

## KEY LEGAL ISSUES AFFECTING YOUR BUSINESS

By: *Michael J. Brown/February 2004*

Illuminated Signs, PBTs and Music Licensing are key legal issues affecting your business.

### ILLUMINATED SIGNS

Illuminated signs advertising the name of alcohol brands are now allowed inside retail establishments after Michigan Attorney General Mike Cox ruled on January 8, 2004 that MLCC Rule 436.1313(1) violates the First Amendment to the United States Constitution and Article 1, Section 5 of the Michigan Constitution. The Michigan Licensed Beverage Association (MLBA) has argued for years that the MLCC rule prohibiting illuminated signs inside retail establishments should be abolished. Michigan was seemingly the only state in the country that did not allow illuminated signs prior to the Attorney General's recent Opinion. As an agency of State government, the MLCC is bound by law to uphold Opinions of the Attorney General. Thus, if you have any lighted signs that you have been keeping on your walls but unplugged or in your back storeroom, you now have legal authority to plug them in and light them up.

One question that remains unresolved by the MLCC is whether you can accept a lighted sign given to you by another licensee, whether the other licensee is a distributor, wholesaler, vendor representative or other agent of a licensee. Another MLCC rule prohibits "aid and assistance" from any of the above licensees to another licensee. The MLCC has not yet stated a position in writing on whether giving a sign to a licensee constitutes "aid and assistance" as that rule has been interpreted in the past. Until this issue is settled you may wish to consider purchasing your own signs or at least declining any signs given as gifts from another licensee.

### PRELIMINARY BREATH TESTS (PBTs)

Another issue the MLBA continues to monitor closely is the use of preliminary breath test (PBT) devices by law enforcement officers while on the premises of a bar or restaurant. In recent years, we have seen a marked increase in the use of PBT devices by various law enforcement departments in an effort to determine whether a licensee has served someone who is intoxicated. In essence, the law enforcement community is using the PBT device as a shortcut method to determine whether a customer should have been allowed to further consume alcohol on the premises. The PBT devices, however, were never intended for such a use.

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Historically, the PBT device was used exclusively to determine whether someone apparently has too much alcohol in their system to properly operate a motor vehicle. Recently, various members of the law enforcement community have begun using the PBT devices to also check for the presence of any alcohol in minors under the "zero tolerance" law. The random use of PBT devices on minors in this regard was recently ruled unconstitutional by a Federal judge sitting in Bay City. The MLBA has been monitoring for some time the use of PBT devices by police officers in bars and restaurants and believes this also violates a person's constitutional rights. The MLBA continues to gather information on the subject with the hope of convincing the MLCC and the law enforcement community in Michigan to discontinue this harassing technique of evidence gathering. The MLBA believes the emphasis in any investigation of allowing an intoxicated person to consume alcohol should focus on their visible signs of intoxication and not on some untrustworthy mechanical calculation. The focus should be on what the bartender or server observes, and on the information that they can obtain from the customer before making the sale, rather than relying on an evaluation made after the fact and without any reference to all of the other information available to the bartender or server at that time. The MLBA believes progress is being made on this issue and continues to have fruitful discussions with the MLCC with the hopes of carrying forward that message to the law enforcement community. You can do your part by reporting to the MLBA any instances you observe of police officers using PBT devices within your establishment.

### MUSIC LICENSING

You should be aware of the importance of being properly licensed by BMI, SESAC and ASCAP if you are utilizing a juke box, prerecorded music, or other forms of entertainment where you play someone else's songs in your establishment. Each year dozens of licensees find themselves being sued by one or more of the above licensing companies for failure to obtain a licensing agreement or pay royalties to the entertainers for the use of their material. These lawsuits are expensive and the potential damages associated with these lawsuits are oftentimes significant. The risks of utilizing this material without a proper license are potentially severe and should encourage you to consider getting the proper licenses. You wouldn't think of operating your business without fire insurance for your building, nor should you consider utilizing the protected artistic works of others without a proper license in place. You can get burned just as easily from music licensing violations as you can from a fire in your building. Do yourself a favor and don't become the next target for one of these lawsuits.