

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF OCTOBER 21, 2014
REFERRED FROM: COUNSEL'S OFFICE

2014-02587A

REASON FOR REFERRAL
REQUEST FOR DIRECTION

OPERATION OF BOTTLE RUSH

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City office on OCTOBER 21, 2014 determined:

RUDNER & PALEUDIS, LLC
ATTORNEYS AND COUNSELORS AT LAW

MEMBERS:
BRIAN M. RUDNER,
ADMITTED IN NY & CT
MICHAEL J. PALEUDIS,
ADMITTED IN NY, NJ, CT, & PA

OF COUNSEL:
JEROME ROSENSTOCK,
ADMITTED IN NY, NJ, & D.C.
RICHARD M. BLANK,
ADMITTED IN NY, CT, & D.C.
ROBIN E. SOSNOW,
ADMITTED IN NY & MA

October 3, 2014

*Via UPS Overnight Delivery and
E-mail: jacqueline.flug@sla.ny.gov*

New York State Liquor Authority
317 Lenox Avenue
New York, NY 10027
Attn.: Jacqueline Flug, Esq.

Re: Bottle Rush LLC

Dear Ms. Flug:

My firm represents Bottle Rush LLC (Bottle Rush). Enclosed, please find my Notice of Appearance. Pursuant to Section 9 NYCRR 98.1, I write to request that the New York State Liquor Authority (SLA) issue a Declaratory Ruling on the validity of Bottle Rush LLC's proposed method of operation as set forth in detail below.

What is Bottle Rush: Bottle Rush has developed a website, and is in the process of developing a smartphone application, (Bottle Rush Platform) that is designed to provide marketing services to off-premises retail licensees (Package Store). The Bottle Rush Platform utilizes an algorithm that anticipates a consumer's wine or spirit preference and provides personalized wine and spirit selections for almost any occasion. These selections can be purchased from the Package Store via a computer, tablet or phone and delivered to the consumer's home within 24 hours. The Bottle Rush Platform has not launched in New York and does not intend to launch until after the SLA rules on this Request. However, in order to inform the SLA, Bottle Rush has created a set of temporary login credentials that the SLA may use to enter and explore the Bottle Rush site while it is in the final stages of development. In the interest of confidentiality, the login credentials are being submitted separately via electronic mail.

How does Bottle Rush work: Each time a consumer visits the Bottle Rush Platform they will be required to check a box indicating that they are twenty-one years of age and input their zip code. During their first visit to the Bottle Rush Platform, consumers are asked to create a consumer account, which includes a shipping address. The shipping address entered by the Consumer determines the Package Store inventory that Bottle Rush will display to the Consumer (in the coming months, Bottle Rush plans to launch in Illinois, New York, Florida, and New Jersey). Upon login, consumers are greeted by a Virtual Sommelier who "gets to know" the consumer by asking multiple-choice questions that provide insight into the consumer's preferences and lifestyle. Based on this data, along with the drinking occasion, food and the consumer's selected budget, the Bottle Rush Platform displays a number of wine selections offered by the Package

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WHITE PLAINS, NEW YORK 10601
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FACSIMILE (914) 220-8271

825 THIRD AVENUE, 2ND FLOOR
NEW YORK, NEW YORK 10022
TELEPHONE (212) 949-0138
FACSIMILE (914) 220-8271

243 TRESSER BOULEVARD, 17TH FLOOR
STAMFORD, CONNECTICUT 06901
TELEPHONE (203) 355-3635
FACSIMILE (914) 220-8271
WWW.RUDNERPALEUDIS.COM

ALL CORRESPONDENCE TO WHITE PLAINS OFFICE

Store. Below each wine selection the Package Store is clearly identified so that the Consumer knows exactly who is on the other side of the transaction. The Consumer selects the wine that they wish to purchase and navigates to the checkout area.

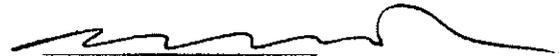
At checkout, the Consumer submits payment to the Package Store through a third party payment platform. Bottle Rush will utilize either Stripe [<https://stripe.com>] or Braintree [<https://www.braintreepayments.com/>] to provide this third party service. After the Consumer submits payment the money is routed directly to the Package Store's account via the third party platform. At no time does Bottle Rush handle any portion of the purchase price. Once the order is placed, the Package Store receives an email alerting them of the order. An employee of the Package Store, in turn, logs into an administrative area of the Bottle Rush Platform where the employee can either accept or reject the order. If the Package Store employee accepts the order an email is generated by the Bottle Rush Platform and is sent to the Consumer's email address confirming that the order has been accepted and that the product(s) will be delivered within twenty-four hours (by an employee of the Package Store). This email clearly identifies the Package Store from which the product has been purchased. This email also contains an information card that highlights why the products were recommended and offers pairings and serving tips. After the Package Store accepts the order the payment is collected by the third party payment platform and deposited directly into Package Store account.

The Bottle Rush Contract: The Bottle Rush contract, which is enclosed herewith for your reference, has several key features: (1) the Package Store has the contractual right to accept or reject all orders; (2) Bottle Rush is compensated via a fixed, yearly "exclusivity fee" and a fixed marketing fee of \$2.50 for each customer that is directed to the Package Store by the Bottle Rush Platform (said marketing fee to change depending on the geographic location of the Package Store); (3) the Package Store retains complete control over the pricing and selection of its inventory; and (4) the Package Store is contractually obligated to establish an account with a third party payment platform that will place the proceeds of each sale directly into the Package Store's exclusive account.

Why we believe Bottle Rush's method of operation is legal: The role and functions of the Package Store demonstrate that Bottle Rush does not control any portion of the licensed business. The Package Store selects the products to be sold, the price at which the products will be sold, and whether or not to accept an order. The Package Store handles the inventory at all stages of the transaction, including the delivery of the product where an employee of the Package Store will insist upon identification from the purchaser. In the event that the consumer cannot produce identification demonstrating that he/she is twenty-one years of age the product will not be delivered. The Package Store retains complete control over all financial aspects of the transaction. Payment is submitted through an unrelated payment-processing platform that deposits the proceeds directly into the Package Store's bank account. The Package Store pays a fixed exclusivity fee and marketing fee to Bottle Rush and ***does not pay Bottle Rush a percentage*** of the purchase price. For these reasons, we submit that, under these circumstances, the Package Store is not permitting an avilment of its license and that Bottle Rush does not have a financial interest in the licensed premises.

Thank you for your courteous time and attention to this matter and, of course, should you have any questions or concerns regarding the foregoing please do not hesitate to contact me at (212) 949-0138.

Yours truly,

A handwritten signature in black ink, appearing to read "Michael Paleudis". The signature is fluid and cursive, with a prominent loop at the end.

Michael Paleudis, Esq.

Enclosures

cc: Tamara Lover, tamara@bottlerush.com
Renell Sullivan, renell@bottlerush.com

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF OCTOBER 21, 2014
REFERRED FROM: COUNSEL'S OFFICE

2014-02587F

REASON FOR REFERRAL
REQUEST FOR DIRECTION

APPLICATION OF 200 FOOT LAW
FOR PROPERTY LOCATED AT:

50 WEST 17TH STREET, MANHATTAN

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City office on OCTOBER 21, 2014 determined:

ELKE A. HOFMANN LAW, PLLC

Eleven Broadway, Suite 800
New York, New York 10004
212.487.9100 phone
212.487.9131 fax
www.eahlaw.com

October 21, 2013

Ms. Jacqueline Flug
General Counsel
New York State Liquor Authority
80 South Swan Street, 9th Floor
Albany, NY 12210

*Re: Request for Declaratory Ruling
Application of 200 Foot Rule at 50 West 17th Street, New York, NY*

Dear Ms. Flug:

I represent the principals of 50 West Realty Company, L.P. (the "Applicant"), the current owner of the premises located at 50 West 17th Street (the "Premises"). The Applicant seeks a determination from the New York State Liquor Authority with respect to the application of the 200 foot rule at the Premises.

The 200 foot rule prohibits the Authority from issuing a retail license for the sale and/or consumption of liquor at premises located on the same street and within 200 feet of any "building occupied exclusively" as a school or place of worship. Notwithstanding such prohibition, a statutory exception provides for the "grandfathering" of a location if a license was in effect at that location prior to the opening of a school or place of worship.

The Applicant hereby requests that the Authority determine whether the building located at 590 Sixth Avenue would be "exclusively occupied" as a school if the building is occupied as anticipated and described herein, and further, requests the Authority to consider whether the Premises would be "grandfathered" under the circumstances set forth herein if the building is exclusively occupied as a school when the school commences operations.

1. Would the building at 590 Sixth Avenue be exclusively occupied as a school if the upper floors of the building are used as offices, unrelated to P.S. 340?

The 200 foot rule also grants the Authority the right to determine, in its sole discretion, whether a building is “exclusively occupied” as a school or place of worship for the purposes of the 200 foot rule. The Applicant hereby requests that the Authority determine that the building at 590 Sixth Avenue would not be used exclusively as a school if the building is operated as anticipated and described herein.

In 2011, the media reported that the New York School Construction Authority was planning to convert the New York Foundling Hospital, a fourteen-story building located at 590 Sixth Avenue, which occupies a large portion of West 17th at Sixth Avenue, into a new public school, P.S. 340. There is no question that when P.S. 340 commences operations, which is anticipated to occur in September, 2014, the school’s entrance will be located within 200 feet of the entrance to the Premises.

The press reports indicate that the building will be a “mixed use” building: P.S. 340 will occupy the cellar and lower six floors of the building, while the upper floors of the building will be used as offices by staff of the New York Foundling Hospital. At least one news article specifically indicated that each section of the building would have a separate entrance. (Some press reports also have included references to a dance studio and a rooftop playground, with no indication of whether or not such uses would be related to P.S. 340.)

The Applicant requests that the Authority determine that, in the event that the upper floors of the Foundling Hospital are in fact used as offices by the Foundling Hospital (or by any other entity that is not related to P.S. 340), and the school occupies only the lower floors, the building would not be “occupied exclusively” as a school and therefore, the 200 foot rule would not prohibit issuance of a license for the consumption of liquor on the Premises.

2. Would an application for a license at the Premises be “grandfathered” for the purposes of the 200 foot rule, notwithstanding the surrender of the current licenses?

Even assuming, arguendo, that the building at 590 Sixth Avenue is ultimately “occupied exclusively” as a school, an exception to the 200 foot rule permits the licensing of premises “at which a license under this chapter has been in existence continuously from a date prior to the date when a building on the same street or avenue and within two hundred feet of said premises has been occupied exclusively as a school...” Accordingly, the question is whether the Premises would be “continuously licensed” notwithstanding the surrender of the license and temporary lapse of operation.

Renegades Associates, Inc., dba Splash (“Splash”) has been licensed and has operated a nightclub at the Premises continuously since September, 1991 (with licenses for two (2) additional bars). On or around July 29, 2013, Splash entered into an agreement with the Applicant, pursuant to which Splash agreed to vacate the Premises and surrender the lease for the Premises to the Applicant. The agreement also included a bill of sale relating to certain equipment remaining on the Premises. Splash vacated the Premises on or around August 15, 2013. (The license certificates are currently in the Authority’s possession and will be in safekeeping upon payment of a conditional no contest associated with a minor delay in submitting the license certificates to the Authority, pending the Authority’s determination in this matter.).

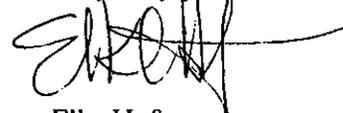
The Applicant intends to undertake a complete renovation of the Premises and to convert the former nightclub into a restaurant, which will be operated either by the Applicant or by a new tenant. It is anticipated that such renovations could take 6-8 months or even longer, given the scale of the demolition and renovations in this instance.

The Authority has, under similar circumstances, concluded that premises were "continuously licensed" notwithstanding the surrender of a license and a lapse in the licensing history of a particular location, even in instances in which the lapse continued for months, and even up to a year, when the premises had been licensed prior to the construction of the school or place of worship and, accordingly, there was no evidence that the applicant was filing an application to "lay claim" to certain premises. The same is true in this instance, as the Premises have been licensed continuously since 1991 and construction activities for P.S. 340 did not commence until 2012; therefore, there can be no concern that the Applicant or any other tenant would be filing an application for a liquor license in order to "lay claim" to the Premises before P.S. 340 commences operation.

The Applicant therefore respectfully requests that the Authority determine that even if the building located at 590 Sixth Avenue is ultimately "occupied exclusively" as a school, the Premises would be considered to have been "continuously licensed" notwithstanding the anticipated surrender of the licenses at the Premise, and that the Premises be "grandfathered" for the purposes of a new license application, provided that an application for a liquor license is filed on a timely basis.

Please do not hesitate to contact me if you have any questions with regard to this request for a declaratory ruling, or require any further information.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Elke Hofmann', with a long horizontal flourish extending to the right.

Elke Hofmann

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF OCTOBER 21, 2014
REFERRED FROM: COUNSEL'S OFFICE

2014-02587G

REASON FOR REFERRAL
REQUEST FOR DIRECTION

DONATIONS TO RETAILERS

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City office on OCTOBER 21, 2014 determined:

STATE OF NEW YORK: LIQUOR AUTHORITY

IN THE MATTER OF DONATIONS TO RETAILERS

PETITION FOR DECLARATORY RULING

Petitioner, The Brooklyn Brewery, by its attorneys, Buchman Law Firm, LLP, hereby seeks a declaratory ruling Pursuant to Section 98.1 of the Rules of The State Liquor Authority (9 NYCRR subtitle B) that activities as described herein are permitted as a charitable donation and as an ongoing cooperative educational initiative between a brewery and a not for profit educational institution retailer.

Applicable Law

ABCL Section 101 - It shall be unlawful for a Manufacturer or wholesaler (a) to be interested directly or indirectly in any premises where alcoholic beverage is sold at retail (b) to make or cause to be made any loan to any person engaged in the manufacture or sale of alcoholic beverage at wholesale or retail (c) make any gift or render any service of any kind directly or indirectly to any person licensed under this chapter which in the judgment of the liquor authority may tend to influence such licensee to purchase the product of such manufacturer or wholesaler. The provisions of paragraph (c) shall not be construed to prevent a manufacturer or wholesaler from entertaining a licensee at lunch or dinner, or prevent a manufacturer or wholesaler from participating in or supporting bona fide retailer association activities, such as but not limited to, associate memberships, dinners, conventions, trade shows, product tastings, product education where such participation is in reasonable amounts and does not reach proportions that indicate attempts to influence the purchase of products of contributing manufacturers and wholesalers by the members of such retailer associations.

ABCL Section 101(7) – New legislation which authorizes the Culinary Institute of America (“CIA”), to obtain a license under 64(c) and provide brewed beer to all restaurants on the CIA premises.

New York Reg. 86.1 – No manufacturer or wholesaler shall make any gift or render any service or give anything of value to retail licensees except as provided under the rule.

New York Reg. 86.8 – A manufacturer or wholesaler may give or sponsor educational seminars for employees of retailers either at the manufacturer’s or wholesaler’s or retailer’s premises. Examples are seminars dealing with the use of equipment, training seminars for employees or tours of the manufacturer’s or wholesaler’s premises. The retailer cannot pay the wholesaler in connection with the seminar.

Proposal

Petitioner seeks to promote education of brew making practices and recipes by working with and assisting the CIA in the expansion of its curriculum. Petitioner is a licensed New York brewer situated at 79 North 11 St., Brooklyn, NY 11211 (license number 1010943). CIA is a non-profit educational institution established for the purpose of educating students in the culinary arts. CIA intends to apply for a New York State retail license with brewer privileges and intends to establish a brewery at its CIA location at 1946 Campus Dr., Hyde Park, NY

12538. CIA will educate its students regarding formulation of beer and malt beverage recipes and production of these beverages as an expansion to its existing culinary arts curriculum. CIA recently lobbied for legislation, which was passed, allowing CIA to obtain this privilege to manufacture beer at its Hyde Park campus, and sell same at all restaurants located at the facility. BB intends to make a one-time donation of \$250,000.00 to CIA to be used to fund the establishment of the CIA brewery. In addition, BB's brew masters and employees will be on site at the CIA brewery twice a month to educate and assist CIA staff and students in their production of beer and other malt beverages. CIA will pay BB \$50,000.00 annually to cover travel expenses and room and board for staff and brew masters who will conduct classes and help CIA instructors develop curriculum.

BB hereby asks the Authority to rule that its involvement in the CIA brewery and brewmaking is not a prohibited interest under 101 (a), (b), (c). BB will not have an interest in the CIA brewery premises or product. The principals of BB will in no way be principals of CIA. There will be no sharing of officers and/or directors or shareholders. Further, BB will in no way share in the profits. The parties have determined and included in their agreement (provided herein), that the brewery will be called "The Brooklyn Brewery at the CIA." These are merely naming rights, similar to a donation made to a museum, traditional university or stadium along with which the donating party is granted naming rights, and not an indication of BB interest in the brewery.

The proposed start-up contribution should be permitted as a charitable donation to a non-profit retailer. The Authority has traditionally allowed manufacturers and wholesalers to make gratuitous donations to charitable organizations. While CIA is not a charitable organization per se it is a non-profit (verification that CIA is a bona fide non-profit is included herein). The purpose of CIA and this proposed initiative is education. BB's role and interest in the project is to promote education and provide support to this iconic non-profit institution. BB will see no financial gain from the donation. The parties have an existing relationship wherein CIA purchases 1% or less of BB products. Neither party anticipates a change. The one-time endowment will serve only to allow CIA to create its own products and further the education of its students.

Under NY Reg. 86.8, a manufacturer is permitted to sponsor and provide educational seminars for retailers and their employees. In this instance BB will provide ongoing bi-monthly seminars for CIA staff and students pursuant to this exception to the rules on gifts and services. BB brew masters will receive \$50,000.00 annually for travel, expenses, room and board as described above. BB is a New York fully licensed brewer since 1998 and has experience as a brewery and a brew pub with a retail brewer license. The visits and instruction by BB staff will be invaluable to CIA staff and students as BB lends its expertise in formulation and production of beer to the curriculum. The cooperation between CIA and BB will serve to develop and promote New York produced product.

The resulting product will be CIA manufactured, developed and labeled with the assistance of BB. The agreement between the parties does not anticipate any royalties to BB or sharing of revenues between the parties. As indicated above, the financial assistance to be provided is a one-time investment in the future of a New York based product. The ongoing nature of the parties' relationship will be the continued education of aspiring culinary artists and development of a new family of products. BB stands to gain nothing other than the promoting the public welfare through education and development. The brewery, as with the other CIA restaurants, will be open consistent with the CIA school schedule.

Finally, when the legislators passed the legislation allowing CIA to be licensed as a retailer with a brewery privilege which provides beer to all the CIA restaurants directly, to the best of our knowledge the Senate passed it with the understanding that based on BB's intention to be involved, it would apply to the Authority for a declaratory ruling permitting the involvement. The new legislation specifically extended CIA's privileges as a retailer to include beer manufacturing privileges and distribution privileges to all of CIA's restaurants. The legislation was promulgated not only to obviate the need of CIA to distribute its manufactured products through a wholesaler (which it otherwise would have had to do) by authorizing CIA to self-distribute to all of its retail licensed sites but also to counter New York tied house laws which under ABL Sections 101 and 106 have the effect of restricting cross tier ownership and services between manufacturers and retailers. In theory, without a parallel law embedded in the State's ABC laws under Section 51, CIA's prospective brewery operation might be in jeopardy. However, we believe this effort would be superfluous, as the tied house laws are a two-way street, so too, the new law should also be interpreted as a two-way street. In many instances Courts read the laws to avoid conflict and maintain the Legislators' intent. In short, the Authority should read the Sections involved with parallel exceptions and BB's involvement in the CIA brewery should be permitted, as if Section 51 allowed the same conduct.

For the aforementioned reasons, Petitioner hereby seeks a declaratory ruling that their proposed involvement and donation is not an interest in a retailer, does not run afoul of ABCL 101 and is further viewed as an exception under the regulation 86.8 and an extension of the Authorities previous recognition of charitable donations made by manufacturers to non-profit organizations.