

March 22, 2016

Jenna Bell  
Assistant Marketing Coordinator  
Avid Marketing Group  
**VIA E-MAIL**

**RE: Strongbow Glass Promotion**

Dear Ms. Bell:

ISSUE: This correspondence is in response to your e-mail of March 8, 2016, in which you request legal review of a proposed promotion to be conducted in Pennsylvania by your client, Heineken.

According to the summary you provided, the promotion involves a giveaway or sale of Strongbow cider branded glassware, and it will run from May 1, 2016, for as long as supplies last. The rules depend upon the applicable law of each state. In Pennsylvania, consumers will be offered the opportunity to purchase two Strongbow glasses for a total of \$3.58 with free shipping. The customer will also receive a rebate coupon along with the glassware. In states that permit a promotional giveaway that includes an alcohol purchase requirement, customers who supply a receipt showing a Strongbow purchase will receive two free Strongbow glasses along with a coupon. The promotion is open only to adults of legal drinking age.

OPINION: Generally, the Liquor Code prohibits any licensee, manufacturer, or other person from offering or giving to trade or consumer buyers any prize, premium, gift, or other inducement to purchase alcohol. 47 P.S. § 4-493(24)(i). However, there is an exception to this general prohibition which allows the offering or giving of “advertising novelties of nominal value.” Id. The Pennsylvania Liquor Control Board (“PLCB”) has defined “advertising novelties of nominal value” as items that have a wholesale cost of \$15.00 or less and contain advertising material. 47 P.S. § 4-493(24)(i); 40 Pa. Code § 13.52; PLCB Advisory Notice No. 10 (6<sup>th</sup> Revision). Advertising novelties typically consist of items such as matches, disposable lighters, bottle or can openers, t-shirts, caps, corkscrews, pens, or pamphlets. Id. Advertising novelty giveaways may or may not be conditioned on the purchase of an alcoholic beverage. Id.

In this case, since the promotion in question does not involve the sale of alcoholic beverages and essentially amounts to the sale of a branded item, it would not be subject

to section 493(24)(i) of the Liquor Code. Moreover, section 13.52 of the PLCB's Regulations specifically authorizes the sale of promotional items advertising one's own business, such as t-shirts, mugs, caps, and other items, to the general public. Therefore, it would be permissible to run the proposed promotional offer in Pennsylvania. Please note further that even if there were a purchase requirement, based on the information you provided the promotion could also fall under the aforementioned exception for advertising novelties of nominal value if the glassware has a wholesale cost of \$15.00 or less and bears advertising material.

Therefore, it would be permissible to conduct this promotion in the Commonwealth in reference to the area checked below:

- retail licensed premises.
- distributor licensed premises.
- both retail and distributor licensed premises.
- the PLCB's wine and spirits stores, subject to approval of the Bureau of Product Management.
- 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.

Sincerely,



RODRIGO J. DIAZ  
CHIEF COUNSEL

cc: Pennsylvania State Police, Bureau of Liquor Control Enforcement