

August 30, 2016

Jay Lindner
Linco Distributing Co., Inc.
11689 Penn Hills Drive
Penn Hills, PA 15235
VIA E-MAIL

RE: Advertising

Dear Mr. Lindner:

ISSUE: This office is in receipt of your e-mail dated August 10, 2016, wherein you ask if a grocery store may insert a flyer advertising beer prices into a weekly coupon book called the Red Plum. You explain that the Red Plum is distributed in a mass mailing. You believe that this flyer violates the restrictions regarding advertising which are set forth in the Liquor Code. Therefore, you state that you filed a complaint with the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("BLCE"). You note that BLCE declined to take any action based on a 2006 Opinion issued by the Pennsylvania Attorney General's office. You believe that BLCE's decision contradicts Advisory Opinion 2004-396, which this office issued prior to the 2006 Attorney General's Opinion. Therefore, you ask for clarification on the advertising rules set forth in the Liquor Code. Additionally, you ask whether the grocery store may advertise through the Red Plum.

Pennsylvania Liquor Control Board ("PLCB") records indicate that Linco Distributing Company, Inc., d/b/a Beer Minimum ("Beer Minimum") holds Importing Distributor License No. ID-3863 (LID 29334) for use by it at premises located at 11689 Penn Hills Drive, Penn Hills, Pennsylvania. You are listed as the president, shareholder, director, and Board-approved manager of Beer Minimum.

OPINION: As you are aware, the liquor laws in Pennsylvania are enforced by BLCE, not the PLCB. 47 P.S. § 2-211(a). Therefore, please refer questions concerning specific enforcement decisions, such as BLCE's decision not to cite the grocery store, to BLCE.

For your general information, be advised that any advertisements of alcoholic beverages must conform to 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).

For all alcoholic beverage and malt beverage advertising, the following conditions also 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 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 three 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 . . . 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 in 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.” 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.

Provided that the advertisements in the Red Plum are in conformance with the above, such advertisements would be permissible.

Further, to the extent that Advisory Opinion 2004-396 conflicts with the Attorney General’s Opinion, the Attorney General’s Opinion, which was issued subsequent to Advisory Opinion 2004-06, is controlling. A copy of the Attorney General’s Opinion may be obtained at the following link:
<https://www.attorneygeneral.gov/uploadedFiles/MainSite/Content/TheOffice/Offic>

[ialAttorneyGeneralOpinions/AG_CORBETT_OPINION_DEC2006\(1\).pdf](#).

Should you require clarification regarding the Attorney General's Opinion, it is suggested that you direct your inquiry to the Office of the Attorney General.

If you have any further questions or concerns regarding this matter, the Liquor Code, or the PLCB's Regulations, please do not hesitate to 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

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