

Steven Schaffer
Southern Wine & Spirits
VP/GM AWS Spirits Division
460 American Avenue
King of Prussia, PA 19406
VIA E-MAIL: sschaffer@southernwine.com

RE: Gosling's Black Seal Rum – Spring 2014 Consumer Program

Dear Mr. Schaffer:

ISSUE: This correspondence is in response to your e-mail sent December 4, 2013, wherein you request approval to conduct Gosling's Black Seal Rum – Spring 2014 Consumer Program in Pennsylvania.

According to the materials that you submitted for review, through the program, consumers will receive a free golf lesson or a free round of golf with the purchase of either a seven hundred fifty milliliter (750 ml) or one and seventy-five hundredths Liter (1.75L) bottle of Gosling's Black Seal Rum. Each bottle will have a bottle neck hanger that will include a unique code, which the consumer may enter on a promotional website in order to obtain a reward claim form. The consumer will then be required to mail the completed reward claim form, along with the proof of purchase, to the promotional company. Once the reward claim form has been validated, the consumer will be sent an e-mail containing a link with live access to the list of participating golf venues across the county. The consumer will then select the golf venue of his or her choice and print a personalized voucher to be presented at the selected golf venue. Product with the unique bottle neck hangers will be shipped in March and will be ready to be displayed in stores during April, May, and June. The promotion will be supported by bottle neck hangers, shelf talkers, and case cards explaining the promotion.

OPINION: Section 493(24)(i) of the Liquor Code generally prohibits manufacturers and licensees, or any employee or agent of a manufacturer or licensee, from offering to give anything of value, or soliciting or receiving anything of value, as a premium or present to induce directly the purchase of liquor or malt or brewed beverages. [47 P.S. Section 4-493(24)(i)]. Similarly, section 493(24)(i) also generally prohibits manufacturers and licensees, or any employee or agent of a manufacturer or licensee, from offering or giving to trade buyers or to consumer buyers a prize, premium, gift or other inducement to purchase liquor or malt or brewed beverages. [Id.]. However, section 493(24)(i) does provide for several limited exceptions to these general prohibitions. Section 493(24)(i) does not prohibit "any manufacturer or any agent of a manufacturer from offering and honoring coupons which offer monetary rebates on purchases of wines and spirits through State Liquor Stores or purchases of malt or brewed beverages through distributors and importing distributors." [Id.]. Further, section 493(24)(i) of the Liquor Code does not prohibit manufactures or licensees from giving away "advertising novelties of nominal value." [Id.]. The Board has determined "nominal value" to mean having a wholesale cost of fifteen dollars (\$15.00) or less. [Board Advisory Notice No. 10 (6th Revision)]. "Advertising novelties" include items, such as "disposable lighters, bottle or can openers, caps, tee shirts, recipe pamphlets, pens, corkscrews, and ashtrays, which bear advertising matter." [40 Pa. Code Section 13.52].

Here, the giving away of a free golf lesson or free round of golf conditioned on the purchase of either a seven hundred fifty milliliter (750ml) or one and seventy-five hundredths Liter (1.75L) bottle of Gosling's Black Seal Rum would neither satisfy the exception for rebates nor the exception for advertising novelties of nominal value. Thus, your proposed promotion would be considered an unlawful inducement to purchase alcohol in violation of section 493(24)(i) of the Liquor Code and is not permissible in Pennsylvania.

Nevertheless, please be advised that your proposed promotion would be permissible in Pennsylvania if no alcohol purchase were required in order to obtain the free golf lesson or free round of golf.

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. 13-518