



December 14, 2012

Thomas J. Donohue
Special Counsel
New York State Liquor Authority
80 S. Swan Street, 9th Floor
Albany, New York 12210-8002

Re: Petition for Declaratory Ruling

Dear Mr. Donohue,

Six88 Solutions Inc, dba ShipCompliant ["SC"], a Colorado corporation whose corporate offices are in Boulder, CO, and which does business throughout the United States, including in New York State, seeks a declaratory ruling by the New York State Liquor Authority, pursuant to the Rules of the State Liquor Authority §§98.1-98.5, that its national MarketPlace Platform, operated as set forth in this Petition, does not violate New York Alcoholic Beverage Control laws or related SLA Rules.

INTRODUCTION

SC is a technology and regulatory compliance services company that holds no alcoholic beverage licenses in any jurisdiction. SC offers its technological compliance services to wineries and retailers through a proprietary database of state and federal regulations in order to provide a legally compliant direct wine shipping platform to licensed entities. SC has been in business for over eleven years and is the premier compliance services provider in the wine industry. Hundreds of wine producers in the United States use SC's system to manage their direct to consumer (referred to herein as "Producer Direct", or "PD") compliance needs.

SC has developed a business model and compliance system ("MarketPlace Platform") that facilitates the ability of NY licensed wineries and retailers, as well as wineries throughout the US licensed with NY direct shipment permits (collectively, "Licensed Sellers") to utilize the services of advertising platforms (such as operators of internet marketing portals, online magazines and specialty websites) that do not hold alcoholic beverage licenses in NY ("Advertisers") to advertise to consumers the availability of alcoholic beverage products from Licensed Sellers. Products sold by the NY licensed retailers will have been purchased from a NY licensed wholesaler, in accordance with and through the NY three-tier system (and orders that pass through the three-tier system in this manner are referred to as "3T" orders). The MarketPlace Platform provides a service that is in demand by wineries (such as those in NY state, as well as out of state wineries that have trouble finding wholesaler representation) and NY retailers, who want to use modern advertising and social media to reach new consumers who are inclined to purchase and enjoy their products.

SC will offer its MarketPlace Platform as a mechanism for facilitating sales of alcoholic beverage products ("Products") by Licensed Sellers, including NY wineries and retailers, to consumers in New York (as well as in the rest of the US, but this petition is concerned

with New York). SC has designed the MarketPlace Platform to work within the four corners of all state and federal alcoholic beverage laws, and has designed the MarketPlace Platform to be compliant with New York law. We believe that the NYSLA will agree with us that the MarketPlace Platform is compliant with New York law.

STATEMENT OF FACTS

Using SC's MarketPlace Platform, Advertisers use modern communication tools to assist consumers in their interactions with Licensed Sellers. Key to the system is the fact that the Licensed Seller controls all aspects of each transaction, including decisions concerning the selection of alcoholic beverages to advertise or offer for sale, the pricing of those beverages, and the ultimate acceptance and fulfillment of each order. The Licensed Seller is always either a New York licensed retailer, a New York licensed Out of State Direct Shipper (winery), or a New York licensed winery.

Consumers select and place a request for a Product from the items advertised by the Licensed Seller on the Advertiser website or other media, and the Advertiser uses the MarketPlace Platform technology to forward the consumer's request to the Licensed Seller for approval and sale at the Licensed Seller's premise. Product prices listed by the Advertiser are specified by the Licensed Seller. The consumer's order request is checked for compliance (age validation, product compliance and so forth), as well as inventory availability. Once availability and compliance are confirmed, the Licensed Seller must either accept or reject the order request through an automated acceptance utility that employs clickable buttons that direct the licensee to either accept or reject each request. If the order is accepted, the Licensed Seller directs the fulfillment of the order to the consumer.

Following the Licensed Seller's acceptance of an order, funds are processed by a merchant processor who captures all funds from the daily sales and places the funds into an account controlled by a third party entity providing fiduciary services via an escrow or similar type of arrangement. Such funds are segregated according to sales attributable to each Licensed Seller, so that each Licensed Seller receives the total amount of the consumer funds for orders that the Licensed Sellers received and approved. The funds are then settled into an account under the Licensed Seller's control (and tax ID number) held at a third party financial institution ("TPFI").

The SC MarketPlace Platform also promulgates the following rules for each transaction:

- (1) The Licensed Seller's identity is (and must be) clearly displayed to the consumer at the time of transaction and on consumer invoices as applicable and in accordance with state regulation for invoices;
- (2) Each participant in the transaction must establish escrow instructions that an executor ("Executor") will submit to the TPFI to carry out on their behalf;
- (3) SC monitors and confirms product compliance (volume limits, winery direct shipping permits for PD orders; product registrations, price postings, and

retailer licenses and permits for 3T orders). For PD orders to New York consumers, ShipCompliant will provide a compliance check to ensure that licensed wineries only ship products that were produced by the license holder.

- (4) SC performs an age validation check on the consumer's date of birth. Licensed Sellers may also select and use any one of several recognized age verification services through ShipCompliant (SC is currently integrated with Lexis Nexis and IDology);
- (5) SC validates the consumer's address for deliverability and accurate calculation of sales tax;
- (6) At the time the order request is placed, the consumer's funds are authorized, but not captured;
- (7) Following acceptance of an order by the Licensed Seller, funds are captured, and 100% of the consumer's funds settle into the TPF account, under the control of the Licensed Seller. For all 3T transactions, 100% of funds move into an account owned by (i.e., in the tax ID of) the licensed retailer;
- (8) The order is shipped by and at the direction of the Licensed Seller, either from the Licensed Seller's premises or from a public warehouse licensed and authorized to store alcoholic beverage products for licensees, including retailers ("Warehouseman");
- (9) Sales tax is forwarded to the Licensed Seller, for remittance to the state;
- (10) The Licensed Seller pays an advertising fee to the Advertiser for its services as mutually agreed to between Advertiser and Licensed Seller, logistics fees to the Warehouseman for fulfillment services (if applicable, and as invoiced by Warehouseman), and a technology fee to SC for its technology and compliance services. Please see a sample invoice and disbursement example in Exhibit B.

Please see the diagram attached as Exhibit A for more detail on the transaction process and financial flow.

DISCUSSION

SC's MarketPlace Platform works both with wineries shipping into New York from outside the state using their direct shipping permits (PD), and with retailers (3T) and wineries (PD) located in New York delivering their products to consumers within the state.

There are no tied house issues in connection with the MarketPlace Platform, because the Advertisers certify, as part of the MarketPlace Platform set up process, that they do not hold any alcoholic beverage licenses in New York, nor do they have any ownership or other interest in any New York alcoholic beverage licensee or exercise any management or control over any licensee, including the Licensed Sellers.

To ensure that the funds are transferred in accordance with the protocol and the rules, the following safeguards have been established: (a) accounts have been established at a third party financial institution (the TPF, described above): (b) the funds move into the control of the applicable Licensed Seller, and are governed by escrow instructions that are carried out by the TPF for the benefit of the applicable Licensed Seller.

The MarketPlace Platform is also designed to ensure that the state of New York collects the full tax proceeds for each transaction. For every transaction, New York sales taxes are remitted to the Licensed Sellers so that they may calculate and pay their taxes to the state. The MarketPlace Platform will further generate such immediately available reports for the Licensed Sellers as may be requested by the state from the Licensed Sellers.

The MarketPlace Platform is not an exclusionary system; on the contrary, any licensed New York retailer or licensed winery is eligible to participate in the MarketPlace Platform.

CONCLUSION

The SC MarketPlace Platform is a state of the art technical compliance system that not only facilitates increased consumer access to the inventories of Licensed Sellers, including the small wineries and retailers of NY state (which will help them thrive and prosper, thus adding jobs and commerce to NY state), but has also been designed to achieve full legal compliance. This serves the interests of the state, the Licensed Sellers and NY consumers.

To reiterate, as the attached system protocol demonstrates:

- (1) Proceeds from sales by Licensed Sellers are solely controlled by the Licensed Sellers, which prevents any unlicensed entity from sharing in the revenue of a licensed business except through fees for service properly invoiced to the Licensed Seller and properly paid by the Licensed Seller.
- (2) The certifications required of the participants assure that there are no overlapping interests between licensees, or interest in a licensee by any unlicensed participant in the MarketPlace Platform system.
- (3) Age verification is performed at the front and back end of the order process (as carriers are required to obtain an adult signature for delivery).
- (4) For every transaction, the Licensed Sellers receive and remit the full amount of sales (and, where relevant, excise) taxes due to New York State.

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In conclusion, SC's MarketPlace Platform will provide wineries and retailers in New York and elsewhere with the ability to advertise their products and market them through a sophisticated, compliant, advertising platform. The MarketPlace Platform will, in addition, benefit New York consumers by providing an efficient, accessible means to discover products from diverse Sellers.

SC therefore respectfully requests that the NY SLA issue a declaratory ruling holding that that SC's MarketPlace System, as described in this Petition, is compliant with New York law.

In the event that the SLA requires clarification of any matter described in this Petition, or desires any more information about the MarketPlace System, we will be pleased to respond.

Respectfully submitted,



John A. Hinman
Hinman & Carmichael LLP
Attorney for Six88 Solutions, Inc. dba ShipCompliant

Cc: ShipCompliant

Exhibit A: Transaction Process and Financial Flow

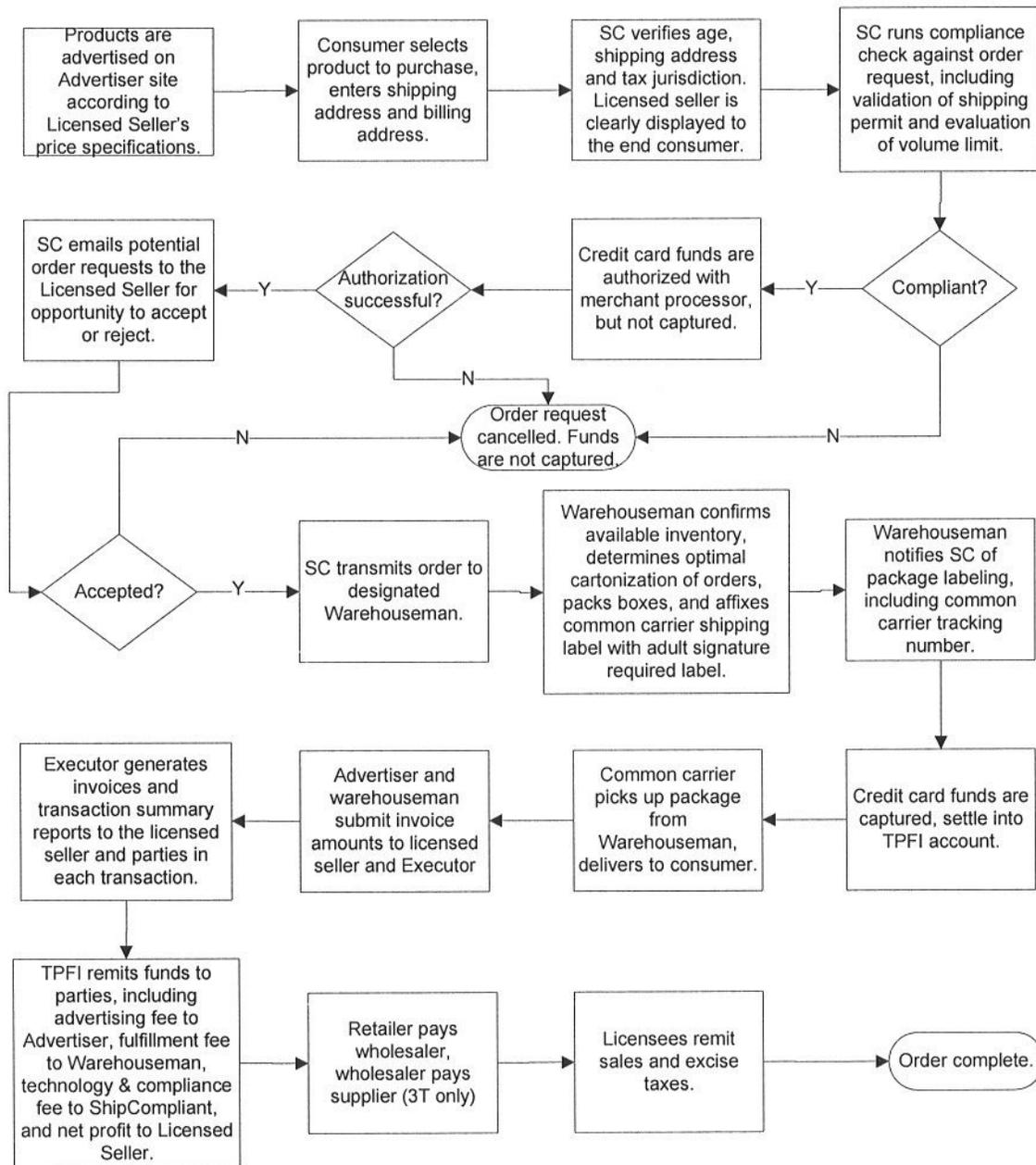


Exhibit B: Sample Invoice and Disbursement

Invoice Number 12345

From: NY Licensed Retailer
To: John Doe (Consumer)

Order Contents

Product	Quantity	Unit Price	Extended Price
Product A	1	\$15.00	\$15.00
Product B	1	\$25.00	\$25.00

Sub Total: \$40.00

Shipping Collected: \$15.00

Sales Tax (8%): \$4.40

Total Amount Collected: \$59.40

Sample Disbursement Transactions for Above Invoice

Starting Order Total: \$59.40

To Licensed Seller:

Deposit into Licensed Seller's Account \$59.40 (Order total)

From Licensed Seller:

Licensed Seller to ShipCompliant \$1.00 (Technology fee)

Licensed Seller to Shipper \$15.00 (Shipping fee)

Outside of System:

Licensed Seller to State of New York \$4.40 (Sales tax)

Amount Retained by Licensed Seller: \$39.00

Monthly Settlement Example

July 2012 Monthly Settlement

Total number of orders:	100	
Average Order Total:	\$59.40	
<i>Transactions to Licensed Seller:</i>		
Deposits into Licensed Seller's Account	\$5,940.00	(Order totals)
<i>Transactions from Licensed Seller:</i>		
Licensed Seller to ShipCompliant	\$100.00	(Order fees)
Licensed Seller to Shipper	\$1,500.00	(Shipping fees)
Licensed Seller to Advertiser	\$1,000.00	(Advertising fees)
<i>Outside of System:</i>		
Licensed Seller to State of New York	\$440.00	(Sales tax)
<i>Amount Retained by Licensed Seller:</i>	\$2,900.00	

Exhibit C: Question and Answer

SC is committed to rigorous adherence to the laws and regulations of the jurisdictions in which it plans to offer its MarketPlace Platform. The goal of the system is to offer all market participants access to appropriate sales opportunities in the most efficient fashion possible utilizing the most advanced system technology available.

Q: How does the MarketPlace Platform address concerns about third parties “availing” themselves of the licenses held by NY Retailers?

A: The MarketPlace platform provides multiple mechanisms designed to make sure that licensed retailers are in full control of all transactions from the moment that their products are selected from the advertised products until the moment that the products are physically delivered to the consumer.

- Retailers always have the ability to accept or reject each order request prior to fulfillment through an automated acceptance mechanism.
- All funds are within the control of the retailer from the moment the funds are captured from the credit or debit card, during segregation (while funds are held in a fiduciary account at a third party financial institution (“TPFI”) for the benefit of the retailer), through to the point at which 100% of the funds move into a bank account owned by (in the tax ID of) the retailer. This is supported by an audit trail report that is available to each participant.
- The Retailer negotiates an advertising or customer acquisition fee schedule that is not based on revenue or profit sharing with the Advertiser but rather on the value of the advertising to the Retailer.
- Retailers direct and control the fulfillment of all orders, based on their shipping preferences.
- Retailers control the placement of products, including product pricing. All products will be established in retailer’s ShipCompliant account in advance of any sale.
- ShipCompliant provides an electronic catalog of products offered through Advertiser sites to the retailers using the MarketPlace Platform to ensure that any orders advertised are also available for customers that request products when physically present at the retailer’s premise, subject to inventory availability.

Q: How is ShipCompliant compensated?

A: SC receives a technological service fee for each transaction that is less than 3% of the total transaction cost. SC's fee is based on the total order although the fee may also be structured as a per-package or per-order fee as invoiced to the licensed seller. This fee structure is similar to the fee for merchant services charged by credit card companies.

Q: How does ShipCompliant ensure that all of the NY Retailers are properly licensed, and that products sold through the MarketPlace Platform have been price posted in NY?

A: As a condition to participating in the MarketPlace Platform, every Licensed Seller (including NY Retailers), will be required to have appropriate licenses and permits and keep them in good standing throughout their involvement with the MarketPlace Platform. This will be part of the original MarketPlace application and on-going compliance process. The MarketPlace Platform does not allow the sale of any item to NY consumers by retailers unless the item has been properly price posted to retail. Price posting checks are built into the MarketPlace Platform system. The system both tracks available inventory in the state and performs compliance checks at the point of order and at the point of delivery as part of the compliance process. Also, because non-NY retailers cannot obtain a permit to ship into NY, ShipCompliant will not allow shipments to New York residents from retailers that are not located in NY. These are core SC functions.

Q: In a typical 3-tier MarketPlace transaction, what does the payment flow look like, and who controls the funds paid by consumers?

A: Consumer credit card funds are authorized at the time of transaction, and captured after acceptance by the Licensed Seller. Captured funds settle, outside of the control of the Advertiser, into an account that is established and maintained by the TPFI. The TPFI is responsible for segregating funds for each order and ensuring that 100% of all funds are subsequently transferred into the bank account of the NY Retailer processing the order via an automated process based on escrow instructions established by the NY Retailer. That NY Retailer account is maintained under the tax ID of the NY Retailer (who also pays the sales taxes). Retailer then remits funds to the various services providers (Advertiser, fulfillment agent, ShipCompliant) from the Retailer's bank account. Therefore, funds are always fully controlled by the NY Retailer.

Q: How will taxes be collected and remitted?

A: 100% of the invoice charge to the consumer, including the sales tax collected, is sent to the NY Retailer. The NY Retailer is responsible for remitting sales tax, and the NY Wholesaler is responsible for excise tax for 3T orders. Wineries are responsible for both excise and sales tax for direct shipments to NY residents (PD).

Q: Why do NY Retailers need or use fulfillment warehouses?

A: Many retailers use fulfillment warehouses for storage of inventory and packaging material (and for packaging of items for delivery to consumers) as a matter of convenience because store space (which may also be used) is generally more expensive. The Marketplace fulfillment system requires the order to be processed (i.e., sale to be made) at the retail store and permits the option of the shipment to the customer to be made from the warehouse where the retailer stores the product and has it boxed up for delivery or from the retail store premises itself. NY Retailers may, and are expected to, also ship product from their physical store location in those instances where the inventory is already on site in the store and packaged. Legal authority for wine and spirits retailers shipping products to NY consumers from storage warehouses (provided that the sale is made at the retailer's licensed store location) exists in ABCL Sec. 96, and has also been verbally confirmed by Tom Donohue on 2/11/08 and again on 7/5/12.