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State Court Rules Brewers' Sweepstakes Aren't Legal

Bob Egelko, Chronicle Staff Writer

Wednesday, January 31, 2001

Want to be a millionaire? Try something besides a beer company sweepstakes.

The state Court of Appeal in Sacramento put sweepstakes run by alcoholic beverage makers on the void-where-prohibited list in California yesterday, upholding a 1999 state regulation based on a temperance-minded law.

The law, which dates from 1937, shortly after the repeal of Prohibition, forbids "any premium, gift or free goods" in connection with the sale or distribution of alcohol. For nearly 20 years, the state Department of Alcoholic Beverage Control interpreted the law to allow sweepstakes, which contestants could enter without having to buy a product.

It was an especially popular promotion with beer makers, who fought for market share with a proliferation of Super Bowl sweepstakes. But the department changed course in 1997, reportedly in response to complaints from competitors, and announced a ban on sweepstakes unless the prizes were nominal:

25 cents for beer, \$1 for wine and \$5 for distilled spirits.

The ban, the only one of its kind in the nation, was scheduled to take effect in 1999 but was blocked by the court in response to a suit by Coors Brewing Co. Coors argued that it was not furnishing an outlawed "premium" in its sweepstakes because the prize was not associated with the sale of the product. The sweepstakes offered cash prizes of as much as \$1 million to participants who dialed an 800 number posted in display ads.

The court disagreed, saying standard dictionaries and legal reference books define a premium as a prize or reward.

The law on which the regulation is based bans giveaways during promotions as well as sales, said Presiding Justice Arthur Scotland in the 3-to-0 ruling. He said arguments by liquor industry groups -- that sweepstakes promote competition among brands without increasing overall consumption -- should be addressed to the Legislature.



Sean SeLegue, a lawyer for Coors, said the Colorado brewer may appeal.

"The court's interpretation of language, we think, is problematic," he said.

"When's the last time you heard somebody say, 'I won a premium'? They'd say, 'I won a prize.' "

For brewers such as Coors that don't dominate the market, SeLegue said, "sweepstakes are its best way of getting its word out to its customers."

"They're a very popular method of marketing . . . whether the prize is money or a trip to Spain," said John Hinman, who represented the Distilled Spirits Council of the United States. He acknowledged that the industry was divided on the issue.

E-mail Bob Egelko at beigelko@sfgate.com.

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This article appeared on page A - 19 of the San Francisco Chronicle