

September 11, 2015

David Romine
Alcohol Beverage Specialist
Kalik Lewin

RE: Divining Rod Wine Rebate Offers

Dear Mr. Romine:

ISSUE: This correspondence is in response to your e-mail of August 30, 2015, wherein you request legal review of three (3) proposed instant rebate promotions to be conducted in Pennsylvania by your client, The Divining Rod Wines.

According to the sample coupons you provided, the first promotion offers consumers an instant rebate of one dollar (\$1.00) on a pumpkin with the purchase of any Divining Rod wine. The second promotion offers consumers an instant rebate of one dollar (\$1.00) on ice with the purchase of any Divining Rod wine. The third promotion offers consumers an instant rebate of one dollar (\$1.00) on the purchase of any Divining Rod wine. The offers expire November 30, 2015, and are limited to adults of legal drinking age.

OPINION: Generally licensees, the Pennsylvania Liquor Control Board (“Board”), and manufacturers, or any employee or agent of a manufacturer, licensee, or the Board, are prohibited from offering to give anything of value, or 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)]. An exception allows a manufacturer or agent of a manufacturer to offer and honor coupons which give monetary rebates on purchases of wines and spirits through the Board’s stores or purchases of malt or brewed beverages through distributors and importing distributors. [Id.].

Accordingly, the third promotion, which offers a rebate on the purchase of any Divining Rod wine at the Board’s stores, qualifies under the exception provided in subsection 493(24)(i) and is acceptable for use in this Commonwealth.

However, the first and second promotions are not acceptable for use in this Commonwealth because they would be deemed an unlawful inducement. Promotions which require the purchase of alcohol in order to receive a rebate on a non-alcoholic product are not permitted under the Liquor Code; rebates may only be offered on alcoholic products in the manner described above. On the other hand, manufacturers may offer rebates on non-alcoholic products as long as no alcohol purchase is required, since the Liquor Code does not apply to purchases of non-alcoholic products.

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. 15-398