

November 25, 2015

Charity Garner
Account Coordinator
Arrowhead Promotion & Fulfillment Co.
VIA E-MAIL

RE: MARTINI[®] Prosecco Italian Sparkling Wine Ibotta Rebate Offer

Dear Ms. Garner:

ISSUE: This correspondence is in response to your e-mail dated November 10, 2015, wherein you seek approval, on behalf of your client, to run an Ibotta rebate promotion involving MARTINI[®] Prosecco Italian Sparkling Wine in Pennsylvania.

According to the Ibotta website, <https://ibotta.com/>, consumers who join Ibotta and download the Ibotta app on their phones or tablet devices may unlock rebates redeemable on purchases of certain products by completing simple tasks such as using recipes, watching videos, or answering poll questions. After making qualifying purchases, consumers must submit receipts and other proofs of purchase to Ibotta using the app to be credited with rebates. Upon verification, rebates amounts are added as cash rewards to consumers' Ibotta accounts. Once consumers have accumulated at least ten dollars (\$10.00) worth of credits in their accounts, they may redeem their cash rewards through Paypal or Venmo, or they may convert their cash rewards to gift cards to other retailers. Prior to redemption, cash rewards remain the sole property of Ibotta. If consumers have less than ten dollars (\$10.00) in cash rewards in their accounts at the time of closing such accounts, they forfeit any rights they have in those cash rewards. Further, if consumers fail to activate an offer within their Ibotta account for twelve consecutive months, their accounts will be considered inactive, and Ibotta will deduct an amount equal to three dollars and ninety-nine cents (\$3.99) from the consumers' accumulated rewards every month prior to reactivation. Ibotta also offers monthly "Teamwork bonuses" and "Promo Codes" to consumers which offer the ability to earn additional cash rewards or savings.

Through the Ibotta rebate offer for which you seek approval, consumers can receive two dollars (\$2.00) off the purchase of a seven hundred fifty milliliter

(750ml) bottle of MARTINI® Prosecco Italian Sparkling Wine. In order to receive the rebate, consumers must read a recipe. The offer is valid only to legal residents of certain states who are twenty-one (21) years of age or older. Although the terms and conditions screen shot that you provided indicates that the rebate expires at the date/time communicated within the offer, an expiration date does not appear in any of the offer screen shots provided.

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 purchase 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 both mail-in and instant monetary rebate coupons relative to purchases of wine and spirits products through the Board's Fine Wine & Good Spirits stores, as long as certain conditions are satisfied.

Specifically, this office has opined that rebate coupons for wine or spirits must contain the following: (1) an expiration date of the offer; (2) the rebate value; (3) provision for the name and address of the individual redeeming the coupon (for mail-in rebates only); (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. Additionally, all wine or spirits mail-in rebate offers must also require submission of proof of purchase in the form of a sales slip or cash register receipt.

It is this office's opinion that the use of an electronic rebate coupon concept by a manufacturer or its agent to offer monetary rebates on the purchase of wine and spirits products through the Board's Fine Wine & Good Spirits stores, instead of a traditional mail-in rebate or instant rebate coupon, would not necessarily be problematic under the Liquor Code or the Board's Regulations, as long as the coupon offers a true monetary rebate and the other conditions discussed above are satisfied.

With that being said, however, after reviewing the Ibotta rebate offer that you submitted in conjunction with the Ibotta website, it does not appear that a true monetary rebate is being offered in this instance. That is, while the promotion offers consumers two dollars (\$2.00) off the purchase of a seven hundred fifty milliliter (750ml) bottle of MARTINI[®] Prosecco Italian Sparkling Wine, consumers will not actually receive that two dollars (\$2.00) until they have accumulated at least ten dollars (\$10.00) worth of credits in their Ibotta accounts. Moreover, until consumers reach the ten dollar (\$10.00) threshold and are able to redeem their cash rewards, the two dollars (\$2.00) that is offered as an incentive to purchase the underlying alcoholic beverage product and which is credited to consumers' Ibotta accounts as a result of such purchases is considered the property of Ibotta. Further, if consumers happen to close their accounts with Ibotta prior to reaching the ten dollar (\$10.00) threshold, Ibotta will retain the two dollar (\$2.00) rebate amount. Also, if, after obtaining the two dollar (\$2.00) credit associated with the purchase of the underlying alcoholic beverage product, consumers don't attempt to redeem another offer through Ibotta for twelve (12) consecutive months, Ibotta will deduct the two dollar (\$2.00) credit that was earned from consumers' accounts. Thus, for all intents and purposes, the Ibotta rebate offer that you submitted appears to be offering a potential means for Ibotta to generate revenue, as opposed to a true monetary rebate for consumers purchasing the underlying alcoholic beverage product.

The terms of use established by Ibotta also seem to necessarily imply that consumers would need to make additional purchases of other alcoholic beverage products or non-alcoholic beverage products having their own rebate amounts

attached to them through the Ibotta app in order to realize the rebate on the MARTINI® Prosecco Italian Sparkling Wine. Such terms likewise seem to imply that consumers would need to purchase the MARTINI® Prosecco Italian Sparkling Wine in order to receive the rebates attached to the other alcoholic beverage products or non-alcoholic beverage products necessary to reach the ten dollars (\$10.00) threshold.

Manufacturers or their agents are permitted to offer rebates which require the purchase of alcohol and a non-alcoholic product when the rebate is offered on the alcoholic beverage product, rather than the non-alcoholic beverage product. However, manufacturers or their agents are not permitted to offer rebates which require the purchase of an alcoholic beverage product and a non-alcoholic beverage product in order to receive a monetary rebate on the non-alcoholic beverage product because this would be an unlawful inducement to purchase alcohol in violation of section 493(24)(i). Manufacturers and their agents are also not permitted to offer rebates which require the purchase of an alcoholic beverage product in order to receive a rebate on the purchase of another alcoholic beverage product because this would be an unlawful inducement to purchase alcohol in violation of section 493(24)(i). Here, the Ibotta rebate offer that you submitted does not account for these restrictions.

Additionally, it is not entirely clear from the materials that you submitted or the Ibotta website what the terms of the relationship are between your client and Ibotta. However, based on the information that is available on the Ibotta website describing the business model being utilized, it seems as though Ibotta is operating to a large degree as an independent, third party entity and not as an agent of your client, which is also problematic under section 493(24)(i).

Therefore, the Ibotta rebate promotion that you submitted is 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

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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,

RODRIGO J. DIAZ
EXECUTIVE DEPUTY CHIEF COUNSEL

cc: Pennsylvania State Police, Bureau of Liquor Control Enforcement
Dale Horst, Director of Marketing and Merchandising
Stacy Kriedeman, Director, Marketing Communications
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LCB Advisory Opinion No. 15-481