

June 28, 2016

Karen L. Gabriele
Senior Compliance Specialist
Mark Anthony Services, Inc.
328 S. Jefferson Street
Chicago, IL 60661
VIA E-MAIL

RE: mike's® Come Out Back Text to Win Sweepstakes

Dear Ms. Gabriele:

ISSUE: This correspondence is in response to your e-mail dated June 22, 2016, in which you seek legal review, on behalf of Mark Anthony Brands, Inc., of a proposed sweepstakes promotion to be conducted in Pennsylvania.

According to the official rules you provided, the “mike's® Come Out Back Text to Win” sweepstakes promotion is scheduled to begin on July 1, and runs until August 31, 2016. There are two methods of entry. The first method of entry requires entrants to text the word “COMEOUTBACK” to 55678. After receiving an automated response, an entrant must text his or her name, address, and date of birth. The second method of entry requires entrants to print his or her name, date of birth, telephone number, and the words “COMEOUTBACK” on a 3” x 5” card, and mail it to the designated P.O. Box.

Two entrants will be randomly selected to receive the grand prize of a Copper Fire Pit. The approximate retail value of each grand prize is \$270.00 and they do not contain alcoholic beverages. The promotion is only open to adults of drinking age in New York, Pennsylvania, and West Virginia, and no purchase is necessary to enter.

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 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), so long as no alcoholic beverages are awarded as part of the grand prize.

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 Board's wine and 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 in the Commonwealth in reference to the areas checked below:

- retail licensed premises.
- distributor licensed premises.
- both retail and distributor licensed premises.
- the PLCB's wine and spirit 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

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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,

A handwritten signature in cursive script that reads "Rodrigo J. Diaz".

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. 16-234