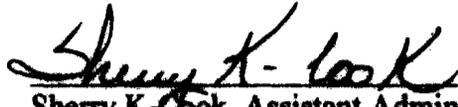




By copy of this Order, service shall be made upon all parties in the manner indicated below.

SIGNED this the 29th day of February  
2010 at Austin, Texas



Sherry K. Cook, Assistant Administrator  
Texas Alcoholic Beverage Commission

Hon. Stephen Burger  
Administrative Law Judge  
State Office of Administrative Hearings  
2020 North Loop West, Suite 111  
Houston, Texas 77018  
**VIA FACSIMILE: (713) 812-1001**

Jorge Armando Ochoa  
**RESPONDENT**  
d/b/a La Union Sports Bar  
5604 Telephone Road  
Houston, Texas 77087  
**VIA U. S. FIRST CLASS MAIL**

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

Licensing Division

Houston District Office



The Notice of Hearing contained a statement of the matters asserted against Respondent; the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; and a reference to the statutes and rules involved. The Notice of Hearing also contained the following language 12-point boldface type: "If you fail to appear at the hearing, the Commission will proceed without you and the allegations in this notice will be deemed admitted as true, and the relief sought may be granted by default." The hearing concluded and the record closed that same day.

## II. LEGAL STANDARDS AND APPLICABLE LAW

The Commission or Administrator may suspend for not more than 60 days or cancel an original or renewal permit or license if it is found, after notice and hearing, that the permittee violated a provision of the code or a commission rule. TEX. ALCO. BEV. CODE ANN. § 11.61(b)(2).

No holder of a permit, nor any officer, agent, or employee, may knowingly possess or permit to be possessed on the premises any alcoholic beverage not covered by an invoice from the supplier from whom it was purchased. The commission shall cancel the permit of any permittee found to have violated the prior section. TEX. ALCO. BEV. CODE ANN. § 28.06 (c) and (d).

No holder of a permit may refill a container which contained distilled spirits on which tax has been paid. TEX. ALCO. BEV. CODE ANN. § 28.08.

A holder of a mixed beverage permit, or the holder's employee, who empties a bottle containing distilled spirits on which the tax has been paid shall immediately after emptying the bottle invalidate the identification stamp on the bottle as prescribed by rule. TEX. ALCO. BEV. CODE ANN. § 28.09 (a).

### III. RECOMMENDATION

The ALJ agrees with Petitioner's request that Respondent's permit be canceled.

### IV. FINDINGS OF FACT

1. Jorge Armando Ochoa's (Respondent), d/b/a La Union Sports Bar, 5604 Telephone Road, Houston, Harris County, Texas, is the holder of a Mixed Beverage Permit, MB-689124, which includes the Mixed Beverage Late Hours Permit, issued by the Texas Alcoholic Beverage Commission (TABC).
2. A Notice of Hearing dated October 14, 2009, was issued by the TABC and sent to Respondent.
3. The October 14, 2009, Notice of Hearing gave the location and nature of the hearing and contained a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short statement of the allegations and the relief sought by the TABC.
4. The October 14, 2009, Notice of Hearing also contained the following language in 12-point or larger boldface type: "If you fail to appear at the hearing, the Commission will proceed without you and the allegations in this notice will be deemed admitted as true, and the relief sought may be granted by default."
5. On December 11, 2009, a public hearing was held before Administrative Law Judge (ALJ) Stephen J. Burger in Houston, Texas. The TABC appeared at the hearing and was represented by Sandra Patton, attorney. Respondent did not appear. The record closed on the same day.
6. On or about May 14, 2009, Respondent or Respondent's agent, servant, or employee, refilled a container that contained distilled spirits on which tax had been paid.
7. On or about May 14, 2009, Respondent or Respondent's agent, servant, or employee, failed to immediately mutilate the identification stamp on an empty bottle that contained distilled spirits.

8. On or about May 14, 2009, Respondent or Respondent's agent, servant, or employee, knowingly possessed or permitted the possession of alcoholic beverages not covered by invoice.

#### V. CONCLUSIONS OF LAW

1. The TABC has jurisdiction over this matter pursuant to Subchapter B of Chapter 5, TEX. ALCO. BEV. CODE ANN.
2. The State Office of Administrative Hearings has jurisdiction to conduct the 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. Proper and timely notice of the hearing was provided to all parties pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052; and 1 TEX. ADMIN. CODE § 155.501.
4. Based on the above Findings of Fact, on May 14, 2009, Respondent or Respondent's agent, servant, or employee refilled a container that contained distilled spirits on which tax had been paid, in violation of TEX. ALCO. BEV. CODE ANN. §§ 28.08 and 11.61(b)(2).
5. Based on the above Findings of Fact, on May 14, 2009, Respondent or Respondent's agent, servant, or employee, failed to immediately mutilate the identification stamp on an empty bottle that contained distilled spirits, in violation of TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), 28.09(a), and TEX. ADMIN. CODE § 41.72.
6. Based on the above Findings of Fact, on May 14, 2009, Respondent or Respondent's agent, servant, or employee, knowingly possessed or permitted the possession of alcoholic beverages not covered by invoice, in violation of TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), 28.09(a), and 28.06.(c) and (d).
7. Based on the preceding Conclusions of Law, Respondent's permit should be canceled.

**SIGNED February 4, 2010.**

  
\_\_\_\_\_  
**STEPHEN J. BURGER**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

**RECEIVED**

**FEB 05 2010**

**TABC HOUSTON  
LEGAL**

February 4, 2010

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

**VIA REGULAR MAIL**

**RE: Docket No. 458-10-0633; Texas Alcoholic Beverage Commission v. Jorge Armando Ochoa d/b/a La Union Sports Bar**

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 § 155.507, a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,  
  
Stephen Burger  
Administrative Law Judge

SB/rlm  
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**  
Sandra Patton, Staff Attorney, Texas Alcoholic Beverage Commission, 427 W 20<sup>th</sup> Street, Suite 600, Houston, TX 77008- **VIA REGULAR MAIL**  
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA REGULAR MAIL**  
Jorge Armando Ochoa d/b/a La Union Sports Bar, 5604 Telephone Rd., Houston, TX 77087 -**VIA REGULAR MAIL**

2020 North Loop West, Suite 111 ♦ Houston, Texas 77018  
(713) 957-0010 Fax (713) 812-1001  
<http://www.soah.state.tx.us>