



JOE SULLIVAN (A)

When the Denver-area supermarket chain Cub Foods placed a large order for the Labor Day rush with Sullivan Distributing Company in August, 1989, President Joe Sullivan Jr. and his employees celebrated. Sullivan had wanted the Cub Foods account for some time, and now the company had an opportunity to meet the supermarket's holiday-weekend rush order. There was a problem, however, and Joe Sullivan was considering how to deal with it. Sullivan was short 420 cases of 3.2 beer, the highest alcohol-content beer that could be sold legally to grocery stores in Colorado. But he did have enough cases of stronger Pabst beer to meet the order. He was contemplating a delivery of the stronger beer, along with the 330 cases of 3.2 beer on hand. He could restamp the stronger beer as 3.2 and ship the 750 cases. This would be a violation of the law, but he needed the account, and he did not want to disappoint a retailer whose long-term relationship could have a significant positive impact on the financial picture of his distributing company.

Sullivan Distributing was the largest beer distributor in Denver. Although the company was well-established and prosperous, Sullivan had recently overextended the company. Thinking he needed to branch out, he had borrowed millions of dollars from United Bank and had begun distributing soft drinks over the past two years. The investment had not paid off, and the company's success was in jeopardy. The industry was soft, and competition was high. Sullivan had been coveting the Cub Foods account for two years, so Sullivan thought that the Cub Foods order was a sign that things were looking up.

Joe Sullivan Jr. took over Sullivan Brothers from his father and uncle in 1969, transforming the company into an independent beer wholesaler worth over \$12 million. In 1989,

Professor Dennis Wittmer and Deanna Wittmer of the Daniels College of Business prepared this case as the basis for class discussion. The case was prepared from public sources, including the Denver Post and the Rocky Mountain News. The case was written to form the basis for class discussion rather than to illustrate either effective or ineffective handling of an administrative situation. The name, Joe Sullivan, is a fictitious name, chosen at random, while other details and names in the case are real and reflect the authors best understanding of the factual basis of the case.

the company employed 108 people in Denver and Silverthorne, Colorado, and had exclusive city-wide distributing rights to Strohs, Pabst, and Old Milwaukee, along with several import beers, including Corona and Grolsch.

Like his company, Joe Sullivan was successful and well known. He had earned himself recognition in Denver as an upstanding citizen. He sat on the Mayor's Anti-Crime Council and was lauded as a likely mayoral candidate. A devout Irish Catholic, Sullivan and his wife Colleen had eight beautiful children. Sullivan "symbolized success in his parish and his city for years," said his priest. He regularly contributed to an array of charities, put ex-convicts to work, and helped rebuild Machbeuf high school. Sullivan was a graduate of Regis College in Denver and the Harvard Business School. In 1975, he was elected as chair of the board of the Colorado Beer Distributors' Association. For as long as anyone could remember, he had owned 44 Denver Broncos season tickets. He took 43 friends and family members to each game.

When the crew first began filling the order for Cub Foods, they realized that it would be impossible to deliver the requested 750 cases of Pabst Blue Ribbon 3.2 percent beer in time, since they only had 330 cases in stock. It was a holiday weekend, so finding any additional supplies of the 3.2 Pabst was unlikely. Besides, brewers make a limited number of production runs of 3.2 beer, since only a few states have laws that restrict retailers other than liquor stores to 3.2 beer.

Colorado law distinguishes beer and malt liquor. On the one hand, the Colorado Beer Code defines "fermented malt beverage (beer)" as a product containing no more than 3.2 percent alcohol by weight. The Colorado Liquor Code, on the other hand, defines malt liquor as beer or fermented beverages in excess of 3.2 percent by weight. Only liquor stores may sell malt liquor (the stronger beer) by legal statute.

Sullivan had a problem. How was he to satisfy his new customer? He wanted to fill the order, because this would hopefully be the start of a long-term relationship with Cub Foods. Sullivan weighed his choices. He was 420 cases short of filling the order. He had tried and failed to get 3.2 beer from other sources. He did not want to blow the order, but he only had less than half of the 3.2 Pabst beer order on hand, which was the brand that Cub Foods advertised for a Labor Day special. It was technically a violation of the liquor code, but just this once he could have the cases of beer stamped as 3.2 beer and distributed to the four stores. He could save his order. His employees would understand if they knew how this might help the future of the company. He had the business to consider, his employees, his family. But was it worth the chance of getting caught? Sullivan sat at his desk, knowing that this was a call he had to make.



JOE SULLIVAN (B)

President Joe Sullivan told the night crew of Sullivan Distributing Company to stamp the stronger Pabst as 3.2 beer in order to fill the new, large order for Cub Foods supermarkets.

Gary Collins had worked for Sullivan Distributing for seven years. In the fall of 1989, while Sullivan was dealing with the Cub Foods account, Collins was employed as a night-crew supervisor. In November of 1989, Collins' job was eliminated, and shortly after his termination, Collins went to the Colorado Department of Revenue and the State Division of Liquor Enforcement to report Sullivan Distributing for falsely stamping 420 cases of full-strength Pabst as 3.2 beer.

Collins reported further wrongdoing—the company had been selling out-of-date beer as fresh. A large, out-of-date stock of Strohs had accumulated at the warehouse, and the company had repackaged the old beer in new cartons with no dates. Crews also stamped old cartons with a new and meaningless stamp over the old freshness date, or sometimes after removing the original freshness date with cleaning fluid, they stamped a new freshness date. The beer inside the cartons was all stamped with freshness dates that had expired. It was impossible, however, for consumers to see the old freshness dates until they opened the cartons.

Three weeks later, when the state department still had not taken action, Collins provided the *Denver Post* with a rubber stamp like the one used in the mislabeling and several company documents, including stamping orders and inventory lists proving the company had thousands of cases of out-of-date beer. He also provided company documents with directions concerning where to stack the restamped beer and which trucks to load with old product.

The State Liquor Enforcement Division did not investigate thoroughly until the *Denver Post* brought a 12-pack of the stronger beer, stamped as 3.2, to division chief Roger Morris. The newspaper had the beer tested by a Chicago laboratory, J.E. Siebel Sons Co., which determined the beer to be 3.63 percent by weight and 4.63 by volume. Within an hour, 33 packs of the full-strength Pabst were confiscated from Cub Foods southwest Denver store. In its inspection of 21 Denver-area stores, the *Denver Post* found old beer falsely stamped in seven grocery stores. The letters and numbers on the cartons matched the rubber stamp Collins gave to the newspaper.

Although freshness dates on beer are not legal standards, a company can still have its license revoked for committing consumer fraud. Freshness dates are regulated by the industry and individual breweries. "A company does not break the law by selling old beer, but it may be

committing consumer fraud if it attempts to conceal or disguise something about its product or attempts to mislead customers,” reported the *Denver Post*.

The phone began ringing at the Collins residence shortly after he blew the whistle on Sullivan. He received hundreds of crank calls, and he and his family were threatened several times. US West traced some of the calls to Sullivan Distributing Co.; 22 calls were traced to four lines at the company. The company’s director of operations, Collins’s former boss Ralph Dillinger, was charged with phone harassment. Collins told the *Denver Post* he was not sorry he blew the whistle on Sullivan: “I don’t think employers should get away with stuff like that,” he said.

“I didn’t want to blow this order,” Sullivan admitted at his December 8 license revocation hearing. “Through some bad judgment on my part, I directed that the product be stamped 3.2.” When Sullivan’s license was ordered temporarily suspended until his scheduled hearing on December 20, Sullivan asked that the hearing be held immediately. Sullivan’s lawyer Dave Burlage argued that Sullivan’s community involvement and clean record warranted him a lesser penalty. Revoking Sullivan’s license would most probably cost him his business, Burlage said. But the deputy director of the state revenue department, Amelie Buchanan, went ahead and revoked Sullivan’s license.

“It gives me no pleasure to order cancellation and revocation of the liquor licenses. . . . It is my finding that these acts were deliberate and willful, that no attempt was made to rectify the situation until the investigation was under way, and finally that these violations are very serious,” Buchanan said in her ruling. Buchanan would later say this was the most difficult decision she had ever made. Sullivan was remorseful and contrite. Buchanan contemplated not revoking his license, but the law was clear, and she felt she had to fulfill her legal and moral obligation to do what the law required.

The Colorado legal statute is quite specific about violations of the Colorado Beer Code. In section 12-46-112 (3), it states, “Any violation by any licensee of the provisions of this subsection (3) shall immediately cause the cancellation of the license granted under this article.” The recodified liquor code (effective July 1, 1997) continues to require the immediate cancellation of a liquor license if a vendor sells any alcoholic product in excess of 3.2.

Three days later, however, the revocations were suspended because Sullivan’s lawyers filed a complaint in Denver District Court, claiming Colorado liquor law was unconstitutional. They protested that the laws did not provide optional penalties for different violations. They further argued that license revocation would result in a loss of all business, make it impossible to meet existing contracts, ruin the company’s credit rating, and force it to lay off workers. Judge Nancy Rice agreed that the company would surely suffer irreparable damage if both licenses were revoked; she issued an order to keep the state from shutting down Sullivan Distributing until judicial review of the case was complete.

Just days after the first hearing, the Consumer Protection Division of the Colorado Attorney General’s Office also began reviewing Sullivan’s case. Included in the packet Collins had provided was a hand-written memo from Sullivan that read, “I’m sorry but we must stamp all Stroh brands . . . that are out of date or will be out of date before Nov. 1st.” There was also a letter from Roseanne Maier of Southland Corporation, owner of 7-Eleven Stores. The September

28 letter informed the distributing company that she had found out-of-date beer in a store, after she had asked the company to be sure all old beer was removed. The letter said she was pulling Stroh's Light 12-packs from all 7-Eleven stores in Colorado.

An editorial in the December 18, 1989, *Denver Post* may have expressed community sentiment best: "It's disheartening to see a respected business like Sullivan Distributing Co. run afoul of the law. But empathy for the perpetrator does not reduce the seriousness of the violation." Cub Foods reacted swiftly to the revelations. All Sullivan products, including non-alcoholic beverages, were removed from Cub Food shelves. Safeway stores asked for a written guarantee that Sullivan Distributing would never again stamp beer improperly, but trust was compromised. A Safeway spokesperson said, "We'll just hope they'll keep their word." The revocation decision was upheld. Within two weeks of the hearings, Sullivan Distributing filed for bankruptcy. The company said paying back its debts was first priority. The company claimed \$9.4 million in secured debt, \$1.7 in unsecured debt, and \$11.5 million in assets. Suppliers and salespeople lost faith in Sullivan, even those who had become Sullivan's close friends or for whom Sullivan had done great favors. By March 1990, within only about six months of his decision to mis-stamp the beer, Western Distributing had purchased Sullivan Distributing. The business Sullivan had built, worth \$12 million dollars, was sold for only \$4 million. To pay the debts, Sullivan had to sell the family house, an antique collection, and almost all his important possessions. Bad judgment had virtually taken virtually everything he had worked so hard to attain.