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DECLARATORY RULING

Electronic platform for product ordering by retailers from wholesalers and suppliers

Agenda # 2020-00720

Introduction

Provi is an electronic communication platform that allows licensed on-premises and off-premises retailers to search for and order products offered by licensed wholesalers and suppliers. According to Provi, participating wholesalers and suppliers pay Provi a flat fee per invoice. The platform is free for retailers to use and requires that all retailers signing up for Provi verify their state retail license number to access it.

The participating wholesalers and suppliers are responsible for all product selection, pricing and discounts. When a retailer places an order, Provi sends the order to the seller. Provi advises that it does not take title to or possession of the alcoholic beverages and is not involved with the business activities of any licensee.

Statutes 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 111 of the Alcoholic Beverage Control Law provides that a liquor license issued to a particular person shall not be made available to any other person.

Section 55-b of the Alcoholic Beverage Control Law provides that no brewer or beer wholesaler may increase the price per case, draft package or special package of beer sold to wholesale and retail licensees until at least 180 days have elapsed since the last price decrease for that beer case or package.

Section 101-b(3)(b) of the Alcoholic Beverage Control Law provides that no brand of liquor or wine shall be sold to or purchased by a retailer unless a schedule of prices has been filed with the Authority and such liquor and wine shall only be sold at the price and quantity discount then in effect.

Questions

By financing the Provi platform, are participating wholesalers and suppliers providing an indirect gift to retailers that influences them to purchase product from the participating wholesalers and suppliers?

Are the participating licensees availing their licenses, *i.e.*, making their licenses available to Provi for Provi's financial benefit?

Will the prices and discounts on alcoholic beverages available on the Provi platform accurately reflect those governed by statute or officially price-posted and in effect at the time of the sale?

Determination

Based on Provi's description of its method of operation, licensed manufacturers and wholesalers will be paying Provi a flat fee per order. While the platform may have the indirect effect of providing a service to retailers, it is primarily a service provided by Provi to licensed wholesalers and suppliers. The platform is open to all retailers, so there does not appear to be any discrimination by wholesalers and suppliers among retailers. It is also open to all wholesalers and suppliers. As described, the platform provides no incentive for retailers to purchase product from any particular wholesaler or supplier. There do not appear to be any gifts and services or discrimination issues with the proposed business method.

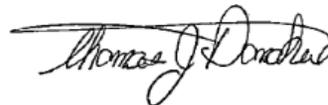
Provi does not perform any activities that involve it in the day to day operations of any licensee. Provi does not select products or pricing. It simply facilitates the ordering of alcoholic beverages by licensed retailers. Provi is being paid by licensed wholesalers and suppliers to provide the electronic platform. Provi is receiving a flat fee per order, so while its compensation is tied to the sale of alcoholic beverages, it is not receiving a percentage of the price of alcoholic beverages. The Members of the Authority have approved flat fee arrangements in the past, such as Swill 2015-01557D, Bottle Rush 2014-02578 and Drizly 2013-02526. Provi does not appear to be availing a liquor license.

The Provi platform is not intended to provide manufacturers and suppliers with an alternative marketplace in which they can sell their products for other than the legally required or officially posted price. Manufacturers will still be statutorily required to sell at the price required by the 180-day law in regard to beer and by the price posted for that month with respect to liquor and wine. The proposed business, thus, does not appear to violate ABC laws on price requirements.

Based upon and limited by the foregoing, the Members find that the proposed business model of Provi to provide an electronic ordering platform for licensed retailers to order product from licensed wholesalers and manufacturers does not violate the NYS Alcoholic Beverage Control Law.

This matter was heard and determined by the Members of the Authority at a Full Board meeting held on June 10, 2020 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 on April 8, 2021.

Dated: 4/9/21



Thomas J. Donohue
Secretary to the Authority