

July 14, 2014

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Jessica Fike
Licensing Assistant
North American Breweries
50 Fountain Plaza, Suite 900
Buffalo, New York 14202

RE: Promotional Seagram's Escapes In-Pack Item

Dear Ms. Fike:

ISSUE: This correspondence is in response to your letter of June 25, 2014, wherein you request approval, on behalf of Labatt USA Operating Co., LLC, to conduct a Fall/Winter in-pack promotion involving Seagram's Escapes in Pennsylvania. Through the promotion, consumers who purchase specially-marked Seagram's Escapes variety packs containing twelve (12) or twenty-four (24) bottles (having a volume of eleven and two tenths ounces (11.2 oz.) each) will receive an imPRESS Press-On Manicure Set ("Manicure Set"), which has a wholesale cost of one dollar and eighty-one cents (\$1.81).

OPINION: Generally, the Liquor Code prohibits providing anything of value as an inducement to purchase alcohol. [47 P.S. § 4-493(24)]. However, there is an exception to this general prohibition which allows manufacturers and licensees to provide advertising novelties of nominal value to other licensees and consumers. [Id.]. The Board has defined advertising novelties of nominal value as items that have a wholesale cost of fifteen dollars (\$15.00) or less and contain advertising material. [40 Pa. Code § 13.52; Board Advisory Notice No. 10 (6th Revision)]. Such advertising novelty giveaways may be conditioned on the purchase of an alcoholic beverage.

Here, while the Manicure Set that you are proposing to include as an in-pack promotional item has a wholesale cost that is substantially less the fifteen dollar (\$15.00) threshold, it is unclear from the materials that you provided whether the Manicure Set will include any advertising material for Seagram's Escapes. If the Manicure Set does not include any advertising material for Seagram's Escapes, then the Manicure Set would not satisfy the exception for advertising novelties of nominal value, and the provision of the same to consumers who purchase specially-marked Seagram's Escapes variety packs would be considered an unlawful inducement to purchase alcohol in violation of section 493(24) of the Liquor Code. However, if the Manicure Set does include advertising material for

Seagram's Escapes, then the Manicure Set would satisfy the exception for advertising novelties of nominal value, and it would be permissible to conduct the proposed promotion in Pennsylvania in reference to the areas checked below:

- retail licensed premises.
- distributor licensed premises.
- both retail and distributor licensed premises.
- the Board's wine and spirit stores, subject to approval of the Bureau of Product Selection.
- other - Internet, text messaging.

Please be advised that prior approval of malt or brewed beverages point-of-sale ("POS") material and prior approval of retail licensed premises POS material are 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)].

Finally, please keep in mind that, in Pennsylvania, importing distributors, and distributors are only permitted to sell malt or brewed beverages in case or keg quantities. [47 P.S. §§ 4-431, 4-440, 4-442]. A "case" is defined as a package prepared by the manufacturer for sale or distribution of twelve (12) or more original containers totaling two hundred sixty-four (264) or more fluid ounces of malt or brewed beverages, excepting those packages containing twenty-four (24) or more original containers each holding seven (7) fluid ounces or more. [47 P.S. § 1-102]. Also, retail licensees, such as restaurant and hotel liquor licensees, are only permitted to sell malt or brewed beverages in quantities of no more than one hundred ninety-two ounces (192 oz.) in a single sale for off-premises consumption.

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

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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

LCB Advisory Opinion No. 14-441