

August 26, 2015

Brian Hatch
Brian A. Hatch PLLC
7405 East Monte Cristo, Suite 201
Scottsdale, AZ 85260

RE: Three ibotta App Promotions

Dear Mr. Hatch:

ISSUE: This correspondence is in response to your e-mail of August 17, 2015, wherein you request legal review of three (3) proposed rebate promotions to be conducted in Pennsylvania by your client, Imperial Brands, Inc.

According to your summary, the first promotion offers consumers a rebate of three dollars (\$3.00) on the purchase of a 750ml bottle of Kerrygold Irish Cream Liqueur. The second promotion offers consumers a rebate of three dollars (\$3.00) on the purchase of a 1.75L bottle of Sobieski Vodka. The third promotion offers consumers a rebate of two dollars (\$2.00) on the purchase of a 750ml bottle of Sobieski Vodka. The rebates will be in the form of a credit to the consumer's ibotta account. It appears from the company's website that ibotta is a mobile phone application ("app") that purportedly offers its users rebates on participating products. The promotions will run from August 26, 2015, through January 31, 2016, and are limited to adults of legal drinking age.

OPINION: This office is unable to conclude that the ibotta offers you submitted fall within the parameters of the exception to section 493(24)(i) allowing manufacturers or their representatives to offer coupons offering monetary rebates on purchases of wine or spirits from the Board's Fine Wine & Good Spirits stores. As a result, the ibotta promotions would be considered an unlawful inducement to purchase alcohol in violation of section 493(24)(i) and are not permitted in Pennsylvania.

As this office explained in Advisory Opinion No. 15-278, consumer incentives offered via the *ibotta* app are problematic because of the prohibition on manufacturers or their agents offering or giving anything of value as an inducement to purchase liquor, including any “prize, premium, gift or other inducement.” [47 P.S. § 4-493(24)(i)]. Although there is an exception for coupons offering *monetary* rebates on purchases through the Board’s Fine Wine & Good Spirits stores, rebates offered through *ibotta* do not qualify under this coupon exception because they are delivered in the form of credits to a third-party account. Therefore, the *ibotta* rebates cannot be used in Pennsylvania toward the purchase of wine or spirits at the Board’s stores.

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. 15-374