

December 8, 1998

Harry Hayman, Director of Operations

Seven Arch, Inc.

t/a Brave New World

720 Arch Street

Philadelphia, PA 19106

Re: 'The Player's Ball'

Dear Mr. Hayman:

ISSUE: In your letter dated November 30, 1998, you inquired on behalf of Seven Arch, Inc. t/a Brave New World, the holder of restaurant liquor license No. R-4609, as to whether Brave New World could host a promotion, 'The Player's Ball,' in conjunction with Johnny Walker Black, an out-of-state manufacturer, on December 12, 1998. According to your letter, two contests would be conducted as part of the proposed promotion whereby the best dressed male and the best dressed female would be awarded a prize of \$1,000.00 each from Johnny Walker Black. Johnny Walker Black would also provide \$1,000.00 to Power 99 FM, a local radio station, to offset the advertising expenses of the promotion. In return, Brave New World would agree to feature Johnny Walker Black at a special price from 9:00 p.m. to 10:00 p.m. on the evening of the promotion. In addition, the promotion would be advertised over local radio stations and on Brave New World's licensed premises.

OPINION: Unfortunately, your proposed promotion would not be permissible for several reasons. Initially, the general rule, as set forth in section 13.51 of the Board's regulations [40 Pa. Code Section 13.51], is that an out-of-state manufacturer cannot contribute, directly or indirectly, to a restaurant licensee anything of value including advertisements, contributions, tickets or donations for any purpose. There is an exception to this rule which permits an out-of-state manufacturer to provide routine business entertainment to a restaurant licensee. Routine business entertainment is defined as meals, beverages, tickets or passes to arts or sporting events. The donor of such routine business entertainment is also required to accompany the recipient for the entertainment. However, such routine business entertainment cannot be provided by the manufacturer if there is a corresponding obligation on the part of the restaurant licensee to purchase alcoholic beverages or to provide any other benefit to the manufacturer. In addition, no more than \$800.00 can be spent in a calendar year by the manufacturer on a specific restaurant licensee. Therefore, Johnny Walker Black would not be permitted to contribute \$1,000.00 as an award for the contest to Brave New World.

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Second, section 13.14 of the Board's regulations [40 Pa. Code Section 13.14] prohibits cooperative advertising between a producer, manufacturer, bottler, importer or wholesaler, such as Johnny Walker Black, and a retailer, such as Brave New World.

Third, section 5.32 of the Board's regulations [40 Pa. Code Section 5.32] generally prohibits any contests on retail licensed premises. There are several exceptions to this prohibition. One of these exceptions permits a restaurant licensee to conduct a self-sponsored contest on its own licensed premises, but manufacturers are not permitted to conduct contests on a restaurant licensee's premises. Self-sponsorship requires that the licensee must conduct and pay for the contest. Any contest conducted by the restaurant licensee may not involve unlawful gambling or the consumption of alcohol. Further, the total value of all prizes for any contest may not exceed \$500.00 and no more than \$5,000.00 in prizes can be awarded by a licensee in any seven day period. In addition, licensees must maintain on their licensed premises for two years from the date of the contest an itemized list of all prizes awarded for each contest indicating each prize, its value and the name and address of the recipient. So long as Brave New World complies with the requirements of this paragraph, it could conduct the contest on its licensed premises.

Finally, according to section 13.102 of the Board's regulations [40 Pa. Code Section 13.102], Brave New World could discount the price of Johnny Walker Black to \$.99 from 9:00 p.m. to 10:00 p.m. during the promotion provided the discount is not being offered as a condition to the receipt of routine business entertainment from Johnny Walker Black.

Please find enclosed copies of section 5.32, 13.51 and 13.102 of the Board's regulations for your review.

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

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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

Enclosures

Refer to: (717) 783-9454

FAX: (717) 787-8820

Advisory Opinion No. 98-398