



September 29, 2020

Karen Gabriele
Mark Anthony Services, Inc.
328 South Jefferson Street, Suite 1050
Chicago, IL 60661
on behalf of Mark Anthony Brands, Inc.
VIA E-MAIL

RE: mike's HARDER® Gaming System Sweepstakes

Dear Ms. Gabriele:

ISSUE: This correspondence is in response to your e-mail of September 15, 2020, in which you request legal review of a sweepstakes promotion to be conducted in Pennsylvania.

According to the official rules you provided, the “mike's HARDER® Gaming System Sweepstakes” promotion is scheduled to begin on October 15, 2020, and runs until December 31, 2020. To participate in the sweepstakes, interested individuals may enter at www.gaming.mikesarder.com (which may also be accessed by a QR Code), as further detailed in the official rules.¹

Twenty-five grand prize winners will be randomly selected to each receive one gaming system that includes a home video game console and one controller. One-hundred first prize winners will be awarded a \$50.00 Gaming Gift Card. The total approximate retail value of the prizes is \$20,000.00. 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 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:

¹ 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).

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.

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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. 20-240

mike's HARDER® Gaming System Sweepstakes
OFFICIAL RULES

NO PURCHASE NECESSARY. A PURCHASE WILL NOT INCREASE YOUR CHANCE OF WINNING. THIS SWEEPSTAKES IS OPEN ONLY TO LEGAL RESIDENTS OF THE 48 CONTIGUOUS UNITED STATES AND THE DISTRICT OF COLUMBIA WHO ARE 21 YEARS OF AGE OR OLDER AT TIME OF ENTRY. VOID IN ALASKA AND HAWAII AND WHEREVER PROHIBITED OR RESTRICTED BY LAW.

1. Eligibility: This Sweepstakes is open only to legal residents of the 48 Contiguous United States and the District of Columbia who are 21 years of age or older at the time of entry. Void in Alaska and Hawaii and wherever prohibited or restricted by law. Employees, officers and directors of the following entities and members of their immediate families (defined as parent, child, sibling, spouse) or same households (whether related or not) are NOT eligible to enter the Sweepstakes or win a Prize: Mark Anthony Brands Inc., its parent company, subsidiaries, divisions, affiliates, prize suppliers, advertising and promotion agencies, including Prize Logic LLC ("PrizeLogic"), as well as alcohol beverage licensees (i.e., alcohol beverage suppliers, importers, wholesalers, distributors and retailers). By participating in the Sweepstakes, entrants agree to abide by and be bound by these Official Rules and the decisions of Sponsor and PrizeLogic, LLC ("PrizeLogic"), the independent judging organization) which shall be final and binding in all respects. All federal, state and local laws apply.

2. Sweepstakes Period: Sweepstakes begins at 12:00:00 a.m. (ET) on October 15, 2020 and ends at 11:59:59 p.m. (ET) December 31, 2020.

3. How to Enter: There is one (1) way to enter this Sweepstakes.

Entry Method – Website (Accessed by Scanning Code): During the Sweepstakes Period, look for the QR Code®* at Point of Sale advertising materials in-store at wine/spirits shops and other retail locations where mike's HARDER® premium malt beverages are sold.

You are NOT required to purchase mike's HARDER® products in order to enter the Sweepstakes. Scanning the QR Code® from your handset (smart phone) will take you to the website www.gaming.mikesarder.com†. After verifying your age, complete the entry form with all required information, including your name, state of residence, and e-mail address. (Scanning the QR Code® alone will NOT result in entry; you must also complete and submit the entry form on the website to enter the Sweepstakes.) Internet access and a valid e-mail address are required to enter via this method. You may be charged for wireless Internet access according to the terms of your plan with your cellular or "wi-fi" provider. All entries must be received no later than 11:59:59 p.m. (ET) on December 31, 2020. Receipt of entry may be acknowledged but such acknowledgment does not constitute any representation of eligibility for the Sweepstakes nor is it otherwise binding upon Sponsor. All entries become the sole property of the Sponsor and receipt of entries will not be acknowledged (except perhaps as noted above) or returned. No alterations or forged entries are permitted. All entrants must have handset and digital service which is compatible with QR Code® technology as well as allowing for Internet access in order to enter the Sweepstakes. Prizes will be awarded to the name corresponding to the e-mail address provided on the entry form. **Third party usage fees may apply.** Please consult your wireless service provider regarding your pricing plan BEFORE entering the Sweepstakes. Check your phone capabilities for specific instructions as to scanning QR Code® and wireless Internet access. Wireless Internet access is not available in all areas.

†You may also enter the Sweepstakes by accessing www.gaming.mikesharder.com directly without scanning the QR Code®.

*QR Code® is a registered trademark of Denso Wave Incorporated and is used herein solely for reference purposes. No endorsement, sponsorship or other affiliation is intended or implied by such use.

4. Entry Restrictions: Limit one (1) entry per person, per day (12:00:00 a.m. [ET] until 11:59:59 p.m. [ET]) during the Sweepstakes Period. Violation of this entry limit will result in only the initial entry on a given day

being accepted. But Sponsor reserves the right to void all entries (and disqualify any entrant from the Sweepstakes altogether as well as to prohibit such entrant from participating in future promotions offered by Sponsor) if Sponsor determines in its sole discretion that a given person has engaged in egregious, blatant or repeated violations of the entry limit. Proof of submission of entry does not constitute proof of receipt of same or proof of entry. All entries become the sole property of the Sponsor. Sponsor and its agencies assume no responsibility for late, lost, illegible/garbled, incomplete, damaged, inaccessible, corrupted or jumbled entries/electronic transmissions, regardless of cause; and, all such entries are void.

5. Prizes: Twenty-five (25) Grand Prizes will be awarded. Winners will each receive one (1) Gaming System to include a home video game console and one (1) controller. Specific model and features of prize to be determined by Sponsor in its sole discretion. Approximate Retail Value of each Prize: \$600.00.

One Hundred (100) First Prizes will be awarded. Winners will each receive one (1) \$50 Gaming Gift Card (Gift Card will be chosen by Sponsor at its sole discretion and is subject to terms and conditions of use as indicated thereon). Retail Value of each Prize: \$50.00.

Alcohol beverages are not part of any prize. Total Approximate Retail Value of all Prizes: \$20,000.00.

6. Winners' Determination/Odds: Winners will be determined in a random drawing on or about January 2, 2021 by PrizeLogic, an independent judging organization, whose decisions will be final in all matters relating to this Sweepstakes. Odds of winning will be determined by the total number of eligible entries received. The winners will be notified by e-mail or phone (specific method[s] of notification being of Sponsor's sole choosing) on or about January 2, 2021 and will be required to sign an Affidavit of Eligibility, Liability and Publicity Release (where lawful) within **three (3) business days** of notification (or such shorter period of time as indicated thereon) or prize will be forfeited and may be awarded to another winner at Sponsor's sole discretion. In the event of noncompliance with this requirement or if potential winner cannot be contacted for any reason, prize will be forfeited without compensation of any kind and an alternate winner may be selected.

7. 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 prize substitution except at Sponsor's sole discretion. Prize is not redeemable/exchangeable for cash (except for gift card component of First Prize where required by applicable law). A prize is not transferable except with Sponsor's prior consent which may be granted or withheld in its sole discretion without liability of any kind. All federal, state and local taxes on a prize are each winner's sole responsibility. By accepting a prize, a winner waives the right to assert as a cost of winning a prize, any and all costs of redemption or travel to redeem a prize and any and all liability that might arise from redeeming or seeking to redeem a prize. All costs and expenses associated with prize acceptance and use that are not specified herein are the sole responsibility of each winner.

Taxes on a prize are each winner's sole responsibility. If value of a prize is \$600 or more, each winner will be issued W-9 IRS Tax Form with the Affidavit of Eligibility and Release and a subsequent 1099 IRS Form. Upon receipt of a prize, each winner shall be required to comply with any and all applicable federal, state and local law, rules and regulations.

Sponsor makes no warranties, and hereby disclaims any and all warranties, express or implied, concerning a prize furnished in connection with the Sweepstakes. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, A PRIZE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, AND SPONSOR HEREBY DISCLAIMS ALL SUCH WARRANTIES, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND/OR NON-INFRINGEMENT. THE ONLY WARRANTIES ON THE GAMING SYSTEM PRIZE (IF ANY) ARE THOSE OF THE PRIZE SUPPLIER.

8. Releases: By participating, entrants indemnify, release and agree to hold harmless (a) Mark Anthony Brands Inc. and its respective parent company, subsidiaries, divisions, affiliates, prize suppliers, and advertising and

promotion agencies (including PrizeLogic); and (b) the directors, officers, agents, representatives, shareholders, employees, successors and assigns of any of the above organizations (collectively, the “Released Entities”); from any and all liability arising from participating in the Sweepstakes, any Sweepstakes-related activity and/or the acceptance, receipt, possession or use/misuse of a prize (as applicable). Without limiting the foregoing, Mark Anthony Brands Inc., makes no representation, warranty or guarantee of any kind regarding a prize; this includes but is not limited to the warranty of merchantability or fitness for intended purpose. Except where prohibited by law, acceptance of a prize constitutes each winner’s agreement to the use of his/her name, address (city, state), likeness, voice, photograph or other indicia of persona and/or statements regarding the Sponsor or the Sweepstakes for advertising, publicity and trade purposes by Sponsor and its designees, without further compensation or any notice or approval of any kind.

9. Online/Website Entry Conditions: In the event of a dispute, entries will be deemed made by the authorized account holder of the e-mail address provided on entry form. The authorized account holder is the natural person who is assigned to the e-mail address by an internet access provider, online service, or other organization that is responsible for assigning e-mail addresses. Sponsor and its agencies are not responsible for lost, late, damaged, illegible, misdirected, incomplete entries, or for 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; or for defect of any kind which prevents a person from properly accessing the Sweepstakes online/website (including the QR Code[®] being misprinted, damaged, defective, irregular or otherwise non-functional). Sponsor is not responsible for incorrect or inaccurate entry information, whether caused by online/website visitors or by any human or technological error that may occur in the processing of entries in this Sweepstakes. Sponsor reserves the right, in its sole discretion, to cancel or suspend all or a portion of the Sweepstakes, should viruses, bugs or other causes beyond control of the Sponsor corrupt the administration, security or proper operation of the Sweepstakes.

10. Caution: ANY ATTEMPT BY A PERSON TO DELIBERATELY UNDERMINE THE LEGITIMATE OPERATION OF THIS SWEEPSTAKES IS A VIOLATION OF CRIMINAL AND CIVIL LAWS AND SHOULD SUCH AN ATTEMPT BE MADE, SPONSOR RESERVES THE RIGHT TO DISQUALIFY SUCH PERSON FROM THE SWEEPSTAKES (IF APPLICABLE), PROHIBIT SUCH PERSON FROM PARTICIPATING IN FUTURE PROMOTIONS OFFERED BY SPONSOR, AS WELL AS TO SEEK DAMAGES FROM ANY SUCH PERSON TO THE FULLEST EXTENT PERMITTED BY LAW.

11. Improper Conduct: Sponsor, in its sole discretion, may disqualify any entrant from participation in or use of any or all portions of this Sweepstakes, and refuse to award a prize if any entrant engages in any conduct Sponsor deems to be improper, unfair, otherwise adverse to the operation of the Sweepstakes or detrimental to other entrants of the Sweepstakes. Such improper conduct includes, without limitation, falsifying personal information required during entrant registration or prize claim, violating any term or condition stated here, accumulating entries through methods such as automated computer scripts or any other programming techniques, allowing others to use an entrant’s personal information for the purpose of accumulating entries, or intentionally trying to defraud, reverse engineer, disassemble or otherwise tamper with the computer programs/technology in connection with this Sweepstakes. Entrants agree that Sponsor may void a prize that an entrant may have won and/or require the return of a prize that an entrant may have won as a rule of such improper conduct. Entrants further acknowledges that any forfeiture of a prize and/or return of a prize shall in no way prevent Sponsor from pursuing other avenues of recourse such as criminal or civil proceedings in connection with such conduct.

12. Sponsor’s Rights: Sponsor reserves the right, in its sole discretion, to cancel, abbreviate, or suspend this Sweepstakes should it be compromised by computer virus, program bugs, non-authorized human intervention or other causes beyond the control of the Sponsor, including but not limited to fire, flood, epidemic, pandemic, earthquake, explosion, labor dispute or strike, act of God or public enemy, satellite or equipment failure, riot or civil disturbance, war (declared or undeclared), terrorist threat or activity, or any federal, state or local government law, order or regulation, order of any court or jurisdiction, without any compensation or liability to any entrant. Sponsor is not responsible for any typographical, technical, or other error in the printing of the offer, administration of the promotion or in the announcement of the prizes. In the event there is a discrepancy or inconsistency between

disclosures or other statements contained in any sweepstakes materials and the terms and conditions of the official rules, the official rules shall prevail, govern and control.

Sponsor assumes no responsibility for any damage to an entrant's or any other person's mobile device or computer which is occasioned by participating in the Sweepstakes or for any computer system, phone line, hardware, software or program malfunctions, or other errors, failures, delayed computer transmissions or network connections that are human or technical in nature. Without limiting the generality of the foregoing, Sponsor is not responsible for lost, interrupted, inaccessible or unavailable networks, servers, satellites, Internet service providers, or other connections; or for miscommunications, failed, jumbled, scrambled, delayed, or misdirected computer, telephone or cable transmissions; or for any technical malfunctions, failures, difficulties or other errors of any kind or nature; or for the incorrect or inaccurate capture of information, or the failure to capture any information. The preceding expressly includes but is not limited to any communications sent by or sent to Sponsor (including attempted use of the QR Code®) which is not properly and timely received and accessible by Sponsor or its agencies for any reason. Sponsor has the right, in its sole discretion, to disqualify any individual who is found to be tampering with the entry process or the operation of the Sweepstakes, to be acting in violation of these Official Rules, or to be acting in an unsportsman-like or disruptive manner, or with the intent to disrupt or undermine the legitimate operation of the Sweepstakes, or to annoy, abuse, threaten or harass any other person, and Sponsor reserves the right to seek damages and other remedies from any such person to the fullest extent permitted by law. Sponsor reserves the right to modify, suspend, or terminate the Sweepstakes if it determines, in its sole discretion, that the Sweepstakes is technically impaired or corrupted or that fraud or technical problems, failures or malfunctions or other causes beyond Sponsor's control have destroyed or severely undermined or to any degree impaired the integrity, administration, security, proper play and/or feasibility of the Sweepstakes as contemplated herein. If the Sweepstakes is modified, terminated or suspended, Sponsor will select the winners (if determined to be feasible in its sole discretion) from all eligible, non-suspect entries received (if any) in a manner determined by the Sponsor in its sole discretion to be fair, appropriate, and consistent with these Official Rules. Inclusion in such drawing shall be each entrant's sole and exclusive remedy under such circumstances, and, if not feasible, Sponsor shall not have any liability of any kind. Only the type and quantity of prizes described in these Official Rules are available to be won in the Sweepstakes. These Official Rules cannot be modified or amended in any way except in a written document issued in accordance with law by duly authorized representatives of Sponsor. The invalidity or unenforceability of any provision of these rules shall not affect the validity or enforceability of any other provision. In the event that any provision is determined to be invalid or otherwise unenforceable or illegal, these rules shall otherwise remain in effect and shall be construed in accordance with their terms as if the invalid or illegal provision were not contained herein.

13. Disputes: This Sweepstakes is governed by the laws of the State of Illinois, without respect to conflict of law/choice of law doctrines of Illinois (or of any other jurisdiction which would lead to the application of the law of any jurisdiction other than Illinois). To the fullest extent permitted by law, as a condition of participating in the Sweepstakes, entrants agree (a) that any and all disputes regarding the Sweepstakes which cannot be resolved between the parties shall be resolved individually, without resort to any form of class action, exclusively before a federal or state court located in Cook County, Illinois; (b) to the personal jurisdiction of such courts and to waive any right of inconvenient forum, change of venue or any like right; (c) that any claims, judgments and awards shall be limited to actual out-of-pocket costs incurred in entering the Sweepstakes (if any), but in no event attorney's fees, with all other forms of remedy – including but not limited to punitive, incidental, or consequential damages and injunctive relief – being expressly waived.

14. Winners' List: For a list of winners, please send a self-addressed stamped envelope to "GAMER", 328 S. Jefferson Street, Suite 1050, Chicago, IL 60661. All requests must be received by March 5, 2021. Winners' list will be available after March 19, 2021.

Sponsor: Mark Anthony Brands Inc., Chicago, IL 60661

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MIKE'S IS HARD. SO IS PRISON. DON'T DRIVE DRUNK ® PREMIUM MALT BEVERAGE.