

January 16, 2015

Bill Presti
General Counsel, SVP

RE: Casamigos Tequila Football Poster

Dear Mr. Presti:

ISSUE: This office is in receipt of your e-mail dated January 9, 2015, wherein you indicate that you are General Counsel for Sidney Frank Importing Co., Inc. (“SFIC”). You explain that SFIC is the sole United States importer and distributor of Casamigos Tequila (“Casamigos”). You indicate that Casamigo’s is seeking permission to distribute a promotional poster to retail licensees. You describe the poster as having the dimensions of eighteen (18) inches by twenty-seven (27) inches and containing the Casamigos logo, tag line, an image of three (3) Casamigos bottles, and an image of George Clooney and Rande Gerber, the founders of Casamigos Tequila, enjoying a cocktail. You further explain that the poster also contains a football pool grid, which is intended to be used by customers at the retail licensed premises who are watching the Super Bowl. You state that this grid is not to be used for gambling purposes; rather, its intent is to permit customers to be more engaged and absorbed in the football game. You explain that you believe the larger size of the poster will deter any gambling or improper behavior because improper behavior is usually conducted in a clandestine manner to avoid detection by authorities.

Additionally, you indicate that the retail licensee is not to accept money from a customer in order to receive a square; nor should the retail licensee pay any money to a customer who wins at the end of each quarter of the game. You further state that if any prize is given to the customer, it should be a point-of-sale (“POS”) or other item of limited or nominal value.

Pennsylvania Liquor Control Board (“Board”) records indicate that SFIC holds Sales Permit SP-420 (LID 22870) and Vendor Permit VP-349 (LID 22956) for use by it at premises located at 20 Cedar Street, New Rochelle, New York.

OPINION: Initially, please be advised that section 13.51(a) of the Board's Regulations prohibits a licensee from contributing to or accepting, directly or indirectly, from another licensee of a different class, anything of value by means of advertisements, contributions, purchase, sale of tickets, donations or by any device, for any purpose. [40 Pa. Code § 13.51(a)]. Section 493(24)(i) of the Liquor Code allows manufacturers and licensees to provide advertising novelties of nominal value, which bear advertising matter, to other licensees and consumers with or without a purchase. [47 P.S. § 4-493(24)(i)]. "Nominal value" currently is interpreted as fifteen dollars (\$15.00) each, wholesale cost, or less. [Board Advisory Notice No. 10 (6th Revision)]. "Advertising novelties" has been defined in the Board's Regulations as matches, disposable lighters, bottle or can openers, caps, tee shirts, recipe pamphlets, pens, corkscrews and ashtrays, which bear advertising matter. [40 Pa. Code § 13.52(a)]. Provided that cost of Casamigos' promotional football pool poster is fifteen dollars (\$15.00) or less, Casamigos would be permitted to distribute the poster to retail licensees as you proposed.

However, be aware that there are additional considerations regarding the use of the promotional poster in conjunction with a football pool. Section 5.32 of the Board's Regulations [40 Pa. Code § 5.32] generally permits retail licensees to hold self-sponsored events, tournaments or contests on their licensed premises. Events, tournaments and contests are defined as "a competitive endeavor involving skill, speed, strength or endurance. The term includes a competitive endeavor involving physical attributes of contestants." [40 Pa. Code § 5.30]. Such events, tournaments, and contests are subject to the following rules: (1) there can be no unlawful gambling directly or indirectly associated with the event, tournament, or contest; (2) there can be no consumption of alcohol by participants as part of the event, tournament, or contest; (3) the price of admission, if any, cannot include a charge for or entitle the participant to receive an alcoholic beverage. [40 Pa. Code § 5.32(e)].

Self-sponsored means paid for and carried out by the licensee. It would not be permissible for a third party to conduct such events, tournaments or contests. However, retail licensees may permit events on the licensed premises sponsored by groups constituting a league, or events for the benefit of, and officially sponsored by, bona fide charitable organizations qualified, approved by and registered with the Department of State and operated under 49 Pa. Code Part I, Subpart B (relating to charitable organizations). [40 Pa. Code §§ 5.32(d)(3)-(4)(i)]. Such an event must comply with the Solicitation of Funds for Charitable Purposes Act [10 P.S. §§

162.1-162.24], the Local Option Small Games of Chance Act [10 P.S. §§ 311-327] and the Bingo Law [10 P.S. §§ 308-308.1]. [40 Pa. Code § 5.32(d)(4)(ii)].

It should be noted that gambling activities, while unlawful generally, may be considered to be lawful if conducted by an entity that holds a small games of chance permit or tavern game license. It may be advisable to contact the County Treasurer or the Pennsylvania Department of Revenue, Miscellaneous Tax Division at (717) 787-8275 to determine what activities are permissible with a small games of chance permit and what prize limits are permissible. It is also advisable to contact local police, the Pennsylvania State Police, or the County District Attorney's Office, as to what constitutes unlawful gambling.

Therefore, considering the above, Casamigos and SFIC would not be permitted to conduct the football pool at a retail licensed premises or award prizes at the retail licensed premises. However, provided that the event is self-sponsored by the retail licensee within the parameters discussed above and no illegal gambling is occurring, it would be permissible for licensee to utilize the promotional poster provided by Casamigos.

Finally, be advised that section 493(20)(i) allows manufacturers, distributors and importing distributors to furnish point-of-sale ("POS") advertising material to retail licensees. [47 P.S. § 4-493(20)(i)]. 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), whether one item or several items. [47 P.S. § 4-493(20)(i)]. The football pool poster could alternatively be construed as POS material. Therefore, it would be permissible for Casamigos to send the posters to retail licensees in Pennsylvania provided that the total cost of the posters distributed to a licensee do not exceed three hundred dollars (\$300.00). [47 P.S. § 4-493(20)(i); Board Advisory Notice No. 10 (6th Revision)].

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

Bill Presti
January 16, 2015
Page 4

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. 15-005