

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 2391

March 5, 1981

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STATE OF NEW JERSEY  
Department of Law and Public Safety  
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March 5, 1981

1. APPELLATE DECISIONS - ANTHONY STOLFO ENTERPRISES, INC. v. ATLANTIC CITY.

#4347

Anthony Stolfo Enterprises, Inc.,  
t/a Rum Point Inn,

Appellant,

v.

Board of Commissioners of the City  
of Atlantic City,

Respondent.

CONCLUSIONS

AND

ORDER

-----  
Sherman L. Kendis, Esq., Attorney for Appellant,  
Emanuel L. Levin, Esq., Attorney for Respondent.

Initial Decision Below

Hon. R. Jackson Dwyer, Administrative Law Judge

Dated: February 5, 1980 - Received: February 14, 1980

BY THE DIRECTOR:

No Exceptions to the Initial Decision were filed  
by the parties hereto pursuant to N.J.A.C. 13:2-17.14.

The appellant has apparently abandoned this appeal  
because of the failure to contest the Director's preliminary  
findings at the hearing in the Office of Administrative Law.  
I, therefore, concur with the findings of the Administrative  
Law Judge and adopt them as my conclusions herein.

Thus, I conclude that the denial by the Board of  
Commissioners of the City of Atlantic City of the person-to-  
person application to transfer license No. 0102-33-183-001  
held by Performance Resorts, Inc., t/a Rum Point Inn to  
Anthony Stolfo Enterprises, Inc. for premises 1800 Brigantine  
Boulevard, Atlantic City be and the same is hereby affirmed,

Accordingly, it is, on this 26th day of March, 1980,

ORDERED that the action of the Board of Commissioners of the City of Atlantic City be and the same is hereby affirmed and the appeal be and is hereby dismissed.

JOSEPH H. LERNER  
DIRECTOR

APPENDIX

Initial Decision Below

IN THE MATTER OF THE DENIAL :  
OF THE TRANSFER OF LICENSE :  
NO. 0102-33-183-001 HELD BY :  
PERFORMANCE RESORTS, INC., :  
t/a RUM POINT INN to ANTHONY :  
STOLFO ENTERPRISES, INC. :  
t/a RUM POINT INN, 1800 :  
BRIGANTINE BOULEVARD, :  
ATLANTIC CITY, NEW JERSEY :  
BY THE BOARD OF COMMISSIONERS :  
OF THE CITY OF ATLANTIC CITY :

INITIAL DECISION

OAL DKT. NO. ABC 5171-79

APPEARANCES:

Charles Mysak, Deputy Attorney General, appeared  
on behalf of the Division of Alcoholic Beverage  
Control

WITNESSES:

Carl Gravel, Inspector, New Jersey State Police

BEFORE THE HONORABLE R. JACKSON DWYER, A.L.J.:

This is an appeal by Anthony Stolfo Enterprises, Inc.  
t/a Rum Point Inn, 1800 Brigantine Boulevard, Atlantic  
City, New Jersey from a denial of its application for a  
person-to-person transfer of its plenary retail consumption  
liquor license No. 0102-33-085-001 by the board of Commis-  
sioners of the City of Atlantic City based upon preliminary  
finding by the Director, Division of Alcoholic Beverage  
Control, after an investigative report was submitted to him  
pursuant to the Emergency Rule regarding retail licenses  
within the City of Atlantic City N.J.A.C. 13:2-3.10.

An appeal was filed on June 13, 1979. The matter was  
transmitted to the Office of Administrative Law, as a con-  
tested case, pursuant to N.J.S.A. 52:14f-1 et seq. A hearing  
was scheduled on January 31, 1980 at City Hall Commissioners  
Chambers, Tennessee Avenue and Bachrach Boulevard, Atlantic  
City, New Jersey.

Deputy Attorney General Charles Mysak and an investigator were ready to proceed with the hearing. They waited one hour prior to being dismissed. The appellant and his counsel failed to appear.

I FIND:

1. The appellant has abandoned his appeal and does not wish to contest the Director's preliminary findings based upon an investigative report submitted to him.
2. The Director's preliminary findings are now considered final.

I CONCLUDE that the approval of the application of the transfer of License 0102-33-183-00 held by Performance Resorts, Inc. t/a Rum Point Inn to Anthony Stolfo Enterprises, Inc., 1800 Brigantine Boulevard, Atlantic City, New Jersey would be contrary to the public interest.

For the reasons set forth herein, the matter before me is, therefore, dismissed.

This recommended decision may be affirmed, modified or rejected by the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, who by law is empowered to make a final decision in this matter. However, if the Director of the Division of Alcoholic Beverage Control does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-1.

I HEREBY FILE with the Director of the Division of Alcoholic Beverage Control, my Initial decision in this matter and the record in these proceedings.

## 2. STATE LICENSES - DISTRIBUTION LICENSE - TRANSFER APPLICATION APPROVED.

In the Matter of Objection to the  
 Person-to-Person and Place-to-Place  
 Transfer of State Beverage Distrib-  
 utor's License No. 3400-19-201-001  
 from:

John H. Bensel  
 t/a Thrifty Beer &  
 Soda Mart  
 666 Mantua Avenue  
 Woodbury, N.J.

CONCLUSIONS

AND

ORDER

TO:

G. Wanda Erickson &  
 Ivy L. Bird  
 Berlin Farmers Market  
 Berlin, N.J.

-----  
 Granite & Granite, Esqs., by Alvin E. Granite, Esq., Attorneys  
 for Applicant.  
 Richman, Berry, Ferren & Tyler, Esqs., by Lawrence Vecchio, Esq.,  
 Attorneys for Objector.

Initial Decision Below

Hon. J. Roger Persichilli, Administrative Law Judge

Dated: February 13, 1980 - Received: February 13, 1980

BY THE DIRECTOR:

No written Exceptions to the Initial Decision were  
 filed herein pursuant to N.J.A.C. 13:2-17.6.

I have carefully considered the objections to the  
 proposed transfer and agree with the Administrative Law  
 Judge that they were not supported by any substantial  
 factual proofs.

As was indicated in the Initial Decision below, the  
 applicants seek to have a person-to-person and place-to-  
 place transfer of a State Beverage Distributor's license.  
 The privilege contained in such license are set forth in  
 N.J.S.A. 33:1-11(2c). In essence, this license permits  
 its holder to maintain licensed premises and warehouse

from which it may sell and deliver only unchilled beer and ale in original containers and in quantities of not less than 144 fluid ounces. In other words, not less than a half case containing 12 ounce cans or bottles. A State Beverage Distributor licensee may sell and deliver this unchilled beer and ale both to licensed retailers and consumers.

In the application sub judica it is proposed that the licensee will sell only on 4 days of the week, that is, on Thursday, Friday and Sunday and during the hours at which the Farmers Market would normally be open. The very nature of the operation which would involve only the sale of unchilled beer in the quantities as aforesaid would make it highly unlikely, as the objectors apprehend, that it would attract the wrong type of people or contribute to the traffic situation in that area.

It should be pointed out that the applicant is requesting the license merely for a small segment of the Farmers Market measuring 16 ft. by 36 ft., as indicated in the sketch accompanying the transfer application. The ABC Enforcement Bureau of the State Police has investigated the proposed transfer and the proposed licensed premises and has recommended to me that the transfer be granted.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Initial Decision, I concur in the findings and recommendation of the Administrative Law Judge and adopt them as my conclusions herein.

Accordingly, it is, on this 27th day of March, 1980,

ORDERED that the application for person-to-person and place-to-place transfer of the State Beverage Distributor license from John H. Bensel to G. Wanda Erickson and Ivy L. Bird, for premises located at the Berlin Farmers Market, Berlin, New Jersey be and the same is hereby approved, in accordance with the application filed therefor.

JOSEPH H. LERNER  
DIRECTOR

APPENDIX

Initial Decision Below

IN THE MATTER OF THE  
OBJECTIONS TO THE PERSON-TO-  
PERSON TRANSFER OF A STATE  
BEVERAGE LICENSE TO G. WANDA  
ERICKSON AND IVY L. BIRD, t/a  
FAMILY BEER AND SODA  
DISTRIBUTORS, BERLIN,  
NEW JERSEY

INITIAL DECISION

DKT. NO. ABC 5169-79

APPEARANCES:

Alvin E. Granite, Esq., of Granite & Granite, on  
behalf of the Applicant, G. Wanda Erickson  
and Ivy L. Bird

Benjamin E. Goldstein, Esq., on behalf of the Landlord,  
Stanley Giberson

Lawrence Vecchio, Esq., of Richman, Berry, Ferren &  
Tyler, on behalf of the Objectors,  
Allan Steadman (t/a Berlin Liquor Store, Inc.)  
and the South Jersey Package Stores Association

Irvin Shoemaker, Esq., Solicitor for the Borough of  
Berlin

BEFORE THE HONORABLE J. ROGER PERSICHILLI, A.L.J.

WITNESSES:

Stanley Giberson, Landlord

G. Wanda Erickson, Applicant

John Bensel, Owner of S.B.D., License No. 39

Robert Paternostero, Resident, Berlin Borough  
Councilman and Member of the Public Safety Committee

EXHIBITS

- C-1 A photocopy of an application consisting of 26 pages
- C-2 A letter dated September 27, 1979 addressed to Mr. Lerner from the Borough of Berlin
- C-3 A photocopy of a letter dated October 19, 1979 from the Law Firm of Richman, Berry, Ferren & Tyler
- C-4 Photocopies of letters dated September 21 and 24 from Director Lerner

The application sub judice is for a person-to-person and place-to-place transfer of a State Beverage Distributors License from John Bensel, 66 Mantua Avenue, Woodbury, New Jersey to G. Wanda Erickson and Ivy L. Bird for premises located at the Berlin Farmers Market, Berlin, New Jersey.

By letter dated September 27, 1979, the Borough Clerk of the Borough of Berlin filed objections to the proposed transfer. (See Exhibit C-2 in evidence) The objections are as follows:

"1. There are five licensed premises for consumption and one liquor store licensee in the Borough of Berlin. These licensees pay fees to the Borough of Berlin and it is felt that we should protect their interest and not have a distributor in the Borough who will be competing for the same customers. (The population of the Borough of Berlin in the 1970 official census was 4,997.)

2. The location involved is an attraction to a certain element of individuals, specifically youthful persons and the item involved is conducive to sale to this type of individual and will be prone to extreme problems.

3. This is a highly congested traffic area. The proposed premises is within the Berlin Farmers Market. On the weekends, when the Farmers Market is open, there are many traffic problems due to the masses of people who frequent the market. In addition to the 100 stores inside the market, hundreds of merchants set up fleamarket booths outside.

4. The cost of policing the entire premises would be prohibitive."

By letter dated October 19, 1979, a letter of objection was filed on behalf of Allan Steadman, trading as Berlin Liquor Store and the South Jersey Package Stores Association. Said letter voiced the identical objections contained in the Borough's letter of September 27, 1979. (See Exhibit C-3 in evidence)



The matter was transmitted to the Office of Administrative Law for determination, as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A hearing was conducted on December 18, 1979 at the Collingswood Borough Municipal Court, Collingswood, New Jersey. All parties were given the opportunity to be heard and to cross-examine witnesses. The hearing record was closed upon receipt of Benjamin Goldstein's post-hearing submission on December 31, 1979.

The Borough and the Objectors joined in their objections and assert the same positions. Mr. Robert Paternostero, a Berlin Borough Councilman and member of the Public Safety Committee, amplified the basic objections contained within C-2 and C-3 in evidence.

Mr. Stanley Giberson, owner of the Berlin Farmers Market, testified on behalf of the applicant. Mr. Giberson addressed each of the objections advanced by the Objectors. The first objection addresses competition and "protection." Mr. Giberson stated that the objection is to an additional license for Berlin and not the Berlin Farmers Market per se. Berlin Liquor Store asserts hardship but Mr. Giberson replies that "Competition is competition." He further added..."I don't see where our interests aren't as valid as the objectors..."

Addressing the second objection, Mr. Giberson observed that virtually all of the residents of Berlin and the surrounding area, utilized the Berlin Farmers Market. He therefore did not comprehend what the Borough or the Objectors meant when they stated that the "location involved is an attraction to a certain element of individuals." The Berlin Farmers Market has been a father and son operation for approximately forty years. It is an old fashioned mall, a forerunner of the present day mall. There are approximately one hundred stores with aisles down the center and stores on either side. In addition to these stores, hundreds of merchants set up flea market booths outside. The popularity of this mall or market focuses upon the third objection, i.e., congestion. Mr. Giberson states that the applicant will replace another vendor. The same amount of traffic and the same volume will be present and therefore the traffic flow or pattern should not be affected. Mr. Giberson testified that the Berlin Fire Marshall was present during the busiest day of the year and told him that "he didn't find any problems with the traffic."

The last objection states that the cost of policing the entire premises would be prohibitive. Mr. Giberson testified that "the policing at the Farmers Market now is nominal, if non-existent." He further stated that he attempted to have the Borough approve a part-time policeman from another town but was turned down and told that the policing problem of the Farmers Market and its security was his problem and not the Borough's. Now its suddenly a Borough problem. At present Mr. Giberson provides security for the Berlin Farmers Market.

Mrs. G. Wanda Erickson testified that she will operate the proposed business with her daughter, Ivy L. Bird. Mrs. Erickson testified that she has had experience in the liquor business and during her years of ownership and management she has never experienced any major problems or violence. The hours of operation for the proposed business will be the same as the Berlin Markets' hours. They are only open during Thursday, Friday, Saturday and Sunday of each week. Thursday and Friday the Market is open from 11:00 a.m. to 10:00 p.m. in the evening. Saturday it is open from 10:00 a.m. to 10:00 p.m. and Sunday, from 11:00 a.m. to 6 p.m.

Mr. John Bensel identified himself as the person who is the current owner of S.B.D. License No. 39, the license which is the subject of the proposed transfers.

Based upon the foregoing, I find that the objections have little evidentiary weight. They are in the nature of pleadings and are not supported by any factual proofs. Mr. Paternostero's testimony added little to the Objectors' position. The first objection states that there are five licensed premises for consumption and one liquor store license in the Borough of Berlin. The license application sub judice is for a State Beverage Distributors License pursuant to N.J.S.A. 33:1-11.2 (c). The objections clearly seek to "protect" vested interests rather than regulate the product sold. Furthermore, the Objectors have not established that "the location involved is an attraction to a certain element of individuals," nor have they established that "the item involved is conducive to sale to this type of individual and will be prone to extreme problems."

In sum, the Objectors have offered virtually no support for their expressed fears. On the contrary, the applicant is an experienced person, one involved in the liquor business and without a blemished record. The Berlin Farmers Market is a focal point of commercial retail activity with ample off-street parking. It obviously services a population and geographic area which is greater than the Borough of Berlin. The restricted days and hours of operation, as well as the very nature and location of operation, does not suggest that the applicant is in direct competition with area licensees. The addition of this license in the Berlin Farmers Market will not add to traffic congestion to any measurable degree. Mr. Giberson's testimony, in all respects, is supportive of the application. It logically dismantles the vacuous objections in this matter.

In the absence of proofs to support the objections, and in consideration of the application, the testimony adduced at the hearing and the documents received in evidence, as well as the demeanor of the witnesses, I FIND and CONCLUDE that the applications sub judice should be approved.

Accordingly, it is ORDERED that S.B.D. License No. 39 be transferred to G. Wanda Erickson and Ivy L. Bird, t/a Family Beer and Soda Distributors, for premises to be located within the Berlin Farmers Market, more particularly designated as 41 Clementon Road, Berlin, New Jersey.

This recommended decision may be affirmed, modified or rejected by the head of agency, Joseph H. Lerner, Director of the Division of Alcoholic Beverage Control, who by law is empowered to make a final decision in this matter. However, if the head of the agency does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I HEREBY FILE with Joseph H. Lerner, Director of the Division of Alcoholic Beverage Control, my Initial Decision in this matter and the record in these proceedings.

3. DISCIPLINARY PROCEEDINGS - SALES TO NON-BONA FIDE MEMBERS AND GUESTS - ALLOWED PERMITTED AND SUFFERED A RAFFLE UPON LICENSED PREMISES - LICENSE SUSPENDED 45 DAYS - DIRECTOR PERMITTED A FINE IN LIEU OF SUSPENSION.

In the Matter of Disciplinary  
Proceedings against

Browns Mills Memorial Post  
V.F.W. 6805  
N/S of Junction Road  
Pemberton, N.J.

S-12,283

X-43,351-I

CONCLUSIONS

AND

Holder of Plenary Retail Consumption  
License No. 0329-31-020-001 issued  
by the Borough Council of the Borough  
of Pemberton.

ORDER

-----  
Joseph M. Pinto, Esq., Attorney for Licensee.  
Charles J. Mysak, Esq., Deputy Attorney General for the Division

Initial Decision Below

Hon. Thomas E. Clancy, Administrative Law Judge

Dated: January 29, 1980 - Received: January 29, 1980

BY THE DIRECTOR:

The licensee herein was charged as follows:

1. On October 15, 1978, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to persons not bona fide members of your club or bona fide guest of any such members; in violation of N.J.A.C. 13:2-8.8.

2. In or about October, 1978, you directly or indirectly, offered or furnished gifts and prizes, or similar inducements with the retail sale of alcoholic beverages, and you engaged in or allowed, permitted or suffered in or upon your licensed premises or in connection with the conduct of the licensed premises, a practice unduly designed to increase the consumption of alcoholic beverages viz., a raffle, in violation of N.J.A.C. 13:2-23.16.

At the scheduled hearing before the Administrative Law Judge, prior to the actual taking of testimony, a stipulation was entered into on the record by the parties hereto, as set forth in the Initial Decision, whereby the licensee withdrew its plea of not guilty and entered a plea of guilty to the aforesaid charges with the understanding that a recommendation would be made to the Director for the imposition of a \$2,500.00 fine, in compromise, in lieu of a 45 days suspension of the subject license.

The Deputy Attorney General had consulted me prior to entering into the said stipulation and he was authorized to make such representation. Therefore, I shall accept the sum of a \$2,500.00 fine in lieu of a license suspension of 45 days.

Accordingly, it is, on this 25th day of March, 1980,

ORDERED that the payment of a \$2,500.00 by the licensee herein be and the same is hereby accepted, in compromise, in lieu of a suspension of license of the aforementioned charges for 45 days.

JOSEPH H. LERNER  
DIRECTOR

APPENDIX  
Initial Decision Below

In the Matter of: }

New Jersey Division of Alco-)  
holic Beverage Control )

INITIAL DECISION

O.A.L. DKT. # A.B.C. 5713-79

v. )

Agency Dkt. # S-12283

Browns Mills Memorial Post )  
V.F.W. 6805 )

APPEARANCES:

Charles J. Mysak, Esq., Deputy Attorney General,  
on behalf of the New Jersey Division of Alcoholic  
Beverage Control

Joseph M. Pinto, Esq., on behalf of Respondent,  
Browns Mills Memorial Post-V.F.W. 6805

BEFORE THE HONORABLE THOMAS E. CLANCY, A.L.J.:

The New Jersey Division of Alcoholic Beverage Control  
charged the Respondent with alleged violations of New Jersey  
Administrative Code provisions 13:2-8.8 and 13:2-23.16.

At an administrative judicial proceeding held on  
January 23, 1980, the parties stipulated that:

- (a) No factual dispute exists with respect to  
the charges made against the Respondent;
- (b) Respondent should be allowed to enter  
pleas of guilty to the charges made - in  
exchange for the imposition of a \$2500 fine  
in lieu of a forty-five (45) day sus-  
pension of Respondent's license; and,
- (c) In the event the Director of the Division  
of Alcoholic Beverage Control makes a final  
decision which does not affirm this Initial  
Decision, the Respondent shall be allowed to  
withdraw its guilty pleas and to proceed to  
a hearing in the matter.

Pursuant to the stipulations reached, Respondent  
(through its attorney, its Post Commander, Frederic Reimer, and  
its Trustee, James Hardin) entered pleas of guilty to the charges  
and Deputy Attorney General Mysak represented that he had authori-  
zation to "bind" the Division of Alcoholic Beverage Control to the  
imposition of a \$2500 fine in lieu of a forty-five (45) day  
suspension of Respondent's license. Respondent (through its attor-  
ney, its Post Commander and its Trustee) then agreed to accept the  
imposition of the proposed fine.

Accordingly, on the basis of the foregoing, I DECIDE AND ORDER that Respondent be fined the sum of \$2500 for its violations of N.J.A.C. 13:2-8.8 and N.J.A.C. 13:2-23.16.

This recommended decision may be affirmed, modified or rejected by the head of agency, the Director of the Division of Alcoholic Beverage Control, who by law is empowered to make a final decision in this matter. However, if the head of the agency does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I HEREBY FILE with the Director of the Division of Alcoholic Beverage Control, Joseph W. Lerner, my Initial Decision in this matter and the record in these proceedings.

4. PETITION - BRAND REGISTRATION OF CERTAIN "WESTERN" MALT BEVERAGES.

In the Matter of the	)	
Brand Registration of	)	ORDER
Certain "Western" Malt Beverages	)	GRANTING
on Petition to the Director	)	PETITIONS
-----	)	

TO: Krueger Distributing Co.  
 Lake Beer & Soda Distributors, Inc.  
 Trentacoste Bros., Inc.  
 Adolph Coors Company  
 Buffalo Brewing Co.  
 Olympia Brewing Company  
 Rainier Brewing Company  
 The Stroh Brewing Company

BY THE DIRECTOR:

Krueger Distributing Co., 77 North Morris Street, Dover, New Jersey (hereinafter "Krueger"), Lake Beer & Soda Distributors, Inc., 314 Route 46, Rockaway, New Jersey, (hereinafter "Lake") and Trentacoste Bros., Inc., 100 Maine Avenue, Hainesport, New Jersey (hereinafter "Trentacoste") have individually petitioned the Director to "register" certain brands of beer pursuant to N.J.A.C. 13:2-33.1(b)(3). The brands sought to be registered are believed by the Division to be "owned" by the Adolph Coors Brewing Company, Golden, Colorado (hereinafter "Coors"), The Buffalo Brewing Company, Sacramento, California (hereinafter "Buffalo"), the Olympia Brewing Company, Olympia, Washington (hereinafter "Olympia"), the Rainier Brewing Company, Seattle, Washington (hereinafter "Rainier"), and The Stroh Brewing Company, Detroit, Michigan (hereinafter "Stroh"). The products are collectively referred to in the trade of this State as "western beers" for obvious geographical reasons.

The following brands are sought to be registered in various sizes by the petitioners designated thereafter:

"COORS" PRODUCTS

Coors Beer - "Krueger", "Lake", "Trentacoste"  
 Coors Light Beer- "Krueger", "Lake", "Trentacoste"

"BUFFALO" PRODUCTS

Buffalo Beer - "Lake"

"OLYMPIA" PRODUCTS

Olympia Beer - "Krueger", "Lake", "Trentacoste"  
 Olympia Golden Light Beer "Krueger", "Lake", "Trentacoste"  
 Hamm's Beer - "Lake", "Trentacoste"  
 Hamm's Draft Beer - "Lake", "Trentacoste"

"RAINIER" PRODUCTS

Rainier Beer - "Lake"  
 Rainier Ale - "Lake"

"STROH'S PRODUCTS

Stroh's Beer - "Krueger", "Lake"  
 Stroh's Light Beer - "Krueger", "Lake"

"Krueger", "Lake" and "Trentacoste" are licensed to sell malt alcoholic beverages to retailers in this State. "Krueger" and "Lake" are State Beverage Distributor licensees and may also sell to consumers. "Trentacoste" is a Limited Wholesale licensee and may also sell to other wholesalers. N.J.S.A. 33: 1-11. All three (3) petitioners assert that they have been distributing the products they now wish to register "for years" within this State. A review of "Minimum Consumer Resale Price Books" formerly published by the Division, indicates that the products have, in fact, been publically available to retailers and consumers in this State for a period of years.

On April 4, 1979 the Division adopted a number of new regulations designed to repeal certain regulatory proscriptions and improve the ability of the Division to enforce the laws of this State relating to intoxicating beverages. N.J.S.A. 33: 1-1 et seq., See, 11 N.J.R. 257(c). The new regulations were the subject of protracted litigation and did not become effective until March 11, 1980. See Heir v. Degnan 82 N.J. 109

(1980), Division Bulletin 2342, Item 1 (March 11, 1980). See also, California Retail Liquor Dealers Ass'n. v. Midcal Aluminum, Inc., \_\_\_\_\_ US \_\_\_\_\_, 100 S. Ct. \_\_\_\_\_, 63 L. Ed. 2d 233 (1980). In the interim, further amendments to the new regulations were proposed (11 N.J.R. 285(b)) and 11 N.J.R. 384 (c)) and adopted on February 11, 1980. See, 12 N.J.R. 156(a)

Subchapter 33 of the new regulations (N.J.A.C. 13:2-33.1) essentially provides that no alcoholic beverage product may be sold in this State unless it has first been the subject of "brand registration" by the owner or its authorized agent or, as is the issue in the matter herein, by:

"Any wholesaler with the approval of the Director in the event that the owner of such brand does not file or is unable to file a schedule or designate an agent for such purposes . . ." (Emphasis added)  
N.J.A.C. 13:2-33.1(b)(3)

Subchapter 25 of the new regulations provides, in essence, that no wholesale class of licensee may sell a product unless (1) it has been designated as an authorized distributor by the brand owner in its "Brand Registration" of that product pursuant to Subchapter 33 and (2) the product has been purchased from the brand owner or its registered distributors. See, N.J.A.C. 13:2-25.1 et seq. The exception which is germane here relates back to the waiver provisions of N.J.A.C. 13:2-33.1(b)(3). Thus, when read in conjunction, Subchapters 25 and 33 of Division Regulations become, in effect, a "primary source" regulatory initiative. The major relevant exception being that if a brand owner declines to register its products, any other New Jersey<sup>1</sup> wholesaler may petition the Director for permission to do so.

To facilitate the development of a record in this matter, on March 21, 1980 the Division notified "Coors", "Olympia", "Rainier" and "Stroh" in writing of a pending petition pursuant to N.J.A.C. 13:2-33.1(b)(3) and asked the subsequent petitioners "Krueger" and "Trentacoste", when it was later learned that they

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<sup>1</sup>"Brand Registration" initially was to be accomplished by May 1, 1980. (Bulletin 2342, Item 1). The date was subsequently extended to June 1, 1980



were also disposed to register products to do the same.<sup>2</sup>

All four brewers responded that they had no plans to register their products in New Jersey at the present time. "Rainier" indicated that it would not oppose the registration petition of "Lake". "Stroh" made no specific comment in favor or against the proposed registration by a New Jersey licensee. Both "Coors" and "Olympia" vigorously opposed the registration by any wholesaler of their products. Their objections in general were as follows:

1. A brand owner has the right to determine where it will market its products and who will be authorized to distribute the same;

2. Distribution outside an authorized network creates a high-risk of loss of "quality control" over the product, attendant possible detriment to the consumer and a corresponding damage to the good will of the brand owner from the consumer perspective;

3. Unauthorized sale of the brand owners products violates the Federal and State "trade-mark" laws, and;

4. The approval by the Director of the petitions to register the products herein would abet others in violating contractual agreements brand owners have entered into with their customers. Such agreements contain restrictions with respect to the transfer and resale of the products, particularly into markets the brand owner does not wish to serve.

The regulations of the Division of Alcoholic Beverage Control are an extension of the exercise of the full plenary powers of the State of New Jersey to regulate the sale and distribution of alcoholic beverages within its boundaries pursuant to the Twenty-first Amendment. In that regard, Sub-chapters 25 and 33 of the regulations are designed to assist the State in identifying the distribution network of alcoholic beverages to insure tax integrity (See, N.J.S.A. 33:1-31, 33 and 39) and to provide an investigative and enforcement vehicle to

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<sup>2</sup> On March 21, 1980 the Division also attempted to communicate in writing with "Buffalo" at the only available address. The letter was returned by the U.S. Postal Service as "Not Deliverable as Addressed, Unable to Forward." The fact that the Division is having difficulty locating "Buffalo" supports the proposition that "Brand Registration" by owners is a valid regulatory consideration.

secure documentation concerning alleged predatory pricing or discriminatory sales practices. (See, N.J.A.C. 13:2-24.1, 24.6, 24.8, 25.1, et seq, 33.1, et seq, 39.1 and 39.2). The State simply wishes to know what products are being distributed within the State and by whom. The information is of great significance under circumstances such as are now present here, where a State has recently repealed a system of industry price maintenance and permitted a more pro-competitive market. See, Heir v. Degnan, supra.

The Division is aware that distributorship agreements already exist among out-of-state suppliers and distributors licensed to do business within this State. To the extent that such authorization agreements serve the State's purposes for brand registration, the relationships are acknowledged as a chain of product distribution in brand registration. Where, however, products have, and presumably will continue to, come into this State through other distribution channels, the Division's major prerequisite is the identification of the responsible parties for the above stated reasons.

The Division has not denied any brand owner the opportunity to choose its New Jersey distributors. Some simply have declined to do so. The Division is not in the position to allocate State resources to enforce independent business decisions not to affirmatively market products in this State.

The suggested issue of "quality control" is best addressed by the producer in its design and manufacturing process or through distributor agreements. Obviously, concerns relating to products which may come into New Jersey would be mitigated through the designation of distributors responsible for quality control within this State.

I fail to see how the petitioners' purchase in interstate commerce and resale in intrastate commerce of finished products for which the Division requires registration should cause "trade mark" concerns for this Division. Infringement of a trade-mark contemplates the unauthorized use or colorable imitation of a mark on substituted goods for which the mark has been appropriated. Anyone who deals in another's goods may use or sell them with the latter's trade-mark on them, since there is no deception. The mark truthfully indicates origin or ownership. 87 C.J.S.: Trade-Marks, etc. § 72. There is no suggestion that the petitioners herein have substituted other products under any brewers' trade-marks. Nor does the fact that the petitioners seek to register the products they distribute in New Jersey in accordance with Division regulations bear any relationship to the legal issues of ownership or licensing of marks or other concerns relating to the property rights therein, e. g., abandonment. Even if that were the case, this Division is not the appropriate forum and does not possess primary jurisdiction over private conflicts relating to trade-marks.

Finally, to the extent that they do not hinder the competition contemplated in the alcoholic beverage industry of this State, I reject the notion that this Division must police

whatever reasonable vertical restraints brewers have incorporated in out-of-state distributor agreements. The Division neither sanctions nor adjudicates claims alleging interference with private contractual agreements among out-of-state industry members.

I, therefore, conclude that:

- (1) "Coors", "Buffalo", "Olympia", "Rainier" and "Stroh" have declined to file or are unable to file brand registrations pursuant to N.J.A.C. 13:2-33.1 et seq., and
- (2) "Krueger", "Lake", and "Trentacoste" are duly licensed wholesale licensees of this State able to secure the products for which they seek registration, and
- (3) the products sought to be registered by the petitioners have been, and continue to be, of consumer interest in this State, and
- (4) "Coors", "Buffalo", "Olympia", "Rainier" and "Stroh" have either not opposed or taken no position with respect to the registration petitions; or failed to establish compelling reasons for denial thereof or that the granting of the petitions would be contrary to the public interest.

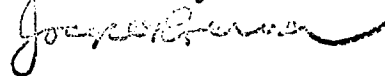
It is, on this 23rd day of May, 1980

ORDERED that:

(1) Unless or until such time as Adolph Coors Company, Buffalo Brewing Company, Olympia Brewing Company, Rainier Brewing Company and the Stroh Brewing Company register their products and designate distributors pursuant to Subchapter 33 of Division Regulations, the respective petitions of Krueger Distributing Company, Lake Beer and Soda Distributors, Inc. and Trentacoste Bros., Inc. to register and distribute certain products are hereby granted, and,

(2) the provisions of this Order shall not take effect until June 1, 1980, and

(3) Should within thirty (30) days, any party to this Order or any other interested person, in the discretion of the Director, desire to present more formal factual or legal presentations, upon written notice to the Director and all the companies named herein, the Director shall establish a date for a further hearing; provided however, that the permission granted to the petitioners herein shall not be stayed by the Director prior to or during the pendency of such further proceeding unless otherwise indicated by law or operation of fact.



Joseph H. Lerner  
Director