

November 9, 1999

Telephone: 717-783-9454
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Caroline C. Murphy
Manager, Legal Services
Ryan Partnership
8 Wright Street
Westport, CT 06880

RE: Murphy's Irish Stout/Irish Amber - GOLF CALENDAR OFFER

Dear Ms. Murphy:

ISSUE: This is in response to your inquiry of September 9, 1999 and supplemental correspondence faxed on October 8, 1999 to this office in which you request an opinion as to the legality of conducting certain activities in Pennsylvania as described in the enclosed correspondence.

OPINION: This office has reviewed the proposed promotion (and accompanying point-of-sale materials). Unfortunately, the pre-printed entry form violates Section 493(24) of the Liquor Code, [47 P.S. Section 4-493(24)], because the purchase of an alcoholic beverage allows participants to receive the Murphy's Irish Amber Golf Calendar for \$4.99 compared to the 'no purchase necessary option' of \$11.99. In a recent phone conversation with this office, your organization indicated that Pennsylvania residents would not be required to send a UPC symbol from the product in order to obtain the calendar for \$4.99. You offered assurance that orders from Pennsylvania consumers will be returned with instructions for a consumer to send in the lesser amount without any UPC product symbols.

Based on this office's review of the revised proposed promotion, it appears that Section 493(24) would still be violated because an unknowing Pennsylvania consumer would still be induced to purchase alcohol to obtain the lesser price for the calendar. Even though orders from Pennsylvania consumers will be returned with instructions for a consumer to send in \$4.99 without any UPC product symbols, the inducement to purchase alcohol is not corrected by the proposed amended rules. Correction of the entry form would be required. If the promotion is modified to comport with Pennsylvania liquor laws, it should be resubmitted to Malt Beverage Compliance 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

c.c. Pennsylvania State Police
Bureau of Liquor Control Enforcement

LCB Advisory Opinion No. 99-359