

BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD
OF THE STATE OF CALIFORNIA

BHIKA G. SOLANKI	)	AB-6861
dba Liquor Plus)	
1535 Amar Road	)	File: 21-274218
West Covina, California 91792,	)	Reg: 96037152
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	John P. McCarthy
DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	February 4, 1998
	)	Los Angeles, CA

Bhika G. Solanki, doing business as Liquor Plus (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which ordered his off-sale general license suspended for 20 days, for his clerk, Gilarmo Rivera, having sold a six-pack of Budweiser beer, in cans, to Joseph Rodriguez, a 17-year-old minor participating in a decoy operation conducted by the West Covina Police

¹ The decision of the Department, dated April 24, 1997, is set forth in the appendix.

Department, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from a violation of Business and Professions Code §25658, subdivision (a).

Appearances on appeal include appellant Bhika G. Solanki, appearing through his counsel, Louis R. Mittelstadt; and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

FACTS AND PROCEDURAL HISTORY

Appellant's license was issued September 3, 1992. The Department filed the accusation in this matter on August 15, 1996, charging the sale of a six-pack of Budweiser beer, in cans, to a 17-year-old minor decoy. An administrative hearing was held on February 3, 1997, at which time oral and written testimony was presented concerning the transaction in question.

Joseph Rodriguez testified that he entered appellant's premises and immediately went to the beer coolers "and grabbed a 6-pack of Budweiser." The clerk did not ask his age or for identification, but simply made change from the \$5.00 bill presented by the decoy and placed the six-pack in a bag. The decoy left the store with his purchase, showed it to the police officer who had accompanied him to the store, and returned to the store with a second officer, and identified the clerk who had made the sale.

On cross-examination, Rodriguez testified that while he could say that the cans contained the name "Budweiser," and were red and white in color, he was unable to say whether they also had the word "beer" on them.

Donald Preston, a police officer with the City of West Covina, testified that, although he was outside the store, he was able to see Rodriguez go to the coolers, remove a six-pack of Budweiser beer, take it to the counter, pay for it, and leave the store, at which point an accompanying officer entered the store with Rodriguez and issued a citation. Preston testified that when he took possession of the cans, he recognized them as 12-ounce cans of Budweiser. He did not take the cans to the hearing because he was running late, and he forgot them.

Following the hearing, the Administrative Law Judge (ALJ) entered his proposed decision sustaining the charges of the accusation and ordering appellant's license suspended.

Appellant has filed a timely notice of appeal, and contends that there is not substantial evidence in support of the findings and decision, in that there is no testimony in the record that either the police officer or the minor read the labels on the cans which were purchased to see if they were labeled "beer."

DISCUSSION

Appellant contends that since neither the police officer who was supervising the decoy operation nor the decoy himself could testify that they read the label on the cans in the six-pack purchased by the minor, and were unable to testify that the label contained the word beer, there is no evidence that what was purchased was in fact beer. Appellant also argues that the best evidence rule was violated by the fact that the cans themselves were not offered in evidence.

The Department contends that testimony of the police officer and the minor

that the six-pack was labeled "Budweiser" and recognized by them as containing 12-ounce cans of Budweiser is sufficient. It cites Government Code §11513, subdivision (c), which, in both its original form and in its 1997 revision, provides that "the hearing need not be conducted according to technical rules relating to evidence and witnesses," and, further, that "any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions."

The ALJ rejected appellant's best evidence objection, noting the liberality of the rules of evidence in administrative proceedings, and concluded that, in the absence of any evidence to the contrary, officer Preston's testimony that he was able to determine that what he took custody of was Budweiser beer without having looked closely at the label.

We are inclined to agree with the ALJ. Evidence that a six-pack of 12-ounce cans bearing the name "Budweiser," was purchased by a minor intending to buy beer, assuming his decoy effort was successful, and was recognized by an adult law enforcement officer as Budweiser beer, is enough to make a prima facie case. It is unlikely that a person at all familiar with alcoholic beverages who is presented with six 12-ounce, red and white metal containers, prominently bearing the name "Budweiser," fastened together into a package of six by plastic strapping, will think they contain anything other than beer.

It can be said that the word "Budweiser," in the world of alcoholic beverages, is synonymous with "beer."

Appellant's arguments border on the frivolous, and must be rejected.

CONCLUSION

The decision of the Department is affirmed.²

BEN DAVIDIAN, CHAIRMAN
RAY T. BLAIR, JR., MEMBER
JOHN B. TSU, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

²This final order is filed in accordance with Business and Professions Code §23088, and shall become effective 30 days following the date of the filing of this decision as provided by §23090.7 of said code.

Any party may, before this final decision becomes effective, apply to the appropriate court of appeal, or the California Supreme Court, for a writ of review of this final decision in accordance with Business and Professions Code §23090 et seq.