

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of:)	
)	
Postmates)	Order No.: 2020-031
)	
<i>Advisory Opinion</i>)	
)	

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Bobby Cato, Member
Rema Wahabzadah, Member
Rafi Crockett, Member

PARTIES: Rob Hawkins, Counsel, on behalf of Postmates (Petitioner)
Nelson Mullins Riley & Scarborough, LLP
101 Constitution Avenue, N.W., Suite 900
Washington, D.C. 20001

**ADVISORY OPINION ON THE PROCESSING OF PAYMENTS BY THIRD
PARTY PROVIDERS**

INTRODUCTION

On December 3, 2019, Postmates, an on-demand technology company, submitted a request for an advisory opinion from the Alcoholic Beverage Control Board. *Letter from Rob Hawkins, Counsel, to the Alcoholic Beverage Control Board*, 1 (Dec. 3, 2019). Specifically, Postmates requests guidance on whether its payment process complies with Title 25 of the D.C. Official Code and the Board’s 2014 *Advisory Opinion on Online Third-Party Advertisers and Payment Processing Services*. *Id.* at 1-2 citing *In re Online Third Party Advertisers*, Board Order No. 2014-314 (D.C.A.B.C.B. Aug. 13, 2014).

Postmates indicates that it is engaged in the business of connecting retailers to customers through its online platform. *Id.* at 1. As part of Postmates’ business plan, Postmates intends to enter into contractual relationships with establishments holding D.C. retail liquor licenses issued by the Board. *Id.* at 2. Under this plan, customer orders for alcohol will be sent to retailers for fulfillment and retailers will retain discretion to accept or decline the order. *Id.* If the retailer accepts the order, the retailer will take the product from their inventory, package it, and fulfill the order through the platform’s courier network. *Id.* at 1-2. The Board further presumes that the third party payment processor is separate and independent from Postmates.

Postmates describes its payment process as follows: (1) the customer will provide his or her credit card number through the Postmates application; (2) the card will be charged through a third party payment processor after a courier verifies the age of the purchaser and delivers the order. *Id.* at 2. Postmates indicates that Postmates and the retailer are not privy to the credit card number provided by the customer. *Id.*

Postmates indicates that once the charge is processed, the payment processor will forward the sale price and all profit to the retailer. *Id.* Once received, Postmates then receives a “logistics fee” based on a percentage of the transaction. *Id.*¹

LEGAL AUTHORITY

In 2014, the Board was asked to review the legality of online third party advertisers and payment processors similar to Postmates. *In re Online Third Party Advertisers*, Board Order No. 2014-314 at 1.

As noted in the 2014 opinion, in accordance with D.C. Official Code § 25-301(a)(5), the alcohol license is issued to a retailer on the condition that the license holder “is the true and actual owner of the establishment for which the license is sought, and he or she intends to carry on the business for himself or herself and not as the agent of any other” *Id.* Under D.C. Official Code § 25-102(a), it is illegal to sell or solicit the sale of alcohol without a license. *Id.* at 2. Finally, while the sale of alcohol on credit is generally prohibited, a retail licensee may accept credit card payments as described in D.C. Official Code § 25-734(a) and (b). *Id.*

In interpreting existing law, the Board has provided the following relevant guidance:

1. The transaction to purchase alcoholic beverages must take place between the customer and licensee. Credit or debit card information provided to the online third party provider must be transferred or redirected to the licensee. Only the licensee may process and complete the transaction.
4. . . . All funds for each sale shall be transferred to the licensed off-premise retailer.
6. The online third party provider shall not charge or process the customer's credit or debit card directly or collect any funds from the customer.
10. The online third party provider can charge licensed retailers a flat monthly fee or other type of transaction fee for their services.
11. The online third party provider shall not collect, receive, or retain any funds or fees that stem from the transaction between the consumer and the licensee.

¹ The nature of the logistics fee was clarified in an email to ABRA’s Office of General Counsel.

In re Online Third Party Advertisers, Board Order No. 2014-314 at 5-6 (citing points 1, 4, 6, 10, 11).

ANALYSIS

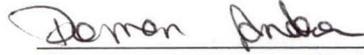
The Board notes that the requirement in the advisory opinion to transfer credit or debit card information to the licensee may be satisfied by transferring the information to a payment processor operating on the retailer's behalf; therefore, Postmates' plan to direct customer payment information to the payment processor acting on the retailer's behalf satisfies Point 1 and Point 6. Postmates indicates that all money related to the sale of alcohol, including profits, are forwarded to the retailer, which satisfies Point 4, Point 6, and Point 11. Postmates also indicates that it only receives its logistics fee payment after the retailer is paid, which satisfies Point 10. Under these circumstances, the Board is persuaded that the payment system outlined by Postmates satisfies D.C. Official Code §§ 25-301(a)(5), 25-102(a), and the Board's 2014 advisory opinion.

The Board emphasizes that this guidance is based only on the facts provided. The Board has not considered matters not presented to it, and this guidance may not apply to future changes to the payment process.

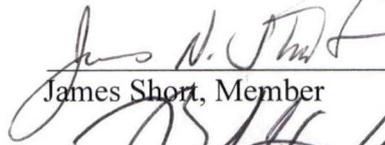
ORDER

Accordingly, on this 15th of January 2020, the above represents the **ADVISORY OPINION** of the Board pursuant to 23 DCMR § 1902.

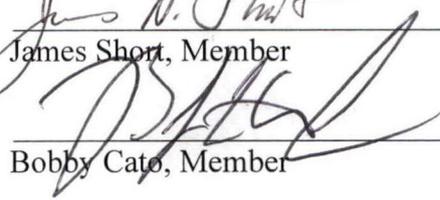
District of Columbia
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson



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Pursuant to 23 DCMR § 1902.6, 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 file a petition with 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.