

STATE OF NEW YORK: LIQUOR AUTHORITY

Application of Bottle Rush LLC

DECLARATORY
RULING
2014-02587A

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 October 3, 2014 a request was submitted by attorney Michael J. Paleudis, on behalf of his client Bottle Rush LLC ("Bottle Rush"). As described by Mr. Paleudis, Bottle Rush is a website and smartphone application which markets wine from local retailers. Bottle Rush does not hold any licenses relating to alcoholic beverages. Mr. Paleudis requests a declaratory ruling as to whether the operation of Bottle Rush violates the Alcoholic Beverage Control Law.

Statement of Facts

The Bottle Rush website/application claims to offer "high-quality wines paired to your taste delivered to your door." When customers enter the website/application they are greeted by a "Virtual Sommelier" who questions them about the type of wine they wish to purchase. Questions asked of the customer include what food does the customer wish to pair the wine with and what occasion will the wine be served for. The Virtual Sommelier will also inquire as to what the customer's price range is.

Based upon the information inputted by the customer, who must include their delivery address, the Virtual Sommelier will suggest the customer buy the particular wine displayed from a particular local participating retailer. When the wine appears, so does the name of the participating retailer. The retailer's information is clearly displayed so that all customers know exactly who they are purchasing the wine from. The customer may then choose to purchase the wine,

pay for it by credit card, and the local participating retailer will deliver the wine within twenty-four hours.

Retailers who wish to employ Bottle Rush's services must sign a contract which designates a certain geographical area where they will be the sole retailer featured on Bottle Rush. The retailer agrees to pay Bottle Rush a flat annual fee and a fee of \$2.50 for each customer who makes a purchase via the Bottle Rush website/application.

The retailer must select the inventory they wish to list on Bottle Rush and the price at which the inventory will be sold. Bottle Rush may make suggestions to the retailer as to which wines they believe should be listed for sale on Bottle Rush, but the decision regarding which wines to sell via Bottle Rush rests completely with the retailer.

Each participating retailer must create an account with a third party payment processing company where all funds from customer's purchases will be deposited and then collected by the retailer. All deliveries to customers are made via the retailer and their employees. Finally, each retailer must establish an e-mail account by which they receive orders via the Bottle Rush website/ application.

Applicable Law

Section 111 of the Alcoholic Beverage Control Law prevents a licensee from making their license "available" to anyone. Section 111 states a license "... 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) requires disclosure of anyone with a financial interest in a licensed premises.

Issues Presented

- (1) Does the operating method of Bottle Rush constitute an availing of a retail license?

- (2) Does Bottle Rush obtain an ownership/financial 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) if an unlicensed person is acting in the place of a licensee, and (2) does an unlicensed party have an ownership/financial interest in the licensed premises.

Does Bottle Rush act in the place of a participating retailer?

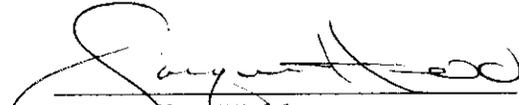
Participating Bottle Rush retailers select all the wines to be sold via Bottle Rush and all the prices at which the wines will be sold. Participating retailers receive the orders and accept the orders from their licensed premise during legal hours of operation. All customer funds go directly into an account controlled by the retailer and all deliveries are made by the retailer. In short, participating retailers are in control of every aspect of wine sales via Bottle Rush and may not be deemed passive. Bottle Rush and their Virtual Sommelier do not act in place of the retailer but merely act as a marketer driving customers to the retailer's products. Bottle Rush may not be deemed to be trafficking in alcoholic beverages or performing any retail functions.

Does Bottle Rush have a financial interest in the participating retail store?

Bottle Rush receives an annual flat fee from the retailer in order to be the designated participating retailer for a geographical region. Additionally, Bottle Rush receives \$2.50 flat fee from the retailer for every customer who makes a purchase via their website/application. The fee to Bottle Rush is not dependent upon the sale amount but remains \$2.50 for all sales. These fees are paid by the retailer to Bottle Rush. Bottle Rush has no ability to access any funds paid by customers to the retailer. The Members have previously approved of such marketing fees to unlicensed marketing entities (*See Declaratory Ruling 2014-01059*). Accordingly, there is no argument to be made that Bottle Rush has a financial interest in the participating retailer store.

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 from the representations set forth above. The

forgoing Declaratory Ruling was approved by the Members of the Authority at a Full Board meeting held on October 21, 2014.



Jacqueline Held
Secretary to the Authority