

March 13, 2014

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Gail Dubois
Regulatory Affairs Assistant
Vermont Hard Cider Company, LLC
153 Pond Lane
Middlebury, VT 05753

RE: Glassware Questions

Dear Ms. Dubois:

ISSUE: This correspondence is in response to your e-mail sent January 23, 2014, wherein you ask whether it is permissible for Vermont Hard Cider Company, LLC (“Vermont Hard Cider”) to give away or sell glassware to a retailer in Pennsylvania. You also ask whether it is permissible for Vermont Hard Cider to put its logo and the retailer’s name on the glassware.

OPINION: Generally, the Liquor Code prohibits the providing of anything of value as an inducement to purchase alcohol. [47 P.S. § 4-493(24)(i)]. Moreover, section 443(d) of the Liquor Code prohibits malt or brewed beverage manufacturers from either directly or indirectly giving anything of value to a retail licensee for equipping, fitting out, or maintaining or conducting its business. [47 P.S. § 4-443(d)]. Similarly, section 13.51 of the Board’s Regulations also prohibits manufacturers, and their servants, agents or employees, from contributing to or accepting from another licensee or group of licensees of a different class, their servants, agents or employees, anything of value by means of advertisements, contributions, purchase, sale of tickets, or donations or by any device, for any purpose. [40 Pa. Code § 13.51].

However, the Liquor Code and the Board’s Regulations allow manufacturers and licensees to provide advertising novelties of nominal value, which bear advertising matter, to other licensees and consumers with or without a purchase. [47 P.S. § 4-493(24); 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 (6th Revision)]. Such advertising novelty giveaways may or may not be conditioned on the purchase of an alcoholic beverage.

Nevertheless, the Liquor Code and the Board's Regulations prohibit the giving of advertising novelties to other classes of licensees to be used as equipment. [47 P.S. § 4-493(17); 40 Pa. Code § 13.52(c)]. Glassware would be considered equipment to retail licensees, and thus, could not be provided free to retail licensees. However, glassware may be sold to retail licensees at no less than cost. [Id.]. Additionally, this office has historically approved cooperative advertising between manufacturers of malt or brewed beverages and retail licensees, so long as each party pays its proportionate share of the cost of advertisement.

Therefore, to summarize, it would not be permissible for Vermont Hard Cider to give away free glassware to a retail licensee in Pennsylvania; however, it would be permissible for Vermont Hard Cider to sell glassware to a retail licensee in Pennsylvania at no less than cost. Furthermore, it would be permissible for Vermont Hard Cider to put both its logo and the name of the Pennsylvania retailer on the glassware, so long as each party pays its proportionate share of the cost involved with doing so.

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. 14-074