

August 15, 2014

Telephone: (717) 783-9454

FAX: (717) 787-8820

Sara Skinner Chubb
Winston & Strawn LLP
35 West Wacker Drive
Chicago, IL 60601-9703

RE: Burnett's Says Game

Dear Ms. Chubb:

ISSUE: This correspondence is in response to your e-mail sent July 1, 2014, in which you request approval on behalf of your client, Marketing Resources, to conduct a promotion in Pennsylvania sponsored by Heaven Hill Distilleries, Inc.

According to the official rules you provided, the "Burnett's Says Game" promotion is scheduled to run from July 21 through September 15, 2014. Consumers may participate online via Facebook. By playing an online game, participants may earn "Flavor points," which may be redeemed for various prizes, including a branded key chain, a branded baseball hat, a branded t-shirt, branded insulated party cups, branded tailgate chairs, as well as a Visa gift card valued at one hundred dollars (\$100.00). No purchase is necessary, and the promotion is open only to legal U.S. residents who are twenty-one (21) years of age or older at the time of entry.

OPINION: Section 493(24)(i) of the Liquor Code provides, in pertinent part, that it shall be unlawful for:

any licensee under the provisions of this article, or the board or any manufacturer, or any employee or agent of a manufacturer, licensee or of the board . . . to offer or give or solicit or receive anything of value as a premium or present to induce directly the purchase of liquor or malt or brewed beverage, or for any licensee, manufacturer or other person to offer or give to trade or consumer buyers any prize, premium, gift or other inducement to purchase liquor or malt or brewed beverages, except advertising novelties of nominal value which the board shall define.

[47 P.S. § 493(24)(i)].

However, section 5.32(h) of the Pennsylvania Liquor Control Board's ("Board") Regulations states that a manufacturer 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)]. The Board's Regulations define the term "sweepstakes" as "[a] chance promotion in which tickets or game pieces are distributed and the winner or winners are selected in a random drawing." [40 Pa. Code § 5.30]. Promotions which meet the definition of "sweepstakes" set forth in section 5.30 and which are conducted in accordance with the requirements of section 5.32(h) of the Board's Regulations are not considered unlawful inducements to purchase liquor or malt or brewed beverages.

While your proposed promotion would not directly meet the definition of "sweepstakes" set forth in section 5.30 of the Board's Regulations, since the winner or winners are not selected in a random drawing, it is similar to a sweepstakes in that it requires persons to register, play an online game, and redeem the accumulated points in order to obtain prizes. Further, your proposed promotion also involves certain elements of chance in that not all registrants are guaranteed to win a prize, and the likelihood of winning certain prizes is based on the registrant's ability to accumulate points through the online game. The Board has previously approved promotions which did not directly meet the definition of "sweepstakes" but which were structured in a manner comparable to your proposed promotion and which involved similar elements of chance.

Therefore, assuming the proposed promotion is conducted in conformity with the aforementioned guidelines, 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)], it is acceptable for use in this Commonwealth.

Sara Skinner Chubb

August 15, 2014

Page 3

Accordingly, it would be permissible to conduct the 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.
- 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. 14-470