

STATE OF NEW YORK: LIQUOR AUTHORITY

Application regarding indirect payments
to retailers for inside signs via digital table
tents

DECLARATORY
RULING
2014-00488

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.

By letter dated August 19, 2013, a request was submitted by attorney Robert M. Blau, on behalf of his client Display Points Group, Inc. (Display Points). Display Points does not hold any licenses relating to alcoholic beverages. As described by Mr. Blau, Display Points is a marketing and promotional company that wishes to install “digital table tents” comprised of tabletop-based, interactive video monitors and related equipment in select on-premises retail establishments. The digital table tents, among other things, would display advertisements for products including alcoholic beverages. Mr. Blau requests a declaratory ruling as to whether the payments by Display Points to retailers for the installation and use of the digital table tents violate the Alcoholic Beverage Control Law.

Statement of Facts

Display Points is a marketing and promotional company with no interest in any manufacturer, distributor or retailer of alcoholic beverages. Display Points owns the intellectual property behind digital table tents/tablets that may be mounted on a table in a licensed on-premises venue. The table tents then display video and interactive digital content to consumers. The content contains advertising and other non-advertising content such as sporting events, trivia, public service announcements and information on the host venue.

Display Points maintains control over the content of the table tents. Display Points collects marketing fees from advertisers and then pays the licensed on-

premises retailer a flat fee for the ability to install the table tents at their venue. Display Points then intends to pay the retailer a monthly fee based upon a percentage of the fees it receives from non-alcoholic advertisers. Display Points states that the retailer will not receive any portion of the payments received from alcoholic beverage advertisements.

Applicable Law

SLA Rule 86.4(b) prohibits manufacturers and wholesalers from directly or indirectly paying a retailer for displaying a sign inside their premises or for any expense incidental to its operation.

Question to be Determined

- (1) Does the payment by Display Points to retailers constitute an indirect payment by manufacturers or wholesalers for displaying a sign/ advertisement in violation of Rule 86.4(b)?

Determination by the Board

Under the facts presented, Display Points has created a sophisticated method to calculate the payment to retailers who permit and use the digital table tents at their premises. The system was created to segregate payments from alcoholic beverage manufacturers and wholesalers from all other advertisers. Display Points has stated that a retailer will never receive money paid to them by manufacturers and wholesalers. The Board finds that segregation of funds does not overcome the prohibition set forth in Rule 86.4(6).

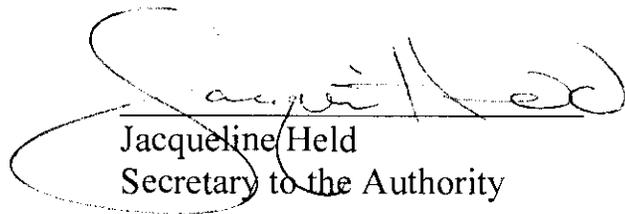
Money is fungible. It is of no relevance which particular Display Points clients gave them a particular dollar as long as dollars from Display Points are paid to retailers. Tracking specific dollars does not declassify the payment by Display Points to a retailer as an indirect payment from a manufacturer or wholesaler. Accordingly, because manufacturers and wholesalers pay Display Points for advertising time on the digital table tents and Display Points in turn pays retailers to use the table tents, the Board deems such a payment an indirect payment from the manufacturer or wholesaler to a retailer for displaying a sign/ advertisement in violation of Rule 86.4(b).

However, the Board will permit Display Points to provide the digital table tents to retailers in the following manner. Display Points may permit retailers to

create 20 percent of the content programming on the digital table tents in exchange for installing and using them in their premises. Under this agreement, the retailer receives no monetary compensation directly or indirectly from manufacturers and wholesalers. Under this agreement the benefit/gift conveyed to the retailer is directly and solely from Display Points a non-licensed entity. This model was adopted by the state of Florida in response to a similar application by Display Points.

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 foregoing Declaratory Ruling was formally approved by the Members of the Authority at a Full Board meeting held on February 25, 2014.



Jacqueline Held
Secretary to the Authority