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Commissioner

DECLARATORY RULING

Hudson Yards' Advertising Rights

Agenda # 2019-00172

Introduction

Hudson Yards is one of the largest mixed-use private real estate developments in the history of the United States, and the largest development in New York City since Rockefeller Center in the 1930's, with 18 million square feet of commercial and residential space including over 100 retail shops, plus 14 acres of public open space with parks and green space, a public school and hotel.

Hudson Yards will include Vessel, a new kind of public landmark, engaging and interactive, meant to be climbed and explored with numerous interconnected flights of stairs and landings. It will be free and open to the public via timed ticketing, with an estimated two million annual visitors.

There will be retail on-premises licensees located within Hudson Yards and the owners of Hudson Yards will have interests in them. Large corporations, some of which may operate in the supplier and wholesale tiers, might wish to contract for naming and advertising rights in and around specific parts of the property. The owners of Hudson Yards would like to transfer the naming and advertising rights to another corporation (the "Sponsorship Company") having different owners who would not have any interest in a New York licensee in any of the three tiers.

The Sponsorship Company will pay Hudson Yards a flat fee for these rights. The Sponsorship Company would then be free to negotiate advertising contracts with licensed suppliers and wholesalers for placement of digital advertising and signage at Hudson Yards. Hudson Yards requests approval of this arrangement, for a limited physical part of Hudson Yards, from the Members by way of a Declaratory Ruling.

The request, and this Declaratory Ruling, is limited to the Public Square and Gardens (including the Vessel), to the Great Room at 20 Hudson Yards, and the two public walkways at the plaza level that connect to 10th Avenue.

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Questions Presented

Does Hudson Yards qualify for a sponsorship agreement?

Does the proposed arrangement avoid prohibited tied-house and gift and service violations?

Statutes & Rule Involved

Section 101(1)(c) of the Alcoholic Beverage Control Law states that it shall be unlawful for a licensed manufacturer or wholesaler to "... make any gift or render any service of any kind whatsoever, directly or indirectly, to any person licensed under this chapter which in the judgment of the liquor authority may tend to influence such licensee to purchase the product of such manufacturer or wholesaler ..."

Section 106(13) of the Alcoholic Beverage Control Law provides, "No retail licensee for on-premises consumption shall be interested, directly or indirectly, in any premises where liquors, wines or beer are manufactured or sold at wholesale, by stock ownership, interlocking directors, mortgage or lien on any personal or real property or by any other means. . ."

Rule 86.1 provides in part, "No manufacturer or wholesaler shall, directly or indirectly, give any article or thing of value, or render any service of any kind, to any retailer, except as permitted by this rule. No retail licensee shall accept any such gift or service of any kind whatsoever, except as permitted by this rule."

Previous Rulings by the Members

In 2013, the Board Members disapproved a sponsorship company arrangement for a restaurant (DR 2013-03059) finding that it was primarily intended to provide additional revenue (from suppliers and wholesalers) to the retailer, a violation of New York's tied-house laws. The Board has approved such arrangements in the past for Yankee Stadium (DR 2009-00615), Bethel Woods Center for the Arts (DR 2011-01646C), Brooklyn Events Center (DR 2012-00957) and Buffalo River Works (DR 2014-00421B).

For these large sports stadia/concert venues, the Members found that, historically, brands of alcoholic beverages have been associated with the sponsorship of sports teams, concerts and similar events at venues designed for such events, and that the primary purpose was to promote the brand rather than to create additional revenue for retailers. Conversely, for an individual retailer to have a sponsorship agreement, the primary purpose would be to draw business for the retailer and create additional revenue for the retailer. Such an arrangement could be used by manufacturers and wholesalers to illegally control or influence the retailer in the choice of alcoholic beverages offered.

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Determination of the Members

While Hudson Yards is not a sports stadium or concert venue, it will be a large complex of public event spaces, parks, housing, and shopping centers. Due to the size, scope, and the proposed events, uses, and activities at Hudson Yards, which is expected to draw millions of visitors annually, the Members find that it qualifies for this type of arrangement for the purposes of naming and advertising rights.

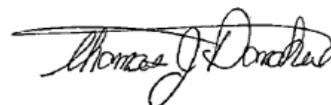
The owners of Hudson Yards will have ownership interests in retail on-premises licenses within the complex, so they will not be able to receive advertising revenue from brands. The owners would assign to the Sponsorship Company (whose owners would have no interest in any licensed manufacturer, wholesaler or retailer) for a flat fee (unrelated to advertising revenue) the ability to sell the naming and advertising rights to the Hudson Yards complex in general, as opposed to any individual restaurant within it. The Sponsorship Company would then negotiate with and sell the advertising space to the brands and other companies in exchange for U.S. currency and will retain all revenue. The Sponsorship Company will have no authority to commit any retailer within Hudson Yards to purchase and sell any particular alcoholic beverage.

Advertising will be limited to the Public Square and Gardens (including the Vessel), to the Great Room at 20 Hudson Yards, and the two public walkways at the plaza level that connect to 10th Avenue.

Based upon, and as limited by the foregoing, the Members find that the sponsorship arrangement would suffice to insulate the owners from having any prohibited tied-house interest and that the flat fee provided by the Sponsorship Company to the retail owners as well as the advertising revenue flowing to the Sponsorship Company does not constitute a prohibited gift or service.

This matter was heard and determined by the Members of the Authority at a Full Board meeting held on January 23, 2019 before Chairman Vincent Bradley, Commissioner Lily Fan and Commissioner Greeley Ford. The above written ruling was approved by Chairman Bradley on behalf of the Members of the Authority on February 11, 2019.

Dated: 2/11/19



Thomas J. Donohue
Secretary to the Authority