

ISSUED DECEMBER 29, 1998

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

CIRCLE K STORES, INC.	)	AB-6978
dba Circle K Food Store	)	
2604 B Street	)	File: 20-284721
San Diego, California 92102,	)	Reg: 97040152
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.	)	December 2, 1998
	)	Sacramento, CA
	)	

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ORDER

Circle K Stores, Inc., doing business as Circle K Food Store (appellant), appeals from a decision of the Department of Alcoholic Beverage Control which revoked its license for its clerk, Carolyn Cannon, having sold an alcoholic beverage (a six-pack of Budweiser beer) to Erik Gutierrez, a 19-year-old minor participating in a decoy operation being conducted by the San Diego Police Department.

Based upon our review of the record and upon the representations of counsel for the Department and the appellant, we conclude that the result in this matter is controlled by the October 28, 1998, decision of the Second District Court of

Appeal in Acapulco Restaurants, Inc. v. Alcoholic Beverage Control Appeals Board (1998) 67 Cal.App.4th 575 [79 Cal.Rptr.2d 126]. The court there stated that "rule 141(b)(5) means what it says," i.e., strict compliance with the face-to-face identification provision is required. No face-to-face identification of the seller by the decoy was made in this case.<sup>1</sup> Pursuant to Rule 141(c), the failure of the police to comply with 141(b)(5) provides a defense to the accusation issued by the Department. Therefore, the decision of the Department is reversed.<sup>2</sup>

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

JOHN B. TSU, MEMBER, did not participate in the hearing or decision of this matter.

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<sup>1</sup> Our review of the record indicates that the failure of identification rests on the inexact testimony of witnesses, and not on the distance between the participants.

<sup>2</sup> 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.