

May 14, 1999

Mark W. Leunig  
Vice President and General Counsel  
THE GENESEE BREWING COMPANY, INC.  
P.O. Box 762  
Rochester, NY 14603

**RE: Race to Fish Sweepstakes and Distributor Incentive Program**

Dear Mr. Leunig:

**ISSUE:** This is in response to your letter dated April 28, 1999, your supplemental letter dated May 6, 1999 and supplemental POS material received by this office on May 10, 1999. You request approval for a distributor-incentive program to be conducted in Pennsylvania in connection with a consumer-rebate program and consumer sweepstakes. The Genesee Brewing Company will be offering a \$3.00 consumer rebate on 36-can packs of Genesee Beer, Genny Light and Genny Cream Ale purchased in Pennsylvania from May 3 through September 7, 1999. During the same period, The Genesee Brewing Company will also be sponsoring in Pennsylvania a related consumer sweepstakes known as the 'Race to Fish Sweepstakes'. The sweepstakes winner will receive a weekend prize package consisting of tickets to the NASCAR race at Watkins Glen followed by a day of fishing with NASCAR driver Jimmy Stewart. In order to encourage distributors to prominently display the packages that are subject to the rebate, The Genesee Brewing Company will run a distributor sweepstakes promotion during the period of May 15 through July 15, 1999. The distributor sweepstakes promotion involves participating distributors receiving one entry in a prize drawing for every ten 36-can cases of Genesee Beer, Genny Light or Genny Cream Ale that the distributor has on a front end display during a given week. Nine prize winners will be selected from all eligible entries at the end of the sweepstakes program. Each winning entry will receive a trip to the 'Stock Car Racing Sprints at Pocono Raceway' which is a four hour speed-way driving experience that includes stock car driving instruction and two eight-lap sessions behind a wheel of a stock car at the Pocono Raceway. The value of each distributor prize is \$1,025. The total cost of all distributor prizes is \$9,225. The Genesee Brewing Company has printed a total of 325,000 consumer rebate coupons which will be circulated in Pennsylvania during the consumer rebate promotion. Based on prior experience with Pennsylvania rebate programs, The Genesee Brewing Company expects 55,000 to 60,000 rebate submissions to be received and paid to consumers. Based on expected redemption rates the total cost of the consumer rebate program will be approximately \$175,000. The value of the consumer sweepstakes promotion is \$1,250. Therefore, the estimated total consumer element of the promotion is approximately \$176,250.

**OPINION:** Preliminarily, this office has reviewed the proposed consumer sweepstakes and related point-of-sale materials and determined that they comport with applicable liquor laws and regulations, specifically, section 493(24) of the Liquor Code. [47 P.S. Section 4-493(24)]. Therefore, it is permissible to conduct the consumer sweepstakes at retail and distributor licensed premises. Samples of the consumer rebate tear-pad and related POS materials should be submitted for approval to Malt Beverage Compliance if approval for these items has not already been received.

Next, manufacturers proposing incentive programs are required to follow the guidelines set forth in PLCB 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 distributor incentive program in Pennsylvania has been linked with the 'Race to Fish Sweepstakes' and a \$3.00 consumer rebate promotion. The nine prizes available for distributors total \$9,225. Based on a modest redemption rate of five percent of the 325,000 rebate coupons, the consumer-rebate promotion is valued at \$48,750. Additionally, the consumer sweepstakes is valued at \$1,250, bringing the consumer portion of the promotion to \$50,000. The distributor incentive program, if run simultaneously with the consumer element, provides for a consumer to distributor ratio of 5:1 and is aimed primarily at consumers. The incentive to participate in the distributor portion of the promotion is not substantial as it only provides a chance to win one of nine prizes if certain display requirements are met. Therefore, this consumer rebate and sweepstakes/distributor incentive program is permissible as proposed. Please be advised that approval of specific point-of-sale incentive programs in the past shall not be construed by the Board as approval of a same or similar future program.

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

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

Advisory Opinion No. 99-171