

January 24, 2019

Karen Gabriele
Senior Compliance Specialist
Mark Anthony Services, Inc.
328 S. Jefferson Street, Suite 1050
Chicago, IL 60661
VIA E-MAIL

RE: mike's® In Flight Sweepstakes

Dear Ms. Gabriele:

ISSUE: This office is in receipt of your e-mail dated December 10, 2018, wherein you request legal review of a sweepstakes promotion to be conducted in Pennsylvania. In a follow-up e-mail dated January 3, 2019, you provided this office with a revised set of official rules for the above-captioned sweepstakes promotion that added a first and second prize.

According to the revised official rules you provided, the “mike's® In Flight Sweepstakes” promotion is scheduled to begin on April 1 and runs until May 31, 2019. To participate in the sweepstakes, interested individuals may enter by texting “MIKESINFLIGHT” to shortcode 55678 and replying with their date of birth. Alternatively, interested individuals may enter by mailing a 3” x 5” card with the entrant’s name, address, date of birth, telephone number, and the words “MIKESINFLIGHT” to the address provided. Entrants are limited to one entry per person, per day during the sweepstakes entry period.

One grand prize winner will be randomly selected to receive a \$3,600.00 gift card to be used to purchase air travel. One first prize winner will be randomly selected to receive a \$500.00 gift card to be used to purchase air travel. One second prize winner will be randomly selected to receive a \$300.00 gift card to be used to purchase air travel. The approximate retail value of all prizes is \$4,400.00. No purchase is necessary to enter the sweepstakes, and the sweepstakes is only open to adults who are at least twenty-one years of age at the time of entry. The official rules state that alcohol will 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 comports with applicable liquor laws and regulations, specifically section 5.32(h) of the PLCB's Regulations, 40 Pa. Code § 5.32(h).

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, 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).

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

LCB Advisory Opinion No. 19-004