

January 11, 2017

David Romine  
Alcohol Beverage Specialist  
357 Castleton View Road  
Castleton, VA 22716  
**VIA E-MAIL**

**RE: CK Mondavi Wines Rebate Promotions**

Dear Mr. Romine:

ISSUE: This correspondence is in response to your e-mail dated December 7, 2016, wherein you request approval to conduct four rebate coupon promotions in Pennsylvania.

With regard to the Ibotta rebate offer, consumers can “earn” \$2.00 on any two bottles of CK Mondavi wine on the “free Ibotta app.” To earn the \$2.00 rebate, consumers must download the Ibotta app, search the CK Mondavi wine brand, “unlock [the] rebate,” and “purchase [the] product.” It is unclear what “purchase [the] product” means since consumers would have to purchase the alcoholic product in order to receive the rebate; therefore, it will be presumed that consumers must purchase the two bottles of CK Mondavi wine in order to “unlock [the \$2.00] rebate.” The rebate offer is valid from January 1, 2017 through April 30, 2017. The rebate offer is valid only to adults of legal drinking age.

Through the second promotion, consumers may receive \$3.00 off the purchase of any two bags of Bridgford Pepperoni. To redeem the rebate, consumers must mail the completed mail-in rebate form along with the original register receipt with the Bridgford Pepperoni purchase price circled. The rebate offer is valid from January 1, 2017 through April 30, 2017. The rebate is available to adults who are at least twenty-one years of age and no alcohol purchase is required.

Through the third promotion, consumers may receive \$3.00 off the purchase of any two bags of chips. To redeem the rebate, consumers must mail the completed mail-in rebate form along with the original register receipt with the chips purchase price circled. The rebate offer is valid from January 1, 2017 through April 30, 2017. The rebate is available to adults who are at least twenty-one years of age and no alcohol purchase is required.

Finally, through the fourth promotion, consumers are offered an escalating mail-in rebate of up to \$18.00 on the purchase of any 750ml or 1.5L bottle of CK Mondavi wine. With regard to the 750ml bottle, consumers may: purchase one to four bottles to save \$0.50 per bottle; purchase five to eight bottles to save \$0.75 per bottle; or purchase nine to twelve bottles to save \$1.00 per bottle. With regard to the 1.5L bottle, consumers may: purchase one to four bottles to save \$1.00 per bottle; purchase five to eight bottles to save \$1.25 per bottle; or purchase nine to twelve bottles to save \$1.50 per bottle. To redeem the rebate, consumers must mail the completed mail-in rebate form along with the original register receipt with the brand purchase price circled. The rebate offer is valid from January 1, 2017 through April 30, 2017. The rebate is available to adults who are at least twenty-one years of age.

OPINION: In reference to the Ibotta rebate offer, Section 493(24)(i) of the Liquor Code generally prohibits licensees, manufacturers, and the Pennsylvania Liquor Control Board (“PLCB”), or any employee or agent of a licensee, manufacturer, or the PLCB, 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 § 4-493(24)(i).

The difficulty with Ibotta’s incentives is that although Ibotta purports to offer coupons offering monetary rebates on the purchase of the particular items specified in its coupons, the general terms of use established by Ibotta, including the redemption process, do not appear to be consistent with a true monetary rebate coupon program. That is, under a true monetary rebate coupon program, qualifying consumers can realize the monetary rebate amount being offered on the item or items specified in a coupon without the need to satisfy any conditions beyond purchasing the particular item or items and submitting a rebate form along with a receipt or other proof of purchase. However, pursuant to Ibotta’s general terms of use, the incentives being offered require consumers to satisfy the additional condition of accumulating a total of \$20.00 worth of “user rewards,” based on the redemption of other coupons for purchases of other items, before they can realize the lesser rebate amount being offered through each specific coupon. Until this additional condition is satisfied, the monetary value of the rebate that is purported to be offered on a specific item through a coupon remains the property of Ibotta. Consequently, because of this additional, intervening condition that must be satisfied in order to realize the rebate amount being offered on the purchase of alcoholic beverage items, the incentives cannot be said to offer true monetary rebates.

In order to avoid being considered an unlawful inducement to purchase alcoholic beverages under section 493(24)(i) of the Liquor Code, the terms of use and/or specific coupon conditions pertaining to alcoholic beverage offers would need to

make it clear that any persons making purchases in Pennsylvania may only participate by submitting a coupon or rebate form to Ibotta along with a receipt, either electronically or via mail, and that they are entitled to receive the specified rebate amount in full without regard to the normal distribution threshold imposed by Ibotta. The terms of use and/or specific coupon conditions would also need to specify that persons making purchases in Pennsylvania are not eligible to have coupons redeemed for alcoholic beverage purchases credited as rewards in their Ibotta accounts. In addition, the terms of use and/or specific coupon conditions should also make it clear that persons making purchases in Pennsylvania are not eligible to receive any available bonuses or additional incentives offered by Ibotta or participating manufacturers with regard to alcoholic beverage purchases, unless of course such bonuses or incentives are limited to advertising novelties of nominal value.

Therefore, absent evidence that Ibotta has changed the manner in which it operates, the proposed Ibotta rebate offer is not permitted for use in Pennsylvania.

Additionally, this office has reviewed the remaining three mail-in rebate promotions and determined that these offers comport with applicable liquor laws and regulations, specifically subsection 493(24)(i) of the Liquor Code, 47 P.S. § 4-493(24)(i), and are acceptable for use in the Commonwealth.

With regard to the second and third coupon promotions, it is unclear if you anticipate offering the coupon at the PLCB's Fine Wines and Good Spirit 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 instant rebate coupons for alcoholic beverages cannot be used at retail licensed establishments, only at the PLCB's Fine Wine and Good Spirit stores.

Last, 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 PLCB'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 would be permissible to conduct the proposed rebate promotions in the Commonwealth in reference to the area 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  
Dale Horst, Director of Marketing and Merchandising  
Stacy Kriedeman, Director, Marketing Communications  
Joseph Puhalla, Director, Bureau of Product Selection

LCB Advisory Opinion No. 16-570