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DECLARATORY RULING

Melio – credit cards for beer and wine products only

Agenda # 2021-02224

Introduction

The State Liquor Authority has received a request for a declaratory ruling on behalf of Melio. Melio reports that it does not handle or traffic in alcohol. Melio states that it is an intermediary that operates as an online “account organization platform which can facilitate bill payment between small and medium sized businesses.” Retailers can use the Melio platform to organize wholesaler invoices from multiple sources on a unified interface. Wholesalers can receive payment for liquor, wine, and beer sales from retailers through Melio’s platform.

Melio claims that under its current New York operation, payments from licensed retailers to New York licensed wine and spirit wholesalers may only be made through two channels: the Automatic Clearing House “ACH” Network (electronic funds transfer – “EFT”) payments from bank to bank, and debit card (EFT payments from bank to card processing network to bank). Melio partners with financial institutions to enable users to schedule payments via the Melio platform. The retailer identifies an invoice that it would like to pay and the method by which it would like to make payment and informs Melio. Melio then relays that instruction to the bank. Melio informs the wholesaler that a retailer is using Melio and that payment is being made.

Up until 2019, retailers were not able to use credit cards to make any purchases from wholesalers. In 2019, the Alcoholic Beverage Control law was amended to permit retailers to use credit cards to make purchases from wholesalers for beer and wine products only. Although the legislature contemplated passing a broader amendment, using credit cards for liquor and wine remained illegal. SLA learned that Melio was nonetheless processing credit card payments for retailer purchases of liquor and wine and, in certain correspondence the SLA ultimately reviewed, Melio was advising industry members about a list of wholesalers who were accepting those payments. The SLA advised the wholesalers on the list that they were breaking the law and had a duty to make sure that it was not accepting credit card payments for liquor or wine sales.

In its declaratory ruling request, Melio advises that it has disabled its credit card function for New York business. It apparently continues to process credit card sales outside of New York. Melio also advises that it does not charge retailers or wholesalers fees from the general use of the platform. Melio derives revenue from premium services, such as when a retailer wishes to accelerate a payment. Melio can view the retailer’s account but has no control of the account or the funds. Melio states that it does not advance funds or provide any credit to retailers.

Statutes 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 ..."

Section 101-aa(2) of the Alcoholic Beverage Control Law states that manufacturers and wholesalers may only sell or deliver liquor or wine to a retailer for cash paid at the time of delivery or on terms requiring payment by such retail licensee for such alcoholic beverages on or before the final payment date of the credit period for which delivery is made. The "credit period" means the 30-day period beginning on the date of delivery. "Cash" means U.S. currency and coin, certified or bank check, money order, electronic funds transfer, or check drawn on the account of the retail licensee payable to the manufacturer or wholesaler.

As discussed above, Section 101-aaa, covering the terms of sale for beer or wine products, was amended in 2020 to allow retailers to use of a "business payment card" – which includes credit cards – to make payments for product. No similar amendment was added to Section 101-aa, covering the terms of sale for liquor or wine.

Analysis

Melio is an account organizer and a payment facilitator. Based on the information provided, it does not appear to exert any control over the retailer, to make decisions on behalf of the retailer, or to have control over the funds in the retailer's account, and does not receive any payment from the retailer or wholesaler unless requested to provide a premium service. As such, it is not availing the liquor license of either a retailer or wholesaler.

EFT's are expressly authorized by the statute. ACH and debit card payments are two forms of EFT. Retailers pay invoices to wholesalers via the Melio platform through either an ACH payment or a debit card payment. Funds are debited directly from the retailer's financial institution account. Payments are made in accordance with banking industry standards and held in bank-owned custodial accounts for the benefit of the retailer. As reported to the Members, the Melio transaction takes the same amount of time as any other EFT. Melio does not handle or process the funds transfer and does not make payments on behalf of retailers or advance funds in anticipation of payment. As such, through these ACH and debit card transfers, Melio is not unlawfully extending credit to retailers on behalf of wholesalers, unless those transactions begin with the use of a credit card or other debt instrument.

Prior to the SLA's warnings to wholesalers, at least one New York Melio sales manager had previously been telling the industry that the Melio platform had made "accepting credit cards legal in NY." That was, and is, untrue. And in exchanges with certain wholesalers about the use of Melio, SLA learned that wholesalers generally use Melio without having written contracts and were apparently accepting whatever payments Melio sent along, without conducting any diligence as to whether such transactions were legal. As a result, SLA made it clear to the wholesalers – to those that, based on information SLA had received, appeared to already be involved -- that it was the wholesaler's obligation to make sure that the payments they receive are being made in a lawful manner.

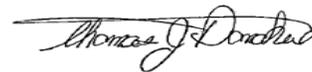
Determination

The Members declare that Melio’s method of operation, as described, does not appear to violate the law, but with the proviso that Melio not facilitate the payment of liquor and wine invoices via credit card until such time as it may be legal in New York to do so.

While Melio advises that it has “disabled” the credit card feature of its business in New York, the Members have no basis to confirm that this approach would effectively comply with this proviso. The Members thus note as well that retailers and wholesalers have an independent duty to exercise sufficient diligence to make sure they are following the law, and not using credit cards to make payments for liquor or wine, whether using Melio or any other intermediary to process payments.

This matter was heard and determined by the Members of the Authority at a Full Board meeting held on August 18, 2021 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 October 22, 2021.

Dated: 10/25/21



Thomas J. Donohue
Secretary to the Authority