

DOCKET NO. 603066

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
I GOTCHA INC.	§	
D/B/A ILLUSIONS	§	ALCOHOLIC
PERMIT/LICENSE NO(s). MB158142	§	
TARRANT COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-05-3247)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 31st day of December, 2007, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Tanya Cooper. The hearing convened on 4th day of March 2005 and adjourned that same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on the 13th day of April 2005. 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. Exceptions were 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.

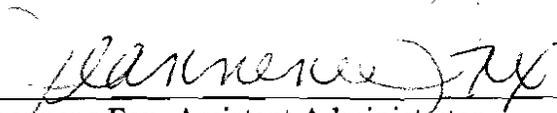
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that your permit(s) are hereby **SUSPENDED**.

IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of \$1,500.00 on or before the 18th day of February 2008, all rights and privileges under the above described permits will be **SUSPENDED for a period of ten (10) days, beginning at 12:01 A.M. on the 24th day of February 2008.**

This Order will become final and enforceable on January 31, 2008, unless a Motion for Rchearing 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 31st of December, 2007, at Austin, Texas.



Jeanene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

The Honorable Tanya Cooper
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (817) 377-3706

John Gamboa
ATTORNEY FOR RESPONDENT
VIA FAX (817) 885-8504

I GOTCHA INC.
RESPONDENT
d/b/a ILLUSIONS
7405 CAMP BOWIE WEST
FORT WORTH, TX 76116
VIA REGULAR MAIL

JUDITH KENNISON
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Enforcement Division

TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 603066

REGISTER NUMBER:

NAME: I GOTCHA INC.

TRADENAME: ILLUSIONS

ADDRESS: 7405 Camp Bowie West, Fort Worth, Texas 76116

DATE DUE: February 18, 2008

PERMITS OR LICENSES: MB158142

AMOUNT OF PENALTY: \$1,500.00

Amount remitted \$ _____ Date remitted _____

You may pay a civil penalty rather than have your permits and licenses suspended if an amount for civil penalty is included on the attached order.

YOU HAVE THE OPTION TO PAY THE CIVIL PENALTY ONLY IF YOU PAY THE ENTIRE AMOUNT ON OR BEFORE THE DUE DATE. AFTER THAT DATE YOUR LICENSE OR PERMIT WILL BE SUSPENDED FOR THE TIME PERIOD STATED ON THE ORDER.

Mail this form along with your payment to:

TEXAS ALCOHOLIC BEVERAGE COMMISSION
P.O. Box 13127
Austin, Texas 78711

Overnight Delivery Address: 5806 Mesa Drive, Austin, Texas 78731

You must pay by postal money order, certified check, or cashier's check. No personal or company check nor partial payment accepted. Your payment will be returned if anything is incorrect. You must pay the entire amount of the penalty assessed.

Attach this form and please make certain to include the Docket # on your payment.

Signature of Responsible Party

Street Address P.O. Box No.

City State Zip Code

Area Code/Telephone No.

LEGAL

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

41-23
APR 13 2005

April 13, 2005

Alan Steen, Administrator
Texas Alcoholic Beverage Commission

VIA FACSIMILE 512/206-3498

John Gamboa,
Attorney for Respondent

VIA FACSIMILE 817/885-8504

RE: **Docket No. 458-05-3247; Texas Alcoholic Beverage Commission vs i Gotcha, Inc.
d/b/a Illusions (TABC Case No. 603066)**

Dear Mr. Steen:

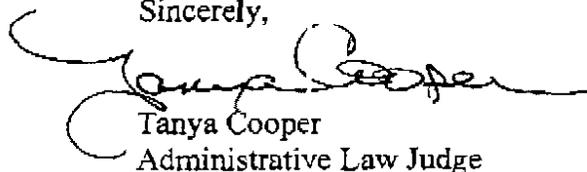
Enclosed please find a Proposal for Decision in the above-referenced cause for the consideration of the Texas Alcoholic Beverage Commission. Copies of the proposal are being sent to Timothy Griffith, attorney for Texas Alcoholic Beverage Commission, and to John Gamboa, Attorney for the Respondent. The Texas Alcoholic Beverage Commission (TABC) Staff brought this disciplinary action against I Gotcha, Inc. d/b/a Illusions (Respondent), alleging that the place and manner in which Respondent conducts its business warrants the cancellation or suspension of Respondent's permits based upon the general welfare, health, peace, morals, and safety of the people and on the public sense of decency in violation of the Texas Alcoholic Beverage Code (the Code).

In TABC Staff's notice of hearing, it alleged that Respondent's agent, servant, or employee, Tanya Manuel, or some other person engaged in or permitted sexual contact with the intent to arouse or gratify the sexual desires of any person on the licensed premises. TABC Staff sought a twenty-day suspension of Respondent's permits, or a \$3,000 civil penalty in lieu of suspension, in relation to this allegation. However, the ALJ finds the evidence produced by TABC Staff was insufficient to support this alleged violation, and thus, no penalty should be assessed against Respondent.

The ALJ does, however, find that the evidence was sufficient to show that Respondent permitted lewd conduct on the licensed premises and recommends that Respondent's permits be suspended for 10 days, or in lieu of any suspension that Respondent pay a civil penalty in the amount of \$1,500.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings, located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas 76116. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,



Tanya Cooper
Administrative Law Judge

attachments

xc: Tim Griffith, TABC Staff Attorney via facsimile 972/547-5093

DOCKET NO. 458-05-3247

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION, Petitioner	§	
	§	
V.	§	OF
	§	
	§	
I GOTCHA, INC. D/B/A	§	
ILLUSIONS, Respondent	§	
TARRANT COUNTY, TEXAS	§	
(TABC CASE NO. 603066)	§	ADMINISTRATIVE HEARING

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) Staff brought this disciplinary action against I Gotcha, Inc. d/b/a Illusions (Respondent), alleging that the place and manner in which Respondent conducts its business warrants the cancellation or suspension of Respondent's permits based upon the general welfare, health, peace, morals, and safety of the people and on the public sense of decency in violation of the Texas Alcoholic Beverage Code (the Code).¹ In TABC Staff's notice of hearing, it alleged that Respondent's agent, servant, or employee, Tanya Manuel, or some other person engaged in or permitted sexual contact with the intent to arouse or gratify the sexual desires of any person on the

¹ The Commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found after notice and hearing, that the permittee/retail dealer violated a provision of the Code or a rule of the Commission. TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2) and 61.71(a)(1).

* * * *

All provisions of the Code which apply to a mixed beverage permit also apply to a mixed beverage late hours permit. TEX. ALCO. BEV. CODE ANN. § 29.03.

* * * *

Permittee means a person who holds a permit provided for in the Code, or an agent, servant, or employee of that person. TEX. ALCO. BEV. CODE ANN. § 1.04(11).

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licensed premises. TABC Staff sought a twenty-day suspension of Respondent's permits, or a \$3,000 civil penalty in lieu of suspension,² in relation to this allegation. However, the ALJ finds the evidence produced by TABC Staff was insufficient to support this alleged violation, and thus, no penalty should be assessed against Respondent. The ALJ does, however, find that the evidence was sufficient to show that Respondent permitted lewd conduct on the licensed premises and recommends that Respondent's permits be suspended for 10 days, or in lieu of any suspension that Respondent pay a civil penalty in the amount of \$1,500.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There were no contested issues of notice or jurisdiction in this proceeding. Therefore, those issues are addressed only in the Findings of Facts and Conclusions of Law.

On March 4, 2005, a hearing convened before ALJ Tanya Cooper, at the SOAH offices located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas. TABC Staff was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent appeared through its representative, Waldron "Walt" Duncan, and was represented by John Gamboa, attorney at law. The hearing concluded on March 4, 2005, and the record closed on March 14, 2005.

II. EVIDENCE

Respondent holds a Mixed Beverage Permit, MB 158142, and a Mixed Beverage Late Hours Permit, LB 158143, issued by TABC for Respondent's premises, I Gotcha, Inc., d/b/a Illusions, located at 7405 Camp Bowie West, Fort Worth, Texas. Respondent's permits were initially issued on December 16, 1983, and have been continuously renewed since that date. Mr. Duncan, Ralph May, James Sharp,

² When the Commission is authorized to cancel or suspend a permit, a civil penalty may be authorized to be not less than \$150 or more than \$25,000 for each day the permit was to have been suspended. TEX. ALCO. BEV. CODE ANN. § 11.64(a).

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and Tina Niemi testified at the hearing.

A. TABC's Evidence.

In support of its allegations, TABC Staff presented the testimony of Agent Ralph May. Agent May has been a TABC agent for six years. On November 21, 2002, Agent May said he was at Respondent's licensed premises, Illusions. While there, he came into contact with Tanya Manuel, a dancer at Illusions.

Agent May testified that Ms. Manuel was circulating through the licensed premises talking with customers. She approached him, and after some conversation, asked if he wanted her to perform a lap dance for him. He told Ms. Manuel that he wanted a lap dance. At that point, they walked over to a private room just off the licensed premises' bar area. Agent May stated that the doorway to the room was open to the bar where the bartender and other customers were present.

Once inside the room, Agent May saw four armless chairs. The room was dimly lit, but he saw another dancer and male patron were seated in two of the chairs. Agent May stated that he sat down in one of the remaining chairs. Ms. Manuel then removed her pullover top. She was attired in a "G-string" only and sat on Agent May's lap with her genitals against his genitals. According to Agent May, Ms. Manuel moved her body against him simulating a sex movement. Ms. Manuel then put her face on his genitals through his clothing, humming and blowing, simulating oral sex. Agent May acknowledged paying Ms. Manuel \$20 for the personal performance. After completing the dance, Ms. Manuel asked him if he enjoyed the dance and wanted another one.

Agent May said he thought the purpose of Ms. Manuel's conduct was to arouse sexual desire, and that she was acting recklessly because others were present in the room and just outside the room in the bar area that could have been offended. Agent May conceded that he did not watch what others were doing in the room and did not know if anyone watched Ms. Manuel while she was dancing for him.

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According to Agent May's testimony, he believed the licensed premises was a public place because it was a business that was open to the public. However, in cross-examination by Respondent's attorney, he agreed that there were restrictions concerning who was admitted into the licensed premises, as contrasted with public businesses such as an airport or bus station. Agent May said a cover charge (\$5) had been paid in order to enter the business, age requirements (over 21 years of age) were enforced, and proper attire was required.

Agent May said that Ms. Manuel was cited for public lewdness because her dance simulated sex acts with physical contact and she was reckless as to whether others present could see her conduct and be offended by it. Agent May went on to describe conduct during a lap dance that would not have been lewd, such as if a dancer were to remain standing while dancing; or if only limited physical contact were occurring, such as if a dancer merely placed her hands on a customer's shoulders, or rubbed a customer's arms with her hands.

B. Respondent's Evidence.

1. Walt Duncan's Testimony.

During Mr. Duncan's testimony, several records, referred to as Incident Reports, maintained by Respondent were produced concerning the incident on November 21, 2002. These records described actions of Respondent's employees at the licensed premises when TABC agents arrived to issue Ms. Manuel and Respondent citations for lewd conduct. The documentary evidence shows that Respondent received a citation for permitting public lewdness on that date.

2. James Sharp's Testimony.

James Sharp testified that he was a floor manager on duty at Illusions on November 21, 2002. His duties included seeing that customers conducted themselves properly and that dancers circulated throughout

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the licensed premises to interact with customers.

According to Mr. Sharp, Ms. Manuel arrived for work on time around 7:00 p.m. He said that he did not see Ms. Manuel engage in the conduct complained of in this enforcement action by TABC Staff. He testified that no one complained to him that evening about Ms. Manuel's conduct, and he did not see any reckless behavior on Ms. Manuel's part while she was at the licensed premises.

Mr. Sharp said that Illusions was not a public place because requirements for admissions to the licensed premises were enforced. These requirements include payment of a cover charge, age restrictions, and a dress code. Mr. Sharp explained that entertainment provided at the licensed premises consists of topless dancing, and is designed to cater primarily to adult male patrons only. No one had come forward to report being offended by any of the performances on that evening. Mr. Sharp further testified that the room where this violation was alleged to have occurred was enclosed from the main portion of the licensed premises. He went on to explain that a lap dance should not include sexual stimulation, but was a type of performance that was designed to provide a patron with closer personal attention from the dancer.

3. Tina Niemi's Testimony.

Tina Niemi, a dancer at Illusions, testified she was present at the licensed premises on November 21, 2002, when the alleged violation was said to have occurred. She said that she knew Ms. Manuel, another dancer at Illusions. Although Ms. Niemi said she did not observe the conduct complained of, she said that she saw no one at the premises that evening that seemed offended by the performance of any dancer. Ms. Niemi said that the room where Agent May described receiving a lap dance was not visible from the stage areas.

Ms. Niemi said she was familiar with performing a lap dance. According to Ms. Niemi, a lap dance lasted for one song and costs \$20. She further stated that while a dancer is close to the patron when performing a lap dance, the dancer should not touch the customer.

III. ANALYSIS

The first issue to be determined in this matter is whether Respondent has conducted its business in a place or manner that is contrary to the general welfare, health, peace, morals, and safety of the people and contrary to the public sense of decency,³ as alleged by TABC Staff. In support of its position, TABC Staff contends that one instance has occurred where Respondent's employee, Tanya Manuel, engaged in lewd activity that is prohibited by the Code or TABC Rules⁴ while on the licensed premises.⁵ The Texas Penal Code provides that a person commits an offense by knowingly engaging in an act of deviate sexual intercourse⁶ or an act of sexual contact⁷ in a public place or, if not in a public place, is reckless about whether another is present who will be offended by the activity.⁸ TABC Staff also alleged that Respondent was responsible for permitting lewd or vulgar entertainment on the licensed premises due to the manner in which Ms. Manuel's performed a lap dance while working at Respondent's business contrary to TEX. ALCO. BEV. CODE ANN. § 104.01(6).⁹

³ TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(7) and 61.71(a)(17).

⁴ 16 TEX. ADMIN. CODE § 35.31 incorporating provisions of Chapter 21 of the Texas Penal Code pertaining to sexual offenses.

⁵ Premises means the grounds and all buildings, vehicles, and appurtenances pertaining to the grounds, including any adjacent premises if they are directly or indirectly under the control of the same person. TEX. ALCO. BEV. CODE ANN. § 11.49(a). See also TEX. ALCO. BEV. CODE ANN. § 1.04(19).

⁶ Deviate sexual intercourse means any contact between any part of the genitals of one person and the mouth...of another person. TEX. PENAL CODE ANN. § 21.01(1)(A).

⁷ Sexual contact means any touching of...any part of the genitals of another person with intent to arouse or gratify the sexual desire of any person. TEX. PENAL CODE ANN. § 21.01(2).

⁸ TEX. PENAL CODE ANN. §§ 21.07(a)(2) and 21.07(a)(3). See also 16 TEX. ADMIN. CODE § 35.41(1).

⁹ TEX. ALCO. BEV. CODE ANN. § 104.01(6) provides that no retail dealer, nor his agent, servant, or employee, may engage in or permit conduct on the premises of the retailer which is lewd, immoral, or offensive to public decency, including but not limited to, permitting lewd or vulgar entertainment. Further, TEX. ALCO. BEV. CODE ANN. § 61.71(1)(11) provides that it is a violation for a permittee to allow a person on the licensed premises to engage in conduct which is lewd, immoral, or offensive to public decency.

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In the ALJ's opinion, demonstrating a single instance of public lewdness, even if proven in this case, would be insufficient to support a finding concerning whether the place or manner of operations at Respondent's business is contrary to TEX. ALCO. BEV. CODE ANN. §§ 11.61 (b)(7) or 61.1(1)(17). Generally, a place and manner violation suggests that an unlawful pattern of conduct has been engaged in or an inappropriate location has been utilized by Respondent. While the ALJ recognizes there could be conduct or a condition so egregious that a single instance could amount to a place and manner violation, this ALJ is of the opinion that this is not such a situation.

In this case, TABC Staff sought to prove that Ms. Manuel engaged in public lewdness, as defined by the applicable standards in the Texas Penal Code. The ALJ believes that the evidence was insufficient to prove that Ms. Manuel's activity was ongoing in a public place, or recklessly engaged in at a location where others might see the activity and be offended by it. Respondent's premises is not fully accessible to the public. There is an admission fee (cover charge); age requirements exist for gaining entrance to the premises; and patrons admitted inside the licensed premises are required to be dressed appropriately. Enforcement of an age requirement is particularly important in this situation since the typical entertainment *within any establishment* such as Respondent's (i.e. a topless bar) is often not suitable for underage individuals. As a result, only adults are allowed into Respondent's licensed premises.

Additionally, Ms. Manuel was not reckless in performing a lap dance that others could see and become offended by. After Agent May requested a lap dance, she took him into an enclosed area *within* the premises, presumably where this type of personal performance was to be provided to patrons. While there was another couple inside the room where Ms. Manuel and Agent May went, there is no evidence this couple took note of Ms. Manuel and Agent May's conduct, or were likely to have been offended by it. Agent May testified that he did not know what the other couple was doing. In addition, Agent May did not express being *offended by the other couple's conduct, nor did he specifically testify that Ms. Manuel's conduct offended him.* No other persons sought out Respondent's manager that evening to express being offended by any activities being engaged in at the licensed premises. The ALJ further finds it would be highly unlikely that an adult individual not seeking the type of entertainment provided at this licensed

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premises could mistakenly enter Respondent's business and have been offended by Ms. Manuel's conduct, as was argued by TABC Staff.

The ALJ was, however, persuaded that Ms. Manuel's performance did go beyond permissible conduct described by Agent May, Mr. Sharp, and Ms. Niemi for performing a lap dance; and as a result, she engaged in conduct that was lewd while on the licensed premises.

Agent May paid Ms. Manuel \$20 to perform a lap dance for him. His testimony was that she removed her top, but that he was fully clothed at all times during Ms. Manuel's performance. During the dance, Ms. Manuel sat on Agent May's lap wearing only a "G-string" and, at some point, touched her face to his clothed genital area. While she "simulated" sexual contact and deviate sexual intercourse for Agent May, the acts which are described within the Texas Penal Code did not actually occur. Nevertheless, Ms. Manuel's conduct was lascivious and performed for Agent May with the intent of attempting to arouse or gratify Agent May's sexual desire.

Based upon the factors listed above, the ALJ finds that TABC Staff established that Ms. Manuel engaged in lewd conduct while on the licensed premises. Ms. Manuel's actions are attributable to Respondent as its employee. As a result, the ALJ finds that Respondent permitted conduct on the licensed premises that was lewd because physical contact occurred between Ms. Manuel and Agent May, and Ms. Manuel simulated sexual activities toward Agent May during this contact.

IV. RECOMMENDATION

The ALJ recommends that no penalty should be assessed against Respondent for the alleged violation of conducting its business in a place or manner contrary to general welfare, health, peace, morals, and safety of the people and on the public sense of decency on November 21, 2002. The evidence was insufficient to support TABC Staff's burden of proof concerning that allegation.

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The evidence, however, does support that Respondent permitted lewd conduct on the licensed premises. Because this is the first violation concerning lewd conduct on the licensed premises, as determined by the ALJ's review of Respondent's licensing history and the standard penalty chart adopted in TABC's Rules (*See* TABC Staff's Exhibits 2 and 6), the ALJ recommends a 10-day permit suspension, or in lieu of any permit suspension, that Respondent be allowed to pay a civil penalty in the amount of \$1,500.

V. PROPOSED FINDINGS OF FACT

1. I Gotcha Inc. d/b/a Illusions (Respondent) holds a Mixed Beverage Permit, MB158142, and a Mixed Beverage Late Hours Permit, LB158143, issued by the Texas Alcoholic Beverage Commission (TABC) for the premises located at 7405 Camp Bowie West, Fort Worth, Tarrant County, Texas.
2. All of Respondent's patrons must meet certain requirements before entering the licensed premises described in Finding of Fact No. 1 as follows:
 - pay a cover charge;
 - be at least 21 years old; and
 - wear suitable attire.
3. On November 21, 2002, Tanya Manuel was a dancer employed at Respondent's premises described in Finding of Fact No. 1.
4. On that day, TABC Agent Ralph May was at Respondent's licensed premises and encountered Ms. Manuel.
5. Ms. Manuel asked Agent May if he wanted a lap dance; Agent May agreed that he did and paid Ms. Manuel \$20 for the dance.
6. Ms. Manuel and Agent May went through a doorway and into another area in the licensed premises that was enclosed within four walls.
7. Two other people, one male and one female, were inside the room when Ms. Manuel and Agent May arrived, but left the room at some undetermined point.
8. Ms. Manuel took off her top and began dancing for Agent May; Agent May remained fully clothed throughout Ms. Manuel's performance.

9. During the dance, Ms. Manuel simulated sexual movements while seated on Agent May's lap, and as she placed her face near his genitals.
10. No complaints were received from patrons at the licensed premises by Respondent's manager in relation to the entertainment or performances on that evening.
11. Respondent was cited for permitting public lewdness on November 21, 2002.
12. A hearing in this matter was conducted on March 4, 2005, at the State Office of Administrative Hearings, 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas. ALJ Tanya Cooper presided. TABC Staff was represented by TABC Staff Attorney, Timothy Griffith. Respondent was represented by John Gamboa, attorney at law. The hearing concluded and the record closed on March 14, 2005.

VI. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. chs. 5, 28, and 29, §§ 6.01, 11.61, 61.71, 69.13, and 104.01, and 16 TEX. ADMIN. CODE § 31.1 *et seq.*
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 TEX. GOV'T CODE ANN. chs. 2001 and 2003.
3. Respondent received adequate notice of the proceedings and hearing as required by TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. Based upon Findings of Fact Nos. 1 - 10, Respondent did not operate its business in a place or manner contrary to general welfare, health, peace, morals, and safety of the people and the public sense of decency on November 21, 2002, because insufficient evidence was presented to establish that a pattern of inappropriate conduct, namely public lewdness, was ongoing in relation to Respondent's business in violation of TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), 11.61(b)(7), 61.71(a)(1), and 61.71(a)(17), TEX. PENAL CODE ANN. §§ 21.01 and 21.07, and 16 TEX. ADMIN. CODE §§ 35.31 and 35.41.
4. Based on Findings of Fact Nos. 1 - 10 and Conclusion of Law No. 4, Respondent's Mixed Beverage Permit, MB158142, and Mixed Beverage Late Hours Permit, LB158143, issued by TABC should not be suspended for any period of time in relation to this allegation by TABC Staff.
5. Based on Findings of Fact Nos. 1 and 3 - 9, Respondent's employee engaged in lewd conduct on

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the licensed premises. TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), 61.71(a)(1), 61.71(a)(11) and 104.01(6).

6. Based on Findings of Fact Nos. 1 and 3 - 9, and Conclusion of Law No. 5, Respondent's Mixed Beverage Permit, MB158142, and Mixed Beverage Late Hours Permit, LB158143, issued by TABC should be suspended for a period of 10 days, or in lieu of any suspension, Respondent should pay a civil penalty in the amount of \$1,500.

SIGNED April 13, 2005.



TANYA COOPER, Administrative Law Judge
State Office of Administrative Hearings

STATE OFFICE OF ADMINISTRATIVE HEARINGS

6777 Camp Bowie Blvd.
Ft. Worth, Texas 76116
Phone (817) 731-1733
Fax (817) 377-3706

SERVICE LIST

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION
CASE: I Gotcha Inc. d/b/a Illusions
DOCKET NUMBER: 458-05-3247
AGENCY CASE NO: 603066

Timothy Griffith
Staff Attorney
Texas Alcoholic Beverage Commission
Fax: 972/547-5093

AGENCY COUNSEL
BY FAX

John Gamboa
Attorney at Law
817/885-8504

ATTORNEY FOR RESPONDENT
BY FAX

As of April 13, 2005