

STATE OF CONNECTICUT

DEPARTMENT OF CONSUMER PROTECTION

IN THE MATTERS OF

Star Distributors, Inc.
Permit #LIW.533
Case No. 2008-7298
Docket No. 2008-1214

J&M Sales Co., Inc.
Permit #LIW.543
Case No. 2008-7320
Docket No. 2008-1215

A. Gallo Company of Litchfield
Permit #LIW.540
Case No. 2008-7299
Docket No. 2008-1216

September 23, 2008

MEMORANDUM OF DECISION

This matter involves petitions submitted by Star Distributors, Inc. (hereinafter "Star"), 10 Eder Road, West Haven, Connecticut, holder of wholesaler liquor permit LIW.533; J&M Sales, Inc. (hereinafter "J&M"), Old Route #8 South, Torrington, Connecticut, holder of wholesale liquor permit LIW.543; and A. Gallo Company of Litchfield (hereinafter "Gallo"), 89 Sharon Turnpike, Goshen, Connecticut, holder of wholesaler liquor permit LIW.540, in accordance with Section 30-64a, Connecticut General Statutes. A formal administrative hearing was held before the Department of Consumer Protection, Liquor Control Commission, on September 4, 2008, at which time Anthony Gallo appeared on behalf of each of the wholesalers.

Pursuant to Section 4-177a, Connecticut General Statutes, the Connecticut Package Stores Association was granted intervenor status for this hearing on August 21, 2008, and Wine and Spirits Wholesalers of Connecticut, Inc. was granted intervenor status for this hearing on September 2, 2008. Counsel for both intervenors were present at the hearing. At the conclusion of the hearing, the record was left open until September 9, 2008, to allow the intervenors to submit briefs.

Pursuant to Connecticut General Statutes, Section 30-64a:

Notwithstanding any provision of the general statutes or any regulations issued pursuant thereto to the contrary, a wholesaler, who sells any product or is authorized to sell any product by this chapter, shall sell such product to each retail permittee in the wholesaler's geographic territory who desires to purchase such product. Such wholesaler shall not charge any retail permittee, to whom the wholesaler is required to sell by virtue of this section, a different rate for the delivery or transportation of any alcoholic liquor than such wholesaler would charge any other retail permittee. *Where distance, road conditions, travel time or any such factor substantially affects the cost of delivery or transportation of a product sold by a wholesaler, the wholesaler shall file a schedule of proposed delivery charges with the Department of Consumer Protection. Such schedule shall only apply after a hearing by and upon written approval from said department.* (Emphasis added.)

The subject of this hearing was the schedule of proposed delivery charges, in the amount of \$2.30 per delivery due to increased diesel fuel costs, effective October 1, 2008 and approval of their request to increase or decrease the delivery charge in the future on a quarterly basis.

Based upon the testimony and documents submitted at the hearing, we find that the costs of delivery or transportation for Star, J&M, and Gallo have all increased due to the increase in freight fuel surcharges of some liquor suppliers, primarily of domestic product. In order to maintain its level of customer service, it is necessary to pass along the incremental increase in diesel fuel prices, and Star, J&M and Gallo believe the added surcharge on its invoices to be the fairest way to do so for its customers. The surcharge would not be dependent upon the volume of the customer's order, and thus not be discriminatory.

In order to address increased costs of delivery and transportation, liquor wholesalers may avail themselves of one of two statutorily prescribed options; posting increases to the case price in accordance with Section 30-681, Connecticut General Statutes, or requesting approval of proposed delivery charges from the department following a hearing, in accordance with Sec. 30-64a, Connecticut General Statutes, as in this case. Upon review and consideration of the evidence presented, the increased delivery charge method would appear to more accurately reflect the costs attributed to delivery, rather than a price increase posted to the case.

Petitioners have presented substantial evidence that the delivery and transportation costs have been substantially affected and have recently increased. Accordingly, the delivery charge of \$2.30 is hereby

approved, to be effective October 1, 2008, upon prior written notice to its customers, either by posting in the Connecticut Beverage Journal or provided in person by its drivers. Furthermore, we find that this is a properly approved charge imposed upon the purchaser and effective October 1, 2008, subject to Section 30-48, Connecticut General Statutes, and Section 30-6-A37a of the Regulations of Connecticut State Agencies.

As part of its petition, Star, J&M and Gallo have also requested approval for the ability to increase or decrease the amount of the approved \$2.30 delivery charge, on a quarterly basis, based upon fuel costs. Such request cannot be, and is not, approved. Section 30-64a, Connecticut General Statutes, clearly states that any proposed schedule of delivery charges shall apply only after a hearing and upon written approval by this department.

**DEPARTMENT OF CONSUMER PROTECTION
LIQUOR CONTROL COMMISSION
BY**

Elisa A. Nahas, Esq.
Presiding Officer

Angelo Faenza, Commissioner

Stephen Somma, Commissioner

Parties:

Star Distributors, Inc., J&M Sales, Inc.; and A. Gallo Company of
Litchfield c/o Anthony J. Gallo, P.O. Box 1200, New Haven, CT 06505

Intervenors:

Peter A. Berdon, Esq., Executive Director and General Counsel, Wine and
Spirits Wholesalers of Connecticut, Inc. 132 Temple Street, New Haven,
CT 06510

Joshua D. Hughes, Esq., Assistant Executive Director, Connecticut
Package Stores Association, 700 Plaza Middlesex, Middletown, CT 06457

Nonparties:

Director John Suchy, Liquor Control Division
Connecticut Beverage Journal, 2508 Whitney Ave., P.O. Box 185159,
Hamden, CT 06518
Connecticut State Library, 231 Capitol Avenue, Hartford, CT 06106