

January 8, 2015

Riquelmi Flete
Rémy Cointreau USA, Inc.

RE: Product Locator Tool on Vendor Website

Dear Ms. Flete:

ISSUE: This office is in receipt of your e-mail dated December 19, 2014, wherein you advise that your company wishes to place a “Product Locator” feature on its website, listing the names and addresses of retail licensees selling your products, which features consumers could use as a convenience. You ask for a reference to the applicable regulation or policy that would allow or disallow such a feature.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that Rémy Cointreau USA, Inc. (“Rémy”), 1290 Avenue of the Americas, 14th Floor, New York, New York, holds Sales Permit No. SP-455 (LID 22886) and Vendor Permit No. VP-433 (LID 22995).

OPINION: Nothing in the Liquor Code or the Board’s Regulations would preclude a licensee from utilizing internet tools to advertise a product or the locations where such product may be available for purchase. Accordingly, Rémy would be permitted to use an internet locator tool on its website to advertise availability of its products subject to the various restrictions provided below.

Please be advised generally that section 498(a) of the Liquor Code permits establishments, manufacturers and shippers to advertise their products and prices in the Commonwealth. [47 P.S. § 4-498(a)]. No advertisement of products or prices, however, may contain the following: (1) any statement that is false, deceptive or misleading; (2) any statement that is disparaging of the products of a competitor; and (3) any statement referring to monetary comparisons between brands. [47 P.S. § 4-498(b)(1)-(3)].

The entity responsible for the advertisement shall be clearly identified in the advertisement. [47 P.S. § 4-498(e)(1)]. No advertisement may use any subject

matter, language or slogan directed to minors to promote the consumption of alcoholic beverages by minors. [47 P.S. § 4-498(e)(4)]. No advertisement that is obscene is allowed. [47 P.S. § 4-498(e)(6)]. Advertisements shall not be inconsistent with the spirit of safety or safe driving programs. [47 P.S. § 4-498(f)].

As you likely know, a sales permit is issued to a manufacturer or vendor who does not hold a Pennsylvania importer's license before sales of liquor can be made to the Board. A vendor's permit is issued to non-resident vendors (i.e., those entities wishing to sell to the Board, but that do not possess an importer's or manufacturer's license issued by the Board) and allows the holder to sell to the Board, and to solicit and promote products (but not sell) to licensed retail establishments in Pennsylvania. [40 Pa. Code § 13.71].

Section 491 of the Liquor Code makes it unlawful for any person, including restaurant, hotel and club licensees (retail licensees), to possess any wine or liquor within Pennsylvania that has not been purchased through a Pennsylvania wine and spirits store or a licensed limited winery or a limited distillery or distillery. [47 P.S. §§ 4-491(2), 5-505.2, 5-505.4]. It is understood that Rémy primarily represents spirit products. Please be advised that the Board has a locator feature on the Board's website that customers may use to locate products in Board stores [www.finewineandgoodspirits.com]. Other than hyperlinking to this feature, it is unclear how Rémy would have the required information concerning the Board's product availability in any given location at any given time. Permission is granted for this hyperlinking, if desired.

Also for your information, unlike a limited winery license or a limited distillery license, a vendor permit only authorizes a person or entity to sell liquor to the Board, and not to other licensees or permittees. Therefore, it is not clear how Rémy would be able to provide restaurant-level information to its interested customers.

Finally, please note that section 13.51 of the Board's Regulations would require a restaurant licensee to pay its share of any advertisement or advertising-related component appearing on Rémy's website. This is so because no licensee may, directly or indirectly, contribute anything of value, including advertisements, to any other licensee or group of licensees of a different class. [40 Pa. Code § 13.51].

Should you have any additional questions, do not hesitate to contact this office.

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
Jerry W. Waters, Director of Office of Regulatory Affairs
Tisha Albert, Director, Bureau of Licensing
Jeffrey Lawrence, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No. 14-650