

September 13, 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 “Show Your Game” Contest**

Dear Mr. Schleifstein:

ISSUE: This correspondence is in response to your e-mail sent August 31, 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 “Show Your Game” Contest.

According to the official rules you provided, the contest was scheduled to begin on September 1, 2016, and runs until February 8, 2017. To enter the contest, interested individuals must go to [www.showyourgamecontest.com](http://www.showyourgamecontest.com) and follow the provided instructions. Upon registration, individuals may upload to the website a photo showing “how [they] prepare for ‘Game Day,’” which includes, but is not limited to, a photo of the individual’s “game face” or food and drink prepared at tailgate parties, along with the hashtag #SHOWYOURGAMECONTEST. In the alternative, individuals may post their “Game Day” photo on their “non-private” Instagram or Twitter account using the #SHOWYOURGAMECONTEST hashtag. If individuals choose to submit a photo with a drink, the drink does not need to be an alcoholic beverage. A regional contest will also be held in select states, including Pennsylvania, in which individuals from those states who entered the national contest will automatically be entered into the regional contest. There is a limit of one entry per person.

One grand prize will be awarded each week for a period of twenty-three weeks. The grand prize winners will be selected by a panel of judges based on the following criteria: originality and creativity—40%; degree of passion for football—20%; and degree to which the entry complements or fits with the SMIRNOFF ICE brand—40%. In the instance where there is a tie in a given week, the entrant who had a highest score with regard to originality and creativity will be selected. Each grand

prize winner will receive a \$250.00 gift card which may be used for tickets to a football game or other event. The approximate retail value for all grand prizes is \$5,750.00 and alcoholic beverages are not included in the grand prize. The contest is open to legal residents who are at least twenty-one years of age at the time of entry and no purchase is necessary to enter 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).

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.

Therefore, it is permissible to conduct the proposed contest 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).

X 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. 16-354