

STATE OF NEW YORK: LIQUOR AUTHORITY

2011-01646C

Application of the “tied-house” and “gifts & services”
Laws on sponsorship agreements

DECLARATORY
RULING

Preliminary Statement

Section 98.1 of the Rules of the State Liquor Authority, (9 NYCRR subtitle B) provides that any person may request the Authority to issue a declaratory ruling on the application of the Alcoholic Beverage Control Law, or the Rules of the Authority, on any person, property or state of facts. By letter dated April 21, 2011, Jennifer L. Tsyn, Esq. (Bond, Schoeneck & King) seeks a ruling as to whether a licensed manufacturer and wholesaler may continue a sponsorship agreement with an entertainment venue that holds a retail license. After considering the record before the Full Board in this matter, as well as the relevant statutory and case law, the Members of the Authority find the sponsorship agreement, is permissible under the relevant provisions of the Alcoholic Beverage Control Law (“ABCL”).

Applicable law

ABCL §101(1)(a) prohibits a licensed manufacturer or wholesaler from having any interest, direct or indirect, in any premises where alcoholic beverages are sold at retail. ABCL §106(13) prohibits a licensed on-premises retailer from having any interest in a business that manufactures or wholesales alcoholic beverages.

ABCL §101(1)(b) prohibits a licensed manufacturer or wholesaler from making any gift, or rendering any service, to a licensed retailer if, in the judgment of the Authority, the gift or service might tend to influence the retailer to purchase the manufacturer’s or wholesaler’s products. Section 86.1 of the Rules of the Authority prohibits licensed retailers from accepting such gifts or services.

Statement of facts

The following is a summary of the pertinent facts, as more fully set forth in Ms. Tsyn’s letter:

- The Bethel Woods Center for the Arts (“Center”) is an outdoor performing arts center located at the site of the 1969 Woodstock festival. The facility has been operating since 2006. In addition to the Center, the Museum at Bethel Woods (“Museum”) is also located on the grounds.
- The Center is owned and operated by The Bethel Performing Arts Center LLC (“BPAC”). In addition to the Center, the Museum at Bethel Woods (“Museum”) is also located on the grounds. It is operated by a separate board of trustees, although the Gerry Foundation, Inc. is the sole member of BPAC and the Museum.
- Since the opening of the Center, BPAC had contracted with a national food services company to operate the food and beverage concession facilities at the Center. That company obtained an on-premises license to sell alcoholic beverages at those facilities. [The Museum is not included on the licensed premises].
- BPAC has terminated its relationship with that company and has now entered into a contract with Ovations Food Services LP (“Ovations”), another national food service company, to operate the concession facilities.
- The agreement between BPAC and Ovations provides that BPAC will share in a significant percentage of the revenues from the sale of alcoholic beverages. BPAC does not dispute that, as a result, it must be a “co-licensee” with Ovations on the on-premises license for the concession facilities.
- While the facilities were licensed to the other food service company, BPAC and Anheuser-Busch Companies, Inc., (“Anheuser-Busch”) were parties to a sponsorship agreement for the Center. In return for payment to BPAC, Anheuser-Busch obtained the right to place signage at the Center. Anheuser-Busch is licensed as both a manufacturer and wholesaler in this state.

Request to be considered

BPAC and Anheuser Busch acknowledge that the “tied-house” [ABCL 101(1)(a) and ABCL §106(13)] and “gifts and services” [ABCL 101(1)(b)] provisions would not allow the existing sponsorship agreement to continue if BPAC is licensed as a retailer. However, as noted by Ms. Tsyn, the revenue from the agreement is critical to the continued operation of the Center.

BPAC proposed to assign the naming/sponsorship rights to the Center to the Museum, which does not hold a license of any kind and, as noted above, is not physically located on the licensed premises. The Museum would then be free to enter into a sponsorship agreement with Anheuser Busch, or any other licensed or non-licensed party.

Prior rulings by the Authority

In 2009, the Authority was presented with a similar situation with respect to the licensing of, and sponsorship agreements for, the new Yankee Stadium. Based upon the facts presented in that matter, the Members of the Authority issued a declaratory ruling that allowed the potential licensee to transfer the naming/sponsorship rights for food and beverage venues within Yankee Stadium premises to a separate, unlicensed, entity. That entity was then allowed to enter into agreements with manufacturers and wholesalers, and any other parties of its choosing, for advertising and naming rights for those venues.

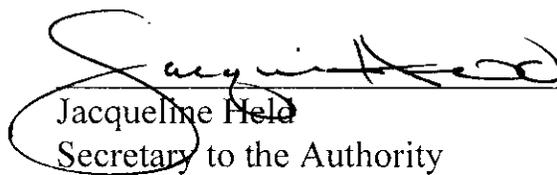
Determination of the Authority

The purpose of the “tied-house” and “gifts & services” laws is to prevent suppliers of alcoholic beverages from having an interest in, or undue influence over, retailers. As presented to the Authority, the parties have created a structure whereby BPAC, one of the joint licensees, will sell the sponsorship rights to the Museum, which does not hold a license to traffic in alcoholic beverages. With the proposed resignation, from the Museum, of one individual who currently serves on the Board of Trustees of both entities, no person will be a principal in both organizations. The Museum will then enter into an agreement with Anheuser-Busch, or any other sponsor of its choosing. None of the proceeds from that agreement will go to BPAC. While BPAC may obtain a payment from the

Museum for the sponsorship rights, it will have no control over whether the Museum sells those rights are then re-sold to a supplier of alcoholic beverages or to some other entity not associated with the distribution of alcoholic beverages.

In this specific case, given the separation between the retailer and the supplier, the Authority finds that the proposed sponsorship agreement does not violate either the "tied-house" or "gift or services" law.

Dated: May 25, 2011


Jacqueline Field
Secretary to the Authority