



STATE OF CONNECTICUT
COMMISSIONER OF CONSUMER PROTECTION
165 Capitol Avenue, Hartford, Connecticut 06106

MARK A. SHIFFRIN

MAY 5 1998

P.J. Cimini, Esquire
Robinson & Cole
One Commercial Plaza
280 Trumbull Street
Hartford, CT 06103-3597

Dear Mr. Cimini:

On behalf of your client, Bass plc ("Bass") and certain of its operating subsidiaries which are engaged in the hotel and alcoholic beverage distribution businesses, you have requested the issuance of a Declaratory Ruling pertaining to a unique situation involving a multinational enterprise which operates separately managed subsidiaries. I now exercise the discretion vested in me by Section 4-176 of the Connecticut General Statutes and Sections 21a-1-10 and 30-6-C9 of the Regulations of Connecticut State Agencies and grant your petition. Specifically, you have requested guidance concerning the following issues:

A. Whether the provisions of Section 30-48 of the Connecticut General Statutes render Holiday Hospitality Corporation and its affiliates and subsidiaries (hereinafter referred to collectively as "HHC") and Bristol Hotel Company (hereinafter referred to as "Bristol"), both indirect subsidiaries of Bass, ineligible to hold a permit authorizing them to operate hotels in Connecticut, including the sale of alcoholic beverage therein, at the same time that Bass Beers America ("BBA") holds a Connecticut Out-Of-State Shipper's Permit for alcoholic liquors; similarly, whether Section 30-48 of the Connecticut General Statutes renders BBA ineligible to hold an Out-of-State Shipper's Permit for alcoholic liquors at the same time that HHC and Bristol hold licenses/permits authorizing them to own and operate hotels; and

B. Whether the provisions of Section 30-94 of the Connecticut General Statutes prohibit General Innkeeping Acceptance Corporation (hereinafter referred to as "GIAC"), GIAC Leasing Corp. (hereinafter referred to as "GIAC Leasing") and Holiday Inns Franchising Inc. (hereinafter referred to as "HIFI"), both subsidiaries of HHC, from engaging in the financing and leasing activities with respect to franchisees of HHC's hotels.

I have thoroughly reviewed the facts and circumstances presented in this matter and have carefully considered the relevant caselaw, particularly as it relates to the "evil of the tied house" of the prohibition era. *See Beckanstin v. Liquor Control Commission*, 140 Conn. 185, 99 A.2d 119 (1953). Based upon this review, it does not appear that the "tied house" provisions were enacted to deal with the type of situation presented in this matter, or with the purpose of prohibiting corporations that are indirect subsidiaries of a holder of an Out-of-State Shipper's Permit from conducting customary hotel activities in states with such statutes. Therefore, my ruling with regard to the questions posed by your petition is as follows:

A. The provisions of Section 30-48 of the Connecticut General Statutes do not render subsidiaries of a publicly-owned corporation ("Parent") ineligible to hold a permit authorizing them to own and/or operate hotels in Connecticut, including the sale of alcoholic beverages therein, at the same time that another indirectly owned subsidiary of the Parent holds a Connecticut Out-of-State Shipper's Permit for alcoholic liquors; similarly, the provisions of Section 30-48 of the Connecticut General Statutes do not render a subsidiary of the Parent ineligible to hold an Out-of-State Shipper's Permit for alcoholic liquors at the same time that other indirect subsidiaries of the Parent hold licenses/permitting authorizing them to own and/or operate hotels; and

B. The provisions of Section 30-94 of the Connecticut General Statutes do not prohibit indirect subsidiaries of the Parent from engaging in financing and leasing activities with respect to franchisees of hotels owned by other indirect subsidiaries of the Parent.

The Department takes notice of the following facts: HHC and Bristol are operationally independent from the beer distribution activities of BBA, with HHC and Bristol having a totally separate management operating from totally separate headquarters; HHC and Bristol are in the hotel business, not the retail alcoholic beverage business; and the number of retail outlets which HHC and Bristol might eventually maintain in Connecticut, as an ancillary part of such hotel business, would be insignificant in comparison to the total number of retail outlets in Connecticut. Furthermore, to insure that the intent and purpose of the "tied-house" statutes are being complied with, we will require that HHC and Bristol agree to certain restrictions on the sale of alcoholic beverage brands at the hotel outlet, and the requirement that HHC and Bristol hotels purchase brands only from independent wholesalers as hereinafter set forth.

The Department notes as an essential caveat to this ruling that any of the following actions would cause the parties to be in contravention of the statutes: (i) the purchase or sale of any brand of alcoholic beverages distributed by BBA by any HHC or Bristol owned and operated hotel; (ii) any franchisee that received financing from GIAC, GIAC Leasing or HIFI, as described above, from purchasing or selling any brand of alcoholic beverages distributed by BBA; or (iii) any employee, agent or representative of

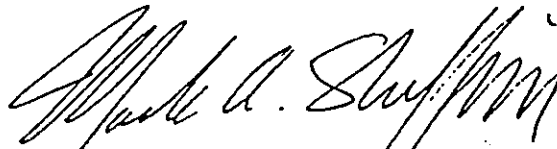
Page 3

P. J. Cimini, Esquire

Bass, its affiliates or subsidiaries, influencing any HHC or Bristol owned and operated hotel with respect to such hotel's decisions concerning the purchase and sale of alcoholic beverages. Furthermore, any HHC or Bristol owned and operated hotel shall purchase its inventory of alcoholic beverages solely from duly licensed Connecticut wholesalers that are independent of, and unrelated to, Bass or any of its affiliates or subsidiaries.

With the imposition of such restrictions and on the facts summarized herein, HHC, Bristol, BBA, and any Bass affiliate or subsidiary engaged in the alcoholic beverage businesses, would not be engaging in any conduct violative of public policy or the purpose underlying Connecticut's "tied-house" statutes.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mark A. Shiffrin". The signature is written in dark ink and is positioned above the printed name and title.

Mark A. Shiffrin
Commissioner

MAS/dmc/ean

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February 18, 1998

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Via Hand Delivery

Mr. Mark A. Shiffrin
Commissioner
Department of Consumer Protection
State Office Building
165 Capitol Avenue
Hartford, CT 06106

Re: **Declaratory Ruling Request**

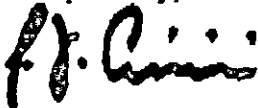
Dear Commissioner Shiffrin:

On behalf of our client, Bass plc and certain of its operating subsidiaries which are engaged in the hotel and alcoholic beverage distribution businesses, we respectfully request, pursuant to Section 30-6-C9 of the Regulations of the Department of Consumer Protection, that the Department render a declaratory ruling covering multinational enterprises operating through separately managed subsidiaries.

Attached is information outlining in detail the formal request, the facts surrounding the current situation and the reasons for the Department to render the requested ruling.

Please feel free to contact me if you have any questions or need additional information.

Respectfully,



P.J. Cirrini

Enclosure

cc: Mr. Ralph Marcarelli, Esq.
Counsel to the Commissioner

On behalf of our client, Bass plc ("Bass") and certain of its operating subsidiaries which are engaged in the hotel and alcoholic beverage distribution businesses, we respectfully request, pursuant to Section 30-6-C9 of the Regulations of the Department of Consumer Protection ("Department"), that the Department render a declaratory ruling as follows:

A. That the provisions of Section 30-48 of the Connecticut General Statutes (i) do not render Holiday Hospitality Corporation and its affiliates and subsidiaries (collectively hereinafter referred to as "HHC") and Bristol Hotel Company ("Bristol"), both indirect subsidiaries of Bass, ineligible to hold a permit authorizing them to operate hotels in Connecticut, including the sale of alcoholic beverage therein, at the same time that Bass Beers America ("BBA") holds a Connecticut Out-Of-State Shipper's Permit for alcoholic liquors and, similarly, that said statutory provision does not render BBA ineligible to hold an Out-of-State Shipper's Permit for alcoholic liquors at the same time that HHC and Bristol hold licenses/permits authorizing them to own and operate hotels; and

B. That the provisions of Section 30-94 of the Connecticut General Statutes do not prohibit General Innkeeping Acceptance Corporation ("GIAC"), GIAC Leasing Corp. ("GIAC Leasing") and Holiday Inns Franchising Inc. ("HIFI"), both subsidiaries of HHC, from engaging in the financing and leasing activities with respect to franchisees of HHC's hotels, more particularly described below.

Set forth below is our understanding of the facts regarding Bass and its United States operating subsidiaries and the reasons why we believe it both appropriate and proper for the Department to render the requested ruling.

1. Bass plc and its operating subsidiaries

Bass plc is a major multinational enterprise engaged through subsidiary companies in a variety of businesses, including alcoholic beverage and soft drink production, hotels and leisure retailing (e.g. taverns, betting and gaming establishments). Bass is headquartered in London, England and its stock is traded on the London Stock Exchange and on the New York Stock Exchange, the latter in the form of American Depository Shares. As of December 1997, Bass plc was the 26th largest public limited company in the United Kingdom on the basis of market capitalization. Bass operates as a holding company, with each of its operating subsidiaries conducting business from its own headquarters and independent of each of the other

operating subsidiaries. Annexed hereto is a "Basic Ownership Chart" reflecting the ownership structure of Bass and its subsidiaries.

a. Bass' Hotel Operations

Bass has been involved in the hotel industry for many years. It owned and operated the Crest hotel chain in Europe and the Middle East and also owned Bass Horizons Hotels which operated resort hotels in Spain and the Mediterranean. In 1988, it acquired ownership of a majority of the assets of Holiday Inns outside North America, including the international rights to the Holiday Inn trademark. That same year it acquired ownership of thirteen Holiday Inn hotels in the United States. In 1990, it acquired the remainder of the Holiday Inn hotel chain for approximately \$2.3 billion.

Today, Holiday Hospitality Corporation, its subsidiaries and affiliates, own, operate and franchise more than 2,380 hotels with approximately 392,000 guestrooms in more than 60 countries. Approximately eighty (80%) percent of the hotels are located in the United States. The hotels are operated under a variety of brandnames, including Crowne Plaza, Holiday Inn, Holiday Inn Select and Holiday Inn Express.

Bristol, a publicly-owned Texas corporation headquartered in Dallas, owns and operates hotels throughout the United States under the Bristol Suites, Harvey Hotel and Harvey Suites brandnames. In 1997, Bristol acquired ownership of sixty (60) Holiday Inn hotels in North America in consideration for which it issued approximately thirty-two (32%) percent of its outstanding shares of stock to two subsidiaries of Bass, Bass America, Inc. and Holiday Corporation.

HHC sets quality standards for all of its hotel brands and operates a sophisticated customer satisfaction and quality measurement system to ensure those standards are met or exceeded. In 1994, it launched an initiative to modernize the North American, full-service portion of its hotel portfolio, with franchisees investing more than \$1 billion in the renovation and upgrading of their properties. In addition, as of September 30, 1997 there were franchise agreements for 658 hotels with approximately 71,000 rooms that remained to be constructed and integrated into the HHC hotel system. The construction, conversion and development of hotels is dependent upon a number of factors, including franchisees obtaining suitable financing at acceptable interest rates. Because conventional financing institutions have been reluctant to extend financing to franchisees to construct, renovate and equip hotels, it has become customary for hotel franchisors to extend financing in the

form of loans and leases of furniture, fixtures and equipment ("FF&E") to franchisees upon competitive terms and rates. HHC, through its indirect subsidiaries, General Innkeeping Acceptance Corporation ("GIAC") and GIAC Leasing Corp. ("GIAC Leasing") makes such loans and enters into such FF&E leases, oftentimes taking a mortgage on the franchisee's real property and/or a security interest in the FF&E.

Holiday Inns Franchising, Inc. ("HIFI") which franchises the hotels bearing the Holiday brand names, receives a franchise fee from each franchisee equal to between 3% and 5% of revenues derived by the franchisees from guestroom rentals. None of the revenue derived by the franchisees from the sale of alcoholic beverages is paid to HIFI and HIFI does not exercise any management control over the purchase and sale of alcoholic beverages by any franchisee. HIFI will sometimes defer receipt of payment of various fees payable by a franchisee under the franchise agreement until the franchisee is financially able to meet such obligation.

b. Bass' Brewing and Distribution Operations

Bass has been engaged in the brewing business for many years through Bass Brewers Ltd., which presently operates eight (8) breweries in the United Kingdom, producing over sixty (60) brands of beer. BASS Ale is sold worldwide by Bass Beers Worldwide ("BBW"), which handles the export of all Bass Brewers' brands. Through another subsidiary, Bass owns an equity interest in breweries located in the Czech Republic and China.

Until 1997, BASS Ale was the only brand produced by Bass Brewers to be sold in the United States. The brand has been, and is currently, imported into the United States by Guinness Import Company, an independent company, unrelated to Bass, which sells the brand to licensed wholesalers throughout the United States, including Connecticut wholesalers. In 1997, Bass Beers America, headquartered in Atlanta, was formed to sell HOOPER'S HOCH alcohol lemon drink, another Bass Brewers' brand, to licensed wholesalers throughout the United States. Currently, BBA does not sell the brand to wholesalers in Connecticut, but would like to do so if it is deemed eligible to obtain an Out-of-State Shipper's Permit.

2. The Connecticut "Tied-House" Statutes

Most of the states of the United States have statutory provisions which prohibit or restrict a manufacturer or wholesaler of alcoholic beverages from owning or otherwise being financially interested in a retail alcoholic beverage business in

such state. These provisions are generally known as "tied-house" statutes. Enacted shortly after the repeal of prohibition, their purpose was to protect retailers (and the public) from undue pressure from distributors and manufactures promoting in a controlled retail outlet the sale of their alcoholic beverage products in preference to those of other manufacturers. The social concern behind such statutes was that permitting tied houses with the attendant possibility of direct and unreasonable promotion and sale of the brands of the interested manufacturer or distributor would result in excessive sales stimulation at the retail level, creating a direct conflict with the public policy to promote temperance. United States Department of Commerce, Report on State Liquor Legislation (1941), p 20.

The relevant Connecticut tied house provisions are found in Sections 30-48 of the Connecticut General Statutes. Section 30-48 prohibits a permittee of one class of permit shall not be a permittee or backer of another class of permit. A "backer" means the "proprietor" of the business engaged in the manufacture or sale of alcoholic liquor, in which business and permittee is associated, whether as employee, agent or part owner [C.G.S. §30-1(4)]. Section 30-94 prohibits a permittee from directly or indirectly offering, furnishing or receiving any free goods, gratuities, gifts, loans or other inducements with the sale of alcoholic beverages.

As a result of such tied-house statutes, the alcoholic beverage industry in Connecticut and elsewhere in the United States, has developed into a three-tier system of licensing and distribution - manufacturers, wholesalers and retailers.

3. The Dilemma Facing HHC, Bristol, and BBA Under The Connecticut "Tied-House" Statutes

As a consequence of Bass being the ultimate parent of HHC and BBA, as well as the ultimate parent of Bass America, Inc. and Holiday corporation which together owns 32% of Bristol's stock, the ability of HHC and Bristol to engage in hotel operations in Connecticut, while at the same time BBA holds an Out-of-State Shipper's Permit in order to sell alcoholic beverage products to Connecticut wholesalers, has been called in to question by Connecticut's tied-house laws. The uncertainty, on the part of HHC and Bristol, of not knowing whether they can obtain the requisite retail licenses to operate hotels, because of Bass' ultimate, indirect ownership of HHC, Bristol and BBA, makes it impossible for either HHC or Bristol to make plans for the development and operation of hotels in Connecticut, or to acquire a nationwide or regional hotel chain having hotels in

Connecticut. Connecticut is a priority state for HHC and Bristol because of its role as a commercial center and a popular tourism state. The inability of HHC and Bristol to be able to plan future hotel development in Connecticut results in lost opportunities not only for these hotel operators but also for the State of Connecticut, which will lose the economic benefits (i.e. capital investment and employment) associated with the construction and development of major hotel projects as well as the prestige and benefits generated by the presence in the state of a major international hotel company of recognized quality.

4. Suggested Resolution

It is clear that the "tied-house" statutes were not enacted to deal with multinational enterprises operating through different subsidiary companies in diversified businesses or with the purpose of prohibiting corporations such as HHC and Bristol from conducting customary hotel activities in states with such statutes. Enterprises such as Bass, conducting various businesses through different subsidiaries, operationally and managerially independent of each other, do not conduct business in a way which results in the "evils" intended to be prohibited by the "tied-house" statutes -- the direct and unreasonable promotion and sales of one's own brands through controlled retail outlets, to the detriment of the public and the policy against encouraging excessive consumption of alcoholic beverages. Even after development and acquisition expansion in Connecticut, HHC and Bristol are unlikely to have more than a few retail outlets, with the sale of alcoholic beverages being ancillary to customary hotel activities.

For these reasons, we believe it is entirely appropriate that the Department should be able to apply the "tied-house" provisions of the Connecticut statutes sensibly with the intent and purpose of such statutes in mind, particularly when arrangements can be specified that completely guarantee that the public will be protected and the underlying intent and purpose of such statutes will be carried out fully. In this regard, the Department would be properly fulfilling its mandate under Section 30-6 of the Connecticut General Statutes "to do what is reasonably necessary for the carrying out of the intent of this chapter ...".

In properly exercising such discretion, we believe it is appropriate for the Department to take notice of the fact that HHC and Bristol are operationally independent from the beer distribution activities of BBA, with HHC and Bristol having a totally separate management operating from totally separate

headquarters; that HHC and Bristol are in the hotel business, not the retail alcoholic beverage business; and that the number of retail outlets which HHC and Bristol might eventually maintain in Connecticut, solely as an ancillary part of such hotel business, would be insignificant in comparison to the total number of retail outlets in Connecticut. Furthermore, as additional protection, and to insure that the intent and purpose of the "tied-house" statutes are being complied with, the Department could require that HHC and Bristol agree to certain restrictions on the sale of alcoholic beverage brands at the hotel outlet and the requirement that HHC and Bristol hotels purchase brands only from independent wholesalers.

Our clients are agreeable to restrictions that (i) would prohibit the purchase or sale of any brand of alcoholic beverages distributed by BBA by any HHC or Bristol owned and operated hotel; (ii) prohibit any franchisee that received financing from GIAC, GIAC Leasing or HIFI, as described above, from purchasing or selling any brand of alcoholic beverages distributed by BBA; (iii) require any HHC or Bristol owned and operated hotel to purchase its inventory of alcoholic beverages solely from duly licensed Connecticut wholesalers, that are independent of, and unrelated to, Bass or any of its affiliates or subsidiaries; and (iv) prohibit any employee, agent or representative of Bass, its affiliates or subsidiaries, from influencing any HHC or Bristol owned and operated hotel with respect to such hotel's decisions concerning the purchase and sale of alcoholic beverages. Under such restrictions, neither HHC, Bristol or BBA, nor any Bass affiliate or subsidiary engaged in the alcoholic beverage businesses, could be possibly engaging in any conduct violative of the purpose underlying the Connecticut "tied-house" statutes. Permitting HHC, Bristol and BBA to conduct business in Connecticut pursuant to such restrictions would not in any way interfere with the three-tier system of distribution or run contrary to public policy.

CONCLUSION

We respectfully request that the Department render a declaratory ruling as above requested and that there be included in the ruling if the Department deems appropriate, the prohibitions and restrictions set forth above. Such a ruling would be in accord with the intent and purpose of the Connecticut "tied-house" statutes while, at the same time, recognizing the realities of modern-day multinational enterprises operating through separately managed subsidiaries.

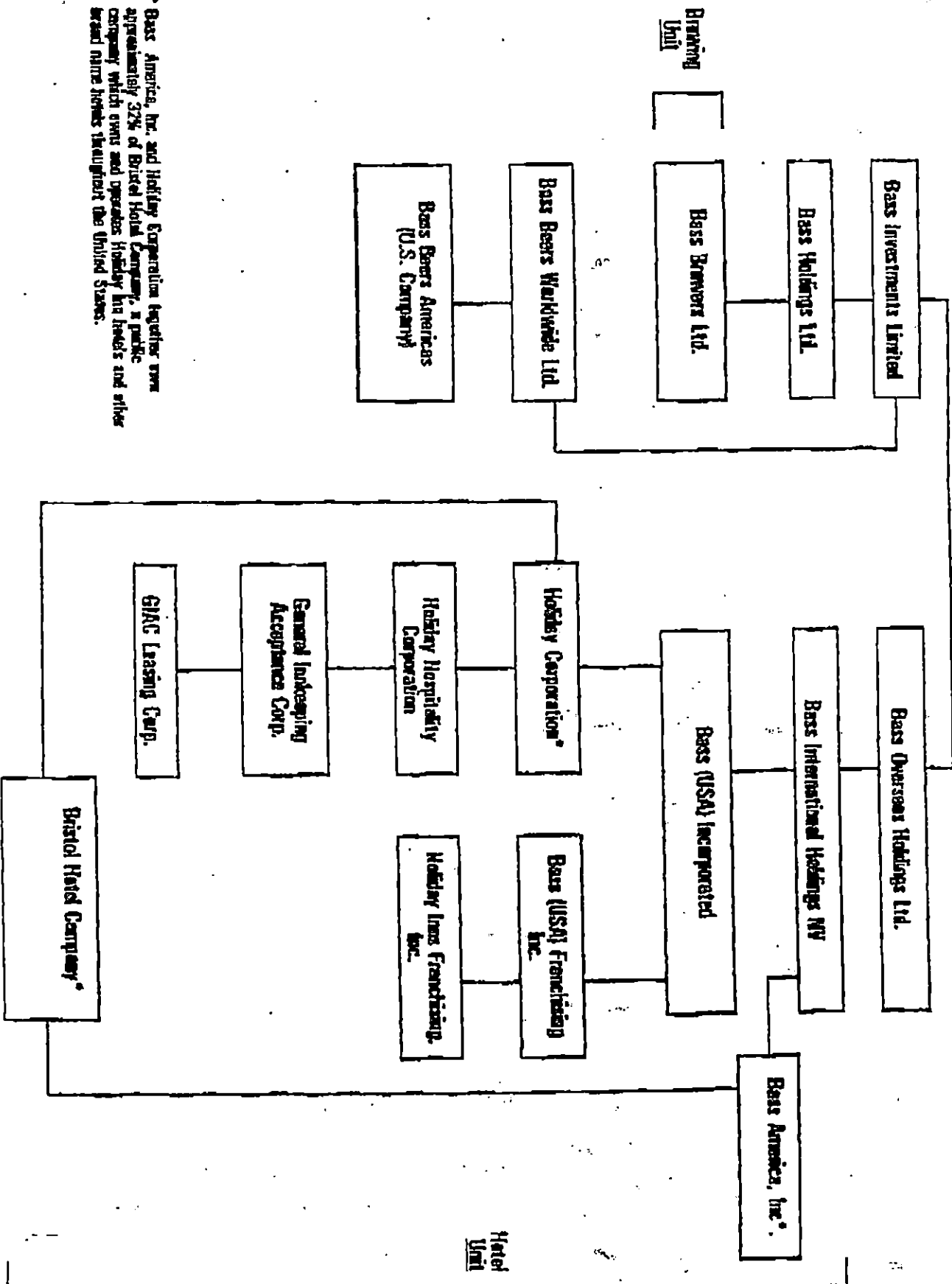
We respectfully suggest that a contrary interpretation

would serve no public purpose and would conflict with the generally recognized principle that an administrative agency should interpret the laws it is mandated to administer and enforce in a manner that is in accord with their intent and purpose and that does not produce unreasonable or harmful results. Clearly, laws can be drafted by the legislature only in general terms, with questions regarding their applicability to specific and unique fact situations (which may not even have been contemplated by the legislature) being left to the agency charged with the administration of such laws, subject to the principle that such laws should be administered and interpreted in any particular fact situation in a way which carries out the underlying intent and purpose of such laws.

Thank you for your prompt consideration of this request. If you have any questions or require any additional information, please do not hesitate to contact the undersigned.

BASIC OWNERSHIP CHART

BASS PLC



* Bass America, Inc. and Hostely Corporation together own approximately 32% of Bristol Hotel Company, a public company which owns and operates Hostely Inn hotels and other brand name hotels throughout the United States.