

DISTRICT OF COLUMBIA  
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ALCOHOLIC BEVERAGE CONTROL BOARD  
+ + + + +  
MEETING

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IN THE MATTER OF: :  
 :  
SAS Convenience, Inc., :  
t/a Shop Express : Show Cause  
3900 Benning Road, NE : Hearing  
Retailer B :  
License No. 74500 :  
Case No. 12-CMP-00587 :  
ANC 7F :  
Sold Go-Cups :  
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APRIL 17, 2013

The Alcoholic Beverage Control Board met in the Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street, N.W., Washington, D.C., Ruthanne Miller, Chairperson, presiding.

PRESENT  
RUTHANNE MILLER, Chairperson  
NICK ALBERTI, Member  
DONALD BROOKS, Member  
MIKE SILVERSTEIN, Member

ALSO PRESENT  
FERNANDO RIVERO, OAG  
BRIAN OWENS, ABRA

T-A-B-L-E O-F C-O-N-T-E-N-T-S

Opening Statement for the Government. . . . .6  
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WITNESSES

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P-R-O-C-E-E-D-I-N-G-S

11:22 a.m.

CHAIRPERSON MILLER: Okay. The last case of the morning is Case No. 12-CMP-00587, Shop Express, located at 3900 Benning Road, N.E., License No. 74500 in ANC 7F.

MR. RIVERO: Good morning, Board Members. Fernando Rivero for the District of Columbia standing in for Senior Assistant Attorney General Michael Stern.

CHAIRPERSON MILLER: Good morning.

MR. GUPTA: Hi. Good morning. I'm Anil Gupta, president of Shop Express.

CHAIRPERSON MILLER: And what's your name again?

MR. GUPTA: Anil Gupta.

CHAIRPERSON MILLER: Okay. Are you the president?

MR. GUPTA: Yes, ma'am.

CHAIRPERSON MILLER: Owner?

MR. GUPTA: Yes, ma'am.

CHAIRPERSON MILLER: Okay. Good.

1 MR. RIVERO: Brief indulgence,  
2 please?

3 CHAIRPERSON MILLER: Okay.

4 MR. RIVERO: Thank you.

5 CHAIRPERSON MILLER: Okay. This  
6 is a show cause hearing. Are there any  
7 preliminary matters?

8 MR. RIVERO: There are not. The  
9 Government is ready to move forward to a show  
10 cause hearing at this time.

11 CHAIRPERSON MILLER: Okay. And  
12 have you ever participated in a show cause  
13 hearing, or a hearing before the ABC Board?

14 MR. GUPTA: No, ma'am. This is  
15 just first time.

16 CHAIRPERSON MILLER: Okay. So let  
17 me just tell you what the procedure will be.  
18 The Government has the burden of proof, so the  
19 Government goes first. Mr. Rivero will  
20 probably make an opening statement; it's not  
21 required, just to describe what he's going to  
22 do, how he's going to prove his case.

1 MR. GUPTA: Okay.

2 CHAIRPERSON MILLER: And then you  
3 have the opportunity then to make a opening  
4 statement about your case, or you can wait  
5 until you present your case.

6 MR. GUPTA: Okay.

7 CHAIRPERSON MILLER: Because after  
8 opening statements Mr. Rivero can call  
9 witnesses or put in documents. He's got to  
10 put in his evidence.

11 MR. GUPTA: Okay.

12 CHAIRPERSON MILLER: You'll have a  
13 chance to cross-examine any witnesses. So  
14 will the Board.

15 MR. GUPTA: Okay.

16 CHAIRPERSON MILLER: And then when  
17 he's done with that, then you will have the  
18 chance to testify under oath, or present any  
19 witnesses or documents and then close. Okay.  
20 So if you have any questions --

21 MR. GUPTA: No.

22 CHAIRPERSON MILLER: -- feel free.

1 Okay. All right. Mr. Rivero?

2 MR. RIVERO: Thank you. Good  
3 morning, Board Members. We're here in the  
4 show cause matter of SAS Convenience,  
5 Incorporated, trading as Shop Express, located  
6 at 3900 Benning Road, N.E.

7 The show cause notice issued in  
8 this matter concerns the charge that the  
9 Licensee provided a quote "go-cup" with the  
10 sale of an alcoholic beverage in violation of  
11 D.C. Official Code 25-741, 2001 edition.

12 It is our belief by a  
13 preponderance of the evidence based on  
14 testimony to be presented today by ABRA  
15 Investigator Brian Owens that the Government  
16 will prove that on September 13th, 2012 the  
17 Licensee provided a go-cup to the investigator  
18 who made that purchase in an undercover  
19 capacity.

20 And of that, of course we would  
21 call the investigator.

22 CHAIRPERSON MILLER: All right.

1 Unless you want to make an opening statement  
2 at this time.

3 MR. GUPTA: Well, ma'am, we are  
4 not providing go-cup for any --

5 CHAIRPERSON MILLER: Right. Okay.  
6 You're going to have a chance to testify.

7 MR. GUPTA: Okay.

8 CHAIRPERSON MILLER: It sounds  
9 like that was testimony, so I think we should  
10 wait until your case.

11 MR. GUPTA: Okay.

12 CHAIRPERSON MILLER: All right.  
13 Go ahead.

14 MR. RIVERO: Thank you. The  
15 Government will call Investigator Brian Owens.

16 CHAIRPERSON MILLER: Okay.

17 INVESTIGATOR OWENS: Good morning.

18 CHAIRPERSON MILLER: Good morning.

19 Do you swear to tell the truth, the whole  
20 truth, nothing but the truth?

21 INVESTIGATOR OWENS: I do.

22 CHAIRPERSON MILLER: Okay. Thank

1       you.

2                   MR. RIVERO: Good morning. Would  
3       you please state your name?

4                   INVESTIGATOR OWENS: Brian Owens.

5                   MR. RIVERO: Spell your last name  
6       for the record, please?

7                   INVESTIGATOR OWENS: O-W-E-N-S.

8                   MR. RIVERO: Mr. Owens, what is  
9       your occupation?

10                  INVESTIGATOR OWENS: I'm an ABRA  
11       investigator for the Alcohol Beverage  
12       Regulation Administration.

13                  MR. RIVERO: And for how long have  
14       you worked for ABRA?

15                  INVESTIGATOR OWENS: Approximately  
16       one year, two months.

17                  MR. RIVERO: Okay. And what are  
18       your duties as an investigator?

19                  INVESTIGATOR OWENS: As an  
20       investigator I conduct inspections and  
21       investigations of all ABC-licensed  
22       establishments in the District of Columbia.

1 MR. RIVERO: Okay. And are you  
2 familiar with an establishment known as Shop  
3 Express?

4 INVESTIGATOR OWENS: Yes.

5 MR. RIVERO: And how are you  
6 familiar with this establishment?

7 INVESTIGATOR OWENS: From a visit  
8 I made at Shop Express on September 13th, 2012  
9 in an undercover capacity conducting single  
10 sales and go-cup enforcement.

11 MR. RIVERO: Okay. Please  
12 describe what happened when you conducted your  
13 visit on September 13th.

14 INVESTIGATOR OWENS: Well, on  
15 Thursday, September 13th at approximately 1:20  
16 p.m. I entered Shop Express in an undercover  
17 capacity. I went to the rear of the  
18 establishment, retrieved a bottle of MD 20-20  
19 Peaches 'N Cream and also a cup and went to  
20 the cash register where I rendered payment to  
21 a Hispanic female.

22 MR. RIVERO: Where exactly did you

1 find this bottle?

2 INVESTIGATOR OWENS: It was in the  
3 rear cooler. It was a wall cooler. Majority  
4 of the coolers have locks on them, so actually  
5 there was a male employee who was restocking  
6 kind of behind the coolers where you had to  
7 knock on the door and he would get you -- he  
8 would grab the bottle of MD 20-20. And so  
9 when I got the bottle of MD 20-20, I turned  
10 around --

11 MR. RIVERO: Is that what you did?

12 INVESTIGATOR OWENS: Yes.

13 MR. RIVERO: Explain.

14 INVESTIGATOR OWENS: Okay. And so  
15 once I got the bottle, I turned around and  
16 retrieved a cup from a coffee/Slushee station.

17 MR. RIVERO: Where is that station  
18 located?

19 INVESTIGATOR OWENS: Right  
20 adjacent to the rear wall of the cooler. It's  
21 right across from it. And so I turned  
22 directly around, stepped maybe one, two paces,

1       retrieved the cup and then I went to the  
2       counter and rendered payment to a Hispanic  
3       female.

4                   MR. RIVERO:   Okay.   And then what  
5       did you do?

6                   INVESTIGATOR OWENS:   I then exited  
7       the establishment.

8                   MR. RIVERO:   Okay.   I'm going to  
9       go ahead and show you a bottle and a cup that  
10      are bound together by a rubber band.

11                   I'm going to approach and make  
12      sure that the Licensee a look at it.

13                   Clearly visible to Board Members.

14                   Can you tell me about this bottle?  
15      Is this the bottle you testified to?

16                   INVESTIGATOR OWENS:   Yes, it is.

17                   MR. RIVERO:   How do you know?

18                   INVESTIGATOR OWENS:   Because of  
19      the flavor, the size and I also label by cups  
20      and bottles after I leave the establishment so  
21      that I don't mix the cups and the evidence up  
22      while I'm conducting single sales for that

1 day.

2 MR. RIVERO: Okay. So you  
3 testified there's a label on the bottle?

4 INVESTIGATOR OWENS: Yes.

5 MR. RIVERO: There's handwriting  
6 on the label. Is that your handwriting?

7 INVESTIGATOR OWENS: Yes, it is.

8 MR. RIVERO: Okay. What did you  
9 write?

10 INVESTIGATOR OWENS: Shop Express,  
11 License No. 74500, 9/13/12, go-cup, Peaches 'N  
12 Cream, MD 20-20.

13 MR. RIVERO: All right. There's a  
14 cup also --

15 INVESTIGATOR OWENS: Yes.

16 MR. RIVERO: -- bound by a rubber  
17 band to this. Okay. And there appears to be  
18 a label there?

19 INVESTIGATOR OWENS: Yes.

20 MR. RIVERO: Read the label.

21 INVESTIGATOR OWENS: Shop Express,  
22 go-cup, License No. 74500, trade name Shop

1 Express, date of sale 9/13/12.

2 MR. RIVERO: Is this the cup that  
3 you were testifying about just a moment ago?

4 INVESTIGATOR OWENS: Yes.

5 MR. RIVERO: The actual items are  
6 available here for inspection. We're not  
7 entering them into evidence at this time, but  
8 they're available.

9 When you left the establishment --

10 INVESTIGATOR OWENS: Yes?

11 MR. RIVERO: -- with the bottle  
12 and the cup, what did you do or where did you  
13 go?

14 INVESTIGATOR OWENS: After that I  
15 may have conducted some more single sales that  
16 day, but at the end of my day I went to ABRA,  
17 filled out a transmittal sheet and submitted  
18 the evidence for the cup and the bottle of MD  
19 20-20.

20 MR. RIVERO: Okay. You  
21 submitted --

22 INVESTIGATOR OWENS: For storage.

1 MR. RIVERO: -- the evidence --

2 INVESTIGATOR OWENS: Yes, in the  
3 storage.

4 MR. RIVERO: -- to whom?

5 INVESTIGATOR OWENS: Chief Johnnie  
6 Jackson.

7 MR. RIVERO: And what do you mean  
8 by storage?

9 INVESTIGATOR OWENS: We have an  
10 evidence locker where evidence is stored once  
11 we fill out an evidence transmittal sheet.  
12 And that's where it's stored until a hearing  
13 date in a show cause hearing such as today is  
14 held.

15 MR. RIVERO: Okay. All right. No  
16 further questions at this time.

17 CHAIRPERSON MILLER: Okay. Sir,  
18 do you have any questions you'd like to ask  
19 Mr. Owens related to his testimony?

20 MR. GUPTA: Well, when did you  
21 purchase this bottle, and then you when you  
22 went in and showed the manager that you

1 purchase this and you got this cup also with  
2 that?

3 INVESTIGATOR OWENS: I didn't show  
4 the -- well, can you repeat that question  
5 again?

6 CHAIRPERSON MILLER: Yes.

7 MR. GUPTA: Okay. The day you  
8 purchase the bottle --

9 INVESTIGATOR OWENS: Yes.

10 MR. GUPTA: -- received by -- and  
11 when you went out --

12 INVESTIGATOR OWENS: Yes.

13 MR. GUPTA: -- you came in and  
14 show the manager on duty that?

15 INVESTIGATOR OWENS: No, I did  
16 not. Actually the citation -- the store was  
17 notified the next day on the 14th, that  
18 Friday --

19 MR. GUPTA: Okay.

20 INVESTIGATOR OWENS: -- by another  
21 investigator. Because I was in an undercover  
22 capacity, I did not go back in the store and

1 show them that a violation was made. Another  
2 investigator, Earl Jones, entered the  
3 establishment the following day and wrote a  
4 citation for the violation that was found for  
5 the go-cup and bottle.

6 MR. GUPTA: Yes, I would like to  
7 say something. Yes, this is a --

8 CHAIRPERSON MILLER: Wait. Okay.  
9 This is the way it goes in this process. You  
10 are going to have a chance to testify --

11 MR. GUPTA: Okay.

12 CHAIRPERSON MILLER: -- and make  
13 statements.

14 MR. GUPTA: Okay. But --

15 CHAIRPERSON MILLER: Okay. This  
16 is only questions.

17 MR. GUPTA: There is no question.

18 CHAIRPERSON MILLER: Okay. All  
19 right. Board questions? Mr. Alberti?

20 MEMBER ALBERTI: Investigator  
21 Owens?

22 INVESTIGATOR OWENS: Yes?

1                   MEMBER ALBERTI: Good morning.  
2           It's still morning. Okay. Can you just  
3           describe the counter where you paid for your  
4           purchases at this establishment?

5                   INVESTIGATOR OWENS: Oh, okay. So  
6           if my memory serves me, you have the cashier's  
7           counter.

8                   MEMBER ALBERTI: Yes.

9                   INVESTIGATOR OWENS: Which is  
10          right by the entrance door. Above it I would  
11          like to say that there -- it may be an  
12          inventory of where normally cigarettes are  
13          stored above the counter. To the right of it  
14          may have been the lottery stand, or the  
15          lottery machine where they input for lottery,  
16          if I'm not mistaken. And then also there was  
17          a food heating display, but there was no food  
18          in that particular day.

19                   MEMBER ALBERTI: Okay. Let me  
20          focus. So is this a store that has an open  
21          counter, or is there --

22                   INVESTIGATOR OWENS: Yes, it has

1 an open counter.

2 MEMBER ALBERTI: So there's no  
3 plexiglass?

4 INVESTIGATOR OWENS: No  
5 plexiglass, no.

6 MEMBER ALBERTI: Okay. So and is  
7 there a counter?

8 INVESTIGATOR OWENS: Yes.

9 MEMBER ALBERTI: That sits right  
10 there between you and the employee?

11 INVESTIGATOR OWENS: Yes, it is.  
12 It's very open and very personal.

13 MEMBER ALBERTI: Okay. So  
14 describe to me what you did after you took the  
15 bottle. You got the bottle from an employee?

16 INVESTIGATOR OWENS: Yes.

17 MEMBER ALBERTI: And then you  
18 picked up the styrofoam cup from a display  
19 that had loose cups in it?

20 INVESTIGATOR OWENS: Yes.

21 MEMBER ALBERTI: Is that correct?

22 INVESTIGATOR OWENS: Yes.

1                   MEMBER ALBERTI: All right. What  
2 else is in that display there where the  
3 styrofoam cup was?

4                   INVESTIGATOR OWENS: It was pretty  
5 much coffee accessories, sugar, the stir  
6 straws. There was two Slushee machines, if  
7 I'm not mistaken. And then there was also,  
8 you know, the coffee dispensaries as well.  
9 And there were other different cups.

10                  MEMBER ALBERTI: Okay. And is  
11 that a self-service?

12                  INVESTIGATOR OWENS: Yes.

13                  MEMBER ALBERTI: Okay. It's a  
14 self-service station? Okay. So when you get  
15 to the counter, you come to the front of the  
16 store, you get to the counter, what did you  
17 do?

18                  INVESTIGATOR OWENS: Actually I  
19 kind of waited behind -- I believe there was  
20 another customer before me. And once they  
21 rendered payment, I came to the counter,  
22 showed that I had the MD 20-20 and the cup and

1 said that I would like to purchase, make a  
2 purchase. I would like to purchase the cup  
3 and the MD 20-20. And I set -- normally I set  
4 the cup in front of the bottle.

5 MEMBER ALBERTI: And you did that  
6 this time?

7 INVESTIGATOR OWENS: Yes.

8 MEMBER ALBERTI: And did you  
9 verbally tell them that you wanted the cup?

10 INVESTIGATOR OWENS: Yes.

11 MEMBER ALBERTI: Do you know if  
12 there was a charge for the cup?

13 INVESTIGATOR OWENS: No, I can't  
14 remember the charge for the cup and the  
15 bottle.

16 MEMBER ALBERTI: I mean do you  
17 know if there was a separate charge?

18 INVESTIGATOR OWENS: Oh, no.

19 MEMBER ALBERTI: Did you look at  
20 the receipt?

21 INVESTIGATOR OWENS: I didn't get  
22 a receipt either.

1 MEMBER ALBERTI: Okay.

2 INVESTIGATOR OWENS: Yes.

3 MEMBER ALBERTI: But are you  
4 certain that the clerk was aware of the cup?

5 INVESTIGATOR OWENS: Yes.

6 MEMBER ALBERTI: How can you be  
7 certain?

8 INVESTIGATOR OWENS: I made every  
9 effort to display it right there in front of  
10 her. I made sure it wasn't hidden behind a  
11 bottle for dispute. It wasn't to the side.  
12 It was strictly in front of the cup. Just as  
13 it's displayed on the counter, it was made  
14 distinctly that the cup was with the bottle.

15 MEMBER ALBERTI: Okay. Thank you.

16 INVESTIGATOR OWENS: I set the cup  
17 down and then bottle behind it.

18 MEMBER ALBERTI: Okay. No further  
19 questions.

20 CHAIRPERSON MILLER: Others?

21 (No audible response.)

22 CHAIRPERSON MILLER: Mr. Owens, so

1       you didn't ask an employee for a cup to go  
2       with the liquor?

3                   INVESTIGATOR OWENS:  No, I did  
4       not.

5                   CHAIRPERSON MILLER:  And this cup  
6       was with slush drinks?

7                   INVESTIGATOR OWENS:  Yes, Slurpees  
8       or Slushees.

9                   CHAIRPERSON MILLER:  Slurpees or  
10      things like that?

11                  INVESTIGATOR OWENS:  Yes,  
12      Slurpees/Slushees.

13                  CHAIRPERSON MILLER:  Okay.  And  
14      were there also styrofoam cups or something  
15      for coffee?

16                  INVESTIGATOR OWENS:  Yes.

17                  CHAIRPERSON MILLER:  Okay.  So you  
18      just --

19                  INVESTIGATOR OWENS:  This was the  
20      primary cup though.

21                  CHAIRPERSON MILLER:  That's the  
22      cup that you --

1                   INVESTIGATOR OWENS: The primary  
2 cup for coffee.

3                   CHAIRPERSON MILLER: -- picked up?  
4 Okay. So there was no conversation about the  
5 cup?

6                   INVESTIGATOR OWENS: No.

7                   CHAIRPERSON MILLER: Okay. And  
8 you're not clear whether there was any charge  
9 for the cup?

10                  INVESTIGATOR OWENS: No.

11                  CHAIRPERSON MILLER: Okay. All  
12 right. Others?

13                               (No audible response.)

14                  CHAIRPERSON MILLER: Any redirect  
15 based on Board questions?

16                  MR. RIVERO: Mr. Owens?

17                  INVESTIGATOR OWENS: Yes.

18                  MR. RIVERO: It isn't normally  
19 your practice to ask for a receipt when you  
20 are in an undercover capacity, is it?

21                  INVESTIGATOR OWENS: No, I do not.

22                  MR. RIVERO: Thank you.

1 CHAIRPERSON MILLER: Do you have a  
2 question based on this?

3 MR. GUPTA: Yes.

4 CHAIRPERSON MILLER: Okay.

5 MR. GUPTA: When you put the cup  
6 you have any idea how much did you pay for  
7 this?

8 INVESTIGATOR OWENS: For the both  
9 items?

10 MR. GUPTA: For the both.

11 INVESTIGATOR OWENS: It was -- I'd  
12 be guessing. No.

13 MR. GUPTA: Because I --

14 CHAIRPERSON MILLER: Okay. It's  
15 not --

16 MR. GUPTA: All right. Yes.  
17 Okay.

18 CHAIRPERSON MILLER: You'll have  
19 your chance.

20 MR. GUPTA: Okay. All right.  
21 Sorry.

22 CHAIRPERSON MILLER: Okay.

1 MR. GUPTA: First time, you know,  
2 so --

3 CHAIRPERSON MILLER: That's all  
4 right. Any other questions?

5 MR. GUPTA: No.

6 CHAIRPERSON MILLER: All right.  
7 Thank you very much.

8 INVESTIGATOR OWENS: All right.  
9 Thank you.

10 MR. RIVERO: No further  
11 witnesses --

12 CHAIRPERSON MILLER: Okay.

13 MR. RIVERO: -- or documents to  
14 present.

15 CHAIRPERSON MILLER: Okay. All  
16 right. Now it's your time to put on your  
17 case. I'm going to swear you in because I'm  
18 pretty sure you want to testify, correct?

19 MR. GUPTA: Yes.

20 CHAIRPERSON MILLER: Okay. Do you  
21 swear to tell the truth, the whole truth,  
22 nothing but the truth?

1 MR. GUPTA: I do.

2 CHAIRPERSON MILLER: Okay. So if  
3 you want to have access to your documents or  
4 whatever, you can stay there, if you prefer.

5 MR. GUPTA: No, I'd just like to  
6 say I don't have to show anything. Actually,  
7 you know, my beer and this alcohol, those, and  
8 then just after that there is a coffee table,  
9 self-serving. And we do have a Slurpee also,  
10 but we don't have self-service for Slurpee  
11 cups. We have behind the counter. So if  
12 somebody wants to purchase a Slurpee, then  
13 need to go to the cashier first, pay them, and  
14 then get the cup. That is a different cup.  
15 This cup is just for the coffee and it is just  
16 next to the beer door, you know, not far from  
17 there.

18 And I am sure if he present both  
19 thing on the counter, he had paid for the  
20 coffee also. Because sometimes customers  
21 bring and when they are brewing fresh coffee,  
22 so cashier assume he wanted coffee and this

1 and they charge for both. But we are not  
2 serving to-go cup with the beer or anything.  
3 So I am sure she charged for this bottle as  
4 well as coffee also, large coffee.

5 CHAIRPERSON MILLER: Okay. Did  
6 you have more to say or --

7 MR. GUPTA: Well, yes. And  
8 regarding like -- well, he present this for so  
9 many time, you know, we are in a rough  
10 neighborhood, ma'am, in Minnesota and Benning  
11 Road, and I know sometime when I check my  
12 inventory I realize, you know, I have loose  
13 stuff missing. We did not sell that much  
14 coffee. But I don't have any control. I  
15 cannot put coffee cups behind the counter and  
16 customer pay first and then we give it to them  
17 then. We try our best, you know?

18 CHAIRPERSON MILLER: Okay.

19 MR. GUPTA: That's all.

20 CHAIRPERSON MILLER: Okay. Do you  
21 have any questions, Mr. Rivero?

22 MR. RIVERO: I do have a small

1 question on cross-examination, but I just want  
2 to put it out there that I intend to recall a  
3 witness.

4 CHAIRPERSON MILLER: You're going  
5 to recall a witness who already listened to --

6 MR. RIVERO: The witness was not  
7 in the room.

8 CHAIRPERSON MILLER: Huh?

9 MR. RIVERO: The witness was not  
10 in the room.

11 CHAIRPERSON MILLER: The witness  
12 was not in the room?

13 MR. RIVERO: No.

14 CHAIRPERSON MILLER: Okay. Fine.  
15 All right.

16 MR. RIVERO: What did you mean by  
17 a rough neighborhood?

18 MR. GUPTA: We have a people, you  
19 know, they're just grabbing cups. Sometime  
20 people they are showing and sometime they are  
21 hiding. Even beers, you know, they are  
22 stealing beer. So many time we see -- are

1 supposed to sell the two beers pack, right?

2 And so many times there is a beer is missing,  
3 you know? So like --

4 MR. RIVERO: You don't have any  
5 plexiglass or --

6 MR. GUPTA: No.

7 MR. RIVERO: -- bulletproof  
8 glass --

9 MR. GUPTA: No, no.

10 MR. RIVERO: -- to protect your  
11 clerk?

12 MR. GUPTA: No, sir. This is just  
13 like a -- design like a 7-Eleven store. So  
14 everybody's self-serving. And most of the  
15 time because of -- as the investigator says,  
16 he knock the door and ask for this -- because  
17 we had stealing problems, so wine and these  
18 kind drink, they have to go to the cashier and  
19 somebody go in and grab it. We lock. Just we  
20 open beer door only, because we have a lot of  
21 a stealing problem.

22 MR. RIVERO: No further questions.

1 CHAIRPERSON MILLER: Okay. Board  
2 questions?

3 MEMBER ALBERTI: Yes, may I ask a  
4 question?

5 CHAIRPERSON MILLER: Yes.

6 MEMBER ALBERTI: So, Mr. Gupta?

7 MR. GUPTA: Yes, sir?

8 MEMBER ALBERTI: So you sell both  
9 Slurpees and coffee in those cups?

10 MR. GUPTA: No, this is a coffee  
11 cup, sir. And Slurpee cup we have behind the  
12 counter. If you need Slurpee, you have to go  
13 to the cashier, pay first and then they will  
14 give different cup.

15 MEMBER ALBERTI: Okay. So this is  
16 just --

17 MR. GUPTA: This is just the  
18 coffee, sir.

19 MEMBER ALBERTI: This is just a  
20 coffee cup?

21 MR. GUPTA: Yes, sir.

22 MEMBER ALBERTI: Okay. No further

1 questions right now.

2 MR. GUPTA: And we don't have any  
3 one loose soft drink, you know, not anymore.  
4 No drinks.

5 CHAIRPERSON MILLER: How do we  
6 know it's a coffee cup and not a Slurpee cup?

7 MR. GUPTA: Well, like we have --  
8 Slurpee is a separate cup. This is Slurpee.  
9 And there's a different lid on it, so people  
10 they put the lid on the cup, empty cup and  
11 they fill Slurpee easily. And this is -- we  
12 have three size, I believe, and this design,  
13 this is just for the coffee only.

14 CHAIRPERSON MILLER: So that's a  
15 large coffee, right?

16 MR. GUPTA: This is a large  
17 coffee. Yes, ma'am.

18 CHAIRPERSON MILLER: So when  
19 customers buy coffee from you, they can grab  
20 one of those cups that's near the coffee  
21 stand?

22 MR. GUPTA: Self-serve. Yes.

1 Yes, ma'am.

2 CHAIRPERSON MILLER: And just tell  
3 you they're doing coffee?

4 MR. GUPTA: Yes.

5 CHAIRPERSON MILLER: And does  
6 someone have to ask an employee for the  
7 liquor?

8 MR. GUPTA: No.

9 CHAIRPERSON MILLER: That bottle,  
10 that type of liquor? That's right off the  
11 shelf?

12 MR. GUPTA: No, this kind liquor,  
13 they have to go to the employee, wine and  
14 thing. Beer, they can take themselves. But  
15 these kind thing, they have to do -- go to the  
16 cashier. As the investigator says, he knocked  
17 the door and they brought out. So, yes,  
18 because we had a lot of stealing problem. We  
19 see lot of short inventory. So we decided to  
20 put a lock on this.

21 CHAIRPERSON MILLER: Okay. So  
22 when your employees see that cup, they don't

1 ask about it? They just assume it's a large  
2 coffee?

3 MR. GUPTA: Yes, ma'am. And she  
4 charge for the coffee, large coffee.

5 CHAIRPERSON MILLER: Okay.

6 MR. GUPTA: Just I'm assuming.  
7 I'm not sure, but if officer says he present  
8 at the counter, then I'm sure she charged for  
9 these both.

10 CHAIRPERSON MILLER: Does that  
11 come with lids also for the coffee?

12 MR. GUPTA: Lids is right there  
13 nearby the coffee cup. Yes, ma'am.

14 CHAIRPERSON MILLER: Okay. And  
15 how long have you been in business?

16 MR. GUPTA: On that particular  
17 place I'm in 2006, ma'am.

18 CHAIRPERSON MILLER: Yes.

19 MR. GUPTA: 2006.

20 CHAIRPERSON MILLER: Since 2006?

21 MR. GUPTA: Yes, ma'am.

22 CHAIRPERSON MILLER: Okay.

1                   MEMBER ALBERTI: May I just follow  
2 up, please?

3                   CHAIRPERSON MILLER: Sure. Yes.

4                   MEMBER ALBERTI: Mr. Gupta?

5                   MR. GUPTA: Yes?

6                   MEMBER ALBERTI: Do you know who  
7 was on duty that day of this --

8                   MR. GUPTA: As he mentioned I now  
9 the Hispanic girl. And then my manager was  
10 also there.

11                  MEMBER ALBERTI: So you had two  
12 employees there?

13                  MR. GUPTA: No, we have other  
14 employee who --

15                  MEMBER ALBERTI: I know, but do  
16 you know who was there that day?

17                  MR. GUPTA: Oh, yes. As he  
18 mention, you know, the lady, I know who is  
19 she.

20                  MEMBER ALBERTI: Who know it was?  
21 You know who served him?

22                  MR. GUPTA: No, no, I don't know.

1 I was not there, sir.

2 MEMBER ALBERTI: Okay. You were  
3 not there?

4 MR. GUPTA: I was not there, yes.

5 MEMBER ALBERTI: Do you know who  
6 was on duty that day?

7 MR. GUPTA: Yes, I know.

8 MEMBER ALBERTI: Okay. How many  
9 people were on duty besides yourself that day?

10 MR. GUPTA: I'm not sure. Maybe  
11 three people. One is filling the cooler and  
12 two people are at the counter.

13 MEMBER ALBERTI: Okay. So the  
14 person who's filling the cooler, are they ever  
15 a cashier at the counter?

16 MR. GUPTA: Yes. I don't know who  
17 was that person who was filling the cooler,  
18 but yes, he serve and the counter, too, yes.

19 MEMBER ALBERTI: Okay. Of your  
20 employees that are regularly there, how long  
21 have they been there?

22 MR. GUPTA: The lady, she has been

1       there for almost six years.

2                   MEMBER ALBERTI:   Okay.

3                   MR. GUPTA:   And the guy, he's  
4       since I have that store.  And I don't know who  
5       was the third employee who was filling the  
6       cooler.  Yes, I have no idea, sir.

7                   MEMBER ALBERTI:   What's the  
8       shortest time any of your employees have been  
9       there who might have been there that day?

10                  MR. GUPTA:   I don't know, sir.  I  
11       don't know.  I'm involved in other businesses  
12       also, so I go just for two, three, four hours  
13       in the morning.  That's what I'm doing.  So I  
14       don't know who was --

15                  MEMBER ALBERTI:   Who does the  
16       hiring?

17                  MR. GUPTA:   Excuse me?

18                  MEMBER ALBERTI:   Who does the  
19       hiring?

20                  MR. GUPTA:   I does.  I do.  And my  
21       manager also do the hiring.

22                  MEMBER ALBERTI:   Okay.  I have no

1 further questions. Thank you.

2 CHAIRPERSON MILLER: Were you  
3 aware of this go-cup law?

4 MR. GUPTA: I know. We are not  
5 providing with the beer any cup. If sometime  
6 they bring it, we take the cup back and we  
7 sell the beer. If they buy wine, if they  
8 don't. That's why, and they can leave it.

9 CHAIRPERSON MILLER: Okay.

10 MR. GUPTA: Because I remember in  
11 past we had a problem. People are buying ice  
12 from us and then later on they're coming in  
13 and buying a beer. So we decide not to sell  
14 anymore ice. We stop selling ice almost five  
15 years back. Same thing we did it -- we have  
16 a fountain drink. We are not selling anymore  
17 fountain drink either.

18 CHAIRPERSON MILLER: Okay. Any  
19 other questions?

20 (No audible response.)

21 CHAIRPERSON MILLER: Any questions  
22 based on Board questions?

1 (No audible response.)

2 CHAIRPERSON MILLER: Okay.

3 Anything else you want to say before we end  
4 it?

5 (No audible response.)

6 CHAIRPERSON MILLER: Okay. Any  
7 other evidence anyone wants to put in the  
8 record?

9 MR. RIVERO: Yes, the Government  
10 would recall Investigator Owens at this time.

11 CHAIRPERSON MILLER: Okay. And  
12 Mr. Owens was out of the room?

13 MR. RIVERO: Correct.

14 CHAIRPERSON MILLER: He was just  
15 in the room for this. It's not related to  
16 this present testimony?

17 MR. RIVERO: I asked him to be  
18 brought in because when I turned around he was  
19 not there. He left the room after he  
20 testified.

21 CHAIRPERSON MILLER: Okay. You're  
22 under oath. Okay?

1 INVESTIGATOR OWENS: Okay.

2 MR. RIVERO: Investigator Owens,  
3 when you got the cup from the location where  
4 the cup was --

5 INVESTIGATOR OWENS: Yes.

6 MR. RIVERO: -- from that point to  
7 the counter did you put any liquid in the cup?

8 INVESTIGATOR OWENS: No, I did  
9 not.

10 MR. RIVERO: Did you exit the  
11 establishment with any liquid in the cup?

12 INVESTIGATOR OWENS: No, I did  
13 not.

14 MR. RIVERO: No further questions.

15 CHAIRPERSON MILLER: Okay. Any  
16 questions for him? Any Board questions?

17 MEMBER ALBERTI: Did anyone ask  
18 you what the purpose of the cup was?

19 INVESTIGATOR OWENS: No, they did  
20 not.

21 MEMBER ALBERTI: Thank you.

22 CHAIRPERSON MILLER: Okay. Thank

1 you. Any other evidence anybody wants to put  
2 into the record?

3 (No audible response.)

4 CHAIRPERSON MILLER: Okay. Do you  
5 want to make a closing, Mr. Rivero?

6 MR. RIVERO: Thank you very much.

7 CHAIRPERSON MILLER: Okay.

8 MR. RIVERO: Unless this Board  
9 wishes to engage in novel interpretations of  
10 the law, it cannot be that the Government  
11 failed to prove its case today.

12 The Licensee provided a go-cup  
13 with the purchase of an alcoholic beverage.  
14 It doesn't matter that the cup was not  
15 separately charged. That could have been the  
16 case. It could have been given for free. A  
17 cup that accompanies the purchase of an  
18 alcoholic beverage is a go-cup as the law  
19 defines it.

20 It may be that the Licensee was  
21 aware of the concept of a go-cup and  
22 understood, as the Licensee testified, that

1 absolutely go-cups are not provided with the  
2 purchase of beer and wine, as was testified.  
3 We don't have beer and wine in question here.  
4 It could just simply be that the employee made  
5 a mistake and let the cup go, but the cup is  
6 clearly presented with the bottle. The cup  
7 accompanied the purchase. And as such under  
8 the law that was a go-cup.

9 Now, it doesn't matter who was on  
10 the other side of the counter. It could have  
11 been a Hispanic female. It could have been  
12 black male. It could have been a white  
13 female. It could have been anybody. The  
14 person was an employee. There has been no  
15 testimony to indicate that some rogue  
16 individual or some customer or somebody who is  
17 not connected to the establishment provided  
18 that go-cup.

19 As such, the only testimony that  
20 you have is that a person connected with the  
21 Licensee, and hence the Licensee, provided a  
22 go-cup by having the go-cup leave the

1 establishment clearly accompanying a bottle at  
2 the time of purchase.

3 And that's it. That's our case.  
4 And whether the Board wishes to do anything  
5 beyond that, the evidence is here. The  
6 evidence is actually more than a preponderance  
7 at this point. And we rest on that evidence  
8 today.

9 CHAIRPERSON MILLER: Okay. Would  
10 you like to make a closing argument?

11 MR. GUPTA: Yes, ma'am.

12 CHAIRPERSON MILLER: Okay.

13 MR. GUPTA: First of all, I would  
14 like to say, like when I said beer and wine,  
15 I was considering it as a wine because I don't  
16 drink and so I have no idea the difference  
17 between this one and wine, you know? That was  
18 my point.

19 And second, the lady who's -- I  
20 have only lady. She's been us with almost  
21 five, six year and she had worked before in  
22 another store. And that store close and she

1 was there for six, seven year. And she was  
2 serving like, you know, beer and wine over  
3 there also. So this is very unlikely. You  
4 know, if she made that mistake or whatever,  
5 no. But that's unlikely. And I'm assuming,  
6 I'm not sure, she's charged for large coffee.  
7 And if you check my records since 2006 until  
8 date, we don't have any record like this kind  
9 issue. This was first time. That's it.

10 CHAIRPERSON MILLER: Okay. All  
11 right. I'm going to close the record now  
12 then. No more evidence will be put in. Last  
13 call.

14 (No audible response.)

15 CHAIRPERSON MILLER: Okay. Do the  
16 parties want to file proposed findings of fact  
17 and conclusions of law, or waive their right  
18 to do so?

19 MR. RIVERO: The Government  
20 waives.

21 CHAIRPERSON MILLER: Okay. Do you  
22 understand the question?

1 MR. GUPTA: No.

2 CHAIRPERSON MILLER: Okay. You  
3 have a right to file written proposed findings  
4 of fact based on this hearing and evidence  
5 that was admitted, which would be found in a  
6 transcript of the hearing, which would come  
7 out in a couple weeks.

8 MR. GUPTA: Okay.

9 CHAIRPERSON MILLER: It's a  
10 written document. It's like a legal argument.  
11 You would identify findings of fact in your  
12 favor and then cite the law as to why the law  
13 would be in your favor based on those facts.  
14 Most parties do not choose to do this, but  
15 they have a right to if they want to.

16 MR. GUPTA: Okay.

17 CHAIRPERSON MILLER: So Mr. Rivero  
18 said no, he doesn't choose to do that.

19 MR. GUPTA: Okay.

20 CHAIRPERSON MILLER: So what would  
21 you like to do?

22 MR. GUPTA: (No audible response.)

1 CHAIRPERSON MILLER: You can ask  
2 me a question if you don't understand.

3 MR. GUPTA: No, I don't know. No,  
4 this upon you, ma'am. As I said, my record is  
5 neat and clean. My record is since 2006 and  
6 we never made these kind of things, you know?  
7 And how this thing happen, I have no idea, in  
8 September. I just your consideration, if I  
9 can get a warning or leave this time and --

10 MR. RIVERO: Brief indulgence?  
11 Thank you.

12 CHAIRPERSON MILLER: Okay. Thank  
13 you.

14 MR. GUPTA: Yes, I just waive, you  
15 know?

16 CHAIRPERSON MILLER: Okay.

17 MR. GUPTA: Thank you.

18 CHAIRPERSON MILLER: Thank you.

19 MR. GUPTA: Yes.

20 CHAIRPERSON MILLER: All right.

21 So that's that. The Board's going to issue a  
22 written decision within 90 days.

1                   And I'm going to read and the  
2                   Board's going to vote deliberating this in  
3                   executive session. You don't have to wait for  
4                   that if you don't want to, or you can listen.  
5                   Okay?

6                   As Chairperson of the Alcoholic  
7                   Beverage Control Board for the District of  
8                   Columbia and in accordance with Section 405 of  
9                   the Open Meetings Amendment Act of 2010, I  
10                  move that the ABC Board hold a closed meeting  
11                  for the purpose of seeking legal advice from  
12                  our counsel on Case No. 12-CMP-00587, Shop  
13                  Express, per Section 405(b)(4) of the Open  
14                  Meetings Amendment Act of 2010 and  
15                  deliberating upon this case for the reasons  
16                  cited in Section 405(b)(13) of the Open  
17                  Meetings Amendment Act of 2010.

18                  Is there a second?

19                  MEMBER BROOKS: Second.

20                  CHAIRPERSON MILLER: Mr. Brooks  
21                  has seconded the motion. I'll now take a roll  
22                  call vote on the motion now that it's been

1 seconded. Mr. Brooks?

2 MEMBER BROOKS: I agree.

3 CHAIRPERSON MILLER: Mr. Alberti?

4 MEMBER ALBERTI: I agree.

5 CHAIRPERSON MILLER: Ms. Miller

6 agrees. Mr. Silverstein?

7 MEMBER SILVERSTEIN: I agree.

8 CHAIRPERSON MILLER: The motion  
9 has passed by a vote of 4-0-0. I hereby give  
10 notice that the ABC Board will hold a closed  
11 meeting in the ABC Board conference room today  
12 pursuant to the Open Meetings Amendment Act of  
13 2010 and issue an order within 90 days.

14 Thank you very much.

15 MR. RIVERO: Thank you.

16 CHAIRPERSON MILLER: I believe  
17 that that concludes all the cases for hearing  
18 on our morning calendar and the Board will  
19 take a recess now.

20 (Whereupon, the hearing was  
21 concluded at 11:54 a.m.)  
22

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