STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
744 Broad Street, Newark, N. J.

BULLETIN 366 DECEMBER 5, 1939.

1. RULINGS - ALL RULINGS ARE MADE IN WRITING - HEREIN OF THE DANGERS OF AN OPEN FORUM.

Dear Sir:

In the light of numerous problems arising daily in the life of the liquor licensee, I should like to make a suggestion which may or may not prove to have some merit.

Is it possible to conduct a forum once a week, or bi-monthly at a given place and time for those interested or about to become interested in some manner in connection with the liquor industry? There to voice any opinion, or ask questions relative to the legal aspects and problems which confront or will confront them - I assume, naturally, that some one in authority fully qualified to answer would be in charge. For myself, as the ordinary citizen - confronted with these problems, I should like nothing better.

Perhaps such a forum is already in existence. I know nothing of it. Would it entail a great deal of expense for the state? If the burden is too great, perhaps those attending such a forum would be glad to pay a fee for a course over a given period of time.

Very truly yours,
Claire R. Levine

November 27, 1939

Miss Claire R. Levine,
c/o Claridge Wine & Liquor Co.,
Princeton, N. J.

My dear Miss Levine:

I have before me your letter suggesting that I conduct weekly or bi-monthly forums for those interested in the liquor industry.

Your suggestion is extremely interesting and indicates great interest in the multifarious problems that are constantly arising and besetting those in the trade.

But there would be great danger involved because the answers of the person conducting the forum, no matter how fully authorized, would be oral. And the spoken word is but a broken reed upon which to lean in time of need. Since the inception of the Department all rulings have been made in writing in response to written inquiry. That way there is no doubt whatever as to what the question was or what the answer is. Crystallized in the written word, the ruling means exactly the same a year later as it does at the time it is made.

Upon further reflection I am sure that you will agree that the dangers incident in a forum such as you suggest would far outweigh the advantages.

If you have any question and wish an authoritative answer, you have but to write me and I shall be glad to give you a ruling - in writing.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

2. CORPORATIONS - THE LEGAL ENTITY SURVIVES DESPITE WITHDRAWAL OF STOCKHOLDERS OR CHANGES IN STOCK HOLDINGS AND THE CORPORATION MAY CONTINUE TO HOLD THE LICENSE AND RENEW SAME - HEREIN OF THE REQUIREMENT OF NOTICE TO THE LICENSE ISSUING AUTHORITY OF SUCH WITHDRAWAL OR CHANGE, THE STATUTORY QUALIFICATIONS OF STOCKHOLDERS, AND THE DUTIES DEVOLVING UPON LICENSE ISSUING AUTHORITIES UPON RECEIPT OF SUCH NOTICE.

Dear Sir:

A corporation of three members holds a Plenary Retail Consumption License issued by the Township Committee of the Township of Scotch Plains. One of the three members wishes to withdraw from the corporation and sell his share to the other two members.

Are there any legal requirements concerning the issued license, such as notifying the issuing authority, and will it be possible to continue to do business under the present license? We would also like to know if it will be possible to obtain a renewal of the license at the expiration of the present year on June 30, 1940?

Yours very truly,
Township of Scotch Plains
Charles H. Roberts, Clerk.

November 27, 1939

Charles H. Roberts, Clerk,
Township of Scotch Plains, N. J.

Dear Mr. Roberts:

A corporation is a legal entity separate and distinct from its members or officers. Hence, when a retail liquor license is issued to it, it continues, despite subsequent changes as to stockholders, to hold the license in its own right and may apply for a renewal in its own name.

However, under R. S. 33:1-34, the corporation must, where any such change would originally have prevented issuance of the license, notify the local issuing authority of that change within ten days after its occurrence.

To discover when any such change in stockholdings would have prevented issuance of the license, we must turn to R.S. 33:1-12(1), 25. Those sections provide that no retail liquor license shall be issued to a corporation (except in the instance of a bona fide hotel) if any holder of more than 10% of the stock could not, in all respects, qualify for a retail liquor license in his individual capacity.

In consequence, the said notice to the local issuing authority as to change in stockholdings is necessary if (1) the change converts a person into the holder of more than 10%, and (2) such person is deemed to lack the statutory qualifications for a retail liquor license.

Such qualifications which the "more than 10%" stockholder must thus meet are that he has never been convicted of a crime involving moral turpitude (or, if so convicted, has had his disqualification removed by the State Commissioner); that he has not been on two occasions adjudged guilty of violating the Alcoholic Beverage Law; that he has not held a liquor license which, within two years last past, was revoked; and that (unless the corporation is operating a bona fide hotel at the licensed premises) he is of age, a five years' resident of this State and either an American citizen or else an alien of one of the foreign countries on the list set forth in Re Guskind, Bulletin 130, Item 5 (as amended and brought up to date in Re Woertendyke, Bulletin 304, Item 8 and Re Aliens, Bulletin 341, Item 1). See R. S. 33:1-25,31.

Clearly, it does not behoove the corporation to determine by itself whether any new holder of more than 10% of the stock meets these qualifications and hence, to give or withhold notice of the change according to its own decision. See Re Stokes, Bulletin 231, Item 7. That decision should be by the issuing authority.

Hence, in any case where there is such a change, converting a person, theretofore holding only 10% or less or none of the stock, into a holder of more than 10%, the corporation should notify the issuing authority in writing within ten days.

Similarly, R. S. 33:1-34 requires the corporation to give the same type of notice on any change in officers (including directors).

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - 5-DAYS' SUSPENSIONS WITH WARNINGS.

November 28, 1939

John M. Pillsbury, Esq.,
Atlantic Highlands, N. J.

My dear Mr. Pillsbury:

I have before me staff report and your letter re disciplinary proceedings conducted by the Keansburg Borough Council against

1. Robert Beyer
Main Street Cor. Port Monmouth Road

2. Adelaide C. Porter
123-125 Carr Avenue

both of whom were charged with possession of off-proof liquor, and note that the license of each was suspended for five days.

I note with particular interest the statement of the Council spread upon the minutes of the meeting and enclosed with your letter, viz.:

"The Council are of the firm opinion and belief that neither one of the licensed holders had any knowledge of the possession of such liquor.

"The Council are of the opinion that neither one of these license holders would intentionally violate any of the rules of the Department nor any of the laws regulating the business.

"The individual members of the Council are personally acquainted with both licensed holders and have known them for many years and can testify as to their character and integrity.

"The Council have never had any complaints against either one of the licensed holders previously, either from the Department at Newark or from the police department, nor from any of the neighbors.

"At the same time the Council believe that the enforcement of the laws and rules regulating the sale of alcoholic beverages must be upheld and that the Commissioner of Alcoholic Beverage Control, personally, and his staff, must be supported in their administration.

"At the same time the Council believe that too harsh a penalty in some cases will not always work for the best interest of enforcement in the long run.

"But regardless of the personal feelings of the members of the Council and their admitted friendship and acquaintance with these license holders, all license holders in the Borough must realize that the possession of illicit alcoholic beverages must stop and the licensed holders must suffer the consequence whether they personally are blameless or not.

"So as a warning to all license holders in the Borough, the penalty in each one of these cases will be a suspension of the license of each for a period of five days, beginning midnight on Wednesday, October 18 and ending on midnight on Monday, October 23, 1939.

"The Council also gives this warning to all license holders in the Borough that for any future violations of this charge, whether the licensed holders are personally innocent or not, the penalty will be greater."

which was extremely helpful in understanding why it imposed only a five-day suspension instead of the recommended thirty-day minimum for possession of illicit alcoholic beverages.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. MUNICIPAL REGULATIONS - LIMITATION OF LICENSES - EXCEPTION AUTHORIZING RENEWAL OF LICENSES PRESENTLY OUTSTANDING IN EXCESS OF THE QUOTA.

MUNICIPAL REGULATIONS - LIMITATION OF LICENSES - INAPPROPRIATE AS REGARDS CLUB LICENSES.

MUNICIPAL REGULATIONS - DISTANCE BETWEEN LICENSED PREMISES - EXCEPTION ALLOWING LICENSEES TO MOVE TO NEW PREMISES AT WILL, PROVIDED ONLY THAT THEY DO NOT MOVE MORE THAN 500 FEET AT ONE TIME, DISAPPROVED.

MUNICIPAL REGULATIONS - HOURS - SALES IN THE DAY TIME ON SUNDAYS BEFORE NOON, DEPRECATED.

MUNICIPAL REGULATIONS - A RULE ALLOWING MINORS ON LICENSED PREMISES ONLY IF ACCOMPANIED BY A PARENT SHOULD REQUIRE THAT THE PARENT BE THE MINOR'S OWN PARENT.

MUNICIPAL REGULATIONS - SALES AND SERVICE TO WOMEN DIRECTLY OVER BARS - MAY BE REPEALED OR CONTINUED IN THE MUNICIPALITY'S DISCRETION.

November 29, 1939

John F. Lee,
City Clerk,
Bayonne, N. J.

My dear Mr. Lee:

I have before me proposed amendment to Sections 4, 6, 11, 14 and 15 of ordinance pertaining to alcoholic beverages adopted by the Board of Commissioners on June 2, 1936.

Section 4 provides that the number of plenary retail consumption licenses shall not exceed 170, that the number of plenary retail distribution licenses shall not exceed 12, and that the number of club licenses shall not exceed 10. According to my records, you have 183 plenary retail consumption, 12 plenary retail distribution and 16 club licenses presently outstanding. That means, if all of these licenses are to be renewed in subsequent years, that there should be an exemption authorizing renewals of present licenses in excess of the quotas. Section 8 of the original ordinance purports to do this but does not accomplish it for the reason that it refers to Sections 5, 6 and 7, but fails to include Section 4, which is the section imposing the limitation. Hence, also amend Section 8 so that it reads:

> "Nothing contained in Sections 4, 5, 6 and 7 shall apply to the issuance of renewals of licenses now issued and outstanding."

I am not favorably impressed with the limitation of club licenses. The object of club licenses is not to supply the needs of the public at large. That is what the regular plenary retail consumption license is for. Privileges under the club license are confined to members and bona fide guests. It is not permissible to sell to the general public. Hence, the argument for limitation does not apply with equal force where club licenses are concerned. It seems to me that so long as the municipality has provided for club

licenses, they should be afforded, in fairness, to all bona fide clubs that can properly qualify, rather than give some groups the privilege and arbitrarily exclude others. The principle is enunciated and discussed in Irish American Association v. Kearny, Bulletin 293, Item 11.

Limitations of licenses, under the statute, are not subject to the Commissioner's approval first obtained. They are, instead, as provided in R. S. 33:1-41, reviewable on appeal. I shall, therefore, allow the limitation to stand pending review on appeal. When and if it comes before me on appeal, it will be considered in the light of the Irish American Association ruling.

Section 6 commences:

> "Neither a Plenary Retail Consumption License nor a Plenary Retail Distribution License shall be issued for, or transferred to any premises located within 250 feet of any other premises for which a Plenary Retail Consumption License or a Plenary Retail Distribution License shall then be issued and outstanding,..."

So far, so good. But the section then concludes:

> ".....provided, however, that such licenses may be transferred to any premises located within 500 feet of the licensed premises from which such transfer is sought."

The trouble with this proviso is that it aggravates, instead of eliminates, existing conditions because it destroys all the protection afforded by the 250 foot rule and opens the door wide to transfer to any old place a licensee wishes provided only that he doesn't jump more than 500 feet at one time.

For instance: Suppose "A's" licensed place is at the northerly line of your city. The ordinance permits him to move 500 feet south even though the new place is within 250 feet of a place already licensed. Having made that move, there is nothing to prevent his making another and going 500 feet still further south and thereby encroaching within 250 feet of other licensed places, from which originally he was far apart. So, by successive moves, he can transfer to any location he pleases.

The proviso thus makes a farce of Section 6. It might just as well read:

> "Any licensee can transfer his place of business wherever he chooses provided he doesn't move more than 500 feet at one time."

If you wish Section 6 to stand without the proviso I shall approve it. As submitted, it is disapproved.

Perhaps the Board had something else in mind. If you will revise the section and resubmit it, I shall be glad to consider it.

Section 11 prohibits sales of alcoholic beverages and requires premises to be closed on weekdays from 3:00 A.M. until 7:00 A.M. and on Sundays from 3:00 A.M. until 10:00 A. M. I do not approve of sales of alcoholic beverages in the daytime on Sundays before noon. I see no reason why taverns should be open Sunday mornings during church hours. Noon on Sundays is plenty early enough.

The new regulation properly applies to all licensees and not merely to plenary retail consumption licensees, as the present regulation is worded, but I cordially suggest that you leave the Sunday opening at 1:00 P.M., or, in any event, not advance it before noon. I am not approving on appeal any regulations to the contrary.

Section 14 provides that no minors shall be allowed in any room in which any bar is located unless accompanied by a parent or guardian. As it now stands, any parent or guardian will do regardless of whether or not it is the minor's own parent or guardian. I suggest that you strike out "by a parent or guardian" and in its place insert "by the minor's own parent or guardian."

I note that the regulation that women shall not be served directly over any bar will be abrogated. That is a matter for the Board to handle as it sees fit in its discretion. Re Bocca, Bulletin 105, Item 7; Holderness v. Orange, Bulletin 257, Item 1. It has the power to repeal the regulation if it wishes.

Section 15 is approved as submitted.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings and Order to Show Cause against)

JULIUS E. WEINER, 142 Washington St., Paterson, N. J.,)

Holder of Plenary Retail Distribution License D-69, issued by the Board of Aldermen of the City of Paterson.)

CONCLUSIONS AND ORDER

Samuel B. Helfand, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Julius E. Weiner, Pro Se.

BY THE COMMISSIONER:

This licensee has pleaded guilty to a charge of selling liquor at his licensed premises on October 21, 1939 at less than the Fair Trade price, in violation of Rule 6 of Regulations No.30. His license will, therefore, be suspended for five (5) days instead of the usual ten (10) on this charge.

Licensee also admitted and declared, in writing, that he had no good cause to show why the five-day suspension heretofore imposed against the license of Health Shop, Inc., his predecessor in interest (see Bulletin 362, Item 1), for a similar violation, should not be imposed against his present license, and consented that the said suspension should be imposed against his present license.

Accordingly, it is, on this 28th day of November, 1939,

ORDERED, that plenary retail distribution license D-69, heretofore issued to Julius E. Weiner by the Board of Aldermen of the City of Paterson, be and the same is hereby suspended for a period of ten (10) days, commencing November 29, 1939, at 11:00 P.M.

D. FREDERICK BURNETT,
Commissioner.

6. HOTELS - PURCHASE OF PACKAGE GOODS BY BELL-HOP AS SERVANT OR AGENT OF GUEST - PERMISSIBLE PROVIDED THE BELL-HOP IS NOT A MINOR.

My dear Commissioner: Re: St. Francis Hotel and Bayou Holding Co., Inc.

This is further in regard to your letter to us of June 27, 1939 (Bulletin 334, Item 14).

Upon a re-examination of the correspondence it seems that your rulings are fair and equitable based upon the questions asked in our earlier letters. However, as the situation actually works out and as the facts actually are, your ruling places an unusual hardship upon our client, the Bayou Holding Co., Inc., the tenant in the St. Francis Hotel.

In the first place, reference in our letter to "bell boys" does not necessarily mean minors. As a matter of fact we believe that the "bell boys" are all over twenty-one years of age and the correct terminology should be "bell hops".

The guests now checking in at the hotel desiring liquor or beverages in packages call the desk and have the bell hops (not minors) go out and purchase for them the desired merchandise at stores in the neighborhood. Because of your ruling as contained in your letter of June 27th, the hotel management feels that its bell hops cannot make these purchases in the premises of my tenant who is in the hotel.

The size of my client's business forbids the employment of any other help that could run these errands, nor does the actual practice in the hotel adapt itself to guests calling directly down to the bar. They usually ask that a bell hop be sent to their room and they then make their request of the bell hop for the desired service.

Under the circumstances, would you please reconsider your findings as contained in your letter of June 27 and especially in view of the fact that no minors would be involved in the purchase or delivery of the package goods in question.

Certainly my client should not be placed at a disadvantage with other stores in the neighborhood merely because his premises are actually in the hotel.

Respectfully yours,
Charles Handler

November 27, 1939

Charles Handler, Esq.,
Newark, N. J.

My dear Mr. Handler: Re: St. Francis Hotel and Bayou Holding Co.

I understand that it is common practice for guests in hotels to send out bell-hops for package goods and that in so doing, the bell-hop does not act on behalf of the hotel or any particular liquor store, but rather as the servant or agent of the guest.

No reason or abuse has come to my attention why this practice should not be allowed to continue.

The Bayou Holding Co. holds a plenary retail consumption license, which license confers the privilege of selling by the drink for on-premises consumption as well as in the original container for off-premises consumption. The bell-hop who goes out to purchase package goods for a guest may buy where he wishes or where the guest directs. The Bayou Holding Co. may, therefore, sell to bell-hops acting in the above capacity, provided, of course, as indicated in my letter to you of June 27th (Bulletin 334, Item 14), the bell-hop is not a minor.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

7. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED.

In the Matter of the Seizure on October 11, 1939, of an Oldsmobile Coupe and 44 - 5 gallon cans of alcohol contained therein on the public highway in Pleasant Plains, Township of Dover, County of Ocean and State of New Jersey.	Case 5597 ON HEARING CONCLUSIONS AND ORDER

Harry Castelbaum, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On October 11, 1939, Corporal Thomas T. Forkin of the New Jersey State Police seized John Rocco's Oldsmobile Coupe and forty-four 5-gallon cans of alcohol being transported therein by Emil Nole. The motor vehicle and alcohol were turned over to this Department. Samples of the alcohol were analyzed by the Department's Chemist and found to be high proof alcohol, fit for beverage purposes when diluted with water.

At the hearing held herein, no one appeared to contest forfeiture of the articles seized. The alcohol was *prima facie* illicit since, although fit for beverage purposes, it bore no tax stamps. Hence, I find that the alcohol and the vehicle in which it was being transported constitute unlawful property, and are subject to forfeiture. R. S. 33:1-66.

Accordingly, it is ORDERED that the property set forth in Schedule "A" be and hereby is forfeited, and that it be retained for the use of hospitals and State, County and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

D. FREDERICK BURNETT,
Commissioner.

Dated: November 29, 1939.

SCHEDULE "A"

44 - 5 gallon cans illicit alcohol
1 - Hydrometer and test tube
1 - Oldsmobile Coupe, Serial BC198652, Engine L298142, 1939 New York Registration 5 Y 6939

8. BAR - SERVICE BAR - WHAT CONSTITUTES.

Dear Sir:

I understand that Ventnor City is about to issue alcoholic consumption license on premises pertaining to dining room, with a service bar.

Will you kindly inform me just what constitutes a service bar, and performance of serving beverage.

Very truly yours,
E. S. Albertson

November 30, 1939

Mr. E. S. Albertson,
Ventnor City, N. J.

My dear Mr. Albertson:

I have before me your letter of November 22nd reporting that Ventnor City is about to issue an on-premises consumption license for a dining room with a service bar, inquiring what constitutes a service bar and the performance of serving beverages.

According to my records, there is presently no provision for the issuance of consumption licenses in Ventnor City, but there is a proposed ordinance authorizing the issuance of plenary retail consumption licenses to hotels or restaurants and providing by Section 10:

> "No bar, except a service bar, shall be permitted in any premises for which a Plenary Retail Consumption License is issued, and no person shall be served with beverages either at or directly over any bar."

I take it that your inquiry relates to the provisions of the proposed ordinance. Under the proposed ordinance any bar may be a service bar so long as no one is served with beverages at or directly over the bar. The important thing is not what it is, but the use that is made of it.

With respect to what constitutes the service of beverages, here again the method is not so important as the result. If a patron obtains beverages at or directly over the bar, it matters not whether they be handed to him ready mixed by the bartender or whether a bottle and glass are placed upon the bar and the customer is permitted to serve himself.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

9. CORPORATIONS - RIGHT TO DO BUSINESS IN A TRADE OR OTHER NAME THAN THAT BY WHICH IT WAS INCORPORATED - THE RIGHT SUSTAINED.

November 29, 1939

Lehigh Warehouse & Transportation Co., Inc.,
Newark, N. J.

Gentlemen:

I understand that the only question upon which I am asked to pass is whether or not you may amend your application for rectifier's license to read that the licensee shall be "Lehigh Warehouse & Transportation Company, Incorporated, doing business as 'Foreign and Domestic Bottlers'."

This, in turn, raises the question whether or not a corporation may lawfully do business in a name other than that by which it was incorporated.

The statute concerning the registration of assumed trade names, P.L. 1906, c. 240, now R. S. Title 56, Chapter 1, while it allows such names to be used under certain conditions, expressly declares that these provisions "shall in no way affect or apply to any corporation duly organized under the laws of this State or any corporation organized under the laws of any other state and lawfully doing business in this state." R. S. Title 56:1-5.

If this were all, there would be serious question as to your right to use a name as to which you are denied the right of registry. But this is not all.

The statute concerning the registration of labels and trade-marks, P.L. 1898, c. 50, now R. S. Title 56, Chapter 3, expressly includes corporations among other parties who may register for their protection such labels, trademarks, terms or designs that have been used or are intended to be used for the purpose of designating, making known, or distinguishing any goods, wares, merchandise or products of labor that have been or may be wholly or partly made by any such person, association, organization or corporation or that may adopt and file for registry any such label, trade-mark, term or design as aforesaid.

This is a very broad statute. It clearly establishes the right of a New Jersey corporation to adopt labels, trade-marks, terms or designs which distinguish its products from those of its competitors. The underlying idea of a trade-mark is to identify the maker - to furnish to the trade a mark which shall be as good as his name - in short, a substitute name by which he does business.

There is nothing in the Corporation Act, R. S. Title 14, which prohibits the use of a trade name by a corporation. The only pertinent sections are R. S. 14:2-3, which provides that the certificate of incorporation shall set forth the name of the corporation, which shall not contain the words "insurance", "safe deposit", "trust company" or "bank" and that the name shall not be one already in use by another existing corporation of this state or so similar thereto as to lead to uncertainty or confusion, and R. S. 14:3-1, which provides that every corporation shall have power to have succession by its corporate name and sue and be sued in any court.

Turning to the cases, I find in Alexander v. Berney, 28 N. J. Eq. 90, 93 (Ch. 1877), the Court said: "A corporation may acquire a name by usage."

In International Silver Company v. William H. Rogers Corporation, 66 N. J. Eq. 119 (Ch. 1904); 67 N. J. Eq. 646 (E. & A. 1904), Vice Chancellor Stevens granted an injunction against appropriation of trade names used by the complainant. He said (66 N.J. Eq. at 120):

> "It has been so often decided, in cases which will be referred to in the course of this opinion, that the complainant and its immediate predecessors are entitled to the trade names Wm. Rogers & Sons, Wm. Rogers and Wm. Rogers Manufacturing Company, that any further statement of complainant's title or the grounds on which it rests is needless."

In Blue Goose Auto Service, Incorporated v. Blue Goose Super Service Station, Incorporated, 110 N. J. Eq. 547 (E. & A. 1931), the case was one of infringement of a trade name or unfair competition. It was held that the right to a trade name may be acquired by user only. Mr. Justice Parker, speaking for the court of last resort, said:

> "Complainant corporation had taken the 'fancy' name 'Blue Goose' in 1925 and even at common law had acquired an exclusive right thereto. 38 Cyc. 718; Eureka Fire Hose Co. v. Eureka Rubber Manufacturing Co., 69 N. J. Eq. 159; affirmed, 71 N. J. Eq. 300. See United Cigar Stores Co. v. United Confectioners, 92 N. J. Eq. 449.
>
> "Whether complainant had registered the name, or incorporated under it, was immaterial although as we have said, the corporation complainant had officially adopted it. But mere user will generally suffice: it appearing, as in this case, that a good will had been established in connection with the name. Eureka Fire Hose Co. v. Eureka Rubber Manufacturing Co., supra."

These cases, which recognize the common law right of a corporation to acquire a trade name by mere user and thereafter to protect it in the courts, demonstrate that its initial act of adopting a trade name, which is the necessary first step to any usage, is also legal. If the full grown goose is within the law, so is the egg whence it came.

The request to amend your application as first above indicated is, therefore, granted.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. GAMES - BINGO - HEREIN OF A PLAN TO CAPITALIZE ON THE OUTLAWRY OF BINGO.

November 28, 1939.

Dear Sir:

I represent several licensed tavern owners who have, upon their premises, operated bingo games. The said bingo games, of course, have been conducted in rooms which have not violated the rules of your department. Due to the recent proclamation of the Prosecutor of Essex County, these bingo games, of course, will desist on or about December 1st next.

One licensee, who heretofore rented the upper floor of his establishment to independent bingo operators, now plans to rent the said upper floor of his establishment to independent operators who will conduct instead, card parties. At these card parties, pinochle, bridge, and the like will be played, and prizes (not cash) will be awarded to the winner or winners at each table. It goes without saying that no gambling of any kind will be permitted on the premises as heretofore.

In view of the agitation against bingo, I am wondering whether you would express an opinion as to whether such card parties would be in violation of your rules and regulations covering the conduct of taverns and licensed premises.

Respectfully yours,

Herman W. Kurtz

November 30, 1939.

Herman W. Kurtz, Esq.,
Newark, N. J.

My dear Mr. Kurtz:

Yours of the 28th is at hand.

Without pausing to condole with the current dejection of the legion of Bingers, I doubt very much their enthusiasm for such strenuous substitutes as pinocle, bridge, skat and the like. In any event, mention of "independent operators" sounds quite professional and hardly a charitable promotion. While it may go without saying that gambling should not be permitted, it won't go at all if it is. Judgment is therefore reserved until I know what actually happens. If it develops that the scheme is naught but a cover for gambling, suspensions will be in order.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

11. ENFORCEMENT DIVISION ACTIVITY REPORT FOR NOVEMBER, 1939.

To: D. Frederick Burnett, Commissioner

ARRESTS: Total number of persons - - - - - - - - - - - - - - - - 22
Licensees - 0 Non-licensees - 22

SEIZURES: Stills - total number seized - - - - - - - - - - - - -12
Capacity 1 to 50 gallons - - - - - - - - - - 6
Capacity 50 gallons and over - - - - - - - - 6

Motor Vehicles - total number seized - - - - - - - - - 4
Trucks - 0 Passenger Cars - 4

Alcohol
Beverage Alcohol - - - - - - - - - - - - - - - - - 48 Gallons

Mash - Total number of gallons- - - - - - - - - - 9517

Alcoholic Beverages
Beer, Ale, etc. - - - - - - - - - - - - - - - - 17 Gallons
Wine - 1043 "
Whiskies and other hard liquor - - - - - - - - 50 "

RETAIL INSPECTIONS:
Licensed premises inspected- - - - - - - - - - 1099
Illicit (bootleg) liquor - - - - - - - 5
Gambling violations- - - - - - - - - - -12
Sign violations- - - - - - - - - - - - -21
Unqualified employees- - - - - - - - - -70
Other mercantile business- - - - - - - 8
Disposal permits necessary - - - - - - 3
"Front" violations - - - - - - - - - - 6
Improper beer markers- - - - - - - - - 3
Other violations found - - - - - - - -17

Total violations found - - - - - - - 145

Total number of bottles gauged - - - - - - - - 9093

STATE LICENSEES:
Plant Control inspections completed - - - - - - - 71
License applications investigated- - - - - - - - 14

COMPLAINTS:
Investigated and closed- - - - - - - - - - - - -306
Investigated, pending completion - - - - - - - - -478

LABORATORY:
Analyses made- - - - - - - - - - - - - - - - - - -120
Alcohol and water and artificial coloring cases- - - - - - - - - 19
Poison and denaturant cases- - - - - - - - - - - - 0

Respectfully submitted,
E. W. Garrett,
Chief Deputy Commissioner.

12. FOREIGN MANUFACTURERS AND WHOLESALERS - MAY NOT SOLICIT ORDERS IN NEW JERSEY WITHOUT A LICENSE HERE IN ITS OWN NAME - THE STATUTORY REQUIREMENTS MAY NOT BE EVADED BY INDIRECTION - HEREIN OF A CURB ON WINE WHOLESALE LICENSES.

Dear Sir:

We have a tentative proposition with the Cameo Vineyards Company of Fresno, California, whereby we, by taking out a Wholesale Wine License, are to sell their products in tanks, barrels and bottles.

The point we are interested in clearing up at this time is when carloads of bulk wines are shipped it will be necessary to have same billed direct from the shipper in California to the bonded winery, the purchaser, in New Jersey.

We, being the sole distributors in New Jersey, would like to ask you to grant us the privilege to have these bulk shipments of carload lots billed directly from the source in California.

Since the customers that are to purchase this merchandise are in the same business category as ourselves, it would be unwise for us to bill them for this merchandise since there naturally exists a certain amount of business jealousies, price secrecy, and also that every winery owner thinks he has his own direct source of supply, and for numerous other reasons which would keep him from buying this product if it were to be billed by ourselves rather than the source in California.

If you can help us by granting this privilege, we think it might go far toward helping to cure the present evil of unlicensed solicitation. The state is covered by our bond under the Wholesale Wine License, for which we are paying the $1,000.00 fee, thereby making the conditions in connection with the state entirely the same as if a new license were being taken out by a new concern.

Very truly yours,
Sonoma Vineyards Winery

December 2, 1939

Sonoma Vineyards Winery,
Paterson, N. J.

Gentlemen:

Cameo Vineyards Company of Fresno, California, may, at present, sell its wines to licensed New Jersey manufacturers and wholesalers but it cannot solicit orders or send missionary men into this State because it is not the holder of a New Jersey license.

As I understand your letter, you plan to take out a wine wholesale license, thereafter solicit orders from New Jersey manufacturers and wholesalers on behalf of Cameo Vineyards, forward said orders to Cameo at Fresno, California, and have the wines billed and shipped by that concern directly to the purchasers.

The plan is a mere subterfuge to permit the California company to solicit orders in New Jersey without a license. If it wishes to carry on such activities, it must apply for a license in its own name and obtain solicitors' permits for salesmen and missionary men employed by it. The plan is, therefore, disapproved.

If you obtain a wine wholesale license, you may purchase the wine from Cameo and distribute and sell it to licensed retailers and wholesalers, but, in such event, the wines must be sold and shipped to you, and thereafter sold and shipped by you in accordance with the terms of your license. Shipping and billing by Cameo to the purchasers of sales made by you would not be permissible.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

By: Edward J. Dorton,
Deputy Commissioner and
Counsel.

13. DONATIONS - CONTRIBUTION BOXES IN TAVERNS TO RAISE MONEY FOR A POLICE AMBULANCE - APPROVED.

December 2, 1939

Patrolman Norman Turner, Chairman,
Police Headquarters,
North Arlington, N. J.

My dear Mr. Turner:

I have before me your letter of November 21st and note with interest the undertaking of the North Arlington Police to raise some $3,000.00 to buy an ambulance.

I cordially approve of your request to place in the several taverns, if the proprietors are willing, a contribution box for this splendid cause and hope that your campaign will be crowned with the success it deserves.

Very truly yours,

D. Frederick Burnett

Commissioner.