

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL  
COMMISSION MINUTES  
DECEMBER 10, 2014**

The following narrative and summary describes the North Carolina Alcoholic Beverage Control Commission meeting held at 400 East Tryon Road, Raleigh, North Carolina on December 10, 2014, beginning at 10:00 AM. The meeting was recorded and the disc is on file at the NC ABC Commission in the Legal Division.

**ROLL CALL**

Chairman James C. Gardner and Commissioners Joel L. Keith and Kevin M. Green were present. Chairman Gardner called the meeting to order.

**MINUTES OF NOVEMBER 12, 2014**

Chairman Gardner asked for a motion to waive the reading of the minutes of the November 12, 2014 meeting into the record. Commissioner Green made a motion to waive the reading of the minutes from the November 12, 2014 meeting. Commissioner Keith seconded the motion. Motion Passed. Chairman Gardner asked for a motion to approve the minutes of the November 12, 2014 meeting. Commissioner Green made a motion to approve the minutes from the November 12, 2014 meeting. Commissioner Keith seconded the motion. Motion Passed.

**CONFLICTS OF INTEREST**

As required by N.C.G.S. § 138A-35, Chairman Gardner asked if there were any conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the agenda. Commissioner Green stated he found no conflicts of interest. Commissioner Keith stated he found no conflicts of interest. Chairman Gardner stated he found no conflicts of interest.

**I. HEARING CASES – 59**

Chief Counsel K. Renee Cowick stated Jason Buckley, the COO of the business, was present on behalf of hearing case number 11, Frankies Restaurant to answer any questions. Mr. Buckley accepted the penalty as stated in the Offer in Compromise.

Commissioner Keith made a motion to ratify the offers in compromise. Commissioner Green seconded the motion. Motion Passed.

**II. OTHER BUSINESS – APPEAL STAFF DISAPPROVAL OF MALT BEVERAGE PRODUCT – IMPORTER: IROKOS GROUP, LLC, BOSTON, MASSACHUSETTS; MANUFACTURER: BREUVAGES BLUE SPIKE, INC., MONTREAL, QUEBEC (MOJO – 1.7 OZ., 11.9% ABV; 11.6 OZ., 7.0% ABV; AND 26 OZ, 11.9% ABV)**

Administrator Robert A. Hamilton stated importer Irokos Group of Boston, Massachusetts, representing the manufacturer, Breuvages Blue Spike, Inc. of Montreal, Quebec, was present to appeal the NC ABC Commission disapproval of the products submitted for approval. Mr. Hamilton stated the products were Mojo Shot, a 1.7 oz. malt beverage with an 11.9% ABV (alcohol by volume), an 11.6 oz. Mojo malt beverage product with a 7% ABV and a 26 oz. Mojo Shot malt beverage product with an 11.9% ABV.

Mr. Hamilton explained the NC ABC Commission staff had disapproved the product based upon authority within 04 NCAC 02S .0101(4) which defines “original container” as a bottle, can or other alcoholic beverage container filled by a manufacturer or bottler that has been approved for sale within this State. The disapproval was also issued under the authority of 04 NCAC 02S .1005(a) General Restrictions. An advertisement of product label shall not contain: (1) any statement, design, device or representation that is false or misleading in any material particular; and, (10) any subject matter or illustrations inducing persons under 21 years of age to drink.

Mr. Hamilton displayed the 1.7 oz. mini-bottle sized Mojo Shot product and stated alcoholic beverages sold in this sized container are only available as spirituous liquor products in ABC Stores. Additionally, the NC ABC Commission has not previously approved similarly sized containers for malt beverages. Mr. Hamilton also displayed bottles of water products found at grocery stores and compared them to a photograph of the Mojo 11.6 oz. product. Mr. Hamilton illustrated how similar the two containers are in shape and design. Mr. Hamilton explained the importer had previously stated the bottles were expressly designed to appear like water bottles to appeal to women. Mr. Hamilton also stated the 26 oz. Mojo Shot bottles were shaped similarly to spirituous liquor bottles as depicted in a photograph provided, making them more attractive to underage individuals.

Mr. Hamilton recommended the staff’s disapproval be upheld and introduced Mr. Sidiki Fadika, present on behalf of Irokos Group. Mr. Fadika stated his company imports the products from Montreal, Canada where they have been sold for fifteen years. He stated they have been approved for sale in most states along the eastern US coast, including West Virginia, Pennsylvania, Kentucky, South Carolina and Virginia over the last four years. Mr. Fadika stated the Mojo 11.6 oz. products are sold in 4-packs, not individually, and displayed a bottle with Mr. Hamilton’s similarly sized product sample. He stated there are three flavors of the Mojo Shot product – tropical fruit, strawberry kiwi and fruit punch, and are packaged in plastic bottles which are eco-friendly.

Mr. Fadika stated the product is similar to the Smirnoff Ice malt beverage product. Additionally, Mr. Fadika explained the 1.7 oz. bottle was intended to serve as a sample of the 26 oz. bottle Mojo Shot product and provide an opportunity for consumers to try the product, similarly to the mini bottles sold in ABC Stores. Mr. Fadika stated he believes the permit holders will be responsible and does not see the risk of sales to underage individuals. Mr. Fadika also stated he did not understand why the bottles might be misleading.

Mr. Hamilton explained, as with products previously disapproved, the similarity to products a child might consume may be confusing to a child who cannot read. In this case, the appearance of the clear beverage was too close to water packaged in similar containers. Mr. Hamilton asked that the staff disapproval be upheld.

Commissioner Keith made a motion to uphold the staff disapproval. Commissioner Green seconded the motion. Motion Passed.

### **III. OTHER BUSINESS – PRESENTATION OF THE NC ABC COMMISSION INITIATIVE TO REDUCE UNDERAGE DRINKING TALK IT OUT CAMPAIGN**

Chairman Gardner introduced Mr. Harris Vaughan of Eckel and Vaughan Group who was in attendance to present the [www.talkitoutnc.org](http://www.talkitoutnc.org) website as a resource for the Underage Initiative. Mr. Vaughan presented the video shown on the website and commercials now airing on North Carolina television stations and other media outlets. The 7-minute video included four stories featuring three North Carolina parents relating the stories of their families' experiences with underage drinking, as well as an interview with a 17-year old North Carolina girl and her experience with underage drinking. Mr. Vaughan also showed two 30-second commercials currently airing on television. Mr. Vaughan explained the campaign is designed to give parents the opportunity to speak with their middle school-aged children on the dangers of underage drinking. An infographic highlighting the key points was also presented to those in attendance.

Chairman Gardner stated since the launch one week prior, the website had numerous hits and many emails had been received supporting the Initiative to Reduce Underage Drinking and the Talk It Out campaign. Chairman Gardner read portions of two emails submitted by parents who had lost their children voicing support for the campaign. Chairman Gardner affirmed underage drinking is a problem affecting all of North Carolina.

### **IV. OTHER BUSINESS – ADJUSTMENT – DECREASE OF BAILMENT, INCREASE OF BAILMENT SURCHARGE AND INCREASE OF LOCAL ABC BOARD MARK-UP TO BE EFFECTIVE MAY 1, 2015 – G.S. §18B-203(a)(3)(14); 18B-208(b); 18B-804(b)(2)(3)(6a)**

Administrator Michael C. Herring explained, over twenty months ago, the NC ABC Commission embarked upon a program to stop underage drinking in North Carolina, stating it is a real problem with real consequences. Each month at NC ABC Commission meetings, the most common violation is Sale to Underage. Mr. Herring stated the Commission had already taken strong measures the previous year by increasing the penalties for Sale to Underage violations. Unfortunately, the sales continue to occur and can tragically result in fatalities. Mr. Herring stated the NC ABC Commission had invested \$2.4 million over the past twenty months to build the foundation of the underage prevention program.

The NC ABC Commission and Chairman Gardner, along with Governor Pat McCrory, the Lt. Governor and other officials, launched the key components of the Underage Initiative program at a middle school in Raleigh, North Carolina on December 3, 2014. The program is designed to provide parents with resources through the website [www.talkitoutnc.org](http://www.talkitoutnc.org). Mr. Herring stated the Initiative is raising awareness through a series of television, radio and social media advertisements. The number of hits on the website had already reached over 8,000 since the program launch. The program has also received endorsements from groups including, the NC Association of ABC Boards, the NC Beer and Wine Wholesalers Association, the NC Parent Teacher Association, the NC Association of Police Chiefs, the Superintendent of Public Instruction, and many others.

Mr. Herring stated a good start had been made; however, additional funding would be required to make the difference needed to eliminate underage drinking in North Carolina. Mr. Herring explained the NC ABC Commission is an agency existing at the intersection of public health, public safety and fair commercial regulation. The NC ABC Commission has an opportunity to show leadership and create an

ongoing funding source through its current operating model. This funding would give parents and their children access to resources regarding the hazards of drinking while underage.

As a receipt-supported agency, Mr. Herring stated the NC ABC Commission is funded by two fees or charges attached to the uniform sale price of spirituous liquor. First, as the wholesale distributor of spirituous liquor in the State, the bailment fee pays for the costs to operate the State ABC Warehouse. The second charge, which funds the Commission's other responsibilities such as facilities and operations, is the bailment surcharge fee. In addition to these charges, a mark-up fee is charged by local ABC Boards who collect the bailment and bailment surcharge and submit those fees to the NC ABC Commission. The ABC Statutes give the NC ABC Commission the authority to make adjustments to the three charges. Mr. Herring stated in previous years, increases had been made to the charges in order to cover increasing costs associated with operating the business. However, as a result of efficiency in operations, in 2012, the bailment and bailment surcharge were reduced \$.05 each to 2001 levels. Additionally, the local ABC Boards have not had a mark-up increase since 2006 to cover their increasing cost to conduct business.

Mr. Herring recommended the NC ABC Commission consider three adjustments to the Spirituous Liquor Pricing Formula. First, increase the local ABC Board mark-up from the current 39% to 39.5% effective May 1, 2015. This increase would allow the ABC Boards to cover the increasing costs of conducting business and to deliver additional profits to their county and local governments.

Secondly, decrease the bailment fee \$.10 per case from the current charge of \$1.60 to \$1.50 effective May 1, 2015. The current warehouse contract with LB&B Associates is in effect through 2021. The contract is designed to provide the best in service for the receipt, storage and distribution of spirituous liquor throughout the State and is structured so the fee collected to pay for services decreases over the term of the contract.

Thirdly, Mr. Herring recommended an increase to the bailment surcharge fee from the current fee of \$.80 to \$1.40 per case effective May 1, 2015. Mr. Herring explained the \$.60 per case increase will provide an additional \$3 million per year to assist the NC ABC Commission in the funding of the Initiative to Reduce Underage Drinking.

The effective date of May 1, 2015, will allow distillers five months to develop pricing strategies. Mr. Herring explained the net impact of the fee changes to customers at ABC Stores will be pennies per bottle, even if the distillers opt not to absorb the fee increase. Mr. Herring emphasized the impact upon the children of North Carolina through the funding of the Underage Initiative can be the difference between life and death. Mr. Herring recommended the Commission approve the implementation of all three fee changes.

Mr. Herring introduced Michelle Rokes, the President of the NC Association of ABC Boards. Ms. Rokes stated the association applauded the efforts of the Underage Initiative and were proud to be a part of the rollout presentation. During a conference call regarding the proposed changes, Ms. Rokes stated the Board of Directors agreed to support the Underage Initiative and the fee changes. Ms. Rokes stated the Board had been waiting for a local Board mark-up and were pleased it was included in the fee changes.

Chairman Gardner stated the Underage Initiative would not be possible without the support of all the local Boards across the state. Every local Board effectively returns money to its community for prevention and treatment of alcoholism and substance abuse.

Mr. Herring introduced Dylan Ellerbe of the Board of Directors of the North Carolina Alcohol Policy Alliance. Mr. Ellerbe stated the alliance represents twenty organizations across the state that stand for and support regulatory and legislative policy, which research indicates would prevent and reduce underage

and excessive drinking of alcohol. Mr. Ellerbe stated the alliance supports the changes to the fee as every increase to the price of alcohol decreases underage and excessive drinking. They also support the additional funds to the local communities and the additional awareness to the issue of underage drinking.

Mark Ezell, representing his client, the Addiction Professionals of North Carolina, was also present to speak in support of the increase of the fees. Mr. Ezell stated the prevention community will wholeheartedly support the Underage Initiative, as a key component to reducing underage drinking is parents speaking to their children early and effectively. Mr. Ezell also stated even a slight increase in price will help in the issue of underage drinking.

Mr. Herring recommended the ABC Commission approve May 1, 2015 as the effective date of an increase to the Spirituous Liquor mark-up from 39% to 39.5%; a decrease of the bailment fee from \$1.60 to \$1.50; and, an increase to the bailment surcharge from \$.80 to \$1.40 per case.

Commissioner Green thanked Mr. Herring and stated he was excited to support the Underage Initiative. Commissioner Green made a motion to approve the recommended adjustment to the fees. Chairman Gardner seconded the motion. Commissioner Keith opposed the motion. Motion Passed.

#### **V. OTHER BUSINESS – EXEMPTION REQUEST – BULL DURHAM BEER CO., LLC; BULL CITY HOSPITALITY, LLC**

Attorney Jennifer Morgan was present on behalf of her clients, Bull Durham Beer Co., LLC and Bull City Hospitality, LLC. Also present was Jennifer Venable, Vice President and General Counsel of Capitol Broadcasting Company, Inc. Ms. Morgan provided exhibits to the NC ABC Commission.

As background, Ms. Morgan explained the Durham Bulls Baseball Club, Inc. is a wholly owned subsidiary of Capitol Broadcasting, Inc. The Durham Bulls baseball team plays at the Durham Bulls Athletic Park which is leased from the City of Durham. The park is located within the American Tobacco Campus. As part of the lease, Durham Bulls Baseball must provide concessions which include alcohol sales. Recently, Durham Bulls Baseball ended its Concessions Agreement with Volume Services, Inc. and entered into a new Concessions Agreement with Bull City Hospitality, LLC.

Bull City Hospitality, LLC's sole member-manager is Blackwell Street Management Company, LLC which is a wholly owned subsidiary of Capitol Broadcasting Company, Inc. Bull City Hospitality will hold ABC retail permits as the previous concessionaire did and will also enter into management contracts with three or four food vendors at the concourse level for food and alcohol sales. Bull City Hospitality will also contract with a third-party catering company for food and alcohol sales in the Club and suites level of the stadium. The catering company will operate under its own ABC permits.

Bull Durham Beer, LLC's sole member-manager is American Campus V, LLC which is a wholly owned subsidiary of Capitol Broadcasting Company, Inc. Bull Durham Beer is a new brewery and brewpub which plans to open in the spring of 2015 on the concourse level of the Durham Bulls Athletic Park with the applicable federal and state ABC permits. Bull Durham Beer intends to sell beer to consumers at retail within the brewery and at wholesale to retailers including Bull City Hospitality and the contracted catering company for sale to consumers at the Durham Bulls Athletic Park.

Ms. Morgan stated Bull Durham Beer and Bull City Hospitality are separate legal entities owned by separate companies, American Campus V, LLC and Blackwell Street Management Company, LLC, respectively. They share a common affiliate in Capitol Broadcasting which is the owner of those parent companies.

Bull Durham Beer and Bull City Hospitality have different management teams and separate sets of personnel. Ms. Morgan explained each will operate independently. Bull Durham Beer will have no right to select or control which brands of malt beverages are sold by Bull City Hospitality, the food vendors, or the catering company within the Durham Bulls Athletic Park.

Ms. Morgan stated North Carolina Alcohol Law Enforcements will have access to the Bull Durham Beer facility even when the ball park is closed. The business may also open at times other than during baseball games.

An exemption is requested under N.C.G.S. § 18B-1116(a)(2), (3), (b) to allow the affiliated ownership as the public welfare is protected. The City of Durham benefits through the creation of a cultural destination and highlighting local business and the craft brewery industry. The value of the brewery will be small as the annual barrel production will be approximately 450 barrels. The businesses will be managed separately with no decision-making authority granted to either, protecting the trade customs.

Ms. Cowick stated the field advertising is contracted through outside parties so other malt beverage products may be advertised. Ms. Cowick also confirmed the ALE access to the brewery. Ms. Cowick stated the brewery is required by Statute to sell to other retailers. Ms. Morgan stated Bull Durham Beer will make its products reasonably available to other retailers. Ms. Cowick recommended the ABC Commission grant the exemption under the defined terms.

Commissioner Green made a motion to grant the exemption based upon the defined conditions. Commissioner Keith seconded the motion. Motion Passed.

#### **V. OTHER BUSINESS – MANDATED REVIEW OF 04 NCAC 02R – INITIAL CLASSIFICATIONS**

Ms. Cowick explained the NC General Assembly passed a law requiring a mandated review of rules by State agencies. Ms. Cowick stated each agency was to make an evaluation of its existing rules and provide a report to the Office of Administrative Hearings upon an assigned schedule of reviews. Ms. Cowick asked for approval of the rules as they currently stand based upon agency determination. The current report would be posted on the NC ABC Commission website and the Office of Administrative Hearings website for a 60-day public comment period. In March or April 2015, a final determination would be made for each rule and its designation.

Commissioner Keith made a motion to approve the agency determination of the rules. Commissioner Green seconded the motion. Motion Passed.

#### **VI. OTHER BUSINESS – REQUEST TO AMEND ABC COMMISSION RULE 04 NCAC 02T.0713**

Terry Burn of the Wine Institute, the trade association of California wineries, was present to request ABC Commission Rule 04 NCAC 02T .0713 be amended. Ms. Burn explained, currently the dollar limitations per brand cannot exceed \$160.00, including displays industry members can provide to retailers for the presentation of products. Ms. Burns stated usually only cardboard-based displays fall below the \$160.00 limit and provided photographs of this type of display. Several examples of displays constructed of other materials, including particle board or pressed board which would be valued at an amount less than

\$300.00, were presented to be viewed by the Commission. Ms. Burn asked the Commission to increase the limit for product displays to \$300.00.

Commissioner Green made a motion to approve beginning the rule-making process to increase the limit to \$300.00. Commissioner Keith seconded the motion. Motion Passed.

Mr. Herring remarked after 398 NC ABC Commission meetings, the December 2014 Commission Meeting was his final meeting. He stated it had been an honor and pleasure to work at the best agency within the North Carolina State government. Chairman Gardner stated it had been a pleasure to work with Mr. Herring and commended him on his great leadership.

Chairman Gardner announced the next NC ABC Commission meeting will be held on Wednesday, January 14, 2015.

Commissioner Keith made a motion to adjourn. Commissioner Green seconded the motion. Motion Passed. With no further business, the meeting adjourned.

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James C. Gardner, Chairman  
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by,

[SIGNED]

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Caroline Y. Washburn for the Legal Division