

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES:	BERRIMAH SUPERMARKET
LICENSEE:	Edmund Cecil Yuen
LICENSE NUMBER:	80900870
PROCEEDING:	Complaint Pursuant to Section 48(2) of the <i>Liquor Act</i> - Breach of Section 106C of the <i>Liquor Act</i> (Supply of Liquor to a Minor)
COMPLAINANT:	Inspector Chris O'Brien
HEARD BEFORE:	Richard O'Sullivan (Chairman) Merran Short John Brears
DATE OF HEARING:	13 September 2007
DATE OF DECISION:	
APPEARANCES:	Mr Phil Timney for the Director of Licensing Mr Edmund Yuen, Licensee

Background

- 1) A complaint was lodged with the Director of Licensing pursuant to Section 48(2) of the *Liquor Act* ("the Act") alleging a breach of the Act when on 15 May 2007 at approximately 4.00pm, a group of about seven to nine (7 -9) female students from Kormilda College attended the premises known as Berrimah Supermarket, (licence number 80900870), located at 1145 Berrimah Road, Berrimah, Northern Territory.
- 2) One of the students ("the student") entered the shop and asked to purchase a packet of Winfield Blue 25's cigarettes. The male attendant serving her, Mr Lee, requested identification. She stated she "had none" and she was then asked if she was over eighteen (18) years old to which she replied "yes". She was in fact fifteen (15) years old at the time.
- 3) Mr Lee, called upon Mr Edmund Yuen, the Licensee to confirm the female was over eighteen (18). Mr Yuen said to Mr Lee "that's fine".

- 4) The student was then sold a packet of cigarettes for \$11.45 which was in breach of Section 42 of the *Tobacco Control Act*, sale of tobacco to children prohibited. The student then requested to purchase a flat bottle of Bundaberg Rum. Mr Lee went to the locked cabinet in the liquor section of the store, removed one (1) 375ml bottle liquor of Bundaberg Rum and sold it to the girl for \$20.00.
- 5) Upon returning to the boarding house the Head of the boarding house discovered the student and her fellow students, at least one of whom appeared to be intoxicated and reported the matter to Racing Gaming and Licensing.
- 6) On 22 May 2007, Mr Yuen wrote to the Director of the Licensing admitting to the offence as alleged and gave the following by way of explanations:
 - Due to the recent sudden death of Mr Yuen's wife of 54 years, he had a casual worker (Mr Lee) assisting him at Berrimah Supermarket.
 - The female student had identified herself on the day in question as being eighteen (18) years of age when questioned by Mr Lee.
 - Mr Yuen was preoccupied when assessing the student's size and maturity as he was urgently required at the morgue for the removal of jewellery from his wife's body and to bring clothing for her to wear for the final burial ceremony the following day. His approval of sale to the minor was in response to her request to purchase cigarettes.
 - Mr Yuen admitted he was careless in telling Mr Lee to sell to the customer and both in his written letter to the Director of the Licensing and again at hearing, he demonstrated real contrition. He was preoccupied with grief and did not pay due attention.
 - It was established in evidence at Hearing that Mr Yuen has had a blemish free record for in excess of twenty (20) years.
- 7) In light of Mr Yuen's admission to the Director of Licensing, the Hearing proceeded by way of penalty submissions and the only oral evidence heard on the day was from Inspector Chris O'Brien and Mr Yuen.
- 8) Inspector O'Brien gave evidence that when she interviewed the student on the day after the event in question, the student appeared approximately five (5) feet two (2) inches tall but with a demeanour of a fifteen (15) year old who, in Inspector O'Brien's opinion, would not be mistaken for an eighteen (18) year old. However Inspector O'Brien did concede that the female student was in uniform when she interviewed her and that she had not seen her on the day in question.

- 9) The Commissioners were advised that some boarding students at Kormilda College were eighteen (18) years of age, and that the school did not issue ID for these students. Mr Yuen stated that his recollection of the minor was that she was mature and of legal age.
- 10) Mr Yuen advised at the Hearing that as Licensee of the Berrimah Supermarket since 1987 he has had an unblemished record despite the fact that they were often challenged by the youth in the area of Berrimah to buy alcohol and cigarettes and that prior to this incident he and his wife had always sought identification.
- 11) Mr Timney was able to confirm Mr Yuen's unblemished record with the Licensing Commission. The matter being admitted at the first possible instance the Commission heard submissions on penalty.

Submissions on Penalty

- 12) In Mr Timney's submission this was a very serious offence and whilst he sympathised with Mr Yuen he submitted that Mr Yuen failed to apply appropriate attention to the sale.
- 13) Mr Timney further submitted there was the aggravating factor here that the sale of the alcohol led to the intoxication of a child and that the students did not return to the dormitory until after 7.30pm.
- 14) Mr Timney conceded in mitigation that Mr Yuen had no prior convictions and had entered a guilty plea at the earliest opportunity and had long held the licence without blemish.
- 15) In all the circumstances, and relying on Lasseter's Casino and the first Tiwi Supermarket decision, Mr Timney sought a one (1) month suspension.
- 16) In response Mr Yuen advised the Commission that a suspension of one (1) month would lead to serious financial difficulty for his business. He and his late wife had always made every effort to ensure they did not sell to minors, which they had to deal with frequently given the proximity of Kormilda College.
- 17) In Mr Yuen's submission a suspension of longer than one (1) week would hurt the business and have consequences for its viability. He accepted one (1) week, mitigated by the circumstances.
- 18) In reaching the decision in this matter the Commission has taken into account the following factors:
 - The seriousness of the offence namely sale of liquor to a minor, particularly a minor who is only fifteen (15) years old.
 - Various decisions referred to by Mr Timney.

- Mr Yuen's prior blemish free record.
- The personal circumstance Mr Yuen was experiencing on the day.
- Mr Yuen's admission at the earliest opportunity.

Decision

- 19) 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.
- 20) Nevertheless, we do not accept that the one (1) month suspension suggested by Mr Timney is an appropriate penalty.
- 21) The Commission has determined to impose a penalty of five (5) days, but discounted due to the circumstances surrounding the breach and the long standing compliance with licence conditions of the Licensee. On this basis and with the discount, it determined a penalty of a two (2) day suspension for serving a minor. The dates of the suspension to be served to be determined by the Director.

Richard O'Sullivan
CHAIRMAN

27 September 2007