

July 8, 2014

Telephone: (717) 783-9454

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Alan Miller, Jr.
Millbock Brewing Company

RE: Brand Registration and TTB Ruling

Dear Mr. Miller:

ISSUE: This office is in receipt of your e-mail of June 3, 2014, in which you state that the Alcohol and Tobacco Tax and Trade Bureau (“TTB”) has issued Ruling 2013-1 dated March 27, 2013, “Malt Beverages Sold Exclusively in Intrastate Commerce (“the TTB Ruling”).” The TTB Ruling provides that brewers are not required to obtain a certificate of label approval (“COLA”) in order to bottle or pack malt beverages that will not be shipped or delivered for sale or shipment into another state.

You state that you do not distribute your products outside of Pennsylvania. Based on the TTB Ruling, you ask whether the Pennsylvania Liquor Control Board (“Board”) nonetheless requires brewers to follow the instructions on the PLCB-1905 Brand Registration Form, which states that registrants are required to submit, among other items, a copy of the TTB’s COLA form 5100.31.

Records maintained by the Board indicate that Millbock Brewing Company is the holder of Malt Beverage Manufacturer License No. G-445 (LID 65336), for use by it at the premises located at 705 Blue Bell Avenue, Harrisburg, Pennsylvania.

OPINION: The filing requirements for Pennsylvania brand registration remain unchanged at this time and thus all elements set forth in the instructions must be supplied. As you are aware, any malt or brewed beverages sold within the Commonwealth of Pennsylvania must be registered with the Board. Section 445(a) of the Liquor Code states that such registration shall consist of an application in the form and manner prescribed by the Board for the registration of the said brand or brands of malt beverages, together with an annual filing fee not to

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exceed seventy-five dollars (\$75) for each brand registration requested. [47 P.S. § 4-445(a)]. Up to twenty (20) brands may be registered for a single annual fee of one hundred fifty dollars (\$150.00), so long as one hundred (100) barrels or less of each brand is produced on an annual basis. [Id.]. Any brand or brands of malt or brewed beverages produced but not offered for sale because of additional aging shall only be registered at the time the brand or brands are offered for sale. [Id.].

As you noted, the instructions for brand registration as set forth on PLCB-1905 indicate that an approved COLA Form 5100.31 must be submitted for all new, revised (only when the label is changed, not size of contents) and specialty bottles or cans, along with a copy of the label. This requirement is also found in the Board's Regulations. [See, 40 Pa. Code § 9.108].

In the discussion section of the TTB Ruling, it is noted that "nothing in the Federal Alcohol Administration Act or the TTB labeling regulations relieves brewers from their obligation to comply with any applicable State requirements or regulations with regard to label approval." Furthermore, brewers are advised in the TTB Ruling that COLAs are still available for malt beverages currently sold only in intrastate commerce and that it may be prudent to obtain COLAs for such products "to cover the possibility that such products may be sold in interstate commerce in the future."

The Board has not elected at this time to amend its brand registration requirements, set forth at section 9.108(b) of the Board's Regulations [40 Pa. Code § 9.108(b)], which regulation includes the requirement of submission of a federal COLA. Therefore, you must submit a COLA for each new, revised or specialty bottle or can in accordance with the Liquor Code and Board Regulations, regardless of the geographic territory in which each product is currently sold or delivered.

If you have any further questions or concerns regarding the Liquor Code or the Board's Regulations, please feel free to 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

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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. 14-404