

Application of the “tied-house” and “gifts & services”
laws on sponsorship rights

DECLARATORY
RULING

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 (“ABCL”), or the Rules of the Authority, to any person, property or state of facts. The Authority is in receipt of a request from Joseph Levey, Esq., on behalf of 61 Gans Restaurant LLC¹, for a declaratory ruling as to whether, under the facts presented, the sale of “sponsorship rights” to its entire licensed premises, or parts of the licensed premises, would be considered a violation of the “tied-house” and “gifts and services” prohibitions in the ABCL.

As explained by Mr. Levey in his letter as well as during his appearance before the Members of the Authority at the August 13, 2013 Full Board meeting, the restaurant, as an additional source of revenue, seeks to sell the sponsorship rights to its establishment, or parts of its establishment, to a third party. The third party would then sell the sponsorship rights to other companies, including alcoholic beverage manufacturers and wholesalers. As an example, the sponsorship rights would result in a particular room in the establishment having signage identifying it by the name of an alcoholic beverage.

It is the policy of the State of New York that “it is necessary to regulate and control the manufacture, sale and distribution within the state of alcoholic beverages for the purpose of fostering and promoting temperance in their consumption and respect for and obedience to the law.”² Consistent with that policy, the distribution of alcoholic beverages in this state is generally accomplished though what is referred to as the “three tier system.”³ With certain exceptions, manufacturers sell their products to wholesalers who, in turn, distribute the products to retailers.

¹ The entity holds an on-premises liquor license for a restaurant located at 53 59 Gansevoort Street in Manhattan.

² ABCL §2.

³ The United States Supreme Court has held that a state, in the exercise of its authority under the Twenty-First Amendment, can mandate a three-tier distribution system. See *North Dakota v. United States*, 495 US 423, 432 (1990).

The ABCL contains numerous provisions that regulate the relationships between the three tiers. These restrictions are intended, inter alia, to prohibit manufacturers and wholesalers from having an undue influence over retail licensees. For example, manufacturers and wholesalers may not offer discounts, rebates, etc., to selected retailers.⁴ While manufacturers may limit which wholesalers sell their product,⁵ each of those wholesalers must be able to purchase the product at the same price from the manufacturer.⁶ A wholesaler must offer the same price, and any discounts, for liquor and wine to all retailers.⁷ With certain exceptions, manufacturers and wholesalers may not provide any gifts or free services to retail licensees.⁸

To further prevent manufacturers and wholesalers from exerting inappropriate control over retail licensees in this state, the ABCL places restrictions on the ability of an entity in one tier to have an interest in an entity in another tier of the industry. These restrictions are commonly known as the “tied house” laws. Licensed manufacturers and wholesalers are prohibited from having any interest, direct or indirect, in any premises where alcoholic beverages are sold at retail.⁹ Retail liquor and wine stores may not have an interest in a business that manufactures or wholesales alcoholic beverages.¹⁰ Those holding a retail on-premises license are banned from having any interest in a business that manufactures or wholesales alcoholic beverages.¹¹ The New York State Court of Appeals has held that even de minimis ownership is a disqualifying interest under the tied house laws.¹²

The Authority does allow for certain relationships to exist between manufacturers and wholesalers on the one hand, and retailers on the other. For example, a retailer may be the landlord of a manufacturer or wholesaler, or vice versa. That relationship, limited to the lease of the property, is not considered to give the landlord an “interest” in the tenant’s business. However, the Authority

⁴ ABCL §101-b(2)(a).

⁵ ABCL §101-b(4-a)(a).

⁶ ABCL §101-b(3)(a).

⁷ ABCL §101-b(3)(b).

⁸ ABCL §101(1)(c).

⁹ ABCL §101(1)(a).

¹⁰ ABCL §105(16). The restriction applies only to those with retail licenses to sell liquor and/or wine for off-premises consumption. It does not apply to retail licensees who are limited to selling beer for off-premises consumption.

¹¹ ABCL §106(13).

¹² *Rihga International USA Inc. vs. State Liquor Authority*, 84 NY2d 876 (1993)

restricts the inclusion of terms in a lease that entitles the landlord to a percentage of the tenant's retail sales.

More relevant to this request, the Authority has issued declaratory rulings in three matters that allow for retailers to transfer "sponsorship rights" for the licensed venue to third parties who, in turn, may sell such rights to other companies.¹³ The Authority has approved, in those situations, manufacturers and wholesalers obtaining the sponsorship rights from the third party. Each of those situations, and several other instances where retail licensees acted in reliance on those rulings, involved sports/concert venues.

Mr. Levey contends that the proposed arrangement presented in his request is consistent with the guidance provided by the Authority in those three rulings. However, in each of those rulings it was noted that the conclusion reached by the Members of the Authority was based on the specific set of facts being considered. As noted above, each of those rulings involved sports/concert venues. Historically, brands of alcoholic beverages have been associated with the sponsorship of sports teams, concerts and similar events at venues designed for such events.

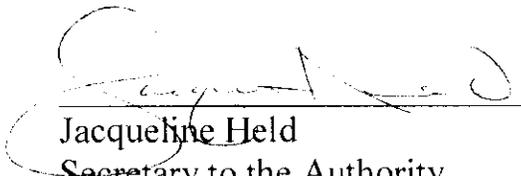
In the view of the Members of the Authority, there are material distinctions between the types of traditional sponsorship arrangements that were the subject of the three rulings, and similar arrangements with other retail premises. In addition to the history of manufacturers and wholesalers being involved in the sponsorship of sports/concert venues, the purpose behind the sponsorship of those venue and premises such as this restaurant are different. Neither the alcoholic beverage manufacturers and wholesalers, nor the venue operator, seek these sponsorships to draw business for the retailer or create additional revenue for the retailer. The purpose of the arrangements approved by the Authority is the promotion of the brand of alcoholic beverages.

However, as conceded by Mr. Levey, the primary purpose of this arrangement is to provide an additional source of revenue for the retailer. The retailer is using the arrangement to obtain a financial benefit from the use of the name of the alcoholic beverage. This financial interest is impermissible under the tied house laws. In addition, the Members of the Authority are not convinced that such arrangements will not be used by manufacturers and wholesalers to illegally control, or at least attempt to influence, the choice of alcoholic beverages offered for sale by the restaurant.

¹³ See declaratory rulings issued in Agenda Nos.2009-00615, 2011-01646C and 2012-00957D.

Accordingly, the Members of the Authority find that the naming agreement proposed in this request is not permissible under the ABCL.

The foregoing Declaratory Ruling was formally approved by the Members of the Authority at a Full Board meeting held on November 21, 2013.



Jacqueline Held
Secretary to the Authority