

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

AB-9256

File: 20-427595 Reg: 11074771

7-ELEVEN, INC., JASVINDER KAUR VIRK, and MUNINDER SINGH VIRK,
dba 7-Eleven
121 West Stowell Road, Santa Maria, CA 93458,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: March 7, 2013
Los Angeles, CA

ISSUED APRIL 10, 2013

7-Eleven, Inc., Jasvinder Kaur Virk, and Muninder Singh Virk, doing business as 7-Eleven (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 10 days for their clerk selling an alcoholic beverage to a police minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants 7-Eleven, Inc., Jasvinder Kaur Virk, and Muninder Singh Virk, appearing through their counsel, Ralph Barat Saltsman and Autumn M. Renshaw, and the Department of Alcoholic Beverage Control, appearing through its counsel, Kerry Winters.

¹The decision of the Department, dated March 16, 2012, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on July 25, 2005. On April 5, 2011, the Department filed an accusation against appellants charging that, on October 22, 2010, appellants' clerk, Mani Lakshmanan (the clerk), sold an alcoholic beverage to 17-year-old Guillermo Pereyra. Although not noted in the accusation, Pereyra was working as a minor decoy for the Santa Maria Police Department at the time.

On the date of the sale, the decoy entered the premises and selected a 24 oz. can of Bud Light beer from the coolers. The decoy approached the counter, and the clerk asked to see his ID. The decoy handed the clerk his California driver's license. The clerk looked at the ID, then handed it back to the decoy and proceeded with the sale.

At the administrative hearing held on January 10, 2012, documentary evidence was received and testimony concerning the sale was presented by Pereyra (the decoy) and by Ricardo Arias, a Santa Maria Police Department officer. Appellants presented no witnesses.

The Department's decision determined that the violation charged was proved and no defense to the charge was established.

Appellants then filed this appeal contending that rule 141(b)(2) violates both federal and state due process requirements, and is therefore unconstitutional.

DISCUSSION

Appellants contend that rule 141(b)(2) unconstitutionally violates both federal and state due process requirements by presenting a standard that is impossible for the ALJ to meet.

As an initial matter, this Board has jurisdiction to hear constitutional challenges to administrative regulations issued by the Department, including rule 141,² as part of its authority to determine whether the Department has proceeded according to law. (Bus. & Prof. Code §23804(b).)

This Board has recently faced a surge of challenges to the constitutionality of rule 141(b)(2). (See, e.g., *7-Eleven Inc.* (2013) AB-9248; *Circle K Stores* (2013) AB-9274). Though the facts in these cases vary, the arguments presented are indistinguishable, if not identical.

As we noted in those cases, rule 141(b)(2) complies with both state and federal constitutional requirements. In short, apparent age is a determination that eludes concrete definition; therefore, the rule need only be sufficiently definite to provide directives of conduct to the administrative officers. Taken in its regulatory context, rule 141(b)(2) provides sufficient guidance.

As the arguments in this case do not differ significantly from those presented in *7-Eleven, Inc.* (2013) AB-9248, we refer appellants to that opinion for a complete analysis.

In closing, we note that appellants' entire argument is patently disingenuous in light of the fact that their clerk examined the minor decoy's driver's license and

²References to rule 141 and its subdivisions are to section 141 of title 4 of the California Code of Regulations, and to the various subdivisions of that section.

completed the sale anyway. The clerk (who, we note, did not testify) had no need to rely on apparent age when he asked for and was presented with concrete proof of the decoy's actual age.

ORDER

The decision of the Department is affirmed.³

BAXTER RICE, CHAIRMAN
FRED HIESTAND, 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.