

August 11, 2016

Patty Voight
Marketing Coordinator
Breakthru Beverage Group
129 Hartman Road
North Wales, PA 19454
VIA E-MAIL

RE: Mionetto Pink Cork Program

Dear Ms. Voight:

ISSUE: This correspondence is in response to your e-mail dated August 4, 2016, in which you seek legal review of a proposed sweepstakes promotion to be conducted in Pennsylvania.

According to the official rules you provided, the “Mionetto Pink Cork Program” promotion is scheduled to begin on August 29 and runs until October 2, 2016. Please be advised you did not provide any details concerning which entrants may enter the sweepstakes other than “winners who find a pink cork...;” therefore, it will be presumed for the purposes of this response that entrants must lawfully purchase a promotional bottle of prosecco in order to “find a pink cork.” The first twelve entrants who find a pink cork will receive a pink Kitchen Aid hand mixer. One of the twelve entrants will be randomly selected to donate \$10,000.00 to a charity of his/her choice on behalf of Mionetto. The approximate retail value of each mixer is \$150.00 and the promotion is only open to adults who are at least twenty-one years of age.

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 sweepstakes promotion and determined that it does not comport 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), and is not acceptable for use in this Commonwealth. It appears that entrants must purchase a bottle of prosecco in order to "find a pink cork" and be considered for the prize; this is a violation section 5.32(h)(i) of the PLCB's Regulations, which requires that no purchase is necessary to enter the sweepstakes. Further, a sweepstakes that requires the purchase of an alcoholic beverage in order to enter the sweepstakes is considered an unlawful inducement to purchase alcohol in accordance with the Liquor Code. 47 P.S. § 493(24)(i). A sweepstakes promotion that requires the purchase of alcohol would only be permissible if it offered an alternative entry method in which entrants may enter the sweepstakes without purchasing a bottle of prosecco.

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

LCB Advisory Opinion No. 16-297