

August 20, 2013

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RE: Four Loko[®] Mail-in Rebate

Dear Ms. Komorowski:

ISSUE: This correspondence is in response to your e-mail of August 12, 2013, wherein you request approval on behalf of Phusion Projects to conduct the Four Loko[®] Celebrate Labor Day mail-in rebate promotion in Pennsylvania. Through the promotion, consumers can save three dollars (\$3.00) by mail on the purchase of four (4) or more cans of Four Loko[®] (any flavor). To receive the rebate, consumers must mail the completed mail-in rebate offer form, along with the original cash register receipt (with the qualifying purchases circled), to the address specified on the form. The rebate is available only to legal residents of certain states, including Pennsylvania, who are twenty-one (21) years of age or older, and there is a limit of one (1) rebate per household. The offer is valid only on purchases made between August 15, 2013 and September 4, 2013.

OPINION: This office has reviewed the proposed mail-in rebate promotion and has determined that it comports with the applicable liquor laws and regulations, specifically subsection 493(24)(i) of the Liquor Code [47 P.S. § 4-493(24)(i)], and is acceptable for use in this Commonwealth subject to certain limitations.

Please be advised that, in Pennsylvania, mail-in rebates on malt or brewed beverages are permissible only if those products are purchased on distributor or importing distributor licensed premises, and those types of licensees must sell by the case. A “case” is defined as a package prepared by the manufacturer for sale or distribution of twelve (12) or more original containers totaling two hundred sixty-four (264) or more fluid ounces of malt or brewed beverages, excepting those packages containing twenty-four (24) or more original containers each holding seven (7) fluid ounces or more. [47 P.S. § 1-102].

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Therefore, it is only permissible to conduct the proposed mail-in rebate promotion in the Commonwealth in reference to the areas checked below and only to the extent that it applies to case quantities as defined above:

- retail licensed premises.
- distributor licensed premises.
- both retail and distributor licensed premises.
- the Board's wine and spirit stores, subject to approval of the Bureau of Product Selection.
- other – Internet, text messaging.

Additionally, please be advised that prior approval of malt or brewed beverages point-of-sale ("POS") material and retail licensed premises POS material is no longer required. However, the requirement for prior approval of POS material intended for use in the Board's wine and spirits stores from the Bureau of Product Selection remains. The total cost of all POS advertising material relating to any one (1) brand of any one (1) manufacturer at any one (1) time may not exceed three hundred dollars (\$300.00) on a retail licensed premises. [47 P.S. § 4-493(20)(i)].

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: Pennsylvania State Police, Bureau of Liquor Control Enforcement
James Short, Director of Marketing
Timothy Fringer, Bureau of Product Selection
Michelle Bonsick, Bureau of marketing Communications, Branding & Design

LCB Advisory Opinion No. 13-393