

July 22, 1999

Telephone: 717-783-9454
FAX: 717-787-8820

Litman, Litman, Harris & Brown Law Offices
3600 One Oxford Centre
Pittsburgh, PA 15219-6401

RE: Pittsburgh Brewing Company Snowboard Promotion

Dear Ms. Helmreich:

ISSUE: This office is in receipt of your letter dated June 30, 1999 in which you request approval for a winter-oriented promotion program proposed by Pittsburgh Brewing Company (PBC) for its Iron City brands. The promotion would involve PBC, a local radio station, the Iron City wholesalers or importing distributors in Beaver, Butler, Westmoreland and Allegheny counties, and a total of 32 retail distributor and bar/restaurant customers chosen by the wholesalers (retail or consumer accounts). Each of the 32 retail accounts will be given point-of-sale materials by PBC consisting of an easel card with information and banners, a registration box and register-to-win cards, the total value which material will not exceed \$140.00. Each retail account will also be given a snowboard to display during the course of the promotion, which will run from December 1999 to February 2000. The snowboard will feature an Iron City logo on the top and bottom, plus the slogan, 'This is City Living', on the bottom. The wholesale cost of the snowboards will be \$140-\$150 each (retail value of \$200-\$250). The importing distributors will pay for half the wholesale cost of the snowboards and PBC will pay for the other half. There will be no importing distributor advertising on the snowboards. It is PBC's intent that the 32 display snowboards be given away by the retail accounts in random, no-purchase-necessary drawings or raffles, to be retained by them for display or to be given away in other drawings conducted by the radio station.

No purchase will be required to fill out a register-to-win card, and participating persons must be over the age of 21 in order to enter.

During each month of the promotion, one or more drawings will be held from the register-to-win cards, to produce five 'winners' per month for a total of 15. These random drawings will be conducted by the radio station. Winners of the initial drawings will receive 'trip to Seven Springs' packages valued between \$125-\$150 each, which will be furnished by the radio station. The total value of these prize packages for the 15 winners is between \$2,000-\$2,500. Each of these winners will be eligible to attend a final party and to participate in a final drawing, likely to be held at Seven Springs. At that party, PBC 'wearable' advertising novelties, such as t-shirts, will be distributed to the winners. These will not have a wholesale cost in excess of \$15. The prizes for the final drawing will be five snowboards paid for entirely by PBC. The drawing will be random and will be conducted by the radio station. The radio station will also, separately, give away two additional snowboards in any manner of the radio station's choosing. These two additional snowboards will be paid for by PBC. It is contemplated that the prizes for the radio station-sponsored contest would include four cases of Iron City beer, which will be donated by PBC to the radio station.

DISCUSSION: Liquor Control Board Advisory Notice No. 10 (4th Revision), at section E, provides that manufacturers may conduct sweepstakes promotions under the following conditions: (1) no purchase is necessary to enter; (2) entrants must be 21 years of age or older; (3) winners are chosen by random drawings; (4) retail licensees (restaurant, hotel, clubs) may only be involved as pick-up or drop-off points for entry forms and not for the conducting of drawings or the awarding of prizes; and, (5) alcoholic beverages may not be prizes. Additionally, Advisory Notice No. 10 (4th Revision), at section A5.b.1, provides that interior point-of-sale displays may be furnished by manufacturers, distributors or importing distributors to retail licensees. While Advisory Notice No. 10 (4th Revision) states that the total cost of all point-of-sale advertising material relating to any one brand of any one manufacturer displayed at any one time may not exceed \$140.00, this amount was increased to \$300.00 by the Board on July 7, 1999.

Section 13.41 of the Board's regulations provides:

Manufacturers and importing distributors of malt or brewed beverages may include the names and addresses of all distributors and importing distributors to whom they sell in the locality covered by the advertising. No discrimination may be shown to one distributor or importing distributor over another, and where more than one distributor or importing distributor purchases the products of the manufacturer or importing distributor in the area covered by the advertisement, the names and addresses of all who purchase the product directly from the advertiser shall be displayed or mentioned in equal prominence. Where this is not done, none may be displayed or mentioned.

[40 Pa. Code Section 13.41].

In addition, section 13.51(a) of the Board's regulations provides that 'no in-state...manufacturer, licensee or group of licensees, their servants, agents or employes, may directly or indirectly...contribute to or accept from another licensee or group of licensees of a different class, their servants, agents or employes... anything of value by means of advertisement contributions, purchase, sale of tickets, donations or by any device, for any purpose.' [40 Pa. Code Section 13.51(a)].

The PBC snowboard promotion appears to comply with the sweepstakes requirements in that the PBC promotion does not require purchase to enter, entrants must be 21 years of age or older, and winners are chosen by random drawing. While your letter did not indicate specifically, it is assumed that the registration boxes to be given to the retail accounts are drop-off points for the entry forms, and the actual drawing and awarding of prizes will not take place on restaurant or hotel licensed premises. PBC donation of four cases of Iron City beer for radio station use as station-sponsored contest prizes would violate the prohibition on alcoholic beverages being given as prizes by manufacturers in their promotions.

With respect to the point-of-sale material to be provided by PBC, the easel cards with information and banners, together with the registration box, register to win cards, and the snowboards, may not exceed the \$300.00 total cost limit of point-of-sale advertising material relating to PBC's Iron City brands at any one time on the retail licensed premises.

PBC's intention to allow the 32 retail distributor and bar/restaurant customers to keep the snowboards, paid for by PBC and the wholesalers, violates section 13.51 of the Board's regulation because it constitutes a contribution or donation from one license to another licensee of a different class.

Please keep in mind that the final drawing to be held at Seven Springs may not take place on its licensed premises, as that would violate the requirement that retail licensed premises may only be involved as pick-up or drop-off points for sweepstakes entry forms and may not be used for conducting drawings or awarding of prizes. As long as 'wearable' advertising novelties supplied to the winners at Seven Springs have a wholesale cost of \$15.00 or less, they may be furnished by PBC.

With the exception of your statement that no importing distributor advertising will be placed on the snowboards, your letter does not provide specific information about how these promotions will be advertised by the radio station. Please keep in mind that any advertisements must conform to, and may not be in violation of, the Board's regulations sections 13.41 and 13.51(a) in particular, and section 498 of the Liquor Code.

Please do not hesitate to contact this office if you have any further questions regarding this promotion.

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

LCB Advisory Opinion No. 99-270