STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO

IN RE:

PETITION FOR DECLARATORY STATEMENT
BEFORE THE DIVISION OF ALCOHOLIC
BEVERAGES AND TOBACCO,

On behalf of Club Madonna,

Petitioner.

DECLARATORY STATEMENT

This Declaratory Statement is rendered by the Director of the Division of Alcoholic Beverages and Tobacco (hereinafter "Division") pursuant to Section 120.565, Florida Statutes. The Petitioner, Club Madonna, has filed a Petition for Declaratory Statement, containing a statement of facts, and a discussion of relevant Florida law and administrative rules. A copy of the Petition for Declaratory Statement is attached hereto and incorporated by reference.

ISSUE PRESENTED

The Petitioners present the following issue to the Division:

Whether Florida's Beverage Law prohibits Club Madonna, who does not possess an alcoholic beverage license, from allowing its patrons to consume their own alcohol on Club Madonna premises, provided Club Madonna does not facilitate or charge fees to accommodate the consumption thereof.

FACTS

1. On January 31, 2011, Petitioner filed with the Division a Petition for Declaratory Statement, thereby giving the Division ninety days to respond from the date...
of the petition. The Division renders its Findings of Fact on the basis of the information contained in the Petition for Declaratory Statement.

2. The conclusion of this Declaratory Statement is based on the facts described in Petitioner’s Petition for Declaratory Statement (hereinafter “the Petition”), research by the Division, and the particular factual assertions described therein. All of the facts presented in the Petition were duly considered and form the basis for this Declaratory Statement. A summary of the facts stated in the Petition for Declaratory Statement is as follows:

Club Madonna is licensed in the City of Miami Beach as an adult entertainment club. It is open from 6 p.m. to 6 a.m. daily, and is not licensed to sell alcohol. Club Madonna sells non-alcoholic beer and non-alcoholic wine, as well as soft drinks.

Club Madonna now proposes that, while it would not ‘facilitate’ the consumption of alcohol on its premises, it would allow patrons to consume alcoholic beverages they might bring into the club. Club Madonna would not sell cups or ‘set-ups’, and would not charge any fees to accommodate the consumption of alcoholic beverages on its premises.

In its proposed business model, Club Madonna would not provide any type of storage facility for alcoholic beverages. Club Madonna would only allow patrons to bring in alcoholic beverages for private consumption, and these beverages would be removed from the premises upon the patron’s departure. Patrons would be required to maintain custody of their alcoholic beverages at all times.

In its proposed business model, a Club Madonna patron could purchase a soft drink of any variety, and, without facilitation or aid from the club, freely add whatever alcoholic beverage the patron has supplied for themselves.

CONCLUSIONS OF LAW

1. The Division has jurisdiction over this matter pursuant to Sections 120.565, 561.02, 561.08, 561.11, Florida Statutes, and is responsible for the application and enforcement of Chapters 561, Florida Statutes, specifically Section 561.01(15), Florida Statutes.
2. Section 561.08, Florida Statutes empowers and directs the Division to enforce the provisions of the Beverage Law and perform such acts as may be necessary to carry out the provisions thereof. Pursuant to this authority, the Division is empowered to enforce the provisions of the beverage law and implement the rules necessary to carry out the purpose and intent of the beverage law statutes. Accordingly, it is the Division that construes and interprets the alcoholic beverage laws of the State of Florida and makes the determination as to whether they are applicable to a specific set of facts.

3. Petitioner Club Madonna is substantially affected by the statutory provisions cited above and has standing to seek this declaratory statement.

4. Section 120.565, Florida Statutes, provides:

Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

4. Rule 28-105.001, F.A.C., provides:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

5. Section 561.01(15), Florida Statutes, provides:

"Bottle club" means a commercial establishment, operated for a profit, whether or not a profit is actually made, wherein patrons consume alcoholic beverages which are brought onto the premises and not sold or supplied to the patrons by the establishment, whether the patrons bring in and maintain custody of their own alcoholic beverages or surrender custody to the establishment for dispensing on the premises, and which is located in a building or other enclosed permanent structure.
6. Section 562.121, Florida Statutes, provides:

It is unlawful for any person to operate a bottle club without the license required by s. 561.14(6). Any person convicted of a violation of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.092 or s. 775.083.

7. In its proposed business model, Petitioner would allow patrons to consume alcoholic beverages which are brought onto the premises, located in an enclosed permanent structure, and not sold or supplied by Petitioner. As such, Petitioner's proposed business model falls under the definition of a bottle club, as specified under Section 561.01(15), Florida Statutes.

8. Based upon the facts set out in the submitted Petition for Declaratory Statement, without first obtaining the bottle club license described in Section 561.14(6), Florida Statutes, Petitioner's proposed business model violates Section 562.121, Florida Statutes.

CONCLUSION

9. In conclusion, based upon the facts set out in the submitted Petition for Declaratory Statement, Petitioner's proposed business model falls under the statutory definition of a bottle club, and without the appropriate alcoholic beverage license, is not valid under Florida law.

10. Furthermore, pursuant to Section 562.121, Florida Statutes, it is unlawful for any person to operate a bottle club without the appropriate alcoholic beverage license. Any person convicted thereof is guilty of a misdemeanor of the second degree, punishable as provided in Sections 775.082 and 775.083, Florida Statutes.
11. This conclusion is based on the facts described in the Petitioner's Petition for Declaratory Statement and legal research by the Division. Accordingly, this conclusion has no application in the event that the factual circumstances and/or relationships among the entities described herein are incorrect or change.

Dated this 5th day of April, 2011.

John R. Powell, Director
Division of Alcoholic Beverages and Tobacco
1940 North Monroe Street
Tallahassee, Florida 32399-1020
RIGHT TO APPEAL

THIS DECLARATORY STATEMENT CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED PURSUANT TO 120.68, FLORIDA STATUTES, AND RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(d), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH SARAH L. WACHMAN, AGENCY CLERK FOR THE DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO, WITHIN 30 DAYS OF THE RENDITION OF THIS DECLARATORY STATEMENT.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Leroy Griffith, Club Madonna, 1527 Washington Ave., Miami Beach, Florida 33139 on this ________ day of April, 2011.

______________________________
Michael W. Ross
Chief Attorney.
Club Madonna
1527 Washington Ave. • Miami Beach, Florida 33139
office@clubmadonna.com • 305-534-2000

PETITION FOR DECLARATORY STATEMENT

(1) Division of Alcoholic Beverages & Tobacco

(2) Leroy Griffith
Club Madonna,
1527 Washington Ave.
Miami Beach, Florida, 33139
Phone: 305-534-2000
Fax: 305-531-9160

(3) Florida Statutes Title XXXIV, Chapter 561.01 Beverage Law: Administration

(4) Club Madonna is licensed in the City of Miami Beach as an adult entertainment club. It is open from 6 p.m. to 6 a.m. every day of the week. We are not licensed to sell alcohol on our premises.

Many of our patrons have asked and continue to ask our managers and staff if it is permissible to bring their own alcohol into our club since we are not licensed to sell alcohol. We do sell non-alcoholic beer and non-alcoholic wine as well as soft drinks.

If we do not “facilitate” the drinking of alcohol in our club in any way, could we allow our patrons to serve themselves from the alcohol they bring into our club? There would be no consideration for bringing alcohol into our club. We would not be selling cups, not selling set-ups, or charging any fees to accommodate their consumption of alcohol in the club.

DS 2011-021
A person could, of course, purchase a Coke or other soft drink and they could do whatever they wanted with their purchase. We were selling a soft drink and not the alcohol they might put in their soft drink.

How does this differ from throwing a party at your home with alcoholic drinks or maybe some guests bringing their own bottle of wine or liquor?

There are many obvious cases throughout Florida and Miami Beach, of course, that allow for this kind of service. Such as art galleries, beauty salons, or even some retail establishments that offer free alcoholic drinks to their patrons for consumption on premises, as long as they are of legal age, and the business is not licensed by the Division of Alcoholic Beverages & Tobacco.

We would not provide any type of bottle storage facility on premises. We would only allow our patrons to bring in their own private liquor for consumption on premises which they would remove once they left the premises. Patrons maintain custody of their own alcoholic beverages at all times.

Sincerely,

(5) [Signature]
Leroy Griffith

(6) January 31, 2011
Griffith Enterprises, Inc.
1527 Washington Ave.
Tallahassee, Florida 32301
(850) 624-2200 Fax (850) 531-6740

Legal

Division of Alcoholic Beverages
1940 North Monroe St.
Tallahassee, Florida

32399-1020

Director: John Powell