

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
NEWARK INTERNATIONAL PLAZA  
U.S. ROUTES 1-9 (Southbound) NEWARK, N. J. 07114

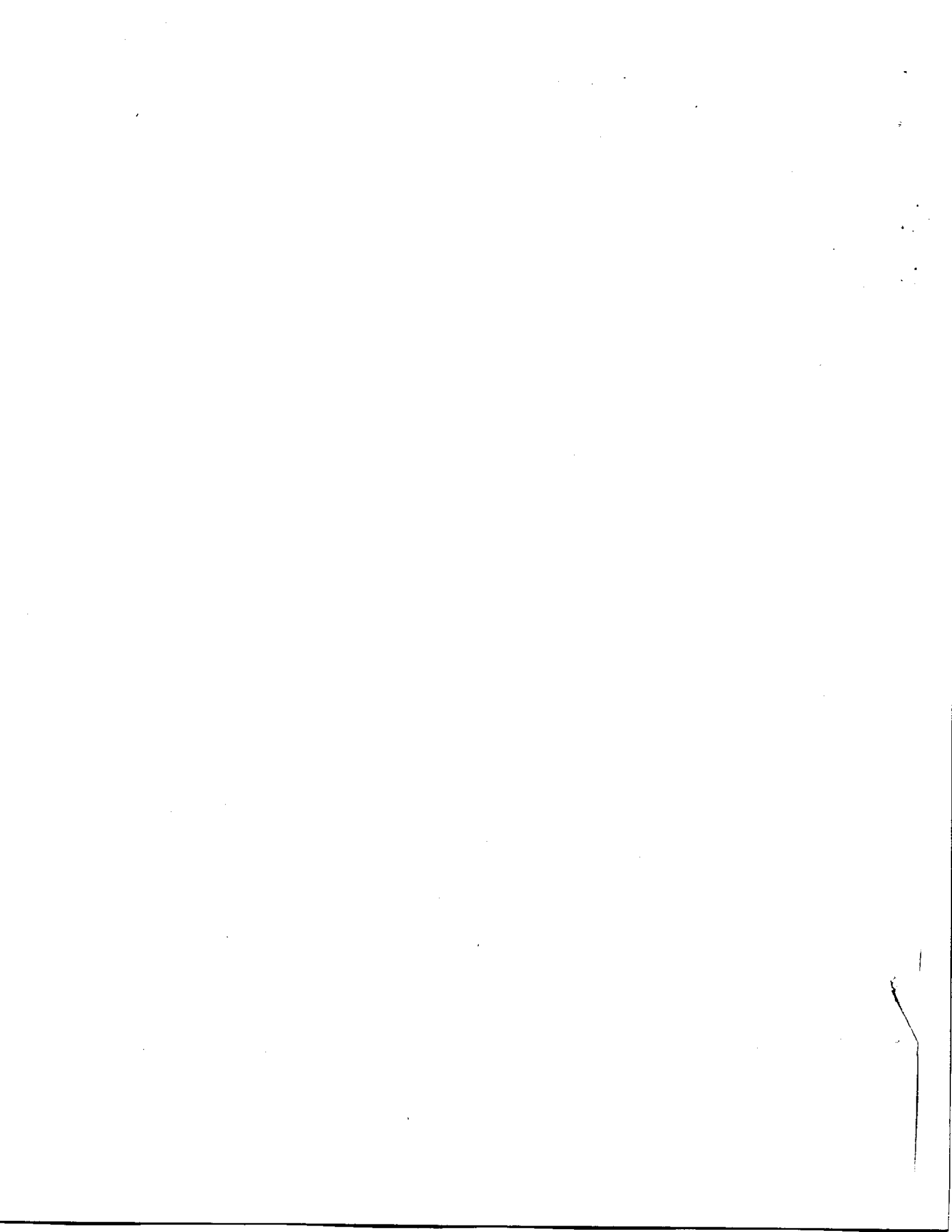
BULLETIN 2427

JULY 27, 1982

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STATE OF NEW JERSEY  
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BULLETIN 2427

JULY 27, 1982

1. OPINION LETTER: PERMISSIBILITY OF AUTOMATIC DISPENSING SYSTEMS -  
PRE-MIXED "SPECIALTY DRINKS".

June 14, 1982

Gentlemen:

In separate letters submitted beginning in January, 1982, inquiries have been made of this Division with respect to the propriety of the pre-mixing of certain alcoholic beverage drinks for ultimate provision to a consumer via an automatic dispensing system. Specifically referenced was the drink known as a "Margarita."

The proposal envisions that the alcoholic beverage components will be pre-mixed with other ingredients in stainless steel containers which are then sealed. The containers will be connected to a system by which the "drink" will be propelled through a tube to a dispensing faucet under pressure. The containers will be located in an area on the licensed premises other than the immediate bar area and will most likely be refrigerated.

I have given careful consideration to the implications of this inquiry and concluded that an interpretation of Division Regulations concerning issues not previously articulated is appropriate. N.J.A.C. 13:2-36.1. Of specific import are the provisions of N.J.A.C. 13:2-23.22 and 23.23.

N.J.A.C. 13:2-23.22(b) provides:

On premises where either an electronic or automatic system is being used, which provides for the dispensing of distilled alcoholic beverages in a barroom, and the label on the container from which the beverage is drawn is not visible to a consumer at the bar, then some alternate device must be used to indicate to the consumer the brand being dispensed.

This Regulation is indicative of two policy considerations. First, the Division recognizes the legitimacy of automatic dispensing systems, in general. Secondly, the consumer should have the opportunity to check that the brand of product he or she orders is the brand being served in the drink tendered. In the instant inquiry there is no intention to serve a specific brand. Rather, the proposal is limited to "Specialty Drinks" in which generic alcoholic beverages may be provided. Therefore, unless the licensee advertises that the "Specialty Drink" contains a specific brand or a consumer orders the use of a specific brand of product in connection with the preparation of the drink, I conclude that N.J.A.C. 13:2-23.22 does not preclude the proposal outlined above.

The companion Regulation, N.J.A.C. 13:2-23.23 provides:

(a) No retail licensee shall possess, have custody of, or allow, permit or suffer in or upon the licensed premises any alcoholic beverage manufactured, distributed, bought, sold, bottled, - rectified, blended, treated, fortified, mixed, processed, warehoused, possessed or transported in violation of the alcoholic beverage law, or any alcoholic beverage in any keg, barrel, can, bottle, flask, or similar container which

(1) Does not bear any label describing its contents; or

(2) Bears a label which does not truly describe its contents; or

(3) Does not bear any indicia of tax payment as required by the laws of the United States.

The use of the conjunctive "or" in this Regulation leads me to conclude that the proposal would be permissible if the steel container in which the drink is mixed contains a "label describing its contents." For purposes of application of this opinion, I consider the minimum requirements to be:

(1) Identification of the type(s) and brand of alcoholic beverage(s), and

(2) Identification of the quantity of each alcoholic beverage(s) in fluid ounces, and

(3) Identification of all other ingredients\* by generic or brand name and the quantity thereof in ounces, and

(4) An approximation of the percentage of alcohol by volume that each drink will contain at the time of service to a consumer.

A copy of this "label of contents" must be conspicuously posted in the licensed premises.

Finally, this Advisory Opinion is limited to "Specialty Drinks", e.g., daiquiris, margaritas, pinacoladas, etc. that are dispensed from a specific single machine or device and is not intended to apply to standard "highballs" or drinks involving the simple combination of alcoholic beverages such as, a martini, manhattan or screwdriver.

\*It is not intended that all pre-packaged ingredients be itemized by components and flavor tracings. For example: "8 ounce package of powdered Mrs. Jones Margarita Mix", will suffice.

JOHN F. VASSALLO, JR.  
DIRECTOR

2. NOTICE REGARDING PRODUCT INFORMATION FILING - BRAND REGISTRATION, and DIVERSION, TRANSSHIPMENT, and REGISTERED DISTRIBUTION REGULATION (N.J.A.C. 13:2-25 & 13:2-33) BEING IN FULL FORCE AND EFFECT.

July 15, 1982

NOTICE TO ALL LICENSEES:

This is to remind you that the provisions of N.J.A.C. 13:2-25.2 and N.J.A.C. 13:2-25.3, provide, in essence, that no plenary wholesale, wine wholesale, limited wholesale or State Beverage Distributor licensee shall sell, deliver, or include in its Current Price List any brand of alcoholic beverages not acquired from the owner of the brand or its registered supplier pursuant to Subchapter 33 or for which that wholesaler or distributor is not a registered wholesaler or distributor pursuant to Subchapter 33.

Exceptions are made under the waiver provisions of N.J.A.C. 13:2-33.1(b)3 and under N.J.A.C. 13:2-25.2(b) which allows accomodation sales or transfers of alcoholic beverages between affiliated wholesalers and allows N.J. registered wholesalers to acquire the product from N.J. registered wholesalers to alleviate a bona-fide temporary shortage of inventory.

These regulations remain in full force and effect and will be strictly enforced. Therefore if any wholesaler/distributor is not an authorized supplier or is not acquiring the product from the authorized distributor, pursuant to N.J.A.C. 13:2-33.1, the C.P.L. filing for August 1982 will be considered a nullity.

To reiterate, all wholesale licensees are hereby notified that no sale of any product can take place unless the wholesaler/distributor is properly designated or receives the product from a duly designated N. J. wholesale licensee. Therefore, if any wholesaler/distributor is not designated as a supplier pursuant to N.J.A.C. 13:2-33.1, it would behoove such wholesaler/distributor to request proper designation in the Brand Registration Statements filed for the current calendar year of 1982.

Retail licensees are also reminded that N.J.A.C. 13:2-33.1 also pertains to them and provides that no purchase shall be made or delivery received from a wholesaler who is not designated, or who has not received the product from a registered N. J. Distributor, in accordance with the regulation. This also will be strictly enforced.

JOHN F. VASSALLO, JR.  
DIRECTOR

3. NOTICE REGARDING PRIVILEGES OF LIMITED WHOLESALE LICENSEES AND HOLDERS OF STATE BEVERAGE DISTRIBUTOR'S LICENSES, PURSUANT TO N.J.S.A. 33:1-11.

Some confusion has arisen in the interpretation of the privileges of Class B licensees as to malt alcoholic beverages. Such privileges are clearly and concisely set forth in N.J.S.A. 33:1-11.

Limited wholesale licensees are entitled to sell and distribute brewed malt alcoholic beverages to retailers and wholesalers. There is no limitation on whether the beverages are warm or chilled.

A State beverage distributor's license entitles the holder to sell only unchilled, brewed malt alcoholic beverages in original containers, in quantities of at least 144 fluid ounces. Such sales may only be made to licensed retailers or to consumers. The statute (N.J.S.A. 33:1-11) does not allow sales to wholesalers or other holders of state beverage distributor's licenses. To the extent that any previous opinions of this Division, including but not necessarily limited to the opinion in Bulletin No. 36, item 6, may be construed as interpreting this statute to the contrary, such opinions are superseded.

If any holder of a State beverage distributor's license is now selling or plans to sell brewed malt alcoholic beverages either chilled (which the Division interprets to mean having temperature lowered by mechanical, electrical or other than natural means) or to other wholesalers or other holders of State beverage distributor's licenses, immediate application should be made for either a plenary wholesale license or a limited wholesale license on forms obtainable from the Division. Fees for such licenses will be prorated for the remaining balance of the current license term. If this is not done, sales of chilled products to other wholesalers or holders of state beverage distributor's licenses will be treated as violations of the statute.

JOHN F. VASSALLO, JR.  
DIRECTOR

4. AMENDED AND SUPPLEMENTAL CONCLUSIONS AND ORDER and SPECIAL RULING - JOSEPH H. REINFELD, INC., et al., vs. SCHIEFFELIN & CO., et al., and CONSOLIDATED CASES (#4604, 4605, 4616, 4615 and 4631).

JOSEPH H. REINFELD, INC.,  
MAJESTIC WINE & SPIRITS, INC.,  
FLAGSTAFF LIQUOR CO., and  
BANNER LIQUOR CO., ALL  
NEW JERSEY CORPORATIONS,  
  
PETITIONERS,  
  
vs.

SCHIEFFELIN & CO., A NEW YORK  
CORPORATION, M-H U.S.A. CORP.,  
D/B/A SCHIEFFELIN & CO., A  
DELAWARE CORPORATION, AND  
MOET-HENNESSY U.S. CORP.,  
A DELAWARE CORPORATION,  
  
RESPONDENTS.  
  
(#4604)

AMENDED AND  
SUPPLEMENTAL  
CONCLUSIONS  
AND ORDER

THE JAYDOR CORPORATION,  
T/A J & J DISTRIBUTING CO.,  
  
PETITIONER,  
  
vs.

AND

SPECIAL  
RULING

SCHIEFFELIN & CO., AND MOET-  
HENNESSY, S.A., AND M-H  
U.S.A. CORP.,  
  
RESPONDENTS,  
  
(#4605)

F & A DISTRIBUTING CO., GILLHAUS  
BEVERAGE CO., INC., MERCHANTS  
WINE & LIQUOR CO.,  
  
PETITIONERS,  
  
vs.

M-H U.S.A. CORP., SCHIEFFELIN & CO.,  
AND FEDWAY ASSOCIATES, INC.,  
  
RESPONDENTS.  
  
(#4616)

REITMAN INDUSTRIES, :

PETITIONER, :

vs. :

SCHIEFFELIN & CO., MOET- :

HENNESSY, S.A., AND :

M-H U.S.A. CORP., :

RESPONDENTS. :

(#4615) :

----- :

AMERICAN B.D. COMPANY, :

PETITIONER, :

vs. :

SCHIEFFELIN & CO., MOET- :

HENNESSY, AND U.S.A. CORP., :

RESPONDENTS. :

(#4631) :

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APPEARANCES:

Sidney Berg, Esq., Attorney for Petitioners - Joseph H. Reinfeld, et als.  
 Joseph M. Jacobs, Esq., Attorney for Petitioner - The Jaydor Corporation.  
 D'Alessandro, Sussman, Jacovino & Mahoney, Esqs., by Brian E. Mahoney, Esq.,  
 Attorneys for Petitioners - F & A Distributing Company, et als.  
 Lowenstein, Sandler, Brochin, Kohl, Fisher & Boylan, P.A., by Theodore V.  
 Wells, Jr., Esq., Attorneys for Petitioner - Reitman Industries.  
 Jeffer, Hopkinson & Vogel, Esqs., by Paul D. Kreisinger, Esq., Attorneys  
 for Petitioner - American B. D. Company.  
 Pitney, Hardin & Kipp, Esqs., by Clyde A. Szuch, Esq. and Elizabeth M.  
 Callaghan, Esq., Attorneys for Respondents, Schieffelin & Co., et als.  
 Sills, Beck, Cummis, Zuckerman, Radin & Tischman, Esqs., by Robert A. Baime, Esq.  
 and Clive S. Cummis, Esq., Attorneys for Respondent- Fedway Associates, Inc.

BY THE DIRECTOR:

Application has been made by Schieffelin & Co. in petition dated July 7, 1982, for modification of the outstanding Order of the Division dated September 4, 1981, subsequently affirmed by the Superior Court-Appellate Division on June 28, 1982 (Reinfeld, et al v. Schieffelin, et al., App. Div. Docket Nos. A-597-81 T 3 and A-591-81 T 3).

At the hearing held on July 9, 1982 in the presence of all parties, arguments were presented with respect to the application. Despite reservations that strict compliance with the previous Order of September 4, 1981 may or may not have occurred, in order to achieve the purposes for which the original petitions in these matters were brought and to permit compliance with N.J.S.A. 33:1-93.6 et seq., and all parties having joined in the basic request of the petition to immediately permit all of the previously authorized wholesalers to commence purchase and sale of the Schieffelin products; therefore,

for good cause shown the Order entered by the Director on September 4, 1981, is hereby amended and supplemented.

Accordingly, it is on this 9th day of July, 1982, ORDERED:

1. That the Order of September 4, 1981 is hereby amended to permit all previously authorized wholesalers of respondents Moet-Hennessy, S.A., Moet-Hennessy U.S. Corp., M-H U.S.A. Corp., Schieffelin & Co. (New York) and Schieffelin & Co. (Delaware), and any other predecessor corporations, subsidiaries or affiliates, to purchase alcoholic beverages from said corporations or parties upon entry of this Order and on the following terms and conditions:

a. The immediate filing of brand registration pursuant to N.J.A.C. 13:2-33.1 et seq., by Schieffelin & Co., which registration must include but is not limited to all previously authorized wholesalers;

b. Compliance by Schieffelin & Co. with the non-discrimination provisions of Division regulations concerning distribution of promotional, merchandising and all other services; facilities or equipment; N.J.A.C. 13:2-24.1 et seq.;

c. Distribution of Schieffelin & Co. products pursuant to purchase orders submitted by its authorized wholesalers after the entry of this Order shall be effected in an equitable manner. Should product supply be insufficient to completely fill orders of all wholesalers submitted within that week, the available product of Schieffelin & Co. shall be apportioned on an equitable basis to all wholesalers who shall have placed such orders in that week. No orders submitted prior to the date of this Order shall be honored;

d. Provision by Schieffelin & Co. to all authorized wholesalers of the current or prevailing F.O.B. prices of Schieffelin & Co. products by July 13, 1982;

e. Sale of Schieffelin & Co. products by all wholesalers to retailers from current inventory is prohibited unless prior to such sale the wholesaler provides to the Director proof, including but not limited to invoices, that such inventory was purchased and received, directly or indirectly, prior to July 23, 1981.

2. IT IS FURTHER ORDERED that authorized wholesalers are hereby permitted to file amended price filings for the month of July, 1982 for Schieffelin & Co. products up to and including July 19, 1982. Further amendment may be permitted upon showing of good cause to the Director.

3. IT IS FURTHER ORDERED that the authorized wholesalers shall be permitted to file price filings for the month of August, 1982, through July 22, 1982, for the products of Schieffelin & Co. only.

Anything herein inconsistent with the terms of the Order of the Director dated September 4, 1981 shall supersede those terms, but all of the other provisions of the Order of September 4, 1981 remain in full force and effect. Nothing herein shall preclude further review and proceedings concerning compliance or non-compliance with the terms of the Order of September 4, 1981.

JOHN F. VASSALLO, JR.  
DIRECTOR

## 5. SYNOPSIS OF RECENT APPELLATE DIVISION CASE: 1030 NEW WILLOW STREET CORP.

1030 NEW WILLOW STREET CORP.,  
t/a NEW WILLOW BAR,

Appellant,

Superior Court of N. J.  
Appellate Division  
Before Judges Matthews and Pressler  
A-2762-80-T2

v.

CITY COUNCIL OF THE CITY OF TRENTON  
and JOSEPH H. LERNER, DIRECTOR OF THE  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL,

Respondents.

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This appeal involved a consolidation of two ABC decisions against appellant. The first appeal challenged a condition requiring a uniformed security guard to patrol appellant's licensed premises, which was imposed by the Director in reversing a City Council denial of appellant's license renewal in 1978. The second appeal challenged the Director's upholding the City Council's action in revoking appellant's license for violations of N.J.A.C. 13:2-23.5(b) (narcotics and illegal activities on the premises). Appellant contended that the revocation of its liquor license by City Council, and ABC's affirmance of that action must be reversed because the action was arbitrary, capricious and an abuse of discretion. The Superior Court of New Jersey, Appellate Division, per curiam affirmed the decision below, and held: (1) the evidence presented unequivocally demonstrated that revocation was based on a reasonable and compelling set of circumstances, and that a reasonable man could reasonably have reached the conclusion that the violations occurred; (2) the licensee's actual knowledge of the illicit activity need not be established under N.J.A.C. 13:2-23.5(b), but it was properly established nonetheless; (3) the Director's findings were properly based on the transcripts of the hearings before Council, which testimony clearly established that numerous persons who were permitted to remain on the licensed premises, had on their possession controlled dangerous substances on March 12 and 15, 1979; and (4) the appeal concerning the conditions imposed on the license was moot because of the revocation.

Dated: April 6, 1982

## 6. SYNOPSIS OF RECENT DIVISION ORDERS:

a. PETITION OF  
Lafayette Roadhouse, Inc.

OAL DKT. NO. ABC 7342-81

Petitioner requested authorization for Lafayette Township to issue a new license for failure to renew, on the basis that the failure to renew was due to circumstances beyond the applicant's control as required by N.J.S.A. 33:1-12.18. The matter was transmitted to the O.A.L. for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. and N.J.S.A. 52:14B-1 et seq. Steven L. LeFelt, A.L.J. found, and the Director affirmed, that the failure to renew the license was not due

to circumstances beyond the licensee's control because the licensee did not make a good faith effort to pay the renewal fees, but rather made a conscious decision to allocate funds to bills and not towards paying the required fees. LeFelt, A.L.J. concluded, and the Director ordered that the petition to permit the issuance of a new license to Lafayette Roadhouse, Inc., upon failure to timely renew under N.J.S.A. 33:1-12.18 be denied.

Dated: April 30, 1982

b. #4600  
OAK STREET TUNNEL CORP.  
t/a THE TUNNEL,

OAL DKT. NO. ABC 3777-81  
MUN. REV. NO. 7839

Appellant,

v.

MAYOR AND BOROUGH COUNCIL OF  
THE BOROUGH OF SAYREVILLE,

Respondent.

CONCLUSIONS AND  
ORDER - SYNOPSIS

Respondent charged appellant with a violation of N.J.A.C. 13:2-23.6(a)(3), for conducting its business as a nuisance to adjoining property owners and residences. After appellant was convicted and sentenced to a 30 days license suspension, appellant appealed to the Director who stayed the suspension pending determination of the appeal, and transmitted the matter to the O.A.L. for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. and N.J.S.A. 52:14B-1 et seq. Hon. Steven L. LeFelt, A.L.J. found, and the Director affirmed, that the Order to Show Cause issued pursuant to N.J.A.C. 13:2-17.12 did not divest respondent of jurisdiction over disciplinary proceedings against the appellant; that the resolution sustaining a disciplinary charge against appellant did not have to set forth findings of fact in order to comply with N.J.A.C. 13:2-2.9, which is not applicable to disciplinary proceedings; that the failure to make findings of fact was not in itself sufficient to require a reversal of the resolution on appeal, where the appellant's efforts fall far short of what would be required for a defense; that the hearing afforded appellant was fair even when it was conducted by the town's assistant borough attorney, and a councilman who testified had a relationship with an objector to the license application; and that the penalty imposed by the respondent was not an abuse of discretion. Based upon this finding, the Director ordered the action of respondent affirmed and the effective dates of suspension to be established by further Order, if and when appellant resumes substantial full-time operations.

Dated: April 23, 1982

c. In the Matter of Disciplinary  
Proceedings against  
W.B.J. CORP., t/a LIGHTHOUSE

S-12,963  
H-7180-746  
OAL DKT. NO. ABC 2021-81

CONCLUSIONS AND  
ORDER - SYNOPSIS

The Director charged petitioner pursuant to N.J.S.A. 33:1-31 with a violation of N.J.A.C. 13:2-23.6, allowing acts of violence upon the licensed premises, the committing of assaults and batteries upon a patron. After the licensee answered and entered a plea of not guilty, the matter was transmitted to the O.A.L. for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. Hon. Carl J. Jahnke, A.L.J. found, and the Director affirmed, that the licensee did not allow, permit or suffer an act of violence on the premises, but that his efforts were limited to controlling the antagonist, and that the injury to him resulted from the licensee's reasonable efforts to restrain him after he struck an employee of the licensee without warning. Jahnke, A.L.J. recommended, and the Director ordered, that the licensee be found "not guilty" and the charge be dismissed.

Dated: April 6, 1982

d. ROYAL LIQUOR DISTRIBUTORS et al  
Appellants,  
v.

OAL DKT. NOS. ABC 2865/2866-79  
AGENCY DKT. NOS. 4343 and 4344

BROWN-FORMAN DISTILLERS et al  
Respondents.

CONCLUSIONS AND  
ORDER - SYNOPSIS

Petitioners, after being notified that their distributorship would terminate, filed two separate discrimination petitions, claiming that respondent's refusal to continue to permit their distribution of Southern Comfort liquor in New Jersey was discriminatory and therefore illegal under N.J.S.A. 33:1-93.6 et seq. Respondents answered both petitions, and these cases were transmitted to the O.A.L. for determination as contested cases pursuant to N.J.S.A. 52:14F-1 et seq. and N.J.S.A. 52:14B-1 et seq.; thereafter, these matters were consolidated. Respondents contended that as the new owners of Southern Comfort by virtue of a stock acquisition, they had the right to establish their own group of "authorized" wholesale distributors in New Jersey and were not required to continue the wholesalers who were previously authorized to distribute Southern Comfort in New Jersey; since petitioners were never authorized by respondent, the new owners of Southern Comfort, N.J.S.A. 33:1-93.6 et seq. did not apply, according to respondents. Respondents further contended that if the statute was construed to require them to continue to supply the Southern Comfort brand liquor, then the statute is unconstitutional. Hon. Steven L. LeFelt, A.L.J., first found that because both parties agreed as to petitioners' ability to pay, the only remaining question was the constitutionality of the statute as applied to respondents by the Director's Special Ruling. Second, LeFelt, A.L.J. found, and the Director affirmed, that he had jurisdiction over the constitutional question

because of the exhaustion principle, which requires that factual and legal determinations rest in the first instance with the administrative official designated by the legislature for that purpose. Third, LeFelt, A.L.J. found, and the Director affirmed, that the Due Process Clause of the U.S. Constitution was not violated by the application of N.J.S.A. 33:1-93.6 et seq. to respondents, because the statute was reasonably related to the state interests of temperance and the prevention of monopolistic domination of the alcoholic beverage market; that the Commerce Clause of the U.S. Constitution was not violated by the application of the statute to respondents under the three-part test of Epstein v. Lordi, 261 F. Supp. 921 (1966); that the Contract Clause of the U.S. Constitution was not violated by the application of the statute to respondents because of the legislative purposes of N.J.S.A. 33:1-93.6 et seq. Finally, LeFelt, A.L.J. concluded, and the Director ordered that N.J.S.A. 33:1-93.6 et seq. as construed by the Special Ruling to apply to respondents was constitutional, and that respondents are to continue to sell Southern Comfort liquor to petitioners on same terms as previously existed.

Dated May 10, 1982

e. #4547 and #4665

JOSE MERCADO, INC., t/a JOE'S PLACE,

Appellant,

v.

BOROUGH COUNCIL OF THE BOROUGH  
OF BUENA,

Respondents.

OAL DKT. NO. ABC 6554-80  
and 0084-82

CONCLUSIONS AND  
ORDER - SYNOPSIS

Petitioners appealed respondent's action in denying petitioner's application for the renewal of Plenary Retail Consumption Liquor License No. 0104-33-008-002 for the 1980-81 license period, contending that Council's action was in error and denying that petitioner had violated the certain and various statutory provisions and administrative provisions as alleged. After the Director granted a Stay of Council's Order of Revocation upon an Order to Show Cause pending the determination of the appeal, the matter was transmitted to the O.A.L. for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. Hon. Lillard E. Law, A.L.J. found, and the Director affirmed, that there was sufficient evidence of nuisance to the community, and violations of regulatory and statutory provisions by the petitioner upon which the Borough Council could have based its determination not to renew petitioner's license in the reasonable exercise of its discretion. Law, A.L.J. further found that because licensee's receivership did not come into existence until after Council had voted not to renew the license, the receiver's rights to take the license for the benefit of creditors was predicated upon the propriety of the action of Council and not upon the financial harm which may occur to the creditors of the licensee, since there would be no license for the receiver to take into custody for the benefit of creditors

if Council acted properly. The Director concurred in this finding and in the order of Law, A.L.J. to affirm Borough Council's Resolution revoking petitioner's Plenary Retail Consumption License.

Dated: May 19, 1982

f. #4652

RALPH PORPORA and JOSEPH LONGO  
t/a THE CELLAR UNLIMITED,

OAI DKT. NO. ABC 8722-81

Appellants,

CONCLUSIONS AND  
ORDER - SYNOPSIS

v.

MAYOR AND COUNCIL OF THE CITY  
OF SOUTH AMBOY,

Respondents.

Appellants appealed action of respondents in imposing a special condition prohibiting go-go dancing in the granting of a person-to-person transfer of appellants' plenary retail consumption license to the Director, who transferred the matter to the O.A.L. for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. Hon. William H. Gindin, A.L.J. held, and the Director affirmed, that a prior ordinance "godfathering" the appellants' license by exempting the license from future restrictions on go-go dancing in the municipality precluded the respondents from attaching a special condition to the license prohibiting go-go dancing in the granting of a person-to-person transfer, where no factual basis establishing specific nuisance conditions directly attributable to the entertainment policy of the licensee existed.

Dated: April 27, 1982

g. #4659

CRANFORD LIQUORS, INC.,

OAL DKT. NO. ABC 8721-81

Appellants,

CONCLUSIONS AND  
ORDER - SYNOPSIS

v.

TOWNSHIP COMMITTEE OF THE  
TOWNSHIP OF CRANFORD,

Respondent.

Appellant appealed respondent's denial of a person-to-person and place-to-place transfer of its plenary distribution license; the matter was transferred to the O.A.L. for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. Hon. William H. Gindin, A.L.J. found, and the Director affirmed, that community sentiment as expressed before the Township Committee was sufficient to justify respondent's denial of appellant's

application for place-to-place and person-to-person transfer, because community sentiment may properly be heard and should be given thoughtful consideration by municipal authorities in consideration of person-to-person and place-to-place transfers. The Director rejected the "beneficial interest" analysis of Gindin, A.L.J., as unnecessary where community sentiment justifies affirmance of the municipal authority's action, and ordered that the action of respondent Township Committee be affirmed.

Dated: June 29, 1982

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7. AS OF JUNE 1, 1982 THE DIVISION'S REGULATORY BUREAU HAS BEEN HEADED BY DEPUTY DIRECTOR ROBERT J. PINARD WHOSE DIRECT PHONE NUMBER IS 648-7058.
8. NEW APPLICATIONS FILED.
  - Loretto Winery Ltd., 553 St. John St., P.O. Box 519, Pleasanton, California.  
Application filed April 26, 1982 for limited wholesale license.
  - Winebow, Inc., t/a Locascio Imports, 721 Carroll Place, Teaneck, New Jersey.  
Application filed April 26, 1982 for wine wholesale license.
  - Randall A. McDonald, 546 North Midland Avenue, Saddle Brook, New Jersey.  
Application filed April 27, 1982 for person-to-person transfer of a state beverage distributor's license from William Smith.
  - Elsa Ewing Fisher and Michael Herbert Fisher, t/a Amwell Valley Vineyard  
RD 1 Old York Road, Box 302, East Amwell Twp., Ringoes, New Jersey.  
Application filed April 28, 1982 for farm winery license.
  - Henry C. Collison & Sons Ltd., 210 Allegheny Avenue, Suite 200,  
Baltimore, Maryland.  
Application filed May 3, 1982 for wine wholesale license.
  - Santini Wines, Inc., 1855 Imperial Avenue, New Hyde Park, New York  
Application filed May 11, 1982 for limited wholesale license.
  - Allwood Distributors, Inc., 83 Dorsa Ave., Livingston, N. J.  
Application filed May 14, 1982 for plenary wholesale license.
  - Vintage Vineyards International, Inc., 1019 Park Ave. Plainfield, N. J.  
Application filed May 19, 1982 for limited wholesale license.
  - Harrison Beverage Co., 850 West Delilah Rd., Pleasantville, N. J.  
Application filed May 25, 1982 for limited wholesale license.
  - F. W. Flinn Import/Export Company, Inc., 149 Route 46, Clifton, N. J.  
Application filed May 28, 1982 for plerson-to-person and place-to-place transfer of a broker's license from Francis W. Flinn, Jr., 26 Glen Rd., Wayne, N. J.

- The Thirst Quencher, Inc., 363A N. Midland Ave., Saddle Brook, N. J.  
Application filed June 3, 1982 for place-to-place transfer of a state beverage distributor's license from 1066 Ringwood Ave., Haskell, N. J.
- J B O Corp., 1911 New York Ave., Union City, N. J.  
Application filed June 7, 1982 for person-to-person and place-to-place transfer of a limited wholesale license from Jaybee Supply Corporation, 230 Tonnele Ave., Jersey City, N. J.
- Peerless Beverage Co., 735 Rahway Ave., Union, N. J.  
Application filed June 7, 1982 for place-to-place transfer of its state beverage distributor's license from 1000 Morris Ave., Union, N. J.
- Marli, Inc., 580 Sylvan Ave., Englewood Cliffs, N. J.  
Application filed June 8, 1982 for plenary wholesale license.
- Baxter Warehouse Corp., 591-629 Rahway Avenue, Union, N. J.  
Application filed June 18, 1982 for plenary wholesale license.
- Baxter Warehouse Corp., 7800 Browning Road, Pennsauken, N. J.  
Application filed June 18, 1982 for additional salesroom license.
- Classic Wine Imports, Inc. (formerly Wide World of Wine, Inc.),  
1-2 Loretto Avenue, Hawthorne, N. J.  
Application filed June 18, 1982 for place-to-place transfer of plenary wholesale license from 95 Cedar Lane, Englewood, N. J.
- Samuel N. Barresi, t/a Barre Wines, Bear Head Road, RR8, Medford, N. J.  
Application filed June 22, 1982 for farm winery license.
- Michael & Rocco Cardillo, t/a Toledo Beverage, 114 Essex Street, Lodi, N. J.  
Application filed June 28, 1982 for transfer of a state beverage distributor's license from Robert Toledo.
- Brookdale Distributors, 216 North Broad Street, Phillipsburg, N. J.  
Application filed June 28, 1982 for state beverage distributor's license.
- Jason Brooke Imports, Inc., 291 (rear) Main Street, Lodi, N. J.  
Application filed July 1, 1982 for transfer of a wine wholesale license from 156 Main Street, Hackensack, N. J.
- The Stroh Brewery Company, One Stroh Drive, Detroit, Michigan  
Application filed July 6, 1982 for limited wholesale license.
- Bacchus Selections of N. J., 527 Madison Avenue, New York, N. Y.  
Application filed July 23, 1982 for place-to-place transfer of its licensed warehouse from Dalebrook Park, HoHoKus, N. J. to 350 Gotham Parkway, Carlstadt, N. J.
- Louis D. Caracciola, Jr., 267A Hayes Mill Road, Atco, N. J.  
Application filed July 26, 1982 for farm winery license.
- Abate Importing Co., 28 N. Kentucky Avenue, Atlantic City, N. J.  
Application filed July 26, 1982 for additional warehouse license for premises 6 Bloomfield Avenue, Bloomfield, N. J. under limited wholesale license.

BUREAU OF AMUSEMENT GAMES CONTROL

9. DETERMINATION OF RETAIL VALUE OF MERCHANDISE PRIZES OR AWARDS AND MAXIMUM CHARGE FOR PRIVILEGE OF PLAYING AMUSEMENT GAMES PURSUANT TO P.L. 1981, c. 291; N.J.S.A. 5:8-107

Pursuant to Chapter 291 of the Laws of 1981 of the State of New Jersey, and the general election approval thereof on November 3, 1981, the Amusement Games Control Commissioner was directed to determine the amount for any one game which shall be charged or accepted by any licensee from any one player or participant as an entry fee or payment for the privilege of participating therein and the amount of the value of the merchandise prize or prizes so to be offered and given in any such game, after public hearing has been held thereon.

On June 1, 1982, and June 4, 1982, public hearings were held at the New Jersey State Museum Auditorium in Trenton, New Jersey. Written comments were received through June 15, 1982. The testimony, proofs and comments received justified an increase in the retail value of prizes from the present \$15.00 and in the player participation fee from the present \$.25. The limits that were established in 1959 do not reflect changing times and demands of amusement games operators and participants. Increases are necessary to retain the viability of this segment of the State's tourist industry and to provide the State's citizens and visitors with entertainment opportunity and merchandise prizes more realistically aligned to current economic and social factors.

Although such justification for an increase in the value of prizes and the player participation fee appears warranted, the Commissioner feels that more time is needed to accomplish a thorough study and assessment of the problems involved, and to enable the Commissioner to set the value and fee at the proper levels. In order to further the legislative and popular intent, however, the Commissioner has determined to set interim limits until the completion of further evaluations at the conclusion of the 1982 tourist season.

Based on the extent of the testimony, proofs and comments received by the Commissioner to date, it appears that an increase in the amount for any one game which shall be charged or accepted by any licensee from any one player or participant as an entry fee or payment for the privilege or participating to a maximum of forty cents (\$.40) is warranted. The nature of the amusement games, however, mandates an even coinage amount. Consequently, in order not to create an inequity as the result of this requirement for an even coinage amount, the determination herein to permit a fifty cent (\$.50) maximum participation or entry fee is based upon the expectation that an excise tax will be imposed on the gross receipts of licensed amusement games. Such a tax will prevent an unwarranted excess participation fee from inuring solely to the benefit of the licensees and operators of the games, and will rather cause the necessary excess to inure to the benefit of the citizens of the State of New Jersey.

Therefore, in accordance with the statutory authority under Chapter 291 of the Laws of 1981 of the State of New Jersey (N.J.S.A. 5:8-107), and after public hearings required thereunder, I, as the Amusement Games Control Commissioner of the State of New Jersey, do hereby determine as follows:

1. The maximum amount for any one game which shall be charged or accepted by any licensee from any one player or participant as an entry fee or payment for the privilege of participating shall be fifty cents (\$.50). No multiple play amounts (e.g., "3 for \$1.00) exceeding fifty cents (\$.50) shall be permitted for any one game.
2. The maximum amount of the value of the merchandise prize or prizes to be offered or given shall not exceed an average retail value of one hundred fifty dollars (\$150.00). Nothing other than merchandise prizes not exceeding the average retail value as aforesaid shall be awarded. In lieu of a merchandise prize for each individual game, an amusement games operator may award tickets or tokens which shall have no cash value, and which may be accumulated for a more valuable merchandise prize rather than being individually redeemed for a smaller merchandise prize. In no event, however, shall the prize or prizes to be awarded for any such accumulation of tickets or tokens exceed the average retail value of one hundred fifty dollars (\$150.00) as aforesaid. Also, operators shall make available merchandise prizes for any level or accumulation of such tickets or tokens up to the maximum value as aforesaid.
3. The determinations herein as to be participation or entry fee and as to the amount of value of a prize or prizes to be awarded is a temporary one for the balance of the 1982 tourist season and is subject to repeal or modification at any time by further determination of the Amusement Games Control Commissioner. The Commissioner reserves the right to hold further hearings during or after the conclusion of the 1982 tourist season in order to gain more information to be utilized in a permanent determination of the participation or entry fee and amount of value of the merchandise prize or prizes to be awarded.
4. The amusement games licensees are hereby advised that the amounts and limits set forth herein shall be strictly enforced during the balance of the 1982 year.
5. The Commissioner will continue to receive written comments either from licensees or the public regarding the amount or limit of the participation or entry fee and the amount of value of a prize or

prizes to be awarded. Such comments may be forwarded to the Amusement Games Control Commissioner at the Division of Alcoholic Beverage Control, Newark International Plaza, Routes 1 and 9 (Southbound), Newark, New Jersey 07114.

6. The determinations herein shall take effect immediately.

In witness whereof, I have set my hand and seal at Newark, New Jersey, this 2nd day of July, 1982.

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JOHN F. VASSALLO, JR.  
DIRECTOR

