

May 3, 2016

Philip D. Calderone, Esq.
Vice President and General Counsel
Banfi Vintners
VIA E-MAIL

RE: Social Media Posts

Dear Mr. Calderone:

ISSUE: This is in response to your correspondence of March 29, 2016, wherein you ask whether Banfi can use its Facebook page or other social media sites for particular brands to geo-target the publicity of certain retail events within the state of Pennsylvania. You also question whether it would be permissible for Banfi to request that the Pennsylvania Liquor Control Board (“PLCB”) point to certain retail events which have approval from the PLCB on the PLCB’s website.

The PLCB’s records reflect that Banfi Products Corporation, located at 1111 Cedar Swamp Road, Old Brookville, New York, holds Vendor Permit No. VP-253 (LID 22938) and Sales Permit No. SP-531 (LID 46935).

OPINION: As an initial matter, it is not entirely clear from your correspondence what you mean by “retail events.” However, for purposes of this response, it is assumed that you mean tasting events or other promotional events conducted at retail licensed premises.

With regard to your first question, please be advised that the Pennsylvania Liquor Code’s provisions governing interlocking business practices generally prohibit licensees of one class, such as manufacturers or suppliers, from providing money or other things of value to equip or otherwise help the operation of a licensee of a different class, such as retail licensees. 47 P.S. §§ 4-411, 4-443. Similarly, section 13.51 of the PLCB’s Regulations prohibits a licensee of one class from providing anything of value, including advertising, to a licensee of another class. 40 Pa. Code § 13.51. A manufacturer or supplier’s posting of information about retail licensees on its website or social media sites would be considered providing something of value, specifically advertising, to licensees of a different class.

Historically, however, this office has opined that cooperative advertising between licensees of different classes would not violate the above-referenced provisions, so long as each party pays its proportionate share for the cost of the advertising. This is because

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if each party pays for its proportionate share for the cost of the advertisement, then neither party can be said to be providing or giving something of value to the other party.

Therefore, if the retail licensees who are receiving the benefit of the contemplated advertising were to pay for their proportionate share of the costs of the same, then the contemplated advertising would be permissible under Pennsylvania law. However, if Banfi were to incur all of the costs involved with the contemplated advertising, and the respective retail licensees were to pay nothing for the benefits that they are receiving from the same, then the contemplated advertising would be prohibited under Pennsylvania law.

If you have not already done so, you may wish to contact the Alcohol and Tobacco Tax and Trade Bureau (“TTB”) to determine whether the cooperative advertising that is being contemplated would be permissible under applicable federal laws. You may visit the TTB’s website at www.ttb.gov for more information.

Turning now to your second question, please be advised that while the PLCB does utilize its website to promote events occurring at the PLCB’s Fine Wine & Good Spirits stores and to promote other events in which the PLCB is an active participant, the PLCB does not otherwise make its website available for the promotion of events occurring at retail licensed premises. Due to the potential implications under applicable federal laws, as well as other equitable considerations, the PLCB has no plans of deviating from its current practice.

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

LCB Advisory Opinion No. 16-154