

ISSUED APRIL 19, 2000

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

PRESTIGE STATIONS, INC.	)	AB-7110
dba AM/PM Mini Mart)	
538 Nordahl Road	)	File: 20-236070
Escondido, CA 92025,	)	Reg: 97041483
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Rodolfo Echeverria
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	March 2, 2000
	)	Los Angeles, CA

Prestige Stations, Inc., doing business as Prestige Stations (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 25 days, with 5 days stayed for a probationary period of one year, for appellant's clerk selling an alcoholic beverage to a person under the age of 21, 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).

¹The decision of the Department, dated April 16, 1998, is set forth in the appendix.

Appearances on appeal include appellant Prestige Stations, Inc., appearing through its counsel, Ralph B. Saltsman and Steven W. Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon Logan.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on July 2, 1992. Thereafter, the Department instituted an accusation against appellant charging that, on June 13, 1997, appellant's clerk, David W. Penstone ("the clerk") sold beer to Andrew Poiencot ("the minor"), who was then 18 years old and participating in a decoy program being conducted by the Escondido Police Department.

An administrative hearing was held on February 25, 1998, at which time oral and documentary evidence was received. At that hearing, testimony was presented by Richard Callister, the police officer in charge of the decoy; Andrew Poiencot, the minor decoy; Robert Crafts, the store manager; and Bradley Christensen, one of appellant's field managers.

On June 13, 1997, the minor went into the premises, selected a six-pack of Miller Genuine Draft Light Beer, and took it to the sales counter [RT 8-10, 32-33]. There the clerk asked for and was shown the minor's California driver's license which contained the minor's correct date of birth, August 29, 1978, and a red stripe that said "AGE 21 IN 1999" [RT 10-11, 33-35]. After comparing the license with something near the cash register, the clerk rang up the total, took the minor's money, and put the beer in a bag [RT 11-12, 35-36]. The minor left the store with the beer, met officer Callister outside, and the two of them re-entered the store [RT 12-13, 36-37]. Callister identified himself and told the clerk he had sold to the minor, gesturing toward the minor, who was standing beside the officer and three to four feet from the clerk [RT 13-15, 30, 38]. The

minor did not identify the clerk, either by pointing to him or in conversation with the officer or the clerk [RT 16, 20, 29-30, 38].

Robert Crafts testified about the daily, monthly, and semi-annual training and reminders about selling alcohol that the employees of his store, including the clerk involved here, received [RT 46-59]. The store policy is to check the identification of anyone wanting to buy alcoholic beverages who looks under age 40 [RT 53]. Crafts also described “an electronic computer-like device,” the “Alcohol and tobacco calendar,” used in the store. If an alcoholic beverage purchaser’s birth date is after one of the dates displayed on the device for alcohol sales, the clerk knows that the purchaser is not yet 21 and cannot purchase alcohol. Another date appears on the calendar to aid in determining whether a person may purchase tobacco products. [RT 60-61.] Bradley Christensen testified about enhancements that had been made to appellant’s employee training program with regard to alcoholic beverage sales [RT 65-69].

Subsequent to the hearing, the Department issued its decision which determined that the sale had been made as alleged in the accusation and that no defense had been established under §25660.

Appellant thereafter filed a timely notice of appeal. In its appeal, appellant raises the following issues: (1) the decision of the Department must be reversed because the minor did not make a face-to-face identification of the seller as required by Rule 141(b)(5) (4 Cal.Code Regs. §141, subd. (b)(5)); and (2) the ALJ used the wrong legal standard for assessing the requirement of Rule 141(b)(2) (4 Cal.Code Regs. §141, subd. (b)(2)) that the decoy display the appearance that could generally be expected of a person under 21 years of age.

DISCUSSION

Appellant contends that the decision must be reversed because the decoy did not make a face-to-face identification of the seller as required by 141(b)(5). Appellant asserts that reversal is required by the decision in Acapulco Restaurants, Inc. v. Alcoholic Bev. Control Appeals Board (1998) 67 Cal.App. 4th 575 [79 Cal.Rptr. 2d 126].

The Department did not file a brief. At oral argument, Department counsel stated that there had been a failure to comply with Rule 141 in this matter and that the Department would not be contesting this appeal.

Our review of the record confirms the failure to comply with Rule 141, and the matter must, therefore, be reversed. In light of the disposition of this issue, it is not necessary to address the other issues raised by appellant.

ORDER

The decision of the Department is reversed.²

TED HUNT, CHAIRMAN
 RAY T. BLAIR, JR., MEMBER
 E. LYNN BROWN, MEMBER
 ALCOHOLIC BEVERAGE CONTROL
 APPEALS BOARD

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² *This 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 order as provided by §23090.7 of said code.*

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