

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF APRIL 5, 2016
REFERRED FROM: COUNSEL'S OFFICE

2016-00763

REASON FOR REFERRAL
REQUEST FOR DIRECTION

OPERATION OF HOOCH

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City office on APRIL 5, 2016 determined:

KALYAN
LAW FIRM

349 Broome Street
New York, NY 10013
Direct: 917474.516
hello@kalyanlawfirm.com

kalyanlawfirm.com

January 19, 2016

Attn: Jacqueline Flug, Counsel
New York State Liquor Authority
80 S. Swan Street, 9th Floor
Albany, New York 12210-8002

PEITITION FOR DECLARATORY RULING: HOOCH, INC.

Dear Ms. Flug,

Hooch, Inc. ["Hooch"], is a Delaware Corporation with corporate offices in New York, NY. Hooch does business throughout the United States, including in New York State. This petition seeks a declaratory ruling by the New York State Liquor Authority, pursuant to the Rules of the State Liquor Authority §§98.1-98.5, that its mobile application, Hooch App (the "Hooch app"), operated as set forth in this Petition, does not violate New York Alcoholic Beverage Control laws or related SLA Rules.

INTRODUCTION

Hooch is a marketing and technology company that holds no alcoholic beverage licenses in any jurisdiction. Hooch offers marketing services to on-premises licensees through its development of proprietary mobile device technology. The Hooch app facilitates the ability of participating NY-licensed bars and restaurants ("Licensee(s)") to connect their establishments with potential new customers who are members of the Hooch community ("Member(s)").

Each Member pays a \$9.99 per month (or \$99 per annum) administrative fee (the "Administrative Fee") to Hooch in exchange for access to the Hooch community. This access includes a complimentary second drink with the purchase of a full-price first drink at any participating Licensee. Licensees provide this complimentary second drink with the purchase of a full-price first drink to each Member in exchange for being listed in the Hooch community.

Hooch has designed its mobile app to work within the four corners of all state and federal alcoholic beverage laws. We believe that the Authority will agree with us that the Hooch mobile app is compliant with New York State law.

STATEMENT OF FACTS

The Hooch app is proprietary mobile device technology developed to connect Members with Licensees. There is no revenue sharing between Hooch and Licensees; Hooch generates all revenue from Administrative Fees from Members. Further, Licensees do not offer anything beyond a "2-for-1" drink discount. Below is a description of the mobile app platform, from both the Members and Licensee user ends.

Members

An individual must first download the Hooch app from the iTunes Store or Google Play store (for iPhone and Android, respectively). That individual will then be asked create a profile on the mobile app using unique identifying information such as name, email, etc. Each individual must also enter their date of birth and affirm a statement that they are 21 year of age or older.

The individual is then asked if they would like to become a Member of Hooch. In order to become a Member, they are asked to enter credit card information in order to pay a \$9.99 per month (or \$99 per annum) Administrative Fee. Once the individual has paid the Administrative Fee and is officially a Hooch Member, they are then provided with a list of participating Licensees that they may visit. Each day, Member can visit one (1) participating Licensee. Once at the Licensee establishment, the Member must show their server/bartender their mobile device with the Hooch app open. The server/bartender slides the screen, which tracks the Member's usage of the Hooch app that day and prevents them from reusing it until the next day. The bartender/server must ask the Member to purchase their first drink, and upon purchase of this first drink, the Member will be provided with a complimentary second drink of the same or lesser value.

Licensees

Hooch also enters into agreements with Licensees whereby Hooch will list the Licensee premises on the Hooch app. Hooch will provide a professional photographer to take high quality images of the premises, as well as styled drink photos. Once a premises is listed, Licensees receive a multi-tiered marketing service that includes email marketing, in-app display marketing, promotional in-app notification and alerts, as well as basic and advanced level analytics.

The value of this marketing is based on industry standard CPM (cost-per-thousand impressions) for marketing services, based on the amount of audience Hooch reaches. The basic level package includes 2,500 email impressions at \$200 CPM, 10,000 in-app impressions for each venue at \$25 CPM, 5,000 in-app notification impressions at \$50 CPM, plus basic analytics on drink redemption and user demographics.

In exchange, the Licensee agrees to provide each Member with a complimentary second drink with the purchase of a full-price first drink. The complimentary second drink must be of same (or lesser) value than the full-price first drink.

[Refer to Exhibit A – Terms of Service”, annexed hereto]

Rules

Hooch promulgates the following rules for each transaction:

- (1) Member Age Verification
 - a. The Member is required to affirm a statement that she/he is 21+ age before becoming a member of Hooch
 - b. The following language, in relevant part, appears prominently within the Hooch Terms of Use:

YOU MUST BE 21 YEARS OF AGE OR OLDER TO USE THIS SITE. IT IS A VIOLATION PUNISHABLE UNDER LAW FOR ANY PERSON UNDER THE AGE OF 21 TO PRESENT ANY WRITTEN EVIDENCE OF AGE WHICH IS FALSE,

FRAUDULENT OR NOT ACTUALLY HIS OR HER OWN FOR THE PURPOSE OF ATTEMPTING TO PURCHASE ANY ALCOHOLIC BEVERAGE. IF YOU ARE NOT 21 YEARS OF AGE OR OLDER OR IF YOU ARE A MINOR, YOU MAY NOT USE THE SITE.

- c. The Licensee must also check ID's of each Hooch Member in order to verify 21+ age, as required in order to maintain compliance with the ABC Law and the Rules of the Authority
- (2) Fees
- a. The Administrative Fee transaction is between Hooch and the Member only. Such Administrative Fee is not shared in any way with the Licensee.
 - b. The Licensee does not pay any fee to Hooch for its marketing services. As such, there is no sharing of revenue.
- (3) First Drink Purchase
- a. Members must purchase their first drink at full-price, which the Licensee must enforce, and only then will they be provided with their complimentary second drink.
 - b. The following language, in relevant part, appears prominently within the Hooch Terms of Use:

HOOCH PROVIDES A MARKETING SERVICE, AND A MARKETING SERVICE ONLY, TO OUR PARTNER VENUES ("VENUES" OR A "VENUE"), BY REFERRING QUALIFIED HOOCH MEMBERS TO DISCOVER AND PAY FOR PRODUCTS AND SERVICES AT THESE VENUES. HOOCH IS A PRIVATE MEMBERSHIP ORGANIZATION AND YOUR MEMBERSHIP PURCHASE IS SIMPLY FOR THE ACKNOWLEDGEMENT TO BE A HOOCH MEMBER AND ABILITY TO USE OUR SITE. AT NO TIME ARE YOU BUYING ANY ALCOHOLIC BEVERAGE FROM HOOCH. AS ONE OF THE MEMBERSHIP PRIVILEGES, AND AS NOT FURTHER PROHIBITED BY STATE ALCOHOLIC BEVERAGE CONTROL (ABC) LAW, HOOCH MAY PAY VENUES FOR A LIMITED AMOUNT OF DRINKS PROVIDED TO QUALIFIED HOOCH MEMBERS. IN SOME STATES, SUCH AS NEW YORK, WHERE ABC LAWS AND REGULATIONS PROHIBIT A VENUE FROM PROVIDING A FREE DRINK TO A CUSTOMER WITHOUT THE PURCHASE OF ANOTHER DRINK, MEMBERS ARE REQUIRED TO PURCHASE AT LEAST ONE ADDITIONAL DRINK AT NO LESS THAN THE SAME REGULAR RETAIL PRICE OF THE COMPLIMENTARY DRINK. FAILURE TO ABIDE BY APPLICABLE STATE ALCOHOL CONTROL LAWS AND REGULATIONS ARE GROUNDS FOR IMMEDIATE TERMINATION OF YOUR HOOCH MEMBERSHIP WITH NO OBLIGATION FOR HOOCH TO PROVIDE ANY REFUND.

ISSUES TO BE CONSIDERED

There are 2 issues raised considering ABCL:

- 1) Whether the Hooch mobile app constitutes a prohibited unlimited drinks offering; and
- 2) Whether the Membership Agreement would be deemed an illegal "availing of the license"

DISCUSSION

With respect to the first issue, ABCL §117-a prohibits a licensee from offering unlimited drinks to patrons during a set period for a fixed price. The statute further prohibits retail licensees from advertising or conducting a promotion, which in the view of the Authority, is an attempt to circumvent the law. Licensees may also not allow third parties to offer or advertise illegal drink promotions. However, the Authority has adopted an informal standard that any promotion in which drinks are offered at no less than half of the Licensee's regular price will not be deemed as a violation of §117-a.

The Hooch app does not violate of §117-a because the Hooch app provides that Licensees give Members only their second drink complimentary, requiring the purchase of a full-price first drink. Further, the complimentary drink must be of equal or lesser value than the first drink. As such, at no time and in no instance does a Licensee provide any more than a fifty percent discount off the Licensee's regular prices. Nor does Hooch, as a third party advertiser, advertise more a than fifty percent discount as to be deemed an illegal drink promotion within the Authority's interpretation of §117-a. In light of these facts, we hope the Authority will agree that there is no violation of §117-a.

With respect to the second issue, ABCL §111 prohibits a licensee from making its license available to a person who has not been approved by the Authority to hold that license. ABCL §110(l)(g) further requires disclosure to the Authority of any person with an economic interest in the licensed establishment. The question to be considered is whether the proposed method of operation provides Hooch with an interest sufficient enough to invoke the provisions of either or both of these statutes.

The arrangement between Hooch and a Licensee entitles is the Licensee to marketing value only. Hooch received neither a percentage of the proceeds from the sale of alcoholic beverages nor does it receive any type of fee from the Licensee. There is no transfer of any financial interest in the licensed business to an unlicensed party. Further, Hooch has no other interest in the ownership, management or business operations of the retail licensees. In light of these facts, we hope the Authority will agree that there is no violation of §111.

CONCLUSION

In conclusion, the HOOCH mobile app facilitates increased consumer access to the establishments of Licensees (which will help them thrive and prosper, thus adding jobs and commerce to NY state), but has also been designed to achieve full legal compliance. This serves the interests of the state, the Licensees and NY consumers.

We therefore respectfully request that the NY SLA issue a declaratory ruling holding that the Hooch app, as described in this Petition, is compliant with New York law. In the event that the SLA requires clarification of any matter described in this Petition, or desires any more information about the Hooch app, we will be pleased to respond.

Very Truly Yours,
Hari Nathan Kalyan, Esq.
Attorney for Hooch, Inc.

/Cc: Robert Bookman, Esq.
Pesetsky and Bookman, P.C.

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF APRIL 5, 2016
REFERRED FROM: COUNSEL'S OFFICE

2016-00764

REASON FOR REFERRAL
REQUEST FOR DIRECTION

CONSENSUS RULES PACKAGE
FOR OUTDATED PROVISIONS 3

The Members of the Authority at their regular meeting held at the Zone I New York City office on APRIL 5, 2016 determined:

Notice of Proposed Rule Making

Liquor Authority, State
(SUBMITTING AGENCY)

- Approval has been granted by Executive Chamber to propose this rule making.
 This rule making does not require Executive Chamber approval.

NOTE: Typing and submission instructions are at the end of this form. Please be sure to COMPLETE ALL ITEMS. Incomplete forms will be cause for rejection of this notice.

1. A. Proposed action:			
Amendment of	Part 65.4	Title <u>9</u>	NYCRR
Amendment of	Part 65.5	Title <u>9</u>	NYCRR
Amendment of	Part 65.11	Title <u>9</u>	NYCRR
Amendment of	Part 97.1	Title <u>9</u>	NYCRR
Repeal of	Part 90.1	Title <u>9</u>	NYCRR
Repeal of	Part 90.2	Title <u>9</u>	NYCRR

- B. This is a consensus rule making. A statement is attached setting forth the agency's determination that no person is likely to object to the rule as written [SAPA §202(1)(b)(i)].
- C. This rule was previously proposed as a consensus rule making under I.D. No. [REDACTED]. Attached is a brief description of the objection that caused/is causing the prior notice to be withdrawn [SAPA §202(1)(e)].
- D. This rule is proposed pursuant to [SAPA §207(3)], 5-Year Review of Existing Rules (see also item 16).

2. Statutory authority under which the rule is proposed:

SAPA Sec. 201, ABCL Sec. 55-a(1), ABCL Sec. 101(1)(c), ABCL Sec. 101-b(4), and ABCL Sec. 109(1).

3. Subject of the rule:

Updated price posting rules, license durations, and recordkeeping requirements, and rescinding of whiskey dividend rules.

4. Purpose of the rule:

To update price posting rules, license durations, recordkeeping, and joint advertising rules for certain license types.

5. Public hearings (check box and complete as applicable):

- A public hearing is not scheduled. (SKIP TO ITEM 8)
- A public hearing is required by law and is scheduled below. (**Note:** first hearing date must be at least 45 days after publication of this notice unless a different time is specified in statute.)
- A public hearing is not required by law, but is scheduled below.

Time:

Date:

Location:

6. Interpreter services (check only if a public hearing is scheduled):

Interpreter services will be made available to hearing impaired persons, at no charge, upon written request to the agency contact designated in this notice.

7. Accessibility (check appropriate box only if a public hearing is scheduled):

All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Attached is a list of public hearing locations that are not reasonably accessible to persons with a mobility impairment. An explanation is submitted regarding diligent efforts made to provide accessible hearing sites.

8. Terms of rule (SELECT ONE SECTION):

A. The full text of the rule is attached because it does not exceed 2,000 words.

B. A summary of the rule is attached because the full text of the rule exceeds 2,000 words.

Full text is posted at the following State website: _____

Full text is not posted on a State website.

Full text is not posted on a State website; this is a consensus rule or a rule defined in SAPA § 102 (2)(a)(ii).

C. Pursuant to SAPA §202(7)(b), the agency elects to print a description of the subject, purpose and substance of the rule as defined in SAPA §102(2)(a)(ii) [Rate Making].

9. The text of the rule and any required statements and analyses may be obtained from:

Agency contact Paul Karamanol, Senior Attorney

Agency Name State Liquor Authority

Office address 80 South Swan Street, Suite 900

Albany, NY 12210

Telephone (518) 474-3114 E-mail: paul.karamanol@sla.ny.gov

10. Submit data, views or arguments to (complete only if different than previously named agency contact):

Agency contact _____

Agency name _____

Office address _____

Telephone _____ E-mail: _____

11. Public comment will be received until:

- 45 days after publication of this notice (MINIMUM public comment period when full text is attached because it does not exceed 2000 words or full text of rule has been posted on a State web site or the rule is a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making]).
- 60 days after publication of this notice (MINIMUM public comment period when full text is not attached or full text is not posted on a State web site or the rule is not a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making]).
- 5 days after the last scheduled public hearing required by statute (MINIMUM, with required hearing). This box may not be checked and the minimum 60-day comment period applies if full text is not attached or text is not posted on a State web site or the rule is not a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making]).
- Other: (specify) _____

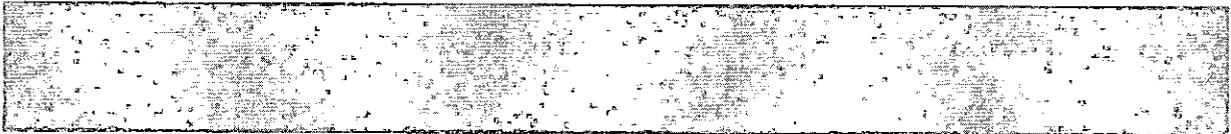
12. A prior emergency rule making for this action was previously published in the _____ issue of the Register, I.D. No. _____

13. Expiration date (check only if applicable):

- This proposal will not expire in 365 days because it is for a "rate making" as defined in SAPA §102(2)(a)(ii).

14. Additional matter required by statute:

- Yes (include below material required by statute).



- No additional material required by statute.

15. Regulatory Agenda (See SAPA §202-d[1]):

- This rule was a Regulatory Agenda item for this agency in the following issue of the State Register:

- This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.
- Not applicable.

16. Review of Existing Rules (ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

This rule is proposed pursuant to SAPA §207 (item 1D applies) (check applicable boxes):

- Attached is a statement setting forth a reasoned justification for modification of the rule. Where appropriate, include a discussion of the degree to which changes in technology, economic conditions or other factors in the area affected by the rule necessitate changes in the rule.
- Attached is an assessment of public comments received by the agency in response to its publication of a list of rules to be reviewed.
- An assessment of public comments is not attached because no comments were received.
- Not applicable.

17. **Regulatory Impact Statement (RIS)**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS, EXCLUDING SUMMARIES OF STUDIES, REPORTS OR ANALYSES [Needs and Benefits]):

A. The attached RIS contains:

- The full text of the RIS.
- A summary of the RIS.
- A consolidated RIS, because this rule is one of a series of closely related and simultaneously proposed rules or is virtually identical to rules proposed during the same year.

B. A RIS is **not attached**, because this rule is:

- subject to a consolidated RIS printed in the *Register* under I.D. No.: _____; issue date: _____.
- exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].
- exempt, as defined in SAPA §102(11) [Consensus Rule Making].

C. A **statement is attached** claiming exemption pursuant to SAPA § 202-a (technical amendment).

18. **Regulatory Flexibility Analysis (RFA) for small businesses and local governments**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

A. The attached RFA contains:

- The full text of the RFA.
- A summary of the RFA.
- A consolidated RFA, because this rule is one of a series of closely related rules.

B. A **statement is attached** explaining why a RFA is not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments and the reason(s) upon which the finding was made, including any measures used to determine that the rule will not impose such adverse economic impacts or compliance requirements.

C. A RFA is **not attached**, because this rule:

- is subject to a consolidated RFA printed in the *Register* under I.D. No.: _____; issue date: _____.
- is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].
- is exempt, as defined in SAPA §102(11) [Consensus Rule Making].

19. **Rural Area Flexibility Analysis (RAFA)**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

A. The attached RAFA contains:

- The full text of the RAFA.
- A summary of the RAFA.
- A consolidated RAFA, because this rule is one of a series of closely related rules.

B. A **statement is attached** explaining why a RAFA is not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas and the reason(s) upon which the finding was made, including what measures were used to determine that the rule will not impose such adverse impact or compliance requirements.

C. A RAFA is **not attached**, because this rule:

- is subject to a consolidated RAFA printed in the *Register* under I.D. No.: _____; issue date: _____.
- is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].

is exempt, as defined in SAPA §102(11) [Consensus Rule Making].

20. Job Impact Statement (JIS)

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

A. The attached JIS contains:

- The full text of the JIS.
- A summary of the JIS.
- A consolidated JIS, because this rule is one of a series of closely related rules.

B. A statement is attached explaining why a JIS is not required. This statement is in scanner format and explains the agency's finding that the rule will not have a substantial adverse impact on jobs and employment opportunities (as apparent from its nature and purpose) and explains the agency's finding that the rule will have a positive impact or no impact on jobs and employment opportunities; except when it is evident from the subject matter of the rule that it could only have a positive impact or no impact on jobs and employment opportunities, the statement shall include a summary of the information and methodology underlying that determination.

A JIS/Request for Assistance [SAPA §201-a(2)(c)] is attached.

C. A JIS is not attached, because this rule:

- is subject to a consolidated JIS printed in the *Register* under I.D. No.: issue date: .
- is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].
- is proposed by the State Comptroller or Attorney General.

AGENCY CERTIFICATION (To be completed by the person who PREPARED the notice.)

I have reviewed this form and the information submitted with it. The information contained in this notice is correct to the best of my knowledge.

I have reviewed Article 2 of SAPA and Parts 260 through 263 of 19 NYCRR, and I hereby certify that this notice complies with all applicable provisions.

Name Paul Karamanol Signature _____

Address 80 South Swan Street, Suite 900, Albany, NY 12210

Telephone (518) 474-3114 E-Mail paul.karamanol@sla.ny.gov

Date 02/22/2016

Please read before submitting this notice:

1. Except for this form itself, all text must be typed in the prescribed format as described in the Department of State's Register procedures manual, *Rule Making in New York*.
2. Rule making notices with any necessary attachments should be e-filed via the Department of State website.

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF MARCH 1, 2016
REFERRED FROM: WHOLESAL E BUREAU

2016-00506 (OVER)
2016-00688 (OVER)
2016-00785

REASON FOR REFERRAL
REQUEST FOR DIRECTION

BRAND LABEL REGISTRATION GUIDANCE

(PROPOSED ADVISORY)

The Members of the Authority at their regular meeting held at the Zone I New York City office on MARCH 1, 2016 determined:

Item carried over to 3/15/2016

The Members of the Authority at their regular meeting held at the Zone I New York City office on MARCH 15, 2016 determined:

Item carried over to 4/05/2016

The Members of the Authority at their regular meeting held at the Zone I New York City office on APRIL 5, 2016 determined:

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF MARCH 1, 2016
REFERRED FROM: WHOLESALE BUREAU

2016-00507(OVER)
2016-00689 (OVER)
2016-00786

REASON FOR REFERRAL
REQUEST FOR DIRECTION

PROPER MARKETING AND SALES OF
"LIMITED AVAILABILITY" ITEMS AND
"CLOSEOUT SALES" OF WINE AND/OR
DISTILLED SPIRITS

(PROPOSED ADVISORY)

The Members of the Authority at their regular meeting held at the Zone I New York City office on MARCH 1, 2016 determined:

Item carried over to 3/15/2016

The Members of the Authority at their regular meeting held at the Zone I New York City office on MARCH 15, 2016 determined:

Item carried over to 4/05/2016

The Members of the Authority at their regular meeting held at the Zone I New York City office on APRIL 5, 2016 determined: