

September 22, 2016

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

RE: CK Mondavi Napa Wine Weekend Sweepstakes and Rebate Promotions

Dear Mr. Romine:

ISSUE: This correspondence is in response to your second e-mail dated July 22, 2016, in which you seek legal review of a sweepstakes and three rebate coupon promotions to be conducted in Pennsylvania.

According to the official rules you provided, the “CK Mondavi Napa Wine Weekend” sweepstakes promotion is scheduled to begin on October 1, and runs until December 31, 2016. Entrants may enter the sweepstakes via Facebook or text message. To enter the sweepstakes via Facebook, entrants must “like” the CK Mondavi Facebook page, “click” on the “sweepstakes tab,” and complete the online entry form. To enter the sweepstakes via text message, entrants must text “CKMONDAVI” to 31279. Entrants will receive a link to the CK Mondavi Facebook page to complete the online entry form.

One entrant will be randomly selected to receive the grand prize of a trip for two to Northern California, including airfare lodging for four days, a welcome and farewell dinner for two, a choice of two activities, a \$250.00 prepaid gift card for spending, and a commemorative gift bag and travel wallet. The approximate retail value of the grand prize is \$4,995.00 and alcoholic beverages are not included in the prize package. The sweepstakes is open to adults who are of legal drinking age in select states, including Pennsylvania, and no purchase is necessary to enter.

With regard to the first rebate promotion, according to the sample coupon you provided, the promotion offers consumers an instant rebate of \$2.00 on any two bottles of CK Mondavi wine. The rebate coupon must be redeemed at the time of

checkout. There is a limit of one rebate coupon per purchase. The offer is valid from October 1, and runs until December 31, 2016.¹ The promotion is limited to adults of legal drinking age.

Through the second rebate promotion, according to the sample coupon you provided, the promotion offers consumers an instant rebate of \$1.00 off President Brie cheese and/or \$1.00 off Rondele cheese spread. The rebate coupon must be redeemed at the time of checkout. There is a limit of one rebate coupon per purchase. The offer is valid from October 1, and runs until January 31, 2017. The rebate is available to adults of legal drinking age and no purchase of wine is necessary.

Finally, through the third rebate promotion, consumers are offered an instant rebate of up to \$3.00; \$1.00 off President Brie cheese, \$1.00 off crackers, and/or \$1.00 off Rondele cheese spread. The rebate coupon must be redeemed at the time of checkout. There is a limit of one rebate coupon per purchase. The rebate is limited to adults of legal drinking age and consumers must purchase a bottle of CK Mondavi wine in order to use the rebate. The offer is valid from October 1, and runs until January 31, 2017.

OPINION: In reference to the sweepstakes promotion, section 5.32(h) of the Pennsylvania Liquor Control Board's ("PLCB") Regulations states that a manufacturer, a manufacturer's representative, or a 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 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

¹ Please note that the front of the point of sale ("POS") material indicates that the coupon expires January 31, 2017.

PLCB's Regulations, 40 Pa. Code § 5.32(h), and is acceptable for use in this Commonwealth.

Furthermore, please be advised that to the extent that any part of the trip being awarded as the grand prize 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.

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 Fine Wine and Good Spirits stores, subject to approval of the Bureau of Product Selection (POS only).
- other – Internet, text messaging.

Additionally, this office has reviewed the remaining instant rebate promotions and determined that the first and second 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 is acceptable for use in this Commonwealth; however, the third instant rebate promotions not comport with the applicable liquor laws and regulations, and is not acceptable for use in this Commonwealth.

With regard to the third instant rebate promotion, 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). As an aside, 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.

With regard to the second instant 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).

Furthermore, please be advised that prior approval of malt or brewed beverages 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, it is permissible to conduct the proposed instant rebate promotions two and three 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

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BY THE LEGISLATURE OR THE PENNSYLVANIA LIQUOR CONTROL
BOARD.

Sincerely,

A handwritten signature in cursive script that reads "Rodrigo J. Diaz".

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. 16-381