

January 12, 2017

Karen S. Gabriele
Mark Anthony Services Inc.
328 S. Jefferson Street
Chicago, IL 60661
VIA E-MAIL

RE: mike's Hold HARDER® Can Challenge

Dear Ms. Gabriele:

ISSUE: This correspondence is in response to your e-mail of December 29, 2016, in which you request legal review, on behalf of Mark Anthony Brands Inc., of a proposed contest promotion to be conducted in Pennsylvania.

According to the official rules you provided, the “mike's Hold HARDER® Can Challenge” contest promotion was scheduled to begin on January 2, and run until May 31, 2017. There are two methods of entry in which consumers may enter the contest. For the first method of entry, consumers who received a “smartphone from Mark Anthony Brands Inc. by participating in the ‘mike's Hold HARDER®’ smartphone offer¹,” and opted-in to receive text messages regarding this promotion, consumers will receive a hyperlink via text message to submit the required sweepstakes information. For the second method of entry, consumers must go to www.mikesharder.com and “click” on the contest button to submit the required registration form. After registration, consumers must “click” the designated button to load the “Can Challenge.” To play, consumers must hold their finger on an icon of a can of mike's HARDER® for “as long as possible.” Consumers' scores will be automatically recorded; the higher the score, the higher the ranking.

Four entrants with the highest scores will be selected to receive one of four prizes. The first place winner will receive a \$1,500.00 gift card; the second place winner will receive a \$1,000.00 gift card; the third place winner will receive a \$500.00 gift card; and the fourth place winner will receive a \$250.00 gift card. The approximate

¹ Mark Anthony Brands Inc. has offered, and will continue to offer, “qualifying U.S. consumers smartphones until May 31, 2017 to promote mike's HARDER® premium malt beverages and “alcohol beverage licensees.”

retail value for all prizes is \$3,250.00. No purchase is necessary to enter, and entrants must be at least twenty-one years of age to be eligible for this promotion.

OPINION: Section 5.32(h) of the Pennsylvania Liquor Control Board's ("PLCB") Regulations states that a manufacturer 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), and is acceptable for use in this Commonwealth, so long as the gift card is not used on the purchase of alcoholic beverages.

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. Therefore, it would be permissible to conduct this promotion in the Commonwealth in reference to the areas checked below:

- retail licensed premises.
- distributor licensed premises (POS only).
- both retail and distributor licensed premises.
(POS only).
- the PLCB's wine and spirits stores, subject to approval of the Bureau of Product Selection (POS only).
- other – Internet, text messaging.

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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,

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

LCB Advisory Opinion No. 16-573