

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

PRESTIGE STATIONS, INC.	)	AB-7261
dba AM/PM Mini Mart)	
27691 Ynez Road	)	File: 20-285050
Temecula, CA 92591,	)	Reg: 98043383
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, 1999
	)	Los Angeles, CA

Prestige Stations, Inc., doing business as AM/PM Mini Mart (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 15 days for appellant's employees having sold an alcoholic beverage to a person under the age of 21, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from a violation of Business and Professions Code §25658, subdivision (a).

¹The decision of the Department, dated October 22, 1998, is set forth in the appendix.

Appearances on appeal include appellant Prestige Stations, Inc., appearing through its counsel, Ralph B. Saltsman and Stephen W. Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, Thanh-Le Nguyen.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on February 16, 1994. Thereafter, the Department instituted an accusation against appellant charging that, on October 24, 1997, appellant's clerk, Benedict Iglesias, sold beer to Daniel J. Kyle, a 19-year-old decoy working with the Riverside County Sheriff's Department.

An administrative hearing was held on August 20, 1998, at which time oral and documentary evidence was received. At that hearing, testimony was presented by Deputy Sheriff Victoria Carver and the minor decoy, Daniel J. Kyle.

Subsequent to the hearing, the Department issued its decision which determined that the sale had occurred as charged and no defense had been established pursuant to Rule 141 or Business and Professions Code §25660.

Appellant thereafter filed a timely notice of appeal. In its appeal, appellant raises the following issues: (1) the decoy's appearance violated Rule 141(b)(2); (2) the face-to-face identification of the seller by the decoy did not comply with Rule 141(b)(5); (3) the Department failed to provide discovery material sought by appellant; and (4) Government Code §11512, subdivision (d), was violated when the Department failed to provide a stenographic reporter to record the hearing on appellant's Motion to Compel Discovery.

DISCUSSION

Appellant contends Rule 141(b)(2) was violated by the use of a decoy who was between 6' 1" and 6' 2" tall, weighed about 225 pounds, and "wearing construction worker clothing." This decoy was so obviously inappropriate, appellant notes, the ALJ advised the Department against using "over-sized" decoys in the future.

The ALJ appears to have struggled some with his decision that the decoy did not violate Rule 141(b)(2). In Finding III. A., the ALJ stated:

"Although [the decoy] was about six feet one inch in height and weighed about 225 pounds as of October 24, 1997, his youthful looking face is such as to give him the appearance which could generally be expected of a person under twenty-one years of age and who would reasonably be asked for identification to verify that he could legally purchase alcoholic beverages. However, in [an] effort to avoid any semblance of unfairness regarding the minor decoy program, the Department would be well advised to refrain from using 'over-sized' teenagers in the future as minor decoys. The minor's appearance at the time of his testimony was substantially the same as his appearance at the time of the sale which occurred at the licensed premises on October 24, 1997."

At the oral argument on this matter, the Department, apparently having reconsidered its adoption of the ALJ's proposed decision, conceded that this decoy violated Rule 141(b)(2). We cannot say that we disagree with the Department's concession.

In light of the Department's concession on this issue, we need not address the remaining issues raised by appellant.

ORDER

The decision of the Department is reversed.²

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

²This 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.