

February 25, 2016

Marianne Kambel
Compliance Analyst
E. & J. Gallo Winery
VIA E-MAIL

RE: Barefoot Backyard BBQ Text-to-Win Sweepstakes

Dear Ms. Kambel:

ISSUE: This correspondence is in response to your e-mail of February 22, 2016, wherein you request legal review of the “Barefoot Backyard BBQ Text-to-Win Sweepstakes.”

According to the “Official Rules” that you provided, the sweepstakes promotion is scheduled to begin on March 27, 2016, and runs until May 30, 2016. Interested individuals may enter the sweepstakes by texting the keyword “BACKYARD” to the short code “44333” and then following the instructions to complete and submit an entry when prompted. Alternatively, interested individuals may enter the sweepstakes by sending an entry via e-mail to sweeps@barefootwine.com. There is a limit of one entry per person/e-mail address/cellular number/household during the sweepstakes period, regardless of the method of entry.

Four prize winners will be selected for the sweepstakes. The prize winners will be determined in a random drawing to be conducted on or about June 7, 2016. Each prize winner will receive a prize package consisting of the following: one \$500.00 American Express gift card; one corn hole set; two folding chairs; two plastic wine tumblers; and one cooler. The approximate retail value of each prize package is \$1,000.00.

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 as of the start date. 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, a manufacturer's representative, or a 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 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 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 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, Marketing and Merchandising
Stacy Kriedeman, Director, Marketing Communications
Joseph Puhalla, Director, Bureau of Product Selection

LCB Advisory Opinion No. 16-047