

January 24, 2014

Telephone: (717) 783-9454

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John C. Woodward
Third & Spruce Café, Inc.

Re: Discount Pricing Practices Complaint

Dear Mr. Woodward:

ISSUE: This is in response to your e-mail of December 1, 2013, in which you request clarification of whether the discount pricing practices of other licensees are legal. Specifically, you inquire about the alleged practice of licensees having “a separate drink menu that goes into effect after 10:00 p.m.” This menu features drinks that were not available prior to 10:00 p.m., at a lower cost than similar beverages available prior to 10:00 p.m.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that you are the President of Third & Spruce Café, Inc., holder of Restaurant Liquor License No. R-12505 (LID 15578) for premises located at 238 South Third Avenue, West Reading, Pennsylvania.

OPINION: Two (2) daily discounts are permissible to licensees under the Board’s Regulations. Those regulations provide that each day retail licensees may have a daily drink special and a happy hour. [40 Pa. Code § 13.102].

With regard to happy hour pricing, a licensee is permitted to discount any and all alcoholic beverages for a period of time not to exceed four (4) consecutive hours or nonconsecutive hours per day and a maximum of fourteen (14) hours per week. [47 P.S. § 4-406(g)]. During this happy hour, the price of alcoholic beverages may not change. Section 406(g) of the Liquor Code [47 P.S. § 4-406(g)] requires notice of all happy hours to be posted on the licensed premises seven (7) days prior to the happy hour.

In addition to happy hours, a licensee is permitted to offer one (1) specific type of alcoholic beverage at a discounted price all day, or for a portion of the day if it chooses, as a daily drink special. [40 Pa. Code § 13.102(b)(2)]. A specific type of

alcoholic beverage means either a specific registered brand of malt or brewed beverages, a type of wine, a type of distilled spirits or a mixed drink. [Id.].

The following are examples of permissible daily beer specials: a specific brand of beer such as “Blue Hound Pilsner” or “Brendan’s Cream Stout” or “Oil City Light,” but not “all draft” or “all bottled” beer or “all Blue Hound products.” Daily wine specials could be “Chardonnay” or “Merlot,” but not “all white wine” or “all red wine” or “all Kendall’s wines.” Permissible spirits specials would be “Rum and Cola” or “all brandy drinks,” but not “all well drinks” or “all Jackson’s products.” [Board Advisory Notice No. 16 (Amended)].

No discount pricing practice may occur between 12:00 a.m. (midnight) and the legal closing hour for restaurant, hotel, and eating place licensees. [40 Pa. Code § 13.102(a)].

The Liquor Code and decisional law in Pennsylvania prohibit a licensee from offering different prices outside of what is permitted by the Board’s discount pricing practices described above. [See In re Locy, 557 A.2d 1164 (Pa. Cmwlth. 1989)]. However, these regulations speak to changing prices, not the availability of a particular drink or variety of alcohol. So long as the price of the drink does not change in a prohibited manner, the practice would be permissible.

Please be advised that it is the Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”), and not the Board which enforces the liquor laws in Pennsylvania. If you would like to report suspected illegal activity by another licensee, you may contact the Bureau’s toll-free tip line at (800) 932-0602. The Bureau investigates every complaint it receives.

Should you have any questions and/or concerns regarding this matter, please feel free to once again 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 LAWS AND POLICIES ON WHICH THIS OPINION IS BASED ARE SUBJECT TO CHANGE BY THE LEGISLATURE OR THE PENNSYLVANIA LIQUOR CONTROL BOARD.

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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
Tisha Albert, Director, Bureau of Licensing
Jeffrey Lawrence, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No. 13-547