

STATE OF NEW YORK: LIQUOR AUTHORITY

Operation of Hooch, Inc.

DECLARATORY
RULING
2016-00763

Preliminary Statement

Section 98.1 of the Rules of the State Liquor Authority 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, on any person, property or state of facts.

By letter dated January 19, 2016, a request was submitted by Hari Nathan Kalyan, Esq. on behalf of his client Hooch, Inc. ("Hooch"). Hooch does not hold licenses relating to alcoholic beverages. As described by Mr. Kalyan, Hooch is an application ("app") that provides members with a buy one drink at full price to receive a complimentary second drink offer at specified participating licensed on-premises venues. Mr. Kalyan asks if Hooch's proposed method of operation violates the Alcoholic Beverage Control Law ("ABCL").

Statement of Facts

Per Mr. Kalyan, Hooch is a marketing company and does not hold any licenses in relation to alcoholic beverages. Hooch operates an app that drives members to on-premises venues. Members, who are customers, join Hooch for a flat monthly fee or flat annual fee and are then considered part of the Hooch community. All members must be over twenty-one.

Members may use the Hooch app at one participating venue a day. The Member shows the server their app and the server slides the app to mark a coupon redeemed. The coupon entitles the member to a second complimentary beverage after they have purchased one beverage at full price. Essentially, Hooch offers members a fifty percent discount when they buy two drinks. All licensed venues participating with Hooch agree to make this offer.

Members always pay the licensed venue for their drinks. Hooch does not process member's payments nor do they ever receive any portion of the member's payment. Additionally, all servers are still required to ensure that all members are of legal age.

Hooch does not contain any advertisements from alcohol manufacturers. Licensed venues contracting with Hooch pay a flat fee to participate and have Hooch create marketing materials.

Statutes Involved

Section 111 of the ABCL states a license issued "... shall not be transferable to any other person or to any other premises...it shall be available only to the person therein specified ..."

Section 117-a of the ABCL is titled "Unlimited drink offerings prohibited" and prohibits any licensee from serving a patron an unlimited number of drinks during any set time period for

a fixed price. It also prohibits licensees from advertising or charging for drinks in a manner which in the judgment of the Authority attempts to circumvent the unlimited drink prohibition.

Questions Presented

1. Is Hooch availing the license of an on-premises venue in violation of ABCL Section 111?
2. Does Hooch violate the unlimited drink offer prohibition in ABCL Section 117-a?

Determination of the Members

The Members review the operations of third party providers to see if: (1) an unlicensed entity is acting in place of a licensee and; (2) does the unlicensed entity have an ownership/financial interest in the licensed premises. The Members view certain functions to be essential to a retailer's control of a licensed premises. These functions include selecting the product to be sold, selecting the price at which the product is sold and the receipt and control of consumer funds. Retailers who permit unlicensed entities to perform these functions are viewed as passive and possibly "availing" in violation of ABCL Section 111.

Under the method of operation as outlined by Hooch, there is nothing to suggest that Hooch takes the place of the licensee or performs any essential retail functions. Under the Hooch method of operations, Hooch plays no role in the product selection of the licensed venue.

As to the price at which drinks are sold via Hooch, retailers choose to sell the member two drinks at a fifty percent discount by contracting with Hooch. It is an across the board discount for every possible drink a member may order, it is not a drink special for a specified brand or even type of alcoholic beverage such as beer or spirits. More specifically, Hooch plays no role in selecting the profit margin a licensed venue yields from each sale. The prices of the alcoholic beverages are determined by the licensee not Hooch.

Finally, Hooch never receives any of the member's drink payment. The payment for drinks is a transaction strictly between Hooch and the member. By selling memberships, Hooch drives the member to the location with the guarantee of a two for one discount. It is the equivalent of selling coupons for a two for one discount.

Accordingly, based on the above three criteria there is no basis to deem retailers who participate with Hooch as passive or to view Hooch in violation of ABCL Section 111.

As to the issue of ABCL Section 117-a and the prohibition on unlimited drink offerings. In Declaratory Ruling 2011-03001 the Members referred to their informal standard that any discount higher than fifty percent violates Section 117-a. Accordingly, the Members have historically deemed two for one or "buy one get one free" drink offerings to comply with Section 117-a. This is exactly what Hooch offers when it says a member will receive a second drink complimentary after they purchase one drink at full price. Therefore, Hooch's operation does not violate ABCL Section 117-a.

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 with the representations as set forth above. The forgoing Declaratory Ruling was approved by the Members of the Authority at Full Board meeting held on April 5, 2016.


Jacqueline Held
Acting Secretary to the Authority