

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

BULLETIN 1785

April 2, 1968

TABLE OF CONTENTSITEM

1. ALCOHOLIC BEVERAGE LAW CONSTRUED - SOLICITATION OF ALCOHOLIC BEVERAGE ORDERS BY OUT-OF-STATE MAIL ORDER FIRMS RULED UNLAWFUL.
2. APPELLATE DECISIONS - YAVARONE v. SOUTH BELMAR.
3. DISCIPLINARY PROCEEDINGS (Atlantic City) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
4. DISCIPLINARY PROCEEDINGS (Lakehurst) - SALE TO A MINOR - PRIOR SIMILAR AND DISSIMILAR RECORD - LICENSE SUSPENDED FOR 35 DAYS.
5. DISCIPLINARY PROCEEDINGS (Belleville) - SALE TO A MINOR - CHARGE DISMISSED.
6. DISCIPLINARY PROCEEDINGS (Franklin Township - Warren County) - SALE TO MINORS - LICENSE SUSPENDED FOR 20 DAYS.
7. DISCIPLINARY PROCEEDINGS (Hoboken) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - FALSE STATEMENT IN LICENSE APPLICATION - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.
8. DISCIPLINARY PROCEEDINGS (West Wildwood) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA - DEFERRED EFFECTIVE DATE OF SUSPENSION.
9. STATE LICENSES - NEW APPLICATIONS FILED.

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1. ALCOHOLIC BEVERAGE LAW CONSTRUED - SOLICITATION OF ALCOHOLIC BEVERAGE ORDERS BY OUT-OF-STATE MAIL ORDER FIRMS RULED UNLAWFUL.

Information received by this Division discloses that in the past few months several out-of-state mail order firms have been mailing to New Jersey residents brochures which are in effect order blanks for the purchase of alcoholic beverages to be delivered from abroad to such residents. Persons placing such orders must accompany the order with advance payment. The firms soliciting these orders do not hold any license to sell alcoholic beverages in this State.

Under the New Jersey Alcoholic Beverage Law (R.S. 33:1-1(w)), the above described activity constitutes the prohibited "sale" of alcoholic beverages without a license. Any person who engages in such sale is guilty of a criminal misdemeanor (R.S. 33:1-50) punishable by a fine of not less than \$100.00 and not more than \$1,000.00, or imprisonment for not less than thirty days and not more than three years, or both, and any alcoholic beverages so sold, as well as any vehicle transporting such alcoholic beverages in New Jersey, are unlawful property subject to seizure and forfeiture (R.S. 33:1-66).

Furthermore, any member of the public who knowingly purchases or receives any such alcoholic beverages is himself guilty of a criminal misdemeanor (R.S. 33:1-49) punishable by a fine of not less than \$10.00 and not more than \$100.00, or imprisonment for not less than two days and not more than ten days, or both.

The Division has in the past warned several of these out-of-state firms of the unlawfulness of their activities. Notwithstanding these warnings, within the last three months two trucks containing large quantities of alcoholic beverages brought into New Jersey as a result of activities by these firms have been seized by this Division.

Under the circumstances, I am hereby alerting the public to the possibility that they may be the recipients of these unlawful solicitations of orders for the purchase of alcoholic beverages and that any alcoholic beverages so ordered may be seized and forfeited, notwithstanding that they may have been paid for in advance by the purchaser. It is accordingly requested that persons receiving these brochures do not place orders for the alcoholic beverages. This will assist in stamping out this unlawful activity and will also avoid any disappointment over the loss of paid-for merchandise.

JOSEPH M. KEEGAN  
DIRECTOR

Dated: March 18, 1968

2. APPELLATE DECISIONS - YAVARONE v. SOUTH BELMAR.

ANTHONY YAVARONE	)	
t/a COLONY SUPER MARKET;	)	
	)	ON APPEAL
Appellant,	)	CONCLUSIONS
	)	AND ORDER
v.	)	
	)	
BOROUGH COUNCIL OF THE BOROUGH	)	
OF SOUTH BELMAR,	)	
	)	
Respondent.	)	

-----  
 Fredric Baar, Esq., Attorney for Appellant  
 Donald J. Cunningham, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent whereby it adjudged appellant guilty of sale of alcoholic beverages to a minor on May 27, 1967, in violation of Rule 1 of State Regulation No. 20, and suspended appellant's license for fifteen days effective September 14, 1967. Appellant's premises are located at 508 18th Avenue, South Belmar.

Upon filing of the appeal, an order dated September 6, 1967 was entered by the Director staying the effect of the suspension pending determination of said appeal.

Appellant alleges in his petition of appeal that "the action of the respondent was erroneous" as the sale of alcoholic beverages to a minor did not occur.

Respondent's answer avers that the appeal herein "is without merit" and that the determination of respondent should be sustained.

The hearing on appeal was de novo pursuant to Rule 6 of State Regulation No. 15.

Donald Richardson testified that he is a special police officer employed by the Borough of South Belmar; that at approximately 10:00 p.m. on May 27, he and Officer Cheesman were in a police car stopped "at the intersection of the Parkway and 18th" while waiting for traffic, when he observed a car park at the corner of White Street and 18th Avenue facing in a northerly direction; that he saw a youth (later identified as Thomas L), "carrying beer in his hand" and both Thomas and "another fellow" get into the parked car which headed north on White Street; that as soon as traffic permitted, the police officers followed the car and stopped it on 17th Avenue; that when Richardson checked the drivers' licenses of the five young men in the car, he observed beer on the floor of the vehicle; that he requested the driver to follow him to police headquarters, where Chief Behrman continued the investigation.

On cross examination, Officer Richardson testified that Thomas came out of the store and was joined by another youth and both went to the parked car. In response to a question by appellant's attorney, the officer identified the five young men seated in the hearing room during the within hearing as the same persons who were in the car on the night in question. Four packs of four 16-ounce bottles and one pack of six 12-ounce bottles of Schaefer beer and one pack of six 12-ounce bottles of Carlings Black Label beer were marked without objection as an exhibit in evidence.

Bradford Behrman, Chief of Police, testified that he was on desk duty on May 27 when Officer Richardson came in with the five youths identified as the same youths in attendance at the hearing herein.

Thomas L-- testified that on May 27 he was 18 years of age, being born on August 22, 1948; that he and Robert B-- entered appellant's licensed premises where he (Thomas) purchased a quantity of beer from appellant consisting of four four-packs of Schaefer, one six-pack of Schaefer and another six-pack of Carlings; that appellant placed the beer in two brown paper bags; that Thomas carried the bags of beer from the store, preceding Robert who had stopped to purchase gum; that Robert caught up with him and both got into the car, which was halted by Officer Richardson after they had traveled "about two blocks"; that after they had identified themselves to the police officer, the latter directed them to follow him to police headquarters.

Thomas was subjected to rigid cross examination by the attorney for appellant and, although he deviated in some details from his testimony before respondent, he adhered strictly to the fact that he had purchased the beer in question from appellant.

Thomas said that he and Robert were asked by appellant if they were 21 years of age and, while he (Thomas) answered in the affirmative, Robert did not answer.

Robert --- testified that he accompanied Thomas to appellant's licensed premises and substantially corroborated the testimony given by Thomas as to the sale of the beer by appellant to Thomas on the evening of May 27.

Edward --- and Jack --- testified that appellant's market was the first place they came to that sold alcoholic beverages and that they remained in the car while Thomas and Robert got out to purchase beer. According to the testimony of the aforesaid witnesses, neither of them saw Thomas come out of appellant's licensed premises.

William --- testified that he parked the car and Thomas and Robert got out; that although he did not see them enter appellant's premises, he saw Thomas come out first; and that he (William) turned the car around and directed Jack to "open up the door" and "by that time Robert was there."

Appellant testified that he remembered the night in question and remembered Thomas being in the licensed premises but that there was a tall person with him who identified himself

as being 23 years of age; that although Thomas had ordered the beer, he did not sell it to him but dealt only with the other man who made the purchase of the beer.

On cross examination, appellant testified that he remembered clearly what took place at the time in question. He stated that Officer Richardson and Thomas were confused, as were the other youths who had testified on behalf of respondent in this matter. He asserted that the attorney for respondent spoke to him prior to the hearing before respondent and suggested that he plead guilty in order to receive remission of part of the penalty that might be imposed. Appellant said he took the advice of the said attorney but that later he retracted the plea of guilty that had been entered and the matter was then heard.

Eleanor Chenoweth testified that she was in appellant's premises on the evening of May 27 when Thomas came in; that she observed a "big boy" with him at the time; that the said larger boy, when questioned as to his age, showed the appellant a wallet; that she saw appellant look at the wallet and then go to the back of the store, obtain beer and push it on the counter to the larger boy. The witness further testified that after reading a local newspaper account of the alleged sale to the minor by appellant, she went to appellant and offered to appear and testify in his behalf.

J. Arthur Fell, executive director of the Monmouth County Retail Liquor Stores Association, testified that he attended the hearing before respondent on August 8, 1967, and that it was his best recollection that "the young man and Mr. Yavarone had a discussion about the different sizes of beer, and then the discussion as to quantity and the amount of money, and that he laid the money on the counter while Mr. Yavarone went to the back to get his beer." However, Mr. Fell was not present in appellant's premises on the night in question.

In this matter we are dealing with a purely disciplinary action and such action is civil in nature and not criminal. In re Schneider, 12 N.J. Super. 449 (App.Div. 1951). Thus, the proof must be supported by a fair preponderance of the credible evidence only. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956).

Although the testimony in this matter is somewhat conflicting, I am satisfied with the authenticity of the testimony of Thomas that he purchased beer at appellant's licensed premises. He had no difficulty in identifying appellant as the one who made the sale to him. Moreover, I am satisfied that his four companions told a truthful story as to what happened on the night of May 27. Robert corroborated the testimony of Thomas in so far as the sale of beer by appellant to Thomas was concerned. The other three youths who remained in the car appeared truthful as to what they knew about the incident. Although Officer Richardson may have been unable to recall every minute detail concerning the manner in which the beer was carried from the premises and the order in which Thomas and Robert left appellant's establishment, there is no doubt that he was Thomas carrying bags of beer when they came out of appellant's place of business. Chief Behrman, as well as Officer Richardson, at the hearing herein identified the five youths who were brought to police headquarters by Officer Richardson.

On the other hand, I was not impressed with the testimony of appellant in this matter. His contention was that he remembered

everything perfectly clearly, whereas the other witnesses, including the police officer, were confused with reference to what happened on the night in question.

Moreover, although appellant made oral inquiry as to the age of Thomas, that in itself does not show compliance with R.S. 33:1-77(a) and hence has not established a defense under said section. Sportsmans 300 v. Board of Commissioners of Nutley, 42 N.J. Super. 488 (App. Div. 1956).

The Director's function in a matter of the kind now under consideration is not to reverse the determination of the local issuing authority unless he finds as a fact that there was a clear abuse of discretion or unwarranted finding of fact or mistake of law by respondent. Schulman v. Newark, Bulletin 1620, Item 1. After careful consideration of all of the testimony presented, I find as a fact that under the circumstances herein there has been sufficient proof to establish appellant's guilt. I conclude that appellant has failed to meet the burden that respondent's action was erroneous and against the weight of the evidence, as required by Rule 6 of State Regulation No. 15.

I therefore recommend that an order be entered affirming respondent's action and dismissing the appeal and fixing the effective date for the suspension of license imposed by respondent and stayed pending the entry of the order herein.

#### Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcripts of testimony, the exhibit, oral arguments in summation presented by the attorneys for the respective parties, and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 15th day of February 1968,

ORDERED that the action of respondent be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that Plenary Retail Distribution License D-2, issued by the Borough Council of the Borough of South Belmar to Anthony Yavarone, t/a Colony Super Market, for premises 508 18th Avenue, South Belmar, be and the same is hereby suspended for fifteen (15) days, commencing at 9 a.m. Thursday, February 22, 1968, and terminating at 9 a.m. Friday, March 8, 1968.

JOSEPH M. KEEGAN  
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

MANCUSO, INC. )  
t/a Fairmount Tavern )  
2300-2302 Fairmount Avenue )  
Atlantic City, N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-46 issued by the Board of Commissioners of the City of Atlantic City. )

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Licensee, by Isabella Mancuso, Secretary-Treasurer, Pro se.  
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on August 24, 1967, it 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.

Although the licensee has no previous record, the license then held by Isabella M. Mancuso (secretary-treasurer and 50 per cent. stockholder of the licensee corporation) for the same premises, was suspended by the Commissioner for three days effective March 17, 1944, for employing an alien bartender without requisite employment permit. Re Mancuso, Bulletin 499, Item 7.

The prior record of suspension of license for dissimilar violation occurring more than five years ago disregarded, 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 Indelicato, Bulletin 1774, Item 6.

Accordingly, it is, on this 29th day of January, 1968,

ORDERED that Plenary Retail Consumption License C-46, issued by the Board of Commissioners of the City of Atlantic City to Mancuso, Inc., t/a Fairmount Tavern, for premises 2300-2302 Fairmount Avenue, Atlantic City, be and the same is hereby suspended for ten (10) days, commencing at 7:00 a.m. Monday, February 5, 1968, and terminating at 7:00 a.m. Thursday, February 15, 1968.

JOSEPH M. KEEGAN  
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - PRIOR SIMILAR AND DISSIMILAR RECORD - LICENSE SUSPENDED FOR 35 DAYS.

In the Matter of Disciplinary Proceedings against

EISENHOWER'S MUSICAL BAR, INC.  
t/a Eisenhower's Musical Bar, Inc.  
Traffic Circle Rt. 70,  
Laurel & Union Streets  
Lakehurst, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-4 issued by the Borough Council of the Borough of Lakehurst.

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Novins & Novins, Esqs., by Robert J. Novins, Esq., Attorneys for Licensee.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On Saturday night, May 13th into Sunday morning, May 14, 1967, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Edward ---, age 17, and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

The Division offered the testimony of the minor, two of his companions and an ABC agent in substantiation of the charge.

Edward --- testified that at 11:30 p.m. on May 13, 1967, when seventeen years of age (being born on September 6, 1949), he visited the licensed premises with two adult companions (Stanley Mick and Gerald Ridgeway); that the three sat at the bar where he and his companions were each served with a bottle of Schaefer's beer on three separate occasions -- twice by the barmaid (identified by Edward as Stella Evans) and once by Stanley Kempinski; that he consumed the contents of the said three bottles of beer and was never questioned at any time as to his age by either the barmaid or bartender with reference thereto. Edward testified that he left the licensed premises at 1:30 a.m. May 14.

Stanley Mick testified that on May 13, 1967, he accompanied Edward and Gerald Ridgeway to the licensee's premises and, while there, he (Mick) and his companions each consumed the contents of three bottles of beer; that the first service was made to them by a lady, the second by a man and he did not remember who made the last service of beer to them. Mick further testified that Edward was not questioned by anyone regarding his age.

On cross examination Mick identified Mr. Kempinski as the bartender who made service of beer to him and his companions on one occasion.

Gerald Ridgeway testified that he was with Edward and Mick on May 13, 1967, when service of beer was made to them; that, so far as he recalled, Edward was drinking beer but, because "I had been drinking all day", his recollection as to the number of times Edward was served or what he was actually served was not too clear.

ABC Agent S testified that on October 24, 1967, he was with a fellow agent when Edward and Mick directed them to the licensee's premises as the place where they were on May 13 and 14, 1967, and, although Edward did not identify anyone, Mick identified Stanley Kempinski as the one who had served beer to Edward, Ridgeway and himself at the time in question; that on November 1, 1967, he, Edward and Mick returned to the said licensed premises, at which time Edward identified Stella Evans as one of the bartenders who served beer to him while in the licensee's tavern on May 13 and 14, 1967.

Stanley Kempinski (treasurer of the licensee corporation) testified that he was present on the evening of May 13, 1967 and during the course of the night had tended bar; that "close to 100, 150 people were in there" on the night in question and, although he saw Ridgeway and Mick at the bar, he did not recall seeing or serving Edward.

Stella Evans testified that she was on duty as a bartender on the night of May 13, 1967, but she had never seen or served Edward in the place; that she only recognized Ridgeway that night as she had on previous occasions seen him drinking in the premises.

Eleanor Kempinski (president of the corporate licensee) testified that she was present on the night of May 13, 1967. Although she did see Ridgeway and Mick in the premises, she had no recollection of seeing Edward there.

At the outset it might be noted that we are dealing with a purely disciplinary action and such action is civil in nature and not criminal. In re Schneider, 12 N.J. Super. 449 (App.Div. 1951). Thus the proof herein must be supported merely by a fair preponderance of the credible evidence. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

Inasmuch as the matter sub judice is strictly a factual situation, the credibility of witnesses must be weighed. It is axiomatic that evidence, to be believed, must not only proceed from the mouths of credible witnesses, but must be credible in itself and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App.Div. 1961). From my observation of the demeanor of the witnesses as they testified herein, and in view of the apparent conflict of testimony, I have made a careful analysis of their testimony.

I am impressed by the fact that the minor and Mick, a companion, directed the agents to the licensed premises. Eleanor Kempinski testified that she remembered seeing both Ridgeway and Mick on the evening in question in the tavern. It is apparent,

despite cross examination by the attorney for the licensee, that the minor identified Stella Evans as the one who had served him on two occasions and Kempinski as the one who had made service to him and his companions on one occasion.

I have also carefully noted the demeanor of Edward and especially that of Mick when examined in this matter, and I have not detected any semblance of improper motivation on their part. In so far as Ridgeway was concerned, he contended that he had little knowledge of what occurred on the licensee's premises on the occasion in question because he had been imbibing the greater part of the day.

It appears that, with the exception of Stella Evans, both the Kempinskis merely could not recall Edward being in the licensed premises at the time now under consideration.

I am of the opinion that a fair and proper evaluation of the evidence clearly leads to the conclusion that the witnesses produced by the Division most surely preponderates in favor of a finding of guilt, and I so recommend.

The licensee has a previous record of suspension of the license by the Director for (1) 10 days effective September 6, 1960 for sale to minors; (2) 30 days effective May 29, 1962 for sale to minors and false statement in the license application; (3) 10 days effective November 1, 1966 for mislabeled beer taps. Re Eisenhower's Musical Bar, Inc., Bulletin 1357, Item 8; Bulletin 1458, Item 4; Bulletin 1706, Item 7.

It is further recommended that the license be suspended for twenty days (Re Key Bar, Inc., Bulletin 1765, Item 11), to which should be added fifteen days by reason of the prior record of two suspensions of license for similar violation more than five but less than ten years ago, and the suspension of license for dissimilar violation within the past five years (Re Boysen's Sunset Tavern, Inc., Bulletin 1766, Item 3), or a total of thirty-five days.

#### Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the transcript of testimony and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 14th day of February 1968,

ORDERED that Plenary Retail Consumption License C-4, issued by the Borough Council of the Borough of Lakehurst to Eisenhower's Musical Bar, Inc., t/a Eisenhower's Musical Bar, Inc., for premises at Traffic Circle Rt. 70, Laurel & Union Streets, Lakehurst, be and the same is hereby suspended for thirty-five (35) days, commencing at 2 a.m. Wednesday, February 21, 1968, and terminating at 2 a.m. Wednesday, March 27, 1968.

JOSEPH M. KEEGAN  
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - CHARGE DISMISSED.

In the Matter of Disciplinary Proceedings against )

Varsity Bar, Incorporated t/a Varsity Bar, Inc. 35 William Street Belleville, N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-41 issued by the Municipal Board of Alcoholic Beverage Control of the Town of Belleville. )

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

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On Sunday, April 16, 1967, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., James ---, age 20; in violation of Rule 1 of State Regulation No. 20."

On behalf of the Division, James --- testified that he was born on August 10, 1946 and was 20 years of age on April 16, 1967.

On early Sunday morning, April 16, 1967, James was a passenger in his father's automobile. The driver of the car was Richard McPhil, 21 years of age. Richard stopped the car on the northerly side of William Street approximately twenty feet easterly from its intersection with Cortland Street and across the street from the licensed premises (a tavern) located on the southeasterly corner of William Street and Cortland Street. Both youths entered the tavern at "1:30, twenty-five after one." James ordered a sausage sandwich to take home. The bartender said he would have to "wait about 15 minutes because it would take that long for the sandwich to be ready." Meanwhile, Richard ordered a container of beer, paid for it and departed with the container after staying in the tavern ten minutes. James waited ten or fifteen minutes for the preparation of the sandwich and brought it to the car and sat in the passenger side. The container of beer was in the car. After the car made a left turn into Cortland Street, the youths were intercepted by Sergeants Place and Kimble of the local police force. Upon being questioned by the police officers, James said he was twenty years of age. Richard said the beer was his, he took it out of the tavern. James denied coming out of the tavern with the beer. No mention was made of the sandwich that was in the back seat.

Sergeant Kenneth Place of the local police force testified that, accompanied by Sergeant Raymond Kimble, he was in

a police radio car patrolling the area where the licensed premises was located on the date and time in question. Noting the presence of an automobile parked on the northwest corner of William and Cortland Streets with its motor running and a male behind the wheel, he parked his vehicle on the westerly side of Cortland Street facing the tavern. He observed a male exiting from the front door of the tavern carrying a plastic container, approximately a quart in size, which had foam on top, was gold in color and resembled beer. The male who entered the parked automobile and sat on the passenger side of the car was later identified as James. The car made a left turn into Cortland Street and passed the lot where the police car was parked. Place drove out of the lot and forced the car in which James was a passenger to stop. Observing the presence of the plastic container in the front seat, he smelled and tasted the contents and testified that, in his opinion, the contents of the container was beer. James admitted that the liquid was beer and upon questioning by the police officer said, "It [the beer] was obtained from the Varsity Bar."

Upon cross examination, the officer testified that, upon interrogation, the driver of the car (McPhil) stated that he had purchased the beer. On redirect examination, Sergeant Place testified that James denied carrying the beer out of the tavern.

The testimony of Sergeant Raymond Kimble mainly corroborated Sergeant Place's testimony as to the matters material to the charge.

In defense of the charge, Sam Stellatella, the president of the licensee corporation, testified that he was not in the tavern at the time of the occurrence. His "partner" Tony Fasio (who was ill and could not attend the hearing of the charge being tried) was tending bar at the time of the alleged sale. He produced at the hearing a sandwich which is long and narrow in shape (commonly known as a "hero" sandwich) and testified that that type of sandwich is sold in the tavern. Sandwiches are prepared in the grill at 1:30 a.m.

In rebuttal, the police officers testified that they had searched the car and did not see a sandwich in the car.

James was called to the witness stand by Stellatella and testified that the police officers searched the front of the car only and not the rear car seat.

It is apparent that the major point of inquiry is factual. In this case, as in all disciplinary proceedings, the Division has the burden of proving the truth of the charge by a preponderance of the evidence. Inasmuch as it is my view that the testimony fails to establish that the licensee sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to a minor, as alleged in the charge, I recommend that the licensee be found not guilty and that the charge be dismissed.

#### Conclusions and Order

No exceptions to the Hearer's Report were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.



Kaczmar put four quarts of Rheingold beer in a paper bag and placed it on the bar. Ronald gave Kaczmar the sum of \$2.20 in payment of the beer, exited with Fred and placed the bag containing the beer on the floor of the car where his companions were waiting and drove off. He was not requested to produce identification, or questioned as to his age, nor was he requested to furnish a written acknowledgement of his age. Finally, the witness testified that he was served beer on prior occasions by John Kaczmar and by the licensee, Michael Kaczmar, and no question was raised concerning his age.

Donald Walters testified that on August 14, 1967, he drove his automobile to the licensed premises and parked. Ronald and Fred, (who with three females were passengers in the car) got out of the car and entered the licensed premises in order to purchase beer. Going into the tavern neither of them was carrying packages. Coming out of the tavern door, he observed Ronald carrying a bag which he placed on the floor of the car. He later discovered that the bag contained four quarts of Rheingold beer. It was consumed by the occupants of the car.

Linda ---, a passenger in Walters' automobile, corroborated the testimony offered by Walters, relevant to the charge.

ABC agent D testified that subsequent to August 14, 1967, Ronald, Fred and Linda identified the licensed premises as being the place where the bottles of beer were procured. Ronald and Fred identified John Kaczmar as being the bartender who had served them on August 14. Kaczmar denied knowing either one of the youths.

Fred did not appear as a witness at the hearing held herein.

In defense of the charge, John Kaczmar testified that on the day that the offense was allegedly committed, he left the tavern to go to several places out of town at "about ten o'clock in the morning" and didn't return until "about twenty to ten at night." He denied that he ever saw Ronald. He admitted having Rheingold beer in quart bottles in stock and that it sold for fifty-five cents a quart. Only he and the licensee, Michael Kaczmar, tend bar at the licensed premises.

Thus, this proceeding presents an essentially factual question.

It is a basic principle of law that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Hornauer v. Division of Alcoholic Beverage Control, 40 N.J. Super. 501 (1956); Howard Tavern, Inc. v. Division of Alcoholic Beverage Control (App. Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1.

In view of the fact that the primary issue presented for determination is factual, I closely observed the demeanor of the witnesses as they testified and made a careful analysis and evaluation of their testimony. I find that the testimony presented by the Division witnesses was credible and inculcated the licensee. Ronald's testimony was direct and clear cut. He made positive identification of the licensee's bartender and the licensed premises where the service was made. The identification of the licensed premises was amply corroborated by Mr. Walters

and by Linda. On the other hand, it is my view that the licensee's disclaimer is totally unbelievable.

Inasmuch as there is no proof of Fred's age, I recommend that the charge in so far as it refers to him be dismissed.

It is therefore, recommended that the licensee be found guilty of sale and service of alcoholic beverages to the minor, Ronald.

The licensee has no prior adjudicated record of suspension of license. Hence, I further recommend that the license be suspended for twenty days. Re Key Bar, Inc., Bulletin 1765, Item 11.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of the testimony and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 13th day of February, 1968,

ORDERED that Plenary Retail Consumption License C-1, issued by the Township Committee of the Township of Franklin, Warren County, to Michael Kaczmar, t/a Asbury Tavern, be and the same is hereby suspended for twenty (20) days, commencing at 7:00 a.m. Tuesday, February 20, 1968, and terminating at 7:00 a.m. Monday, March 11, 1968.

JOSEPH M. KEEGAN  
DIRECTOR

- 7. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED- FALSE STATEMENT IN LICENSE APPLICATION - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

MAKEM, INC. )  
312 River Street )  
Hoboken, N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-92 issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken. )

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Licensee, by Anthony LaBruno, President, Pro se.  
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that (1) on September 18, 1967, it possessed an alcoholic beverage in a 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 current application failed fully to disclose its record of prior suspensions of license, in violation of R.S. 33:1-25.

Licensee has a previous record of suspension of license by the Director for ten days effective January 30, 1956, for possessing alcoholic beverages not truly labeled, and for twenty-five days effective January 8, 1962, for permitting acceptance of numbers bets (Re Makem, Inc., Bulletin 1098, Item 10; Bulletin 1433, Item 7) and by the municipal issuing authority for five days effective January 3, 1965, for sale during prohibited hours, non-disclosure of the latter suspension being the subject of the second charge.

The prior record of suspensions of license for similar and dissimilar violations in 1956 and 1962 occurring, respectively, more than ten and more than five years ago disregarded, the license will be suspended on the first charge for ten days (Re Anderson Hotel Incorporated, Bulletin 1767, Item 12) and on the second charge for ten days (Re Suppa, Bulletin 1775, Item 4), to which will be added five days by reason of the record of suspension for dissimilar violation occurring in 1965 within the past five years (Re Boysen's Sunset Tavern, Inc., Bulletin 1766, 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 13th day of February, 1968,

ORDERED that Plenary Retail Consumption License C-92, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Makem, Inc. for premises 312 River Street, Hoboken, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Tuesday, February 20, 1968, and terminating at 2:00 a.m. Monday, March 11, 1968.

JOSEPH M. KEEGAN  
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA - DEFERRED EFFECTIVE DATE OF SUSPENSION.

In the Matter of Disciplinary Proceedings against P-T-J Corporation t/a Dot's Spot 557 West Glenwood Avenue West Wildwood, N. J.

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-1 issued by the Mayor and Council of the Borough of West Wildwood

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John R. Bennie, Esq., Attorney for Licensee.  
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on September 5, 1967, it possessed an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Anderson Hotel Incorporated Bulletin 1767, Item 12.

Recent report of investigation discloses that the licensed business is not presently being conducted, customarily being resumed on or about Memorial Day. This no effective penalty can be imposed at this time. Hence the effective dates for the suspension will be fixed by the entry of a further order herein after the operation of the licensed business shall have been fully resumed on a substantial basis.

Accordingly, it is, on this 14th day of February, 1968,

ORDERED that Plenary Retail Consumption License C-1, issued by the Mayor and Council of the Borough of West Wildwood to P-T-J Corporation, t/a Dot's Spot, for premises 557 West Glenwood Avenue, West Wildwood, be and the same is hereby suspended for five (5) days, the effective dates of such suspension to be fixed by further order, as aforesaid.

JOSEPH M. KEEGAN  
DIRECTOR

9. STATE LICENSES - NEW APPLICATION FILED.

High Grade Beverage Co.  
Repolge Avenue  
Mine Hill, N. J.

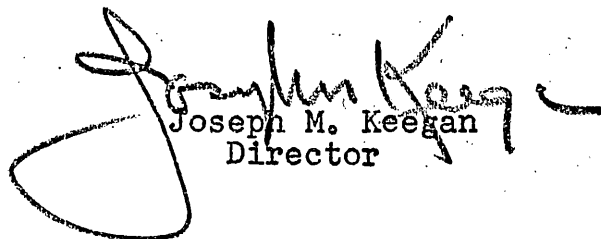
Application filed March 28, 1968 for person-to-person and place-to-place transfer of State Beverage Distributor's License SBD-179 from Ernest Tangeri, t/a Atlantic Bottling Works, 890 King George Road, Woodbridge Township, PO Fords, N. J.

Bergen Warehouse Inc.  
Carlton Avenue and River Street  
East Rutherford, New Jersey

Application filed April 1, 1968 for limited wholesale license.

Krumm Distributors Inc.  
Mountain Avenue, Route S-34  
Hackettstown, New Jersey

Application filed April 1, 1968 for place-to-place transfer of State Beverage Distributor's License SBD-126 to include additional space.

  
Joseph M. Keegan  
Director