

January 14, 2014

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Nicole Cordero
Brass Rail Beverage
2828 Horseshoe Pike
P.O. Box 43
Campbelltown, PA 17010-0042

Re: Wholesale Sale of Beer and Delivery of Other Products

Dear Ms. Cordero:

ISSUE: This is in response to your e-mail sent on December 2, 2013, wherein you explain that you “wholesale” malt or brewed beverages (“beer”) that you legally purchase from importing distributor (“ID”) licensees. You deliver that beer to restaurants, taverns, hotel, golf courses or any licensee that does not hold a distributor (“D”) or ID license. You have been advised that an ID has been telling your customers that what you are doing is illegal. You ask for clarification from this office.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that Brass Rail Beverage, Inc., holds Distributor License No. D-3810 (LID 36386) for the premises located at 2828 Horseshoe Pike, Campbelltown, Pennsylvania.

OPINION: Under the beer distribution system in Pennsylvania, out-of-state manufacturers whose products are sold and delivered in Pennsylvania are required to give distribution rights for their products to IDs for a specific geographical area within Pennsylvania. [47 P.S. § 4-431(b)]. Written territorial franchise agreements between the out-of-state manufacturer and its ID regulate, among other things, the geographical area in which the ID may sell the manufacturer’s products. [Id.]. IDs may then sell the products to IDs, Ds and other licensees within their appointed territories. [Id.]. A D licensee must purchase all out-of-state products from an ID who has been appointed to the territory in which the D licensee is located. [Id.].

Ds, on the other hand, may sell or deliver malt or brewed beverages anywhere within the Commonwealth of Pennsylvania when such beverages have been purchased from persons licensed in Pennsylvania as manufacturers or IDs. [Id.]. Please be advised that a D licensee must be located within the assigned territory in order to accept the delivery of the malt or brewed beverage because acceptance outside of an assigned territory will result in suspension of the D's license for at least thirty (30) days. [Id.]. Further, please note that contractual obligations between the D and ID may limit the D's ability to sell outside of an assigned territory. A D may not engage in any transaction that violates the terms of its territorial franchise agreement.

Assuming that your deliveries are in compliance with the above, you may continue selling and delivering beer to retail licensees.

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

LCB Advisory Opinion No. 14-001