

February 6, 2015

Alexandra Chinn
Marketing Specialist
Capital Wine & Spirits LLC
129 Hartman Road
North Wales, PA 19454

E: Three Olives Cocktail Madness Sweepstakes

Dear Ms. Chinn:

ISSUE: This correspondence is in response to your e-mail of January 30, 2015, wherein you request approval to conduct the Three Olives Cocktail Madness Sweepstakes in Pennsylvania.

According to the materials that you provided, the sweepstakes is scheduled to begin on March 2, 2015, and runs until March 29, 2015. Interested individuals may enter the sweepstakes by completing and submitting an official online entry form. There is a limit of one (1) entry per household.

Two (2) grand prizes will be awarded for the sweepstakes. The grand prize winners will be selected in a random drawing to be conducted on or about April 24, 2015. Each grand prize winner will receive a night on the town with dining, entertainment, transportation, and hotel accommodations valued at two thousand, five hundred dollars (\$2,500.00).

No purchase is necessary to enter or win the sweepstakes. The sweepstakes is open only to residents of Pennsylvania who are twenty-one (21) years of age or older.

OPINION: Section 5.32(h) of the Pennsylvania Liquor Control Board's ("Board") Regulations states that a manufacturer, a manufacturer's representative, or a 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)].

This office has reviewed the proposed sweepstakes promotion and determined that it comports with applicable liquor laws and regulations, specifically section 493(24)(i) of the Liquor Code [47 P.S. § 4-493(24)(i)] and section 5.32(h) of the Board's Regulations [40 Pa. Code § 5.32(h)], and is acceptable for use in this Commonwealth, as long as alcoholic beverages are not awarded as part of the grand prizes.

Please be advised that to the extent that any part of the grand prizes being awarded involves taste testing, sampling, or the provision of alcohol at no additional cost to the grand prize winners, this would be construed as awarding alcohol as part of the prize and is not permitted.

Moreover, please be advised that section 13.51(a) of the Board's Regulations provides as follows:

Except as provided herein and in § 13.52 (relating to advertising novelties), no in-State or out-of-State manufacturer, licensee or group of licensees, their servants, agents or employees, may directly or indirectly, in person, individually or through a trade organization, contribute to or accept from another licensee or group of licensees of a different class, their servants, agents or employees or a trade organization of licensees 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)]. Based on this provision, the sponsor would not be permitted to secure any element of the prize from a retail license of the Board for free or at a discounted price; rather, the sponsor would need to pay fair market value for the same.

Additionally, please be advised that prior approval of malt or brewed beverages point-of-sale ("POS") material and retail licensed premises POS material is no longer required. However, the requirement for prior approval of POS material intended for use in the Board's wine and spirits stores from the Bureau of Product Selection remains. 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)].

Therefore, as long as alcoholic beverages are not awarded as any part of the grand prizes and proper steps are taken to avoid violating section 13.51(a) of the Board's Regulations, it is permissible to conduct the proposed sweepstakes 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 (POS only).
- 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, Director of Marketing and Merchandising
Michelle Bonsick, Director, Bureau of Marketing Communications
Joseph Puhalla, Director, Bureau of Product Selection

LCB Advisory Opinion No. 15-033