

June 29, 1998

Dana Randazzo
Berks Beer Distributing Company
211-219 South 9th Street
Reading, PA 19602

Dear Sir/Madam:

ISSUE: In your letter dated June 10, 1998, you inquired on behalf of Berks Beer Distributing Company, holder of distributor license No. D-2585, as to whether several proposed advertisements would be permissible. The first advertisement will be placed in a newspaper with the following content: "BUD Cans - \$12.99 plus tax with advertisement, limit one per customer." Customers would only receive the price of \$12.99 if they produce the newspaper ad at the time of purchase. Furthermore, you also inquired whether it is permissible to advertise over the radio that customers who mention the radio advertisement could receive a special price on beer at the distributorship. Second, you inquired whether it was permissible to place the advertisement "Genesee 30 pak cans \$6.99 plus tax, final cost after mail-in rebate" on a banner on the outside of your building. Normally, the 30 pak of Genesee cans would cost \$9.99 without the mail-in rebate. In addition, you stated that the "final cost after mail-in rebate" language is not visible from the highway. Specifically, you inquired whether this ad is deceptive or misleading, especially since the mail-in offer is limited to one rebate per household. You also provided sketches of the proposed advertisements.

OPINION: With respect to the first advertisement, section 493(24) of the Liquor Code permits only manufacturers to offer on licensed premises coupons for monetary rebates on purchases of malt or brewed beverages. [47 PS. §4-493(24)]. Your proposed advertisement is essentially a coupon for a point-of-sale discount which is not permissible. Furthermore, the proposed advertisement over the radio whereby customers of the distributor would receive a special price by mentioning the radio advertisement is also not permissible under section 493(22) since licensees may not offer instant rebates. [47 P.S. §4-493(22)].

Regarding your second advertisement, section 498 of the Liquor Code was recently amended to permit the advertisement of alcoholic beverages and their prices subject to certain conditions. [47 P.S. §4-498]. As you referenced in your letter, no price advertisement of malt or brewed beverages may contain any statement that is false, deceptive or misleading. The advertisement, as proposed, would be deceptive or misleading since the "final cost after mail-in rebate" language is very small in comparison to the rest of the advertisement's content. To comply with section 498, it is suggested that the "final cost after mail-in rebate" language be enlarged so that it is more conspicuous. While there is no longer a prohibition to placing a malt or brewed beverage advertisement on a banner on

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the outside of a licensed premises, please be advised that section 498 does prohibit posting of any prices of alcoholic beverages in a window of any licensed establishment. In addition, no print advertisement of alcoholic beverages may be placed within 300 feet of a church, school or public playground. Therefore, provided your proposed banner is modified in accordance with this opinion and is displayed according to section 498, it would be 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

Refer to: (717) 783-9454
FAX: (717) 787-8820

LCB Advisory Opinion No. 98-217