

August 1, 2014

Telephone: (717) 783-9454

FAX: (717) 787-8820

Dijana Kristo
Compliance & Trademark Specialist
The Wine Group
4596 South Tracy Boulevard
Tracy, CA 95377

RE: Money-Back Guarantee Program

Dear Ms. Kristo:

ISSUE: This correspondence is in response to your e-mail forwarded to this office on July 15, 2014, wherein you inquire as to whether it is permissible for a winery to offer a money-back guarantee on wine sold in Pennsylvania. You explain that, under the money-back guarantee program that is being contemplated, customers would only be entitled to a monetary refund if they are dissatisfied with the wine and they mail in a money-back request form to the supplier.

OPINION: Please be advised that it is unlawful for any licensee, or its servants, agents or employees, to offer, pay, make or allow, or to solicit or receive, any allowance or rebate, refunds or concessions, whether in the form of money or otherwise, to induce directly the purchase of liquor or malt or brewed beverages. [47 P.S. 4-493(22)]. However, this office has historically allowed an exception for a refund policy associated with a product satisfaction guarantee program. The Pennsylvania Liquor Control Board ("Board") generally views a consumer satisfaction, money-back guarantee program as one that uses terms such as: satisfaction guaranteed, completely satisfied, and the requirement to express a reason for the dissatisfaction. There generally would not be a requirement to obtain approval from the Board, and neither the Liquor Code nor the Board's Regulations impose any specific requirements regarding the method of refunding the product.

Moreover, please be advised that it is also unlawful for any licensee, the Board, or any manufacturer, or any employee or agent of the same, to offer to give anything

of value or to solicit or receive anything of value as a premium or present to induce directly the purchase of liquor or malt or brewed beverages, or to offer or give to trade or consumer buyers any prize, premium, gift or other inducement to purchase liquor or malt or brewed beverages. [47 P.S. § 4-493(24)(i)]. However, manufacturers and their agents are permitted to offer and honor coupons which offer monetary rebates on purchases of wines and spirits through the Board's Wine and Spirits stores or on purchases of malt or brewed beverages through distributors or importing distributors. [Id.]. A rebate of the full purchase price (excepting taxes) is allowable.

Point-of-sale ("POS") material associated with rebate offers intended for use in the Board's Wine and Spirits stores must be pre-approved by the Board's Bureau of Product Selection. 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)].

It appears that while the program that you are contemplating contains elements of both a product satisfaction or money-back guarantee program and a rebate program, it would ultimately comply with the applicable provisions of the Liquor Code and would be permissible for use within Pennsylvania. Nevertheless, to the extent that you are planning to use POS materials relative to the program, you will still need to obtain approval from the Bureau of Product Selection for such POS materials.

Additionally, although the program that you are contemplating would be permissible under Pennsylvania law, you may wish to consult the U.S. Department of the Treasury, Alcohol, Tobacco, Tax & Trade Bureau ("TTB"), or visit its website at www.ttb.gov/, for clarification on whether and under what circumstances programs such as the one that you are contemplating are permissible under federal law. [See 27 C.F.R. Part 11].

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

Dijana Kristo
August 1, 2014
Page 3

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
Michelle Bonsick, Bureau of Marketing Communications,
Branding & Design
Pamela Bernd, Bureau of Product Selection

LCB Advisory Opinion No. 14-446