

February 18, 2016

Mary A. Monahan
Marketing Compliance Officer
Excelsior Wines
1111 Cedar Swamp Road
Old Brookville, NY 11545
VIA E-MAIL

RE: “Malbec Got Game Sweepstakes”

Dear Ms. Monahan:

ISSUE: This correspondence is in response to your e-mail and letter sent February 9, 2016, in which you request legal review of a promotion, the “Malbec Got Game Sweepstakes,” that will be offered to consumers in Pennsylvania.

According to the “Official Rules” that you provided, the sweepstakes promotion is scheduled to begin on March 1, 2016, and runs until April 30, 2016. Interested individuals may enter the sweepstakes online by visiting www.MalbecGotGame.com and completing and submitting the official entry form. There is a limit of one entry per person, per household, per day.

One grand prize will be awarded for the sweepstakes. The grand prize winner will be selected in a random drawing to be conducted on or about May 16, 2016. The grand prize winner will receive a check in the amount of \$1,000.00.

The sweepstakes is open only to legal residents of the United States 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 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)].

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, 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

Mary A. Monahan
February 18, 2016
Page 3

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. 16-025