

January 17, 2019

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

RE: Cîroc New Year's Crib Countdown Contest

Dear Mr. Schleifstein:

ISSUE: This office is in receipt of your e-mail dated December 31, 2018, wherein you request legal review of a proposed contest promotion to be conducted in Pennsylvania.

According to the official rules you provided, the "Cîroc New Year's Crib Countdown Contest" promotion was scheduled to begin on December 31, 2018 and ended on January 2, 2019. To participate in the contest, interested individuals had to follow the official Cîroc Instagram page or the official Cîroc Twitter page then post a photo or video of his/her "Crib Countdown" to New Year's 2019 showing how the individual was preparing to celebrate New Year's 2019 with the hashtags #CIROCTHENEWEYEAR and #Contest. 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 criteria: creativity and originality (20%), communication of excitement of preparation for the New Year (50%), and alignment with the values underlying the Cîroc brand (30%).

One grand prize winner and a guest was to be chosen to receive a trip to one of three locations (Atlanta, Georgia; Charlotte, North Carolina; or Los Angeles, California) to be chosen by the sponsor, to include: roundtrip airfare, roundtrip ground transportation to and from the airport and hotel, hotel accommodations for two nights, a \$1,000.00 gift card, admission to VIP events where the winner and guest will have the opportunity to meet Mr. Khaled Mohamed Khaled (D.J. Khaled), and

roundtrip ground transportation to and from the hotel and VIP events. The approximate total retail value of all prizes was \$3,500.00. 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 guest that was to accompany the grand prize winner on the trip 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.

While the official rules indicate that alcohol is not part of the grand prize, please be advised that to the extent that any part of the trip being awarded as the grand prize will involve sampling, taste testing, or the provision of alcoholic beverages at no additional cost to the winner and/or his/her guest(s), this would be construed as awarding alcoholic beverages as part of the prize and is not permitted.

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 the 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.

- X the PLCB's Fine Wine & Good Spirits stores, subject to approval of the Bureau of Product Selection (POS only).
- X 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 of Marketing and Merchandising
Stacy Kriedeman, Director, Marketing Communications
Thomas Bowman, Director, Bureau of Product Selection

LCB Advisory Opinion No. 19-001