

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of:)	
)	
Washington Restaurants, LLC)	License No. 81339
t/a Buddha Bar)	Order No. 2012-166
)	
<i>Holder of a</i>)	
<i>Retailer's Class CR License</i>)	
at premises)	
455 Massachusetts Avenue, N.W.)	
Washington, D.C. 20001)	
)	

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Jeannette Mobley, Member

ALSO PRESENT: Washington Restaurants, LLC, t/a Buddha Bar, Licensee

Andre Barlow Esq., of the firm Doyle, Barlow, & Mazard, PLLC,
on behalf of the Licensee

Rosemarie Salguero, Esq., of the firm Doyle, Barlow, & Mazard,
PLLC, on behalf of the Licensee

Anna Don, Owner, on behalf of the Licensee

Shelley Galloway, General Manager, on behalf of the Licensee

Jabriel Shakoor, Investigator
Alcoholic Beverage Regulation Administration

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ADVISORY OPINION AND ORDER

On May 26, 2010, the Alcoholic Beverage Control Board (Board) determined that Washington Restaurants, LLC, t/a Buddha Bar, (Licensee) did not require an Entertainment Endorsement if it merely played music from CDs, no dancing occurred, and employees operating the music did not communicate with patrons. Fact Finding File

No. 11-CMP-00563, Letter From Licensing Specialist, Alcoholic Beverage Regulation Administration, to Rosemarie Salguero, Law Clerk, Doyle, Barlow, & Mazard, PLLC (Apr. 6, 2011) (April 6 Letter); Board Agenda, May 26, 2010 at 6.

In Case Report No. 11-CMP-00563, Alcoholic Beverage Regulation Administration (ABRA) Investigator, Jabriel Shakoor indicated that the nature of the Licensee's music operations require an Entertainment Endorsement.

In response to Investigator Shakoor's report, the Board ordered the Licensee to appear at a Fact Finding Hearing on April 4, 2012, so that the Board could determine whether it should reconsider the exemption from the Entertainment Endorsement requirement granted on May 26, 2010.

Based on our review of the facts and the law, we find that the Board's decision on May 26, 2010, does not reflect the Licensee's actual operations. Presently, the Licensee's music arrangements constitute entertainment under § 25-101(21A). Therefore, if the Licensee wishes to continue its present operations, it must apply for and receive an Entertainment Endorsement from the Board. Our reasoning is explained further below.

FINDINGS OF FACT

1. On May 26, 2010, the Board determined that the Licensee, the holder of a Retailer's Class CR License, did not require an Entertainment Endorsement if it merely played music from CDs, no dancing occurred, and employees operating the music did not communicate with patrons. April 6 Letter; Board Agenda, May 26, 2010; ABRA Licensing File No. 81339. The Board's original decision was solely based on the letter requesting the exemption provided by the establishment, and was not investigated by ABRA's Enforcement Division. Case Report No. 11-CMP-00563, 4.
2. Subsequently, ABRA Investigator Jabriel Shakoor visited the Licensee's establishment on December 10, 2011, around 1:00 a.m. *Transcript (Tr.)*, April 4, 2012 at 6, 8. Once inside, he observed that the establishment had background music playing. *Tr.*, 4/4/12 at 8. He also observed that the establishment had a disc jockey wearing headphones in an elevated booth. Case Report No. 11-CMP-00563, 1. The booth had elaborate sound equipment, which included mixers, large headphones, and a laptop. *Id.* at 2, Exhibits Nos. 4-6.
3. Section five of the establishment's Voluntary Agreement reads, "There will be recorded 'Buddha Bar' music played in the establishment." In re Washington Restaurants, LLC, t/a Buddha Bar, Board Order No. 2009-154, Voluntary Agreement ¶ 5 (D.C.A.B.C.B. Jun. 17, 2009). The agreement then goes on to state, "This music will be controlled using the sound system by an employee of Buddha Bar, but this employee shall not act as a 'DJ' in that he will not announce or talk to the guests through a sound system and he will not encourage dancing in the Establishment." *Id.* Finally, under the

agreement, “The parties agree that playing this background music does not constitute live entertainment requiring an Entertainment Endorsement.” Id.

4. According to the Licensee, under the terms of its franchise agreement, they must have an employee in the establishment’s booth to “make the appearance of a DJ and oversee the equipment.” *Tr.*, 4/4/12 at 29. The employee’s responsibility is to stand by the equipment and ensure that the establishment’s prerecorded music CDs play continuously. *Tr.*, 4/4/12 at 18, 30-31. The employee standing in the booth is part of the establishment’s “concept.” *Tr.*, 4/4/12 at 28. The employee operating the disc jockey booth has no other duties, and his official title is “DJ.” *Tr.*, 4/4/12 at 30.

5. Finally, Ms. Galloway, the establishment’s general manager, stated, “we only have a DJ really there on Friday and Saturday nights because it’s a weekend.” *Tr.*, 4/4/12 at 23.

CONCLUSIONS OF LAW

6. Whether the licensee is required to obtain an Entertainment Endorsement depends on whether its current music arrangements constitute entertainment under the alcoholic beverage control laws. Because we find that the establishment is providing entertainment by using a disc jockey, the Licensee must obtain an Entertainment Endorsement from the Board.

7. Under § 1000.1, “No licensee under a license, class C/R, D/R, C/H, or D/H, may have entertainment, dancing, or charge a cover charge without obtaining an entertainment endorsement. 23 DCMR § 1000.1 (West Supp. 2012). Entertainment is defined by law as “live music or any other live performance by an actual person, including live bands, karaoke, comedy shows, poetry readings, and disc jockeys.” D.C. Code § 25-101(21)(A) (West Supp. 2012); see also 23 DCMR § 199 (West Supp. 2012) (Entertainment). Entertainment does “not include the operation of a jukebox, a television, a radio, or other prerecorded music.” § 25-101(21)(A).

7. Here, the facts show that the Licensee must obtain an Entertainment Endorsement. First, the Licensee must obtain an Entertainment Endorsement if it seeks to provide entertainment, because it holds a Retailer’s Class CR License. Supra, at ¶ 1. Second, we agree with Investigator Shakoor that the Licensee’s setup constitutes a live disc jockey performance, and, thus, constitutes entertainment. Supra, at ¶ 2. As admitted by the Licensee, the establishment seeks to create the appearance of a disc jockey. Supra, at ¶ 4. The Licensee creates this appearance by having an employee with elaborate sound equipment stand in its disc jockey booth and play music continuously. Supra, at ¶ 2. Despite the limitations placed on this employee, we find that such activity constitutes a live performance and qualifies the employee as a disc jockey. See supra at ¶ 3. Therefore, we conclude that the Licensee’s music arrangements require an Entertainment Endorsement, because the establishment holds a Retailer’s Class CR License and is providing entertainment in the form of a disc jockey.

ORDER

Accordingly, the Board, on this 23rd day of May 2012, hereby **ORDERS** that the above represents the **ADVISORY OPINION** of the Board pursuant to 23 DCMR § 1902. The Board **FURTHER ORDERS** that

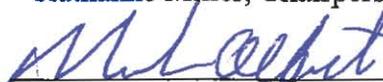
- (1) The Board's decision on May 26, 2010, granting the Licensee an exemption from the Entertainment Endorsement requirement, is **RESCINDED**;
- (2) If the Licensee wishes to maintain its current music arrangements, it must apply for an Entertainment Endorsement; and
- (3) The Board issues a **WARNING** for the alleged violations of §§ 25-113(a) and 25-446 in Title 25 of the District of Columbia Official Code and § 23-1100 in Title 23 of the District of Columbia Municipal Regulations, contained in Case Report No. 11-CMP-00563. A warning is appropriate in this matter, because the Board previously advised the Licensee it was not required to obtain an Entertainment Endorsement on May 26, 2010. Nevertheless, based on Investigator Shakoor's observation of the Licensee's operations, we are now convinced that the law requires such an endorsement.

The ABRA shall deliver copies of this Order to the Licensee.

District of Columbia
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



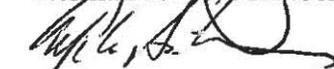
Nick Alberti, Member



Donald Brooks, Member



Herman Jones, Member

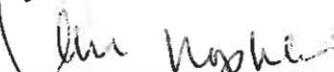


Mike Silverstein, Member



Jeannette Mobley, Member

I dissent from the position taken by the majority of the Board.



Calvin Nophlin, Member

Pursuant to D.C. Code § 1902.6 (2008), if the requestor disagrees with the Board's advisory opinion in any respect, he or she may, within twenty (20) calendar days after issuance of the opinion, petition the Board in writing to reconsider its opinion, setting forth in detail the reasons and legal argument which support the requestor's points of disagreement, or may request the Board to issue a declaratory order, pursuant to § 1903. Advisory opinions of the Board may not form the basis of an appeal to any court in the District of Columbia.