

April 8, 2016

Yolanda Cazessus
Coupon Specialist/POD Support
Insight Resource Group
VIA E-MAIL

RE: Guarachi Wine Partners Mail-in Rebate

Dear Ms. Cazessus:

ISSUE: This correspondence is in response to your e-mail of March 22, 2016, wherein you request legal review of a mail-in rebate promotion to be offered to consumers in Pennsylvania by your client, Guarachi Wine Partners.

Through the rebate promotion, consumers can save \$3.00 on a fresh meat, deli, or produce item by mail with the purchase of any one bottle of Bodega Norton Wine. In order to receive the rebate, consumers must mail a completed rebate form along with their original, store-identified receipt to the designated address. The promotion is valid on purchases made between January 1, 2016, and December 31, 2016. The rebate offer is limited to persons who are at least twenty-one years of age, and there is a limit of one offer per envelope/per household/address.

OPINION: This office has reviewed the proposed mail-in rebate promotion and has determined that it does not comport with applicable liquor laws and regulations, specifically section 493(24)(i) of the Liquor Code, 47 P.S. § 4-493(24)(i), and, therefore is not acceptable for use in this Commonwealth.

Section 493(24)(i) of the Liquor Code generally prohibits licensees, manufacturers, and the Pennsylvania Liquor Control Board (“PLCB”), or any employee or agent of a licensee, manufacturer, or the PLCB, from offering or giving anything of value or from 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 allowing manufacturers or their agents to offer monetary rebates on purchases of wine or spirits from the PLCB or purchases of malt or brewed beverages from importing distributors or distributors. Id.

In order for a cross-promotion requiring the purchase of both an alcoholic beverage product and a non-alcoholic beverage product to fall within the exception for monetary

rebates, the promotion must make clear that the monetary rebate is being offered on the alcoholic beverage product, as opposed to the non-alcoholic beverage product. Alternatively, if the promotion makes it clear that no alcohol purchase is required to receive a rebate on the purchase of a non-alcoholic beverage product, then such promotion would not be subject to section 493(24)(i).

In this instance, the point-of-sale (“POS”) materials that you provided indicate that the \$3.00 rebate is being offered on fresh meat, deli, or produce items, as opposed to the Bodega Norton Wine. Further, pursuant to the POS materials, an alcohol purchase is necessary to receive the rebate. As such, this promotion is subject to section 493(24)(i), and does not fall within the exception thereunder for coupons offering monetary rebates on purchases of wine or spirits from the PLCB. Accordingly, the proposed promotion would be considered an unlawful inducement to purchase alcohol and is not permissible for use in Pennsylvania.

Additionally, please be advised that, in Pennsylvania, the PLCB is generally the only entity that is authorized to sell wine and spirits for off-premises consumption, and there are an extremely limited number of non-alcoholic beverage items that the PLCB sells in its Fine Wine & Good Spirits stores.

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