

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF 03/13/2025
REFERRED FROM: COUNSEL'S OFFICE

03/13/2025-058A

REASON FOR REFERRAL
REQUEST FOR DIRECTION

REQUEST FOR DECLARATORY
RULING- BROKEN SPOKE SALOON,
LLC, RICHMONDVILLE
(200' LAW APPLICABILITY)

The Members of the Authority at their regular meeting held at the Zone I New York City Office on 03/13/2025 determined:

August 27, 2024

NYSLA Legal Department:

RE: NA-0370-23-245359, NA-0524-23-61816, License Serial # 6004182

I am requesting a declaratory ruling on the 200-foot proximity law based on that there was a full liquor license at said premises for 29 years and that license was surrendered within six months preceding my application. I am requesting that the Authority allow measurements to be taken from main entrance door to main entrance door or at least to where the walkway splits off to two entrances. I have included a photograph to where 200-feet is.

If the Authority cannot grant this request, I request that the Authority allow for construction of a new main entrance on the opposite side of the front of the building where there is currently a window and also enclosing the back patio completely and making the current front entrance a fire exit only.

In April 1994, my mother and father opened the Broken Spoke Saloon at 276 Main Street Richmondville NY. My parents divorced, and the establishment was solely owned by my father until his passing on April 7, 2023. I was my father's sole beneficiary; therefore, inherited the bar and all of its contents. As it was his wish for me to continue operating the bar, before his passing, we inquired about adding me to his liquor license, but as he was a sole proprietor, we were unable to get all that was necessary completed before his passing.

In May 2023, I formed an LLC, The Broken Spoke Saloon LLC, and applied for a food and beverage business liquor license and temporary retail permit which was received by the NYSLA on 11/01/2023 (NA-0370-23-245359), having had to wait for my dad's wife to apply to the court to become the executor of his estate and then surrender his liquor license. The bar sat closed from the day he died until I was granted a temporary retail permit on 11/15/23 (NA-0524-23-61816, Serial #6004182). Since then, I have had to apply for three extensions to that temporary permit.

The first extension application was received by the NYSLA on 02/09/2024 and was granted effective 02/14/2024 and expiration date of 05/13/2024. On 04/03/2024, I got a letter that my application (NA-0370-23-245359) was conditionally approved pending submitting a block diagram, to which my attorney submitted right away (for the second time because it was submitted with the application). On 04/29/24, I questioned my attorney about another extension because the expiration date was quickly approaching. He advised me to only apply for a 30-day extension this time because he didn't think it would take much longer for the main application to be approved. The temporary permit expired on 05/13/2024, and I was unable to sell alcohol for 37 days because I had not received any word on the temporary extension or the main application.

The second extension application was received by the NYSLA on 05/10/24, but was not processed until 06/20/2024 and was granted with an effective date of 05/13/2024 and expiration date of 06/12/2024. As this date had already passed, I immediately called and was able to get the expiration date extended to 07/12/2024 which was only a 23-day extension.

On 05/23/2024, there were two guys measuring the distance between the bar and the United Methodist Church, and the status changed from conditionally approved to under review.

On 06/07/2024, they were back again with a third person, again measuring the distance between the bar and the United Methodist Church.

On 06/18/2024, I spoke to someone at the NYSLA who told me that the application was sent on 06/13/2024 for the final approval stage, and I should be receiving an e-mail any day.

I filed for a third extension, which was received by the NYSLA on 07/09/2024. On 07/12/2024, the temporary permit expired again, and I was unable to serve alcohol. On 07/15/2024, I called and was able to get the expiration date extended to 07/19/2024 to give me the full 30-day extension I paid for.

On 07/19/2024, as I still had not received an extension or word on the main application, I went in person to the NYSLA and spoke with Patrick Phillips who stated he would look into my application and get back to me on Monday. That afternoon, I received the 90-day extension effective 07/19/2024 with an expiration date of 10/14/2024.

Patrick e-mailed me on 07/22/2024 and stated he did not have much of an update, but was waiting to hear from the legal team about the 200-foot law and the measurements from the bar to the church. Patrick called me on 07/29/2024 and told me that he was told the measurements were below 200 feet and that he would have to downgrade my application to beer/wine/cider only or I could withdraw my application. I notified my attorney of this, and he contacted Patrick and asked for the exact measurements.

On 08/06/2024, Patrick e-mailed that the patio entrance measurement came to 189 feet and that was the reason my application was forced to be downgraded, but that it was now conditionally approved pending final conditions be met. He also suggested I file a statutory declaration and reach out to my local state senators/congressman to see if they could help me out.

On 08/08/2024, I e-mailed Patrick and asked if I could change the entrances and send in a new diagram for the original application, and I asked what the measurement was for the front entrance.

On 08/13/2024, Patrick e-mailed us the rest of the measurements, rear patio entrance to UMC back walkway 186 feet 5 inches, front exterior entrance to UMC back walkway 189 feet 3 inches, and back exterior entrance to UMC back walkway 184 feet 9 inches. I responded back and asked him if he could find out if the NYSLA would allow me to make a new main entrance on another side of the building that would be over 200 feet and then make the two existing entrances a fire exit and a staff/delivery entrance.

On 08/14/2024, I submitted a FOIL records request, reference number R001791-081424 from the NYSLA asking for the full report on how the measurements were obtained.

On 08/16/2024, Patrick spoke to enforcement and his supervisor, who then advised me to request this declaratory ruling for the premises to allow for a change of class to full liquor.

Patrick told my attorney that the measurements were taken to where the UMC back walkway meets the parking lot and not to their main entrance door. The walkway has three sections; the section that connects to the parking lot does not have a railing and should be considered a sidewalk. It splits off to two entrances; the walkway to the main entrance has a railing. I had someone measure 200 feet from the bar back patio and the bar rear entrance, and it measures to the end of the sidewalk, to where the sections split.

There is still approximately 14 feet of walkway with a railing from this point to the UMC main entrance. I am requesting that the measurement be taken from main entrance to main entrance or at least to the end of the sidewalk where the walkway leads to the main entrance.

I ask for your consideration in granting this request, as without a full liquor license, I do not believe the bar can continue in operation selling only beer, wine, and cider as half of the revenue has proved to be from the sale of liquor.

Sincerely,

Vanessa Snyder, Manager

Broken Spoke Saloon, LLC

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF 03/13/2025
REFERRED FROM: COUNSEL'S OFFICE

03/13/2025-058B

REASON FOR REFERRAL
REQUEST FOR DIRECTION

REQUEST FOR DECLARATORY
RULING- THE FARMER'S WIFE
FOODS, LLC
OFF PREMISES CATERING LICENSE
ISSUANCE FOR A LICENSED
RESTAURANT

The Members of the Authority at their regular meeting held at the Zone I New York City Office on 03/13/2025 determined:

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Tracking No. 9405 8301 0935 5119 4493 78

July 31, 2024

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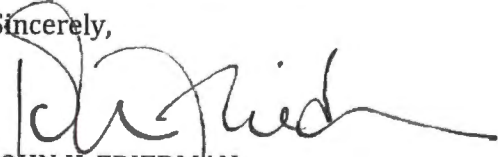
Re: Verified Petition for Declaratory Ruling
The Farmer's Wife Foods, LLC
Application ID NA-0101-23-247275

Dear Sir or Madam:

Enclosed for filing and consideration by the Authority, please find a Verified Petition for Declaratory Ruling regarding Section 64-e of the Alcoholic Beverage Control Law, submitted on behalf of my client, The Farmer's Wife Foods, LLC.

Thank you for your attention to this matter.

Sincerely,


JOHN K. FRIEDMAN
Attorney for The Farmer's Wife Foods, LLC

Encl.

NEW YORK STATE LIQUOR AUTHORITY

-----;
In the Matter of the Petition of

The Farmer's Wife Foods, LLC,
Petitioner

For a Declaratory Ruling That An Off-Premises
Catering Licensee May Sell Food & Non-
Alcoholic Beverages from its Licensed
Premises

**Verified Petition For
Declaratory Ruling**

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The Farmer's Wife Foods, LLC, d/b/a The Farmer's Wife, petitioner, by its undersigned counsel, respectfully petitions the Board of the New York State Liquor Authority (the "**Authority**") for a declaratory ruling pursuant to Section 204(1)(ii) of the New York State Administrative Procedure Act ("**SAPA**") and 9 NYCRR § 98.1, interpreting § 64-e of the Alcoholic Beverage Control ("**ABC**") Law. Petitioner seeks a declaration that § 64-e permits an off-premises catering licensee to sell retail food and non-alcoholic beverages from its licensed premises and an application for such license that includes an intent to conduct such sales should be approved except for good cause shown.

Parties

1. Petitioner, The Farmer's Wife Foods, LLC d/b/a The Farmer's Wife, is a New York State limited liability company located at 3 County Route 8, Ancramdale, NY 12517.

Jurisdiction & Authority

2. This Petition is filed under the authority of SAPA § 204(1)(ii), which empowers the Authority to issue declaratory rulings on questions of whether any action by it should be taken by rule. NYS CLS Admin. P. Act § 204(1)(ii).

3. The Petition is also filed pursuant to 9 NYCRR § 98.1, which authorizes any person to seek a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule or statute enforceable by the Authority.

Statement of Facts

4. Petitioner was formed in 2011 as a family owned business by spouses Job Yacubian and Emilie Sommerhoff. Affirmation of Job (hereinafter the “**Yacubian Affirmation**”, a copy of which is appended hereto and incorporated herein as Exhibit 1), at ¶ 3.

5. It operates a small (4 table, 16 seat) café in the hamlet of Ancramdale (Columbia County) serving breakfast and lunch as well as take-away prepared foods. *Id.* at ¶¶ 4 and 5. Because of its small size, the bulk of its retail sales are to-go. *Id.* at ¶¶ 4 and 10. It is the only purveyor of food, prepared and otherwise, in the hamlet and has 6 full-time equivalent employees throughout the year, adding 10 – 30 part-time employees for each event during the busy catering season (April – October). *Id.* at ¶ 10. The closest supermarket is in Livingston, NY, approximately 18 miles away.

6. In 2020, Petitioner applied for and was granted a tavern license to serve beer and wine on-premises (License No. 0524-23-64177; legacy serial number 2220134).

7. Throughout its operational history and under the same name, Petitioner has also done business as a caterer for private events in the region such as weddings, parties and community gatherings. *Id.* at ¶ 4. Petitioner has only one location, its licensed premises at 3 County Route 8, Ancramdale, NY 12517. *Id.* at ¶ 5. It has always used, and continues to use, its kitchen there to prepare product for its catering jobs as well as for its café, and has only ever done business as “The Farmer’s Wife.” *Id.* at ¶¶ 4 and 5.

8. Presently, petitioner employes 6 full-time equivalent employees year-round, adding between 10 and 30 for each event it caters. *Id.* at ¶ 9.

9. Petitioner's kitchen and preparation areas are segregated from its retail operations by a deli case and a counter. *Id.* at ¶ 5. All alcohol is stored in secure areas behind the deli case/counter and inaccessible to all except Petitioner's authorized employees. *Id.* A drawing illustrating this arrangement, redacted from Petitioner's 2020 on-premises beer and wine application is appended hereto and made part hereof as Exhibit 2.

10. With only a beer and wine license, however, Petitioner couldn't offer liquor to either its retail or catering customers, hampering the growth of its catering business as most hosts desire to offer their guests liquor. Yacubian Affirmation at ¶¶ 6 and 8.

11. Given the small size of petitioner's retail space and its focus on breakfast and lunch items, alcohol sales were never a significant portion of its on-premises sales.

12. Because Petitioner's licensed premises is located on the same road and within 200 feet of a building occupied by and used exclusively as a house of worship, it could not and cannot hold an on-premises liquor license. ABC Law § 64(7)(a).

13. Petitioner filed its application for an off-premises catering license with the Authority on November 14, 2023 (Application ID NA-0101-23-247275). It filed an application for a temporary retail permit thereunder at the same time (Application ID NA-0524-23-47276).

14. On December 8, 2023, the Authority issued a Conditional Letter of Approval for Petitioner's temporary retail permit which required, among other things, that Petitioner surrender its beer and wine license as a condition for the issuance of the temporary retail permit.

15. On December 13, 2023, Petitioner filed its response to the Conditional Letter of Approval including its Petition for Surrender of License as to its on-premises beer and wine license. A copy of this response is appended to and made part hereof as Exhibit 3.
16. On December 14, 2023, the Authority issued Petitioner a temporary retail permit to operate as an off-premises caterer (License ID 0524-23-64177; legacy serial number 6006565).
17. Since that time, Petitioner has filed 3 applications for extension of its temporary retail permit (2/27/24, 5/3/24 and 7/23/24).
18. Since receiving its temporary retail permit in December of last year, Petitioner has signed ___ contracts to cater private events including the provision of liquor.
19. On July 17, 2024, the undersigned received an email from Katie L. of the Authority's Zone 2 Deficiencies team stating that (a) no premises may have more than 1 license (this has been cleared up – see ¶ 14, above and Exhibit 3 hereto), and (b) that off-premises catering licensees are prohibited from serving retail food and beverages from their licensed premises. A copy of this email is appended to and incorporated herein as Exhibit 4.
20. Though Authority staff were unwilling or unable to provide any statutory or regulatory support for its position regarding the serving of retail food and beverages, Petitioner was advised to file the instant petition seeking clarification. A copy of the email thread encompassing this discussion is appended hereto and incorporated herein as Exhibit 5.

QUESTION PRESENTED

21. Whether ABC Law § 64-e prohibits an off-premises catering licensee from selling retail food and non-alcoholic beverages from its licensed premises where such retail sales

are in a physically segregated area apart from where alcohol is stored and used by such licensee.

LEGAL ARGUMENT

22. Summary: There is no statutory language prohibiting an off-premises caterer licensee from selling food and non-alcoholic beverages from its licensed premises in Section 64-e of the ABC Law or elsewhere in that title. Likewise, there is no regulatory prohibition against such action in title 9 of the New York Code, Rules and Regulations and, absent a SAPA-compliant rulemaking, application of such a non-existent prohibition is arbitrary and capricious, a violation of a petitioner's due process rights and, as such, an error of law. Additionally, such a prohibition would be contrary to the Legislature's express public policy goals embodied in the ABC Law. Finally, even if the foregoing is incorrect, as to the instant petitioner selling retail food and non-alcoholic beverages from licensed premises is what it has done since its inception over a decade ago and, therefore doing so is its business. The only thing that has changed as to this petitioner, is that with the off-premises catering license it can add liquor to its regulated beverage offerings where before (pursuant to its on-premises beer and wine license) it could only offer beer and wine.

The Legislature Has Not Created Any Statutory Prohibitions Against An Off-Premises Caterer Licensee Selling Retail Food and Non-Alcoholic Beverages From Its Licensed Premises.

23. Section 64-e of the ABC Law does not, in and of itself, prohibit any specific conduct by an off-premises caterer licensee except limiting the sale of liquor thereunder to "site[s] remote from the licensed premises . . ." ABC Law § 64-e(a).

24. The Legislature defines an "off-premises catering establishment" as

any premises owned or operated by any person, firm, association, partnership or corporation who or which regularly and in a bona fide manner furnishes for hire at a site remote from the premises for a particular function, occasion, or event provisions and service for consumption or use at such function, occasion or event. Such premises must have suitable and adequate facilities to provide food for not less than fifty persons. On-premises consumption shall not be allowed at such premises.

ABC Law § 3(7-a)(b).

25. Notably, the Legislature, in both §§ 3(7-a)(b) and 64-e, chose not to impose any other limitations on an off-premises caterer licensee than the ban on on-premises consumption of alcohol.

26. Of course, it could have. The Legislature established a number of sections within the ABC Law that list prohibited actions and behaviors by different classes of licensees.

27. For instance, § 102 details what are described as general prohibitions regarding alcohol including proscribing employment of certain classes of individuals by licensees (§ 102(2)) and prohibiting the sale of cannabis by retail licensees (§ 102(8)).

28. Likewise, § 105 details provisions governing off-premises licensees (including requiring certain signage and prohibiting others (§§ 105(6) and (7), respectively), while proscribing certain operating hours and generally prohibiting billiards (§§ 105(14(a) and (21), respectively).

29. Notably, neither of these statutes prohibit a licensee from selling food or non-alcoholic beverages for either on- or off-premises consumption. Nor do they prohibit operation of another business from the licensed premises generally. ABC Law §§ 102 and 105.

30. Moreover, and tellingly, in § 63, governing 7-day off-premises retail licensees, the Legislature did impose an express prohibition on such licensees from engaging in any other

business from their licensed premises except those expressly set forth in that section (such as selling lottery tickets and materials ancillary to liquor such as gift wrapping and glassware, etc.). ABC Law § 63(4). But the Legislature chose not do so when it drafted and passed § 64-e.

The Authority Has Not Created Any Regulatory Prohibitions Against An Off-Premises Caterer Licensee Selling Retail Food and Non-Alcoholic Beverages From Its Licensed Premises

31. The Authority clearly has the statutory power to regulate the marketplace for alcohol within the state. ABC Law § 2. This includes the power to require a licensee to sell, or prohibit it from selling, any goods or services provided, of course, that such requirement or prohibition is neither arbitrary or capricious. Joseph Paul Winery, Inc. v. State of New York, 47 Misc. 3d 439, 449 (NY Co. Sup. Ct. 2014) vacated in part on other grounds by Joseph Paul Winery Inc. v. State, 135 A.D. 3d 639 (App. Div. 1st Dept. 2016).

32. Enforcing a requirement that does not exist in either the statutes or regulations as each applies to any particular licensee or applicant or class of licensees or applicants, is, per se, arbitrary and capricious. Joseph Paul Winery, Inc., 47 Misc. 3d at 450, 462. *See, also*, Matter of Candlelight v. NYS Liq. Auth., 54 Misc. 2d 393 (NY Co. Sup. Ct. 1967) (“Liberality in the interpretation of statutes cannot be used as a substitution for substance,” citing Carnival Co. v. Metro Goldwyn-Mayer, 23 AD 2d 75,77).

33. Indeed, if the Authority desires to limit the activities, or otherwise define the operating parameters, of off-premises catering licensees it is obligated to do so in a manner that satisfies the State Administrative Procedure Act (NY CLS St. Admin. P. Act, Art. 2, the “SAPA”) as an attempt to enforce or apply a statutory or regulatory limitation that doesn’t

exist is “arbitrary and capricious, a violation of petitioner’s due process rights and an error of law.” Joseph Paul Winery, Inc., 47 Misc. 3d at 458.

34. However, to date, the Authority has chosen not to undertake the regulatory procedures required by SAPA in order to properly impose any other limitations on off-premises caterer licensees.

35. And, as stated earlier, though the petitioner has sought guidance from the Authority as to the statutory or regulatory authority for the Authority’s statement that an off-premises catering licensee can’t sell retail food and beverage from its licensed premises, none has been forthcoming. See ¶¶ 18 and 19, above and Exhibits 4 and 5, appended hereto.

A Ban Against Off-Premises Caterer Licensees Selling Retail Food and Non-Alcoholic Beverages from Their Licensed Premises Is Contrary to The Express Public Policy Goals of the ABC Law.

36. Section 2 of the ABC Law empowers the Authority to regulate and control the alcohol market in New York, for among other goals “and, to the extent possible, supporting economic growth, job development . . . and its tourism and recreation industry.” ABC Law, § 2.

37. To support these public policy goals, the Authority should permit off-site catering licensees to sell retail food and non-alcoholic beverages from their licensed premises, particularly where, as here, it is already part of an applicant’s business.

38. Permitting would-be licensees to maintain existing business models that are synergistic between the off-site catering and on-site retail food sales encourages investment in both equipment and real estate as well as people (employees).

39. In turn, such licensees increase the available catering options for those seeking to have events in the state's various regions, lowering overall costs to hosts and thus encouraging holding such events in New York State, and therefore driving the demand for tourist accommodations including lodging, restaurants, fuel, retailers, etc.

40. In this way, permitting on-premises retail sales of food and non-regulated beverages by off-premises catering licensees is in keeping with the Authority's public policy mandates under Section 2 of the ABC Law.

Petitioner's Retail Sale of Food and Non-Alcoholic Beverages From Its Licensed Premises Is Not A Separate Business.

41. Finally, even if there is a statutory or regulatory bar against an off-premises catering licensee from operating "another business" from its licensed premises, in the instant application the applicant (the petitioner herein) is not operating "another business" by selling retail food and non-alcoholic beverages from its licensed premises. That is petitioner's business: selling food and beverages. Yacubian Affirmation at ¶ 4.

42. Petitioner is a small, family run food company operating in a very rural part of a very rural county. It is the only food purveyor in the hamlet of Ancramdale. *Id.* at ¶ 10. The catering season runs from approximately April through October. *Id.* at ¶ 9. Selling food – catering and on-site – is petitioner's business and has been for more than a decade. *Id.* at ¶¶ 3 – 5.

43. Eliminating petitioner's retail business would deprive the hamlet and its environs of their only food source. *Id.* at ¶ 10. It would require petitioner to lay off 1 or 2 full-time employee equivalents and even then it might cost petitioner its business. *Id.*

44. Such potential outcomes cannot be squared with the Authority's statutory directives embodied in § 2. As such, they should be avoided.

On the basis of the foregoing, petitioner prays the Authority declare that there is no statutory or regulatory prohibition barring an off-premises catering licensee licensed pursuant to ABC Law § 64-e from selling retail food and non-alcoholic beverages from its licensed premises or, in the alternative, that petitioner is not engaging in a second business in its licensed premises if it continues to sell retail food and non-alcoholic beverages therefrom as it has done for more than a decade.

Dated: July 31, 2024
Hudson, NY



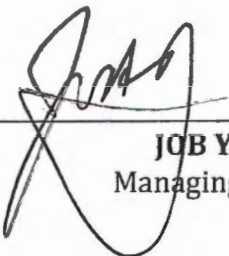
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VERIFICATION

STATE OF NEW YORK }
 } s.s.:
COUNTY OF COLUMBIA }

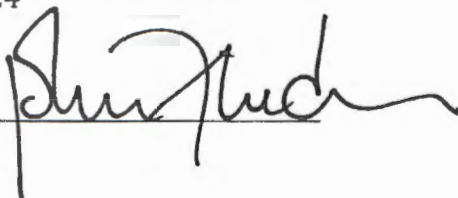
JOB YACUBIAN, being duly sworn, deposes and says that he is a managing member and 50% owner of The Farmer's Wife Foods, LLC d/b/a The Farmer's Wife, the corporation named in the within action; that he has read the foregoing Petition for Declaratory Ruling and knows the contents thereof, and that the same is true to his knowledge except as to those matters stated to be alleged on information and belief, and as to those matters he believes them to be true. The basis of his belief as to all matters stated upon his knowledge are the documents and records of the LLC and his own experience as to the stated matters.

JOHN KENNETH FRIEDMAN
Notary Public, State of New York
No. 02FR6275388
Qualified in Columbia County
Commission Expires 2025



JOB YACUBIAN
Managing Member

Sworn to before me the 31st day of
July 2024



Notary

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF 03/13/2025
REFERRED FROM: COUNSEL'S OFFICE

03/13/2025-058K

REASON FOR REFERRAL
REQUEST FOR DIRECTION

REQUEST FOR DECLARATORY
RULING- BEVSIGN LLC
(GIFTS AND SERVICES LAW
APPLICABILITY)

The Members of the Authority at their regular meeting held at the Zone I New York City Office on 03/13/2025 determined:

may tend to influence the retailer to purchase the products of the manufacturer or wholesaler. Section 86.1 of the Rules of the Authority prohibits a licensed retailer from accepting such gifts and services.

In particular, BevSign seeks guidance as to whether its proposed business model would violate Section 86.4(b) of the rules of the Authority, which prohibits wholesalers from directly or indirectly paying a retailer for displaying a sign inside their premises or for any expense incidental to its operation.

Discussion:

In Declaratory Ruling 2019-01977, the Authority held that the provision of small media devices that allowed the display of short video clips and commercials interspersed with advertising and venue-specific promotions to on-premises licensees by TrueSync, an unlicensed third party, did not violate the Gifts and Services Law. In this instance, neither TrueSync nor the advertising manufacturers or wholesalers would pay anything to the retailers in exchange for the installation of TrueSync media devices. As deemed permissible in Declaratory Ruling 2014-00488, in exchange for using the TrueSync media devices at a retailer's licensed venue, retailers were permitted to create customized content programming on the media device advertising their own business establishment for up to two minutes per hour. Any benefit conveyed to the retailer would come directly and solely from TrueSync, the non-licensed entity, which in turn receives its revenues from advertisers, whether in or outside of the alcohol beverage industry.

In Declaratory Ruling 2014-00488, the Authority held that Display Points, an unlicensed marketing and promotional company, was permitted to provide "digital table tents" to retailers as long as the retailer received no monetary compensation directly or indirectly from a wholesaler or manufacturer. Here, Display Points wanted to install digital table tents comprised of tabletop-based, interactive video monitors and related equipment in select on-premise retail establishments. The digital table tents, among other things, would display advertisements for products including alcoholic beverages. The question presented to the Authority was whether the payments by Display Points to retailers for the installation and use of the digital table tents violated the Alcohol Beverage Control Law.

In Display Points' proposed business model, Display Points would collect marketing fees from advertisers and would pay the licensed on-premise retailer a flat fee for the ability to install the table tents at their venue. Display Points then intended to pay the retailer an additional monthly fee based upon a percentage of the fees it received from non-alcoholic advertisers, arguing that the retailer would not receive any portion of the payments received from alcohol beverage advertisements. The Authority held that the segregation of funds did not overcome the prohibition set forth in Rule 86.4(6) because tracking specific dollars did not declassify the payment by Display Points to a retailer as an indirect payment from a manufacturer or wholesaler. Because manufacturers and wholesalers paid Display Points for advertising time on the digital table tents, the Authority deemed such a payment an indirect payment from the manufacturer or wholesaler to a retailer for displaying a sign or advertisement in violation of Rule 86.4(b).

Ultimately however, the Authority held that, after altering their business model, it was permissible for Display Points to provide the digital table tents, free of charge to the retailer, if the provision of monetary payment to the retailer was eliminated. In exchange for using the table tents at their venues, retailers were permitted to create 20% of the content programming on the digital table tents. The retailer received no monetary compensation directly or indirectly from manufacturers or wholesalers because, under this model, the Authority found that the benefit conveyed to the retailer was directly and solely from the non-licensed entity.

Similarly, in Declaratory Ruling 2016-02767, Next Solutions, a company that owned a digital sign system, requested guidance as to whether the requirement that a retailer buy the advertising alcohol beverage supplier's products in order to qualify to have the digital sign system installed in their store violated the gifts and services law and the regulations promulgated by the Authority with respect to that law. The Authority found that the digital sign system qualified as an interior sign and therefore could be provided by the manufacturer or wholesaler or retailer. The Authority further held that the original proposal requiring the purchase by the retailer of the supplier's products clearly violated the gifts and services prohibition, but stated that a supplier could limit distribution of the digital signs to retailers who have, in the past, purchased product from the supplier because it would be unreasonable to require a wholesaler to provide any or all retailers with the unit regardless of whether the retailer had a history of purchasing the products being advertised on the digital sign.

Here, the BevSign business model is even more conservative than both Declaratory Ruling 2016-02767 and 2014-00488

based on their particular fact scenarios. First, the display screens are not being provided to retailers by wholesalers. The BevSign display screens are provided to retailers directly from BevSign, an unlicensed independent digital signage company. Advertisers pay a flat fee for advertising only. The fee paid by the advertisers does not include the cost of purchasing the display screens. If a retailer aired live television, advertisements for alcohol beverage brands may similarly appear, and those advertisements cost much more than the fixed fees per month charged by BevSign.

Next, there is no requirement that the retailer purchase the products of the advertising alcohol beverage brand via manufacturer, as permissible, or wholesaler. Although the Authority has previously stated that a wholesaler could limit distribution of digital signs to retailers who have, in the past, purchased product from an advertising wholesaler, distribution of BevSign display screens is not limited in this manner. BevSign display screens would be distributed to all off-premise retailers who choose to display the screen in their retail establishment regardless of current or past purchasing history, on a non-discriminatory basis.

Under BevSign's proposed business model, no direct or indirect payments are made to retailers by wholesalers or manufacturers. As deemed permissible in Declaratory Rulings 2014-00488 and 2019-01977, in exchange for using the BevSign display screens at a retailer's licensed premises, retailers are permitted to create customized content programming on the media device advertising their own business establishment. The retailer would receive no monetary compensation directly or indirectly from manufacturers or wholesalers. Any benefit conveyed to the retailer would come directly and solely from BevSign, the non-licensed entity, which in turn receives its revenues from advertisers. Further, in Declaratory Ruling 2014-00488, the Authority stated that it was permissible for the retailer to customize 20% of content programming on the media devices advertising their own business establishment. Retailers under the BevSign business model would also be permitted to customize up 20% of total advertising content.

Conclusion:

To reiterate, BevSign would provide media devices to retailers on a non-discriminatory basis. In exchange for displaying the BevSign display screens inside an off-premise establishment, BevSign would permit retailers to create 20% of the content programming that would be displayed on the display screens. The retailer would receive no monetary compensation whatsoever from BevSign. Advertisers would include alcohol beverage wholesalers and manufacturers, but no monetary benefit to BevSign from such advertisers would pass to the retailers and there is no purchase requirement of any advertiser products.

Therefore, BevSign respectfully requests that the New York State Liquor Authority issue a Declaratory Ruling holding that the third-party marketing and advertising practices of BevSign, as described in this Petition, are compliant with New York law. In the event that the Authority requires clarification of any matter described in this Petition, or desires any more information about BevSign, we will be pleased to respond.

Respectfully Submitted,
Ashley Hanke, Esq. on Behalf of BevSign LLC
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260 95th Street
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NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF 03/13/2025
REFERRED FROM: ENFORCEMENT BUREAU

03/13/2025-058L

REASON FOR REFERRAL
REQUEST FOR DIRECTION

RECOGNITION OF
JOHN MEYER
UPON HIS RETIREMENT FROM
THE STATE LIQUOR AUTHORITY

The Members of the Authority at their regular meeting held at the Zone 1 New York City Office on 03/13/2025 determined:



RESOLUTION OF RECOGNITION AND APPRECIATION

WHEREAS, John Meyer is retiring after serving the People of the State of New York beginning in 1989 with the Workers' Compensation Board, moving to the Department of Health in 2001, then joining the State Liquor Authority in 2007;

WHEREAS, John's hard work and dedication led to his promotion to Senior Investigator at the State Liquor Authority in 2017;

WHEREAS, John had an uncanny ability to be in the right place at the right time during investigations, and when his colleagues saw John's phone number late at night, they knew it was an issue of utmost importance or out of the ordinary;

WHEREAS, John always made himself available to meet the needs of the agency even if it was outside his normal duties and when asked he would respond "I'm getting paid no matter what you have me do, what do you need;"

WHEREAS, John was always personable with licensees and made sure licensees knew exactly what was wrong when a violation was found at their premises by always saying "You're here-I'm here-and this is what it is;"

WHEREAS, John conducted his work in a manner where he stayed off the radar of the "higher ups" and his name was never heard in a negative way;

IT IS HEREBY RESOLVED, on behalf of ourselves, and the entire staff of the Authority, that we hereby acknowledge the exemplary service of John Meyer to this agency and extend to him our sincere appreciation for his faithful service and extend good wishes for a happy retirement; and

IT IS HEREBY FURTHER RESOLVED that this resolution shall be formally entered upon the minutes of this meeting and that forthwith a copy of this resolution shall be provided to John Meyer.

This resolution was issued by the Members of the Authority at a special meeting of the Full Board held on March 13, 2025 before Chair Lily Fan and Commissioner John Maya.

Dated:

Donald Roper
Secretary to the Authority