

August 3, 2016

J. Kenneth Butera, Esquire
Butera Beausang Cohen & Brennan
630 Freedom Business Center Suite 108
King of Prussia, Pa 19406
VIA E-MAIL

RE: Use of Retail Licensee Logo by Manufacturer Licensee

Dear Mr. Butera:

ISSUE: This office is in receipt of your e-mail of June 30, 2016, wherein you state you represent an unnamed university (“the University”) that holds a license from the Pennsylvania Liquor Control Board (“PLCB”). It is presumed for purposes of this response that your client holds a retail license, such as a restaurant, eating place retail dispenser or hotel license. Your client wishes to do a marketing deal with a manufacturing licensee, presumably a brewery licensee. The University’s logo would be placed on the brewery’s six and twelve pack containers. The University would be paid “fair market rate” for the use of its logo.

OPINION: With respect to the reference to the inclusion of the retailer’s logo on the label, be advised that section 13.51 of the PLCB’s Regulations, 40 Pa. Code § 13.51(a), prohibits licensees from giving anything of value by means of advertisement, contributions, etc. to other licensees of a different class. See also 47 P.S. § 4-443. The term “advertisement” includes advertising of alcoholic beverages through the medium of printed or graphic material, including those on the product label or attachment itself. 47 P.S. § 4-498(g).

Additionally, please note, however, that section 13.14 of the PLCB's Regulations 40 Pa. Code § 13.14, prohibits cooperative advertising between a liquor manufacturer and a retail licensee (i.e., an advertisement that jointly advertises the manufacturer or distributor and retailer). This office historically has approved cooperative advertising between beer manufacturers or distributors and retail licensees so long as each party pays its proportional share for the cost of the advertisement. Therefore, a beer manufacturer or distributor may pay a retail licensee its proportionate share for the cost of placing its name/logo in newspapers, maps and brochures.

Consequently, these sections do not prohibit manufacturers from incorporating a retailer's name or business logo on the manufacturer's labels or packaging as long as the retailer is paid the fair market value for the use of its logo. Be aware, however, that federal alcohol regulations prohibit certain forms of joint or cooperative advertising, and have certain labeling requirements, so you may wish to contact TTB for additional clarification, or visit its website at www.ttb.gov.

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,

A handwritten signature in cursive script that reads "Rodrigo J. Diaz".

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. 16-282