

July 18, 2014

Telephone: (717) 783-9454

FAX: (717) 787-8820

Tanya Dolfi
Marketing Intern
Maurice Cooper and Company

RE: Sidewalk Decals in Pittsburgh

Dear Ms. Dolfi:

ISSUE: This correspondence is in response to your e-mail dated June 18, 2014, wherein you indicate that you are interning for a liquor brand, Maurice Cooper and Company, which is considering the placement of sidewalk decals near high foot traffic areas, such as around colleges and bars/restaurants, in the City of Pittsburgh. Accordingly, you ask whether this is permissible and whether Maurice Cooper and Company needs to obtain specific permission from anyone to pursue this course of action.

It is assumed for purposes of this response that the sidewalk decals to which you are referring would contain advertising material relative to the liquor products distributed by Maurice Cooper and Company.

The Pennsylvania Liquor Control Board's ("Board") records indicate that Maurice Cooper et Cie, LLC holds Importer License No. I-819 for use at the premises located at 2633 Trenton Avenue, Office A, Philadelphia, Pennsylvania, 19125-1837.

OPINION: In Pennsylvania, the advertisement of alcoholic beverages is generally governed by section 498 of the Liquor Code [47 P.S. § 4-498]. Pursuant to section 498, manufacturers, wholesalers, retailers and shippers, whether from outside or inside the Commonwealth, and any licensees are permitted to advertise their products and prices in Pennsylvania. [47 P.S. § 4-498(a)]. Any advertisement of price may not contain: "[a]ny statement that is false, deceptive, or misleading"; "[a]ny statement that is disparaging of the products of a competitor"; or "[a]ny statement referring to monetary comparison between brands." [47 P.S. § 4-498(b)]. Prices that are advertised or displayed on licensed premises must be the prices that are in effect at the time of the advertisement or display. [47 P.S. § 4-498(c)].

Moreover, for all alcoholic beverage and malt beverage advertising, the following conditions apply:

1. The entity responsible for the advertisement must be clearly identified in the advertisement.
2. No licensee may distribute, by mail, personally or through servants, agents or employees, price lists, circulars or handbills off the license premises to the general public as a means of advertising liquor, wine or malt or brewed beverages.
3. No print advertisement of alcoholic beverages of any type shall be permitted within three hundred feet of any church, school or public playground. This prohibition shall not preclude any point of sale advertisement, menus or other print advertisement regarding alcoholic beverages inside the licensed premises.
4. The use in any advertisement of alcoholic beverages of any subject matter, language or slogan directed to minors to promote consumption of alcoholic beverages is prohibited. Nothing . . . shall be deemed to restrict or prohibit any advertisement of alcoholic beverages to those persons of legal drinking age.
5. No advertisement shall be permitted, either directly or indirectly, in any booklet, program book, yearbook, magazine, newspaper, periodical, brochure, circular or other similar publication published by, for or in behalf of any educational institution.
6. No advertisement that is obscene shall be permitted; and
7. Advertisement of alcoholic beverages and malt and brewed beverages shall not be inconsistent with the spirit of safety or safe driving programs.

[47 P.S. § 4-498(e)-(f)]. The term “advertisement” is defined as “any advertising of alcoholic beverages through the medium of radio broadcast, television broadcast, newspapers, periodicals or other publication, outdoor advertisement, any form of electronic transmission or any other printed or graphic matter, including booklets, flyers or cards, or on the product label or attachment itself.”

[47 P.S. § 4-498(g)].

Here, the sidewalk decals to which you refer would advertise the liquor products distributed by Maurice Cooper and Company through the medium of an outdoor advertisement. As such, they would fall within the definition of an “advertisement” under the Liquor Code and be subject to the conditions set forth

above, including the prohibition on advertisements of alcoholic beverages being located within three hundred feet of any church, school or public playground.

In addition, please be advised that section 13.51 of the Board's Regulations prohibits a licensee of one (1) class, such as a manufacturer or importer, from providing anything of value to licensees of another class, such as a restaurant liquor licensee. [40 Pa. Code § 13.51]. Similarly, the Liquor Code's provisions on interlocking business practices prohibit manufacturers from providing money or other things of value to equip or otherwise help the operation of the licensed business of a retail licensee. [47 P.S. § 4-411].

In this instance, depending upon where the sidewalk decals are placed and/or whether they advertise the availability of Maurice Cooper and Company's products at particular establishments or locations, they could potentially be construed as providing something of value to the retail licensees selling the products in terms of advertising. Historically, however, this office has approved cooperative advertising between manufacturers or importers and licensees of a different class, so long as each party pays its proportionate share for the cost of advertisement.

If you have not already done so, you may also wish to contact the Alcohol, Tobacco, Tax and Trade Bureau ("TTB") for guidance as to whether or not the use of the sidewalk decals that your company is considering would violate any applicable federal laws.

Finally, please be advised that the placement of any advertisements on sidewalks within the City of Pittsburgh is likely governed by local ordinances. Therefore, you should contact the City of Pittsburgh for further information about any applicable local ordinances and to seek permission for your desired course of action.

If you have any further questions or concerns regarding this matter, the Liquor Code, or the Board's Regulations, please do not hesitate 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

Tanya Dolfi
July 18, 2014
Page 4

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

LCB Advisory Opinion No. 14-425