

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

AB-9266

File: 21-477408 Reg: 11075479

GARFIELD BEACH CVS, LLC and LONGS DRUG STORES CALIFORNIA, LLC,
dba CVS Pharmacy 9978
18020 Chatsworth Street, Granada Hills, CA 91344-5607,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Matthew G. Ainley

Appeals Board Hearing: March 7, 2013
Los Angeles, CA

ISSUED APRIL 10, 2013

Garfield Beach CVS, LLC and Longs Drug Stores California, LLC, doing business as CVS Pharmacy 9978 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 15 days for their clerk selling an alcoholic beverage to a police minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants Garfield Beach CVS, LLC and Longs Drug Stores California, LLC, appearing through their counsel, Ralph Barat Saltzman and Autumn M. Renshaw, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

¹The decision of the Department, dated April 23, 2012, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on June 22, 2009. On July 25, 2011, the Department filed an accusation against appellants charging that, on May 19, 2011, appellants' clerk, Edward Garcia (the clerk), sold an alcoholic beverage to 19-year-old Justin Soderstrom. Although not noted in the accusation, Soderstrom was working as a minor decoy for the Los Angeles Police Department (LAPD) at the time.

At the administrative hearing held on February 16, 2012, documentary evidence was received and testimony concerning the sale was presented by Soderstrom (the decoy), and by Christopher Glassford and Edgar Arca, LAPD officers. Appellants presented no witnesses.

On the date of the sale, officer Glassford entered the premises, followed shortly thereafter by the decoy and a second officer. The decoy went to the area where alcoholic beverages were stored, selected a 24 oz. can of Bud Light beer, and took the beer to the register.

The clerk asked to see the decoy's identification. The decoy took out his California driver's license and handed it to the clerk. The driver's license bore the decoy's correct date of birth, 05-17-92, along with a red stripe indicating "AGE 21 IN 2013." The clerk examined the driver's license, entered something into the register, then asked the decoy, "It's '92, right?"

The decoy interpreted this as a question about his date of birth, and responded affirmatively. The clerk again entered something in the register, returned the driver's license, and proceeded with the sale.

The Department's decision determined that the violation charged was proved and no defense to the charge was established.

Appellants then filed this appeal contending that rule 141(b)(2) violates both federal and state due process requirements, and is therefore unconstitutional.

DISCUSSION

Appellants contend that rule 141(b)(2) unconstitutionally violates both federal and state due process requirements by presenting a standard that is impossible for the ALJ to meet.

As an initial matter, this Board has jurisdiction to hear constitutional challenges to administrative regulations issued by the Department, including rule 141,² as part of its authority to determine whether the Department has proceeded according to law. (Bus. & Prof. Code §23804(b).)

This Board has recently faced a surge of challenges to the constitutionality of rule 141(b)(2). (See, e.g., *7-Eleven Inc.* (2013) AB-9248; *Circle K Stores* (2013) AB-9274). Though the facts in these cases vary, the arguments presented are indistinguishable, if not identical.

As this Board noted in those cases, rule 141(b)(2) complies with both state and federal constitutional requirements. In short, apparent age is a determination that eludes concrete definition; therefore, the rule need only be sufficiently definite to provide directives of conduct to the administrative officers. Taken in its regulatory context, rule 141(b)(2) provides sufficient guidance.

As the arguments in this case do not differ significantly from those presented in *7-Eleven, Inc.* (2013) AB-9248, we refer appellants to that opinion for a complete analysis.

²References to rule 141 and its subdivisions are to section 141 of title 4 of the California Code of Regulations, and to the various subdivisions of that section.

In closing, we note that appellants' entire argument is patently disingenuous in light of the fact that their clerk examined the minor decoy's driver's license, asked an age-related question which was answered truthfully, and nevertheless completed the sale. The clerk (who, we note, did not testify) had no need to rely on apparent age when he asked for and was presented with concrete proof of the decoy's actual age.

ORDER

The decision of the Department is affirmed.³

BAXTER RICE, CHAIRMAN
FRED HIESTAND, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

³This final order is filed in accordance with Business and Professions Code section 23088, and shall become effective 30 days following the date of the filing of this order as provided by section 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 section 23090 et seq.