Not Exactly a Bug’s Life

The ABC Debrief often reports on enforcement action that results in the issuance of citations relating to the possession of adulterated alcoholic beverages. To enlighten our readers and gain an understanding of the elements of this violation, this edition of the back-bar inspection will focus on adulterated alcoholic beverage investigations. Law enforcement personnel rely on Section 347b of the Penal Code (PC) to ensure that alcoholic beverages are free from adulterations. This section attaches misdemeanor liability for any person to furnish, sell, or give away, or offer to do so, any alcoholic solution of a potable nature (alcoholic beverage) containing any deleterious (harmful often in a subtle or unexpected way) or poisonous substance. This section further elaborates that the burden of proof shall be on the person in possession of the adulterated alcoholic beverage to show that it did not contain any deleterious or poisonous substance.

The most frequent contamination discovered by officers during back-bar inspections are fruit flies. These airborne insects are attracted by the sugar content of the alcoholic beverage and often enter the bottle through poorly designed or modified pour spouts. Once inside the bottle, the insects have difficulty escaping and eventually die. Although fruit flies are the most common contamination, officers have on occasions discovered other items inside the bar stock at many locations. These items have included broken portions of the plastic pour spouts, cockroaches, and even band aids. Items which are included by the product manufacture such as the agave worm (gusan rojo) in Mezcal, the gold leaf flakes in Goldschlager, or the sugar crystals inside After Shock cinnamon liqueur, are intentionally placed in the product as a marketing tool and do not constitute a violation of this section.

A visual inspection of all opened alcoholic beverages should accompany any back-bar inspection made by law enforcement personnel during investigations at on-sale ABC-licensed locations. The inspection technique simply involves gently spinning the liquid contents of the alcoholic beverage while holding an illuminated flashlight against the bottom of the bottle. The illumination will reflect off any items and will assist in the identification of potential contamination. Five contaminated bottles of alcoholic beverages are required to establish the elements necessary for a criminal and an ABC administrative filing. It is recommended that each bottle found to be contaminated be shown to the bar and managerial staff and they are instructed in inspection techniques to prevent future violations. All adulterated alcoholic beverages must be recovered and held as evidence. To ensure that contamination does not occur after the beverage is taken into police custody, evidence seals should be placed on across the opening of the pour spout and around the top of each bottle.

Administrative liability for a violation of this section can cause the suspension of an ABC license for five to ten days, or a monetary fine of up to $3,000. Criminal sanctions are delineated in Section 347b PC and indicated that a violation could result in a fine not to exceed $2,500 or imprisonment in a county jail.