

ISSUED JULY 11, 2000

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

CIRCLE K STORES, INC.	)	AB-7395
dba Circle K	)	
14141 Twin Peaks Road	)	File: 20-284700
Poway, CA 92064,	)	Reg: 98044995
Appellant/Licensee,	)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Rodolfo Echeverria
DEPARTMENT OF ALCOHOLIC	)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	May 4, 2000
	)	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 off-sale beer and wine license for 15 days for permitting the sale of an alcoholic beverage to a person under the age of 21 years (the minor), being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, and Business and Professions Code §24200,

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<sup>1</sup>The decision of the Department, dated April 8, 1999, is set forth in the appendix.

subdivisions (a) and (b), arising from a 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 Stephen Warren Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew Ainley.

#### FACTS AND PROCEDURAL HISTORY

Appellant's license was issued on June 23, 1993. Thereafter, the Department instituted an accusation on November 3, 1998, charging the illegal sale of an alcoholic beverage to the minor.

An administrative hearing was held on February 16, 1999, at which time oral and documentary evidence was received. Subsequent to the hearing, the Department issued its decision which determined that the illegal sale had been made.

Appellant thereafter filed a timely notice of appeal. In its appeal, appellant raised the following issues: (1) the decision used an incorrect standard as to the apparent age of the minor; (2) appellant was improperly denied full discovery as provided by law and the hearing on the issue of discovery was not properly recorded as provided by law.

#### DISCUSSION

Appellant contends the decision used an incorrect standard as to the apparent age of the minor.

The decision of the Department states in pertinent part:

“... [The minor] is a youthful looking female, whose appearance is such as to reasonably be considered as being under twenty-one years of age and who would reasonably be asked for identification to verify that she could legally purchase alcoholic beverages. The minor’s appearance at the time of her testimony was substantially the same as her appearance at the time of the sale which occurred on the licensed premises on June 12, 1998. The minor had no makeup that day except for some light foundation and some clear lip gloss. The photograph in Exhibit 3 was taken on June 9, 1998. However, it accurately depicts what the minor was wearing when she was at the premises on June 12, 1998 as well as her general appearance on that date.”

The Rule of the Department (Rule 141(b)(2)) demands that the minor “display the appearance which could generally be expected of a person under 21 years of age, under the actual circumstances presented to the seller of alcoholic beverages at the time of the alleged offense.”

Our concern is, that after having considered the appearance of the minor at the hearing, and after viewing the evidence, the correct legal standard is used in evaluating the minor against the requirements of the Rule.

We determine that the language of the decision sufficiently parallels the language of the rule as to comport with its demand. The additional language regarding the asking for identification is meaningless and of no consequence in this matter.

Appellant cites the case of Acapulco Restaurants, Inc. v. Alcoholic Beverage Control Appeals Board (1998) 67 Cal.App.4th 575 [79 Cal. Rptr.2nd 126], for the

proposition that strict compliance demands the trier-of-fact view the minor and determine that the minor did appear to be under the age of 21 years at the time of the sale. Appellant argues that the Rule requires a comparison by the Administrative Law Judge (ALJ) of the particular minor with what would be generally expected of a person under age 21 years under the actual circumstances presented to the seller. While we agree in principle, we view the Rule calls for nothing more than a subjective evaluation at the hearing by the ALJ of the particular minor and a conclusion that the minor appeared to be under age 21 at the time of the sale.

The ALJ concluded the minor was a youthful looking female whose appearance is such that it would be reasonable (for the ALJ) to consider the minor to be under the age of 21 years. The photo of the minor taken three days before the violation was viewed and presumably influenced the decision of the ALJ. The minor looked under the age of 21 to the ALJ and that is all that is required.

## II

Appellant contends it was improperly denied full discovery as provided by law and the hearing on the issue of discovery was not properly recorded as provided by law.

The Board has addressed these issues in a number of decisions in the very recent past. (See, e.g., The Circle K Corporation (2000) AB-7031a; The Southland Corporation and Mouannes (2000) AB-7077a; Circle K Stores, Inc. (2000) AB-

7091a; Prestige Stations, Inc. (2000) AB-7248; and The Southland Corporation and Pooni (2000) AB-7264.)

The Board has consistently denied the request for broad discovery, and has issued its decisions that discovery for the day of the incident should be sufficient.

ORDER

The decision of the Department is affirmed in all particulars, except that the issue of discovery is reversed and remanded to the Department for further proceedings in accordance with the views expressed herein.<sup>2</sup>

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

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<sup>2</sup>This 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.