

January 3, 2017

Lindsay Fries
Assistant Account Coordinator
100 Corporate Place
Suite 200
Rocky Hill, CT 06067
VIA E-MAIL

Re: BevRage Digital Rebate Coupon Promotions

Dear Ms. Fries:

ISSUE: This letter is in response to your e-mail of November 18, 2016, in which you inquire, on behalf of Proximo Spirits, as to the legality of offering digital rebate coupon promotions through the “BevRAGE” app in Pennsylvania. The first offer is for \$3.00 off the purchase of a 750ml bottle or larger of 1800® Silver, Resposado or Coconut for off-premises consumption. The second offer is for \$2.00 off the purchase of a 750ml bottle or larger of 1800® Silver, Resposado or Coconut for on premises consumption. The promotions began on November 16, 2016 and ended on January 2, 2017.

OPINION: Section 493(24)(i) of the Liquor Code generally prohibits licensees, manufacturers, and the Pennsylvania Liquor Control Board (“PLCB”), or any employee or agent thereof, from offering or giving anything of value or soliciting or receiving anything of value as a premium or present to induce directly the purchase of liquor or malt or brewed beverages. 47 P.S. § 4-493(24)(i). Similarly, section 493(24)(i) generally prohibits licensees, manufacturers, and other persons from offering or giving to trade or consumer buyers any prize, premium, gift, or other inducement to purchase liquor or malt or brewed beverages. Id. However, there is an exception, which provides:

This section shall not prevent any manufacturer or any agent of a manufacturer from offering and honoring coupons which offer monetary rebates on purchases of wines and spirits through State Liquor Stores or purchases of malt or brewed beverages through distributors and importing distributors in accordance with conditions or

regulations established by the board. The board may redeem coupons offered by a manufacturer or an agent of a manufacturer at the time of purchase. Coupons offered by a manufacturer or an agent of a manufacturer shall not be redeemed without proof of purchase.

Id.

With respect to wine and spirits, this office has traditionally interpreted this exception to allow manufacturers and their agents to offer both mail-in and instant monetary rebate coupons on products purchased through the PLCB's Fine Wine & Good Spirits stores, as long as certain conditions are satisfied.

All rebate coupons must at a minimum contain the following: (1) an expiration date of the offer; (2) the rebate value; (3) provision for the name and address of the individual redeeming the coupon; (4) the identity of the manufacturer or manufacturer's agent; (5) a description of the product including, but not limited to, the brand name and size; and (6) a warning statement that the purchase of the product and the rebate offer is restricted to persons who are twenty-one years of age or older. Additionally, all mail-in rebate offers must require submission of proof of purchase in the form of a sales slip or cash register receipt.

As is explained in many Advisory Opinions issued by this office, the use of an electronic rebate coupon, instead of a traditional mail-in rebate or instant rebate coupon, is not necessarily problematic under the Liquor Code or the PLCB's Regulations, as long as the coupon offers a true monetary rebate and the other conditions discussed above are satisfied. *See, e.g.*, Advisory Opinion No. 16-207.

With regard to rebates offered through the BevRAGE app, based on the information provided online at www.bevrage.com/benefits-to-consumers, it appears that most if not all of the conditions discussed above would be met since, for example, consumers will receive the rebate shortly after submitting proof of purchase, and there is no minimum balance needed to receive a rebate. Again, however, rebate coupons for wine and spirits may only be applied to purchases made from the PLCB's Fine Wine & Good Spirits Stores, and such stores only engage in sales for off-premises consumption. Rebates may not be given on wine or spirits purchases made from retail-licensed businesses for either off-premises or on-premises consumption.

Therefore, based on the materials you provided, the first offer is permissible only if applied to purchases of the specified products made from the PLCB's Fine Wine & Good Spirits Stores. However, the second offer would not be permissible in the Commonwealth since it applies to purchases for on-premises consumption. As discussed above, mail-in and instant monetary rebates are only permissible on products purchased through the PLCB's Fine Wine & Good Spirits stores.

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
Dale Horst, Director, Marketing and Merchandising
Stacy Kriedeman, Director, Marketing Communications
Joseph Puhalla, Director, Bureau of Product Selection

LCB Advisory Opinion No. 16-558