



State Liquor Authority

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Governor

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Chairman

GREELEY FORD
Commissioner

DECLARATORY RULING

Digital Interactive Video Advertiser ("DIVA") Digital Signs
Agenda #2016-02767
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The Members of the Authority are in receipt of a request from Next Solutions, a company that owns a digital sign system called DIVA (Digital Interactive Video Advertiser), for a Declaratory Ruling as to whether, under the facts presented, a DIVA unit may be provided to a retail wine or liquor store licensee. In particular, Next Solutions seeks guidance as to whether its proposal violates the "Gifts and Services Law"¹ and the regulations promulgated by the Authority with respect to that law.²

As originally described to the Authority, Next Solutions would rent the DIVA to licensed wholesalers for a monthly subscription fee that includes the display screen, installation in a retail store, video content production and updates. The wholesaler creates a portfolio of its suppliers and brands willing to participate in the DIVA promotion. The retailer chooses products from those participating suppliers/brands in order to qualify to have a DIVA in their store for 60 days promoting those selections. The retailer would be required to purchase a specified quantity of those selections to obtain the DIVA. Subsequently, the proposal was amended and the retailer is no longer required to purchase anything from the wholesaler. Neither DIVA nor the distributor pays the retailer for the display screens.

Questions Presented

Is the provision of a DIVA unit to a licensed retailer by a licensed wholesaler a prohibited gift or service under the Alcoholic Beverage Control Law?

¹ 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.

² In particular, SnapBev seeks guidance as to whether its proposal would violate Section 86.4 of the Rules of the Authority, which regulates the provision of interior signs by a manufacturer or wholesaler to a retailer.

Determination of the Members

By regulation, the Authority has created exceptions to the general prohibition against a manufacturer or wholesaler providing a gift or service to a retailer when, in the judgment of the Authority, the gift or service is intended to influence the retailer to buy the product of the manufacturer or wholesaler. One of those exceptions is for interior signs advertising a product, provided that the signs have no secondary value and are of value to the retailer only as advertising. As described above, the Members of the Authority find that the DIVA unit qualifies as an interior sign and can therefore be provided by the wholesaler to the retailer.

As noted above, the original proposal called for a required purchase by the retailer of the wholesaler's product. Such an arrangement would clearly violate the gifts and services prohibition. That requirement has been deleted from the proposal before us. However, a wholesaler can limit the distribution of the DIVA units to retailers who have, in the past, purchased product from the wholesaler. It would be unreasonable to require a wholesaler to provide any or all retailers with the unit regardless of whether the retailer has a history of purchasing the products being advertised on the DIVA.

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