

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

Deborah B. Goldberg
Treasurer and Receiver General

Kim J. Gainsboro, Esq.
Chairman

NOTICE OF SUSPENSION

February 11, 2016

CRAFT BEER GUILD LLC D/B/A CRAFT BREWERS GUILD
170 MARKET STREET
EVERETT, MA 02149
LICENSE#: WI-298
VIOLATION DATE: 03/18/2015
HEARD: 09/02/2015

After a hearing on September 2, 2015, the Commission finds Craft Beer Guild LLC d/b/a Craft Brewers Guild violated:

- 1) 204 CMR 2.08: No licensee shall give or permit to be given money or any other thing of substantial value in any effort to induce any person to persuade or influence any other person to purchase, or contract for the purchase of any particular brand or kind of alcoholic beverages, or to persuade or influence any person to refrain from purchasing, or contracting for the purchase of any particular brand or kind of alcoholic beverages.
- 2) M.G.L. C. 138, §25A: No licensee authorized under this chapter to sell alcoholic beverages to wholesalers or retailers shall: Discriminate, directly or indirectly, in price, in discounts for time of payment, or in discounts on quantity of merchandise sold, between one wholesaler and another wholesaler, or between one retailer and another retailer purchasing alcoholic beverages bearing the same brand or trade name of like age and quality.

On the first violation, 204 C.M.R. 2.08, the Commission suspends the license for fifteen (15) months, with ninety (90) days to be served and the balance of 12 months held in abeyance for two years provided no further violations of Chapter 138 or Commission Regulations occur.

On the second violation, M.G.L. C. 138, § 25A, the Commission suspends the license for fifteen (15) months with ninety (90) days to be served and the balance of 12 months held in abeyance for two years provided no further violations of Chapter 138 or Commission Regulations occur. This suspension is to run concurrently with the penalty imposed for 204 C.M.R. 2.08.

In total the Commission suspends the license for a period of ninety (90) days to be served, and the balance of 12 months to be held in abeyance for a period of two (2) years, provided no further violations of Chapter 138 or Commission Regulations occur.

The suspension shall commence on Wednesday, March 30, 2016 and terminate on Tuesday, June 28, 2016. The license will be delivered to the Local Licensing Board or its designee on Wednesday, March 30, 2016 at 9:00 A.M. It will be returned to the Licensee Wednesday, June 29, 2016.

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.

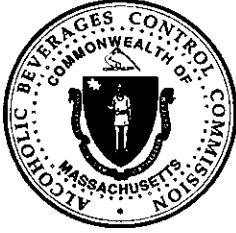
ALCOHOLIC BEVERAGES CONTROL COMMISSION



Kim S. Gainsboro
Chairman

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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Nicholas Velez, Investigator
Caroline A. O'Connell, Esq. via facsimile 617-439-3987
Mark Dickison, Esq. via facsimile 617-439-3987
Administration, File



The Commonwealth of Massachusetts
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DECISION

CRAFT BEER GUILD LLC D/B/A CRAFT BREWERS GUILD
170 MARKET STREET
EVERETT, MA 02149
LICENSE#: WI-298
VIOLATION DATE: 03/18/2015
HEARD: 09/02/2015

Craft Beer Guild LLC d/b/a Craft Brewers Guild (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 19. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Wednesday, September 2, 2015, regarding alleged violations of:

- 1) 204 CMR 2.08: No licensee shall give or permit to be given money or any other thing of substantial value in any effort to induce any person to persuade or influence any other person to purchase, or contract for the purchase of any particular brand or kind of alcoholic beverages, or to persuade or influence any person to refrain from purchasing, or contracting for the purchase of any particular brand or kind of alcoholic beverages.
- 2) M.G.L. C. 138, §25A: No licensee authorized under this chapter to sell alcoholic beverages to wholesalers or retailers shall: Discriminate, directly or indirectly, in price, in discounts for time of payment, or in discounts on quantity of merchandise sold, between one wholesaler and another wholesaler, or between one retailer and another retailer purchasing alcoholic beverages bearing the same brand or trade name of like age and quality.

Prior to the commencement of the hearing, the Licensee stipulated to the violations alleged in Investigator Velez's Report.

The following documents are in evidence:

1. Investigator Velez's Investigative Report dated March 18, 2015;
2. Bank On It (3 pgs);
3. Bank On It (2 pgs);
4. Bank On It (4 pgs);
5. Wilcox Hospitality Group 1 (3 pgs);

6. Wilcox Hospitality Group 2 (2 pgs);
7. The Briar Group 1 (5 pgs);
8. The Briar Group 2 (4 pgs);
9. The Briar Group 3 (2 pgs);
10. Fifth Avenue Productions 1 (3 pgs);
11. Rebel Restaurant Group, Inc. 1 (4 pgs);
12. Rebel Restaurant Group, Inc. 2 (4 pgs);
13. Rebel Restaurant Group, Inc. 3 (3 pgs);
14. The Glynn Hospitality Group 1 (1 pg);
15. The Glynn Hospitality Group 2 (1 pg);
16. The Glynn Hospitality Group 3 (2 pgs);
17. Price Postings from Beverage Journal, January – December 2013;
18. Price Postings from Beverage Journal, January – December 2014; and
19. Licensee's Stipulation of Facts.

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

The Commission took Administrative Notice of the Licensee's file.

FINDINGS OF FACT

1. Craft Beer Guild, LLC, d/b/a Craft Brewers Guild ("Craft" or "Licensee") is a Massachusetts licensed § 18 wholesaler located at 170 Market Street, Everett, MA.
2. Craft came into existence in 2005, as a result of a merger between Snapple Beverages of Boston, LLP and L. Knife & Son, Inc. ("L. Knife"). (Commission File; Testimony)
3. L. Knife is the sole owner of Craft. (Commission Files)
4. Gerald Sheehan is the sole manager of Craft. (Commission Files)
5. Craft distributes approximately 200 craft beer brands, including but not limited to beer from Brooklyn Brewery, Ipswich Ale Brewery, Sierra Nevada Brewing Company, Magic Hat Brewing Company, Lagunitas Brewing Company, Allagash Brewing Company, Pretty Things Beer & Ale Project Inc., Cisco Brewers Inc., Yuengling Brewery, Smuttynose Brewing Company, Wachusett Brewing Company, Brewery Ommegang, Weihestephaner US, and Oskar Blues Brewery. ("Craft Brands").
6. Pretty Things Beer and Ale Project Inc., ("Pretty Things") has never held a license to manufacture alcoholic beverages in Massachusetts¹. (Commission Files)
7. However, Pretty Things' malt beverages are among the products that Craft distributed. (Exhibit 1)
8. On or about October 13, 2014, Dan Paquette, one of the owners of Pretty Things Beer and Ale Project, Inc. posted comments on Twitter alleging that certain licensed Massachusetts Alcoholic Beverages Suppliers (presumably farmer-brewers licensed under § 19B, and certificate of compliance holders licensed under § 18B) (collectively "Suppliers"), and Massachusetts Wholesalers licensed under § 18 were providing unlawful payments to Massachusetts on-premises retailers licensed under § 12 in

¹ However, Pretty Things did hold a Massachusetts Wholesalers License that was issued on July 28, 2015. It was not renewed for calendar year 2016.

- exchange for the retailers (“Retailer or collectively “Retailers”) carrying Craft Brands in their licensed premises. (Exhibit 1, Testimony)
9. As a result of Mr. Paquette’s complaints, Commission investigators began investigating these allegations. The investigation spanned several months, required multiple interviews with employees and representatives of Massachusetts alcoholic beverages licensees and involved a thorough review of an extensive paper trail documenting the allegations and licensees implicated. (Exhibit 1, Testimony)
 10. On October 16, 2014, Chief Frederick Mahony and Investigator Nicholas Velez interviewed Dan Paquette and his wife, Martha Paquette. (Exhibit 1, Testimony)
 11. Mrs. Paquette told the investigators that Wilcox Hospitality Group, Inc. (“Wilcox”) was using a “pay-to-play” scheme with their tap lines. Specifically, Mrs. Paquette told the investigators that Craft was paying the Briar Group, LLC (“Briar”) in exchange for placement of Craft Brands in Briar Group establishments. (Exhibit 1)
 12. In support of this allegation, Mrs. Paquette provided the investigators with an invoice that Craft sent to Pretty Things. The invoice revealed that Craft was invoicing and receiving payment from licensed farmer-brewers as reimbursement for payments Craft had made to retail licensees on their behalf for product placement. (Exhibit 1, Testimony)
 13. When Mrs. Paquette received the invoice, she emailed Craft and requested clarification regarding the contents of the bill. Craft did not respond to her question but instead indicated that Pretty Things did not have to pay the invoice. (Exhibit 1, Testimony)
 14. As a result of this information, on several occasions beginning in October, 2014, Chief Frederick Mahony, and Investigators Caroline Wilichoski, and Nicholas Velez went to Craft’s licensed premises and interviewed several Craft employees regarding these allegations. (Exhibit 1)
 15. Michael Bernfeld has been Craft’s General Manager since 2005. Craig Corthell is the Sales Manager, Pat McCoy is the Director of On-Premises Sales, and Bethany DiCristofaro is the Office Manager. (Exhibit 1, Testimony)
 16. Mr. McCoy has been with Craft for three years as the Director of On-Premises Sales. His immediate supervisors are Mr. Corthell and Mr. Bernfeld. (Exhibit 1)
 17. Craft employs several sales representatives, including Dan Cronin and Mike Maccure. (Exhibit 1)
 18. Initially, when Investigator Wilichoski asked Mr. Corthell what the terms “brand allocation,” “marketing support,” and “menu programming,” signified in the Pretty Things invoice, Mr. Corthell and other Craft representatives denied any knowledge of the meaning of the terms. (Exhibit 1, Testimony)
 19. After continued questioning, Mr. Corthell told Investigator Wilichoski that, “the terms are interchangeable and mean the same thing” and is related to the printing of menus. However, when Investigator Wilichoski asked if Craft prints menus, Mr. Corthell said, “no.” (Exhibit 1, Testimony)
 20. Finally, Mr. Corthell admitted that that the \$20 “rebate” offered was actually a “kickback” to Briar for committed Craft Brand tap lines in its Retail establishments. (Exhibit 1, Testimony)
 21. Mr. Corthell went on to say that Craft has been paying Briar a \$20 “rebate” per keg twice a year for the last three years, in exchange for Briar putting Craft Brands on Briar’s Retailers’ menu. (Exhibit 1, Testimony)

22. Mr. Corthell acknowledged that Craft has similar agreements with Wilcox, Remy's Fenway Group, LLC ("Remy's"), the Glynn Hospitality Group ("Glynn"), and the Lyons Group, LTD ("Lyons"). (Exhibit 1, Testimony)
23. Beginning sometime in 2013 and continuing until the time of the complaints, Craft negotiated and implemented a series of kickback schemes between itself, certain Suppliers, multiple Retailers, and certain Retailers' management/marketing companies, including Briar, Wilcox, Glynn, Fifth Avenue Productions ("Fifth Avenue"), Rebel Restaurant Group ("Rebel"), Bank On It, and Lyons (collectively "Third Parties").
24. None of these Third Parties have alcoholic beverages licenses in Massachusetts.
25. Mr. McCoy has been Craft's primary negotiator in support of these schemes. (Exhibit 1, Testimony)
26. An overview of the schemes are as follows:
 - a. Craft negotiated a payment structure with each Third Party in exchange for the Retailers placing Craft Brands in its on-premises retail establishments. Typically, the negotiated prices ranged from \$1000 to \$1500 per draft line keg.
 - b. Craft would either provide a sample invoice to the Third Party for use or the Third Party would use its own invoice.
 - c. The invoice indicated that Craft was being billed for services rendered to it such as "marketing support," "printing of menus," "promotional services," or some other similar services to Craft.
 - d. In an effort to obfuscate and create distance between the Retailers and Craft, the Retailers never invoiced Craft directly. Instead, the Third Parties fraudulently invoiced Craft. These Third Parties all have similar characteristics. They do not hold alcoholic beverages licenses, are identified as either management or marketing companies for the Retailers, and have the exact same or common group of corporate officers and beneficial interest holders as the Retailers. In the case of Fifth Avenue and Bank On It, there are no employees or payroll.
 - e. Once invoiced, Craft paid the fee for services never performed. In turn, Craft invoiced the Suppliers for reimbursement of the kickbacks paid. Sometimes the Suppliers would fully reimburse Craft, other times they would partially reimburse Craft. (Exhibit 1, Testimony, Commission Files)
 - f. Craft never performed or intended to perform any of the services detailed in the invoice. These invoices were actually pay-offs to participating Retailers to sell Craft Brands in its licensed premises for having committed tap lines for the Craft Brands.
 - g. Often a Craft employee would hand deliver the payments to an employee at the Retailer's licensed premises. (Exhibit 1)
27. Mr. McCoy went on to describe Craft's agreement with Wilcox where Wilcox invoiced Craft twice, each time for a \$10,000 payment. Craft paid Wilcox a total of \$20,000.00 for kickbacks labeled as "marketing support." (Exhibit 1, Testimony)
28. Once Mr. McCoy was finished providing an overview of the kickback scheme for Wilcox, he began describing the terms of the scheme involving Fifth Avenue and Remy's. (Exhibit 1, Testimony)
29. Apparently Fifth Avenue is the "marketing company" for Jerry Remy's Fenway Restaurant on Boylston Street. Rebel is the "marketing company" for Jerry Remy's Seaport Location. Craft paid Fifth Avenue approximately \$2,000 per draft brand, per

year and Remy's had four draft lines for an equivalent value of \$8,000.00 per year. (Exhibit 1, Testimony)

30. Mr. McCoy then described Craft's agreement with Glynn where Craft paid Glynn approximately \$20,000, or \$1,000.00 per draft line, in exchange for committed draft lines. (Exhibit 1, Testimony)
31. Mr. McCoy went on to discuss the scheme involving Lyons. Mr. McCoy stated that he and Lyons made an agreement for product placement of Craft Brands of \$1000.00 per draft line, an additional agreement for a payment of \$1,500.00 to \$1,800.00 per draft line for "Yuengling Beer" to be placed at Lyons Restaurants, and another agreement of \$15.00 per barrel of beer sold in Lyons restaurants. (Exhibit 1, 3)
32. Craft, through both Mr. Bernfeld and Mr. Corthell, admitted that it knew these payments were in violation of the Commission regulation regarding inducements. (Exhibit 1)
33. By Craft's own admission, these kickbacks/rebates were not posted in the Beverage Journal or reported to the Commission and were not available to all retail licensees. (Exhibit 1, Testimony)
34. After reviewing several documents, including invoices that Ms. DiCristofaro provided, the investigators scheduled interviews with the Retailers and Third Parties Craft had been paying off. (Exhibit 1, Testimony)

The Briar Group, LLC ("Briar")

35. The Briar Group, LLC², is the management company³ for the following § 12 on-premises licensees:

- Adare, Inc., d/b/a Ned Devine's;
- FHM Hospitality, Inc., d/b/a Anthem;
- Dunboy, Inc., d/b/a MJ O'Connor's;⁴
- Green Briar Tavern, Inc., d/b/a The Green Briar;⁵
- Galway, Inc., d/b/a The Harp;⁶
- Northern Avenue Hospitality Inc., d/b/a District Hall;⁷ and
- Seaport Hospitality, Inc., d/b/a the Weston Hotel.⁸ (Exhibit 1)

² Austin M. O'Connor is the manager of Briar Group, LLC. (Exhibit 1)

³ There is nothing in the Commission files approving this relationship. (Commission Files)

⁴ Austin M. O'Connor is the President, Treasurer, and Secretary of Adare, Inc., FHM Hospitality Inc., and Dunboy Inc. Austin M. O'Connor, Austin F. O'Connor, and Margaret O'Connor are listed as Directors for these entities. (Exhibit 1, Commission Files)

⁵ Secretary of Commonwealth filings indicate that Austin F. O'Connor is the President, Treasurer, and a Director of Green Briar Tavern, Inc. Austin M. O'Connor is listed as the Secretary for the entity, and Margaret O'Connor is listed as a Director, however Commission files contradict and indicate that Margaret O'Connor is the entity's Secretary. (Exhibit 1, Commission Files)

⁶ Secretary of Commonwealth filings indicate that Austin M. O'Connor is the President, Treasurer, Secretary, and a Director of Galway Inc. Margaret M. O'Connor and Austin F O'Connor are also listed as Directors of the entity however Commission files contradict and indicate Austin F. O'Connor is the President, Treasurer, and a Director of Galway, Inc. Commission files also indicate Margaret O'Connor is the Secretary and a Director of the entity. (Exhibit 1, Commission Files)

⁷ Austin M. O'Connor is the President, Treasurer, Secretary, and Director of Northern Avenue Hospitality, Inc. (Exhibit 1, Commission Files)

36. As the management company, Briar is responsible for managing the licensed premises including managing human resources, payroll and ordering alcohol. (Exhibit 1)
37. Tom Shea is Briar's Chief Operating Officer. Dessie Kerins has been employed by Briar for more than 20 years, and was responsible for Briar's liquor purchases in 2013 and 2014. (Exhibit 1, Testimony)
38. Mr. Kerins is Mr. McCoy's direct contact at Briar.
39. Initially when the Investigators questioned Mr. Kerins about the terms "brand allocation," "marketing support," and "menu programming," Mr. Kerins refused to answer the questions, provide an explanation, or reveal his contact at Craft. (Exhibit 1, Testimony)
40. Instead, Mr. Kerins forwarded the information to Mr. O'Connor and said Mr. O'Connor would provide all the requested information. (Exhibit 1, Testimony)
41. Commission Investigators conducted several interviews both in person and over the phone over the course of the next several months with Briar's representatives. (Exhibit 1, Testimony)
42. For approximately 3-4 years, Craft and Briar had an agreement whereby Craft would pay Briar so that Briar's licensees would carry Craft's products. (Exhibit 1)
43. Mr. Kerins and Mr. McCoy admitted that the agreement required Craft to pay Briar \$20.00 per keg to support a rotational draft program, in exchange for Briar selling Craft's Brands. Craft made these payments twice a year. Every six months, Craft would send a spreadsheet with the number of kegs sold to Briar, and Briar would create a fake invoice based on that spreadsheet and send it to Craft for payment. (Exhibit 1, Testimony)
44. Craft instructed Briar to label the invoices for kickbacks as either "brand allocation," "menu support," "marketing support," or "menu programming." (Exhibit 1, Transcript)
45. Paying this kickback guaranteed that Craft would have a committed draft line for Craft Brands at Briar's Retailers. (Exhibit 1)
46. As of the end of 2014, Craft and Briar had a committed draft line agreement, which required Craft to pay-off Briar twice a year. (Exhibit 1)
47. Mr. McCoy hand delivered the checks to Mr. Kerins. (Exhibit 1, Testimony)
48. An example that illustrates this kickback scheme is contained in three invoices from Briar to Craft. (Exhibits 1, 8, Testimony)
49. The first invoice from Briar to Craft, dated December 15, 2013, was for \$2,860, and indicated it was for "Marketing." (Exhibits 1, 8)
50. A Check Request Form created by Craft indicated that a check should be issued to Briar for \$2,860 for the period of July 1 – December 13, 2013. This Form signaled that it was for "Programming" and specified:
 - i. "\$300 Ipswich,
 - ii. 1,220 Sierra,
 - iii. 100 Magic,
 - iv. 280 Lagunitas,
 - v. 120 Allagash,
 - vi. 80 L. Hans,
 - vii. 120 Pretty Things and
 - viii. 640 Cisco." (Exhibits 1, 8)

⁸Austin M. O'Connor is the President, Treasurer, and Secretary of Seaport Hospitality Inc. Austin F. O'Connor and Margaret O'Connor are the Directors. (Exhibit 1, Commission Files)

51. Handwritten markings state "Pat McCoy to hand deliver." A related spreadsheet indicating retail accounts, address, brands, and "sum" was dated December 16, 2013. (Exhibit 1, 8)
52. On December 15, 2013, Briar invoiced Craft in the amount of \$2860 for "marketing" and on December 30, 2013, Craft issued check # 012105, to Briar for the entire amount. (Exhibits 1, 8)
53. On March 24, 2014, Briar invoiced Craft \$10,500, for "Marketing Support Yuengling." The invoice specified:
 - a. "1 MJ (Park Plaza),
 - b. 2 MJ (Westin), 3 Green Briar,
 - c. 4 Ned Devines,
 - d. 5 Harp,
 - e. 6 Lenox/Solas,
 - f. 7 Anthem." (Exhibits 1, 9)
54. Mr. Bernfeld and Mr. Corthell explained that the March 24, 2014, invoice for "Marketing Support Yuengling" was payment to Briar in exchange for Briar Retailers carrying Yuengling. This invoice was based on a fee of \$1,200 or \$1,500 per draft line. (Exhibit 1)
55. On April 15, 2014, Craft issued check # 013458 to Briar for \$10,500. (Exhibit 1, 9)
56. On July 2, 2014, Craft invoiced Briar for \$4,700, indicating it was for "Marketing Support," from January 1 – June 30, 2014, with an itemization, per licensee managed by Briar, of beer brands and the number of units sold, as well as an indication of a "rebate" of \$20 per keg. (Exhibit 1, 7)
57. A Check Request Form produced by Craft indicated that Craft should pay Briar \$4,700 for "Brand Allocation" and "P. McCoy to hand deliver." Handwritten markings state "Lagunitas Trade Spend, 459957, \$570." (Exhibit 7)
58. Craft issued check # 014723 in the amount of \$4,700 to Briar on July 24, 2014. (Exhibits 1, 7)

The Wilcox Group, Inc. ("Wilcox")

59. The Wilcox Hospitality Group, Inc.⁹ is the management company¹⁰ for the following § 12 on-premises licensees:
 - a. (a) Dot Boy, Inc.¹¹, d/b/a The Lower Depths;
 - b. (b) Montanus, Inc.¹², d/b/a Bukowski Tavern;
 - c. (c) Poe's Pub, Inc.¹³, d/b/a Estelle's; and

⁹ Gordon Wilcox is the President, Treasurer, Secretary, and a Director of the Wilcox Hospitality Group, Inc. (Exhibit 1)

¹⁰ There is nothing in the Commission files approving this relationship. (Commission Files)

¹¹ Secretary of Commonwealth filings indicate that Gordon Wilcox is the President and a Director of Dot Boy, Inc. Peter Cuplo is listed as the Treasurer and a Director of the entity. Suzanne Samowski is listed as the Secretary and a Director of the entity.

¹² Secretary of Commonwealth filings indicate that Gordon Wilcox is the President, and a Director of Montanus, Inc., Suzanne Samowski, is listed as the entity's Treasurer, Secretary, and a Director, however, Commission files contradict and indicate that Maureen Montanus is the President and Treasurer of Montanus, Inc. Commission files also indicate Sean Simmons is the entity's Secretary and that the Directors of the entity are Gordon Wilcox and John A. Gardner III. (Exhibit 1, Commission Files)

- d. (d) Tip Tap Room, Inc.¹⁴, d/b/a Tip Tap Room. (Exhibit 1)
60. Mr. Wilcox is the owner of eight restaurants. He previously had 20 to 35 draft lines of Craft Brands in his licensed establishments. (Exhibit 1, Testimony)
 61. Mr. Wilcox also stated that in previous years Craft had offered "1 on 10 or 2 on 10" discounts per keg. Mr. Wilcox did not like this methodology because it was problematic for accounting purposes. (Exhibit 1, Testimony)
 62. As a result, Mr. Wilcox spoke with Mr. McCoy regarding creating a "better" scheme. (Exhibit 1)
 63. On behalf of Craft, Mr. McCoy offered Mr. Wilcox \$1,000 per draft line for up to 20 lines. However, Mr. Wilcox balked at the terms and instead countered that all of his draft lines (up to 35) be committed, in order for him to agree to the terms. (Exhibit 1, Testimony)
 64. In addition, Mr. Wilcox wanted to control his draft lines and wanted 10% of sales. (Exhibit 1, Testimony)
 65. Mr. McCoy then countered and offered a \$20,000 payment for 2013. When Mr. Wilcox asked Mr. McCoy how he would receive the money, Mr. McCoy told Mr. Wilcox to invoice Craft and label it "marketing services." (Exhibit 1, Testimony)
 66. After Craft and Wilcox reached a mutually satisfactory agreement on the payoff terms, Wilcox invoiced Craft.
 67. After extensive negotiating between Craft and Gordon Wilcox regarding a proper kickback, they agreed upon \$1,000 per draft line, for a total of \$20,000 for 20 draft lines, in 2013. (Exhibit 1)
 68. On May 29, 2013, Craft received its first invoice from Wilcox in the amount of \$10,000. The invoice detailed "Marketing Services" for the periods January 1, 2013 through March 31, 2013 and April 1, 2013 through June 30, 2013. (Exhibit 1, Testimony)
 69. The first invoice was issued by Wilcox on May 29, 2013, in the amount of \$10,000, indicating "Marketing Services" for the period of January 1, 2013, through March 31, 2013, and April 1, 2013, through June 30, 2013. Handwritten markings on the invoice stated "Lagunitas \$7,000, Magic \$1,000, Trosage \$1,000, Smutty \$1,000." (Exhibits 1, 5)
 70. A Check Request Form produced by Craft indicated that a check should be issued to Wilcox for \$10,000, for "Marketing/Menu Support, Allocation of Brand Support Listed," "Magic Hat Trade Spend, \$1,000.00, 459943," "P. McCoy to hand deliver." (Exhibits 1, 5)
 71. Craft issued check # 211001, on June 20, 2013, for \$10,000, to Wilcox. (Exhibits 1, 5)
 72. Mr. McCoy hand delivered a check for \$10,000.00 to Chris Sheridan at the Rattlesnake, Bar and Grille, a Wilcox Restaurant. (Exhibit 1, Testimony)
 73. Mr. Wilcox identified Mr. Sheridan as the Rattlesnake's manager¹⁵ and Wilcox's Beer Manager. (Exhibit 1, Testimony)

¹³ Secretary of Commonwealth filings indicate that Gordon Wilcox is the President, Treasurer, Secretary, and sole Director of Poe's Pub Inc., however, Commission files contradict that and indicate that Peter J. Culpo is the Treasurer and a Director of Poe's Pub Inc. and that Sean Simmons is the Secretary and a Director for the entity. (Exhibit 1, Commission Files)

¹⁴ Gordon Wilcox is the President, Treasurer, Secretary, and a Director of Tip Tap Room, Inc. Joseph Priscella and Gary McDonough are Directors of the entity. (Exhibit 1, Commission Files)

¹⁵ Commission records indicate that John A. Gardner, III is the approved license manager for the Rattlesnake.

74. On November 21, 2013, Craft received its second invoice in the amount of \$10,000 again for "Marketing Services" for the periods of July 1, 2013, through September 31, 2013, and October 1, 2013, through December 31, 2013. (Exhibit 1, Testimony)
75. The second invoice from Wilcox to Craft, dated November 21, 2013, in the amount of \$10,000, was also for "Marketing Services," this time for the period of July 1, 2013, through September 31, 2013, and October 1, 2013, through December 31, 2013, and stated, "Brooklyn . . . Trade Spend \$1500." This invoice also had blacked out handwritten markings. (Exhibits 1, 6)
76. Craft issued check # 011825 on December 5, 2013, for \$10,000 to Wilcox. (Exhibit 1, 6)
77. Mr. McCoy again hand delivered a check for \$10,000.00 to Chris Sheridan at the Rattlesnake, Bar and Grille. (Exhibit 1, Testimony)
78. Early in 2014, Mr. McCoy and Mr. Wilcox had a subsequent conversation regarding the terms for the 2014 kickbacks. Mr. Wilcox wanted Craft to pay Wilcox 10% of the purchase price for all Craft products bought by Wilcox restaurants. (Exhibit 1)
79. Mr. McCoy estimated that Wilcox restaurants purchase approximately \$600,000.00 per year from Craft and that 10% of sales would be approximately \$60,000.00 in 2014. (Exhibit 1)
80. As a result, McCoy stated that Craft declined to make this agreement. (Exhibit 1)
81. In 2014, Craft wanted to pay Wilcox approximately \$500 less per draft line and as a result, the parties never reached an agreement. (Exhibit 1, Testimony)
82. At one point, Lower Depths had twelve draft lines, of which five to six were for Craft products, and Craft supplied 80% of Dot Boy bottled beer. (Exhibit 1)
83. Bukowski Tavern had six to twelve lines of its twenty tap lines for Craft products. (Exhibit 1)

Glynn Hospitality Group ("Glynn")

84. Glynn Hospitality Group¹⁶ is the management company¹⁷ for the following § 12 on-premises licensees:
 - a. (a) 955, LLC, d/b/a Dillon's¹⁸;
 - b. (b) Friar Ventures, LLC d/b/a Hurricane O'Reilly's¹⁹;
 - c. (c) One Hundred Seventy-Three Milk St., Inc., d/b/a Coogan's Bluff²⁰;
 - d. (d) A.T.G. Inc., d/b/a Cleary's²¹;

¹⁶ Christine M. Freeman is the President and sole Director of Glynn Hospitality Group. Michael T. Glynn is listed as the entity's Treasurer and Neil Glynn is listed as the Secretary. (Exhibit 1)

¹⁷ There is nothing in the Commission files approving this relationship.

¹⁸ Neil Glynn is the Manager of 955, LLC. (Exhibit 1, Commission Files)

¹⁹ Secretary of Commonwealth filings indicate that Kelly G. Laurence is the Manager of Friar Ventures, LLC, however, Commission files contradict that and indicate that Neil Glynn is the Manager of Friar Ventures, LLC. (Exhibit 1, Commission Files)

²⁰ Secretary of Commonwealth filings indicate that Christine Freeman is the President of One Hundred Seventy-Three Milk St., Inc. Michael Glynn is listed as the Treasurer and a Director of the entity. Neil Glynn is listed as the Secretary and a Director of the entity, which contradicts Commission files that indicate Christine Freeman is both the President and a Director of One Hundred Seventy-Three Milk St., Inc. Commission files also indicate that Brendan Glynn is the Secretary and a Director of the entity. Other Directors listed in the Commission files are Michael Glynn, Neil Glynn, Kelly Glynn, and Patrick Glynn. (Exhibit 1, Commission Files)

²¹ Secretary of Commonwealth filings indicate that Christine Freeman is the President and a Director of A.T.G., Inc. The Treasurer of the entity is Patrick Glynn and the Secretary is Anne T. Glynn. (Exhibit 1)

- e. (e) The Black Rose, Inc., d/b/a The Black Rose²²; and
f. (f) 111, LLC, d/b/a Brownstone²³. (Exhibit 1)
85. Craft offered Glynn \$39,000 in “promotional money” to place 22 Craft Brands on Glynn’s various menus and draft lines. Over the course of the year some brand items were swapped out for others. (Exhibits 1, 14-16)
86. Although Mr. Glynn occasionally had contact with Mr. McCoy, Louis Luna, an employee of Glynn, was the primary person working with Mr. McCoy. (Exhibit 1, Testimony)
87. Mr. Luna provided Mr. McCoy with blank Glynn Invoices, which Craft completed. (Exhibit 1, Testimony)
88. Mr. McCoy delivered Glynn’s checks to Mr. Luna at Dillon’s. (Exhibit 1, Testimony)
89. A May 9, 2013 Glynn Invoice was labeled “menu support within timeframe of: January – June 2013” with “targeted locations” of Brownstone, Clery’s, Dillon’s, Granary Tavern, Sterling’s, Black Rose, Coogan’s, Hurricane’s, and Jose McIntyre’s. The invoice indicated 1500 units at \$9 per unit, for a total of \$13,500. On May 9, 2013, Mr. Luna approved the invoice. (Exhibits 1, 14)
90. A second invoice, dated October 24, 2013, from Glynn to Craft was labeled “menu support within timeframe of: July – December 2013” with “targeted locations” of Brownstone, Clery’s, Dillon’s, Granary Tavern, Sterling’s, Black Rose, Coogan’s, Hurricane’s, and Jose McIntyre’s. The invoice indicated “1500 units” at \$8 per unit, for a total of \$12,000. Mr. Luna approved the invoice the same day. (Exhibits 1, 15)
91. On April 2, 2014 Glynn issued a third invoice to Craft labeled “Dft Menu Support Within Timeframe of: 2014,” with “targeted locations” of Brownstone, Clery’s, Dillon’s, and Coogan’s. It indicated 1500 units at \$9 per unit, for an amount of \$13,500. Mr. Luna approved the invoice that day. (Exhibits 1, 16)
92. A “Check Request Form” produced by Craft indicated that a check should be issued to Glynn for \$13,500. The form indicated payments were for “menu support 2014,” to Dillon’s, Clery’s, Brownstone, and Coogan’s, with the following payments: “\$4,500 Lagunitas, \$3,000 Oskar Blues, \$1,500 Wachusett, \$1,500 Cisco, \$1,500 Brooklyn and \$1,500 Magic Hat.” It designated “Pat McCoy to hand deliver.” (Exhibits 1, 16)

Fifth Avenue Productions (“Fifth Avenue”) & Rebel Restaurant Group (“Rebel”)

93. Remy’s Fenway Group, LLC, d/b/a Jerry Remy’s Sports Bar & Grille (“Jerry Remy’s Fenway”) has four signatories listed with the Secretary of the Commonwealth: Jerry Remy, John O’Rourke, Larry Garnick, and John Mascia. John Mascia is the former Manager of Remy’s Fenway Group, LLC. (Exhibit 1, Testimony)
94. Fifth Avenue²⁴ is the marketing company for Jerry Remy’s Fenway. Fifth Avenue has no employees and generates no payroll. It is not, and has never been, a corporation or LLC registered with the Secretary of the Commonwealth of Massachusetts. (Exhibit 1)

²² Secretary of Commonwealth filings indicate that Christine Freeman is the President, Treasurer, and a Director of The Black Rose Inc. Anne T. Glynn is the Secretary for the entity however Commission files contradict and indicate that she is also a Director of The Black Rose Inc. along with Philip Sweeney. (Exhibit 1, Commission Files)

²³ Michael T. Glynn is the Manager of 111, LLC. (Exhibit 1, Commission Files)

²⁴ John Mascia claims to be the sole officer of Fifth Avenue and that the function of Fifth Avenue is restaurant consulting, marketing, and startup operations of restaurants. (Exhibit 1)

95. Mr. Mascia is Mr. McCoy's contact at Jerry Remy's Fenway. Mr. Mascia initiated an agreement where Craft would pay Fifth Avenue \$10,000 for draft "brand placement" at Jerry Remy's. (Exhibit 1)
96. Craft has paid Fifth Avenue approximately \$2,000 per draft brand, per year, for four draft lines for an equivalent value of \$8,000 per year. (Exhibit 1)
97. On September 10, 2013, Fifth Avenue issued an invoice to Craft, for \$10,000, labeled "Jerry Remy's (Boylston St.) Marketing Service 2013, menu programming for 2013 Baseball Season. Brooklyn (2), Cisco, Wachusett, Pretty Things." (Exhibits 1, 10)
98. The \$10,000 payment was in exchange for Jerry Remy's keeping in place existing Craft draft lines.²⁵ (Exhibits 1, 10)
99. A "Check Request Form" produced by Craft indicates that a check should be issued for \$10,000 to Fifth Avenue, further indicating the following: "\$500.00 Brooklyn Sorachi Ace, \$500.00 Ommegang, \$3,000.00 Cisco Grey Lady, \$3,000 Brooklyn Lager, \$2,500 Wachusett Green Monstah, \$250.00 Pretty Things, \$250.00 Weihenstephaner, Menu programming 2013." It also indicated, "plz mail directly to vendor." (Exhibits 1, 10)
100. On September 19, 2013, Craft issued check # 010776 in the amount of \$10,000 to Fifth Avenue. (Exhibits 1, 10)
101. Remy's Management, LLC, d/b/a Jerry Remy's on Seaport Boulevard in Boston ("Jerry Remy's Seaport") has the same four signatories as Jerry Remy's Fenway. (Exhibit 1)
102. Rebel is the marketing company for Jerry Remy's Seaport.²⁶
103. An invoice dated July 8, 2013, for \$2,680 from Rebel to Craft was issued for "Jerry Remy's Seaport: Marketing/Menu Support January 2013 to June 2013." (Exhibits 1, 11)
104. A Check Request Form produced by Craft denoted that a check should be issued to Rebel for \$2,680 for the first half of 2013 "programming." It further indicated, "\$1,040.00 Wachusett, \$700.00 Cisco, \$660.00 Sierra, \$140.00 Brooklyn and \$140.00 Smuttynose" and "Pat McCoy to hand deliver." (Exhibits 1, 11)
105. A related spreadsheet indicated that Jerry Remy's should receive a rebate of \$20 per unit of Craft beer as listed on the July 8, 2013, invoice. (Exhibits 1, 11)
106. Craft issued check # 211443, dated July 18, 2013, for \$2,680 to Rebel. (Exhibits 1, 11)
107. An invoice issued from Rebel to Craft on December 17, 2013, for "Jerry Remy's Seaport: Marketing/Menu Support from July 1, 2013 to December 16, 2013." (Exhibits 1, 12)
108. A Check Request Form produced by Craft indicated that a check should be issued to Rebel for \$2,660 for July to December 16th, 2013, "programming." It also indicated "\$1,060.00 Wachusett, \$760.00 Cisco, \$420.00 Sierra, \$220.00 Brooklyn and \$200.00 Smuttynose." Special instructions included, "Pat McCoy to hand deliver." (Exhibits 1, 12)

²⁵ Mascia initially told investigators that the \$10,000 was to pay servers to pass out flyers during baseball games and for marketing support, and he denied it was for dedicated draft lines. When Chief Investigator Mahony informed Mascia that Craft representatives had informed them that the \$10,000 was paid in return for existing draft lines to remain in place, Mascia stated that the agreement may have been for draft lines to stay, but did not recall. (Exhibit 1)

²⁶ Neither the exhibits nor testimony presented at the hearing indicate who owns Rebel. The Commission makes the reasonable inference that Rebel is the marketing company for Jerry Remy's Seaport based on the invoices introduced as exhibits at the hearing and based on their handling of Jerry Remy's Seaport's beer orders, which are nearly identical to the other marketing companies in this matter.

- 109.A spreadsheet dated December 17, 2013, indicated that Jerry Remy's received a \$20 rebate per unit sold. (Exhibits 1, 12)
- 110.Craft issued check # 012085, dated December 30, 2013, in the amount of \$2,660 to Rebel. (Exhibits 1, 12)
- 111.A final invoice, dated July 2, 2014, was issued by Rebel to Craft in the amount of \$3,080 for "Jerry Remy's Seaport: Marketing/Menu Support from January 1, 2014, to June 30, 2014." (Exhibits 1, 13)
- 112.A Check Request Form produced by Craft indicated that the check should be issued to Rebel for \$3,080 with the following specifications: "\$1840 Wachusett Contribution, \$760.00 Cisco Contribution, \$280.00 Sierra Contribution and \$200.00 Brooklyn Contribution." (Exhibits 1, 13)
113. Craft issued check # 014637 for \$3,080.00 to Rebel on July 17, 2014. (Exhibit 13)

Lyons Group ("Lyons")

114. Lyons Group, LTD²⁷, is the management company²⁸ for the following § 12 on-premises licensees:
- a. Game On Fenway, LLC d/b/a Game On;
 - b. Food for Thought Dining, LLC d/b/a Mass Ave. Tavern;
 - c. Lucky's Airport, LLC d/b/a Lucky's;
 - d. Hynes Fine Dining, LLC d/b/a Towne Stove & Spirits;
 - e. BB Social Club, LLC d/b/a Back Bay Social Club;
 - f. Congress Fine Dining, LLC d/b/a Lucky's;
 - g. Game On Airport, LLC d/b/a Game On Sports Café;
 - h. Bleacher Bar, LLC d/b/a Bleacher Bar²⁹;
 - i. Kings Bowl of Dedham, LLC d/b/a Kings³⁰;
 - j. Ipswich Entertainment, Inc.³¹ d/b/a La Verdad;
 - k. Newbury Fine Dining Limited Partnership³² d/b/a Sonsie; and
 - l. Concorde Entertainment, Inc. d/b/a Lansdowne Pub/Bill's Bar.³³ (Exhibit 1)

²⁷ Patrick Lyons is the President and a Director of Lyons Group, LTD. Edward Sparks is the Treasurer, Secretary, and a Director of the entity. (Exhibit 1)

²⁸ There is nothing in the Commission files approving this relationship. (Commission Files)

²⁹ Edward Sparks and Patrick Lyons are the Managers of Game On Fenway, LLC, Food for Thought Dining, LLC, Lucky's Airport, LLC, Hynes Fine Dining, LLC, BB Social Club LLC, Congress Fine Dining, LLC, Game on Airport, LLC, and Bleacher Bar, LLC. Westfield Concession Management, Inc. has an approved management agreement with Lucky's Airport, LLC and Game on Airport, LLC (Exhibit 1, Commission Files)

³⁰ Secretary of Commonwealth filings indicate that Edward Sparks, Patrick Lyons, and LLC Management Company, Inc. are the Managers of Kings Bowl of Dedham, LLC, however, Commission files contradict that and indicate that LLC Management Company, Inc. is not a Manager of the entity. (Exhibit 1, Commission Files)

³¹ Secretary of Commonwealth filings indicate that Patrick Lyons is the President and a Director of Ipswich Entertainment Inc. Edward Sparks is listed as the entity's Treasurer, Secretary, and a Director. (Exhibit 1) However, Commission files contradict that and indicate that Lyons is the President and a Director of Ipswich Entertainment, Edward Sparks is the Treasurer and a Director, Edward J. Latessa is the Secretary/Clerk and a Director, and Seth Greenberg is a Director. (Commission Files)

³² Commission files indicate that the partners listed for Newbury Fine Dining Limited Partnership are Newbury Fine Dining, Inc. and Edward Sparks. (Commission Files)

115. On November 18, 2014 at approximately 12:45 p.m., Investigators Wilichoski and Velez interviewed Edward Sparks and Lyons Vice President of Operations Steven Coyle. (Exhibit 1, Testimony)
116. Patrick T. Lyons is the president and director of Lyons and Bank On It, and Edward J. Sparks is the treasurer and secretary of Lyons and Bank On It. (Exhibit 1, Testimony)
117. Bank On It, LLC is the marketing and promotional company for Lyons. It conducts promotion, advertising, marketing, and media buys. Bank On It has no employees and no payroll. (Exhibit 1, Testimony)
118. Steven Coyle, Vice President of Operations for Lyons or an administrative assistant from Lyons issued all the invoices from Bank On It to Craft. (Exhibit 1)
119. Mr. McCoy is Mr. Coyle's contact at Craft. At some point in 2013, Craft thought Mr. McCoy offered a \$20 rebate program per keg in exchange for Lyons placing Lagunitas, Smuttynose, Wachusett, Cisco, and Magic Hat (as a combination) ("Other Products") in Lyons restaurants. Mr. McCoy advised Mr. Coyle to invoice Craft for menu development or menu placement. (Exhibit 1, Testimony)
120. Lyons has not been offered rebates by any other wholesaler. (Exhibit 1, Testimony)
121. Craft also entered into a separate agreement with Bank On It for Yuengling products. Mr. McCoy went to Mr. Coyle's office and met with him multiple times before Yuengling came into Massachusetts. Mr. McCoy told Mr. Coyle that he wanted Lyons to carry Yuengling and place Yuengling products in Lyons restaurants. Craft gave Lyons a rebate for selling kegs of Yuengling (Exhibit 1, Testimony)
122. On April 28, 2013, Bank On It invoiced Craft for Yuengling products in the amount of \$12,000.00. Invoice number 391 indicates that the invoice was for Yuengling Support" with "Entertainment and Menu Support" for "Lansdowne Pub, Game On (Kenmore), Game On (Airport), Mass Ave. Tavern, Bleacher Bar, Kings, Back Bay Social Club, La Verdad (new location), Bill's Bar, Lucky's (Airport) and Lucky's (S. Boston)." The \$12,000 was paid to have the Craft brand Yuengling placed in Lyons restaurants. Twelve Lyons restaurants carry Yuengling, for \$1,000 per draft. (Exhibits 1, 3)
123. Craft issued check # 013688 in the amount of \$12,000 to Bank On It on May 1, 2014. (Exhibits 1, 3)
124. Bank On It issued its first invoice based on this arrangement for the Other Products to Craft on June 10, 2013, for \$7,000. The invoice, number 436, indicated that it was for "Menu Development & Support" and further indicated that it was for Game On, Mass. Avenue Tavern, Sonsie, Towne Stove & Spirits, Back Bay Social Club, and Lansdowne Pub. (Exhibits 1, 2, Testimony)
125. A Check Request Form from Craft noted that a check should be issued to Bank On It for \$7,000. It indicated \$5,500 for "Magic Hat participation menu," \$1,000 for "Lagunitas participation menu," and \$500 for "Cisco participation menu." McCoy was to hand deliver the check. (Exhibits 1, 2)
126. Craft issued check # 210971 in the amount of \$7,000 to Bank On It on June 26, 2013. (Exhibits 1, 2)

³³ Secretary of Commonwealth filings indicate that Patrick Lyons is the President and a Director of Concorde Entertainment, Inc. Edward Sparks is listed as the entity's Treasurer, Secretary, and a Director, however, Commission files contradict that and indicate that John Lyons is the Secretary of Concorde Entertainment, Inc. (Exhibit 1, Commission Files)

127. A third invoice was dated July 3, 2014, for \$3,345. The invoice indicated that it was for January to June 2014, for "BBL Rebate Program – Menu Support." This invoice was for Craft paying Lyons a fee of \$15 per barrel of beer sold in Lyons restaurants. The brands placed included Lagunitas, Smuttynose, Wachusett, Cisco, and Magic Hat. Coyle would then bill Craft either quarterly or every six months. (Exhibits 1, 4)
128. A Check Request Form was produced by Craft, noting that a check should be issued to Bank On It for \$3,345, as well as an indication it was for "Brand Allocation is listed on attached document" and "Lagunitas Trade Spend . . . \$870," and had handwritten marking indicating "P. McCoy to hand deliver." (Exhibits 1, 4)
129. A spreadsheet produced by Craft indicated a total of 223 units of beer, each multiplied by \$15, for a total of \$3,345. (Exhibits 1, 4)
130. Craft issued check # 014527 in the amount of \$3,345 to Bank On It on July 10, 2014. (Exhibits 1, 4)
131. None of these "rebates" were offered to any other retailers. (Exhibit 1, Testimony)

DISCUSSION

The Licensee has admitted to the facts introduced at the hearing and in the Investigator's Report, Exhibit 1. However, it argues that its conduct does not violate M.G.L. c. 138, § 25A, or 204 C.M.R. 2.08. The Commission has considered each allegation against the Licensee and each defense the Licensee raises. After a thorough review, the Commission finds that there is sufficient evidence that the Licensee violated both M.G.L. c. 138, § 25A, and 204 C.M.R. 2.08.

VIOLATION OF M.G.L. C. 138, § 25A

The Licensee has been charged with a violation of M.G.L. c. 138, § 25A ("§ 25A"). While it does not dispute that it was offering rebates or discounts, the Licensee challenges that § 25A no longer prohibits wholesalers from granting discounts, rebates, free goods, allowances, or other inducements because certain portions of § 25A have been either repealed or invalidated by case law.

From 1946 to 1970, § 25A read as follows:

Section 25A. No licensee authorized under this chapter to sell alcoholic beverages to wholesalers or retailers shall –

- (a) Discriminate, directly or indirectly, in price, in discounts for time of payment or in discounts on quantity or merchandise sold, between one wholesaler and another wholesaler, or between one retailer and another retailer purchasing alcoholic beverages bearing the same brand or trade name and of like age and quality;
- (b) Grant, directly or indirectly, any discount, rebate, free goods, allowance or other inducement, except a discount not in excess of two per centum for quantity of alcoholic beverages except wines, or a discount not in excess of five per centum for quantity of wines.

The Legislature repealed subsection (b) in its entirety in 1970. A year later, in 1971, the Legislature amended § 25A to read as follows:

Section 25A. No licensee authorized under this chapter to sell alcoholic beverages to wholesalers or retailers shall –

- (a) Discriminate, directly or indirectly, in price, in discounts for time of payment or in discounts on quantity or merchandise sold, between one wholesaler and another wholesaler, or between one retailer and another retailer purchasing alcoholic beverages bearing the same brand or trade name and of like age and quality;

[There is no clause (b).]

All price lists or price quotations made to a licensee by a wholesaler shall remain in effect for at least thirty days after the establishment of such price list or quotation. Any sale by a wholesaler of any alcoholic beverages at prices lower than the price reflected in such price list or quotation within such thirty day period shall constitute price discrimination under this section.

In 1998, the U.S. District Court for Massachusetts held that the 1971 addition to § 25A, the so-called “post and hold” clause, as well as related regulations 204 CMR 6.01-6.07 were in violation of the Sherman Antitrust Act and were invalidated. Canterbury Liquors & Pantry v. Sullivan, 16 F. Supp. 2d 41 (1998); Canterbury Liquors & Pantry v. Sullivan, 999 F. Supp. 144 (1998); Whitehall Co. Ltd. v. Merrimack Valley Distrib., 56 Mass. App. Ct. 853, n. 3 (2002).

Accordingly, all that legally remains of § 25A is the following language:

Section 25A. No licensee authorized under this chapter to sell alcoholic beverages to wholesalers or retailers shall –

- (a) Discriminate, directly or indirectly, in price, in discounts for time of payment or in discounts on quantity or merchandise sold, between one wholesaler and another wholesaler, or between one retailer and another retailer purchasing alcoholic beverages bearing the same brand or trade name and of like age and quality[.]

M.G.L. c. 138, § 25A.

With that legislative background in mind, the issue before the Commission is whether the Licensee violated the current version of § 25A. “The subject of s. 25A is discrimination” Van Munching Co., Inc. v. Alcoholic Beverages Control Comm’n, 41 Mass. App. Ct. 308, 310 (1996). The Licensee was not charged with having a rebate program. If it had been, this would not have been a proper charge. See id. (§ 25A “does not address the legality of discounts based on sales between a wholesaler and a retailer”) citing Cellarmaster Wines of Mass., Inc. v. Alcoholic Beverages Control Comm’n, 27 Mass. App. Ct. 25, 27-28 (1989). Instead, the Licensee has been charged with a violation of § 25A for discrimination in two different forms: (1) not offering its rebates to all retail licensees; and (2) to the retail licensees who did get these rebates, they were not all offered the same rebate. The Licensee has admitted to these two facts, but argues they are not contemplated under § 25A as it reads today.

“From its inception . . . § 25A has been firmly tethered to the goal of protecting the public through the strict regulation of the distribution and sale of alcoholic beverages” Miller Brewing Co. v. Alcoholic Beverages Control Comm’n, 56 Mass. App. Ct. 801, 807 (2002). Indeed, in enacting § 25A in 1946, the Legislature stated its intended goals:

Whereas, the practice of manufacturers and wholesalers in granting discounts, rebates, allowances, free goods and other inducements to favored licensees contributes to a disorderly distribution of alcoholic beverages; and
Whereas, the deferred operation of this act would delay the proper regulation thereunder of the alcoholic beverage industry and be contrary to the interests of temperance, therefore this act is hereby declared to be an emergency law necessary for the immediate preservation of the public convenience.

1946 Mass. Acts c. 304. "Given the articulated purpose of eliminating differential treatment of 'favored licensees,' § 25A can reasonably be construed as prohibiting even minor discrepancies in prices" offered by wholesalers to their retail clients. Miller, 56 Mass. App. Ct. at 807. And as the Appeals Court has previously held, the definition of "price" should not be construed narrowly, but rather includes all forms of financial benefits. See, e.g., id. at 806 ("[i]t is virtually self-evident that extending interest-free credit for a period of time is equivalent to giving a discount equal to the value of the use of the purchase price for that period of time. Thus, credit terms must be characterized as an inseparable part of the price"), quoting Catalano, Inc. v. Target Sales, Inc., 446 U.S. 643, 648 (1980). Undoubtedly, a rebate is an inseparable part of the price the retail licensees were paying to the Licensee, as it ultimately reduces the price of beer purchased by retail licensees from the wholesaler. Therefore, any issue of discrimination in the offering of, or implementation of, rebate programs falls under the purview of § 25A.

The Licensee admittedly offered rebates to retail licensees in the Briar Group, the Wilcox Group, Glynn Hospitality Group, the Lyons Group, and two Jerry Remy's licensed establishments. No other retail licensees were offered this rebate that effectively reduced the cost of beer purchased from the Licensee by these retail licensees. But even to certain retail licensees that accepted the rebates, they were not offered the same rate: while Briar Group licensees and Jerry Remy's Seaport received \$20 per keg rebate, Lyons Group licensees only received \$15 per keg rebate. While Wilcox Group licensees received \$1,000 per draft line; Glynn licensees received \$1,500 per draft line; and Jerry Remy's Fenway received \$2,000 per draft line. These rebates clearly benefitted "favored licensees," by offering them monetary rebates on their purchases from the Licensee. Then, to those selected favored licensees, the Licensee offered different rebate amounts, constituting discrepancies in the final price and therefore price discrimination. Accordingly, the Commission is convinced that the Licensee violated M.G.L. c. 138, § 25A.

VIOLATION OF 204 C.M.R. 2.08

The Licensee contends that because subsection (b) of M.G.L. c. 138, § 25A, was repealed in 1970, 204 C.M.R. 2.08 must necessarily be invalidated because the Commission's legislative authority to issue regulations regarding inducements was repealed with the repeal of subsection (b). The Commission is confident that 204 C.M.R. 2.08 is a valid regulation and that the Licensee did violate it.

When a Licensee seeks to facially challenge the validity of a Commission regulation, the Licensee bears the burden to prove to the Commission that the regulation is invalid. Entergy Nuclear Generation Co. v. Dept. of Environmental Protection, 459 Mass. 319, 329 (2011); Mass. Federation of Teachers v. Dept. of Education, 436 Mass. 763, 771 (2002). In doing so, the Licensee must overcome the strong presumption that the regulation at issue is valid. Commonwealth v. Maker, 459 Mass. 46, 49-50 (2011); Doe, Sex Offender Registry Bd. No.

3844 v. Sex Offender Registry Bd., 447 Mass. 768, 775 (2006); Supreme Malt Products Co. v. Alcoholic Beverages Control Comm'n, 334 Mass. 59, 61-62 (1956).

Where an administrative agency is vested with broad authority to effectuate the purposes of an act “the validity of a regulation promulgated thereunder will be sustained so long as it is “reasonably related to the purposes of the enabling legislation.”” Levy v. Bd. of Registration and Discipline in Medicine, 378 Mass. 519, 524 (1979), quoting Consolidated Cigar Corp. v. Dept. of Public Health, 372 Mass. 844 (1977). It has long been understood and undisputed that the Commission’s regulatory authority is broad and comprehensive. See BAA Massachusetts, Inc. v. Alcoholic Beverages Control Comm’n, 49 Mass. App. Ct. 839, 842 (2000) (“Regulation of the liquor industry in Massachusetts is comprehensive and pervasive. The powers of the States in dealing with the regulation of the sale of intoxicating liquors are very broad”), quotations omitted; see also, e.g., Connolly v. Alcoholic Beverages Control Comm’n, 334 Mass. 613 (1956); Johnson v. Martignetti, 374 Mass. 784, 793 (1978). This broad regulatory authority is found not only in specific statutes, but also by reading M.G.L. c. 138 as a whole. Johnson v. Martignetti, 374 Mass. 784, 789 (1978) (must read M.G.L. c. 138 as a whole); Cleary v. Cardullo's, Inc., 347 Mass. 337, 349 (1964) (same).

An analysis of the validity of 204 C.M.R. 2.08 must begin with its legislative history. Prior to 1970 the Commission had issued its own set of regulations, including Regulation 47, regarding inducements:

No licensee shall give or permit to be given money or any other thing of substantial value in any effort to induce any person to persuade or influence any other person to purchase, or contract for the purchase of any particular brand or kind of alcoholic beverages, or to persuade or influence any person to refrain from purchasing, or contracting for the purchase of any particular brand or kind of alcoholic beverages.

As discussed supra, § 25A(b), which addressed inducements, was repealed by the Legislature in 1970. Eight years later, in 1978, the Commission promulgated 204 C.M.R. 2.08 – the regulation at issue -- which bears the same language as prior Regulation 47.

Although § 25A(b) was repealed, the promulgation of 2.04 C.M.R. 2.08 was not an ultra vires exercise of the Commission’s regulatory power, and nothing that the Licensee argues contradicts this conclusion.

It is unreasonable to assume that the Commission promulgated its 1978 regulation based on a statute repealed eight years earlier. Instead, the only logical conclusion is that the Commission did not promulgate this regulation under § 25A(b), but rather relied on the broad regulatory authority granted by M.G.L. c. 138, § 24, to promulgate regulations “for clarifying, carrying out, enforcing and preventing violation of . . . [the] method of carrying on the business of any licensee, . . . for the proper and orderly conduct of the licensed business . . .” M.G.L. c. 138, § 24. This conclusion is supported by the fact that many other parts of the Commission’s regulations were promulgated under M.G.L. c. 138, § 24. This includes 204 C.M.R. 2.05(5), which was promulgated under § 24 because it “[r]egulates activities on licensed premises . . .” Massachusetts Office of the Secretary of State, “Regulation Filing” (June 19, 1992 and December 19, 1992), 204 C.M.R. 10, and 204 C.M.R. 19.03(2), 19.04(1), & 19.04(2). Massachusetts Office of the Secretary of State, “Regulation Filing” (June 19, 1992). The

Commission's reliance on § 24 for the passage of other Commission regulations reflects a logic that would continue with the passage of 204 C.M.R. 2.08.

Furthermore, while the language of M.G.L. c. 138, § 24, is broad, and does not use words specifically as to inducements, "an agency's powers 'are shaped by its organic statute taken as a whole and need not necessarily be traced to specific words.'" Mass. Federation of Teachers v. Bd. of Education, 436 Mass. 763, 773 (2002), quoting Purity Supreme, Inc. v. Attorney General, 380 Mass. 762, 770 (1980); accord Grocery Mfrs. of Am., Inc. v. Dept. of Public Health, 379 Mass. 70, 75 (1979) (authority for regulation need not be pinpointed to specific statutory authority). The Commission here looked to its indisputably broad powers to promulgate a regulation addressing the "method of carrying on the business of any licensee," M.G.L. c. 138, § 24. The Commission's power to promulgate the regulation is also consistent with the purpose of the Alcoholic Beverages Control Commission, which is the "general supervision of the conduct of the business of manufacturing, importing, exporting, storing, transporting and selling alcoholic beverages," M.G.L. c. 10, § 71, and with the intent of Chapter 138, which is "to serve the public need and . . . to protect the common good." New Palm Gardens, Inc. v. Alcoholic Beverages Control Comm'n, 11 Mass. App. Ct. 785, 788 (1981), quoting M.G.L. c. 138, § 23. Likewise, the Commission seeks to "promote temperance, . . . to stabilize the package store business, to avoid price wars and cut throat competition, . . . instill more observance for the law in those engaged in the business and . . . better protect the public . . ." See Supreme Malt Products Co., Inc. v. Alcoholic Beverages Control Comm'n, 334 Mass. 59, 62 (1956); accord Kneeland Liquor, Inc. v. Alcoholic Beverages Control Comm'n, 345 Mass. 228, 233 (1962).

204 C.M.R. 2.08 relates to the conduct of a business in handling and selling alcoholic beverages, and it was unquestionably written to "avoid price wars and cut throat competition," Supreme Malt Products Co., 334 Mass. at 62. Without it, a wholesaler could otherwise bribe or otherwise unfairly influence a retailer to carry one product to the exclusion of another, which could result in a manipulation of the market by powerful wholesalers and distributors, hurting smaller businesses and resulting ultimately in a deterioration of the three-tier system. Heublein Inc. v. Capital Distrib. Co. 434 Mass. 698 (2001); Pastene v. Alcoholic Beverages Control Comm'n, 401 Mass. 612 (1988).

Several regulations have arisen from § 24 that necessarily reflect the broadness of its scope and support the conclusion that 204 C.M.R. 2.08 was validly promulgated under § 24. See 204 C.M.R. 2.05(5), 10, 19.03(2), 19.04(1), 19.04(2); Universal Machine Co. v. Alcoholic Beverages Control Comm'n, 301 Mass. 40 (1938) (regulation regarding cleaning of bar glasses properly promulgated under M.G.L. c. 138, § 24, because it addressed the conduct of the business in selling alcoholic beverages). Based on the foregoing analysis, the Commission is convinced that 204 C.M.R. 2.08 is a valid regulation promulgated under the Commission's broad regulatory authority pursuant to § 24.

Returning to the charge against the Licensee, 204 C.M.R. 2.08 prohibits a Licensee from giving or permitting to be given money or something of substantial value in an effort to induce any person to: (1) persuade or influence any other person to purchase or contract for the purchase or any particular brand or kind of alcohol, or (2) persuade or influence any person to refrain from purchasing or contracting for the purchase of any particular brand or kind of alcohol. The Commission's interpretation of its own regulations is entitled to substantial deference.

eVineyard Retail Sales- Massachusetts, Inc. v. Alcoholic Beverages Control Comm'n, 450 Mass. 825, 826 (2008).

The Licensee admits that it provided money to its employees for them to distribute to retail licensees in order to induce the retail licensees to sell certain brands of beers that the Licensee sold, sometimes directly to the retail licensees.³⁴ However, the Licensee maintains it did not violate this regulation because three parties must be involved in the inducement. No matter how one looks at it, three parties necessarily were involved in these inducements. By giving money to an employee (McCoy, in many cases) for use in inducing a retail licensee to carry Craft brands, there were three parties: the Licensee, the Licensee's employee providing the money, and the retail licensee.³⁵ Where a marketing company was engaged in the transaction, there were also three parties: the Licensee, the marketing company, and the retail licensee. The Licensee also admitted at the hearing that the alcohol supplier would routinely reimburse the Licensee, either in whole or in part, for these inducements, which would also necessarily involve three parties: the supplier, the Licensee, and the retail licensee. Therefore, no matter how the facts behind this charge are read, and to the extent that three parties are required to be part of this transaction, there were three parties involved. Accordingly, the Licensee violated 204 C.M.R. 2.08.

The regulation is not void for vagueness.

The Licensee also contends that even if it did violate 204 C.M.R. 2.08, the regulation is so vague that the Licensee was unaware that it was violating the regulation. "The vagueness doctrine is a function of due process, which requires that a law provide fair notice of what it prohibits or requires so that persons of common intelligence may conform their conduct to the law." Schoeller v. Board of Registration of Funeral Directors and Embalmers, 463 Mass. 605, 611 (2012). "A law is void for vagueness if persons 'of common intelligence must necessarily guess at its meaning and differ as to its application.'" Caswell v. Licensing Comm'n for Brockton, 387 Mass. 864, 873 (1983), quoting Connally v. General Constr. Co., 269 U.S. 385, 391 (1926). 204 C.M.R. 2.08 is not unconstitutionally vague.

"[L]aws which merely regulate business activities need not contain criteria as precise and definite as laws which affect First Amendment freedoms. . . . Similarly, statutes that do not define or relate to criminal conduct need not be drawn as precisely as statutes that touch upon criminal acts. . . . [If] neither First Amendment freedoms nor criminal conduct are concerned . . . we limit our vagueness analysis to whether [the statute or regulation] is unconstitutionally vague as applied in [the particular] case. . . ." Caswell, 387 Mass. at 873; Gurry v. Bd. of Public Accountancy, 394 Mass. 118, 127 (1985); Aristocratic Restaurant of Mass, Inc. v. Alcoholic Beverages Control Comm'n, 374 Mass. 547, 552 (1978). "[If] the statute merely regulates business activity . . . we need not consider whether the statute might be unconstitutionally vague in other circumstances." LaPointe v. License Bd. of Worcester, 389 Mass. 454, 460-461 (1983). A finding of a violation of a license issued to a licensee under M.G.L. c. 138 is not penal or criminal in nature. Such a violation is not designed to punish the licensee, but rather to protect

³⁴ The Licensee concedes that money was exchanged, and not something else of substantial value, so the question of what is something of substantial value is left for another day.

³⁵ Of course, more than one employee for both the Licensee and retail licensee could be involved in this transaction.

the public health, welfare, and safety. See, e.g., Gurry, 394 Mass. at 127 (revocation of physician's license not penal or criminal in nature); Deluty v. Comm'r of Ins., 7 Mass. App. Ct. 88, 91 (1979) (revocation of insurance broker's license not criminal proceeding).

The Licensee raises no First Amendment challenges to 204 C.M.R. 2.08, nor is it a penal or criminal regulation; therefore, the only question is whether 204 C.M.R. 2.08 is unconstitutionally vague *as applied to the Licensee*. And the answer is apparent: no, it is not unconstitutionally vague. The Commission cannot ignore the facts to which the Licensee has admitted, which in and of themselves prove the regulation was not vague as applied to the Licensee. Management at Craft, Bernfeld and Corthell, both admitted to Investigators that they were aware that providing these kickbacks was illegal under 204 C.M.R. 2.08. (Exhibit 1). The Licensee would instruct its retail licensees to bill Craft for the kickbacks (either per keg or per draft line) using generic terms such as "Marketing," "Menu Support," and "Programming," terms which Craft admits were interchangeable because they all meant the same thing – "kickbacks." (Exhibit 1). Sometimes Craft would go so far as to create the invoices for the retail licensees themselves. Not only that, but Craft worked with several sham marketing companies set up by retail licensees – companies that had no employees or payroll -- with the sole purpose of Craft paying kickbacks while evading being caught in violation of 204 C.M.R. 2.08. This obvious knowledge on the part of the Licensee alone must result in a rejection of the Licensee's notice argument as it was clearly not vague as applied to the Licensee as it admitted that it knew its conduct was unlawful under 204 C.M.R. 2.08.

The regulation is not being selectively enforced.

Finally, while the Commission has not charged a violation of 204 C.M.R. 2.08 in recent memory, that fact in no way diminishes the validity of the regulation. "The validity or effect of an ordinance does not depend on the lack of success of enforcement or the diligence of city officials." Brockton Police Ass'n v. City of Brockton, 57 Mass. App. Ct. 671, 674 (2003), citing Doris v. Police Comm'r. of Boston, 374 Mass. 443, 449 (1978). While there is nothing to indicate that the Investigative Division has neglected to routinely enforce 204 C.M.R. 2.08, "[t]he right of the public to have the liquor laws properly administered cannot be forfeited by the action of its officials." New City Hotel Co. v. Alcoholic Beverages Control Comm'n, 347 Mass. 539, 542 (1964). "It would indeed be a most serious consequence if we were to conclude that the inattention or inactivity of government officials could render a statute unenforceable and thus deprive the public of the benefits or protections bestowed by the [regulation]." Doris, 374 Mass. at 449. Therefore, while Craft is the first licensee to be charged under 204 C.M.R. 2.08 in some time, that is irrelevant to the question of whether the Licensee violated the regulation. And it did.

CONCLUSION

Although this Licensee has no prior violations of Chapter 138 or Commission regulations, the Commission finds that the Licensee engaged in a pervasive illegal enterprise involving numerous retailers and corporations that spanned at least five years, spending approximately \$120,000 to pay kickbacks to § 12 retail licensees throughout the Boston area, and went to great lengths to hide its knowingly unlawful conduct. The legislature, in enacting M.G.L. c. 138, § 25A, and the Commission, in promulgating 204 C.M.R. 2.08, intended to protect the public and promote fairness in the sale and distribution of alcoholic beverages in Massachusetts by preventing powerful wholesalers and distributors from being able to inequitably manipulate the alcoholic beverages market in Massachusetts. The Licensee's actions undermine this fundamental purpose of the statutory and regulatory scheme, and impede the fair market in the alcoholic beverages industry.

Based on the evidence, the Commission finds the Licensee violated:

- 1) 204 CMR 2.08: No licensee shall give or permit to be given money or any other thing of substantial value in any effort to induce any person to persuade or influence any other person to purchase, or contract for the purchase of any particular brand or kind of alcoholic beverages, or to persuade or influence any person to refrain from purchasing, or contracting for the purchase of any particular brand or kind of alcoholic beverages.
- 2) M.G.L. C. 138, §25A: No licensee authorized under this chapter to sell alcoholic beverages to wholesalers or retailers shall: Discriminate, directly or indirectly, in price, in discounts for time of payment, or in discounts on quantity of merchandise sold, between one wholesaler and another wholesaler, or between one retailer and another retailer purchasing alcoholic beverages bearing the same brand or trade name of like age and quality.

On the first violation, 204 C.M.R. 2.08, the Commission suspends the license for fifteen (15) months, with ninety (90) days to be served and the balance of 12 months held in abeyance for two years provided no further violations of Chapter 138 or Commission Regulations occur.

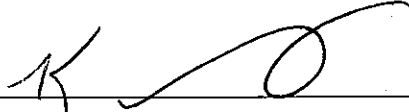
On the second violation, M.G.L. C. 138, § 25A, the Commission suspends the license for fifteen (15) months with ninety (90) days to be served and the balance of 12 months held in abeyance for two years provided no further violations of Chapter 138 or Commission Regulations occur. This suspension is to run concurrently with the penalty imposed for 204 C.M.R. 2.08.

In total the Commission suspends the license for a period of ninety (90) days to be served, and the balance of 12 months to be held in abeyance for a period of two (2) years, provided no further violations of Chapter 138 or Commission Regulations occur.

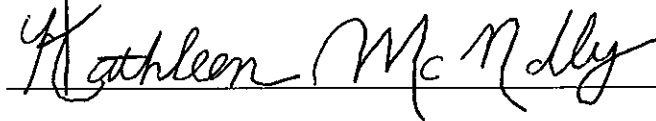
The members of the alcoholic beverages industry in Massachusetts are hereby admonished that if, for any reason, any member of the alcoholic beverages industry in Massachusetts, or any individual who purports to act on behalf of a member of the alcoholic beverages industry in Massachusetts, engages in similar conduct that creates a systemic illegality, this Commission shall take similar, severe enforcement action to eliminate any violation as well as the cause of such conduct.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

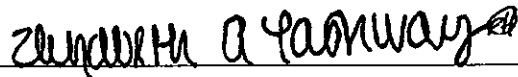
Kim S. Gainsboro, Chairman



Kathleen McNally, Commissioner



Elizabeth A. Lashway, Commissioner



Dated: February 11, 2016

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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cc: Local Licensing Board
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Administration, File