May 4, 2016

David Romine
Alcohol Beverage Specialist
Kalik Lewin
5335 Wisconsin Avenue, NW, Suite 440
Washington, DC 20015
VIA E-MAIL

RE: McCormick Tequila Rose Ibotta Rebate Offer Nov-Dec

Dear Mr. Romine:

ISSUE: This correspondence is in response to your e-mail sent April 11, 2016, wherein you seek approval, on behalf of your client, to offer an Ibotta rebate on McCormick Tequila Rose® in Pennsylvania.

Through the Ibotta rebate offer for which you seek approval, consumers can unlock a coupon for $3.00 off the purchase of McCormick Tequila Rose® (750ml bottle size only) by viewing a "Chocolate Covered Strawberry" mixed drink recipe. The offer is valid only to legal residents of certain states who are twenty-one years of age or older, and it runs from November 1 to December 31, 2016.

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the rebate amount is added as a cash reward to the consumer's Ibotta account; however, the funds may not be withdrawn by the consumer until the account has accumulated at least $20.00 in rewards. Once this threshold is met, the funds may be withdrawn through Paypal or Venmo, or the consumer may convert his or her cash rewards to gift cards to other retailers.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: Section 493(24)(i) of the Liquor Code generally prohibits licensees, manufacturers, and the PLCB, or any employee or agent of a licensee, manufacturer, or the PLCB, 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 this exception to allow manufacturers or their agents to offer both mail-in and instant monetary rebate coupons relative to purchases of wine and spirits products through the PLCB's Fine Wine & Good Spirits stores, as long as certain conditions are satisfied.

Specifically, this office has opined that rebate coupons for wine or spirits must contain the following: (1) an expiration date of the offer; (2) the rebate value; (3) provision for the name and address of the individual redeeming the coupon; (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 wine or spirits 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 $3.00 off the purchase of any variety of McCormick Tequila Rose® (750ml bottle size only), the consumer will not actually receive the rebate amount until he or she has accumulated at least $20.00 of credits in his or her Ibotta account. In the meantime, the $3.00 credit is considered the property of Ibotta, which will retain the $3.00 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 $3.00 McCormick Tequila Rose® 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 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

LCB Advisory Opinion No. 16-159