

March 31, 2016

Salvatore Di Pasquale  
**VIA E-MAIL**

**RE: Take-Out Menu Contents**

Dear Mr. Di Pasquale:

ISSUE: This is in response to your e-mail of February 10, 2016, wherein you state that you have recently acquired a liquor license and are in the process of printing menus to hand out to customers. You inquire if you are able to include beer logos and a list of the liquor, wine, and beer available at your establishment; you also ask if prices may be included. The menus will not be mailed, but will be handed to customers when they pick up their orders.

Records of the Pennsylvania Liquor Control Board (“PLCB”) indicate that Salvatore Restaurant Corporation holds Restaurant Liquor License No. R-12317 (LID 71918) for use by it at 612 Penn Avenue, Wilksburg, Pennsylvania.

OPINION: In Pennsylvania, the advertisement of alcoholic beverages is generally governed by section 498 of the Liquor Code, 47 P.S. § 4-498. Pursuant to section 498, manufacturers, wholesalers, retailers and shippers, whether from outside or inside the Commonwealth, and any licensees are permitted to advertise their products and prices in Pennsylvania. 47 P.S. § 4-498(a). Any advertisement of price may not contain: “[a]ny statement that is false, deceptive, or misleading”; “[a]ny statement that is disparaging of the products of a competitor”; or “[a]ny statement referring to monetary comparison between brands.” 47 P.S. § 4-498(b). Prices that are advertised or displayed on licensed premises must be the prices that are in effect at the time of the advertisement or display. 47 P.S. § 4-498(c).

Moreover, for all alcoholic beverage and malt beverage advertising, the following conditions apply:

1. The entity responsible for the advertisement must be clearly identified in the advertisement.

2. No licensee may distribute, by mail, personally or through servants, agents or employees, price lists, circulars or handbills off the license premises to the general public as a means of advertising liquor, wine or malt or brewed beverages.
3. No print advertisement of alcoholic beverages of any type shall be permitted within 300 hundred feet of any church, school or public playground. This prohibition shall not preclude any point of sale advertisement, menus or other print advertisement regarding alcoholic beverages inside the licensed premises.
4. The use in any advertisement of alcoholic beverages of any subject matter, language or slogan directed to minors to promote consumption of alcoholic beverages is prohibited. Nothing in this section shall be deemed to restrict or prohibit any advertisement of alcoholic beverages to those persons of legal drinking age.
5. No advertisement shall be permitted, either directly or indirectly, in any booklet, program book, yearbook, magazine, newspaper, periodical, brochure, circular or other similar publication published by, for or on behalf of any educational institution.
6. No advertisement that is obscene shall be permitted; and
7. Advertisement of alcoholic beverages and malt and brewed beverages shall not be inconsistent with the spirit of safety or safe driving programs.

47 P.S. § 4-498(e)-(f). The term “advertisement” is defined as “any advertising of alcoholic beverages through the medium of radio broadcast, television broadcast, newspapers, periodicals or other publication, outdoor advertisement, any form of electronic transmission 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).

As indicated above, 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. However, you may wish to consult the decision in Pitt News v. Pappert, 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)].

Also, while section 498(e)(2) of the Liquor Code, 47 P.S. § 4-498(e)(2), prohibits 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, the Liquor Code does not define the terms “circular” or “mailing.” However, 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. Nevertheless, please note that the Pennsylvania Attorney General’s Office has determined that this prohibition does not prevent a licensee from advertising in a newspaper or community newspaper.

Board Advisory Notice No. 15 (4<sup>th</sup> Revision)] which covers advertising of alcoholic beverages in Pennsylvania is attached hereto. It can also be accessed on the Board’s website, at <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.”

Also, Board Advisory Notice No. 10 (A.7) (6<sup>th</sup> Revision) provides that:

Wine Lists/Menus – Manufacturers or importers may furnish, give, rent, loan or sell wine lists or menus to retail licensees. Such wine lists/menus may involve cooperative endeavors related to cost sharing and advertisement between manufacturers/importers and retail licensees. Wine lists/menus for on-premises use may contain preprinted prices.

In sum, your menus, distributed from within your premises as you described, may include beer logos, lists of available alcohol, and accurate pricing. The menu contents and distribution must comply with the aforementioned parameters. Also, you should ask the logo owners for permission to use their logos.

Salvatore Di Pasquale

March 31, 2016

Page 4

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

Attachment

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. 16-049