

State Office of Administrative Hearings



Lesli G. Ginn
Chief Administrative Law Judge

November 17, 2016

Sherry Cook
Executive Director
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA INTERAGENCY MAIL

**RE: SOAH Docket No. 458-16-1365; *In the Matter of EATX Coffee, LLC*
*d/b/a Cuvee Coffee***

Dear Ms. Cook:

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 § 155.507(c), a SOAH rule which may be found at www.soah.texas.gov.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. Beeler".

John Beeler
Administrative Law Judge

JB/vg

Enclosure

xc Judith L. Kennison, Staff Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - (with Certified Evidentiary Record and 1 CD) -**VIA INTERAGENCY MAIL**
Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA INTERAGENCY MAIL**
Angel Tomasino, Attorney, 1210 S. Alamo St., Ste. 1, San Antonio, TX 78210-**VIA REGULAR MAIL**

**SOAH DOCKET NO. 458-16-1365
(TABC CASE NO. 635000)**

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION,
Petitioner**

v.

**EATX COFFEE, LLC
D/B/A CUVEE COFFEE
PERMIT NO. BG887353
TRAVIS COUNTY, TEXAS,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff (Staff) of the Texas Alcoholic Beverage Commission (TABC or Commission) alleges EATX Coffee, LLC d/b/a Cuvee Coffee (Cuvee or Respondent) violated the Texas Alcoholic Beverage Code (Code) by canning beer¹ without first obtaining a manufacturer's permit, possessing equipment designed for manufacturing an illicit beverage, reselling beer that was not in the packaging in which Respondent received it, and offering for sale beer without first submitting a sample of it to the Commission for analysis and without first submitting the label for approval. The evidence failed to prove any of the allegations, and therefore, the Administrative Law Judge (ALJ) recommends that no action be taken against Respondent.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

Notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing on the merits convened on August 23, 2016, and concluded on August 29, 2016, in Austin, Texas. Staff Attorney Judith Kennison represented Staff, and attorney Angel Tomasino represented Respondent. The record closed on October 8, 2016, after the parties filed written closing arguments.

¹ For the purposes of this Proposal for Decision, both beer and ale will be referred to as beer. During the hearing the parties discussed the legal differences between the two, but those differences are immaterial in this proceeding.

II. APPLICABLE LAW

Code § 11.01(a)(1):

(a) No person who has not first obtained a permit of the type required for the privilege exercised may, in a wet area, do any of the following:

(1) manufacture, distill, brew, sell, possess for the purpose of sale, import into this state, export from this state, transport, distribute, warehouse, or store liquor.

Code § 61.71:

GROUND FOR CANCELLATION OR SUSPENSION:
RETAIL DEALER. (a) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that the licensee:

(1) violated a provision of this code or a rule of the commission during the existence of the license sought to be cancelled or suspended or during the immediately preceding license period;

(17):conducted 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.

Code § 62.01(a)(3):

(a) The holder of a manufacturer's license may:

(3) bottle and can beer and pack it into containers for resale in this state, regardless of whether the beer is manufactured or brewed in this state or in another state and imported into Texas.

Code § 74.01(a)(1):

(a) A holder of a brewpub license for a brewpub located in a wet area, as that term is described by Section 251.71 of this code, may:

(1) manufacture, brew, bottle, can, package, and label malt liquor, ale, and beer;

Texas Alcoholic Beverage Code §103.02:

EQUIPMENT OR MATERIAL FOR MANUFACTURE OF ILLICIT BEVERAGES. No person may possess equipment or material designed for, capable of use for, or used in manufacturing an illicit beverage.

Code §1.04(4):

“Illicit beverage” means an alcoholic beverage:

- (A) manufactured, distributed, bought, sold, bottled, rectified, blended, treated, fortified, mixed, processed, warehoused, stored, possessed, imported, or transported in violation of this code;
- (B) on which a tax imposed by the laws of this state has not been paid and to which the tax stamp, if required, has not been affixed; or
- (C) possessed, kept, stored, owned, or imported with intent to manufacture, sell, distribute, bottle, rectify, blend, treat, fortify, mix, process, warehouse, store, or transport in violation of this code.

Code § 104.05:

- (a) This section applies to a permittee or licensee who is authorized to sell beer, malt liquor, or ale to an ultimate consumer for consumption off the permitted or licensed premises.
- (b) The holder of a permit or license described in Subsection (a) of this section may resell beer, malt liquor, or ale only in the packaging in which the holder received the beer, malt liquor, or ale or may resell the contents of the packages as individual containers.
- (c) Except for purposes of resale as individual containers, a licensee or permittee may not:
 - (1) mutilate, tear apart, or cut apart original packaging in which beer, malt liquor, or ale was received; or
 - (2) repackage beer, malt liquor, or ale in a manner misleading to the consumer or that results in required labeling being omitted or obscured.

Code § 101.67:

PRIOR APPROVAL OF MALT BEVERAGES. (a) No person may ship or cause to be shipped into the state, import into the state, manufacture and offer for sale in the state, or distribute, sell, or store in the state any beer, ale, or malt liquor unless:

- (1) a sample of the beverage or a sample of the same type and quality of beverage has been first submitted to an independent, reputable laboratory or the commission for analysis to verify the alcohol content of the beverage; and
- (2) the label of the beverage has been first submitted to the commission or its representative and found to comply with all provisions of this code relating to the labeling of the particular type of beverage.

III. EVIDENCE AND ARGUMENTS

A. Stipulated Facts and Initial Discussion

Respondent holds a Wine and Beer Retailer's On Premise Permit, which also allows sale for off-premise consumption, issued by the Commission for the premises known as Cuvee Coffee, located at 2000 6th Street, Suite 1, Austin, Texas. In September 2015, Cuvee sold beer in cans known as crowlers, had a crowler machine on the premises, and placed hand-written information on the cans identifying the contents and purchase date. TABC learned of the crowlers being sold by Respondent and a few other permittees around the state. After considering the matter for some time, TABC determined that it was illegal for these permittees to sell beer in crowlers.

TABC argues that using a crowler constitutes canning, an activity allowed only by manufacturers. Respondent argues that using a crowler to sell beer is not canning under the Code and points out that TABC does not take the position that selling beer in growlers constitutes bottling beer, another activity reserved for manufacturers. Growlers are bottles filled by permittees and sold for off-premise consumption. TABC asserts there is a difference between the two because growlers have caps that can be removed and then placed back on the bottles, while crowlers have pull tabs that, once opened, cannot be used to reseal the cans.

TABC argues that because crowlers are not permitted, the possession of a crowler machine (the machine that places the lid on the crowler can) is illegal as it is equipment designed for, capable of use for, or used in the manufacturing of an illicit beverage. Cuvee argues that the crowler machine is not illegal because using it does not constitute canning beer.

TABC also argues that Cuvee's placing of hand-written labels on the crowlers is prohibited. Cuvee argues that the beer is actually sold from kegs and there is no evidence that the labels on the kegs were not submitted by the manufacturer and that labels were not approved.

Finally, TABC argues that selling beer for off-premise consumption in crowlers constitutes repackaging it, which is prohibited. Cuvee argues that it is no different that selling beer in growlers, which is permitted.

B. Staff's Evidence

1. Testimony of Rebekah Alaniz

Ms. Alaniz was employed by Respondent as a manager during the dates at issue. She explained that if a customer requested a particular beer that Cuvee kept on tap and wanted it in a crowler, an employee who knew how to use the crowler machine would fill a can and use the crowler machine to put a lid on it. The employee would also handwrite information about the beer on a label and attach it to the can. Cuvee also sold beer in bottles called growlers, which typically hold 64 ounces of beer. The crowlers hold 32 ounces of beer. Both the growlers and crowlers had seals so the beer would not spill when the customer transported them. Neither, in her opinion, had a permanent seal. The difference between the seals is that growlers have a cap and crowlers have a pull tab. Both take a couple of minutes to fill and seal and neither process monitors the pressure in the container or removes oxygen from the container. On one occasion, a few crowlers were filled and placed in a cooler because a keg was close to empty and needed to be replaced. Putting the remaining beer in the crowlers prevented it from being wasted.

2. Testimony of Martin Wilson

Mr. Wilson is an Assistant General Counsel for TABC with his primary duties being rule-making activities and advising the Executive Director concerning contested case matters. He explained that Texas has a three-tier system for the distribution of alcoholic beverages to protect against vertical integration. Vertical integration is a generic term that references ownership or control of all activities related to a product. The three-tier system was adopted by Texas after the repeal of prohibition as a protection against organized crime.

The three-tier system includes manufacturers, wholesalers, and retailers. Manufacturers produce the product, wholesalers distribute it to retailers, and retailers sell it to the ultimate consumer. Mr. Wilson asserted that Cuvee acted as a manufacturer when it sold beer in crowlers. However, while selling beer in crowlers by Cuvee is prohibited because it constitutes canning, selling beer in growlers is not prohibited and does not constitute bottling.

Mr. Wilson explained that putting keg beer in a growler that is not sealed and capable of being refilled is similar to selling it in a pitcher or glass. It is an implied activity because the beer has to be put into some sort of vessel. The distinction is that growlers are not sealed and can be refilled. Growlers have a flip top cap similar to the caps on Grolsch beer. The only difference being that Grolsch bottles have a paper seal added. Mr. Wilson acknowledged that there is no definition of "sealed" or "sealing" in the Alcoholic Beverage Code. Also, there is nothing in the Code that expressly allows permittees such as Cuvee to sell beer in bottles for off-premise consumption.

It is legal for brewpubs to sell beer in crowlers, but only beer they manufacture themselves, and Cuvee does not brew beer. While it is not permissible for Cuvee to sell beer in crowlers, there would be nothing impermissible about selling to consumers in buckets, tennis ball cans, or even mayonnaise jars.

Cuvee also violated the Code by placing labels on the crowler cans. Only labels approved by TABC may be used and Cuvee never provided its labels to TABC for approval. If it had, they would not have been approved because labels are approved only for manufacturers.

Cuvee's labels on crowlers would be misleading because the product was not manufactured by Cuvee.

Placing beer manufactured by another entity into a crowler makes the beer an illicit beverage and, therefore, the crowler machine is equipment used in the manufacturing of an illicit beverage. Mr. Wilson could not say whether a crowler machine that placed a lid with a screw top on the crowler can, instead of a pull tab, would be permitted. He also could not comment on whether screw top bottles would be permitted. He was able to state that Cuvee's crowler cans are not permitted because he was privy to the discussions concerning crowler cans at TABC. He has not been privy to discussions concerning screw top cans or screw top bottles.

3. Testimony of Thomas Graham

Mr. Graham is the Director for Marketing Practices and Excise Tax for TABC and oversees the label approval process. Cuvee has never sought approval of any labels. If Cuvee had sought label approval, it would have been denied because Cuvee did not make the product. An exception to the requirement is that brewpubs that sell their own beer for off-premise consumption do not have to get TABC approval for their labels.

In the past, manufacturers have sent growler type bottle labels to TABC for approval and the usual practice is for the manufacturer to have some kind of a seal on the growler bottle. A seal, however, is not required by TABC for approval. Conversely, placing a paper seal on a growler bottle would not mean the seller was manufacturing beer.

Manufacturers seal their product to assure it stays fresh until it gets to the ultimate consumer. Whether manufacturers seal the product by hand or by machine does not determine whether it is part of the manufacturing process.

4. Testimony of Dexter Jones

Mr. Jones is the Assistant Chief of Field Operations for TABC and oversees audits and investigations. It is not permissible for Cuvee to place labels on any containers it sells beer in,

however, Cuvee could sell beer in glasses or styrofoam cups with the Cuvee name on them. Customers could bring buckets in to Cuvee's premises and purchase beer in them for off-premise consumption. However, placing a lid on a crowler and crimping it with a machine is not permitted because Cuvee does not have a manufacturing permit.

Mr. Jones is concerned that if retailers are allowed to sell beer in crowlers, there will be collusion between manufacturers and retailers. He is also concerned that if retailers are allowed to use crowler machines, nothing would prevent them from operating a more sophisticated canning process. Also, it was illegal for the manufacturer to sell the crowler machine to Cuvee.

The difference between a growler and a crowler is that the crowler has a permanent seal on the top, while a growler does not. There is no definition of "seal" in the Code. Selling beer in crowlers could impact public health because the product is not oxidized and the beer might not be consumed within about 24 hours.

TABC recommends a total penalty of about \$32,000. This is based on eight violations for 13 days each and \$300 per day for each violation.

C. Respondent's Evidence

1. Testimony of Jeffrey Stuffings

Mr. Stuffings is the founder and owner of Jester King Brewery located in Austin, Texas. He has a brewer's permit and a brewpub permit, which authorizes him to sell beer he brews for off-premise consumption. He is familiar with canning and bottling beer and it would not be possible to use a crowler machine for commercial canning. The process would be too slow and the shelf life of the beer would be way too short. Crowlers and growlers are both designed for beer that will be consumed very soon after purchase. Also, canning of beer is distinct from brewing beer.

2. Testimony of Keenan Cole Zarling

Mr. Zarling is the head brewer for 11 Under Brewing Company (11 Under) located in Houston, Texas and studied brewing both at the Siebel Institute in Chicago and at Doemens Academy in Munich. When beer is sold in growlers or crowlers, it has a short shelf life because oxygen is not purged and is absorbed by the beer. The flavor and aroma of the beer will change within 24 hours.

In the canning process at 11 Under, beer is canned at the rate of 40 cans per minute. Weight, temperature, quality of the seal, and dissolved oxygen levels are monitored during the process. As a result, the canned beer has a typical shelf life of three months. He knows of no breweries that distribute their beer using a crowler machine. Labor costs would be too high and quality control too low.

3. Testimony of Rashelle McKim

Ms. McKim is an owner of Cuvee. Cuvee sells beer and started using the crowler machine in December 2014. The average sales of crowlers was about \$1,400 per month with each crowler being sold for about \$13.60. The business barely makes ends meet, so the sale of crowlers is important. Cuvee also sells beer in growlers, but sells very few. She contacted TABC to see if crowlers would be considered permissible if a tennis ball can type plastic lid was added but was told they would not.

4. Testimony of Elizabeth Davis

Ms. Davis is an internal auditor the Department of State Health Services. Prior to this position, she was an Auditor III for TABC. In that position, she purchased crowlers from Cuvee and wrote the case narrative.

5. Testimony of Gene Bowman

Mr. Bowman is employed by TABC as the Director of the Audit and Investigations Division. In that capacity he was involved in the discussions concerning whether Cuvee's selling crowlers was legal. If a crowler had a screw top lid, it would basically be a growler and would not be prohibited.

6. Testimony of Michael McKim

Mr. McKim is an owner of Cuvee and a managing partner. He has seen machines used for filling growlers. The process is commonly referred to as counterpressure filling. He purchased the crowler machine for use at Cuvee so he could be the first to introduce it to the Austin market. He does not consider the use of the crowler machine to be a canning operation. Using the crowler machine does not entail monitoring any date coder, temperature, pressure, dissolved oxygen, or the seal. A crowler is simply an alternative to a glass growler.

After being informed by TABC that crowlers were not permitted, Mr. McKim let them know when he would start selling them again. TABC had informed him that one option concerning the legality of crowlers was to be cited for selling them and therefore, be able to get a legal ruling on the issue.

7. Testimony of Forrest Clark

Mr. Clark is a cofounder of Zilker Brewing Company. A crowler machine could not be used by a manufacturer to can beer for distribution. He attempted to use a crowler machine about a year ago, but it was way too slow even for his brewery, which is small. Further, it resulted in inconsistent levels, short shelf life, and there is no way to purge oxygen from a crowler can.

D. Discussion

The Third Amended Notice of Hearing alleges eight violations by Cuvee. For discussion, the issues will be addressed as follows: Are crowlers prohibited by the Code? Is possession of the crowler machine prohibited? Is Cuvee's placing of hand-written labels on the crowlers prohibited? And did Cuvee violate the Code by reselling beer that was not in the packaging in which Respondent received it?

1. Are crowlers prohibited by the Code?

TABC argues that the use of the crowler machine to sell beer to customers for off-premise consumption constitutes canning of an alcoholic beverage and is allowed only by entities holding manufacturing permits. In support, TABC cites Code § 62.01(a)(3):

(a) The holder of a manufacturer's license may:

(3) bottle and can beer and pack it into containers for resale in this state, regardless of whether the beer is manufactured or brewed in this state or in another state and imported into Texas[.]

The ALJ notes two important aspects of this Code section. First, it provides that a manufacturer's permit is required not only for canning beer, but for bottling beer as well. Second, the provision concerns canning and bottling *for resale*.

Much of TABC's case in chief during the hearing involved testimony concerning the differences between growlers and crowlers. Although TABC relies on the Code section above for the premise that only manufacturers are permitted to can or bottle beer, TABC considers the sale of growlers permissible by Cuvee, but the sale of crowlers prohibited. Both growlers and crowlers are containers in which customers can purchase beer kept on tap at Cuvee, and take it home for off-premise consumption. Growlers are bottles and crowlers are cans, and TABC argues that both canning and bottling of beer are permitted only by manufacturers according to the above Code section. TABC witnesses agreed that beer could be sold to customers in just about anything except crowlers. The sale of beer in buckets, mayonnaise jars, or even tennis ball cans, for off-premise consumption is permitted.

The only relevant distinction TABC noted between growlers and crowlers is the type of lid each has. Growlers are bottles with various types of caps including flip caps and screw caps. Crowlers are sealed with a pull tab. TABC asserts that the pull tab is a permanent seal and, therefore, different from a growler. However, the term "seal" is not defined in the Code and nothing in the Code indicates that sealing with a pull tab is different from sealing with a cap. While TABC asserts that the pull tab is a permanent seal, it obviously is not, because the tab can be pulled and the seal broken. It appears TABC actually uses the term "permanent" to mean a seal that, once broken, cannot be resealed. While it may be true that the growler caps can be taken off and then replaced and the crowler pull tabs cannot, nothing in the code or TABC rules notes any legal distinction between the two.

As set out above, TABC expert witness Martin Wilson testified that he could not say whether crowlers would be permitted if a screw top was used instead of a pull tab. However, Gene Bowman, TABC Director of the Audit and Investigations Division, testified that if a crowler had a screw top lid it would basically be a growler and would not be prohibited.

TABC Director for Marketing Practices and Excise Tax testified that there is no requirement for manufacturers to place permanent seals on bottled beer. If a permanent seal is not required in bottling of beer by manufacturers, and if TABC witnesses cannot agree whether crowlers with screw top lids would be legal or illegal, or say why they would be legal or illegal, it would seem impossible to determine that crowlers are illegal on the basis that they have what TABC refers to as a permanent seal.

TABC also argues that Cuvee selling beer in crowlers jeopardizes the general welfare, health, and safety of people. TABC Assistant Chief of Field Operations Dexter Jones testified that, because beer in crowlers is not properly oxidized, organisms can get into the product. This line of reasoning fails for several reasons. First, TABC permits the sale of beer in growlers, which are filled the same way as crowlers, and therefore, would have the same oxidation issues. Moreover, growlers are less likely than crowlers to be consumed within 24 hours of purchase. Growlers are typically 64-ounce containers and crowlers are typically 32-ounce containers, and, according to TABC, once a crowler is opened, it cannot be resealed for later consumption. Second, crowlers are sold directly to the consumer, not to another retailer who could sell to an

unsuspecting consumer. Lastly, TABC permits beer to be sold in crowlers at brewpubs. It appears disingenuous for Staff to assert crowlers are dangerous to the public, unless they are sold at brewpubs.

The second aspect of Code § 62.01(a)(3) that is in opposition to TABC's position is that it addresses canning and bottling *for resale*. In other words, it provides that a manufacturing permit is required to can or bottle beer that is going into the stream of commerce. TABC witnesses agree that beer from kegs must be sold to the consumer in some type of container. It is not alleged that Cuvee canned beer for resale.

In fact, the evidence clearly established that crowlers could not be used as a canning process for sending beer into the stream of commerce. To can beer for anything other than immediate consumption by the purchaser requires that the beer have a substantial shelf life. In contrast, crowlers have a shelf life of no more than a day, just like growlers, which TABC has determined are permissible.

2. Is possession of the crowler machine prohibited?

The second category of allegations against Cuvee is that it possessed equipment designed for, capable of use for, or used in the manufacturing of an illicit beverage. While it is undisputed that Cuvee's crowler machine is used for placing lids on crowlers, the evidence is clear that it is not capable of, or designed for, canning beer for resale. The process of attaching a lid to the crowler can is much too slow to be commercially viable, and the process lacks the necessary steps to give the beer a sufficient shelf life for resale. As discussed above, TABC agrees that growlers are legally permitted, and there is nothing different about the beer in crowlers than in growlers except that the crowler is smaller and not designed to be resealed. Both of these factors would tend to make the crowler less likely to qualify for resale than the growler. Because crowlers are not illegal, the crowler machine is not equipment designed for, capable of use for, or used in the manufacturing of an illicit beverage.

3. Is Cuvee's placing of hand-written labels on the crowlers prohibited?

The next allegation against Cuvee is that it placed labels on crowlers in violation of Code § 101.67. The ALJ disagrees. The parties agree that the beer sold to consumers in crowlers or growlers came from kegs, and no allegation that labels or lack of labels on the kegs violated this section of the code. It is also undisputed that beer sold to customers from the kegs could be legally transferred into growlers, glasses, buckets, mayonnaise jars, even tennis ball cans. Tennis ball cans would obviously have some type of label on them, which was not approved by TABC, but TABC asserts no violation concerning them. A reasonable inference for this is that the label on the keg met the requirements of the Code and that the label on the tennis can was simply incidental. The labels Cuvee placed on the crowlers were handwritten and only provided information to the consumer as a reminder of which type of beer had been purchased. The beer was actually sold to the consumer from the keg and a growler, crowler, tennis ball can, mayonnaise jar, or bucket would simply be the container used by the consumer transport the beer. Similarly, bars regularly sell beer to customers in glasses for on-premise consumption, but TABC apparently does not require the glasses to have approved labels. A bartender could hand write the name of the beer on plastic cups without fear of violating a Code section. The label requirement would seem to be directed at manufactures to assure customers know what they are purchasing, not at bartenders attempting to distinguish one beer from another sold at the same time. This is consistent with TABC's position that brewpubs are allowed to place labels on beer containers without first receiving approval from TABC. Both brewpubs and Cuvee are selling to the consumer who chose the type of beer, so no misleading would occur.

4. Did Cuvee violate the Code by reselling beer that was not in the packaging in which Respondent received it?

Code § 104.05 requires permittees selling beer for off-premise consumption to sell it only in the package in which the permittee received it. However, TABC acknowledges that this section does not preclude a permittee from transferring beer from a keg and selling it for off-premise consumption to consumers in growlers, buckets, mayonnaise jars, or tennis ball cans. Although there was testimony that one of Cuvee's employees filled crowlers and placed them in a cooler, no evidence was offered indicating any of those were sold, or even offered for sale. The ALJ finds no violation proven concerning this violation.

Because TABC failed to establish Cuvee committed any violation of the Code, the ALJ recommends no action be taken against it.


IV. FINDINGS OF FACT

1. EATX Coffee, LLC d/b/a Cuvee Coffee (Respondent) holds a Wine and Beer Retailer's On Premise Permit issued by the Texas Alcoholic Beverage Commission (TABC) for the premises known as Cuvee Coffee, located at 2000, East 6th Street, Suite 1, Austin, Texas.
2. On September 10, 2015, and September 21, 2015, Respondent sold beer in 32-ounce cans known as crowlers for off-premise consumption.
3. Respondent also offered beer for sale for off-premise consumption in 64-ounce glass containers known as growlers.
4. The TABC determined that selling beer in crowlers violates the Texas Alcoholic Beverage Code (Code), but selling beer in growlers does not violate the Code.
5. There is no material difference between growlers and crowlers.
6. Neither growlers or crowlers have permanent seals.
7. Some manufacturers of beer bottle their product in containers with caps materially the same as growlers.
8. Respondent did not label beer as that term is anticipated by the Code.
9. Respondent did not brew or manufacture beer.
10. Respondent's crowler machine is not designed for, capable of use for, or used in the manufacturing of an illicit beverage.
11. The Commission's Staff (Staff) timely issued a notice of hearing, alleging a violation of the Code.
12. The notice stated the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the statutes and rules involved; and the factual matters asserted.
13. The hearing on the merits convened on August 23, 2016, and concluded on August 29, 2016, in Austin, Texas. Staff Attorney Judith Kennison represented Staff, and attorney Angel Tomasino represented Respondent. The record closed on October 8, 2016, and the parties filed written closing arguments.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this case pursuant to Code ch. 5 and § 11.61.
2. The State Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to Code § 5.43 and Texas Government Code ch. 2003.
3. Respondent received notice of the hearing, pursuant to Texas Government Code §§ 2001.051-.052.
4. By selling beer in crowlers Respondent did not violate Code §§ 11.01(a)(1), 61.71(a)(17), or 62.01(a)(3), 74.01(a)(1), or 104.05.
5. By possessing the crowler machine, Respondent did not violate Code § 103.02.
6. By placing hand-written information on crowlers, Respondent did not violate Code § 101.67.

SIGNED November 17, 2016.



JOHN H. BEELER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS