

July 6, 1999

Mr. Bart Pio  
BARTOLOMEO PIO, INC.  
260 New York Drive  
Fort Washington, PA 19034

Dear Mr. Pio:

ISSUE: This is in response to your letter of May 11, 1999 to Darryl Stackhouse which was forwarded to our office for review. You seek our opinion concerning the legality of selling a 'fermented blend of white grape juice and a light malt base' at beer distributorships. You enclosed an advertising flyer from Saranac/The Matt Brewing Company which lists a new product called Mountain Blush, which contains the fermented blend to which we referred above. Attempts to reach you by telephone in an effort to learn the exact contents of the product were unsuccessful.

OPINION: Mountain Blush by Matt Brewing Company is currently not registered to be sold either through Pennsylvania's beer distribution system or the state store system. Thus, it is not being distributed in Pennsylvania at this time. As to its characterization as a beer, however, a malt or brewed beverage is defined in the Liquor Code as 'any beer, lager beer, ale, porter or similar fermented malt beverage containing one-half of one per centum or more of alcohol by volume, by whatever name such beverage may be called, and shall mean alcoholic cider.' [47 P.S. Section 1-102]. While there is no definition of wine in the Code that is applicable to the entire Code, section 215 contains the following definition (applicable to wine marketing only): '[wine is] liquor which is fermented from grapes and other fruits, having alcoholic content of twenty-four per centum or less. The term wine shall not include malt or brewed beverages, nor shall wine include any products containing alcohol derived from malt, grain, cereal, molasses or cactus.' [47 P.S. Section 2-215]. Finally, 'liquor' is defined as 'any alcoholic, spirituous, vinous, fermented or other alcoholic beverage, or combination of liquors and mixed liquor a part of which is spirituous, vinous, fermented or otherwise alcoholic, including all drinks or drinkable liquids, preparations or mixtures . . . which contain more than one-half of one per cent of alcohol by volume, except pure ethyl alcohol and malt or brewed beverages.' [47 P.S. Section 1-102].

Given these definitions and the little information we have about the product, it appears that the product would most likely be classified as a malt or brewed beverage, assuming that the alcohol derives only from the malt base. Generally, products termed 'beer coolers' are distributed through distributors and importing distributors, whereas 'wine coolers' proceed through the state store system. An official decision on the classification of this or any product, however, would not be made until the manufacturer or its representative would request to sell it in Pennsylvania. At that time, the Board would request more information concerning its exact contents and manufacture process.

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  
D. Stackhouse

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

LCB Advisory Opinion No. 99-240