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Chairman

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Commissioner

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Commissioner

DECLARATORY RULING

On-line ordering system for “takeout restaurant” operated by Grubhub

Agenda # 2017-01701

Introduction

The Members of the Authority are in receipt of a request from Grubhub. Grubhub is an online and mobile device food ordering company which connects diners to local takeout restaurants. Restaurants upload their menus onto the Grubhub website and customers place an order which is then transmitted to the restaurant. The food is picked up by the consumer or delivered either by the restaurant or by independent contractors engaged by Grubhub. Grubhub asks if it may offer beer with the food order in compliance with the Alcoholic Beverage Control Law.

Statute Involved

Section 111 of the Alcoholic Beverage Control Law states a license issued “... shall not be transferable to any other person or to any other premises...it shall be available only to the person therein specified ...”

Statement of Facts

The following are the facts as set out in the request letter:

- Grubhub processes the user’s credit card payment.
- Grubhub retains a portion of the dollar amount of the order.
- Grubhub remits the balance to the restaurant on a weekly, monthly, or bi-monthly basis.
- Grubhub does not select the menu items or their prices.
- Grubhub has no interest in the ownership, management or operation of any licensee.

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- Any order that includes beer will ask the user to enter her date of birth and the delivery person is notified to check the recipient's photo ID.
- Customers are limited to a maximum of two drinks per entrée.
- Each delivery vehicle will have the required transportation permit.
- Grubhub certifies that the percentage of alcohol profits that it will retain will always be below 10%.

Previous Ruling by the Members

In 2015, the Board Members approved a mobile marketing platform for Thirst for Night (Agenda # 2015-01717F). As here, customers pay for their food and drink via the app on their smart phone or internet connection. Licensed retailers pay Thirst a percentage of the sales made via the app, which percentage would always be less than 10%. The Members found this limit to be *de minimus* in relation to the overall sales of the licensed venue.

Determination of the Members

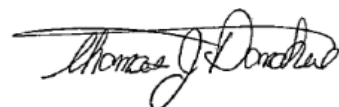
Based upon the foregoing representations, there is no availing of the liquor license since Grubhub does not exercise any control over the operation of the retailers. Grubhub is an unlicensed marketing company that does not have an interest in any liquor license.

Grubhub represents that that the percentage of alcohol profits that it will retain will be below ten percent. As long as Grubhub's retention of the percentage of the cost of beer sold by the licensee remains below ten percent, the Members determine such percentage to be *de minimus* to the overall sales revenue derived from the sale of beer. Grubhub also agrees that it will only deliver beer with a food order since NYS retail on-premises licensees are required to follow this practice.

In view of the foregoing, it appears that Grubhub will not have a financial interest in a licensed retailer based on a retained percentage of beer profits of less than ten percent.

This matter was heard and determined by the Members of the Authority at a Full Board meeting held on August 16, 2017 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 October 3, 2018.

Dated: 10/17/18



Thomas J. Donohue
Secretary to the Authority