

Application of the "tied-house" and "gifts & services"
Laws to sponsorship agreements

DECLARATORY
RULING

Preliminary Statement

Section 98.1 of the Rules of the State Liquor Authority, (9 NYCRR subtitle B) provides that any person may request the Authority to issue a declaratory ruling on the application of the Alcoholic Beverage Control Law ("ABCL"), or the Rules of the Authority, on any person, property or state of facts. The Authority is in receipt of a request from Wormser, Kiely, Galef & Jacobs LLP (William Schreiber, Esq., and Michael Kelly, Esq., of counsel) on behalf of its client, Brooklyn Events Center LLC ("BEC"), for a declaratory ruling as to whether, under the facts presented, the sale of "sponsorship rights" with respect to its proposed licensed premises would be considered a violation of the "tied-house" and "gifts and services" prohibitions in the ABCL.

Applicable law

ABCL §101(1)(a) prohibits a licensed manufacturer or wholesaler from having any interest, direct or indirect, in any premises where alcoholic beverages are sold at retail.

ABCL §106(13) prohibits a licensed on-premises retailer from having any interest in a business that manufactures or wholesales alcoholic beverages.

ABCL §101(1)(b) prohibits a licensed manufacturer or wholesaler from making any gift, or rendering any service, to a licensed retailer if, in the judgment of the Authority, the gift or service might tend to influence the retailer to purchase the manufacturer's or wholesaler's products.

Section 86.1 of the Rules of the Authority prohibits licensed retailers from accepting such gifts or services.

Statement of facts

The following is a summary of the pertinent facts, as more fully set forth in the letter from Mr. Schreiber and Mr. Kelly:

- BEC lease a parcel of land in Brooklyn. BEC is currently constructing an arena on that site that will be used by a professional basketball team operated by New Jersey Basketball LLC (“NJB”).
- BEC will be entering into an agreement with Levy Premium Foodservice Limited Partnership (“Levy”) to provide food, beverage and catering services at the arena.
- Under the agreement, BEC will share in the profits from Levy’s operations. Therefore, BEC and Levy will join in obtaining a license from the Authority.
- BEC has assigned its rights to sell sponsorships to third party companies to NJB. NJB will have the exclusive power to select and contract with those companies, which may include suppliers and distributors of alcoholic beverages.
- The fee paid by NJB to BEC will not be conditioned on who pays for a sponsorship, or how much is paid for the sponsorships.
- There is no common ownership between BEC, NJB or Levy. NJB does not hold a license to traffic in alcoholic beverages, nor will it receive any of the proceeds from the sale of alcoholic beverages at the arena.

Request to be considered

BEC acknowledges that the “tied-house” [ABCL 101(1)(a) and ABCL §106(13)] and “gifts and services” [ABCL 101(1)(b)] provisions would not allow BEC to enter into sponsorship agreements with suppliers or distributors. However, by assigning the right to make such agreements to an unlicensed, unrelated third party, BEC contends that there would be no violation of either the “tied-house” or “gifts and services” prohibitions.

Prior rulings by the Authority

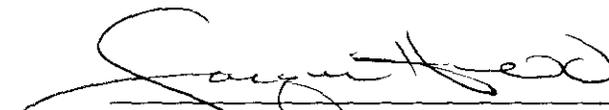
In 2009, the Authority was presented with a similar situation with respect to the licensing of, and sponsorship agreements for, the new Yankee Stadium. Based upon the facts presented in that matter, the Members of the Authority issued a declaratory ruling that allowed the potential licensee to transfer the naming/ sponsorship rights for food and beverage venues within Yankee Stadium premises to a separate, unlicensed, entity. That entity was then allowed to enter into agreements with manufacturers and wholesalers, and any other parties of its choosing, for advertising and naming rights for those venues.

Determination of the Authority

The purpose of the “tied-house” and “gifts and services” laws is to prevent suppliers of alcoholic beverages from having an interest in, or undue influence over, retailers. As presented to the Authority, the parties have created a structure whereby BEC, one of the proposed joint licensees, will assign the sponsorship rights to NJB, which does not hold a license to traffic in alcoholic beverages. No person will be a principal in both organizations. NJB will then enter into an agreement with other companies of its choosing for sponsorship rights at the venue. These other companies may include suppliers and distributors of alcoholic beverages. None of the proceeds from any such sponsorship agreement will go to BEC. While BEC may obtain a payment from NJB for the assignment of the sponsorship rights, it will have no control over the agreements that NJB enters into with those other companies.

In this specific case, given the separation between BEC and any potential supplier or distributor that enters into an agreement with NJB, the Authority finds that the proposed sponsorship agreement does not violate either the “tied-house” or “gift and services” law.

Dated:


Jacqueline Held
Secretary to the Authority