

December 2, 2013

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**RE: E. & J. Gallo Winery Holiday Spirits Sweepstakes**

Dear Ms. Forbes:

ISSUE: This correspondence is in response to your e-mail sent November 26, 2013, wherein you seek approval to conduct the E. & J. Gallo Winery Holiday Spirits Sweepstakes in Pennsylvania.

According to the "Official Sweepstakes Rules" that you provided, the sweepstakes was scheduled to begin on December 1, 2013, and runs until December 31, 2013. The sweepstakes is open only to residents of Philadelphia, New Jersey, or Delaware 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 <http://www.phillymag.com/holidayspirit>, answering the "What's Your Holiday Spirit" quiz questions, and then submitting the requested information. There is a limit of one (1) entry per person.

One (1) winner for the sweepstakes will be selected in a random drawing to be held no later than January 6, 2014. The winner will receive two (2) general admission tickets to the Philadelphia Wine & Food Festival, which will take place in Philadelphia, Pennsylvania, in May 2014. The approximate retail value of the prize is two hundred fifty dollars (\$250.00). The sponsors reserve the right to substitute a prize or portions thereof of equal or greater value if the prize cannot be awarded as described. The prize may not be assigned, transferred, changed, or redeemed for cash.

OPINION: Section 5.32(h) of the Pennsylvania Liquor Control Board's ("Board") 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 and has determined that it would comport with applicable liquor laws and regulations, specifically subsection 493(24) of the Liquor Code [47 P.S. § 4-493(24)] and section 5.32(h) of the Board's Regulations [40 Pa. Code § 5.32(h)], and be acceptable for use in this Commonwealth, as long as alcoholic beverages are not included as any part of the prize.

Please be advised that to the extent that the general admission tickets being awarded to the Philadelphia Wine & Food Festival in this instance would entitle the winner of the sweepstakes and his or her guest to sample the wines featured at the festival or otherwise receive alcoholic beverages at no additional cost, this would be construed as awarding alcoholic beverages as part of the prize and is not permitted. However, the proposed sweepstakes promotion would otherwise be permissible if a prize is awarded that does not include alcoholic beverages.

Furthermore, 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 Management 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 prize, it would be permissible to conduct the proposed sweepstakes promotion in the Commonwealth, as indicated above, 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 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, Product Selection

LCB Advisory Opinion No. 13-510