

May 27, 2015

Karen L. Gabriele  
Compliance Specialist  
Mark Anthony Services, Inc.  
328 S. Jefferson Street, Suite 1030  
Chicago, IL 60661

**RE: Mike's® Mail in Rebate Promotions**

Dear Ms. Gabriele:

ISSUE: This correspondence is in response to your e-mail sent May 15, 2015, in which you seek approval to run two (2) different mail-in rebate promotions in Pennsylvania.

Through the first mail-in rebate promotion, consumers can save five dollars (\$5.00) by mail on the purchase of any two (2) or more eight ounce (8 oz.) twelve (12)-packs of Mike's HARDER® Lemonade. In order to receive the rebate, consumers must mail a completed rebate form along with a cash register receipt with the qualifying purchases circled and the original package UPC codes to the designated address. The offer expires on October 31, 2015, and is limited to persons twenty-one (21) years of age or older. There is a limit of one (1) rebate per address or household.

Through the second mail-in rebate promotion, consumers can save in the following amounts by mail on the purchase of any Mike's® products: one dollar and fifty cents (\$1.50) on the purchase of a six (6)-pack; two dollars and fifty cents (\$2.50) on the purchase of a twelve (12)-pack; and five dollars (\$5.00) on the purchase of a twenty-four (24)-pack. In order to receive the rebate, consumers must mail a completed rebate form along with a cash register receipt with the qualifying purchases circled and the original package UPC code to the designated address. The offer expires on September 9, 2015, and is limited to persons twenty-one (21) years of age or older. There is a limit of one (1) rebate per address or household.

OPINION: This office has reviewed the proposed mail-in rebate promotions described above and has determined that only the second promotion comports with the applicable liquor laws and regulations, specifically subsection 493(24)(i) of the Liquor Code [47 P.S. § 4-493(24)(i)], and is acceptable for use in this Commonwealth subject to certain limitations.

Pursuant to section 493(24)(i) of the Liquor Code, mail-in rebates on malt or brewed beverages are only permitted with respect to products purchased through distributors and importing distributors. [47 P.S. § 4-493(24)(i)]. Moreover, distributors and importing distributors are only permitted to sell malt or brewed beverages in “case” quantities (defined as twelve (12) or more original containers totaling two hundred sixty-four (264) or more fluid ounces of malt or brewed beverages, excepting those packages containing twenty-four (24) or more original containers each holding seven (7) fluid ounces or more) or in “original containers” comprising at least one hundred twenty-eight (128) fluid ounces. [47 P.S. § 4-431(b)].

The eight ounce (8oz.) twelve (12)-packs referenced in the first mail-in rebate promotion would not satisfy the definition of a “case” or an “original container.” As such, distributors and importing distributors would not be permitted to sell these products. Therefore, the first mail-in rebate promotion described above would not be permissible in Pennsylvania.

However, the second mail-in rebate promotion described above would be permissible in Pennsylvania to the extent that it pertains to products that satisfy the definition of a “case” or an “original container” and can be sold by distributors and importing distributors.

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

LCB Advisory Opinion No. 15-234