

STATE OF NEW YORK
LIQUOR AUTHORITY

To: All Trademark holders, manufacturers and wholesalers

Subject: Licensing/trademark agreements with retailers

The purpose of this Advisory is to provide guidance with respect to dealing with licensing and trademarks agreements when the trademark is owned by a retail licensee under the circumstances stated below.

The Authority is aware that some retail licensees (both within New York State and out of the state) hold trademarks and enter into agreements permitting use of those trademarks by manufacturers of liquor, wine and beer. Section 105(16) of the Alcoholic Beverage Control Law ("ABCL") prohibits a retail off-premises licensee from being interested, directly or indirectly, in any premises where liquors, wine or beer are manufactured or sold at wholesale. Section 106(13) of the ABCL prohibits a retail on-premises licensee from being interested, directly or indirectly, in any premises where liquor, wine or beer are manufactured or sold at wholesale. ABCL Sections 101(1)(a), and (c) prohibits, manufacturers and wholesalers from being interested in any premises where alcoholic beverages are sold at retail.

The Authority finds that retail licensees that receive a percentage of a manufacturer's or wholesaler's sales, whether pursuant to a licensing/trademark agreement or otherwise, are "interested" in the manufacturer or wholesaler and in violation of Sections 105(16) and 106(13). Additionally, a retail licensee who receives a flat fee for a trademark which correlates to the amount of product sold by the manufacturer or wholesaler is similarly "interested" in the manufacturer or wholesaler and is in violation of Sections 105(16) and 106(13).

Licensing/trademark agreements between retailers and manufacturers or wholesalers are records which are subject to inspection pursuant to ABCL Sections 105(15), 106(12) and 104(10).

Advisory 2014-7, deals with the issue of the use of Private Brands in the State of New York. This advisory is intended to be used in addition to and not in place of Advisory 2014-7.

Where product bearing the Trademark is sold by manufacturers or wholesalers to retailers that are not the trademark owner, whether in the state of New York or outside the State, the receipt by the New York retailer who owns the Trademark of percentage sales from the manufacturers or wholesalers licensed to use the Trademark violates Section 105(16) (off premises) or 106(13) (on premises). Where a percentage of sales is not used, but the method of calculating the license fee correlates to the sales made by the manufacturer or wholesaler, the same violations exist.

The Authority does not intend, by this advisory, to address or prohibit all licensing/trademark agreements between retailers, manufacturers and wholesalers; rather, this advisory addresses only those that are based upon a percentage of sales or correlate with sales. The legality of other trademark and licensing agreements must be determined based upon the applicable facts and circumstances.