

June 20, 2016

Crystal Hartz  
Wilsbach Distributors, Inc.  
905 Katie Court  
Harrisburg, PA 17109  
**VIA E-MAIL**

**Re: Advertisement Over Grocery Cart Racks**

Dear Ms. Hartz:

ISSUE: This is in response to your e-mail dated May 12, 2016, wherein you ask if it is permissible to advertise outside a grocery store in Pennsylvania that has been approved to sell alcohol for consumption on and off the premises. You included photos that show canopies over grocery cart racks; the canopies bear logos of different types of beer that, presumably, are available for purchase inside the grocery store.

Records of the PLCB indicate that Wilsbach Distributors Inc. holds Importing Distributor License No. ID-178 (LID 8492) for the premises at 905 Katie Court, Harrisburg, Pennsylvania.

OPINION: Section 13.51 of the Board's Regulations prohibits licensees or manufacturers from contributing to or accepting from another licensee of a different class anything of value by means of advertisement for any purpose. 40 Pa. Code § 13.51. However, an exception exists within section 493(24) of the Liquor Code and within section 13.52 of the Board's Regulations for advertising novelties which include, but are not limited to, matches, disposable lighters, bottle or can openers, caps, shirts, recipe pamphlets, pens, corkscrews and ashtrays which bear advertising matter, and have a wholesale value of \$15.00 dollars or less. 47 P.S. § 4-493(24); 40 Pa. Code §§ 13.51, 13.52; Board Advisory Notice No. 10 (6th Revision). Please also be aware that section 493(17) of the Liquor Code makes it unlawful for any licensee to provide equipment or fixtures to another class of licensee. 47 P.S. § 4-493(17). Therefore, t-shirts, key chains and other novelty items are permissible if the wholesale cost is \$15.00 or less, contains advertising for the supplier, and provided that the items will not be used by the licensee or its employees as equipment during their shifts at the establishment.

Advertising banners for exterior use are considered to be advertising novelties by the Board if the banner conspicuously advertises a product sold by the licensee or the name of the manufacturer of products sold by the licensee and has a wholesale cost of \$15.00 or less. Should the cost be greater than \$15.00, please be advised that this office historically has approved cooperative advertising between beer manufacturers or distributors and retail licensees, so long as each party pays its proportional, fair-market-value share for the cost of the advertisement.

Outside advertising banners must comply with the provisions of section 498 of the Liquor Code:

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 licensed 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 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 canopies in the photos would be considered “outdoor advertisements,” but it is unclear from the photos if they comply with all of the requirements of section 498.

Should you have any other questions and/or issues related to the Liquor Code or the PLCB'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.

Sincerely,



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  
Ron Murphy, Product Management and Pricing Division

LCB Advisory Opinion No. 16-231