

September 13, 2016

Mary A. Monahan  
Marketing Compliance Officer  
1111 Cedar Swamp Road  
Old Brookville, New York 11545

**VIA E-MAIL**

**RE: Frontera “#BetterAfterDark” Contest**

Dear Ms. Monahan:

ISSUE: This correspondence is in response to your e-mail dated September 2, 2016, in which you seek legal review, on behalf of Frontera Wines, of a proposed contest to be conducted in Pennsylvania.

According to the official rules you provided, the “#BetterAfterDark” contest is scheduled to begin on September 13, and runs until October 4, 2016. To enter the contest, interested individuals must “capture an original photo” that depicts how he/she is “inspired by the night” and upload the photo to his/her Instagram with the hashtag “#BetterAfterDark;” the individual’s Instagram profile must be public in order for the judges to view, copy, and store the photo. Individuals are limited to one entry, per Instagram user, per day.

Eligible photos will be evaluated by judges who work for Frontera. There are two judging rounds of “equal difficulty.” During the first round, photos will be judged based on whether they meet all submission requirements and are visually appealing. All photos that meet such requirements will be advanced to the second round of judging. During the second round, photos will be evaluated based on the “extent to which the entry delivers the message of being inspired by the night” and “creativity and originality;” each criterion is equally weighted.

One contest winner will be selected to receive the grand prize of either receiving “an experience” valued up to \$500.00 for dinner for two “under the stars” or a \$500.00 cash prize. An additional two contest winners will be selected to receive a cash prize of \$90.00 to create his/her own “After Dark” experience. It is presumed that no

purchase is necessary to enter the contest and the contest is only open to United States residents 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 contest 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 prizes.

Please be advised that to the extent that any part of the prizes being awarded will involve sampling, taste testing, or the provision of alcoholic beverages at no additional cost to the winner and/or his or her guest, this would be construed as awarding alcoholic beverages as part of the prize and is not permitted.

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. 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, so long as alcoholic beverages are not included in any of the prizes, it would be permissible to conduct the contest 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

LCB Advisory Opinion No. 16-357