



October 5, 2020

Kevin McCarty
Breakthru Beverage Pennsylvania
129 Hartman Road
North Wales, PA 19454
VIA E-MAIL

RE: Shaker Promotion - Consumer Giveaway

Dear Mr. McCarty:

ISSUE: This correspondence is in response to your e-mail dated July 14, 2020, in which you seek legal review of a proposed promotion to be conducted in Pennsylvania. You note in your e-mail that you are planning an on-premise promotion using a plastic cocktail shaker as a consumer giveaway. The cost of the plastic shaker is approximately \$2.00. The shaker will be sealed with a sticker indicating for consumer use only. You inquire as to whether you are able to place an instant rebate coupon pre-approved by the Pennsylvania Liquor Control Board (“PLCB”) inside of the shaker. The rebate coupon will be redeemable at the PLCB’s Fine Wine & Good Spirits stores.

OPINION: Section 493(24)(i) of the Liquor Code generally prohibits licensees, manufacturers, and the PLCB or any employee or agent of a licensee, manufacturer, or the PLCB, from offering or giving anything of value or from soliciting or receiving anything of value as a premium or present to induce directly the purchase of liquor or malt or brewed beverages. 47 P.S. § 4-493(24)(i). Similarly, section 493(24)(i) generally prohibits licensees, manufacturers, and other persons from offering or giving to trade or consumer buyers any prize, premium, gift, or other inducement to purchase liquor or malt or brewed beverages. Id. However, one of the exceptions to this prohibition is for advertising novelties of nominal value. Id.

The PLCB has defined “advertising novelties of nominal value” as items that have a wholesale cost of \$15.00 or less and contain advertising material. 40 Pa. Code § 13.52; Board Advisory Notice No. 10 (6th Revision). Advertising novelties of nominal value typically include items such as matches, disposable lighters, bottle or can openers, t-shirts, caps, corkscrews, and pens and pamphlets. Generally, such advertising novelty giveaways may be conditioned on the purchase of an alcoholic

beverage. However, licensees are prohibited from providing equipment or fixtures to be used as equipment or as a fixture in a licensed business. Thus, advertising novelties given to a licensee may not be used as equipment or as a fixture in a licensed business, although they may be passed along to consumers. If a licensee receives an advertising novelty from another class of licensee and uses it as equipment, instead of passing it along to a consumer, it could be the basis for a citation.

With regard to the plastic cocktail shaker, it appears that it would be considered an advertising novelty because it will not be used as equipment by a licensee, it will be passed along to consumers, and it costs approximately \$2.00 per shaker. Please note that this would only be approved as an advertising novelty if the cocktail shaker features manufacturer branding.

With regard to the rebate coupon portion of the program, section 493(24)(i) of the Liquor Code generally prohibits licensees from offering anything of value to induce the purchase of alcoholic beverages. 47 P.S. § 4-493(24)(i). However, section 493(24)(i) provides an exception for manufacturers and agents of manufacturers to offer monetary rebates on purchases of wine and spirits through the PLCB's Fine Wine & Good Spirits stores or purchases of malt or brewed beverages through distributors and importing distributors.

In this case, you noted that the consumer giveaway will be taking place at on-premise locations. It is assumed that this is referring to retail licensed premises, such as a restaurant licensee. Generally, retail licensees are prohibited from offering rebate coupons. However, if the rebate coupon being offered inside the advertising novelty meets several conditions, it would be permissible. These conditions are: (1) the rebate coupon is being offered solely by the manufacturer or an agent of the manufacturer; (2) the coupon is only redeemable at the PLCB's Fine Wine & Good Spirits stores (or a distributor or an importing distributor if the coupon is for malt or brewed beverages) and is not redeemable at the retail licensed premises; and (3) there is no purchase requirement in order to obtain the cocktail shaker.

Please note that although novelty giveaways may be conditioned on the purchase of an alcoholic beverage, in this case it would be considered an inducement under section 493(24)(i) if a consumer were required to purchase a cocktail shaker in order to obtain a rebate coupon. Therefore, you would be permitted to include a rebate coupon inside the cocktail shaker as long as the cocktail shaker was free to consumers.

Finally, although many manufacturers send promotional material to this office for prior approval, there is nothing in the Liquor Code that requires them to do so. Additionally, 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. You may wish to consult Advisory Notice No. 10 (8th Revision) on Trade Practices found at www.lcb.pa.gov/Legal/Documents/AdvisoryNotice for more information.

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
Michael Demko, Executive Director
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