



**DECISION OF THE
GENERAL MANAGER
LIQUOR CONTROL AND LICENSING BRANCH**

IN THE MATTER OF

A hearing pursuant to Section 20 of

The Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267

Licensee:	Shu Guo dba Hi-Bridge Consulting Corporation 300-1275 W6th Avenue Vancouver, BC V6H 1A6
Case:	EH13-002
For the Licensee:	Shu Guo
For the Branch:	Peter Mior
General Manager's Delegate:	R. John Rogers
Date of Hearing:	September 25, 2013
Date of Decision:	November 5, 2013

**Liquor Control and
Licensing Branch**

Mailing Address:
PO Box 9292 Stn Prov Govt
Victoria BC V8W 9J8
Telephone: 250 952-5787
Facsimile: 250 952-7066

Location:
Fourth Floor, 3350 Douglas Street
Victoria BC
<http://www.pssg.gov.bc.ca/lclb/>

INTRODUCTION

Ms. Shu Guo (the "Licensee") is a liquor agent who since 2004 has been doing business as Hi-Bridge Consulting Corporation pursuant to agent licence #301130 (the "Licence"). The address for the Licensee is #300-1275 West 6th Avenue, Vancouver, B.C.

The Licence is, as are all liquor licences issued in the province, subject to the terms and conditions contained in the publication Guide for Liquor Licensees in British Columbia (the "Guide").

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch's (the "Branch") allegations and proposed penalties are set out in the Notice of Enforcement Action (the "NOEA") date February 6, 2013.

The Branch alleges that the Licensee contravened subsection (2) of section 45 of the *Liquor Control and Licensing Act* (the "Act") by offering on her website rebates for three separate products as part of a product promotion and as an inducement to purchase these products. The proposed enforcement action outlined in the NOEA is a monetary penalty of \$7,500 as provided in item 40, Schedule 4 of the *Liquor Control and Licensing Regulation* B.C. Reg. 244/2002 (the "Regulation"). Item 40, Schedule 4 of the Regulation provides that for a first contravention an enforcement action be imposed of either or both of a suspension of the Licence for a period of from between 10 and 15 days and/or a monetary penalty of between \$7,500 and \$10,000.

Pursuant to section 3 of the Regulation, the General Manager of the Branch for the purpose of this enforcement hearing has delegated to the undersigned the powers, duties and functions imposed upon the General Manager by, and referred to in, Section 20 of the Act and sections 65-69 of the Regulation.

RELEVANT STATUTORY PROVISIONS***Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267*****Licensee not to give or accept gifts for promoting liquor**

- 45** (2) A licensee or the licensee's employee must not induce, further or promote the sale of a particular kind, class or brand of liquor.

Liquor Control and Licensing Regulation, B.C. Reg. 244/2002

Schedule 4
Enforcement Actions
Inducements

Item	Contravention	Period of Suspension (Days)			Monetary Penalty
		First Contravention	Second Contravention	Subsequent Contraventions	
40	A breach by the licensee or an employee of the licensee of section 45 of the Act [<i>Licensee not to give or accept gifts for promoting liquor</i>]	10-15	20-30	30-60	\$7,500-\$10,000

ISSUES

1. Did the contravention occur?
2. If so, has the Licensee established a defence to the contravention?
3. If the contravention is proven, what penalty, if any, is appropriate?

EXHIBITS

Exhibit No. 1: Branch's Book of Documents, tabs 1 to 11 inclusive.

Exhibit No. 2: Copy of a screenshot of an email sent by WD to the Licensee on March 25, 2013.

- Exhibit No. 3:** Copy of a letter dated February 16, 2012 sent via fax from H.O.S.T. Consulting Ltd. to the Deputy General Manager, Compliance and Enforcement Division for the Branch.
- Exhibit No. 4:** Copy of a letter dated February 23, 2012 to the Licensee from the Deputy General Manager, Compliance and Enforcement Division for the Branch, in response to Exhibit 3.
- Exhibit No. 5:** Copy of five pictures of a bottle of liquor identified as Chu Yeh Ching Chiew

EVIDENCE – BRANCH

The Branch called as witnesses Liquor Inspector A (“Inspector A”) and Manager of Investigation B (“Investigator B”).

The Rebate Promotion

Investigator B identified the document included as tab 1 in Exhibit 1 as a copy of the NOEA of which he was the author. He confirmed that, as set out in the NOEA, on December 27, 2012 he had received an email from Inspector A. This email advised Investigator B that a source had questioned the legality of a promotion accessed through the Licensee’s website, www.yanjingbeer.ca.

Investigator B testified that when he went to this website he found a mail-in rebate form (“Rebate Form”) with an offer of a monetary rebate when purchasing three products identified on the website as products #46623, #636811, and #428185. He testified that he took a screen shot of the Rebate Form from the website and confirmed that a copy of this screenshot is at tab 2 of Exhibit 1.

Investigator B testified that although the promotion was expressed on the website in a combination of English and Chinese characters, he was able to ascertain that the promotion was that:

- for product #46623, a purchase of 12 bottles of the product entitled the purchaser to a rebate of \$16.99
- for product #636811, a purchase of 12 bottles of the product entitled the purchaser to a rebate of \$19.00, and
- for product #428185, a purchase of 8 bottles of the product entitled the purchaser to a rebate of \$8.00

To claim the applicable rebate, the website instructed the purchaser to complete the Rebate Form and to mail the completed form, together with sales receipts dated between December 10, 2012 and February 28, 2012 for the product purchased, to the Licensee's business address at #300-1275 West 6th Avenue, Vancouver, B.C.

Product Identification

Investigator B testified that to identify the products referred to in the promotion on the Licensee's website, on January 2, 2013 he contacted the portfolio manager of the Liquor Distribution Branch and was advised by email that:

- #46623: ER GOU TOU – SHAO JIU is an Asian Chinese Spirit, 56% ABV with the 500 ml bottle price being \$16.99
- #636811: CHU YEH CHING CHIEW is an Asian Chinese Spirit, 45% ABV with the 375 ml bottle price being \$18.99, and
- #428185: KONG YIJI is an Asian Chinese Rice Wine, 11% ABV with the 298 ml bottle price being \$8.02

After receiving this email from the Liquor Distribution Branch, Investigator B testified that he went to the liquor store at the corner of 41st Avenue and Cambie Street in Vancouver, located product #636811 on the shelf in the store, and took the pictures of this product (copies of which are included in Exhibit 5). He noted that one of the pictures in Exhibit 5 is of the label on the back of the bottle of product #636811 and that this label clearly states that the product was produced in China and is imported into British Columbia by the Licensee.

Branch Contact with the Licensee

On January 3, 2013, Investigator B testified that he telephoned the Licensee who advised Investigator B that she had just logged onto her website and acknowledged the presence of the promotion. Investigator B explained to the Licensee that he believed that the promotion on the website was a violation of section 45(2) of the Act and he advised that a contravention notice would be issued to her. He informed the Licensee of the penalty schedule according to the Regulation.

Investigator B testified that, in this telephone conversation, the Licensee advised him that his was the first and only phone call or message that she had received concerning the promotion and that, to the time of the phone call, no one had attempted to receive a rebate from the promotion on her website. She stated that she was initially unsure of the legality of the promotion and that she had assigned one of her employees to call the Branch to determine whether or not she was permitted to offer this rebate. When this employee called the Branch, the Licensee claimed, her employee had been advised that the promotion was legal.

Investigator B noted that during this telephone conversation the Licensee advised him that she would take down the promotion immediately.

Investigator B testified that on January 4, 2013, the day following his telephone conversation with the Licensee, he went to the Licensee's website and found that the promotion had indeed been taken down. He then mailed to the Licensee Contravention Notice #B016821, a copy of which he identified as tab 4 of Exhibit 1.

The Obligations of the Licensee as a Licenced Agent

In his testimony, Inspector A confirmed that tab 5 of Exhibit 1 was a copy of the Licence. He noted that one of the terms and conditions stated in the Licence was that the Licence was subject to the terms and conditions of the Guide. Inspector A confirmed that a copy of the Guide was included as tab 6 of Exhibit 1. He testified that in his opinion the Guide was written in plain language and was, therefore, easy to understand. However, he noted, in the case where English was a second language, interpreters were used to ensure a proper understanding of the Guide and its provisions.

Inspector A confirmed that the Guide clearly states that:

1. The Licensee is legally responsible for:
 - understanding how the Act, the Regulation and the terms of the Licence affects her business
 - ensuring that she is complying with all the relevant terms imposed upon her by these sources

- being in specific compliance with these sources when promoting the liquor products she is authorized to represent
2. The Licensee as a licensed agent is liable for all advertising that bears her name or brand, whether done by the Licensee directly or by someone else on her behalf, no matter where such advertising is displayed or distributed.
 3. The Licensee may not at any time offer or give money, gifts, rewards or remuneration to licensees who carry the products she represents. This prohibition extends to:
 - supplying such licensees with additional bottles of beer or spirits at either no cost or at a reduced cost
 - value-added promotions for a rebate or a reduction in the purchase price of one of the products

Inspector A identified the document in tab 7 of Exhibit 1 as a copy of a document which was entitled "Independent Agent Interview Sheet", dated September 30, 2004, and which appears to have been signed by the Licensee. He noted that this document clearly suggested that the provisions of the Guide had been discussed with the Licensee and specifically the provisions in the Guide dealing with inducements. Inspector A also identified the document in tab 8 of Exhibit 1 as a copy of a document confirming that the Licensee carries on business as "Hi Bridge Consulting Corporation".

The Licensee's Past Conduct

Inspector A identified the document in tab 9 of Exhibit 1 as a copy of a report dated September 25, 2006 from a compliance meeting held between a Branch inspector and the Licensee. Inspector A testified that a compliance meeting occurs when there has been a complaint that a licensee has breached a term of its licence, but where a decision has been made by the Branch not to issue a contravention notice. The purpose of such a compliance meeting, Inspector A testified, was to encourage voluntary compliance by the licensee.

Inspector A testified that, based upon the compliance meeting report (tab 9, Exhibit 1), it appeared that the Licensee and the Branch liquor inspector discussed the provisions of the Guide dealing with the Licensee's responsibility with respect to record keeping. Included in this document was reference to the Licensee's commitment to keep up to date records and not to provide free products.

Inspector A identified the document in tab 10 of Exhibit 1 as a copy of a report of a subsequent compliance meeting held between the Licensee and Inspector A on April 6, 2011. Inspector A testified that this compliance meeting came about as a result of a complaint that the Licensee was offering cash inducements to encourage other licensees to purchase the products she represented. He noted that this document concluded with the statement that "Further non-compliance will result in enforcement action + may result in cancellation of agent licence".

Since this compliance meeting held on April 6, 2011, Inspector A testified that the Licensee had not contacted him seeking information as to what she could or could not do with respect to promoting her products.

In her cross-examination of Inspector A, the Licensee submitted Exhibits 3 and 4 into evidence (with the consent of the Branch). She referred Inspector A to these exhibits and to the separate contravention notice B005366 referred to in the NOEA in the Licensee's compliance history section. Inspector A agreed that following the issuance of this separate compliance notice B005366 alleging that the Licensee had failed to enter into a buy/sell agreement with a licensee with respect to the purchase and use of a refrigerator, that the Licensee had subsequently satisfied the Branch that such a buy/sell agreement was in fact in place and that, therefore, no further action was taken by the Branch against the Licensee in regard to compliance notice B005366.

EVIDENCE – LICENSEE

The Licensee called as her witness her web developer ("WD"), the person the Licensee claimed was responsible for designing and posting the Rebate Form on the Licensee's website together with Witness A, a colleague and a supporter of the Licensee.

The Evidence of WD

WD testified that following instructions from the Licensee and prior to the start of the Chinese New Year in 2012, WD telephoned the Branch's office in Victoria and advised the person to whom she eventually spoke that she was working on a Chinese website promoting a Chinese beer. In this telephone conversation, WD said that she asked the person from the Branch if it was "OK" to promote a Chinese beer on this website and was advised that it was. Immediately following this conversation, WD telephoned the Licensee to advise her of the conversation with the person from the Branch and that it was permissible to promote the sale of the beer the Licensee represented on the Licensee's website in celebration of Chinese New Year.

The Licensee then instructed WD to proceed with the development of the Rebate Form and to post it on the Licensee's website.

WD identified Exhibit 2 as a copy of an email WD she had sent to the Licensee on March 25, 2013 setting out her understanding of her telephone conversation with the person at the Branch as referred to above.

In her cross-examination, WD stated that she had worked together with the Licensee to develop the Rebate Form. WD confirmed that she did not hold a liquor licence issued under the Act and was not familiar with the law or obligations of a party holding such a licence. She testified that she expected that any client she was working for who held such a licence to be familiar with this law and these obligations.

WD further confirmed on cross-examination that she had stated in her email (Exhibit 2) that she had been advised by the person at the Branch that "The liquor dealer knows what they need to inform when they want to do some promotion".

The Evidence of Witness A

Witness A testified that the Licensee has been in business for approximately nine years and that, although she has had some contraventions, she has produced evidence before the hearing that the list of the contraventions in the NOEA as part of the Licensee's compliance history are not entirely correct. He noted that if the amount of the penalty recommended by the Branch was based upon the Licensee's compliance history as set out in the NOEA, the evidence produced by the Licensee with respect to these contraventions should be taken into account when determining the amount of the penalty. He denied that there was a repeated pattern of non-compliance by the Licensee.

Witness A also noted that Investigator B has testified that he called the Licensee on January 2, 2013 to point out the impropriety of the Rebate Form, and that the entire page on which the Rebate Form was situate was taken down by January 4, 2013. He pointed out that the Licensee was very cooperative and that, once she had been advised by Investigator B that the Rebate Form was not proper, she had it removed.

Witness A felt strongly that the Licensee should not be facing a monetary penalty. Rather he believed that she should have been given a warning that she should check her promotion material more carefully and that she should pay more attention to the rules and regulation affecting the Licence.

SUBMISSIONS – BRANCH

The Branch noted that the contravention of the Act as alleged by the Branch in the NOEA is among the most serious contraventions of the Act a licensee is capable of committing. This is evidenced by the amount of the monetary penalties related to section 45 of the Act, which penalties are at the highest level of monetary penalties when compared to breaches of other sections of the Act.

The Branch submitted that Investigator B was correct in including the reference to the separate contravention notice B005366 in the NOEA, even though it was subsequently satisfactorily explained by the Licensee, as the Licensee's entire compliance history was relevant in the consideration of the Licensee's contravention in the matter at hand.

The Branch noted that Inspector A was familiar with and had previously been involved with the affairs of the Licensee. It would have been a simple matter for the Licensee to contact Inspector A to inquire about the propriety of the Rebate Form rather than to delegate to WD the task of calling the Branch's office in Victoria to make the inquiry.

More importantly, the Branch submitted, the email (Exhibit 2) does not convey the message as suggested by the Licensee. Rather it suggests that the information received by WD from the Branch's Victoria office was that a website could promote the sale of a liquor product. It does not suggest that WD received advice from the Branch's Victoria office that the Licensee is permitted under the Act to induce the purchase of liquor by the offer of a cash rebate. Indeed, the Branch submitted, it appears that the message from WD to the Licensee in this email, as confirmed by WD in her evidence, is that the onus is on the Licensee to know what the rules are and what can and cannot be posted on a website.

The Branch noted the commitments made by the Licensee in the past to comply with the terms and conditions of the Licence and specifically not to provide inducements to parties to purchase liquor. From the evidence before the hearing, the Branch submitted, the Licensee has clearly breached these commitments and, therefore, the penalty of \$7,500 as recommended in the NOEA is appropriate.

SUBMISSIONS – LICENSEE

In her submissions, the Licensee focused on the NOEA and her compliance history. She submitted that the reference to the alleged contravention with respect to the lack of a buy/sell agreement for a refrigerator in compliance notice B005366 had been demonstrated to have been incorrect and that this incorrect reference to a contravention in the NOEA tainted the entire NOEA.

The Licensee submitted that she has always tried to follow the rules and pointed out that, prior to designing the Rebate Form, on her instructions WD had telephoned the Branch to ensure that the inclusion of the Rebate Form on the website was in compliance with the rules.

REASONS AND DECISION

Contravention

The Licensee has acknowledged that the Rebate Form was posted on her website. It is obvious from the terms of the Rebate Form that it offered a cash rebate to a purchaser of the liquor products referred to in the Rebate Form. In order to receive the cash rebate, the purchaser was to submit the completed Rebate Form to the Licensee together with a proof of purchase of the liquor product upon which the cash rebate was claimed.

Section 45(2) of the Act is clear that the Licensee must not induce the sale of a particular brand of liquor. The Rebate Form was posted on the Licensee's website and the Rebate Form offered a cash inducement for liquor products which the Licensee represented as a licensed agent.

I, therefore, find on the evidence before me that the Branch has proven on a balance of probabilities that the contravention set out in the NOEA did occur. In particular, I find that the Licensee offered a monetary rebate to potential purchasers of the liquor products listed in the Rebate Form in an attempt to induce the sale of the brands of liquor listed in the Rebate Form.

Due Diligence

The Licensee is entitled to a defence if it can be shown that she was duly diligent in taking reasonable steps to prevent the contravention alleged in the NOEA from occurring. To establish that she was duly diligent, the Licensee must not only demonstrate that she had previously established procedures to ensure that she did not operate in breach of section 45 of the Act, she must also ensure that those procedures were consistently acted upon.

Although she did not specifically claim that she was duly diligent in attempting to prevent the contravention of section 45 of the Act as alleged in the NOEA, the Licensee's evidence was that she instructed WD to call the Branch in Victoria to inquire as to whether or not a cash inducement could be offered in the Rebate Form.

I have a great deal of difficulty accepting that an employee of the Branch would have given the advice, as alleged by the Licensee, to have been given by telephone to WD. Nor does the wording in the email from WD to the Licensee (included in Exhibit 2) support the Licensee's contention that this advice was given. Rather, this wording, as supported by the evidence of WD in her cross-examination, suggests that the obligation is on the Licensee to understand her obligations under the terms of the Licence and to comply with them.

I therefore find that there is no evidence before me that would justify a claim by the Licensee that she was duly diligent in attempting to prevent the contravention of section 45 of the Act, as alleged in the NOEA. Therefore, she is not entitled to the benefit of the defence of due diligence.

PENALTY

Pursuant to section 20(2) of the Act, having found that the Licensee has contravened the Act, the Regulation and/or the terms and conditions of the licence, I may do one or more of the following:

- Take no enforcement action
- Impose terms and conditions on the Licence or rescind or amend existing terms and conditions
- Impose a monetary penalty on the Licensee
- Suspend all or any part of the Licence
- Cancel all or any part of the Licence
- Order the Licensee to transfer the Licence

I am not bound to order the penalty proposed in the NOEA. However, if I find that either a licence suspension or a monetary penalty is warranted, I am bound to follow the minimums set out in Schedule 4 of the Regulation. I am not bound by the maximums and may impose higher penalties when it is in the public interest to do so.

The factors that I have considered in determining the appropriate penalty in this case include: whether there is a proven compliance history; a past history of warnings by the branch; the seriousness of the contravention; the threat to the public safety; and the well-being of the community.

Licensees are obliged to comply with the legislation and the terms and conditions of their licences. Enforcement action is intended to both redress the Licensee's non-compliance, and to encourage future compliance by way of deterrence.

In the matter at hand, even if consideration of the contravention B005366 is ignored, as urged upon me by the Licensee, the NOEA contains evidence undisputed by the Licensee of:

- an earlier contravention notice dealing with inducing the sale of liquor contrary to section 45 of the Act, and
- a subsequent compliance meeting at which the Licensee committed not to offer inducements to purchase the products she represented

I therefore find that merely a warning to the Licensee by the Branch, as urged upon me by Witness B, is not appropriate and a monetary penalty should be imposed.

There is no record of a proven contravention for the Licensee within the preceding twelve months similar to the contravention alleged in the NOEA. Therefore, I find this to be a first contravention for the purposes of Schedule 4 of the Regulation and the calculation of an appropriate penalty. Item 40 in Schedule 4 provides a range of penalties for a first contravention of this type: a 10-15 day licence suspension and/or a \$7,500-\$10,000 penalty.

ORDER

Although I find the Licensee's compliance history troubling, I am willing to accept the Branch's recommendation of a monetary penalty of \$7,500. I order that pursuant to section 20(2) of the Act, the Licensee pay a monetary penalty in the sum of \$7,500 to the General Manager of the Liquor Control and Licensing Branch on or before December 5, 2013.

Original signed by

R. John Rogers
General Manager's Delegate

Date: November 5, 2013

cc: Liquor Control and Licensing Branch, Vancouver Office
Attention: Donna Lister, Regional Manager

Liquor Control and Licensing Branch, Vancouver Office
Attention: Peter Mior, Branch Advocate