



September 28, 2020

Amanda Paventi  
Marketing Project Coordinator  
Avid Marketing Group  
100 Corporate Place  
Suite 200  
Rocky Hill, CT 06067  
on behalf of Proximo Spirits, Inc.  
**VIA E-MAIL**

**RE: TINCUP® Whiskey & IKON Pass Sweepstakes**

Dear Ms. Paventi:

**ISSUE:** This correspondence is in response to your e-mail of September 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 “TINCUP® Whiskey & IKON Pass Sweepstakes” promotion is scheduled to begin on October 1, 2020 and runs until December 31, 2020. To participate in the sweepstakes, interested individuals may enter by text message or by mail, as further detailed in the official rules.<sup>1</sup>

One grand prize winner will be randomly selected to receive an IKON pass. The total approximate prize value of the prize is \$1,099.00. No purchase is necessary to enter the sweepstakes, and the sweepstakes is open only to residents who are at least twenty-one years of age at the time of entry. The official rules indicate that alcohol is not included in the prize.

**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:

---

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

- 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), so long as alcohol is not included in the prize.

While the official rules indicate that alcohol is not part of the prize, please be advised that to the extent that any part of the prize being awarded involves 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.

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, as long as alcohol is not included in the prize, 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).

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  
Michel Demko, Executive Director  
Elizabeth Brassell, Director of Policy & Communication  
Stacy Kriedeman, Director, Marketing Communications  
Thomas Bowman, Director, Bureau of Product Selection  
[Ra-lbpromo@pa.gov](mailto:Ra-lbpromo@pa.gov)

LCB Advisory Opinion No. 20-236

## **TINCUP® Whiskey & IKON Pass Sweepstakes Official Rules (the “Official Rules”)**

**THE SWEEPSTAKES IS RESTRICTED TO ENTRANTS WHO ARE 21 YEARS OF AGE OR OLDER AT THE TIME OF ENTERING THE SWEEPSTAKES AND WHO ARE LEGAL RESIDENTS OF THE UNITED STATES. VOID OUTSIDE THE UNITED STATES AND WHERE PROHIBITED OR RESTRICTED BY LAW. ALL FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS APPLY. NO PURCHASE OR PAYMENT NECESSARY. PURCHASE OR PAYMENT OF ANY KIND WILL NOT INCREASE YOUR CHANCES OF WINNING.**

### **1. Eligibility**

The Sweepstakes is open only to legal U.S. residents who are at least twenty-one (21) years old at the time of entry. Void where prohibited or restricted by law. The following individuals are not eligible to win the Sweepstakes: (a) employees of (i) Sponsor (as defined in Section 2 below) or its related companies, (ii) vendors of Sponsor, (iii) licensed alcoholic beverage distributors and retailers, (iv) Administrator (as defined in Section 2 below) and, in each case, any of its or their respective affiliates, subsidiaries, advertising agencies or any other company or individual involved with the design, production, execution or distribution of the Sweepstakes and (b) the immediate family (spouse, parents and step-parents, siblings and step-siblings, and children and step-children) and household members (people who share the same residence at least three (3) months out of the year) of each such individual. The Sweepstakes is subject to all applicable federal, state and local laws and regulations. Participation constitutes entrant’s full and unconditional agreement to these Official Rules and Sponsor’s and Administrator’s decisions, which are final and binding in all matters related to the Sweepstakes. Winning a prize is contingent upon fulfilling all requirements set forth herein. No purchase or payment is necessary to enter or win the Sweepstakes.

### **2. Sponsor and Administrator**

Sponsor: Proximo Spirits, Inc., Jersey City, NJ 07302.

Administrator: Avid Marketing Group, P.O. Box 1008, Rocky Hill, CT 06067-1008.

### **3. Timing**

The Sweepstakes begins on October 1, 2020 at 12:00 a.m. Eastern Time (“ET”) and ends on December 31, 2020 at 11:59 p.m. ET (the “Sweepstakes Period”). Sponsor is the official timekeeper for this Sweepstakes.

**4. How to Enter** There are two (2) different ways to enter the Sweepstakes (“Entry Methods”).

**Entry Method No. 1** – Enter via Text Message. Send a text message to “55755” with the word “IKON” from your mobile device. You will then be sent a reply text that asks for your date of birth to confirm age eligibility for the Sweepstakes. You must reply to that text with your date of birth in the “MM/DD/YYYY” format. You are required to provide your date of birth in order to enter the Sweepstakes. You will also be sent another text that asks for your name and address. Responding to that text with your name and address is not required to enter the Sweepstakes. Standard text message rates apply to all texts that are sent and received.

**Entry Method No. 2** – Enter by Mail. Print your name, address, date of birth and telephone number and the words “TINCUP Whiskey & IKON Pass Sweepstakes – PRO2062454W” on a 3” x 5” card and mail to: c/o Avid Marketing Group, P.O. Box 1008, Rocky Hill, CT 06067-1008.

**Entering is free. Limit: one (1) entry per person, per cell phone number, per mailing address and per email address during the Sweepstakes Period, regardless of method of entry.** A person may enter by text message OR by mail but NOT by using both methods. Multiple entries will automatically result in disqualification. All entries must be received no later than 11:59:59 p.m. ET on December 31, 2020. All entries become the property of the Sponsor and will not be returned.

Proof of submission of an entry does not constitute proof of receipt of entry by Sponsor or its agents. Sponsor reserves the right to void all entries made through any third-party website or service, or through any robotic, automatic, mechanical, programmed or similar entry duplication method, and to disqualify any individual using such a website/service or Entry Method. Sponsor is not responsible for technical difficulties or Internet service disruptions or other equipment or service issues which might affect an online user's ability to enter and qualify or the ability of Sponsor to notify the winners. Facsimiles or mechanical reproductions will not be accepted and entrants may not use any other device or artifice to enter in excess of the number of entries allowed. All entries become the property of Sponsor and will not be returned.

## **5. Winner Selection**

### Prize Winners

One (1) prize winner will be randomly selected from all eligible entries starting on October 1, 2020 with final selection occurring on or about January 3, 2021. The drawing will be conducted by Administrator, an independent third-party organization, whose decisions, along with the decisions of Sponsor, will be final and binding in all matters relating to this Sweepstakes. Odds of winning a prize will be determined by the total number of eligible entries received through all Entry Methods combined. The awarding of the prize is subject to verification of each potential winner's eligibility. The winner will be notified by email and/or postal mail on or around January 3, 2021, and will be required to furnish valid proof of age in a form prescribed by Sponsor (for example, a copy of a valid driver's license, birth certificate or passport) within three (3) days of notification. If any prize notification is returned as undeliverable, or if a potential winner fails to return the prize claim documents within the stated time period, or if a potential prize winner cannot accept the prize as stated, or if Sponsor, in its sole discretion, deems a potential winner ineligible to receive the prize for any reason, the corresponding prize will be forfeited in its entirety and awarded (time permitting) to an alternate winner in a random drawing from among the remaining entries received.

**6. SPONSOR'S AND/OR ADMINISTRATOR'S DECISIONS AS TO THE ADMINISTRATION AND OPERATION OF THE SWEEPSTAKES AND THE SELECTION OF POTENTIAL WINNERS ARE FINAL AND BINDING IN ALL MATTERS RELATED TO THE SWEEPSTAKES. AN ENTRANT IS NOT A WINNER OF ANY PRIZE UNLESS AND UNTIL ENTRANT'S ELIGIBILITY AND THE POTENTIAL WINNING ENTRY HAVE BEEN VERIFIED AND ENTRANT HAS BEEN NOTIFIED THAT VERIFICATION IS COMPLETE. SPONSOR WILL NOT ACCEPT SCREEN SHOTS OR OTHER EVIDENCE OF WINNING IN LIEU OF ITS VALIDATION PROCESS. ANY ENTRY THAT OCCURS AFTER THE SYSTEM HAS FAILED FOR ANY REASON IS DEEMED DEFECTIVE AND IS VOID AND WILL NOT BE HONORED.**

## **7. Verification of Potential Winners**

Potential winners must continue to comply with all terms and conditions of these Official Rules, and winning is contingent upon fulfilling all requirements. Each winner must be 21 years of age or older. The potential winner may be required to provide Sponsor or Administrator with documentation that shows he or she was an eligible participant. In the event that a potential winner of a Sweepstakes prize is disqualified for any reason, Administrator may award the applicable prize to an alternate winner by random drawing from among all remaining eligible entries.

Prizes are non-transferable and no substitution will be made except as provided herein at the Sponsor's sole discretion. Sponsor reserves the right to substitute any listed prize for one of equal or greater value for any reason. Any and all guarantees and warranties are subject to the manufacturer's terms and conditions, and winner agrees to look solely to such entity for any such warranty or guarantee claim. Winners are solely responsible for all federal, state and local income taxes.

**Sponsor reserves the right to conduct a background check of any criminal records of any prize winner.**

To the extent necessary and permitted by law, prize winners authorize this background check. Sponsor reserves the right, at its sole discretion, to disqualify any prize winner from any prize element, based on the background check. Winner also accepts sole responsibility for any miscellaneous costs relating to acceptance of prize.

## **8. Prizes**

### Prizes

One (1) grand prize will be awarded during the Sweepstakes Period. The grand prize winner will receive one (1) IKON pass. Sponsor is not responsible for transportation or lodging to destinations. Tickets are subject to terms and conditions stated thereon as well as destination restrictions and are NOT for resale. Alcoholic beverages are not part of the prize. Approximate retail value ("ARV") of the prize package is \$1,099.00. Actual value may vary. Any difference between the stated ARV and actual value will not be awarded.

## **9. Entry Conditions and Release**

By entering, each participant agrees to: (a) comply with and be bound by these Official Rules and the decisions of Sponsor and Administrator, which are binding and final in all matters relating to this Sweepstakes; (b) release and hold harmless Sponsor, Administrator, the prize suppliers and any other organizations responsible for sponsoring, fulfilling, administering, advertising or promoting the Sweepstakes, and all of their respective affiliates and related entities and each of their respective officers, directors, agents, vendors, employees and other representatives (collectively, the "Released Parties") from and against any and all claims, expenses, and liability, including but not limited to negligence and damages of any kind to persons and property, including but not limited to invasion of privacy (under appropriation, intrusion, public disclosure of private facts, false light in the public eye or other legal theory), defamation, slander, libel, violation of right of publicity, infringement of trademark, copyright or other intellectual property rights, property damage, or death or personal injury arising out of or relating to a participant's entry, creation of an entry or submission of an entry, participation in the Sweepstakes, acceptance or use or misuse of prize (including any travel or activity related thereto) and/or the broadcast, exploitation or use of entry; and (c) indemnify, defend and hold harmless the Released Parties from and against any and all claims, expenses, and liabilities (including reasonable attorneys' fees) arising out of or relating to an entrant's participation in the Sweepstakes and/or entrant's acceptance, use or misuse of prize.

Any personally identifiable information collected during an entrant's participation in the Sweepstakes will be collected by Sponsor, Administrator or other Sponsor designee and used by Sponsor, its affiliates, designees, agents and marketers for purposes of the administration and fulfillment of the Sweepstakes as described in these Official Rules.

## **10. Publicity**

Except where prohibited, participation in the Sweepstakes constitutes winner's consent to Sponsor's and its agents' use of winner's name, likeness, photograph, voice, opinions and/or hometown and state for promotional purposes in any media, worldwide, without further payment or consideration.

#### **11. General Conditions**

Administrator reserves the right to cancel, suspend and/or modify the Sweepstakes, or any part of it, if any fraud, technical failures or any other factor beyond Administrator's reasonable control impairs the integrity or proper functioning of the Sweepstakes, as determined by Administrator in its sole discretion. Administrator reserves the right in its sole discretion to disqualify any individual it finds to be tampering with the entry process or the operation of the Sweepstakes or to be acting in violation of these Official Rules or any other promotion or in an unsportsmanlike or disruptive manner. Any attempt by any person to deliberately undermine the legitimate operation of the Sweepstakes may be a violation of criminal and civil law, and, should such an attempt be made, Administrator reserves the right to seek damages from any such person to the fullest extent permitted by law. Administrator's failure to enforce any term of these Official Rules shall not constitute a waiver of that provision.

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 and as required by law. Prize is non-transferable except at the sole discretion of the Sponsor. All federal, state and local taxes on the 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 said prize.

The value of the prize won by a participant in 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. Winner will be issued an IRS Form W-9 with the Affidavit of Eligibility and Release and a subsequent IRS Form 1099 if necessary. 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.

The stated ARV of the prize is based on available information provided to Sponsor. Any difference in ARV at the time of awarding will not be awarded, and the value of any prize awarded to a winner may be reported for tax purposes as required by law. Neither Sponsor nor Administrator have made any warranty, representation or guarantee, expressed or implied, in fact or in law, with respect to any prize awarded, and specifically disclaim all such warranties, representations or guarantees, including, without limitation, any warranty of merchantability or fitness for a particular purpose.

Electronic Entries: In the event of a dispute, online entries will be deemed made by the authorized account holder of the email address submitted at time of entry. The authorized account holder is the natural person who is assigned to the email address by an Internet access provider, online service, or other organization that is responsible for assigning email addresses. Potential Winner may be required to show proof of being the authorized account holder. CAUTION: ANY ATTEMPT BY A PERSON TO DELIBERATELY DAMAGE ANY WEBSITE OR UNDERMINE THE LEGITIMATE OPERATION OF THIS SWEEPSTAKES IS A VIOLATION OF CRIMINAL AND CIVIL LAWS. SHOULD SUCH AN ATTEMPT BE MADE, SPONSOR RESERVES THE RIGHT TO SEEK DAMAGES FROM ANY SUCH PERSON TO THE FULLEST EXTENT PERMITTED BY LAW.

#### **12. Limitations of Liability**

The Released Parties are not responsible for: (a) any incorrect or inaccurate information, whether caused by entrants, printing errors or by any of the equipment or programming associated with or utilized in the

Sweepstakes; (b) technical failures of any kind, including, but not limited to malfunctions, interruptions or disconnections in phone lines or network hardware or software; (c) unauthorized human intervention in any part of the entry process or the Sweepstakes; (d) technical or human error which may occur in the administration of the Sweepstakes or the processing of entries; or (e) any injury or damage to persons or property which may be caused, directly or indirectly, in whole or in part, from entrant's participation in the Sweepstakes or receipt or use or misuse of any prize. If for any reason an entrant's entry is confirmed to have been erroneously deleted, lost or otherwise destroyed or corrupted, entrant's sole remedy is another entry in the Sweepstakes, provided that if it is not possible to award another entry due to discontinuance of the Sweepstakes, or any part of it, for any reason, Sponsor, at its discretion, may elect to hold a random drawing from among all eligible entries received up to the date of discontinuance for any or all of the prizes offered herein. No more than the stated number of prizes will be awarded. **One prize per person only.** In the event that production, technical, seeding, programming or any other reasons cause more than the stated number of prizes as set forth in these Official Rules to be available and/or claimed, Sponsor reserves the right to award only the stated number of prizes by a random drawing among all legitimate, unawarded, eligible prize claims.

### **13. Choice of Law and Disputes**

By entering the Sweepstakes, entrants agree that all issues and questions concerning the construction, validity, interpretation and enforceability of these Official Rules, participant's rights and obligations, or the rights and obligations of Sponsor in connection with the Sweepstakes shall be governed by laws of the State of New York, without giving effect to any choice of law or conflict of laws principles. By participating in the Sweepstakes, entrants consent to the jurisdiction and venue of the federal, state and local courts located in New York, New York.

Entrants agree that: (a) any and all disputes, claims and causes of action arising out of or connected with this Sweepstakes, or any prizes awarded, shall be resolved individually, without resort to any form of class action; (b) any and all claims, judgments and awards shall be limited to actual out-of-pocket costs incurred, including costs associated with entering this Sweepstakes, but in no event attorneys' fees; and (c) under no circumstances will entrant be permitted to obtain awards for, and entrant hereby waives all rights to claim punitive, incidental and consequential damages and any other damages, other than for actual out-of-pocket expenses, and any and all rights to have damages multiplied or otherwise 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.

### **14. Entrant's Personal Information**

Information collected from entrants is subject to Sponsor's Privacy Policy, which is available at <http://proximospirits.com/privacy/>. Each entrant acknowledges that, by entering the Sweepstakes, entrant has opted into Sponsor's Privacy Policy and, by opting into Sponsor's Privacy Policy, has read and accepted Sponsor's Privacy Policy. Any complaints or concerns regarding this policy should be directed to [sweepsteam@avid.com](mailto:sweepsteam@avid.com)

### **15. Sweepstakes Results**

For Sweepstakes results and/or a copy of these Official Rules, send a hand-printed, self-addressed, stamped envelope to "TINCUP Whiskey & IKON Pass Sweepstakes – PRO2062454W" on a 3" x 5" card and mail to: c/o Avid Marketing Group, P.O. Box 1008, Rocky Hill, CT 06067-1008. Requests for the winner list must be received by January 31, 2021.