

August 18, 1999

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

Barbara Gilleran
Regulatory Compliance Specialist
Miller Brewing Company
3939 W. Highland Blvd.
P.O. Box 482
Milwaukee, WI 53201-0482

RE: Miller Lite Football Promotion

Dear Ms. Gilleran:

ISSUE: This is a response to your letter dated July 27, 1999 to Robert Kaskiel that was forwarded to this office. You request an opinion as to the legality of conducting the Miller Lite Football Sweepstakes in Pennsylvania. The sweepstakes involves consumers pulling tabs on a football-theme game piece, possibly revealing certain 'winning' phrases. The consumers must call an 800 number to determine what they have won (i.e., a tee-shirt or NFL jacket). Additionally, all winning and non-winning mailed-in game pieces will be entered into a random drawing, the winners of which will receive a grand prize trip to Super Bowl XXXIV. No purchase is necessary to obtain a game piece.

The lower portion of the game piece contains four additional pull-tabs which may optionally be used for self-sponsored games conducted by the retailer. This portion may be removed and discarded if the retailer does not wish to conduct its own games. Miller Brewing Company's only involvement with the lower portion of the game piece is providing it to retail and wholesale accounts as point-of-sale material.

OPINION: The above-mentioned promotion is permitted on distributor and importing distributor licensed premises. However, the promotion is NOT permitted on retail licensed premises because: 1) the promotion is considered a contest and not a sweepstakes under Pennsylvania liquor laws, and 2) the self-sponsored retail contest is tied to the manufacturer's 'sweepstakes' by using the same game piece such that something of value is conferred upon the retail license. [40 Pa. Code Section 13.51]. Sections 5.30 and 5.32 of the Board's regulations prohibit a manufacturer from conducting a contest on retail licensed premises. A contest is defined as a competitive endeavor involving skill, speed, strength or physical attributes. This office has historically interpreted 'skill' to encompass any requirement beyond the mere completion of a tear-pad entry form. Because a participant is required to pull a tab and dial an 800 phone number to determine what they have won, the promotion involves 'skill' and is therefore not permitted.

Additionally, the self-sponsored retail contests for which the lower portion of the game piece may be used may not be 'tied' to a larger manufacturer's 'sweepstakes,' such that something of value is conferred upon the retail licensee. [40 Pa. Code Section 13.51]. The overall promotion will be reconsidered if each part is submitted as a separate proposal.

This office notes that a similar promotion (Super Bowl XXXIII Sweepstakes) was approved by Advisory Opinion No. 98-253 on August 5, 1998. However, last year's version can be distinguished because it did not 'tie' a manufacturer's contest to a retail promotion through a multi-promotion game piece.

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
R. Kaskiel, Special Investigations

LCB Advisory Opinion No. 99-295