



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

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

**NOTICE OF SUSPENSION**

June 17, 2021

**APPLE NEW ENGLAND, LLC  
D/B/A APPLEBEE'S NEIGHBORHOOD GRILL & BAR  
214 BROAWAY  
SAUGUS, MA 01906  
LICENSE#: 00024-RS-1078  
VIOLATION DATE: 10/30/2020  
HEARD: 12/3/2020**

After a hearing on December 3, 2020, the Commission finds Apple New England LLC d/b/a Applebee's Neighborhood Grill & Bar violated 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, § 34C- Possession of an alcoholic beverage by a person under twenty-one (21) years of age (1 count). Therefore, the Commission **suspends the license for a period of one (1) day to be served.**

**The suspension shall commence on Monday, August 2, 2021 and terminate on Monday, August 2, 2021.** The license will be delivered to the Local Licensing Board or its designee on Monday, August 2, 2021 at 9:00 A.M. It will be returned to the Licensee on Tuesday, August 3, 2021.

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.

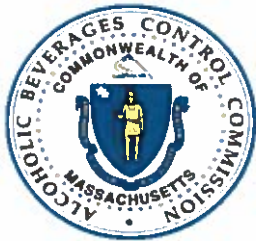
You are advised that you have the right to appeal this decision under M.G.L. c. 30A to Superior Court within thirty (30) days upon receipt of this notice.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Jean M. Lorizio  
Chairman

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这份文件是重要的，应立即进行翻译。

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Kyle E. Gill, Esq., Associate General Counsel  
Joseph Di Cicco, Investigator  
Christopher Temple, Investigator  
Dennis Keefe, Investigator  
John Connell, Esq.  
Administration, File



*Commonwealth of Massachusetts  
Alcoholic Beverages Control Commission  
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*Chairman*

**DECISION**

**APPLE NEW ENGLAND LLC  
D/B/A APPLEBEE'S NEIGHBORHOOD GRILL & BAR  
214 BROADWAY  
SAUGUS, MA 01906  
LICENSE#: 00024-RS-1078  
VIOLATION DATE: 10/30/2020  
HEARD: 12/3/2020**

Apple New England LLC d/b/a Applebee's Neighborhood Grill & Bar (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission ("ABCC" or "Commission") held a remote hearing via Microsoft Teams on Thursday, December 3, 2020, regarding an alleged violation of 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: M.G.L. Ch. 138, § 34C Possession of an alcoholic beverage by a person under twenty-one years of age (1 Count). The above-mentioned occurred October 30, 2020, according to Investigator Di Cicco's Report.

The following documents are in evidence:

1. Investigator Di Cicco's Investigative Report;
2. Copy Form 43 Transfer of License Approval, 10/19/2011;
3. Copy of Fraudulent Massachusetts Driver's Licenses;
4. Copy of Genuine New Hampshire Driver's License;
5. Underage #1's College Student Identification;
6. Bar Receipt, 10/30/2020.

A. Apple American Group's Manager Guide 2020.

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

## FINDINGS OF FACT

1. On Friday, October 30, 2020, at approximately 9:00 p.m., Investigators Keefe, Temple, and Di Cicco ("Investigators"), conducted an investigation of the business operation of Apple New England LLC d/b/a Applebee's Neighborhood Grill & Bar (Saugus) to determine the manner in which its business was being conducted. (Testimony, Exhibit 1)
2. While on the licensed premises, Investigators observed a table occupied by youthful appearing individuals, in possession of alcoholic beverages. Investigators identified themselves and asked to see proof of legal age. *Id.*
3. Underage #1 was in possession of a Topsy Zombie rum mixed drink. He informed Investigators his actual date of birth is 3/01/2001 (age 19). He admitted to Investigators he had used his friend's genuine New Hampshire driver's license to purchase his alcoholic beverage. The friend to whom the New Hampshire driver's license belonged was also seated at the table. Investigators determined that Underage #1 did not resemble the person pictured on the New Hampshire driver's license. Underage #1 provided Investigators his college student identification. (Testimony, Exhibits 1, 4, 5)
4. Investigators informed the manager on duty about the violation and that a report would be submitted to the Chief Investigator for review. *Id.*
5. Paul Benko, General Manager for the Licensee, attended the Commission hearing. Mr. Benko testified that serving staff are required to complete an extensive "Serving Alcoholic Beverages Responsibly" training annually. Mr. Benko stated he interviewed the server and manager on duty that evening about the underage patron found to be in possession of alcoholic beverages. He explained that the server was adamant in stating she requested and examined identification from each patron she served and believed she was acting reasonably when accepting drink orders. (Testimony, Exhibit A)
6. The Licensee has held a license under M.G.L. c. 138, § 12 since 2011 with no prior violations. (Exhibit 2, Commission Records)

## 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 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: Chapter 138, § 34C- Possession of an alcoholic beverage by a person under twenty-one (21) years of age. A Commission regulation promulgated at 204 CMR 2.05(2) provides in pertinent part, that “[n]o licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to take place in or on the licensed premises. The licensee shall be responsible therefore, whether present or not.” The law is well-settled that,

under the regulation [204 C.M.R. 2.05(2)], 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, 11 Mass. App. Ct. 785, 788 (1981). 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). A licensee is responsible for illegalities that occur on the licensed premises. See id.

Massachusetts General Laws, Chapter 138, § 34C states, in pertinent part, that: “Whoever, being under twenty-one years of age and not accompanied by a parent or legal guardian, knowingly possesses any alcohol or alcoholic beverages, shall be punished.” M.G.L. c. 138, § 34C. Direct evidence was presented through the testimony of Investigator Di Cicco as to an individual under the age of 21 found to be in possession of an alcoholic beverage. The Licensee argued that the employee acted reasonably in that she had examined and relied on the New Hampshire issued identification that Underage #1 presented.

A Massachusetts driver’s license which purports to show that a patron is 21 years of age or older is not an affirmative defense available for the statutory violation of permitting an illegality of a minor in possession of alcoholic beverages pursuant to Section 34C. 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 four (4) pieces 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. Section 34B does not offer protection to license holders who rely on out of state driver’s licenses. Section 34B refers only to the activities of delivery and sale, and it omits any reference to the act of, possession. See id. Consequently, Section 34B offers no relief from liability for allowing possession of alcoholic beverages in violation of Section 34C.

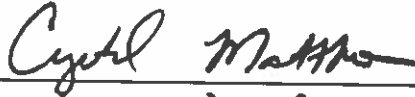
The Commission is persuaded by the evidence that Underage #1 was younger than 21 years of age and was in possession of an alcoholic beverage in the licensed premises. The Commission finds that the Licensee committed a violation of 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, § 34C- Possession of an alcoholic beverage by a person under 21 years of age (1 count).

### CONCLUSION

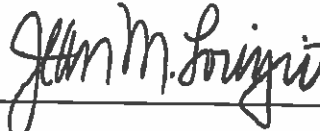
Based on the evidence, the Commission finds the Licensee violated of 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: M.G.L. Ch. 138, § 34C Possession of an alcoholic beverage by a person under twenty-one years of age (1 Count). Therefore, the Commission **suspends the license for a period of one (1) day to be served.**

### ALCOHOLIC BEVERAGES CONTROL COMMISSION

Crystal Matthews, Commissioner



Jean M. Lorizio, Chairman



Deborah A. Baglio, Commissioner



Dated: June 17, 2021

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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