

To: Trademark holders, manufacturers and wholesalers

Re: Licensing/ trademark agreements with retailers

The purpose of this Advisory is to provide guidance with respect to dealing with licensing and trademarks agreements when the trademark is owned by a retail licensee.

The Authority is aware that some retail licensees hold trademarks and enter into agreements permitting use of those trademarks by manufacturers of liquor, wine and beer. Section 105.16 of the Alcoholic Beverage Control Law prohibits a retail off- premises licensee from being interested, directly or indirectly, in any premises where liquors, wine or beer are manufactured or sold at wholesale. Section 106.13 of the Alcohol Beverage Control Law prohibits a retail on-premises licensee from being interested, directly or indirectly, in any premises where liquor, wine or beer are manufactured or sold at wholesale. The Authority finds that retail licensees that receive a percentage of a manufacturer's or wholesaler's sales, whether pursuant to a licensing/trademark agreement or otherwise, are "interested" in the manufacturer or wholesaler and in violation of Section 106.13.

If the trademarked item is intended for sale only in the State of New York and only to the retail licensee that owns the trademark, please refer to Advisory 2014-7 as it relates to Private Brands. Where the Trademark is used as a Private Brand in the State of New York and sold in other states to retailers that are not the trademark owner, percentage sales in those other states violate Section 105.16 (off premise) or 106.13 (on premise.)

The Authority does not intend, by this advisory, to prohibit all licensing/ trademark agreements between retailers, manufacturers and wholesalers; rather, this advisory addresses only those that are based upon a percentage of sales in

violation of Section 105.16 or 106.13. The legality of other trademark and licensing agreements must be determined based upon the applicable facts and circumstances.

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