

**STATE OF ILLINOIS
LIQUOR CONTROL COMMISSION**

In the Matter of:)
)
City Beverage – Markham, LLC, d/b/a City Beverage –)
Markham, City Beverage – Arlington Heights;)
City Beverage, LLC, d/b/a City Beverage – Bloomington;) 12 CCH 001
Chicago Distributing, LLC, d/b/a City Beverage - Chicago)
)

**LEGAL DIVISION RESPONSE TO RESPONDENTS’ MOTION
FOR LEAVE TO SERVE REQUESTS TO ADMIT**

1. Respondents’ Motion for Leave to serve requests to admit on the ILCC Legal Division is an attempt to mislead the Commission that the Legal Division did not make a good faith attempt to comply with the Commission’s discovery order of August 8, 2012.

2. Section 10(a) of the Commission’s 8/8 discovery order states that it **“expects that the parties will enter into stipulations with respect to the historical facts which reflect the Commission’s interpretation and enforcement of, and licensing under, the Act from 1982 to the present.”**

3. The ILCC Legal Division has made an honest and good faith attempt to agree to stipulations with Respondents related to the above stated order but will not stipulate to Respondents’ versions of stipulations that spin facts toward their legal arguments.

4. Attached are the stipulations the Respondents propose the Legal Division to admit. Underneath the Respondents' stipulations are (and were) the Legal Division's responses.

5. The Legal Division's responses that offer clarification to facts are all based on documentation shared with the Respondents throughout the discovery process:

WEDCO/AB Proposed Stipulation

1. From 2005 to the present, CITY Beverage – Markham, LLC has done business as CITY Beverage – Markham and CITY Beverage – Arlington Heights, and the ILCC has issued separate distributor's and importing distributor's licenses for each location.

ILCC Legal Response

1. From October 2005 to March 2010, CITY Beverage – Markham, LLC has done business as CITY Beverage – Markham and CITY Beverage – Arlington Heights, and the ILCC has issued separate distributor's and importing distributor's licenses for each location. During that time, the licensed owner of record was Double Eagle Distributing, Inc. wholly owned ultimately by Anthony Soave and Cecil Troutwine.

WEDCO/AB Proposed Stipulation

2. From 2005 to the present, Chicago Distributing, LLC has done business as CITY Beverage – Chicago, and the ILCC has issued it a distributor's license and an importing distributor's license.

ILCC Legal Response

2. From 2005 November 2004 to March 2010, Chicago Distributing, LLC has done business as CITY Beverage – Chicago, and the ILCC has issued it a distributor's license and an importing distributor's license. During that time, the licensed owner of record was Soave Distributing Inc. wholly owned individually by Anthony Soave and Cecil Troutwine.

WEDCO/AB Proposed Stipulation

3. From 2005 to the present, CITY Beverage, LLC has done business as CITY Beverage – Bloomington, and the ILCC has issued it a distributor's license and an importing distributor's license.

ILCC Legal Response

3. From 2005 April 2004 to March 2010, CITY Beverage, LLC has done business as CITY Beverage – Bloomington, and the ILCC has issued it a distributor's license and an importing distributor's license. During that time, the licensed owners of record were Anthony Soave and Cecil Troutwine individually.

Also related to the above 1-3, ILCC Legal proposed the following:

In 2005, the ILCC received a flowchart and explanation from WEDCO and its affiliates that CITY Beverage owned CITY Beverage – Markham, LLC, CITY Beverage, LLC, and Chicago Distributing, LLC.

In 2010, CITY Beverage submitted applications to formally notify the ILCC that CITY Beverage owned CITY Beverage – Markham, LLC, CITY Beverage, LLC and Chicago Distributing, LLC.

WEDCO/AB Proposed Stipulation

4. On January 6, 2010, A-B LLC and WEDCO notified the ILCC's legal division that WEDCO planned to purchase a distributorship in Illinois. On January 27, 2010, A-B LLC and WEDCO notified the ILCC's legal division that WEDCO planned to purchase the 70 percent interest in CITY Beverage that it did not already hold.

ILCC Legal Response

4. Will not stipulate – ILCC Legal contests that this stipulation has any relevance to the Commission's 8/8 discovery order 10(a).

WEDCO/AB Proposed Stipulation

5. Between 2005 and February 11, 2010, there was no change in the law relating to the legality of WEDCO's interest in CITY Beverage. No amendments were passed, no regulations were promulgated, and no cases were decided that affected WEDCO's 30 percent interest in CITY Beverage.

ILCC Legal Response

5. ILCC Legal stipulates. (Previous oversight on the part of ILCC legal)

WEDCO/AB Proposed Stipulations

6. In December 2009, WEDCO reached an agreement to purchase the 70 percent interest in CITY Beverage that it did not already hold. The transaction was scheduled to close on February 12, 2010.

7. As of February 11, 2010, virtually all preconditions to closing the transaction had been met by all parties to the transaction in preparation for the February 12 closing.
8. On February 11, 2010, at 4:29 p.m., Ivan Fernandez, legal counsel for the ILCC, e-mailed a letter to a representative of A-B LLC from Richard Haymaker, the ILCC's chief legal counsel. Mr. Haymaker's letter stated that it would be unlawful for WEDCO to consummate the acquisition of CITY Beverage. After receiving this letter, A-B LLC and WEDCO postponed the closing because the letter stated that proceeding with the transaction would violate the Liquor Control Act.

ILCC Legal Response

6, 7, 8 - Will not stipulate – ILCC Legal contests that these stipulations have any relevance to the Commission's 8/8 discovery order 10(a).

WEDCO/AB Proposed Stipulation

9. The ILCC has issued or renewed distributor's licenses and importing distributor's licenses to A-B LLC or its affiliates, as set forth below:

Licensed Entity	Location	Period Held
A-B LLC	Addison	1980-1983
A-B LLC	Chicago / Arlington Heights (1401 E. Algonquin)	1980-2005
A-B LLC	Arlington Heights (1717 E. Davis)	1982-1983
Donald Neistrom JC Alvarez	River North	1988-1996
Anheuser-Busch River North Investment Capital Corp.	River North	1997-1998

ILCC Legal Response

9. From Ivan Fernandez email to Andrew Fuchs on 9/7:

“We are willing stipulate to facts which we can infer from credible documentation. We can stipulate that AB was issued more than one distributor license between 1980 and 2006, however, the language of the stipulations must not confuse the facts. We believe the following to be true: Beginning in 1980, AB ran a single distribution operation in Addison which moved to Arlington Heights at 1717 E. Davis in 1982, then to 1401 E. Algonquin in 1983 where it remained until the formation of CITY in 2005.

We are not aware of a distributor license issued to a Chicago location from 1980-1983. If you have documentation to support this license, please provide it to us. We will also stipulate that AB was involved in the operation of River North from its inception in 1988, took full control in 1997 and sold its interest in 1998.”

WEDCO/AB Proposed Stipulation

10. The ILCC's chief legal counsel's duties and responsibilities include reviewing requests for the ILCC to issue or renew liquor licenses and answering applicants' questions regarding the Liquor Control Act.
11. The ILCC's chief legal counsel has the duty and authority to interpret the Liquor Control Act and to determine whether certain licensing arrangements are consistent with the provisions of the Liquor Control Act.
12. When interpreting the Liquor Control Act or making licensing determinations, it is standard practice for the ILCC's chief legal counsel to seek input from the Commissioners if a particular interpretation or licensing decision is unclear or controversial.
13. When interpreting the Liquor Control Act or making licensing determinations, it is standard practice that the ILCC's chief legal counsel interpret the Liquor Control Act and make decisions without input from the Commissioners if a particular interpretation or licensing decision is considered straightforward or is not controversial.
14. The ILCC's chief legal counsel from January 2004 through June 2007 was William O'Donaghue.
15. Prior to closing the 2005 Transaction, A-B LLC's in-house counsel, Jay Golder, requested that Mr. O'Donaghue approve the transaction, including WEDCO's contemplated 30 percent interest in CITY Beverage. In connection with Mr. Golder's request, the ILCC received information from WEDCO and its affiliates regarding the transaction, including a contribution agreement summary and flowchart. These documents provided significant detail regarding the transaction and specifically described the involvement of the various parties to the transaction.

ILCC Legal Response

Respondents' submit stipulations 10-15 to prove facts related to their equitable estoppel claim. Respondents do not submit 10-15 in a good faith attempt to comply with the Commission's 8/8 subsection 10(a) discovery order. ILCC legal will not stipulate to any fact related to respondents' claim of equitable estoppel.

WEDCO/AB Proposed Stipulation

16. As required by its standard operating procedure prior to issuing a new license, the ILCC conducted the distributor pre-licensing investigation of A-B LLC's Arlington Heights location. The investigator's formal report noted that A-B LLC

was a “two-tier entity,” stating that the issue was “deferred to [the] legal division.”

ILCC Legal Response

ILCC legal rejected this stipulation but notified Respondents’ that we would not object to the submission of the entire investigative report as an exhibit. In our opinion, the entire investigative report establishes a better record than the parsed extractions of the document.

Respectfully Submitted on September 11, 2012 by,

Richard R. Haymaker
Ivan H. Fernandez

Illinois Liquor Control Commission Legal Division

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned certifies that the foregoing **Response to Respondents Motion for Leave for Request to Admit** was hand delivered to the Illinois Liquor Control Commission and emailed on September 11, 2012 to: Stephen B. Schnorf, Acting Chairman of the Illinois Liquor Control Commission, at stephenbs@sbcglobal.net, Allyson Reboyras, Commission Secretary at allyson.reboyras@illinois.gov, Thomas J. Verticchio, counsel for City Beverage, at tverticchio@smbtrials.com, Irene Bahr, counsel for Anheuser Busch LLC/WEDCO at irene.bahr@gmail.com and Edward M. Crane, counsel for Anheuser Busch LLC/WEDCO at edward.crane@skadden.com.

/s/ Richard R. Haymaker

Richard R. Haymaker
Chief Legal Counsel
Illinois Liquor Control Commission