

January 28, 2019

Rachael Pulwers
Strike & Techel
556 Commercial Street
San Francisco, CA 94111
VIA E-MAIL

RE: 2019 X Marks the Yacht Sweepstakes

Dear Ms. Pulwers:

ISSUE: This office is in receipt of your e-mail dated January 11, 2019, wherein you request legal review of a sweepstakes promotion to be conducted in Pennsylvania.

According to the official rules you provided, the “2019 X Marks the Yacht Sweepstakes” promotion is scheduled to begin on February 1 and runs until May 31, 2019. To participate in the sweepstakes, interested individuals must register on the website found at www.bluechairbayrum.com/xmarkstheyacht and either download a free image of a skull pattern or look for the skull pattern under the tamper tape on any bottle of Blue Chair Bay Spiced Rum. Once registered, the interested individual may follow the official Twitter or Instagram page of Blue Chair Bay Spiced Rum or like the Blue Chair Bay Rum on Facebook and post a photograph of the interested individual with the skull image and share the photograph with the hashtags #XMarksTheYacht and #Sweeps to either Twitter, Instagram, or Facebook. The official rules state that the photograph constitutes the entrant’s sweepstakes submission and entrants will receive entry into the sweepstakes upon successful completion of the registration. Entrants are limited to one entry per person, per day during the sweepstakes entry period.¹

One grand prize winner will be randomly selected to receive a trip for up to three guests on a chartered yacht, to include: roundtrip airfare to the area of the yacht’s port, three nights’ accommodation on a private chartered yacht, and roundtrip

¹The official rules also state that no more than one entry per natural person/email/address/phone number. It is unclear which provision is correct.

transportation to and from the airport to the yacht. The total approximate retail value of the grand prize is shall not exceed \$50,000.00. No purchase is necessary to enter the sweepstakes, and the sweepstakes is open only to adults who are at least twenty-one years of age at the time of entry. The winner's guests must also be at least twenty-one years of age to travel. 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), as long as alcohol is not part of any prize.

While the official rules indicate that alcohol is not part of the grand prize, please be advised that to the extent 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.

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 is not included in the prize, it would be permissible to conduct this promotion in the Commonwealth in reference to the areas checked below:

- retail licensed premises.
- 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 of Marketing and Merchandising
Stacy Kriedeman, Director, Marketing Communications
Thomas Bowman, Director, Bureau of Product Selection

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