

April 8, 2016

Dijana Kristo
Compliance & Trademark Specialist
The Wine Group
VIA E-MAIL

RE: Ibotta Rebate Offer on a Glass of Wine

Dear Ms. Kristo:

ISSUE: This correspondence is in response to your e-mail of March 16, 2016, wherein you seek legal review of a proposed rebate promotion in Pennsylvania in support of Trapiche wines. Through the promotion, consumers may receive a \$2.00 rebate on the purchase of a glass of Trapiche wine. To obtain the rebate, consumers must take a photo of a receipt from an on-premises licensee, such as a restaurant, showing a by-the-glass purchase of Trapiche wine. Once the photo is submitted via the Ibotta app and approved, Ibotta will deposit \$2.00 into the consumer's Ibotta account. The Wine Group will pay Ibotta \$2.00 (plus a small handling fee) for each consumer redemption. The on-premises retailer is not involved in the promotion.

Further, according to the Ibotta website, <https://ibotta.com/>, after a rebate is added to a consumer's Ibotta account, the funds may not be withdrawn by the consumer until the account has accumulated at least \$20.00 in rewards. Once this threshold is met, the funds may be withdrawn through Paypal or Venmo, or the consumer may convert his/her cash rewards to gift cards to other retailers. Prior to reaching the \$20.00 threshold, the funds remain the sole property of Ibotta, and if a consumer closes an Ibotta account containing less than \$20.00, the funds are forfeited. Further, Ibotta deducts \$3.99 from a consumer's accumulated funds 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 for a number of reasons.

First and foremost, the Liquor Code does not permit manufacturers to offer rebates on purchases made at on-premises retail establishments. As an exception to the

general prohibition on giving anything of value as an inducement to purchase alcoholic beverages, section 493(24)(i) 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 purchases 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.

47 P.S. § 4-493(24)(i) (emphasis added).

Because the exception for rebates on wine and spirits products is limited to purchases made at the Pennsylvania Liquor Control Board's ("PLCB") wine and spirits stores, the proposed promotion would not fall under the exception and thus would be construed as an unlawful inducement.

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 glass of Trapiche wine, the consumer will not actually receive the rebate amount until they have accumulated at least \$20.00 of credits in his/her 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. Therefore, 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 Trapiche 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, for all of the above reasons, the proposed 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 BY THE LEGISLATURE OR THE PENNSYLVANIA LIQUOR CONTROL BOARD.

Sincerely,



**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