



September 1, 2020

Scott A. Schleifstein  
Cohen Silverman Rowan LLP  
3 Grace Avenue, #108  
Great Neck, NY 11021  
on behalf of Diageo Beer Company USA  
**VIA E-MAIL**

**RE: Guinness Football Sweepstakes**

Dear Mr. Schleifstein:

ISSUE: This correspondence is in response to your e-mail of August 10, 2020, in which you request legal review of a sweepstakes promotion to be conducted in Pennsylvania.

According to the official rules you provided, the “Guinness Football Sweepstakes” promotion was scheduled to begin on August 15, 2020 and runs until October 31, 2020. To participate in the sweepstakes, interested individuals may send a text message or enter by mail, as further described in the official rules.<sup>1</sup>

One national grand prize winner will be randomly selected to receive a Guinness Party pack to include a \$50.00 Fanatics® gift code, a flat screen television, Guinness pennants and advertising material, glassware, a wall mount bottle opener, ice bucket, an apron, two hoodies, and a pouring spoon. Fifty national runner-up prize winners will each receive a \$100.00 Fanatics® gift code. Two residents from Northern and Eastern Pennsylvania will also have the opportunity to win a regional prize with the same party pack. The total approximate retail value of the prizes available to Pennsylvania residents is \$6,905.00. 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 official rules indicate that alcohol will not be included in any prize.

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<sup>1</sup> The official rules have been attached to this Advisory Opinion for your convenience.

OPINION: Section 5.32(h) of the Pennsylvania Liquor Control Board's ("PLCB") Regulations states that a manufacturer, manufacturer's representatives, 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).

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

Therefore, it is 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,

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

LCB Advisory Opinion No. 20-201

## GUINNESS FOOTBALL SWEEPSTAKES

NO PURCHASE NECESSARY TO ENTER. A PURCHASE WILL NOT INCREASE YOUR CHANCES OF WINNING. OPEN ONLY TO LEGAL RESIDENTS OF THE UNITED STATES, WHO ARE 21 YEARS OF AGE OR OLDER. VOID WHERE PROHIBITED OR RESTRICTED BY LAW.

1. **To Enter:** Sweepstakes begins at 12:01 a.m. Eastern Time (ET) on August 15, 2020 and ends at 11:59:59 p.m. (ET) on October 31, 2020. There are two (2) ways to enter this sweepstakes.
  - a. **Entry Method No. 1** - During the Sweepstakes Period, send a text message with the word "GAMETIME" from your handset addressed to 24272. Once you send the text message, verify your age and provide your name, state and zip code, you will be automatically entered into the Sweepstakes. You will be charged for all text messages sent and received from your handset according to the terms in your individual Calling Plan with your cellular provider. For additional support, text HELP to 24272 or STOP to cancel at any time. All entries made using Entry Method No. 1 must be received no later than 11:59:59 p.m. ET on October 31, 2020. No alterations or forged entries are permitted. Receipt of entry may be acknowledged but such acknowledgment is in no way otherwise binding upon Sponsor. All entrants using Entry Method No. 1 must have a text messaging two-way capable handset and digital service in order to enter the Sweepstakes using the text messaging method. Prize will be awarded to the name corresponding to the phone number from which the text message originated. By texting "GAMETIME" to 24272, you agree you are of legal age to purchase beverage alcohol in the U.S. and to receive recurring marketing SMS and MMS messages, including text messages, using an automatic telephone dialing system from Diageo Beer Company USA You also agree to these official rules. *Message & Data Rates May Apply.* Text STOP in reply to any message to stop receiving our messages. You may also text HELP to 24272 for more information. Consent is not a condition of any purchase. Please consult your wireless service provider regarding your pricing plan. Not all cellular phone providers carry necessary service to participate. Check your phone capabilities for specific text messaging instructions. Text messaging service is not available in all areas.
  - b. **Entry Method No. 2** – Print your name, address, date of birth and telephone number on a 3" x 5" card and mail to DIA1947535 Guinness Football Sweeps Entry P.O. Box 1008, Rocky Hill, CT 06067-1008, to be postmarked by November 2, 2020 and received by November 9, 2020. Receipt of entry will not be acknowledged.

The state/zip code (for Entry Method No. 1) or address (for Entry Method No. 2) provided on your entry will be used to determine whether you are eligible to be entered for a chance to win a regional prize in addition to national prizes as discussed below.

One entry per person regardless of method of entry; a person may enter by sending a text message OR by postal mail but NOT by using both methods. Multiple entries will automatically result in disqualification.

Sponsor is not responsible for technical difficulties, telephone or cell phone service disruptions or other equipment or service issues which might affect the ability of a person to text in and qualify; or the ability of the Sponsor to notify the winners. Sponsor assumes no responsibility for lost, late, damaged, misdirected, illegible, corrupted, jumbled, inaccessible, incomplete, incorrect entries or other Sweepstakes materials, all of which are void. Sponsor also assumes no responsibility for postage due mail. Facsimiles or mechanical reproductions will not be accepted. All entries become the property of the Sponsor and will not be returned.

Entrants' personal information will only be used for purposes of Sweepstakes administration, unless an entrant expressly consents beforehand in writing to such other use by Sponsor. For more information, please review Diageo's Privacy & Cookie Notice at [https://footer.diageohorizon.com/dfs/assets/www.guinness.com/PrivacyPolicy\\_uen.html?locale=uen-us](https://footer.diageohorizon.com/dfs/assets/www.guinness.com/PrivacyPolicy_uen.html?locale=uen-us) and Diageo's Conditions of Use at [https://footer.diageohorizon.com/dfs/assets/www.guinness.com/TnC\\_uen.html?locale=uen-us](https://footer.diageohorizon.com/dfs/assets/www.guinness.com/TnC_uen.html?locale=uen-us). In the event of any discrepancy between the privacy policy and these Official Rules, the privacy policy shall control and govern; in the event of any discrepancy between the conditions of use and these Official Rules, the conditions of use shall control and govern.

## 2. Prizes:

### **NATIONAL PRIZES:**

**National Grand Prize (1): Guinness Party Pack "A." Approximate Retail Value: \$635.00.**

**National Runner-Up Prize (50): \$100 Fanatics® gift code.**

### **REGIONAL PRIZES:**

**Illinois State Grand Prize (1): Guinness Party Pack "B" Approximate Retail Value: \$710.00**

**Indiana State Grand Prize (4): Guinness Party Pack "B" Approximate Retail Value: \$710.00 each.**

**Northern & Western NJ/Northern & Eastern PA Grand Prize† (2): Guinness Party Pack "A." Approximate Retail Value: \$635.00.**

**New York City (all 5 boroughs)/Orange County‡ Grand Prize (1): Guinness Party Pack "A." Approximate Retail Value: \$635.00.**

**Guinness Party Pack "A" consists of:**

- **\$50 Fanatics® gift code**
- **Flat screen television**
- **Guinness pennants and advertising material**
- **Six (6) piece set of University of Notre Dame® glassware**
- **Wall mount bottle opener, ice bucket, apron, (2) hoodies, and Guinness pouring spoon from Guinness Webstore®.**

**Guinness Party Pack “B” consists of:**

- **\$50 Fanatics® gift code**
- **Flat screen television**
- **Guinness pennants and advertising material**
- **Six (6) piece set of University of Notre Dame® glassware**
- **2020 long sleeve University of Notre Dame® T-shirt, 24-can cooler with University of Notre Dame® logo, 2 portable chairs & 1 portable table with University of Notre Dame® logo which are suitable for tailgating.**

**ALCOHOL BEVERAGES ARE NOT INCLUDED AS PART OF EITHER GUINNESS PARTY PACK “A” OR “B.”**

Guinness Party Pack must be accepted in its entirety by winner or declined.

Fanatics gift codes will be awarded in “e”/virtual form and can be redeemed for merchandise on [www.fanatics.com](http://www.fanatics.com) or [www.FansEdge.com](http://www.FansEdge.com). Terms and conditions apply to Fanatics gift code usage.

Sponsor reserves the right to ship individual elements of Guinness Party Pack separately. Actual prize may differ from items as depicted in Sweepstakes advertising materials, with Sponsor disclaiming any liability in conjunction therewith under any legal theory.

Where not specified herein, Sponsor shall determine the manufacturer and model number of a given prize element.

†Region includes the following counties in New Jersey: Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex and Warren as well as the following counties in Pennsylvania: Berks, Bucks, Carbon, Chester, Delaware, Lackawanna, Lancaster, Lehigh, Luzerne, Monroe, Montgomery, Northampton, Philadelphia, Pike, Susquehanna, Wayne and Wyoming. See Exhibit A for a list of zip codes comprising the Region.

‡See Exhibit B for a list of zip codes comprising the Region.

**TOTAL APPROXIMATE RETAIL VALUE OF ALL PRIZES: \$11090.00.**

**TOTAL APPROXIMATE RETAIL VALUE OF ALL PRIZES AVAILABLE TO FLORIDA RESIDENTS: \$5635.00.**

**TOTAL APPROXIMATE RETAIL VALUE OF ALL PRIZES AVAILABLE TO NEW YORK RESIDENTS: \$6270.00.**

**3. Winner Determination:**

Winners will be determined via random drawings on or about November 12, 2020 by an independent third party judging organization (“Judges”) whose decisions will be final in all matters relating to this Sweepstakes. The National Prize random drawing will consist of all eligible entries received from legal U.S. residents regardless of their state of residence. The Illinois State random drawing will consist of all eligible entries received from legal U.S. residents of the State of Illinois; the Indiana State random drawing will consist of all eligible entries received from legal residents of the State of Indiana; the Northern & Western New Jersey/Eastern Pennsylvania random drawing will consist of all eligible entries received from legal U.S. residents from that Region as per Exhibit A; the New York City/Orange County random drawing will consist of all eligible entries received from legal U.S. residents from that Region as per Exhibit B. (For the avoidance of doubt, not all residents of the States of New Jersey, New York and Pennsylvania will be eligible to participate in a Regional random drawing.) The state/zip code or address (as applicable) provided at time of entry form will be used to determine whether an entrant is eligible for a Regional random drawing (i.e., Illinois, Indiana, Northern & Western New Jersey/Eastern Pennsylvania or New York City/Orange County random drawing) in addition to the National Prize random drawing. (The National Prize random drawing will take place prior to Regional random drawings.) Odds of winning a National Prize will be determined by the total number of eligible entries received from legal U.S. residents regardless of their state of residence. Odds of winning a Regional Prize will be determined by the total number o/f eligible entries received from legal U.S. residents who are residents of the corresponding Region.

Winners will be notified by phone and/or e-mail (method of notification to be determined by Sponsor in its sole discretion as well as depending upon method of entry used) on or about November 16, 2020 and will be required to sign a declaration of eligibility, a liability release and a publicity release (where lawful) within five (5) days of notification or prize will be forfeited and may be awarded to another winner at sponsor's sole discretion. If winner cannot be located or does not respond to attempt to be notified within five (5) days, prize will automatically be forfeited, and an alternate winner may be selected at Sponsor's sole discretion. Except where prohibited, acceptance of prize constitutes winner's consent to use of his/her name, likeness and biographical data for advertising and promotional purposes without additional compensation. Sponsor shall have the right, in its sole discretion, to abbreviate, modify, suspend, cancel or terminate the promotion without notice or further obligation.

Prize details will be provided to winner upon proof of eligibility; for example, a driver's license, birth certificate or passport. The prize will not be awarded unless Judge's records reflect that the winner has agreed to the terms of the declaration/release.

Winners agree that an electronic signature/affirmation or facsimile version of the declaration of eligibility, a liability Release and a publicity release (where lawful) shall have the same legal force and effect as a hand-signed document. Notwithstanding the foregoing, should Sponsor determine in its sole discretion that the electronically signed/affirmed/facsimile version of the declaration/release is not acceptable, Sponsor may condition award of prize on return of the actual hand-signed document.

- 4. Eligibility:** This Sweepstakes is open only to legal U.S. residents who are 21 years of age or older at the time of entry. Employees of the following entities and members of their families or households are not eligible for participation under any circumstances: Diageo Beer Company USA, The James Trading Group Inc., Fanatics, Inc, University of Notre Dame du Lac, and (as applicable) their respective affiliates, printers, advertising and promotion agencies (including Judges), alcohol beverage suppliers, importers, wholesalers, distributors or retailers. All federal, state and local laws apply.
- 5. General Conditions:** Entry in the Sweepstakes constitutes an entrant's full and unconditional agreement to abide by and accept the terms and conditions of these Official Rules. No substitution of prize or cash equivalent except at Sponsor's sole discretion. (The preceding is subject to laws which allow for the holder of a gift code to redeem same for its cash value, to the extent applicable). Limit one (1) prize per household, family or address. Prize is non-transferable except at the sole discretion of the Sponsor. All federal, state and local taxes on prize are winner's sole responsibility. By accepting the prize, winner waives the right to assert as a cost of winning said prize any and all costs of redemption or travel to redeem said prize and any and all liability that might arise from redeeming or seeking to redeem said prize. Sponsor reserves the right to conduct a background check of any criminal records of prize winners. To the extent necessary and permitted by law, prize winners shall authorize this background check. Sponsor reserves the right, at its sole discretion, to disqualify prize winners based on the background check. Winners also accept sole responsibility for any miscellaneous costs relating to acceptance of prize.

Entrants hereby agree to indemnify and hold Sponsor, The James Trading Group Inc., Fanatics, Inc, University of Notre Dame du Lac, as well as Facebook, Inc./Instagram harmless from and against any third party claims, actions or proceedings of any kind and from any and all damages, liabilities, costs and expenses, including attorney fees and court costs, arising out of any breach or alleged breach of any of the warranties and representations set forth above and/or participation in this Sweepstakes (regardless of the cause of such injury, damage or loss) and/or the delivery and/or subsequent use or misuse of the prize awarded (including any travel or activity related thereto). SPONSOR MAKES NO REPRESENTATION, WARRANTY OR GUARANTEE OF ANY KIND REGARDING PRIZES INCLUDING THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR THE INTENDED PURPOSE. THE ONLY WARRANTIES – IF ANY – ARE THOSE OF THE APPLICABLE PRIZE MANUFACTURER.

The value of the prize won by a participant under the sweepstakes may be taxable as income to its winner. Winner is solely responsible for any and all taxes and/or fees

associated with the prize. National and Regional Grand Prize winners will be issued an IRS Form W-9 with the declaration of eligibility, a liability release and a publicity release (where lawful) and a subsequent IRS Form 1099. Upon receipt of a prize, the winner shall be required to comply with any and all applicable federal, state and local laws, rules and regulations.

In consideration of his/her receipt of any prize, prize winner for himself or herself and his or her guest, heirs, personal representatives and assigns shall voluntarily and knowingly completely and forever release, waive and discharge Sponsor and all related parties, The James Trading Group Inc., Fanatics, Inc, University of Notre Dame du Lac, as well as Facebook, Inc./Instagram against any and every kind of claim, demand, injury, costs, attorney fees, right, liability or cause of action or other liabilities of whatever kind or nature, known or unknown, absolute or contingent, and whether or not fixed, which the prize winner ever had, now has or might in the future have arising in any way or related to this Sweepstakes, including, but not limited to, prize winner's participation in the Sweepstakes; prize winner's Sweepstakes entry; use of prize winner's name, biographical information, signature, image or likeness; prize winner's receipt, use or inability to use any prize or part thereof, including but not limited to injury or loss sustained in any travel related to the prize; financial claims; physical and/or emotional injury; and/or any other legal claim that may arise, whether under contract, tort, warranty or any other theory or claim.

Sponsor shall have the right, in its sole discretion, to abbreviate, modify, suspend, cancel or terminate this promotion, or any part thereof, at any time, for any reason, without notice or further obligation.

- 6. Text Message Entry Conditions:** Sweepstakes is intended for participation in the United States only and shall be construed only according to United States law. In case of dispute as to identity of entrant, entry will be declared made by the authorized account holder of the cellular provider. "Authorized Account Holder" is defined as the natural person who is assigned a number by the cellular provider or as shown on the cellular provider's records. Sponsor and its agencies are not responsible for SMS entries not received due to lost, failed, delayed or interrupted connections or miscommunications, or to other electronic malfunctions, delays, or errors of any kind in the transmission or receipt of entries. Sponsor is not responsible for incorrect or inaccurate entry information, whether caused by any human or technological error that may occur in the processing of entries in this Sweepstakes. Any other attempted form of entry not specified herein is prohibited; no automatic, programmed; robotic or similar means of entry are permitted.
- 7. Winners' List:** For winners' list, please send a self-addressed stamped envelope to DIA1947535 Guinness Football TTW Sweeps, P.O. Box 1008, Rocky Hill, CT 06067-1008. All requests for the winners' list must be postmarked by November 30, 2020 and received by December 14, 2020.

Sponsor: Diageo Beer Company USA, New York, NY.

Diageo Beer Company USA, New York, NY.

Please Drink Responsibly.

This promotion is in no way sponsored, endorsed or administered by, or associated with, Facebook or Instagram.



3 World Trade Center  
175 Greenwich Street  
New York, NY 10007

August 10, 2020

Rodrigo Diaz, Esq.  
Pennsylvania Liquor Control Board  
Third & Forster Streets  
Harrisburg, PA 17124

**Re: Diageo Beer Company USA**  
**Guinness Football Sweepstakes**

Dear Mr. Diaz:

In my capacity as outside promotion legal counsel to Diageo Beer Company USA, I am contacting you regarding the above-referenced random drawing sweepstakes promotion which is being offered by Diageo Beer Company USA in support of its GUINNESS brand of malt beverages. The Official Rules of the promotion are attached for reference purposes. No purchase of any alcohol beverage is required to enter this sweepstakes; nor is alcohol included as part of any prize.

Details of the promotion are as follows:

- All entrants must be at least 21 years of age at time of participation.
- Promotion is sponsored by Diageo Beer Company USA, New York, NY
- Promotion will be conducted in the United States
- Total estimated value of all prizes - \$11,090
- Total estimated value of all prizes available to be won in Pennsylvania- \$6,905
- Beginning date of promotion - August 15, 2020
- Ending date of promotion - October 31, 2020
- Employees of alcohol beverage wholesalers and retailers and their families are not eligible to participate.

Thank you, in advance, for your review and approval of this promotion. If you have any questions, please feel free to contact me directly at 212-986-8282 or via email at [sschleif@promolaw.com](mailto:sschleif@promolaw.com). Thank you for your courtesy and cooperation.

Sincerely,

COHEN SILVERMAN ROWAN LLP  
Scott A. Schleifstein