

March 23, 2016

Amy Rossi
Compliance Specialist
Mark Anthony Services Inc.
VIA E-MAIL

RE: Palm Breeze Ibotta Rebate Offer

Dear Ms. Rossi:

ISSUE: This correspondence is in response to your e-mail of March 3, 2016, wherein you seek approval to conduct an Ibotta rebate promotion in Pennsylvania in support of Palm Breeze® malt beverages. Through the promotion, consumers may receive a \$2.00 rebate on the purchase of a twelve-pack of any Palm Breeze® variety pack. The offer is valid only to residents of certain states who are of legal drinking age.

According to the Ibotta website, <https://ibotta.com/>, consumers who join Ibotta and download the Ibotta app on their phones or tablet devices may unlock rebate offers by completing certain tasks such as watching videos or answering poll questions. To redeem a rebate, consumers must scan a receipt or other proof of purchase using the Ibotta app. Upon verification, the rebate amount is added as a cash reward to the consumer's Ibotta account; however, the funds may not be withdrawn by the consumer until the account has accumulated at least \$20.00 in rewards. Once this threshold is met, the funds may be withdrawn through Paypal or Venmo, or the consumer may convert their cash rewards to gift cards to other retailers. Prior to reaching the \$20.00 threshold, the rewards remain the sole property of Ibotta, and if a consumer closes an Ibotta account with less than \$20.00 in rewards, the rewards are forfeited. Further, Ibotta deducts \$3.99 from a consumer's accumulated rewards each month after the consumer's account has been inactive for twelve months.

OPINION: Based on the material you provided, as well as the above information obtained from the Ibotta website, the promotion would not be permissible in Pennsylvania.

Section 493(24)(i) of the Liquor Code generally prohibits licensees, manufacturers, and the Board, or any employee or agent of a licensee, manufacturer, or the Board, from offering or giving anything of value or soliciting or receiving anything of value as a premium or present to induce directly the purchase of liquor or malt or brewed beverages. 47 P.S. § 4-493(24)(i). Similarly, section 493(24)(i) generally prohibits licensees, manufacturers, and other persons from offering or giving to trade or consumer buyers any prize, premium, gift, or other inducement to purchase liquor or malt or brewed beverages. Id. However, section 493(24)(i) includes an exception, which provides:

This section shall not prevent any manufacturer or any agent of a manufacturer from offering and honoring coupons which offer monetary rebates on purchases of wines and spirits through State Liquor Stores or purchase of malt or brewed beverages through distributors and importing distributors in accordance with conditions or regulations established by the board. The board may redeem coupons offered by a manufacturer or an agent of a manufacturer at the time of purchase. Coupons offered by a manufacturer or an agent of a manufacturer shall not be redeemed without proof of purchase.

Id.

This office has traditionally interpreted the above section to allow manufacturers or their agents to offer mail-in monetary rebate coupons relative to purchases of twelve-packs and cases through distributors and importing distributors.

Specifically, this office has opined that rebate coupons for malt or brewed beverages must contain the following: (1) the initiation and expiration date of the offer; (2) the rebate value; (3) provision for the name and address of the individual redeeming the coupon (mail-in rebates only); (4) the identity of the manufacturer or manufacturer's agent; (5) a description of the product including, but not limited to, the brand name and size; and (6) a warning statement that the purchase of the product and the rebate offer is restricted to persons who are twenty-one years of age or older. Additionally, all malt or brewed beverage mail-in rebate offers must also require submission of proof of purchase in the form of a sales slip or cash register receipt.

Please note that the use of an electronic rebate coupon, instead of a traditional mail-in rebate or instant rebate coupon, would not necessarily be problematic under the

Liquor Code or the PLCB's Regulations, as long as the coupon offers a true monetary rebate and the other conditions discussed above are satisfied.

In this case, however, it does not appear that a true monetary rebate is being offered through Ibotta. Although the promotion offers consumers \$2.00 off the purchase of a twelve-pack of Palm Breeze, the consumer will not actually receive the rebate amount until they have accumulated at least \$20.00 of credits in their Ibotta account. In the meantime, the \$2.00 credit is considered the property of Ibotta, which will retain the \$2.00 in the event the consumer closes the account prior to reaching the mandated threshold. Thus, the promotion does not offer what this office considers to be a true monetary rebate for consumers purchasing the underlying alcoholic beverage product.

The terms of use established by Ibotta also suggest an implied inducement to make additional purchases, since in order to reach the \$20.00 threshold, and thus receive the \$2.00 Palm Breeze rebate, consumers will need to purchase other products having their own rebate offers through the Ibotta app, which will likely include alcoholic beverage products. This is problematic because of the aforementioned prohibition on manufacturers or their agents offering an inducement to purchase alcoholic beverages.

Finally, it is not entirely clear from the materials that you submitted or the Ibotta website what the terms of the relationship are between the manufacturer and Ibotta. However, based on the information that is available on the Ibotta website describing its business model, it seems as though Ibotta is operating to a large degree as an independent, third-party entity and not as an agent of the manufacturer, which is also problematic under section 493(24)(i).

Therefore, the Ibotta rebate promotion is not permissible in Pennsylvania.

If you have any additional questions or concerns regarding this matter, the Liquor Code, or the PLCB'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

Amy Rossi
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BY THE LEGISLATURE OR THE PENNSYLVANIA LIQUOR CONTROL
BOARD.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rodrigo J. Diaz".

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. 16-089