00 a.m. and 2:00 a.m. of the following day. Any wine that is sold by the permittee must either be purchased from a Pennsylvania wine and spirits store, Pennsylvania limited winery, or any seller authorized to sell wine by the bottle or case in Pennsylvania, or wine that is donated by a person who is neither a licensee nor a permittee who has legally acquired the wine and legally possesses it in the Commonwealth.

Alternatively, a supplier can always make a cash donation to the charity, which in turn can purchase the products from the Board.

11. *Can a Supplier provide alcoholic beverages to any of the organizations mentioned in Question 10 above for that organization to use at a dinner? If so,*
- a. *Are there any limitations?*
  - b. *Is there a section or regulation covering the above?*
  - c. *If not, is there a section or regulation covering this?*

See response to Question 10.

12. *Can a Supplier provide education seminars for retailer's employees? If so,*
- a. *Are there any limitations?*
  - b. *Is there a section or regulation covering the above?*
  - c. *If not, is there a section or regulation covering this?*

Board Advisory Notice No. 10 (6<sup>th</sup> Revision), provides that "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."

13. *Instant redeemable cents-off coupons are prohibited. Can you tell me what regulation/statute covers this?*

Section 493(24) of the Liquor Code has been amended to now allow manufacturers to offer instant redeemable coupons, monetary rebates on purchases of wines and spirits through the Board's wine and spirits stores, in accordance with conditions and regulations established by the Board. [47 P.S. § 4-493(24)]. No such exception exists for instant redeemable coupons for malt or brewed beverages.

14. *Is there a regulation or statues covering consumer self-liquidating offers, wherein the consumer purchases a product, sends in proof of purchase with an order form, pays a certain amount and receives an item such as a cooler, t-shirt, beach bag, etc.?*

Section 493(24) of the Liquor Code [47 P.S. § 4-493(24)] prohibits the giving of things of value, except for product rebates and advertising novelties, as an inducement to purchase a product. A qualifying advertising novelty bears advertising matter, is distributed with or without proof of purchase, and is limited

to a wholesale cost of fifteen dollars (\$15.00) or less. The offering of merchandise that has a wholesale value greater than fifteen dollars (\$15.00) that is conditioned upon the purchase of alcohol, whether bearing advertising matter or not, is not permissible. In the alternative, the sale of such merchandise without proof of purchase would be acceptable.

*15. Can a supplier give wine lists, table tents or distilled spirits drink lists to retail licensees and is there a law or regulation covering this?*

Section 13.51(a) of the Board's Regulations [40 Pa. Code § 13.51(a)] prohibits manufacturers from giving anything of value by means of advertisements or contributions to licensees of a different class. However, Board Advisory Notice No. 10 (6<sup>th</sup> Revision) provides that "[m]anufacturers 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."

Accordingly, it would be permissible for a retail licensee to accept menus that are paid for by suppliers of spirits, wines and beers, without regard to a set dollar limit.

*16. Can a supplier provide entertainment to a retail licensee? Is there a law or regulation covering this?*

Section 13.51 of the Board's Regulations provides that no manufacturer, licensee or group of licensees, their servants, agents or employees, may directly or indirectly contribute to or accept from another licensee or group of licensees of a different class, anything of value by means of advertisements, contributions, purchase, sale of tickets, donations or by any device, for any purpose. [40 Pa. Code § 13.51(a)]. Further, section 5.32(e) of the Board's Regulations [40 Pa. Code § 5.32(e)] permits a **retail licensee** to hold, or permit to be held, on its licensed premises an event, tournament, or contest, but only under certain conditions. One (1) of these conditions is that, except under certain circumstances not relevant herein, it must be **self-sponsored**, i.e., paid for and carried out by the licensee itself. [40 Pa. Code § 5.32(e)(5)]. Therefore, a supplier cannot sponsor an event on licensed premises or sponsor or pay for live entertainment for a licensee.

17. *Can a supplier name a retailer in advertisements and is there a law or regulation covering this?*

Section 13.51 of the Board's Regulations prohibits licensees or manufacturers from contributing to or accepting from another licensee of a different class anything of value by means of advertisement for any purpose. [40 Pa. Code § 13.51]. Joint or cooperative advertising has been permitted, however, in situations where each licensee is paying for its respective share of the advertisement.

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 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

cc: Pennsylvania State Police,  
Bureau of Liquor Control Enforcement

LCB Advisory Opinion No. 06-504