

August 19, 2015

Mary A. Monahan
Marketing Compliance Officer
Excelsior Wines
1111 Cedar Swamp Road
Old Brookville, NY 11545
VIA E-MAIL: mmonahan@banfi.com

**RE: Casillero del Diablo “Legendary Halloween Costume” Contest
(Revised Rules)**

Dear Ms. Monahan:

ISSUE: This correspondence is in response to your e-mail sent August 13, 2015, wherein you request legal review of the Casillero del Diablo “Legendary Halloween Costume” Contest based on a revised version of the “Official Rules.”

According to the revised version of the “Official Rules” that you provided, the contest is scheduled to begin on October 1, 2015, and runs until November 8, 2015. The contest is open only to legal residents of the United States who are twenty-one (21) years of age or older at the time of entry. No purchase is necessary to enter or win the contest.

Interested individuals may enter the contest by visiting www.Facebook.com/DiabloWine and completing an online entry form. Entrants are required to upload a photo of themselves wearing a Casillero del Diablo-themed costume and to select which of the following elements are featured in their photo: Devil or “Diablo”; Wine; Casillero del Diablo; or other. Entrants may also include an optional description of one hundred fifty (150) words or less briefly explaining why their costume fits the theme. Alternatively, interested individuals may enter via Twitter or Instagram by visiting www.Twitter.com/DiabloWine or www.Instagram.com/DiabloWine, following @DiabloWine on either Twitter or Instagram, uploading a photo showing their best Casillero del Diablo-themed costume; and tagging @Diablowine and including #DIABLOHALLOWEEN. There is a limit of one (1) entry, per person, per household, per day, regardless of the method of entry.

All eligible entries will be posted to the promotion website for public viewing during the entry submission period. At the conclusion of the entry submission period, a

panel of judges will select one (1) grand prize winning entry and one (1) second prize winning entry based on the following criteria: adherence to the “legendary” theme (up to fifty (50) points); creativity and originality (up to forty (40) points); and technical merit (up to ten (10) points). The highest scoring entry will receive the grand prize, and the second highest scoring entry will receive the second prize. Entries fitting into the “other” category are not eligible for the grand prize, but will be eligible for the second prize.

The grand prize winner will receive a Canon Rebel Digital SLR Camera or a camera of equivalent price and quality. The approximate retail value of the grand prize is six hundred fifty dollars (\$650.00). In lieu of the prize, the grand prize winner may request to receive the cash equivalent of the prize.

The second prize winner will receive a Devil Feast Animation Mask, a Hooded Black Adult Robe, Latex Devil Hands, a four hundred (400) Watt Metal Fog Machine, one (1) bottle of fog machine fluid from Spirit Halloween, and a one dollar (\$1.00) donation to Spirit of Children. The approximate retail value of the second prize is one hundred thirteen dollars (\$113.00). The second prize winner may not request to receive the cash equivalent for the secondary prize.

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 promotion, as described above, 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)].

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, it is permissible to conduct the proposed 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
Joseph Puhalla, Director, Bureau of Product Selection

LCB Advisory Opinion No. 15-352