

**VIA ELECTRONIC FILING**

June 10, 2015

Blake A. Hawthorne  
Clerk of the Court  
Supreme Court of Texas  
201 W. 14th Street, Room 104  
Austin, TX 78701

RE: *Cadena Comercial USA Corp. v. Tex. Alco. Bev. Comm'n*, No. 14-0819

Dear Mr. Hawthorne:

The Texas Association of Business and McLane Company, Inc. wish to briefly reply to the Commission's Response to the Petition for Review in this matter. As Amici Curiae, we contend that the Commission's Response only further illustrates why the Court should now request briefing on the merits in this case.\*

\* \* \*

In our January 14, 2015 letter brief, we observed that the Petition for Review gives the Commission "an opportunity to advise this Court whether it maintains or abandons its absurd 'single share' theory—and whether or not it will continue to deny licensing to McLane or any other company on that ground."

The Commission's Response, however, does neither.

---

\* No counsel for a party authored this brief in whole or in part, and no party made a monetary contribution intended to fund the preparation of submission of this brief. No person other than Amici Curiae, their members, or their counsel made a monetary contribution to its preparation or submission. Tex. R. App. P. 11.

Blake A. Hawthorne  
June 10, 2015  
Page 2

Instead, the Commission contends that the single share theory is simply not presented in this case. But it is the Commission who presented its single share theory at trial in this case in the first place, as their legal basis for denying a license to Cadena. *See, e.g.*, 1 RR 58, 69 (purchase of “one share of stock” in two different tiers triggers a “three-tier violation”) (statement of Amy Harrison, Director of Licensing, Texas Alcoholic Beverage Commission). The Commission then continued to defend its single share theory on appeal before the Third Court of Appeals. *See, e.g.*, Brief of the Texas Alcoholic Beverage Commission at 35-36, *Cadena Comercial USA Corp. v. Texas Alcoholic Beverage Com’n*, 449 S.W.3d 154, (Tex. App.—Austin 2014, pet. filed).

The Commission’s unwillingness to defend its single share theory in this Court is, in some sense, understandable. After all, it is an absurd rule that misinterprets Texas law—as we detailed and argued before the Third Court, and previewed in this Court in our January 14, 2015 letter.

But the Commission’s unwillingness to tell this Court whether it intends to maintain or abandon its single share theory is troubling. The Third Court expressly declined to endorse the Commission’s single share theory. To the contrary, it appeared to adopt the “control or influence” standard recommended by *Amici Curiae*. Yet despite this adverse language from the Third Court, the Commission has informed us through counsel that it fully intends to continue to deny licensing to McLane (and presumably other applicants) based on its single share theory.

It is only now that the single share theory has attracted the attention of this Court that the Commission is suddenly switching gears and declining to defend it in this Court. Yet it is still enforcing its single share theory against businesses in private.

If the Commission wishes to persist in enforcing its single share theory, then this Court should have the opportunity to review it, and this case presents a proper vehicle for doing so. If the Commission wishes to abandon its single share theory, however, then it should say so to this Court.

# GIBSON DUNN

Blake A. Hawthorne  
June 10, 2015  
Page 3

Either way, the business community has a right to know what the law is—including how the Commission plans to interpret and to enforce it—just as Texas courts have the right to review the Commission’s actions to ensure their validity. For these reasons, we ask the Court to request briefing on the merits in this case, in order to give the Commission another opportunity to either defend or abandon its single share theory.

Sincerely,

/s/ James C. Ho

James C. Ho

State Bar No. 24052766

Prerak Shah

State Bar No. 24075053

GIBSON, DUNN & CRUTCHER LLP

2100 McKinney Avenue, Suite 1100

Dallas, TX 75201-6912

Tel.: (214) 698-3264

Fax: (214) 571-2917

*jho@gibsondunn.com*

*pshah@gibsondunn.com*

Blake A. Hawthorne  
June 10, 2015  
Page 4

**CERTIFICATE OF COMPLIANCE**

This document complies with the type-volume limitations of Texas Rule of Appellate Procedure 9.4(i)(2) because it contains 593 words, excluding any parts exempted by Texas Rule of Appellate Procedure 9.4(i)(1). This document also complies with the typeface requirements of Texas Rule of Appellate Procedure 9.4(e) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

/s/ James C. Ho

James C. Ho

**CERTIFICATE OF SERVICE**

I certify that on June 10, 2015, a true and correct copy of the foregoing document was delivered via electronic service on the following counsel of record for all parties:

Debora B. Alsup  
Danley K. Cornyn  
THOMPSON & KNIGHT LLP  
98 San Jacinto Boulevard  
Suite 1900  
Austin, Texas 78701

*Counsel for Petitioners*

Joseph D. Hughes  
Robin Sanders  
OFFICE OF THE ATTORNEY GENERAL  
P.O. Box 12548  
Austin, Texas 78711-2548

Judith L. Kennison  
TABC LEGAL DIVISION  
5806 Mesa  
Austin, TX 78731

*Counsel for Respondents*

/s/ James C. Ho

James C. Ho