

NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF JULY 1, 2014  
REFERRED FROM: COUNSEL'S OFFICE

2014-01592 (OVER)  
2014-01753

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

OTG MANAGEMENT, LLC

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City office on JULY 1, 2014 determined:

Robert Skene, Esq. and Chris Redd appeared

Keven Danow, Esq. appeared in opposition

A short recess was called by Commissioner Greene to conference with Counsel. The Members thereafter returned.

Decision is reserved until the Full Board meeting of July 15, 2014

The Members of the Authority at their regular meeting held at the Zone I New York City office on JULY 15, 2014 determined:

Upon hearing the concerns of an individual in connection with the Applicant's request, the Authority opted to reserve its decision and welcomed the Applicant to submit additional argument in support of its request. Accordingly, Applicant respectfully submits this supplemental response for the Authority's consideration.

**Response to Concerns**

A. **This Case is Factually and Legally Indistinguishable from Similar Cases in which Similar Requests for Authority Approval were Granted.**

At the July 1, 2014 meeting of the Authority, certain concerns were raised in connection with Applicant's pending request. It is clear from the statements on the record<sup>1</sup> that any opposition was conditioned on the mistaken understanding that Applicant, as a retail licensee, was proposing to sell advertising. It was apparent from the comments, that the concern raised was that the retailer was requesting permission to sell advertising directly to alcoholic beverage manufacturers citing, for example, catalogue sales programs. However, the Applicant's request for a declaratory ruling stated very clearly that its proposed plan was to simply sell advertising space on computer tablets to a third party advertising agency<sup>2</sup> in the same exact manner previously approved by the Authority on multiple occasions in similar unique situations. The instances of such prior approval were outlined in the Applicant's request and involve situations where the advertising of alcoholic beverage manufacturers is placed on licensed premises that are specialized public venues operated by private entities. The specialized public venues are stadiums, arenas, train stations and museums.

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<sup>1</sup> Keven Danow appeared and stated only a tentative opposition to the extent the Applicant was proposing to sell advertising in a manner clearly prohibited by the tied-house rules. A transcription of Mr. Danow's comments as recorded by our office is attached hereto as Exhibit A.

<sup>2</sup> Compliance controls are in place at OTG to ensure that the agency's decisions relating to advertising cannot be influenced by the offerings of alcoholic beverages on OTG's restaurant menus.

The applicant respectfully submits that its request for its airports facilities is for a similar specialized public venue and is, in every material respect, legally indistinguishable from the instances of prior approval involving stadiums, arenas, train stations and museums. In each such prior instance, advertisements of alcoholic beverage manufacturers were proposed to be placed within the premises of a private retail licensee. In each such prior instance, advertisements of alcoholic beverage manufacturers were proposed to be placed at or within the places in such venues where alcoholic beverages are purchased and consumed, including specifically at the exact points of alcoholic beverage sales.

Most of the airport facilities operated by the Applicant are licensed for the sale of alcoholic beverages in the same manner that these other special purpose venues are licensed. Like a stadium or arena, the Applicant's licenses cover wide areas - entire post-security departure levels of airport terminals - and designate multiple points of sale in a facility that contains multiple types of non-restaurant retail stores and operations. Activities within the licensed areas go well beyond traditional restaurant activities in a multitude of ways. In view of the similarities between the Applicant's airport facilities and railroads, stadiums and concert venues, the Authority should grant the Applicant the same special consideration that it has previously granted for other such unique facilities. It is important to note that the permission requested by the Applicant, if granted, would be sufficiently narrow in scope with respect to the types of facilities to which it may apply going forward.

B. The Added Element of a Public Benefit Militates in Favor of Approval of the Applicant's Request.

In his comments, Mr. Danow suggested that his concerns would be alleviated to the extent that the advertising was placed by the Port Authority of New York and New Jersey (the

“Port Authority”). The applicant respectfully submits that the involvement of a public agency at that level should not be required. No public agency was involved in the cases involving Yankee Stadium, the Bethel Woods Center for the Arts or the Brooklyn Events Center. Nevertheless, because the Port Authority must specifically approve all commercial activities that occur in the New York airports, and because the Port Authority receives a significant portion of all revenues generated from such activities, in a very real sense it is the Port Authority that is conducting the commercial activities, albeit through its private company agents. The fact is that the Port Authority relies on a multitude of private companies to perform various commercial activities within its airports in order to generate the revenues necessary to operate, maintain and improve the airports, as well as various of New York City bridges, tunnels and other Port Authority facilities. The Applicant respectfully submits that the element of a public benefit sets this matter apart from the previously approved instances involving privately owned venues and makes the case for the special consideration requested by the Applicant even stronger.<sup>3</sup>

#### **Conclusion**

Considering all of the specific facts and attendant circumstances surrounding this matter, the concerns raised at the Full Board meeting of July 1, 2014 simply fail articulate a reasoned basis for denying Applicant’s pending request for a declaratory ruling. Airports, like sports stadiums, concert venues and railroads, are unique in nature and thus should be given special consideration with respect to advertising and sponsorship agreements. In addition, in this particular instance, there is a substantial public benefit at stake. The approval if granted, can be and should be sufficiently narrow in scope and will continue to be limited to special purpose venues.

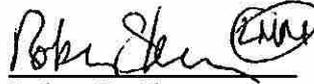
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<sup>3</sup> The City of New York owns the land upon which the airports are located.

In view of the foregoing, we respectfully request that the Authority issue a declaratory ruling authorizing the Applicant to sell its advertising rights to an independent third party for a flat rate fee at the locations it operates within New York airports.

We thank you again for your time and consideration in this matter.

Sincerely,



Robert D. Skene

Cc (via email only):  
Jacqueline Held  
Kerri O'Brien  
Keven Danow  
OTG Management, LLC

RDS/jv

**EXHIBIT A**

Transcription of Comments made by Keven Danow

at July 1, 2014 Full Board Hearing.

“Keven Danow in opposition. *I think* - the reason I say “I think” is that *if* the licensee is going to be the one that is advertising I think that you have the same situation as you have in the [Ghens] matter, in which you refused to grant this because it was the licensee trying to do it. If the Port Authority wanted to do the advertising it would be the same as the stadium doing it and I would think that would come under the Yankee Stadium cases and things like that. I don’t want to belabor this, but it’s clear that where the retailer - and that is what we are dealing with in the application - is the one that is seeking to sell the advertising, then you have a tied- house issue that is very difficult because it is like the catalogues where the supplier is paying to be in the catalogue of the retailer, it is like the hotel rooms that you said no to, it’s like the clubs that asked to be able to sell these sponsorship rights. It is different than when it is the retailer asking and I think you should hold to the position that retailers just can’t do this no matter how magnificent the retailer is.”

# SKENE LAW FIRM, P.C.

A NEW JERSEY PROFESSIONAL CORPORATION  
2614 ROUTE 516, 2<sup>ND</sup> FLOOR • OLD BRIDGE, NEW JERSEY • 08857  
PHONE: 732-727-5030 • FAX: 732-727-5028  
WWW.SKENELAWFIRM.COM

ROBERT D. SKENE \* +

RICHARD D. NASCA \* +

JOSEPH A. ASCOLI \*

LISA M. MILLER \* + ^

JOHN F. VASSALLO, JR., OF COUNSEL

ANNE MARIE VASSALLO, OF COUNSEL

\* NEW JERSEY BAR ADMISSION  
+ NEW YORK BAR ADMISSION  
^ PENNSYLVANIA BAR ADMISSION

July 7, 2014

Attn: Jacqueline Flug, General Counsel  
New York State Liquor Authority  
317 Lenox Avenue,  
New York, NY

**Re: Supplemental Response in Support of Request for Declaratory Ruling;  
OTG Management, LLC**

Dear Ms. Flug:

The undersigned represents OTG Management, LLC ("OTG" or the "Applicant"), along with its subsidiaries, in their alcohol beverage regulatory control matters. At the Full Board meeting of July 1, 2014, the Applicant presented argument in support of its pending request for a declaratory ruling authorizing it to sell the rights to advertising space on tablet computers already installed at its facilities located in JFK International Airport and La Guardia Airport. As detailed in the Applicant's prior submission, the advertising rights would be sold by the Applicant in whole for a flat fee to a third party advertising agency that is not licensed in any tier of the alcoholic beverage industry. It is the advertising agency that would then sell advertising on the tablets. The applicant would not share in the advertising revenue generated by the third party advertising agency on a percentage of revenue or other basis.

NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF JULY 15, 2014  
REFERRED FROM: ADMINISTRATION

2014-01765C

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

INGREDIENT STANDARDS FOR NEW YORK  
STATE LABELLED WINES AND WINES  
PRODUCED BY FARM WINERIES

(ADVISORY 19 - DRAFT)

The Members of the Authority at their regular meeting held at the Zone I New York City office on JULY 15, 2014 determined:

STATE OF NEW YORK  
LIQUOR AUTHORITY

TO: All licensed wineries and farm wineries

SUBJECT: Ingredient standards for New York state labelled wines and wines produced by Farm Wineries

The purpose of this Advisory is to provide guidance to: 1) licensed wineries with respect to the statutory requirements to designate a product as a New York state labelled wine, and 2) farm wineries with respect to the production of any wine under their license.

New York state labelled wine

Pursuant to Alcoholic Beverage Control Law (“ABCL”) Section 3(20-a), New York state labelled wine must contain at least 75% by volume New York grown grapes or other fruits.

Wineries

Winery licensees are reminded that while they may import out-of-state wine, grapes or other fruits for manufacturing purposes, they may not represent any wine as “New York state labelled wine” unless at least 75% of the grapes or other fruits utilized to produce the wine were grown in New York. As part of the licensee’s obligation under ABCL Section 103(7) to maintain adequate books and records, wineries should maintain documentation to demonstrate that any New York state labelled wine produced by the licensee conforms to the statutory standard.

Farm Wineries

Farm winery licensees are reminded that they may only utilize grapes or other fruit grown in New York State absent a declaration from the Commissioner of the Department of Agriculture and Markets permitting the use of out-of-state agricultural products because of a natural disaster, act of God or adverse weather conditions. As part of the licensee’s obligation under ABCL Section 103(7) to maintain adequate books and records, farm wineries should maintain

documentation to demonstrate that any wine produced by the licensee is made using only New York State grapes or other fruits.

NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF JULY 15, 2014  
REFERRED FROM: ADMINISTRATION

2014-01765D

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

INGREDIENT STANDARDS FOR NEW YORK  
STATE LABELLED LIQUOR AND LIQUOR  
PRODUCED BY FARM WINERIES

(ADVISORY 20 - DRAFT)

The Members of the Authority at their regular meeting held at the Zone I New York City office on JULY 15, 2014 determined:

STATE OF NEW YORK  
LIQUOR AUTHORITY

TO: All licensed distillers and farm distillers

SUBJECT: Ingredient standards for New York state labelled liquor and liquor produced by Farm Distillers

The purpose of this Advisory is to provide guidance to: 1) licensed distillers with respect to the statutory requirements to designate a product as a New York state labelled liquor, and 2) farm distillers with respect to the production of any liquor under their license.

New York state labelled liquor

Pursuant to Alcoholic Beverage Control Law (“ABCL”) Section 3(20-c), a liquor can be designated as a “New York state labelled liquor” if 75%, by volume, of the fruits, vegetables, grain and grain products, honey, maple sap or other agricultural products used are grown or produced in New York state.

Distillers

Distiller licensees are reminded that while they may import out-of-state liquor and ingredients for manufacturing purposes, they may not represent any liquor as “New York state labelled liquor” unless at least 75% of the fruits, vegetables, grain and grain products, honey, maple sap or other agricultural products utilized to produce the liquor were grown or produced in New York. As part of the licensee’s obligation under ABCL Section 103(7) to maintain adequate books and records, distillers should maintain documentation to demonstrate that any New York state labelled liquor produced by the licensee conforms to the statutory standard.

Farm Distillers

Farm distiller licensees are reminded that, pursuant to ABCL Section 61(2-c)(a)(ii), they may only produce liquor made “primarily” from farm and farm products (such as fruits, vegetables, grain and grain products, honey, maple sap or other agricultural products) grown or produced in New York state. The Authority

interprets “primarily” to mean at least 75% by volume. This standard applies to each product manufactured by the farm distiller, and not the farm distiller’s overall use of ingredients in all of its liquor. As part of the licensee’s obligation under ABCL Section 103(7) to maintain adequate books and records, farm distillers should maintain documentation to demonstrate that any liquor produced by the licensee conforms to this standard.

NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF JULY 15, 2014  
REFERRED FROM: ADMINISTRATION

2014-01765E

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

INGREDIENT STANDARDS FOR NEW YORK  
STATE LABELLED BEER AND BEER  
PRODUCED BY FARM WINERIES

(ADVISORY 21 - DRAFT)

The Members of the Authority at their regular meeting held at the Zone I New York City office on JULY 15, 2014 determined:

STATE OF NEW YORK  
LIQUOR AUTHORITY

TO: All licensed breweries and farm breweries

SUBJECT: Ingredient standards for New York state labelled beer and beer  
produced by Farm Breweries

The purpose of this Advisory is to provide guidance to: 1) licensed breweries with respect to the statutory requirements to designate a product as a New York state labelled beer, and 2) farm breweries with respect to the production of any beer under their license.

New York state labelled beer

Section 3(20-d) of the Alcoholic Beverage Control Law (“ABCL”) defines “New York state labelled beer.” Until December 31, 2018, at least 20% (by weight) of the hops, and at least 20% (by weight) of all other ingredients excluding water, used to make the beer must be grown in New York state. From January 1, 2019 until December 31, 2023, those percentages are increased to 60%. Starting January 1, 2024, at least 90% (by weight) of the hops, and at least 90% (by weight) of all other ingredients excluding water, used to make the beer must be grown in New York state.

Breweries

Brewery licensees are reminded that while they may import out-of-state beer and ingredients for manufacturing purposes, they may not represent any beer as “New York state labelled beer” unless that beer meets the standards set forth in ABCL Section 3(20-d) As part of the licensee’s obligation under ABCL Section 103(7) to maintain adequate books and records, breweries should maintain documentation to demonstrate that any New York state labelled beer produced by the licensee conforms to the statutory standard.

Farm Breweries

Farm brewery licensees are reminded that they may only produce beer that meets the definition of “New York state labelled beer” absent a declaration from

the Commissioner of the Department of Agriculture and Markets permitting the use of out-of-state agricultural products because of a natural disaster, act of God or adverse weather conditions. The standards contained in that definition apply to each beer produced by the farm brewery, and not the farm brewery's overall use of ingredients in all of its beer. As part of the licensee's obligation under ABCL Section 103(7) to maintain adequate books and records, farm breweries should maintain documentation to demonstrate that any beer produced by the licensee conforms to the statutory standard.

NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF JULY 15, 2014  
REFERRED FROM: ADMINISTRATION

2014-01765F

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

INGREDIENT STANDARDS FOR NEW YORK  
STATE LABELLED CIDER AND CIDER  
PRODUCED BY FARM WINERIES

(ADVISORY 22 - DRAFT)

The Members of the Authority at their regular meeting held at the Zone I New York City office on JULY 15, 2014 determined:

STATE OF NEW YORK  
LIQUOR AUTHORITY

TO: All manufacturers licensed to produce cider

SUBJECT: Ingredient standards for New York state labelled cider and cider produced by Farm Cideries

The purpose of this Advisory is to provide guidance to: 1) manufacturers licensed to produce cider with respect to the statutory requirements to designate a product as a New York state labelled cider, and 2) farm cideries and farm breweries with respect to the production of any cider under their license.

New York state labelled cider

Section 3(20-e) of the Alcoholic Beverage Control Law (“ABCL”) defines “New York state labelled cider as cider made exclusively from apples of other pome fruits grown in New York State.

Cider Producers and Farm Wineries

Cider Producer and Farm Winery licensees are reminded that while they may import out-of-state cider and ingredients for manufacturing purposes, they may not represent any cider as “New York state labelled cider” unless that cider meets the standards set forth in ABCL Section 3(20-e). As part of the licensee’s obligation under ABCL Section 103(7) to maintain adequate books and records, cider producers and farm wineries should maintain documentation to demonstrate that any New York state labelled cider produced by the licensee conforms to the statutory standard.

Farm Cideries and Farm Breweries

Farm cidery and farm brewery licensees are reminded that they may only produce cider that meets the definition of “New York state labelled cider” absent a declaration from the Commissioner of the Department of Agriculture and Markets permitting the use of out-of-state agricultural products because of a natural disaster, act of God or adverse weather conditions. The standards contained in that definition apply to each cider produced by the farm cidery or farm brewery, and

not the licensee's overall use of ingredients in all of its cider. As part of the licensee's obligation under ABCL Section 103(7) to maintain adequate books and records, farm cideries and farm breweries should maintain documentation to demonstrate that any cider produced by the licensee conforms to the statutory standard.