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DECLARATORY RULING

Placement of trademark interests in trust – Margaritaville Enterprises LLC

Agenda # 2018-00614

Introduction

Margaritaville Enterprises LLC, requests a declaratory ruling asking whether the placing of ownership and control in irrevocable trusts of the trademark classes and ownership interests as discussed below removes any direct or indirect interest of Margaritaville Enterprises LLC in the manufacture or wholesale of alcoholic beverages.

Statement of Facts

This Declaratory Ruling would be conditioned upon Margaritaville divesting itself of control and ownership of trademarks regarding malt and alcohol beverages – but NOT divesting itself of non-malt and non-alcohol beverages – into irrevocable trusts, as follows:

1. Margaritaville Enterprises LLC transfers ownership of trademarks and license agreements to its parent-owner, which is Margaritaville Holdings LLC (“Holdings”).
2. Holdings would then transfer ownership of those trademarks and agreements to the owners of Holdings.
3. Thereafter, the Holdings owners would transfer their ownership of the trademarks and agreements into an *Irrevocable Trust*, formed under New York State law, to hold and operate the business related to those assets.
4. Margaritaville and Jimmy Buffet would then transfer all rights they had remaining in trademarks for alcohol beverages, if any, to the Trust. Further, they would then transfer all remaining rights they had, if any, in the trademark and licensing agreements with manufacturers and wholesalers into the Trust.
5. The Trust would sign a guaranty to Holdings’ lender regarding the debt owed to the lender by Holdings and its subsidiaries.

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6. The Trust would be operated by an *Independent Trustee*, proposed by Margaritaville.

7. Trustee *would not be* an employee, owner, officer, or director of Holdings, Margaritaville, or any subsidiary thereof.

8. Trustee would have no power unless and until he or she were approved by the New York State Liquor Authority.

Beneficiaries

With one exception, the holders of Margaritaville Holdings LLC shall not be beneficiaries of the Trust. The exception involves several related entities that are part of an institutional, investment banking firm known as the Raine Group. Each of these affiliated entities shall be permitted to both transfer the alcohol beverage assets in question to the Trust and also be the beneficiaries of the Trust.

Questions Presented

Does Margaritaville's proposed placement of ownership and interests of trademarks and licensing agreements into an irrevocable trust remove any interest in the trademarks?

Previous Ruling by the Members

Declaratory Ruling 2015-02615 provides that a grantor's irrevocable gift to a trust does not entitle the grantor to profits or control of the gift, and is therefore not considered an interest for tied-house purposes by the Authority. Furthermore, irrevocable trusts may be issued a liquor license, if the trustee is qualified to hold a license, and the beneficiaries are similarly qualified and do not have interests in any other tiers.

Determination of the Members

The issue here is whether Margaritaville's grant of its interests in wholesale and manufacture trademarks and licensing agreements into an Irrevocable Trust would extinguish its interest in those tiers, as far as Section 101 of the Alcoholic Beverage Control Law is concerned.

The facts governing Declaratory Ruling 2015-02615 are instructive. DP 49 LLC owned a marina, and sought to sublet a brewery, a distillery, and a restaurant on its property. The owners of the brewery, distillery, and restaurant owned interest in the parent DP 49 LLC. To resolve the tied house issue, the Authority approved the owners putting their interest in DP 49 LLC into individual Irrevocable Trusts, naming their family as the respective Beneficiaries. Thus, the parent property-owner, DP 49 LLC, was owned by Irrevocable Trusts granted by the individual lease-owners.

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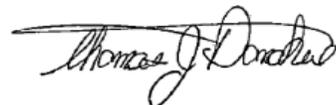
Margaritaville proposes to grant all its malt- and alcohol-related trademarks into Irrevocable Trusts, operated by an independent Trustee. This Trustee would not be an employee, owner, officer, or director of Margaritaville, its parent Margaritaville Holdings, or any subsidiaries thereof.

Margaritaville's granting of its interest in alcohol-related trademarks into an Irrevocable Trust, naming an unrelated Trustee, and naming unrelated Beneficiaries should not run afoul of Section 101(1)(a)'s tied house proscription, if the Trustee and the Beneficiaries do not have an interest in a license that violates the tied house law.

The Members hereby find that Margaritaville's proposed grant into an Irrevocable Trust of its interests in manufacture and wholesale trademarks, naming of a completely independent Trustee, who has no affiliation whatsoever with Margaritaville or Holdings, and naming of completely independent Beneficiaries, removes its interest in the manufacture and wholesale trademarks, except with respect to the Raine Group entities. Raine Group will still need to clarify whether and to what extent they control the Margaritaville trademarks associated with the Irrevocable Trust. Furthermore, this Declaratory Ruling has no bearing on any later filed retail licensees, and their suitability to receive a retail license, in regards to this property.

This matter was heard and determined by the Members of the Authority at a Full Board meeting held on April 4, 2018 before Chairman Vincent Bradley and Commissioner Greeley Ford. The above written ruling was approved by Chairman Bradley on behalf of the Members of the Authority on November 27, 2018.

Dated: 12/3/18



Thomas J. Donohue
Secretary to the Authority