

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

Jean M. Lorizio, Esq.
Chairman

NOTICE OF SUSPENSION

September 7, 2022

JNT PACKAGE CORP. D/B/A ODB LIQUORS
1253 HYDE PARK AVENUE
BOSTON, MA 02136
LICENSE#: 00990-PK-0116
VIOLATION DATE: 5/20/2022
HEARD: 7/26/2022

After A Hearing On July 26, 2022, the Commission finds JNT Package Corp. d/b/a ODB Liquors violated M.G.L. c. 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 one (1) day to be served.**

The suspension shall be served on Monday, October 24, 2022. The license will be delivered to the Local Licensing Board or its designee on Monday, October 24, 2022 at 9:00 A.M. It will be returned to the licensee on October 25, 2022.

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.

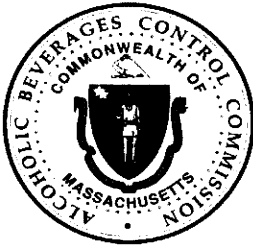
You are advised that you have the right to appeal this decision under M.G.L. c. 30A to Superior Court within thirty (30) days upon receipt of this notice.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio
Chairman

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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Kyle E. Gill, Esq., Associate General Counsel
Michael Teehan, Investigator
Jack Carey, Investigator
Lisa Watson, Investigator
Administration, File



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DECISION

JNT PACKAGE CORP. D/B/A ODB LIQUORS
1253 HYDE PARK AVENUE
BOSTON, MA 02136
LICENSE#: 00990-PK-0116
VIOLATION DATE: 5/20/2022
HEARD: 7/26/2022

JNT Package Corp. d/b/a ODB Liquors ("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, July 26, 2022, 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). The above-mentioned occurred on May 20, 2022, according to Investigator Teehan's Report.

The following documents are in evidence:

1. Investigator Teehan's Investigative Report;
 2. ABCC Form 43 License Transfer Approved 3/22/2010;
 3. ABCC Decision, 3/6/2018;
- A. Photos from Licensee's Surveillance Video, 5/20/2022.

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

FINDINGS OF FACT

1. On Friday, May 20, 2022, Investigators Carey, Watson, and Teehan ("Investigators"), conducted an inspection of JNT Package Corp. d/b/a ODB Liquors to determine the manner in which its business was being conducted, and to investigate a complaint filed with this Commission.
2. At approximately 6:27 p.m. while outside the licensed premises, Investigators observed a youthful appearing male individual exit the store in possession of one 18-pack of Bud Light beer and one 12-pack of White Claw Hard Seltzer. Investigators identified themselves and asked to see proof of legal age.
3. Underage #1, actual date of birth 2/27/2004 (age 18), admitted to Investigators that he was under twenty-one years of age. He stated that he was not asked for any identification when he purchased the alcoholic beverages at the licensed premises.

4. Investigators informed the owner, Nguyen Pham, of the violation and that a report would be filed with the Chief Investigator for further review.
5. Mr. Pham appeared at the Commission hearing along with Allan J. Hector Varrs, an employee at the licensed premises.
6. Mr. Hector Varrs testified Underage #1 had presented identification twice in the past. Mr. Pham concurred.
7. The Licensee has held a license under M.G.L. c. 138, § 15 since 2010 with one prior violation.

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 Licensee is charged with a violation of Massachusetts General Law Chapter 138, § 34 Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age (1 count). M.G.L., Chapter 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. 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.

Direct evidence was presented through the testimony of Investigator Teehan as to his observations and interaction with Underage #1. Underage #1 admitted to the Investigator that he was under the age of twenty-one. The Licensee argued Underage #1 had produced identification in the past. However, there was no evidence presented as to the reasonableness of the Licensee's reliance on an identification.

The Commission is persuaded by the evidence that JNT Package Corp. d/b/a ODB Liquors sold alcoholic beverages to a person who was under twenty-one years of age. The Commission finds

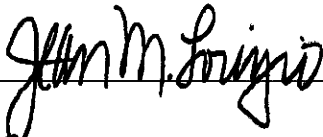
that the Licensee committed a violation of M.G.L. c. 138, § 34 Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age (1 count).

CONCLUSION

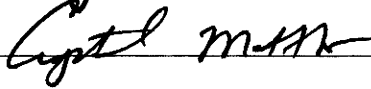
Based on the evidence, the Commission finds the Licensee violated M.G.L. Ch. 138, § 34 Sale or Delivery of an alcoholic beverage to a person under twenty-one years of age (1 count). Therefore, the Commission **suspends the license for a period of one (1) day.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

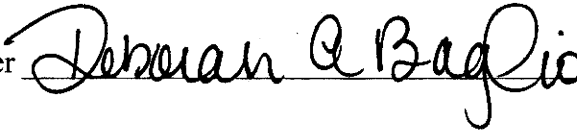
Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah A. Baglio, Commissioner



Dated: September 7, 2022

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2022-000076-ad-enf

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