



September 1, 2020

Katie Ford
Pernod Ricard USA
on behalf of Fooji Inc.
VIA E-MAIL

RE: #MalibuSweepstakes

Dear Ms. Ford:

ISSUE: This correspondence is in response to your e-mail of August 4, 2020, in which you request legal review of a sweepstakes promotion to be conducted in Pennsylvania.

According to the official rules you provided, the “#MalibuSweepstakes” promotion was scheduled to begin on August 7, 2020 and ran until August 10, 2020. To participate in the sweepstakes, interested individuals were to enter via Twitter, as further detailed in the official rules.¹

One-hundred and sixty-six prize winners were to be randomly selected to each receive a branded Bluetooth speaker. The total approximate prize value of all prizes is \$1,992.00. No purchase was necessary to enter the sweepstakes, and the sweepstakes was open only to residents who were at least twenty-one years of age at the time of entry. The official rules indicate that alcohol was not included in the prizes.

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.

¹ The official rules have been attached to this Advisory Opinion for your convenience.

- 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).

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 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. 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

Katie Ford
September 1, 2020
Page 3

BY THE LEGISLATURE OR THE PENNSYLVANIA LIQUOR CONTROL BOARD.

Sincerely,

A handwritten signature in black ink that reads "Rodrigo J. Diaz". The signature is written in a cursive style with a large initial 'R'.

RODRIGO J. DIAZ
CHIEF COUNSEL

cc: Pennsylvania State Police, Bureau of Liquor Control Enforcement
Michael Demko, Executive Director
Elizabeth Brassell, Director of Policy & Communications
Stacy Kriedeman, Director, Marketing Communications
Thomas Bowman, Director, Bureau of Product Selection
Ra-lbpromo@pa.gov

LCB Advisory Opinion No. 20-208

#MALIBUSWEEPSTAKES

OFFICIAL RULES

NO PURCHASE IS NECESSARY TO PARTICIPATE OR WIN. A PURCHASE WILL NOT IMPROVE YOUR CHANCES OF WINNING. YOU MUST BE 21 YEARS OF AGE OR OLDER AT THE TIME OF ENTRY. VOID WHERE PROHIBITED BY LAW.

TO BE ELIGIBLE TO PARTICIPATE AND WIN A PRIZE (AS THAT TERM IS DEFINED BELOW), YOU MUST LIVE IN AN AREA SERVICED BY UPS (“FULFILLMENT PARTNER”) IN THE UNITED STATES AND MUST SATISFY THE OTHER ELIGIBILITY REQUIREMENTS SET FORTH BELOW. ALCOHOL IS NEVER PART OF THE PRIZE.

BY PARTICIPATING IN THIS SWEEPSTAKES, YOU AGREE TO THESE OFFICIAL RULES, WHICH ARE A CONTRACT, SO READ THEM CAREFULLY BEFORE PARTICIPATING. WITHOUT LIMITATION, THIS CONTRACT PROVIDES FOR INDEMNIFICATION OF THE SPONSOR AND OTHER PROMOTION ENTITIES BY YOU, A CLASS ACTION AND JURY TRIAL WAIVER, A REQUIREMENT THAT MOST DISPUTES BE SETTLED BY MANDATORY BINDING ARBITRATION, AND A LIMITATION OF YOUR RIGHTS AND REMEDIES.

1) Sweepstakes Entry Period: The #MalibuSweepstakes (the “Sweepstakes”) begins at approximately 12pm Eastern Daylight Time (“EDT”) on August 7, 2020 and ends at 11:59pm Eastern Daylight Time (“EDT”) on August 10, 2020 or when all available Prizes are issued by Sponsor, whichever comes first (the “Sweepstakes Period”). At 12pm Eastern Daylight Time (“EDT”) on August 4, 2020, the beginning of the Sweepstakes Entry Period, Sponsor will tweet a call to action from the @maliburum Twitter handle (the “CTA Tweet”). As soon as the CTA Tweet is issued, eligible entrants may participate in the Sweepstakes as provided herein.

2) Eligibility: To be eligible to receive a Prize, entrants must, at the time of entry, meet all of the following requirements: (i) be legal residents of the fifty (50) United States or the District of Columbia who live in an area serviced by Fulfillment Partner at one of the locations identified in the link above (“Territory”); (ii) be 21 years of age or older as of the date and time of participation; and (iii) be registered users of Twitter (each, a “Participant(s)”). Employees of Pernod Ricard USA, LLC, and each of its respective parent companies, subsidiaries, affiliates, officers, directors, governors, owners, partners, distributors, retailers, advertising/Sweepstakes/service agencies, dealers, licensors, agents, suppliers, independent contractors, bartenders and those of Fooji, Inc. (“Fooji,” “Sponsor” or “Administrator”), Fulfillment Partner, any other company involved in the presentation, administration or fulfillment of the Sweepstakes, and their respective subsidiaries, affiliated companies, and divisions (collectively, the “Sweepstakes Entities”) and those of alcohol beverage manufacturers, wholesalers, and retailers and each of their immediate family members (defined as any spouse, partner, parent, legal guardian, sibling, child, legal ward, grandparent, or grandchild, regardless of where they reside) and/or those living in the same household of any such person (whether or not related) are not eligible for the Sweepstakes. Void outside the Territory and in Puerto Rico and where prohibited or restricted by law.

3) Sponsor: The Sponsor and Administrator of the Sweepstakes is Fooji, Inc. located at 257 E. Short St. Suite 200, Lexington, KY 40507.

4) How To Participate in the Sweepstakes: After the CTA Tweet is made, during the Sweepstakes Period, to participate, send an @reply on the Twitter platform to @maliburum with the hashtag #MalibuSweetpstakes (“Required Hashtag”) (each, a “Participation Tweet”). If the Sweepstakes is still ongoing when your Participation Tweet is received by @maliburum, you will receive a link tweeted back to you that directs you to the online registration form. You must fully complete the registration form by providing your name, date of birth, residential address, e-mail address, and phone number and submit to Fooji a completed registration form for its receipt. A maximum of one (1) Prize consisting of one (1) Malibu branded speaker may be awarded per person, per Twitter account and per delivery address in connection with the Sweepstakes. Sponsor may, in its sole discretion, accept or reject any purported Participation Tweet that does not include both the required emoji as set forth in the CTA Tweet and the Required Hashtag. Purported Participation Tweets that are incorrect or incomplete, received outside the Sweepstakes Period (including after all Prize(s) have been redeemed), or that contain obscene, offensive, or any other language communicating messages inconsistent with the positive images with which Sponsor wishes to associate itself (all as determined by Sponsor in its sole discretion) will be void and disqualified. Sponsor is not responsible for misspellings, typographical errors, or other issues that may affect the ability to locate or record a purported Participation Tweet. Due to the way Twitter operates its service, Fooji may not be able to view or record purported Participation Tweets, receive or send communications, or otherwise detect participation from or interact with potential Participants who have Twitter account settings that make their updates, comments, posts or communications private, protected, or otherwise limited, in which case any such purported Participant will be disqualified and ineligible to receive a Prize. Normal Internet access and phone/usage charges imposed by your online/phone service may apply. Each Participation Tweet and registration form entry (if applicable) must be manually key stroked and manually entered by the individual Participant; automated and/or repetitive submission of Participation Tweets or registration forms (including but not limited to entries made using any script, macro, bot or sweepstakes service) will be disqualified.

THIS SWEEPSTAKES IS IN NO WAY SPONSORED, ENDORSED, OR ADMINISTERED BY OR ASSOCIATED WITH TWITTER, INC.

NOTE ABOUT MOBILE DATA AND MESSAGING CHARGES: When you participate in the Sweepstakes via a mobile device and/or download or transmit data via your mobile device, data and messaging rates may apply according to the terms and conditions of your service agreement with your wireless carrier. Other charges may apply (such as normal airtime and carrier charges) and may appear on your mobile phone bill or be deducted from your prepaid account balance. Wireless carriers' rate plans may vary, and you should contact your wireless carrier for more information on rate plans and charges relating to your participation in this Sweepstakes. Check your mobile device's capabilities for specific instructions.

5) Prizes: one-hundred sixty-six (166) prizes will be awarded. ALCOHOL IS NEVER PART OF THE PRIZE. Verified prize winners will receive a box with one (1) Malibu branded

Bluetooth speaker (each a “Prize”). All federal, state and local taxes and all other expenses not expressly listed in these Official Rules are the sole responsibility of the grand prize winner. Prize is nontransferable and may not be substituted or redeemed for cash by grand prize winner. Sponsor reserves the right to substitute the Prize for one of equal or greater value. Prize type(s) and components will be selected by Sponsor or its representatives in its/their sole discretion. Actual retail value of the Prize(s) may vary, including variations based on the Participants’ location. **Approximate retail value of each Prize is \$12. Total ARV of all Prizes available in this Sweepstakes: \$1,992.**

6) Winner Selection: Odds of winning a Prize in this Sweepstakes depend on the number of Participants and your timing of participation in relation to other Participant’s participation. Fooji will be the official time keeping device for the Sweepstakes and all decisions by the Sponsor regarding the timing of entries and the order in which they are received will be final and binding. Subject to compliance with these Official Rules, approximately 2 prizes per hour will be awarded. Participants selected as winners are limited to one (1) Prize per person, per Twitter account, and per delivery address during the Sweepstakes Period. The number of available Prizes may but are not obligated to be periodically communicated throughout the Sweepstakes via tweets from Sponsor’s @maliburum handle. Prizes will be facilitated through Fooji’s ordering system on Twitter. Local merchants that participate in the Fulfillment Partner network may provide fulfillment and delivery of the Prize(s). Prize availability may vary and is not guaranteed in all areas. Except as determined by Sponsor in its sole discretion, no substitution of any Prize is offered, no transfer of Prize to a third party is permitted, and non-cash Prize(s) may not be redeemed for cash value. AS SET FORTH ABOVE, YOU MUST RESIDE IN A LOCATION SERVICED BY FULFILLMENT PARTNER IN ORDER TO BE ELIGIBLE TO PARTICIPATE IN THIS SWEEPSTAKES AND WIN A PRIZE. Prize(s) will be awarded and delivered only to addresses within the United States that are serviced by Fulfillment Partner. Verified Prize winner(s) will be solely responsible for all applicable federal, state and local taxes on Prize(s) and may receive an IRS Form 1099 for the retail value of the Prize and must provide Sponsor with a valid social security number if requested for tax reporting purposes. All expenses associated with the receipt and use of a Prize not specifically mentioned herein are solely the responsibility of the winners. Sponsor is not responsible for any delay or cancellation of the Prize delivery due to unforeseen circumstances, or those outside of Sponsor’s control. If the fulfilling merchant cancels the order for reasons out of Sponsor’s control, the Prize will not be delivered and no additional compensation will be provided. Potential winners are subject to verification and may be required to sign and return to Sponsor for its receipt within three (3) business days an Affidavit of Eligibility/ Liability Release with (where lawful) a publicity release for receipt by Sponsor by the due date indicated in the notification message. If any required documents are not timely received by Sponsor, or if any message or mail intended for a winner is returned as undeliverable, then the applicable Prize may be may be forfeited.

7) General Rules / Limitations of Liability: By participating in the Sweepstakes, Participants agree to be bound by these Official Rules and the decisions of the Sponsor which shall be final in all respects. Participation in the Sweepstakes constitutes permission for the Sponsor and its designees to use the Participant’s name, likeness, voice, biographical information, prize information, quotes attributable to Participant, and any other elements of Participant’s persona for purposes of advertising and trade in any and all media now known or otherwise developed without

further compensation or review, including a Participant list to be used by Fooji and its partners to re-target participants via email or the Fooji app, unless prohibited by law. By clicking "Order Now," Participants authorize Fooji or their Fulfillment Partners to send text messages or phone calls notifying Participants of delivery details for their order. Participants agree that Fooji or the Fulfillment Partner may send the notice to the telephone number the Participant provides during the registration process, and Participants understand notifications will be sent using automatic dialing technology. Participants understand that they are not required to agree to receive such messages as a condition of participation. In the event there is a discrepancy or inconsistency between disclosures or other statements (in any and all media) contained in any Sweepstakes materials and the terms and conditions of the Official Rules, the Official Rules shall prevail, govern and control. Sponsor, Pernod Ricard USA, LLC, and each of its respective parent companies, subsidiaries, affiliates, officers, directors, governors, owners, partners, distributors, retailers, advertising/Sweepstakes/service agencies, dealers, licensors, agents, suppliers, independent contractors, and the other Sweepstakes Entities assume no responsibility or liability for (a) any incorrect or inaccurate entry information, or for any faulty, failed, garbled or jumbled electronic data transmissions; (b) any unauthorized access to, or theft, destruction or alteration of entries at any point in the operation of this Sweepstakes; (c) any technical malfunction, failure, error, omission, interruption, deletion, defect, delay in operation or communications line failure, regardless of cause, with regard to any equipment, systems, networks, lines, satellites, servers, computers, software or providers utilized in any aspect of the operation of the Sweepstakes; (d) inaccessibility or unavailability of the Internet or the Twitter platform or any combination thereof, or; (e) any injury or damage to Participant's or to any other person's computer which may be related to or resulting from any attempt to participate in the Sweepstakes. The Sponsor and other Sweepstakes Entities are not responsible for the failure of any order to be received for any reason or for any delay in the processing or failure to process any order or entries. The Sponsor reserves the right at its sole discretion to disqualify any individual that tampers or attempts to tamper with the order process or the operation of the Sweepstakes; violates the Official Rules; is suspected of cheating, fraud, or acting in an unsportsmanlike or disruptive manner, or with intent to annoy, abuse, threaten or harass any other person. Any Participant who uses or is suspected of using cheating, fraudulent means, unauthorized ordering methods, or otherwise attempts to participate multiple times, or with multiple identities, Twitter accounts, and/or addresses will be disqualified. Any attempt by any person to undermine the legitimate operation of the Sweepstakes may be a violation of criminal and civil law, and, should such an attempt be made, the Sponsor reserves the right to seek damages from any such person to the fullest extent permitted by law. The Sponsor's failure to enforce any term of these Official Rules shall not constitute a waiver of that or any other provision. If, for any reason, the Sweepstakes is not capable of running as planned, including infection by computer virus, bugs, tampering, unauthorized intervention, fraud, technical failures, changes to the Twitter platform that are not acceptable to Sponsor, or any other causes beyond the control of the Sponsor which corrupt or affect the administration, security, fairness, integrity or proper conduct of the Sweepstakes, then the Sponsor reserves the right in its sole discretion to cancel, modify, suspend or terminate the Sweepstakes in whole or in part. In the event Sponsor experiences a technical failure during admission of the Promotion that causes the Promotion to be suspended, Sponsor shall select a winner(s) by random drawing from all valid entries received up to the point of the technical failure. **TO THE FULLEST EXTENT PERMITTED BY LAW, AS A CONDITION OF ENTRY INTO THE SWEEPSTAKES, ALL PARTICIPANTS AGREE TO RELEASE, INDEMNIFY AND HOLD HARMLESS THE SPONSOR,**

PERNOD RICARD USA, LLC AND OTHER SWEEPSTAKES ENTITIES FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS OR ACTIONS OF ANY KIND WHATSOEVER FOR INJURIES, DAMAGES, OR LOSSES TO PERSONS OR PROPERTY WHICH MAY BE SUSTAINED IN CONNECTION WITH: PARTICIPATING IN ANY ASPECT OF THE SWEEPSTAKES; THE RECEIPT, OWNERSHIP OR USE OF ANY PRIZE AWARDED; PREPARING FOR, PARTICIPATING IN OR TRAVELING TO AND/OR FROM ANY PRIZE- RELATED OR SWEEPSTAKES-RELATED ACTIVITY, OR; ANY TYPOGRAPHICAL OR OTHER ERROR IN THESE OFFICIAL RULES OR ANY CTA TWEETS OR OTHER ANNOUNCEMENTS RELATING TO THE SWEEPSTAKES. THE WINNERS SHALL BEAR ALL RISK OF LOSS OR DAMAGE TO THEIR PRIZE AFTER THEY HAVE BEEN DELIVERED. SPONSOR AND THE OTHER SWEEPSTAKES ENTITIES MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND CONCERNING THE APPEARANCE, SAFETY OR PERFORMANCE OF ANY PRIZE(S).

BY ENTERING THE SWEEPSTAKES, PARTICIPANT AGREES THAT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW: (1) ANY AND ALL DISPUTES, CLAIMS AND CAUSES OF ACTION ARISING OUT OF OR CONNECTED WITH THE SWEEPSTAKES, OR ANY PRIZE(S) AWARDED WILL BE LIMITED TO ACTUAL, OUT-OF-POCKET COSTS INCURRED (IF ANY) NOT TO EXCEED TEN DOLLARS (\$10.00), BUT IN NO EVENT WILL ATTORNEYS' FEES BE AWARDED OR RECOVERABLE; AND (2) UNDER NO CIRCUMSTANCES WILL ANY PARTICIPANT BE PERMITTED TO OBTAIN ANY AWARD FOR, AND PARTICIPANT HEREBY KNOWINGLY AND EXPRESSLY WAIVES ALL RIGHTS TO SEEK, PUNITIVE, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, LOST PROFITS AND/OR ANY OTHER DAMAGES (OTHER THAN ACTUAL OUT-OF-POCKET EXPENSES NOT TO EXCEED TEN DOLLARS (\$10.00)) AND/OR ANY RIGHTS TO HAVE DAMAGES MULTIPLIED OR OTHERWISE INCREASED. SOME JURISDICTIONS DO NOT ALLOW THE FOREGOING LIMITATIONS OR EXCLUSION OF LIABILITY, SO THE ABOVE MAY NOT APPLY TO YOU.

Without limiting any other provision in these Official Rules, the Sweepstakes Entities are not responsible or liable to any Participant or winner (or any person claiming through such Participant or winner) for failure to supply the prize or any part thereof in the event that any of the Sweepstakes activities or Sweepstakes Entities' operations or activities are affected by any cause or event beyond the sole and reasonable control of the applicable Sweepstakes Entity (as determined by Sponsor in its sole discretion), including, without limitation, by reason of any acts of God, equipment failure, threatened or actual terrorist acts, air raid, act of public enemy, war (declared or undeclared), civil disturbance, insurrection, riot, epidemic, fire, explosion, earthquake, flood, hurricane, unusually severe weather, blackout, embargo, labor dispute or strike (whether legal or illegal), labor or material shortage, transportation interruption of any kind, work slow-down, any law, rule, regulation, action, order, or request adopted, taken, or made by any governmental or quasi-governmental entity (whether or not such governmental act proves to be invalid), or any other cause, whether or not specifically mentioned above.

EACH PARTICIPANT UNDERSTANDS AND AGREES THAT ALL RIGHTS UNDER SECTION 1542 OF THE CIVIL CODE OF CALIFORNIA AND ANY SIMILAR LAW OF ANY STATE OR TERRITORY OF THE UNITED STATES ARE HEREBY EXPRESSLY WAIVED BY HIM/HER AGAINST THE SWEEPSTAKES ENTITIES. SECTION 1542 READS AS FOLLOWS:

“CERTAIN CLAIMS NOT AFFECTED BY A GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

8) Privacy Policy: By entering the Sweepstakes, Participants agree that any personal information submitted by Participants may be used and shared by Sponsor subject to Fooji’s privacy policy posted at <https://www.fooji.com/privacy/> An entrant not interested in receiving future promotional offers should write to: PRUSAConsumerSupport@pernod-ricard.com to notify the Sponsor that he or she does not desire to receive such materials.

10) Governing Law / Disputes/ Arbitration: Except where prohibited by law, as a condition of participating in this Promotion, each Entrant agrees that (1) any and all disputes and causes of action arising out of or connected with these Promotion, including but not limited to Prize awarded, shall be resolved individually, without resort to any form of class action, and exclusively by final and binding arbitration under the rules of JAMS and held at the JAMS regional office nearest the Entrant; (2) the Federal Arbitration Act shall govern the interpretation, enforcement and all proceedings at such arbitration; and (3) judgment upon such arbitration award may be entered in any court having jurisdiction. Under no circumstances will any Entrant be permitted to obtain awards for, and Entrant hereby waives all rights to claim, punitive, incidental or consequential damages, or any other damages, including attorneys’ fees, other than Entrant’s actual out-of-pocket expenses (i.e., costs associated with participating in this Promotion), and Entrant further waives all rights to have damages multiplied or increased. **SOME JURISDICTIONS DO NOT ALLOW THE LIMITATIONS OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE MAY NOT APPLY TO YOU.** All issues and questions concerning the construction, validity, interpretation and enforceability of these Official Rules, or the rights and obligations of the Entrant and Sponsor in connection with the Promotion, shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to any choice of law or conflict of law rules (whether of the State of New York or any other jurisdiction), which would cause the application of the laws of any jurisdiction other than the State of New York.

11) Severability: If any term of provision of these Official Rules is found under the law to be invalid or unenforceable, then such specific term or provision shall be of no force and effect and shall be severed and the remainder of these Official Rules shall continue in full force and effect.

12) Winners List: For a winners’ list, no later than 60 days after the close of the Sweepstakes, send an email request with the name of the Sweepstakes to hello@fooji.com or mail your request

together with a self-addressed stamped envelope to #MalibuSweepstakes Winner's List Sponsor at the address noted in Section 3 above.

13) Questions? If you have any questions, you may contact us at help@fooji.com.

Sip Easy. Enjoy Malibu Responsibly.

Malibu ® Caribbean Rum with Coconut Liqueur. 21% - 24 Alc./Vol. © 2020 Pernod Ricard USA, New York, NY.