

DOCKET NO. 519283

IN RE DOUBLE 11 INC.  
d/b/a Love Field Mart  
PERMIT NOS. Q558346 & BF558341

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BEFORE THE TEXAS

ALCOHOLIC

DALLAS COUNTY, TEXAS  
(SOAH DOCKET NO. 458-06-1876)

BEVERAGE COMMISSION

ORDER

**CAME ON FOR CONSIDERATION** this 17<sup>th</sup> day of July, 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Kyle Groves. The hearing was held on June 7, 2006 and convened on the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 28, 2006. This Proposal For Decision (**attached hereto as Exhibit "A"**), 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, Transcripts, 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 **Respondent's permits shall be suspended for a period of 6 days commencing at 12:01 on August 23, 2006, pursuant to §§ 11.61(b)(2), 61.71(a)(1), 61.73(b) and or 102.31.**

**This Order will become final and enforceable on August 15, 2006, unless a Motion for Rehearing is filed before that date.**

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

**DOCKET NO. 503731**

HERMANLEELOTT CORPORATION  
D/B/A ON THE ROXX OF HOUSTON  
PERMIT/LICENSE NO(s). MB569964

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BEFORE THE TEXAS

ALCOHOLIC

HARRIS COUNTY, TEXAS  
(SOAH DOCKET NO. 458-06-2032)

BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 28<sup>th</sup> day July 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Don Smith. The hearing convened on June 23, 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 June 28, 2006. The Proposal For Decision, attached as Exhibit "A", 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 thirty (30) days**.

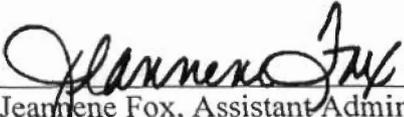
**IT IS FURTHER ORDERED** that if the civil penalty in the amount of **\$4,500.00** is not received by the Commission on or before the **3rd day of October 2006**, all rights and privileges granted by the Commission under the above described permit(s) and/or license(s) will be **SUSPENDED for thirty (30) days** starting at 12:01 A.M. on the **11<sup>th</sup> day of October 2006**.

This Order will become final and enforceable on 18<sup>th</sup> day of August of 2006, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by in the manner indicated below.

**SIGNED** this the 28th day of July 2006, at Austin, Texas.

On Behalf of the Administrator,

  
Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

Hon. Judge Don Smith  
State Office of Administrative Hearing  
2020 North Loop West, Suite 111  
Houston, TX 77018  
*VIA FACSIMILE: 713-812-1001*

Hermanleelott Corporation  
**RESPONDENT**  
d/b/a On The Roxx of Houston  
3918 Old Spanish Trail '1'  
Houston, TX 77021-1425  
*CERTIFIED MAIL NO. 7005 3110 0000 6409 1120*

Sandra K. Patton  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

Houston District Office

# State Office of Administrative Hearings



**Shelia Bailey Taylor**  
**Chief Administrative Law Judge**

**RECEIVED**

JUL 3 2006

**LEGAL DIVISION**

June 28, 2006

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

VIA REGULAR MAIL

**RE: Docket No. 458-06-2032; Texas Alcoholic Beverage Commission v.  
Hermanleelott Corporation d/b/a On the Roxx of Houston**

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](http://www.soah.state.tx.us).

Sincerely,

Don Smith  
Administrative Law Judge

DS/mc  
Enclosure

xc: **Sandra Patton**, Texas Alcoholic Beverage Commission, 427 West 20<sup>th</sup> Street, Suite 600, Houston, Texas 77008 - VIA REGULAR MAIL  
Hermanleelott Corporation d/b/a On the Roxx of Houston, 3918 Old Spanish Trail "1", Houston, Texas 77021-1425 - VIA REGULAR MAIL

**DOCKET NO. 458-06-2032**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>HERMANLEELOTT CORPORATION D/B/A ON THE ROXX OF HOUSTON PERMIT NOS. MB569964, LB569965, CB569966 HARRIS COUNTY, TEXAS (TABC CASE NO. 503731)</b>	§ § § § § § §	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (TABC or the Commission) brought this enforcement action against Hermanleelott Corporation d/b/a On the Roxx of Houston (Permittee) for offenses committed in violation of TEX. ALCO. BEV. CODE ANN. § 1.01 et seq. (Vernon 1995 & Supp. 2004) (Code) or the Texas Alcoholic Beverage Commission Rules, 16 TEX. ADMIN. CODE § 31.1 et seq. (West 2004) (the Rules), or both. The Permittee did not make an appearance at the hearing. This Proposal for Decision finds the allegations proven and adopts the recommendation of the staff that the license be suspended for a period of 30 days or that Permittee be allowed to pay a civil penalty of \$4,500.00 in lieu of suspension.

**I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION**

The hearing in this matter convened on June 23, 2006, at the offices of the State Office of Administrative Hearings in Houston, Harris County, Texas. TABC was represented by its counsel, Sandra Patton. Because the hearing proceeded on a default basis and Staff's factual allegations are deemed admitted as true, the Administrative Law Judge (ALJ) has incorporated those allegations into the findings of fact.

The Commission and the State Office of Administrative Hearings have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute enforcement action

and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

## II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS

This CODE § 11.61 (b) (2) authorizes the Commission to cancel or suspend a license for not more than 60 days if it is found, after notice and hearing, that the Permittee violated a provision of the Code or a rule of the Commission. As described in the findings of fact, the Permittee violated CODE §§ 11.61 (b) (2), and 104.01 (7).

The Staff attorney introduced three exhibits into evidence. TABC exhibit 1 is the return receipt showing Permittee received the Notice of Hearing On Mary 15, 2006. TABC exhibit 2 is an affidavit of Amy Harrison, Licensing Department Director, that Mixed Beverage Permit, MB-569964, Mixed Beverage Late Hours Permit, LB-569965, and Caterer's Permit, CB-569966 were issued to Permittee. Permittee's mailing address is 3918 Old Spanish Trail '1', Houston, Texas 77021-1425. TABC exhibit 3 is an affidavit of Dale Evans, Supervisor of Compliance, that Caterer's Permit and Late Hours Permit CB-569966 were issued to Permittee.

## III. RECOMMENDATION

The notice of hearing, in bold lettering, states "if you fail to appear at the hearing, the allegations in the notice will be deemed admitted as true, and the relief sought may be granted by default." The Rules authorize service of the notice of hearing by sending it to the party's address as shown by the agency's records, and there is credible evidence that the notice of hearing was sent by certified or registered mail, return receipt requested, to Permittee's address, as shown by the agency's records. The return receipt has a delivery date, to Petitioner, of May 15, 2006. Therefore, the allegations that Permittee violated CODE §§ 11.61 (b) (2), and 104.01 (7) are admitted as true. The relief sought should be granted, and the permit should be suspended for thirty days, or in lieu of suspension the Permittee should pay a civil penalty of \$4,500.00.

#### IV. FINDINGS OF FACT

Permits MB-569964, LB-569965, and CB-569966 were issued to Hermanleelott Corporation, d/b/a On the Roxx of Houston by the Texas Alcoholic Beverage Commission. The mailing address of Permittee is 3918 Old Spanish '1', Houston, Texas 77021-1421.

2. The staff sent a notice of hearing regarding the violations of the Texas Alcoholic Beverage Code to the Permittee by certified mail, return receipt requested, and mailed the notice to Permittee's address as shown in the agency's records.
3. Permittee received the Notice of Hearing on May 15, 2006.
4. The notice of hearing contained the following language in capital letters in 12-point boldface type:

**If you fail to appear at the hearing, the allegations in the notice will be deemed admitted as true, and the relief sought may be granted by default.**

5. The hearing on the merits was held on June 23, 2006, at the offices of the State Office of Administrative Hearings, Houston, Harris County, Texas. Staff was represented by its counsel, Sandra Patton. The Permittee did not appear and was not represented at the hearing.
6. The hearing proceeded on a default basis, and the factual allegations were deemed admitted as follows:

On or about July 29, 2005, Permittee, Hermanleelott Corporation, its agent, servant or employee, solicited or permitted solicitation of persons for immoral or sexual purposes.

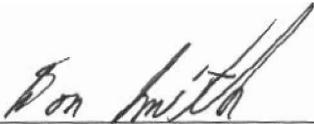
7. By soliciting or permitting the solicitation of persons for immoral or sexual purposes, Permittee, violated Texas Alcoholic Beverage Code §§ 11.61 (b) (2) and 104.01 (Vernon 1995 and Supp).

#### V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. § 11.61.
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. Ch. 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.

- 4. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 Tex. Admin. Code § 155.55.
- 5. Based upon findings of fact No. 6 and 7, Permittee violated TEX. ALCO. BEV. CODE ANN. §§ 11.61 (b) (2) and 104.01 (7).
- 6. Based on the foregoing Findings of Fact and Conclusions of Law, a thirty-day suspension of the permit and license is warranted. Pursuant to TEX.ALCO.BEV. CODE ANN. § 11.64, the Permittee should be allowed to pay a \$4,500 civil penalty in lieu of suspension of its permits.

SIGNED June 28, 2006.

  
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**DON SMITH**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**