

Review of Proposal of
Branding Railroad Commissary Carts

DECLARATORY
RULING

Preliminary Statement

Section 98.1 of the Rules of the State Liquor Authority, (9 NYCRR subtitle B) provides that any person may apply to the Authority for a declaratory ruling on the applicability of the Alcoholic Beverage Control Law (“ABCL”), or the Rules of the Authority, to any person, property, or state of facts.

By petition dated June 21, 2010, a request for a declaratory ruling was submitted by Richard L. Gans, Esq. counsel for Metro-North Railroad (“Metro-North”), the Metropolitan Transit Authority (“MTA”) and the Long Island Rail Road Company (“LIRR”) (hereinafter collectively referred to as “the Petitioners”). The MTA seeks to adopt a sponsorship agreement between the MTA and a manufacturer or wholesaler of alcoholic beverages to brand the Railroad’s commissary carts.

Relevant Statutes

ABCL § 101(1)(a) provides, in part, that it is unlawful for a manufacturer or wholesaler licensed under the ABCL to be “interested directly or indirectly in any premises where any alcoholic beverage is sold at retail; or in any business devoted wholly or partially to the sale of any alcoholic beverage at retail by stock ownership, interlocking directors, mortgage or lien or any personal or real property, or by any other means.”

ABCL § 101(1)(c) provides, in part, that it is unlawful for a manufacturer or wholesaler licensed under the ABCL to “make any gift or render any service of any kind whatsoever, directly or indirectly, to any person licensed under this chapter which in the judgment of the liquor authority may tend to influence such license to purchase the product of such manufacturer or wholesaler.”

ABCL § 106 (11) provides, in part, that a railroad with an on-premises license “shall be allowed to sell liquors and/or wines from portable carts located on station platforms located at Penn Station, Grand Central Station, Jamaica, Hunterspoint Avenue or Flatbush from which such licensed railroad cars depart.”

Discussion

In an effort to increase revenues during a time of tremendous budgetary shortfalls, the MTA, a New York State public authority and public benefit corporation, recently issued a Request for Proposals (“RFP”) seeking proposals from beverage companies to display their brands or logos on up to 40 commissary carts (“Carts”) owned by the Metro-North and LIRR (“the Railroads”) in exchange for a sponsorship fee. These Carts are used to sell non-alcoholic beverages as well as beer, wine, liquor and snacks to customers at station platforms.

The Metro-North and LIRR are New York State public benefit corporations, and subsidiaries of the MTA under Pub. Auth. Law § 1266. However, both are distinct corporate entities. Their purpose is to provide commuter rail service to passengers traveling in and out of New York City. Therefore, the MTA and the Railroads are unique public transportation agencies, which distinguishes them from the usual entities regulated by the Authority.

The Railroads’ procurement of food and beverages for retail sale is subject to Pub. Auth. Law §1265-a. Metro-North and LIRR issue individual RFPs for the food and beverages they sell to the public. Each generally awards contracts on its own behalf to the lowest bidder. The MTA is not involved in this process, nor does it procure food or beverages for sale at retail. Thus, The Railroads’ procurement of alcoholic beverages for sale at the Carts is pursuant to a regulated, public and transparent process, and is wholly separate and apart from the proposed MTA sponsorship agreements. Accordingly, there is no reasonable basis to conclude that a sponsorship fee paid to the MTA by a manufacturer or wholesaler of alcoholic beverages might tend to influence the Railroads to purchase the products of such manufacturer or wholesaler.

The Railroads are unique entities regulated under ABCL § 106(11), a specific and narrowly tailored statutory provision, which allows for railroads to sell alcoholic beverages from portable carts on particular station platforms. Metro-

North and LIRR are the only railroads operating portable carts on the platforms at those stations. Since ABCL § 106(11) only applies to Metro-North and LIRR, the proposed sponsorship arrangement is a singular situation, one wholly inapplicable to any other licensed retailer.

Determination of the Authority

After considering the record before the Full Board in this matter, the representations of the Petitioners, and the relevant statutory law, the Members of the Authority determine that it is permissible under the ABCL for the MTA to enter into sponsorship opportunities with manufacturers or wholesalers of alcoholic beverages who will, if selected, brand the Carts owned by the Railroad with their logos, provided that the sponsorship fees are paid to the MTA and not the Railroads.