

December 16, 2013

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Steven Schaffer  
Southern Wine & Spirits  
VP/GM AWS Spirits Division  
460 American Avenue  
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**RE: Reconsideration of Advisory Opinion No. 13-518**

Dear Mr. Schaffer:

ISSUE: This correspondence is in response to your e-mail sent December 13, 2013, wherein you request reconsideration of Advisory Opinion No. 13-518, which was issued by this office on December 11, 2013 in response to a request for approval to conduct Gosling's Black Seal Rum – Spring 2014 Consumer Program in Pennsylvania.

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.

In Advisory Opinion No. 13-518, this office concluded that it would not be permissible to conduct the proposed promotion because it would be considered an unlawful inducement to purchase alcohol in violation of section 493(24)(i) of the Liquor Code. In reaching this conclusion, this office also concluded that 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.

You are requesting reconsideration based on the belief that the proposed promotion would, in fact, satisfy the exception for advertising novelties of nominal value because the wholesale cost to Gosling – Castle Partners, Inc. for each golf lesson or golf round is only fifty-eight cents (\$0.58).

OPINION: As previously explained, 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. § 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, including an exception that allows manufacturers or licensees to give away “advertising novelties of nominal value” and to condition the receipt of the same on the purchase of alcohol. [Id.]. “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 § 13.52]. 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)].

Here, the problem is that golf lessons or golf rounds are events or experiences, and not “advertising novelties.” As set forth above, the Board’s Regulations define the term “advertising novelties” to include tangible objects, such as “disposable lighters, bottle or can openers, caps, tee shirts, recipe pamphlets, pens, corkscrews, and ashtrays, which bear advertising matter.” [40 Pa. Code § 13.52]. Thus, since golf lessons or golf rounds do not fall within the definition of the term “advertising

novelties” under the Board’s Regulations, it does not matter in this instance that Gosling – Castle Partners, Inc. only pays fifty-eight cents (\$0.58) for each golf lesson or golf round being given away.

Accordingly, this office stands by its prior conclusions reached in Advisory Opinion No. 13-518.

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  
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LCB Advisory Opinion No. 13-525