

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

PRESTIGE STATIONS, INC.	)	AB-7332
dba AM/PM)	
798 Third Avenue	)	File: 20-234680
Chula Vista, CA 91910	)	Reg: 98043747
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.	)	July 6, 2000
	)	Los Angeles, CA

Prestige Stations, Inc., doing business as AM/PM (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its off-sale beer and wine license for 15 days for its clerk, Michael Kraklau, having sold an alcoholic beverage (a single 12-ounce can of Budweiser beer) to Horacio Morales, a 19-year-old minor acting as a decoy for the Chula Vista Police Department, the sale 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

¹The decision of the Department, dated December 24, 1998, is set forth in the appendix.

Professions Code §25658, subdivision (a).

Appearances on appeal include appellant Prestige Stations, Inc., appearing through its counsel, Ralph Barat Saltsman and Stephen Warren Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon E. Logan.²

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on October 19, 1990. Thereafter, the Department instituted an accusation against appellant charging that appellant, through its clerk, sold an alcoholic beverage to a minor.

An administrative hearing was held on November 10, 1998, at which time oral and documentary evidence was received. At that hearing, testimony was presented by Chula Vista police officer Ben Chassen and Horacio Morales, the minor decoy. Appellant presented no evidence in its defense.

Subsequent to the hearing, the Department issued its decision which determined that the unlawful sale had occurred as alleged.

Appellant thereafter filed a timely notice of appeal. In its appeal, appellant raises the following issues: (1) the decision considered only the physical appearance of the decoy, in violation of Rule 141(b)(2); and (2) the use of a driver's license which was not legible violated Rule 141(b)(3).

² This case was restored to the July calendar pursuant to stipulation.

DISCUSSION

I

Appellant contends that the decision of the Department, by limiting its assessment of the decoy's appearance to his physical appearance, did not comply with Rule 141(b)(2).

The Board has routinely reversed the Department in cases where, as here, the Administrative Law Judge has failed to indicate in his proposed decision whether he considered other age indicia in addition to the decoy's physical appearance. It does so in this case as well.

Although the proposed decision stated that no defenses under Rule 141 had been established, the Board cannot ascertain whether this determination was based on other than simply the physical appearance of the decoy.

II

Appellant contends that the driver's license presented to the clerk when he requested identification from the decoy was in such condition that the clerk was unable to read it, and was confused. Since Rule 141(b)(3) requires a decoy to present proper identification when requested to do so, appellant contends, the presentation of identification that is sufficiently illegible as to confuse a clerk violates the rule.

Appellant asserts that the record does not support the Department's finding that, despite the fact that the driver's license presented by the decoy was "beat up" and not in perfect condition, the date of birth and all relevant information were very clear and legible.

It appears from the record that the laminated surface of the license had begun to separate from the base, partially obscuring the photo of the minor. A photocopy (Exhibit

A) of the license made on the night of the transaction confirms its “beat up” condition, but does not support appellant’s contention that it was illegible. The date of birth is legible, and the stripe stating “Age 21 in 1999” is as well.

There is no evidence that the condition of the license was in any way connected to the confusion supposedly experienced by the clerk.

ORDER

The decision of the Department is reversed for its improper application of Rule 141(b)(2).³

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

Board Member Ray T. Blair, Jr., did not participate in the deliberation of this appeal.

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.