



**DECISION OF THE
GENERAL MANAGER
LIQUOR CONTROL AND LICENSING BRANCH
IN THE MATTER OF
A hearing pursuant to Section 51 of
*The Liquor Control and Licensing Act, S.B.C. 2015, c. 19***

Licensee:	Micro Web Solutions Inc. c/o Syed Talat 2-1800 2 nd Street N. Cranbrook, BC V1C 5A2
Case:	EH17-018
Licensee's Representative	Syed Talat ("Licensee's Representative")
For the Branch:	Hugh Trenchard
General Manager's Delegate:	R. John Rogers
Date of Hearing:	Written Submission
Date of Decision:	October 26, 2017

**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://www2.gov.bc.ca/gov/content/employment-business/business/liquor-regulation-licensing>

INTRODUCTION

Micro Web Solutions Inc. (the "Licensee") holds Food Primary Licence No. 179287 (the "Licence"), pursuant to which it operates a restaurant called "Spice Hut" at 510 Esplanade Avenue, Ladysmith, B.C., V9G 1A9 (the "Establishment").

According to the terms of the Licence, the Licensee may sell liquor from Noon to 2:00 a.m. Monday through Saturday and from 11:00 a.m. to Midnight on Sunday. The Licence establishes the capacity for the Establishment to be 75 inside the Establishment and 48 on the patio.

The Licence is, as are all liquor licences issued in the Province, subject to the terms and conditions contained in the publication "Food Primary, Terms and Conditions" (the "Terms and Conditions Handbook").

The Licensee, as well, holds Food Primary Licence No. 305760 pursuant to which it operates a restaurant called "Spice Hut" in Campbell River, B.C. ("Spice Hut Campbell River"). In addition, Spice Hut Incorporated holds Food Primary Licence No. 305525 in Comox, B.C. ("Spice Hut Comox). The Licensee's Representative is the sole shareholder of the Licensee and of Spice Hut Incorporated.

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 March 8, 2017, amended March 13, 2017 (the "NOEA") (Exhibit 1 tab 1).

The Branch alleges that on February 19, 2017, the Licensee contravened Section 77(1)(a) of the *Liquor Control and Licensing Act* S.B.C. 2015 c. 19 (the "Act") by selling, giving or otherwise supplying liquor to a minor ("Minor Agent #88"). Item 3, Schedule 2 of the *Liquor Control and Licensing Regulation* BC Reg 241/2016 (the "Regulation") sets out the range of penalties for a first contravention of this type: a 10 to 15 day licence suspension and/or a \$7,500 to \$10,000 monetary penalty. The Branch proposes either a 15 day licence suspension or a monetary penalty of \$10,000.

The Licensee has admitted that its employee sold liquor to Minor Agent #88 and to the facts as set out in the NOEA. The Licensee is not pursuing a due diligence defence to the contravention. However, the Licensee in its written submission has requested that if a penalty is imposed that it is a monetary penalty rather than a suspension of the Licence. In addition, in this written submission, the Licensee has requested that if a monetary penalty is imposed, that it be less than the \$10,000 monetary penalty recommended by the Branch in the NOEA

For the purposes of this hearing and in accordance with Section 5 of the Act, the General Manager has delegated to me the powers, duties and functions provided to the General Manager by Section 51 of the Current Act.

RELEVANT STATUTORY PROVISIONS OF THE ACT AND REGULATION

Liquor Control and Licensing Act, S.B.C. 2015, c. 19

Supplying liquor to minors

77 (1) Subject to the regulations, a person must not

(a) sell, give or otherwise supply liquor to a minor.

Liquor Control and Licensing Regulation, B.C. Reg. 241/2016

Schedule 2 Monetary Penalties and Licence Suspensions

Minors

Item	Contravention	Period of Suspension (Days)			Monetary Penalty
		First Contravention	Second Contravention	Subsequent Contraventions	
3	Contravention of section 77 of the Act [<i>supplying liquor to minors</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 1: Branch book of documents, tabs 1 to 16.
- Exhibit 2: The Licensee's written submission contained in an email dated September 28, 2017.
- Exhibit 3: The Branch's response dated September 29, 2017.
- Exhibit 4: The Licensee's final written submission dated October 1, 2017.

EVIDENCE—BRANCH

The NOEA

The NOEA notes that in order to ensure that a licensee is not selling or supplying liquor to persons under the age of 19 in contravention of the Act, the Act and the Regulation require that licensees check 2 pieces of identification in order to verify the age of a customer prior to selling liquor to or supplying this customer with liquor.

The NOEA further notes that the Act was amended to permit the Branch to employ minors as agents to test compliance with this prohibition and the requirement to ask for identification. Following this legislative change, the Branch established its Minors as Agents Program ("MAP") initiative whereby it employs 16-18 year old minors as agents of the Branch to carry out compliance inspections. These minors are giving training on the Act, on making and documenting observations, and on safety considerations. As part of this training, these agents are directed not to attempt to deceive by disguise or other methods in order to portray themselves as a person older than their actual age.

Licensees under the Act and the Regulation were first notified of the institution of MAP by way of a letter from the Branch General Manager dated February 2011. Following this initial notification, there have been ongoing communications from the Branch to these licensees and the industry about MAP and its continuing activities.

The NOEA states that on February 19, 2017 Liquor Inspectors A, B, and C together with two minor agents constituted an inspection team pursuant to MAP to test compliance with the Act and the Regulation in the Chemainus/Ladysmith area at several Food Primary and Liquor Primary Licensees, Licensed Retail Stores, and BC Government Liquor Stores.

At the start of the shift on this date, one of the minor agents on this inspection team, Minor Agent #88, was photographed (a redacted copy of which is included in Exhibit 1 tab 12), her identification viewed and photographed (a redacted copy of which is also included in Exhibit 1 tab 12) and her age confirmed to be 17 years old.

At 5:43PM on February 19, 2017, Inspector A together Minor Agent #88 entered the Establishment and were directed to a table in the centre of the restaurant in full view of the serving staff. It was noted that there were 23 customers in the Establishment.

When the server (the "Server") asked Inspector A and Minor Agent #88 if they would like to order food or just a drink to start with, Minor Agent #88 ordered a bottle of Kokanee beer and Inspector A asked for the same. The Server returned with two opened bottles of Kokanee beer and two chilled glasses and placed one of each in front of Inspector A and Minor Agent #88. When asked if they were ready to order, Minor Agent #88 responded that more time was needed to decide, the Server left to serve other customers, and Inspector A photographed Minor Agent #88 with the liquor (Exhibit 1 tab 13).

Before the Server returned to the table, Minor Agent #88 went to the Establishment's service counter, advised the Server that she had been called away and paid for the beer. Inspector A and Minor Agent #88 then left the Establishment and completed their notes of the event (Exhibit 1 tabs 10 and 11).

At no time during her time in the Establishment was Minor Agent #88 asked for her identification by either the Server who served the beer to Minor Agent #88 and received payment for the beer or by the Manager of the Establishment (the "Manager") who opened the beer for the Server.

Following the departure of Inspector A and Minor Agent #88 from the Establishment, Inspector B entered the Establishment and sought to speak with the Manager. When Inspector B asked the Manager if he could speak with her in a less public place as he had something important to discuss with her, although the Manager acknowledged that she had recognized Inspector B and remembered who he was, she claimed that she was too busy to speak with him and proceeded to walk away. Inspector B followed the Manager and advised her that a MAP inspection had taken place in the Establishment and that liquor had been served to a minor. He further advised that a contravention notice would be issued.

The Manager told Inspector B that as the Server was under 19 years old that she hadn't opened the beer served to Minor Agent #88, but that the Manager had done so.

Inspector B issued Contravention Notice B009950 (Exhibit 1 tab 7) (the "Contravention Notice") to the Manager who signed an acknowledgement of receipt.

A copy of the Contravention Notice was sent to the Licensee by registered mail on February 28, 2017 and the Licensee's Representative responded by email on March 2, 2017 advising that he was out of the country, but confirming that he had been advised of the contravention and expressing his frustration and apologies therefor.

Past Enforcement Action Taken

The NOEA also contained references to past enforcement actions taken against the Licensee or another licensee for which the Licensee's Representative is recorded as the sole owner.

The NOEA notes that a result of a routine inspection of the Spice Hut Campbell River on November 28, 2015, Contravention Notice B013206 was issued by the Branch resulting in a compliance meeting held in Nanaimo on December 15, 2015. At this compliance meeting, the Licensee's Representative was present and the issues leading to the issuance of Contravention Notice B013206 were reviewed by the Branch's representatives. As well, MAP was discussed with the Licensee's Representative. The Licensee's Representative made various commitments with respect to compliance with the Act, the Regulation and licensing terms in connection with the operation of the Spice Hut Campbell River, the Spice Hut Comox and the Establishment.

The NOEA also noted that on June 10, 2016 the Spice Hut Comox failed a MAP inspection and that following the voluntary signing of a waiver by the licensee, a monetary penalty of \$7,500 was assessed.

Finally, the NOEA noted that on January 13, 2017, a routine inspection at the Establishment identified that the required documents were not posted. In addition, during this inspection, the Manager was advised to review the Terms and Conditions Handbook, was advised about MAP, and was advised to ensure that her staff requested identification.

WRITTEN SUBMISSIONS

Five pre-hearing conferences were scheduled. The Licensee's Representative failed to participate in any of them.

The first pre-hearing conference was scheduled for April 10, 2017, but, at the request of the Licensee's Representative, was moved to April 24, 2017. The Licensee's Representative failed to participate and advised by email on April 25, 2017 that he was out of the country due to his father's ill health and asked that the pre-hearing conference be scheduled for the middle of May.

The rescheduled pre-hearing conference was set for May 17, 2017. Again, the Licensee's Representative failed to participate and, when contacted by email, asked that the pre-hearing conference be rescheduled for the end of May or the beginning of June.

The second rescheduled pre-hearing conference was set for June 14, 2017 and on June 12, 2017 the Licensee's Representative advised that he was still attending on his sick father and asked that the pre-hearing conference be rescheduled for the first week of July.

The third rescheduled pre-hearing conference was set for July 5, 2017 and the Licensee's Representative again failed to participate. When contacted by the Branch's representative, the Licensee's Representative advised that he was still out of the country and asked to reschedule the pre-hearing conference for August.

The fourth rescheduled pre-hearing conference was set for August 16, 2017 and, again, the Licensee's Representative failed to participate.

Following this failure, the Branch's representative determined that this matter should proceed by way of a written submissions and advised the Licensee's Representative of this decision by letter dated August 16, 2017. This letter further advised the Licensee's Representative that he would be provided with copies of the Branch's submissions and that the Licensee's Representative would have 14 calendar days to provide the Licensee's written submissions in response to those of the Branch.

When the Branch's representative had received no response from the Licensee's Representative to his letter of August 16, 2017, he reminded the Licensee's Representative by email on September 27, 2017 that the Licensee's written submissions were due by no later than September 29, 2017 and that if the Licensee's written submissions were not received prior to that date, that the General Manager would make a decision on this matter without the Licensee's input. This email directed the attention of the Licensee's Representative to the fact that the Branch was seeking a penalty of either a 15 day suspension of the Licence or a monetary penalty of \$10,000.

The Licensee's Representative responded to this email of September 27, 2017 by an email dated September 28, 2017 in which the Licensee's Representative submitted:

1. His apology on behalf of the Licensee and the Licensee's staff for the contravention at the Establishment on February 19, 2017, observing that "We always like to keep high standards and follow the rules" and that "We always train our staff to make sure they ask for ID";
2. That the Server who served liquor to Minor Agent #88 had just started working with the Establishment and was in the process of training, so that under the pressure of her new job she had made an honest mistake;
3. That the Licensee had increased the training for its new servers and had retrained its existing servers to make sure that they are asking for identification;
4. That any penalty be waived as such penalty would have a severe effect on the Licensee's small business at this difficult time; and
5. That if a penalty were to be imposed that it be a monetary fine and that the amount of this fine be less than \$10,000.

When asked to respond to the Licensee's email submission of September 27, 2017, the Branch noted the reference in the NOEA to past enforcement actions taken with respect to the Establishment and to the other licensed establishment of which the Licensee's Representative was a principal and submitted that based upon this history of very poor compliance notwithstanding the commitments of the Licensee's Representative, that a higher penalty was definitely warranted.

When, in turn, asked to respond to the response to the Branch to the Licensee's submissions, the Licensee's Representative further submitted in an email dated October 1, 2017:

1. That following the compliance meeting in Nanaimo on December 15, 2015 in accordance with the commitments made by the Licensee's Representative at that time that the Licensee's policies did, in fact, change to be in compliance with the Act, the Regulation and the Licence;
2. That following the incident on February 19, 2017 at the Establishment, the Licensee had taken more steps to ensure that customers are asked for identification; and

3. That a lower monetary penalty should be assessed as the Licensee's Representative was giving his assurance that such an incident as occurred on February 19, 2017 would not happen again and as a high monetary penalty would have a very negative effect on the small business run by the Licensee.

REASONS AND DECISION

Contravention

The Licensee has admitted that on February 19, 2017, as alleged in the NOEA, liquor was sold to Minor Agent #88 by one of its employees in contravention of section 77(1)(a) of the Act.

The Licensee has not raised the defence of due diligence.

I therefore find that on February 19, 2017 the Licensee contravened section 77(1)(a) of the Act, by selling, giving or otherwise supplying liquor to a minor.

PENALTY

Pursuant to section 51(2)(b) 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 2 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.

As 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, I find this to be a first contravention for the purposes of Schedule 2 and calculating a penalty. As noted above, Item 3 in Schedule 2 provides a range of penalties for a first contravention of this type to be a 10 to 15 day suspension of the Licence and/or a \$7,500 to \$10,000 monetary penalty.

The Branch has recommended either a 15 day suspension of the Licence or a monetary fine of \$10,000. The Licensee has requested that if a penalty is imposed that it be a monetary fine. It has also observed that as it is a small business a monetary penalty of \$10,000 would have a severe effect on its business.

The factors that I have considered in determining the appropriate penalty in this matter 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.

As the matter involves the sale of liquor to a minor, the most important of these factors is the public safety issue because of:

- The effects of alcohol on growing bodies and developing minds;
- The effects on individuals and society of irresponsible drinking behavior learned at an early age;
- A minor's lack of capacity to metabolize alcohol in the same manner as an adult with the result being a more intoxicating effect on minors; and
- The fact that liquor is a significant factor in many crimes committed by youth, including serious driving offences, assault, sexual assault and theft.

However, in addition to the public safety aspect, what is particularly troubling to me is the Licensee's compliance history. As noted above, since December of 2015 the Licensee's Representative has been meeting with the Branch's inspectors and making commitments that in the licensed establishments in which he is a principal there would be compliance with the provisions of the Act, the Regulation and the applicable licenses. Notwithstanding these many commitments, the record before me shows that on June 10, 2016, a mere 6 months after the compliance meeting on December 15, 2015, the Spice Hut Comox contravened the Act by serving liquor to a minor.

In addition, on January 13, 2017 a routine inspection at the Establishment found it to be in breach of the Regulation. During this inspection, the liquor inspector discussed with the Manager the existence of MAP and its mandate to test compliance of licensees with requesting 2 pieces of identification. And yet following this discussion about MAP, a little over a month later during the course of a MAP inspection of the Establishment liquor was served to Minor Agent #88.

The Branch's objective is to secure compliance by licensees with the Act, the Regulation and the terms and conditions of their licenses. Wherever possible, the Branch attempts to realize this objective by assisting the licensees with ongoing communication and, where necessary, compliance meetings. Most licensees realize that being licensed is a privilege and not a right and take the necessary steps to be in such compliance.

With respect to the Licensee and the matter at hand, the Licensee's Representative on behalf of the Licensee in his submission apologized for the contravention and committed to ensuring that matters would be different going forward. However, a similar commitment was made in December of 2015 and 6 months later a contravention occurred at Spice Hut Comox.

The Licensee's Representative on behalf of the Licensee points out that the Licensee runs a small business and that a monetary penalty would adversely affect this small business. Given that the Spice Hut Comox, a similar small business, in June of 2016 paid a fine of \$7,500, one would have thought that extra efforts would have been taken to ensure compliance at all 3 establishments for which the Licensee's Representative is the principal. However, such did not appear to be the case as the January 13, 2017

inspection of the Establishment and the later February 19, 2017 contravention at the Establishment demonstrated.

In order to make clear to the Licensee and the Licensee's Representative that apologies and unfulfilled commitments of compliance to the Act, the Regulation and the Licence are not sufficient, I must agree with the position taken by the Branch and find that the maximum permissible monetary penalty is warranted here to encourage the Licensee and the Licensee's Representative to change their ways. Such a change would result in not merely a commitment to compliance, but in fact its achievement.

ORDER

Pursuant to section 51(2)(b) of the Act, I order that the Licensee pay a monetary penalty of \$10,000 to the General Manager of the Branch on or before November 27, 2017.

Signs satisfactory to the General Manager notifying the public that such monetary penalty has been imposed will be placed in a prominent location in the Establishment by a Branch inspector or a police officer, and must remain in place during the period of suspension

Original signed by

R. John Rogers
General Manager's Delegate

Date: October 26, 2017

cc: Liquor Control and Licensing Branch, Victoria Office
Attn: Stephen Hitchcock, Regional Manager

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