

November 3, 2016

Mark Lambert  
**VIA E-MAIL**

**RE: Mug Clubs**

Dear Mr. Lambert:

ISSUE: This office is in receipt of your e-mail dated September 1, 2016, wherein you ask the following questions about mug clubs: (1) can you combine the mug club with an existing loyalty program that is a food-based program; (2) are you required to charge an annual fee for the mug club; and, if so, what are the maximum and minimum amounts that you may charge; (3) who is responsible for setting the date that the mug club members must pay the annual fee; (4) are you required to keep a list of mug club members on the licensed premises; and, if so, may you use your existing loyalty program point of sale tracking.

Pennsylvania Liquor Control Board (“PLCB”) records indicate that Home Delivery Pizza, Inc. holds the following Restaurant Liquor Licenses: (1) R-20541 (LID 21019) for use by it at premises located at 1820 South Atherton Street, State College Pennsylvania; and (2) R-18414 (LID 52525) for use by it at premises located at 1796 Zion Road, Bellefonte, Pennsylvania. You are listed as the Board-approved manager on Restaurant Liquor License No. R-18414 (LID 52525).

OPINION: As you are aware, Act 39 of 2016 (“Act 39”) amended the Liquor Code to permit retail licensees and breweries to offer a mug club to their patrons. 47 P.S. 4-493(24)(iii). A “mug club” is defined as a group organized by a retail licensee or a brewery whose members are entitled to discounted malt or brewed beverages. Membership in the mug club must be by written application and the licensee must maintain a written list of active members as part of its records. 47 P.S. § 1-102. Members are also required to pay an annual fee, as well as a renewal fee as set by licensee. 47 P.S. § 1-102. Membership in the mug club entitles the member, at a minimum, to a mug, glass or similar container, and said container must be used when the member is served any discounted malt or brewed beverages. 47 P.S. § 1-102. However, no discounted malt or brewed beverages may be provided between 12:00 a.m. and 7:00 a.m. 47 P.S. § 1-102. Each of your specific questions regarding mug clubs are addressed below in the order in which you presented them.

1. *Can you combine the mug club with an existing loyalty program that is a food-based program?*

Mug clubs are exempt from the prohibition set forth in section 493(24)(i). 47 P.S. § 4-493(24)(iii). Section 493(24)(i) of the Liquor Code prohibits any licensee of the PLCB, a manufacturer, or an employee or agent of a manufacturer from offering or giving anything of value as a premium to induce the purchase of liquor or malt or brewed beverages, except advertising novelties of nominal value, defined as items bearing advertising slogans with a value of fifteen dollars or less. 47 P.S. § 4-493(24)(i). In the past, this office has advised that rewards programs in which points or rewards are given in exchange for purchases of alcohol would be considered an unlawful inducement, unless the rewards are limited to advertising novelties of nominal value. However, since mug clubs are exempt from the prohibition set forth in section 493(24)(i), your mug club could be tied to an existing loyalty program.

2. *Are you required to charge an annual fee for the mug club; and, if so, what are the maximum and minimum amounts that you may charge?*

Yes, mug club members are required to pay an annual fee, as well as a renewal fee, which is set by the licensee. 47 P.S. § 1-102. There is no maximum or minimum amount that the licensee is required to charge. A nominal fee would suffice.

3. *Who is responsible for setting the date that the mug club members must pay the annual fee?*

There is no set date on which the licensee must collect the annual fee paid by mug club members. The only requirement is that the fee be collected annually. Therefore, the licensee may determine on which date it will collect the fee, provided that the fee is collected annually.

4. *Are you required to keep a list of mug club members on the licensed premises; and, if so, may you use the existing loyalty program point of sale tracking?*

Yes, a licensee is required to maintain a written list of active mug club members as part of its records. 47 P.S. § 1-102. Since electronic record keeping is typically acceptable under the PLCB's Regulations, you may use your existing point of sale tracking system to maintain the list of mug club members provided that this list is kept and maintained on the licensed premises. See 40 Pa. Code §§ 5.101 (allowing electronic record keeping for breweries); 5.102 (bonded warehouses); 5.103 (limited wineries); 5.73 (clubs); 9.13

(transporter-for-hire); 9.101 (importing distributors and distributors); 11.35 (permittee); 11.84 (sacramental wine licensees).

However, as previously indicated, be advised that membership in the mug club must be by written application. 47 P.S. § 1-102. Therefore, it is possible that your list of active mug club members will not be the same as your list of existing loyalty program members. Since the membership of the mug club and your loyalty program may be different, you will need to ensure that your point of sale tracking system is able to maintain a list which specifically identifies active mug club members as required by section 102 of the Liquor Code.

Please do not hesitate to contact this office should you have additional questions.

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  
Jerry W. Waters, Director of Office of Regulatory Affairs  
Tisha Albert, Director, Bureau of Licensing  
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