

October 21, 2014

Nick Weyandt
Alpine Beverage Mart, Inc.
1422 Scalp Avenue
Johnstown, PA 15904-3321

RE: Website Age Verification

Dear Mr. Weyandt:

ISSUE: This correspondence is in response to your e-mail dated September 9, 2014, wherein you indicate that you are currently working on a website for Alpine Beverage, and you ask whether an age verification page must be used in conjunction with the website. You also ask whether there are regulations that would apply to the operation of websites related to alcoholic beverages generally.

The Pennsylvania Liquor Control Board's ("Board") records indicate that Alpine Beverage Mart, Inc., t/a Alpine Beverage Mart, holds Distributor License No. D-3639 (LID 40986) for use at the premises located at 1422 Scalp Avenue, Johnstown, Pennsylvania.

OPINION: Please be advised that there is nothing in the Liquor Code or the Board's Regulations that specifically addresses the issue of age verification for websites. However, as you should be aware, section 493(1) of the Liquor Code makes it unlawful to sell, furnish or give, malt or brewed beverages to minors. [47 P.S. § 4-493(1)]. Thus, it would be advisable for your distributorship to take all appropriate measures to prevent the sale or furnishing of malt or brewed beverages to minors. Nevertheless, please keep in mind that only the preventive measures set forth in section 495 of the Liquor Code will serve as affirmative defenses to citations for serving or furnishing malt or brewed beverages to minors. [47 P.S. § 4-495].

Moreover, please be advised that the proposed website would be subject to section 498 of the Liquor Code [47 P.S. § 4-498], which generally governs the advertisement of alcoholic beverages in Pennsylvania. 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)].

Additionally, 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)].

Finally, if you have not already done so, you may also wish to check the Alcohol, Tobacco, Tax and Trade Bureau’s (“TTB”) website at www.ttb.gov for guidance as to whether there are any federal laws that govern websites related to alcoholic beverages.

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. 14-552