

June 3, 2014

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Scott A. Schleifstein
Cohen Silverman Rowan LLP
360 Lexington Avenue, 16th Floor
New York, NY 10017

RE: Smirnoff Sorbet Light “Spa PA” Sweepstakes

Dear Mr. Schleifstein:

ISSUE: This correspondence is in response to your e-mail and attached letter dated May 24, 2014, in which you seek approval on behalf of Diageo Americas, Inc., to conduct the Smirnoff Sorbet Light “Spa PA” Sweepstakes in Pennsylvania.

According to the “Official Rules” that you provided, the sweepstakes is scheduled to begin on June 1, 2014, and runs until September 30, 2014. Interested individuals may enter the sweepstakes by visiting www.smirnoffsorbetsweeps.com and following the instructions to complete and submit an entry form. Alternatively, interested individuals may enter by texting “SORBET” to “839863.” There is a limit of one (1) entry per person, regardless of the method of entry.

One (1) grand prize and four (4) first place prizes will be awarded for the sweepstakes. The winners will be determined in a random drawing to be conducted on or about October 1, 2014.

The grand prize winner will receive a two (2) night hotel stay for the winner and up to three (3) guests (who must be twenty-one (21) years of age or older) at a local spa resort of the sponsor’s choosing. The prize also includes a one thousand dollar (\$1,000.00) voucher to be used for meals during the stay and one (1) two thousand dollar (\$2,000.00) voucher to be used at the spa for the winner and up to three (3) guests. Alcoholic beverages are not part of the prize. The approximate retail value of the prize is four thousand, five hundred dollars (\$4,500.00).

Each first place prize winner will receive a six hundred dollar (\$600.00) gift card for use at a spa location of the sponsor’s choosing.

The sweepstakes is open only to legal residents of Pennsylvania who are twenty-one (21) years of age or older. No purchase is necessary to enter or win.

OPINION: Section 5.32(h) of the Pennsylvania Liquor Control Board's ("Board") Regulations states that a manufacturer, manufacturer's representative, 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 promotion and has determined that it comports 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)], as long as no alcoholic beverages are awarded as part of the prizes.

Please be advised that to the extent that any part of the prizes being awarded involves taste testing, sampling, or the provision of alcohol at no additional cost to the winners and/or his or her guests, this would be considered awarding alcoholic beverages as part of the prize and is not permitted.

Moreover, please keep in mind that section 13.51 of the Board's Regulations prohibits manufacturers, licensees or their servants, agents or employees, from giving anything of value by means of advertisements, contributions, purchase, sale of tickets, donations or by any device, for any purpose to licensees of a different class. [40 Pa. Code § 13.51]. Thus, if the prizes being awarded are for use at businesses that are licensed by the Board as retailers, Diageo Americas, Inc. would need to ensure that it pays the regular price to the retailer for the prizes in order to avoid violating section 13.51.

Further, 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

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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 no alcoholic beverages are awarded as part of the prizes and Diageo pays the regular price to any licensed retailers for the prizes being awarded, if applicable, it would be permissible to conduct this promotion in the Commonwealth 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
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. 14-245