

September 3, 2015

David Romine
Alcohol Beverage Specialist
Kalik Lewin
5335 Wisconsin Avenue, NW
Suite 440
Washington, DC 20015

RE: Spellbound Wine Instant Rebate Offer

Dear Mr. Romine:

ISSUE: This correspondence is in response to your e-mail sent August 30, 2015, in which you request approval, on behalf of Folio Wine Company, to conduct an instant rebate coupon promotion involving Spellbound Wine in Pennsylvania.

Through the promotion, consumers can save two dollars (\$2.00) instantly with the purchase of any spell bound wine and a pumpkin. A Spellbound Wine purchase and a minimum pumpkin purchase of two dollars and one cent (\$2.01) is required. The offer expires on October 31, 2015. The rebate coupon must be redeemed at the time of purchase. The rebate is available only to persons who are twenty-one (21) years of age or older.

OPINION: Section 493(24)(i) of the Liquor Code generally prohibits offering anything of value to induce directly the purchase of alcoholic beverages. [47 P.S. § 4-493(24)(i)]. However, section 493(24)(i) includes an exception which permits manufacturers or their agents to offer monetary rebates on purchases of wines and spirits through the Pennsylvania Liquor Control Board's ("Board") Fine Wine and Good Spirits stores or purchases of malt or brewed beverages through distributors and importing distributors. [Id.].

In order for cross-promotional rebate offers to fall within the scope of the exception for monetary rebates on purchases of wine and spirits, the rebate must be offered on the alcoholic beverage product, as opposed to the non-alcoholic beverage product. Cross-promotional rebate offers which offer a rebate on a non-alcoholic beverage product are only permissible if they make clear that no alcoholic beverage purchase is required.

In this instance, the point-of-sale ("POS") materials that you provided indicate that a Spellbound Wine purchase and a minimum pumpkin purchase of two dollars and one cent (\$2.01) is required. However, it is unclear from the POS materials whether the rebate is

being offered on the Spellbound Wine purchase or the pumpkin purchase. Therefore, this office is unable to conclude that the instant rebate promotion is permissible as currently proposed. However, if the POS materials are modified to clarify that the rebate is being offered on the Spellbound Wine, as opposed to the pumpkin, or that no wine purchase is required in Pennsylvania, then the promotion would be permissible. Nevertheless, please keep in mind that, in Pennsylvania, wine may generally only be sold for off-premises consumption through the Board's Fine Wine & Good Spirits Stores, and the Board does not sell pumpkins.

Finally, 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)].

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. 15-386