Andy Beshear
Governor

Kerry B. Harvey
Secretary

Allyson C. Taylor
Commissioner

ALCOHOLIC BEVERAGE CONTROL

PUBLIC PROTECTION CABINET
500 Mero Street, 2NE33
Frankfort, Kentucky 40601
502-564-4850 (o)
502-564-7479 (f)

ABC ADVISORY OPINION 2020-002

October 20, 2020

Question:	"May Molson-Coors, a manufacturer and importer of malt beverages provide rebate coupons that are redeemable by main-in certificate on the purchase of (1) non-alcoholic products and (2) a combination of malt beverages and non-alcoholic products?"[1]
Requested by:	Christopher Wittman Assistant Secretary Molson Coors Beverage Company USA LLC
Syllabus:	So long as the manufacturer follows statutes and regulations regarding the advertisement and marketing of alcoholic beverages, the Department interprets the law to permit the use of rebate coupons on non-alcohol products and combinations of non-alcohol and alcohol products.
Statutes construed:	KRS 244.461(3)
Legal authority:	KRS 244.461(3); KRS 241.060(1); KRS 244.130.

Opinion of the Department of Alcoholic Beverage Control

The legislature amended KRS 244.461 this year in SB 99 to authorize manufacturers and importers of malt beverages to advertise and promote their alcoholic beverage products by use of rebate coupons. 2020 Ky. Acts Ch. 102 (SB 99). However, the statute is silent as to whether a

[1] This Advisory Opinion Request ("Request") was submitted under the process outlined in 804 KAR 6:020. The Department has deemed this Request issuable under 804 KAR 6:020, Section 2(1) as it "concerns the application and interpretation of alcoholic beverage control statutes and administrative regulations with regard to a particular act or transaction that the requestor is taking or plans to take," namely permitting minors on a licensed premises with the assumption that it is an "entertainment facility" under KRS 244.085(5)(a).

malt beverage manufacturer or importer may offer rebate coupons on non-alcoholic products or a combination of alcoholic and non-alcoholic products. The Requester, Molson-Coors Beverage Company, LLC, (hereinafter "the Requester"), submitted a request to the Department for an advisory opinion as to whether malt beverage manufacturers are limited to advertising and promoting their malt beverage products only by mail-in certificates for rebates on the purchase of alcoholic beverage products, or if they can also offer rebate coupons for non-alcoholic beverage products or a combination of alcoholic beverage and non-alcoholic-beverage products.

Previously, only manufacturers and importers of distilled spirits and wine were permitted to use rebate coupons to advertise or promote their alcoholic beverage products. Now, though malt beverage manufacturers and importers may use rebate coupons, unlike for distilled spirits and wine, malt beverage manufacturers and importers are not permitted to offer rebate coupons to be redeemed at the point of purchase, only by mail-in certificate. KRS 244.461(1) & (3). These mail-in rebate coupons may offer consumers "a cash refund or nonalcoholic beverage merchandise from the manufacturer, importer, or clearinghouse acting for the manufacturer or importer, upon submission by the consumer of the required proof of purchase." KRS 244.461(3).

Kentucky law generally permits alcoholic beverage licensees to "advertise or cause to be advertised in any manner *any product that the licensee is licensed to manufacture or sell* unless prohibited by administrative regulations promulgated by the board." KRS 244.130(1) (emphasis added). However, the Requester is asking whether a licensee may also advertise products the licensee is not licensed to manufacture or sell by offering rebates on malt beverage products to purchasers of those other products.

Pursuant to the authority under KRS 243.130, the Board promulgated 804 KAR 1:030, which enumerates "Prohibited alcoholic beverage advertisements." The Requester's inquiry implicates two of these enumerated advertisements worthy of note at this time, § 1(10) and (12). In relevant part, 804 KAR 1:030 §1(10) states that advertisements cannot use the terms "free" or "complimentary" alcoholic beverages "unless the statement references permissible manufacturer

or wholesaler coupons," which does not answer the Requester's inquiry, but rather permits otherwise prohibited language to be used when in concert with permissible coupons. 804 KAR §1(12) prohibits advertisements, or in this case rebate coupons, from "targeting minors" or undertaking actions "the primary purpose of which is to initiate, maintain, or increase the incidence of minor consumption of alcoholic beverages." The non-alcohol products on which the Requester intends to offer rebates if sold in combination with malt beverages include chips and similar snacks, which are often eaten by minors, but cannot be said to primarily be eaten by minors such that offering rebates on them when sold in combination with malt beverages would "primarily" target minors.

The Department is unable to find any other statutes or regulations that would prohibit, *per se*, malt beverage manufacturers from offering rebates on non-alcohol products or combinations of non-alcohol and alcohol products. Therefore, so long as the manufacturer follows statutes and regulations regarding the advertisement and marketing of alcoholic beverages, the Department interprets the law to permit the use of rebate coupons on non-alcohol products and combinations of non-alcohol and alcohol products.

Allyson Taylor
Commissioner
Department of Alcoholic Beverage Control