

STATE OF NEW YORK: LIQUOR AUTHORITY

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Operation of Smart Phone application Slingr

DECLARATORY  
RULING  
2013-02826B

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**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, or the Rules of the Authority, to any person, property or state of facts.

By letter dated July 30, 2013, a request was submitted by Justin Malvin, President of Slingr, Inc. Slingr does not hold licenses relating to alcoholic beverages. As described by Mr. Malvin, Slingr is a location-based social gifting web application. Slingr enables customers at licensed premises to receive delivery of menu items, including alcoholic beverages which are purchased by others not at the premises. Mr. Malvin requests a declaratory ruling as to whether the operation of Slingr violates the Alcoholic Beverage Control Law.

**Statement of Facts**

Slingr is a smartphone app. Slingr permits customers at participating licensed on-premises venues to receive delivery/“slings” of the venue’s menu items – both alcoholic beverages and food items – which were ordered and paid for by friends and followers on social networks. In order to receive a “sling,” a customer at a participating on-premises venue must “check in” at the location via the Slingr app or another social media outlet. Friends, family or followers of the customer can then send a “sling” to the customer while they are at the venue. Via the Slingr app, friends may view the venue’s menu, order items and pay for items to then be served to their friend at the venue.

The licensed on-premises venue selects the items, both food and alcoholic beverages which are listed on the Slingr app as well as the price. The licensed venue must accept or reject each order. The licensed venue is responsible for ensuring that all customers who receive “slings” for alcoholic beverages are of

legal drinking age. All alcoholic beverages are served by employees of the licensed establishment.

When an order is placed via Slingr, Slingr captures the credit card funds. Orders may even include tips for the venue's wait staff. On a weekly basis, Slingr pays each venue the amount they have collected for them via direct deposit or check minus the Slingr fee. Currently, Slingr charges the licensed venue a per transaction fee of 25 cents per order plus 2.5% of each transaction. If an order/"sling" is rejected the captured funds are not processed. Orders that are unattended will be void.

Slingr installs their electronic hardware in each participating venue free of charge. Each venue is responsible for electricity charges and Internet service which the Slingr hardware uses.

### **Applicable Law**

Section 111 of the Alcoholic Beverage Control Law prevents a licensee from making their license "available" to anyone. Section 111 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 110(1)(g) requires disclosure of anyone with a financial interest in a licensed premises.

### **Issues Presented**

- (1) Does the operating method of Slingr constitute an availing of an on-premises license?
- (2) Does Slingr have an ownership interest in the licensed premises?

### **Determination of the Members**

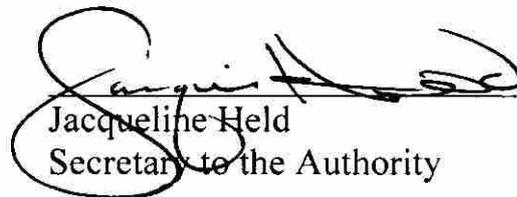
When determining if a retail licensee has made its license available to another, the Members examine the role of the licensee in the operation of the premises. The Members ask whether the licensee is playing a passive role and if an unlicensed person is acting in their place.

Under the facts as presented by Mr. Malvin, it appears that Slingr does not play any role in the operation of a licensed premises. All licensees retain control of the product selection, product prices and delivery of the products. Slingr does, as part of its services, collect payment for the product but that payment is soon transferred to the licensee. Under these particular facts, the licensee retains all essential controls and has not made its' license "available" to an unlicensed party. Accordingly, the Slingr app does not violate Section 111 of the Alcoholic Beverage Control Law.

Additionally, the Members must examine whether an unlicensed party has a financial interest in a licensed premises. Under the facts stated by Mr. Malvin, Slingr receives a flat fee for their services and then a small percentage of items sold via their app. This percentage appears to be an insignificant amount of the overall revenue generated from the sale of alcoholic beverages at a licensed premises. Accordingly, it is the finding of the Members that this fee does not grant Slingr an ownership interest in a licensed premises and, therefore, does not violate Section 110(1)(g) of the Alcoholic Beverage Control Law.

In conclusion, the specific operation of Slingr as described by Mr. Malvin does not violate the Alcoholic Beverage Control Law. 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 from the representations as set forth above.

The forgoing Declaratory Ruling was approved by the Members of the Authority at a Full Board meeting held on October 22, 2013.



Jacqueline Held  
Secretary to the Authority