

DOCKET NO. 502731

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
AGILE INVESTMENTS LLC	§	
D/B/A STARS & STRIPES USA #1	§	ALCOHOLIC
PERMIT/LICENSE NO(s). BQ548638	§	
HILL COUNTY, TEXAS	§	
(SOAH DOCKET NO.458-06-1712)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 30th day of October, 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Ami L. Larson. The hearing convened on July 14, 2006 and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on September 8, 2006. The Proposal For Decision was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. As of this date no exceptions have been filed.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that your permit(s) and/or license(s) is/are hereby **SUSPENDED** for a period of **twenty (20) days**.

IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$3,000.00** on or before the **1st** day of **December, 2006**, all rights and privileges under the above described permits will be **SUSPENDED** for a period of **twenty (20) days**, beginning at **12:01 A.M.** on the **8th** day of **December, 2006**.

This Order will become final and enforceable on 30th day of October, unless a Motion for Rehearing is filed before that date.

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

September 8, 2006

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

INTERAGENCY DELIVERY

RE: Docket No. 458-06-1712; Agile Investments LLC d/b/a Starts & Stripes USA #1

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

Ami L. Larson
Administrative Law Judge

ALL/trp
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA HAND DELIVERY**
Judith Kennison, Staff Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-
VIA HAND DELIVERY
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-
VIA HAND DELIVERY
Rashid Dara, Agile Investments LLC, 1500 E. Main Street, Itasca, TX 76055 -**VIA REGULAR MAIL**

A handwritten signature or set of initials in the bottom left corner of the page.

II. APPLICABLE LAW

The Alcoholic Beverage Code prohibits a licensee from conducting his business in a place or manner which warrants the cancellation or suspension of the license based on the general welfare, health, peace, morals, safety, and sense of decency of the people. (Place or manner violation)² Place or manner violations may be sanctioned by suspension of not more than 60 days or cancellation of a retail dealer's on or off-premise license.³

TABC rules provide that a license or permit holder commits a place or manner violation and is subject to permit or license cancellation or suspension for up to 60 days if any public decency offense described in Chapter 43 of the Texas Penal Code (Penal Code) is committed on the premises.⁴

Included in the relevant Penal Code offenses is a prohibition against any person intentionally displaying or distributing "an obscene photograph, drawing, or similar visual representation or other obscene material" *and* being "reckless about whether a person is present who will be offended or alarmed by the display or distribution." (emphasis added)⁵

Chapter 43 of the Penal Code also prohibits a person from the promoting or possessing with

2 TEX. ALCO. BEV. CODE ANN. § 61.71(a)(17). In its Second Amended Notice of Hearing, TABC cited section 61.71(a)(17) of the Texas Alcoholic Beverage Code (Code) as a basis for the alleged violation. Chapter 61 of the Code applies to licenses. Chapter 11 of the Code applies to permits. However, both sections 61.71(a)(17) and 11.61(b)(7) contain functionally equivalent language. The evidence is not clear as to whether Respondent holds a license or a permit. The document admitted as TABC Exhibit 2, page 1 appears to be a "Wine and Beer Retailer's Off Premise Permit." However, that same document contains language that states as follows: "This *license* is not transferrable, must be publicly displayed . . ." (emphasis added). Because the relevant language pertaining to license and permit holders is substantially the same and because no objection was raised by Respondent at the hearing, the ALJ finds that this distinction is irrelevant since Respondent's violation of one provision would necessarily constitute a violation of the other given their equivalent language. For purposes of this proposal for decision, however, the ALJ shall use the term license.

3 TEX. ALCO. BEV. CODE ANN. § 61.71(a).

4 16 TEX. ADMIN. CODE (TAC) § 35.31(c)(12).

5 TEX. PENAL CODE § 43.22(a).

the intent to promote any obscene material, the content and character of which was known to him.⁶ A person who promotes obscene material or possesses the same with intent to promote it in the course of his business is presumed to do so with knowledge of its content and character.⁷

The Penal Code defines the relevant terms, in pertinent part, as follows:

(1) "Obscene" means material . . . that:

(A) the average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex;

(B) depicts or describes: (i) patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or (ii) patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a discernibly turgid state or a device designed and marketed as useful primarily for stimulation of the human genital organs; and

(C) taken as a whole, lacks serious literary, artistic, political, and scientific value.

(2) "Material" means anything tangible that is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound, or in any other manner, but does not include an actual three dimensional obscene device.

(4) "Patently offensive" means so offensive on its face as to affront current community standards of decency.

(5) "Promote" means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same.

(6) "Wholesale promote" means to manufacture, issue, sell, provide, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, or to offer or agree to do the same for purpose of resale.⁸

⁶ TEX. PENAL CODE §§ 43.23(a) and (c)(1).

⁷ TEX. PENAL CODE §§ 43.23(e).

⁸ TEX. PENAL CODE § 43.21(a).

III. EVIDENCE PRESENTED

TABC Staff offered several documents into evidence including a three-pack of magazines that was purchased at Respondent's store and is alleged to be obscene. Additionally, Staff presented the testimony of two witnesses, both of whom were agents for TABC.

Respondent did not present any documentary evidence, but testified on his own behalf.

IV. SUMMARY OF EVIDENCE⁹

Stars & Stripes is a convenience store that is located in Itasca, Hill County, Texas, and holds current TABC Wine & Beer Retailer's Off Premise Permit No. BQ548638. On June 17, 2005, TABC Agent William Scott Helpenstell responded to Stars & Stripes to investigate a complaint regarding the sale of allegedly obscene materials at that location. Rashid Dara is the principal owner of Stars & Stripes. Mr. Dara was not present during Agent Helpenstell's June 17, 2005 investigation.

Once inside the Stars & Stripes, Agent Helpenstell observed an area where adult videos and magazines were for sale. The videos were contained in an enclosed and locked cabinet at the far end of the sales counter. The magazines were also located at the far end of the counter in a wooden rack that faced the wall. Agent Helpenstell selected and purchased a three-pack of magazines from the assortment of similar magazines displayed on the rack.

The magazines he purchased magazines were wrapped in plastic, some of which was clear and some of which was opaque. Agent Helpenstell removed the magazines from their packaging and showed the clerk the photographs contained inside. He then explained to the clerk that possession and sale of such items was a violation of both TABC rules and the Alcoholic Beverage Code because they contained graphic depictions of people engaging in sexual activity including penetration.

⁹ Most of the facts in this case are not in dispute.

Agent Helpenstell then issued an administrative warning¹⁰ to the clerk and told her that a new inspection would be performed and the obscene items must be removed from the store or an enforcement action would be initiated by TABC¹¹

Following the inspection, Agent Helpenstell spoke to Mr. Dara by telephone, told him of the violation, and asked him to address the issue.

TABC Agent Danny Pavlas returned to Stars & Stripes approximately six weeks later on July 30, 2005, to conduct a follow-up inspection and determine whether the premises was in compliance with the applicable law. Once in the store, Agent Pavlas observed a magazine rack facing the back wall on the far side of the sales counter.¹² This rack contained a variety of magazines for sale.

Agent Pavlas selected and purchased a three-pack of magazines that he believed contained indecent material.¹³ The rack from which Agent Pavlas selected his magazines also contained a variety of other similar three-packs of magazines that were available for sale. The set of magazines Agent Pavlas purchased was wrapped in plastic that had both clear and opaque portions. Agent Pavlas removed the wrapper and showed the clerk the photos contained inside the magazines to demonstrate why the possession and sale of those items was a violation. The photos contained in the magazines depicted various sexual acts including some that involved penetration. He then issued an administrative notice for the violation.

10 TABC Exhibit 3.

11 Agent Helpenstell testified that he advised the clerk that a new inspection would be performed within seven days and the items needed to be removed by then. Respondent stated that he was not made aware of any specific time or date by which the items had to be removed and the reinspection would occur.

12 The locked case containing adult videos that had been present during Agent Helpenstell's inspection in June had been removed by the time Agent Pavlas conducted his follow-up inspection in July.

13 Respondent objected to the admission of these magazines into evidence because they were no longer wrapped as they had been in the display case at his store prior to purchase. Respondent's objection goes to the weight, not the admissibility of the evidence, however. Therefore, his objection is overruled and the three magazines that were purchased by Agent Pavlas are admitted into evidence as Exhibit 6.

The magazines at issue were provided to and placed in Stars & Stripes by an outside vendor. After Mr. Dara was notified in June that a warning had been issued by TABC based on the magazines and videos he was selling, he removed the locked cabinet of videos from the retail area of the store and asked the vendor to remove the magazines and rack. Mr. Dara also went to the TABC office where he met with a sergeant and explained his awareness of the violation and intent to take care of it.

The magazine rack with the magazines were not removed, however, and remained in the store and available for sale from the time of the initial warning until the time the administrative notice was issued approximately six weeks later. By the date of the hearing, the magazines had been removed and were no longer present in Respondent's store.

V. DISCUSSION AND ANALYSIS

A. **Did Respondent Commit A Place and Manner Violation of the Alcoholic Beverages Code by Committing a Public Decency Offense Described in Chapter 43 of the Texas Penal Code on the Premises?**

Staff's second amended notice of hearing alleged a place and manner violation of the Alcoholic Beverages Code.¹⁴ Additionally, Staff's notice cited to the TABC rule that defines the commission, on a licensed premises, of a public decency offense described in Chapter 43 of the Texas Penal Code as a place and manner violation of the Alcoholic Beverages Code.¹⁵ The relevant Penal Code offenses prohibited by TABC rules concern the display, distribution, or promotion of obscene material.

14 TABC Exhibit 1.

15 It should be noted that Staff, in its Second Amended Notice of Hearing, cited to 16 TAC § 35.31(a), which relates to the applicability of the entire section. 16 TAC § 35.31(c)(12) is the specific section that prohibits Penal Code indecency offenses on the premises.

1. Were the magazines offered for sale at Stars & Stripes obscene materials?

Neither the Code nor the TABC rules specifically define obscene material. However, the Penal Code provides a definition of obscenity that is instructive.¹⁶

The Penal Code definition of obscene material is based on an average person's application of contemporary community standards. TABC did not present any evidence regarding contemporary community standards. However, since the magazines alleged to be obscene materials were introduced into evidence, additional evidence of community standards is not required.¹⁷

The ALJ has reviewed the magazines that were purchased at Stars & Stripes and admitted as evidence.¹⁸ Based on this review, the ALJ finds the magazines at issue appeal to the prurient interest in sex; depict patently offensive sex acts including sexual intercourse, masturbation, lewd exhibition of genitals, male and female genitals in a state of sexual stimulation or arousal; and, taken as a whole, lack serious literary, artistic, political and scientific value.¹⁹ Accordingly, the magazines are obscene materials, according to the Penal Code definition of obscenity.

2. Did Stars & Stripes, on the premises, intentionally display or distribute obscene material while being reckless about whether a person is present who will be offended or alarmed by the display or distribution in violation of Chapter 43 of the Penal Code?²⁰

The evidence shows that Mr. Dara displayed and distributed obscene materials on the premises. To constitute a violation of this provision, however, he must have intentionally displayed

¹⁶ TEX. PENAL CODE § 43.21(a).

¹⁷ *Knight v. State*, 642 S.W.2d 180 (Tex.App.-Houston[14th Dist.] 1982, no writ).

¹⁸ TABC Exhibit 6.

¹⁹ TEX. PENAL CODE § 43.21(a). The ALJ's finding is based on her own perceptions of what is offensive, but rather from the perspective of an average person according to contemporary community standards. *Miller v. California*, 413 U.S. 15 (1973).

²⁰ TEX. PENAL CODE § 43.22(a).

such items and must also have been reckless as to whether a person present would be alarmed or offended by the display or distribution of the obscene items.

Although Mr. Dara testified that he was unaware of the contents of the magazines at issue, he also testified about his efforts to display them responsibly so they would not be discovered by others who may not wish to see them. Additionally, Mr. Dara continued to allow the magazines to be displayed and sold on the premises even after he was warned by Agent Helpenstell that the items were obscene and needed to be removed. Therefore, the ALJ finds that Mr. Dara intentionally displayed and distributed obscene materials on the premises.

The Penal Code defines recklessness as follows:²¹

A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

The evidence is unclear as to exactly how the obscene magazines were packaged other than that they were wrapped in plastic, portions of which were opaque. The opaque portions of the wrappers covered, to some extent, certain parts of the magazine covers.

Additionally, the evidence shows that the obscene items were displayed at the far corner of the store away from the entrance and near where the truck parts were kept. Mr. Dara testified that this was done in an effort to keep them away from more frequently purchased items and items likely to appeal to minors. Further, the evidence shows that the rack in which the magazines were displayed was facing the wall of the store so that the magazines contained therein were not visible unless one were to walk around the rack itself from the main area of the store.

21 TEX. PENAL CODE § 6.03(c).

Because the evidence shows that Mr. Dara made some attempt to keep the obscene materials out of the way of minors or others who would likely be offended or alarmed by their display or distribution, the ALJ finds that he was not reckless. Therefore, the ALJ finds that Mr. Dara did not violate the TABC rule that corresponds to this provision of the Penal Code.

3. Did Stars & Stripes promote or possess with the intent to promote any obscene material, the content and character of which was known to him?

TABC rules, by reference to Chapter 43 of the Penal Code, also prohibit a person from promoting or possessing with the intent to promote, on the premises, any obscene material, the content and character of which was known to him.²²

The Penal Code defines the term “promote” to include selling, giving, disseminating, exhibiting, or offering to do the same. A person who promotes obscene material or possesses it with the intent to promote it in the course of his business is presumed to do so with knowledge of its content and character.²³

Mr. Dara contracted with an outside vendor to supply the obscene materials that he sold on the premises. He is presumed, therefore, to have knowledge of the content and character of the obscene magazines he promoted in the course of his business. Additionally, as discussed above, Mr. Dara deliberately tried to isolate the obscene items from others who may have been offended by their content. His actions imply that he knew about the obscene nature of the magazines he offered for sale. Moreover, Respondent was warned that the materials were obscene and needed to be removed by Agent Helpenstell on June 17, 2005. By the time of the cited violation, therefore, he was aware of the content and character of the obscene materials.

The ALJ finds that, by possessing for sale and selling obscene materials on the premises, Respondent violated TABC rules and is, therefore, subject to suspension or cancellation of the

²² TEX. PENAL CODE § 43.23(a) and (c)(1).

²³ TEX. PENAL CODE § 43.23(e).

license or permit for Stars & Stripes.

B. Did Stars & Stripes commit a place and manner violation of the Alcoholic Beverage Code as alleged by TABC?

TABC alleged that Stars & Stripes violated the Alcoholic Beverage Code by conducting its business in a place or manner which warrants cancellation or suspension of the license based on the general welfare, health, peace, morals, safety, and sense of decency of the people.²⁴

TABC rules define the commission of any public indecency offense described in Chapter 43 of the Texas Penal Code as a place and manner violation of the Alcoholic Beverage Code.²⁵ Because the ALJ found that Stars & Stripes promoted and possessed with intent to promote obscene materials the content and character of which was known as prohibited by Chapter 43 of the Texas Penal Code, the ALJ finds that this same conduct constitutes a place and manner violation in contravention of the Alcoholic Beverage Code.

VI. RECOMMENDED SANCTION

TABC has adopted, in its rules, a penalty chart that offers guidelines for sanctions deemed to be generally appropriate relative to certain violations.²⁶ Where a violation is not listed in the penalty chart, the administrator or his designee is authorized to assess penalties.²⁷ The penalty chart is not binding as to penalties for any violation determined to have occurred by the facts presented in an administrative hearing and the record of that proceeding shall be the determining factor as to the sufficiency of the penalty assessed.²⁸

²⁴ TEX. ALCO. BEV. CODE ANN. § 61.71(a)(17).

²⁵ 16 TAC § 35.31(b).

²⁶ 16 TAC § 37.60.

²⁷ 16 TAC § 37.60(e).

²⁸ 16 TAC § 37.60(g).

The preponderance of the evidence demonstrates that Stars & Stripes committed a place and manner violation of the Alcoholic Beverage Code by promoting and possessing with the intent to promote obscene material with knowledge of its content and character.²⁹

For this violation, the TABC standard penalty chart recommends a minimum sanction of a license suspension for a period of 15 days and a maximum sanction of license cancellation.

Staff recommended that a 30-day suspension be imposed or, in lieu of the suspension, a \$4,500.00 civil penalty be paid.

Mr. Dara had been warned that he was in violation and needed to remove the obscene materials from the premises but he continued to possess and sell the prohibited materials for an additional six weeks until he was eventually cited.

After he was warned of the violation, Mr. Dara removed the adult videos himself and asked the vendor who supplied the obscene magazines to remove them from the premises. Ultimately, however, it was Mr. Dara's responsibility to ensure that the obscene materials were removed and he is responsible for their continued presence following the initial warning of violation.

It should be noted, however, that there is no evidence that anyone was actually offended by the materials sold by Mr. Dara. Further, the evidence shows that Mr. Dara took steps to prevent those most likely to be offended from seeing the obscene materials. Additionally, although he did not do so in a timely manner, Mr. Dara ultimately removed the offensive materials from the premises where they are no longer present or for sale. Although these facts in no way serve to negate the violation found,³⁰ they do warrant consideration when determining the appropriate penalty.

29 16 TAC § 35.31 and TEX. PENAL CODE §§ 43.23(a) and (c)(1).

30 *Paris Adult Theatre I v. Slaton*, 413 U.S. 49 (1973) (“[T]here are legitimate state interests at stake in stemming the tide of commercialized obscenity, even assuming it is feasible to enforce effective safeguards against exposure to juveniles and to passersby”).

Having considered the totality of the evidence, the ALJ recommends that the TABC license or permit issued to Stars & Stripes be suspended for 20 days or, in the alternative, a civil penalty shall be paid in the amount of \$3,000.00.

VII. FINDINGS OF FACT

1. Rashid Dara is the principal owner of the business Agile Investments LLC, d/b/a Stars & Stripes USA #1 (Stars & Stripes).
2. Stars & Stripes is a convenience store that is located in Itasca, Hill County, Texas, and holds current Texas Alcoholic Beverage Commission (TABC) Wine & Beer Retailer's Off Premise Permit No. BQ548638.
3. On June 17, 2005, TABC Agent William Scott Helpenstell responded to Stars & Stripes to investigate a complaint regarding the sale of allegedly obscene materials on the premises.
4. Mr. Dara was not present during Agent Helpenstell's investigation.
5. During his investigation of Stars & Stripes, Agent Helpenstell observed an area where multiple magazines were displayed in a rack for sale.
6. Agent Helpenstell selected and purchased a three-pack of magazines from the rack.
7. Agent Helpenstell opened the partially opaque plastic wrapper around the magazines he purchased, showed the clerk the contents of those magazines, and explained that possession and sale of such items was a violation of both TABC rules and the Alcoholic Beverage Code.
8. Agent Helpenstell issued an administrative warning to Stars & Stripes for displaying and selling various magazines that contained photographs of people engaging in sexual activity, including penetration.
9. Stars & Stripes and Mr. Dara were advised, on June 17, 2005, by Agent Helpenstell, that the obscene materials would need to be removed from the premises and that a reinspection would be conducted to ensure compliance.
10. On July 30, 2005, a TABC Agent Danny Pavlas returned to Stars & Stripes to conduct a follow-up investigation and determine whether the premises was in compliance with applicable law.
11. Once inside the premises, Agent Pavlas observed a rack facing the back wall of the store that contained a variety of magazines for sale.

12. From the magazine rack, Agent Pavlas selected and purchased a three-pack of magazines that contained photographs of people engaging in sex acts including sexual intercourse, masturbation, lewd exhibition of genitals, and male and female genitals in a state of sexual stimulation or arousal.
13. The magazines purchased by Agent Pavlas were wrapped in plastic that had both clear and opaque portions.
14. Agent Pavlas removed the wrapper from the magazines he had purchased, showed the clerk the photographs contained inside, and explained why offering them for sale was a violation.
15. Agent Pavlas seized the magazines and issued an administrative notice to Stars & Stripes for the violation.
16. The magazines purchased by Agents Pavlas and Helpenstell as well as a locked cabinet containing adult videos were provided to and placed in Stars & Stripes by an outside vendor.
17. Mr. Dara took steps to prevent those most likely to be offended from seeing the obscene materials.
18. After the warning was issued in June 2005, Mr. Dara removed the locked cabinet containing adult videos and placed them in an abandoned room.
19. Mr. Dara called the vendor and asked that the magazines be removed from the premises.
20. The magazines were not removed from the premises and remained on display and available for sale at all times from the time of the June 17, 2005 warning until the re-inspection was conducted on July 30, 2005.
21. By July 14, 2006, the magazines had been removed from the premises.
22. On May 23, 2006, TABC sent a second amended notice of hearing to Mr. Dara. The notice contained the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was held; and a reference to the particular sections of the statutes and rules involved.
23. A hearing on this matter was convened on July 14, 2006, in Waco, Texas, before Administrative Law Judge Ami L. Larson.
24. At the hearing, Mr. Dara waived any objection to notice of the short, plain statement of the matters asserted and elected to proceed to hearing as scheduled.

25. TABC proved, by a preponderance of the evidence, that Stars & Stripes violated TABC rules by possessing for sale and selling obscene materials on the premises.

VIII. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this case. TEX. ALCO. BEV. CODE ANN. § 6.01.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. TEX. GOV'T CODE ANN. §§ 2003.021(b) and 2003.042.(5).
3. Adequate and timely notice of hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052 and 1 TEX. ADMIN. CODE § ch. 155.
4. Based on the foregoing Findings of Fact, Agile Investments LLC d/b/a Stars & Stripes USA #1 (Respondent) promoted, on the premises, obscene material, the content and character of which was known to Rashid Dara, principal owner of Respondent, in violation of 16 TEX. ADMIN. CODE § 35.31 and TEX. ALCO. BEV. CODE ANN. § 61.71(a)(17).
5. Based on the foregoing Findings of Fact and Conclusions of Law, TABC should suspend Respondent's Off Premise Permit No. BQ548638 for a period of 20 days or impose a \$3,000 civil penalty in lieu of the suspension pursuant to 16 TEX. ADMIN. CODE §§ 35.31 and 37.60 and TEX. ALCO. BEV. CODE ANN. § 61.71(a)(17).

SIGNED, September 8, 2006.



AMI L. LARSON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

EXHIBIT LOG

Docket No. 458-06-1712

Length of Hearing: 1 day

In Re: Agile Investments

Date Hearing Started: 7/14/06

Party	Exhibit	Description	Obtained?	Admitted?	Admitted?	Admitted?	Offer of Proof Accepted?
TABC	1	Notice of Hrg w/ Green Card	yes	no	yes	no	
"	2	Agile Permit + Administrator's Orders	yes	no	yes	no	
"	3	Admin notice	yes	no	yes	no	
"	4	Evidence receipt	yes	no	yes	no	
"	5	store receipt	yes	no	yes	no	
"	6	3 magazines	yes	yes	yes	no	