



September 28, 2020

Katie Ford
on behalf of Pernod Ricard USA, LLC
VIA E-MAIL

RE: All Bourbon No Bullst Debates Contest**

Dear Ms. Ford:

ISSUE: This correspondence is in response to your e-mail of September 16, 2020, in which you request legal review of a contest promotion to be conducted in Pennsylvania.

According to the official rules you provided, the “All Bourbon No Bulls**t Debates Contest” promotion was scheduled to begin on September 25, 2020 and runs until November 1, 2020. To participate in the contest, interested individuals may enter at www.smoothambler.com/debate, as further detailed in the official rules.¹

Eight winners of the contest will be selected by third-party judges based upon the following weighted criteria: creativity/uniqueness (40%), relevance to theme (30%), and best fit to brand image (30%), as further defined in the official rules. The winners will each receive a Masterbuilt Gravity Series 560 Digital Charcoal Grill and Smoker. The total approximate retail value of the prizes is \$3,992.00. No purchase is necessary to enter the contest, and the contest 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 is not part of the 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

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

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. § 4-493(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.

This office has reviewed the proposed contest 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,



RODRIGO J. DIAZ
CHIEF COUNSEL

cc: Pennsylvania State Police, Bureau of Liquor Control Enforcement
Michel Demko, Executive Director

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Elizabeth Brassell, Director of Policy & Communication
Stacy Kriedeman, Director, Marketing Communications
Thomas Bowman, Director, Bureau of Product Selection
Ra-lbpromo@pa.gov

LCB Advisory Opinion No. 20-233



Date: September 2, 2020
Client: Pernod Ricard USA, LLC
Contest: All Bourbon No Bulls**t Debates Contest
Subject: Official Rules

Mandatories

NO PURCHASE NECESSARY TO ENTER OR WIN. Void where prohibited. All Bourbon No Bulls**t Debates Contest is open to legal residents of the 50 U.S. & D.C., 21 years of age or older. Begins 12:00:01 a.m. ET 9/25/20, ends 11:59:59 p.m. ET 11/01/20. Alcohol is not included with prize. Click here for entry details and Official Rules, which govern. Sponsor: Pernod Ricard USA, LLC, New York, NY.

NO PURCHASE NECESSARY. OPEN TO LEGAL RESIDENTS OF THE 50 UNITED STATES AND THE DISTRICT OF COLUMBIA, 21 YEARS OF AGE OR OLDER AS OF DATE OF ENTRY.

1. **Contest Period:** All Bourbon No Bulls**t Debates Contest (the “**Contest**”) begins 12:00:01 a.m. Eastern Time (“**ET**”) September 25, 2020 and ends at 11:59:59 p.m. ET on November 1, 2020 (the “**Contest Period**”).
2. **Eligibility:** Open to legal residents of the 50 United States and the District of Columbia, 21 years of age or older as of date of entry. For purposes of the Contest and these Official Rules, the person submitting the Entry (as defined below) is considered the “**Entrant**”. Employees of Pernod Ricard USA, LLC. (“**Sponsor**”), Don Jagoda Associates, Inc., their respective affiliates, parents, subsidiaries, divisions, suppliers, distributors, all retailers of any alcohol-beverage products, and advertising, promotional and judging agencies (collectively “**Released Parties**”), and each of their respective employees, shareholders, directors, officers, members and agents and their immediate family members spouses, parents, children, and siblings and their spouses) and/or those living in the same household of each are not eligible to participate or win. All federal, state and local taxes are the sole responsibility of winner. Void where prohibited by law and subject to all federal, state, and local laws.
3. **How to Enter:** There is **NO PURCHASE NECESSARY** to participate in the Contest. A purchase does not increase your chance of winning. During the Contest Period, you may enter by visiting www.smoothambler.com/debate (the “**Contest Website**”) and following the on-screen instructions by completing the online entry form, including outlining your favorite non-political debate topic that makes you call bulls**t (the “**Essay**”), in 300 characters or less, to receive one (1) entry (the “**Entry**”).

There is a limit of one (1) Entry per person per day. All Entries will be judged, as described below, to determine eight (8) Grand Prize winners. By entering, you understand that your Entry in its entirety or portion thereof may (in Sponsor’s sole discretion) be posted on websites, Social Media sites and/or other Sponsor-selected media. Normal data/Internet access and usage charges imposed by Entrants’ online/phone service will apply.



4. **Entry Requirements:** To be entered into the Contest, Entrants must comply with registration instructions when submitting their Entry. All Entries must be in English only. The Entry may not contain obscene, profane, lewd, defamatory or inappropriate text including acts of violence or acts that appear to cause harm or are illegal/dangerous, as determined at Sponsor's sole discretion. Any Entry or portion thereof that is, in the Sponsor's sole discretion, obscene, profane, lewd, defamatory, highlights brand in a negative way, contains any third party materials (other than Smooth Ambler), or otherwise violates or infringes (or may infringe) any copyright, trademark, logo, mark that identifies a brand or other proprietary right of any person living or deceased (including, but not limited to, rights of privacy or publicity or portrayal in a false light) or entity, or is otherwise objectionable, will not be considered and may disqualify the Entrant. Entry may not mention politics. If Entry mentions subject matter that is political, the Entry will be disqualified. Entrants may not copy or otherwise plagiarize the Entry from any source. Sponsor has the sole discretion to determine whether an Entry qualifies. All Entries must be the sole, original work of the Entrants. By submitting an Entry, you hereby grant the Sponsor, its affiliates, subsidiaries, assigns, licensees, designees and legal representatives the irrevocable, perpetual, worldwide digital and other rights to use, reproduce, edit, market, store, distribute, have distributed, publicly and privately display, communicate, publicly and privately perform, transmit, have transmitted, create derivative works based upon, and promote the Entries or excerpts of Entries (as such may be edited and modified by the Sponsor at its discretion) for editorial, commercial, promotional and all other purposes (including posting on Sponsor-affiliated websites, Social Media sites and/or other Sponsor-selected media). In addition, you hereby assign to the Sponsor all rights, titles, and interests that you may be deemed to have in any reproduction, product, or derivative work using or incorporating the Entry. You further agree to waive any moral rights in and to the Entry. Automated, script, macro or robotic Entries submitted by individuals or organizations will be disqualified. Any Entry not in compliance with the above and does not meet the Contest Website's requirements will be disqualified.
5. **Judging and Winner Notification:** All Entries received by the end the Contest Period will be judged by Sponsor-selected judges ("**Judges**") on or about November 16, 2020 based on the following criteria: Creativity/Uniqueness (40%); Relevance to Theme (30%); and Best Fit to Brand Image (30%) (the "**Judging Criteria**"), to determine eight (8) Grand Prize winners. Any tied Entries will be re-judged by the judges based 100% on Creativity/Uniqueness to determine the applicable Grand Prize winner. Judges' decisions are final with respect to all matters relating to the Contest. By participating, Entrants agree to the Official Rules and the decisions of the Judges, which shall be final and binding in all respects.
6. **Grand Prize and Approximate Retail Value ("ARV") and Winner Notification: Grand Prize (8 total):** Masterbuilt Gravity Series 560 Digital Charcoal Grill + Smoker (ARV: \$499 each). **ALCOHOL IS NOT PART OF THE PRIZE.** No substitution or transfer of any prize permitted except at the sole discretion of the Sponsor who reserves the right to substitute a prize of equal or greater value in the event the prize is unavailable.

Potential Grand Prize winners will be notified via email and will be required to provide their mailing address and confirm their eligibility within forty-eight (48) hours of notification attempt or Grand Prize will be forfeited and an alternate potential Grand Prize winner will be determined. Return of Grand Prize notification as undeliverable may result in disqualification and determination of an alternate Grand Prize winner. In the event of a dispute regarding any Entry, that Entry will be deemed made by the authorized account holder of the email address submitted at the time of the Entry. Potential Grand Prize winner may be required to show proof of being the authorized account holder of the email address associated with the Entry. The Sponsor and its agencies are not responsible for technical, hardware, software or telephone malfunctions of any kind, lost or unavailable network connections, or failed, incorrect, incomplete,



inaccurate, garbled or delayed electronic communications caused by the user or by any of the equipment or programming associated with or utilized in this Contest or by any human error which may occur in the processing of the Entries in this Contest. The Sponsor reserves the right at its sole discretion to disqualify any individual that tampers or attempts to tamper with the Entry process or the operation of the Contest or the Contest Website; violates these official rules; or acts in an unsportsmanlike or disruptive manner, or with intent to annoy, abuse, threaten or harass any other person. Any attempt by any person to deliberately undermine the legitimate operation of the Contest may be a violation of criminal and civil law, and, should such an attempt be made, Sponsor reserves the right to seek damages from any such person to the fullest extent permitted by law. Sponsor's failure to enforce any term of these Official Rules shall not constitute a waiver of that provision. The Sponsor reserves the right, in its sole discretion, to cancel, modify or suspend the Contest if it is not capable of running as planned, including, but not limited to, infection by computer virus, tampering, unauthorized intervention, fraud, technical failures or any other problems beyond the control of the Sponsor and award the prizes from among all eligible Entries received prior to cancellation, if any based on the Judging Criteria above. The Sponsor and each of its respective affiliates, officers, directors, agents and employees will have no liability or responsibility for any claim arising in connection with participation in this Contest or the prizes awarded. Grand Prize winners assume all liability for any injury or damage caused, or claimed to be caused, by participation in this Contest or use or redemption of prizes. These Official Rules cannot be modified or amended in any way except in a written document issued in accordance with law by a duly authorized representative of Sponsor. You hereby represent and warrant that you have read these Official Rules and are fully familiar with its contents. Entries generated by script or bot are not eligible. As a condition of entering the Contest, Entrant/Grand Prize winners agree that: 1) under no circumstance will Entrant/Grand Prize winners be permitted to obtain awards for, and Entrant/Grand Prize winners hereby waive all rights to claim punitive, incidental, consequential or any other damages, other than for out-of-pocket expenses; 2) all causes of action arising out of or connected with this Contest, or any prizes awarded, shall be resolved individually, without resort to any form of class action; and 3) any and all claims, judgments, and award shall be limited to actual out-of-pocket costs incurred, but in no event attorneys' fees.

7. **Conditions:** Entrants/Grand Prize winners acknowledge and agree that Sponsor has the right to edit, adapt, modify, reproduce, promote and otherwise use the Entry in any way it sees fit in connection with advertising in any medium, throughout the world, in perpetuity. Entrant/Grand Prize winners shall have no right to review or approve edits, alterations or modifications, and the Entrant/Grand Prize winners waive the benefit of any provision of law known as "moral rights." No information regarding Entries or judging will be disclosed to any third party not involved in the conduct of the Contest. By submitting an Entry, you represent: (a) that the Entry is your own original work that has not previously been published or publicly shown or won a prize or award; and (b) any and all rights to the Entry belong to you and the Entry does not infringe, misappropriate or violate the rights of any third party. Further, any Entries that Sponsor, in its sole discretion, deems to be inappropriate for publication will not be considered.
8. **Winners List:** For the names of the Grand Prize winners, available after November 30, 2020, send a stamped, self-addressed envelope by December 15, 2020, to: All Bourbon No Bulls**t Debates Contest - Winners, 100 Marcus Drive (Dept. NR), Melville, NY 11747.
9. **Sponsor:** The Sponsor of the Contest is Pernod Ricard USA, LLC, 250 Park Avenue, New York, NY 10177.

PLEASE AMBLE RESPONSIBLY.