

May 18, 1998

Eric B. Werner  
Sales Manager  
GOETTLER DISTRIBUTING, INC.  
153 Hindman Road  
Butler, PA 16001

RE: Miller Nascar Promotion

Dear Mr. Werner:

**ISSUE:** This is in response to your letter of April 21, 1998 to Robert Kaskiel, which was forwarded to this office for reply. In addition, this office received a facsimile from you dated May 14, 1998. The promotion you propose on behalf of Goettler Distributing, Inc., the holder of Importing Distributor License No. ID-145, involves a consumer component and a distributor incentive program.

The consumer portion is for participants 21 years of age or older who may obtain entries for a random drawing without a purchase of any kind, at distributors (D's) and importing distributors (ID's) in your territory. The prizes are as follows:

First Prize - Miller Lite Nascar mini racecar, value \$995.00.

Second Prize - two tickets to the 1998 Pocono Nascar race, value \$80.00.

Thirty-six, Third Prizes - Miller T-shirts @ 4.75 each, value \$171.00

Total value of prizes for the consumer portion: \$1,246.00.

The distributor incentive portion consists of one entry per D or ID for each week that the D or ID displays 100 cases, (from existing stock) of Miller Lite, Genuine Draft, Genuine Draft Light or Miller beer, in any combination. You state that your retailers typically purchase quantities of 91 cases or more on a regular basis.

The winning D or ID will be picked in a random drawing. The winner will receive a one day Rusty Wallace Showcar Viewing to be conducted on the area outside the licensed premises. The prize value of the distributor portion of the promotion is \$590.00. Drawings for both portions will take place off the licensed premises.

**OPINION:** The consumer portion of this promotion involves participants who are at least 21 years of age picked in a random drawing, without purchase requirements. Therefore, it comports with section 493(24) of the Liquor Code and is permissible. [47 P.S. Section 4-493(24)].

Point-of-sale incentive programs for D's and ID's sponsored by manufacturers or ID's are governed by PLCB Advisory Notice No. 1.

The guidelines state that approval will not be granted to any point-of-sale incentive program providing a gift or prize to every participant, or where the incentive to participate is substantial. In this situation there is a random drawing for qualifying D's and ID's who have met the case display requirements. The incentive to participate is entry into a random drawing involving a large number of entries (up to 39 distributors each week) and, therefore, it is not substantial. Advisory Notice No. 1 also requires that point-of-sale incentive programs must be aimed primarily at consumers. Since the total value of the distributor portion of prizes is only 32% of the total value of the promotion, it is primarily aimed at consumers.

Additionally, be advised that point-of-sale incentive programs involving a payment to licensees based upon the number of cases displayed will not be approved. However, the promotion herein described does not involve payment of any kind. It only gives D's and ID's an entry in a drawing to win a single prize. Therefore, the incentive program is permissible.

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,

FAITH S. DIEHL  
Chief Counsel

cc: Bureau of Liquor Control Enforcement,  
Pennsylvania State Police  
Robert P. Kaskiel

Telephone: 717-783-9454  
FAX: 717-787-8820

LCB Advisory Opinion No. 98-167