

March 26, 2015

David Romine  
Kalik Lewin  
5335 Wisconsin Avenue, NW  
Washington, DC 20015

**RE: Mail-in Rebate Offers**

Dear Mr. Romine:

ISSUE: This correspondence is in response to your e-mail of March 3, 2015, in which you request legal review of three (3) mail-in rebate promotions to be conducted in Pennsylvania.

Through the first promotion, consumers can save one dollar (\$1.00) off the purchase of cheese by mail with the purchase of any seven hundred fifty milliliter (750ml) bottle of Oberon wine. In order to receive the rebate, consumers must mail to the designated address a completed rebate form along with a cash register receipt, dated between April 1, 2015 and June 30, 2015, with the qualifying purchases circled. The offer expires on June 30, 2015, and is limited to adults of legal drinking age. There is a limit of one (1) rebate per person, address or household.

Through the second promotion, consumers can save in the following amounts by mail on the purchase of seven hundred fifty milliliter (750ml) bottles of Danzante wines: one dollar (\$1.00) off the purchase of one (1) bottle; five dollars (\$5.00) off the purchase of three (3) bottles; or twelve dollars (\$12.00) off the purchase of six (6) bottles. In order to receive the rebate, consumers must mail to the designated address a completed rebate form along with a cash register receipt, dated between January 1, 2015 and March 31, 2015, with the qualifying purchases circled. The offer expires on March 31, 2015, and is limited to legal residents of the United States who are of legal drinking age. There is a limit of one (1) rebate per person, address or household.

Through the third promotion, consumers can save five dollars (\$5.00) by mail on the purchase of any two (2) bottles of Il Fresco Brut or Il Fresco Rosé wines. In order to receive the rebate, consumers must mail to the designated address a completed rebate form along with a cash register receipt, dated between January 1, 2015 and December 31, 2015, with the qualifying purchases circled. The offer expires on December 31, 2015,

and is limited to adults of legal drinking age. There is a limit of one (1) rebate per person, address or household.

OPINION: Section 493(24)(i) of the Liquor Code generally prohibits licensees, manufacturers, and the Pennsylvania Liquor Control Board (“Board”), or any employee or agent of a licensee, manufacturer or the Board, from offering or giving anything of value or from soliciting or receiving anything of value as a premium or present to induce directly the purchase of liquor or malt or brewed beverages. [47 P.S. § 4-493(24)(i)]. Similarly, section 493(24)(i) generally prohibits licensees, manufacturers, and other persons from offering or giving to trade or consumer buyers any prize, premium, gift or other inducement to purchase liquor or malt or brewed beverages. [Id.] However, as you already appear to be aware, section 493(24)(i) includes an exception that allows manufacturers or agents of manufacturers to “offer[] and honor[] coupons which offer monetary rebates on purchases of wines and spirits through State Liquor Stores or purchases of malt or brewed beverages through distributors and importing distributors in accordance with conditions or regulations established by the board.” [Id.].

This office has reviewed the proposed mail-in rebate promotions described above and has determined that the second and third, but not the first, promotions comport with section 493(24)(i) of the Liquor Code and are acceptable for use in this Commonwealth.

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 Fine Wine & Good 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, it would be permissible to conduct the second and third mail-in rebate promotions described above 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.
- other – Internet, text messaging.

With respect to the first promotion described above, please be advised that rebate promotions involving the purchase of both a wine or spirits product and a non-alcoholic beverage product must make clear that the rebate is being offered on the wine or spirit product, and not the non-alcoholic beverage product, in order to fall within the parameters of the exception for coupons offering rebates on wine or spirits found in section 493(24)(i) of the Liquor Code. Thus, the first promotion would be considered an unlawful inducement in violation of section 493(24)(i) because it offers a rebate on cheese, as opposed to Oberon wine.

However, if the first promotion were modified to indicate that the rebate is being offered on the Oberon wine, rather than on cheese, then such promotion would comply with section 493(24)(i) and would be permissible. Alternatively, the first promotion would also be permissible if it were modified to indicate that no wine purchase is necessary to receive the rebate on cheese.

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. 15-119