

August 6, 1999

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

Francis X. O'Brien, Jr., Esquire VIA FAX: 717 236-6795
204 State Street
Harrisburg, PA 17101

RE: Amendment to Advisory Opinion No. 99-223 dated June 25, 1999: Coors Light Starting Line Up Sweepstakes/Contest/POS

Dear Mr. O'Brien:

ISSUE: This is a response to your letter dated July 12, 1999 to this office on behalf of Coors Brewing Company. On May 22, 1999, Coors Brewing Company wrote to the Board seeking approval of the Coors Light Starting Line Up promotion. In a response dated June 25, 1999 (Advisory Opinion No. 99-223), this office advised that '[t]he above-referenced promotion may not be conducted on retail licensed premises because section 5.32 of the Board's regulation (sic) [40 Pa. Code Section 5.32] prohibits a manufacturer from conducting a contest on retail licensed premises.' Section 5.32(e) of the Board's regulations prohibited the promotion on retail licensed premises because section 5.30 of the Board's regulations [40 Pa. Code Section 5.30] defines an 'event/tournament/contest' for purposes of section 5.32 as a competitive endeavor involving skill, speed, strength or endurance. It is this office's opinion that the 'sweepstakes' entry form involves skill because a participant is required to select various professional football players' names, and depending on the players' performances, a participant receives certain points. The person(s) with the most points at various intervals of the promotion is (are) awarded the prizes. Therefore, the promotion is a contest under Pennsylvania law. Thereafter, by letter dated June 10, 1999, Coors Brewing Company submitted for prior approval samples of the proposed point-of-sale materials for the promotion. The approval/disapproval of these items will be discussed below.

OPINION: In your letter, you argue that making available tear-pad entry forms on retail licensed premises for sweepstakes does not constitute conducting a contest on retail licensed premises, pursuant to sections 5.30 and 5.32 of the Board's regulations. This office has historically permitted retail licensed premises to be used as pick-up and drop-off points for manufacturers' sweepstakes promotions. Therefore, you ask this office to approve permitting retail licensed premises to be used as pick-up only locations for tear-pad entry forms for a manufacturer's contest. It is this office's opinion that a retail licensed premises may not be used in a manufacturer's contest and this prohibition would extend to using the premises as a pick-up location.

Turning to the specific POS samples submitted to this office for approval, please be advised that the point-of-sale materials comport, in part, with applicable liquor laws and regulations, specifically sections 493(20)(i) and 493(24) of the Liquor Code [47 P.S. Sections 4-493(20)(i) and 4-493(24)], for use on both retail and distributor licensed premises, subject to the following caveats: the tear-pad entry forms are not permitted as stated above; coasters and pint glasses are not approved because they are considered equipment under Pennsylvania laws. [47 P.S. Section 4-493(17)]. The total cost of all POS advertising matter relating to any one brand shall not exceed a cost of \$300.00 at any one time, whether one item or several. [47 P.S. Section 4-493(20)(i)]. The Wilson Football, Ridell Mini Helmet, Leather Jackets, Starter Sweat Suit and Ashworth Golf Skirt may be used as sweepstakes prizes but not as novelty items because each exceeds a wholesale value of \$15.00. [47 P.S. Section 4-493(24)].

If the tear-pad entry forms and promotion can be modified to comply with Pennsylvania law, those items should be resubmitted for approval.

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. 99-287