

December 22, 2014

Gail Dubois
Regulatory Affairs Specialist
Licensing & Compliance Manager
Vermont Hard Cider Company, LLC
1321 Exchange Street
Middleburg, Vermont 05753

RE: Mail in Rebate for Woodchuck Hard Cider

Dear Ms. Dubois:

ISSUE: This correspondence is in response to your letter of December 1, 2014, in which you seek, on behalf of Vermont Hard Cider Company, LLC, a legal review of a proposed mail-in rebate offer to be conducted in Pennsylvania. The promotion is scheduled to run from January 15, 2015 through April 30, 2015. According to the official rules you provided, Vermont Hard Cider Company plans to offer a mail-in rebate of one dollar (\$1.00) off one (1) six pack or larger size of Woodchuck Hard Cider with the purchase of any eight (8) ounce Cabot Cheddar Cheese.

OPINION: As an initial matter, please be advised that section 493(24)(i) of the Liquor Code [47 P.S. 4-493(24)(i)] generally prohibits licensees, the Pennsylvania Liquor Control Board (“Board”), and manufacturers, or any employee or agent of a manufacturer, licensee, or the Board from offering to give anything of value or soliciting or receiving anything of value as a premium or present to induce directly the purchase of liquor or malt or brewed beverages. Section 493(24)(i) also generally prohibits licensees, manufacturers, and other persons from offering or giving to trade consumer buyers any prize, premium, gift or other inducement to purchase liquor or malt or brewed beverages.

Promotions which require the purchase of both alcohol and a non-alcoholic product in order to receive a monetary rebate on the non-alcoholic product are generally not permitted because this would be an unlawful inducement on violation of section 493(24)(i). However, manufacturers or their agents may offer mail-in

rebates which require the purchase of alcohol and a non-alcoholic product when the rebate is offered on the alcohol, rather than the non-alcoholic product.

With regard to instant rebates, which are only permissible at wine and spirit stores, note that there are a very limited number of non-alcoholic products available for sale at the Board's wine and spirit stores. Similarly, mail-in rebate promotions offered at distributors or importing distributors will face a similar problem in that such licensees are limited in the non-alcoholic products they are permitted to sell.

Please be advised that, under the current three (3)-tier distribution system in Pennsylvania, only licensed manufacturers, importing distributors, and distributors are permitted to sell malt or brewed beverages in case quantities. [47 P.S. §§ 4-431, 4-440, 4-442]. A "case" is defined as 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].

If a promotion does not require the purchase of alcohol in order to receive a rebate on a non-alcoholic product, then it is not subject to the provisions of section 493(24)(i).

This office has reviewed the proposed promotion and has determined that the promotion as written violates section 493(24)(i) of the Liquor Code. For the promotion to be allowed, one of the following changes would have to be made: no cheese purchase is required; no cider purchase is required, or the rules specify that the one dollar (\$1.00) comes off the cider, not the cheese.

Therefore, as written it would not be permissible to conduct this promotion in the Commonwealth of Pennsylvania.

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.

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Very truly yours,

FAITH S. DIEHL
CHIEF COUNSEL

cc: Pennsylvania State Police, Bureau of Liquor Control Enforcement

LCB Advisory Opinion No. 14-627