

April 21, 2016

David Romine
Alcohol Beverage Specialist
Kalik Lewin
VIA E-MAIL

RE: Folio Fine Wine Partners Instant Rebates and Sweepstakes

Dear Mr. Romine:

ISSUE: This correspondence is in response to your e-mail sent March 31, 2016, wherein you request legal review of six instant rebate promotions and a sweepstakes that your client, Folio Fine Wine Partners, would like to offer to consumers in Pennsylvania.

Regarding the rebates, the first rebate promotion offers consumers an instant rebate of \$1.00 on the purchase of any meat or seafood. No wine purchase is required. The second promotion offers consumers an instant rebate of \$1.00 on the purchase of Crios Wine. The first and second rebate offers expire on March 31, 2017. The third promotion offers consumers an instant rebate of \$1.00 on the purchase of Frescobaldi wines including Rèmole Toscana IGT, Castiglioni Chianti DOCG, Nipozzano Chianti Rúfina Riserva DOCG, or Tenuta Frescobaldi di Castiglioni Toscana IGT. The third rebate offer expires December 31, 2016. The fourth promotion offers consumers an instant rebate of \$2.00 on the purchase of at least \$2.01 of beef and any Spellbound wine. The wine purchase is required, and the rebate appears to be on the beef. The fourth rebate offer expires September 15, 2016. The fifth promotion offers consumers an instant rebate of \$3.00 on the purchase of any bottle of Hangtime Wine. The fifth rebate offer expires July 31, 2016. Finally, the sixth promotion offers consumers an instant rebate of \$3.00 on the purchase of at least \$3.01 of cheese or salami with the purchase of any Oberon wine. The wine purchase is required, and the rebate appears to be on the cheese or salami. The sixth rebate promotion expires June 30, 2016.

As for the sweepstakes promotion, according to the official rules you provided, the “Hangtime Wines ‘Kick Back & Relax’ Contest” is scheduled to run from May 1 through July 31, 2016. Consumers may participate online via the promotional website by submitting an essay and original photo. Public voting will determine up to twenty finalists from which a panel of judges will select three winners. Each winner will

receive a stand-alone hammock with an approximate retail value of \$1,000.00. No purchase is necessary to enter, and the promotion is limited to adults of legal drinking age.

OPINION: This office has reviewed the proposed instant rebate offers and has determined that the first, second, third, and fifth rebate promotions comport with applicable liquor laws and regulations, specifically subsection 493(24)(i) of the Liquor Code, 47 P.S. § 4-493(24)(i), and are acceptable for use in this Commonwealth. Please note there are a limited number of non-alcoholic products available for sale at the PLCB's Fine Wine and Good Spirits stores. However, the fourth and sixth promotions, which are cross-promotional offers requiring the purchase of both alcohol and a non-alcoholic product in order to receive a rebate on the non-alcoholic product, are not permissible in Pennsylvania. Although rebates on wine and spirits are permissible, subsection 493(24)(i) does not allow rebates to be given on non-alcoholic items, where an alcohol purchase is required, because it would be considered an unlawful inducement to purchase alcohol.

Additionally, this office has reviewed the sweepstakes promotion and determined that it comports with applicable liquor laws and regulations, specifically section 493(24)(i) of the Liquor Code, 47 P.S. § 4-493(24)(i), and section 5.32(h) of the PLCB's Regulations, 40 Pa. Code § 5.32(h). Section 5.32(h) of the PLCB's Regulations states that a manufacturer, manufacturer's representative, or licensee may sponsor sweepstakes promotions subject to the following conditions:

- i. No purchase is necessary to enter.
- ii. Entrants shall be twenty-one years of age or older.
- iii. Retail licensed premises may only be involved as pick-up or drop-off points for entry forms and not for the conducting of drawings or the awarding of prizes.
- iv. Alcoholic beverages may not be part of the prize.

40 Pa. Code § 5.32(h).

Finally, please be advised that prior approval of malt or brewed beverages point-of-sale ("POS") material and retail licensed premises POS material is no longer required. However, the requirement for prior approval of POS material intended for use in the PLCB's Fine Wine and Good Spirits stores from the Bureau of Product Selection remains. The total cost of all POS advertising material relating to any one

brand of any one manufacturer at any one time may not exceed \$300.00 on a retail licensed premises. 47 P.S. § 4-493(20) (i).

Therefore, it would be permissible to conduct the sweepstakes, as well as the first, second, third, and fifth rebate promotions, 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 Fine Wine and Good Spirits stores, subject to approval of the Bureau of Product Selection.
- 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
Dale Horst, Director, Marketing and Merchandising
Stacy Kriedeman, Director, Marketing Communications
Joseph Puhalla, Director, Bureau of Product Selection