

January 17, 2017

Horace Howells  
General Counsel  
W&L Sales Company  
**VIA E-MAIL**

**RE: Mail-in, Ibotta, and Checkout 51 Rebate Promotions**

Dear Mr. Howells:

ISSUE: This is in response to your e-mail sent November 30, 2016, wherein you pose two questions. The first is whether mail-in rebates are permissible on alcohol purchases made at retail-licensed premises such as a restaurant. Secondly, you ask for clarification as to whether digital rebate promotions may be offered through platforms such as Ibotta and Checkout 51, as you recently heard that this office has modified its prior opinions on this issue.

Records maintained by the Pennsylvania Liquor Control Board (“PLCB”) indicate that W&L Sales Co. Inc. holds Importing Distributor License No. ID-264 (LID 8508) for use by it at premises located at 4050 North Industrial Road, Harrisburg, Pennsylvania.

OPINION: As you know, the Liquor Code generally prohibits 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). However, section 493(24) contains the following exception for rebate promotions:

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. (emphasis added). As emphasized above, the exception for manufacturer rebate coupons is limited to products purchased at the PLCB's wine and spirits stores and those purchased at distributor and importing distributor licensees.

Therefore, in response to your first question, your understanding is correct that rebates may not be given on products sold at retail-licensed premises such as restaurants, eating places, and hotels. Despite the passage of Acts 39 and 166 of 2016, this provision remains unchanged. It should be noted, however, that distributors and importing distributors will soon be permitted to sell their products in any package configuration including, for example, six-packs, when Act 166 takes effect on January 17, 2017. Thus, manufacturer rebates offered on malt or brewed beverages sold at distributors or importing distributors will no longer be limited to certain package configurations such as twelve-packs or cases.

As to your second question, this office's prior opinions regarding digital rebate promotions through the Ibotta and Checkout 51 platforms remain unchanged. It must be emphasized that digital rebate coupons are permissible under the aforementioned exception for manufacturer rebate coupons, as long as all legal requirements for a true monetary rebate coupon are met. However, the problem specific to Ibotta and Checkout 51 is that the general terms and conditions in place for those platforms do not appear to be consistent with a *bona fide* monetary rebate coupon program.

Under a permissible rebate offer, qualifying consumers 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 the general terms of use for Ibotta and Checkout 51, as understood by this office, consumers must satisfy the additional condition of accumulating a total of \$20.00 worth of "user rewards" or "cash back rewards," by purchasing other products and redeeming additional rebates, before they can realize any monetary rebate amount. Prior to the consumer meeting the \$20.00 threshold, the purported rebates remain the property of Ibotta or Checkout 51 and are subject to deductions for account inactivity. Consequently, such promotions cannot be said to offer true monetary rebates so as to fall within the scope of the rebate exception discussed above. Instead, they are more akin to a customer loyalty program, which are generally considered an unlawful inducement under section 493(24)(i) of the Liquor Code.

If you have any further questions regarding this matter or the Liquor Code, please do not hesitate to again contact this office.

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, appearing to read "Rodrigo J. Diaz".

RODRIGO J. DIAZ  
CHIEF COUNSEL

cc: Pennsylvania State Police, Bureau of Liquor Control Enforcement  
Tisha Albert, Director of Office of Regulatory Affairs  
B.L. Peifer, Director, Bureau of Licensing  
Jeffrey Lawrence, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No. 16-576