

NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF SEPTEMBER 21, 2015  
REFERRED FROM: COUNSEL'S OFFICE

2015-02153

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

AUTOMATED DRINK DISPENSERS IN  
OFF-PREMISES PACKAGE STORE LOCATIONS

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City office on SEPTEMBER 21, 2015 determined:

# Gary Landsman - Taste Wine, LLC

50 3rd Ave  
NY, NY 10003  
info@tastewineco.com

March 31, 2015

Jacqueline P. Flug  
General Counsel  
NY State Liquor Authority  
317 Lenox Ave  
NY, NY 10027

Re: Use of mobile application (the "app") as additional method to access wine dispensing machines in Package store.

Dear Ms Flug,

On May 6, 2014 the Authority issued a formal approval to my request for a Declaratory Ruling concerning the use by customers of automated wine dispensing machines in a package store. The idea here was to provide a modern method for customers to have the opportunity to taste samples of wine prior to purchase much like a traditional wine tasting at a package store.

## INTRODUCTION

Determining a responsible way to dispense the samples, beyond only being poured by Taste Wine staff became a necessity following the enthusiastic reception Taste Wine received for its wine dispensing machine package store concept. But how could we ensure that the wines would only be sampled by responsible, age-appropriate individuals in moderation and not by underage or irresponsible individuals in excess if not poured by a staff member? The answer was obvious to us; technology, specifically a mobile application.

The following is more about the process whereby a mobile "app" can also provide access to these samples for age appropriate individuals, in a responsible manner and in moderation with the hope that the members of the Authority will approve the use of the app and point system as an additional way to access samples.

## THE PROCESS

Upon entering the store, customers will have the opportunity to have wine dispensed for them either by a staff member, or once their ID is verified (by an ATAP certified staff member - EXHIBIT 2), through the Taste Wine Company free mobile phone app (available for download for both Apple & Android users - EXHIBIT 1).

In addition to aiding in the sampling process, the app will provide information about the wines carried in the store (which can be sorted by price, color, etc) and include a feature to help users identify their wine style preferences (EXHIBIT 3).

To encourage customers to engage with the app (rather than rely on the staff) the app was developed with "gamification" in mind - *play* on the app to learn about wine and access wine samples.

When using the app to access the samples, users will have the opportunity to earn points through various methods such as rating a wine, reviewing a wine and sharing a wine via social media (EXHIBIT 4). These points can then be redeemed for tastes (not to exceed 6 per visit) at the wine dispensing machines.

Any customer who doesn't have a smart phone or doesn't want to use the app can still ask a staff member to help them gain access to the samples.

REQUEST TO BE CONSIDERED

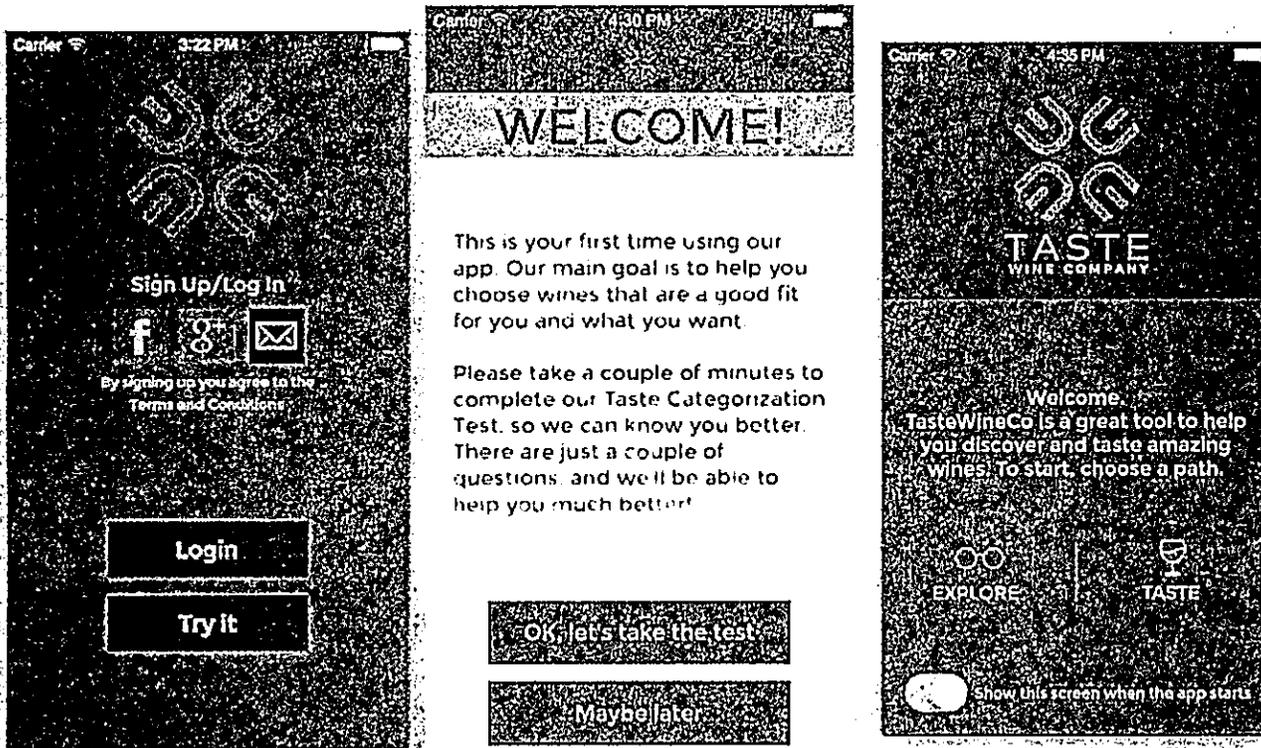
I sincerely hope that the Members of the Authority recognize that the mobile app and its point system are within the legal framework of providing in-store tastings to customers and will approve of their use.

Sincerely yours,



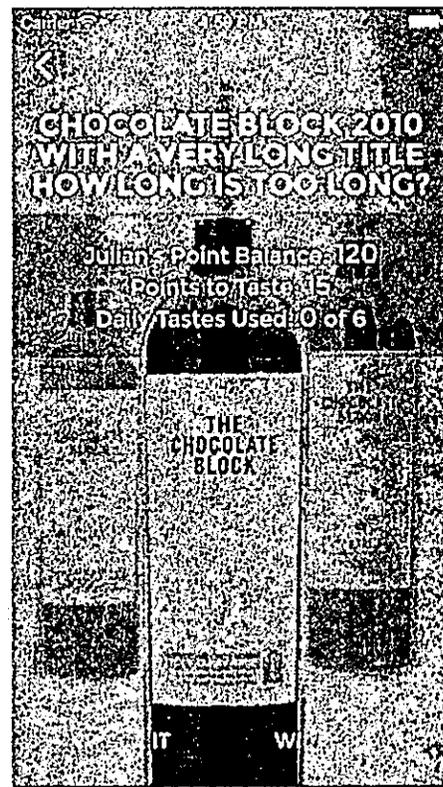
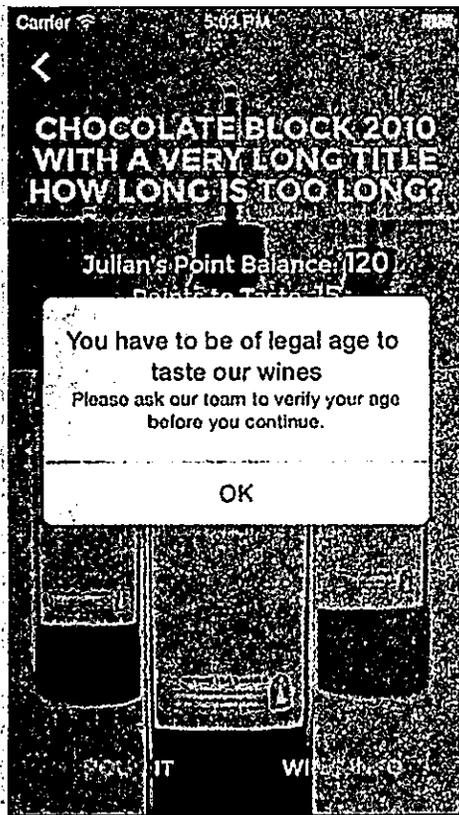
Gary Landsman

## Exhibit 1: Welcome screens



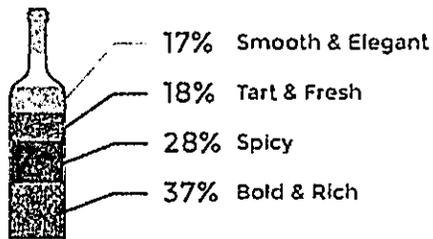
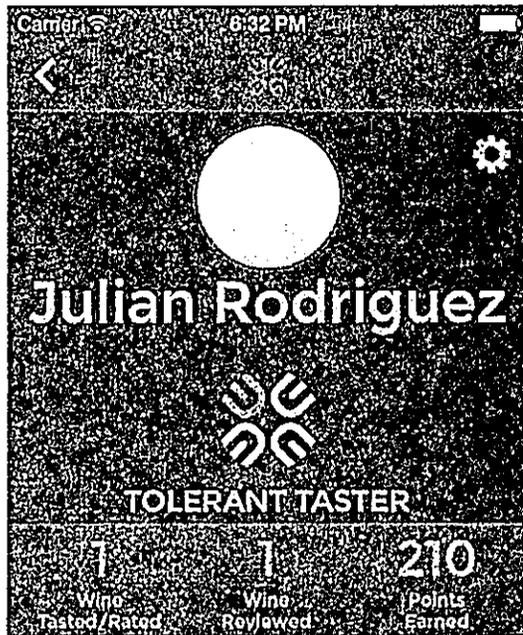
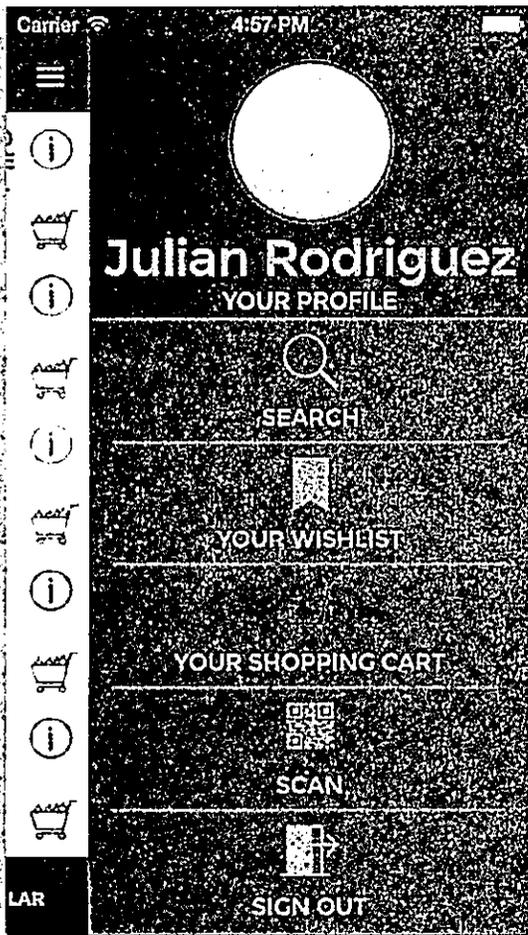
“Sign Up” screen (Screen 1), “Welcome - Taste Test” screen (screen 2) to take the test and learn about wines suited to a specific Taste Type, and initial “Welcome” (path) screen (screen 3) for returning users.

## Exhibit 2: screens when user attempts to sample

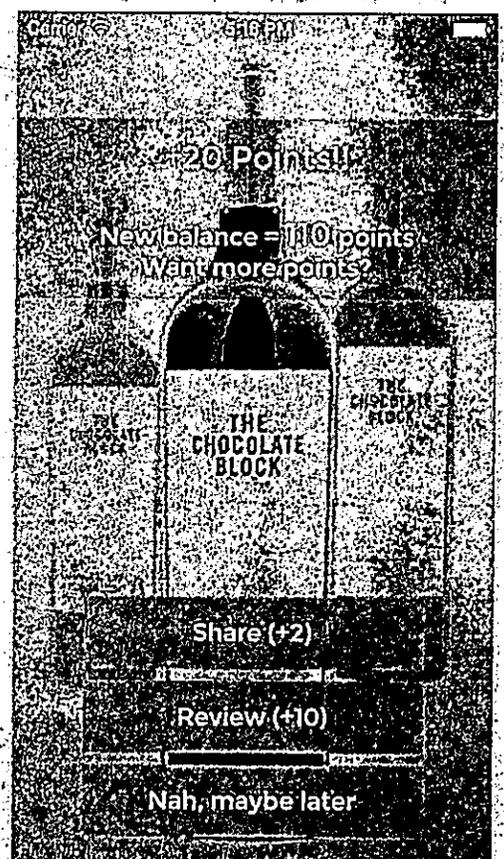
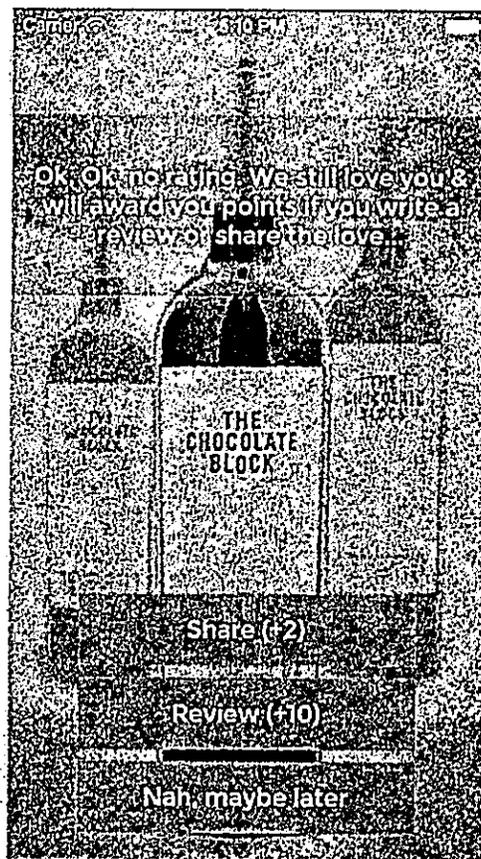
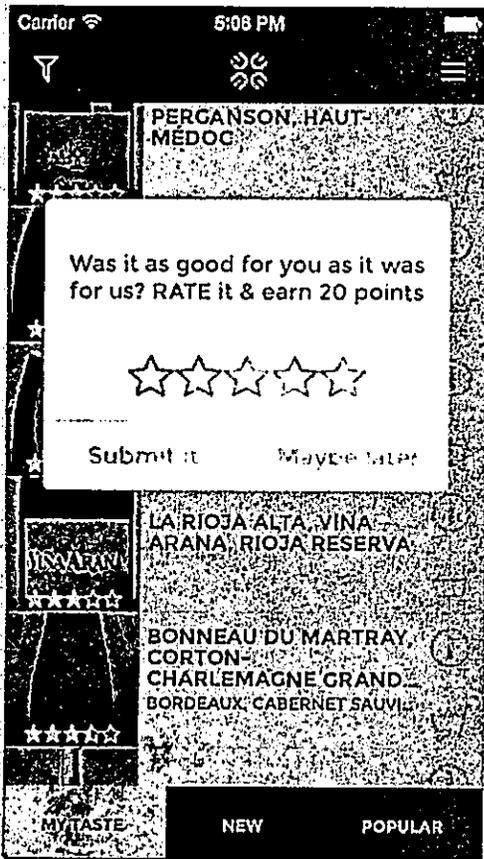


When attempting to sample, users must first have their sampling feature enabled by an employee (screen 1). Once enabled, the user can see their current points, how many points are required to taste a specific wine and how many of their max daily samples they have already used (screen 2).

## Exhibit 3: User profile pages



## Exhibit 4: Point generating screen



Rating a sampled wine, reviewing a wine or sharing a wine are some of the ways users can earn points for additional samples without ever having to purchase anything in the store.

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REFERRED FROM: COUNSEL'S OFFICE

2015-02221B

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

OPERATION OF TABBEDOUT

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City office on SEPTEMBER 21, 2015 determined:



May 26, 2015

Teresa Russo  
518.449.8893 (direct)  
Teresa.russo@wilsonelser.com

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

Re: ATX Innovations, Inc. d/b/a TabbedOut

Dear Ms. Flug:

My firm represents ATX Innovations, Inc. d/b/a TabbedOut (TabbedOut). Pursuant to Section 9 NYCRR 98.1, I respectfully request that the New York State Liquor Authority issue a Declaratory Ruling on the validity of TabbedOut's proposed method of operation as set forth below:

**What is TabbedOut?:** TabbedOut is an innovative mobile payment platform for bars and restaurants which offers a safe, secure and simple for method for consumers to pay their tabs. Through its integration with point of sale providers, TabbedOut is able to capture behavioral on-premise consumption and purchase data directly from the point of sale. This valuable data is then sold to manufacturers as a license fee.

**How Does TabbedOut Work?** Consumers download a free TabbedOut Application and create a user profile. When they visit a participating retailer, they can open their tab on their phone and share their tab code with their server. TabbedOut may offer promotions on certain drinks or invite the user to VIP events. When the consumer is ready to check-out, they can pay their entire tab from their mobile phone or can split the table tab between multiple smart phone users. This application offers consumers a secure way to pay with their credit card that is encrypted on their device and the App will automatically e-mail a receipt.

Merchants pay a monthly fee for the ability to use the Application which captures data about their guests' purchasing behavior and feedback regarding their experience at the Merchant's location. TabbedOut may offer drink specials based on check volume and/or particular menu items directly to consumers to collect consumer behavioral data, in its sole discretion. TabbedOut believes there is value to alcoholic beverage manufacturers from the data collected from consumers on their purchasing behavior, which may include alcoholic beverages, similar to the data that they purchase from Nielsen for retail sales. At times and in its sole discretion, TabbedOut may offer discounts off certain items to aid the collection of sufficient data to provide analytics and other reports to a beverage manufacturer. For example, TabbedOut may offer a discount on a particular drink and a certain check size, and would then be able to track future consumption patterns to measure whether the consumer ordered any more of that specific drink (or something else from the same brewery, winery or distillery), as well as what the drink is ordered with (such as food, soft drinks, etc). No coupons are issued- TabbedOut simply electronically pays a portion of the consumers' check directly to the retailer. The retailer may or may not even be aware of where or when a drink special is being offered and does not receive anything of value above the regular

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price they would normally charge a consumer for such item. TabbedOut gathers all the data and then licenses a web-based dashboard to the manufacturers. The data is organized demographically and geographically. The manufacturers can know the geographic area where the survey was conducted, but only see the data on a macro level - they do not know the specific bars and restaurants where any discounts may have been offered or the consumers that purchased their beverage.

**How is TabbedOut Paid for their services?** Retailers pay a nominal monthly fee (approximately \$99) to allow their consumers to use the TabbedOut application for payment at their premise. In addition, manufacturers and distributors enter into contracts to pay TabbedOut a license fee for access to data that results from the consumers using the application with regards to their beverage purchases. Manufacturers and distributors pay a flat fee to TabbedOut for data license access for a set amount of data collected. TabbedOut collects data in multiple ways including but not limited to banner advertisements, drink discounts and tracking general consumer usage for a set period of time. The method used to collect the data is within the sole discretion of TabbedOut to obtain the most reliable data.

**Why we believe Tabbed Out's Method of Operation is not a violation of New York State Law**  
The Application will not allow a drink to be discounted more than 50% to insure compliance with Section 117-a of the Alcoholic Beverage Control Law.

In addition, the Application does not violate Section 101 (1)(b) of the Alcoholic Beverage Control Law because manufacturers and wholesalers are not making any gifts to retailers. Drink discounts are being offered and paid for solely by TabbedOut at its own discretion. The manufacturer is not involved in the design of the survey and cannot be said to be targeting any particular retailer. Any "gift" is being offered by TabbedOut, which cannot be viewed as an agent of the manufacturer. The discounts are activated completely independent of the retailer.

Thank you for your consideration. Please feel free to contact me if you require any additional information.

Very Truly Yours,

Wilson Elser Moskowitz Edelman & Dicker, LLP

A handwritten signature in black ink, appearing to read "Theresa M. Russo". The signature is fluid and cursive, with a long horizontal stroke at the end.

Theresa M. Russo