

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

CIRCLE K STORES, INC.	)	AB-7069
dba Circle K	)	
6930 Morro Road	)	File: 20-142233
Atascadero, CA 93422,	)	Reg: 97039590
Appellant/Licensee,	)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Sonny Lo
	)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	September 2, 1999
	)	Los Angeles, CA
	)	

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Circle K Stores, Inc., doing business as Circle K (appellant), appeals from a decision of the Department of Alcoholic Beverage Control<sup>1</sup> which suspended its license for 30 days, for its clerk, Jeffrey Flescher, having sold an alcoholic beverage (a six-pack of Budweiser beer) to Alicia Carney, an 18-year-old minor participating in a decoy operation conducted by the Atascadero Police Department, said sale being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from a

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<sup>1</sup> *The Department's Decision Under Government Code §11517, subdivision (c), dated March 11, 1998, is set forth in the appendix, together with the Proposed Decision dated July 30, 1997.*

violation of Business and Professions Code §25658, subdivision (a).

. Appearances on appeal include appellant Circle K Stores, Inc., appearing through its counsel, Ralph Barat Saltsman and Steven Warren Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

Appellant contends in its brief that there was no compliance with Department Rule 141(b)(2) and Rule 141(b)(5). The Department, in its reply brief, states that, in light of the court's decision in Acapulco Restaurants, Inc. v. Alcoholic Beverage Control Appeals Board (1998) 67 Cal.App.4th 575 [79 Cal.Rptr.2d 126], the Department does not contest or oppose the appeal.

The Department's decision antedated the decision in Acapulco Restaurants, Inc., supra, which held that Rule 141(b)(5) must be strictly enforced.

Our review of the record suggests the Department's concession was well-advised. There was no compliance with the requirement of Rule 141(b)(5) that the minor make a face to face identification of the person who sold the alcoholic beverage.

ORDER

The decision of the Department is reversed.<sup>2</sup>

TED HUNT, CHAIRMAN  
RAY T. BLAIR, JR., MEMBER  
JOHN B. TSU, MEMBER  
ALCOHOLIC BEVERAGE CONTROL  
APPEALS BOARD

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<sup>2</sup>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.