

STATE OF NEW JERSEY
 Department of Law and Public Safety
 DIVISION OF ALCOHOLIC BEVERAGE CONTROL
 1100 Raymond Blvd. Newark 2, N. J.

December 18, 1963

BULLETIN 1541

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

December 18, 1963

BULLETIN 1541

1. COURT DECISIONS - JAMES M. McCUNN & CO., INC. v. FLEMING & MC CAIG, INC. AND DIVISION OF ALCOHOLIC BEVERAGE CONTROL - REMAND FOR FURTHER FINDINGS AND CONCLUSIONS.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-144-62 and A-560-62

JAMES M. McCUNN & CO., INC., a
corporation,

Appellant,

vs.

FLEMING & McCAIG, INC., a
corporation, and DIVISION OF
ALCOHOLIC BEVERAGE CONTROL OF
THE STATE OF NEW JERSEY,

Respondents,

Argued September 30, 1963 - Decided November 5, 1963

Before Judges Conford, Freund and Sullivan.

Mr. Joseph M. Jacobs argued the cause for appellant
(Messrs. Harrison and Jacobs, attorneys).

Mr. Max Mehler argued the cause for respondent,
Fleming & McCaig, Inc.

Mr. Avrom J. Gold, Deputy Attorney General, argued
the cause for respondent, Division of Alcoholic
Beverage Control (Mr. Arthur J. Sills, Attorney
General of New Jersey, attorney).

The opinion of the court was delivered by

SULLIVAN, J.A.D.

James M. McCunn & Co., Inc. (McCunn) appeals from the conclusions and order of the Acting Director of the Division of Alcoholic Beverage Control, requiring McCunn to sell and continue to sell to Fleming & McCaig, Inc. (McCaig) alcoholic beverages "on terms usually and normally required" by McCunn. (Fleming & McCaig, Inc. v. James M. McCunn & Co., Inc., Bulletin 1506, Item 1.)

McCunn is an importer of alcoholic beverages and is the sole distributor in the United States of John Begg scotch whiskey and Tanqueray gin. McCaig has been a liquor wholesaler in New Jersey for more than 25 years.

It has been McCunn's policy to effect distribution in New Jersey through one wholesaler as the sole distributor. McCaig became

the sole distributor for McCunn in 1947 and continued in that capacity until 1952 when by mutual agreement John Barry, who had been McCaig's sales manager, took over the prime distributorship for McCunn. However, McCaig continued to sell McCunn's products as sub-dealer by purchasing from Barry at an "override" of \$1.50 per case.

In the Spring of 1961 Barry decided to retire from the business as a wholesaler and offered to sell his accounts to McCaig for \$15,000. Discussions were had with McCunn who was willing to appoint McCaig as prime distributor in place of Barry if agreement could be reached as to a purchase commitment by McCaig. Ultimately such an agreement was worked out. Effective June 30, 1961, McCaig purchased Barry's accounts for \$15,000 and also bought Barry's inventory of 1,200 cases of Begg scotch. McCaig also agreed to purchase from McCunn an additional 6,800 cases of Begg scotch and 1,000 cases of Tanqueray gin for the period July 1, 1961 - March 31, 1962. McCunn thereupon wrote to the Alcoholic Beverage Control Board of New Jersey notifying it that as of July 1, 1961, it had appointed McCaig as its primary distributor in New Jersey for Begg scotch and Tanqueray gin.

In addition to effecting distribution in New Jersey through one wholesaler as the prime distributor, it had also been McCunn's policy to enter into a yearly agreement with its prime distributor for the fiscal year April 1 to March 31, whereby the prime distributor committed itself to the purchase of fixed quantities of McCunn's products. Pursuant to such policy Barry had purchased 7,330 cases of Begg scotch for the fiscal year April 1, 1959 to March 31, 1960, and had purchased 8,655 cases of Begg scotch for the following fiscal year.

As heretofore noted, when Barry sold to McCaig effective June 30, 1961, he still had in inventory 1,200 cases of Begg scotch.

On March 1, 1962, McCaig notified McCunn that it still had 5,200 cases of Begg scotch on hand and would be unable to make any commitment at that time for additional purchases of Begg scotch for the ensuing year. McCaig, however, indicated its desire to remain as prime distributor.

In May 1962 McCaig was notified by McCunn that the prime distributorship would be terminated as of August 1, 1962. On July 16, 1962, McCunn notified the Division that Joseph H. Reinfeld, Inc., and Majestic Wine & Spirits Corporation (two affiliated wholesalers, the former also being owner of a 35% interest in McCunn) had been appointed as McCunn's prime distributors. Thereafter McCunn refused to do business with McCaig or fill its purchase orders.

In August 1962 McCaig filed a petition with the Director of Alcoholic Beverage Control to require McCunn to continue to fill McCaig's orders. The petition sought relief under N.J.S.A. 33:1-93.1 et seq., the provisions of which are 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.

In the event any distiller, importer, or rectifier shall refuse to sell to any individual wholesaler any amount of alcoholic liquor or comply with the provisions of this act, then the wholesaler shall petition the Commissioner of Alcoholic Beverage Control setting forth the facts and demanding a hearing thereon to determine whether such refusal to sell is arbitrary or not.

If the Commissioner of Alcoholic Beverage Control is satisfied with the ability of the wholesaler to pay for such merchandise as ordered, he shall order the distiller, importer, or rectifier to complete said sale of alcoholic liquor to the wholesaler."

At the hearing on the petition McCaig produced testimony that it sells numerous brands of alcoholic beverages and that many of its customers purchase not only Begg scotch and Tanqueray gin but also other brands. The inability of McCaig to furnish its customers with Begg or Tanqueray would cause many customers to drop McCaig entirely and purchase from a wholesaler who could supply all their needs. McCaig also charged that its purchase of Barry's accounts for \$15,000 was predicated on McCunn's assurances that it would continue McCaig as prime distributor.

At the hearing McCaig also claimed that its 8,000 case commitment for the period July 1, 1961 to March 31, 1962 was a compromise of a 10,000 case figure suggested by McCunn and that there were misgivings at the time as to whether the market could absorb this amount of Begg scotch since the compromise figure represented a one-third increase over and above the best depletion previously experienced.

McCaig showed that it had been unable to hold on to all of the Barry accounts, many of whom stopped doing business on Begg. It also produced as a witness, Barry, who testified that in anticipation of going out of business on July 1, 1961, he had asked his customers to purchase a two or three months supply and had been fairly successful in his efforts. As heretofore noted, Barry still had 1,200 cases of Begg scotch on hand on June 30, 1961.

McCunn, on its part, claimed that McCaig readily agreed to the 8,000 case figure and gave assurances that it would have no trouble selling 8,000 cases and most likely would sell more.

It was McCunn's position that the dropping of McCaig as its prime distributor was a sound business decision based upon McCaig's failure to show adequate sales performance of Begg scotch. McCunn claimed that the 8,000 case commitment by McCaig was a reasonable figure in the light of previous sales under Barry's distributorship and that McCaig's inability to sell more than it had up to March 1, 1962, justified the decision.

McCunn also contended that its relationship with McCaig was contractual and covered a period expiring March 31, 1962. McCunn argued that a wholesaler whose authorization as a distributor was reduced to a writing fixing a length of time for the duration thereof could not assert any claim under N.J.S.A. 33:1-93.1 et seq.

The Division of Alcoholic Beverage Control concluded that the mere termination of the contract between McCunn and McCaig did not give McCunn the right to terminate its relationship with McCaig and to undertake a new relationship with other distributors. The Division also found it unnecessary to decide whether, under the statute, all wholesalers have an equal right to purchase the products

of the distillers. It noted that the overriding consideration and perhaps sole reason why McCunn terminated the distributorship of McCaig was because McCaig did not adequately meet McCunn's sales' goal of purchasing and distributing 8,000 cases of Begg scotch. The Division added that it might well be that an annual commitment may be a reasonable requirement provided it does not impose any arbitrary standard. After reviewing all of the proofs, the Division ruled that McCunn had not established any objective criteria which would justify its refusal to continue McCaig as a distributor. The Division's conclusion was that McCunn's refusal to sell was arbitrary within the meaning of the statute. Accordingly, the order, which is the basis of the instant appeal was entered.

The Division's reference to "objective criteria" is taken from Canada Dry Ginger Ale, Inc. v. F & A Distrib. Co., 28 N. J. 444, 457 (1958). In that case a distiller determined to reduce the number of its New Jersey wholesalers from eleven to five and, accordingly six wholesalers were eliminated. A petition was filed under N.J.S.A. 33:1-93.1 et seq. by some of the wholesalers who had been dropped. The Supreme Court held that where it is shown that a distiller or importer has eliminated a wholesaler while continuing to sell to other wholesalers it is reasonable to require the distiller to come forward with an explanation and factual statement so that the Director may effectively fulfill his statutory duty and determine whether the refusal to sell was the result of a decision fairly arrived at, or was arbitrary within the statutory prohibition. It held that while the Director is not authorized to command a distiller to distribute his product to every wholesaler who desires to purchase it, the Director is empowered to determine whether a reasonable method has been employed by a distiller in the selection of wholesalers with whom he will or will not deal. The Court added that there must be a showing that the selection of certain wholesalers to the exclusion of others was made on the basis of a standard reasonably related to the legitimate business goal sought to be achieved and not conducive to the evils which the Act is designed to prevent. The standard must be of such a tangible or objective nature as will enable the Director to determine from the proofs whether its application to the wholesalers in question could reasonably result in the distinction which a distiller has made. Applying the foregoing rules, the Court held in Canada Dry that the distiller had failed to document its "objective criteria" by failing to reveal in depth the underlying facts from which the Director could evaluate the reasonableness of the distiller's actions. It therefore affirmed the Director's order requiring Canada Dry to "sell and continue to sell" to the petitioners.

In Canada Dry Justice Francis filed a separate opinion in which he concurred in the result, but on the ground that the impact of the statute under ordinary circumstances is that any reasonably competent and financially capable wholesaler is entitled to be served and cannot be discriminated against arbitrarily. However, the majority of the court did not adopt this construction and, as heretofore noted, held that the Director is not authorized to command a distiller to distribute his product to every wholesaler who desires to purchase it and that the statute condemns a refusal to sell only when it is found to be arbitrary.

On the basis of the Canada Dry decision we conclude that a prime distributorship is not per se a violation of the statute and that the taking away of a prime distributorship from one wholesaler and giving it to another is not necessarily improper. Thus McCunn's elimination of McCaig as its prime distributor would not be contrary to N.J.S.A. 33:1-93.1 et seq., provided McCunn presented facts

demonstrating that the action taken was reasonable, a proper and legitimate business decision, and not tending to defeat any relevant purpose or policy of the statute.

As heretofore noted the conclusions of the Division of the Alcoholic Beverage Control in the instant case were that McCunn had not established any objective criteria to justify its refusal to continue McCaig as prime distributor. The Division therefore held that McCunn's action was arbitrary and discriminatory.

We do not agree that McCunn failed to establish any objective criteria. The issue posed was a narrow one. McCunn asserted that it had eliminated McCaig as prime distributor because McCaig's performance in that capacity was inadequate. McCunn showed that McCaig had undertaken a commitment of 8,000 cases of Begg scotch for the period ending March 31, 1962, and that on March 1, 1962, McCaig disclosed that it still had 5,200 cases on hand and would therefore be unable to make a commitment at that time for any additional purchase of Begg scotch for the ensuing fiscal year. McCunn claimed that this performance was unsatisfactory since the commitment was reasonable in the light of previous sales' figures and projections thereof. This was the basis on which it justified its action.

It is clear to us that the 8,000 case quota was an objective criterion in the sense that it was understood that McCaig would dispose of substantially all of it during the year ending March 31, 1962. But the determinative question is whether that criterion was unreasonable or excessive so as to make it arbitrary. The Division nowhere makes an express determination of this issue or, equally important, as to any of the subordinate facts which would have to be determined to permit a reasoned conclusion on the issue of arbitrariness. See D., L. & W. R. Co. v. City of Hoboken, 10 N. J. 418, 425-427 (1952).

McCaig claimed that the 8,000 case figure was high and that its failure to deplete substantially that allotment was not its fault. In addition to the number of cases which it was required to take, McCaig claimed that it was unable to retain a number of the Barry accounts, many of whom stopped buying Begg scotch. McCaig also claimed that many of Barry's customers were stocked up immediately prior to its purchase of the accounts, and that McCunn's decision to drop McCaig, made in May 1962, some ten or eleven months after McCaig took over the prime distributorship, did not afford McCaig a reasonable opportunity to demonstrate its ability to handle the prime distributorship.

It does not appear that any findings were made as to these disputed matters. The Division stated that McCunn's action was arbitrary but did not indicate in what way it found it to be arbitrary other than to note that objective criteria had not been established - a determination which we have found to be incorrect.

We conclude that it was incumbent on the Division to determine whether or not McCaig's failure substantially to deplete its 8,000 case purchase, together with its resultant inability to make a new commitment, justified McCunn's decision to drop McCaig as its prime distributor. In this connection it would have to be decided whether or not the 8,000 case figure was reasonable in the light of past sales and depletion experiences, or any other relevant business consideration. Express findings are needed as to the figures for past sales and depletion periodically by both Barry and McCaig as well as for the current period by McCaig alone. There is some confusion in the record in these respects. Also a factual determination would have to be made as to McCaig's contention that its disappointing

performance was due to the unexpected loss of many of the Barry accounts as well as insufficient time to demonstrate its ability to handle the prime distributorship. There should be a conclusion as to the legal sufficiency of these contentions if found to be true.

The Division points out that Reinfeld's stock interest in McCunn may have influenced the selection of Reinfeld and Majestic as prime distributors but it makes no express finding on this point. If material to the Division's final conclusions, such a finding should be made.

Resolution of all of the foregoing issues was vital to a reasoned determination as to whether or not McCunn's action was arbitrary within the meaning of the statute.

McCunn also contends that N.J.S.A. 33:1-93.1 et seq. is unconstitutional because it does not establish a definite standard by which the Director may determine whether or not the refusal to sell is arbitrary. We find no merit in this contention. The fact that the statute is cast in broad terminology is not fatal so long as a sufficient standard is indicated. As is stated in Ward v. Scott, 11 N. J. 117, 123-124 (1952):

" . . . [T]he exigencies of modern government have increasingly dictated the use of general rather than minutely detailed standards in regulatory enactments under the police power."

And see R. H. Macy & Co., Inc. v. Director, Div. of Taxation, 77 N.J. Super. 155 (App. Div. 1962), affirmed o. b. ___ N. J. ___ (1963); Esso Standard Oil Co. v. Holderman, 75 N.J. Super. 455 (App. Div. 1962), affirmed o. b. 39 N. J. 355 (1963).

In construing the statute in question the Supreme Court noted in Canada Dry that the Director is empowered to determine whether a reasonable method has been employed by a distiller in the selection of wholesalers with whom he will or will not deal. Under the statute as construed in Canada Dry, where a refusal to sell is established a distiller is required to come forward and present facts showing that its refusal was reasonable and the resultant decision fairly arrived at. The statute has been before our Supreme Court on two occasions and no suggestion of its invalidity has been made. We hold the statute is not unconstitutional for the reasons asserted.

Ancillary to the foregoing, McCunn argues that the failure of the Director to adopt implementing regulations, as suggested in Canada Dry, results in a situation where each case is decided on an ad hoc basis. The statute, says McCunn, does not accord the Director such power. We do not agree that such is the result. Implementing regulations which "delineate the grounds and the nature of the showing required" might well promote the fair and proper administration of the statute. See R. H. Macy & Co., Inc. v. Director, Div. of Taxation, supra (per curiam opinion of the Supreme Court). However, the statute is not unenforceable without them. We note that since the institution of these proceedings the Division has promulgated a regulation governing the administrative procedure before the Division in cases of this kind. However, this does not serve the purpose of the suggestion of the Supreme Court in Canada Dry.

McCunn repeats its argument made before the Division that a wholesaler whose authorization as a distributor is reduced to a writing fixing a length of time for the duration thereof can have

no claim under the statute. We conclude however, as did the Division, that the statute transcends contractual rights and obligations.

We will retain jurisdiction of this appeal and remand the matter to the Division for the limited purpose of making findings and conclusions as to the matters heretofore indicated, or as to any others relevant to the ultimate decision of the Division. These findings and conclusions should be made and filed with this court within 90 days following which the parties should apply for directions as to further briefs and argument. In the meantime, the order of March 12, 1963, is to remain in full force and effect. The allowance of costs will await the final outcome of the appeal.

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2. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - SALE IN VIOLATION OF MUNICIPAL HOURS ORDINANCE - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
Mandiberg's Delicatessen Corp.
t/a Mandiberg's Delicatessen
230 Graham Avenue
Paterson 1, N. J.
Holder of Plenary Retail Distribution License D-67, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

CONCLUSIONS AND ORDER

Licensee, by Max Mandiberg, President, and Betty Mandiberg, Treasurer, Pro se.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to charges alleging that on Sunday, October 20, 1963, at 11:30 a.m., it sold a pint bottle of whiskey (1) for off-premises consumption, in violation of Rule 1 of State Regulation No. 38, and (2) in violation of local hours regulation.

Absent prior record, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Meehan, Bulletin 1512, Item 10.

Accordingly, it is, on this 6th day of November, 1963,

ORDERED that Plenary Retail Distribution License D-67, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Mandiberg's Delicatessen Corp., t/a Mandiberg's Delicatessen, for premises 230 Graham Avenue, Paterson, be and the same is hereby suspended for fifteen (15) days, commencing at 9:00 a.m. Wednesday, November 13, 1963, and terminating at 9:00 a.m. Thursday, November 28, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE BELOW FILED PRICE - AIDING AND ABETTING UNLAWFUL TRANSPORTATION - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Hampshire Bar, Inc.)
t/a Hampshire Bar)
201 N. New Hampshire Avenue)
and 121 Madison Avenue)
Atlantic City, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-13, issued by the Board of Commissioners of the City of Atlantic City)

Samuel Epstein, Esq., Attorney for Licensee.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to charges alleging that (1) on July 17, August 30 and October 30, 1962, and January 25, 1963, it sold alcoholic beverages at less than their filed prices, in violation of Rule 5 of State Regulation No. 30, (2) on December 12, 1962, it aided and abetted unlawful transportation of alcoholic beverages contrary to R.S. 33:1-2, in violation of R.S. 33:1-52, and (3) on July 30, 1963, it sold a pint bottle of gin for off-premises consumption during prohibited hours, in violation of State Regulation No. 38.

Reports of investigation disclose that with respect to the first charge, the licensee sold various kinds and quantities of alcoholic beverages totaling approximately twelve cases at a total price of approximately \$770., the orders for which were cleared by the licensee for friends of a solicitor. With respect to the second charge, the reports disclose that the manager assisted the purchaser of eight cases of assorted alcoholic beverages to load the same into the purchaser's unlicensed vehicle for transportation by him.

Absent prior record, the license will be suspended on the first charge for twenty days (Re Orbin, Bulletin 1360, Item 4; cf. Re Miner, Bulletin 1442, Item 4), on the second charge for ten days (Re Garibaldi, Bulletin 944, Item 9) and on the third charge for fifteen days (Re Falciani, Bulletin 1533, Item 7), or a total of forty-five days, with remission of five days for the plea entered, leaving a net suspension of forty days.

Accordingly, it is, on this 6th day of November, 1963,

ORDERED that Plenary Retail Consumption License C-13, issued by the Board of Commissioners of the City of Atlantic City to Hampshire Bar, Inc., t/a Hampshire Bar, for premises 201 N. New Hampshire Avenue and 121 Madison Avenue, Atlantic City, be and the same is hereby suspended for forty (40) days, commencing at 7:00 a.m. Wednesday, November 13, 1963, and terminating at 7:00 a.m. Monday, December 23, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

4.

ACTIVITY REPORT FOR NOVEMBER 1963

ARRESTS:		
Total number of persons arrested - - - - -		13
Licensees and employees - - - - -	7	
Bootleggers - - - - -	6	
SEIZURES:		
Motor vehicles - cars - - - - -		2
Distilled alcoholic beverages - gallons - - - - -		249,593
Brewed malt alcoholic beverages - gallons - - - - -		6,376
RETAIL LICENSEES:		
Premises inspected - - - - -		765
Premises where alcoholic beverages were gauged - - - - -		240
Bottles gauged - - - - -		3,717
Premises where violations were found - - - - -		75
Violations found - - - - -		96
Unqualified employees - - - - -	33	Other mercantile business - - - - - 1
Reg. #58 Sign not posted - - - - -	21	Disposal permit necessary - - - - - 1
Application copy not available - - - - -	12	Other violations - - - - - 24
Prohibited signs - - - - -	4	
STATE LICENSEES:		
Premises inspected - - - - -		8
License applications investigated - - - - -		8
COMPLAINTS:		
Complaints assigned for investigation - - - - -		325
Investigations completed - - - - -		293
Investigations pending - - - - -		176
LABORATORY:		
Analyses made - - - - -		131
Refills from licensed premises - bottles - - - - -		40
Bottles from unlicensed premises - - - - -		17
IDENTIFICATION:		
Criminal fingerprint identifications made - - - - -		7
Persons fingerprinted for non-criminal purposes - - - - -		236
Identification contacts made with other enforcement agencies - - - - -		146
DISCIPLINARY PROCEEDINGS:		
Cases transmitted to municipalities - - - - -		14
Violations involved - - - - -		16
Sale during prohibited hours - - - - -	9	Sale to minors - - - - - 7
Cases instituted at Division - - - - -		18
Violations involved - - - - -		27
Sale during prohibited hours - - - - -	5	Fraud in application - - - - - 1
Possessing liquor not truly labeled - - - - -	4	Permitting foul language on premises - - - - - 1
Permitting lottery activity (numbers) on premises - - - - -	3	Permitting immoral activity on prem. - - - - - 1
Sale below filed price - - - - -	3	Permitting gambling (playing bowling machine for money) on premises - - - - - 1
Permitting bookmaking on premises - - - - -	2	Sale to minors - - - - - 1
Conducting business as a nuisance - - - - -	2	Substituting drink other than ordered - - - - - 1
Beverage Tax Law non-compliance - - - - -	1	Serving woman at bar (local reg.) - - - - - 1
Cases brought by municipalities on own initiative and reported to Division - - - - -		12
Violations involved - - - - -		16
Sale to minors - - - - -	6	Failure to close prem. during proh. hrs. - - - - - 1
Sale during prohibited hours - - - - -	2	Failure to afford view into premises during prohibited hours. - - - - - 1
Employing persons w/o iden. card (local reg.) - - - - -	2	Permitting immoral activity on prem. - - - - - 1
Permitting brawl on premises - - - - -	2	Sale to intoxicated person - - - - - 1
HEARINGS HELD AT DIVISION:		
Total number of hearings held - - - - -		27
Appeals - - - - -	3	Seizures - - - - - 1
Disciplinary proceedings - - - - -	16	Application for license - - - - - 1
Eligibility - - - - -	6	
STATE LICENSES AND PERMITS ISSUED:		
Total number issued - - - - -		1,395
Licenses - - - - -	6	Social Affair permits - - - - - 346
Solicitors' permits - - - - -	31	Miscellaneous permits - - - - - 225
Employment permits - - - - -	223	Transit insignia - - - - - 258
Disposal permits - - - - -	40	Transit certificates - - - - - 12
Wine permits - - - - -	254	
OFFICE OF AMUSEMENT GAMES CONTROL:		
Enforcement files established - - - - -	2	

EMERSON A. TSCHUPP
Acting Director of Alcoholic Beverage Control
Acting Commissioner of Amusement Games Control

- 5. DISCIPLINARY PROCEEDINGS - SALE TO INTOXICATED PERSON - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
 Elmer Z. Vamos)
 t/a Ramble Inn)
 Main Street)
 Lebanon Township)
 PO New Hampton, N. J.)
 Holder of Plenary Retail Consumption License C-6, issued by the Township Committee of Lebanon Township.)

CONCLUSIONS AND ORDER

 Licensee, Pro se
 David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that on January 13, 1963, he sold drinks of alcoholic beverages to an intoxicated person, in violation of Rule 1 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Director for forty days effective July 26, 1962, for making a combination sale of alcoholic beverages for off-premises consumption, furnishing a discount in connection with sale of alcoholic beverages for off-premises consumption, sale to a minor and sale of alcoholic beverages for off-premises consumption during hours prohibited by State Regulation. Re Vamos, Bulletin 1473, Item 4.

The license will be suspended for twenty days (Re Parnes, Bulletin 1530, Item 2), to which will be added five days by reason of the record of suspension for previous dissimilar violation within the past five years (Re Falciani, Bulletin 1533, Item 7), 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 12th day of November, 1963,

ORDERED that Plenary Retail Consumption License C-6, issued by the Township Committee of Lebanon Township to Elmer Z. Vamos, t/a Ramble Inn, for premises on Main Street, Lebanon Township, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. Tuesday, November 19, 1963, and terminating at 2 a.m. Monday, December 9, 1963.

EMERSON A. TSCHUPP
 ACTING DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE BELOW FILED PRICE - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Bartolini Bar & Liquor Store, Inc.)
t/a Bartolini Bar & Liquor)
Store, Inc.,)
931 Chambers Street)
Trenton 10, New Jersey,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-5, issued by the City Council of the City of Trenton.)

Felcone & Felcone, Esqs., by Michael Felcone, Esq., Attorneys For Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE ACTING DIRECTOR:

Licensee pleads guilty to a charge alleging that on October 25, 1963, it sold two six-packs of beer at less than filed price, in violation of Rule 5 of State Regulation No. 30.

Absent prior record, license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Garsky, Bulletin 1518, Item 7.

Accordingly, it is, on this 12th day of November 1963,

ORDERED that Plenary Retail Consumption License C-5, issued by the City Council of the City of Trenton to Bartolini Bar & Liquor Store, Inc., t/a Bartolini Bar & Liquor Store, Inc., for premises 931 Chambers Street, Trenton, be and the same is hereby suspended for five (5) days, commencing at 2 a.m. Monday, November 18, 1963, and terminating at 2 a.m. Saturday, November 23, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE OFF LICENSED PREMISES -
AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 20 DAYS,
LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Pinky's Deli-Liquors, Inc.
729-735 High Street
Newark, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution License D-65, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Samuel Raffaello, Esq., Attorney for Licensee
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that on August 3, 1963, it sold alcoholic beverages at unlicensed premises, in violation of R.S. 33:1-2.

The sale was made at premises 118 Spruce Street, Newark, from which the license had been transferred to premises 729-735 High Street. See 737 High Street Corp. v. Newark and Pinky's Deli-Liquors, Inc., Bulletin 1516, Item 2. At the time of renewal of the license in June 1963, the licensee chose to apply for renewal for the new premises rather than the old, notwithstanding the fact that the new premises were not yet ready for occupancy. Division records disclose that the licensee was well aware that, under the circumstances, it would have to discontinue sale of alcoholic beverages at the old premises after June 30, 1963, and, of course, could not commence sale at the new premises until they were suitable for occupancy. In fact, the license was recently issued with effective date of November 1, 1963.

It appearing that the violation was deliberate, it must be considered as aggravated. The license will be suspended for twenty days (cf. Re Assisi and Faccione, Bulletin 1527, Item 3), with remission of five days for the plea entered, leaving a net suspension of fifteen days.

Accordingly, it is, on this 12th day of November 1963,

ORDERED that Plenary Retail Distribution License D-65, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Pinky's Deli-Liquors, Inc., for premises 729-735 High Street, Newark, be and the same is hereby suspended for fifteen (15) days, commencing at 9 a.m. Tuesday, November 19, 1963, and terminating at 9 a.m. Wednesday, December 4, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

8. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against)

John Bozzone)
t/a "B and A Tavern")
74 Cambridge Avenue)
Jersey City, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-481, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

Licensee, by John Bozzone, Pro se
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensee pleaded not guilty to a charge alleging that on September 23, 1963 he possessed on his licensed premises an alcoholic beverage in one bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

At the hearing held herein, an ABC agent testified in substance that on September 23, 1963 he visited the licensed premises wherein he gauged and tested licensee's open stock of assorted brands of liquor; that the contents of one bottle labeled "Gordon's Distilled London Dry Gin, 90 Proof" appeared low in proof; that he sealed the bottle in the presence of the licensee and placed it in the trunk of his car and that on the following day he delivered the bottle to the Division's chemist.

The Division's chemist testified that on September 24, 1963, the agent turned over to him the bottle in question; that he analyzed its contents; that he found them low in proof, low in acids, and high in solids and not genuine Gordon's Distilled London Dry Gin and that the bottle was in the laboratory vault from September 24, 1963 until the day of the within hearing.

The licensee and his bartender testified that they did not tamper with the bottle and that they were unable to account for the substitution of its contents. Nevertheless, a licensee is responsible when alcoholic beverages not truly labeled are found on his licensed premises. Cedar Restaurant & Cafe Co. v. Hock, 135 N.J.L. 156 (Sup. Ct. 1947); Re Kruvant, Bulletin 1291, Item 3; Re Hala Corporation, Bulletin 1525, Item 4.

I have carefully reviewed the evidence adduced herein and I find that the agent performed his duties in the customary and accepted manner; that the aforesaid questionable bottle was in fact possessed by the licensee upon his premises, and that

its contents were not the genuine product of the named brand. Hence, I conclude that the Division has established the truth of the charge by a fair preponderance of the believable evidence, and I recommend that the licensee be found guilty as charged.

The licensee has a prior adjudicated record. Effective July 9, 1962, the license was suspended by the Director for fifteen days for a similar violation. Re Bozzone, Bulletin 1470, Item 12. The prior record considered, it is further recommended that an order be entered suspending the license for twenty days. Re Mazur & Strat, Bulletin 1505, Item 4.

Conclusions and Order

No written exceptions to the Hearer's Report were filed with me within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the transcript of the proceedings, the exhibits and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 20th day of November, 1963,

ORDERED that Plenary Retail Consumption License C-481, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to John Bozzone, t/a "B and A Tavern", for premises 74 Cambridge Avenue, Jersey City, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Wednesday, November 27, 1963, and terminating at 2:00 a.m. Tuesday, December 17, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

9. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - FALSE STATEMENT IN APPLICATION FOR LICENSE - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Kickey's Inc.)
4806 Broadway)
Union City, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-120, issued by the Board of Commissioners of the City of Union City.)
-----)

Licensee, by John J. Reddan, President, Pro se.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to charges alleging that (1) on October 23, 1963, it possessed an alcoholic beverage in one bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20, and (2) in its application for current license, it falsely concealed the prior record

of suspensions of license of its president (its principal stockholder), in violation of R.S. 33:1-25.

The previous record of suspensions, the concealment of which is the subject of the second charge, consists of suspension of license of John J. Reddan for premises 552 Park Avenue, West New York, by the Commissioner for ten days, effective September 24, 1938, for twenty days, effective October 21, 1940, and for the balance of its term, effective May 12, 1941, all for "hours" violations. Re Reddan, Bulletin 458, Item 4. In addition, his license for premises 4806 Broadway, Union City, was suspended by the Director for thirty-five days, effective May 21, 1956, for foul language, sale to intoxicated persons and possession of indecent matter. Re Reddan, Bulletin 1118, Item 4.

The prior record of suspension for dissimilar violations occurring more than five years ago disregarded, the license will be suspended on the first charge for ten days and on the second charge for ten days, or a total of twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Robert-Alan Hotel, Inc., Bulletin 1532, Item 4.

Accordingly, it is, on this 14th day of November, 1963,

ORDERED that Plenary Retail Consumption License C-120, issued by the Board of Commissioners of the City of Union City to Kickey's, Inc. for premises 4806 Broadway, Union City, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m. Thursday, November 21, 1963, and terminating at 3:00 a.m. Friday, December 6, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

10. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE AND NUMBERS BETS) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

John B. Slobodian)
t/a John's Bar and Restaurant)
57 Lexington Avenue)
Passaic, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-2, issued by the Board of Commissioners of the City of Passaic)
-----)

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

BY THE ACTING DIRECTOR:

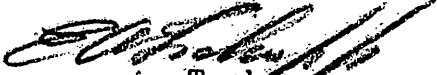
Licensee pleads non vult to charges (1) and (2) alleging that on September 10, 1963, he permitted the acceptance of horse race and numbers bets on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Licensee has a previous record of suspension of license for five days by the municipal issuing authority for "screen" violation, in violation of local regulation, and for permitting an act of violence on the licensed premises, in violation of state regulation.

The prior record considered, the license will be suspended for thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days. Cf. Re Garsky, Bulletin 1518, Item 7; Re DeFrancisco, Bulletin 1531, Item 4.

Accordingly, it is, on this 18th day of November, 1963,

ORDERED that Plenary Retail Consumption License C-2, issued by the Board of Commissioners of the City of Passaic to John B. Slobodian, t/a John's Bar and Restaurant, for premises 57 Lexington Avenue, Passaic, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m. Monday, November 25, 1963, and terminating at 3:00 a.m. Friday, December 20, 1963.


Emerson A. Tschupp,
Acting Director.