

January 2, 2019

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

RE: Zacapa Rum Instagram Holiday Sweepstakes

Dear Mr. Schleifstein:

ISSUE: This office is in receipt of your e-mail dated December 3, 2018, wherein you request legal review of a sweepstakes promotion to be conducted in Pennsylvania.

According to the official rules you provided, the “Zacapa Rum Instagram Holiday Sweepstakes” promotion was scheduled to begin on December 5 and run until December 6, 2018. To participate in the sweepstakes, interested individuals were able to enter by liking a sweepstakes message on the Zacapa Rum’s official Instagram page @zacaparumusa. Entrants were limited to one entry per person.

Three grand prize winners were to be randomly selected to receive a set of two Zapaca Rum/Ron Zapaca tumblers. The total approximate retail value for all prizes was \$60.00. No purchase was necessary to enter the sweepstakes and the sweepstakes was only open to adults who are at least twenty-one years of age at the time of entry. The official rules state that alcohol would not be included in any 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 sweepstakes 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 alcohol was not part of any prize.

Further, 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 a retail licensed premises. 47 P.S. § 4-493(20)(i).

Therefore, as long as alcohol was not included in the prizes, it would have been 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.

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

LCB Advisory Opinion No. 18-472