ISSUED JANUARY 12, 1998

BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD

OF THE STATE OF CALIFORNIA

HOLLYWOOD SUNSET, INC. dba Crazy Girls 1433 N. La Brea Ave. Los Angeles, CA 90028, Appellant/Licensee, v. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL, Respondent.	)	AB-6827 File: 48-176017 Reg: 96037566 Administrative Law Judge at the Dept. Hearing: Ronald M. Gruen Date and Place of the Appeals Board Hearing: October 1, 1997 Los Angeles, CA

Hollywood Sunset, Inc., doing business as Crazy Girls (appellant), appeals from a decision of the Department of Alcoholic Beverage Control[1] which suspended its on-sale general public premises license for 60 days with 30 days stayed, for permitting female entertainers to expose their buttocks and pubic hair, touch and fondle their breasts and buttocks, and simulate sexual intercourse, being contrary to the universal and generic public welfare and morals provisions of the California

[1]The decision of the Department dated March 6, 1997, is set forth in the appendix.

Constitution, article XX, §22, arising from a violation of California Code of Regulations, title IV, §143.3, subdivisions (1) (a) and (b), and (2).

Appearances on appeal include appellant Hollywood Sunset, Inc., appearing through its counsel, Andreas Birgel, Jr.; and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon E. Logan.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public premises license was issued on October 21, 1985.

Thereafter, the Department instituted an accusation alleging the above referenced violations. An administrative hearing was held on January 21, 1997, at which time oral and documentary evidence was received. Subsequent to the hearing, the Department issued its decision which determined that certain violations had occurred and ordered the license suspended. Appellant thereafter filed a timely notice of appeal.

In its appeal, appellant raises the following issues: (1) there was insufficient evidence to support the findings, arguing that the mere fact of mimicking sexual intercourse is not tantamount to simulated sexual intercourse; (2) the display of pubic hair was an accident; and (3) the entertainers did not touch or expose their breasts or buttocks.

DISCUSSION

The accusation alleges ten violations of the California Code of Regulations (rule 143), which relates to defining proper conduct by entertainers. Count 2 of the accusation was dismissed. The accusation alleges that, on May 7, 1996, three female entertainers violated rule 143. The rule states as follows:

> "(1) No licensee shall permit any person to perform acts of or acts which simulate:[2] (a) Sexual intercourse ... (b) The touching, caressing or fondling[3] on the breast, buttocks[4] ... The display of the pubic hair....
> (2) Subject to the provisions of subdivision (1) hereof, entertainers whose breasts and/or buttocks are exposed to view shall perform only upon a stage at least 18 inches above the immediate floor level and removed at least six feet from the nearest patron."

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[2]The word "simulate" is defined as: "to give the appearance or effect of, to have the characteristics of but without the reality of, to make a pretense of, to give a false indication or appearance of, to take on an external appearance of, or act like..." (Webster's Third International Dictionary (1986), page 2122; Funk & Wagnells Standard College Dictionary (1973), page 1252; and Webster's New World Dictionary, Third College Edition (1988), page 1251).

[3]The word "touch" is defined as: "to bring a bodily part briefly into contact with so as to feel ... to perceive or experience through the tactile sense ... to cause to be briefly and lightly in contact or conjunction with something ...." The word "caress" is defined as: "... light stroking, rubbing or patting, to touch or stroke ...." The word "fondle" is defined as: " ... to handle tenderly ...." (Webster's Third New International Dictionary (1986), pages 2415-2416, 339, and 883, respectively).

[4]The word "breast" is defined as: "... either of two protuberant milk-producing glandular organs situated on the front of the chest or thorax in the human female ... a front, forward, swelling, bulging, or curving part ...." The word "cleavage" is defined as: "... the depression between a woman's breasts, a division ...." The word "buttock" is defined as: "... either of the two rounded prominences separated by a median cleft that form the lower part of the back in man and consist largely of the gluteus muscles ...." (Webster's Third International Dictionary (1986) pages 273, 420, and 305, respectively).

I

Appellant contends that there was insufficient evidence to support the findings, arguing that the mere fact of mimicking sexual intercourse is not tantamount to simulated sexual intercourse.

A. Dorsch violation (count I - simulated intercourse)

Shawn Collins, a Department investigator, testified that Kim Dorsch approached him and asked if he would like a “chair dance.” After consent, Collins sat on a chair, his legs were spread in a "V" angle from two to three feet apart, and Dorsch stood between his legs [RT 9-11, 29].

Dorsch with her back to Collins and standing between Collins' legs, sat down in Collins' groin area with Dorsch’s covered buttocks touching him. Dorsch then performed a bouncing motion up and down about four times for about three to four seconds [RT 15-17].

B. Lewis violation (count 6 - simulated intercourse)

Eric Froeschner, a Department investigator, testified that Tamara Joy Lewis approached him and offered a complimentary chair dance. After consent, Froeschner, sitting on a chair, saw Lewis turn away from him, then squat down on his groin with her buttocks, and commenced an up and down movement, as well as a circular rubbing motion -- the groin described by Froeschner as his crotch. Lewis then turned around, facing Froeschner, and straddled Froeschner's right leg, with

one of Lewis' legs on either side of Froeschner's leg. Lewis in that position, rubbed her groin area up and down on the leg. Lewis than changed to Froeschner's left leg and repeated the rubbing, ending by rubbing Lewis' thigh in Froeschner's crotch [RT 34, 36-39]. Lewis then, while facing away from Froeschner, pressed Lewis' buttocks into Froeschner's groin in a rubbing manner [RT 39-40].

C. Lisa violation (count 8 - simulated intercourse)

Peter James Parszik, a Department investigator, testified that he saw Lisa (her stage name) doing a chair dance for a patron, and asked if she would perform for him. Lisa seated her buttocks on Parszik's crotch over his penis area and began rubbing back and forth, then moved the rubbing motion of her buttocks up as far as Parszik's chest [RT 49, 51, 54, 59].

We conclude the entertainers' conduct falls within the prohibitions of the rule.

II

Appellant contends that the display of pubic hair, as alleged in count 3, was an accident.

Collins testified that, on two occasions, and while wearing a long black dress, Dorsch turned her back to him while standing between his legs. Dorsch bent over, pulled her dress up (in the back), thus exposing her black bikini bottom. The bikini bottom at this bent over angle allowed Collin's observation that the under portion of the bikini was about one-quarter inch wide at the underside, covering her

anus, but allowing exposure of her pubic hair. He observed the pubic hair for a period of four to five seconds [RT 11-14]. This act was later again performed and the same observations were made [RT 17].

The entertainers and appellant are responsible to see that the coverings of the entertainers are such that the law and rules are followed. We conclude the findings are supported by substantial evidence.

III

Appellant contends that the entertainers did not touch or expose their breasts, buttocks, or other bodily parts.

A. Dorsch violation (count 4 - touching breasts and buttocks)

Collins testified that, on three occasions, Dorsch, wearing a long black dress, cut low in the front allowing the top of her large breasts and cleavage to show, pressed the top portion of her breasts on Collins face, nose, and cheek with skin contact lasting about 5 seconds [RT 11-12, 30]. A second touching also occurred on his nose and cheek for about three seconds. Dorsch also rubbed Collins' chest with her breasts [RT 11, 14-15]. The final time, for a period of three to four seconds, Dorsch rubbed Collins' nose and cheek area with her breasts [RT 18].

Appellant argues there was no touching of the body parts of Dorsch by her hands. However, the definition of touch encompasses a contact, a rub, or contact in a moving motion. Dorsch caused the face, etc., of Collins to be the instrument of her having her breasts touched. The rule prohibits the touching of the breasts,

by any person, including a patron, or, the entertainer herself.

B. Lewis violation (count 5 - non-stage exposure, and 7 - touching breasts)

Froeschner testified that Lewis's shorts were very short, exposing the lower portion of Lewis' buttocks (the shorts covering about three-quarters of the buttocks at the top), with the underneath portion of the shorts ending up in the cleft of her buttocks when Lewis bent over [RT 34, 43]. During her dance, Lewis bent over a table in front of Froeschner and exposed her buttocks, moving her buttocks in circular motions, and within one foot of Froeschner's face [RT 38].

Lewis during the course of the dance, and upon two occasions, pressed the top portion of her breasts against Froeschner's face, skin to skin -- and on two occasions, proceeded to rub her breasts against Froeschner as she lowered her breasts down Froeschner's torso to his crotch. Lewis, following the portion of the dance where she sat on Froeschner's groin area, again rubbed her breasts in Froeschner's face. Froeschner stated that the breasts were uncovered just above the areola which was covered [RT 35-36, 39].

We conclude that Lewis exposed her buttocks as alleged, by showing the lower portion of the cleft of the buttocks.[5]

C. Lisa violation (count 9 - non-stage exposure, and count 10 - touching

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[5]However, there is no showing that the vagina was touched. We believe the problem is with language. Where a female sits on the lap of a male, technically, there is a touching of the vagina. The rule would only contemplate intentional touching in some manner, and not the societal touching, as with sitting. While the count should be dismissed, the decision will not be reversed. (Miller v. Eisenhower Medical Center (1980) 27 Cal.3d 614 [166 Cal.Rptr. 826].)

buttocks)

Parszik testified that Lisa was wearing a mini dress during the time of the chair dance, with a "G-string" described as a black thong bottom (measuring about one-half inch across) under Lisa's dress [RT 51-52]. Lisa sat on the crotch area of Parszik and rubbed her buttocks back and forth, then rubbed up his chest [RT 51-54, 59].

Lisa, after the chair dance, went to the stage area which was raised about three feet from the floor, and surrounded by a counter of about two feet in width [RT 58]. Lisa disrobed except for the "G-string" thong (and pasties over her nipples so that she appeared to Parszik as naked), and during the dance performed on the stage, stepped on the stage counter and leaned toward Parszik, causing her breasts and buttocks to come within "inches" of Parszik's face [RT 55-56, 63].[6]

There is no substantial evidence the Lisa touched her breasts, and count 10 is dismissed.

CONCLUSION

Count 10 as to Lisa touching her breasts and that portion of count 7 concerning the touching of the vagina of Lewis are dismissed. However, the decision of the Department will not be reversed. (Miller v. Eisenhower Medical Center, supra.)

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[6]The investigator, after the chair dance and after Lisa went to the stage, moved his seat to a place directly adjacent to the stage and beside the counter of the stage.

In all other respects, the decision of the Department is affirmed.[7]

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

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

Any party may before this final decision becomes effective, apply to the appropriate district 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.