

January 25, 2012

Telephone: (717) 783-9454

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Jack T. Thorn, Ph.D.
CEO, Thorn Hill Vineyards

Re: Advertising Limited Winery Promotions

Dear Dr. Thorn:

ISSUE: This office is in receipt of your e-mail of December 20, 2011, in which you advise that your limited winery has recently opened its first store located in Lancaster, Pennsylvania. You are seeking guidance with respect to advertising various promotions. Specifically, you ask for guidance regarding the following four (4) promotions, as provided in your correspondence:

1. Rules for winery wine clubs. In California, club members receive a discount of twenty percent (20%). This encourages loyalty to our winery in hopes that they will buy cases of wine for their wine cellars, etc. In addition, we hold special events for club members such as movie night, new release parties, etc.
2. Discounts on our wine offered in a coupon in an advertisement where the discount requires a person who is at least twenty-one (21) years of age to take the coupon to our store.
3. Case discounts – ten percent (10%) off on the purchase of a case consisting of one (1) varietal, or a mixed case.
4. Restaurant discounts – if the restaurant buys several cases of our wine we give a discount.

Finally, you ask whether there is a class or a session you could take which cover the rules regarding marketing for limited winery licensees.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that Thorn Hill Vineyards, Inc. holds Limited Winery License No. LK-314 (LID 64608) for the premises located at 8170 Highway 29, Lower Lake, California.

OPINION: With respect to your first promotion involving wine clubs, be advised that section 493(24)(i) of the Liquor Code and Advisory Notice No. 10 (6th Revision) prohibit a licensee from offering or giving to trade (licensed) or consumer (non-licensed) buyers any prize, premium, gift or other direct inducement to purchase liquor or malt or brewed beverages except advertising novelties of nominal value. [47 P.S. § 4-493(24)(i)]. Novelty items bearing advertising matter, such as matches, disposable lighters, bottle or can openers, tee shirts, caps, corkscrews, pens and pamphlets, may be distributed with or without proof of purchase by any class of licensee to trade or consumer buyers. [Board Advisory Notice No. 10 (6th Revision)]. Advertising novelty items are limited to a wholesale cost of fifteen dollars (\$15.00) each or less.

Accordingly, while your limited winery would be permitted to operate and promote a wine club in Pennsylvania, it would not be permissible for the winery to offer only members of the wine club a discount on the purchase of alcohol, as such would be considered an inducement pursuant to section 493(24)(i) of the Liquor Code.

Further, please note that section 11.111(10) of the Board’s Regulations prohibits limited wineries from selling wine which is listed for sale as a stock item by the Board in its wine and spirits stores, at a price lower than the price charged by the Board. [40 Pa. Code § 11.111(10)]. However, section 505.2(2) of the Liquor Code provides a limited exception for wine which has undergone a second fermentation process. Such wine may be sold by the producing limited winery to the purchasing limited winery only at a price lower than the price charged by the Board. [47 P.S. § 5-505.2(2)]. Therefore, a limited winery licensee may not sell wine to its customers at a price lower than that for which the product is sold by the Board.

With respect to your second promotion, section 493(24)(i) prohibits the offering of anything of value to induce the purchase of alcohol, but carves out a limited exception allowing any manufacturer or any agent of a manufacturer to offer and honor coupons which offer monetary rebates on purchases of wines and spirits through the Board’s wine and spirits stores. [47 P.S. § 4-493(24)(i)]. These provisions prohibit limited wineries from offering coupons for the sale of wine from their limited winery locations. Please note, however, that a limited winery

would not be prohibited from issuing coupons redeemable on products that are purchased at the Board's wine and spirits stores.

Further, as noted above a limited winery licensee may not sell wine to its customers at a price lower than that for which the product is sold by the Board.

With respect to your third and fourth promotions, promoting a volume discount on your limited winery products would not be permissible (i.e., "buy a case of X wine and get a ten percent (10%) discount"). In the alternative, it would be permissible to implement a pricing policy as follows: a single bottle of X wine costs ten dollars (\$10.00), six (6) bottles cost fifty dollars (\$50.00), and a case of twelve (12) bottles costs one hundred dollars (\$100.00). In this hypothetical situation, a pricing policy is implemented which sets, across the board, the cost for various quantities of wine. Such a practice would be permissible.

As to advertising, generally, be advised that section 498 of the Pennsylvania Liquor Code allows the advertising of both the availability and the price of alcoholic beverages in Pennsylvania. [47 P.S. § 4-498]. "Advertisement" means any advertising of alcoholic beverages through the means of radio broadcast, television broadcast, newspapers, periodicals, or any other publications, outdoor advertisement, any form of electronic transmission (e.g., Internet), or any other printed or graphic matter including booklets, flyers or cards, or on the product label or attachment itself. [47 P.S. § 4-498(g)]. Board Advisory Notice No. 15 (4th Revision) summarizes provisions of the Liquor Code relative to the advertising of alcoholic beverages.

Section 498(b) of the Liquor Code prohibits any false, deceptive or misleading statements in price advertisements, disparaging statements of the products of a competitor, or statements referring to monetary comparisons between brands. The prices that are advertised or displayed on the licensed premises shall be those that are in effect at the time of the advertisement or display. [47 P.S. § 4-498(b)(1)-(3), (c)].

With regard to advertising alcoholic beverages, please note that the entity responsible for the advertisement shall be clearly identified in the advertisement. No print advertisement of alcoholic beverages is permitted within three hundred (300) feet of any church, school or public playground, although this prohibition does not preclude any point-of-sale advertisement, menus or other print advertisement regarding alcoholic beverages if such advertisements are inside the

licensed premises. The advertisement of alcoholic beverages may not contain language or slogans directed to minors to promote the consumption of alcoholic beverages. Advertisements of alcoholic beverages cannot be inconsistent with the spirit of safety or safe driving programs. [47 P.S. § 4-498(e)(1)-(6), (f)].

No obscene advertisement is permitted. Further, no advertisement is permitted, either directly or indirectly, in a booklet, program book, yearbook, magazine, newspaper, periodical, brochure, circular or similar publication published by, for or on behalf of any educational institution, although you may wish to consult the decision in Pitt News v. Pappert, 379 F.3d 96 (3d Cir. 2004), for its interpretation of section 498(e)(5) of the Liquor Code.

Section 498(e)(2) of the Liquor Code prohibits the distribution by mail of price lists, circulars or handbills to the general public, as a means of advertising liquor, wine or malt or brewed beverages. [47 P.S. § 4-498(e)(2), Board Advisory Notice No. 15]. While the Liquor Code does not define the terms “circular” or “mailing,” Webster’s II New College Dictionary (1999) defines “circular” as a “printed advertisement, directive or notice for mass distribution,” and “mailing” is defined as “a batch of mail sent at one time by a mailer.” For purposes of clarity and uniformity, the Pennsylvania Liquor Control Board (“Board”) has generally defined the terms “circular,” “price list” and “handbill” to mean any form of “unsolicited” advertising. The Pennsylvania Attorney General’s Office has determined, however, that this prohibition does not prevent a licensee from advertising the same in a newspaper or community newspaper. [See also 40 Pa. Code §§ 13.1 – 13.62].

Finally, be advised that there is no class or session offered by the Board in the area of permissible marketing efforts on the part of a licensed limited winery. However, it is hoped that the above-referenced restrictions on the promotions set forth in your e-mail will provide a firm basis for your decisions regarding future promotions. This office has historically analyzed proposed promotions as presented on a case-by-case basis, rather than attempt to provide a list of all permissible promotions. Accordingly, you may submit further promotions to this office for review and guidance.

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

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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: Pennsylvania State Police,
Bureau of Liquor Control Enforcement
Jerry W. Waters, Director of Office of Regulatory Affairs
Tisha Albert, Director, Bureau of Licensing
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LCB Advisory Opinion No. 11-581