

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

**Jean M. Lorizio, Esq.**  
*Chairman*

**DECISION**

**OM MARUTI INC. D/B/A OXBOW VARIETY  
3 OXBOW ROAD  
CHARLTON, MA 01507  
LICENSE#: 89213-PK-0190  
VIOLATION DATE: 4/24/2023  
HEARD: 8/01/2023**

Om Maruti Inc. d/b/a Oxbow Variety ("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, August 1, 2023, regarding an alleged violation of 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. Ch. 138, § 34 Sale or Delivery of an alcoholic beverage to a person under twenty-one years of age. The above-mentioned occurred on April 24, 2023, according to Investigators Kujawski and Gould's Minimum Purchase Age Compliance Check Field Report.

The following documents are in evidence:

1. Investigators Kujawski & Gould's Minimum Purchase Age Compliance Check Field Report, 4/24/2023;
2. ABCC Application Summary Review, Transfer of License Approved, 12/7/2017;
3. ABCC Decision, 8/29/2022;
4. Licensee Stipulation of Facts.

A. Photograph of Underage Operative.

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

**FINDINGS OF FACT**

1. On Wednesday, April 24, 2022, at approximately 5:10 p.m., Investigators Kujawski and Gould ("Investigators") inspected the business operation of Om Maruti Inc. d/b/a Oxbow Variety. (Testimony, Exhibit 1)
2. An underage operative, working under the supervision of Investigators, purchased an alcoholic beverage, one 16 oz. Bud Light beer for two dollars and fifteen cents (\$2.15). The underage operative was not asked for identification. Id.
3. The underage operative was 18 years old, with a birth date of 10/3/2004. (Exhibit 1)

## 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 M.G.L. c. 138.

M.G.L. c. 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) (emphasis supplied). 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 204 CMR 2.05(2) Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, § 34 Sale or Delivery of an alcoholic beverage to a person under twenty-one years of age. General Laws chapter 138, §34 provides, in part, that “[w]hoever makes a sale or delivery of any alcoholic beverage or alcohol to any person under 21 years of age, either for his own use or for the use of his parent or any other person, ... shall be punished.” The Appeals Court has stated that “the purpose of the statute [is] to protect the welfare of children from the danger of alcohol,” See Tobin v. Norwood Country Club, Inc., 422 Mass. 126, 133-134 (1996); Fran's Lunch, Inc. v. Alcoholic Beverages Control Comm'n, 45 Mass.App.Ct. 663, 664 (1998).

The legality of the use of a minor to conduct sting operations was decided in Fran's Lunch, Inc. v. Alcoholic Beverages Control Comm'n, 45 Mass. App. Ct. 663 (1998). The Appeals Court held that in permitting a person under twenty-one (21) years of age to purchase alcoholic beverages in a “sting” operation at a licensed premises, neither the Alcoholic Beverages Control Commission nor a municipal police department, violated M.G.L. c. 138, § 34A, the statute prohibiting a person under the age of twenty-one (21) years old from purchasing alcoholic beverages. The Court's rationale was that the purchase of alcoholic beverages by the under-age operative was made to ferret out violators of the Liquor Control Act, M.G.L. c. 138, and as a result promoted the purpose of the statute. The Appeals Court further held that where a “sting operation was conducted in accordance with published guidelines designed to insure that such operations were conducted fairly, the commission could properly rely on this evidence.” Fran's Lunch, 45 Mass. App. Ct. at 665.

In this matter, direct evidence was presented through the investigator's testimony as to the compliance check conducted on April 24, 2023, wherein an underage operative, a person under

the age of twenty-one, working under the supervision of the investigator, was sold an alcoholic beverage at the licensed premises.

The Licensee argued the underage operative did not reasonably look eighteen years of age and presented photographic evidence to support that argument. (Exhibit A) Upon review of the photograph of the underage operative (Exhibit A), the Commission concurs and finds the underage operative appeared to be over the age of eighteen.

The 2023 ABCC Compliance Check Guideline No. 2 states, "[t]he underage person taking part in the compliance check should reasonably look their age."

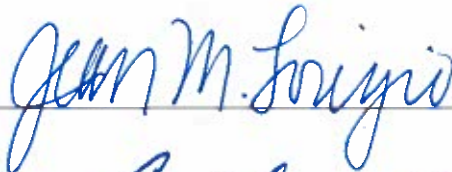
The Commission finds that by working with an underage operative who did not reasonably look his age, the Investigation and Enforcement Division failed to strictly comply with Compliance Check Guidelines. The Commission finds this compliance check to be unfair and invalid. As a result, the Commission finds no violation.

#### CONCLUSION

Based on the evidence, the Commission finds that **NO VIOLATION** of 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. Ch. 138, § 34 Sale or Delivery of an alcoholic beverage to a person under twenty-one years of age occurred.

#### **ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah A. Baglio, Commissioner



Dated: March 10, 2025

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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2022-000096-ad-enf

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Jan Kujawski, Investigator  
Brain Gould, Investigator  
Arthur Pearlman, Esq.  
Administration, File