**STATE OF CONNECTICUT**

**DEPARTMENT OF CONSUMER PROTECTION**

 *In the matter of: -*

 **MEMORANDUM OF DECISION**

David J. Trone, Permittee Permit No. LIP.14992 Total Wine & More Case No. 2021-838

380 Main Avenue Backer: Connecticut Fine Wine & Spirits LLC Norwalk, CT 06851

And

David J. Trone, Permittee Permit No. LIP.15211 Total Wine & More Case No. 2021-839

230 Cherry Street Backer: Connecticut Fine Wine & Spirits LLC Milford, CT 06460

Case Nos. 2021-838 and 2021-839 were heard at the same hearing.

At 10:08 a.m. on March 2, 2023, the Liquor Control Commission held a formal administrative hearing in Case No. 2021-838, the matter of David J. Trone, Permittee, Permit No. LIP.14992, Total Wine & More, 380 Main Avenue, Norwalk, CT; the Backer is Connecticut Fine Wine & Spirits, and Case No. 2021-839, the matter of David J. Trone, Permittee, Permit No. LIP.15211, Total Wine & More, 230 Cherry Street, Milford, CT. Permittee and Backer shall hereinafter be referred to as Total Wine.

Brian Edelman, District Manager for Total Wine in Connecticut and Northern New Jersey, John Rich, Regional Ordering Captain for Connecticut, Jeff Herbele, Store Manager for Total Wine in Norwalk, former Store Manager for Total Wine in Milford, Ryan Tavenor, Store Manager for Total Wine in Milford, and Michael Cowan, Regional Ordering Captain for Total Wine in Northern New Jersey, formerly Regional Ordering Captain for Connecticut appeared for the Respondents, who were represented by Attorney Andrew Glassman of Pullman and Comley, Hartford, CT, and Robert Shaffer, General Counsel to Total Wine of Bethesda, MD.

Special Liquor Control Agent Michael Kula, and Department of Consumer Protection Attorney Scott Madeo appeared at the hearing for the Department of Consumer Protection.

This case was heard by Dominic Balletto, Liquor Commissioner, John P. McKinney, Liquor Commissioner, and David A. Cousins, Presiding Officer.

Both these matters were set down for a formal hearing following a compliance meeting held on September 20, 2022, and by decision by the full Commission.

On December 19th, 2022, the Department of Consumer Protection sent Respondent Notice and Particulars for Case No. 2021-838 alleging that Respondents have:

**Charge 1.**

On or about July 13, 2022, violated Sec. 30-94(a) of the Connecticut General Statutes which provides that no permittee or group of permittees licensed under the provisions of this chapter, in any transaction with another permittee or group of permittees, shall directly or indirectly offer, furnish or receive any free goods, gratuities, gifts, prizes, coupons, premiums, combination items, quantity prices, cash returns, loans, discounts, guarantees, special prices or other inducements in connection with the sale of alcoholic beverages or liquors. No such permittee shall require any purchaser to accept additional alcoholic liquors in order to make a purchase of any other alcoholic liquor.

**Charge 2.**

On or about July 13, 2022, violated Sec. 30-6-A29(a) of the Regulations of Connecticut State Agencies which provides that no permittee in transactions with another permittee shall directly or indirectly offer, furnish, solicit or receive any free goods, discounts, gratuities, gifts, prizes, coupons, premiums, combination items, quantity prices, cash returns, loans, guarantees, inducements or special prices, or other inducements with the sale of alcoholic liquors.

AS MORE PARTICULARLY SET FORTH: On July 13, 2022, a liquor control agent observed a tractor trailer from Dichello Distributors backing up to the loading dock of the premise. The agent then observed employees from Dichello Distributors arrive in a panel van and enter the premise. The agent subsequently entered the premise and observed the employees moving cases of Bud Light beer 24 packs from a rolling gondola to the shelving area. The area was the only point of sale for the Bud Light 24 packs in the premise and had direct consumer access. Such activity of wholesalers stocking newly delivered beer for retail off-premises permittees is prohibited by law.

AND

On December 19th, 2022, the Department of Consumer Protection sent Respondent Notice and Particulars for Case No. 2021-839 alleging that Respondents have:

**Charge 1.**

On or about December 7, 2021, violated Sec. 30-94(a) of the Connecticut General Statutes which provides that no permittee or group of permittees licensed under the provisions of this chapter, in any transaction with another permittee or group of permittees, shall directly or indirectly offer, furnish or receive any free goods, gratuities, gifts, prizes, coupons, premiums, combination items, quantity prices, cash returns, loans, discounts, guarantees, special prices or other inducements in connection with the sale of alcoholic beverages or liquors. No such permittee shall require any purchaser to accept additional alcoholic liquors in order to make a purchase of any other alcoholic liquor.

**Charge 2.**

On or about December 7, 2021, violated Sec. 30-6-A29(a) of the Regulations of Connecticut State Agencies which provides that no permittee in transactions with another permittee shall directly or indirectly offer, furnish, solicit or receive any free goods, discounts, gratuities, gifts, prizes, coupons, premiums, combination items, quantity prices, cash returns, loans, guarantees, inducements or special prices, or other inducements with the sale of alcoholic liquors.

 AS MORE PARTICULARLY SET FORTH: On December 7, 2021, a liquor control agent observed a Star Distributors tractor trailer at the dock of the premises, as well as a Star Distributors panel van. The agent then entered the premises and observed employees from Star Distributor stocking shelves at the permit premises with Modelo beer and Miller Lite beer. The area being stocked was the only point of sale for the products and was directly accessible to patrons. Such activity of wholesalers stocking newly delivered beer to liquor retailers is prohibited by law.

The Liquor Control Commission finds the following facts, based on testimony provided as well as video and documentary evidence in the record:

**Case No. 2021-838**

1. Notice was sent on December 19, 2022, and not contested.
2. In Special Agent Kula’s territory, there are three beer distributors, two of which are Dichello and Star.
3. On July 13, 2022 Special Agent Kula was visiting the Norwalk Total Wine location for another investigation and noted a tractor-trailer from Dichello Distributors pulling up to the loading dock, as well as another vehicle from Dichello Distributers.
4. Special Agent Kula followed the persons from the Dichello vehicles into the Norwalk Total Wine location.
5. Special Agent Kula then observed them stocking beer onto the shelves and floor from a cart, and took a video entered in evidence as DCP Exhibit 2A.
6. Special Agent Kula approached the Dichello employees and told them stocking the shelves was prohibited. The employees did not state they were rotating the stock.
7. Stocking of the shelves with beer occurred and constituted free labor.

**Case No. 2021-839**

1. Notice was sent on December 19, 2022, and not contested.
2. In Special Agent Kula’s territory, there are three beer distributors, two of which are Dichello and Star.
3. On December 7, 2021 Special Agent Kula observed several vehicles, including a tractor-trailer at the loading dock, from Star Distributors in the parking area at the Milford Total Wine store.
4. On December 7, 2021 Special Agent Kula observed several employees of Star Distributors enter, place cases of beer on shelves and the floor area within Total Wine in Milford.
5. The video taken by Special Agent Kula and entered as DCP Exhibit 2 shows persons he identified as Star Distributor employees stocking the shelves from a rolling cart which contained several brands of beer.
6. When questioned by Special Agent Kula while leaving the store and returning to their vehicles, the Star Distributor employees did not state they were rotating the stock.
7. Stocking of the shelves with beer occurred and constituted free labor.

**RULING of the COMMISSION**

Based upon the evidence and testimony presented in both the cases before us, the Liquor Control Commission rules that

**Case No. 2021-838**

1. Notice to Total Wine was proper.
2. Dichello’s employees were not rotating existing stock.
3. Dichello’s employees were bringing new stock onto the sales floor from the truck or store room.
4. Dichello’s employees stocking the shelves of the Total Wine constituted free labor.
5. Free labor is a prohibited inducement under Sec. 30-6-A29(a) of the Regulations of Connecticut State Agencies.
6. Free labor is a prohibited inducement under Sec. 30-94(a) of the Connecticut General Statutes.
7. Total Wine has violated Sec. 30-6-A29(a) of the Regulations of Connecticut State Agencies.
8. Total Wine has violated Sec. 30-94(a) of the Connecticut General Statutes.
9. **Case No. 2021-839**
10. Notice to Total wine was proper.
11. Star Distributors’ employees were not rotating existing stock.
12. Star Distributors’ employees were bringing new stock onto the sales floor from the truck or store room.
13. Star Distributors’ employees stocking the shelves of the Total Wine constituted free labor.
14. Free labor is a prohibited inducement under Sec. 30-6-A29(a) of the Regulations of Connecticut State Agencies.
15. Free labor is a prohibited inducement under Sec. 30-94(a) of the Connecticut General Statutes.
16. Total Wine has violated Sec. 30-6-A29(a) of the Regulations of Connecticut State Agencies.
17. Total Wine has violated Sec. 30-94(a) of the Connecticut General Statutes.

Dispensing liquor is a privilege and not a right. Beckanstin v. Liquor Control Commission, 140 Conn. 185, 192, 99 A.2d 1191 (1953). Additionally, the Liquor Control Act grants the Liquor Control Commission a liberal discretionary power to determine factual matters regarding liquor permits and to suspend or revoke the permit after a hearing. Balog v. Liquor Control Commission, 150 Conn. 473, 191 A.2d 20 (1963).

Ch. 545, Sec. 30-47 of the Connecticut General Statutes states

**Discretionary suspension, revocation or refusal of permits; disqualification of applicant or permittee; alcohol seller and server training program; permittee participation.** (a) The Department of Consumer Protection may, in its discretion, suspend, revoke or refuse to grant or renew a permit for the sale of alcoholic liquor if it has reasonable cause to believe:

(7) that the applicant or permittee has violated any provision of this chapter or any regulation adopted under this chapter. Any backer shall be subject to the same disqualifications as provided in this section in the case of an applicant for a permit or a permittee.

Ch. 545, Sec. 30-55(a) of the Connecticut General Statutes states

**Revocation, suspension or placing conditions on permits. Fine. Hearing. Appeal to stay proceedings.** (a) The Department of Consumer Protection may, in its discretion, revoke, suspend or place conditions on any permit or provisional permit or impose a fine of not greater than one thousand dollars per violation, upon cause found after hearing, provided ten days' written notice of such hearing has been given to the permittee setting forth, with the particulars required in civil pleadings, the charges upon which such proposed revocation, suspension, condition or fine is predicated. Any appeal from such order of revocation, suspension, condition or fine shall be taken in accordance with the provisions of section 4-183.

Because of Respondents’ violations of the statutes and regulations cited in this decision, the Commissioners order that

In case no. 2021-838:

Total Wine shall be fined $500 for violation of Sec. 30-6-A29(a) of the Regulations of Connecticut State Agencies;

Total wine shall be fined $500 for violation of Sec. Sec. 30-94(a) of the Connecticut General Statutes;

For a total fine in this case of $1,000.

In case no. 2021-839

Total Wine shall be fined $500 for violation of Sec. 30-6-A29(a) of the Regulations of Connecticut State Agencies;

Total Wine shall be fined $500 for violation of Sec. Sec. 30-94(a) of the Connecticut General Statutes;

For a total fine in this case of $1,000.

All fines must be paid by Total Wine within 30 days of the delivery of this Decision.

Dated this 21st day of June 2023.

**LIQUOR CONTROL COMMISSION**

BY:

Dominic Balletto

Dominic Balletto

Commissioner

David A. Cousins

David A. Cousins

Designated Presiding Officer

John P. McKinney

Commissioner

**Parties:**

By Certified Mail, First Class mail, and via email

David J. Trone, Permittee

Total Wine & More

230 Cherry Street

Milford, CT 06460

rshaffer@Totalwine.com; LICENSES@TOTALWINE.COM

David J. Trone, Permittee

Total Wine & More

380 Main Avenue

Norwalk, CT 06851

rshaffer@Totalwine.com; LICENSES@TOTALWINE.COM

Andrew C. Glassman, Esq.

Pullman & Comley

90 State House Square

Hartford, CT 06103-3702

aglassman@pullcom.com

**Non-parties:**

Connecticut Beverage Journal, 2508 Whitney Ave., P.O. Box 185159, Hamden, CT 06518

M. Caitlin Anderson, Director, Liquor Division

Connecticut State Library, 231 Capitol Avenue, Hartford, CT 06106