

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES: MALAK SUPERMARKET
1 Malak Place
MALAK NT 0810

LICENSEE: Susannah Vong

LICENCE NUMBER: 80900726

PROCEEDINGS: To Undertake a Hearing to Consider a Complaint Pursuant to Section 48 (2) of the *Liquor Act* – Breaches of Conditions of the Licence

MEMBERS: Richard O'Sullivan (Chairman)
Cynthia-Lee Bravos
Jane Large

ATTENDEES: Licensing Inspector Shane McCorkell for the Director of Licensing
Ms S Vong, Licensee
Mr H Yap for the Licensee

DATE OF HEARING: 13 April 2011

BACKGROUND

- 1) Following information received from a member of the public, Licensing Inspectors McCorkell and Burdett attended at the Malak Supermarket on 26 November 2010. Upon inspection of the premises the inspectors found that cooking wine, plum wine and sake were displayed on the grocery shelves and available for sale outside the secured area and outside licensed hours in breach of the liquor licence conditions. Also, boxes of cooking wine were stacked in the open and away from the liquor storage area. The cooking wine, plum wine and sake were above 1.15% ethyl alcohol by volume and were in containers exceeding 50 ml and are therefore required to be sold in accordance with conditions of the store liquor licence.

- 2) On 3 December 2010 the Director of Licensing wrote to Ms Vong, Licensee Malak Supermarket, advising her of the breaches of the conditions of her liquor licence and giving her the opportunity to provide a written response by 17 December 2010.
- 3) No response was received but on 11 January 2011 Licensing Inspector Shane McCorkell received a phone call from an angry Mr Yap who advised that the letter from the Director of Licensing had been destroyed. A further letter dated 11 January 2011 was sent to Ms Vong enclosing a copy of the original letter.
- 4) A complaint was lodged by the A/Director of Licensing to Licensing Commission on 11 January 2011 alleging that the Licensee of the Malak Supermarket had committed a breach of Section 110 of the *Liquor Act* by contravening or failing to comply with the conditions of their liquor licence.
- 5) Under Section 49 (2)(c) of the *Liquor Act*, if the Commission, upon receiving a complaint under that Act does not find the complaint to be of a frivolous, irrelevant or malicious nature then the Commission must:

“conduct a hearing in relation to the complaint”
- 6) The complaint as lodged was not found to be of a frivolous, irrelevant or malicious nature and a hearing date of 13 April 2011 was set. The Licensee was advised of this date on 7 February 2011.

THE HEARING

- 7) Inspector McCorkell read out the facts of the complaint which were not disputed by the Licensee. He also advised the Commission that when he had discussed the matter with the Licensee on 26 November 2010 the wines were immediately removed and stored as instructed. A later inspection showed full compliance with the licence conditions.
- 8) Ms Vong, Licensee and Mr Yap, on behalf of the Licensee, both asserted that they were not aware that there was an offence being committed as the wine was only used for cooking and not suitable for drinking.
- 9) They maintained that, by targeting their supermarket, they were put at a commercial disadvantage as other supermarkets sell cooking wine from grocery shelves which means the sales can be conducted outside of the liquor licence hours. They explained that it was a particular advantage to be able to sell this produce on Sundays when the majority of Asians do their weekly shopping. Mr Yap pointed out that a bottle of cooking wine cost less than a can of beer.

- 10) In support of their argument Mr Yap tendered invoices which showed cooking wine (640 ml) was purchased from two other supermarkets on Sunday 10 April 2011 and Monday 11 April 2011.
- 11) MsVong explained that the boxes of wine were temporarily stacked in the vegetable section of the supermarket due to lack of storage space at the time.

CONSIDERATION OF THE ISSUES

- 12) There is clearly a breach of the Malak Supermarket Liquor Licence which states:

“All products including essences which contain more than 1.15% ethyl alcohol by volume marketed in containers exceeding 50 ml may only be sold in accordance with licence conditions.”

Further conditions set out the requirements for when liquor can be sold and the security of liquor outside of trading hours.

- 13) However, the Commission believes this is more a technical than a deliberate breach and notes that when advised of the breach the Licensee immediately took action to rectify the situation and there has been no resultant downturn or change in sales.
- 14) When questioned as to any penalty sought Inspector McCorkell stated that the Director of Licensing considered the breach was an oversight by the Licensee and it was more a question of education rather than any penalty.
- 15) The Commission felt that there was a strong likelihood that if the Licensee had responded to the Director of Licensing's letter of 3 December 2010 then the matter would not have been referred to the Commission and all parties would have been spared the inconvenience of attendance at a hearing.

DECISION

- 16) The Commission has examined all the evidence and documents provided and reached the following decision:
- a) The Commission agrees with the Director's assessment and no penalty is imposed on the Malak Supermarket.
 - b) There is some evidence that other supermarkets are under the same misconception as the Licensee of Malak Supermarket and the Commission requests the Director of Licensing to:

- ensure that all NT Licensees of supermarkets and stores which sell cooking wines and sake are made aware of their responsibilities under the conditions of their liquor licences.
- advise unlicensed stores selling cooking wine and the National Association of Retail Grocers of Australia that stores and supermarkets in the Northern Territory which have for sale cooking wine, plum wine and sake which are above the 1.15% ethyl alcohol by volume and in containers exceeding 50 ml will need to have a liquor licence and be aware of the requirements of the Northern Territory *Liquor Act*.

Richard O'Sullivan
CHAIRMAN

16 May 2011