

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Gray Supermarket
Licensee:	Laddmac Pty Ltd
Licence Number:	80915260
Proceeding:	Complaint Pursuant to Section 48(2) of the <i>Liquor Act</i> Breaches of Section 106C-Supply of Liquor to Minors
Heard Before:	Mr Richard O'Sullivan (Chairman) Mrs Jane Large Mr John Brears
Date of Hearing:	11 May 2010
Appearances:	Mr Peter McQueen for the Licensee Inspector Mark Wood for the Director of Licensing

Background

- 1) A complaint pursuant to Section 48(2) of the *Liquor Act* ("the Act") was lodged against the Licensee of the Gray Supermarket alleging a breach of the Act under Section 106C – Supply of Liquor to Minors.
- 2) The complaint alleges that on three (3) separate occasions (Ms X) purchased alcohol from the Gray Supermarket when Ms X was aged fourteen (14) years and nine (9) months.
- 3) It is alleged the breaches occurred as follows:
 - On 27 October 2009 at approximately 20:34 hours, two (2) 700ml bottles of Bundaberg Rum were sold to Ms X. The EFTPOS purchase was made using a credit card of the father (Mr Y) and signed by the minor.
 - On 28 October 2009 at approximately 15:30 hours, two (2) six (6) packs of Bundaberg Rum and Cola were purchased again using the credit card of Mr Y and signed by the minor.
 - On the same evening of 28 October 2009 at approximately 18:42 hours, the minor purchased two (2) twenty-four (24) packs of Bundaberg Rum and Cola. Again this alcohol was purchased by EFTPOS using Mr Y's credit card, with the minor's signature to the purchase.
- 4) The purchases came to light when Mr Y was advised of irregular transactions on his credit card.
- 5) Inspector Pippa Pech conducted an investigation and subsequently lodged a complaint relating to the incident with the Director of Licensing on the basis of the alleged breach of Section 106C of the Act.

6) Section 106C states:

106C Supply of liquor to minors

“A person who has attained the age of 18 years shall not sell or supply liquor on licensed premises to another person who has not attained the age of 18 years except where the first-mentioned person is the licensee of the licensed premises, or a person employed by the licensee, and:

- (a) The liquor is sold or supplied on licensed premises or any part of licensed premises that is the subject of a declaration for the purposes of section 106(1)(b);*
- (b) The person to whom liquor is sold or supplied is in the company of his parent, guardian or spouse (who has attained the age of 18 years); and*
- (c) The liquor is sold in conjunction with or ancillary to a meal supplied on the licensed premises.”*

7) The complaint was then referred to the Licensing Commission who determined to conduct a Hearing pursuant to Section 49(2) of the Act.

8) Section 49(2) states:

49 Decision on consideration of complaint

(1) The Commission must consider a complaint, the report or reports of the Director and any comments forwarded to the Commission under section 48(6) and must:

- (a) if the Commission is of the opinion that the complaint is of a frivolous, irrelevant or malicious nature – dismiss the complaint and direct the Director to inform the person who made the complaint that the complaint has been dismissed;*
- (b) direct the Director to inform the person who made the complaint that the complaint has been investigated but no further action is warranted; or*
- (d) conduct a hearing in relation to the complaint.*

9) The Licensee of Gray Supermarket, Laddmac Pty Ltd responded to the letter of complaint sent by the Director and fully admitted to the alleged breaches of the Act. This letter received by the Director of Licensing on 5 February 2010 also outlines that the Licensee had willingly supplied all information available to Inspectors investigating the alleged breach.

Hearing

10) Mr Mark Wood, on behalf of the Director, outlined the breaches. Mr Wood advised the Commission that the credit card provider had contacted the minor’s father, Mr Y, informing him of purchase irregularities on the card. Mr Y then contacted Licensing Inspectors who investigated the matter, giving rise to the complaint currently before the Commission.

11) While evidence before the Commission is that shop attendant Simone was the person who had served Ms X, Mr Lyle Mackay, a Dual Nominee of Laddmac Pty Ltd, admitted that during the last purchase of alcohol by Ms X, ie on 28 October 2009 at approximately 18:42 hours when two (2) twenty-four (24) packs of Bundaberg Rum and Cola were sold, he had taken over the counter. Mr Mackay had not “signed in” on the till register, thus the sale was recorded under the name of Simone.

12) Mr McQueen, on behalf of the Licensee, advised that his client admitted to all of the offences and presented evidence of the Licensee’s full cooperation in the investigation of the alleged breach to the point to where Mr Lyle Mackay admitted to serving the minor. Furthermore credit should be given for the candid comments by Mr Lyle Mackay Senior, to

the effect that there was no way known that a fourteen (14) year old could have purchased alcohol at Gray Supermarket. He is quoted as having said: *“The girls ask anyone who looks under twenty-five. Sometimes it is embarrassing the people they ask. They are obviously over eighteen. The girl must have had someone older purchase the alcohol for her”*.

- 13) This statement was made when the Inspectors first visited the premises as part of their investigation.
- 14) The Commission was shown as Exhibit 1 a photograph of Ms X taken well before the October 2009 purchases of alcohol at Gray Supermarket. In this picture it clearly shows a girl who looks much older than her real age and standing against her mother she is by far the taller and larger of the two.
- 15) The physical appearance of Ms X, in Mr McQueen's submission, could be consistent with that of a person over the age of eighteen (18) years.

Submissions on Penalty

- 16) Mr Wood submitted that the breaches occurred over three (3) separate occasions and while the photograph of Ms X showed a person looking older than her fourteen (14) years nine (9) months there were at least three (3) occasions available to the Licensee to query or seek ID from the minor.
- 17) Points made by Mr Wood in relation to penalty were:
 - The Gray Supermarket is predominantly a supermarket / grocery store and it is expected that a higher level of vigilance would be shown from a store in a neighbourhood with children and whose customers were often minors.
 - While Ms X may not have looked her real age the staff did not query or check ID as a precaution against serving a minor.
 - The sum of alcohol sales was high.
 - There was no direct evidence of intoxication but given the continued sales the liquor was obviously drunk, potentially in company with minors. However Mr Wood admitted there was no evidence to support this assumption.
 - The credit card was in the name of a male (Jose, with Spanish pronunciation “hose”), with a female presenting and purchasing with use of the card.
- 18) Mr Wood drew the Commission's attention to *O'Neill Hotel Management Services Pty Ltd v The Northern Territory Liquor Commission* (1999) decision by Justice Thomas. Paragraph 44 quotes the Second Reading Speech delivered in relation to an amendment to the *Liquor Act* delivered on 20 May 1993:

“It is the government's view that breaches of the Act should be judged individually and that the Liquor Commission is best positioned to make those judgments. The suspension penalties continue to be available to the commission if it believes that a licensee has flagrantly defied the rules, has irresponsibly allowed under-age drinkers onto the premises, has continued to serve drinks to the intoxicated or has failed to prevent riotous conduct and violence on the premises. However, if the commission decides that a licensee has tried to act in a responsible manner and that someone has slipped under this guard, then it would have the discretion to impose a more suitable penalty.”

- 19) Mr Wood contends that if one sale occurred it could have *“slipped under the guard”*, but that three (3) individual sales had occurred without questioning, and this made the breaches far more serious.

- 20) Mr Wood referred the Commission to previous penalties where the sale of alcohol to minors had occurred. A proven breach by Liquorland (Australia) Pty Ltd resulted in a two (2) day suspension (one served and one suspended); a single Berrimah Supermarket breach resulted in a two (2) day suspension and Douglas Street Supermarket which incurred a suspension of twenty-one (21) days for multiple breaches of serving minors.
- 21) In determining penalty, Mr Woods advised that the Commission should take into account that the sale of liquor is secondary to the primary business of a supermarket and in that context any penalty imposed would not have the same degree of impact as it would on a hotel or tavern, which relies almost entirely on alcohol sales. He contended that the Commission should start with a penalty of around fourteen (14) days, discounted by the evident contrition of the Licensee, the full cooperation with the investigations and the historically good record of the Licensee. He recommended that a seven (7) to ten (10) day suspension would be appropriate.
- 22) Mr McQueen submitted that the Christian name (Jose) on the credit card used by the female minor was an irrelevant consideration as while Jose is in the Spanish countries the name of a male, in contemporary non Spanish usage it is also the Christian name of many females.
- 23) Therefore the presentation of credit card for payment of alcohol purchased could not reasonably be assumed to be a reason to suspect a minor was using another's ID or credit card.
- 24) Mr McQueen submitted as evidence the Statutory Declaration provided by shop attendant Simone that she candidly did not view the minor as a person who looked under eighteen (18) years of age. The Statutory Declaration includes:
- "I did not ask her for ID when she purchased alcohol as I believed she was overage. I had thought this when she approached the counter and when she paid with a credit card I thought she definitely must be over 18 as you have to be over 18 to have a credit card. She signed the credit card herself."*
- 25) The degree to which Ms X had the appearance of an adult of eighteen (18) years or over is supported by the fact that an experienced Dual Nominee, Mr Lyle Mackay, served Ms X without compunction and on the assumption that she was not a minor. In Mr Mackay's letter to the Director of Licensing received on 5 February 2010, he states: *"At no time did (Ms X) appearance cause me to believe she was under eighteen years. I also had no reason to assume that any earlier sale was unlawful."*
- 26) Mr McQueen submits that Mr Mackay is a responsible Nominee, was doing the right thing evidenced by when he saw Ms X outside of the store in the company of a younger girl. At this point Mr Mackay became concerned that Ms X may have been intending to supply alcohol to a person under eighteen (18) years of age. Mr Mackay then instructed attendant Simone not to serve any further liquor to Ms X. Following this Ms X did attempt to purchase more alcohol but was refused by Simone. Ms X contested this decision and the Licensee's attitude was confirmed by their refusal to serve any further alcohol to Ms X on the night.
- 27) Mr McQueen advised that attendant Simone had undertaken the Responsible Service of Alcohol course and received certification. The presentation of a credit card to undertake the purchase in Mr McQueen's submission added weight to the assumption that Ms X was over eighteen (18) years of age.
- 28) While Simone and Mr Lyle Mackay had assumed Ms X was not a minor, once the danger of Ms X supplying to a minor was realised, the Licensee ceased service to Ms X.
- 29) Mr McQueen submitted that other examples of penalty raised by Mr Wood generally had a number of distinguishing particulars, including either harm or intoxication. In this instance there was no evidence to suggest that the alcohol was consumed to harmful or intoxicating levels.

- 30) He further added that in terms of the Douglas Street penalty there were a number of transactions involving a number of individuals. In this instance they only involved the one (1) customer.
- 31) Since the breaches of October 2009 the store has implemented a very strict policy and placed prominent signage in the premises conveying the message that if a customer looks under twenty-five (25) years of age, they are to be asked for ID.
- 32) Further the attendant who served Ms X on two (2) occasions has left the employ of Gray Supermarket due to stress and realisation of the nature of the offence.

Consideration of the Issues

- 33) The Commission is fully persuaded that the sale of alcohol to a minor was not intended by Gray Supermarket. Nominees, Directors and staff of the Supermarket have all cooperated fully with the Commission in both admitting to the breaches and supplying information relevant to the investigation.
- 34) The Commission is aware of the responsible attitude of Mr Lyle Mackay Senior and that he has been prominent in his capacity of former President of the Liquor Stores Association, in conveying the message of the need to deter alcohol sales to minors.
- 35) Both the current and former Chairman of the Licensing Commission are on the record as stating that the most serious offence is that of serving takeaway alcohol to minors where the minor is afforded no direction, control or supervision over the consumption of the alcohol purchased and the harmful consequences which may arise.
- 36) While the Licensee does have an unblemished record, the Commission has a responsibility to convey to Licensees, the general public and to minors themselves that the unlawful sale / purchase of alcohol by minors will not be tolerated.
- 37) This gives rise to the need to impose severe penalties where breaches are detected.

Decision

- 38) The Commission considers that an appropriate penalty in this instance of selling alcohol to a minor on three (3) separate occasions is the imposition of a ten (10) day licence suspension. Given the good record of the Licensee, its cooperation in the investigation and during the Hearing on the matter, and the mitigating circumstance of the minor looking considerably older than her actual age, the Commission will apply a discount. This discount is to reduce the penalty by five (5) days.
- 39) The Commission has therefore determined a penalty of five (5) days suspension. Given that the breaches occurred on a Tuesday and Wednesday in October 2009 and the general Commission policy of including in any suspension penalty the days on which the breaches occurred, the suspension is to occur for the five days from Tuesday 15 June 2010 through until Saturday 19 June 2010 inclusive.

Richard O'Sullivan
Chairman

26 May 2010