

May 15, 2014

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Ryan Malkin, Esq.
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RE: Mumm Napa Instant Rebate Offer

Dear Mr. Malkin:

ISSUE: This correspondence is in response to your e-mail and letter of May 6, 2014, in which you request approval on behalf of your client, Pernod Ricard USA, LLC, to conduct an instant rebate coupon promotion in Pennsylvania. Through the promotion, consumers can save three dollars (\$3.00) instantly on the purchase of Stacy's Pita Crisps (five ounces (5oz.) or larger, any variety/flavor) with the purchase of one (1) seven hundred fifty milliliter (750ml) bottle of Mumm Napa Sparkling Wine. The promotion will be offered from May 1, 2014 to August 19, 2014. The rebate coupon must be redeemed at the time of purchase. The rebate is available only to persons who are twenty-one (21) years of age or older.

OPINION: Section 493(24)(i) of the Liquor Code generally prohibits offering anything of value to induce directly the purchase of alcoholic beverages. [47 P.S. § 4-493(24)(i)]. However, section 493(24)(i) includes an exception which permits manufacturers or their agents to 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.].

In this instance, the proposed instant rebate promotion does not appear to satisfy the exception for monetary rebates on purchases of wines and spirits because the rebate is being offered on the purchase of Stacy's Pita Crisps, as opposed to the purchase of Mumm Napa Sparkling Wine. In order for cross-promotional rebate offers to fall within the scope of the exception for monetary rebates on purchases of wine and spirits, the rebate must be offered on the alcoholic beverage product, as opposed to the non-alcoholic beverage product. Cross-promotional rebate offers which offer a rebate on a non-alcoholic beverage product are only permissible if they make clear that no alcoholic beverage purchase is required. Therefore, it is not permissible to conduct the instant rebate promotion in Pennsylvania as proposed.

However, it would be permissible to conduct the instant rebate promotion in Pennsylvania if the rebate were offered on the Mumm Napa Sparkling Wine, or if the

rebate clearly stated that no alcoholic beverage purchase is required. Nevertheless, please keep in mind that, in Pennsylvania, wine may generally only be sold for off-premises consumption by the Pennsylvania Liquor Control Board (“Board”) through its wine and spirits stores, and there are a very limited number of non-alcoholic beverage items offered for sale at the Board’s wine and spirits stores.

Finally, 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 Selection 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)].

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
Dale Horst, Interim Director of Marketing and Merchandising
Michelle Bonsick, Director, Bureau of Marketing Communications,
Branding & Design
Pamela Bernd, Product Selection

LCB Advisory Opinion No. 14-218