

DISTRICT OF COLUMBIA

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ALCOHOLIC BEVERAGE CONTROL BOARD

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MEETING

IN THE MATTER OF:

Aniket Shah
t/a Ultra
360 West 43rd Street
New York, N.Y. 10036

Fact-
Finding
Hearing

(Unlicensed)

July 9, 2014

The Alcoholic Beverage Control Board met in the Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street, N.W., Suite 400S, Washington, D.C. 20009, Chairperson Ruthanne Miller, presiding.

PRESENT:

RUTHANNE MILLER, Chairperson
NICK ALBERTI, Member
DONALD BROOKS, Member
MIKE SILVERSTEIN, Member
HECTOR RODRIGUEZ, Member
JAMES SHORT, Member

1 P-R-O-C-E-E-D-I-N-G-S

2 (2:58 p.m.)

3 CHAIRPERSON MILLER: All right.

4 We are one minute early, but are the parties
5 here for Ultra?

6 COURT REPORTER: Ms. Miller, I
7 think you need to turn your mike on.

8 CHAIRPERSON MILLER: I do, sorry.
9 Okay. So our next case is another Fact-
10 Finding Hearing for Ultra located at 360 West
11 43rd Street in New York, not licensed at the
12 time.

13 Okay. So if we can start with
14 just introducing yourself for the record?

15 MR. SHAH: Okay. So I'm Aniket
16 Shah and I'm the founder and officer for
17 Ultra.

18 CHAIRPERSON MILLER: You're the
19 what?

20 MR. SHAH: Officer.

21 CHAIRPERSON MILLER: Okay. So I
22 know you have been sitting in the hearing

1 room. There have been different types of
2 hearings here, so none of these are under
3 oath. They are to gather whatever information
4 is relevant to the issue before us and your
5 issue is very different from the previous
6 ones.

7 And I know that you gave us some
8 material to look at ahead of time. I know
9 that this is an order to cease and desist
10 because the Board interpreted the on-line
11 sales and etcetera as soliciting without a
12 license under our regulations.

13 Okay. So I think you have some
14 ideas that you want to share with us as far as
15 how to approach getting your license to comply
16 with our -- well, getting you a license in
17 which you would be complying with our
18 regulations. That's kind of my understanding.
19 I don't know whether I framed that quite
20 correctly, but I know you would like to
21 operate in the District.

22 And so we want to take a look at,

1 you know --

2 MR. SHAH: We are purely a

3 technology -- sorry.

4 CHAIRPERSON MILLER: Go ahead.

5 MR. SHAH: We are purely a

6 technology company. So we operate in Chicago,

7 New York and New Jersey, Hoboken and Jersey

8 City. In all of these areas, we don't operate

9 as a licensee. We operate as a technology

10 company. There are other companies that

11 provide similar services as us, which is allow

12 wine stores to sell on-line.

13 CHAIRPERSON MILLER: Yes.

14 MR. SHAH: Then through BevMedia,

15 WineFetch, which are basically a structured

16 website program that allow the wine store

17 owners to add their inventory. People will go

18 in and, you know, on onto those sites and buy

19 whatever they want to buy.

20 Our concept is no different, so we

21 are hoping to not become a licensee, but at

22 the same time be compliant with any D.C. Laws

1 and Regulations that govern our operations.

2 So from background, there are
3 states such as Texas and California that have
4 laws or guidelines, advisories that kind of
5 provide guidelines to operations like ours or
6 technology companies like ours to operate or
7 provide services to the licensees in those
8 states.

9 We don't have any specific -- I
10 don't have any specific suggestions for you to
11 follow. It's just that there are going to be
12 more and more companies like us operating in
13 D.C. and not -- you know, it's kind of
14 difficult for a regulator to actually look at
15 all these different technology companies
16 because they might be doing similar thing, but
17 in different ways.

18 CHAIRPERSON MILLER: Right.

19 MR. SHAH: So there is not like
20 one fit all regulation that you might want to
21 -- you know, it might be -- you know, I'm just
22 speculating that in the future you might

1 actually get more cases where people are doing
2 similar things as us.

3 So I don't really have a broad,
4 you know, like any comment on that, but just
5 that how -- why alcohol is sold on-line is
6 changing, how people are buying is changing
7 over time.

8 And, you know, the old rules of,
9 you know, what is solicitation, you know,
10 placing an ad in newspapers. Nowadays nobody
11 places -- I mean, you know, as you know for
12 D.C. on-premise and off-premise licensees.
13 They don't sell as much alcohol because of
14 their advertisements in newspapers as much as
15 they -- because of their ads on Yelp! or on
16 Google.

17 I don't have specific numbers for
18 you to, you know, support that fact, but it's
19 just, you know, what is going on around us
20 that small businesses are using these
21 technologies more and more and separation
22 between marketing, solicitation and technology

1 and actually, you know, the old definition of
2 what is solicitation is, you know, in my
3 opinion at least, changing over time.

4 Texas and California. California
5 was the first state to actually come up with
6 specific advisory because they have the most
7 technology company, so it's in their interest
8 to actually reduce the number of individual
9 cases that might come up in front of them.

10 So they came up with this advisory
11 which goes into the details of, you know, just
12 core or specific areas, but, you know, the
13 pricing of the products, inventory control,
14 order acceptance, who collects the payments.

15 CHAIRPERSON MILLER: Yes.

16 MR. SHAH: Delivery
17 responsibility, item verification. So it kind
18 of goes into those aspects that you can use in
19 the future. You know, if you do decide that
20 this is something that you want to provide
21 more guidance over, you can do that.

22 Specifically coming back to my

1 case, we were dinged because we were accepting
2 credit cards on our site directly that was
3 very specifically prohibited, but
4 beerrightnow.com was before you and --

5 CHAIRPERSON MILLER: Right.

6 MR. SHAH: -- it was not our
7 intention to actually, you know, ignore that
8 case and go ahead and sell. Just that there
9 are other instances where something similar
10 nature was not acted upon by the Board.

11 So we assumed that, for example,
12 deal sites that collect payments up front from
13 on-site licensees where, you know, a
14 restaurant might sell a deal for food and
15 beverages on-line through Groupon and Groupon
16 collects the funds up front and sends 50
17 percent of the funds as, you know, their
18 remittance and they keep actually 50 percent,
19 which is significant.

20 But that case had come up in front
21 of NYSLA, New York State Liquor Authority, and
22 the state liquor authority had deemed it to be

1 not significant, taking into consideration
2 overall revenues of a restaurant.

3 So, you know, no restaurant can
4 afford to give out 50 percent of their
5 proceeds on an ongoing basis, so they might
6 run a Groupon on it on a basis where, you
7 know, they might get customers. So that does
8 not -- you know, would not be a significant
9 portion of their overall revenue.

10 So from that point, they had ruled
11 that the significant, you know, transactions
12 from -- for third-party, it wasn't significant
13 just based on that criteria. So we looked at
14 that model as something that was not, you
15 know, looked at in D.C. as illegal, so we used
16 that model. But now, you know, we do realize
17 that, you know, we need to change it because,
18 you know, obviously of this order, because of
19 this order.

20 So we are going to, you know, if
21 your approval, allow the licensee in D.C. to
22 actually charge the cards directly and we

1 won't store any information at our end. So
2 that may, you know, help make our operations
3 legal just from us not being the licensee, you
4 know.

5 CHAIRPERSON MILLER: So does that
6 mean you will advertise on-line, but the
7 charges will go to the licensee? You won't
8 have anything to do directly with the
9 financial exchange?

10 MR. SHAH: Yes. So --

11 CHAIRPERSON MILLER: Then the
12 licensee will pay you something? Okay.

13 MR. SHAH: Yes, so that way we
14 don't actually store any credit card
15 information. Any refunds, so if, for example
16 -- it's quite possible, it hasn't happened to
17 us in D.C., but for example a minor orders on-
18 line and they want a delivery, in that case if
19 the credit card information is sent directly
20 to the retailer, they will attempt to do the
21 delivery, which their owner 100 percent will
22 be doing, they will check the ID. And if that

1 person is a minor, they will take that order
2 back and they will just cancel that charge
3 directly at their end.

4 So this is very similar to the
5 wine store websites, you know, the model from
6 WineFetch or Beverage Media where the wine
7 store has direct control over the payments.

8 CHAIRPERSON MILLER: So the
9 licensee will have control over delivery. You
10 won't have anything to do with delivery
11 either? So your role will be advertising and
12 taking the orders?

13 MR. SHAH: Yes, it's purely
14 technology because most other websites, at
15 least from our -- you know, when we decided on
16 doing this business, was that 95 percent of
17 the alcohol sales take place locally. But
18 most of the websites are designed for distance
19 sales.

20 And in bigger cities, the rents
21 for properties are -- you know, the rents of
22 wine store locations are higher. So their

1 prices are higher. So they cannot compete on
2 price, which is a primary driver for the other
3 people to buy wine on-line.

4 So they might buy wine from a low
5 price store in different state than in D.C.
6 So D.C. stores they might have a website, but
7 they might not get a lot of business through
8 that website. So we are actually, you know,
9 offering them a solution where they can
10 actually sell to their local customers and the
11 customers like it, because they can see how
12 long it will take them to get the delivery of
13 the products.

14 CHAIRPERSON MILLER: Yes.

15 MR. SHAH: When somebody walks
16 into a store and they don't know the different
17 information on the wine, so if a store has 100
18 different bottles of wine, you know, they
19 might not have that description of those
20 wines. So as a customer, it becomes difficult
21 for the customer to get information before
22 buying, so there is, for example, 10 different

1 kinds of zinfandel from California within \$10
2 to \$20, so it becomes more difficult for a
3 customer to make the decision.

4 So by having discussion on our
5 side, it makes it easier for them to make a
6 more informed decision. So that's slightly
7 different than the regular website that wine
8 stores use currently.

9 CHAIRPERSON MILLER: Yes, okay.
10 Who else has questions?

11 MEMBER ALBERTI: I do.

12 CHAIRPERSON MILLER: Yes, Mr.
13 Alberti?

14 MEMBER ALBERTI: Mr. Shah, thank
15 you for the advisories, I'm sure they will be
16 very helpful.

17 I sort of want to take a step back
18 to sort of fully understand how your -- what
19 you are offering and how this all works.

20 So you currently only have one
21 client in D.C., is that --

22 MR. SHAH: Yes.

1 MEMBER ALBERTI: -- client --

2 okay.

3 MR. SHAH: Yes.

4 CHAIRPERSON MILLER: And what
5 portion of their inventory is on your website?
6 How do they decide? If not all of it, how do
7 they decide what to put on your website?

8 MR. SHAH: I don't have the exact
9 person to -- but I believe it is anything
10 between 20 to 30 percent. It might to be 30
11 to 40 percent, because --

12 MEMBER ALBERTI: Of their
13 inventory?

14 MR. SHAH: Yes.

15 MEMBER ALBERTI: Okay.

16 MR. SHAH: Because the POS system
17 that they use may not have all the
18 information, which is needed for selling on-
19 line. So --

20 MEMBER ALBERTI: Okay.

21 MR. SHAH: -- when somebody walks
22 into the store, they don't need to know -- the

1 store owner doesn't need invent -- the
2 description of the product in their POS,
3 because that's useless information. Nobody
4 sees it.

5 MEMBER ALBERTI: Right.

6 MR. SHAH: And it was a manual
7 process for my partner store to actually
8 provide us with that information. So he said
9 these are the products that we think are going
10 to sell the most on the site, so they provided
11 to us, but I can get you that information.

12 MEMBER ALBERTI: Okay. No, that's
13 just I'm curious. No, that's fine, that's
14 fine. Just so we get a general picture. So
15 what do you -- when I go onto your website,
16 what would I see? Would I see pictures of
17 this, lists? I mean, what would I see?

18 MR. SHAH: It's no different from
19 any other website for wine stores.

20 MEMBER ALBERTI: Okay.

21 MR. SHAH: So the only difference
22 is people have to enter their ZIP Code and

1 they see inventory right away, just because,
2 you know --

3 MEMBER ALBERTI: There is a search
4 engine? I can search for a particular wine?

5 MR. SHAH: Yes.

6 MEMBER ALBERTI: That sort of
7 thing? Okay.

8 MR. SHAH: Yes, so there is a
9 search bar, you know, that people can -- there
10 is two versions. One is the mobile version
11 and one is the desktop version. So mobile
12 doesn't have a search feature, but the desktop
13 one does, because of the size, you know,
14 problems. You don't want to have a lot of
15 gadgets or widgets on our webpages. So if
16 it's a mobile, you don't want to clutter the
17 screen, so it doesn't have a search, but you
18 can filter by price.

19 You can filter by region or
20 alcohol type and any special features like
21 red, white, sparkling, those certain things
22 that customers might find to filter and make

1 a purchase.

2 MEMBER ALBERTI: So now I choose
3 product, choose quantity or whatever, all
4 right, and this comes to you. How does the
5 information get transferred to the store
6 owner?

7 MR. SHAH: So the store can get a
8 fax, a text message, and an email.

9 MEMBER ALBERTI: All right. Okay.

10 MR. SHAH: So it helps them, you
11 know, whichever way is better for them to get
12 that alert, because in some ways they need a
13 faster turn around time, because this is not
14 a two-day delivery.

15 MEMBER ALBERTI: Right.

16 CHAIRPERSON MILLER: Yes.

17 MR. SHAH: But from the 16
18 minutes, so they want to be notified as soon
19 as possible.

20 MEMBER ALBERTI: Okay. So they
21 are notified and they put it together and they
22 send out a delivery person with the product?

1 MR. SHAH: Yes, they do.

2 MEMBER ALBERTI: Now, originally
3 your role was you take all the information,
4 you take the name and address of the person to
5 whom this is going? Is that correct? What
6 information do you take on the customer?

7 MR. SHAH: We don't take any
8 information other than what is needed to
9 complete the order.

10 MEMBER ALBERTI: Which is what?

11 MR. SHAH: So shipping address,
12 billing address, delivery time if it's
13 specific.

14 MEMBER ALBERTI: So you don't
15 actually take the name of the person?

16 MR. SHAH: To register on our
17 site, they just need an email address and
18 choose a password.

19 MEMBER ALBERTI: Okay.

20 MR. SHAH: We don't actually have
21 -- we don't need any other information to run
22 our service. We don't need -- we are not

1 right now collecting any other information.

2 MEMBER ALBERTI: Okay. Okay.

3 Well, before you got the cease and desist, I
4 mean how -- you had to get a name for payment,
5 right?

6 MR. SHAH: Name for payment?

7 MEMBER ALBERTI: Yes. I mean, you
8 had to get a billing address.

9 MR. SHAH: Right, yes, of course.

10 MEMBER ALBERTI: So you were
11 getting that information. But you don't
12 necessarily need that if you are not doing the
13 billing. Is that correct?

14 MR. SHAH: Yes. No. The thing is
15 we -- even under the new process, you don't
16 need to collect that information because the
17 credit card is entered on our site, but it is
18 transferred to the merchant account of the
19 store.

20 MEMBER ALBERTI: Okay. Okay. But
21 originally, it was -- you were handling all
22 that and you were handling the process?

1 MR. SHAH: Right.

2 MEMBER ALBERTI: And then
3 transferring the --

4 MR. SHAH: Yes.

5 MEMBER ALBERTI: Okay. So okay
6 under this new model that you are proposing,
7 how would that account -- the accounting
8 happen? I mean, you would get the billing
9 address and the credit card information from
10 the client, right? And then just ship that
11 over to the owner, to the retailer or would
12 you somehow pass this information directly to
13 the processor?

14 MR. SHAH: So the processor gets
15 any information that is entered on our site.

16 MEMBER ALBERTI: By processor you
17 mean --

18 MR. SHAH: The processor will get
19 it.

20 MEMBER ALBERTI: Who is the
21 processor?

22 MR. SHAH: But the processor

1 account is the store's account, not our
2 account.

3 MEMBER ALBERTI: So they would --
4 I'm not very technically literate.

5 MR. SHAH: No, that's fine, sure.

6 MEMBER ALBERTI: All right. I'm
7 trying to understand what's happening, but I
8 really don't know the details. So they would
9 have to give you some authorization to direct
10 -- to sort of tap into their processor, right?
11 To the processor being a bank. Let's say
12 essentially it's a bank. It may go through
13 some company.

14 MR. SHAH: Right.

15 MEMBER ALBERTI: But it's a bank.

16 MR. SHAH: Yes.

17 MEMBER ALBERTI: Is that right?
18 Eventually it gets to -- so they have to allow
19 you to sort of access that conduit to the
20 bank, right?

21 MR. SHAH: Yes.

22 MEMBER ALBERTI: Is that a problem

1 for them? I mean, how does that --

2 MR. SHAH: The way -- maybe I can
3 explain it.

4 MEMBER ALBERTI: Sure.

5 MR. SHAH: There is a code. So
6 after they authorize that name and they
7 request our store to use authorize.net. As
8 well, it's, you know, US' biggest payment
9 processor.

10 MEMBER ALBERTI: Okay.

11 MR. SHAH: Because they have
12 pretty good software, so we, you know, advise
13 our partner stores to us that.

14 MEMBER ALBERTI: All right.

15 MR. SHAH: And they give you an
16 ID. So each account has an ID.

17 MEMBER ALBERTI: Yes.

18 MR. SHAH: That is entered in a
19 specific location on our site in the back-end.

20 MEMBER ALBERTI: Yes.

21 MR. SHAH: So that ID is some sort
22 of key that connects the payment made by the

1 customer to that store's merchant account.

2 MEMBER ALBERTI: Merchant account,
3 okay.

4 MR. SHAH: So that is the key. So
5 we will have probably 10 different stores with
6 10 different keys, you know.

7 MEMBER ALBERTI: Okay.

8 MR. SHAH: So their payments --
9 you know, so for example in New York, if we
10 come up with a system like this, the New York
11 store will have their key. D.C. store will
12 have one different key. So when a D.C.
13 customer will enter their information in our
14 website --

15 MEMBER ALBERTI: Yes.

16 MR. SHAH: -- that -- through our
17 program, that key will connect to that D.C.
18 store's merchant account, but not New York
19 stores merchant account.

20 MEMBER ALBERTI: Right, right,
21 right, because it connects?

22 MR. SHAH: Yes, exactly.

1 MEMBER ALBERTI: You know where
2 the merchandise is coming from, so you connect
3 the key to that.

4 MR. SHAH: Exactly. And our
5 software will pick up the current key for a
6 certain merchant.

7 MEMBER ALBERTI: Gotcha. So that
8 much I can understand.

9 MR. SHAH: Yes.

10 MEMBER ALBERTI: All right. Thank
11 you that was very helpful. You did a good job
12 explaining that.

13 MR. SHAH: Thank you.

14 MEMBER ALBERTI: A trick question
15 here. Can store X in D.C. have more than one
16 access key? So they give you one that no one
17 -- you are the one they give it to? Can they
18 do that? Can they have several --

19 MR. SHAH: They can if they want.

20 MEMBER ALBERTI: -- at access.net?

21 MR. SHAH: If they want to have
22 multiple vendors. So, you know, I'm

1 predicting that the competition for -- you
2 know, I think there is already some other
3 alcohol Clink or whatever operating in D.C.
4 doing the same thing.

5 So if my vendor partner decides to
6 work with them as well and they don't want to
7 make transactions from these two different --

8 MEMBER ALBERTI: Right.

9 MR. SHAH: -- partners, then they
10 will see we need two different accounts, just
11 so that we can get our accounting separate.

12 MEMBER ALBERTI: Separate,
13 correct.

14 MR. SHAH: But that is --

15 MEMBER ALBERTI: They want to know
16 who is doing the best for them.

17 MR. SHAH: Exactly. But that's
18 their decision.

19 MEMBER ALBERTI: Right.

20 MR. SHAH: And one thing I forgot
21 to add, you know, once the store gets an
22 order, they actually physically have to

1 confirm the order, so they have to click about
2 and say we accept this order, so it's not
3 automatic.

4 So it's not our decision that a
5 reorder has to be completed. So it's the
6 store's decision if they are going to complete
7 the order or not, so it's their decision.

8 MEMBER ALBERTI: Yes. I want to
9 thank you for coming and providing this
10 information and just comment that you are
11 stretching us, this is a challenge to figure
12 out. But I -- so but I do appreciate it.
13 Thank you. Thank you for coming. I have
14 nothing else.

15 CHAIRPERSON MILLER: Yes, Mr.
16 Short?

17 MEMBER SHORT: Good afternoon. I,
18 too, like my coworker appreciate the
19 information you shared with us. And it just
20 sounds like it is working out pretty good for
21 you so far or have there been any glitches?

22 MR. SHAH: There aren't any

1 glitches.

2 MEMBER SHORT: You mentioned
3 earlier about an order that didn't have to be
4 filled. So someone puts their credit card in
5 your site to order wine, you are in D.C., the
6 merchant doesn't fill it, what then happens?

7 MR. SHAH: The merchant doesn't
8 confirm.

9 MEMBER SHORT: Doesn't confirm.

10 MR. SHAH: In that case, we
11 actually call the merchant to check if the
12 order should be completed or not, because
13 until now we are responsible for charging the
14 card. And if the customer came back to us and
15 said I didn't receive my order, in that case,
16 we have to issue a refund, but then, you know,
17 the merchant, our partner store will say we
18 did complete the order. So we need to have
19 good communication between the customer, the
20 store and us.

21 There have been instances when a
22 customer has ordered after the store was

1 closed. In that case, we had to get back to
2 the store and ask them if they plan to
3 complete this order the next day, if not,
4 sometimes the customer just wants a specific
5 thing then, you know right then.

6 So they might say I'm having
7 dinner right now and I want a bottle of wine
8 right now, but I don't want a bottle of wine
9 tomorrow morning when the store opens again.
10 So we have had instances when the customer
11 said no, we don't want the bottle delivery
12 right now, so please, cancel the order.

13 And in those cases, the store had
14 not confirmed the order, so we issued a
15 refund, full refund to the customer and
16 canceled that order at our end, so end of the
17 month we didn't have to pay the store for that
18 order.

19 But moving forward, once we
20 implement the new system, new process, when
21 the customer gets charged directly from the
22 store, we will just direct the customer

1 directly to the store saying the store has
2 charged your card. You should contact them
3 for any refund or adjustments or some times a
4 certain product might be out of stock. In
5 that case, the store will call the customer
6 and say hey, we don't have this bottle of
7 Pinot Grigio for \$20, but we have this bottle
8 for \$23 of Pinot Grigio that you might like.
9 That \$3 now, the store can charge directly or
10 those smaller adjustments.

11 We just will be technology
12 providers, so where we don't actually
13 participate in the transaction.

14 MEMBER SHORT: Okay. That sounds
15 fair to me, being a person that's not
16 technically progressed, as yourself. But let
17 me ask some other questions.

18 I do know when alcohol is sold in
19 the District of Columbia, there is a tax to
20 help keep our school enrollments going and
21 sewage and all those things. And I know New
22 York is definitely going to get their taxes

1 from you.

2 So tell me how that works, New
3 York taxes, D.C. taxes.

4 MR. SHAH: New York's taxes are
5 8.8875 and D.C., I think, are 10 percent, if
6 I'm not mistaken. You just collect the
7 information from our partner stores.

8 MEMBER SHORT: Yes.

9 MR. SHAH: And plug it into our
10 systems. So each store has their own little
11 page where they enter information into the
12 rear area and tax area. And the store is
13 responsible for collecting all taxes and
14 submitting them to D.C. Tax Authority.

15 We don't, as part of our agreement
16 with the store, actually oversee that process
17 at our end, because we, obviously, don't have
18 the capability sitting in New York, you know,
19 overseeing how the D.C. store complies with
20 D.C. Tax Regulations.

21 MEMBER SHORT: Oh, okay. Now,
22 that's the question I had when I first heard

1 about Ultra.

2 MR. SHAH: Right. So --

3 MEMBER SHORT: And I would hope
4 that -- we would have to just hope that the
5 store here, the ABC store here would pay their
6 fair taxes. But in other words, what can keep
7 a record if everything is done electronically
8 between you and he?

9 MR. SHAH: What we do is actually
10 issue --

11 MEMBER SHORT: Or the owner.

12 MR. SHAH: We issue a monthly
13 statement and details or transactions for each
14 store. So there is actually each line item
15 that shows the subtotal tax amount and the
16 date for the order. So if --

17 MEMBER SHORT: The information
18 goes where?

19 MR. SHAH: To the store for their
20 accounting purposes. Now, they can -- they
21 actually use that information for their own
22 accounting and they have, I believe, I haven't

1 checked if our partner store has complied with
2 D.C. Tax Authorities. You know, that's part
3 of our agreement, you know, we require them to
4 follow, you know, necessary local state and
5 federal tax and other laws.

6 So we are assuming, at this point.
7 What I can do is if you have further
8 questions, you know, how they actually comply
9 with overall D.C. Tax.

10 MEMBER SHORT: That would be very
11 helpful to this Board. If you could help us
12 with that, that would be greatly appreciated.

13 MR. SHAH: Okay. Yes. You know,
14 I can send that information through, you know,
15 the partner store if the Board wants.

16 CHAIRPERSON MILLER: Mr.
17 Silverstein?

18 MEMBER SILVERSTEIN: What are your
19 rules and protocol regarding the delivery of
20 items to a place when someone is not present?

21 MR. SHAH: Yes, so based on our
22 policies, the store is not allowed to leave

1 any products, alcoholic products with a minor
2 or unattended. So those are two things.

3 MEMBER SILVERSTEIN: Unattended.

4 MR. SHAH: Now, at our end, we
5 can't enforce it from, you know, where we are,
6 but all the rules and regulations that apply
7 to licensees in D.C., they apply in this
8 situation as well. So as far as I know, our
9 partner store, I think it is B1P West Street,
10 Dupont Circle. I can give it a legal name,
11 you know, for the partner store. I don't know
12 exactly the name, but they are required to
13 actually follow all D.C. Regulations.

14 So I can get more specific
15 information, but as a general rule, we don't
16 allow or don't -- you know, we had in our
17 email that goes to each other that somebody
18 should be available to sign for.

19 MEMBER SHORT: Someone of age to
20 be available?

21 MR. SHAH: Somebody of age, yes,
22 exactly. But we can't oversee every single

1 order that is delivered on our end.

2 MEMBER SILVERSTEIN: Okay. Thank
3 you.

4 CHAIRPERSON MILLER: Yes, Mr.
5 Rodriguez?

6 MEMBER RODRIGUEZ: Yes, sir, very
7 interesting. Can you -- I think Mr. Short
8 asked you for some information and you said
9 you were going to gather that. I want to
10 piggyback on what he requested.

11 Can you do for us a dichotomy of a
12 sale diagram?

13 MR. SHAH: Okay.

14 MEMBER RODRIGUEZ: I want to
15 follow that diagram all the way to -- from the
16 point of sale to where the taxes are, where,
17 you know, the different points of interest
18 are.

19 MR. SHAH: Okay.

20 MEMBER RODRIGUEZ: The dichotomy
21 of a sale diagram. Thank you, Madam Chair.

22 CHAIRPERSON MILLER: Okay. Mr.

1 Alberti?

2 MEMBER ALBERTI: Mr. Shah, is your
3 company licensed by state or Federal
4 Government in any way?

5 MR. SHAH: We are an LLC in New
6 York State.

7 MEMBER ALBERTI: You're an LLC in
8 New York State. All right. Licensed just as
9 an LLC? I mean, follow-up -- there is no
10 professional -- I mean, there is no -- it's
11 not like the liquor license or any -- the
12 reason I'm asking is this is like going
13 towards the future.

14 Let's say we needed to bring a
15 case against a store that you are partnering
16 with in D.C. And we wanted to review their
17 records and try and compare them with what
18 they told us they were getting from you, you
19 know, the sales with regard to you, and we
20 wanted to subpoena them from you. I'm trying
21 to think about what legal weight we would have
22 in leveraging our authority expressing this

1 wrong, but I mean how could we use legal
2 authority to get this information with you?

3 And I guess I'm assuming that you
4 have some confidentiality. First of all, may
5 I ask, do you have a confidentiality clause
6 with your clients?

7 MR. SHAH: We have a contract with
8 our partner stores, but I don't know what is
9 their confidential.

10 MEMBER ALBERTI: Well, I mean, you
11 know, I just couldn't have an ABC attorney
12 call you up and ask you for that information,
13 you probably wouldn't want to give it to us
14 without your client's permission, I'm
15 guessing, right?

16 MR. SHAH: Well, we actually own
17 more so the information that, you know, is --
18 occurred on our website, so as item, you know,
19 if --

20 MEMBER ALBERTI: You can give us a
21 whole list of products and cost of those
22 products and well, the sales price of all

1 those products for a particular --

2 MR. SHAH: Yes.

3 MEMBER ALBERTI: -- you would just
4 give it up without --

5 MR. SHAH: Yes, yes, yes, because
6 we do want to cooperate with the Board. And
7 you know, understand that you have a
8 responsibility towards the public.

9 MEMBER ALBERTI: Okay.

10 MR. SHAH: And, you know, as -- I
11 can talk about industry as a whole, but for my
12 company, we can give you any information that
13 you ask for.

14 MEMBER ALBERTI: I'm just sort of
15 thinking, you know, a head to the future what
16 do we, as a Board, need to be thinking about
17 as we move forward, because you're not going
18 to be the only person.

19 MR. SHAH: Right.

20 MEMBER ALBERTI: You're not going
21 to be the only company and I'm trying to think
22 about how this is going to go for the future.

1 MR. SHAH: Just from record
2 retention point of view, we can come up with
3 some sort of regulation where you require the
4 technology company dealing with -- I don't
5 know how -- it's just throwing out ideas, but
6 you can have probably some sort of record
7 retention for two years.

8 MEMBER ALBERTI: Right.

9 MR. SHAH: You know, that's one
10 way of doing it.

11 CHAIRPERSON MILLER: That's fine.

12 MR. SHAH: The problem is that,
13 you know, with start-ups like ours, you know,
14 things change very fast. So many times the
15 company might go out of business in two years,
16 you know, who knows.

17 MEMBER ALBERTI: I getcha. I
18 gotcha. Okay. Thank you. That was helpful.

19 CHAIRPERSON MILLER: Okay. I just
20 have a few questions.

21 Do you have anything on your site
22 that says you have to be 21 years or older to

1 make a purchase?

2 MR. SHAH: Yes, it's in our terms
3 and conditions.

4 CHAIRPERSON MILLER: Oh, it's in
5 the conditions?

6 MR. SHAH: Yes.

7 CHAIRPERSON MILLER: Okay. Do
8 they have to like check a box saying I'm 21 or
9 something like that?

10 MR. SHAH: No, but they have to
11 click, you know. It's in terms and
12 conditions. I mean, we can add a box, but
13 usually that doesn't really stop anybody from
14 doing anything.

15 CHAIRPERSON MILLER: Okay.

16 MR. SHAH: I'm just being honest.

17 CHAIRPERSON MILLER: Yes, okay, I
18 see.

19 MR. SHAH: But it's a moot point
20 because, you know, we require our stores to
21 not deliver to anybody under 21.

22 CHAIRPERSON MILLER: Right. I

1 understand that. And I think Mr. Alberti
2 might have mentioned this earlier, but do you
3 not require them to identify themselves by
4 name at all? You said they will have an email
5 address and I have a delivery address and
6 that's enough. I guess on the credit card
7 there has to be a name, right?

8 MR. SHAH: Yes. So we know who is
9 buying from the credit card information.

10 CHAIRPERSON MILLER: Right.

11 MR. SHAH: There might be a gift
12 order, so it might be different gift address.

13 CHAIRPERSON MILLER: Yes.

14 MR. SHAH: But for payment, you
15 know, that's how we insert it in the payee's
16 order.

17 CHAIRPERSON MILLER: So I mean,
18 when we go on-line, it's not uncommon that you
19 see, right, you know, the purchaser's name and
20 address and then the delivery to name and
21 address. So why don't you capture a name?

22 MR. SHAH: We don't capture the

1 name at the time of registration, but it stays
2 in our system, the billing information and the
3 delivery information.

4 CHAIRPERSON MILLER: Okay.

5 MR. SHAH: So we go have the name
6 and address and phone number of --

7 CHAIRPERSON MILLER: And one way
8 or another it is picked up? I mean, I know it
9 is picked up by the -- okay. So it's picked
10 up by the credit card by the payment.

11 MR. SHAH: Exactly.

12 CHAIRPERSON MILLER: And then the
13 delivery is picked up, because they have got
14 to give a name for that, right?

15 MR. SHAH: Exactly.

16 CHAIRPERSON MILLER: Okay. Is the
17 model that you have just described to us, I
18 think that you are recommending, to do here?
19 Okay. Have you used this exact model anywhere
20 else or is this just kind of like a
21 modification of what you have done?

22 MR. SHAH: We are using it in

1 Maryland, but it seems like it's not as
2 popular in Maryland as it is in D.C. We
3 haven't had that many sales in Maryland.

4 We propose to do it in different
5 states, just because it's easier to convince,
6 you know, I'm just going in detail, but it's
7 much better for the retailers to collect them
8 directly, instead of trusting somebody like us
9 who probably have a business background with,
10 so, yes, that's not -- is going to go ahead
11 with different states.

12 CHAIRPERSON MILLER: So when
13 somebody goes on-line and orders this wine or
14 whatever, they give a credit card. That
15 automatically goes into the liquor store's
16 bank account automatically?

17 MR. SHAH: Yes.

18 CHAIRPERSON MILLER: As soon as
19 they type it in?

20 MR. SHAH: Yes. I mean, the usual
21 time to take for the payment to settle.

22 CHAIRPERSON MILLER: Okay.

1 MR. SHAH: I think it might be two
2 to four days for Visa, Mastercard. It might
3 be several for American Express.

4 CHAIRPERSON MILLER: Oh, okay.

5 MR. SHAH: So after that, it will
6 go into the --

7 CHAIRPERSON MILLER: Okay.

8 MR. SHAH: -- account.

9 CHAIRPERSON MILLER: So if the
10 licensee doesn't confirm, do you stop the
11 payment?

12 MR. SHAH: At this point, we
13 wouldn't be able to. It would be the
14 licensee's end to either cancel it or --

15 CHAIRPERSON MILLER: Would they
16 deal with it?

17 MR. SHAH: Yes.

18 CHAIRPERSON MILLER: Okay. So you
19 have to have a licensee who is going to be
20 checking the computer periodically to see
21 whether orders are coming in?

22 MR. SHAH: Right.

1 CHAIRPERSON MILLER: Okay. And
2 can I ask you what your -- how you are paid,
3 what the arrangement is?

4 MR. SHAH: It's on a commission
5 basis right now. So it's a percentage. It's
6 less than 8 percent.

7 CHAIRPERSON MILLER: Okay. And do
8 you -- we may have this, but I'm not sure, do
9 we have your website if we wanted to go look
10 at it?

11 MR. SHAH: It's
12 www.orderultra.com. So it's O-R-D-E-R-U-L-T-
13 R-A.com.

14 CHAIRPERSON MILLER: Could you say
15 it again, www.order what?

16 MR. SHAH: Ultra.

17 CHAIRPERSON MILLER: Order Ultra?

18 MR. SHAH: So order food,
19 orderultra as in U-L-T-R-A.

20 CHAIRPERSON MILLER: Right, .com,
21 okay. So and that's in New York. So you do--
22 from that website, you do New York and

1 anywhere else?

2 MR. SHAH: Yes, D.C., Chicago.

3 CHAIRPERSON MILLER: You want to
4 do D.C. Chicago, okay. Okay. Good. Okay.

5 MEMBER SHORT: I have.

6 CHAIRPERSON MILLER: Yes, Mr.
7 Short has. Okay.

8 MEMBER SHORT: We have a situation
9 in the District of Columbia where some
10 businesses don't check IDs as well as they
11 should and then other businesses have been
12 selling to minors with fake IDs when their IDs
13 weren't really checked out well.

14 We have somewhere in the
15 neighborhood of six or seven universities,
16 four or five major ones here in the city and
17 I know when I was 19, 18 maybe, like must
18 curious youngsters, I wanted to find out what
19 alcohol was about.

20 So what's to stop a college kid
21 who has his mother or father's credit card
22 from emailing you, getting the alcohol

1 delivered to -- off-campus and if I'm a
2 businessman, I'm probably going to want to say
3 well, I need this order it's \$50 or \$60. You
4 know, I'm not concerned. I'm just doing my
5 business.

6 MR. SHAH: Right.

7 MEMBER SHORT: And so that's the
8 only situation I would have with this, besides
9 the fact the taxes, the proper amount of taxes
10 being paid. And right now, there doesn't seem
11 to be any checks or balances as to the -- your
12 end in New York or the end here in D.C. And
13 again, I think that basically I would just
14 like to see most businesses, all businesses
15 who are doing business in Washington, D.C.
16 with ABC privileges or licenses to pay the
17 appropriate taxes.

18 So right now, under the business
19 model that you have just described, I haven't
20 heard any of that. Everything is I want to do
21 my part. They will do their part, but there
22 are no checks or balances that I heard.

1 MR. SHAH: So there are two
2 things. The first thing is tax and the second
3 thing is IDs.

4 For tax, we don't actually have
5 the capability and neither does --

6 MEMBER SILVERSTEIN: I'm sorry,
7 you don't actually have? Please repeat that.

8 MR. SHAH: I'm sorry. The
9 capability to actually monitor how the tax
10 payment is made from the vendor to the state
11 or the D.C. District. And I believe that, I'
12 not sure, but, they might be auditing from --
13 by the Tax Authority to ascertain if taxes are
14 paid on all orders in D.C., for D.C.
15 businesses.

16 I believe that should be or would
17 be a standard procedure for collecting taxes.
18 And I believe that that is being done by our
19 partner store right now, because he was looked
20 up on and our office was asking me to provide
21 detailed statements, which can be sent to his
22 accountant, for record keeping.

1 MEMBER SILVERSTEIN: This is the
2 store that you use in D.C.? This is Mr.
3 Shiraf?

4 MR. SHAH: Yes. And our
5 percentage of overall sales is no more than 5
6 percent. So for saving taxes on these 5
7 percent of sales, I don't think, that's my
8 personal opinion, that he will jeopardize his
9 whole business, you know, just to save this 5
10 percent. You know, that's again a
11 speculation, but I do understand your concern.

12 Having said that, I do believe
13 that he enters each transaction at his end as
14 his own sale and I believe as part of the
15 investigation, there was photocopies of
16 receipts maintained by the store.

17 So I don't know if you had a
18 chance to -- in front of your decease and
19 desist order, there were actually records of
20 each transaction that was reviewed by the
21 Investigator. So I believe that the record
22 keeping is maintained by the store. So that--

1 MEMBER SILVERSTEIN: And in your
2 model, Mr. Shah, you deal with how many
3 suppliers in any given market?

4 MR. SHAH: It depends on the area,
5 but in D.C. it's only one. In New York, it's
6 12.

7 MEMBER SILVERSTEIN: 12 in the
8 whole city or it's 12 in --

9 MR. SHAH: In New York City, so
10 that is Manhattan and Brooklyn and Queens.

11 MEMBER SILVERSTEIN: But here you
12 will only deal with one or you do only deal
13 with one?

14 MR. SHAH: That's because the
15 vendor asked us to have an exclusive. It's
16 kind of informal and we didn't have anybody
17 else at the moment working with us in D.C., so
18 we decided okay. It just makes life easier
19 for us, because in some ways it is easier for
20 the store to get around in all of D.C. instead
21 of New York City where it is more dense and
22 nobody has cars and it's much more difficult

1 for this delivery person to park their cars.

2 MEMBER SILVERSTEIN: Okay. No
3 further questions.

4 MR. SHAH: Just coming back to the
5 ID question from Mr. Short, our process is no
6 different from what a store might use for
7 doing their deliveries. We are just one
8 aspect of it, so they might use USPS, other
9 common carriers as UPS, as FedEx, even those
10 guys have the same process. You know, they
11 have the same responsibility for checking IDs
12 before dropping off the delivery.

13 As a UPS person, they have less
14 interest in tripping, you know, the D.C. Laws
15 or local laws as compared to a delivery person
16 of a wine store in D.C., because if the USPS
17 employees drops off a bottle of alcohol from
18 somewhere, they are not personally liable.
19 The USPS -- UPS is responsible.

20 But so there is more
21 accountability at least in my mind that this
22 delivery person has clear guidelines from the

1 store to check IDs upon a more consistent or
2 all basis than a common carrier would.

3 Now, that is a speculation, but at
4 the same time, that is something that we have
5 experienced in different instances.

6 MEMBER SHORT: Okay. Now, wine is
7 the only thing, that's the only beverage that
8 you sell? Wine or do you sell all spirits?

9 MR. SHAH: Wine. Well, we don't
10 sell. The store sells wine, beer and hard
11 liquor.

12 CHAIRPERSON MILLER: Okay.

13 MEMBER ALBERTI: Just a quick
14 clarification.

15 CHAIRPERSON MILLER: Sure. Mr.
16 Alberti?

17 MEMBER ALBERTI: I think you told
18 Ms. Miller that you work on a commission.

19 Okay. I misunderstood that. I thought that
20 somehow I was under the impression that you
21 worked on a flat rate fee, but you work on a
22 commission?

1 MR. SHAH: Yes.

2 MEMBER ALBERTI: Okay. I am just
3 throwing it out there that that might be a
4 glitch because the way the D.C. Law reads, it
5 can be interpreted to say that you can't
6 really share in the profits of the sale of
7 alcohol and in a way that is what is
8 happening. But we will take a look at that.

9 CHAIRPERSON MILLER: We will look
10 at it.

11 MR. SHAH: Well --

12 MEMBER ALBERTI: That's a concern
13 for me.

14 MR. SHAH: -- yes, they are open
15 to, you know, if you propose a certain model
16 of payments, we can. It's just that it makes
17 it easier.

18 MEMBER ALBERTI: I understand for
19 business why you would want to do that. I
20 understand that. I'm just putting it out
21 there for my fellow Board Members. I was --
22 before I was operating -- I knew different.

1 All right. Thank you.

2 CHAIRPERSON MILLER: How long is
3 your contract for?

4 MR. SHAH: It's open-ended.

5 CHAIRPERSON MILLER: Okay. Okay.
6 Any other questions? Do you have any other
7 questions?

8 MR. SHAH: From my end, you know,
9 I was going to request my partner store to
10 provide some sort of confirmation that they
11 are paying taxes on the orders that are placed
12 through Ultra, that's one.

13 And the second is the diagram that
14 Mr. Rodriguez requested.

15 CHAIRPERSON MILLER: Okay.

16 MR. SHAH: That I can send
17 tomorrow as a PDF. That will provide you with
18 details of how the individual sale works.

19 MEMBER RODRIGUEZ: Yes, I
20 appreciate that. Thank you.

21 CHAIRPERSON MILLER: Let me ask
22 you how you feel about providing us with a

1 contract or the contract with anything marked
2 out that was confidential or something?

3 MR. SHAH: Yes, I can provide you
4 with. Do you want a contract with the D.C.
5 store filled or you want blank contract?

6 CHAIRPERSON MILLER: I don't know,
7 because I haven't seen it. I mean, the
8 purpose is -- I think the purpose would be to
9 look at that to see if we have any issues. I
10 think, for instance, like Mr. Alberti brought
11 up, I'm not sure. We have to have a look at
12 the law and look at the type of payment or
13 something might be an issue.

14 So I think the purpose would be to
15 make sure we get rid of all the glitches or
16 get it right, so that, you know, you are
17 operating in a legal way.

18 MR. SHAH: Okay.

19 CHAIRPERSON MILLER: So it's kind
20 of up to you, I think, at this point.

21 MR. SHAH: Okay.

22 CHAIRPERSON MILLER: That would be

1 my purpose. Unless other Board Members are
2 sure they want it filled in. I mean, I'm sure
3 he has less of a problem with a contract that
4 is not filled in, the model contract.

5 It goes to one of the issues I was
6 saying goes to your point about whether --

7 MEMBER ALBERTI: Right.

8 CHAIRPERSON MILLER: -- or not he
9 gets paid by commission or --

10 MEMBER ALBERTI: I'm not sure --

11 CHAIRPERSON MILLER: -- whether
12 there --

13 MEMBER ALBERTI: Correct.

14 CHAIRPERSON MILLER: -- certain
15 responsibilities are yours and theirs and so
16 that's why I think it's important to see a
17 contract.

18 MEMBER ALBERTI: Oh, his contract?

19 CHAIRPERSON MILLER: Well, he was
20 saying there is one. We could see the model
21 one or we could see -- do we want to see the
22 one that is entered into?

1 MEMBER ALBERTI: That may be
2 helpful, but in the end, we are going to have
3 go give guidance.

4 CHAIRPERSON MILLER: Oh, sure,
5 we're going to have to give --

6 MEMBER ALBERTI: I'm mean,
7 guidance.

8 CHAIRPERSON MILLER: Sure.

9 MEMBER ALBERTI: But it still may
10 be helpful to see the contract, I don't know.

11 MEMBER SHORT: Okay. And one
12 last --

13 MEMBER ALBERTI: I mean, without--
14 I mean, we don't really need to see a model
15 one with that issue would be sufficient.

16 CHAIRPERSON MILLER: Okay. Right.

17 MEMBER ALBERTI: I don't need to
18 see the finances.

19 CHAIRPERSON MILLER: Okay. Well,
20 that's what --

21 MEMBER ALBERTI: I just need to
22 have sort of the role. You know, I don't care

1 whether it is 25 percent or 1 percent that you
2 are getting. I just need to know it's a
3 percentage, that sort of thing.

4 CHAIRPERSON MILLER: As long as a
5 model one would predict accurately the
6 business relationship and the
7 responsibilities, if it leaves it open as to
8 who does what, then we would want to see what
9 you actually want to do.

10 MR. SHAH: We tried to make it as
11 specific as possible.

12 CHAIRPERSON MILLER: Okay.

13 MR. SHAH: Go back and send you
14 the contract and if you think there is an area
15 of it you feel is more open-ended --

16 CHAIRPERSON MILLER: Okay.

17 MR. SHAH: -- we will try to put
18 more structure to it.

19 CHAIRPERSON MILLER: Okay. Thank
20 you. Yes, Mr. Short?

21 MEMBER SHORT: And there was also
22 a question about your being associated with

1 the Alcoholic Board of New York. You say you
2 don't have any credentials at all. There is
3 no requirement in New York for you to be in
4 the alcohol business even technically and not
5 have any regulations from New York State or
6 City?

7 MR. SHAH: There is no such
8 license in State of New York that would
9 require us to have a license.

10 MEMBER SHORT: Okay. All right.
11 Thank you.

12 CHAIRPERSON MILLER: Can I just
13 confirm also that as far as the delivery goes,
14 that's all under the purview of the licensee.
15 You really don't have anything to do with it,
16 so when they are asking about checking IDs,
17 that really doesn't fall on you. It falls on
18 the licensee.

19 MR. SHAH: Exactly. So all the
20 owners that follow the process, it's the same
21 process for everybody.

22 CHAIRPERSON MILLER: Okay. Good.

1 Okay. All right. Well, this has been very
2 helpful. So you know, as soon as you can
3 provide that material, that would be great and
4 then we will take a look at this issue and --

5 MR. SHAH: Sure.

6 CHAIRPERSON MILLER: -- get back
7 to you.

8 MR. SHAH: What form -- what --
9 how should I send you the information?

10 CHAIRPERSON MILLER: Oh, I guess,
11 you could send it to Martha Jenkins, our
12 General Counsel.

13 MR. SHAH: Okay.

14 CHAIRPERSON MILLER: That would be
15 good.

16 MR. SHAH: Okay.

17 CHAIRPERSON MILLER: You have
18 probably met her, right?

19 MR. SHAH: She is wonderful.

20 CHAIRPERSON MILLER: Oh, okay.
21 Yes, she is. Okay.

22 MR. SHAH: Thank you very much.

1 CHAIRPERSON MILLER: Thank you
2 very much.

3 MEMBER ALBERTI: Thank you.

4 CHAIRPERSON MILLER: Okay. So we
5 have a few more Fact-Finding Hearings. I just
6 would like to take a five minute break, if
7 that's all right with everyone. Okay. And
8 you in the audience, sorry to keep you
9 waiting, but I think that would be better.
10 Okay. Thank you.

11 (Whereupon, the Fact-Finding
12 Hearing in the above-entitled matter was
13 concluded at 3:49 p.m.)

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