



**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 RSBC c. 267**

<b>Licensee:</b>	Scott Road Brewing Company
Case Number:	EH02-115
<b>Appearances:</b>	
For the Licensee	Reider Ostensen Stephen Ostensen
For the Branch	Peter Jones
Enforcement Hearing Adjudicator	Suzan Beattie
Date of Hearing	April 8, 2003
Place of Hearing	Surrey, B.C.
Date of Decision	May 12, 2003

## INTRODUCTION

The licensee, Scott Road Brewing, is located at 104/103 – 7533 – 133 Street, Surrey, B.C. It holds a Ubrew/Uvin Licence #204098 which 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.

The hours of the liquor licence are Monday to Sunday, 9:00 A.M. to 11:00 P.M.

## ALLEGED CONTRAVENTION AND RECOMMENDED PENALTIES

The Liquor Control and Licensing Branch alleges that on November 17, 2002, the licensee contravened section 45 of the *Liquor Control and Licensing Regulations* by advertising availability of finished product, contrary to the *Regulations*.

Schedule 4 of the *Liquor Control and Licensing Regulations*, provides a range of licence suspensions and monetary penalties for each contravention. For the contravention of section 45, the penalty range is 1 to 3 days or \$1,000.00 to \$3,000.00 for the first contravention. In this case, the branch is recommending a one (1) day suspension. It recommends the suspension be served on a Sunday.

The relevant statutory provisions of the *Liquor Control and Licensing Act and Regulations* state:

### **45 Advertising**

- (1) A licensee may only do the following in any advertisement relating to the U-brew or U-vin:
  - (a) state that the U-brew or U-vin is licensed to provide goods, facilities or services for the production or manufacturing of beer, wine or cider by customers;
  - (b) state the name of the U-brew or U-vin and its address;
  - (c) provide a list of the goods, facilities and services available at the U-brew and U-vin and their prices;

- (d) advertise the availability of specific types of ingredients for the production or manufacturing of beer, wine or cider at the U-brew or U-vin.
- (2) Any advertisement placed by or on behalf of a licensee must clearly state that the prices advertised represent the cost of producing or manufacturing the beer, wine or cider at the U-brew or U-vin and do not refer to the price of the finished product.

## ISSUES

1. Whether the licensee contravened section 45 of the *Liquor Control and Licensing Regulations*.
2. If so, is the recommended penalty appropriate in the circumstances?

## COMPLIANCE HISTORY

There is no record of prior contraventions, offences or enforcement actions for this licensee ("compliance history") or for this establishment. However, the branch file shows a contravention notice dated August 16, 2002 regarding advertising contrary to the *Liquor Control and Licensing Act and Regulations*.

## WITNESSES

The branch called a liquor inspector as its witness. The licensee called its Quality Controller/Director as its witness.

## EXHIBITS

The branch and the licensee presented the following exhibits:

### Exhibit 1

### Book of Documents

- Tab 1 Notice of Enforcement Action dated December 4, 2002.
- Tab 2 Contravention Notice No. A000304 dated November 17, 2002.

- Tab 3 Notes from Liquor Control and Licensing Branch Inspector Edwina Nazareth related to the alleged contravention including notes of conversations with the licensee.
- Tab 4 Enforcement Action Recommended dated October 30, 2002, relative to Contravention Notice No. A000304 and the subsequent Notice of Enforcement Action letter.
- Tab 5 Documentation referred to in the Notice of Enforcement Action letter under the heading "Documentation" – Appendix A. Documentation includes U-brew U-vin Terms & Conditions Interview Report No. 00147 dated March 14, 2002, with the owner of the establishment.
- Tab 6 Disclosure documents received from the licensee on March 20, 2003 including sample advertising of advertisements from the Province of Ontario and advertisement from the lower mainland area of the City of Vancouver, list of web sites, and photographs of signage of establishment. These disclosure requirements were identified in the letter from the adjudicator of the hearing, Suzan Beattie, in a letter dated March 12, 2003.
- Tab 7 Ubrew/Uvin licence issued to Roseg Management Ltd., doing business as Scott Road Brewing with an expiry date of March 1, 2003.
- Tab 8 Decision of the adjudicator, M.T. Taylor, in reference to Nelson Home Breweries and the Liquor Control and Licensing Branch.

## **EVIDENCE, SUBMISSIONS AND FINDINGS ON CONTRAVENTIONS**

### **Evidence**

By way of background, I will deal first with the evidence surrounding the August 6, 2002, contravention notice issued for an advertisement published on July 21, 2002.

The liquor inspector testified that, on September 16, 2002, she had a meeting with the licensee regarding an advertisement in the July 21, 2002, Surrey/North Delta Leader. This July 21, 2002, advertisement spoke of the price of the finished product and also advertised volume discounts. At this time, the liquor inspector referred to the

March 2002 Ubrew/Uvin Terms and Conditions Interview Report confirming an interview held between the licensee and another liquor inspector. The Interview Report indicated that advertising issues were discussed at the time between the licensee and the branch representative.

In the September 16, 2002, meeting with the licensee, the liquor inspector also referred to the Guide for Ubrew/Uvin Licensees in British Columbia (2001) which states, in part, at page 20-21:

## **16. Advertising, Pricing and Promotions**

You are permitted to advertise and promote your Ubrew/Uvin and inform the public of your products and services through the advertising medium of your choice, including the Internet. However, there are some restrictions imposed on the content of the advertising that primarily reflects the fact your establishment does not sell beer, wine, cider or coolers.

### **Advertising and Pricing**

Examples of *unacceptable* advertising include the following:

- beer - at half the liquor store price
- wine \$3.00 per bottle
- wine sale on now
- 12 dozen beer for \$110, or
- 50 litres of beer for \$100.

The focus of these unacceptable examples is on the finished product or the price of the finished product. These examples also suggest that the customer may purchase liquor from a Ubrew/Uvin.

On August 16, 2002, the liquor inspector had issued a contravention notice for the July 21, 2002, advertisement. Enforcement action was not recommended at that time to provide the licensee with an opportunity to voluntarily comply.

The liquor inspector offered to view any future advertisements for the licensee if the licensee was in doubt about compliance with the *Liquor Control and Licensing Act and Regulations*.

I turn now to the events in issue.

On November 17, 2002, the licensee ran another ad in the Surrey/North Delta Leader. This ad was entitled "Fit For A King!" and in the body of the advertisement stated:

"Come in NOW for the festive season!"

- Christmas Spiced Food Ales
- Dinner Wine
- Champagne!
- Festive Wines

Visit us at [SRBrewing.com](http://SRBrewing.com)

The ad included the address, telephone number and site location as well as a picture of a lion's head grasping a beer glass with foam.

The liquor inspector testified that the November 17, 2002, advertisement mentioned the finished products of Christmas Spiced Food Ales, Dinner Wines, Champagne and Festive Wines, while making no mention of the brewing procedure other than the invitation to visit the website of [SRBrewing.com](http://SRBrewing.com). The liquor inspector visited the website and found numerous references to finished product and again implied that finished product was available.

Under cross-examination, the liquor inspector explained a telephone conversation she had with a local Member of Parliament (MLA). The MLA advised the licence inspector that he felt it was his role to mediate between the licence inspector and the licensee.

The Quality Controller/Director testified that the main objective from a business viewpoint was to appeal to the customers' self esteem, inflate their interest and convince them to search the web page. The main thrust of the advertisement was a

directional advertisement to the website as well as an attention grabber. The licensee also entered as exhibits a number of examples of advertising. The first example was a brewing club including an on-line store with prices and shipping instructions. There was also a reference to a web page from a brewer in Vancouver and two pages of a "Google" search under "Ubrew". There were also examples of Ontario advertisements and the placement of advertisements in the British Columbia yellow pages. The distinction the licensee was drawing with respect to the yellow pages was advertisements under the heading of "breweries/brew pubs" and those under "wineries" and "wines".

Lastly, the licensee entered photocopies of its establishment with extensive signage indicating it is a Ubrew. It compared its signage to other establishments with no Ubrew sign. As well, the licensee entered an e-mail conversation between itself and the MLA in which the MLA stated he would raise the issue of the contravention and enforcement action with the Solicitor General. The MLA stated to the licensee, "it certainly does sound unfair that a slight omission would bring on the full force of the law."

Under cross-examination, the licensee's witness explained that additional ads, since the November 2002 advertisement, have been sent to the liquor inspector for approval prior to placing the advertisement.

### **Submission**

The licensee submits that the advertisement of November 17, 2002, simply formed a part of its overall marketing plan with a view to obtaining a customer's attention by the visual of the lion, with the wording "fit for a king", and to convince the customer to enter into the website. The licensee maintains that the website clearly specifies it is a Ubrew.

The licensee states it is their objective to advertise in a manner that brings the customer into their portals, either the front door where they are met or into their website. In either the premises or on the website the customer will be faced with the fact that the

establishment is a Ubrew. In that respect, the licensee argues that it is complying with the intent of the *Liquor Control and Licensing Act*.

### **Finding**

On the evidence before me, I find the advertisement of November 17, 2002 advertises a finished product contrary to section 45 of the *Liquor Control and Licensing Regulations*.

### **PENALTY SUBMISSIONS AND DECISION**

Pursuant to section 20(2) of the *Act*, having found that the licensee has contravened the *Act*, the *Regulations* and/or the terms and conditions of the licence, I have discretion to order one or more of the following enforcement actions:

- impose a suspension of the liquor licence for a period of time
- cancel a liquor licence
- impose terms and conditions to a licence or rescind or amend existing terms and conditions
- impose a monetary penalty
- order a licensee to transfer a licence

Imposing any penalty is discretionary. However, if I find that either a licence suspension or monetary penalty is warranted, I am bound to follow the minimums set out in Schedule 4 of the *Regulations*.

### **Submission**

The licensee argues that his discussion with his local MLA confirmed his sense that it was unfair to receive a one-day suspension for the alleged contravention. The licensee argues that the contravention is not a public safety issue. Nor is it attempting to mislead the public. Rather the licensee, by its advertisement of November 17, 2002, is saying "we are here, come and talk to us".



The licensee also points out that it employs six individuals and is responsible for providing paychecks on a bi-weekly basis to these individuals. Finally, the licensee states that it has received the message, it is educated and it is aware of the rules and laws respecting Ubrew/Uvin licensees. It has no intention of repeating the infraction.

## **Decision**

The *Regulations* provide for a graduated scale of penalties for contraventions of the *Act*. The graduated nature of the penalties is necessary for the consistent and vigorous enforcement of the provisions in the *Act* and *Regulations*.

The branch's primary goal in determining the appropriate penalty along the scale is achieving voluntary compliance. Among the factors that are considered in determining the appropriate penalty is whether there is a past history of warnings by the branch and/or the police, the seriousness of the contravention, the threat to public safety and the well being of the community.

I will deal first with the licensee's submission regarding fairness. The branch's enforcement program is based on the premise that voluntary compliance by licensees is expected. In this case, the licensee signed a Ubrew/Uvin Terms and Conditions Interview Report on March 13, 2002, confirming he received the Guide for Ubrew/Uvin Licensees in British Columbia. It also confirmed a liquor inspector discussed advertising, amongst other topics, with the licensee.

I also point out that the licensee received a contravention notice regarding advertising in August 2002. At that time, the liquor inspector did not recommend enforcement action. Given this background, I find the branch's recommendation of the minimum penalty is, of itself, fair.

The licensee also argues that a contravention of section 45 of the *Regulations* is not a public safety issue. I disagree. Decisions of the branch are made in the public interest

having regard for community standards and public safety. It is in the public interest to safeguard individuals and communities from harm caused by the abuse of alcohol and the inappropriate manufacture and/or sale of alcohol, which arises in instances of excessive competition.

The licensee next submits that, as an employer, a suspension would also financially penalize its employees. The licensee, as employer, bears the responsibility for how its actions impact its employees.

Finally, the licensee submits it now understands its obligations and will not repeat the contravention. I acknowledge that the licensee is now seeking the liquor inspector's input for its advertisements.

However, on the facts before me, the licensee did receive educational materials on advertising in March 2002, has received a compliance notice with no enforcement action recommended for a contravention of section 45 of the *Liquor Control and Licensing Regulations*, and had a meeting with a liquor inspector in September 2002, and still, in November 2002, contravened the *Regulations*.

In these circumstances, I find the recommended one (1) day minimum suspension is warranted for this contravention.

## **ORDER**

Pursuant to section 20(2) of the *Act*, concerning the Ubrew/Uvin Licence #204098, I order as follows:

For the contravention of section 45 of the *Liquor Control and Licensing Act* on November 17, 2002, I order the licence suspended for one (1) day. I order the licence suspension to take effect as of the close of business on Saturday, June 28, 2003, and to continue through to the opening of business on Monday, June 30, 2003.

To ensure that this order is effective, I direct that the liquor licence, Ubrew/Uvin Licence #204098, be held by the branch or the Surrey Detachment of the R.C.M.P. until the licensee has demonstrated to the branch's satisfaction that the licensed establishment has been closed for one (1) business day. The suspension sign notifying the public shall be placed in a prominent location by a Liquor Inspector or Police Officer.

*Original signed by*

Suzan Beattie  
Enforcement Hearing Adjudicator

Date: May 12, 2003

cc: R.C.M.Police Surrey Detachment

Liquor Control and Licensing Branch, Surrey Regional Office  
Attention: Michael J. Clark, Regional Manager

Liquor Control and Licensing Branch, Victoria Office  
Attention: Peter K. Jones