

August 10, 2016

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

RE: The Divining Rod Divinely Spooky Rebate Promotion Coupons

Dear Mr. Romine:

ISSUE: This correspondence is in response to your e-mail of July 22, 2016 wherein you request approval to conduct five rebate coupon promotions in Pennsylvania.

Through the first promotion, consumers can instantly save \$1.00 on the purchase of one 750ml bottle of Divining Rod wine. The rebate must be redeemed at the time of checkout and there is a limit of one rebate per purchase. The offer is limited to adults who are at least twenty-one years of age. The rebate offer expires on October 31, 2016.

Through the second coupon promotion, consumers are offered a \$3.00 rebate on purchases of any two 750ml bottles of The Divining Rod wine. To redeem the rebate, consumers must mail the completed mail-in rebate form and the original register receipt to the address specified on the back of the rebate form. The rebate is available to adults of legal drinking age. The offer expires October 31, 2016.

The third promotion would offer consumers an instant rebate of \$1.00 on “fresh pumpkins” with the purchase of any 750 ml bottle of Diving Rod wine. The rebate must be redeemed at the time of checkout and there is a limit of one coupon per purchase. The rebate is available to adults of legal drinking age. The offer expires October 31, 2016.

With regard to the fourth promotion, consumers can instantly save \$1.00 on ice with the purchase of a 750 ml bottle of Divining Rod wine. The rebate must be redeemed at the time of checkout and there is a limit of one coupon per purchase. The rebate is available to adults of legal drinking age. The offer expires October 31, 2016.

Finally, through the fifth promotion, consumers are offered a mail-in rebate of \$4.00 on “fresh pumpkins” and ice. To redeem the rebate, consumers must purchase “any pumpkin” and “any bag of ice”, complete the offer form, and mail it to the designated P.O. Box with the original dated cash receipt. There is a limit of one rebate per household and the rebate is available to adults of legal drinking age. There is no purchase of wine required.

OPINION: This office has reviewed the remaining rebate promotions and determined that the first, second, and fifth rebate promotions comport with applicable liquor laws and regulations, specifically subsection 493(24)(i) of the Liquor Code, 47 P.S. § 4-493(24)(i), and are acceptable for use in this Commonwealth; however, the third and fourth rebate promotions do not comport with the applicable liquor laws and regulations, and are not acceptable for use in this Commonwealth.

With regard to the third and fourth rebate promotions, manufacturers or their agents are not permitted to offer instant rebates which require the purchase of alcohol and a non-alcoholic product in order to receive a monetary instant rebate on the non-alcoholic product, as this would be an unlawful inducement to purchase alcohol in accordance with the Liquor Code. 47 P.S. § 493(24)(i). However, manufacturers or their agents may offer instant rebates which require the purchase of alcohol and a non-alcoholic product when the rebate is offered on the alcohol, rather than the non-alcoholic product. In cross-promotions, the purchase of the non-alcohol product must be the prior condition to receiving the rebate on the alcohol.

Furthermore, with regard to the fifth rebate promotion, it is unclear if you anticipate offering the coupon at the PLCB’s Fine Wine and Good Spirits Stores or at a retail licensed premises such as a grocery store that sells wine. If you anticipate offering the coupon at a licensed premises that sells both food products and wine, please be advised that the PLCB’s Fine Wine and Good Spirits stores are statutorily limited in what non-alcoholic products it can sell to consumers. 47 P.S. § 3-305(h). It sells neither pumpkins nor ice.

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 Fine Wine and Good 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 retail licensed premises. 47 P.S. § 4-493(20)(i).

Therefore, 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.
- 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 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
Charles Mooney, Chief Operating Officer
Dale Horst, Director of Marketing and Merchandising
Stacy Kriedeman, Director, Marketing Communications
Joseph Puhalla, Director, Bureau of Product Selection