

April 13, 2011

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

Charles Schnable  
Keewaydin Cider Mill  
**E: Hard Cider Distribution**

Dear Mr. Schnable:

ISSUE: This is in response to your April 4, 2011 e-mail to this office. In your e-mail, you reference your earlier e-mail regarding the Pennsylvania Liquor Control Board's (Board) decision to revoke your brand registration of Keewaydin semi-dry hard cider and Keewaydin semi-sweet hard cider. By Advisory Opinion dated February 22, 2011, this office explained why the Board had revoked the aforementioned registration and had suggested that a possible solution would be to apply for a brewery license. In your e-mail, you indicate why you believe you cannot acquire a brewery from the Board, why you believe you are being treated differently than out-of-state wineries and you reiterate your request to be reinstated in the Board's brand registration system. Board records indicate that Keewaydin Cider Mill LP holds Limited Winery License No. LK-271 (LID 60942) for use by it at 917 Keewaydin Road, Frenchville, Pennsylvania.

OPINION: Section 102 of the Liquor Code defines malt or brewed beverages to include those beverages which meet the definition of alcoholic cider. [47 P.S. § 1-102]. Alcoholic cider is defined by section 102 of the Liquor Code as:

A beverage which may contain carbonation in an amount not to exceed three hundred ninety-two one thousandths of a gram per one hundred milliliters and flavors, produced through alcoholic fermentation of only apples or apple juice, **consisting of at least one-half of one per centum, but not greater than five and one-half per centum, alcohol by volume and sold or offered for sale as alcoholic cider and not as a wine, a wine product or**

**as a substitute for wine,** in bottles, cases, kegs, cans or other suitable containers of the type used for the sale of malt or brewed beverages in this Commonwealth.

[47 P.S. § 1-102.] (Emphasis added)

As explained in the February 22, 2011 Advisory Opinion, while section 505.2 of the Liquor Code allows for limited wineries such as yours to produce both wine and alcoholic cider, it does not authorize limited wineries to sell alcoholic cider to distributors or importing distributors. Therefore, since you may not sell alcoholic cider to distributors or importing distributors, the provisions of section 445 which would otherwise require you to register each brand of alcoholic cider you sell are not applicable. As also explained in the February 22, 2011 Advisory Opinion, acquiring a brewery licensee would allow you to produce alcoholic cider, register specific brands and sell them to distributors and importing distributors. If you intend to use both licenses at the same location, then you will need to ask the Board for specific approval to do so.

In response, you indicate that you cannot acquire a brewery basic permit from the United States Treasury Department, Alcohol and Tobacco Tax and Trade Bureau (“TTB.”) Possession of a basic permit from TTB is not a prerequisite to acquire a brewery license from the Board.

You further indicate that numerous out-of-state wineries have registered brands of alcoholic ciders with the Board and you provided a list of some of those brands along with your letter. A review of that list reveals that most of the entities that you are referring to are located out-of-state and neither hold, nor are required to hold, a license issued by the Board. Therefore, it is not that the Board is treating out-of-state licensed wineries differently than you but rather that those entities are not out-of-state licensed wineries.

In addition, Bube’s Restaurant, Inc. holds brewery license G-329 and Boston Beer Corporation holds alternate brewery license AG-11; they are both therefore licensed as beer manufacturers as required by the Liquor Code. E & J Gallo Winery holds importer license I -729 to import their non-malt or brewed products into Pennsylvania, not to produce alcohol in Pennsylvania. Finally Hauser Estate, Inc. holds both limited winery license LK-256 and brewery license G-423. It specifically obtained the latter license in order to register its brands of alcoholic

cider and to be able to sell them to distributors and importing distributors. Again, this would seem to be the most viable solution for you.

Finally, you noted that you were told that you are unable to sell your alcoholic cider through the Board. That is because the Board does not sell products that meet the definition of a malt or brewed beverage set forth in the Liquor Code. It can sell similar products that do not meet the definition of a malt or brewed beverage. In the case of products like alcoholic cider, such products typically are made similarly to alcoholic cider but contain more alcohol than is permitted in order to be considered alcoholic cider.

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  
Jerry W. Waters, Director of Office of Regulatory Affairs  
Jane Melchior, Director, Bureau of Licensing  
Tisha Albert, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No.: 11-029