

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

AB-9980

File: 20-584831; Reg: 23093025

7-ELEVEN, INC. & CORP. A3G, Inc.,
dba 7-Eleven Store #39902A
801 South Twin Oaks Valley Road,
Suite 105
San Marcos, CA 92078,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Doris Heubel

Appeals Board Hearing: December 8, 2023
Videoconference

ISSUED DECEMBER 11, 2023

Appearances: *Appellants:* Adam Koslin, of Solomon, Saltsman & Jamieson, as
counsel for 7-Eleven, Inc. & Corp. A3G, Inc.,

Respondent: Trisha Pal, as counsel for the Department of Alcoholic
Beverage Control.

OPINION

7-Eleven, Inc. & Corp. A3G, Inc., doing business as 7-Eleven Store #39902A (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ suspending their license for 20 days because their clerk sold an alcoholic beverage to two individuals under the age of 21, in violation of Business and Professions code section 25658(a).²

¹ The decision of the Department, dated July 18, 2023, is set forth in the appendix.

² All statutory references are to the California Business and Professions Code unless otherwise stated.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on December 12, 2018. Appellants' license was previously disciplined for violation of section 25658(a) on November 20, 2020.

On March 10, 2023, the Department filed a four-count³ accusation against appellants charging that, on December 31, 2022, appellants' clerk, Varun Vuppala (the clerk), sold two alcoholic beverages to Caroline De La Cruz (De La Cruz) and Hiruni Jayaratna (Jayaratna), individuals under the age of 21.

At the administrative hearing held on May 18, 2023, documentary evidence and evidence by oral stipulation was admitted, and oral testimony was given by Ge Sun, who was a Department agent at the time of the sale. The evidence established that Department agents Sun and Delatorre were outside the licensed premises conducting general enforcement observation. At approximately 4:00 p.m., Agent Sun noticed two youthful appearing females, later identified as De La Cruz and Jayaratna, enter the licensed premises. Agent Sun entered the premises shortly thereafter.

Upon entering, Agent Sun observed De La Cruz and Jayaratna standing in front of the alcoholic beverage coolers. De La Cruz selected a Smirnoff Ice Smash Pink Lemonade, an alcoholic beverage, and Jayaratna selected a Twisted Tea Hard Iced Tea, also an alcoholic beverage. De La Cruz and Jayaratna then walked to the sales counter.

³ Counts one and four alleged that the clerk sold De La Cruz a Smirnoff Ice Smash Pink Lemonade 8% alcohol by volume (ABV) and Jayaratna a Twisted Tea Hard Iced Tea 5% ABV, while counts two and three alleged the clerk sold De La Cruz a Twisted Tea Hard Iced Tea 5% ABV, and Jayaratna a Smirnoff Ice Smash Pink Lemonade 8% ABV. Counts one and four were ultimately dismissed as duplicative.

At the sales counter, the clerk scanned the Twisted Tea Hard Iced Tea, and then scanned the bar code of a California Identification card securely placed underneath the base of the point-of-sale (POS) monitor. The identification belonged to another individual, Michael Haywood Andrews, who was 32 years old. The clerk then scanned the Smirnoff Ice Smash Pink Lemonade.

As the clerk was about to touch the POS screen and proceed with the sale, Jayaratna held out a fraudulent California driver's license, which the clerk looked at from a distance for about one second. He did not hold the identification. At that point, De La Cruz opened her wallet and held out the wallet which also contained a fraudulent California identification. The clerk looked at the identification from a distance for about one second, did not ask De La Cruz to remove the identification from her wallet, and did not hold the identification. The clerk also did not look at De La Cruz or Jayaratna to compare them to their identifications. Instead, the clerk proceeded with the sale. De La Cruz paid for the beverages and she and Jayaratna exited the store.

Both De La Cruz and Jayaratna were twenty years old on the day of the sale. De La Cruz looked "very youthful, 18 or 19 years old," while Jayaratna appeared youthful and "her age of 20 years old." (Exhs. 4 and 8.)

Agent Sun observed the sales transaction from an unobstructed view. She exited the store and contacted De La Cruz and Jayaratna, along with Agent Delatorre. The agents identified themselves as Department agents, and Agent Sun explained the reason she stopped De La Cruz and Jayaratna was because they both purchased alcoholic beverages and looked very young. Agent Sun asked De La Cruz and

Jayaratna their ages. Jayaratna did not reply, while De La Cruz mumbled something and then said she was 21.

De La Cruz and Jayaratna appeared nervous and eventually presented their fraudulent identifications to Agent Sun. Agent Sun immediately noticed, based on her training and experience, an obvious defect with the identifications, that the driver's license numbers on both identifications started with the letter "B," which is used for people over the age of 40. Additionally, the identifications were thinner than valid driver's licenses. Agent Sun asked De La Cruz and Jayaratna whether the identifications were fraudulent, and both admitted that they were.

Agent Sun reentered the licensed premises and contacted the clerk. She identified herself as a Department agent and explained the violation. The clerk claimed that he looked at the year of birth on the identifications and proceeded with the sale by pressing an "OK" button on the POS screen. Agent Sun asked the clerk to demonstrate. When the clerk scanned a beer, several prompts popped up on the screen, but none of them was an "OK" button. The clerk then admitted he did not press an "OK" button, but rather scanned the bar code on the back side of a different California identification which was securely placed under the base of the register's monitor, to bypass the POS system's age verification and enable the sales transaction to proceed.

Agent Sun asked the clerk who the identification under the monitor belonged to and the clerk said he did not know. Agent Sun confiscated the identification, which depicted the name of Michael Haywood Andrews (exh. 12.) Later, Agent Sun spoke to Gurinder Walia, the secretary of A3G, Inc., who told Agent Sun the identification was only to be used for Mexican identifications, which cannot be scanned. Agent Sun also

obtained a receipt for De La Cruz and Jayaratna's sales transaction, which showed the age entered for the alcohol transaction was the date of birth for Michael Haywood Andrews.

On June 9, 2023, the administrative law judge (ALJ) issued a proposed decision sustaining two of the four counts of the accusation and recommending a 20-day suspension of appellants' license. The Department adopted the proposed decision on July 17, 2023, and issued a certificate of decision the next day. Appellants filed a timely appeal contending that the Department erred in rejecting their defense under section 25660, or reasonable reliance on a false identification.

DISCUSSION

Appellants contend the Department erred in rejecting their section 25660 defense. (AOB, at pp. 5-7.) Specifically, appellants argue that their clerk reasonably relied on De La Cruz and Jayaratna's fake identifications. (*Ibid.*)

Section 25660(c) provides:

Proof that the defendant-licensee, or his or her employee or agent, demanded, was shown, and acted in reliance upon [a government-issued identification or identification purporting to be government-issued⁴] shall be

⁴ It is immaterial whether the identification used was actually government-issued.

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.

(*Masani, supra*, at p. 1445.)

a defense to any criminal prosecution therefor or to any proceedings for the suspension or revocation of any license based thereon.

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

(2004) 118 Cal.App.4th 1429, 1444-1445 [13 Cal.Rptr.3d 826, 837] (Masani).) However,

section 25660 must be narrowly construed and the licensee has the burden of

establishing the defense. *(Lacabanne Properties, Inc. v. Alcoholic Beverage etc. Appeals*

Board (1968) 261 Cal.App.2d 181, 189-190 [67 Cal.Rptr. 734] (Lacabanne).)

One of the requirements of section 25660 is that a licensee must show that reliance on the false identification was *reasonable*. *(Lacabanne, supra, at p. 189; 5501 Hollywood v. Dept. of Alcoholic Bev. Control (1957) 155 Cal.App.2d 748, 753-754 [318 P.2d 820] (5501 Hollywood).*) In other words, a licensee (or employee) must exercise the caution that a reasonable and prudent person would show in the same or similar circumstances. *(Lacabanne, supra, at p. 189; Farah v. Alcoholic Bev. Control Appeals Bd. (1958) 159 Cal.App.2d 335, 339 [324 P.2d 98]; 5501 Hollywood, supra, at p. 753.)* Further, reasonable reliance cannot be established if the appearance of the person presenting the identification is “too young in appearance to be 21.” *(5501 Hollywood, supra, at p. 754.)*

Finally, the Department’s findings regarding a section 25660 defense will be upheld so long as those findings are supported by substantial evidence. *(Masani, supra, at p. 1437; Kirby v. Alcoholic Beverage Control Appeals Bd. (1968) 261 Cal.App.2d 119, 122 [67 Cal.Rptr. 628] [“In considering the sufficiency of the evidence issue the court is governed by the substantial evidence rule[;] any conflict in the evidence is resolved in favor of the decision; and every reasonably deducible inference in support thereof will be indulged. [Citations.]”.)* Substantial evidence is “evidence of ponderable legal

significance, which is ‘reasonable in nature, credible and of solid value.’ ” (*County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 814 [38 Cal.Rptr.2d 304, 307–308], internal citations omitted.)

In the instant case, the Department rejected appellant’s section 25660 defense because:

8. [...] Clerk Vuppala did not reasonably rely on the two fake IDs. The video surveillance clearly shows clerk Vuppala’s quick rhythm in scanning the Twisted Tea and immediate automatic act in scanning the bar code of Michael’s ID, and Hiruni’s Smirnoff Ice thereafter. There is no credible evidence he even asked to see the IDs. Clerk Vuppala did not look at the IDs before he scanned the bar code of the ID under the POS monitor base. Clerk Vuppala clearly was ready to proceed with the transaction without looking at the young girls or at any identification because his right hand immediately moved to touch the POS screen to continue with the sale. He only stopped when Hiruni held out her fake ID, and Carolina followed suit. When the IDs were offered, clerk Vuppala did not take them in his hand or make any effort at a diligent inspection. Clerk Vuppala looked at the IDs from a distance and only for a second if that. Clerk Vuppala failed to make a reasonable, due diligent inspection of the IDs offered. More importantly he failed to even look at the alleged owners of the IDs. If he had followed the POS screen’s suggestion to compare the IDs to Carolina and Hiruni, and had he even looked at the girls he would have noticed their youthful appearances. (Exhibits 2, 4, and 15.) Carolina and Hiruni’s personal appearances and demonstrated above mere suspicion that they were not the legal owners of the fake IDs.

(Conclusions of Law, ¶ 8.)

The Department also found that De La Cruz and Jayaratna had “youthful appearances, so much so that it caused Agent Sun to follow them into the Licensed Premises and observe them as they selected and purchased alcoholic beverages.”

(Conclusions of Law, at ¶ 9.) Based on their appearances, the Department found that “they could not be 21 years of age and could not be the legal owners of the IDs.” (*Id.* at ¶ 10.)

Based on the above, the Department's findings are supported by substantial evidence. Agent Sun's testimony and video surveillance support the Department's findings that the clerk did not make a diligent examination of the false identifications presented to him. Further, the photographs of De La Cruz and Jayaratna, as well as Agent Sun's testimony, support the Department's findings that they both exhibited youthful appearances. Although the Board would not go as far as to say that De La Cruz and Jayaratna could not be 21 years old based on their appearances, the Board cannot simply second guess the Department and reach a different conclusion based upon its own observations of the evidence. It is clear, however, that De La Cruz and Jayaratna's youthful appearances should have warranted additional scrutiny from the clerk when inspecting their identifications. The Department's findings must stand.

ORDER

The decision of the Department is affirmed.⁵

SUSAN BONILLA, CHAIR
MEGAN McGUINNESS, MEMBER
SHARLYNE PALACIO, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

⁵ This 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.

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.* Service on the Board pursuant to California Rules of Court (Rule 8.25) should be directed to: 400 R Street, Ste. 320, Sacramento, CA 95811 and/or electronically to: abcboard@abcappeals.ca.gov.

APPENDIX

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

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

7-ELEVEN INC., AND CORP. AG3, INC.
7-ELEVEN STORE 39902A
801 SOUTH TWIN OAKS VALLEY ROAD,
SUITE 105
SAN MARCOS, CA 92078-4354

OFF-SALE BEER AND WINE - LICENSE

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

SAN DIEGO DISTRICT OFFICE

File: 20-584831

Reg: 23093025

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 the case on July 17, 2023. 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. The appeal must be filed within 40 calendar days from the date of the decision, unless the decision states it is to be "effective immediately" in which case an appeal must be filed within 10 calendar days after the date of the decision. Mail your written appeal to the Alcoholic Beverage Control Appeals Board, 400 R St, Suite 320, Sacramento, CA 95811. For further information, and detailed instructions on filing an appeal with the Alcoholic Beverage Control Appeals Board, see: <https://abcab.ca.gov> or call the Alcoholic Beverage Control Appeals Board at (916) 445-4005.

On or after August 28, 2023, a representative of the Department will contact you to arrange to pick up the license certificate.

Sacramento, California

Dated: July 18, 2023



Matthew D. Botting
General Counsel

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

IN THE MATTER OF THE ACCUSATION AGAINST:

7-Eleven Inc., and Corp. A3G, Inc.
Dbas: 7-Eleven Store 39902A
801 South Twin Oaks Valley Road, Suite 105
San Marcos, California 92078-4354

Respondents

Off-Sale Beer And Wine License

} File: 20-584831
}
} Reg.: 23093025
}
} License Type: 20
}
} Word Counts: 15,552
}
} Kennedy Court Reporters:
} Court Reporter: Hanna Jenkin
} Video Hosts: Spencer Burdock;
} Fabian Schwin
}
} **PROPOSED DECISION**

Administrative Law Judge D. Huebel, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter by video conference, California, on May 18, 2023.

Trisha Pal, attorney, represented the Department of Alcoholic Beverage Control (the Department).

Adam Koslin, attorney, represented Respondents, 7-Eleven Inc., and Corp. A3G, Inc.

The Department seeks to discipline the Respondents' license on the grounds that, on or about December 31, 2022, the Respondents, through its agent or employee, Varun Vuppala, at said premises, sold, furnished, gave or caused to be sold, furnished or given, alcoholic beverages, to-wit: Smirnoff Ice Smash Pink Lemonade 8% ABV¹, to Carolina De La Cruz, and Twisted Tea Hard Iced Tea 5% ABV, to Hiruni Jayaratna, individuals under the age of 21, in violation of Business and Professions Code section 25658(a).² (Counts 1 and 4.)

Further, the Department seeks to discipline the Respondents' license on the grounds that, on or about December 31, 2022, the Respondents, through its agent or employee, Varun Vuppala, at said premises, sold, furnished, gave or caused to be sold, furnished or given, alcoholic beverages, to-wit: Twisted Tea Hard Iced Tea 5% ABV, to Carolina De La

¹ Alcohol by volume.

² All statutory references are to the Business and Professions Code unless otherwise noted.

Cruz, and Smirnoff Ice Smash Pink Lemonade 8% ABV, to Hiruni Jayaratna, individuals under the age of 21, in violation of Business and Professions Code section 25658(a). (Counts 2 and 3.) (Exhibit 1³.)

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 May 18, 2023.

FINDINGS OF FACT

1. The Department filed the accusation on March 10, 2023.
2. The Department issued a type 20, off-sale beer and wine license to the Respondents for the above-described location on December 12, 2018 (the Licensed Premises).
3. The Respondents have been the subject of the following discipline:

<u>Date of Violation</u>	<u>Reg. No.</u>	<u>Violation</u>	<u>Penalty</u>
11/20/2020	21091283	BP§§25658(a)	Pending (Exhibits 16-19.)

4. On December 31, 2022, Department Agents Sun and Delatorre, were outside of the Licensed Premises conducting general enforcement to observe for any Alcoholic Beverage Control Act violations. At approximately 4:00 p.m., Agent Sun noticed something which caught her eye as suspicious. She observed two youthful appearing females enter the Licensed Premises. The two females were later identified as Carolina De La Cruz and Hiruni Jayaratna (hereinafter referred to as Carolina and Hiruni, respectively.) Agent Sun entered the premises shortly thereafter. Upon entering Agent Sun observed Carolina and Hiruni standing in front of the beer coolers. Carolina selected a Twisted Tea Hard Iced Tea (5% ABV) (hereinafter referred to as Twisted Tea) and Hiruni selected a Smirnoff Ice Smash Pink Lemonade (8% ABV) (hereinafter referred to as Smirnoff Ice) and walked to the sales counter. (Exhibit 6 color photo of alcoholic beverages.)

5. At the sales counter a male clerk, later identified as Varun Vuppala⁴ (hereinafter referred to as clerk Vuppala), assisted the two youthful appearing females. Carolina first placed her Twisted Tea on the counter. Then clerk Vuppala, in swift movements, used the hand-held scanner from the point of sale (POS) register and scanned the Twisted Tea, then immediately waived the hand-held scanner over the bar code of a California

³ Exhibit 1, page 14 of 19, "Stipulation And Waiver For Prehearing Settlement" ABC-315 form not admitted as part of this exhibit.

⁴ Exhibit 7 - color photograph of Varun Vuppala.

Identification (ID) Card securely placed underneath the base of the POS monitor. The ID had the name of Michael Haywood Andrews with date of birth April 18, 1990. The ID made Carolina and Hiruni 32 years old for purposes of the sale through the POS system. Hiruni placed her Smirnoff Ice on the counter. Immediately thereafter clerk Vuppala scanned the Smirnoff Ice. Clerk Vuppala was about to touch the POS screen to continue with the sale, when Hiruni held out a fraudulent California Driver License, which clerk Vuppala looked at from a distance for about one second. He did not hold the ID. At that point, Carolina opened her wallet and held out the wallet which contained a fraudulent California Driver License. Carolina did not take the ID out of the wallet. Clerk Vuppala looked at the ID from a distance for about one second and did not hold the ID. Clerk Vuppala immediately thereafter continued with the sales transaction. Clerk Vuppala did not look at Carolina or Hiruni to compare their IDs with them while they stood before him. Carolina paid for the alcoholic beverages with a debit card. Carolina and Hiruni both picked up their respective alcoholic beverages and exited the store. (Exhibit 15 – video surveillance of sales transaction with Carolina, Hiruni and clerk Vuppala in the video footage.) Clerk Vuppala did not ask Carolina or Hiruni for their age and did not ask them any questions about the IDs they presented. Agent Sun witnessed these above-described events with an unobstructed view.

6. Carolina was born on January 18, 2002. (Exhibit 3 – Calif. DMV Image Record.) On December 31, 2022, she was 20 years old. Carolina wore no make-up and had acne on her face. She wore dark pants and a gray front-zipper sweatshirt over a black t-shirt. She wore her hair long past her shoulders, and parted in the middle. (Exhibit 2.) Carolina appeared, very youthful, 18 or 19 years old. (Exhibit 2 and exhibit 15 – video surveillance of sales transaction.)

7. Hiruni was born on December 1, 2002. (Exhibit 5 – Calif. DMV Image Record.) On December 31, 2022, she was 20 years old. Hiruni wore make-up with her hair long, past her shoulders, and parted on the side. She wore dark pants, and a black, front-zipper sweatshirt over a blue t-shirt. (Exhibit 4.) Hiruni appeared youthful, her age of 20 years. (Exhibit 4 and exhibit 15 – video surveillance of sales transaction.)

8. Carolina's fraudulent ID had a date of birth of January 18, 2000, making the cardholder 22 years old. The ID listed her name, with a Newberry Park, California address and physical descriptors of brown hair, hazel eyes, 5 foot 2 inches in height and a weight of 90 pounds. (Exhibit 8- color photocopy of the front of the ID.) Carolina's valid ID lists the same physical descriptors except for a weight of 95 pounds and a Thousand Oaks address. (Exhibit 3 – Calif. DMV Image Record.)

9. Hiruni's fraudulent ID had a date of birth of December 1, 2000, making the cardholder 22 years old. The ID listed her name, with a Newbury Park address, and physical descriptors of black hair, brown eyes, 5-foot in height and a weight of 110 pounds.

(Exhibit 9- color photocopy of the front of the ID.) Hiruni's valid ID lists the same physical descriptors except for a weight of 113 pounds, and a Beaumont address. (Exhibit 5 – Calif. DMV Image Record.)

10. Agent Sun exited the Licensed Premises after Carolina and Hiruni, at which point Agents Sun and Delatorre contacted Carolina and Hiruni and identified themselves as Department agents. Agent Sun explained the reason she wanted to talk to them was because they both purchased alcoholic beverages and they look very young. Agent Sun asked for their ages. Hiruni did not reply. Carolina mumbled something and then said she was 21. Both Carolina and Hiruni appeared nervous and eventually presented their fraudulent IDs to Agent Sun. Agent Sun immediately noticed, based on her training and experience, the obvious defect in the IDs, in that the driver license numbers on both IDs started with the letter "B," which is used for people over the age of 40, and the IDs were thinner than valid driver licenses. (Exhibits 8 and 9.) Agent Sun asked if they were fraudulent IDs, to which Carolina and Hiruni admitted they were. Agent Sun confirmed their ages with the California DMV Cal Photo Image database. (Exhibits 3 and 5.)

11. Agent Sun re-entered the Licensed Premises, contacted clerk Vuppala, identified herself as a Department agent and informed the clerk he had sold alcohol to two, 20-year-olds who used fake IDs. Clerk Vuppala claimed that he looked at the year of birth on the IDs and proceeded with the transaction by pressing an "OK" button on the POS screen. Agent Sun asked clerk Vuppala to demonstrate how he proceeded on the POS. Clerk Vuppala scanned a beer can and a yellow screen appeared instructing the clerk to "ID 30 AND UNDER. MUST BE 21 TO PURCHASE. 1. PICTURE ON I.D. MUST MATCH THE CUSTOMER. 2. SCAN OR SWIPE I.D." with an "EXIT" button at the bottom of the screen and no "OK" button. (Exhibit 10 – color photo of yellow POS screen.) Agent Sun inquired why there was no "OK" button as the clerk claimed. Clerk Vuppala then admitted he did not press an "OK" button but scanned the bar code on the back side of a different California ID which was securely placed under the base of the register monitor to bypass the POS system's age verification and enable the sales transaction to proceed. (Exhibit 11 - color photo of POS screen, with the bar code of the ID under the monitor base, bar code-side up.)

12. Agent Sun asked whose ID it was. Clerk Vuppala said he did not know because it belonged to no one. Agent Sun confiscated the California ID from under the monitor base, which depicted the name of Michael Haywood Andrews and date of birth April 18, 1990. (Exhibit 12.) Agent Sun then spoke on the telephone with Gurinder Walia, the secretary of Corp. A3G, Inc. Agent Sun advised Mr. Walia that she left a Notice to Produce requesting a copy of the video surveillance in the Licensed Premises and a copy of the receipt for the transaction in question. (Exhibit 13 – copy of Notice to Produce.) Agent Sun asked Mr. Walia the reason he placed a California ID under the

monitor base. Mr. Walia said the clerks should only use the bar code of the ID for customers who are purchasing alcohol with a Mexican ID, which cannot be scanned.

13. On or about January 5, 2023, Agent Sun visited the Licensed Premises and received from Mr. Walia the receipt for Carolina and Hiruni's alcohol sales transaction of December 31, 2022. The receipt showed that the age entered for the alcohol sales transaction was April 18, 1990, the same date of birth as on Michael Haywood Andrews' ID, which Agent Sun had confiscated. (Exhibit 14 – black and white copy of a “Print Screen” receipt.) Mr. Walia also showed Agent Sun the video surveillance from the alcohol sales transaction in question. Agent Sun used her Department-issued cellular telephone to record the video footage. (Exhibit 15.)

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 December 31, 2022, Respondents' employee, clerk Varun Vuppala, inside the Licensed Premises, sold alcoholic beverages, to-wit: Smirnoff Ice Smash Pink Lemonade 8% ABV to Hiruni Jayaratna, and Twisted Tea Hard Iced Tea 5% ABV to Carolina De La Cruz, persons under the age of 21, in violation of Business and Professions Code section 25658(a). (Counts 2 and 3.)⁵ (Findings of Fact ¶¶ 4-13.)
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).

⁵ Counts 1 and 4 are duplicative to counts 2 and 3.

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.⁶ To provide a defense, reliance on the document must be reasonable, that is, the result of an exercise of due diligence. This section applies to identifications actually issued by government agencies as well as those which purport to be.⁷ 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 identification 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.⁸ The defense offered by section 25660 is not established if the appearance of the minor does not match the description on the identification.⁹ Thus, 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.

7. The Respondents argued they should not be penalized for having accepted credible forgeries, which may be relied upon, citing *Dethlefsen v. State Board of Equalization* 145 Cal. App.2d 561, pp567-568. Respondents also argued, the law against providing alcohol to minors “does not impose upon the licensee the duty of determining at his peril whether the driver's license is a bona fide license of the party presenting it. Possession of the license is presumptive evidence that the license belonged to the holder,” citing *Conti v State Board of Equalization* (1952) 113 Cal.App.2d 465, p. 466. Respondents’ argument is rejected. After the quoted text cited by Respondent, the *Conti* Court provides a disclaimer stating that, “*Unless* the personal appearance of the holder of the driver's license demonstrates above mere suspicion that he is not the legal owner of the license,” a licensee “is justified in assuming the validity of the driver's license and in accepting the holder as the legal owner.”¹⁰

8. The Respondents failed to meet their burden of proof in establishing pertinent elements of the affirmative defense. Clerk Vuppala did not reasonably rely on the two

⁶ *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).

⁷ *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).

⁸ *Masani* (2004) 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).

⁹ *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).

¹⁰ *Conti v State Board of Equalization* (1952) 113 Cal.App.2d 465, 466-467. (Emphasis added by italics.)

fake IDs. The video surveillance clearly shows clerk Vuppala's quick rhythm in scanning the Twisted Tea and immediate automatic act in scanning the bar code of Michael's ID, and Hiruni's Smirnoff Ice thereafter. There is no credible evidence he even asked to see the IDs. Clerk Vuppala did not look at the IDs before he scanned the bar code of the ID under the POS monitor base. Clerk Vuppala clearly was ready to proceed with the transaction without looking at the young girls or at any identification because his right hand immediately moved to touch the POS screen to continue with the sale. He only stopped when Hiruni held out her fake ID, and Carolina followed suit. When the IDs were offered, clerk Vuppala did not take them in his hand or make any effort at a diligent inspection. Clerk Vuppala looked at the IDs from a distance and only for a second if that. Clerk Vuppala failed to make a reasonable, due diligent inspection of the IDs offered. More importantly he failed to even look at the alleged owners of the IDs. If he had followed the POS screen's suggestion to compare the IDs to Carolina and Hiruni, and had he even looked at the girls he would have noticed their youthful appearances. (Exhibits 2, 4 and 15.) Carolina and Hiruni's personal appearances demonstrated above mere suspicion that they were not the legal owners of the fake IDs.

9. Agent Sun's sworn, direct testimony credibly maintained that on December 31, 2022, Carolina and Hiruni appeared to Agent Sun to have youthful appearances, so much so that it caused Agent Sun to follow them into the Licensed Premises and observe them as they selected and purchased alcoholic beverages. (Findings of Fact ¶¶ 4, 6, and 7.)

10. The Court in *Masani*¹¹ stated while analyzing the issue of "whether the statutory defense [of section 25660] is limited to ID's actually issued by the government or may include documents which purport to be issued by the government but are fake –albeit credible forgeries." (*Id.* at 1442.) The Court said that "a reasonable interpretation of the statute would include a fake ID purporting to be issued by a government agency. To rule otherwise leads to an unreasonable and illogical result." The Court therefore stated, "the licensee should not be penalized for accepting a credible fake *that has been reasonably examined for authenticity and compared with the person depicted.*" (Emphasis added by italics.) While the Court held that a fake ID can support a defense under section 25660, it held the ultimate analysis relied not upon the quality of the fake ID, but upon whether the fake ID was "*reasonably examined for authenticity and compared with the person depicted.*" (*Id.* at pp. 1444 – 1445.) In the matter at hand, clerk Vuppala failed to do either, a reasonable examination of the IDs or comparison of the IDs with minors Carolina and Hiruni. Had he done so clerk Vuppala would have seen that Carolina and Hiruni's appearances indicated they could not be 21 years of age and could not be the legal owners of the IDs.

¹¹ *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.*, 118 Cal.App.4th 1429 [Real party in interest, Aiyaz Masani]. The undersigned will refer to this as the *Masani* case.

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

PENALTY

The Department requested the Respondents' license be suspended for a period of 25 days, based on the aggravating factors of the facts of the case and the pending accusation in registration number 21091283 as continuing course or pattern of conduct. (Exhibits 16-19.)

The Respondents requested a 15-day suspension arguing the accusation in registration number 21091283 is not akin to a warning letter, nor evidence of ongoing discipline.

In assessing an appropriate measure of discipline, the Department's penalty guidelines are in California Code of Regulations, Title 4, Division 1, Article 22, section 144, commonly referred to as rule 144. Under rule 144, the presumptive penalty for a first violation of selling or furnishing an alcoholic beverage to a minor in violation of section 25658 is a 15-day license suspension. Rule 144 allows for progressive discipline for a second violation of section 25658 within 36 months of a 25-day suspension. Rule 144 also permits imposition of a revised penalty based on the presence of aggravating or mitigating factors.

There was no mitigation presented other than cooperation by the Licensee. There was no evidence of positive action by the Licensees to correct the problem or documented training. It is of grave concern that the Respondents believe it is suitable to leave an age-appropriate ID under the base of the register monitor for their clerks to scan at will for age-restricted merchandise sales; making it easy for clerks to bypass any alleged safety protocols in place.

Pursuant to *7-Eleven and Yi*, Precedential Decision No. 19-03-E (*Yi*), *Yi* held that where a similar disciplinary matter is pending against the licensee, the prior violation can be considered for purposes of notice but cannot be considered a "prior strike" under section 25658. In the matter at hand, the prior accusation relating to registration number 21091283, while not final, alleges the same sale-to-minor violation under section 25658(a) on November 20, 2020, as the current matter, and as such provides notice to the Respondents "of a problem concerning alcoholic beverages being sold to minors," at the Licensed Premises "such that it may be used in the instant case for purposes of penalty consideration." *Yi* provides that, "Nothing in section 25658.1, or elsewhere, precludes the use of prior actual notice of an alleged violation of section 25658(a), whether by way of verbal or written warning, or of a *pending* accusation, as an aggravating factor in determining the appropriate level of discipline following a determination that the licensee has subsequently violated the same law." (Emphasis added.) *Yi* established that receipt of

a letter of warning or a pending accusation puts the licensee on notice that (1) the complained of behavior is reasonably foreseeable in the premises, and (2) a responsible licensee has a duty to prevent that behavior. Failure to take adequate preventative measures, or allowing the continuation of the behavior, shows a continuing course or pattern of conduct. *Yi* goes on to state that, "For purposes of notice, it does not matter that the prior accusation is not final, or even whether it is sustained. Nor is the Department under any obligation to 'prove-up' the prior alleged violation before an accusation on file, and served upon the licensee, may be considered as notice in a subsequent matter."

In the current matter, the Department pointed out that the prior accusation was litigated by the Respondents so they were on notice there may be a problem with sales-to minors at the Licensed Premises. It is of grave concern that despite that prior notice of an alleged violation of the same law, the Respondents took no steps whatsoever to prevent future sales to minors either after the prior or current violation. Other aggravating factors include that both Carolina and Hiruni had youthful appearances. Carolina, in fact, appeared, very youthful with her facial acne, 18 or 19 years of age.

In weighing the foregoing, the penalty recommended herein complies with rule 144.

ORDER

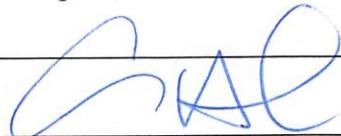
Counts 1 and 4 are dismissed as duplicative to counts 2 and 3.

Counts 2 and 3 are sustained. The Respondents' off-sale beer and wine license is hereby suspended for a period of 20 days.

Dated: June 9, 2023



D. Huebel
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By: 
Date: <u>07/17/23</u>

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

7-ELEVEN INC., AND
CORP. AG3, INC.,
dba 7-Eleven Store 39902A
801 South Twin Oaks Valley Road,
Suite 105
San Marcos, CA 92078-4354,
Appellants/Licensees,

v.

DEPARTMENT OF ALCOHOLIC
BEVERAGE CONTROL,
Respondent.

) AB-9980

) File: 20-584831
) Reg: 23093025

**DECLARATION OF SERVICE
BY E-MAIL**

I, MARIA SEVILLA, declare that I am over the age of eighteen (18) years, and not a party to the within action; that my place of employment and business is 400 R Street, Suite 320, Sacramento, CA; that on the 11th day of December, 2023, I served a true copy of the attached **Decision** of the Alcoholic Beverage Control Appeals Board in the above-entitled proceeding on each of the persons named below:

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the person(s) at the e-mail address(es) listed below:

Ralph Barat Saltsman
Solomon, Saltsman & Jamieson
426 Culver Boulevard
Playa Del Rey, CA 90203
rsaltsman@ssjlaw.com

Department of ABC
Office of Legal Services
3927 Lennane Drive, Suite 100
Sacramento, CA 95834
yuri.jafarinejad@abc.ca.gov

I declare under penalty of perjury that the foregoing is true and correct. Executed at Sacramento, California, on the 11th day of December 2023.

MARIA SEVILLA