

November 25, 2013

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Gastón Oría  
La Dorita, LLC  
2313 Main Street  
Sharpsburg, PA 15215

**Re: La Dorita Dulce de Leche Liqueur**

Dear Mr. Oría:

ISSUE: This is in response to your e-mail sent on September 26, 2013, wherein you advise that local restaurants are willing to offer their customers a free shot of La Dolcita Dulce de Leche Liqueur (“the liqueur”), for which you have a vendor’s permit, but the restaurants complain that the cost of the liqueur is too high for them to give it away with free shots. You ask if it is possible for you to match whatever they buy, and give them a bottle for free. You would also provide the restaurants with some marketing materials, advising interested customers that the liqueur is available at the local wine and spirits store.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that the liqueur is distilled and bottled by Pennsylvania Pure Distilleries, LLC, which holds Limited Distillery License No. AL-164 (LID 59324) for the premises located at 1101 William Flynn Highway, Glenshaw, Pennsylvania. Board records also indicate that you are the Manager for La Dorita, LLC, which holds Importer License No. I-861 (LID 66960) for the premises located at 211 Harrow Drive, Blawnox, Pennsylvania.

OPINION: The holder of an importer license is considered a licensed vendor and may employ agents to promote sales in Pennsylvania. [40 Pa. Code § 13.71]. “Agent” is defined as an individual employed by a licensed vendor to promote the sale of liquor through state liquor stores. [*Id.*]. Agents enjoy the following privileges as set forth in section 13.73 of the Board’s Regulations:

- (a) Agents may advertise and promote the sale of stock merchandise by “missionary work” of only those brands sold to the Board by the vendor by whom the agents are employed.
- (b) Agents may solicit orders from retail purchasers for stock merchandise or gift certificates for the merchandise.

- (c) Agents may solicit from licensees or other persons, orders for those brands of liquor which have been listed with the Special Liquor Purchase Division by the vendors by whom the agents are employed. Special orders obtained by vendors' agents shall be filed with one of the State Liquor Stores as required in this subchapter.
- (d) Agents may solicit from licensees or other persons, orders for those brands of liquor which have been designated by the Board as luxury items. Orders for luxury items obtained by vendors' agents shall be filed with one of the State Liquor Stores as required in this subchapter.

[40 Pa. Code § 13.73].

Nothing in the above regulation allows for an agent to purchase or otherwise discount the cost of the liquor the agent is promoting. Indeed, such a practice would conflict with section 13.51 of the Board's Regulations, which prohibits a manufacturer or licensee from giving anything of value, directly or indirectly to another licensee of a different class. [40 Pa. Code § 13.51(a)].

There is an exception in section 13.51(e), however, which provides that the "sponsorship of a tasting upon a licensed premises will not be considered giving or accepting a thing of value." [40 Pa. Code § 13.51(e)]. A sponsor of a tasting event may be any licensed vendor, importer, distributor, importing distributor or manufacturer or its agent or employee who is twenty-one (21) years of age or older. [40 Pa. Code § 13.201]. The Board's Regulations provide the following details about tasting events:

- (a) Tastings may be conducted by sponsors upon licensed or unlicensed premises.
- (b) Sponsors conducting a tasting event shall adhere to the following requirements:
  - (1) Products used shall be legally procured and properly registered and taxes on the products shall be paid.
  - (2) Purchase requirements may not be associated with the tasting.
  - (3) Products offered will not exceed a standard size alcoholic beverage for that product. For example, if wine is offered, each glass of each wine offered to a participant will not exceed 4 ounces in volume. A tasting event comparing a

brand of Chardonnay from California to a brand of Chardonnay from France would allow the participant to receive one 4-ounce glass of each Chardonnay.

[40 Pa. Code § 13.211].

Therefore, in lieu of providing restaurant licensees with bottles of the liqueur at a reduced cost or at no cost, you may, in the alternative, hold tasting events at such locations to introduce your product to the local community.

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  
Jerry W. Waters, Director of Office of Regulatory Affairs  
Tisha Albert, Director, Bureau of Licensing  
Jeffrey Lawrence, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No. 13-503