

Id. Mr. Gropper notes that the retailer is responsible for paying all taxes, complying with local laws, and verifying the age of the recipient. Id.

CONCLUSIONS OF LAW

2. The question before the Board is whether, as conceived, the proposed website engages in the unlawful sale of alcoholic beverages without a license.

3. Under § 25-102(a), “No person shall sell any alcoholic beverage in the District without having first obtained an appropriate license as required by this title.” D.C. Code § 25-102(a) (West Supp. 2012). The term “sell” or “sale” in Title 25 is defined broadly as “soliciting orders for sale,” among other definitions. D.C. Code § 25-101(45) (West Supp. 2013).

4. We note that the term “solicit” means, “To try to obtain by entreaty, persuasion, or formal application.” Webster’s II New College Dictionary (1995) (solicit). Under this definition, it could be argued that a website that accepts and transfers customer orders in exchange for a convenience fee from the customer is attempting to persuade customers to purchase alcohol from the retailer; thereby, creating a “sale” under the law by taking and transferring the order to the retailer. On the other hand, we note that retailers in the District of Columbia may lawfully advertise their products in publications and other forms of media, so long as the advertisements otherwise conform with Title 25. See D.C. Code § 25-764 (West Supp. 2013).

5. In our view, when a third party participates or has a substantial interest in the exchange of money between the consumer and retailer this constitutes solicitation, and thus, requires the third party to obtain a license from the Board. For example, if a retailer placed an ad in a newspaper advertising its products and prices, this would not constitute solicitation on the part of the newspaper, because the newspaper would not have a substantial interest or participate in any purchases of alcoholic beverages made by consumers who viewed the advertisement. Nevertheless, the newspaper’s actions would constitute solicitation, if it, in any way, handled or received money or credit card information from the consumer—even if it only forwarded money or a credit card number to the retailer for processing.

6. For this reason, we find that the proposed website described by the Petitioner violates § 25-102(a), because the Petitioner accepts credit or debit card information and forwards it to retailers, which constitutes soliciting orders for sale without a license. Supra, at ¶ 1. Hence, the Petitioner’s proposed website allows it to obtain the benefits of licensure without obtaining a license. We note that we would not deem the proposal a violation of §25-102(a), if the Petitioner does not accept or receive money, debit or credit card information, or other financial instruments on behalf of a retailer.

ORDER

Accordingly, the Board, on this 20th day of March 2013, hereby **ORDERS** that the above represents the **ADVISORY OPINION** of the Board pursuant to 23 DCMR § 1902.

District of Columbia
Alcoholic Beverage Control Board


Ruthanne Miller, Chairperson


Nick Alberti, Member


Donald Brooks, Member


Herman Jones, Member


Mike Silverstein, Member

Pursuant to D.C. Code § 1902.6 (2008), if the requestor disagrees with the Board's advisory opinion in any respect, he or she may, within twenty (20) calendar days after issuance of the opinion, petition the Board in writing to reconsider its opinion, setting forth in detail the reasons and legal argument which support the requestor's points of disagreement, or may request the Board to issue a declaratory order, pursuant to § 1903. Advisory opinions of the Board may not form the basis of an appeal to any court in the District of Columbia.