

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
233 RICHMOND STREET
PROVIDENCE, RHODE ISLAND 02903

_____	:	
IN THE MATTER OF:	:	
	:	
NORTH SMITHFIELD	:	DBR No. 06-L-0014
WINE & SPIRITS, INC.,	:	
	:	
RESPONDENT. ¹	:	
_____	:	

CONSENT ORDER

It is hereby agreed between the Department of Business Regulation (“Department”) and North Smithfield Wine & Spirits, Inc. (“Respondent”) as follows:

1. Respondent holds a Class A license for the retail sale of alcoholic beverages pursuant to R.I. Gen. Laws § 3-7-3.
2. R.I. Gen. Laws § 3-5-21 provides that the Department, on its own motion, may revoke or suspend a license and may fine a licensee for breach of the conditions on which the license was issued or for violation by the holder of the license of any statute, rule or regulation applicable.
3. R.I. Gen. Laws § 3-5-11(a) provides that Class A licenses shall not be granted, issued, or transferred to, or for the use of, any “chain store organization.”

¹ Respondent changed its corporate name from Douglas Wine & Spirits North Smithfield, Inc., to North Smithfield Wine & Spirits, Inc., on November 2, 2007, and changed its fictitious name from Douglas Wine & Spirits North Smithfield, Inc., to N. Smithfield Beverages & More on December 5, 2007.

4. R.I. Gen. Laws § 3-5-11(b)(1)(vi) defines the term “chain store organization” as, *inter alia*, any group of one or more holders of Class A liquor licenses who use “a term or name identified as a chain or common entity.”

5. The Department identified Respondent as a Class A licensee with the same or materially similar name as another Class A licensee.

6. The Department sent Bulletin #2005-2 (“Bulletin”) to Respondent on September 21, 2005. The Bulletin addressed four types of business practices prohibited by the recently amended statute, R.I. Gen. Laws § 3-5-11, including having the same or materially similar names.

7. Paragraph 4 of the Bulletin directed Respondent to submit and obtain approval for a name dissimilar than any other Class A licensee by December 31, 2005, in order to comport with R.I. Gen. Laws § 3-5-11(b)(1)(vi).

8. The final paragraph of the Bulletin stated that the Department “encourages all licensees to call with any further questions they may have” about operating under R.I. Gen. Laws § 3-5-11.

9. Respondent failed to secure approval of its name by December 31, 2005.

10. Based on the foregoing, the Department had reason to believe that Respondent violated a directive of the Department and engaged in a business practice prohibited by R.I. Gen. Laws § 3-5-11.

11. On January 6, 2006, the Director of the Department issued an *Order to Show Cause, Notice of Hearing, and Appointment of Hearing Officer* to Respondent for operating as a “chain store organization” in violation of R.I. Gen. Laws § 3-5-11 due to the use of a “same or materially similar name as another Class A licensee” as defined in R.I. Gen. Laws § 3-5-11(b)(1)(vi).

12. On March 20, 2006, the Department filed a Motion and Memorandum of Law in Support of its Motion for Summary Judgment.

13. On April 28, 2006, the Respondents filed their Memorandum in Support of their Opposition to the Department's Motion for Summary Judgment and their Cross-Motion for Summary Judgment.

14. On May 24, 2006, the hearing officer issued a decision, adopted by the Director of the Department, holding that Respondent's use of its name in relation to seven (7) other Class A licensees with similar names violated R.I. Gen. Laws § 3-5-11(a) because it constituted "the use of terms or names identified as a chain or common entity" and therefore established a "chain store organization" under R.I. Gen. Laws § 3-5-11(b)(1)(vi).

15. The Department had sufficient cause to suspend or revoke Respondent's license and assess an administrative penalty pursuant to R.I. Gen. Laws § 3-5-21.

16. In an effort to resolve this matter, effect a timely and amicable resolution of the issues raised in this Consent Order, and allow Respondent to maintain its license in good-standing, Respondent understands and agrees to the following:

A. Respondent shall pay an administrative penalty in the amount of \$9,100.00, payable to the Rhode Island General Treasurer. This penalty is an amalgamation of the \$5,000 fine assessed for operating as a "chain store organization" in violation of R.I. Gen. Laws § 3-5-11 due to the use of a "same or materially similar name as another Class A licensee," as defined in R.I. Gen. Laws § 3-5-11(b)(1)(vi), and a \$4,100.00 fine in lieu of the ten (10) day suspension ordered by the Director in the May 24, 2006 decision referenced in Paragraph 14.

B. Respondent shall pay the \$9,100.00 administrative penalty referenced in Paragraph 16(A) in two (2) monthly payments in accordance with the following schedule:

February 29, 2008: \$4,600.00

March 31, 2008: \$4,500.00

C. Failure to pay the required amount by the date set forth in this schedule shall be a violation of the terms of this Consent Order and shall result in the re-institution of the ten (10) day suspension ordered by the Director in the May 24, 2006 decision referenced in Paragraph 14.

D. This Consent Order shall not operate to shield Respondent from liability or from enforcement actions arising out of future activities related to or affecting its license.

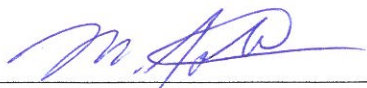
17. If Respondent fails to abide by any of the requirements of this Consent Order, the Department shall initiate administrative proceedings to revoke Respondent's license following the ten (10) day suspension referenced in Paragraph 16(C).

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

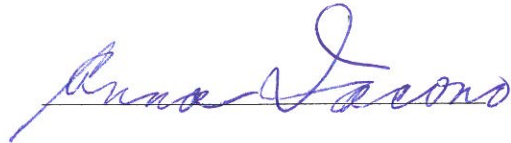
THE DEPARTMENT AND RESPONDENT HEREBY CONSENT AND AGREE
TO THE FOREGOING AS TO FORM AND SUBSTANCE:

Department of Business Regulation
By its Legal Counsel:

No. Smithfield Wine & Spirits, Inc.,
On behalf of Respondent by:



Michael P. Jolin
Department of Business Regulation



Date: 2-26-08

Date: 2/14/08

Recommended by:



Neena Sinha Savage, Esq.
Hearing Officer

Date: 2-26-08

ORDER

I have read the Hearing Officer's Recommendation in this matter, and I hereby take the following action with regard to the Recommendation:

ADOPT
 REJECT
 MODIFY



A. Michael Marques
Director

Date: 02-26-2008

THIS CONSENT ORDER CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO RHODE ISLAND GENERAL LAWS TITLE 42, CHAPTER 35. AS SUCH, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MAY BE COMPLETED BY FILING A PETITION FOR REVIEW OF SAID COURT. HOWEVER, RESPONDENT UNDERSTANDS THAT BY WAIVING ITS RIGHT TO A COMPLETE HEARING AND AGREEING TO THIS CONSENT ORDER, THE ABOVE RIGHTS ARE WAIVED AND IF ANY TERMS OF THIS CONSENT ORDER ARE VIOLATED, REFERRAL MAY BE MADE TO THE RHODE ISLAND ATTORNEY GENERAL FOR FURTHER PROSECUTION.