

February 26, 2016

Tomasz Skowronski
Apteka, Inc.
VIA E-MAIL

RE: Acquiring Spirits

Dear Mr. Skowronski:

ISSUE: This is in response to your e-mail of January 12, 2016, wherein you state that you and your partner hold a liquor license in safekeeping until the construction of the restaurant/bar is completed. The restaurant cuisine will be Central/Eastern European; it is your intention to have spirits that will complement the cuisine. However, you have found that the spirits, specifically, liquors, cordials and vodkas, are not readily available in Pennsylvania, but are often imported and available in New York and New Jersey. You are aware of application processes, such as those in Montana, for purchasing specific quantities of spirits at approved businesses. You inquire if there is a process in Pennsylvania by which you will be able to access the spirits you are seeking.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that Apteka, Inc. holds Restaurant Liquor License No. R-2107 (LID 71512) for use by it at 4604-4606 Penn Avenue, Pittsburgh, Pennsylvania. Board records further reflect that the license is in safekeeping.

OPINION: Products not listed for regular sale through the Board’s approximately 600 wine and spirits stores may be acquired by licensees and residents of the Commonwealth via a special liquor order (“SLO”). [47 P.S. § 3-305]. SLOs may be placed at any of the Board’s wine and spirits stores, or via the Bureau of Product Selection at (717) 783-7601. SLOs must be shipped to a Board-operated store and, when purchased by a licensee, may then be sold in its licensed establishment.

By way of background information, the Board has the exclusive authority “to buy, import or have in its possession for sale and sell liquor [and] alcohol.” [47 P.S. § 2-207(a)]. Additionally, the Board has the general authority to control the

manufacture, possession, sale, consumption, importation, use, storage, transportation and delivery of liquor and alcohol within the Commonwealth. [47 P.S. § 2-207(b)]. It is unlawful for any person to import alcohol into the Commonwealth except as permitted within the Liquor Code and the Board's Regulations. [47 P.S. § 4-491(8), (11)].

Section 410 of the Liquor Code authorizes importation of wine and/or liquor; an importer's license permits the holder to bring or import into Pennsylvania from other states or United States possessions and foreign countries, and to purchase wine and liquor from manufacturers located outside Pennsylvania which will be sold either outside Pennsylvania or to the Board. [Id.]. All importations of wine and/or liquor into Pennsylvania by the licensed importer must be consigned to the Board or to the principal place of business or authorized place of storage maintained by the licensee. [47 P.S. §4-410(e)]. Accordingly, a licensed importer is not permitted to sell directly to licensees, such as restaurants; sales must be made through the Board. [Id.].

Please note that the holder of an importer license is considered a licensed vendor and may employ agents to promote sales in Pennsylvania. [40 Pa. Code § 13.71]. "Agent" is defined as an individual employed by a licensed vendor to promote the sale of liquor through state liquor stores. [Id.]. Agents enjoy the following privileges as set forth in section 13.73 of the Board's Regulations:

- (a) Agents may advertise and promote the sale of stock merchandise by "missionary work" of only those brands sold to the Board by the vendor by whom the agents are employed.
- (b) Agents may solicit orders from retail purchasers for stock merchandise or gift certificates for the merchandise.
- (c) Agents may solicit from licensees or other persons, orders for those brands of liquor which have been listed with the Special Liquor Purchase Division by the vendors by whom the agents are employed. Special orders obtained by vendors' agents shall be filed with one of the State Liquor stores as required in this subchapter.
- (d) Agents may solicit from licensees or other persons, orders for those brands of liquor which have been designated by

the Board as luxury items. Orders for luxury items obtained by vendors' agents shall be filed with one of the State Liquor stores as required in this subchapter.

[40 Pa. Code § 13.73].

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,

RODRIGO J. DIAZ
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. 16-042