

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

AB-9754

File: 20-413532; Reg: 18086565

7-ELEVEN, INC., IQBAL KAUR, and SURINDER SINGH VIRK,
dba 7-Eleven Store #25115
552 California Boulevard,
San Luis Obispo, CA 93405,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: June 6, 2019
Ontario, CA

ISSUED JUNE 21, 2019

Appearances: *Appellants:* Donna J. Hooper, of Solomon, Saltsman & Jamieson,
as counsel for 7-Eleven, Inc., Iqbal Kaur, and Surinder Singh Virk,

Respondent: Sean Klein, as counsel for the Department of
Alcoholic Beverage Control.

OPINION

7-Eleven, Inc., Iqbal Kaur, and Surinder Singh Virk, doing business as 7-Eleven Store #25115, appeal from a decision of the Department of Alcoholic Beverage Control¹ suspending their license for 15 days because they sold alcohol to two individuals under the age of 21, in violation of Business and Professions Code section 25658, subdivision (a).

¹The decision of the Department, dated October 10, 2018, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on July 6, 2004. On February 27, 2018, the Department instituted a two-count accusation against appellants charging that on September 16, 2017, appellants' employee sold alcoholic beverages to two individuals who were under the age of 21.

At the administrative hearing held on June 12, 2018, documentary evidence was received and testimony concerning the violation charged was presented by Department Agent Lori Kohlman; by the two minors, Lauryn Brittain and Lindsay Peria; and by one of the licensees, Surinder Singh.

Testimony established that on September 17, 2017, the two minors and two of their friends entered the licensed premises and went to the coolers where they selected 18 6-ounce cans of Mike's Harder Lemonade and two bottles of Gatorade. They placed their selections in a basket and Ms. Brittain carried it to the register.

The clerk rang up the items then asked for Brittain's identification. She handed him a fake Colorado driver's license (exh. 3) which he attempted to scan, unsuccessfully. He told her the ID was not working and she replied, "that's weird, it should." She also stated that she was old enough to purchase alcohol. The clerk compared the information on the ID to Brittain, noting that the photo and other information matched her appearance, that it was not expired, and that the birth date indicated that she was old enough to purchase alcohol. He entered the birth date into the register, completed the sale, and placed the items into two bags.

Brittain picked up one bag, Peria picked up the other, and they exited the premises, followed by Agent Lori Kohman. Kohman and her partners contacted the two minors near their vehicle and identified themselves as ABC agents. When questioned,

Peria admitted that she was 18 years old and produced a valid California ID. Brittain, however, maintained that she was over 21, and showed them her fake Colorado ID — which contained her actual photograph, and correct physical descriptors.

Agent Kohman noticed that the ID was shiny, which in her experience indicated that the ID was fake. She also observed that the ID was too thick, and that the photo appeared to have been photoshopped onto the ID. After further questioning, Brittain admitted that she was 18 years old and she produced her Washington ID to confirm that fact.

The administrative law judge (ALJ) submitted his proposed decision on July 27, 2018, dismissing count one, pertaining to Peria, and sustaining count two of the accusation, pertaining to Brittain. He recommended a 20-day suspension. The Department adopted the proposed decision, but reduced the penalty to a 15-day suspension, in an Order dated September 28, 2018. A Certificate of Decision was issued on October 10, 2018.

Appellants then filed a timely appeal contending they reasonably relied on false identification presented by the minor.

DISCUSSION

Appellants contend the decision is not supported by substantial evidence because appellants reasonably relied on false identification — thereby establishing a complete defense under section 25660.

Section 25660 provides:

(a) Bona fide evidence of majority and identity of the person is a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, an identification card issued to a member of the Armed Forces that contains the name, date of birth, description, and picture of

the person, or a valid passport issued by the United States or by a foreign government.

[¶ . . . ¶]

(c) Proof that the defendant-licensee, or his or her employee or agent, demanded, was shown, and acted in reliance upon bona fide evidence in any transaction, employment, use, or permission forbidden by Section 25658, 25663, or 25665 shall be a defense to any criminal prosecution therefor or to any proceedings for the suspension or revocation of any license based thereon.

The burden in such a case is on the party asserting the defense.

In *Masani*, the court said:

The licensee should not be penalized for accepting a credible fake that has been reasonably examined for authenticity and compared with the person depicted. A brilliant forgery should not ipso facto lead to licensee sanctions. In other words, fake government ID's cannot be categorically excluded from the purview of section 25660. The real issue when a seemingly bona fide ID is presented is the same as when actual governmental ID's are presented: reasonable reliance that includes careful scrutiny by the licensee.

(Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.

(2004) 118 Cal.App.4th 1429, 1445 [13 Cal.Rptr.3d 826] (Masani).)

The scope of the Appeals Board's review is limited by the California Constitution, by statute, and by case law. In reviewing the Department's decision, the Appeals Board may not exercise its independent judgment on the effect or weight of the evidence, but is to determine whether the findings of fact made by the Department are supported by substantial evidence in light of the whole record, and whether the Department's decision is supported by the findings.²

Reasonable reliance on a fake ID cannot be established unless the appearance

²The California Constitution, article XX, section 22; Business and Professions Code sections 23084 and 23085; and *Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control* (1970) 2 Cal.3d 85 [84 Cal.Rptr. 113].

of the person presenting identification indicates that he or she could be 21 years of age and the seller makes a reasonable inspection of the identification offered. (5501 *Hollywood v. Dept. of Alcoholic Bev. Control* (1957) 155 Cal.App.2d 748, 753-754 [318 P.2d 820] (5501 *Hollywood*).)

Section 25660, as an exception to the general prohibition against sales to minors, must be narrowly construed. (*Lacabanne Properties, Inc. v. Alcoholic Beverage etc. Appeals Board* (1968) 261 Cal.App.2d 181, 189 [67 Cal.Rptr. 734] (*Lacabanne*).) The statute provides an affirmative defense, and "[t]he licensee has the burden of proving . . . that evidence of majority and identity was demanded, shown and acted on as prescribed by . . . section 25660." (*Ibid.*)

The case law regarding section 25660 makes clear that to provide a defense, reliance on the document must be reasonable, that is, the result of an exercise of due diligence. (See, e.g., *Lacabanne, supra*; *5501 Hollywood, supra*.) A licensee, or a licensee's agent or employee, must exercise the caution that would be shown by a reasonable and prudent person in the same or similar circumstances. (*Lacabanne, supra*; *Farah v. Alcoholic Bev. Control Appeals Bd.* (1958) 159 Cal.App.2d 335, 339 [324 P.2d 98]; *5501 Hollywood, supra*.) Reasonable reliance cannot be established unless the appearance of the person presenting identification indicates that he or she could be 21 years of age and the seller makes a reasonable inspection of the identification offered. (*5501 Hollywood, supra*, at pp. 753-754.)

Whether or not a licensee has made a reasonable inspection of an ID to determine that it is bona fide is a question of fact (*Masani, supra*, at p. 1445; *5501 Hollywood, supra*, at pp. 753-754), and this Board may not go behind that factual

finding. The the standard of review is as follows:

We cannot interpose our independent judgment on the evidence, and we must accept as conclusive the Department's findings of fact. [Citations.] We must indulge in all legitimate inferences in support of the Department's determination. Neither the Board nor [an appellate] court may reweigh the evidence or exercise independent judgment to overturn the Department's factual findings to reach a contrary, although perhaps equally reasonable, result. [Citation.] The function of an appellate Board or Court of Appeal is not to supplant the trial court as the forum for consideration of the facts and assessing the credibility of witnesses or to substitute its discretion for that of the trial court. An appellate body reviews for error guided by applicable standards of review.

(*Masani, supra*, at page 1437.)

In sum, the law requires three things to establish a defense under section 25660: (1) that a clerk exercise the caution that would be shown by a reasonable and prudent person in the same or similar circumstances, (2) that the person presenting the ID look like they could be 21, and (3) that the clerk make a reasonable inspection of the identification offered. As the court in *Masani* said, “[t]he licensee should not be penalized for accepting a credible fake that has been reasonably examined for authenticity and compared with the person depicted.” (*Masani, supra* at 1445.)

The ALJ relies entirely on the register's rejection of the ID when it was scanned and swiped in the register as the basis for rejecting appellants' 25660 defense. He states: “In general, valid IDs scan” and that “In general, valid IDs can be read when swiped.” (Findings of Fact, ¶ 7.) While we are unaware of any rule or case law that dictates that an out of state driver's license must be scannable or swipable to be valid, unfortunately the question of reasonable reliance is a question of fact, and the Board may not reevaluate the evidence to reach its own conclusion. As the Court in *Masani* admonished, the Board may not “reweigh the evidence or exercise independent judgment to overturn the Department's factual findings to reach a contrary, although

perhaps equally reasonable, result.” (*Masani, supra*, at page 1437.)

In the instant case, the clerk checked to see if the person before him matched the photo on the ID, that the height, weight, eye color and hair color were correct, that it was not expired, and that the birth date indicated that she was over the age of 21. While we do concur with appellants that Brittain could pass for someone over the age of 21, this alone is not enough to establish a defense under section 25660. We agree with the ALJ that, in this case, a non-scannable, non-swipable ID should have alerted the clerk to the possible falseness of the offered identification, thereby making the clerk’s reliance on the fake ID less than reasonable.

ORDER

The decision of the Department is affirmed.³

MEGAN McGUINNESS, ACTING CHAIR
SUSAN A. BONILLA, 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.

APPENDIX

**BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA**

**IN THE MATTER OF THE ACCUSATION
AGAINST:**

7-ELEVEN, INC., IQBAL KAUR &
SURINDER SINGH VIRK
7-ELEVEN #25115
552 CALIFORNIA BLVD.
SAN LUIS OBISPO, CA 93405

OFF-SALE BEER AND WINE - LICENSE

Respondent(s)/Licensee(s)
Under the Alcoholic Beverage Control Act

SAN LUIS OBISPO DISTRICT OFFICE
AB - 9754
File: 20-413532

Reg: 18086565

CERTIFICATE OF DECISION

It is hereby certified that, having reviewed the findings of fact, determination of issues, and recommendation in the attached proposed decision, the Department of Alcoholic Beverage Control adopted said proposed decision as its decision in this case. Pursuant to Government Code section 11519, this decision shall become effective 30 days after it is delivered or mailed.

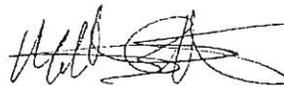
Any party may petition for reconsideration of this decision. Pursuant to Government Code section 11521(a), the Department's power to order reconsideration expires 30 days after the delivery or mailing of this decision, or if an earlier effective date is stated above, upon such earlier effective date of the decision.

Any appeal of this decision must be made in accordance with Business and Professions Code sections 23080-23089. For further information, call the Alcoholic Beverage Control Appeals Board at (916) 445-4005, or mail your written appeal to the Alcoholic Beverage Control Appeals Board, 1325 J Street, Suite 1560, Sacramento, CA 95814.

On or after November 20, 2018, a representative of the Department will contact you to arrange to pick-up the license certificate.

Sacramento, California

Dated: October 10, 2018



Matthew D. Botting
General Counsel

**BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA**

**IN THE MATTER OF THE ACUUSATION
AGAINST:**

7-Eleven, Inc., Iqbal Kaur & Surinder Singh
Virk
Dba 7-Eleven #25115
552 California Blvd.
San Luis Obispo, CA 93405

File No.: 20-413532

Reg. No.: 18086565

Licensee(s).

ORDER

Having adopted the Proposed Decision of the Administrative Law Judge dated July 27, 2018, in the above-entitled matter, and pursuant to Business and Professions Code section 24211, the Department hereby reduces the discipline in this matter as follows:

The Respondents' Off-Sale Beer and Wine License is hereby suspended for 15 days.

Sacramento, California

Dated: September 28, 2018



for Jacob Appelsmith
Director

Pursuant to Government Code section 11521(a), any party may petition for reconsideration of this decision. The Department's power to order reconsideration expires 30 days after the delivery or mailing of this decision, or on the effective date of the decision, whichever is earlier.

Any appeal of this decision must be made in accordance with Chapter 1.5, Articles 3, 4 and 5, Division 9, of the Business and Professions Code. For further information, call the Alcoholic Beverage Control Appeals Board at (916) 445-4005.

**BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA**

IN THE MATTER OF THE ACCUSATION AGAINST:

| | | |
|---|---|---------------------------------|
| 7-Eleven Inc., Iqbal Kaur & Surinder Singh Virk | } | File: 20-413532 |
| dba 7-Eleven #25115 | } | |
| 552 California Blvd. | } | Reg.: 18086565 |
| San Luis Obispo, California 93405 | } | |
| | } | License Type: 20 |
| Respondents | } | |
| | } | Word Count: 16,500 |
| | } | |
| | } | Reporter: |
| | } | Pamela Cox |
| | } | Kennedy Court Reporters |
| | } | |
| <u>Off-Sale Beer and Wine License</u> | } | <u>PROPOSED DECISION</u> |

Administrative Law Judge Matthew G. Ainley, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at San Luis Obispo, California, on June 12, 2018.

Jonathan V. Nguyen, Attorney, represented the Department of Alcoholic Beverage Control.

Donna J. Hooper, attorney-at-law, represented respondents 7-Eleven Inc., Iqbal Kaur, and Surinder Singh Virk.

The Department seeks to discipline the Respondents' license on the grounds that, on or about September 16, 2017, the Respondents, through their agent or employee, sold, furnished, or gave alcoholic beverages to Lindsay Peria, an individual under the age of 21, in violation of Business and Professions Code section 25658(a).¹ The Department also seeks to discipline the Respondents' license on the grounds that, on or about September 16, 2017, the Respondents, through their agent or employee, sold, furnished, or gave alcoholic beverages to Melissa Brittain, an individual under the age of 21, in violation of Business and Professions Code section 25658(a). (Exhibit 1.)

Oral evidence, documentary evidence, and evidence by oral stipulation on the record was received at the hearing. The matter was argued and submitted for decision on June 12, 2018.

¹ All statutory references are to the Business and Professions Code unless otherwise noted.

FINDINGS OF FACT

1. The Department filed the accusation on February 27, 2018.
2. The Department issued a type 20, off-sale beer and wine license to the Respondents for the above-described location on July 6, 2004 (the Licensed Premises).
3. The Respondents' license has been the subject of the following discipline:

| <u>Date Filed</u> | <u>Reg. No.</u> | <u>Violation</u> | <u>Penalty</u> |
|-------------------|-----------------|------------------|----------------|
| 4/5/2011 | 11074772 | BP §25658(a) | 10-day susp. |

The foregoing disciplinary matter is final. (Exhibit 2.)

4. Lauryn Brittain was born on January 19, 1999. On September 16, 2017, she was 18 years old.
5. Lindsay Peria was born on December 18, 1998. On September 16, 2017, she was 18 years old.
6. On September 16, 2017, Brittain, Peria, and two of their friends went to the Licensed Premises. Brittain and Peria entered and walked to the refrigerated section. They grabbed 18 6-oz. cans of Mike's Harder Lemonade, an alcoholic beverage containing 8% alcohol by volume. (Exhibit 4.) They also grabbed two bottles of Gatorade. They placed everything into a basket, which Brittain carried to the front counter.
7. The clerk, Kuljinder Singh, rang up the Mike's Harder Lemonade and the Gatorade, then asked Brittain for her ID. Brittain handed a fake Colorado driver license (exhibit 3) to him, which he tried to scan. When it failed to scan properly, he tried to swipe it through the register. Singh told Brittain that the ID was not working. Brittain said, "That's weird, it should." She also stated that she was old enough to purchase alcohol. Singh compared the ID to Brittain, noting that the photo and the description matched her actual appearance. He also noted that the ID had not expired and that the date of birth on the ID indicated that she was old enough to purchase alcohol. He entered the date of birth into the register.
8. Brittain paid for the Mike's Harder Lemonade and the Gatorade with her debit card. Singh placed everything into two bags. Brittain picked up one of the bags and Peria, who was standing nearby, picked up the other. They carried the bags outside.
9. Agent Lori Kohman, who had followed Brittain and Peria inside the Licensed Premises, exited and contacted her partners. They contacted Brittain and Peria near their

vehicle and identified themselves. When questioned, Peria indicated that she was 18 years old and produced a valid California ID. She indicated that she had carried one of the bags outside. One of the officers took a photo of her. (Exhibit 6.)

10. Brittain, on the other hand, indicated that she was over the age of 21 and produced the fake Colorado driver license. This ID, which had been manufactured for her, indicated that she was 21 years old. Because it had been manufactured for her, it contained her actual photo and all of the physical descriptors were correct. (Exhibit 3.) Agent Kohman immediately noticed that it was shiny. In her experience, shiny out-of-state IDs tended to be fake. She also noticed that the ID was too thick and felt more like a credit card than an ID. Finally, she noticed that the photo appeared to be Photoshopped onto the ID. Coincidentally, Agent Kohman had seen a valid Colorado ID earlier that night.

11. Agent Kohman told Brittain that she looked to be 18 years old. She asked Brittain a number of questions about the ID and the date of birth set forth on it. In light of the problems she noted with the ID and Brittain's answers, Agent Kohman told Brittain that she did not believe that the Colorado ID was Brittain's real ID. Brittain admitted that it was not and that she was only 18 years old. She produced a valid Washington ID to that effect. One of the officers took a photo of her. (Exhibit 5.)

12. Brittain obtained the fake Colorado ID approximately three months before the sale in this case. She had used it twice before to purchase alcohol, both times in Washington.

13. A video of a portion of the sale was marked and entered into evidence. (Exhibit B.) The video shows Singh's handling of the ID once he obtained it from Brittain. Peria is not visible in the video.

14. Except as set forth in this decision, all other allegations in the accusation and all other contentions of the parties lack merit.

CONCLUSIONS OF LAW

1. Article XX, section 22 of the California Constitution and section 24200(a) provide that a license to sell alcoholic beverages may be suspended or revoked if continuation of the license would be contrary to public welfare or morals.

2. Section 24200(b) provides that a licensee's violation, or causing or permitting of a violation, of any penal provision of California law prohibiting or regulating the sale of alcoholic beverages is also a basis for the suspension or revocation of the license.

3. Section 25658(a) provides that every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.

4. Cause for suspension or revocation of the Respondents' license exists under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) on the basis that, on September 16, 2017, the Respondents' clerk, Kuljinder Singh, inside the Licensed Premises, sold an alcoholic beverage to Lauryn Brittain, a person under the age of 21, in violation of Business and Professions Code section 25658(a). (Findings of Fact ¶¶ 4 & 6-13.)

5. Section 25660 provides a defense to any person who was shown and acted in reliance upon bona fide evidence of majority in permitting a minor to enter and remain in a public premises in contravention of section 25665, in making a sale forbidden by section 25658(a), or in permitting a minor to consume in an on-sale premises in contravention of section 25658(b). This section expressly states that "[b]ona fide evidence of majority and identity of the person is any of the following: (1) A document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a valid motor vehicle operator's license, that contains the name, date of birth, description, and picture of the person. (2) A valid passport issued by the United States or by a foreign government. (3) A valid identification card issued to a member of the Armed Forces that includes a date of birth and a picture of the person."

6. The defense offered by this section is an affirmative defense. As such, the licensee has the burden of establishing all of its elements, namely, that evidence of majority and identity was demanded, shown, and acted on as prescribed.² This section applies to IDs actually issued by government agencies as well as those which purport to be.³ A licensee or his or her employee is not entitled to rely upon an identification if it does not appear to be a bona fide government-issued ID or if the personal appearance of the holder of the identification demonstrates above mere suspicion that the holder is not the legal owner of the identification.⁴ The defense offered by section 25660 is not established if the appearance of the minor does not match the description on the identification.⁵

² *Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control*, 261 Cal. App. 2d 181, 189, 67 Cal. Rptr. 734, 739 (1968); 27 Ops. Atty. Gen. 233, 236 (1956).

³ *Dept. of Alcoholic Beverage Control v. Alcoholic Control Appeals Bd. (Masani)*, 118 Cal. App. 4th 1429, 1444-45, 13 Cal. Rptr. 3d 826, 837-38 (2004).

⁴ *Masani*, 118 Cal. App. 4th at 1445-46, 13 Cal. Rptr. 3d at 838; *5501 Hollywood, Inc. v. Department of Alcoholic Beverage Control*, 155 Cal. App. 2d 748, 753, 318 P.2d 820, 823-24 (1957); *Keane v. Reilly*, 130 Cal. App. 2d 407, 411-12, 279 P.2d 152, 155 (1955); *Conti v. State Board of Equalization*, 113 Cal. App. 2d 465, 466-67, 248 P.2d 31, 32 (1952).

⁵ *5501 Hollywood*, 155 Cal. App. 2d at 751-54, 318 P.2d at 822-24; *Keane*, 130 Cal. App. 2d at 411-12, 279 P.2d at 155 (construing section 61.2(b), the predecessor to section 25660).

7. In the present case, since the ID in question was manufactured for Brittain, it matched her in all respects. However, there were a number of factors which indicated that the ID was not valid. The first red flag was that the register rejected the ID when it was scanned. In general, valid IDs scan. The second red flag was that the register could not read the ID when it was swiped. In general, valid IDs can be read when swiped.⁶ In short, the register repeatedly indicated that the ID was not valid.

8. While Agent Lori Kohman suspected that the ID was fake when she first saw it based on its look (too shiny) and feel (too thick), it is unclear if these factors would have been apparent to someone who was not familiar with Colorado IDs. However, when compared to a valid Colorado license as depicted in the ID Checking Guide (exhibit A), two things are immediately apparent. First, the words "DRIVER LICENSE" are in the wrong place. On a valid Colorado ID, the words should appear starting just at the end of the "A" in Colorado. On the fake ID, they appear starting under the "R" in Colorado. Second, the color of a majority of the words on the ID are wrong. On a valid ID, all of the words are black. On the fake ID, a majority of the words are blue. Both problems would have been apparent to Singh had he bothered to check further (which he should have done given the two red flags sent up by the register).

9. In short, the fake Colorado ID used by Brittain on September 16, 2017 does not qualify under section 25660. Singh was not entitled to rely upon it in making the sale to Brittain.

10. Cause for suspension or revocation of the Respondents' license does **not** exist for the violation of section 25658(a) alleged in count 1 of the accusation. Although Lindsay Peria helped select the 18 cans of Mike's Harder Lemonade, there is no evidence that Singh saw her do so or was in a position to see her do so. Peria did not carry any of the cans to the counter, nor did she stand at the counter during the sale to Brittain. Simply picking up one of the bags after the sale was completed is insufficient, in and of itself, to establish a violation. (Findings of Fact ¶¶ 5-9 & 13.)

PENALTY

The Department requested that the Respondents' license be suspended for a period of 20 days. The only aggravation cited by the Department was the 2010 sale-to-minor violation. The Respondents argued that, if the accusation were not dismissed, a 10-day suspension was appropriate given the training they provided to their employees, both pre- and post-sale.

⁶ During his testimony, Singh testified that he noticed a scratch on the metallic strip on the back of the ID. In his opinion, this might have prevented the register from reading the ID. The undersigned could not find any significant scratch on the fake ID. Even if such a scratch existed, it would not have prevented the register from reading the ID when scanned.

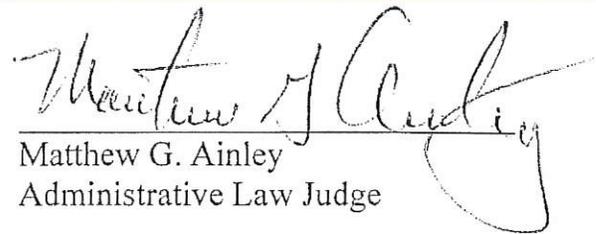
This is the Respondents' second sale-to-minor violation in 13 years of operation, the last violation having occurred seven years before the sale in this case. Interestingly, in the prior case, the Department argued that six years of discipline-free operation warranted a mitigated penalty (a 10-day suspension). The Department did not explain how six years of discipline-free warranted mitigation, but seven subsequent years of discipline-free operation did not. It is notable, however, that Kuljinder Singh went forward with the sale even though the register repeatedly declined to accept Melissa Brittain's fake ID. While there is no evidence that Singh acted intentionally, a system designed to prevent sales to minors cannot be effective if it is ignored.

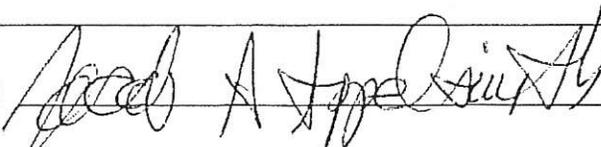
The penalty recommended herein complies with rule 144.⁷

ORDER

The Respondents' off-sale beer and wine license is hereby suspended for a period of 20 days.

Dated: July 27, 2018


Matthew G. Ainley
Administrative Law Judge

| | |
|---|--|
| <input checked="" type="checkbox"/> Adopt | Reduce to 15 days. |
| <input type="checkbox"/> Non-Adopt: | _____ |
| By: |  |
| Date: | _____ |

⁷ All rules referred to herein are contained in title 4 of the California Code of Regulations unless otherwise noted.