

May 17, 2016

Scott A. Schleifstein, Esq.  
Cohen Silverman Rowan LLP  
360 Lexington Avenue, 16<sup>th</sup> Floor  
New York, NY 10017  
**VIA E-MAIL**

**RE: Smirnoff Ice “Bring Your Baddie” Contest**

Dear Mr. Schleifstein:

ISSUE: This correspondence is in response to your e-mail and letter sent April 28, 2016, in which you seek legal review of a contest promotion that Diageo-Guinness USA Inc. would like to make available in Pennsylvania, the Smirnoff Ice “Bring Your Baddie” Contest.

According to the “Official Rules” that you provided, the contest was scheduled to begin on April 28, 2016, and it ended on May 1, 2016. Interested individuals were able to enter the contest by posting a photo of themselves and their “Baddie,” which is a friend, relative, or another individual whom they know personally and who is fifty years of age or older, to their public Instagram account. Entrants were also permitted to include comments along with their photos, but they were not required to do so. Entrants were required to use the hashtag #BRINGYOURBADDIECONTEST and to tag @SmirnoffSoundCollective and @SmirnoffUS in their photos. There was a limit of one entry per person.

Five grand prizes were to be awarded for the contest. The grand prize winners were to be selected by a panel of judges, on or about May 2, 2016, based on originality (40%), degree to which entry complements/fits with the Smirnoff Ice brand (30%), and creativity (30%). Each grand prize winner would receive a trip for himself/herself and his/her “Baddie” to the 2016 Electronic Daisy Carnival festival on Saturday, May 14, 2016, through Sunday, May 15, 2016, in Flushing, New York. The trip included the following: round-trip coach air travel from the major airport nearest the winner’s residence to New York, New York; two VIP admission, two-day tickets to the festival; hotel accommodations for the winner and guest (two rooms, single occupancy) for two nights; a \$1,000.00 prepaid card which could be

used for ground transportation or otherwise; and a meet-and-greet opportunity with “Baddie” Winkle (i.e., Ms. Helen Ruth Van Winkle). The approximate retail value of each grand prize is \$5,000.00. Alcoholic beverages were not part of the prizes.

The contest was open only to legal residents of the contiguous United States or Washington, D.C., who were twenty-one years of age or older at the time of entry. No purchase was necessary to enter or win the contest.

OPINION: Section 5.32(h) of the Pennsylvania Liquor Control Board’s (“PLCB”) 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).

This office has reviewed the proposed promotion as described above 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), as long as no alcoholic beverages are awarded as part of the grand prizes.

Although the “Official Rules” indicate that alcoholic beverages are not part of the prizes, please be advised that any part of the trips being awarded as the grand prizes involving sampling, taste testing, or the provision of alcoholic beverages at no additional cost to the winners and/or their guests would be construed as awarding alcoholic beverages as part of the prizes and would not be permitted.

Furthermore, 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 wine and spirits stores from the Bureau of Product Selection remains. The total cost of all POS advertising material relating to any one

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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, as long as no alcoholic beverages are awarded as part of the grand prizes, it is permissible to conduct the proposed sweepstakes promotion in the Commonwealth in reference to the areas checked below:

- retail licensed premises.
- distributor licensed premises.
- both retail and distributor licensed premises (POS only).
- The PLCB's wine and spirits stores, subject to approval of the Bureau of Product Selection (POS only).
- 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

LCB Advisory Opinion No. 16-182