

May 7, 1999

Karen K. Manders
Associate General Counsel
ANHEUSER-BUSCH COMPANIES, INC.
One Busch Place
St. Louis, MO 63118-1852

RE: 'D' Distributor POS Incentive Program and Budweiser ESPN Sports Century

Dear Ms. Manders:

ISSUE: This is in response to your correspondence of March 26, 1999 to this office requesting approval for a distributor point-of-sale incentive program and the Budweiser ESPN Sports Century consumer program.

The consumer promotion, ESPN Sports Century, would be conducted on distributor licensed premises only. You state, '(t)he game is not to be conducted in on-premise licensed accounts.' To play, consumers would be expected to collect game pieces that match three-part phrases on game boards found at displays or on the Budweiser web site. Game pieces could be obtained in three ways: by purchasing specially marked packages of beer, by attending select activities at bars and restaurants where Anheuser-Busch may hand out game pieces (where permitted by law) and by requesting a game piece (limit of one per request) through the mail on a 3'x5' card or by calling a toll-free number. 'Pop up cans' would not be used in Pennsylvania. To win, a player would be required to submit one matching game piece for each individual part of any one of the 12 official winning three-part phrases. You estimate the total prize value at \$32,677,800. Additionally, Anheuser-Busch, in conjunction with a radio station, will give away a sports utility vehicle, bringing the total value of the consumer promotion to \$32,702,800.

The distributor incentive program would be conducted in the Pittsburgh metropolitan area involving approximately 325 importing distributors and distributors. This represents all of the distributors and importing distributors who sell at retail within the participating wholesalers' territories. For every 25 cases of Bud family products placed in an up-front prominent display, the participant would receive one entry each week. The maximum number of entries each week is 12. The grand prize, a 1999 Ford Explorer, 5 first place prizes and 5 second place prizes have an estimated retail value of \$52,500.

OPINION: Manufacturers proposing incentive programs are required to follow the guidelines set forth in Advisory Notice No. 1. Approval will not be granted if a prize is awarded to every participant or if the incentive to participate is substantial. Programs must be aimed primarily at consumers and no payment for case displays is permitted.

The consumer portion of this promotion, ESPN SportsCentury, involves the purchase of beer in order to participate, or the alternate method of sending for a game piece by mailing a 3'x5' card or calling a toll-free number. Attending select activities at bars and restaurants would not be an option since retail licensed establishments may only be used as pick-up and drop off points for entry forms in manufacturers' sweepstakes. [Advisory Notice No. 10 (4th Revision)]. Requiring a purchase to play would constitute an inducement contrary to the Liquor Code. [47 P.S. Section 4-493(24)]. However, the alternate methods of entry would be permissible as long as they provide as many game pieces as received with a purchase of the product.

The distributor-incentive program in Western Pennsylvania has been linked with the nationwide consumer program. The 11 prizes available for distributors total \$52,500. The program, if run simultaneously with consumer elements, is aimed primarily at consumers. The incentive to participate is not substantial as it only provides a chance to win one of 11 prizes if certain display requirements are met. Therefore, this consumer/distributor incentive program is permissible as proposed. Please be advised that approval of specific POS incentive programs in the past shall not be construed as approval of a same or similar future program by the Board.

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

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Advisory Opinion No. 99-158