

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Good Fortune Takeaway Mini Market
Licensee:	Leang Soy Te
Licence Number:	80901818
Proceeding:	Complaints pursuant to s48(2) of the <i>Liquor Act</i>
Complainant:	Licensing Inspector Marc Mackenzie
Heard Before:	Mr John Flynn (Presiding) Ms Brenda Monaghan Ms Veronica McClintic
Date of Hearing:	14 July 2006
Appearances:	Mr Phil Timney for the Complainant Mr Alan Woodcock for the Licensee

- 1) The hearing reconvened on 14 July 2006 for submissions on penalty following a finding by the Commission that the licensee was in breach of her licence conditions by selling liquor to a customer outside licensed trading hours.
- 2) Counsel for the licensee, Mr Woodcock gave a detailed personal history of Ms Te that shows that she is a hardworking person who has strived to achieve some financial security for herself and her family against some odds. The breach occurred at a time when she had not had a liquor licence for long and we understand that since this breach, she has abided by her licence conditions. She has also attended a Responsible Service of Alcohol Course.
- 3) Mr Woodcock referred to certain previous decisions of the Commission that he considered that we should have regard to. They were *Melanka Lodge* dated 4/4/02-regarding the sale of takeaway alcohol with no licence where a penalty of 2 days loss of licence was imposed. The second decision was *Lasseters Casino* dated 28 April 2006 regarding the sale of heavy beer before 11.30am in breach of licence conditions. Mr Woodcock submitted that a suspension of licence for a period could not be measured by a loss of profit from liquor sales alone. Customers often buy incidentals with their liquor purchases. Ms Te's business is a small business with "no fat" in the budget.
- 4) Finally Mr Woodcock advised that the complaints process had had a salutary effect on Ms Te who is now well aware of the implications of failing to comply with her liquor licence. She has taken steps to improve her book up processes and her security in the cool room. Mr Woodcock submits that a 24 hour loss of licence is adequate penalty.
- 5) Mr Timney, Counsel for the Director of Licensing, noted that this was the first complaint against Ms Te but submitted that there were aggravating factors in that this complaint occurred shortly after she was granted a liquor licence which required the licensee to show her understanding of the licensing scheme including the consequences of a breach. He submitted that there was an element of recklessness on Ms Te's part with respect to the circumstances of the offence and he distinguished the circumstances of this case from the *Lasseter's* decision. Mr Timney recommended a suspension of 2 weeks was an appropriate penalty.
- 6) In reaching a decision in this matter, the Commission has taken into account the following matters:

- a) The impact on residential neighbourhoods of antisocial behaviour and public drunkenness is a matter of ongoing concern to the Commission and any licensees who contribute to this problem for their own commercial benefit must accept the consequences of their actions.
 - b) We have read the *Melanka* decision arising from an incident that occurred in January 2002. It involved a barman providing a re-corked bottle of white wine to a back packer to take away from the licensed premises outside of licensed takeaway hours. There was no suggestion that the customers were intoxicated or that their consumption of the bottle might lead to antisocial behaviour or public drunkenness. The Commission was more concerned with the fact that this was a blatant breach of the licence conditions and they imposed a 2-day suspension. The main difference between the two cases is the fact that Ms Te's customer was a dishevelled man who wanted a cask of wine first thing in the morning-at a time when children were going to school and adults to work. It is well known that the cask wine provided to the customer is a "liquor of choice" for many problem drinkers as it is cheap. The chances of the cask wine sold leading to antisocial behaviour and public drunkenness within the neighbourhood of the licensed premises was increased in all of these circumstances and we take this factor into account.
 - c) We also see this matter as being different to the *Lasseters* matter. In that case, a staff member sold full strength beer on premises when the licence conditions only allowed light beer sales before 11.30am. The Commission accepted that the breach was not deliberate but was caused by inadvertence. The alcohol was provided on premises and therefore under the supervision of the licensee's staff. The licensee also had a history of responsible service of alcohol and after years of trade, it had a clean record. The Commission gave a suspended suspension of 24 hours. In Ms Te's case, we consider that the breach was deliberate. Further, it was irresponsible, as Ms Te had no way of controlling the manner in which the cask was drunk after it left her premises. She sold the cask quietly (ie when no other customers were around and wrapped up in newspaper) and she sold it to a man who had the appearance of someone who needed a drink and who was likely to drink in a public place.
 - d) To her credit, we have no doubt that Ms Te is a hardworking woman who deserves respect for improving her financial position and supporting her family. We note the references provided confirming her general good character and community-minded attitude and take those into account. We only hope that she is now aware that irresponsible sale of liquor in breach of her licence conditions is very detrimental to the very neighbourhood she services.
- 7) We consider that a meaningful suspension of the liquor licence is the right penalty to impose for a breach such as this one. We do not accept that 14 days suggested by Mr Timney is an appropriate penalty but neither do we think that the 24 hours suggested by Mr Woodcock is sufficient. We consider that the liquor licence should be suspended for 10 days –such suspension period to commence on Monday 14 August 2006.

John Flynn
Chairman

2 August 2006