

August 15, 2014

Telephone: (717) 783-9454

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Seth Wolkofsky, Esquire

RE: Free Beer Dispensing System

Dear Mr. Wolkofsky:

ISSUE: This is in response to your e-mail of July 17, 2014, in which you state that you represent Heineken USA Incorporated (“HUSA”), a New York-based importer and supplier of Heineken beer and other beer and alcoholic beverages. HUSA wishes to furnish, without charge, directly or through its duly designated and licensed Pennsylvania wholesaler, the Heineken Brewlock Beer Dispensing System (“Brewlock”) to on-premises retailers in Pennsylvania.

You provide information about Brewlock, which you describe as an innovative system that uses compressed air to dispense beer from a specially designed plastic bladder. This system would replace a traditional keg system for Heineken products. You note that, together with installation, the value of the Brewlock system is five hundred dollars (\$500.00) and that it would be offered for free to every retailer that requests it. It appears from the information provided that the Brewlock system at issue is specifically for the dispensing of Heineken products. You do not ask any questions, but it will be assumed that you are seeking confirmation of the legality of your proposed business venture.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that Heineken USA Incorporated holds Brand Registration No. BC-16 (LID 62482), with a registered address of 360 Hamilton Avenue, Suite 1103, White Plains, New York.

OPINION: Generally, the Liquor Code prohibits the providing of anything of value by anyone to anyone else as an inducement to purchase alcohol. [47 P.S. § 4-493(24)]. Section 13.51 of the Board’s Regulations prohibits in-state and out-of-state 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]. Although HUSA holds only brand registration in Pennsylvania, it is clearly an agent of a manufacturer, representing the interests of that manufacturer by distributing equipment specific to that manufacturer's brand.

The Brewlock system is considered equipment to retail licensees; therefore, HUSA and any Pennsylvania licensed distributors ("Ds") or importing distributors ("IDs") are precluded from giving the Brewlock system to retail licensees and from providing free labor to install the systems.

Next, section 493(17) of the Liquor Code prohibits the sale of equipment from one licensee to another, and provides that it shall be unlawful:

For any licensee, or any officer, director, stockholder, servant, agent or employe of any licensee, to own any interest, directly or indirectly, in or be employed or engaged in any business which involves the manufacture or sale of any equipment, furnishings or fixtures to any hotel, restaurant or club licensees, or to any importing distributors, distributors or retail dispensers. Notwithstanding any other provision of this section or this act, licensees may sell glasses at not less than cost and to provide metal keg connectors and tap knobs to other licensees and to holders of special occasion permits.

[47 P.S. § 4-493(17)]. Therefore, Pennsylvania licensed Ds or IDs may not sell the Brewlock system to retail licensees, nor could Ds or IDs provide the labor to install the system. [40 Pa.Code § 13.51]. Notwithstanding the above, HUSA may sell the Brewlock system directly to retail licensees at fair market value, with any accompanying labor or installation charges.

In summary, neither HUSA nor any Pennsylvania Ds or IDs may give the equipment to retail licensees. Pennsylvania Ds and IDs may not sell the equipment to retail licensees. HUSA may sell the equipment to retail licensees. These conclusions do not take into account any federal laws or regulations that may apply, and HUSA is encouraged to seek guidance from private counsel or directly from the federal Alcohol and Tobacco Tax and Trade Bureau at www.ttb.gov.

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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. 14-468