

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of:)	
)	
)	
Toppromo, Inc.)	Case No.: 19-PRO-00163
t/a Ultrabar/Chroma)	License No.: ABRA-074767
)	Order No.: 2022-442
Application to Renew a)	
Retailer's Class CN License)	
)	
at premises)	
911 F Street, N.W.)	
Washington, D.C. 20004)	

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Bobby Cato, Member
Rafi Aliya Crockett, Member
Jeni Hansen, Member
Edward S. Grandis, Member

ALSO PRESENT: Toppromo, Inc., t/a Ultrabar/Chroma, Applicant

Andrew Kline and Sidon Yohannes, Counsels, of the The Veritas Law Firm, on behalf of the Applicant

Kevin Wilsey, Chairperson, Advisory Neighborhood Commission (ANC) 2C, Protestant

Ashley Steinberg, Designated Representative, on behalf of a Group of Five or More Residents and Property Owners, Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

INTRODUCTION

The Alcoholic Beverage Control Board (Board) approves the Application to Renew a Retailer's Class CN License filed by Toppromo, Inc., t/a Ultrabar/Chroma (hereinafter "Applicant" or "Ultrabar") subject to conditions where the Protestants demonstrated that Ultrabar regularly permits its music to be heard in nearby residences and has become a hang out spot for large crowds. Specifically, Ultrabar is required to prevent its music from being heard in nearby residences, keep its doors and windows closed when not in use for ingress and egress, produce a sound analysis report regarding its premises for review by the Board, and shall hire the Metropolitan Police Department (MPD) Reimbursable Detail on Fridays and Saturdays.

Procedural Background

The Notice of Public Hearing advertising Ultrabar's Application was posted on November 8, 2019, and informed the public that objections to the Application could be filed on or before December 23, 2019. *ABRA Protest File No. 19-PRO-00163*, Notice of Public Hearing [*Notice of Public Hearing*]. The records of the Alcoholic Beverage Regulation Administration (ABRA) indicate that Advisory Neighborhood Commission (ANC) 2C and a Group of Five or More Residents and Property Owners (collectively, the "Protestants") have filed a protest against the Application. *ABRA Protest File No. 19-PRO-00163*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on January 6, 2020, where all of the above-mentioned objectors were granted standing to protest the Application. The matter was stayed with the consent of the parties in Board Order No. 2021-015, issued on January 6, 2021. The stay was lifted on February 2, 2022, in Board Order No. 2022-043. On March 2, 2022, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on May 11, 2022.

The Board recognizes that an ANC's properly adopted written recommendations are entitled to great weight from the Board. D.C. Code §§ 1-309.10(d), 25-609; *Foggy Bottom Ass'n v. District of Columbia Alcoholic Beverage Control Bd.*, 445 A.2d 643, 646 (D.C. 1982). Accordingly, the Board "must elaborate, with precision, its response to the ANC[']s issues and concerns." *Foggy Bottom Ass'n*, 445 A.2d at 646. The Board notes that it received a properly adopted written recommendation from ANC 2C, which indicated that its protest is based on concerns regarding Ultrabar's impact on peace, order, and quiet. *ANC 2C Protest Letter* (Dec. 18, 2019). The ANC's issues and concerns shall be addressed by the Board in its Conclusions of Law below.

Based on the issues raised by the Protestants, the Board may only grant the Application if the request will not have an adverse impact on the peace, order, and quiet and residential parking and vehicular and pedestrian safety of the area located within 1,200 feet of the establishment. D.C. Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2022); *Group Protest Letter* (Dec. 10, 2019).

The Board notes that the Protestants do not contest the renewal of the license, but solely request that the Board impose conditions on the license. *Transcript (Tr.)*, May 11, 2022, at 27,

29-30. Specifically, the Protestants request that the Board require Ultrabar hire an independent sound engineer to issue sound recommendations and require Ultrabar to follow those recommendations. *Id.*

FINDINGS OF FACT

The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file, makes the following findings:

I. Background

1. Ultrabar has submitted an Application for a New Retailer's Class CN License at 911 F Street, N.W., Washington, D.C. *Notice of Public Hearing.*
2. ABRA Investigator Rhoda Glasgow investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 19-PRO-00163, Protest Report (May 2022) [Protest Report]*. The proposed establishment is in a D-7 zone. *Protest Report*, at 4. Fifty-nine licensed establishments are located within 1,200 feet of the location. *Id.* There are no schools, recreation centers, public libraries, or day care centers located within 400 feet of the establishment. *Id.* at 6. The establishment's hours of operation are: 9:00 a.m. to 2:00 a.m., Sunday through Thursday, and 9:00 a.m. to 3:00 a.m. on Friday and Saturday. *Id.* at 7.
3. The Protest Report describes the public transportation resources available in the neighborhood. *Id.* at 8. The establishment is located near a metro station and three bus lines. *Id.*
4. ABRA investigators visited the establishment on 11 separate occasions between March 3, 2022, and May 7, 2022. *Id.* at 8. Investigators reported no issues during their visits. *Id.* The records of the Metropolitan Police Department (MPD) indicate that MPD received 91 calls for service related to the establishment's address between June 2021 and April 2022. *Id.*; *Tr.*, 5/11/22 at 50. There is no record of prior violations of the District's alcohol laws in the report.
5. Investigator Glasgow observed the operations of the establishment on several occasions. *Tr.*, May 11, 2022 at 38. When she was in her agency vehicle with the windows closed, she only heard music from the establishment when patrons were entering or exiting the premises. *Id.* at 38-40. She also observed a security guard ask patrons standing outside to be quiet on another occasion. *Id.* at 39. She noted that the establishment is in the same neighborhood as the Capitol One Arena. *Id.* at 41. A hotel also operates on the other side of the street from the establishment. *Id.* at 67. She also observed that after 11:00 p.m., Ultrabar is one of the few businesses that appear to operate during the late night and early morning. *Id.* at 42. Finally, she entered the residential apartment building across the street but did not observe any noise when one resident's windows were closed. *Id.* at 35, 59.

II. Dimitrios Marmaras

6. Dimitrios Marmaras is the managing partner of Ultrabar. *Id.* at 98. He has been with the business since 2006. *Id.* He believes that a nightclub has operated at Ultrabar's location since the early 1990's. *Id.* at 99, 156. The business has a capacity of 739 people. *Id.* at 157.

7. The building was constructed in the 1800's and was previously used as a bank. *Id.* at 100-01. The business generally operates on Friday and Saturday nights. *Id.* at 102.

8. Mr. Marmaras noted that as part of his duties he interacts with the community and the establishment's neighbors. *Id.* at 104-05. He recalled that Ashely Steinberg has complained to him about noise related to cars, crowds, and the venue's music. *Id.* at 106, 147. He indicated that in response to such complaints he sends security personnel to talk with drivers or reports the issue to the MPD Reimbursable Detail. *Id.* at 106. He noted that the street in front of his business is temporarily closed due to a sewer maintenance issue, which has caused traffic and noise problems. *Id.* at 107-08. He also recalls that another resident used to complain about customers parking in front of the business and taking parking spaces. *Id.* at 110.

9. The business has taken steps to mitigate noise and to address the noise issues of nearby residents. *Id.* at 133-34. He noted that during this time, the business has received various complaints that nearby residents could hear music and feel vibrations. *Id.* at 115. In response to one complaint, in 2019, the establishment installed soundproofing foam and added a double door in the back to mitigate sound escaping from the rear of the building. *Id.* at 111-12. The establishment has also installed soundproofing foam on walls and placed yoga mats under the bass speakers to control vibrations. *Id.* at 112. In 2020, the establishment installed soundproofing foam near the entrance, the walls, and ceiling of the establishment. *Id.* at 114. The business further installed sound dampening insulators, acoustical panels, soundproofing curtains, and more foam. *Id.* at 119-20. Finally, in the week before the protest, the business moved a disc jockey booth near the entrance of the main floor to the other side of the room. *Id.* at 123.

10. He also noted that in response to recent complaints, the business is in the process of building a new entrance foyer, hallway, doors, and other architectural improvements to decrease sound leakage. *Id.* at 120-21. He further noted that the new doors will automatically close when not in use. *Id.* at 127. As of the date of the Protest Hearing, some of the improvements were completed a week before the protest while some of the additional doors have been delayed. *Id.* at 122, 125, 129. This new area will also not have any speakers installed. *Id.* at 132. Mr. Marmaras believes these additional measures will prevent noise from leaking out from the establishment's main floor. *Id.* at 123.

11. Mr. Marmaras admitted that a certified or professional sound engineer has never analyzed the noise situation at Ultrabar. *Id.* at 116. He indicated that the business intends to hire a sound engineer to analyze the noise situation at the establishment. *Id.* at 153.

12. Mr. Marmaras next discussed Ultrabar's security measures. *Id.* at 135. The business generally employs ten security guards outside that check patrons' identifications, perform pat

downs and metal detector wandering, and manage the nightclub's queue lines. *Id.* at 136. The business also hires the MPD Reimbursable Detail to help with security between 11:30 p.m. and 3:30 a.m. *Id.*

13. Mr. Marmaras indicated that he had no objection to a condition on his license requiring that the business generate no noise that may be heard in a resident's home. *Id.* at 139.

III. Galen Epps

14. Galen Epps serves as the head of security for Ultrabar. *Id.* at 162. He has worked at Ultrabar since 2014. *Id.* He indicated that the establishment provided him with security training as part of his duties and it also conducted an additional training for staff when the business reopened after the end of pandemic-related restrictions. *Id.* at 164.

15. When in operation, the crowd outside the premises is mostly comprised of Ultrabar's patrons. *Id.* at 167. Nevertheless, the crowd frequently included people going to or coming from the nearby arena. *Id.*

16. Mr. Epps indicated that outside security personnel monitor noise levels outside the premises. *Id.* at 166. As part of their duties, security personnel will approach patrons if they are acting unruly or rowdily outside the premises. *Id.* They will also ask drivers to turn down their music if they are stopped near the establishment if it is too loud. *Id.* Based on his experience, he believes the noise issues at the establishment stemmed from the prior architecture of the establishment's entrance that allowed sound to escape, and that the changes made by the establishment have addressed the issue. *Id.* at 171.

17. Mr. Epps indicated that security personnel will also monitor the area for litter. *Id.* at 168. As part of their duties, security personnel will carry trash cans up and down the establishment's queue lines to prevent littering. *Id.* He also noted that Ultrabar's staff clean outside the establishment, around the block, and across the street after the business closes. *Id.* at 169-70.

IV. Antonios Karagounis

18. Antonios Karagounis is one of the owners of Ultrabar. *Id.* at 180. He has owned the business since 2006. *Id.* He indicated that the establishment regularly hires the MPD Reimbursable Detail. *Id.* at 182. He further indicated that the business is willing to call the police or other emergency services when necessary. *Id.* at 182.

V. Yanev Suissa

19. Yanev Suissa resides in the building across the street from Ultrabar. *Id.* at 190. He has lived there since 2015 and began experiencing noise issues related to Ultrabar at that time. *Id.*

20. Mr. Suissa described his issues and concerns. *Id.* at 191. Specifically, late at night, when Ultrabar is in operation, he hears bass sounds and music from the establishment inside his residence even when wearing noise cancelling headphones and using a noise dampener device.

Id. at 190, 226. In his experience, Ultrabar keeps the entrance door open on a regular basis and not always for ingress and egress. *Id.* at 193, 204, 207-08. He further noted that Ultrabar has a long admission line and large crowds late at night, which results in a lot of screaming and loud crowd noises outside. *Id.* at 200-201. He also observed that large crowds remain outside the premises after closing, engage in disruptive activity such as screaming and vomiting, and do not disperse quickly. *Id.* at 222.

VI. ANC Commissioner Michael Shankle

21. Advisory Neighborhood Commission (ANC) Commissioner Michael Shankle represents ANC 2C01. *Id.* at 229. His single member district encompasses Ultrabar. *Id.* He also resides in the building directly across the alley from the establishment. *Id.* at 230. In his role as an ANC Commissioner, he has received complaints regarding Ultrabar's noise from nearby residents in the past few years. *Id.* In August 2019, he observed that music and bass sounds from the building could be heard in his residential building. *Id.* at 233. He also noted that noise can still be heard in his building as of the date of the Protest Hearing. *Id.* at 250. He further noted that signs advising customers to be quiet were posted a few weeks before the Protest Hearing. *Id.* at 240.

22. In August 2021, Commissioner Shankle attended a sound investigation conducted by an ABRA official in the residential building across the street from Ultrabar. *Id.* at 237-38. While standing in a fifth-floor apartment's living room with the windows closed, he could hear Ultrabar's music inside the apartment. *Id.* at 238. He also noted that various cars and ATVs were parked in front of the club. *Id.* at 239.

VII. Brett Spooner

23. Brett Spooner lives in a fifth-floor apartment across the street from Ultrabar. *Id.* at 262. Music from Ultrabar regularly penetrates his home. *Id.* at 262. Based on his experience, the noise is so bad that he cannot use one of his bedrooms and his young son must sleep in a room meant to be an office. *Id.* at 262. In order to sleep during the weekend, he also has to use headphones and uses noise from an iPad. *Id.*

24. Outside the club, he has observed all-terrain vehicles doing donuts and other tricks. *Id.* at 267. He further noted that the presence of ATVs attracts additional people to the establishment to hang out. *Id.*

CONCLUSIONS OF LAW

25. The Board may approve an Application to Renew a Retailer's Class CN License when the proposed establishment will not have an adverse impact on the neighborhood. D.C. Code §§ 25-104, 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2022). Specifically, the question in this matter is whether the Application will have a negative impact on the peace, order, and quiet and residential parking and vehicular and pedestrian safety of the area located within 1,200 feet of the establishment. D.C. Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2022).

I. Ultrabar is Appropriate for the Neighborhood Subject to Conditions Related to Curbing Noise and Crowd Control.

26. The Board is persuaded that Ultrabar is appropriate so long as it complies with conditions designed to curb noise disturbances and crowd control. Under the appropriateness test, “the applicant shall bear the burden of proving to the satisfaction of the Board that the establishment for which the license is sought is appropriate for the locality, section, or portion of the District where it is to be located . . .” D.C. Code § 25-311(a). The Board shall only rely on “reliable” and “probative evidence” and base its decision on the “substantial evidence” contained in the record. 23 DCMR § 1718.3 (West Supp. 2022). The substantial evidence standard requires the Board to rely on “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Clark v. D.C. Dep’t of Employment Servs.*, 772 A.2d 198, 201 (D.C. 2001) citing *Children’s Defense Fund v. District of Columbia Dep’t of Employment Servs.*, 726 A.2d 1242, 1247 (D.C.1999).

27. In determining appropriateness, the Board must consider whether the Applicant’s future operations will satisfy the reasonable expectations of residents to be free from disturbances and other nuisances—not just whether the Application complies with the minimum requirements of the law. D.C. Council, Bill 6-504, the “District of Columbia Alcoholic Beverage Control Act Reform Amendment Act of 1986,” Committee on Consumer and Regulatory Affairs, 38 (Nov. 12, 1986); see *Panutat, LLC v. D.C. Alcoholic Beverage Control Bd.*, 75 A.3d 269, 277 n. 12 (D.C. 2013) (“However, in mandating consideration of the effect on peace, order, and quiet, § 25-313(b)(2) does not limit the Board’s consideration to the types of noises described in § 25-725.”). As part of its analysis, the Board should evaluate each “unique” location “according to the particular circumstances involved” and attempt to determine the “prospective” effect of the establishment on the neighborhood. *Le Jimmy, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 433 A.2d 1090, 1093 (D.C. 1981). Furthermore, the analysis may also include the Applicant’s efforts to mitigate or alleviate operational concerns, the “character of the neighborhood,” the character of the establishment, and the license holder’s future plans. *Donnelly v. District of Columbia Alcoholic Beverage Control Board*, 452 A.2d 364, 369 (D.C. 1982) (saying that the Board could rely on testimony related to the licensee’s “past and future efforts” to control negative impacts of the operation); *Upper Georgia Ave. Planning Comm. v. Alcoholic Beverage Control Bd.*, 500 A.2d 987, 992 (D.C. 1985) (saying the Board may consider an applicant’s efforts to “alleviate” operational concerns); *Citizens Ass’n of Georgetown, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 410 A.2d 197, 200 (D.C. 1979); *Gerber v. D.C. Alcoholic Beverage Control Bd.*, 499 A.2d 1193, 1196 (D.C. 1985); *Sophia’s Inc. v. Alcoholic Beverage Control Bd.*, 268 A.2d 799, 800-801 (D.C. 1970).

a. Ultrabar’s noise and crowd issues threaten the peace, order, and quiet of the neighborhood.

28. Ultrabar’s noise and crowd issues threaten the peace, order, and quiet of the neighborhood. “In determining the appropriateness of an establishment, the Board shall consider . . . [t]he effect of the establishment on peace, order, and quiet, including the noise and litter provisions set forth in §§ 25-725 and 25-726.” D.C. Code § 25-313(b)(2); see also D.C. Code §§ 25-101(35A), 25-314(a)(4). Among other considerations, the Board is instructed to consider

“noise, rowdiness, loitering, litter, and criminal activity.” 23 DCMR § 400.1(a) (West Supp. 2022).

29. The Board also relies on various court rulings and statutes to evaluate whether a licensee’s impact on noise has a negative impact on peace, order, and quiet. *In re Inner Circle 1223, LLC, t/a Dirty Martini Inn Bar/Dirty Bar*, Case No. 13-PRO-00172, Board Order No. 2014-507, ¶¶ 24-49 (D.C.A.B.C.B. Dec. 10, 2014). Specifically, in *Panutat*, the court wrote that “[I]n mandating consideration of the effect on peace, order, and quiet, § 25–313(b)(2) does not limit the Board's consideration to the types of noises described in § 25–725.” *Panutat, LLC v. D.C. Alcoholic Beverage Control Bd.*, 75 A.3d 269, 277 n. 12 (D.C. 2013). This means that the Board may consider loud talking, playing music, revving car engines, and yelling. *Panutat, LLC v. D.C. Alcoholic Beverage Control Bd.*, 75 A.3d 269, 277 n. 12 (D.C. 2013). In *T.L.*, the court has provided that “[t]he government has a substantial interest in protecting its citizens from unwelcome noise” *In re T.L.*, 996 A.2d 805, 812 (D.C. 2010) (quotation marks removed). This interest is “. . . greatest when [the] government seeks to protect the wellbeing, tranquility, and privacy of the home.” *Id.* As a result, the government has a right to prevent noise so unreasonably loud that it “. . . unreasonably intrude[s] on the privacy of a captive audience or so loud and continued as to offend[] a reasonable person of common sensibilities and disrupt[] the reasonable conduct of basic nighttime activities such as sleep.” *Id.* at 813 (quotation marks removed). Finally, under the District’s disorderly conduct law, “It is unlawful for a person to make an unreasonably loud noise between 10:00 p.m. and 7:00 a.m. that is likely to annoy or disturb one or more other persons in their residences.” D.C. Code § 25-1321(d).

30. The Board is persuaded that conditions are warranted for several reasons. First, the Board credits the Protestants’ evidence that Ultrabar regularly produces amplified music that can be heard in nearby residents’ homes late at night during traditional sleeping hours. *Supra*, at ¶¶ 20-23. Second, the Board recognizes that Ultrabar has attempted to install soundproofing; however, the Applicant did not present persuasive evidence that the soundproofing is effective, sufficient, or commercially reasonable under the circumstances where no certified sound analysis or credible testimony that such measures resolved the noise issues exist in the record. *Supra*, at ¶¶ 9-11. Third, based on testimony, the noise leakage has been at least partially caused by the failure to keep the establishment’s doors closed on a regular basis. *Supra*, at ¶ 20. Fourth, the Board further recognizes that Ultrabar has a large occupancy, a location near a sports arena, and that the area outside Ultrabar has become an attractive place for people to hang out late at night, which results in crowd issues such as yelling and late-night loitering on a regular basis. *Supra*, at ¶¶ 15, 20, 22, 24. Nevertheless, the Board credits the Applicant’s testimony that it takes sufficient steps to clean the area. *Supra*, at ¶ 17. Consequently, the Board is persuaded that additional measures related to noise and crowd control are warranted.

b. Ultrabar is not having a negative impact on residential parking or vehicular and pedestrian safety.

31. The Board is not persuaded that Ultrabar is having a negative impact on residential parking and vehicular and pedestrian safety. The Board notes that there is no indication that Ultrabar is having a negative impact on residential parking; therefore, the sole issue is whether the establishment poses a negative impact on vehicular and pedestrian safety.

32. The Board is unaware of any prior case that involves the presence of ATV riders; therefore, this is a matter of first impression for the Board. The existence of such behavior falls within the rubric of appropriateness. As noted in the law, “In determining the appropriateness of an establishment, the Board shall consider . . . [t]he effect of the establishment upon residential parking needs and vehicular and pedestrian safety” D.C. Code § 25-313(b)(3); *see also* D.C. Code §§ 25-101(35A), 25-314(a)(4). Among other considerations, the Board is instructed to consider the availability of both private and public parking, any parking arrangements made by the establishment, whether “[t]he flow of traffic . . . will be of such pattern and volume as to . . . increase the [reasonable] likelihood of vehicular [or pedestrian] accidents” 23 DCMR § 400.1(b), (c) (West Supp. 2022).

33. In the District of Columbia, driving an ATV is illegal. Specifically, pursuant to D.C. Official Code § 50-2201.04b,

(a)(1) No person shall:

(A) Operate an all-terrain vehicle or dirt bike on public property, including any public space in the District; or

(B) Park, stand, or stop an all-terrain vehicle or dirt bike on public property, including any public space in the District.

D.C. Code § 50-2201.04b. A violation of the ATV prohibition may result in fines, incarceration, and forfeiture of the offending vehicle. *Id.* at § 50-2201.04b(b)-(f).

34. Under the appropriateness standard, the regular presence of ATV riders is a valid consideration when considering the establishment’s “particular circumstances”; the “character of the neighborhood”; and the flow of traffic. *Infra*, at ¶¶ 27. Nevertheless, the Board recognizes that illegal ATV riders in this case are private persons operating their vehicles in public space and there is no indication that Ultrabar is overtly directing or encouraging their presence. It should also be noted that “the mere existence of [an establishment] in a high crime area or the mere commission of crime within or outside the [establishment] are not sufficient to render its presence inappropriate.” *In re Holiday Family Liquor, Inc., t/a Holiday Liquors*, Case No. 21-PRO-00025, Board Order No. 2021-518, (D.C.A.B.C.B. Sept. 29, 2021).

35. In this case, the illegal ATV riders are hanging out outside Ultrabar and performing donuts and tricks on the road. *Id.* at ¶¶ 22-24. Yet, there is no testimony that this behavior by ATV riders endangered pedestrians or persons in other vehicles. Moreover, there was no testimony as to how this could potentially create a threat to pedestrians and vehicles in the future. Under these circumstances, while illegal, the facts in this case do not demonstrate that the establishment poses a threat to pedestrians and vehicles even if the area outside the establishment has become a hang out spot for illegal ATV activity. On a final note, even if such activity threatened vehicular and pedestrian safety or violated the order standard, the Board’s condition to hire the MPD Reimbursable Detail is sufficient to address the issue. Therefore, the Board

finds in favor of Ultrabar under the residential parking and vehicular and pedestrian safety standard.

II. The Board Imposes Conditions on the License.

36. In light of the Board’s findings regarding appropriateness, the Board finds it necessary to impose conditions on the Applicant’s license. *See In re Dos Ventures, LLC, t/a Riverfront at the Ball Park*, Case No. 092040, Board Order No. 2014-512. ¶ 49 (D.C.A.B.C.B. Nov. 13, 2013) (saying “[i]n practice, the Board has imposed conditions when it is shown that there are valid concerns regarding appropriateness that may be fixed through the imposition of specific operational limits and requirements on the license”). Under § 25-104(e), the Board is granted the authority to impose conditions on a license when “. . . the inclusion of conditions will be in the best interest of the [neighborhood]” D.C. Code § 25-104(e).

37. First, the Board agrees with the Protestants that Ultrabar generates unreasonable amounts of disturbing noise and credits evidence that the Applicant has begun taking steps to address the issue. In order to ensure such steps are taken, effective, and maintained, the Board will condition licensure on Ultrabar refraining from generating amplified music and other amplified sounds that can be heard in a residential premise, keeping its doors and windows closed except when in use, and conducting an appropriate sound analysis. The Board is further hopeful that cutting down on sound outside the establishment will help calm the crowds outside the establishment by reducing the volume outside the establishment and reducing the need for yelling and shouting. The Board does not adopt additional conditions suggested by the Protestants because the Board’s current conditions adequately address all reasonable concerns raised by the Protestants.

38. Second, the Board will require the establishment to regularly hire the MPD Reimbursable Detail. Such a step is warranted because large crowds and ATV riders regularly appear outside the establishment. The Board is aware that this is something the establishment already does; however, the Board believes that the regular presence of large crowds merits the hiring of the detail on a permanent basis. The Board further recommends that the parties communicate their concerns regarding crowd behavior and the presence of ATVs to the local MPD District Commander so that MPD is aware of ongoing issues that focused policing could resolve.

39. Finally, the Board advises the parties that additional conditions related to crowd noise on public space are not warranted in this case. The Board notes that crowd noise conducted on public space controlled by the District—rather than in a licensee’s private or public outdoor seating area where the licensee has control over the use, capacity, and architectural features of the seating area—is to be reasonably expected in a downtown neighborhood near an arena. Therefore, it is incumbent upon residents to ensure that their property has sufficient soundproofing features (e.g., noise cancelling windows) to address anticipated noise such as the unamplified human voice on public space and emergency vehicle sirens.

40. For these reasons, subject to the conditions described above, the Board deems the Application to be appropriate.

III. The Establishment's Record of Compliance Merits Renewal.

41. Under § 25-315, “[t]he Board shall consider the licensee's record of compliance with this title and the regulations promulgated under this title and any conditions placed on the license during the period of licensure, including the terms of a settlement agreement.” D.C. Code § 25-315(b)(1). Based on the Applicant’s history of no prior violations of the District’s alcohol laws, Ultrabar merits the renewal of its license. *Supra*, at ¶ 3.

IV. The Application Satisfies All Remaining Requirements Imposed by Title 25.

42. Finally, the Board is only required to produce findings of fact and conclusions of law related to those matters raised by the Protestants in their initial protest. *See Craig v. District of Columbia Alcoholic Beverage Control Bd.*, 721 A.2d 584, 590 (D.C. 1998) (“The Board's regulations require findings only on contested issues of fact.”); 23 DCMR § 1718.2 (West Supp. 2022). Accordingly, based on the Board’s review of the Application and the record, the Applicant has satisfied all remaining requirements imposed by Title 25 of the D.C. Official Code and Title 23 of the D.C. Municipal Regulations.

ORDER

Therefore, the Board, on this 20th day of July 2022, hereby **APPROVES** the Application to Renew a Retailer's Class CN License at premises 911 F Street, N.W., filed by Toppromo, Inc., t/a Ultrabar/Chroma subject to the following **CONDITIONS**:

1. Ultrabar shall not generate amplified sounds that may be in a residence or residential unit so long as the residence has its windows or doors closed.
2. Ultrabar shall keep its windows and doors closed except when in use as an ingress or egress.
3. Ultrabar shall hire a qualified sound professional to conduct a commercially reasonable sound analysis of the premises and produce a report on sound issues and soundproofing at the establishment. The report shall indicate the qualifications of the sound professional; the method used to test the noise levels and soundproofing at the establishment; the time and place such tests were undertaken; additional soundproofing recommendations, if any; and whether the soundproofing and architectural features of the establishment allow the licensee to comply with Condition 1 or whether additional steps are required. A copy of the report shall provided to the Protestants and the Board within 90 days of this Order unless an extension is granted.
4. Ultrabar shall hire at least two officers with the Metropolitan Police Department from at least when it begins admitting patrons until at least one hour after the close of business on Friday and Saturday.

IT IS FURTHER ORDERED that the Board’s findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed

invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

The ABRA shall deliver a copy of this order to the Parties.

District of Columbia
Alcoholic Beverage Control Board

eSigned via SeamlessDocs.com
Donovan Anderson
Key: ac43cb9ebc9d5f09e4b730093d1dccc8

Donovan Anderson, Chairperson

eSigned via SeamlessDocs.com
James Short
Key: 547ae372f620de6ac6d1b332ad2049cc

James Short, Member

Bobby Cato, Member

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Key: 5027bda7f9f0040ec14adeb52541ce5

Edward S. Grandis, Member

Pursuant to D.C. Official Code § 25-433(d)(1), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, Reeves Center, 2000 14th Street, NW, 400S, Washington, D.C. 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 430 E Street, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b) (2004).