

March 18, 2016

David Simoni, Esq.  
North American Breweries  
50 Fountain Plaza, Suite 900  
Buffalo, New York 14202  
**VIA E-MAIL**

**RE: Seagram's Escapes Wholesaler Performance Rewards Program**

Dear Mr. Simoni:

ISSUE: This correspondence is in response to your e-mail and letter of February 13, 2016, wherein you request approval on behalf of Labatt USA Operating Co., LLC to conduct a wholesaler performance rewards program involving Seagram's Escapes. Through the program, performance rewards would be given to importing distributors who succeed in growing their Seagram's Escapes shipments and/or depletions by 15% or more between March and September 2016 as compared to the same time period in 2015. If the importing distributor is successful in meeting the shipment and depletion targets, the importing distributor will be eligible for a performance reward. Any earned performance reward would be paid by check to any qualifying importing distributor.

As you explain, there will be three performance reward tiers and a performance reward multiplier associated with each tier. Those tiers and associated multipliers are as follows: Tier 1 – for volume sold between 15% and 19.999% growth a multiplier of \$1.00/CE will be used; Tier 2 – for volume sold between 20% and 24.999% growth a multiplier of \$1.50/CE will be used; and Tier 3 – for volume sold between 25% growth and beyond a multiplier of \$2.00/CE will be used. The calculation of the performance reward will be based on shipments and depletions. Shipments will account for 60% of the performance reward and depletions will account for 40% of the performance reward.

OPINION: Section 493 of the Liquor Code provides, in pertinent part, as follows:

It shall be unlawful—

**(22) Allowance of rebate to induce purchases.** For any licensee, or his servants, agents or employees, to offer, pay, make or allow, or for any licensee, or his servants, agents or employees, to solicit or receive any allowance or rebate, refunds or concessions, whether in the form of money or otherwise, to induce directly the purchase of liquor or malt or brewed beverages.

**(24)(i) Things of Value Offered as Inducement.** Except as provided in subclause (ii), for any licensee under the provisions of this article, or the board or any manufacturer, or any employe or agent of a manufacturer, licensee or of the board, to offer to give anything of value or to solicit or receive anything of value as a premium for the return of caps, stoppers, corks, stamps or labels taken from any bottle, case, barrel or package containing liquor or malt or brewed beverages, or to offer or give or solicit or receive anything of value as a premium or present to induce directly the purchase of liquor or malt or brewed beverage, or for any licensee, manufacturer or other person to offer or give to trade or consumer buyers any prize, premium, gift or other inducement to purchase liquor or malt or brewed beverages, except advertising novelties of nominal value which the board shall define. . . .

47 P.S. § 4-493(22), (24)(i).

Moreover, section 13.51(a) of the Pennsylvania Liquor Control Board's ("PLCB") Regulations provides as follows:

(a) Except as provided herein and in § 13.52 (relating to advertising novelties), no in-State or out-of-State manufacturer, licensee or group of licensees, their servants, agents or employees, may directly or indirectly, in person, individually or through a trade organization, contribute to or accept from another licensee or group of licensees of a different class, their servants, agents or employees of a trade organization of licensees of a different class, anything of value by means of advertisements, contributions, purchase, sale of tickets, donations or by any device for any purpose.

40 Pa. Code § 13.51.

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It is the opinion of this office that the proposed wholesaler rewards program would violate the above-quoted provisions of the Liquor Code and the Board's Regulations and, therefore, would not be permissible under applicable Pennsylvania law.

Additionally, it is this office's understanding that the proposed rewards program may also be problematic under federal law to the extent that it can be construed as involving quota sales and/or depletion allowances. See 27 C.F.R. §§ 6.41, 6.71; Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms Industry Circular No. 87-2 (April 13, 1987). Thus, if you have not already done so, you may wish to contact the Alcohol, Tobacco, Tax and Trade Bureau for guidance as to whether or not the proposed rewards program would, in fact, violate any applicable federal laws.

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.

Sincerely,



RODRIGO J. DIAZ  
CHIEF COUNSEL

cc: Pennsylvania State Police, Bureau of Liquor Control Enforcement

LCB Advisory Opinion No. 16-079