

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	3/8/2012
File #	2012-01493

IN RE:

PETITION FOR DECLARATORY STATEMENT
BEFORE THE DEPARTMENT OF BUSINESS
AND PROFESSIONAL REGULATION,
DIVISION OF ALCOHOLIC BEVERAGES
AND TOBACCO,

DS 2011-017

On behalf of BK WHOPPER BAR, LLC, a
Florida Limited Liability Company and BURGER
KING CORPORATION, a Florida corporation.

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DECLARATORY STATEMENT

This Declaratory Statement is rendered by the Director of the Division of Alcoholic Beverages and Tobacco (hereinafter "Division") pursuant to § 120.565, Florida Statutes. The Petitioners, BK Whopper Bar, LLC (BK Whopper Bar) and Burger King Corporation (BKC), have filed an Amended Petition for Declaratory Statement containing a Statement of Facts and a discussion of Florida law, administrative rules, and prior Declaratory Statements issued by DABT. The Intervenors, Florida Beer Wholesalers Association, Inc. and the Wine and Spirits Distributors of Florida, Inc. (collectively "Intervenors"), have filed a Proposed Declaratory Statement discussing Florida law, administrative rules, and prior Declaratory Statements issued by DABT.

ISSUE PRESENTED

The Petitioners present the following issue to DABT:

Whether §§ 561.22 and/or 561.42(1), *Fla. Stat.* prohibit BK Whopper Bar, LLC from holding a Florida Alcoholic Beverage License as a retail vendor pursuant to the business structure described in the Amended Petition for Declaratory Statement.

FINDINGS OF FACT

On or about December 2, 2011, Petitioner filed with the Division an Amended Petition for Declaratory Statement on behalf of BK WHOPPER BAR, LLC, a Florida limited liability company and BURGER KING CORPORATION, a Florida corporation. The Division renders its Findings of Fact on the basis of the information contained in the Amended Petition for Declaratory Statement, and all uncontested and related filings of Petitioners and Intervenors. This conclusion has no application in the event of a material change in the facts as presented to the Division. The Division takes no position as to the accuracy of the facts, but merely accepts them as submitted for purposes of this final order.

1. Burger King Corporation owns and franchises more than 12,000 restaurants worldwide, of which approximately 550 operate in the State of Florida.
2. In 2008, Burger King Corporation began developing a concept titled WHOPPER Bar, where certain restaurant locations would offer customers beer as a beverage choice.

3. The only current WHOPPER Bar operating in the State of Florida is located in Miami Beach, Florida and operates pursuant to a temporary Florida Alcoholic Beverage License 23-29946, 2 COP.

4. Burger King Corporation is wholly owned by Burger King Holdings, Inc. Prior to October 19, 2010, Burger King Holdings, Inc. was publicly traded and listed on the New York Stock Exchange. Now, Burger King Holdings, Inc. is a wholly owned subsidiary of Burger King Capital Holdings, LLC.

5. Burger King Capital Holdings, LLC is a wholly owned subsidiary of Burger King Worldwide Holdings, Inc. Burger King Worldwide Holdings, Inc. is majority owned by 3G Special Situations II L.P.

6. The general partner of 3G Special Situations II L.P. is a 3G limited partnership entity, which is a wholly owned subsidiary of 3G Capital Partners, L.P. The limited partners of 3G Special Situations II L.P. include Peter Harf, Carlos Albert da Velga Sicupira, Marcel Hermann Telles, and Jorge Paulo Lemann. None of these individuals currently act as directors, officers, or managers for Burger King Corporation or BK Whopper Bar (Petitioners). The general partner of 3G Capital Partners, L.P. is 3G Capital Partners, Ltd. Mr. Sicupira, Mr. Telles, and Mr. Lemann hold minority equity positions in 3G Capital Partners, Ltd.

7. AB InBev is a Belgian corporation traded on the New York Stock Exchange. Its subsidiary Anheuser-Busch Inc. is engaged in the manufacture of alcoholic beverages and holds multiple licenses in the State of Florida. Mr. Sicupira, Mr. Telles, and Mr. Lemann currently hold three of the four AmBev seats on the Board of Directors of AB InBev. The "AmBev" name is derived from the merger of the two entities AmBev

and Interbrew. Mr. Harf does not hold any interest in AB InBev and sits on the Board of Directors as an independent director and Chairman.

8. The controlling shareholder of AB InBev is an entity known as the Stichting Anheuser Busch InBev (Stiching), a foundation organized under the laws of the Netherlands. The Stichting is jointly controlled by the entities BRC and EPS: BRC and EPS jointly and equally exercise control over the Stichting and the shares held by it.

9. BRC is a wholly owned subsidiary of BR Global. S-Br owns 82.28% of BR Global.

10. Mr. Lemann owns Inpar, which holds a majority interest in Santa Ana CV and Santa Vitoria CV. Santa Ana CV holds a majority interest in Santa Erika Ltd., which holds an interest in S-Br. Santa Vitoria CV holds a majority interest in Santa Roselli Ltd, which holds an interest in S-Br.

11. Mr. Sicupira holds a majority interest in Santa Carolina CV, which holds a majority interest in Santa Heloisa Ltd. Santa Heloisa Ltd holds an interest in S-Br.

12. Mr. Telles holds a majority interest in Santa Maria Isabel CV, which holds a majority interest in Santa Paciencia Ltd. Santa Paciencia Ltd holds an interest in S-Br.

13. As noted in Petitioner's Response To Request For Additional Information, Anheuser Busch, Inc., is a limited partner in Eagle Brands Wedco Limited partnership, which is a Florida licensed distributor of alcoholic malt beverages.

CONCLUSIONS OF LAW

14. This Amended Petition is one of first impression for the Division. Previous declaratory statements, such as those cited by the Petitioner in its Proposed

Declaratory Statement, do not involve individuals or entities in all three tiers (manufacturer, distributor, vendor).

15. The Division has jurisdiction over this matter pursuant to §§ 120.565, 561.02, and 561.11, Florida Statutes, and is responsible for the application and enforcement of Chapters 561 and 562, Florida Statutes, specifically §§ 561.22 and 561.42, Florida Statutes.

16. Petitioner is substantially affected by the statutory provisions cited above and has standing to seek this declaratory statement.

17. § 561.22, Florida Statutes, provides:

- (1) Except as provided in this section, any applicant may receive a license as a manufacturer or distributor or may be registered as an exporter, but a license or registration may not be issued to a manufacturer, distributor, or exporter as a vendor, and a license or registration may not be issued to a vendor as a manufacturer, distributor, or exporter.
- (2)(a) If any applicant for a vendor's license or renewal thereof is an individual, such individual is within the provisions of subsection (1) if he or she is interested or connected, directly or indirectly, with any corporation which is engaged, directly or indirectly, or through any subsidiary or affiliate corporation, including any stock ownership exceeding 0.5 percent owned individually, including a 0.5 percent interest in a blind or revocable trust, as set forth in subsection (3), in manufacturing, distributing, or exporting alcoholic beverages under a license or registration of this state or any state of the United States.
- (b) If any applicant for a vendor's license or renewal thereof is a copartnership, such copartnership is within the provisions of subsection (1) if any member of the copartnership is interested or connected, directly or indirectly, with any corporation which is engaged, directly or indirectly, or through any subsidiary or affiliate corporation, including any stock ownership as set forth in subsection (3), in manufacturing, distributing, or exporting alcoholic beverages under a license or registration of this state or any state of the United States.

- (3) If any applicant for a vendor's license or the renewal thereof is a corporation, such corporation is within the provisions of subsection (1) if such corporation is affiliated with, directly or indirectly, any other corporation which is engaged in manufacturing, distributing, or exporting alcoholic beverages under a license or registration of this state or any other state of the United States, or if such applicant corporation is controlled by or the majority stock therein owned by another corporation, which latter corporation owns or controls in any way the majority stock or controlling interest in any other corporation that is engaged, directly or indirectly, in manufacturing, distributing, or exporting alcoholic beverages under a license or registration in this state or any other state in the United States.

18. § 561.42, Florida Statutes, provides:

- (1) No manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant of any of the beverages herein referred to, whether licensed or operating in this state or out-of-state, nor any broker, sales agent, or sales person thereof, shall have any financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the Beverage Law...

19. The Florida Supreme Court has upheld the constitutionality of § 561.42(1) and recognized that the purpose of the statute is to prevent the integration of retailer and wholesale outlets and to remove retailers from financial or business obligations to the wholesaler or manufacturer, with the exception of ordinary commercial credit. Pickerill v. Schott, 55 So. 2d 716, 717 (Fla. 1951). The purpose of divorcing manufacturing-distributing activities of the liquor business from that of retailers was restated in Mayhues' Super Liquor Store, Inc. v. Miekeljohn, 426 F.2d 142, 147 (5th Cir. 1970), and was relied upon in determining that the licensing of an alien manufacturer as a vendor would violate §§ 561.42 and 561.22, Fla. Stat. In re: Petition for Declaratory Statement, On behalf of Angostura Holdings Limited, BPR 2001-03114, July 20, 2001.

20. § 561.22(1), Fla. Stat., prohibits the licensing of a manufacturer or distributor as a vendor, or the licensing of a vendor as a manufacturer or distributor. Subsection (2)(a) of § 561.22 addresses applicants who are individuals, (2)(b) addresses applicants which are partnerships, and subsection (3) addresses applicants which are corporations. The characteristics of the applicant control which subsection may apply and what prohibitive circumstances will be looked for. § 561.22(2), Fla. Stat., contemplates prohibiting circumstances when ownership and control of the applicant are unitary. § 561.22(3), Fla. Stat., contemplates prohibiting circumstances when ownership and control of the applicant are distinct. Though Subsection (3) refers only to corporations, the Florida Supreme Court has stated that “An LLC is a type of corporate entity, and an ownership interest in an LLC is personal property that is reasonably understood to fall within the scope of ‘corporate stock.’” *quoting Olmstead v. Federal Trade Commission*, 44 So. 3d 76, 80 (Fla. 2010). Limited liability companies are corporate entities due to the separation of ownership and control and fall under § 561.22(3), Fla. Stat., for determining prohibitive circumstances.

21. § 561.22(3), Fla. Stat., sets forth two circumstances in which a corporate applicant will be prohibited from obtaining a vendor’s license. The first is when the corporate applicant is directly or indirectly affiliated with any other corporation which is engaged in manufacturing, distributing, or exporting alcoholic beverages. The second is when the corporate applicant is controlled or majority owned by another corporation, which latter corporation owns or controls in any way the majority stock or controlling interest in any other corporation that is directly or indirectly engaged in manufacturing, distributing, or exporting alcoholic beverages. The first set of circumstances is broad and

the use of the term “affiliated” is distinct to dealing with corporate applicants. The scope of the term “affiliated” is derived from the context of its use within § 561.22, Fla. Stat. Churchill v. GACS, Incorporated, 973 So.2d 1212 (1st DCA 2008). Subsections 2(a) and 2(b) both refer to “any subsidiary or affiliate corporation”, meaning that “affiliate” is distinct from subsidiary. Further, the two sets of circumstances found in § 561.22(3) are necessarily distinct; otherwise the language would be superfluous. When interpreting a statute, a court will not engage in an interpretation which renders portions to be redundant or otherwise adding no meaning. Johnson v. Feder, 485 So.2d 409 (Fla. 1986); Statton v. Sarasota Court, 983 So.2d 51 (2d DCA 2008). In viewing the use of the term “affiliate” in §§ 561.22(2)-(3), the scope of the term is meant to be broad and encompass those relationships in which control of an applicant corporation is derived from some other method than ownership. This approach is supported by the Circuit Court of the Second Judicial Circuit in and for Leon County:

[Minority] stock ownership may, of course, be considered in connection with other factors in determining whether there is an actual affiliation or control...

[T]wo corporations are “affiliated with” each other only when the same individual, or a group of cooperating individuals having common interests, have the power to control formation and execution of the business policies of both corporations. Such control may be from stock ownership, voting trusts, common officers, contracts, or a combination of two or more of these elements, but there must be an actual practical control or a legal power to control.

Walter J. John and Southern Wine and Spirits, Inc. v. Meiklejohn, Case No 68-196 (Fla. 2d Jud. Cir. 1968) (Judgment). Also persuasive is the Florida Business Corporation Act, § 607.0901(1)(a), Fla. Stat., which states:

“Affiliate” means a person who directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified person.¹

22. The second test is considerably narrower and contemplates a situation in which the applicant corporation is controlled or owned by another corporation which owns or controls a corporation that is directly or indirectly engaged in the manufacturing of alcoholic beverages. The use of the terms “control” and “own” points to the prohibition in situations where control is derived from an ownership interest. The most basic scenario prohibited in the second test of § 561.22(3) is one in which a vendor and a manufacturer can both be traced back to a common parent corporation, whether by ownership or control. However, this is not the only scenario in which the second test of § 561.22(3) would apply. The use of the phrasing “owns or controls in any way the majority stock or controlling interest” makes clear the legislative intent that the reach of this test be more than just a parent corporation which directly owns a subsidiary manufacturing corporation and a subsidiary vendor applicant corporation. Under a restrictive reading, an applicant corporation could merely create an intermediate corporation between it and the parent corporation in question and be rid of the restrictions under this test. It is well settled that statutory provisions should be interpreted so as to

¹ This authority is cited as persuasive and not controlling because § 607.0901(1), Fla. Stat. states that the definitions found therein are “For purposes of this section.”

avoid arbitrary, absurd, and/or unreasonable results. Carawan v. State, 515 So.2d 161 (Fla. 1987); Towerhouse Condominium, Inc. v. Millman, 475 So.2d 674 (Fla. 1985); Fletcher v. Fletcher, 573 So.2d 941 (1st DCA 1991); Hamilton v. State, 645 So.2d 555 (2d DCA 1994).

23. A restrictive reading of the second test of § 561.22(3) would require the legislature to enumerate each and every possible business relationship in an infinite number of degrees. This requirement would quite literally be impossible for the legislature to meet since there is no limitation on the number of relationships allowed among corporate entities. Even if the legislature were to enumerate all possible combinations involving one thousand (1,000) corporate entities, a stubborn corporate applicant could create a network of one thousand and one (1,001) corporate entities and fall outside the prohibitions of § 561.22(3). Such a reading of the second test of § 561.22(3) is both arbitrary and absurd. The legislative intent of prohibiting consolidation among the three tiers would be frustrated by such a reading, and the Division is required to interpret and apply § 561.22 in a reasonable manner by giving effect to the clear and unambiguous legislative intent. Zukerman v. Alter, 615 So.2d 661 (Fla. 1993). The reach of the second test is those situations in which a corporate applicant vendor and a manufacturer are both controlled by a common corporate entity, no matter the degrees of separation.

24. BK Whopper Bar, LLC, as a Florida Limited Liability Company, is a corporate entity and falls under the tests of § 561.22(3), Fla. Stat. as a corporate applicant for a vendor's license. Under the first test of § 561.22(3), the question is whether BK Whopper Bar is directly or indirectly affiliated with Anheuser-Busch Inc., a manufacturer

of alcoholic beverages. The focus of the first test, under the facts presented to the Division, is the connection of the individuals Peter Harf, Carlos Albert da Velga Sicupira, Marcel Hermann Telles, and Jorge Paulo Lemann. Through the various corporate entities, it is clear that the various Burger King entities are ultimately owned by 3G Special Situations II, L.P. The network of various 3G corporate entities and business organizations that interlink with 3G Special Situations II, L.P. are extensive with many of them acting as general partner or member for one another. The only individual interests in the 3G network given to the Division are those of Mr. Harf, Mr. Telles, Mr. Lemann, and Mr. Sicupira. Mr. Harf does not hold any interest in AB InBev but he does sit as an independent director and Chairman for the board of AB InBev.

25. Mr. Telles, Mr. Lemann, and Mr. Sicupira hold three of the four AmBev seats on the InBev board of directors. The controlling shareholder of AB InBev is the Stichting, which is jointly controlled by BRC and EPS. BRC is a wholly owned subsidiary of BR Global, which is majority owned by S-Br. Mr. Lemann's connection to S-Br is evident from the entities Inpar, Santa Ana CV, Santa Vitoria CV, Santa Erika Ltd, and Santa Roselli Ltd. Mr. Sicupira's connection to S-Br is evident from the entities Santa Carolina CV and Santa Heloisa Ltd. Mr. Telles' connection to S-Br is evident from the entities Santa Maria Isabel CV and Santa Paciencia Ltd. These four cooperating individuals have common interests in both the Burger King corporate entities and in AB InBev entities. Coupled with their current director positions, ownership interests, and ability to control decision making, whether or not that control is exercised, Mr. Harf, Mr. Telles, Mr. Lemann, and Mr. Sicupira create the connection between BK Whopper Bar,

LLC and Anheuser-Busch, Inc. as affiliates for purposes of the first test under § 561.22(3), Fla. Stat.

26. Under the second test of § 561.22(3), the focus is whether BK Whopper Bar, LLC and Anheuser-Busch, Inc. both share a common parent corporate entity. The second test requires that BK Whopper Bar, LLC, be controlled by or the majority stock therein owned by another corporate entity which owns or controls in any way the majority stock or controlling interest in Anheuser-Busch, Inc., or another corporate entity that is directly or indirectly engaged in manufacturing alcoholic beverages. However, since the circumstances as presented fall within the first test of § 561.22(3), disposition of this issue is unnecessary.

CONCLUSION

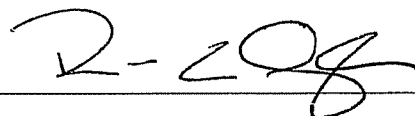
Based upon the specific facts presented by the Petitioners, research by the Division, and the legal conclusion set forth in full herein,

THE DIVISION HEREBY CONCLUDES:

- A. It is the responsibility and duty of the DIVISION to construe and interpret provisions of §§ 561.22 and 561.42, Fla. Stat.
- B. The proposed business structure of BK Whopper Bar, LLC, prohibits Petitioner from being issued a retail vendor's license for alcoholic beverages pursuant to § 561.22, Fla. Stat.
- C. That based on the foregoing facts and legal research, the DIVISION cannot approve Petitioner's proposed business structure for a licensed retail vendor.

- D. As the business structure is prohibited by § 561.22, Fla. Stat., a determination of whether it comports with § 561.42(1) is unnecessary, though the obvious involvement of the Petitioner at all three tiers would likely be problematic.
- E. That this conclusion is based on the facts described in Petitioner's Amended Petition for Declaratory Statement and legal research by the Division. Accordingly, this conclusion has no application in the event that the factual circumstances and/or relationships among the entities described herein are incorrect or change.

Dated this 8 day of March, 2012.



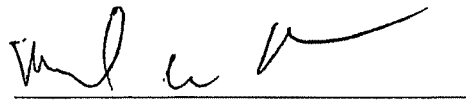
Robert Allen Douglas, Director
Division of Alcoholic Beverages and Tobacco
1940 North Monroe Street
Tallahassee, Florida 32399-1020

RIGHT TO APPEAL

THIS DECLARATORY STATEMENT CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED PURSUANT TO 120.68, FLORIDA STATUTES, AND RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(d), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH RONDA BRYAN, AGENCY CLERK FOR THE DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO, WITHIN 30 DAYS OF THE RENDITION OF THIS DECLARATORY STATEMENT.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Louis J. Terminello, Esq., Attorney for Petitioner, 2700 SW 37 Avenue, Miami, FL 33133 and to Donna E. Blanton, Esq., Attorney for Intervenor, 301 S. Bronough Street, Suite 200, Tallahassee, FL 32301 on this 9 day of March, 2012.



Michael W. Ross
Chief Attorney.

Amended Petition for Declaratory Statement
on behalf of BK Whopper Bar, LLC

FILED	
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STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO

IN RE: PETITION FOR DECLARATORY STATEMENT
on behalf of BK WHOPPER BAR, LLC, a Florida
limited liability company and BURGER KING
CORPORATION, a Florida corporation

DS 2011-017

AMENDED PETITION FOR DECLARATORY STATEMENT

BK WHOPPER BAR, LLC, (BK WHOPPER BAR), a Florida limited liability company, and BURGER KING CORPORATION (BKC), a Florida corporation, Petition the Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco (DABT) for a Declaratory Statement as to the applicability of § 561.22 and 561.42(i), *Fla.Stat.* to the specific facts enumerated herein.

CORPORATE STRUCTURE

BKC is one of the originators of the "fast food" concept of restaurants having been in existence for more than fifty (50) years. BKC owns or franchises more than 12,000 restaurants worldwide, of which approximately 550 operate in the State of Florida. The BURGER KING® business model is commonly known throughout the world, so a detailed description will not be provided herein.

In approximately 2008, BKC began development of a specialty burger concept for a very small number of restaurants, some of which would offer beer to patrons, as an additional beverage choice. These outlets were to be known as a "WHOPPER® Bar". As of this date, there is only one WHOPPER® Bar serving alcoholic beverages in Florida, which is located in Miami Beach, Florida in the area known as "South Beach" pursuant to Florida Alcoholic Beverage License 23-29946, 2 COP. BK Whopper Bar has continued to sell beer at this location, but not AB InBev products.

Prior to October 19, 2010, BKC's parent company, Burger King Holdings, Inc. ("HOLDINGS") was a publicly traded corporation, whose shares were listed on the New York Stock Exchange. On that date, Holdings stock was acquired by an affiliate of 3G Capital Partners, Ltd. (3G).¹ 3G is a multi-billion dollar, global investment firm. 3G has held or currently holds interests in various businesses in addition to BURGER KING® restaurants, including soft drink bottlers, railroads, intellectual technology interests, consumer goods and logistics. 3G has not held direct or indirect financial interests in the United States or elsewhere in any alcoholic beverage business of any kind, until its acquisition of BKC, resulting from existing WHOPPER® Bar outlets owned by BKC.

None of the officers, directors, or managers of the Petitioners, BK WHOPPER BAR or its parent BKC have any direct or indirect interest in or control of any alcoholic beverage business other than BK WHOPPER BAR. BKC's parent, HOLDINGS, is a Delaware corporation controlled by fourteen (14) officers, and directors, including a CEO. Three of HOLDING's directors are also directors of Anheuser Busch InBev (AB InBev) and/or its AmBev subsidiary. Two (2) of those directors are also directors of 3G.² Though Peter Harf previously sat on the HOLDINGS board, he has since resigned his seat. AB InBev is the manufacturer of various brands of beer, including Budweiser, and soft drinks. AmBev

¹ BKC is the operating company of BURGER KING® restaurants. BKC is a wholly owned subsidiary of HOLDINGS, which is a wholly owned subsidiary of Burger King Capital Holdings, LLC, which is a wholly owned subsidiary of Burger King Worldwide Holdings, Inc. ("BKWW"), which is 99.9% owned by 3G Special Situations Fund II, L.P. (the "FUND"). The FUND'S general partner is a 3G limited partnership entity, which is a wholly owned subsidiary of 3G Capital Partners, L.P., whose general partner is 3G Capital Partners, Ltd. (3G).

² Carlos Alberto da Velga Sicupira serves on the boards of directors of HOLDINGS, AB InBev, and 3G in addition to the boards of Lojas Americanas, S.A. (a Latin American on-line retailer), Harvard Business School and other educational foundations.

Marcel Hermann Telles serves on the boards of HOLDINGS, 3G, AB InBev and AmBev in addition to Harvard Business School and other educational foundations.

Alexandre Van Damme will serve on the board of directors of HOLDINGS, as of December 8, 2011. Mr. Van Damm serves on the board of AB InBev, but not 3G.

produces various brands of beer and soft drinks in addition to bottling, selling and distributing Pepsi brand products throughout Latin America.

AB InBev is a Belgian corporation, with ADS's trading on the New York Stock Exchange. Its Board of Directors consists of between twelve (12) to sixteen (16) members. As AB InBev resulted initially from the combination of Interbrew and AmBev, those interests hold four (4) seats each, in addition to four (4) to six (6) independent seats on the board. Of the three (3) HOLDINGS board members who also sit on the board of AB InBev, Mr. Telles and Mr. Sicupira hold "AmBev (BRC) seats" while Mr. Van Damme holds an "Interbrew (EPS) seat."

The FUND is a limited partnership and owns 99.9% of BKWH, which is the indirect parent of HOLDINGS. Mr. Telles and Mr. Sicupira hold minority limited partner interests in the FUND. Another minority interest in the FUND is held by Peter Harf. Mr. Harf holds an "independent seat" on the AB InBev board and is currently its chairman. Lastly, Jorge Lemann, a board member of 3G, also holds a minority interest in the FUND and an "AmBev seat" on the AB InBev board. Even collectively, Mr. Telles, Mr. Sicupira, Mr. Harf, and Mr. Lemann hold a minority interest in the Fund. Mr. Van Damme holds no interest in the FUND.

As to AB InBev, Mr. Van Damme holds an indirect, minority interest in the company through his minority position in EPS. Mr. Van Damme's direct interest is limited to 66 shares (0.000004%). Mr. Telles, Mr. Sicupira, and Mr. Lemann have an indirect, minority interest in AB InBev through their interests in BRC. Together EPS and BRC hold 41.3% of the shares of AB InBev in a Dutch foundation, governed by a shareholder's agreement, known as the Stichting. The operation of the Stichting is more fully described in the Corporate Governance Charter (CHARTER) previously provided to DABT. Mr. Harf no longer holds any of shares in AB InBev.

None of the aforementioned persons are officers or directors of Anheuser Busch, Inc. nor are they members of the Executive Board of Management (EBM). The EBM is responsible for the day-to-day management of all the AB InBev companies. Individual directors are prohibited by the CHARTER from intervening in the operation of AB InBev businesses. Carlos Brito, the CEO of AB InBev and head of the EBM, has no involvement with the Petitioners or their parents.

WHOPPER® BAR CONCEPT

BKC developed the WHOPPER® Bar concept at least two (2) years prior to its acquisition by 3G. The appeal of the WHOPPER® Bar focuses upon guests having a selection of more than twenty (20) toppings for their WHOPPER® sandwich in addition to a variety of specialty sandwiches, all offered in an innovative and sleek restaurant design. WHOPPER® Bar restaurants are currently located in Germany, Singapore, and Venezuela serving specialty burgers, desserts, and offering beer as a beverage, in addition to the Miami Beach, Florida location. However, the allure of a WHOPPER® Bar restaurant is not beer. In fact, BKC opened its first WHOPPER® Bar at Universal CityWalk, in Orlando, even though the lease precludes the sale of alcoholic beverages. The WHOPPER® Bar menu from the Miami Beach venue (attached to original Petition for Declaratory Statement) also does not emphasize beer but rather features its specialty WHOPPER® sandwiches and topping choices. The Universal venue's menu (also attached) is virtually identical to the Miami Beach menu, except for the omission of "ice cold beer" at the end of the beverage list.

At present, Miami Beach is the sole U.S. location selling beer. BKC does not intend to sell beer at conventional BURGER KING® restaurants (see January 22, 2010 New York Post news article attached) nor will WHOPPER® Bar restaurants proliferate. Rather, they will be placed in targeted marquee locations with high traffic such as sports arenas, airports, and other tourist destinations (see January 22, 2010 Business Wire News article, attached to original Petition for Declaratory Statement). Even then, beer will be an optional item available only in appropriate locations. The sale of beer will be a negligible revenue stream for BKC, even at those WHOPPER® Bar restaurants selling beer. Beer sales will have virtually no effect on the profits of BKC and even less so for 3G. Even as more WHOPPER® Bar restaurants open, there will continue to be minimal financial impact on BKC or 3G based on their business model. Just as the overwhelming majority of traditional BURGER KING® restaurants are individually owned franchises

(approximately 90%), new WHOPPER® Bar restaurants will likewise consist of primarily franchised locations.

As can clearly be seen by the BKC brochure attached to the original Petition for Declaratory Statement describing the WHOPPER® Bar business, the “bar” is for the service of WHOPPER® sandwiches, not beverages. The service of beer is a diner’s option, only at selected outlets, together with a variety of non-alcoholic beverages. The lure of the WHOPPER® Bar is the burger, not the beer. It is for that very reason that not only do Petitioners not sell AB InBev products now, but will permanently refrain from dispensing AB InBev products in the future.

MEMORANDUM OF LAW

Petitioners would incorporate by reference their Memorandum of Law as contained in their original petition for Declaratory Statement.

Wherefore Petitioners request a Declaratory Statement that the aforesaid business structure is permissible under Chapter 561, Florida Statutes and BK Whopper Bar, LLC is permitted to hold a Florida Alcoholic Beverage License as a retail vendor.

Respectfully submitted,

LOUIS J. TERMINELLO, ESQ.
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By: 

Louis J. Terminello
FBN: 872547

CERTIFICATE OF SERVICE

2nd I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this day of December, 2011, to: Michael W. Ross, Chief Attorney, Office of the General Counsel, Division of Alcoholic Beverages & Tobacco, 1940 North Monroe Street, Suite 42, Tallahassee, Florida 32399 and Donna E. Blanton, Radey Thomas Yon & Clark, 301 S. Bronough Street, Suite 200, Tallahassee, Florida 32301.



Louis J. Terminello