



***Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
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Jean M. Lorizio, Esq.
Chairman

DECISION

**AUGUST A. BUSCH & CO. OF MASSACHUSETTS
440 RIVERSIDE AVENUE
MEDFORD, MA 02155
LICENSE#: WI-7
VIOLATION DATE: Various in 2014 and 2015
HEARD: 11/28/2017**

August A. Busch & Co. of Massachusetts (the "Licensee" or "Busch") holds a wines and malt beverages wholesaler license issued pursuant to M.G.L. c. 138, § 18. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, November 28, 2017, regarding an alleged violation of 204 CMR 2.08: No licensee shall give or permit to be given money or any other thing of substantial value in any effort to induce any person to persuade or influence any other person to purchase, or contract for the purchase of any particular brand or kind of alcoholic beverages, or to persuade or influence any person to refrain from purchasing or contracting for the purchase of any particular brand or kind of alcoholic beverages.

The alleged violation occurred on various dates during 2014 and 2015, according to Investigator Velez's report.

The following documents are in evidence:

1. Investigator Velez's Violation Report;
 2. Spreadsheet of Refrigeration Units & Draught Towers;
 3. Spreadsheet of Refrigeration Units & Retailers;
 4. Spreadsheet of Draught Towers & Retailers;
 5. Photos of Coolers with Busch logos;
 6. Email 2/24/2017 from Atty. Straub;
 7. Email 4/11/2017 from Atty. Straub;
 8. Email 3/27/2017 from Atty. Straub; and
 9. Email 4/3/2017 from Atty. Straub
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- A. Licensee's Commission File;
 - B. ABCC Response to Licensee's Public Record Request;
 - C. ABCC Advisories;
 - D. ABCC Annual Reports;
 - E. Affidavit of Katharine Ott, 11/21/2017;
 - F. Affidavit of Brian McEleney, 11/22/2017;

- G. Affidavit of Thomas A. Barocci, 11/24/2017; and
H. Suffolk Superior Court Pleadings, # 1684CV00809, Craft Beer Guild LLC v. ABCC.

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

The Commission took administrative notice of the Licensee's file.

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. August A. Busch & Co. of Massachusetts ("August Busch" or "Licensee") holds a § 18 wines and malt beverage wholesaler license with a place of business at 440 Riverside Avenue, Medford, Massachusetts, and has held that license since 1937. (Exhibit 1, Exhibit F, Commission File)
2. The Licensee is a wholly owned subsidiary of Anheuser-Busch LLC ("Anheuser"). Anheuser hold a § 18B certificate of compliance, with its principal office in St. Louis, Missouri. (Exhibit 1, Exhibit F, Commission File)
3. None of the Licensee's senior managers are employed by Anheuser, nor do any of the Licensee's directors serve on the Board of Directors of Anheuser. (Exhibit 1, Exhibit F, Commission File)
4. Over the course of 2016 and 2017, Investigators Kenny and Velez, along with Chief Investigator Mahony made multiple requests for documents and invoices from the Licensee concerning the placement of refrigeration units and draft equipment commonly used in retail outlets. The amassed documentation supplied included lists of the type and cost of units, and number of units placed in retail outlets. (Exhibit 1)
5. From early 2014 to early 2015, the Licensee's sales representatives contacted multiple retailers offering the retailers Budweiser draught towers and coolers. When a retailer indicated that it wanted a draught tower and/or cooler, the Licensee's representatives would authorize the delivery of the draught tower and/or cooler. (Exhibits 1, 7, 8, Exhibit F)
6. Anheuser ordered and purchased the coolers from third-party refrigeration manufacturers, who in turned shipped the coolers to an inventory management system storage warehouse, and from there, delivered to the Licensee's premises in Medford. The Licensee then delivered the coolers to the retailers who requested them. These coolers were provided at no cost to the retailers. (Exhibits 1, 7, 8, 9, Exhibit F)
7. Anheuser ordered and purchased the Budweiser draught towers from Micro Matic, a third-party draught equipment manufacturer, who then shipped them to Sutherland Installations, a third-party installation company, for delivery and installation at the respective retailers' premises. The Licensee did not deliver or install the draught towers; however, the Licensee's draught manager would contact Sutherland to set up installation of the draught towers at retailers' premises. These draught towers were provided at no cost to retailers. (Exhibits 1, 8, Exhibit F)

8. Anheuser retained ownership of both the draught towers and coolers after they were delivered to the retailers. GPS devices were installed on the coolers, so Anheuser could track their location. Anheuser retained the power and authority to remove the draught towers and coolers at any time. Likewise, the retailers had the right to demand the removal of the towers and coolers at any time. (Exhibits 1, 9, Exhibit F)
9. If any draught tower or cooler malfunctioned, Anheuser paid to have a third-party company repair or replace it. (Exhibit F)
10. The retailers were never invoiced for either the draught towers or coolers, provided they agreed that the draught towers and coolers were only used for Budweiser products. (Exhibits 1, 8, Exhibit F)
11. During this period of early 2014 to early 2015, draught towers were provided to 70 retailers, for a total value of approximately \$245,000. Each draught tower was valued at \$3,000 to \$3,500 each. (Exhibits 1, 4, 7)
12. During this same period, coolers were provided to 371 retailers, with a value of approximately \$697,200. Of that total, 103 coolers were valued between \$500 to \$700 each; 358 coolers were valued at \$850 to \$1,250 each; 12 coolers were valued at \$1,560 each; and 47 coolers were valued at \$5,700 each. (Exhibits 1, 3, 7)

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 Chapter 138 of Massachusetts General Laws.

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.

Every violation the Commission finds must be based on substantial evidence. See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm'n., 401 Mass. 526, 528 (1988). “Substantial evidence” is “such evidence as a reasonable mind might accept as adequate to support a conclusion.” Id. Evidence from which a rational mind might draw the desired inference is not enough. See Blue Cross and Blue Shield of Mass. Inc., v. Comm’r of Ins., 420 Mass 707, 710 (1995). Disbelief of any particular evidence does not constitute substantial evidence to the contrary. New Boston Garden Corp. v. Bd. of Assessor of Boston, 383 Mass. 456, 467 (1981).

The Licensee is alleged to have violated 204 CMR 2.08, which states:

Inducements. No licensee shall give or permit to be given money or any other thing of substantial value in any effort to induce any person to persuade or influence any

other person to purchase, or contract for the purchase of any particular brand or kind of alcoholic beverages, or to persuade or influence any person to refrain from purchasing, or contracting for the purchase of any particular brand or kind of alcoholic beverages.

As described more fully in the factual findings, the Licensee, a wholly-owned subsidiary of Anheuser, facilitated the retailers' receiving coolers and draught towers by offering the equipment, taking orders for the draught towers and coolers, and providing that information to Anheuser. The Licensee assisted in scheduling installation of draught towers and even actually delivered the coolers itself. However, Anheuser ordered and paid for the manufacturing of the coolers and draught towers. At all times Anheuser retained ownership of the coolers and draught towers, both when the Licensee had possession of the coolers and after the coolers and draught towers were delivered to the retailers. Anheuser arranged for and paid for repairs or paid for replacements of malfunctioning coolers and draught towers. Anheuser-manufactured alcoholic beverages were required to be stocked in the draught towers and coolers.

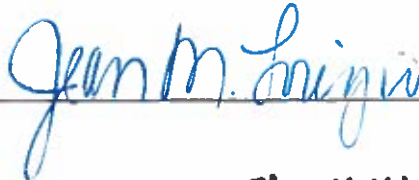
An essential element of 204 CMR 2.08 is that a licensee "give[s] . . . money or any other thing of substantial value." While the Licensee certainly assisted its parent company in placing the draught towers and coolers in retail establishments, it did not "give" the coolers or draught towers to the retailers – Anheuser did. Because the Licensee did not "give . . . money or any other thing of substantial value," but rather only provided *de minimus* labor to Anheuser, the Licensee did not violate 204 CMR 2.08.¹

CONCLUSION

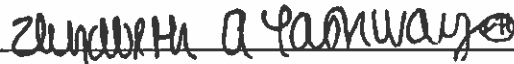
The Commission, after a hearing, finds that there was not sufficient evidence presented at the hearing that the Licensee committed a violation of 204 CMR 2.08.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Elizabeth A. Lashway, Commissioner



Kathleen McNally, Commissioner



Dated: April 17, 2018

¹ Because the Commission finds that there is insufficient evidence that the Licensee violated 204 CMR 2.08, the Commission need not reach the remaining legal arguments raised by the Licensee.

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

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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Nicholas Velez, Investigator
Mark Kenney, Investigator
Richard P. Campbell, Esq.
Glen Alberich, Esq.
Administration, File