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STATE OF ILLINOIS  
LIQUOR CONTROL COMMISSION

LICENSING DIVISION  
ILCC

In the Matter of:	)	No. 12 C 100220
	)	No. 12 C 100221
City Beverage – Markham, LLC	)	
d/b/a/ City Beverage Markham	)	LIC: 12-2A-102035; 12-2B-69574
2064 W. 167th St.	)	Exp: 9/30/2012
Markham, IL 60428	)	IBT: 5524-4025

In the Matter of:	)	No. 12 C 100222
	)	No. 12 C 100223
City Beverage – Markham, LLC	)	
d/b/a/ City Beverage –Arlington Heights	)	LIC: 12-2A-102034; 12-2B-69575
1401 E. Algonquin Rd.	)	Exp: 9/30/2012
Arlington Heights, IL 60005	)	IBT: 3665-2202

In the Matter of:	)	No. 12 C 100218
	)	No. 12 C 100219
Chicago Distributing LLC	)	
d/b/a/ City Beverage - Chicago	)	LIC: 12-2A-96603; 12-2B-64729
4841 S. California Ave.	)	Exp: 10/31/2012
Chicago, IL 60632	)	IBT: 5515-9060

In the Matter of:	)	No. 12 C 100216
	)	No. 12 C 100217
City Beverage LLC	)	
d/b/a/ City Beverage	)	LIC: 12-2A-98399; 12-2B-61392
1105 E. Lafayette Ave.	)	Exp: 3/31/2013
Bloomington, IL 61701	)	IBT: 5509-8851

**MOTION FOR SUMMARY JUDGMENT**

1. The Legal Division of the Illinois Liquor Control Commission (“Commission”) respectfully petitions the Commission for summary judgment on the substantive merits of the legal argument of whether or not Anheuser Busch, LLC, (“AB LLC”), an Illinois Non-Resident Dealer, may possess an equity interest and a management interest in City

Beverage Distributors<sup>1</sup> through a commonly owned affiliate, the Wholesaler Equity Development Corporation (“WEDCO”). Summary judgment is appropriate and encouraged when the court determines there is no genuine issue of material fact. The above stated legal question is the only question at issue and the relevant facts pertaining to it are not or should not be at issue. The basic facts are as follows:

- a. AB LLC is a licensed Illinois Non-Resident Dealer<sup>2</sup> (Exhibit 1B).
  - b. WEDCO holds a 30% ownership interest City Beverage<sup>3</sup> (Exhibit 1A).
  - c. WEDCO holds a 75% management interest in City Beverage<sup>4</sup> (Exhibit 1C).
  - d. AB LLC and WEDCO are commonly owned affiliates and are both wholly owned subsidiaries of Anheuser Busch Companies LLC<sup>5</sup> (Exhibit 2).
2. Illinois Courts have ruled that administrative agencies should use the Illinois Code of Civil Procedure as a guide to ruling on motions for summary judgment.<sup>6</sup> The Illinois Civil Procedure Code states “any time after the opposite party has appeared”, a party “may move with or without supporting affidavits for a summary judgment in his or her favor for all or any part of the relief sought.”<sup>7</sup> The Code also directs that a “judgment sought shall be rendered without delay if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of

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<sup>1</sup> “City Beverage” is a group of Illinois Distributor and Importing Distributor license holders under the names City Beverage – Markham, LLC, City Beverage – Bloomington, LLC and Chicago Distributing, LLC.

<sup>2</sup> Exhibit 1 - Affidavit of Dusanka Marijan, subsection 3, 7/17/2012.

<sup>3</sup> Marijan Affidavit at subsection 2.

<sup>4</sup> Marijan Affidavit at subsection 4.

<sup>5</sup> From Defendants’ submission in federal court, “Affidavit of Anthony J. Short in Support of Plaintiffs’ Motion for Summary Judgment on Their Commerce Clause Claim”, p. 2, 4/9/2010.

<sup>6</sup> Cano v. Village of Dolton, 250 Ill.App.3d 130, 620 N.E.2d 1200 (1993).

<sup>7</sup> 735 ILCS 5/2-1005(a).

law.”<sup>8</sup> Courts have regularly encouraged the use of summary judgment in order to promote the “expeditious disposition of a lawsuit.”<sup>9</sup>

3. In the current case before the Commission, there is no genuine issue of material fact and the Legal Division of the Illinois Liquor Control Commission is entitled to a judgment as a matter of law. The factual claim stated in the affidavits and exhibits are simple and should be undisputed. AB LLC is an Illinois Non-Resident Dealer which has an ownership and management interest in City Beverage, an Illinois Distributor and Importing Distributor. The information contained in Exhibit 1, Affidavit of Dusanka Marijan, is all a matter of public record and was submitted by Anheuser Busch and City Beverage. The Commission has conducted no specific fact finding investigation in this matter other than what is normally conducted and/or expected in the processing of applications. In addition, per the defendant’s submission of the affidavit of Anthony Short (Exhibit 2) submitted in a prior federal court matter,<sup>10</sup> there is an uncontested ownership connection between AB LLC and City Beverage. The only change to the information since the federal court filing was a business structure change from “AB Inc” to “AB LLC” which was reported to this Commission as a conversion earlier this year. As such, Commission staff recognizes AB Inc. and AB LLC as the same entity. To the knowledge of the Commission staff, all alleged facts regarding ownership and management of AB LLC, WEDCO and City Beverage are true and correct as of the date of this motion.

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<sup>8</sup> 735 ILCS 5/2-1005(c).

<sup>9</sup> Bryant v. Glen Oaks Medical Center, 272 Ill.App.3d 640, 650 N.E.2d 622 (1995); Bolingbrook Equity I Ltd. Partnership v. Zayre of Illinois, Inc. 252 Ill.App.3d 753, 624 N.E.2d 1287 (1993).

<sup>10</sup> Anheuser-Busch, et. al. v. Schnorf, et. al., 738 F.Supp.2d 793.

4. The substance of the litigation is simply a matter of statutory construction of the Illinois Liquor Control Act. The Defendants argue that an Illinois Non-Resident Dealer and Illinois Distributor and Importing Distributor can be commonly or wholly owned and managed by the same parent. Effectively, an Illinois Non-Resident Dealer can be an Illinois Distributor. The Legal Division of the Commission argues that an Illinois Non-Resident Dealer cannot own or manage an Illinois Distributor and Importing Distributor thus precluding WEDCO from owning thirty percent of and managing City Beverage (See Amended Citation and Notice of Hearing). Because the matter before the Commission is simply one of statutory construction, it should be reviewed as a question of law only under a motion for summary judgment.

5. For the purpose of honoring the Commission scheduling order, the Legal Division refrains from currently arguing the substantive merits of the construction of the statute and reserves the right to do so when the schedule permits.

Respectfully Submitted on July 18, 2012,

Richard R. Haymaker  
Konstantina J. Tsatsoulis  
Ivan H. Fernandez

Legal Division  
Illinois Liquor Control Commission

# EXHIBIT 1

## AFFIDAVIT OF DUSANKA MARIJAN

1. My name is Dusanka Marijan. I make this affidavit in my professional capacity as Licensing Administrator for the Illinois Liquor Control Commission (Commission). I have held this position since January 1999. My duties include the supervision of personnel that regularly take in, review and process applications for new liquor licenses, applications for recorded changes to liquor licenses and applications for the renewal of liquor licenses (collectively "Liquor License Applications"). As part of my duties, I regularly undertake the direct review of Liquor License Applications for Illinois Distributor and Importing Distributor licenses. I additionally supervise the intake and processing of applications for alcoholic beverage brand registrations and the concurrent assignment of brand distribution territories (collectively "Brand Registrations"). My duties include but are not limited to: 1) reviewing Liquor License Applications and Brand Registrations, 2) corresponding with license applicants or their agents related to the processing of Liquor License Applications and Brand Registrations, 3) requesting supplementary documentation related to the processing of the Liquor License Applications and Brand Registrations, 4) maintaining a system of records for Liquor License Applications and Brand Registrations.

2. Having reviewed the Commission records for the most recent liquor license renewals for business names containing the term "City Beverage", I certify that the Commission records indicate:

- a. Chicago Distributing LLC, City Beverage - Markham LLC and City Beverage LLC (collectively "City Beverage") currently hold Illinois Distributor and Importing Distributor licenses at four separate business locations within Illinois<sup>1</sup> issued by the Illinois Liquor Control Commission; and,

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<sup>1</sup> City Beverage – Markham LLC is issued two sets of Distributor and Importing Distributor licenses in Arlington Heights, Illinois and in Markham, Illinois.

- b. City Beverage Illinois LLC wholly owns City Beverage; and,
  - c. Wholesaler Equity Development Corporation (WEDCO) owns a partial 30% interest in City Beverage Illinois LLC; and,
  - d. BDT Capital Partners CBI I, L.P., BDT – CBI A Corp., and BDT – CBI B Corp (Collectively “BDT Capital Partners), own a partial 70% interest in City Beverage Illinois LLC.<sup>2</sup>
3. Having reviewed the Commission records for business names containing the term “Anheuser Busch”, I certify that the Commission records reflect that Anheuser Busch LLC currently holds an Illinois Non-Resident Dealer license.<sup>3</sup>
4. Having reviewed the documents submitted in support of a September 2010 City Beverage change of ownership application, I certify the renewal file contains the attached Exhibit 1C documents and that the documents are considered part of the application record. The documents contain the following statements:
- a. In 2010, WEDCO held the right to appoint 2 of 5 board members of City Beverage;
  - b. In 2010, WEDCO held the right to approve 3 of top 4 management employees of City Beverage;
  - c. In 2010, WEDCO had whole or partial control of buying or selling distribution rights, territories and brands;
  - d. In 2010, WEDCO had first right to purchase 21% of the equity (increasing its share to 51%) of City Beverage Illinois LLC from BDT Capital Partners in September 2013;
  - e. In 2010, WEDCO had first right to purchase all of City Beverage from BDT Capital Partners by September 2019 or find a legally permissible buyer.<sup>4</sup>

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<sup>2</sup> Exhibit 1A – From RJ O’Hara letter to Dusanka Marijan “RE: City Beverage-Markham Distributor Renewals – License Nos. 11-2B-0069575 and 11-2B-0069574 (Arlington Heights and Markham)”, 9/22/2011.

<sup>3</sup> Exhibit 1B - From Illinois Liquor Control Commission License Database records, printed 7/17/2012.

<sup>4</sup> Exhibit 1C – From RJ O’Hara email to Richard Haymaker titled “Haymaker’s Questions on the Change of Ownership Notice – FW: Change of Corporate Officers Application – License#: 10-2B-61392”, 11/18/2010.

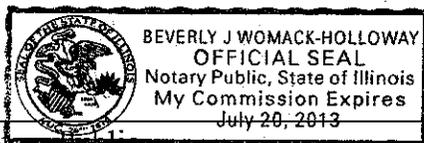
5. Having reviewed Illinois Liquor Control Commission records, I certify that City Beverage has not submitted an application to change or update records with the Commission (as would be required by Commission Rule 100.100 if any of the terms or conditions of ownership or corporate officers have substantially changed) since September 2010. Based on this, I make this statement under the presumption that the information contained in the 2010 Change of Officers application currently remains true.

6. Having reviewed Illinois Liquor Control Commission records, I certify that Anheuser Busch LLC obtained a new Illinois Non-Resident Dealer license in 2012 as a result of a corporate conversion from Anheuser Busch Inc..<sup>5</sup>



Dusanka Marijan  
License Administrator  
Illinois Liquor Control Commission

Sworn to before me this 18th day of July 2012



Notary Public



<sup>5</sup> See Exhibit 1B – From Illinois Liquor Control Commission Database records, printed 7/17/2012.

# **EXHIBIT 1A**

# **EXHIBIT 1B**

### General License Info for ANHEUSER-BUSCH LLC (43-0161000)

#### Licensee Editing Screen

<b>State License Number</b>	<b>License Class</b>	<b>IBT</b>	<b>License Issued</b>	<b>License Expires</b>	<b>Effective Date</b>
12-3J-193501	NR DEALER > 500,000	0	02/23/2012	01/31/2013	02/23/2012

<b>Name:</b> ANHEUSER-BUSCH LLC		<b>County:</b> OUT OF STATE
<b>Premise Address</b>		<b>NRD Address</b>
<b>Address:</b> ONE BUSCH PLACE		<b>Phone:</b> (314) 577-2000
<b>Unit/Suite:</b> 202-1		<b>Ext.:</b>
<b>C/S/IZ:</b> ST LOUIS MO 63118		<b>Mail To:</b>
		<input type="radio"/> Corporate Premise <input type="radio"/> E-3rd <input type="radio"/> NRD

<b>Certificate No:</b> E-294333	<b>Method Of Application Delivery:</b> <input type="checkbox"/> Walk Up To Counter <input checked="" type="checkbox"/> Mail
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Activity Code	Business Code	Refund Amount	Refund Date	Fee Due
ACTIVE	OTHER	0.00	//	270.00

Fee Paid	DCH	Plane/Train	Late Filing Fee	Reissue Date	Reissue Fee	Total Fees
270.00	C-086112	0	0.00	//	0.00	270.00

<b>Method of Payment</b>		<b>Conf (or Auth) #:</b>
<b>License Fee / Late Fee</b>	<input checked="" type="checkbox"/> Check <input type="checkbox"/> Credit Card	
<b>Reissue Fee</b>	<input type="checkbox"/> Check <input type="checkbox"/> Credit Card	

<input type="checkbox"/> <b>Read Notes</b>	<b>Comments:</b> A new license number was issued due the fact that AB went from Anheuser Busch Inc to Anheuser-Busch LLC; they obtained a new file number with the Secretary of State offices in Missouri and in Illinois- this required that they obtain a new state license.	<b>Added By:</b> DV	02/23/2012
		<b>Last Edit By:</b> DV	02/23/2012

<input type="button" value="Leased"/>	<input type="button" value="Bill Of Sale"/>	<input type="button" value="Waivers"/>	<input type="button" value="Status"/>
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<input type="button" value="Renewal Form"/>	<input type="button" value="Brand/Type"/>	<input type="button" value="Non-Res Dir"/>	<input type="button" value="Dist. Prod."/>	<input type="button" value="Lic. Hist."/>
<input type="button" value="Top"/>	<input type="button" value="Prior"/>	<input type="button" value="Next"/>	<input type="button" value="Print"/>	<input type="button" value="Search"/>
<input type="button" value="Change"/>	<input type="button" value="Delete"/>	<input type="button" value="Exit"/>		

# EXHIBIT 1C

## City Beverage – Response to ILCC Questions

18 November 2010

### 1. Financial terms of transaction

- The purchase price paid by BDT Capital Partners (“BDT”) for the 70% Soave stake in City Beverage was unchanged from original agreement between WEDCO and Soave. WEDCO did not consummate the transaction with Soave.
- Through Agreement to Assign and Assume (“Assignment Agreement”), BDT became the direct purchaser of the 70% interest in City Beverage from Soave itself (i.e., BDT did not pay WEDCO for the interest)
- WEDCO continues to hold its 30% stake in City Beverage; BDT Capital Partners is the 70% majority owner of the business

### 2. WEDCO’s retained rights

- With respect to your question about Sections 8.1.3 and 8.3 of the Assignment Agreement, while BDT assumed the same economic terms as WEDCO had with Soave (e.g., purchase price), Section 2.1 of the Assignment Agreement describes two specific obligations in the Purchase Agreement that remained with WEDCO and were not transferred to BDT:
  - a) The Gross Profit Earn-Out due to Soave under Section 1.4 of the Purchase Agreement, which provides for up to an additional \$2mm of earn-out payments to Soave over 4 years subject to Company meeting certain gross profit targets. The Assignment Agreement states that this earn-out will be paid out of the cash flow of City Beverage.
  - b) Separation pay due to City Beverage employees under Section 3.3.3 of the Purchase Agreement, which covers any employees terminated without cause prior to December 31, 2010. These costs will be shared 70% by Soave and 30% by WEDCO.
- As a 30% minority owner in City Beverage, WEDCO retains customary shareholder rights including:
  - Right to appoint 2 of 5 board members of City Beverage
  - Right to approve 3 of top 4 management employees
  - Changes to the cash distribution policy
  - Reserved actions related to buying or selling distribution rights, territories and brands

- WEDCO also has various minority consent rights, including amendment of agreements, admission of new members to the LLC, dissolution of the LLC, guarantee, sales of assets other than in the ordinary course, replacement of accountants and the approval of any transactions with affiliates of the managers of the LLC
- All of these rights are customary for a party having a significant minority interest in a business and were negotiated at arm's-length

### 3. WEDCO call option

- As we mentioned in our meeting, should WEDCO become legally permitted to increase its ownership in City Beverage by a final court decision or legislative change, WEDCO has the contractual right (but not the obligation) to purchase portions of BDT's stake in City Beverage on the following dates:
  - At any time prior to March 31, 2011, WEDCO may purchase some or all of BDT's interest in City Beverage
  - \* - If the March 31, 2010 call right expires, on the 3<sup>rd</sup> anniversary of close (September 2013) WEDCO may purchase 21% of the equity of City Beverage from BDT. If this call right were able to be exercised, BDT would still own 49% of City
  - \* - On the 9<sup>th</sup> anniversary of close, WEDCO may purchase all of BDT's interest in City Beverage. If WEDCO is still not able to legally increase its ownership, WEDCO must find a legally permissible buyer to purchase BDT's interest

## **EXHIBIT 2**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

ANHEUSER-BUSCH, INC., WHOLESALER )  
EQUITY DEVELOPMENT CORPORATION, )  
CITY BEVERAGE – ILLINOIS, L.L.C., CITY )  
BEVERAGE L.L.C., CITY BEVERAGE – )  
MARKHAM L.L.C., CHICAGO DISTRIBUTING )  
L.L.C., SD OF ILLINOIS, INC., And DOUBLE )  
EAGLE DISTRIBUTING COMPANY )

Plaintiffs, )

v. )

STEPHEN B. SCHNORF, JOHN M. AGUILAR, )  
DANIEL J. DOWNES, SAM ESTEBAN, )  
MICHAEL F. MCMAHON, MARTIN )  
MULCAHEY, DONALD O'CONNELL, )  
Commissioners, of the Illinois Liquor Control )  
Commission, in their official capacities; And )  
RICHARD R. HAYMAKER, Chief Legal Counsel )  
of the Illinois Liquor Control Commission, in his )  
official capacity )

Defendants. )

Case No. 10 CV 01601

Hon. Robert M. Dow, Jr.

Hon. Michael T. Mason

**AFFIDAVIT OF ANTHONY J. SHORT IN SUPPORT OF PLAINTIFFS' MOTION  
FOR SUMMARY JUDGMENT ON THEIR COMMERCE CLAUSE CLAIM**

1. I, Anthony J. Short, have personal knowledge of the matters set forth herein and could testify competently about these matters if called as a witness.
2. I am Vice President of Business & Wholesaler Development for Anheuser Busch Inc. I have held this position since 2002. Throughout my 23 years in the beer industry I have held

many positions, several of which have involved the oversight, operation, and management of beer producers and wholesalers.

3. I make this affidavit in support of Plaintiffs' motion for summary judgment in the above-captioned action and on behalf of Anheuser-Busch, Inc. ("AB Inc.") and Wholesaler Equity Development Corporation ("WEDCO").

4. AB Inc. is a wholly owned subsidiary of Anheuser-Busch Companies, Inc. AB Inc. is the leading U.S. brewer and producer of beer in the United States, brewing, among others, the Budweiser and Bud Light brand beers, which are the two largest selling beers in the world. AB Inc. produces over 100 beers, flavored alcoholic beverages, and nonalcohol brews, and imports other beers for distribution in the United States. AB Inc.'s Budweiser, Bud Light, Michelob ULTRA, Busch, and Natural Light brand beers hold the No. 1 positions in their respective U.S. market segments. AB Inc. operates 12 breweries in the United States in 11 States and distributes products through a network of nearly 600 independent wholesalers and operates 11 company-owned distributors in eight states.

5. AB Inc. does not brew/produce beer within Illinois and has not done so at any time relevant to this matter. AB Inc. produces beer at various breweries throughout the United States, including its brewery in St. Louis, Missouri, that is sold in Illinois through CITY Beverage. The St. Louis brewery is located on the Western bank of the Mississippi river, which is the border between Missouri and Illinois.

6. At all times relevant to this matter, AB Inc. has exported beer produced in the United States into Illinois for distribution within the State, and intends to continue to do so in the future. AB Inc.'s beer is widely distributed, sold, and consumed in Illinois.

7. AB Inc.'s beer is distributed in Illinois through various distributors, including in parts of northern Illinois by CITY Beverage. In 2009, CITY Beverage distributed within Northern Illinois over 16.9 million case equivalents (over 38 million gallons) of AB Inc. beer, translating into tens of millions of dollars of product revenue for AB Inc. and CITY Beverage.

8. Plaintiff WEDCO, formerly known as AB Investment Capital Corp., is a wholly-owned subsidiary of Anheuser-Busch Companies, Inc. From CITY Beverage's formation in 2005, through the present, WEDCO has maintained a 30 percent ownership interest in CITY Beverage WEDCO.

9. In December 2009, WEDCO reached an agreement with SD of Illinois, Inc. ("SDI") and Double Eagle Distributing Company ("Double Eagle") (SDI and Double Eagle, collectively the "Soave Entities") to purchase the Soave Entities' 70 percent interest in CITY Beverage. The transaction was scheduled to close on February 12, 2010. The transaction involves the acquisition of a business worth many millions of dollars.

10. As of February 11, 2010, virtually all preconditions to the closing of the transaction were complied with by all parties to the transaction. All material closing documents were prepared and significant funds had been transferred from various accounts to a particular WEDCO account that was designated to wire the purchase price to the Soave Entities. In preparation for the imminent closing, and to make the transition as seamless as possible, by February 11, 2010, AB Inc. already had enrolled all of the CITY Beverage employees in its benefits plans. CITY Beverage's beer shipments were cancelled to accommodate an audit of the inventory scheduled to occur the next day. AB Inc. also had made a significant capital investment in IT infrastructure to transition the business to AB Inc.'s IT systems, including arranging for computers and servers to be installed immediately after the closing.

11. After receiving a letter from Richard Haymaker of the Illinois Liquor Control Commission in the evening of February 11, 2010, stating that it would be unlawful for WEDCO to consummate the acquisition of CITY Beverage, the parties postponed the sale of CITY Beverage. The only reason that WEDCO did not close the transaction on February 12, 2010, is that Mr. Haymaker's letter stated that it would violate Illinois law to do so.

12. Plaintiffs have continued to postpone the closing of this transaction through the present. WEDCO remains ready, willing, and able to immediately close an acquisition of CITY Beverage if this lawsuit is resolved in their favor.

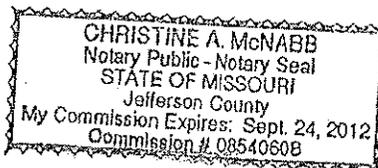
13. The acquisition of the remainder of the CITY Beverage business is a unique and important business opportunity for WEDCO and AB Inc. that will permit AB Inc. to realize the same common advantages that in-state brewers may achieve by distributing beer. The fact that WEDCO's acquisition of the CITY Beverage Entities has not closed is causing substantial harm to WEDCO and AB Inc.

14. Subsequent to an acquisition by WEDCO of CITY Beverage, AB Inc. intends and is prepared to continue to comply with all regulations applicable to holders of an NRD License and WEDCO intends and is prepared to require the CITY Entities to continue to comply with all regulations applicable to holders of Distributor's and Importing Distributor's Licenses.

  
Anthony J. Short

Sworn to before me this 9th day of  
April, 2010

Christine A. McNabb  
Notary Public



STATE OF ILLINOIS        )  
                                  ) SS.  
COUNTY OF COOK         )

The undersigned certifies that the foregoing MOTION FOR SUMMARY JUDGMENT, AFFIDAVIT AND EXHIBITS were hand delivered to the Illinois Liquor Control Commission and emailed on July 18, 2012 to: Stephen B. Schnorf, Acting Chairman of the Illinois Liquor Control Commission, at [stephenbs@sbcglobal.net](mailto:stephenbs@sbcglobal.net), Allyson Reboyras, Commission Secretary at [allyson.reboyras@illinois.gov](mailto:allyson.reboyras@illinois.gov), Thomas J. Verticchio, counsel for City Beverage, at [tverticchio@smbtrials.com](mailto:tverticchio@smbtrials.com), Irene Bahr, counsel for Anheuser Busch LLC/WEDCO at [ibahr@aol.com](mailto:ibahr@aol.com) and Edward M. Crane, counsel for Anheuser Busch LLC/WEDCO at [edward.crane@skadden.com](mailto:edward.crane@skadden.com).

/s/ Richard R. Haymaker

Richard R. Haymaker  
Chief Legal Counsel  
Illinois Liquor Control Commission