

April 17, 2015

Sanjay Patel  
ARAV18 LLC

**Re: Advertising**

Dear Mr. Patel:

ISSUE: This correspondence is in response to your e-mail of March 14, 2015, in which you seek a legal opinion as to television and radio commercials you have made, but not yet aired. You advise that neither commercial contains any statements as to pricing or disparaging comments as to the products of a competitor. The content relays that you are open for business, your location, and that you carry domestic, imported and premium /craft beers. You request a method by which to send the video and audio portion for review.

Pennsylvania Liquor Control Board (“Board”) records indicate that Arav18, LLC holds Restaurant Liquor License No. R-18025 (LID 69658) for use by it at the premises located at 241 A West Main Street, Plymouth, Pennsylvania.

OPINION: With regard to alcoholic beverage advertisements, please be advised that “advertisement” is defined in the Liquor Code as any advertising of alcoholic beverages through the means of radio broadcast, television broadcast, newspapers, periodicals, or any other publications, outdoor advertisement, any form of electronic transmission (i.e., Internet), 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)].

The advertisement of alcoholic beverages, their availability and/or their prices, by in-state and out-of-state manufacturers, wholesalers, retailers, shippers, and Board licensees, generally is permitted in Pennsylvania, subject to the following conditions:

1. The entity responsible for the advertisement must be clearly identified in the advertisement. [47 P.S. § 4-498(e)(1)].

2. The advertisement cannot be obscene. [47 P.S. § 4-498(e)(6)].
3. The advertisement cannot be inconsistent with the spirit of safety or safe driving programs. [47 P.S. § 4-498(f)].
4. The advertisement cannot be directed to minors. The use of any subject matter, language, or slogan directed to minors to promote the consumption of alcoholic beverages is not allowed. However, this does not prohibit or restrict advertisements to those persons of legal drinking age. [47 P.S. § 4-498(e)(4)].

Section 498(b) prohibits any false, deceptive or misleading statements in price advertisements, disparaging statements of the products of a competitor, or statements referring to monetary comparisons between brands. Prices advertised or displayed on licensed premises shall be those that are in effect at the time of advertisement or display. [47 P.S. § 4-498(b)-(c)]. Section 493(24)(i) of the Liquor Code further prohibits any licensee from offering anything of value to induce directly the purchase of alcoholic beverages. [47 P.S. § 4-493(24)(i)].

Please note that the entity responsible for the advertisement shall be clearly identified in the advertisement. No print advertisement of alcoholic beverages is permitted within three hundred (300) feet of any church, school or public playground, although this prohibition does not preclude any point-of-sale advertisement, menus or other print advertisement regarding alcoholic beverages if such advertisements are inside the licensed premises. The advertisement of alcoholic beverages may not contain language or slogans directed to minors to promote the consumption of alcoholic beverages. Advertisements of alcoholic beverages cannot be inconsistent with the spirit of safety or safe driving programs. [47 P.S. § 4-498(e)(1)-(6), (f)].

As noted earlier, no obscene advertisement is permitted. Further, no advertisement is permitted, either directly or indirectly, in a booklet, program book, yearbook, magazine, newspaper, periodical, brochure, circular or similar publication published by, for or on behalf of any educational institution, although you may wish to consult the decision in Pitt News v. Pappert, 379 F.3d 96 (3d Cir. 2004), which held section 498 of the Liquor Code unconstitutional as applied to The Pitt News. [Pitt News v. Pappert, 379 F.3d 96, 113 (3d Cir. 2004) (holding 47 P.S. § 4-498 unconstitutional, as applied)].

Section 498(e)(2) of the Liquor Code prohibits, however, the distribution by mail of price lists, circulars or handbills to the general public, as a means of advertising liquor, wine or malt or brewed beverages. [47 P.S. § 4-498(e)(2)]. While the Liquor Code does not define the terms “circular” or “mailing,” Webster’s II New College Dictionary (1999) defines “circular” as a “printed advertisement, directive or notice for mass distribution,” and “mailing” is defined as “a batch of mail sent at one time by a mailer.” For purposes of clarity and uniformity, the Board has interpreted the terms “circular,” “price list” and “handbill” to mean any form of “unsolicited” advertising. However, the Pennsylvania Attorney General’s Office has determined that this prohibition does not prevent a licensee from advertising in a newspaper or community newspaper. [See 40 Pa. Code §§ 13.1 – 13.62].

Please be advised that the information discussed herein is also available on the Board’s website, [www.lcb.state.pa.us](http://www.lcb.state.pa.us), by placing your cursor over “Legal,” selecting the link for “Advisory Notices,” and then selecting the link for “Advisory No. 15 – Advertising of Alcoholic Beverages in Pennsylvania.”

Finally, there is no need for you to provide the advertising material to this office for review. However, if you still want to provide said information to this office, you may provide a disc with the advertising material to the Office of Chief Counsel, 401 Northwest Office Building, Harrisburg, PA, 17124.

Should you have any additional questions 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 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. 15-176