



State Liquor Authority

ANDREW M. CUOMO
Governor

VINCENT G. BRADLEY
Chairman

GREELEY FORD
Commissioner

DECLARATORY RULING

Instacart Internet-Based Grocery Service
Agenda #2016-02757
Page 1 of 33

The Members of the Authority are in receipt of a request from Instacart, an internet platform that permits customers to order and pay for alcoholic beverages to be delivered to them, for a Declaratory Ruling as to whether its proposed method of operation is in compliance with the Alcoholic Beverage Control Law. Instacart is a technology company that does not hold any liquor licenses and has no interest in any liquor license. Instacart provides on demand delivery of grocery items and wishes to add wine, beer and spirits to the portfolio of items it offers to its customers.

Internet Platform – Method of Operation

Licensed retailers will pay Instacart to be included on the platform: a flat fee per order; and a pickup/delivery service charge. Consumers will also pay a delivery charge to Instacart. Instacart's method of operation also includes the following:

- Licensed retailers will be responsible for selecting items that they wish to advertise for sale on the platform.
- Licensed retailers will be responsible for selecting the price each item will be sold for.
- Licensed retailers will be responsible for affirmatively accepting or rejecting each order placed via Instacart.
- Customers browse the Instacart website and choose a retailer they wish to shop from.
- Customers will then select the items they wish to purchase from the retailer, enter their address and credit card information for payment.
- The sale of each alcoholic beverage will be listed separately on the invoice from the delivery charge to the customer.

- After a consumer purchases the product, the retailer will pick the product and prepare the delivery.
- Instacart will then deliver the product.
- Deliveries by Instacart will either be on foot or by car and Instacart states that they will obtain a fleet permit for these deliveries.
- Instacart delivery staff will ensure that the recipient of items is the person who ordered the items and of legal age.
- Payments for alcoholic beverages by customers go straight to the licensed retailer via a payment processing system. Licensed retailers receive 100% of the customer payment for alcoholic beverages.
- All payments for non-alcoholic items ordered by customers will go directly to Instacart, not the licensed retailer.
- Credit card receipts for the purchase of alcoholic beverages shall indicate the licensed retailer.
- Instacart will sell advertising to alcoholic beverage manufacturers.

Determination of the Members

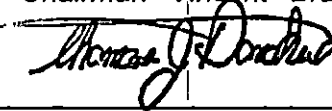
In reviewing this proposed method of operation, it appears that the issues to be resolved are: (1) whether Instacart's involvement in the sale of alcoholic beverages by the retailer constitutes an "availing" of the retailer's license;¹ and (2) whether the payment for advertising by alcoholic beverage manufacturers constitutes an indirect gift or service to the retailers.² Based upon the foregoing representations, the Members of the Authority find that there is no availing of the retailer's license by Instacart since: Instacart does not exercise any control over the operation of the retailers; all funds from the purchase of the alcoholic beverages go directly to the retailer; and Instacart is paid a flat fee per order. Given that it appears that any fee for advertising paid by an alcoholic beverage manufacturer would not subsidize any of the retailer's expenses and the retailer does not receive any portion of those payments, the Members of the Authority also find that there is no prohibited gift or service.

¹ Section 111 of the Alcoholic Beverage Control Law prohibits a licensee from allowing an unlicensed person to "avail itself", or use the privileges of the license without the express permission of the Authority.

² Section 101(1)(c) of the Alcoholic Beverage Control Law prohibits, with certain exceptions, a licensed manufacturer or wholesaler from making any gift or providing any service to a licensed retailer that, in the judgment of the Authority, may tend to influence the retailer to purchase the products of the manufacturer or wholesaler. Section 86.1 of the Rules of the Authority prohibits a licensed retailer from accepting such gifts and services.

This matter was heard and determined by the Members of the Authority at a Full Board meeting held on December 22, 2016 before Chairman Vincent Bradley and Commissioner Greeley Ford. The written declaratory ruling was approved by the Members of the Authority at a Full Board meeting held on January 19, 2017 before Chairman Vincent Bradley and Commissioner Greeley Ford.

Dated: 1/24/17



Thomas J. Donohue
Secretary to the Authority