

October 19, 2015

Nicholas Sacco
Sacco Beer Distributor, Inc.
526 West Third Street
Berwick, PA 18603
VIA FIRST-CLASS MAIL

RE: Beer Packaging

Dear Mr. Sacco:

ISSUE: This is in response to your letter dated September 15, 2015, wherein you ask for clarification of the legality of a distributor licensee selling two (2) six (6)-packs of twelve (12) ounce containers of beer in a single sale. Specifically, you ask whether the two (2) six (6)-packs constitute a twelve (12) pack sale.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that Sacco Beer Distributor, Inc. is the holder of Importing Distributor License No. ID-729 (LID 8609) for the premises located at 526 West Third Street, Berwick, Pennsylvania.

OPINION: As you appear to be aware, in Advisory Opinion 15-077, issued by this office on March 6, 2015, this office determined that licensed distributors and importing distributors are authorized to sell and deliver malt or brewed beverages in original containers, as prepared for the market by the manufacturer, containing one hundred twenty-eight (128) ounces or more. The "original containers" may be twelve (12)-packs, provided that the total amount of malt or brewed beverage is at least one hundred twenty-eight (128) ounces, and the twelve (12)-packs are packaged as such by the manufacturer. As a licensed distributor, you are still authorized to sell and deliver malt or brewed beverages in original containers containing one hundred twenty-eight (128) ounces or more. [47 P.S. § 4-431(b)].

In your letter, you specify that the beer packaging in question is in the nature of six (6)-packs of twelve (12) ounce containers. The total quantity in each such six (6)-pack is thus seventy-two (72) ounces. It is not permissible to sell two (2) such six (6)-packs in order to meet the required minimum “original container” volume of

one hundred twenty-eight (128) ounces or more. [Id.]. For your convenience, attached please find a letter to industry members dated March 18, 2015, in which the Board's Chief Counsel further explained the packaging requirements.

In sum, the only way that you may sell a six (6)-pack is if the manufacturer packaged for single unit sales in the marketplace a six (6)-pack consisting of six (6) containers having a total volume of at least one hundred twenty-eight (128) ounces. Your invoices from the manufacturer would also have to document this configuration, as described in the attached letter.

Should you have any additional questions, do not hesitate to 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

enclosure

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- 444