

STATE OF NEW YORK: LIQUOR AUTHORITY

Use of mobile phone application by package store
Taste Wine Co.

DECLARATORY
RULING
2015-02153

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 Members of the Authority are in receipt of a request from Gary Landsman of Taste Wine LLC d/b/a Taste Wine Company (New York L 1282743) for a declaratory ruling as to whether, under the facts presented, his mobile phone application ("app") may be used for accessing tastings in his store from the previously approved automated wine dispensing machines located therein (Declaratory Ruling 2014-01166E). A retail package store licensee may conduct wine tastings pursuant to Alcoholic Beverage Control Law [ABCL] § 80.

The Taste Wine Company ("TWC") mobile smartphone app is available free for downloading. The app contains information regarding the wines that TWC sells. Upon entering the store for the first time, a customer has their ID verified by staff to make sure they are over the age of 21 in order to activate the app. The customer obtains points for downloading the app and may then use those points to taste various wines. They may then rate the wines tasted, write a review, and/or share it on social media, thereby earning more points in the process. Over time, a user profile is developed regarding the customer's wine preferences.

As a package store, the licensee is limited to selling wine for off-premises consumption only [ABCL § 105]. If the package store licensee is requiring a consumer to purchase anything in order to sample wine, then it would constitute a sale for on-premises consumption, which is prohibited for a liquor store.

TWC represents that a consumer cannot purchase any points through use of its mobile phone app for the purposes of tasting wine. The question before the Members is whether the exchange of points for a sample of wine constitutes a sale under ABCL § 3 (28) and whether that sale is permissible for an off-premises package store.

The facts upon which this ruling is based are as follows:

- Customers can select a wine they wish to taste and scan the corresponding QR code with the app's QR reader. The app then automatically subtracts points from the customer's account while simultaneously directing the machine to dispense a sample.
- The number of points it takes to taste a particular wine depends on the price of the wine – 1 point per dollar price of the wine.
- Customers are limited by the app to a maximum of six one ounce samples of wine per day.

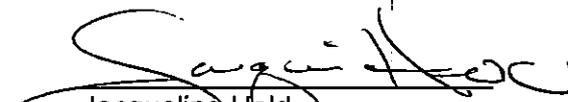
- A customer cannot earn points by making a purchase.
- Points are earned through downloading the free app, rating and reviewing the wines, and sharing the review on social media.
- A customer is not required to use the app or have any points in order to sample any wine being offered for tasting.

Determination of the Members

Wine tasting samples must be free when offered by off-premises licensees. If the licensee issued points based upon purchases which were then redeemable for tasting samples, then the app would fall within the ABCL § 3 (28) definition of sale and be prohibited at an off-premises location. The method of operation present here however, where points are provided to customers utilizing the store's app free of charge, and where there is no requirement that customers use the free app in order to participate in a tasting, does not violate the ABCL and the redemption of points does not constitute a sale.

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, with 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 September 21, 2015.


Jacqueline Held
Secretary to the Authority