

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Planet Tenpin
Licensee:	Grape Pty Ltd
Licence Number:	80816952
Nominee:	Mr David Bailey
Proceeding:	Complaint pursuant to s48(2) of the <i>Liquor Act</i>
Complainant:	Australian Hotels Association-Northern Territory
Heard Before:	Mr John Withnall Ms Annette Milikins Mrs Barbara Vos
Date of Hearing:	24 January 2003
Date of Decision:	18 February 2003
Appearances:	Mr David Bailey for the Licensee Mr Greg Weller for the Complainant

1. By letter of 24 November 2002, Australian Hotels Association – Northern Territory lodged a complaint against Planet Tenpin in relation to a television advertisement that was being broadcast at that time. The complaint was essentially that the advertisement was in breach if not of the letter then certainly of the spirit of conditions which the Commission had inserted into the licence to ensure that the venue remained primarily a sporting complex, with the availability of alcohol as only an ancillary service to players and bona fide spectators.
2. The complainant alleged that the advertisement was a clear attempt to promote the venue as a bar or nightclub, with minimal reference in vision or sound to the activities of bowling.
3. The Commission elected to deal with the complaint separately from an application which had already been lodged by the licensee for the Commission to lift all restriction on “live entertainment or similar activities not directly related to the principal operation of the premises as a bowling alley”. That application has yet to be heard by the Commission. The complainant AHA – NT has also objected to such a variation of licence conditions for the venue.
4. Nominee Mr Bailey readily claimed responsibility for the advertisement the subject of the complaint, denying that anything about it was in conflict with any licence condition or incompatible with the principal operation of the premises.
5. The advertisement runs for fifteen seconds, containing a multiplicity of fast cut scenes set in the interior of the premises. The soundtrack voiceover runs as follows:
6. *“On Friday and Saturday nights, fun for all ages with the wicked music and light show. While you’re there, try the newly developed mini golf course. All this and more.....”*
7. On a scene by scene analysis, Mr Bailey would appear to be correct: no individual scene can be said to be in breach of any specific licence condition. Typical of Mr Bailey’s ready explanations is the one in respect of the portrayal of a young female person carrying drinks on a tray in close vicinity to happy-looking young people playing pool. There is a condition

in the licence prohibiting the consumption of alcohol in the area shown, but Mr Bailey points out that there are only glasses of unknown beverage on the tray, and that there is nothing in the scene to indicate that the beverages are alcoholic. Again, what at first viewing appeared to the Commission members to be a young lady dancing to the soundtrack music is shown by Mr Bailey on a subsequent and forewarned viewing to be a female bowler reacting jubilantly to a successful bowl.

8. Such analysis however is an exercise at some remove from the initial effect of the unbroken fifteen second burst of colour and sound in real time. The fast cutting, the attire of the young people portrayed and the voiceover in young people's parlance referring to a wicked music and light show as a prime attraction all contribute to an over-all effect suggestive of a nightclub-type venue in the weekends. While it cannot be said that the advertisement shows or extols any breach of the condition restricting the service of alcohol to players and bona fide spectators, there is no hint or suggestion in the advertisement of any such restriction. The suggestion to try mini-golf comes across almost as an afterthought, certainly not in any way that might indicate (to quote from the licensee's original application for the licence) that the venue's "primary focus is on introducing more people to the activity bowling on a weekly basis".
9. So while we are unable to point to the breach of any specific licence condition, we agree with Mr Weller that the advertisement is not consistent with the operational concept that was licensed, notwithstanding Mr Bailey being able to point to his use of the term "entertainment venue" in parts of the original licence application. The actual licence conditions make it unequivocally clear as to what type of venue was to be covered by the licence.
10. As a consequence, the Commission has determined to implement variations of licence conditions prior to hearing the licensee's forthcoming application to operate without restriction as to entertainment.
11. The tone of the advertisement has rung alarm bells with the Commission in relation to the unrestricted access of minors. At present there is no restriction on even unaccompanied minors from attending the premises at any time, a situation which acknowledged the essential nature of the premises as a bowling centre. The promotional direction illustrated by the advertisement complained of causes us to now reconsider the unfettered ability of minors to access such licensed premises at any time.
12. The Commission has determined to put the premises on an equal footing in this regard with the other Northern Territory bowling centre which holds a liquor licence.
13. Pursuant to s.49(4)(a) of the Liquor Act, the conditions of licence No. 80816952 shall be varied firstly by the inclusion of the following additional condition:

Restrictions on minors:

- (a) No minors within the meaning of the *Liquor Act* shall be permitted to enter or remain on the licensed premises after 1700 hours on any day unless accompanied by a seemingly responsible adult, or unless such minor shall be 13 years of age or older **and** have his or her name recorded by the licensee as a player at that time.
- (b) Notwithstanding condition(a) immediately above, the licensee shall not schedule any junior league competition or any junior tournament for any time which would necessarily or probably result in the presence of minors on the licensed premises during licensed hours.
- (c) Notwithstanding conditions (a) and (b) immediately above, the licensee shall not permit or suffer any minor to enter or remain in the licensed premises in any circumstances after 2000 hours, and for all purposes of the *Liquor Act* this restriction shall be deemed to be and shall constitute a declaration under s.106(1)(a) of that Act.

14. The licence conditions are varied secondly by the amendment of the condition headed "**Advertising and Signage**" as follows:

The licensee shall not permit or suffer the words "bar", "happy hour" or "beer" in any external advertising, promotional material or signage, nor shall the licensee advertise or promote the licensed premises in any way which shall be able to be reasonably perceived as inconsistent with the primary operational purpose of the premises being as licensed by the Commission.

15. These new conditions are to take effect immediately upon the licensee's receipt of these Reasons for Decision, and thus become restrictions which the licensee may wish to argue against in the forthcoming hearing as to the staging of live entertainment. We make it very clear, however, that the licensee will commence that hearing with the above new conditions already in place.

John Withnall
Presiding Member

18 February 2003

Addendum:

An application to the Supreme Court by the Licensee for a judicial review of the foregoing decision was resolved on 7 March 03 by the withdrawal of the application on the basis of the following new condition being substituted in lieu of those set out above:

Restrictions on Minors

- No minor within the meaning of the *Liquor Act (NT)* shall be permitted to remain on the licensed premises after 1800 hours on any day unless he or she is:
- accompanied by an apparently responsible adult; or
- 13 years of age or older *and* is a player of ten pin bowling at that time; or
- 13 years of age or older and is *bona fide* in the company of a person who is a player of ten pin bowling at that time; or
- present on the licensed premises for the *bona fide* purpose of ingress to or egress from any recreational area within the building not within the area of the licensed premises.

John Withnall
7 March 2003