

January 2, 2019

Kelsey McCoy
Marketing Coordinator
Breakthru Beverage PA
129 Hartman Road
North Wales, PA 19454
VIA E-MAIL

RE: Barrel of Fun Sweepstakes

Dear Ms. McCoy:

ISSUE: This correspondence is in response to your e-mail dated November 5, 2018, wherein you request legal review of a proposed promotion to be conducted in Pennsylvania. You clarified the details of the promotion to this office in a telephone conversation on November 11, 2018, which will be discussed below.

According to the official rules you provided, the “Barrel of Fun” sweepstakes promotion is scheduled to begin on January 28, 2019 and runs until February 24, 2019. To enter the promotion, interested individuals may go to their local Fine Wine & Good Spirits (“FW&GS”) store to complete and submit the entry form. You indicated in a follow-up phone conversation that individuals may enter by filling out an entry form including their name, e-mail, and phone number at a free tasting held at the FW&GS store and that the winners will be drawn at the tasting in the FW&GS store. You also indicated in a follow-up telephone conversation that, alternatively, winners may be drawn and notified at a later date. Entrants are limited to one entry per person “in store” at the in-store tasting.

The official rules state that seventy-five winners, one from each tasting, will be randomly selected to receive one large barrel with an approximate retail value of \$27.00. The total approximate retail value of all prizes is \$2,025.00. The sweepstakes is only open to Pennsylvania residents who are at least twenty-one years of age at the time of entry. Although the official rules do not indicate whether alcohol is a part of any prize, you confirmed in the follow-up telephone conversation that alcohol is not a part of the prize.

OPINION: 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).

This office has reviewed the proposed promotion *as written* in the official rules and determined that, as written, the sweepstakes does not comport with applicable liquor laws and regulations, specifically section 5.32(h) of the PLCB's Regulations, and it is not acceptable for use in this Commonwealth. 40 Pa. Code § 5.32(h). Specifically, retail licensed premises, including the FW&GS stores, 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.

However, in a follow-up telephone conversation you stated that, alternatively, winners may be drawn off the licensed premises and notified at a later date. If this is how the sweepstakes is to be conducted, this method would comport with the applicable liquor laws and regulations, specifically section 493(24)(i) of the Liquor Code, 47 P.S. § 4-493(24)(i), and 5.32(h) of the PLCB's Regulations, 40 Pa. Code § 5.32(h), and is acceptable for use in this Commonwealth as proposed, so long as alcoholic beverages are not included in the prizes.

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 FW&GS 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, if the sweepstakes is to be conducted using the second method you mentioned in your follow-up telephone conversation whereby the FW&GS store is used solely as a drop-off for entry forms, and as long as alcohol is not part of any prize, it would be permissible to conduct this promotion 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,



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
Thomas Bowman, Director, Bureau of Product Selection