

August 25, 2015

Horace Howells, Esq.
Vice President and General Counsel
W&L Sales Company
4050 Industrial Rd.
Harrisburg, PA 17110

**RE: Inclusion of Alcohol by Volume Information in Advertising Materials
for Malt or Brewed Beverages**

Dear Mr. Howells:

ISSUE: This correspondence is in response to your e-mail sent July 20, 2015, wherein you seek guidance with regard to the issue of including alcohol by volume (“ABV”) information in advertising materials for malt or brewed beverages.

You explain that a Pennsylvania State Police, Bureau of Liquor Control Enforcement Officer recently informed W&L Sales Company that certain of its signs produced to promote its brands do not comply with section 493(8) of the Liquor Code [47 P.S. § 4493(8)], because they list the ABV of the brand on the sign. You also explain, however, that you have found two (2) advisory opinions issued by this office, Nos. 07-115 and 08-115, indicating that it is permissible for restaurant liquor licensees to publish the ABV of malt or brewed beverages on their drink lists or whiteboards.

Accordingly, you seek clarification as to how section 493(8) is interpreted with regard to importing distributors or distributors by asking whether it would be permissible for W&L Sales Company to do any of the following: print posters and signs to hang in accounts that list the ABV of the product being advertised; print posters and signs to hang in accounts showing a picture of the manufacturer’s packaging which includes a label with the ABV of the product; print sell sheets and other point-of-sale (“POS”) materials describing the individual attributes of the malt beverage, including its ABV, to be given to licensees and their patrons; publish the ABV and other attributes on your website; or distribute signs, posters, counter cards, sell sheets and other POS produced by the manufacturer that contain ABV information.

Horace Howells, Esq.
August 25, 2015
Page 2

The Pennsylvania Liquor Control Board's ("Board") records indicate that W&L Sales Company holds Importing Distributor License No. ID-264 (LID 8508) for use at the premises located at 4050 North Industrial Road, Harrisburg, Pennsylvania.

OPINION: Section 493(8) of the Liquor Code provides that it is unlawful:

For any manufacturer or other licensee, or his servants, agents or employees, to issue, publish or post, or cause to be issued, published or posted, any advertisement of any malt or brewed beverage including a label which shall refer in any manner to the alcoholic strength of the malt or brewed beverage manufactured, sold or distributed by such licensees, or to use in any advertisement or label such words as "full strength," "extra strength," "high test," "high proof," "pre-war strength," or similar words or phrases, which would lead or induce a consumer to purchase a brand of malt or brewed beverage on the basis of its alcoholic content, *or to use in or on any advertisement or label any numeral, unless adequately explained in type of the same size, prominence and color*, or for any licensee to purchase, transport, sell or distribute any malt or brewed beverages advertised or labeled contrary to the provisions of this clause.

[47 P.S. § 4-493(8) (emphasis added)].

As you can see, the first portion of section 493(8) generally prohibits all licensees from including any references to the alcoholic strength of malt or brewed beverages in any form of advertisement. However, as you can also see, a latter portion of section 493(8), which is emphasized above, indicates that licensees are not prohibited from including numerals in advertisements for malt or brewed beverages, as long as those numerals are adequately explained in type that is equal in size, prominence, and color.

Based on this language, this office has traditionally interpreted section 493(8) as allowing licensees to include the ABV percentage of malt or brewed beverage products in any form of advertising for such products. This interpretation is consistent with the United States Supreme Court's decision in Rubin v. Coors Brewing Company, 514 U.S. 476, 115 S. Ct. 1586 (1995), wherein the court held that a federal law prohibiting the inclusion of alcohol content in labels or advertising for beer products violated the commercial speech protections afforded by the First Amendment of the United States Constitution.

Horace Howells, Esq.
August 25, 2015

Therefore, to answer your questions, it would be permissible for the ABV percentage of malt or brewed beverage products to be included in any advertising produced, utilized, or distributed by W&L Sales Company, such as advertisements on posters, signs, counter cards, sell sheets, or your website, subject to the limitations explained above. Please keep in mind, however, that such advertising would also be subject to the laws generally applicable to advertisements of alcoholic beverages, as set forth in section 498 of the Liquor Code [47 P.S. § 4-498], as well as the limitations on cooperative advertising (which were previously addressed in Advisory Opinion No. 15-319 issued to you on July 29, 2015).

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. 15-365