

February 8, 2016

Scott A. Schleifstein, Esq.
Cohen Silverman Rowan LLP
360 Lexington Avenue, 16th Floor
New York, NY 10017
VIA E-MAIL

RE: Buchanan's Billboard Latin Music Awards Sweepstakes

Dear Mr. Schleifstein:

ISSUE: This correspondence is in response to your e-mail and letter sent January 26, 2016, in which you seek legal review of a sweepstakes promotion that Diageo Americas, Inc. would like to make available in Pennsylvania—the “Buchanan’s Latin Billboard Music Awards Sweepstakes.”

According to the “Official Rules” that you provided, the sweepstakes is scheduled to begin on February 1, 2016, and runs until March 31, 2016. There are three different ways for interested individuals to enter the sweepstakes: via text message by texting the word “BUC12” to 24587; via the mobile site by visiting m.buchananwhisky.com; or via U.S. mail. There is a limit of one entry per person, regardless of the method of entry.

Two grand prizes will be awarded for the sweepstakes. The grand prize winners will be determined in a random drawing to be conducted on or about April 6, 2016. Each grand prize winner will receive a trip for two people to the 2016 Latin Billboard Music Awards. The trip includes the following: round-trip coach air travel from the major airport nearest the winner’s residence to Miami, Florida; transportation to and from the Miami airport and the hotel; transportation to and from the hotel and the Latin Billboard Music Awards and the After Party; two VIP tickets to the Latin Billboard Music Awards along with two After Party tickets; standard accommodations for the winner and a guest for two nights and three days at a hotel in Miami of the sponsor’s sole choosing; and a \$150.00 gift card. Alcoholic beverages are not part of the grand prize. The approximate retail value of each grand prize is \$2,500.00.

The sweepstakes is open only to legal residents of the fifty United States or the District of Columbia who are twenty-one years of age or older at the time of entry. No purchase is necessary to enter or win the sweepstakes.

OPINION: Section 5.32(h) of the Pennsylvania Liquor Control Board's ("Board") Regulations states that a manufacturer, manufacturer's representative, or licensee may sponsor sweepstakes promotions subject to the following conditions:

- i. No purchase is necessary to enter.
- ii. Entrants shall be twenty-one (21) years of age or older.
- iii. Retail licensed premises may only be involved as pick-up or drop-off points for entry forms and not for the conducting of drawings or the awarding of prizes.
- iv. Alcoholic beverages may not be part of the prize.

[40 Pa. Code § 5.32(h)].

This office has reviewed the proposed sweepstakes promotion as described above and determined that it comports with applicable liquor laws and regulations, specifically section 493(24)(i) of the Liquor Code [47 P.S. § 4-493(24)(i)] and section 5.32(h) of the Board's Regulations [40 Pa. Code § 5.32(h)], as long as no alcoholic beverages are awarded as part of the grand prizes.

Please be advised that to the extent that any part of the trips being awarded as the grand prizes will involve sampling, taste testing, or the provision of alcoholic beverages at no additional cost to the winners and/or their guests, this would be construed as awarding alcoholic beverages as part of the prizes and is not permitted.

Furthermore, 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 brand of any one manufacturer at any one time may not exceed \$300.00 on a retail licensed premises. [47 P.S. § 4-493(20) (i)].

Therefore, as long as no alcoholic beverages are awarded as part of the grand prizes, it is permissible to conduct the proposed sweepstakes promotion in the Commonwealth in reference to the areas checked below:

- retail licensed premises.
- distributor licensed premises.
- both retail and distributor licensed premises.
- the Board's wine and spirits stores, subject to approval of the Bureau of Product Selection (POS only).
- other – Internet, text messaging.

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,

RODRIGO J. DIAZ
CHIEF COUNSEL

cc: Pennsylvania State Police, Bureau of Liquor Control Enforcement
Dale Horst, Director of Marketing and Merchandising
Stacy Kriedeman, Director, Marketing Communications
Joseph Puhalla, Director, Bureau of Product Selection

LCB Advisory Opinion No. 16-010