

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF FEBRUARY 25, 2014
REFERRED FROM: COUNSEL'S OFFICE

2014-00488

REASON FOR REFERRAL
REQUEST FOR DIRECTION

DISPLAY POINTS GROUP, INC.

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City office on FEBRUARY 25, 2014 determined:

**STATE OF NEW YORK
LIQUOR AUTHORITY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

In re:

PETITION FOR DECLARATORY RULING
BEFORE THE NEW YORK STATE LIQUOR
AUTHORITY, DIVISION OF ALCOHOLIC
BEVERAGE CONTROL,

Display Points Group, Inc.,
Petitioner

PETITION FOR DECLARATORY RULING

This Petition for Declaratory Ruling ("Petition") is submitted to the New York State Liquor Authority (the "Authority") pursuant to New York Alcoholic Beverage Control Law section 98.1. Display Points Group, Inc. ("Petitioner" or "DP"),¹ files this Petition seeking a Declaratory Ruling from the Authority that Petitioner's proposed business model does not violate New York's Alcoholic Beverage Control ("ABC") Law, codified as Chapter 3-B of the New York Consolidated Laws and related administrative regulations, including all applicable laws pertaining to advertising and promotional activities conducted on the licensed premises of a vendor engaged in the retail sale of alcohol beverages.

¹ The Petitioner, Display Points Group, Inc. has its principal place of business located at 999 Douglass Avenue, Suite 2225, Altamonte Springs, FL 32714; the Petitioner's telephone number is (407) 672-5757; the Petitioner's telefax number is (727) 865-5195.

ISSUE PRESENTED

Whether New York's ABC Law allows a bona fide marketing and promotional company that is not licensed to sell alcohol beverages, and is neither affiliated with, financed by, nor interested in any alcohol beverage manufacturer, distributor, or retailer, to install "digital table tents" comprised of tabletop-based, interactive video monitors and related broadcast equipment for operating a proprietary closed-circuit television and information network inside the licensed premises of selected on-premises retail vendors, and provide both broadcast and hard drive based content for the network that would include advertisements for alcohol and non-alcohol products and services, under the following scenario: DP installs and operates its proprietary broadcast network inside a retail vendor's licensed premises; as consideration for the use of space at the licensed premises, DP pays the host retail vendor a monthly lease fee based on the total number of non-alcohol beverage advertisements featured in its broadcasts during that month.

RELEVANT FACTS AND CIRCUMSTANCES

In support of its position that DP's proposed business model is not prohibited by New York's ABC Law, DP sets forth the following facts and circumstances, which the Authority may rely upon in issuing the requested Declaratory Ruling:

A. Overview of DP and its Business Model

1. DP is a bona fide for-profit corporation engaged in the business of marketing and promoting consumer goods and commercial services. DP creates and implements advertising that is directed to specifically targeted consumers: affluent young adults between 25 and 35 years of age with substantial disposable income who frequently make leisure and non-necessity purchases.

2. DP owns the intellectual property behind the digital table tent—an electronic device that is designed to mount on a tabletop and provide video and electronic displays for consumers.² DP advertises and promotes its clients' goods and services through video broadcast and interactive digital content ("Content") that is presented through a proprietary local area network ("Network") which DP deploys at selected host retail venues (each a "Host Venue"). The technology behind the Network utilizes a combination of satellite broadcasting and wireless router-based digital transmissions to display the Content on tabletop-mounted, electronic-display monitors, i.e. the digital table tents, which DP installs inside each Host Venue.

3. This marketing model is similar to, but a step ahead of, an advertiser buying advertising time on traditional television; unlike traditional television programming which is completely passive and is broadcast indiscriminately to the public at large, the Network allows customized, demographic-specific, and interactive messages to be focused directly at a selected population of targeted consumers.

4. To maximize the delivery of its advertising messages to their intended audiences, DP strategically selects Host Venues based on their ability to attract high numbers and traffic of targeted consumers. Host Venues commonly include, but are not limited to, upscale licensed premises such as sports-themed restaurants, taverns, and clubs where alcohol beverages are sold and consumed in a convivial environment. Host Venues also may include unlicensed locations, such as computer hardware and software retail stores, retail malls, entertainment parks, etc. where affluent, young adults are likely to congregate.

² Images of the digital table tent are attached hereto as Exhibit "A."

5. While some Host Venues are licensed to sell alcohol beverages, DP does not engage directly or indirectly in the sale of alcohol beverages. DP is not licensed to sell alcohol beverages at any level of any state's three-tier system. Nor is DP owned, affiliated with, or financed by any alcohol beverage licensee.

6. Even though DP is not an alcohol beverage licensee, it nevertheless understands and appreciates the heavily-regulated nature of the alcohol industry. Consequently, for each jurisdiction where DP intends to operate its Network and install the digital table tents at a Host Venue that is licensed for the sale and consumption of alcohol beverages, company representatives typically meet with state alcohol beverage regulatory officials to review the company's business model and confirm that its operation does not violate the alcohol beverage laws of that state. For example, DP met with alcohol regulators in Texas, where the company initiated its business model for operating the Network at Host Venues licensed for on-premises sales and service of alcohol beverages. A copy of the correspondence regarding the compliant nature of the DP business model from the Texas Alcoholic Beverage Commission is attached hereto as Exhibit "B." Additionally, DP obtained a favorable Declaratory Statement from the Florida Division of Alcoholic Beverages and Tobacco ruling that its business model is valid under Florida law, which is attached hereto as Exhibit "C."

7. DP is now proposing to roll out the digital table tents in the State of New York. As in other states, DP will select Host Venues that include on-premises alcohol beverage retail vendors, as well as various unlicensed commercial establishments that fit the DP business model.

B. DP's Proprietary Broadcast and Electronic Network

8. The DP business model derives revenue by delivering the promotion and advertisement of participating sellers' goods and services directly to targeted consumers through the use of DP's proprietary digital table tents. In contrast to public billboards or commercial radio broadcasts, which are both passive media, viewed or heard by a broad range of consumers, advertisements included as Content on the Network are viewed only inside Host Venues, where the likelihood of perception by targeted consumers is significantly higher. Moreover, DP's digital table tents offer advertisers the option to craft interactive content that directly engages consumers at the table where the digital table tent is based.

9. Each participating advertiser pays DP a marketing fee to broadcast its advertisement over the Network for a fixed period of time each hour. Advertisements generally contain brand-specific advertising and promotional messages. Most advertisement segments last 15–30 seconds each. In some instances (typically interactive content pieces), the marketing fee is calculated based on consumer interaction ("hits") rather than fixed amounts of display time.

10. At any given time, examples of DP's non-advertising Content may include, but are not necessarily limited to, professional sporting events, performing arts videos, interactive games, consumer education and information content (e.g. recipes, trivia fun facts, lawful coupons or discounts, etc.), and public service announcements.

11. DP broadcasts all Content through a dedicated, WiFi-supported, local area network that DP owns and controls. Although the Content is broadcast through the

Network using a WiFi connection, DP does not provide free WiFi internet access to the Host Venues or its customers.

12. The Network's advertising services are available for the marketing or promotion of a broad range of goods and services including, but not limited to, alcohol beverages. DP's advertising services are not granted or allocated on an exclusive basis to any advertiser. Moreover, in the context of the alcohol industry, Content is not limited to any particular segment of the alcohol industry (i.e. malt beverages, wine, and distilled spirits), ensuring that no one product segment or manufacturer monopolizes the Network's advertising opportunities for the alcohol beverage category.

13. DP maintains exclusive control over the Content, including any alcohol beverage advertisements. DP reviews each submitted advertisement and retains the sole discretion to accept or reject any advertisement for inclusion in the Content.

14. DP's digital table tents, and the related equipment that DP installs at Host Venues, are positioned inside the premises of the Host Venue and powered by the retailer's normal power supply. DP installs the digital table tents so that they are viewed by DP's target consumers, i.e. the Host Venue's patrons and customers. The digital table tents are not installed to be viewed by members of the public at large from outside the Host Venue.

15. Moreover, the Network cannot be used to broadcast any other media content (i.e. content from other television networks or cable programming). All Content broadcast over the Network is provided and controlled solely by DP.

C. *The Advertisers*

16. The advertising segments that are included in the Content that DP broadcasts on its Network are provided by commercial advertisers. These advertisers are producers of consumer goods and providers of consumer services that span a broad spectrum of commercial activity.

17. Examples of advertisers who will utilize DP's Network include: automobile manufacturers; cell phone companies; the United States Armed Services; television, movie, and other media companies; clothing manufacturers; banks and financial institutions; general retail merchandise stores; professional sports associations and their constituent teams; recreational vehicle manufacturers; and food and beverage manufacturers, including the suppliers of alcohol and non-alcohol beverages.

18. Advertisers who submit their own advertisement video segments for inclusion by DP in the Content must certify that the submitted advertisement does not violate federal or state laws, including alcohol beverage laws.

19. Advertisers have no control or input regarding DP's selection of Host Venues. DP retains the sole discretion to accept, reject, or terminate Host Venues.

20. Advertisers receive no guarantee from DP that the goods or services advertised by any advertiser will be sold, served, or otherwise offered by all or any of the Host Venues.

D. *Participating Host Venues*

21. Host Venues are retail locations that DP, in its sole discretion and business judgment, deems qualified to complement the DP business model. DP seeks venues that are likely to attract affluent young adults between 25 and 35 years of age with substantial

disposable income who frequently make leisure and non-necessity purchases. DP selects Host Venues based on consumer demographics related to the venue's business.

22. Host Venues will include alcohol beverage licensees and non-licensees.

23. There is no requirement that a Host Venue sell, serve, or provide products or services that are advertised on the Network. Similarly, Host Venues pay no fee to participate; the venue's only obligation is to allow installation of the digital table tents and Network equipment as well as provide power for the system from the retailer's normal power source.

24. Host Venues that are licensed to sell alcohol beverages at retail are not identified in any advertisement included in the Content that is supplied by, paid for, or otherwise furnished to the Network by an alcohol beverage manufacturer or wholesale distributor.

25. No Host Venue can control the Content that is broadcast on the Network. There are only two ways in which a Host Venue can impact the operation of DP's Network.

(a) First, the Host Venue always retains the ability to turn the Network on and off.

(b) Second, the Host Venue has the option to utilize DP's Network outside of regular business hours to display self-supplied content relating to collateral uses, such as closed-circuit training of the retailer's staff.³

³ As electronic, interactive training becomes more commonplace, the Network and digital table tents presents an attractive vehicle for promoting responsible vending practices. The Network also can be used by DP to communicate content from alcohol regulatory agencies, either to all Host Venues in the form of public service messages, or on a Host Venue-specific basis through inclusion in content that the Host Venue presents to its employees using the Network outside of regular business hours.

E. No Relationship Between DP and the Alcohol Industry

26. As noted previously, DP is a bona fide, independent marketing company. DP is not owned, controlled, financed by, or affiliated with, any alcohol beverage manufacturer, wholesale distributor, or retail vendor.

27. DP retains ownership of, and control over, all digital table tents and Network-related equipment utilized in connection with its business. No alcohol beverage manufacturer, wholesale distributor, or retail vendor has any ownership in any aspect of the Network or digital table tents.

28. DP retains sole control of all Content broadcast over the Network. No alcohol beverage manufacturer, wholesale distributor, or retail vendor has any interest in the Content, other than with regard to a specific advertising segment that is submitted to DP by that industry member in its capacity as an advertiser. However, an advertiser cannot control the timing or sequence of Network broadcasts generally, or of its own particular advertisement segment(s).

29. Likewise, a Host Venue (whether or not licensed to sell alcohol beverages) cannot control the timing or sequence of Network broadcasts.

F. Compensation Between DP, the Advertiser, and the Host Venue

30. As noted above, DP collects marketing fees from its participating advertisers. Participation as an advertiser on the Network is contracted for at arm's length and marketing fees are negotiated at fair market value.

31. DP retains all marketing fees collected from its advertisers. DP does not act as a conduit or otherwise pass through any payments received from advertisers to Host Venues.

32. Where permitted by law,⁴ DP compensates the owner/operator of a Host Venue for the lease of on-premises space to install and maintain the digital table tents and related broadcast equipment comprising the Network.

33. Depending on the laws of the relevant jurisdiction, DP's business model will employ one of three different compensation options for providing lease payments or other non-monetary consideration to the Host Venue in return for access to the premises and space to install the digital table tents and related equipment.

34. For the purposes of this Petition, however, DP's business model for the State of New York will utilize the following compensation structure: DP installs its Network and digital table tents at a Host Venue's premises and pays the Host Venue a monthly fee, based on the total number of non-alcohol beverage advertisers featured per month, for DP to lease the space used by the Network and for the Host Venue to maintain the digital table tents.⁵

35. The allocation of time for alcohol and non-alcohol advertisements, which will determine how the monthly lease fee is computed, will be as follows: Advertising

⁴ The "tied-house evil" laws of numerous states prevent alcohol manufacturers and wholesale distributors from paying money or providing inducements directly or indirectly to alcohol retailers. To avoid the unlawful practice of using sham marketing companies as conduits to "pass through" otherwise impermissible payments or inducements, some states construe their tied-house laws to restrict or even prohibit an unlicensed marketer's ability to pay monetary compensation to an alcohol retailer when: (a) the marketer receives monetary compensation from an alcohol manufacturer or wholesale distributor to (b) promote alcohol beverages through (c) advertisements or promotional materials that are provided to licensed retailer. Depending on the circumstances (e.g. the independence of the marketer, the relationship between the monetary compensation paid by the alcohol supplier relative to the money received by the retailer, etc.), alcohol regulators in some states could deem such promotional payments to constitute impermissible inducements from the alcohol supplier that are passed through the marketer to the retailer in violation of the tied-house laws.

⁵ The other two compensation structures that could be used in other states include: (1) DP pays each Host Venue a flat monthly lease fee to lease the space used by DP's Network and maintain the digital table tents, regardless of the number of advertisers providing advertisements to the Content or (2) DP pays no lease fee to any Host Venue participating in the Network. Instead, as non-monetary, comparable-value consideration provided by DP in return for space and power provided by the Host Venue to accommodate DP's digital table tents and related equipment, DP allows the Host Venue to utilize twenty percent (20%) of the advertising time available in each hour of broadcast Content to feature the Host Venue's own electronic content.

content will constitute roughly 35% of the total Content (21 minutes per hour)—the 39 minutes of non-advertising time will be divided between up to 15 minutes of In-store Promotions from the Host Venue, for example, daily food and beverage specials that are traditionally promoted on static table tents, and 24 minutes of Real-time Content including breaking news, weather updates, and sports highlights—of the 21 minutes of advertising time, alcohol beverage advertisements would comprise at most 25% of the total advertising time (5 minutes and 15 seconds), while the remaining 75% of the advertising time (15 minutes and 45 seconds) will be composed of non-alcohol beverage advertisements.

36. The funding formula will be based on these 15 minutes and 45 seconds of non-alcohol beverage advertising time, or 26.25% of the total Content. The Host Venue will be compensated exclusively from 5–10% of the revenue generated from these non-alcohol beverage advertisements. Thus, the funding formula for the lease fee will take a percentage of the total revenue derived from the non-alcohol beverage advertisements, which would be at most 2.6% of the entire revenue generated from the Content. To reiterate, DP will not compensate a Host Venue with lease payments that are calculated by taking into account the number or value of any alcohol beverage advertisements contained in the Content. Rather, DP will compensate the Host Venue by paying a monthly fee based upon a small percentage of the revenue derived from non-alcohol beverage advertisements during that month.

37. As mentioned above, up to 15 minutes of each hour of operation would be available to the Host Venue to display In-store Promotions including menu items, special offers, events, charities, etc. The Host Venue would not be permitted to display any

material or reference to alcohol beverages that is subsidized in any way by industry members or that acts as a subterfuge to violate any alcohol beverage law. Moreover, none of the funds derived from alcohol beverage advertising will go towards underwriting the In-Store Promotions. To facilitate compliance with New York's ABC laws, and to provide an additional layer of protection against potential undue influence from industry members, DP will have the ultimate power to approve the Host Venue's proposed content. Accordingly, the Host Venue will have no ability to independently place promotional materials on the Network—only DP has the technical capacity to actually display Content through the Network—so any promotion must be submitted to and approved by DP. Essentially, DP must approve any promotional material that a Host Venue wants to include in its allocated In-store Promotional time and only after DP approves the proposed promotion will it appear on the Network. Consequently, DP's position as a gate-keeper for promotional materials will deter any attempt by an industry member to unduly influence the retailer's promotional activities. Although the Host Venues will be allowed to submit material to DP, they will have no control, direct or indirect, over the materials displayed because DP retains ultimate control over the Content that is displayed through the Network.

LEGAL ANALYSIS

Under Petitioner's proposed advertising business model, numerous digital table tents utilizing DP's proprietary technology would be installed at the licensed premises of one or more retail vendors, visible only within each vendor's premises. In the context of New York's ABC laws, the installation and operation of an electronic broadcasting system by a bona fide marketing and promotion company that is not licensed to sell

alcohol, and is not directly or indirectly affiliated with any alcohol beverage manufacturer or wholesale distributor, should be permissible so long as the enterprise does not: (1) violate interior signage laws imposed on retail vendors or (2) violate the tied-house evil laws by constituting a gift or service to a retailer from manufacturers or distributors of alcohol beverages.

A. *DP is not a Licensee*

DP is not a licensee.⁶ DP is not engaged, either directly or indirectly, in the sale of alcohol beverages.⁷ Nor does DP generate or receive revenue based on the sale of alcohol beverages. To the extent that either DP's advertisers or its Host Venues are members of the alcohol industry, DP derives revenue from the advertisers solely through a contractual advertising relationship with the licensee. Consequently, DP is not an entity whose business model requires an alcohol beverage license within the meaning of New York's ABC Law.

B. *Installation of the Network and Display of the Content does not Violate Signage Laws for Licensed Retail Premises*

Under New York's alcohol beverage regulations, "[s]igns may be displayed in the interior of premises licensed to sell alcoholic beverages for on-premises consumption."⁸ Rule 83.3 permits licensed on-premises retailers to display interior signs without restrictions; the section only imposes limitations on window displays.⁹ Petitioner proposes to install numerous digital table tents and other broadcast-related equipment on

⁶ "'Licensee' means any person to whom a license has been issued pursuant to [the Alcohol Beverage Control Law]." N.Y. Alco. Bev. Cont. Law § 3(17) (McKinney 2012).

⁷ "'Sale' means any transfer, exchange or barter in any manner or by any means whatsoever for a consideration, and includes and means all sales made by any person, whether principal, proprietor, agent, servant or employee of any alcoholic beverage and/or a warehouse receipt pertaining thereto." *Id.* § 3(28).

⁸ N.Y. Comp. Codes R. & Regs, tit. 9, § 83.3(a) (2012).

⁹ *See id.* § 83.3(c). Relevant to this Petition, windows displays may not be "displayed in a manner which obstructs a clear and full view into the interior of said premises from the street." *Id.* § 83.3(c)(3).

the licensed premises of select retail vendors to broadcast advertisements provided by the suppliers of consumer goods and services including, but not limited to, alcohol beverage manufacturers. These digital table tents and related equipment constitute “electric graphic display” signs within the meaning of Rule 83.1 of New York’s Compilation of Codes, Rules, and Regulations.¹⁰

As reflected by the Petitioner’s factual representations, neither the Network’s equipment nor digital table tents are positioned in a window of any Host Venue’s licensed premises; they are all relatively small 5” x 7” units, and are mounted on tabletops in the venue premises so as to be accessible to the particular consumers sitting at each table. The digital table tents are interior signs, rather than window displays or exterior signs, because they are not installed to display to, or be viewed by, members of the public at large outside the Host Venue, nor are they positioned in a way that obstructs a clear view of the interior of the premises. Consequently, the digital table tents constitute permissible interior signs under New York’s ABC Law.

New York’s alcohol beverage rules contain an additional provision concerning “inside signs.”¹¹ Rule 86.4 permits manufacturers or wholesalers to furnish inside signs to retailers under certain conditions.¹² Inside signs include “posters, placards, designs, mechanical devices and window decorations which bear advertising matter, and have no secondary value and are of value to the retailer only as advertising.”¹³ This provision, however, should not affect the legality of DP’s business model. First, “inside signs,” for

¹⁰ “Sign means any sign, poster, placard, design, device, statuette, decalcomania, beer tap marker or graphic display, printed, painted or electric, bearing the name, trade name, trademark, insignia, symbol or product slogan of a manufacturer or wholesaler of alcoholic beverages or the trade name, trademark, insignia, symbol, design or label of a brand of alcoholic beverages.” *Id.* § 83.1.

¹¹ *See id.* § 86.4.

¹² *Id.*

¹³ *Id.*

the purposes of Rule 86.4, are different from “interior signs,” for the purposes of Rule 83.3 described above. Although the digital table tents have the secondary value of providing a screen to display the Content, they should be properly classified as interior signs because they are more analogous to “electric graphic displays” than the items listed as examples of “inside signs.” Consequently, Rule 83.1 should not apply and the digital table tents should be not subject to the secondary-value prohibition.

More importantly, Rule 86.4 should not apply because this inside sign provision is concerned with regulating what upper-tier industry members may provide to retailers including, for example, prohibiting payments to retailers to display the inside signs or for any expenses incidental to their use. As previously discussed, however, DP is not an industry member nor is it affiliated with, financed by, or interested in an industry member. Therefore, because the inside sign provision should not apply to the digital table tents, the digital table tents should be classified as permissible interior signs under Rule 83.3.

C. DP’s Business Model and the Installation of the Network and Display of the Content does not Violate the Tied-House Laws or Constitute a Gift or Service

The tied-house evil provisions of the New York ABC Law are codified in section 101 of the New York Consolidated Laws. In addition to prohibiting alcohol beverage manufacturers and wholesale distributors from having any direct or indirect interest in a licensed retail vendor,¹⁴ New York’s tied-house evil laws also regulate the gifts or services that a vendor may receive.¹⁵ Specifically, it is unlawful for manufacturers or wholesalers to “[m]ake any gift or render any service of any kind whatsoever, directly or

¹⁴ See N.Y. Alco. Bev. Cont. Law § 101(1)(a).

¹⁵ *Id.* § 101(1)(c); see also N.Y Comp. Codes R. & Regs, tit. 9, §§ 86.1–86.17.

indirectly, to any person licensed under this chapter which in the judgment of the liquor authority may tend to influence such licensee to purchase the product of such manufacturer or wholesaler.”¹⁶ Similarly, licensed retailers are prohibited from receiving these gifts or services, except as otherwise permitted by rule.¹⁷

Under Petitioner’s facts, the Host Venues that are licensed as retail vendors of alcohol beverages do not receive a gift or service from a manufacturer or wholesaler because DP provides the digital table tents and supplies the Content that is broadcast over the Network. As noted by the Petitioner’s facts:

- DP has sole ownership and control of the Network, the Content, and the digital table tents that display the Content; the Host Venue is essentially a passive venue.
- The Host Venue receives no money or other item of material value, directly or indirectly, from any alcohol beverage advertiser.
- No alcohol-related advertisement contained in the Content references or identifies any Host Venue.
- Neither the advertiser nor the Host Venue has the ability to control the sequence or frequency of an advertisement’s presentation within the Content.
- The Host Venue’s compensation from DP for permitting installation of the Network is calculated based upon the number of non-alcohol advertisements that are broadcast in the Content each month: the Host Venue will be compensated exclusively from 5–10% of the revenue generated from these non-alcohol beverage advertisements. Thus, the funding formula for the fee will take a percentage of the total revenue derived from the non-alcohol beverage

¹⁶ N.Y. Alco. Bev. Cont. Law § 101(1)(c).

¹⁷ N.Y. Comp. Codes R. & Regs, tit. 9, § 86.1.

advertisements; at most, the fee would be 2.6% of the entire revenue generated from the Content.

New York's tied-house evil law makes clear that alcohol beverage manufacturers and distributors are not to be engaged in business with retail vendors. Under DP's business model, based on the facts as presented above, licensed retail vendors who participate as Host Venues will not receive anything of value directly or indirectly from sellers who advertise on the Network. Advertisers have no ability to control DP's selection of Host Venues; nor can they dictate the sequence or frequency with which their advertisements are broadcast over the Network. The Host Venues, in turn, have no obligation to any advertiser. In fact, each Host Venue retains the ultimate control over the Network—the ability to turn the system on and off.

The purpose of the tied-house evil and gifts and services laws is to prevent suppliers of alcohol beverages from having an interest in, or undue influence over, retailers.¹⁸ DP is a bona fide marketing company; it is not a subterfuge for exerting influence or passing money from upper-tier industry members to licensed retail Host Venues. While the alcohol beverage advertisers pay DP a marketing fee to incorporate their advertisements into the Content that is broadcast to the digital table tents, this money is essentially sequestered from the Host Venues. In fact, DP's leasing fee to Host Venues for using the retailer's table space to display the digital table tents is based on the sale of non-alcohol beverage advertisements. Thus, there is no money being exchanged between upper-tier alcohol beverage advertisers and licensed retail Host Venues.

¹⁸ See New York State Liquor Authority, Declaratory Ruling 2012-00957D, 3 (March 27, 2012), available at http://www.sla.ny.gov/system/files/2012-00957D-Tied-House_and_Gifts_Services_Laws_to_Sponsorship_Agreements.pdf.

Additionally, Petitioner is an unlicensed, unrelated third-party entity, not an upper-tier licensee that is covered by the tied-house laws. Thus, DP's providing the digital table tents and broadcasting the Content to retail Host Venues does not violate the tied-house evil or gift and services provisions. To support this contention, Petitioner relies on a March 27, 2012 Declaratory Ruling from the Authority that found a particular business practice permissible given the appropriate separation via an unlicensed third-party between a licensed retailer and suppliers and distributors.¹⁹ Given that DP acts as a barrier between the upper-tier industry members and the retailer Host Venues by controlling the Content and allocating the leasing fees to Host Venues from revenue derived from non-alcohol beverage advertisements, there is no way for alcohol beverage advertisers to influence the independent business judgment of licensed Host Venues. Thus, DP's business model is permissible under New York ABC Law as it does not violate the tied-house evil provisions.

Moreover, although the Content is broadcast through a WiFi connection, DP does not provide free WiFi internet access to consumers; this business model is in direct contrast to the impermissible business plan at issue in a June 2009 Opinion Letter from the Authority.²⁰ In that letter, a company sought a ruling as to the permissibility of its proposed business plan that sought to provide video screen displays that would include alcohol beverage advertisements. The Authority opined that the business plan incorporated impermissible gifts or services to licensed retailers. It noted as problematic, for example, the fact that there would be free WiFi internet service that could be utilized by the venue's patrons and that the revenue utilized to underwrite the costs of providing

¹⁹ *Id.*

²⁰ See Opinion Letter from Thomas J. Donohue, Counsel to the New York State Liquor Auth., to Morton Siegel, Esq. and Ross Cassabonne, Chairman and CEO, aCent eSolutions, LLC.

the services would be derived from alcohol beverage suppliers and wholesalers.²¹ Although the device at issue in this Opinion Letter may share similar characteristics with DP's digital table tents, DP's Network does not provide free WiFi internet access to the Host Venue or its customers. Additionally, DP's business model and compensation structure is different from the one at issue in the Opinion Letter because it pays a lease fee to Host Venues based on money derived from non-alcohol beverage advertisements, not from alcohol beverage suppliers and wholesalers. Accordingly, and in contrast to the Opinion Letter, DP's business model complies with New York's ABC Law.

CONCLUSION

Based upon the facts presented by the Petitioner, DP's business model does not violate New York's ABC Law. The installation and operation of an electronic advertising network using digital table tents by a bona fide marketing and promotion company that is not licensed to sell alcohol, and is not directly or indirectly affiliated with any alcohol beverage manufacturer or wholesale distributor, is permissible under Petitioner's facts because the enterprise does not violate interior signage laws imposed on retail vendors; all of the Network equipment is located within the Host Venue and the digital table tents are installed for viewing by patrons inside the venue, as opposed to window displays or exterior signs that can be viewed by members of the public at large from outside the venue. These facts demonstrate that the Network and digital table tents are in compliance with the electric sign category of the interior sign provisions of Rule 83.3, and are not subject to Rule 86.4.

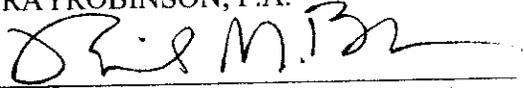
²¹ *Id.*

Likewise, DP's business model does not allow suppliers or wholesaler distributors to provide gifts or services to participating retail vendors. DP is a bona fide, independent marketing company, and its business model allows for no tied-house arrangements to be created between upper-tier alcohol beverage advertisers and licensed retailer Host Venues. Additionally, the facts set forth in the Petition demonstrate that DP's business model does not operate as a subterfuge whereby alcohol manufacturers or wholesale distributors furnish or supply items of value to retail vendors in violation of New York's tied-house evil laws. Consequently, the purpose of the tied-house laws is not violated because suppliers or wholesalers cannot exert any influence over retailers because (1) they do not provide money, gifts, or services to retailers and (2) they have no control over the Content that is broadcast through the Network to the digital table tents on the retailer's premises. And, to reiterate, none of the marketing fees that DP receives from alcohol beverage advertisers will go to licensed retail Host Venues. The leasing fee that Host Venues receive is not connected to money provided by licensed suppliers or wholesalers because, as described above, the payment is derived from non-alcohol advertisements.

For the reasons set forth above, the Petitioner respectfully requests that the Authority issue a Declaratory Ruling pursuant to the New York State Administrative Procedure Act section 204 and Alcoholic Beverage Control Law section 98.1, declaring that DP's business model as defined herein does not violate New York's ABC Laws.

Respectfully submitted,

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