

STATE OF NEW YORK: LIQUOR AUTHORITY

Operation of smartphone/web application
Drizly

DECLARATORY
RULING
2013-02526

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, to any person, property or state of facts.

By letter dated June 26, 2013, a request was submitted by attorney Martin Mehler, on behalf of his client Drizly. Drizly does not hold any licenses relating to alcoholic beverages. As described by Mr. Mehler, Drizly is a smartphone/web application (“app”) that enables the user to purchase alcoholic beverages from a local package store and have it delivered to them in less than 60 minutes. Mr. Mehler requests a declaratory ruling as to whether the operation of Drizly violates the Alcoholic Beverage Control Law (“ABCL”).

Statement of Facts

Drizly is a smartphone/web app that enables customers to purchase alcoholic beverages for delivery. It also, via GPS, permits customers to track the physical movements of their orders while en route. Drizly customers create accounts that include their location and credit card information.

Licensed retailers who participate with Drizly also create accounts. Retailers’ accounts include the products they select to sell via Drizly along with the prices they wish to sell them. Participating stores post 150 to 200 items for sale via the Drizly app. The retailer must maintain a credit card processing account and bank account with institutions designated by Drizly. The retailer must also use the iPads and iPhones which contain the Drizly software.

Drizly assigns each participating retailer a geographic area for which they will service customers. When a customer uses Drizly in a specific geographic area,

they will be directed to the one participating retailer in that area. The retailer will review the order and choose to accept or deny it. If the order is accepted, it will be delivered to the customer. The Drizly app permits the customer via GPS to track the physical location of their order. The retailer's delivery employees are responsible for ensuring that customers are all of legal age.

Participating retailers pay a flat monthly fee to Drizly for their services and use of the iPads and iPhones along with a small flat fee for every order placed via the app. Customer payments go directly to accounts controlled solely by each retailer. Each retailer then pays Drizly the amount due.

At times Drizly may run ads on their app for certain alcoholic beverages but the ads do not mention or list specific retailers.

Applicable Law

Section 111 of the ABCL prevents a licensee from making their license "available" to anyone. Section 111 states a license issued "... shall not be transferable to any other person or to any other premises...it shall be available only to the person therein specified"

Section 110(1)(g) of the ABCL requires disclosure of anyone with a financial interest in a licensed premises.

Issues Presented

- (1) Does the operating method of Drizly constitute an availing of a retail license?
- (2) Does Drizly obtain an ownership interest in the licensed premises?

Determination of the Members

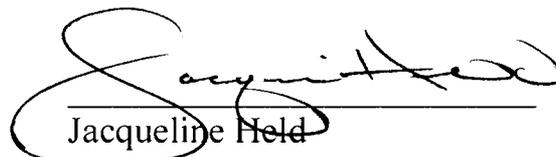
When determining if a retail licensee has made their license available to another, the Members examine the role of the licensee in the operation of the premises. The Members ask: (1) whether the licensee is playing a passive role and if an unlicensed person is acting in their place; and (2) does an unlicensed party have an ownership or financial interest in the licensed premises.

To answer the first question the Board has reviewed the role and functions of the licensed retailer who participates with Drizly. The licensed retailer selects the products to be sold, the price it is sold at and whether or not to accept an order. The licensed retailer delivers the product, ensures that customers are of a legal age and processes and collects all the funds for each sale. A retailer participating with Drizly retains total control of their products, service and finances. Accordingly, retailers participating with Drizly are not passive agents but active retailers responsible for all business functions. There is no argument to be made that Drizly controls any portion of the licensed business.

In response to the second question of whether or not Drizly has a financial or ownership interest in a licensed premises, the Board answers this question in the negative. All funds go directly from the customer to the retailer. The retailer is the only one with access to these funds. Drizly and the licensee do not maintain escrow accounts. Rather, Drizly is paid a flat fee for their services provided. Drizly does not receive a portion of the licensed retailer's profits. Accordingly, it cannot be argued that Drizly possess a financial interest or ownership interest in the licensed retailer's business.

In conclusion, the specific operation of Drizly as described by Mr. Mehler does not violate the ABCL. Drizly's third party services are simply marketing services and do not constitute an availing of a license or a financial interest in a licensed premises. Licensees are reminded that this ruling is limited to the facts set forth herein. This ruling should not be considered approval for any other proposal which deviates, in any respect with the representations as set forth above.

The foregoing Declaratory Ruling was formally approved by the Members of the Authority at a Full Board meeting held on September 25, 2013.



Jacqueline Held
Secretary to the Authority