

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

LICENSEE: Venturin Nominees Pty Ltd

PREMISES: Northside Foodland

NOMINEE: Trevor Raymond Gleeson

LICENCE NUMBER: 80902690

PROCEEDING: Complaint Pursuant to Section 48(2) of the *Liquor Act* Regarding Service of Liquor to a Minor

HEARD BEFORE: Richard O'Sullivan
Merran Short
John Brears

DATE OF HEARING: 19 September 2007

APPEARANCES: Mr Wayne Sanderson for the Director of Licensing
Mr Paul Venturin for the Licensee
Mr Trevor Gleeson for the Licensee

- 1) A complaint has been lodged by the Acting Deputy Director (South) of Licensing against Northside Foodland alleging a breach of Section 106C of the *Liquor Act* when on Friday 18 May 2007 alcohol (one carton of Black Jack Bourbon and Cola) was sold to a minor, Mr Ater Atar. The breach took place at about 5.30pm when a person employed by Northside Foodlands, Mr Chris Brennan, sold the alcohol to Mr Atar whose date of birth is 30 November 1989.
- 2) Mr Paul Venturin, Director of Venturin Nominees Pty Ltd (owners of Northside Foodland) admitted to the breach at the earliest opportunity, but sought that the Commission consider the extenuating circumstances leading to the sale of alcohol to a minor.

- 3) The Commission was assisted in its deliberations by viewing a CCTV tape taken at the time of the sale of alcohol to Mr Atar which clearly shows a very confident tall person identified as Mr Atar taking a carton of alcohol to the counter, making payment and exiting the store with the alcohol in his possession.
- 4) The circumstances of the breach appear to be, and are accepted by the Commission, as involving Mr Chris Brennan selling the alcohol, but only after being informed by his checkout colleague, Mr Ben Muir that the customer, Mr Atar (who was known personally to him) was over the age of eighteen (18) years of age.
- 5) In evidence before the Commission Mr Brenton Schilling, a Supervisor at Northside Foodland, advised that when Mr Brennan served Mr Atar he was advised by Mr Muir "he's okay (or he's alright), he's eighteen". To substantiate this evidence, the Commission reviewed the CCTV tape with audio to ascertain the veracity of Mr Schilling's evidence. The Commission has concluded that while the audio of the tape is not entirely clear and decipherable, on balance it supports the evidence of Mr Schilling. The Commission therefore accepts that the sale took place on the assurance of the staff member that Mr Atar was over eighteen (18) years of age.
- 6) Mr Schilling also advised that he had instructed staff at the liquor section at Northside Foodland that, as a matter of risk minimisation, where a customer looks twenty-five (25) years of age or under, they are to ask for ID and in this instance such procedures were not followed due to the assurance by Mr Ben Muir, who evidently knew Mr Atar, that he was over eighteen (18) years of age. He was in fact within six (6) months of eighteen (18) years of age.
- 7) In addressing the issue surrounding the purchase by a minor, Mr Schilling also advised that Mr Atar is tall, looks well above his age ("looks in his mid twenties") and had the confidence and demeanour of a person over eighteen (18) years of age who had previously purchased alcohol.
- 8) The Commission also noted that Mr Ben Muir held a Certificate into the Responsible Service of Alcohol.

Sale of Alcohol to a Minor

- 9) The Chairman of the Licensing Commission has previously advised the liquor industry that he regarded the sale of alcohol to a minor, particularly when relating to takeaway alcohol sales, as at the highest end of the scale of breaches of the *Liquor Act*. It is evident that a great deal of harm and anti social behaviour arising from excessive alcohol consumption relates to takeaway sales. All Licensees have an added duty of care in relation to avoiding the sale of alcohol to minors and the sale of takeaway alcohol to minors.

10) The evidence presented at hearing to the Commissioners clearly evidenced a breakdown in procedures to avoid such breaches occurring.

Submissions on Penalty

11) Mr Wayne Sanderson provided the Commission with a number of penalties applying to breaches of the *Liquor Act* for the sale of alcohol to minors. He admitted to the history of co-operation and initiatives taken by Northside Foodland in regards to alcohol supply reductions and measures to prevent breaches of the *Liquor Act* and strong involvement in forums and panels seeking ways to address alcohol related anti social issues in the township of Alice Springs. Mr Sanderson sought a five (5) day fully served suspension of the Northside Foodland licence.

12) In response Mr Paul Venturin sought that the Commission take into account the long history of compliance with and initiatives relating to the responsible service of alcohol at Northside Foodland and associated supermarket outlets owned by Venturin Nominees Pty Ltd.

13) Factors cited by Mr Venturin (and witnesses, Mr Brenton Schilling and Mr Trevor Gleeson), which the Commission was asked to take into account, when sentencing, included:

- The history of training of staff including the Responsible Service of Alcohol Certificate Courses, initially ran by DASA but more recently the Centralian College;
- The voluntary removal of high risk alcohol products from the shelves at Northside Foodland to minimise alcohol related harm including the recent voluntary removal of 750ml and 800ml bottled beer products;
- The curtailment of sale hours for Green Ginger Wine;
- The removal of four (4) and five (5) litre casks of wine from sale;
- The removal of high alcohol products such as vanilla essence from stocks;
- No heavy discounting of alcohol;
- No sale of product below cost as a price leader;
- The active participation of Mr Paul Venturin on the Alcohol Reference Panel;
- The installation of security cameras at a standard well above the minimum requirements (evidence tendered that the Northside

Foodland CCTV provide fourteen (14) frames per second against the minimum standard required of eight (8) frames per second);

- The maintenance of a log and the employment of a person to view CCTV footage to assist in alcohol sale monitoring;
- The maintenance of a log recording people not being served alcohol who are intoxicated (evidencing up to forty (40) persons denied sale in one day due to intoxication);
- Recent introduction of extended internal staff training, including alcohol sale responsibilities, from one and a half hours to an eight hour course;
- Of the four (4) people employed in the liquor sales area, three (3) people have Responsible Service of Alcohol Certificates;
- The use and co-operation of Northside Foodland in the ID trial (together with the adjoining Hoppys Cash Store, a licensed outlet);
- Provision of security at the front door to vet customers, especially relating to intoxication issues;
- Lack of any prior history of offences at Northside Foodland.

14) Mr Venturin ventured his opinion that an appropriate penalty would be a reprimand, perhaps combined with an instruction from the Commission on how to improve their compliance measures. He advised the Commission on the financial penalty which would accrue to Northside Foodland if the full five (5) day suspension of liquor trading was applied.

Decision

15) In assessing the relevance and weight to be placed on the mitigating factors referred to above, the Commission is of the view that the standard set by Northside Foodland, in having CCTV coverage in excess of the minimum standard, of logging refusal of sale to intoxicated persons, of the monitoring of CCTV footage and other more recent initiatives in relation to alcohol harm minimisation, should be commended.

16) Taking into account the long history of compliance with licensing requirements and the history of being at the forefront of alcohol abuse prevention initiatives, the Commission determined to factor the mitigating circumstances referred to above in determining appropriate penalty. The Commission was also minded to take into account the age of the minor who was within six (6) months of reaching the age of consent when he could be lawfully sold alcohol.

17) The penalty for such an offence could be within the five (5) day realm sought by Mr Wayne Sanderson, however the Commission determined to discount this penalty sought by three (3) days due to mitigating factors. It determined a penalty of two (2) day suspension for serving a minor, with one (1) day fully suspended if a further breach does not occur within twelve (12) months from the date of this decision. The date of the suspension is to be served to be determined by the Director.

Richard O'Sullivan
CHAIRMAN

26 September 2007