



DECISION OF THE
GENERAL MANAGER
LIQUOR CONTROL AND LICENSING BRANCH

IN THE MATTER OF

A penalty-only written submissions hearing pursuant to Section 20 of

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

Licensee: Grapes 4 U Enterprises (Austin) Inc.
dba Grapes 4U/Coquitlam
1044A Austin Avenue
Coquitlam, BC, V3K 3P3

Case: EH16-043

For the Licensee: Rick Todd

For the Branch: Hugh Trenchard

General Manager's Delegate: R. John Rogers

Date of Hearing: Written Submissions

Date of Decision: July 27, 2016

**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

Grapes 4 U Enterprises (Austin) Inc. (the "Licensee") owns and operates Grapes 4 U/Coquitlam, a UBrew/UVin operation from premises located at 1044A Austin Ave., Coquitlam, BC, V3K 3P3 (the "Establishment"). The Licensee holds UBrew/UVin Licence number 207324 (the "Licence"). According to the terms of the Licence, the Licensee's hours of sale are from 9:00 a.m. to 11:00 p.m. Monday through Sunday.

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"). The Licence also contains the following condition:

- The licence is provided to an establishment that provides goods, facilities or services to persons producing or manufacturing beer, cider or wine in the establishment for their own consumption or consumption at no charge to others

Mr. Rick Todd, the principal of the corporate Licensee (the "Licensee's Representative") made written submissions on behalf of the Licensee.

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch's (the "Branch") allegations and proposed penalty are set out in the Notice of Enforcement Action dated April 19, 2016 (the "NOEA").

The Branch alleges that on April 6, 2016 the Licensee contravened sections 25(1) and 28(1) of the *Liquor Control and Licensing Regulation* (the "Regulation") issued under the *Liquor Control and Licensing Act*, R.S.B.C. 1996, c. 267 (the "Act") by not properly tagging carboys situated within the Establishment and by not ensuring that bottled product was removed immediately from the Establishment. Item 42, Schedule 4 of the Regulation sets out the range of penalties for a first contravention of breaches of sections 25 and 28 of the Regulation as being a 1 to 3 day Licence suspension and/or a \$1,000 to \$3,000 monetary penalty for each offence. The Branch proposes a monetary penalty of \$1,000 for breach of Section 25 of the Regulation and a monetary penalty of \$2,000 for breach of Section 28 of the Regulation.

For the purposes of this hearing, and in accordance with section 6.1 of the Act, the General Manager has delegated to me the powers, duties and functions provided to the General Manager by Section 20 of the Act and Sections 65-69 of the Regulation.

RELEVANT STATUTORY PROVISIONS

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

Storage requirements

- 25 (1) A licensee must ensure that each carboy containing a customer's ingredients has a tag setting out the customer's name and the date any enzymes or yeast were added.
- (2) A licensee must not remove a customer's beer, wine or cider from the U-Brew or U-Vin for any purpose before bottling.

Removal of finished product required

- 28 (1) A licensee must ensure that the customer removes his or her beer, wine or cider from the U-Brew or U-Vin immediately after bottling and must not allow the customer to store, for any purpose, the beer, wine or cider that has already been bottled at the U- Brew or U-Vin.
- (2) A licensee must not deliver a customer's beer, wine or cider.

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

Schedule 4 Enforcement Actions

Minors

Item	Contravention	Period of Suspension (Days)			Monetary Penalty
		First Contravention	Second Contravention	Subsequent Contraventions	
42	A breach of section 25 [<i>storage requirements</i>], or 28 [<i>removal of finished product required</i>], of this regulation	1-3	3-6	6-9	\$1,000-\$3,000

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 1: Branch book of documents, tabs 1 to 9.

Exhibit 2: The undated written submissions of the Licensee's Representative.

ELECTION FOR PENALTY-ONLY WRITTEN SUBMISSIONS HEARING

On May 31, 2016 the Licensee's Representative advised the Branch that the Licensee wished to elect the option offered by the Branch in its letter of May 9, 2016 to the Licensee and to proceed by way of a penalty-only written submissions hearing.

By electing to proceed in this manner, the Licensee confirmed that the Licensee:

- admitted the contraventions as alleged in the NOEA;
- confirmed that it is not pursuing a due diligence defence to these contraventions; and
- confirmed that it is only disputing the monetary penalties proposed by the Branch in the NOEA.

THE NOEA

The Facts

The facts set forth in the NOEA (Exhibit 1 tab 1) leading to the admitted contraventions resulted from a routine inspection of the Establishment by Liquor Inspector A on April 6, 2016 at approximately 3:00 p.m.

These facts might be summarized as follows:

- The Carboys
 - In the Establishment's storage area, Inspector A counted approximately 49 carboys containing red and/or white wine;
 - Of these carboys, only five were tagged with the customer's name and product information;
 - Approximately 27 of these carboys did not contain the requisite tagging; and
 - There were additional carboys in the storage area, but these additional carboys were located behind full carboys on the top shelving which meant that they could not be safely accessed by Inspector A and therefore could not be inspected by her.

- The Explanation of the Licensee's Representative for Lack of Tagging the Carboys
 - When asked why most of the carboys had not been tagged, the Licensee's Representative stated that "he had been lazy"; and
 - When asked how he determined to whom the product in the carboys belonged, the Licensee's Representative made a gesture pointing to the side of his head;

- The Full Bottles of Finished Product
 - Upon further inspection, Inspector A found several unlabeled bottles of finished product scattered throughout the right side of the Establishment, including:
 - Port Wine:
 - one full and one half full 1.5 litre bottle; and
 - one full and another nearly half full gallon container;
 - Red Wine:
 - one $\frac{3}{4}$ full gallon container;
 - 1.5 liter container almost full; and
 - five full 750 ml bottles; and
 - one full 1.5 litre of white wine.

- Other than the explanation offered by the Licensee's Representative below set out, no further information was provided to Inspector A by the Licensee's Representative as to:
 - the name of the customer who owned these bottles,
 - whether the customer had intentionally left the bottled product in the Establishment,
 - the type of product in the containers; or
 - the date that the product had been produced.
- The Explanation of the Licensee's Representative for the Full Bottles of Finished Product
 - When asked for an explanation for these bottles of finished product, the response was that:
 - Some of the port wine was described as "leftover garbage";
 - Two of the 750 ml bottles of the wine was stated to be "blueberry wine"; and
 - The white wine belonged to a specific customer and was awaiting filtration as it had glass in the container; and
 - As most of these bottles were "garbage" that Inspector A could dispose of them if she wished.

Following the inspection, Inspector A issued Contravention Notice B011307 (Exhibit 1 tab 2) and served it on the Licensee's Representative.

The Reasons for Pursuing Enforcement

The NOEA points out that Section 25 of the Regulation requires that the Licensee operating under the UBrew/UVin Licence must ensure that a carboy tag or label is attached to every carboy, fermentation vessel or barrel situated in the Establishment, which tag or label clearly states the customer's proper name, the date that the product was started, and the customer invoice number.

The inspection by Inspector A on April 6, 2016 discovered approximately 27 carboys containing red and/or white wine that did not have tags or labels. The explanation offered by the Licensee's Representative was that he had been lazy and with the suggestion that he kept track of the ownership of these carboys in his head.

The NOEA also notes that Section 28 of the Regulation requires that the Licensee operating under the UBrew/UVin Licence must ensure that its customers:

- bottle and seal the products produced by them at the Establishment,
- affix labels or other decorative items to the bottles containing these products, and
- remove these bottles from the Establishment immediately after production.

Section 28 is quite specific in requiring that the Licensee ensure that bottled product is removed from the Establishment immediately after bottling and that the Licensee not store any of this product for its customers.

The NOEA points to the presence of 12 bottles of various sizes in the Establishment contrary to Section 28 with the only explanation offered by the Licensee's Representative being that these bottles were "garbage".

The Licensee's Compliance History

The NOEA contains the following summary of the Licensee's compliance history (Exhibit 1 tab7):

1. November 18, 2003 – bottled products were found within the Establishment, a compliance notice was issued, but as the Licensee's Representative acknowledged the requirement to remove the products and agreed to do so within an hour of the issuance of the compliance notice, no enforcement action was taken;
2. February 17, 2004 – bottled products were again found within the Establishment and during the inspection the Licensee's Representative began to remove them. Although a contravention notice was issued, as the Licensee's Representative had explained that the products belonged to him, although not being able to

provide information to support this, no enforcement action was taken apart from advising the Licensee's Representative that all products had to be labeled and had to be removed after bottling;

3. June 21, 2004 – a compliance meeting was held with the Licensee's Representative at which the prohibition against the storage of bottled products was discussed and at which the Licensee's Representative gave his assurance that bottled products would in the future be removed immediately from the Establishment;
4. April 28, 2007 – bottled products were found in the Establishment, a contravention notice was issued, the Licensee's Representative signed a waiver acknowledging the contravention, and the Licensee served a 3 day suspension of the Licence;
5. February 13, 2013 – 22 plastic carboys and 42 glass carboys were found untagged in the Establishment. A contravention notice was issued, but no enforcement action was taken as the Licensee's Representative claimed to be behind in his labelling and that he was going to tag them; and
6. February 23, 2013 – A compliance meeting was held with the Licensee's Representative to review the requirements contained in Section 25 of the Regulation and the Licensee's Representative made a commitment to ensure that all carboys would be properly labeled in the future.

THE LICENSEE'S WRITTEN SUBMISSIONS

In his written submissions, the Licensee's Representative attributed the Licensee's compliance failure to "procrastination" on the part of the Licensee's Representative. He submitted that:

- The containers of port wine were leftovers from the kit-making process of dessert wines, were not finished products, and should have been disposed of prior to the visit of Inspector A;
- The balance of the bottled items he confirmed should not have been in his primary work space and should have been otherwise dealt with prior to the visit of Inspector A;

- With respect to the tagging of the carboys, he submitted that every batch of product that is started in the Establishment has a tag created when the customer first arrives and on which the customer signs off when the bottling process has been completed. As the information on the tag might be incomplete, the tag remains at the front desk and is not placed on the carboy immediately. As the Licensee's Representative is aware of the activities in the Establish, he submitted, he is aware of the contents and ownership of each carboy and therefore no harm is done if the carboy is tagged in due course; and
- That he hadn't intended to pursue any illegal activities, that he does not take any visits, recommendations, or enforcement actions lightly and that he guesses that he just needs to be "prodded occasionally".

With respect to the penalties proposed in the NOEA, the Licensee's Representative submitted that the suggested penalties are "geared towards the larger establishments in the Liquor Control Empire, where they reflect an entity's ability to pay." He submitted that as the Establishment is a small operation that a monetary penalty would constitute "cruel and unusual punishment".

The Licensee's Representative submitted that if a penalty is found to be warranted that a one to three day closure would be more appropriate and should occur around August 13th to 15th if at all possible

BRANCH'S RESPONSE

The Branch elected not to submit a written response to the submissions of the Licensee.

REASONS AND DECISION

Contravention

The Licensee through the Licensee's Representative has admitted that the Licensee committed as alleged in the NOEA contraventions of the Regulation on April 6, 2016 by:

1. failing to properly tag carboys contrary to Section 25 of the Regulation, and
2. failing to ensure that bottled product was immediately removed from the Establishment contrary to Regulation 28.

I therefore, so find.

Due Diligence

The Licensee has elected to proceed by way of written submissions and has confirmed that it is not pursuing the defence of due diligence to the admitted contraventions.

I therefore find that the defence of due diligence does not apply.

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 penalties 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.

I find that penalties are warranted here.

There is no record of a proven contravention of the same type as dealt with here for the Licensee within the preceding 12 months of this incident. Therefore, I find this to be a first contravention for the purposes of Schedule 4 and calculating penalties.

Item 42 in Schedule 4 provides a range of penalties for a first contravention of these types of contraventions to be a 1 to 3 day suspension of the Licence and/or a \$1,000 to \$3,000 monetary penalty.

Having found that penalties are warranted, I am required to impose at least the minimum for a first contravention, which is either a \$1,000 monetary penalty or a 1 day suspension of the Licence for each contravention. The Licensee has requested that if I find that a penalty is warranted, that I impose a suspension rather than a fine.

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

Of particular concern to me is the Licensee's compliance history. Licensees are obliged to comply with the Act, the Regulation and the terms and conditions of their licences. Enforcement action is intended to both redress a licensee's non-compliance, and to encourage future compliance by way of deterrence. Given the Licensee's compliance history which is before me, it would appear that the Licensee requires an ongoing enforcement regime to encourage enforcement. Therefore, I see no reason not to impose the penalties as recommended in the NOEA. Indeed, given this history, I believe that the recommended penalties are quite on the side of leniency.

I find the Licensee's Representative's plea for recognition of procrastination as a valid reason for non-compliance as being totally inappropriate. The granting of the Licence to the Licensee is a privilege and not a right. With the receipt of this privilege comes the reciprocal obligation on the part of the Licensee to comply with the terms of the Licence. And a whimsical excuse such as procrastination does a disservice to those other licensees who take pains to ensure such compliance.

Given the Licensee's compliance history and the approach of the Licensee's Representative to the enforcement process, notwithstanding the effect financial penalties would have on the business of the Licensee, I do not find that a suspension rather than monetary penalties is warranted. Indeed, I would suggest that if in the future the Licensee's performance continues to reflect such a disregard for compliance with the terms of the Licence, that much more severe financial penalties for non-compliance should be warranted.

ORDER

Pursuant to section 20(2) of the Act, I order that the Licensee pay a monetary penalty in the sum of \$1,000 and a monetary penalty in the sum of \$2,000, being a total monetary penalty of \$3,000, to the General Manager of the Liquor Control and Licensing Branch on or before August 29, 2016.

Signs satisfactory to the General Manager showing that a monetary penalty has been imposed will be placed in a prominent location in the establishment by a Liquor Control and Licensing Branch inspector or a police officer.

Original signed by

R. John Rogers
General Manager's Delegate

Date: July 27, 2016

cc: Liquor Control and Licensing Branch, Surrey Regional Office
 Attn: Rupi Gill, Regional Manager

 Liquor Control and Licensing Branch, Victoria Regional Office
 Attn: Hugh Trenchard, Branch Advocate