

April 17, 2015

Pat Sharyon
Lagunitas Brewing Company

Re: Original Container Question

Dear Mr. Sharyon:

ISSUE: This is in response to your e-mail of March 27, 2015, wherein you inquire on behalf of Lagunitas Brewing Company (“Lagunitas”), regarding the interpretation of section 211.1 of the Liquor Code. You ask if Lagunitas is able sell twelve (12)-packs to its wholesale partners in Pennsylvania packaged as individual twelve (12)-packs or if the package must contain two (2) original containers (one hundred forty-four (144) ounces in each) in a single tray prior to shipping. You then quote from a paragraph in Advisory Opinion No. 15-077, which in part states that “[t]he holder of a brewery license may continue to sell its products to licensees in ‘case’ quantities, or it may choose to sell in ‘original containers’ comprising at least one hundred twenty-eight (128) ounces of malt or brewed beverages.” [Advisory Opinion No. 15-077].

You follow up with questions as to the necessity of trays when selling from a manufacturer to a distributor and from the distributor to a retail location, and to any changes applicable to the method of billing.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that Lagunitas holds Brand Registration License No. BC-590 (LID 62632) for the premises at 1280 North McDowell Boulevard, Petaluma, California.

OPINION: Please be advised that on March 18, 2015, Chief Counsel Faith Diehl issued a communication to industry members to specifically address Advisory Opinion No. 15-077. A copy of that letter is attached hereto.

As to your first question, it would be permissible for Lagunitas to sell twelve (12)-packs of malt or brewed beverages to its wholesale partners in Pennsylvania, as long as each twelve (12)-pack was prepared for the marketplace as an “original container” and consisted of at least one hundred twenty-eight (128) fluid ounces (a twelve (12)-pack consisting of twelve (12) fluid ounce cans would be acceptable). Please note that the “original container” may consist of any size combination of smaller containers, as long as the total fluid ounces of malt or brewed beverages in the “original container” is at least one hundred twenty-eight (128) fluid ounces. Therefore, it would not necessary for trays to be utilized for “original containers” that meet the requirements provided above.

As to whether the method of billing is a factor, this would only come into play in the short term with the existing inventory that a distributor and/or importing distributor may have. For their existing inventory, it would be acceptable for a distributor and/or importing distributor to split "cases" of beer, as long as the "case" is comprised of multiple sealed "original containers" totaling at least one hundred twenty-eight (128) fluid ounces and the invoices reflects that packaging. For example, a distributor and/or importing distributor can split a case of beer that is comprised of two (2) or more twelve (12)-packs into individual twelve (12)-packs, as long as the invoices for said "cases" specify terms such as "2/12" to signify that the cases really are comprised of two (2) individual twelve (12)-packs, and the individual twelve (12)-packs in the cases are packaged as a single connected unit by the brewery. The same would be true for other configurations, such as three (3) eight (8)-packs of cans (each can holding sixteen (16) fluid ounces) and two (2) fifteen (15)-packs of cans (each can holding twelve (12) fluid ounces). Please note that it would not acceptable for a distributor and/or importing distributor to break down "cases" for resale consisting of loose cans or packs that had not been packaged in a configuration, such as those mentioned above.

Should you have any other questions and/or issues related to the Liquor Code or the Board's Regulations, please feel free to once 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 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. 15-172