STATE OF NEW YORK: LIQUOR AUTHORITY

Application of Alcoholic Beverage Control Law with respect to on-line coupon service

DECLARATORY RULING 2011-03001

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 applicability of the Alcoholic Beverage Control Law ("ABCL"), or the Rules of the Authority, to any person, property or state of facts. Wormser, Keily, Galef & Jacobs LLP (William Schreiber, Esq, of counsel), on behalf of an unlicensed business entity, seeks a declaratory ruling as to whether, under the facts presented, the service it provides to licensed on-premises retailers would violate any provisions of the ABCL.

Statement of facts

As described by Mr. Schreiber, his firm's client is a "third party provider" that intends to enter into agreements with entities licensed in this state to sell alcoholic beverages for consumption on the premises. The client would offer a promotion on behalf of individual retailers. The promotion would take the form of a coupon that can be redeemed to purchase food and alcoholic beverages at a licensed retailer's establishment. The client would sell the coupon on its website. The coupon would be specific as to the retailer establishment where it can be used.

The coupon is sold to a consumer at one price ($25, for purposes of illustration) but can be redeemed for food and beverages costing a higher amount ($50, for purposes of illustration). Mr. Schreiber's client states that it will not offer any promotion in which a coupon can be used exclusively to obtain alcoholic beverages. Nor will the coupon give consumers more than a fifty percent discount off the retailer's prices.

The client would receive a fee for each coupon sold. The fee is a percentage of the price paid by the consumer. The client does not hold a liquor license and represents that it will not have any interest in the ownership, management or

business operations of any of the licensed retailers. The client proposes that it will not offer a coupon for the same licensed retailer more than four times each calendar year nor more than two times in any calendar quarter. In additional, the client states that each promotion would last no more than two weeks, although a coupon purchased during that period may be redeemed after the promotion ends.

Issues to be considered

In reviewing this proposal, there appear to be two issues raised concerning the ABCL:

(1) Whether the agreement between Mr. Schreiber's client and a licensed retailer would be deemed an illegal "availing" of the license; and

(2) Whether the promotion constitutes a prohibited unlimited drinks offering.

Determination of the Authority

With respect to the first issue, ABCL §111 prohibits a licensee from making its license available to a person who has not been approved by the Authority to hold that license. ABCL §110(1)(g) requires disclosure to the Authority of any person with an economic interest in the licensed establishment. The question to be considered is whether the proposed method of operation provides Mr. Schreiber's client with an interest sufficient enough to invoke the provisions of either or both of these statutes.

The arrangement between Mr. Schreiber's client and the retail licensee entitles the client to a percentage of the proceeds from the sale of alcoholic beverages. The Authority has generally considered such relationships to constitute a transfer of a financial interest in the licensed business to an unlicensed party. Absent disclosure to the Authority and the addition of that party to the licensed entity, the licensee is in violation of §111.

Given the proposed method of operation as described above, it appears that Mr. Schreiber's client will be entitled to a relatively insignificant percentage of the retail licensee's income from the sale of alcoholic beverages. The client will have no other interest in the ownership, management or business operations of the retail licensees. In light of these facts, it is the finding of the Members of the Authority

that the proposal described by Mr. Schreiber would not constitute a violation of §111.

With respect to the second issue, ABCL §117-a prohibits licensees from offering unlimited drinks to patrons during a set period for a fixed price. The statute further prohibits licensees from advertising or conducting a promotion which, in the view of the Authority, is an attempt to circumvent the law. Licensees may not allow third parties to offer or advertise illegal drink promotions. The Authority has adopted an informal standard that any promotion in which drinks are offered at less than half the retailer's regular price will be deemed as a violation of §117-a. Since these coupons give consumers no more than a fifty percent discount off the retailer's prices, the Authority finds that the proposal described by Mr. Schreiber would not constitute a violation of §117-a.

In conclusion, the specific proposal described by Mr. Schreiber does not violate the provisions of the ABCL. Licensees are reminded, however, that this ruling is limited to the facts set forth herein. This ruling should not be considered approval of any other proposal which deviates, in any respect, with the representations set forth above.

The foregoing Declaratory Ruling was formally approved by the Members of the Authority at a Full Board meeting held on October 5, 2011.

Jacqueline Held
Secretary to the Authority