

STATE OF NEW JERSEY
 Department of Law and Public Safety
 DIVISION OF ALCOHOLIC BEVERAGE CONTROL
 1100 Raymond Blvd. Newark, N. J. 07102

BULLETIN 1682

July 11, 1966

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incorporation, the wholesale distributor business now conducted by it was owned and operated by Phillip Hoffman individually. Phillip Hoffman had been operating a wholesale liquor business since 1943 and until 1959 when Hoffman was incorporated. In 1952 Hoffman was appointed exclusive distributor of Wildman's products until May 18, 1962, when Wildman granted franchises for distribution of its products to Merchant's Wine and Liquor Co. and Gillhaus Beverage Co., two New Jersey wholesalers which are wholly owned and controlled by F & A. Hoffman remained a distributor of Wildman's products until June 15, 1965, when, as stated hereinabove, its distributorship was terminated.

Wildman is the exclusive United States agent for various producers and shippers of French, German and Italian still wines, Catto Scotch whisky and Catto gin, Extraordinaire and Veritable cognacs, a vodka from England, and Marc Burgoyne brandy, all of which are produced in Europe. Wildman's wines and liquors are distributed throughout the United States, and it is also a wholesaler of these products in New York. Wildman commenced business in 1951 as a partnership and, in either 1961 or 1962, it became a division of Almaden Vineyards, a subsidiary of Lawrence Warehouse, Inc., a producer and seller of California premium wines. In its present capacity Almaden, under the Wildman name, now represents the European shippers and producers who previously had been represented in the United States by Wildman.

Wildman leases space in a Brooklyn warehouse where it stocks inventory for its wholesale business as well as for distribution of its products to its distributors throughout the country. It sells its products to Hoffman with the understanding that Hoffman may either purchase by direct import through Wildman or from its Brooklyn warehouse, from which Hoffman picks up the said merchandise in its own trucks.

I

Before discussing the primary issue hereinabove, it is important to resolve two jurisdictional issues raised by counsel for Wildman. It first states that Wildman is not an "importer" as contemplated by the statute because it does not directly ship any of its products into the State of New Jersey. From the evidence adduced it appears that it operates its business in the following manner: Distributors may purchase alcoholic beverages from it by placing direct import orders or by purchasing orders out of Wildman's New York warehouse. It asserts that its New York warehouse is used as an accommodation and not as a primary source for the sale of its products.

Wildman produced testimony to show that it considers the purchase of its products from the New York warehouse an undesirable practice because it means, in effect, that the purchaser is carrying on its business based on investment by Wildman in its warehouse, rather than on the basis of a wholesaler's own warehouse capacity. In any event, it contends that it does not actually import these products into the State of New Jersey and, therefore, is outside the contemplation of the applicable section. I do not agree with this reasoning.

The statutory definition of "importing" has remained unchanged since the original enactment of the Alcoholic Beverage Law in 1933. N.J.S.A. 33:1-1(1) provides:

"For the purpose of this chapter, the following words and terms shall be deemed to have the meanings herein given to them:

"h. 'Importing.' The act of bringing or causing to be brought any alcoholic beverage into this State.

"Any definition herein contained shall apply to the same word in any form. Thus 'sell' means to make a 'sale' as above defined."

The evidence clearly shows that Wildman deals exclusively in alcoholic liquors imported from Europe. With the exception of S. S. Pierce, which distributes some of the products dealt in by Wildman in parts of New England, Wildman is the sole importer in the United States of the wines, whiskies and other alcoholic liquors in which it deals. Furthermore, Wildman admits that it is an importer and has the word "importer" on its seal of identification which it uses on its correspondence, billheads, price lists and other documents. It is also undisputed that the wines that Hoffman purchases through Wildman are caused to be imported into the State by Wildman. Admittedly, Hoffman cannot place an order directly with any of the Wildman sources or accounts. I therefore find that, under the facts of this case, Wildman is an importer of wines and liquors within the contemplation of R.S. 33:1-93.1 et seq.

II

Wildman further challenges the jurisdiction of the Director under the provisions of R.S. 33:1-93.1 et seq. because it asserts that it is not a distiller, importer or rectifier of nationally advertised brands of alcoholic liquors. R.S. 33:1-93.1 prohibits discrimination in sales to wholesalers only where the alcoholic liquors involved are nationally advertised.

The primary reason underlying the restriction inserted in this section by the Legislature is that only alcoholic liquors which are well known and have wide consumer acceptance give a distiller, importer or rectifier sufficient leverage in the market to indulge in the types of practices which the statute was enacted to prevent. Obviously the Legislature never intended to place such restrictions on private label brands or such brands which are locally distributed, because such products would be the unlikely subjects of competition by wholesalers.

It would be helpful to understand the genesis of this specification in the legislation in order better to appreciate its rationale. This section was adopted during war-time, in 1942, when there was a shortage of alcoholic liquors, particularly Scotch which was imported from abroad. The shortage was primarily and almost exclusively in the well known nationally advertised products. As explained by Justice Francis, in his concurring opinion in Canada Dry Ginger Ale, Inc. v. F & A Distributing Co., 28 N.J. 444 (1958), at p. 460:

"It is a matter of common knowledge that in the past various brands of liquor were in shorter supply or greater demand than others. When such a situation exists, if those brands are localized in the hands of one or a few wholesalers, obviously retailers will be more anxious to deal with him or them in order to

obtain a supply of the scarce commodity and therefore will be inclined to purchase their other related requirements of alcoholic beverages from him or them to the detriment of the not so favored wholesalers. The Legislature may well have believed that such a situation would produce practices known to be inimical to the public interest. And when it is recalled that in 1942 when the statute was adopted the country was at war and imported liquors were unusually scarce, it is not difficult to conjure up the reason for the legislative desire to secure an equitable basis for competition among all wholesalers."

Thus it is apparent why this legislation was directed against "nationally advertised" brands of alcoholic liquors.

Webster's Third New International Dictionary defines "nationally" as "by, with regard to, or in terms of a nation as a whole; on a national scale; throughout a nation." "National" involves the nation as a whole, as distinguished from its subordinate areas.

In Hoffman Import & Distributing Co. v. Peerless Importers, Inc., Bulletin-1584, Item 1, the matter of national advertising was first considered in this context by the Director. In that case advertisements of the products were then being carried in the New York Times and New York Herald Tribune. The Director there held:

"...The intent of the Legislature, as I interpret the Introductory Statement to relevant provisions of this statute, is that widely known brands of alcoholic beverages, as distinguished from local brands, shall be embraced within the sweep of its provisions, where the same are nationally advertised." (Emphasis supplied)

In the definitive context of this national media test, the record shows that the advertising of Wildman products was in local trade journals in the various states in which the Wildman products were sold; in brochures sent to wholesalers, retailers, restaurants, hotels and certain individuals who specifically requested the same.

National advertising is that placed in national media such as national magazines, newspapers nationally circulated, radio and television which has as its primary purpose the creation of a broad consumer awareness of brands. Advertising which primarily sets forth local distributor prices of its products for each state or locality of distribution does not, either individually or in sum, amount to national advertisement in any real sense. Such price listings are designed to induce retailers to purchase from the wholesaler whatever products the retailer may need. National advertising, on the other hand, seeks to influence the consumer to purchase the product on the basis of the quality and integrity of the product so advertised.

National advertising may be effected in several ways: (1) by the use of such media as nationally circulated newspapers, magazines, television and radio; (2) by advertising in leading newspapers circulating in the various major geographical areas of the country; (3) or by a combination of both. However, if the local newspapers are used as the means of national advertising, a plan

designed and geared toward nation-wide coverage must be developed. Either or both methods may be supplemented by nation-wide billboard and even foreign language newspaper advertising--specifics designed to assure broad national coverage.

It is well recognized that the more usual practice is to engage the services of advertising agencies dealing with national advertising. While most nationally advertised brands operate in this manner, it is not an exclusive procedure.

Such national advertising is of the institutional type, as distinguished from point-of-sale advertising, and is designed to create a favorable image of the product and the integrity of the manufacturer or producer.

In State Wholesale Grocers v. Great Atlantic & Pacific Tea Co., 154 F. Supp. 471 (N.D. Ill. 1957), affirmed in part and reversed in part on other grounds, 258 F. 2d 831 (7th Cir. 1958), cert. denied 358 U.S. 947, 3 L. Ed. 2d 352 (1959), the court, in distinguishing between national brand grocery advertising and grocery store advertising, stated:

"...Grocery store advertising is designed and intended to bring people into a particular store and features the price of the product and the location of the store. National brand advertising, conversely, mentions no price and does not mention the name or location of any store or stores--it merely attempts to acquaint the reader with the desirability of trying a particular nationally known, brand name product."
154 F. Supp. at 479.

The pamphlet which Wildman distributes to wholesalers, retailers and those consumers who specifically request it, is a four-page pamphlet entitled "Nouvelles de Vignobles" and is devoted mainly to the connoisseurship of imported wines. Obviously this pamphlet cannot qualify under the broad concept of national advertising.

An essential component definitively embraced in a "nationally advertised" brand is recency of exposure. In order to make national advertising meaningful, it must be sustained and current. My examination of the evidence in this respect discloses that the last advertisement for Catto's Scotch whisky which appeared in a publication having a national circulation was in October, 1963, in the Sunday supplement of the New York Herald Tribune. In fact, according to Solon Kelly, assistant general sales manager of Wildman, his company has "spent absolutely nothing on advertising of Scotch whisky in the last two, three years." He added that Catto's Scotch and its other products have only been advertised in the Beverage Media, a monthly publication for the trade, which contains a listing of wholesalers' names and the prices of their products to the trade.

Wildman's wines were last advertised in national media during the 1950's; they have not been advertised in such media, or in local newspapers or other acceptable media covering the broad geographical areas of the country, since 1959. Thus, these products have fallen short of meeting even the marginal requirements of national advertising as contemplated in the applicable section.

In summary, the definitive components of a "nationally advertised brand" are (1) advertising on a nation-wide basis, national in scope, (2) sustained and recent exposure and (3) it must be geared and oriented to the consumer and the general public.

Therefore, I find that, since Wildman does not engage in national advertising as hereinabove defined and has not been so engaged since at least October 1963 (with respect to Catto's Scotch and since 1959 with respect to its wines), Wildman does not fall within the contemplation of the aforementioned section.

III

Although my determination hereinabove is dispositive of the matter in issue, I feel it important to consider a further jurisdictional challenge raised by respondent, in view of the fact that other matters now pending before this Division involve the same legal issue as herein projected. The said challenge to the petition was based on the allegation that under R.S. 33:1-93.1 et seq., the Director has no jurisdiction with respect to sales of Wildman's wines because the term "alcoholic liquors" does not include fermented beverages.

In this case, it is significantly noted that the preponderance of the orders by Hoffman from Wildman were for wine and vinous products. For example, in the order of June 17, 1965, Hoffman ordered 100 cases of Scotch and 340 cases of various kinds of wine. (There was also testimony to the effect that prior to the filing of this petition, Hoffman was advised that Catto's was unwilling to bottle any more private label Scotch for any accounts in this country.)

R.S. 33:1-93.1 states as follows:

"There shall be no discrimination in the sale of alcoholic liquors by distillers, importers, and rectifiers of nationally advertised brands of alcoholic liquors to duly licensed wholesalers of alcoholic liquors in this state."

Paragraphs 2, 3 and 4 of the same section also refer to the "distiller, importer, or rectifier" of alcoholic liquors. In examining the phrase "alcoholic liquors", we note that that term is not specifically defined either in that section or in the basic statute R.S. 33:1-1 etc.

The basic statute defines alcoholic beverages (but not alcoholic liquors) to include wines, beers, distilled and rectified liquors. Thus, had the Legislature, in enacting the statute in question (R.S. 33:1-93.1 et seq.), intended to cover wines and beers as well as distilled and rectified products, it would have followed the simple course of using the term "alcoholic beverages", a term already defined and in use. Throughout the statute the term "alcoholic beverages" is used where it is intended to include wines as well as distilled and rectified products. For example, R.S. 33:1-2 makes it unlawful to manufacture or sell alcoholic beverages without a license. See also R.S. 33:1-77 and R.S. 33:1-78.

Webster's Third New International Dictionary (1961) defines "liquor" as:

"a liquid substance: as a: Something drunk as a beverage (as water, milk, fruit juice); esp: a usu. strong distilled alcoholic beverage (as whiskey, rum) rather than a fermented one (as wine, beer)..." (Emphasis added)

The generally accepted meaning of the word "liquor" refers only to distilled alcoholic beverages rather than fermented or brewed beverages such as wine or beer. Hollender v. Magone, 149 U.S. 586, 589, 37 L. Ed. 860 (1893); Bobo v. State, 101 Ga. App. 48, 112 S.E. 2d 679, 681 (Ct. Apps. 1960). In State ex rel Springer v. Bliss, 199 Okla. 189, 201, 185 P. 2d 220, 223 (1947), the Supreme Court of Oklahoma stated:

"It is generally recognized that in common usage in a discussion of beverages the word 'liquor' has reference to a beverage produced by the process of distillation and of high potency; although lexicographers might define beer, ale, and wine as malt liquor, fermented liquor and vinous liquor, in common usage such beverages would be called by name and be distinguished from the term liquor."

Similarly, in Lea v. State, 181 S.W. 2d 351 (Tenn.), it was held that "liquor" in common parlance does not mean beer.

Furthermore, the use of the adjective "alcoholic" as a modifier in R.S. 33:1-93.1 et seq. clearly limits the term "liquors" to a distilled alcoholic beverage as that word is most generally used. This interpretation makes sense when the 1942 Act is viewed in the context of Chapter 1 of Title 33. The definition of "alcoholic beverages" as defined therein also includes the word "liquors", but here the word is carefully modified by adjectives such as "distilled", "blended distilled", "brewed", and "fermented." The term "alcoholic liquors" is nowhere used except in the 1942 Act.

If the Legislature intended that all alcoholic beverages, including wines and beers, were to be included under the provisions of the 1942 Act, it would have employed the generic term "alcoholic beverages", which the Legislature had already defined, to encompass wine and beer in the Act as originally enacted. In using the narrow phrase "alcoholic liquors", the legislative intent to limit the 1942 Act to distilled alcoholic beverages is manifest.

It should be pointed out that R.S. 33:1-93.1-5 is an amendment to the basic Alcoholic Beverage Law. The presumption is that every amendment of a statute is made to effect some purpose, and the effect must be given the amended law in a manner consistent with the amendment. Accordingly, a change in phraseology is held to indicate persuasively, and to raise a presumption, that a departure from the old law was intended. 50 Am. Jur. 262. Thus the term "alcoholic liquors" must be taken to mean something other than "alcoholic beverages." A corollary to the rule above stated is that:

"Where the meaning of a prior law is intended to be continued, its terminology is also usually continued, so that an omission of words implies an intended change in the meaning of the statute." 50 Am. Jur. 263.

Or, as stated in Novicki v. O'Mara, 124 A. 672, 673, 280 Pa. 41 (1924):

"A change of language in separate provisions of a statute is prima facie evidence of a change of intent."

Counsel for Hoffman cites United States v. Kinsel, 263 Fed. 141, D.C. Wash. (1918) in support of his contention that "alcoholic

liquors" is synonymous with "alcoholic beverages." In that case the defendant was charged with violating the regulation promulgated by the President by which a zone was created in which the sale of alcoholic liquors was prohibited. The defendant was charged with selling a private one pint labeled "Nebro's Herpicide." Defendant demurred to the information on the ground that it did not allege a crime. The Court pointed out that the words "alcoholic liquors" as used in the regulation included beer, ale or wine. The Court said:

"The terms 'alcoholic liquor,' 'intoxicating or spiritous liquor,' 'intoxicating liquor, including beer, ale or wine,' are used in section 12 as synonymous terms."

However, in examining the terms of the executive regulation discussed in Kinsel, it is apparent that the term "alcoholic liquors" does not encompass fermented alcoholic beverages. The regulation contained the terms "alcoholic liquors, including beer, ale or wine." If, as Hoffman contends, the words "alcoholic liquors" by themselves clearly include beer and wine, then the words "including beer, ale and wine" in the regulation are unnecessary surplusage. The implication of the court decision is that wine is not usually considered to be an "alcoholic liquor."

With respect to the terms "distilled" and "rectified" products, it is clear that under the Alcoholic Beverage Law, products which are distilled and rectified refer only to liquors and not to beer and wine. Thus, under R.S. 33:1-10(4) the Director may grant a Class A license, as a rectifier and blender license "To rectify, blend, treat and mix distilled alcoholic beverages, and to fortify, blend and treat fermented alcoholic beverages." This rectification is confined to distilled products, and fortifying, blending and treating are related to fermented products, i.e., wines. It should be added significantly that R.S. 33:1-10 was amended in the same year that R.S. 33:1-93 et seq. was enacted (1942) and defined "rectifier" as above stated, which is the same as is employed in our present statute.

Counsel for Hoffman further argues that the term "importer" sandwiched between the words "distiller" and "rectifier" includes importers of wines as well as distilled products; that the statute should be liberally construed in favor of control of all such products. He argues that it was the intention of the Legislature to make the term "importer" applicable to all situations where New Jersey wholesalers might be subject to discrimination in the distribution of "alcoholic liquors."

I am persuaded, however, that the word "importer" must be interpreted in relation to the words "distilled" and "rectified" and, since wine is not the product of distilling and rectifying, the word "importer" cannot be applicable to vinous or malt products. Additionally, to construe the word "importer" so as to include importers of wines would mean that the proscription against arbitrary discrimination in the sale to wholesalers would apply only to imported wines and would not cover domestic wineries producing and selling nationally advertised wines. To give such an effect to the statute would be to distort it completely because no such intent to subject domestic and imported wines to different treatment appears in the body of the statute or can reasonably be assumed to be the intent of the Legislature. Making such a distinction may well raise a serious constitutional question of discrimination and classification on the basis of having no reasonable relevancy to the purpose and intent of the Act. Cf. Grand Union Co. v. Sills, 34 N. J. 390,

405 (1964); Meehan v. Board of Excise Commissioners of Jersey City, 73 N.J.L. 382 (1906).

I therefore find that, while the use of the word "importer" was necessary to cover all types of distilled and rectified liquors, domestic or foreign, if it were applied to wines it would force a distinction in classification between foreign and domestic wines without any apparent reason or logic for such distinction.

I am further satisfied that the Legislature clearly intended to limit this section to liquor by the use of the words "distiller, importer and rectifier of alcoholic liquors" and expressly intended to exclude wines and other vinous and malt products.

I therefore conclude that (a) the term "alcoholic liquors" as used in R.S. 33:1-93.1 et seq. does not refer to nor is it applicable to wine or vinous or malt products; (b) the terms "distiller" and "rectifier" do not apply to wines or vinous products and are limited solely to "alcoholic liquors;" (c) the term "importer" in the above section is restrictive and specific in meaning as used therein, and refers only to "distilled" and "rectified" alcoholic liquors. See 50 Am. Jur. 244, 245; Jersey Central etc. Co. v. State Bd. of Tax Appeals, 131 N.J.L. 565, 567 (E.& A. 1944). Therefore, the wine and vinous products sold by Wildman are not subject to the provisions of the above section. See also Reitman Industries v. Paul Masson Vineyards, Bulletin 1637, Item 6.

Since I have heretofore concluded that Wildman is not a distiller, importer or rectifier of nationally advertised brands of alcoholic liquors as contemplated in R.S. 33:1-93.1 et seq., it must follow that the Director does not have jurisdiction over Wildman under the provisions of R.S. 33:1-93.1 et seq.

Accordingly, it is recommended that Hoffman's petition be dismissed.

Conclusions and Order

Exceptions to the Hearer's report and accompanying argument have been filed by the petitioner pursuant to Rule 5 of State Regulation No. 15A. Answering argument has been filed by the respondent.

Petitioner argues (1) that respondent's wine and distilled products which it seeks to purchase are "nationally advertised brands" because the wine products are currently advertised in brochures mailed to consumers and currently advertised or listed in trade journals distributed to wholesale and retail licensees, and the distilled products are still in public demand, notwithstanding the cessation for almost two years of any national advertising thereof, and (2) the Hearer's recommended construction of "alcoholic liquors" to include only distilled and rectified alcoholic beverages is contrary to the implications engendered by the use of the phrase "alcoholic beverages" in both the introducer's statement and the title of the legislation in question.

In its answering argument, respondent contends that it is not an "importer" of any alcoholic beverages within the intendment of R.S. 33:1-93.1 because it does not bring or cause to be brought any alcoholic beverages into New Jersey and answers the above second point of petitioner's exceptions by stating that "there is no real

conflict between the use of the words 'alcoholic beverages' in the title and the sponsor's statement and 'alcoholic liquors' in the body of R.S. 33:1-93.1 et seq." Additionally, respondent points out that the definitional section of the State Alcoholic Beverage Tax Law (R.S. 54:41-2) defines "liquors" to be limited to distilled and rectified spirits.

Initially, I find that respondent is an "importer" of alcoholic beverages into New Jersey within the meaning of R.S. 33:1-93.1 since, at the least, it causes alcoholic beverages to be brought into this state. The record shows that all direct import orders of respondent's products placed by petitioner must be submitted to respondent, who in turn orders the alcoholic beverages from abroad for direct shipment to petitioner's New Jersey licensed premises. Although petitioner is the consignee of such orders for purposes of delivery, respondent is the purchaser thereof, to whom the foreign shipper looks for payment.

I further find, for the reason set forth by the Hearer, that the words "alcoholic liquors" as used in the applicable statute denote only distilled and rectified alcoholic beverages and not wines. The use of the words "alcoholic beverages" in the introducer's statement and the title of the act is of no significant help in resolving this question of statutory construction.

Our Supreme Court has heretofore specifically ruled that this particular introducer's statement, "not being in the nature of a preamble to a statute, is 'not to be considered an index of legislative intent in judicial exposition of the enactment.'" Hoffman v. Hock, 8 N.J. 397, 408 (1952). Also, the title of the act, namely, "An Act concerning alcoholic beverages", is not in conflict with the body thereof dealing only with distilled alcoholic beverages; the act does concern alcoholic beverages in the sense that distilled alcoholic beverages are one subdivision of the generic classification, alcoholic beverages. Indeed, I am inclined to believe that the act would not have been differently titled had the body contained the specific language "distilled spirits" or "distilled or rectified alcoholic beverages" instead of "alcoholic liquors."

This brings me to the question whether any of respondent's distilled products sought by petitioner may be deemed "nationally advertised brands of alcoholic liquors." In this connection, I agree with the Hearer that, by enacting the legislation in question, the Legislature was motivated by an intention to restrict only the sale of products which are well known to consumers.

In Canada Dry Ginger Ale, Inc. v. F & A Distrib. Co., 28 N.J. 444, 455 (1958), the Supreme Court, in discussing the purpose of the statute, referred to a wholesaler being "dependent upon a distiller for a supply of sought-after merchandise." The sought-after merchandise consists of products for which there is consumer demand. It is not unreasonable for the Legislature to conclude that consumer demand is generated by national advertising which makes a brand well known to consumers.

A brand may be nationally advertised in many ways. Direct mailing to consumers to an adequate degree may be one such way. However, in the instant case, the brochures mailed to consumers by respondent contain only brands of wines and, in view of my hereinbefore stated interpretation of "alcoholic liquors", are not material to this issue.

Advertising directed to wholesalers and retailers, rather than consumers, may not qualify as national brand advertising, unless it can be shown that the material in some way reaches the public. This has not been done here. For this reason, I have not considered the trade journals distributed to wholesalers and retailers or the price filings with state agencies as acceptable methods of such advertising.

The record indicates that the Catto brand distilled products were at one time nationally advertised. Mere proof of national advertising will suffice to meet the statutory criterion where it is current. Where it is not, there may be, as petitioner contends, a continued public demand of a well known nationally advertised brand even after the cessation of such advertising. However, it is my opinion that petitioner has the burden of establishing such situation where, as here, there is a prolonged period in which the product has not been nationally advertised. My careful reading of the record herein leads me to conclude that petitioner has not sustained this burden.

Under the circumstances, I find that petitioner has not sustained the burden of establishing by a preponderance of the evidence adduced that respondent refused to sell to it any nationally advertised brand of alcoholic liquors. I therefore concur in the Hearer's recommendation and will dismiss the petition.

Accordingly, it is, on this 18th day of May, 1966,

ORDERED that the petition filed herein be and the same is hereby dismissed.

JOSEPH P. LORDI,
DIRECTOR

ACTIVITY REPORT FOR MAY 1966

2.

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| ARRESTS: | | |
| Total number of persons arrested | | 21 |
| Licensees and employees | 15 | |
| Bootleggers | 6 | |
| SEIZURES: | | |
| Distilled alcoholic beverages - gallons | | 4.37 |
| Brewed malt alcoholic beverages - gallons | | 17.92 |
| RETAIL LICENSEES: | | |
| Premises inspected | | 776 |
| Premises where alcoholic beverages were gauged | | 637 |
| Bottles gauged | | 9,655 |
| Premises where violations were found | | 135 |
| Violations found | | 194 |
| Unqualified employees | 82 | Disposal permit necessary 6 |
| Application copy not available | 37 | Prohibited signs 2 |
| Reg. #38 sign not posted | 20 | Improper beer taps 1 |
| Other mercantile business | 12 | Other violations 34 |
| STATE LICENSEES: | | |
| Premises inspected | | 58 |
| License applications investigated | | 13 |
| COMPLAINTS: | | |
| Complaints assigned for investigation | | 429 |
| Investigations completed | | 443 |
| Investigations pending | | 228 |
| LABORATORY: | | |
| Analyses made | | 88 |
| Refills from licensed premises - bottles | | 42 |
| Bottles from unlicensed premises | | 7 |
| IDENTIFICATION: | | |
| Criminal fingerprint identifications made | | 3 |
| Persons fingerprinted for non-criminal purposes | | 424 |
| Identification contacts made with other enforcement agencies | | 249 |
| Motor vehicle identifications via N.J. State Police teletype | | 1 |
| DISCIPLINARY PROCEEDINGS: | | |
| Cases transmitted to municipalities | | 10 |
| Violations involved | | 11 |
| Sales to minors | 6 | Failure to close premises during prohibited hours 1 |
| Sale during prohibited hours | 4 | |
| Cases instituted at Division | | 36 |
| Violations involved | | 45 |
| Permitting lottery activity on prem. | 10 | Permitting immoral activity on prem. 2 |
| Sale to minors | 6 | Permitting hostesses on premises 1 |
| Sale during prohibited hours | 5 | Permitting foul lang. on premises 1 |
| Permitting bookmaking on premises | 3 | Sale to non-members by club 1 |
| Sale outside scope of license | 3 | Conducting business as a nuisance 1 |
| Sale below filed price | 3 | Failure to close premises during prohibited hours 1 |
| Possessing liquor not truly labeled | 3 | Beverage Tax Law non-compliance 1 |
| Unqualified employees | 2 | |
| Permitting gambling on premises | 2 | |
| Cases brought by municipalities on own initiative and reported to Division | | 26 |
| Violations involved | | 32 |
| Sale to minors | 17 | Permitting brawl on premises 1 |
| Sale during prohibited hours | 6 | Conducting business as a nuisance 1 |
| Failure to close premises during prohibited hours | 5 | Sale to intoxicated person 1 |
| | | Permitting bookmaking on premises 1 |
| HEARINGS HELD AT DIVISION: | | |
| Total number of hearings held | | 40 |
| Appeals | 5 | Seizures 1 |
| Disciplinary proceedings | 24 | Tax revocations 1 |
| Eligibility | 9 | |
| STATE LICENSES AND PERMITS ISSUED: | | |
| Total number issued | | 15,063 |
| Licenses | 2 | Social affair permits 502 |
| Solicitors' permits | 26 | Miscellaneous permits 392 |
| Employment permits | 525 | Transit insignia 12,161 |
| Disposal permits | 82 | Transit certificates 1,373 |
| OFFICE OF AMUSEMENT GAMES CONTROL: | | |
| Licenses issued | 114 | |
| Enforcement files established | 1 | |

JOSEPH P. LORDI
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

Dated: June 7, 1966

3. MORAL TURPITUDE - CONVICTION OF POSSESSING POLICY LOTTERY SLIPS IN NEW YORK HELD TO INVOLVE MORAL TURPITUDE - COLLATERAL ATTACK OF CONVICTION.

Re: Eligibility No. 747

Applicant seeks an advisory opinion as to whether or not he is eligible to be associated with the alcoholic beverage industry in this State in view of a conviction of a crime.

Applicant's criminal record discloses that on March 11, 1963 he was convicted in the Criminal Court of the City of New York for knowingly possessing policy lottery "numbers" slips, in violation of Section 975 of the Penal Laws of the State of New York and fined \$100.00 or fifteen days and five days. Aforesaid conviction is tantamount to a conviction under N.J.S. 2A:121-3(b), which proscribes the same offense.

At the hearing held herein, applicant testified that in December 1962 he was arrested while ascending the stairs leading from the hallway of a building in which he resided; that at the time of his arrest he was returning home from work; that there were some fellows in the hallway taking "numbers" bets; that these men daily shifted their unlawful operation from building to building; that he was searched by the arresting officer and that no "numbers" slips were found on his person.

Applicant further testified that he was tried and convicted as aforesaid and that he was represented at his trial by an attorney.

Applicant further testified that he is innocent of the crime and that he had never been connected with anyone in the operation of any unlawful gambling activities. However, his conviction cannot be collatorally attacked in these proceedings. Re Elig. No. 239, Bulletin 305, Item 9; Re Elig. No. 711, Bulletin 1587, Item 6.

In my opinion the crime of which applicant was convicted on March 11, 1963 involves the element of moral turpitude. Re Elig. No. 735, Bulletin 1596, Item 8; Re Case No. 1931, Bulletin 1652, Item 6; Re Case No. 1965, Bulletin 1652, Item 11.

Under the circumstances, I recommend that applicant be advised that (1) in the opinion of the Director, he has been convicted of a crime involving moral turpitude; (2) the Alcoholic Beverage Law of this State (R.S. 33:1-25) provides that no license of any class shall be issued to a person convicted of a crime involving moral turpitude, and (3) R.S. 33:1-26 and Rule 1 of State Regulation No. 13 provide that no licensee shall employ or have connected with him, in any business capacity whatsoever, a person so disqualified.

I. Edward Amada,
Attorney

Approved:

Joseph P. Lordi,
Director

Dated: May 23, 1966

DISCIPLINARY PROCEEDINGS - EMPLOYMENT OF MINOR WITHOUT PERMIT - SALE OF ALCOHOLIC BEVERAGES BY MINOR EMPLOYEE - PERMITTING CONSUMPTION ON DISTRIBUTION PREMISES - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
 Joseph Koslo)
 Route #46)
 Roxbury Township)
 PO Kenvil, New Jersey)
 Holder of Plenary Retail Distribution License D-3, issued by the Township Committee of the Township of Roxbury)

CONCLUSIONS AND ORDER

 Licensee, Pro se.
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on April 20, 1966, he (1) employed a minor, age 19, without requisite employment permit, in violation of Rule 3 of State Regulation No. 13, (2) permitted the same minor to sell alcoholic beverages, in violation of Rule 2 of State Regulation No. 13, and (3) permitted consumption of alcoholic beverages on the distribution licensed premises, in violation of Rule 14 of State Regulation No. 20.

Absent prior record, the license will be suspended on the first charge for five days (Re Giaquinto, Bulletin 1605, Item 3), on the second charge for ten days (Re Baldanza and Pino, Bulletin 1652, Item 10), and on the third charge for ten days (cf. Re Silence, Bulletin 1170, Item 8; Re Assisi & Faccione, Bulletin 1527, Item 3), or a total of twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days.

Accordingly, it is, on this 19th day of May, 1966,

ORDERED that Plenary Retail Distribution License D-3, issued by the Township Committee of the Township of Roxbury to Joseph Koslo for premises on Route #46, Roxbury, be and the same is hereby suspended for twenty (20) days, commencing at 9:00 a.m. Thursday, May 26, 1966, and terminating at 9:00 a.m. Wednesday, June 15, 1966.

JOSEPH P. LORDI,
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Arpad Homoky)
631 Ferry Street)
Newark, New Jersey)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-303, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark)

Henry Spielvogel, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 12, 1966, he possessed alcoholic beverages in two bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Director for fifteen days effective January 9, 1964, for similar violation. Re Homoky, Bulletin 1547, Item 14.

The prior record of suspension of license for similar violation within the past five years considered, the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re Mandel, Bulletin 1553, Item 4.

Accordingly, it is, on this 23d day of May, 1966,

ORDERED that Plenary Retail Consumption License C-303, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Arpad Homoky for premises 631 Ferry Street, Newark, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Wednesday, May 25, 1966, and terminating at 2:00 a.m. Tuesday, June 14, 1966.

JOSEPH P. LORDI,
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Mary Maione)
t/a Jim's Tavern)
Route #130)
Bordentown, N. J.)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Bordontown)
-----)

James F. McGovern, Jr., Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on March 5-6, 1966, she sold mixed drinks of alcoholic beverages to two minors, age 18 and 20, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Maurie's, Inc., Bulletin 1664, Item 10.

Accordingly, it is, on this 24th day of May, 1966,

ORDERED that Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Bordontown to Mary Maione, t/a Jim's Tavern, for premises on Route #130, Bordontown Township, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Tuesday, May 31, 1966, and terminating at 2:00 a.m. Friday, June 10, 1966.

JOSEPH P. LORDI
DIRECTOR


7. STATE LICENSES - NEW APPLICATIONS FILED.

Sanford Kalb, t/a Kalb Beverage Co.
438 Addison Road, Howell Twp.
PO Farmingdale, New Jersey

Application filed June 30, 1966 for place-to-place transfer of State Beverage Distributor's License SBD-97 from Highway #9, Howell Township, PO Farmingdale, N. J.

Austin, Nichols & Co., Inc.
58th Street & 55th Drive
Maspeth, New York

Application filed July 8, 1966 for person-to-person transfer of Wine Wholesale License WW-3 from W. T. Mac Gowan, Inc., 516-518 Passaic Avenue, Spring Lake, New Jersey.


Joseph P. Lordi
Director