MAR 15 2012

STATE OF VERMONT
DEPARTMENT OF LIQUOR

STATE OF VERMONT
LIQUOR CONTROL BOARD

IN RE:

Baker Distributing Corporation
Doing business at:

1. **395 North Shrewsbury Road**
   North Clarendon, VT 05759, under Wholesale Dealer License #2134-001-WHDR-01; and
2. **130 Orion Drive**
   Colchester, VT 05446, under Wholesale Dealer License #2134-002-WHDR-01

DECISION

The Liquor Control Board (LCB) held proceedings in Montpelier, Vermont, on April 27, 2011 and June 29, 2011, to consider the suspension or revocation of Wholesale Dealer License #2134-001-WHDR-01 and Wholesale Dealer License #2134-002-WHDR-01 granted to Baker Distribution Corporation (BDC), doing business at the captioned locations.

BDC was present by and through Joseph Michael Baker, III, its incorporated principal owner, as well as by its attorney, Thomas M. Dowling. The Department of Liquor Control (DLC) was present and represented by Assistant Attorney General Jacob A. Humbert.

A Notice of Hearing dated February 18, 2011, with Investigative Report attached, was sent to BDC at each of its two captioned locations, in which it was alleged that during 2010 BDC provided things of value to retail licensees in violation of Wholesale Dealer Regulation No. 15 (WDR 15). WDR 15 was duly adopted by the LCB.

FINDINGS OF FACT

1. The Licensee, BDC, does business at 395 North Shrewsbury Road, North Clarendon, VT 05759, and at 130 Orion Drive, Colchester, VT 05446, by and through Wholesale Dealer License #2134-001-WHDR-01 and Wholesale Dealer License #2134-002-WHDR-01,

respectively, by which it is permitted to sell malt and vinous alcohol containing beverages to first and second class liquor license holders (retailers).

2. WDR 15 states:

> No manufacturer, certificate of approval holder, or wholesale dealer shall directly or indirectly or through any affiliate induce any licensee to purchase any alcoholic beverage by giving or offering to such purchaser anything of value except brand-identified items which are primarily valuable to the retailer for advertising purposes only. Such advertising items require prior Liquor Control Board approval.

3. DLC Investigator Michael Davidson was sworn and testified. Pursuant to a statewide investigation of wholesale alcohol dealers, on October 7, 2010, he arrived at the BDC facility at North Clarendon, Vermont. Davidson's visit to BDC was unannounced. A DLC investigation of Wholesale Dealers was initiated after the DLC received anonymous reports that Wholesale Dealers were giving gifts and things of value to certain retailers, in possible violation of WDR 15.

4. Davidson requested and obtained BDC records beginning early in January of 2010 up until the date of his visit, which reported BDC sales representatives' expenditures for or on behalf of retailers to determine if anything of value was being given or offered by the BDC sales representatives to their retailers. The records requested were received in a cooperative, timely manner by the DLC.

5. The records obtained from BDC were then brought by Davidson to the DLC headquarters in Montpelier, where he was assisted by DLC Investigators Elmer and Curran in the task of examining, documenting and copying what the DLC termed "relevant records", i.e., those that show the giving or offering of anything of value by BDC representatives to BDC retailers, in possible violation of WDR 15.

6. The records obtained included the payroll and expense accounts of BDC sales representatives. At the DLC headquarters, a DVD was made of all of the BDC records that the DLC obtained on October 7, 2010 that were deemed "relevant". The DVD was marked State's 1 for identification and was admitted into evidence without objection.

7. From the DVD or State's 1, the DLC produced a summary spreadsheet of all "relevant" documents. (Taken from the testimony of Michael Davidson).

8. DLC Investigator Jason Elmer was sworn and testified. On October 10, 2010, Elmer and Investigator Curran were assigned to assist Investigator Davidson at DLC headquarters in Montpelier, in an examination of the BDC records which Davidson had obtained. They examined the records, looking for BDC expenditures for anything of value which was given to or for retailers which included, without limitation, meals and associated beverages, gift cards, sporting events promotions and the like, which they considered "relevant".

9. Elmer identified State's 2 as a packet containing 26 pages in summary spreadsheet form, reporting expenditures by each of BDC's sales representatives that were deemed "relevant". Each BDC representative's expenditures were reported on a separate page that identified the representative, the date the expenditure was made, the location where the questioned activity took place, the amount of the expenditure and the retailer for whom the expenditure was made. The first page of State's 2 is a summary containing the names of the 25 sales representatives and the amount of the "relevant" expenditures made by each representative, for a total of $48,058.08 during the time period in question.

10. The DLC offered State's 2 into evidence, at which point BDC objected on the basis that there are dates contained in State's 2 for the activity in question and unless those dates coincided with the dates for the same activity on a similar document that BDC has prepared for

admission into evidence, they object to its admission. At that, the DLC stipulated that the admission of State's 2 could be limited by the Board to the condition requested by BDC, i.e., if the dates in question on State's 2 do not vary from the dates on the BDC equivalent exhibit, then State's 2 is admitted. If the dates, however, do vary, then the admission is limited to dates and associated facts not at variance. Dates and associated issues at variance will be determined by the LCB. State's 2 was admitted with that condition.

11. Several documents on State's 2 reveal the use of the letters "BB". The Board understands this to mean that BDC, in its dealings with an alcohol supplier, will "BB" or bill back to that supplier an agreed upon percentage of an expenditure, i.e., "50% BB" or "100% BB", for example.

12. Elmer was asked by the Board to explain what he and the DLC intended the Board to learn from State's 2. Elmer stated that the many individual expenditures by BDC detailed on State's 2 show the giving of things of value to or on behalf of retailers, which over the period of time in question, i.e. from January through the date of the investigation in the year 2010, reached a total of $48,058.08. (Taken from the testimony of Elmer and from State's Exhibit 2).

13. BDC made the assertion that BDC will be able to prove that many of the so-called "relevant" expenditures by BDC shown on State's 2 either received specific DLC approval or were in a category of expenditure that did not violate WDR 15.

14. At this point, the State rested.

15. Joseph Michael Baker, III, the principal owner of BDC, was sworn and testified.

16. Licensee's 1 for identification is a two page document, the first page of which is a spreadsheet, which in summary form, contains every expenditure or transaction that is identified

in State's 2. The second page of Licensee's 1, entitled "Footnotes" contains 17 footnotes, each of which provides clarifying information for an abbreviated statement which appears on Page 1 of Licensee's 1.

The first page of Licensee's 1 is entitled "Baker Distributing Corporation Expense Analysis". That page read from left to right contains 12 columns. The first column lists the names of the sales representatives of BDC. The second column lists the total amount of so-called "relevant" expenditures attributed to that representative during the time period here in question. The third column is entitled "Gift Cards for Baker Employees" and has a (1) beneath it. That (1) refers to Footnote (1) on Page Two of Licensee's 1. Beneath that, on a line parallel with the first representative noted, is that portion of the total amount of expenditures made by that representative that is attributable to Gift Cards for Baker Employees. To the immediate right, is a column entitled "Consumer Giveaway Promotions" under which is Footnote (2) and under that is a dollar amount. That represents the dollar amount of the total expenditures for the representative attributed to consumer giveaway promotions. To the right of that is a column entitled "Meals for Baker Employees" and beneath that is Footnote (3). In this case for the employee in question there were no expenditures in that category. Immediately to the right is another category entitled "Meals with Baker Spouses" and beneath that is Footnote (4). There were no expenditures for this representative in that category. To the immediate right is a column entitled "Other Expenses" and beneath that is Footnote (5). In this case the employee in question expended $105.85 in that category. To the right is the category "Wine Tasting" and beneath that is Footnote (6) and beneath that is the dollar amount of the expenditures by the same representative in that category. To the right is another category entitled "Dinner Meeting with Suppliers" and beneath that is Footnote (7). To the right of that is another category entitled

"Charity Donations" beneath which is Footnote (8). To the right is the category entitled "Meals/drinks with Licensee" and beneath that is Footnote (9). The last category is entitled "Unsubstantiated Expenses" and beneath that is Footnote (10) and for the representative in question for categories 7, 8, 9 and 10, there were no expenditures in those categories. The second column of Licensee's 1 totals $48,058.08, which is the same total found on Page 1 of State's 2. Between columns 2 and 3, as well as 5, 6, 7, 8 and 9, on Page 1 of Licensee's 1, there are numbers in parenthesis referring to the (Footnote) page of Licensee's 1.

17. Referring to Licensee's 1, Page 1, to the column entitled "Gift Cards for Baker Employees", in fact, none of the gift cards were given to licensees of BDC. They were instead given to salesmen.

18. Licensee's 1 was admitted into evidence without objection.

19. Baker then introduced Licensee's 2 for identification. It is a document/record containing 28 pages, on which there appears more detailed information contained on Licensee's 1 for each of the BDC representatives or salesmen in question.

For example, Page 1 of Licensee's 2 reports its information in seven columns from left to right. The first column on each page of Licensee's 2 lists the employee in question, the second column gives the date of the incident, the third column identifies the activity in question and/or its location, and the fourth column shows the dollar amount of the expenditure. The fifth column identifies the licensee or other non-licensee recipient of the expenditures. The sixth column entitled "Detail" reports what the expenditure was for and the last column to the right is entitled "Category" and coincides with information in a four (4) line cluster on Page 1 beneath columns 2 and 3 so as to provide to the reader the total expenditures by that employee for each of the categories. (Underlining is intended to clarify). Licensee's 2 was admitted into evidence without objection.

20. Baker, III was asked to explain to the Board the "gift card" concept and how it was used by BDC.

21. The gift card concept is used as a means by which to give an incentive or a reward to salesmen for meeting various sales goals. For example, in some instances a beer supplier such as Fosters will agree to sponsor 50% or in some cases 100% of an incentive program for employees whose sales reach the goal at which the incentive is given.

22. Although the use of gift cards appears convoluted, it is administratively simple in execution. BDC will buy the gift cards needed from either Staples or from some other source who carry gift cards. The cost of the gift card is then "billed back" when Baker bills the agreed upon percentage of the cost to the sponsor or cosponsor. Once the employee reaches the goal at which the gift card is given, he is notified by his BDC internal sales manager that he is entitled to pick up his gift card. Receipt of the gift card by an employee is reported on the employee's W-2.

BDC runs "incentives" either monthly or bimonthly. Employees get notice of the incentives at the beginning of the month by way of a written pronouncement alerting the employees to the existence of the incentive and indicating the goal that must be reached to entitle them to receive the reward.

23. With reference to Licensee's 1, and the column entitled "Consumer Giveaway Promotions", the promotions are given to consumers and not retailers. BDC receives DLC approval for the promotions before they are announced.

24. Making reference again to Licensee's 1 and to the "Promotions" column, on the first line is reported that salesman Andrew Jackson expended $109.90 for giveaway promotions.

To the right of that is a (1) (i.e.) Footnote (1). On the second page of Licensee's 1 Footnote (1) explains that the promotion was by and through a Staples gift card and was a Sam Adams sponsored promotion.

25. At this point, the Board decided to recess the hearing for the purpose of entering into an executive session with its attorney to discuss the state of the hearing. The hearing was then recessed and the parties and their representatives absented themselves from the hearing room.

26. After concluding its executive session, the Board reopened the hearing with the following remarks:

The Board observed that State's 2 (26 pages) presents to the Board a reporting of the expenditures by sales representatives, with other previously stated information. What is missing, however, is an analysis of the individual expenditures similar to that shown in detail on Licensee's 1 and 2. That analysis, together with the testimony of BDC owner, Baker III, made a strong showing that many of the BDC expenditures labeled "relevant" by the DLC have either received prior DLC approval or by their very nature are not violations of WDR 15.

27. At that point in the proceeding, the DLC, by and through Humbert, its attorney, recited into the record a lengthy list of BDC "relevant" expenditures which the DLC has since determined are not in fact violations of WDR 15, and asked the Board to allow it to withdraw those particular BDC expenditures from its list of "relevant" expenditures shown on State's 2.

28. The Board, observing an underlying degree of cooperation between the parties, suggested that the DLC needed to re-examine its Exhibit State's 2 and strike from it those "relevant" documents those that in fact were not "relevant". Some corrective culling of State's 2 already started when Humbert recited into the record a substantial number of BDC expenditures

which were mislabeled as "relevant" when they were not. By now working together and exchanging information, the parties most likely can agree upon a much shortened list of "relevant" expenditures that remain for resolution by the Board.

29. The Board advised the DLC to exclude from its new list of "relevant" BDC expenditures those that paid for meals and associated beverages provided to of for retailers at BDC business meetings.

30. The Board, with the agreement of the parties, recessed the hearing to a later date, within a reasonable time, to be determined by the Board, after it hears from the parties, that they have concluded their efforts. The Board will then upon notice, resume the hearing to resolve those matters and expenditures, if any, which remain as alleged violations of WDR 15.

31. At this point, the hearing ended to be reconvened as stated.

RECONVENED HEARING

1. The Liquor Control Board, on notice to the parties, reconvened the hearing in this cause on June 29, 2011 at its offices in Montpelier, Vermont. Present was the DLC, again represented by Assistant Attorney Jacob A. Humbert. Also present was the Licensee, by and through Joseph Michael Baker, III, its incorporated co-owner, as well as by its attorney, Thomas M. Dowling.

2. Humbert addressed the Board and stated that the parties have discussed the content of the exhibits in evidence and, as a result, the DLC has culled its allegations against BDC to some 16 violations of WDR 15, and that the DLC was prepared to present its evidence after which BDC will present its mitigating testimony. BDC did not object or comment to that statement, and so the hearing proceeded.

3. Jason Elmer, DLC Investigator, was sworn and testified.

After the first hearing in this cause on April 27, 2011, he was requested by Investigators Davidson and Curran of the DLC, to once more assist them in reviewing and examining the records and documents they had obtained from BDC on or about October 7, 2010.

He began the review of the records and documents with the understanding that the LCB wished to exclude expenditures by BDC for meals and beverages while meeting with their retailers. That was done.

4. Elmer was shown State's Exhibit A for identification and identified it as a letter to Attorney Thomas M. Dowling from Assistant Attorney General Jacob A. Humbert dated May 26, 2011 upon which Humbert listed 16 expenditures by BDC which in Humbert's opinion remained at issue for resolution by the Board. All 16 are set forth on the first page of State's A. State's A was admitted into evidence without objection.

The sixteen (16) BDC expenditures shown on State's A were all for retail customers of BDC and include expenditures for:

(1) Wine list covers – $197.50;
(2) Concert tickets - $50.00;
(3) Bar mount/wine opener - $57.61;
(4) Hotel accommodations - $759.36;
(5) Hotel accommodations - $759.36;
(6) Hotel accommodations - $210.53;
(7) Hotel accommodations - $210.53;
(8) Hotel accommodations - $170.53;
(9) Hotel accommodations - $222.53;
(10) Hotel accommodations - $157.61;
(11) Celtics tickets - $124.08;
(12) Canadians hockey tickets - $476.95;
(13) Hotel accommodations - $116.99;
(14) Hotel accommodations - $255.06;
(15) Saratoga Race Course promotion - $1000.00; and
(16) Hotel accommodations - $186.12

The overall expenditure total is $4,954.76.

5. Elmer was shown State's 1-A through and including 9-A for identification, and he identified 1-A through 9-A collectively as BDC records that support and backup the impact of State's A, i.e., that the 16 expenditures by BDC were in fact violations of WDR 15.

6. The Board finds it sufficient at this point to say that it examined Exhibits 1-A through and including 9-A and found that the records are copies of diverse documents including, but not limited to copies of BDC invoices to suppliers, copies of BDC credit card statements, handwritten notes by BDC representatives, BDC representatives' monthly expense reports, billings from sports ticket brokers and bills from hotels for accommodations. This foregoing statement is intended to be representative of the supporting records, but is not likely complete. The Board makes the finding that Exhibits 1-A through and including 9-A, support and corroborate Humbert's statement that the 16 numbered BDC expenditures shown on State's A are violations of WDR 15 by BDC.

7. Exhibits 1-A through and including 9-A were admitted into evidence, subject only to the restriction that since they reveal expenditures and transactions for other events not part of the 16 numbered expenditures shown on State's A, their admission is restricted to only that which concerns the 16 expenditures in question. (Taken from the exhibits mentioned and the testimony of Michael Davidson, Jason Elmer, and Joseph Michael Baker, III.

8. At this point, the State rested.

9. Joseph Michael Baker, III took the stand, was sworn and testified. Neither BDC nor he contest the fact that the 16 numbered items, each of which constitutes an expenditure by BDC, violate the stated provisions of WDR 15, although it was not his intention nor the intention of BDC to do so.

10. In the making of the 16 expenditures listed on State's A, it was not his intention nor the intention of BDC to induce any retailer beneficiary of those expenditures to make any or additional alcohol purchases.

11. States 1-A concerns wine list covers, the giving of which he believes is an industry wide practice. The wine list covers to the best of his knowledge contain no language or symbols identifying themselves with an alcohol brand nor does he believe they are identified by imprint or otherwise as coming from BDC. Every distributor in the State is now and has been doing the same.

12. The concert tickets identified in A (2) were tickets for a performance at Higher Ground, a Burlington area venue, and were purchased by the use of a BDC credit card by an employee.

13. As to (11) and (12) on State's A, they illustrate the BDC purchase of hockey tickets. The retailers asked if BDC could provide them. BDC has provided them in the past and retailers recognize that if they are not requested of BDC they will not be provided. That cycle has been going on for a long time.

14. Item (15) which concerns the Saratoga race course, was a consumer giveaway for a consumer promotion to which licensees were also invited.

15. Some of the numbered expenditures on State's A reveal the purchase by BDC of hotel accommodations for retailers, for which he really had no explanation. However, in this and many other instances, suppliers of alcohol product to BDC ask BDC to spend money to promote their brand. In such instances the money is expended by BDC, subject to a "bill back" to the provider either for 100% or more frequently 50% of the cost.

16. The Board asked Baker if he had any suggestions for the Board, if the Board were inclined to address the WDR 15 violations by additional enforcement guielines? Baker responded by saying that in this (alcohol) industry both distributors and retailers need to know specifically what a violation is and how strictly it will be enforced. There is competition in this industry and when a retailer asks for something that the distributor refuses to provide because it is believed to be a violation of the Board's regulations, the retailer will often point out that another distributor will provide that gratuity to that retailer.

All the State's distributors and retailers need to have a good, clear understanding of what the Board's regulations mean and enforcement practices are, so that some suspect business practices can become clarified. In this regard, although distributors rarely in the past spoke to each other about DLC enforcement matters, they are doing so now. Each one wants to learn from the other what their experiences with the DLC in "suspect" areas have been.

17. On the non-alcohol side of the beverage industry, all kinds of incentives and promotions are permitted. One of the things to consider is that a distributor who deals in alcohol product as well as non-alcohol product may make a gratuity of non-alcohol things of value to a retailer to "induce" that retailer to buy more of any of its product, including alcohol product.

18. A supplier of non-alcohol products can pay for shelf space and shelf location which is something no supplier of an alcohol product can do. So also, a supplier of non-alcohol products can give incentives to buy more, such as for example to give a case free if ten cases are bought. In addition, quantity discounts can and are given. (Taken from the testimony of Joseph Michael Baker, III and the exhibits utilized).

19. At this point, both parties rested and the hearing ended. Requested findings were waived by the Licensee and the State.

CONCLUSIONS

1. The Licensee, BDC, conducts its wholesale dealer business at 395 North Shrewsbury Road, North Clarendon, Vermont, and at 130 Orion Drive, Colchester, Vermont. BDC at each location does business with Wholesale Dealer Licenses which are numbered, in sequence, 2134-001-WHDR-01 and 2134-002-WHDR-01. Each license enables BDC to sell malt and vinous beverages to first and second class licensees (retailers) within its geographic territory.

2. WDR 15, which is set forth in full in the Findings, has divided the Board with respect to its interpretation.

3. One suggested interpretation of WDR 15 holds that before the giving or offering a licensee <u>anything of value</u> can became a violation, it must have <u>induced</u> that licensed retailer to purchase more alcoholic beverages. (Underlining added here and below for emphasis and clarity).

4. Another interpretation of WDR 15 is that by the mere giving or offering to a retail licensee <u>anything of value</u>, a wholesaler has <u>induced</u> that licensee purchaser and a violation of WDR 15 has occurred. This is the interpretation that has been adopted by the LCB.

5. There is an exception in the prohibition against giving or offering a purchaser <u>anything of value</u> when a brand identified item is given, which item is primarily valuable to the retailer and is for advertising purposes only. Such advertising items require prior LCB approval, however. (WDR 15).

6. The BDC records that DLC Investigator Davidson obtained from the North Clarendon, Vermont office of the BDC, were examined and copied at Montpelier, Vermont. The records included payroll as well as expense accounts of BDC sales representatives and

records of BDC promotions. Records of expenditures which appear to violate WDR 15 were deemed "relevant" by the DLC. "Relevant" documents at that time included BDC expenditures for meals and associated beverages at BDC business meetings. State's 1, a DVD, was made of all "relevant" BDC records obtained.

7. State's 2 is a packet that contained 26 pages in spreadsheet form reporting the "relevant" records of BDC. The first page of State's 2 revealed the names of 25 of BDC's sales representatives and the total amount of the relevant expenditures which was $48,058.08.

8. State's 2 was admitted subject to a condition requested by BDC that did not occur and so the admission of State's 2 became unconditional.

9. The Board learned that the letters "BB" on a record or document could simply mean that there would either be a "buy back" or "bill back" by BDC. In a bill back situation, when BDC invoiced, it would bill an expenditure at an agreed upon percentage back to the supplier. This had no practical effect on any evidence in this hearing, except to the extent that where there was a bill back, the expenditure by BDC was lessened by the amount that BDC did not expend for that retailer.

10. State's 2 contained a page for each of the 26 BDC sales representatives, and then was presented in spreadsheet form. State's 2 reported basic information such as the name of the representatives and the date as well as the activity involved, the location where the activity took place, the dollar amount in question and some information identifying the the licensee (retailer).

State's 2, however, provided no additional information about the particular expenditure nor could DLC Investigator Elmer, who was involved in its preparation, further explain or provide information beyond what appeared on the document. The Board was therefore not able to determine "why" the expenditure was made, and whether the retailer or some other person or entity was the actual beneficiary. This information, and more, was possessed by BDC but had not been acquired by the DLC.

11. Humbert addressed the Board and stated that a subsequent review of the records contained in State's 2 revealed that there were a number of expenditures included as "relevant" that the DLC had in fact now discovered were not, and with the permission of the Board, were being withdrawn by the State from any list of alleged violations by BDC under WDR 15. After certain "culling" by Humbert, which was done orally and quickly, the remaining records he said "spoke for themselves".

12. Joseph Michael Baker, III produced Licensee's 1 entitled "Baker Distributing Corporation Expense Analysis". It is a two page document exhibiting considerable effort and detail in preparation. The first page is a spreadsheet containing 12 columns, which in summary form contains every expenditure or transaction that is reported on State's 2, but also provides additional detail for the expenditure by category. Page 1 is heavily footnoted and the second page of Licensee's 1 entitled "Footnotes" contains 17 footnotes with summary explanation. With Licensee's 1 in hand, which was admitted without objection, and with clarifying testimony by Joseph Michael Baker, III, and with his introduction of Licensee's 2 for identification, the Board was able to understand that many expenditures considered "relevant" by the DLC and reported on State's 2, in fact were not, because they were either preapproved transactions or expenditures by the BDC or at their core were simply not violations.

13. Licensee's 2 presented the same information as did State's 2, but contained sufficient additional information by which the BDC expenditures could be determined to be "relevant" or not. Licensee's 1 and 2 were admitted into evidence without objection.

14. It now became clear to the Board that a recessed hearing at this point would permit the State and BDC to collaborate and further examine the so-called "relevant" expenditures and allow BDC to input its knowledge concerning each of these expenditures to assist in determining whether they were in fact "relevant" or not.

15. The hearing at that point recessed. The hearing reconvened and continued on June 29, 2011, with the same parties, Board members and counsel.

16. The Board was presented, before evidence was taken, with a statement by Humbert that a letter from Humbert to Dowling, Esq., (State's Exhibit A) dated May 26, 2011, contained 16 numbered expenditures by BDC which remained in contention for resolution by the Board. The State would present only a single witness to establish for the record each of the 16 "relevant" expenditures by BDC and to place into the record such additional documents as exhibits that support and corroborate the 16 expenditures by BDC in question. Testimony from BDC would be by way of mitigation.

17. State's Exhibit A, the May 26, 2011 letter, was admitted into evidence without objection.

18. Licensee's Exhibits 1 and 2, and the additional clarifying testimony of Baker III, and the opportunity to collaborate offered to the parties by the recessed hearing resulted in the preparation of State's A and the identification of the 16 expenditures which Baker III agreed were violations of the written provisions of WDR 15. All of the foregoing brought this proceeding to a clear and unquestionable conclusion. The opportunity given to the parties to collaborate by continuing the hearing apparently worked.

19. Those 16 separate expenditures by BDC contained in and clearly shown on State's Exhibit A, supported by the documents contained in 1-A through and including 9-A are

16 clear separate violations of WDR 15 by BDC. This was proven to the Board by a clear preponderance of the evidence.

20. The conclusion of the Board is that a prohibited inducement and consequent violation has occurred when "anything of value" is given or offered to a licensed retailer, unless the Board has beforehand approved the "giving or offering" of "anything of value" as brand identified advertising. (WDR 15).

21. The Board concludes further that BDC clearly ignored the prohibition of WDR 15. Failure to read and understand and comply with Board Regulations places the liquor license in jeopardy. The Board did not understand that violations of WDR 15 were taking place in this State until investigations by the DLC of BDC and other wholesalers took place. The Board never received a request from the State's wholesalers for a hearing, formal or informal, to address their concerns about the meaning of its Regulations and its enforcement policies.

22. It is equally clear from the DLC investigation and from the evidence admitted in this case, that all BDC retailers did not share materially equally in the receipt of "anything of value" from BDC. Those retailers that did benefit, for the most part, appear to have been volume customers of BDC.

DECISION

It is the determination of the Liquor Control Board that: Baker Distributing Corporation, doing business at 395 North Shrewsbury Road, North Clarendon, Vermont, under Wholesale Dealer License #2134-001-WHDR-01, and at 130 Orion Drive, Colchester, Vermont, under Wholesale Dealer License #2134-002-WHDR-01, violated Wholesale Dealer Regulation No. 15, 16 separate times, as set forth in this Decision, is fined the sum of Five Thousand Dollars

($5,000.00) to be paid to the DLC by the end of the 10th business day following the day this Decision is served upon Baker Distributing Corporation.

Dated at So. Burlington, Vermont, on this 9th day of March, 2012.

LIQUOR CONTROL BOARD

By: Stephanie O'Brien
Stephanie M. O'Brien, Chair