



*Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, Massachusetts 02150-2358*

Jean M. Lorizio, Esq.
Chairman

NOTICE OF SUSPENSION

January 23, 2024

**QUALITY MART INC. D/B/A QUALITY MART
21 MASSACHUSETTS AVENUE
BOSTON, MA 02115
LICENSE#: 01957-PK-0116
VIOLATION DATE: 2/09/2023
HEARD: 6/20/2023**

After a hearing on June 20, 2023, the Commission finds Quality Mart Inc. d/b/a Quality Mart violated M.G.L. Ch. 138, § 34 – Sale or delivery of an alcoholic beverage to a person under twenty-one years of age (1 Count). The Commission **suspends the license for a period of two (2) days to be served.**

The suspension shall commence on Monday, March 11, 2024, and terminate on Tuesday, March 12, 2024. The license will be delivered to the Local Licensing Board or its designee on Monday, March 11, 2024, at 9:00 A.M. It will be returned to the licensee on March 13, 2024.

You are advised that pursuant to the provisions of M.G.L. c.138 § 23, you may petition the Commission to accept an offer in compromise in lieu of suspension within twenty (20) calendar days following such notice of such suspension. If accepted, you may pay a fine using the enclosed form which must be signed by the Licensee and a Massachusetts Licensed Accountant.

You are advised that you have the right to appeal this decision under M.G.L. c. 30A to Superior Court within thirty (30) days upon receipt of this notice.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio
Chairman

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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Nicole Smith, Investigator
Christopher Temple, Investigator
Nicole Terasconi, Investigator
Carolyn Conway, Esq.
Administration, File



Commonwealth of Massachusetts
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DECISION

QUALITY MART INC. D/B/A QUALITY MART
21 MASSACHUSETTS AVENUE
BOSTON, MA 02115
LICENSE#: 01957-PK-0116
VIOLATION DATE: 2/09/2023
HEARD: 6/20/2023

Quality Mart Inc. d/b/a Quality Mart ("Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 15. The Alcoholic Beverages Control Commission ("ABCC" or "Commission") held a remote hearing via Microsoft Teams on Tuesday, June 20, 2023, regarding an alleged violation of M.G.L. Ch. 138, § 34 – Sale or delivery of an alcoholic beverage to a person under twenty-one years of age (1 Count) which occurred on February 9, 2023, according to Investigator Smith's report.

The following documents are in evidence:

1. Investigator Smith's Report, 2/9/2023;
2. ABCC Form 43, New License Approval, 8/30/2011;
3. Photographs (2) of Fraudulent Identification Confiscated;
4. ABCC Decision, 7/20/2017;
5. ABCC Decision, 7/25/2017;
6. ABCC Decision, 8/25/2022.

At the conclusion of the hearing, the Commission left the record open to June 27, 2023, for the Licensee to submit an additional exhibit. The Commission did not receive any documents and the record is now closed.

There is one (1) audio recording of this hearing.

FINDINGS OF FACT

1. On Thursday February 9, 2023, at approximately 6:15 p.m., Investigators Temple, Terasconi, and Smith ("Investigators") conducted an inspection of Quality Mart Inc. d/b/a Quality Mart ("Licensee" or "Quality Mart") at 21 Massachusetts Avenue, Boston. (Testimony, Exhibit 1)
2. Investigators were conducting surveillance outside of the establishment when they observed two youthful appearing male individuals exit the licensed premises carrying two 12-packs of Stella Artois beer and one 1.75-ml bottle of Smirnoff vodka, which they began

to place into backpacks. Investigators approached, identified themselves and asked to see proof of legal age to purchase and/or possess alcoholic beverages. Id.

3. Underage #1, actual date of birth 12/20/2004 (age 18), admitted he purchased the alcoholic beverages inside the licensed premises and stated that he was not asked to produce identification. He presented to Investigators a fraudulent Republic of Colombia driver's license bearing his name but a different birth date. (Testimony, Exhibits 1, 3)
4. Investigators entered the licensed premises and identified the Underage Individual to the clerk and the manager, Chafik Hamadeh. They informed Mr. Hamadeh of the violation and that a report would be submitted to the Chief Investigator for further review. (Testimony, Exhibit 1)
5. Mr. Hamadeh appeared at the Commission hearing and testified he was present behind the counter when the clerk scanned Underage #1's identification through the Licensee's identification scanner prior to the sale. Mr. Hamadeh testified he scanned it himself a 2nd time when Investigators brought Underage #1 back into the store and both times, the identification scanned as legitimate. (Testimony)
6. The Licensee has held a license under M.G.L. c. 138, § 15 since 2011 with three (3) prior violations. (Exhibits 2, 4, 5, 6)

DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control, *Connolly v. Alcoholic Beverages Control Comm'n*, 334 Mass. 613, 619 (1956), for which States have especially wide latitude pursuant to the Twenty-First Amendment to the United States Constitution. *Opinion of the Justices*, 368 Mass. 857, 861 (1975). The procedure for the issuance of licenses and required conduct of licensees who sell alcoholic beverages is set out in Massachusetts General Laws, Chapter 138.

Chapter 138 gives the Commission the authority to grant, revoke and suspend licenses. Chapter 138 was "enacted ... to serve the public need and ... to protect the common good." M.G.L. c. 138, § 23. "[T]he purpose of discipline is not retribution, but the protection of the public." *Arthurs v. Bd. of Registration in Medicine*, 383 Mass. 299, 317 (1981). The Commission is given "comprehensive powers of supervision over licensees." *Connolly*, 334 Mass. at 617.

The law is well-settled that the responsibility of the licensee is to exercise sufficiently close supervision so that there is compliance with the law on the premises. A vendor who sells alcohol is "bound at his own peril to keep within the condition of his license." *Commonwealth v. Gould*, 158 Mass. 499, 507 (1893); *Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Comm'n*, 7 Mass. App. Ct. 186, 190 (1979). It is, thus, quite possible for a licensee to offend the regulatory scheme without scienter. *Rico's of the Berkshires, Inc. v. Alcoholic Beverages Control Comm'n*, 19 Mass. App. Ct. 1026, 1027 (1985).

The Licensee is charged with a violation of M.G.L. c. 138, § 34 - Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age. M.G.L. c. 138, § 34 states, in pertinent part, that: "[w]hoever makes a sale or delivery of any alcoholic beverage or alcohol to any person

under twenty-one years of age ... shall be punished by a fine of not more than \$2,000 or by imprisonment for not more than one year or both.” M.G.L. c. 138, § 34.

In this matter, direct evidence was presented through the investigator’s testimony as to her observations of the licensed premises on February 9, 2023, and her interactions with the underage individual as well as with the employees of the Licensee.

The Licensee contends its employee utilized an identification scanner prior to the sale and the underage individual’s identification was reported to be legitimate. (Testimony)

Here, the evidence shows the underage individual presented the Licensee with a fraudulent Republic of Colombia driver’s license. Massachusetts General Laws, Chapter 138, § 34B offers protection from license suspension or revocation or criminal penalties to license holders who reasonably rely on one of the types of identification specified in the statute, including a valid Massachusetts driver’s license, Massachusetts liquor identification card, Massachusetts identification card, a United States passport, or a passport issued by the government – recognized by the United States – of a foreign country, a passport card for a U.S. passport, or a valid U.S. military identification card. See M.G.L. c. 138, § 34B. Consequently, the out-of-country identification provides no such defense.

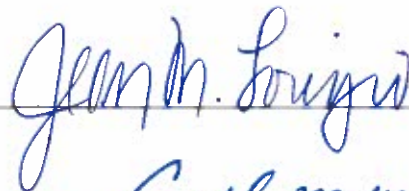
The Commission is persuaded by the evidence that Quality Mart, Inc., d/b/a Quality Mart sold alcoholic beverages to a person who was under twenty-one years of age. The Commission finds that the Licensee committed a violation of M.G.L. c. 138, § 34 - Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age (1 count).

CONCLUSION

Based on the evidence, the Commission finds the Licensee violated M.G.L. Ch. 138, § 34 – Sale or delivery of an alcoholic beverage to a person under twenty-one years of age (1 Count). Therefore, the Commission **suspends the license for a period of two (2) days.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: January 23, 2024

You have the right to appeal this decision to the Superior Courts under the provisions of Chapter 30A of the Massachusetts General Laws within thirty (30) days of receipt of this decision.

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2023-000036-ad-enf

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