

August 14, 1998

Paul V. Lemley

GETTYSBREW PUB & BREWERY

248 Hunterstown Road

Gettysburg, PA 17325

RE: Brand Registration

Dear Mr. Lemley:

ISSUE: This office is in receipt of your July 15, 1998 letter in which you request a written opinion regarding whether or not you are required to register the malt or brewed beverages sold at your pub and brewery pursuant to section 445 of the Liquor Code [47 P.S. Section 4-445] or section 9.108 of the Board's Regulations [40 Pa. Code Section 9.108]. You received a letter dated June 26, 1998 from Paul Messer, Licensing Analyst, notifying you that you had 72 hours to register the brands of malt or brewed beverages sold on your licensed premises. You have paid the registration fee and registered the brands as requested; however, you dispute that the beers you currently offer at your beer establishment need to be registered, as they are neither distinguished by a unique prescribed formula, nor sold under a distinct label. You also argue that the patrons in your brewpub would not constitute trade buyers as the term is used in Liquor Code section 445.

In particular, you describe that your 'Festbier' is a blend of three different beers you have made, which blend is created with no prescribed formula, and cannot be replicated. Your 'Pennsylvania Blonde' is 50/50 mix of golden ale and golden lager which you created on one occasion in order to free up a vessel. Your 'Hefeweizen' is generically-labeled and consists of wheat beer with yeast. You advised that if you make 'Hefeweizen' again, it would not be the current recipe. Your 'Black Cherry' ale and 'Beer Coolers' are actually 'Festbiers' with extract flavoring added to them. Your 'Pale Ale' and 'Red Lager' are generic beer descriptions for which you are not using a particular recipe. Each batch of 'Pale Ale' and 'Red Lager' you have created in the past has been significantly different from each other batch.

OPINION: Section 445 of the Liquor Code provides that 'No brand or brands of malt or brewed beverages shall be offered, sold or delivered to any trade buyer within this Commonwealth unless the manufacturer thereof shall first submit an application in the form and manner prescribed by the board for the registration of the said brand or brands of malt beverages, together with an annual filing fee . . . for each brand registration requested.' [47 P.S. Section 4-445]. Section 9.108(a) of the Board's Regulations defines brand as 'malt or brewed beverages, distinguished by a unique prescribed formula and sold under a distinct label. Differences in packaging such as different style, type or size of container are not considered different brands.' [40 Pa. Code Section 9.108(a)]. Section 9.108(b) requires that any brand of malt or brewed beverage that a manufacturer sells within the Commonwealth must first be registered. [40 Pa. Code Section 9.108(b)]. The Board has interpreted the aforementioned sections to mean that all malt or brewed beverages offered, sold or delivered within the Commonwealth must be registered with the Board. This is the case in all instances, even in situations where manufacturers only wish to conduct consumer market research studies involving the testing of their beer products in the Commonwealth and the product is not otherwise offered, sold or delivered here.

The malt or brewed beverages offered on the beer list in your licensed establishment, despite your representation to the contrary, are distinguished by unique formulas, and are sold as such. It is, therefore, the opinion of this office that the malt or brewed beverages offered on your licensed premises are brands which must be registered with the Board in order for you to legally manufacture, offer, sell or deliver them in the Commonwealth of Pennsylvania.

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: Pennsylvania State Police-

Bureau of Liquor Control Enforcement

Refer to: (717) 783-9454

FAX: (717) 787-8820

LCB Advisory Opinion No. 98-265