

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
1511 PONTIAC AVENUE, BUILDING 69
CRANSTON, RI 02920

IN THE MATTER OF:	:	
	:	
WINEBOW RHODE ISLAND, INC.	:	DBR No. 17-LQ-003
d/b/a WINEBOW	:	
	:	
Application for a Wholesale Class B Liquor License	:	

DECISION AND ORDER

I. Introduction

On or about February 8, 2017, the Department of Business Regulation (“Department”) received from Winebow Rhode Island, Inc. d/b/a Winebow (the “Applicant”), through its General Counsel, Kimberly R. Hillman, an Application for a Wholesaler’s Class B Alcoholic Beverage License (the “Application”) with respect to the premises located at 2000 Plainfield Pike, Unit W, in Cranston, Rhode Island (the “Premises”). On March 1, 2017, the Director of the Department issued an “Order Appointing Hearing Officer and Providing Notice of Hearing” scheduling a hearing for March 23, 2017, and appointing a Hearing Officer to conduct the hearing and render a decision in the above captioned matter pursuant to R.I. Gen. Laws §§ 42-6-8 and 42-35-1 *et seq.* and the Department’s *Rules of Procedure for Administrative Hearings* 230-RICR-100-00-2 (formerly known as Central Management Regulation 2) (the “Rules of Procedure”)¹.

In accordance the general public notice requirements of R.I. Gen. Laws § 3-5-17, an advertisement was published in the Legal Section of the *Cranston Herald* on March 9 and March 16, 2017, notifying all interested persons of the scheduled hearing. As documented by certified

¹ On June 7, 2017, due to the Hearing Officer’s unavailability to complete the pending proceeding, the Department issued a Notice of Substitution confirming that the matter would be concluded by the Director.

mailing receipts, the Applicant complied with the abutter notice requirements of R.I. Gen. Laws § 3-5-17 upon sending notice by certified mail on March 2, 2017, to ten (10) abutters, i.e. owners of property within a 200 foot radius of the Applicant's Premises.

On March 21, 2017, the Department received from the Alcoholic Beverage Wholesaler Dealers of Rhode Island (the "Wholesaler Association"), through its counsel, Shechtman Halperin Savage, LLP, a written objection to the Application and a copy was provided to the Applicant. A hearing was held on March 23, 2017. Kimberly R. Hillman, General Counsel, Richard Blau, Esquire and Tom Modica, General Manager, appeared on behalf of the Applicant. James Atchison, Esquire of Schechtman Halperin Savage, LLP, counsel for the Wholesaler Association, attended the hearing and was permitted to make oral and written statements in the proceeding pursuant to § 2.15(F) of the Rules of Procedure.² No property abutters appeared at the hearing for either comment or objection to the Application. The Applicant and the Wholesaler Association were permitted to present additional evidence and comments through post-hearing written submissions pursuant § 2.15(G) of the Rules of Procedure.³ The Wholesaler Association submitted its post-hearing submission by letter dated April 6, 2017, and a copy of such submission was provided to the Applicant. The Applicant submitted its post-hearing submission by letter dated April 12, 2017, and a copy of such submission was provided to the Wholesaler Association.⁴

² Section 2.15(F) of the Rules of Procedure provides that "any Person who is not a Party to a proceeding may, in the discretion of the Hearing Officer, be permitted to make oral or submit written statements on any issues relevant to the proceeding."

³ Section 2.15(G) of the Rules of Procedure provides in relevant part: "No evidence shall be admitted [after the hearing], unless otherwise ordered by the Hearing Officer."

⁴ In addition to the post-hearing submissions that were permitted by order of the Hearing Officer, after the hearing, the Department received and provided copies to the Applicant of the following letters objecting to the Application: (1) letter dated March 25, 2017, from Frank P. Fede, Treasurer of the Rhode Island Liquor Stores Association, which was received by the Department on March 31, 2017; (2) letter dated March 31, 2017, from Robert D. Goldberg, Esquire, counsel to the United Independent Retail Liquor Store Association, which was received by the Department on April 3, 2017; and (3) letter dated March 30, 2017, from Elizabeth A. Suever, Esquire, counsel to McLaughlin and Moran, which was received by the Department on April 3, 2017. None of these parties are 200 foot property abutters.

II. Jurisdiction

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws §§ 3-5-1 *et seq.* and 3-6-1 *et seq.*, and R.I. Gen. Laws §§ 42-14-1 *et seq.* and 42-35-1 *et seq.*

III. Issue

Whether the Application should be granted and a wholesaler's Class B alcoholic beverage license issued to the Applicant pursuant to R.I. Gen. Laws §§ 3-5-14.1 and 3-6-10.

IV. Material Facts and Testimony

At the hearing, the Hearing Officer reviewed the Application in its entirety in order to determine if it meets the requirements under Title 3 of the Rhode Island General Laws and Commercial Licensing Regulation 8 *Liquor Control Administration* ("CLR 8") and noted that all attendees would have the opportunity to speak on the record relative to the Application and, if necessary, be allowed to submit written comments following the hearing. In reviewing the Application, the Hearing Officer stated that the following requirements had been satisfied and were in compliance with Title 3 and CLR 8: (1) the Applicant is a Rhode Island corporation, in good standing and authorized by the Rhode Island Secretary of State to transact business in Rhode Island consistent with R.I. Gen. Laws § 3-5-10(a)(1) and (2); (2) the bond requirement under R.I. Gen. Laws § 3-6-13 and Rule 7 of CLR 8 had been met; (3) the Applicant submitted the Federal Basic Permit authorizing the Applicant's operation as a wholesaler at the Premises pursuant to Rule 40(e) of CLR 8; (4) the Applicant provided commitment letters from suppliers in accordance with Rule 40(d) of CLR 8; (5) identification of hours of operation was provided in accordance with CLR 8, Rule 40(f); (6) the license fee prescribed by R.I. Gen. Laws § 3-6-10(b) and CLR 8, Rule 15(d) had been paid; and (7) the Applicant submitted criminal history records of Applicant and its

The letters contain abbreviated versions of the objections raised by the Wholesaler Association as hereinafter described.

officers from both Rhode Island and Virginia in accordance with R.I. Gen. Laws § 3-5-10(b)(1) (requiring that all officers and directors of a corporate beverage license holder be suitable persons, within the discretion of the body issuing the license) and § 3-5-10(d) (granting the Department the authority to deny applications of persons who have criminal records or who have records of repeated violations of Title 3)⁵.

Additionally, per Department policy, the Hearing Officer determined that the Applicant had submitted appropriate zoning approval from the City of Cranston authorizing the Premises to be used for the wholesaling of alcoholic beverages as well as an approval from the City of Cranston Fire Department stating that the Premises comply with the fire safety code. Although not required by statute or regulation, the Applicant also submitted appropriate financial documents, which evidence the Applicant's ability to sustain its proposed business operation, including the payment of taxes to both the Federal and State government.

The Wholesaler Association's written objection to the Application was made a part of the record, and the Hearing Officer permitted the Association's counsel to provide oral testimony pursuant to § 2.15(F) of the Rules of Procedure. In its testimony and written submissions, the Wholesaler Association argued that the Applicant is prohibited from holding a wholesaler's license pursuant to R.I. Gen. Laws § 3-6-15 and that granting a wholesaler's license to the Applicant would violate Rhode Island's three-tier regulatory system under R.I. Gen. Laws § 3-1-6(b). In the Wholesaler Association's view, the Applicant, a Rhode Island entity incorporated as a wine and spirits wholesaler, is also a wine importer through its affiliation with import companies in the Winebow Group, and an importer should be treated as a manufacturer for purposes of § 3-6-15.

⁵ In determining that the Applicant had satisfied the statutory and regulatory application requirements, the Hearing Officer noted that the only open item was for the Department to conduct an inspection of the Premises. The inspection was conducted on May 17, 2017, and the results were satisfactory to the Department.

In support of this, the Wholesaler Association argued that CLR 8, Rule 19(b) and R.I. Gen. Laws §§ 3-13-1(5) and 3-6-16(a) treat importers the same as manufacturers, and also cited Lawrence v. Anheuser-Busch, Inc., 523 A.2d 864 (R.I. 1987). Lastly, the Wholesalers Association noted that the newspaper advertisement noticing the hearing did not include the Applicant's "D/B/A" as required under CLR 8, Rule 3.

In its testimony and written submission, the Applicant countered the Wholesaler Association's objections as follows. The Applicant noted that the Wholesaler Association is not a 200 foot abutter of the Premises entitled to object under § 3-5-17 and suggested that, as a trade association, the Association's intention is simply to delay a potential competitor's entry into the wholesaler market so as to cause the Applicant expense and harm. The Applicant stated that it is not a manufacturer in any jurisdiction and remains within the middle, wholesaling tier of the Rhode Island alcohol beverage industry. The Applicant argued that it is not a manufacturer under § 3-6-15, which prohibits manufacturers, not importers, from holding a wholesaler's license, noting that R.I. Gen. Laws § 3-6-1 (manufacturer's license) does not contemplate importation functions and that manufacturers and importers conduct vastly different activities. Furthermore, the Applicant's affiliation with an entity licensed as an importer in another state does not render the Applicant a manufacturer under Rhode Island law. In the Applicant's view, the provisions and case cited by the Wholesaler Association, § 3-6-16 regarding wholesaler purchasing restrictions, § 3-13-1 regarding beer distribution agreements, CLR 8, Rule 19 regarding imports, and Lawrence v. Anheuser-Busch, Inc., *supra*, do not support the Wholesaler Association's objection. The Applicant contends that a plain reading of § 3-6-15, other statutory provisions and a more recent Superior Court case, C & C Distributors, Inc. v. McConaghy, C.A. No. 2001-6295, 2002 R.I. Super. LEXIS 80 (R.I. Super. June 11, 2002), support the Applicant's position that the

manufacturer prohibition in § 3-6-15 does not apply to the Applicant. Lastly, the Applicant asserts that the Department has previously issued wholesaler licenses to Rhode Island wholesalers that hold importer licenses/permits either directly or indirectly.

V. Discussion

“The right, power, and jurisdiction to issue manufacturer’s and wholesaler’s licenses are solely in the [D]epartment.” R.I. Gen. Laws § 3-5-14.1. The statutory and regulatory application requirements for a Class B wholesaler’s license are set forth in four provisions of the General Laws and in CLR 8 as follows:

(1) R.I. Gen. Laws § 3-5-10, which provides in relevant part:

(a)(1) Except as otherwise provided, licenses are issued only to citizens who are residents of this state. It is not required that dining car companies, sleeping car companies, railroad companies operating in this state, or companies operating passenger-carrying marine vessels in this state be citizens of this state in order to be eligible to receive retailers' Class G licenses. Retailer's licenses may, however, be issued to corporations incorporated in any other of the United States which are authorized by the secretary of state to transact business in this state.

(2) Notwithstanding the provisions of subsection (a)(1) of this section, no license shall be issued, granted, renewed, or transferred to any trust or trustee or to any corporation of which any share or shares of stock or other indicia of ownership or control are owned or held by any trust, or trustee, business organization, or other entity or person other than a natural person or corporation authorized by the secretary of state to transact business in this state; provided, however, that this subsection shall not affect any grant, renewal, or transfer of a license which occurred prior to the effective date of this subsection [June 15, 2000].

(b)(1) In applications for beverage licenses by corporations except those having more than twenty-five (25) stockholders, the names and addresses of all officers and members of the board of directors and of all stockholders shall be filed with the board, body, or official to whom application is made. No beverage license shall be issued to the corporation unless each officer, director or stockholder is a suitable person to hold a license within the discretion of the board, body or official to whom application is made.

...

(c) Applicants for beverage licenses shall make full disclosure in their applications for a license of any interest, whether direct or indirect, by any other person, firm or corporation in the license applied for, and failure to do so or any misrepresentation

by the applicant may be cause for denial of the application or revocation of the license if granted by the board, body or official issuing the license.

(d) The board, body or official issuing beverage licenses may also deny applications of persons who have criminal records, or who have records of repeated violations of this title.

(2) R.I. Gen. Laws § 3-5-17, which provides as follows:

Before granting a license to any person under the provisions of this chapter and title, the board, body or official to whom application for the license is made, shall give notice by advertisement published once a week for at least two (2) weeks in some newspaper published in the city or town where the applicant proposes to carry on business, or, if there is no newspaper published in a city or town, then in some newspaper having a general circulation in the city or town. Applications for retailer's Class F, P and Class G licenses need not be advertised. The advertisement shall contain the name of the applicant and a description by street and number or other plain designation of the particular location for which the license is requested. Notice of the application shall also be given, by mail, to all owners of property within two hundred feet (200') of the place of business seeking the application. The notice shall be given by the board, body or official to whom the application is made, and the cost of the application shall be borne by the applicant. The notices shall state that remonstrants are entitled to be heard before the granting of the license, and shall name the time and place of the hearing. At the time and place a fair opportunity shall be granted the remonstrants to make their objections before acting upon the application; provided that no advertisement or notice need be given pursuant to this section when a license holder applies for a temporary seasonal expansion of an existing liquor license.

(3) R.I. Gen. Laws § 3-6-10, which provides as follows:

(a) A wholesaler's license, Class B, authorizes the holder to keep for sale and to sell malt and vinous beverages and distilled spirits at wholesale, at the place described in the license, to holders of licenses under this title within this state and to holders of wholesale licenses in other states and authorizes the transportation and delivery from the place of sale to those license holders or to a common carrier for that delivery. Sales by a wholesaler in this state to a holder of a wholesale license in another state shall be only to a wholesaler who is a distributor of the same brand of malt beverages, vinous beverages, and distilled spirits subject to permission by the state liquor control administrator. The license shall not authorize the sale of beverages for consumption on the premises where sold nor the sale of beverages for delivery outside this state in violation of the law of the place of delivery.

(b) The annual fee for the license is four thousand dollars (\$4,000) prorated to the year ending December 1 in every calendar year, and shall be paid to the division of taxation and turned over to the general treasurer for the use of the state whenever any malt beverages, vinous beverages, and distilled spirits are sold outside the state

pursuant to this section. Refunds or credits of import fees previously paid on malt beverages, vinous beverages and distilled spirits shall be made to holders of wholesaler's licenses under this title in accordance with regulations promulgated by the division of taxation.

(4) R.I. Gen. Laws § 3-6-13, which provides as follows:

As conditions precedent to the issuance by the department of any manufacturer's license, rectifier's license, wholesaler's Class A license, wholesaler's Class B license, and wholesaler's Class C license under the provisions of this chapter, the person applying for a license shall give bond to the general treasurer of the state in a penal sum in the amount that the department of business regulation requests with at least two (2) resident sureties satisfactory to the department of business regulation, or a surety company authorized to do business in this state as surety, which bond shall be on condition that the licensee will not violate, or suffer to be violated, on any licensed premises under his or her control any of the provisions of this chapter or of chapter 5 of this title or of chapters 10, 34, or 45 of title 11 or §§ 11-2-1, 11-9-13, 11-9-15, 11-11-5, 11-18-2 – 11-18-4, 11-20-1, 11-20-2, 11-23-4, 11-31-1 or 11-37-2 – 11-37-4 and on condition that the licensee will pay all costs and damages incurred by any violation of any of those chapters or sections and shall also pay to the division of taxation the license fee required by this chapter.

and (5) CLR 8, which provides in relevant part:

RULE 3 ADVERTISING LICENSE APPLICATIONS
RETAIL/WHOLESALE/MANUFACTURERS

- (a) In advertising applications for, or transfer of, an alcoholic beverage license, notice must be given once a week for two weeks on days other than Sunday or legal holidays and at least fourteen (14) days must elapse between the first publication and the date or hearing on the application.
- (b) The advertisement must include the following:
 - (1) Name of applicant (individual, corporation, limited liability company, or partnership) and the name of any person(s) owning more than 10% of the interest in the proposed license holder, if applicable;
 - (2) D/B/A (name of business);
 - (3) Address of proposed licensed premise; and
 - (4) Date, time, and place of public hearing;
- (c) The licensing authority may bill the applicant for the cost of the advertisement.
- (d) No notice shall be required for a licensee moving within the same plat and lot number.

...

RULE 7 BONDS – WHOLESALE/MANUFACTURER

The penal sums of bonds pursuant to § 3-6-13 are as follows:

Manufacturer's bond	\$5,000.00
Wholesaler's bond	
Class A	\$2,500.00
Class B	\$2,500.00

...

RULE 40 WHOLESALE/MANUFACTURER LICENSE APPLICATIONS

The applicant must:

- (a) File an application on a form or forms supplied by the Department.
- (b) Provide a secure premise for the storage of alcoholic beverages. Said premises shall have a proper repository for invoices and other documents which shall be available for inspection by the Department during normal operating hours.
- (c) Provide suitable truck transportation for delivery of alcoholic beverages if the applicant intends on transporting beverages in the course of business. Any truck used for such deliveries shall have a cab separated from the body by a permanent partition.
- (d) Provide specific information as to commitment from suppliers or manufacturers regarding product line to be sold.
- (e) Submit a copy of the Federal Basic Permit for the premises.
- (f) Identify hours of operation at the time of the hearing.

At the hearing, the Hearing Officer determined that the Applicant had satisfied all such statutory and regulatory application requirements.⁶ The Wholesaler Association did not object to or counter such determination.

The crux of the Wholesaler Association's objection to the Application is its claim that the Applicant, as an importer of wine through its affiliates, is a "manufacturer" under § 3-6-15, which prohibits a manufacturer from holding a wholesaler license. Specifically, § 3-6-15 states:

⁶ See footnote 5.

No **manufacturer** of distilled spirits or wines **whose principal place of manufacture is outside of this state** shall hold a wholesaler's license issued under this title or shall have any interest in a wholesaler's license, either directly or indirectly, as an owner or part owner, or through a subsidiary or affiliate, or by any officers, directors, or employees of the manufacturer, or by stock ownership, interlocking directors, trusteeship, loan, mortgage or by being a guarantor, endorser or surety of any obligation of a wholesaler. [Emphasis added].

In the Association's view, granting the Applicant a wholesaler's license in violation of § 3-6-15 would also violate the three-tier regulatory system described in § 3-1-6(b), which states:

If any provision of this title, or its application to any person or circumstance, is determined by a court to be invalid or unconstitutional, the remaining provisions and sections shall be construed in accordance with the intent of the general assembly to limit rather than expand commerce in alcoholic beverages and to enhance strict regulatory control over taxation, distribution, and sale of alcoholic beverages through the three-tier regulatory system imposed by this title upon all alcoholic beverages.

“It is well settled in this jurisdiction that when the language of a statute is unambiguous and expresses a clear and sensible meaning, the Court must interpret the statute literally and must give the words of the statute their plain and obvious meaning.” Bandoni v. State, 715 A.2d 580, 584 (R.I. 1998); see also Ret. Bd. of the Emples. Ret. Sys. Of R.I. v. DiPrete, 845 A.2d 270, 297 (R.I. 2004), citing State v. Bryant, 670 A.2d 776, 779 (R.I. 1996) (“when a statute expresses a clear and unambiguous meaning, the task of interpretation is at an end and this Court will apply the plain and ordinary meaning of the words set forth in the statute.”). Furthermore, “ ‘if the language is clear on its face, then the plain meaning of the statute must be given effect’ and this Court should not look elsewhere to discern the legislative intent.” Henderson v. Henderson, 818 A.2d 669, 673 (R.I. 2003), quoting Fleet National Bank v. Clark, 714 A.2d 1172, 1177 (R.I. 1998), quoting Gilbane Co. v. Poulas, 576 A.2d 1195, 1196 (R.I. 1990).

The language of § 3-6-15 is clear and unambiguous. It prohibits a manufacturer whose principal place of manufacturing is outside of Rhode Island from holding a Rhode Island

wholesaler's license. A "manufacturer" is "[a] person or entity engaged in producing or assembling new products." *Black's Law Dictionary*, 10th Edition. Under Rhode Island's alcoholic beverage laws, a manufacturer establishes and operates a brewery, distillery or winery at the licensed premises. R.I. Gen Laws § 3-6-1(a).⁷

The Applicant is a wine and spirits wholesaler. A wholesaler is "[s]omeone who buys large quantities of goods and resells them in smaller quantities to retailers or other merchants, who in turn sell them to the ultimate consumer." *Black's Law Dictionary*, 10th Edition. As described in § 3-6-10, a liquor wholesaler is authorized to "keep for sale and to sell malt and vinous beverages and distilled spirits at wholesale, at the place described in the license, to holders of licenses under this title within this state and to holders of wholesale licenses in other states and authorizes the transportation and delivery from the place of sale to those license holders or to a common carrier for that delivery." The Applicant is affiliated with out-of-state importers who are not manufacturers. An importer is "[a] person or entity that brings goods into a country from a foreign country and pays customs duties." *Id.* Pursuant to R.I. Gen. Laws § 3-1-1(9) with respect to alcoholic beverages, "[i]mport" means at one time, or in one transaction, to take, or cause to be taken, into this state from outside the state any malt beverage in excess of eight (8) gallons or any vinous beverage or any beverage consisting in whole, or in part, of alcohol produced by distillation in excess of three (3) gallons."

⁷ R.I. Gen. Laws § 3-6-1(a) states as follows:

(a) A manufacturer's license authorizes the holder to establish and operate a brewery, distillery, or winery at the place described in the license for the manufacture of beverages within this state. The license does not authorize more than one of the activities of operator of a brewery or distillery or winery and a separate license shall be required for each plant.

Application of these plain and ordinary meanings confirms that liquor manufacturers, wholesalers and importers are distinct. Under Rhode Island's liquor laws, a manufacturer creates and produces alcoholic beverages while a wholesaler purchases, resells, transports and delivers such products. An importer transports alcoholic beverages, specifically, alcoholic beverages that have been manufactured out-of-state taking them into Rhode Island. Employing the above described tenets of statutory construction, an importer is not a manufacturer for purposes of § 3-6-15.

In support of its claim that an importer should be treated as a manufacturer for purposes of § 3-6-15, the Wholesaler Association argues that CLR 8, Rule 19(b) and §§ 3-13-1(5) and 3-6-16(a) treat importers the same as manufacturers. Rule 19(b) of CLR 8 provides in relevant part:

RULE 19 IMPORTS OF ALCOHOLIC BEVERAGES
WHOLESALE/MANUFACTURER

...

(b) IMPORTER (MANUFACTURER)

(1) At Rest: All alcoholic beverages brought into the State of Rhode Island for resale shall be consigned and delivered to a licensed Rhode Island wholesaler.

(2) At the time of each shipment, a copy of the shipper's invoice bearing the date of delivery must be delivered to the Department. (3) Any change in the appointment (designation) of a Rhode Island wholesaler must be forwarded to the Department at the time of change.

Section 3-13-1(5) states in relevant part:

As used in this chapter:

...

(5) "Supplier" means any person engaged in business as a brewer, manufacturer, importer, master wholesaler, broker, or agent of malt beverages who enters into an agreement with any wholesaler in this state to distribute any or all of its brands of malt beverages, and any successor-in-interest to that entity with respect to the agreement. The term supplier does not refer to any brewer licensed under § 3-6-1.

Section 3-6-16(a) states:

The holders of wholesale licenses in this state shall purchase beverages only from the distillery, rectifier, winery or brewery manufacturing the beverages or from the importer holding the basic contract with a foreign supplier whereby that foreign supplier exports distilled spirits, wines or malt beverages into the United States. Any wholesaler, who, prior to May 16, 1975, has made regular purchases from the agent specifically designated by a distillery, rectifier, winery, brewery or importer for the express purpose of making sales of distilled spirits, wines or malt beverages to wholesalers in states other than the one in which the agent is licensed and located, may continue to make those purchases from the agent.

Just as it states, Rule 19 of CLR 8 requires that alcoholic beverages brought into Rhode Island for resale be consigned and delivered to a Rhode Island licensed wholesaler. Requiring both importers and manufacturers to comply with this Rule does not mean that importers and manufacturers be treated the same for all purposes under Title 3.

Chapter 13 of Title 3 governs Malt Beverage Supplier – Wholesaler Agreements. Section 3-13-1(15) is a definition within Chapter 13. As stated at the outset of § 3-13-1, the definitions apply to terms used in Chapter 13. To the extent that § 3-13-1(15) is applicable to interpreting § 3-6-15, including manufacturers and importers within the definition of a supplier does not mean that they are interchangeable roles that should be subject to all of the same rights and restrictions throughout Title 3.

Section 3-6-16(a) restricts a wholesaler licensee's ability to purchase alcoholic beverages to two sources, manufacturers and importers. Even though they are grouped together for this limited purpose, manufacturers and importers are recognized as distinct in the statute as evidenced by the fact that § 3-16-6(a) describes them using the disjunctive. "The holders of wholesale licenses in this state shall purchase beverages only from the distillery, rectifier, winery or brewery manufacturing the beverages **or** from the importer holding the basic contract with a foreign supplier whereby that foreign supplier exports distilled spirits, wine or malt beverages into the United States." [Emphasis added]. R.I. Gen. Laws § 3-6-16(a).

In drafting § 3-6-15, the Legislature used the phrase “**manufacturer** of distilled spirits or wines whose principal place of manufacture is outside of this state” [emphasis added] to identify those persons⁸ who are prohibited from holding a wholesaler’s license under Title 3. If it had intended to preclude issuance of wholesaler licenses to importers as well, it would have done so by including such term, just as it has included multiple persons in other provisions of Title 3 such as §§ 3-6-16(a) and 3-13-1(5). “ ‘[I]t is not within the province of th[e] court to insert in a statute words or language that does not appear therein except in those cases where it is plainly evident from the statute itself that the legislature intended that the statute contain such provisions.’ ” Callaghan v. Darlington Fabrics Corp., C.A. No. PC-2014-5680, 2017 R.I. Super. LEXIS 88, pg. 25 (R.I. Super. May 23, 2017), citing New England Die Co. v. Gen. Prods. Co., 92 R.I. 292, 298, 168 A.2d 150, 154 (1961). “Furthermore, per the maxim expressio unius est exclusion alterius, the Court infers that in explicitly including certain definitions ..., the General Assembly intended to exclude all others.” *Id.*, citing Gorman v. Gorman, 883 A.2d 732, 738 n.9 (R.I. 2005).

The Wholesaler Association cites Lawrence v. Anheuser-Busch, Inc., 523 A.2d 864, 868 (R.I. 1987) in support of its objections. Lawrence is a dram shop wrongful death case where the victim’s family sought to hold the liquor manufacturer and wholesaler liable in addition to the retailer. In rejecting the plaintiff’s claim that the retailer was acting as an agent for the manufacturer and the wholesaler, the Court was only considering that portion of the language in § 3-6-16(a) referencing wholesalers and manufacturers. *Id.* The case did not involve a liquor

⁸ R.I. Gen. Laws § 43-3-6 entitled “ ‘Person’ defined” states: “The word ‘person’ extends to and includes co-partnerships and bodies corporate and politic.”

importer and is therefore inapposite to the issue of whether an importer should be treated as a manufacturer for purposes of § 3-6-15.⁹

Lastly, the Wholesaler Association raised an objection as to the newspaper advertisement noticing the hearing. Specifically, the advertisement described the Applicant by its full corporate name “Winebow of Rhode Island, Inc.” but did not separately include the Applicant’s D/B/A, i.e. “Winebow,” as required under CLR 8, Rule 3.¹⁰ R.I. Gen. Laws § 3-5-17 entitled “Notice and hearing on licenses” provides: “[t]he advertisement shall contain the name of the applicant and a description by street and number or other plain designation of the particular location for which the license is requested.” Rule 3(b)(2) lists “D/B/A (name of business)” as a required element of the notice, in addition to the “name of the applicant.”

The notice requirements set forth in CLR 8, Rule 3 were promulgated by the Department in accordance with its authority to adopt rules and regulations to effectuate legislative intent in the realm of liquor control. As such, Rule 3 is applied on a case by case basis in a manner that is consistent with the ultimate purpose of § 3-5-17. In Edward W. Smith Estates, Inc. v. O'Dowd, 174 A.2d 676 (R.I. 1961), the Rhode Island Supreme Court found that a notice of a liquor

⁹ As a counter to the Wholesaler Association’s reliance on Lawrence, the Applicant cites C & C Distributors, Inc. v. McConaghy, C.A. No. 2001-6295, 2002 R.I. Super. LEXIS 80 (R.I. Super. June 11, 2002). In that case, the Superior Court reviewed a decision of the Department, which had approved the transfer of stock of an entity holding a Rhode Island wholesaler’s license to a Massachusetts licensed wholesaler that was engaged in rectifying activity. The appellants, other Rhode Island wholesalers, objected claiming that the transferee’s rectifying activities constitute manufacturing and that therefore the transfer would violate § 3-6-15, which prohibits an out-of-state manufacturer from holding a wholesaler’s license. After reviewing statutes pertaining to rectifying and manufacturing, the Court upheld the Department’s decision finding that “the legislature intended rectifying to be distinct from manufacturing.” *Id.*, at 11. The decision in C & C Distributors is not inconsistent with the decision in this matter.

¹⁰ RULE 3 ADVERTISING LICENSE APPLICATIONS RETAIL/WHOLESALE/MANUFACTURERS (a) In advertising applications for, or transfer of, an alcoholic beverage license, notice must be given once a week for two weeks on days other than Sunday or legal holidays and at least fourteen (14) days must elapse between the first publication and the date or hearing on the application. (b) The advertisement must include the following: (1) Name of applicant (individual, corporation, limited liability company, or partnership) and the name of any person(s) owning more than 10% of the interest in the proposed license holder, if applicable; (2) D/B/A (name of business); (3) Address of proposed licensed premise; and (4) Date, time, and place of public hearing; (c) The licensing authority may bill the applicant for the cost of the advertisement. (d) No notice shall be required for a licensee moving within the same plat and lot number.

applications was sufficient even where notice failed to list the location in precise terms because it could be readily identified from the descriptions given. This case supports a conclusion that even if a liquor license application notice is not strictly compliant with Rule 3, it is adequate if it achieves the purpose of notifying those entitled to notice of the elements set forth in the Rule. See also 58 Am. Jur. 2d Notice § 9 (“While statutory notice provisions are mandatory to avoid chaos, generally, substantial compliance with statutory notice provisions will usually be sufficient;” “[S]tatutes imposing technical requirements for a notice should not be strictly enforced where the party seeking enforcement had actual notice and cannot show prejudice as a result of the alleged failure to follow the technical requirements.”).

In the instant matter, since the D/B/A name of the Applicant’s business, “Winebow,” is included in the Applicant’s name as set forth in the advertisement, “Winebow of Rhode Island, Inc.,” the notice was sufficient to inform interested persons of both the Applicant’s name and the D/B/A of the Applicant’s business. The Wholesaler’s Association had actual notice of the hearing and has not shown any prejudice resulting from the failure to include D/B/A as a separate field in the advertisement. Lack of an express D/B/A field did not render the notice materially deficient.

VI. Findings of Fact and Conclusions of Law

1. The facts contained in Sections I, IV and V are incorporated herein as findings of fact.
2. Pursuant to R.I. Gen. Laws §§ 3-5-14.1 and 3-6-10, the Department is authorized to issue Class B wholesaler alcoholic beverage licenses.
3. The Applicant has satisfied the statutory and regulatory application requirements for a Class B wholesaler license under Title 3 and CLR 8.
4. The notice requirements under R.I. Gen. Laws § 3-5-17 have been satisfied by Applicant’s publication of a notice of application and hearing in the *Cranston Herald* on March 9 and March

16, 2017, and by evidence of certified mailings to property abutters identified on a list prepared by the Applicant.

5. The facts and legal arguments presented in opposition to the Application fail to demonstrate that the Applicant is a “manufacturer” prohibited from holding a Class B wholesaler’s license pursuant to R.I. Gen. Laws § 3-6-15.

6. Issuing a Class B wholesaler’s license to the Applicant will not violate § 3-6-15 or countermand strict regulatory control over the sale of alcoholic beverages through the three tier regulatory system under § 3-1-6(b).

VII. Decision

For the reasons stated herein, the undersigned concludes that the Application of Winebow Rhode Island, Inc. d/b/a Winebow for a Class B wholesaler’s license shall be granted and a license issued pursuant to R.I. Gen. Laws §§ 3-5-14.1 and 3-6-10. Nothing in this Decision and Order should be construed as exempting the Applicant or the property owner from compliance with all applicable federal, state and local law.

Dated: 6-8-17



Elizabeth K. Dwyer
Deputy Director, Insurance and Banking,
as Delegate for the Director of the
Department of Business Regulation

Entered as an Administrative Order this 8th day of June, 2017.

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR

COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON APPROPRIATE TERMS.

CERTIFICATION

I hereby certify on this 8 day of June, 2017, that a copy of the within Decision and Order and Notice of Appellate Rights was sent by e-mail and first class mail, postage prepaid to:

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