



*The Commonwealth of Massachusetts*  
*Department of the State Treasurer*  
*Alcoholic Beverages Control Commission*  
*Boston, Massachusetts 02114*

*Steven Grossman*  
*Treasurer and Receiver General*

*Kim J. Gainsboro, Esq.*  
*Chairman*

**DECISION**

**WEGMANS MASSACHUSETTS INC. DBA WEGMANS**  
**RT. 9; CHESTNUT HILL SQUARE, UNIT 124**  
**NEWTON, MA 02467**  
**LICENSE#: 080000153**  
**VIOLATION DATE: 04/24/2014**  
**HEARD: 07/22/2014**

Wegmans Massachusetts Inc. dba Wegmans (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, §15. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, July 22, 2014, regarding an alleged violation of 204 CMR 2.03 (2) No licensee shall use, or permit to be used, any advertising matter which is false or untrue in any particular. Any advertising matter which directly, or by ambiguity or omission tends to deceive or to create a misleading impression shall be deemed to be false or untrue.

The following documents are in evidence:

1. Investigator Carey's Violation Report;
  2. Photo of Signage – Photo of Kendall Jackson (2 pgs.);
  3. Photo of Signage – White Zinfandel (2 pgs.);
  4. Photo of Signage – Beringer White Zinfandel (2 pgs.);
  5. Photo of Signage – Sierra Nevada Pale Ale (2 pgs.); and
  6. Photo of Signage – Moet and Grey Goose (2 pgs.).
- 
- A. Letter from Attorney Devlin to ABCC dated May 5, 2014 (2 pgs.);
  - B. Receipt from Gary's Liquors and Marty's Fine Wines of Newton (2 pgs.);
  - C. Wine Specials packet from Gary's Liquors;
  - D. Gary's Liquors Inventory Lists (2 pgs.);
  - E. Inventory of Liquors (3 pgs.);
  - F. Letters from Attorney Simao and Attorney Van Arsdale (6 pgs.); and
  - G. 2 Letters from Attorney Haney and Attorney Van Arsdale (4 pgs.).

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

**FACTS**

1. On Thursday, April 24, 2014, Gary Park, the owner of Gary's Liquors in West Roxbury, provided Investigator Carey with photographs that he had taken of signs at the above-mentioned licensed premises.

2. The photographs indicated a Wegmans store sign that stated the Wegmans' price for Kendall Jackson Chardonnay 750 ML was \$10.49 and Gary's Liquors price to be \$10.96. This sign stated "Prices checked week ending 3/22/14". Mr. Park then provided a computer printout from Gary's Liquors indicating that during the week ending 3/22/14, Gary's Liquors actually sold the above item for \$10.28.
3. Mr. Park provided a photograph of a Wegmans store sign which stated that the Wegmans' price Beringer White Zinfandel 750 ML to be \$4.49 and Gary's Liquors price to be \$5.48. This sign stated "Prices checked week ending 3/22/14". Mr. Park then provided a computer printout from Gary's Liquors indicating that on 3/21/14, Gary's Liquors actually sold the above item for \$4.68.
4. Mr. Park also provided a photograph of a Wegmans store sign that stated the Wegmans' price for Beringer White Zinfandel 1.5 L to be \$8.49 and Gary's Liquors price to be \$9.98. This sign stated "Prices checked week ending 3/22/14". Mr. Park then provided a computer printout from Gary's Liquors indicating that on March 15, 17, 18, 19, 20 and 21 of 2014, Gary's Liquors actually sold the above item for \$8.98.
5. Mr. Park provided a photograph of a Wegmans store sign that stated the Wegmans price for Sierra Nevada Pale Ale six-pack 72 fl. oz. was \$7.99 and Gary's Liquors price to be \$9.99. This sign stated "Prices checked week ending 3/22/14". Mr. Park then provided a computer printout from Gary's Liquors indicating that Gary's Liquors has not carried that particular product since 8/19/13, at which time the Gary's Liquors price was \$7.99.
6. Mr. Park provided a photograph of a Wegmans store sign that stated the Wegmans' price for Moet & Chandon Imperial 750 ML was \$34.49 and Gary's Liquors price to be \$34.88. This sign stated "Prices checked week ending 4/12/14". Mr. Park then provided a computer printout from Gary's Liquors indicating that Gary's Liquors did not sell this product during this week and that the Gary's Liquors price to be \$34.48.
7. After Investigator Carey spoke with Mr. Park, he left that store and drove to the Wegmans store in Newton, which is approximately three miles from Gary's Liquors in West Roxbury.
8. Upon entering the store, the Investigator observed a comparison advertisement sign, similar to that in Mr. Park's photographs that had a different date on it.
9. Investigator Carey spoke with the store's manager, Richard Boscia and the area merchandise manager, Ed Swantek. Mr. Boscia stated that he had receipts for the items posted as he had his personnel at the store do that comparison. Mr. Boscia stated that the signs in question were done by the corporate office. Mr. Boscia also stated that he would like to contact his corporate office and to have someone from there contact Investigator Carey about this issue. Contact information was exchanged and Investigator Carey left the premises.
10. On Friday, April 25<sup>th</sup>, Investigator Carey received a phone call from Attorney Joseph Devlin informing the Investigator that he represents Wegmans Massachusetts Inc. dba Wegmans (the "Licensee"). Attorney Devlin stated that he believed there may have been some confusion on the prices because originally, the price comparison was done by an outside company which checks all retailer prices then sells that information back to retailers. Attorney Devlin stated that he believed the most recent signage in the store to be correct because store personnel was buying the products and obtaining the receipts.

11. Investigator Carey informed Attorney Devlin of the information that he had in his possession and Attorney Devlin stated that he also had some of the same information because of the correspondence to Wegmans from Mr. Park's attorney.
12. On Tuesday, May 6<sup>th</sup>, Investigator Carey advised Attorney Devlin that a report would be filed with the commission relative to this activity.

### CONCLUSION

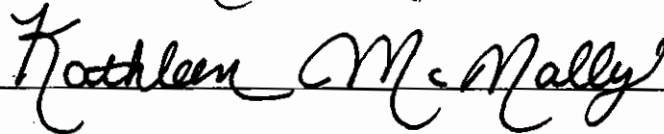
Based on the evidence, the Commission finds the licensee violated 204 CMR 2.03 (2) No licensee shall use, or permit to be used, any advertising matter which is false or untrue in any particular. Any advertising matter which directly, or by ambiguity or omission tends to deceive or to create a misleading impression shall be deemed to be false or untrue and issues a **WARNING**.

### ALCOHOLIC BEVERAGES CONTROL COMMISSION

Susan Corcoran, Commissioner



Kathleen McNally, Commissioner



Dated: July 22, 2014

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.

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Jack Carey, Investigator  
Administration  
File