

October 20, 2015

Donna Young
Regulatory Affairs Specialist
Vermont Hard Cider Company, LLC
1321 Exchange Street
Middlebury, VT 05753
VIA E-MAIL

RE: Woodchuck Hard Cider Ibotta Rebate Offers

Dear Ms. Young:

ISSUE: This correspondence is in response to your e-mail dated September 2, 2015, wherein you seek approval to run two (2) Ibotta rebate offer promotions involving Woodchuck Hard Cider in Pennsylvania.

According to the Ibotta website, <https://ibotta.com/>, a consumer who joins Ibotta and downloads the Ibotta app on his or her phone or tablet device may unlock cash rewards by completing simple tasks such as using recipes, watching videos, and answering poll questions. Ibotta offers monthly “Teamwork bonuses” for Ibotta users who create a team by getting their friends to join. Ibotta also offers “Promo Codes,” which are special coupons, deals or codes that provide additional savings to the consumer, in addition to the Ibotta rebate, as well as bonuses which are described as extra cash back for the consumer who buys featured products, redeems items at specific retailers, or completes certain tasks. The consumer must electronically submit receipts and other proofs of purchase to Ibotta using the app to be credited with the rebate. The consumer may submit the cash rewards and rebate funds for redemption as cash or as gift certificates to other retailers.

Through the first Ibotta rebate offer for which you seek approval, consumers can receive three dollars (\$3.00) off one (1) twelve (12)-pack of Woodchuck Hard Cider bottles or cans, any style. In order to receive the rebate, consumers must watch two (2) different videos related to Woodchuck. The initial budget for this promotion is seven hundred fifty dollars (\$750.00). The offer is valid only to legal residents of the Pennsylvania who are twenty-one (21) years of age or older. There is a limit of three (3) redemptions per consumer.

Through the second Ibotta rebate offer for which you seek approval, consumers can receive eight dollars (\$8.00) off one (1) twenty-four (24)-pack of Woodchuck Hard Cider bottles or cans, any style. In order to receive the rebate, consumers must watch two (2) different videos relative to Woodchuck. The initial budget for this promotion is two thousand dollars (\$2,000.00). The offer is valid only to legal residents of the Pennsylvania who are twenty-one (21) years of age or older. There is a limit of three (3) redemptions per consumer.

OPINION: Section 493(24)(i) of the Liquor Code generally prohibits licensees, manufacturers, and the Board, or any employee or agent of a licensee, manufacturer or the Board, from offering or giving 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)]. Similarly, section 493(24)(i) generally prohibits licensees, manufacturers, and other persons from offering or giving to trade or consumer buyers any prize, premium, gift or other inducement to purchase liquor or malt or brewed beverages. [Id.]. However, section 493(24)(i) includes an exception, which provides:

This section shall not prevent any manufacturer or any agent of a manufacturer from offering and honoring coupons which offer monetary rebates on purchases of wines and spirits through State Liquor Stores or purchases of malt or brewed beverages through distributors and importing distributors in accordance with conditions or regulations established by the board. The board may redeem coupons offered by a manufacturer or an agent of a manufacturer at the time of purchase. Coupons offered by a manufacturer or an agent of a manufacturer shall not be redeemed without proof of purchase.

[Id.].

This office has traditionally interpreted this section to allow manufacturers or their agents to offer mail-in monetary rebate coupons relative to purchases of malt or brewed beverages through distributors and importing distributors only.

Specifically, this office has opined that rebate coupons for malt or brewed beverages must contain the following: (1) an initiation and expiration date of the coupon; (2) the rebate value; (3) provision for the name and address of the individual redeeming the coupon; (4) the identity of the manufacturer or

manufacturer's agent; (5) a description of the product including, but not limited to, the brand name and size; and (6) a warning statement that the purchase of the product and the rebate offer is restricted to persons who are twenty-one (21) years of age or older. [Board Advisory Notice No. 10 (6th Revision)]. Mail-in rebate coupon offers must also require submission of proof of purchase in the form of a sales slip or cash register receipt. [Id.].

Here, while the Ibotta rebate offers that you submitted bear many similarities to traditional mail-in rebate coupons, there are several significant differences. For starters, unlike traditional mail-in rebate coupons, which are simply made available to anyone purchasing the underlying products, the Ibotta rebate offers that you describe appear to essentially be discounts offered as rewards for completing activities through the Ibotta app that extend beyond the mere purchase of the underlying product. Moreover, unlike traditional mail-in rebate coupons, the Ibotta rebate offers that you submitted do not have a set initiation and expiration date but rather are simply described as expiring when an undefined budget is exhausted, which leaves open the possibility that these coupons will expire after only a very short time or will remain open indefinitely. Further, unlike traditional mail-in rebate coupons, which are mailed directly to the manufacturer or their representative after the time of purchase, it appears that the proposed Ibotta rebate offers are to be redeemed with Ibotta, a third party, solely through the use of its app, and it is not entirely clear when or how manufacturers become involved in the rebate process. Additionally, unlike traditional mail-in rebate coupon promotions where a monetary rebate is delivered directly to a consumer, the rebates awarded for the proposed Ibotta rebate offers appear to be delivered in the form of credits to a third-party account. Finally, and perhaps most importantly, unlike traditional mail-in rebate coupons, it appears that the Ibotta rebate offers that you submitted for review offer something of value to consumers that goes beyond a simple monetary rebate on the underlying products purchased; that is, according to Ibotta's website, they offer consumers the ability to obtain further discounts or additional cash back beyond the rebate amounts themselves and can essentially be redeemed for gift certificates to other retailers instead of cash.

Considering the foregoing, this office is unable to conclude that the proposed Ibotta rebate offers fall within the parameters of the exception to section 493(24)(i) allowing manufacturers or their representatives to offer mail-in rebate coupons offering *monetary* rebates on purchases of malt or brewed beverages from importing distributors and distributors. As a result, the proposed Ibotta rebate

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offers would be considered an unlawful inducement to purchase alcohol in violation of section 493(24)(i) and are not permitted in Pennsylvania.

If you have any additional questions or concerns regarding this matter, the Liquor Code, or the Board's Regulations, please do not hesitate to again contact this office.

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. 15-435