

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

AB-8179

File: 20-386466 Reg: 03054746

BP WEST COAST PRODUCTS, LLC dba Arco AM/PM #5406
3890 North University Parkway, San Bernardino, CA 92407,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: April 8, 2004
Los Angeles, CA

ISSUED JULY 19, 2004

BP West Coast Products, LLC, doing business as Arco AM/PM #5406
(appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹
which suspended its license for 15 days for its clerk having sold an alcoholic beverage
to a minor, a violation of Business and Professions Code section 25658, subdivision
(a).

Appearances on appeal include appellant BP West Coast Products, LLC,
appearing through its counsel, Ralph B. Saltsman and Stephen W. Solomon, and the
Department of Alcoholic Beverage Control, appearing through its counsel, John W.
Lewis.

¹The decision of the Department, dated July 31, 2003, is set forth in the
appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on September 11, 2002. Thereafter, the Department instituted an accusation against appellant on March 25, 2003, charging that, on November 14, 2002, Melvis Benavides, an employee of appellant, sold beer to Ly'Amber White, a 19-year-old minor. Not stated in the accusation was the fact that White was acting as a decoy for the San Bernardino Police Department.

An administrative hearing was held on June 24, 2003, at which time oral and documentary evidence was received. At that hearing, testimony was presented by White and by Ronald Garcia, a San Bernardino police officer, regarding the circumstances of the sale transaction. Appellant presented no witnesses. Subsequent to the hearing, the Department issued its decision which determined that the sale transaction had occurred as alleged, and that appellant had failed to establish any defense under Rule 141(b)(2)². Appellant thereafter filed a timely notice of appeal. In its appeal, appellant contends that the decoy did not display the appearance required by Rule 141(b)(2).

DISCUSSION

Rule 141(b)(2) provides:

The decoy shall display the appearance which could generally be expected of a person under 21 years of age, under the actual circumstances presented to the seller of alcoholic beverages at the time of the alleged offense.

Appellant points to a scarf the decoy wore on her head, the decoy's "mature" hair style,

² The reference is to Department Rule 141(b)(2) (4 Cal.Code Regs. section 141, subd. (b)(2).)

her “extremely long fingernails,” and a gold necklace, and asserts that these, in combination, gave this decoy an appearance that could not generally be expected of a person under the age of 21.

The administrative law judge concluded that the decoy’s appearance complied with Rule 141(b)(2), stating (Finding of Fact II D):

The decoy’s overall appearance including her demeanor, her poise, her mannerisms, her size and her physical appearance were consistent with that of a person under the age of twenty-one years and her appearance at the time of the hearing was similar to her appearance on the day of the decoy operation. However, on the day of the hearing, her curly hair was worn down and brushed away from her face. On the day of the sale, her hair was worn in a bun with a scarf tied around it so that you could not see the hair. The decoy who is five feet seven inches in height and who weighs one hundred seventeen pounds was wearing blue jeans, a black turtleneck sweater and black boots on the day of the sale. The photograph depicted in Exhibit 2-A was taken at the premises on the night of the sale and it depicts how the decoy appeared that night. The decoy testified that she had not participated in any prior decoy operations and that she was nervous when she was at the premises because she had not done this before. At the hearing, the decoy was soft-spoken and she appeared nervous. After considering the photograph depicted in Exhibit 2-A, the decoy’s overall appearance when she testified and the way she conducted herself at the hearing, a finding is made that the decoy displayed an overall appearance which could generally be expected of a person under twenty-one years of age under the actual circumstances presented to the seller at the time of the alleged offense.

We have reviewed the photo depicted in Exhibit 2-A. It depicts the scarf, the necklace, and the long fingernails, none of which separately or in combination alter the decoy’s appearance to such extent that we could question the ALJ’s assessment.

There are no exceptional circumstances here. Appellant’s efforts to persuade this Board to substitute its judgment for that of the ALJ are unavailing.

ORDER

The decision of the Department is affirmed.³

TED HUNT, CHAIRMAN
E. LYNN BROWN, MEMBER
KAREN GETMAN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

³ 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.