

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

AB-8041

File: 21-194582 Reg: 02053162

THE VONS COMPANIES, INC., dba Vons
868 Orange Street, Coronado, CA 92118,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: John P. McCarthy

Appeals Board Hearing: August 14, 2003
Los Angeles, CA

ISSUED OCTOBER 7, 2003

The Vons Companies, Inc., doing business as Vons (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for seven days, with all seven days stayed for a probationary period of 12 months, for its clerk selling an alcoholic beverage to an 18-year-old police decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant The Vons Companies, Inc., appearing through its counsel, Ralph B. Saltsman, Stephen W. Solomon, and James S. Eicher, Jr., and the Department of Alcoholic Beverage Control, appearing through its counsel, Roxanne B. Paige.

¹The decision of the Department, dated October 10, 2002, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on December 1, 1988.

Thereafter, the Department instituted an accusation against appellant charging that, on April 18, 2002, appellant's clerk, Joe Cosio, sold an alcoholic beverage to 18-year-old Victoria Majewski. Majewski was working as a minor decoy for the National City Police Department at the time of the sale.

At the administrative hearing on August 13, 2002, documentary evidence was received and testimony concerning the violation charged was presented by Majewski and by National City police officer John Dougherty. Majewski testified that the clerk requested identification when she brought a six-pack of Tecate beer to the counter, and she handed her true California driver's license to him. The clerk looked at the driver's license for two or three seconds, handed it back to her, and sold her the beer.

Subsequent to the hearing, the Department issued its decision sustaining the charge of the accusation and finding that appellant had not established a defense to the charge.

Appellant filed a timely notice of appeal contending that the decoy operation violated the requirement of rule 141(a) (4 Cal. Code Regs., §141, subd. (a)) that such activities be conducted "in a fashion that promotes fairness."

DISCUSSION

Appellant contends the decoy operation was not conducted in a fashion that promotes fairness because the decoy's photograph on her driver's license made her appear to be over the age of 21.

Appellant makes the novel argument that the decoy's *picture* on her driver's license made her appear old enough to purchase alcohol, and complains that the

Administrative Law Judge (ALJ) "failed to make a finding as to whether or not the *photograph* makes the decoy appear old enough to purchase alcohol." (App. Br. at 3 [italics added].) Appellant complains further that the ALJ prevented its counsel from inquiring whether the decoy and the police officer thought the photograph on the decoy's driver's appeared older than or different from her real appearance.

Appellant argues in its brief that the photograph "enhanced the appearance" of the decoy, the clerk told the officer that he was satisfied after looking at the decoy's identification that she was old enough to purchase alcohol, and "a reasonable inference can be drawn that as a part of this check of the ID, the clerk visually inspected the photograph as well." (App. Br. at 4.) Appellant fails to tell us, in its brief, what it would have us conclude from the three propositions it states. However, appellant made a similar argument at the hearing, and asserted there that the "enhancement" in the photograph confused the clerk.

The ALJ addressed, and rejected, this argument in Determination of Issues I:

Respondent argued that the identification decoy Majewski showed assistant manager/clerk Cosio was unfair since it "enhanced" her appearance and confused the clerk. The enhancement noted refers to apparent long, thick hair and lipstick in the photograph. This argument is rejected. First, it is by no means clear that the photograph on the ID makes the decoy appear to be over the age of 21 years. Second, it simply is not reasonable to believe that the clerk would rely on the decoy's photograph on her driver's license as the best indicia of her age when he has the actual person in front of him and the ID states in no uncertain terms both her birth date and that she will not be 21 years of age until the year 2004. Finally, Rule 141(b)(3) requires a decoy who carries her own identification to present it if asked.

We agree with the ALJ's assessment, and rejection, of appellant's quibbling argument. We would only add that, whether the decoy appeared to be over 21 years of age in the picture on the ID is irrelevant; the rule requires that the *decoy* appear to be

under 21, and the clerk should have judged the decoy's age by looking at the decoy, not her picture. In any case, it is hard to see how the clerk could have thought the ID made the decoy appear to be 21, when it bore a prominent stripe saying "AGE 21 IN 2004" right next to the photograph.

ORDER

The decision of the Department is affirmed.²

TED HUNT, CHAIRMAN
KAREN GETMAN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

²This 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.