March 17, 2015

Ryan M. Martin
Winston & Strawn LLP
35 West Wacker Drive
Chicago, IL 60601-9703

RE: Burnett's Vodka Throwback Shots Photo Contest (Official Rules Revised)

Dear Mr. Martin:

ISSUE: This correspondence is in response to your e-mail and letter sent February 26, 2015, in which you seek further legal review of the Burnett's Vodka Throwback Shots Photo Contest. You explain that, in response to Advisory Opinion No. 15-066, which was issued by this office on February 25, 2015, the "Official Rules" for the contest have been revised to more clearly communicate that entrants may include "a Burnett's Vodka bottle" in their photo submission and that they are not required to purchase their own bottle. You also question the applicability of section 5.32(h) of the Pennsylvania Liquor Control Board's ("Board") Regulations [40 Pa. Code § 5.32(h)] since the promotion in question is a contest where winners are determined based on judging of the entries, as opposed to a sweepstakes where winners are determined through a random drawing.

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 Board's 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)]. 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.

Although there are no similar provisions in the Board's Regulations addressing manufacturer-sponsored contests where winners are selected by a panel of judges, such as the promotion proposed in this instance, this office has traditionally opined that such promotions are permissible as long as they comply with the same conditions applicable to sweepstakes as set forth above.

With that being said, this office has reviewed the revised version of the "Official Rules" for the proposed contest promotion and has determined that such promotion now comports with 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)]. Therefore, it is permissible to conduct this promotion in the Commonwealth in reference to the areas checked below:

___ retail licensed premises.

___ distributor licensed premises.

___ both retail and distributor licensed premises.

X the Board's wine and spirit stores, subject to approval of the Bureau of Product Selection (point-of-sale ("POS") only).

X other – Internet, text messaging.

Please note that prior approval of malt or brewed beverages 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)].

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. 15-087