

July 5, 2016

Crystal Hartz
Wilsbach Distributors, Inc.
905 Katie Court
Harrisburg, PA 17109

RE: Facebook Giveaways

Dear Ms. Hartz:

ISSUE: This correspondence is in response to your letter received by this office on May 16, 2016, wherein you indicate that you are seeking clarity on “Facebook giveaways,” and you raise three different questions. First, you ask whether the value of the item that you may give away is capped at \$15.00, or if you may exceed that value. Second, you ask whether you may run a promotion whereby you award \$150.00 worth of items to ten separate winners with each item having a value of \$15.00. Finally, you ask if the \$15.00 is based on your cost or the retail value.

The Pennsylvania Liquor Control Board’s (“PLCB”) records indicate that Wilsbach Distributors, Inc., holds Importing Distributor License No. ID-178 (LID 8492) for use at the premises located at 905 Katie Court, Harrisburg, Pennsylvania.

OPINION: As an initial matter, it is not entirely clear from your letter what you mean when you say “Facebook giveaways.” However, it is assumed that you are referring to a sweepstakes promotion in which participants are required to register or submit an entry and winners are randomly selected from among all eligible entries received. Further, it appears that you may be inadvertently combining two different concepts: sweepstakes promotions and the provision of advertising novelties of nominal value.

Section 493(24)(i) of the Liquor Code generally prohibits manufacturers or licensees from offering anything of value as an inducement to purchase alcohol. 47 P.S. § 4-493(24)(i). However, section 493(24)(i) includes a limited exception allowing for the provision of advertising novelties of nominal value. Id. The PLCB has defined advertising novelties of nominal value as items that have a wholesale cost of \$15.00 or less and contain advertising material. 40 Pa. Code § 13.52; PLCB Advisory

Notice No. 10 (6th Revision). Advertising novelties of nominal value typically include items such as matches, disposable lighters, bottle or can openers, t-shirts, caps, corkscrews, and pens and pamphlets. Such advertising novelty giveaways may be conditioned on the purchase of an alcoholic beverage. In other words, licensees are permitted to offer promotions whereby consumers receive an advertising novelty of nominal value even if they are required to purchase a particular alcoholic beverage item, such as a case of “Bud Light.”

Additionally, section 5.32(h) of the PLCB’s Regulations authorizes manufacturers, manufacturers’ representatives, or licensees to 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). Sweepstakes promotions conducted in accordance with these provisions are not considered unlawful inducements to purchase alcohol and, thus, do not violate section 493(24)(i) of the Liquor Code.

Notably, section 5.32(h) does not place a maximum dollar amount on the value of each prize or the total value of all prizes that may be awarded as part of a sweepstakes promotion.

Therefore, to summarize, if you are seeking to give something away that is conditioned on the purchase of an alcoholic beverage, you would be limited to providing items that qualify as advertising novelties and have an individual wholesale cost of \$15.00 or less. On the other hand, if you are seeking to offer a sweepstakes promotion (which appears to be the case), there is no maximum dollar amount on the value of each prize or the total value of all prizes that may be awarded under applicable Pennsylvania law; however, such promotion must conform with the requirements found in section 5.32(h) of the PLCB’s Regulations, which were previously discussed above.

Should you have any additional questions regarding 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
Jerry W. Waters, Director of Office of Regulatory Affairs
Tisha Albert, Director, Bureau of Licensing
Jeffrey Lawrence, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No. 16-239