

December 11, 2018

Scott Schleifstein  
Cohen Silverman Rowan LLP  
79 Madison Avenue  
New York, NY 10016  
**VIA E-MAIL**

**RE: Captain Morgan Captain's Night In Contest**

Dear Mr. Schleifstein:

ISSUE: This office is in receipt of your e-mail dated November 29, 2018, wherein you request legal review of a proposed contest promotion to be conducted in Pennsylvania.

According to the official rules you provided, the "Captain Morgan Captain's Night In Contest" promotion was scheduled to begin on November 29 and ended on December 5, 2018. To participate in the contest, interested individuals had to follow the official Captain Morgan Instagram page, @CaptainMorganUSA, and in response to the contest message "Tell us why you have the most holiday cheer" on Instagram, post an original comment that includes the hashtag #CaptainsNightInContest. Entrants were limited to one entry per person.

The winner was selected via judging by an independent agency as well as representatives of the sponsor based upon the following equally weighted criteria: creativity, ability to show holiday cheer, and alignment with the spirit of good times associated with the Captain Morgan brand.

One grand prize winner was chosen to receive a holiday house party at his/her residence visited by Adam Devine, to include: food and non-alcoholic beverages; servers and personnel to set up, conduct, and clean up after the party; holiday décor with party favors; life-sized snow globe; photo booth; entertainment, holiday sweaters and apparel; a \$500.00 gift card; and a voucher for a private car service. The house party included up to ten guests. The approximate total retail value of all prizes was \$2,750.00. No purchase was necessary to enter the contest, and the

contest was only open to adults who were at least twenty-one years of age at the time of entry. The ten guests that were to accompany the grand prize winner at the party also had to be twenty-one years of age or older. The official rules state that alcohol would not be included in any prize.

OPINION: Section 493(24)(i) of the Liquor Code provides, in pertinent part, that it shall be unlawful for:

any licensee under the provisions of this article, or the board or any manufacturer, or any employee or agent of a manufacturer, licensee or of the board . . . to offer or give or solicit or receive anything of value as a premium or present to induce directly the purchase of liquor or malt or brewed beverage, or for any licensee, manufacturer or other person to offer or give to trade or consumer buyers any prize, premium, gift or other inducement to purchase liquor or malt or brewed beverages, except advertising novelties of nominal value which the board shall define.

47 P.S. § 493(24)(i).

However, section 5.32(h) of the Pennsylvania Liquor Control Board's ("PLCB") Regulations states that a manufacturer, manufacturer's representative, 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).

The PLCB's Regulations define the term "sweepstakes" as "[a] chance promotion in which tickets or game pieces are distributed and the winner or winners are selected in a random drawing." 40 Pa. Code § 5.30. Promotions which meet the definition of "sweepstakes" set forth in section 5.30 and which are conducted in accordance with the requirements of section 5.32(h) of the PLCB's Regulations are not considered unlawful inducements to purchase liquor or malt or brewed beverages.

Although there are no similar provisions in the PLCB's Regulations addressing manufacturer-sponsored contests where winners are selected by a panel of judges, such as the promotion proposed in this instance, this office has traditionally opined that such promotions are permissible as long as they comply with the same conditions applicable to sweepstakes as set forth above.

This office has reviewed the proposed contest promotion and determined that it comported with applicable liquor laws and regulations, specifically section 5.32(h) of the PLCB's Regulations, 40 Pa. Code § 5.32(h), as long as alcoholic beverages are not part of any prize.

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. However, the requirement for prior approval of POS material intended for use in the PLCB's Fine Wine & Good 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 retail licensed premises. 47 P.S. § 4-493(20)(i).

Therefore, as long as alcoholic beverages were not part of any prize, it would have been permissible to conduct this contest in the Commonwealth in reference to the areas checked below:

- retail licensed premises.
- distributor licensed premises.
- both retail and distributor licensed premises.
- the PLCB's Fine Wine & Good Spirits 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,

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  
Dale Horst, Director of Marketing and Merchandising  
Stacy Kriedeman, Director, Marketing Communications  
Thomas Bowman, Director, Bureau of Product Selection

LCB Advisory Opinion No. 18-437