

April 23, 2014

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Susan Rayner, Boordy Vineyards
Phineas Deford, Boordy Vineyards

Brittany Percich, Account Executive
York Revolution Professional Baseball

Re: Girls Night Out Featuring Maryland Vintner

Dear Ms. Rayner, Mr. Deford, and Ms. Percich:

ISSUE: An e-mail from Phineas Deford, of Boordy Vineyards (“Boordy”), to the Pennsylvania Liquor Control Board’s (“Board”) Product Selection Division was forwarded to this office on March 5, 2014, for response. Originally, Brittany Percich, Account Executive for the York Revolution Professional Baseball Team (“the Revolution”), contacted Susan Rayner of Boordy to see if Boordy would be interested in being the wine vendor for the Revolution’s “Girls Night Out” event scheduled for Friday, September 12, 2014. Ms. Percich advised that the vintner would be “product exclusive” and would receive additional promotional benefits from the event. Ms. Rayner subsequently asked Mr. Deford to contact the Board as to the legality of this type of event; Boordy is located in Maryland and does not hold a Pennsylvania license.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that Legends Hospitality LLC (“Legends”) holds Public Venue Liquor License No. PV-137 (LID 64700) for the premises at 5 Brooks Robinson Way, York, Pennsylvania. This location also serves as the home field for the Revolution.

OPINION: It is unclear what Ms. Percich meant when she advised that Boordy would be “product exclusive” at the Girls Night Out event. It is assumed, for purposes of this response, that she meant that Boordy’s wines would be the exclusive wines sold that evening. It is unclear what is meant by “additional promotional benefits.” Please be aware that section 13.51 of the Board’s Regulations prohibits manufacturers – such as Boordy – and their servants, agents or employees, from contributing to or accepting from another licensee or group of licensees of a different class – such as Legends – their servants, agents or

employees, anything of value by means of advertisements, contributions, purchase, sale of tickets, or donations or by any device, for any purpose. [40 Pa. Code § 13.51].

Legends may decide to offer only one brand of wine on a particular night. In light of the fact that Legends contacted Boordy with regard to this promotion, it is assumed that Legends is interested in some type of presence or interaction by Boordy at the event.

Be advised that the Board has the general authority to control the manufacture, possession, sale, consumption, importation, use, storage, transportation and delivery of liquor and alcohol within the Commonwealth. [47 P.S. § 2-207(b)]. Generally, all sales of wine must occur through the Board's wine and spirits stores. Other than the Board, only licensed limited wineries are permitted to sell wine for off-premises consumption directly to the public and to retail licensees. [47 P.S. § 5-505.2].

Be further advised that it is unlawful for anyone in Pennsylvania to possess wine not acquired from a Pennsylvania wine and spirits store, a sacramental wine dealer, a licensed limited winery, or a licensed direct wine shipper. [47 P.S. §§ 4-491(2), 5-505.2, 5-505.4]. Similarly, it is unlawful for any person to import alcohol into the Commonwealth except as permitted within the Liquor Code and the Board's Regulations. [47 P.S. § 4-491(8), (11)].

Therefore, it would not be permissible for Boordy to bring wine into Pennsylvania for any type of event. If Boordy wishes to promote its wines in Pennsylvania, those wines would have to be acquired from one of the Board's wine and spirits stores. However, if Boordy were to obtain a Pennsylvania limited winery license, Boordy would be able to sell product directly to Legends. The prohibition set forth in section 13.51 of the Board's Regulations would still apply.

Whether Boordy held a Pennsylvania limited winery license or not, it would not be able to sell wine for off-premises consumption at another licensee's location. Legends, through the authority of its public venue license, is permitted to sell glasses of wine for on-premises consumption but may not sell wine for off-premises consumption.

Please note that section 493(24)(i) of the Liquor Code prohibits a licensee from offering things of value as an inducement to the purchase of alcohol, with the

exception of advertising novelties of nominal value and coupons. [47 P.S. § 4-493(24)(i)]. The Board has defined “advertising novelties of nominal value” as “matches, disposable lighters, bottle or can openers, caps, tee shirts, recipe pamphlets, pens, corkscrews and ashtrays, which bear advertising matter.” [40 Pa. Code § 13.52(a)]. In addition, a licensee may sell promotional items advertising its business only, such as tee shirts, mugs, caps and other similar items, to the general public. [40 Pa. Code § 13.52(f)].

Manufacturers may offer coupons, but only for the purchase of wines and spirits through the Board’s wine and spirits stores or for the purchase of malt or brewed beverages through distributors and importing distributors. [47 P.S. § 4-493(24)(i)].

Finally, with regard to sponsoring a “Girls Night Out,” please note that the Pennsylvania Human Relations Act (“PHRA”) prohibits discrimination on the basis of gender or sex. [43 P.S. § 951, et seq.]. It is unlawful to offer only one (1) sex a benefit or to deny admission based on sex. A promotion in which females receive a benefit that is not also offered to men is not permissible: both men and women must receive the same benefit. Therefore, you may title an event “Girls Night Out,” but both men and women must be able to receive the same specials or benefits. This office is not authorized to opine as to whether any specific conduct definitively would or would not violate the PHRA. The Pennsylvania Human Relations Commission (“PHRC”) would have authority in these circumstances. You may wish to contact the PHRC for more information regarding the PHRA at www.phrc.state.pa.us or at 717-787-4410.

Although you may simply call an event “Girls Night Out” without running afoul of the PHRA, there may nonetheless be concerns about advertising such an event. Section 498(b) of the Liquor Code prohibits any false, deceptive or misleading statements in price advertisements, disparaging statements of the products of a competitor, or statements referring to monetary comparisons between brands. [47 P.S. § 4-498(b)(1)-(3), (c)]. You must ensure that any advertising or promotion of a “Girls Night Out” must not deceptively suggest that there are promotions or specials when there are, in fact, none.

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

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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
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LCB Advisory Opinion No. 14-168