

October 17, 2013

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Scott A. Schleifstein, Esq.
Cohen Silverman Rowan LLP
360 Lexington Avenue, 16th Floor
New York, NY 10017

RE: Smirnoff Winter Fun Sweepstakes

Dear Mr. Schleifstein:

ISSUE: This correspondence is in response to your e-mail and attached letter dated October 8, 2013, wherein you request approval, on behalf of Diageo Americas, Inc., to conduct the Smirnoff Winter Fun Sweepstakes in Pennsylvania.

According to the "Official Rules" that you provided, the sweepstakes is scheduled to begin on November 1, 2013, and runs until January 31, 2014. The sweepstakes is open only to legal residents of nine (9) states, including Pennsylvania, who are twenty-one (21) years of age or older. No purchase is necessary to enter or win the sweepstakes.

Interested individuals may enter the sweepstakes by visiting www.smirnoffwinterfun.com and following the on-screen instructions to submit an entry. Alternatively, interested individuals may enter by sending a text message with "WINTERFUN" from their handset to "839863." There is a limit of one (1) entry per person, regardless of the method of entry.

One (1) grand prize will be awarded for the sweepstakes. The grand prize winner will be selected via random drawing on or about February 7, 2014. The grand prize drawing will consist of all eligible entries received from all nine (9) states in which the sweepstakes is offered. The grand prize winner will receive one (1) gift card which may be redeemed at a ski resort location in New England to cover

expenses, which may include: hotel accommodations; meals at the resort; ski rentals; lift fees; and/or fees to participate in other resort activities for the grand prize winner and one (1) guest. If the grand prize winner lives outside of a one hundred fifty (150)-mile radius of the selected ski resort location, the grand prize winner and guest will also receive round-trip coach air travel between the winner's residence and a major commercial airport near the selected ski resort location. The approximate retail value of the grand prize is three thousand dollars (\$3,000.00). The grand prize winner's guest must be twenty-one (21) years of age or older. Alcoholic beverages are not part of the grand prize.

Nine (9) first prizes will also be awarded for the sweepstakes. The first prize winners will also be selected via random drawing on or about February 7, 2014. The nine (9) participating states will each have their own first prize drawing consisting of all eligible entries received from residents of that particular state. Each first prize winner will receive one (1) backpack. The approximate retail value of each backpack is three hundred dollars (\$300.00).

OPINION: Section 5.32(h) of the Board's Regulations states that a manufacturer or licensee may sponsor sweepstakes promotions subject to the following conditions:

- i. No purchase is necessary to enter.
- ii. Entrants shall be twenty-one (21) years of age or older.
- iii. Retail licensed premises may only be involved as pick-up or drop-off points for entry forms and not for the conducting of drawings or the awarding of prizes.
- iv. Alcoholic beverages may not be part of the prize.

[40 Pa. Code § 5.32(h)].

This office has reviewed the proposed sweepstakes promotion as described in the "Official Rules" and determined that it comports with applicable liquor laws and regulations, specifically section 493(24)(i) of the Liquor Code [47 P.S. § 4-493(24)(i)] and section 5.32(h) of the Board's Regulations [40 Pa. Code § 5.32(h)], as long as alcoholic beverages are not awarded as any part of the prizes.

While the "Official Rules" that you provided indicate that alcoholic beverages are not part of the grand prize, it is important to point out, in case you are unaware, that to the extent that any part of the gift card/trip being awarded will involve

sampling, taste testing, or the provision of alcoholic beverages at no additional cost to the winner and/or his or her guest, this would be construed as awarding alcoholic beverages as part of the grand prize and is not permitted. Also, there is no indication in the “Official Rules” as to whether the backpacks being awarded as the first prizes will be empty or contain any items. Please note that it would not be permissible to include alcoholic beverages in the backpacks being awarded, although it would be permissible to fill the backpacks with other non-alcoholic beverage items, such as Smirnoff-branded novelty items.

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)].

Therefore, as long as alcoholic beverages are not awarded as any part of the prizes, it is permissible to conduct this promotion in the Commonwealth in reference to the areas checked below:

- retail licensed premises.
- distributor licensed premises.
- both retail and distributor licensed premises.
- the Board’s wine and spirits stores, subject to approval of the Bureau of Product Selection (POS only).
- other – internet, text messaging.

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

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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 and Merchandising
Michelle Bonsick, Director, Bureau of Marketing Communications,
Branding & Design
Pamela Bernd, Bureau of Product Selection

LCB Advisory Opinion No. 13-455