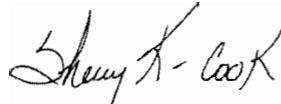




12:01 a.m. on December 16, 2015 and shall remain suspended for EIGHT (8) DAYS, UNLESS a civil penalty in the amount of \$2400.00 is paid ON OR BEFORE December 8, 2015.

This Order will become final and enforceable on the 1st day of December, 2015, unless a Motion for Rehearing is filed by the 30th day of November, 2015.

SIGNED this the 5th day of November, 2015, at Austin, Texas.

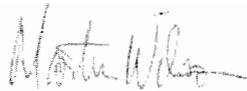


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Sherry K-Cook, Executive Director  
Texas Alcoholic Beverage Commission

#### CERTIFICATE OF SERVICE

I certify that the persons listed below were served with a copy of this Order in the manner indicated below on this the 5th day of November, 2015.



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Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

Sharon Cloninger  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
300 W. 15<sup>th</sup> Street, Suite 502  
Austin, TX 78701  
**VIA FACSIMILE: (512) 322-2061**

Blue Dolphin Club, Inc.  
d/b/a The Silk Stocking Lounge  
**RESPONDENT**  
4075 Hwy. 6 South  
College Station, TX 77845-8963  
***VIA FIRST CLASS MAIL, CMRRR # 70090960000121491254***

Judith Kennison  
**ATTORNEY FOR PETITIONER**  
TABC Legal Division  
***VIA E-MAIL: [judith.kennison@tabc.texas.gov](mailto:judith.kennison@tabc.texas.gov)***

TEXAS ALCOHOLIC BEVERAGE COMMISSION  
CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 629626

REGISTER NUMBER:

NAME: Blue Dolphin Club, Inc.

TRADENAME: The Silk Stocking Lounge

ADDRESS: 4075 Hwy. 6 South, College Station, Texas

DUE DATE: December 8, 2015

PERMITS OR LICENSES: MB138982, PE, LB

AMOUNT OF PENALTY: \$2,400.00

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 with your payment to:

TEXAS ALCOHOLIC BEVERAGE COMMISSION  
P.O. Box 13127  
Austin, Texas 78711  
Overnight Delivery Address: 5806 Mesa Dr., 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.



Richard Lignes, Respondent's general manager, represented Respondent. The hearing concluded and the record closed that same date.

## II. STAFF'S ALLEGATION AND APPLICABLE LAW

Staff alleges that on August 23, 2014, Respondent violated Code provisions which require that the holder of a mixed beverage permit may not possess or permit a person to possess on the premises distilled spirits in any container that does not bear a serially numbered identification stamp issued by the Commission or other identification approved by the Commission.<sup>1</sup>

TABC may suspend a permit for not more than 60 days if it is found, after notice and hearing, that the permittee violated a provision of the Code.<sup>2</sup> In lieu of a suspension, TABC may allow a permittee to pay a civil penalty. The amount of civil penalty imposed may not be less than \$150 per day or more than \$25,000 for each day the permit was to have been suspended.<sup>3</sup>

## III. DISCUSSION

Staff offered four exhibits and the testimony of Shannon Patterson, TABC Agent. Respondent offered no documentary evidence but called Leonzo Cook, Respondent's floor manager, as a witness.

On February 22, 1982, the Commission issued Mixed Beverage Permit No. MB-138982, which includes a Mixed Beverage Late Hours Permit and Beverage Cartage Permit, for

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<sup>1</sup> Code § 28.15; 16 Tex. Admin. Code § 41.71(i). Holders of local distributor's permits are required to affix the serially numbered identification stamps issued by the Commission near the top of the brand label of the bottle, covering some portion of the brand label. 16 Tex. Admin. Code § 41.71(c).

<sup>2</sup> Code § 11.61(b)(2).

<sup>3</sup> Code § 11.64(a).

Respondent's premises located at 4075 Highway 6 South, College Station, Brazos County, Texas.<sup>4</sup>

Agent Patterson testified that she and Agent Joe Schott inspected Respondent's premises on August 23, 2014. Respondent's premises were a priority location due to a prior complaint or violation, she said. The agents made contact with Joe Baldwin, the bartender, telling him they would check behind the bar as part of their inspection. Behind the bar, the agents found six bottles of distilled spirits that did not have the required identification stamp on them: two bottles of Jose Cuervo tequila and one bottle each of Malibu rum, Crown Royal whiskey, Dewars whiskey, and Maker's Mark whiskey. The agents seized the bottles and transported them to their office, where the bottles were photographed.<sup>5</sup> Agent Schott completed a Seized Property Report that same night, identifying Agent Patterson as the agent who seized the bottles.<sup>6</sup>

Before the August 2014 inspection, Respondent had received written warnings on April 11, 2013, and on October 24, 2013, for possession of distilled spirits without the required identification stamp.<sup>7</sup> Agent Patterson testified that since August 2014, she had conducted at least two inspections of Respondent's premises and had found no bottles of distilled spirits without the required identification stamp.

Respondent does not dispute that the bottles of distilled spirits seized by Agent Patterson and Agent Schott were missing the required identification stamps. However, Respondent argues, the stamps were on the bottles when they were delivered from Respondent's distributor, and the stamps either fell off after the delivery or were removed by Agent Patterson and/or Agent Schott during their inspection.

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<sup>4</sup> TABC Ex. 2.

<sup>5</sup> TABC Ex. 3.

<sup>6</sup> TABC Ex. 4.

<sup>7</sup> TABC Ex. 2.

In support of this contention, Respondent called Mr. Cook, who testified he is certain the bottles were properly labeled when they arrived from the distributor. He speculated that the identification stamps could either have fallen off or been removed by the agents or someone else. Mr. Cook said that during his 3 years as Respondent's employee, he has never seen an identification stamp fall off a bottle but he has seen stamps that were partly unattached from the bottle.

Mr. Cook testified that he was too busy, as was the bartender, to watch Agent Patterson and Agent Schott conduct their inspection. He said Agent Patterson was behind the bar for about 10 minutes, adding that a stamp could easily be removed in a matter of seconds. But, he said, the labels missing from the six bottles were not found lying behind the bar either during the inspection or after the agents left.

Mr. Cook explained that now, when the distributor delivers distilled spirits, the bartender uses a check-in sheet and inspects the bottles to ensure the identification stamps are affixed to them. Also, he said, tape is placed over the identification stamps as a precautionary measure. In addition, Respondent now videotapes inspections conducted by TABC agents, he said.

#### IV. ANALYSIS

Staff proved its allegation that six bottles of distilled spirits without required identification stamps were on Respondent's premises during the TABC agents' August 23, 2014 inspection. The ALJ does not find credible Respondent's assertion that perhaps the identification stamps fell off all six seized bottles or were removed by Agent Patterson and/or Agent Schott during their August 2014 inspection. Mr. Cook looked for and did not find the missing labels after the inspection and nobody saw either of the TABC agents remove the labels. Therefore, the ALJ finds that Respondent violated Code § 28.15 and 16 Texas Administrative Code § 41.71(i) and is subject to a penalty.

The Commission may assess a penalty consistent with Code § 11.61, which allows for a suspension of up to 60 days or cancellation of a permit for violation of a Code provision. Staff's

recommended penalty comports with the Schedule of Sanctions and Penalties (Schedule) set forth in the TABC rules.<sup>8</sup> While the Schedule applies to a settlement offer made by designated commission personnel prior to a contested case hearing before SOAH,<sup>9</sup> the ALJ will rely on the Schedule for guidance in determining a recommended penalty for Respondent's violation.

The ALJ notes that 16 Texas Administrative Code § 34.1(i) allows designated Commission personnel to deviate from the Schedule when aggravating or mitigating circumstances are found to exist. As for aggravating factors, prior to the August 2014 violation, Respondent received written warnings about the identical violation in April 2013 and October 2013, yet did not implement safeguards to prevent the violation from reoccurring. This is Respondent's third violation of Code § 28.15 in a 16 month period. As for mitigating circumstances, Respondent has passed at least two inspections by Agent Patterson since August 2014. Respondent also has instituted safeguards since August 2014 to ensure the required identification stamps are on all bottles of distilled spirits. The ALJ does not find the mitigating factors to outweigh the aggravating factors.

Based on the aggravating factor that Respondent was found in possession of six bottles of distilled spirits that did not bear serially numbered identification stamps after having received two written warnings about the identical violation, the ALJ recommends an 8-day suspension rather than the 6-day suspension possible for a first violation of Code § 28.15 pursuant to the Schedule. In lieu of suspension, Respondent should be allowed to pay a \$300 per day civil penalty for a total of \$2,400.

## V. FINDINGS OF FACT

1. Blue Dolphin Club Inc. d/b/a The Silk Stocking Lounge (Respondent) currently operates under authority of a Mixed Beverage Permit, which includes a Mixed Beverage Late Hours Permit and Beverage Cartage Permit, issued for the premises located at 4075 Highway 6 South, College Station, Texas 77845.

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<sup>8</sup> According to the Schedule, the penalty for a first violation of Code § 28.15 is suspension for 6-8 days or \$300 per day in lieu of suspension. 16 Tex Admin Code § 34.3.

<sup>9</sup> 16 Tex Admin. Code § 34.1(b).

2. The Texas Alcoholic Beverage Commission (TABC or the Commission) issued Mixed Beverage permit MB-138982 LB & PE to Respondent on February 22, 1982.
3. On January 20, 2015, Staff sent Respondent a Notice of Violation letter, alleging that on August 23, 2014, Respondent possessed on the permitted premises distilled spirits in containers not bearing serially numbered identification stamps issued by the Commission or other identification stamps approved by the Commission, in violation of the Texas Alcoholic Beverage Code and Commission rules.
4. The Notice of Violation informed Respondent of the opportunity to show compliance with the law and/or resolve the matter informally, or be subject to a formal administrative action before the State Office of Administrative Hearings (SOAH).
5. On February 9, 2015, Staff sent Respondent a hearing notice.
6. The notice contained a statement of the time, place, and nature of the hearing; 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, plain statement of the matters asserted.
7. On May 19, 2015, a hearing convened before Administrative Law Judge Sharon Cloninger at SOAH, William P. Clements State Office Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Judith L. Kennison, attorney, represented Staff. Respondent's general manager, Richard Lignes, represented Respondent. The hearing concluded and the record closed that same day.
8. On August 23, 2014, TABC Agents Shannon Patterson and Joe Schott inspected Respondent's premises and found six bottles of distilled spirits without the required identification stamp on them.
9. The unstamped bottles seized by Agent Patterson and Agent Schott included two bottles of Jose Cuervo tequila and one bottle each of Maker's Mark whiskey, Malibu rum, Dewar whiskey, and Crown Royal whiskey.
10. In April 2013 and October 2013, Respondent received written warnings from TABC agents for unstamped bottles of distilled spirits found on the premises.
11. Agent Patterson has conducted at least two inspections of Respondent's premises since August 2014 and has found no violations.

## VI. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter. Tex. Alco. Bev. Code (Code) §§ 5.01, 5.31, 5.33, 5.35, 5.43, 11.015.

2. SOAH 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 ch. 2003.
3. Proper and timely notice of the hearing was provided to all parties pursuant to the Administrative Procedure Act, Tex. Government Code ch. 2001, and 1 Texas Administrative Code § 155.401.
4. On August 23, 2014, Respondent possessed six bottles of distilled spirits on its premises that did not bear serially numbered identification stamps, in violation of Code § 28.15.
5. Respondent's permit should be suspended for 8 days or, in lieu of suspension, Respondent should be allowed to pay \$300 per day for a total of \$2,400. Code § 11.61(b)(2); 16 Tex. Admin. Code § 41.71.

**SIGNED June 5, 2015.**

  
\_\_\_\_\_  
**SHARON CLONINGER**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**