

April 28, 1999

Kenneth B. Skelly, Esq.
Assistant General Counsel
Schieffelin & Somerset Co.
Two Park Avenue
17th Floor
New York, NY 10016

Dear Ken:

ISSUE: In your letter dated March 29, 1999, you indicated that Schieffelin & Somerset, the holder of vendor's permit No. VP-513, was offered the opportunity to purchase sponsorship of certain events and activities conducted by a radio station in southeastern Pennsylvania. Specifically, Schieffelin & Somerset would like to participate in sponsorship of the following:

- (1) a live concert at the First Union Center (Tanqueray);
- (2) parties at licensed on-premise establishments where branded advertising specialty items with a wholesale value of \$15.00 or less would be distributed (Grand Marnier);
- (3) radio advertisements of the brand's sponsorship of the events/activities occurring at retail licensed premises (Grand Marnier);
- (4) live radio remote broadcasts from licensed on-premise establishments including on-air and off-air mentions of the brand's sponsorship (Grand Marnier);
- (5) brand signage and advertising specialties, displayed and/or offered without condition of purchase or exclusivity of purchase or sale (Tanqueray and Grand Marnier); and
- (6) tastings for adult consumers of one drink of the sponsoring brand's product (Tanqueray and Grand Marnier).

You inquired as to the legality of Schieffelin & Somerset's involvement with the activities listed above. In a subsequent phone conversation with this office, you indicated that Schieffelin & Somerset intended to pay the radio station for sponsorship of the listed activities in order to ensure that its brands are mentioned and advertised.

OPINION: Each event will be addressed in the order listed above.

1. Initially, it should be noted that there are six different licenses at the First Union Center which are held by three different entities including Aramark Leisure Services, Aramark Sports & Entertainment Services, Inc., and Red Bell Brewery & Pub Company. Regardless, it would be permissible for a liquor manufacturer via its licensed vendor to sponsor a live concert at the First Union Center provided that the entity conducting the concert and receiving the proceeds of the brand sponsorship (e.g., the concert promoter, the entertainment broker or the entertainer) is not a licensee of the Board. If the entity is a licensee of the Board, sponsorship by a liquor manufacturer would be prohibited by section 13.51 of the Board's regulations [40 Pa. Code Section 13.51] which prohibits an out-of-state manufacturer from contributing anything of value such as advertisements, contributions, tickets or donations for any purpose to Board licensees. While there is an exception to the general prohibition of section 13.51 for routine business entertainment, brand sponsorship of a live concert would not fall within this exception.

2. Section 5.32 of the Board's regulations generally prohibits any events, tournaments or contests on retail licensed premises. [40 Pa. Code Section 5.32]. There are several exceptions to this prohibition. One of these exceptions permits retail licensees to conduct self-sponsored events, tournaments or contests on their own licensed premises, but neither radio stations nor manufacturers are permitted to conduct events, tournaments or contests on retail licensed premises. For purposes of section 5.32, 'events, tournaments and contests' are defined as competitive endeavors involving skill, speed, strength, endurance or physical attributes. [40 Pa. Code Section 5.30]. Except for the provisions of section 5.32, there is nothing in the liquor laws which would prohibit a radio station from hosting a party at a retail licensed establishment. Furthermore, a manufacturer may also sponsor such a party at retail licensed premises provided it does so in conformity with all applicable liquor laws.

In addition, section 493(24) of the Liquor Code prohibits a manufacturer from giving anything of value to induce the purchase of alcoholic beverages. [47 P.S. Section 4-493(24)]. However, an exception exists that permits the distribution of advertising novelties with a wholesale value of \$15.00 or less, with or without purchase. [PLCB Advisory Notice No. 10 (4th Revision)]. Therefore, the radio station and/or the manufacturer may distribute advertising novelties during parties held at retail licensed premises.

It should further be noted that 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. As a result, there can be no advertising of any event which references both a retail licensee and a manufacturer's product such as Tanqueray or Grand Marnier, regardless of whom is paying for the advertisement. However, section 13.14 does not prohibit a retail licensee from advertising the products offered for sale at its premises. (See Liquor Code section 498 [47 P.S. Section 4-498]).

3. In light of the cooperative advertising prohibition in section 13.14 discussed above, a radio station could not advertise on-air the manufacturer's brand sponsorship of an event at retail licensed premises.

4. See paragraph number three above. Nonetheless, the radio station would be permitted to mention a live broadcast from an on-premise establishment on the air provided the manufacturer's sponsorship of the activities occurring on the licensed premises is not mentioned.

5. With respect to advertising novelties, see paragraph number two above. In regard to brand signage at retail licensed premises, point-of-sale advertising of a manufacturer's brand(s) is permitted on retail licensed premises provided no single piece of advertising exceeds \$70.00 and the total value of advertising for a single brand does not exceed \$140.00. Additionally, the area of any window or door display of point-of-sale advertising may not exceed 600 square inches. Finally, all advertising of alcoholic beverages must conform with the requirements of section 498 of the Liquor Code. [47 P.S. Section 4-498].

6. Manufacturers or their representatives may conduct tastings on retail licensed premises if such tastings are conducted in accordance with PLCB Advisory Notice No. 10 (4th Revision), a copy of which is enclosed.

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

Enclosure

cc: Bureau of Liquor Control Enforcement,
Pennsylvania State Police

Refer to: (717) 783-9454
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Advisory Opinion No. 99-141