



**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

Licensee: Man Kei Enterprises Ltd.
dba New Brandiz Pub
122 E. Hastings Street
Vancouver, BC

Case: EH03-123

APPEARANCES

For the Licensee: Alex Nian Du Guo, President
Man Kei Enterprises Ltd., and
George Afshari, for the third party
operator, A & B Pub Ltd.

For the Branch: Peter Jones, Advocate

Enforcement Hearing Adjudicator: M. G. Taylor

Date of Hearing: October 6, 2003

Place of Hearing: By Teleconference

Introduction

The licensee, Man Kei Enterprises Ltd., holds a Liquor Primary Licence No. 004141 for the location at 122 E. Hastings Street, Vancouver. A third party operator, A & B Pub Ltd. leases the space and operates the New Brandiz Pub. The pub is licensed to operate from 11:00 A.M. to 1:00 A.M. Monday to Saturday and until 12:00 Midnight on Sunday. The licence permits a capacity of 117 patrons in area 01 and 43 patrons in area 02.

Alleged Contraventions and Recommended Enforcement Action

The Branch's allegations and recommended enforcement action are set out in the Notice of Enforcement Action (NOEA) dated September 3, 2003, Exhibit No.1. The Branch alleges that, on July 11, 2003, the Licensee contravened section 45(2) of the *Liquor Control and Licensing Regulations* by failing to request 2 pieces of identification from a person appearing to be under the age of 25 before allowing her to enter the licensed establishment, or before selling or serving liquor to her.

Schedule 4 of the Liquor Control and Licensing Regulations, BC Reg. 608/76, Enforcement Actions, provides a range of licence suspensions and monetary penalties for each contravention. Item 4 of the Schedule, pertaining to this particular contravention, provides for a licence suspension of 1 to 3 days, or a monetary penalty of \$1,000 to \$3,000, for a first contravention. The Branch recommended a monetary penalty of \$1000.

Compliance History

There is no record of prior contraventions or enforcement actions ("compliance history") of *this type* for this licensee or this establishment within the year preceding this incident. Therefore, this contravention, if proved, would be considered a first contravention for the purposes of the Penalty Schedule.

In October 2002, police issued Licensed Premises Checks for selling liquor to an intoxicated person, allowing an intoxicated person to remain in the premises, permitting unlawful activity, and allowing minors in the premises. For the contraventions of permitting unlawful activities, the branch imposed a 10 day licence suspension. The branch did not pursue enforcement action on the other allegations.

On October 22, 2002, the branch held a compliance meeting with the licensee, attended by Mr. Guo, Mr. Afshari, the branch liquor inspector and the branch regional manager to discuss problems related to minors. As a result of the meeting, the licensees agreed that they would have a person on door control to conduct identification checks. The branch reiterated the necessity of having the bartender see identification prior to serving patrons.

On June 21, 2003, the branch issued a Contravention Notice for failure to request identification contrary to section 45(2) of the Regulations. The branch did not pursue enforcement action on that allegation.

Issues

The licensee conceded that the contravention occurred but disputed the proposed \$1,000 penalty.

Exhibits

Exhibit No. 1	Notice of Enforcement Action dated September 3, 2002
Exhibit No. 2	Contravention Notice No. B004023
Exhibit No. 3	Liquor Primary Licence No. 004141
Exhibit No. 4	Official Floor Plan

Applicable Statutory Provisions

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

Minors

45 (1) For the purposes of section 33 (5) of the Act, identification includes the following:

- (a) a passport;
- (b) a driver's licence that displays a photograph and the date of birth of the holder;
- (c) an identification card, issued by a government agency, that displays a photograph and the date of birth of the holder.

(2) A licensee must request 2 pieces of identification from any person appearing to be under the age of 25 before

- (a) allowing the person to enter the licensed establishment, if the establishment is one in which minors are not allowed, or
- (b) selling or serving liquor to the person.

(3) The pieces of identification required under subsection (2) must include

- (a) one piece of the identification referred to in subsection (1), and
- (b) one other piece of identification that displays the person's name and at least one of the person's signature and picture.

(4) A licensee must not allow a minor to have liquor in his or her possession in the licensed establishment unless the licence issued for that establishment is a food primary licence or a liquor primary licence for a stadium and the minor is working as a server in the establishment.

Evidence and Submissions

The branch's evidence is contained in the narrative to the Notice of Enforcement Action. On July 11, 2003, three branch liquor inspectors and the regional manager attended the New Brandiz Pub. During the inspection, the inspectors encountered a very young looking woman who was seated at table drinking beer. She did not have any identification and was directed to leave.

The licensee acknowledged that the woman was in the premises and that she had not been checked for identification. However, Mr. Afshari stated that the young woman had entered furtively and unnoticed while the door control person was engaged in an argument with another customer. He suggested that she did not personally purchase liquor from the bartender but that her friends purchased it for her.

Mr. Afshari has run the New Brandiz Pub for approximately five years. He submitted that it is a difficult location because of the number of street people, drug dealers, violence, and sick people. Mr. Afshari related that he has been the victim of assaults on four occasions but the police are not able to apprehend the offenders because they are long gone before the police arrive.

Mr. Afshari stated that he employs a door control person but that every half hour that person has to check the pub to ensure that there are no intoxicated patrons or that patrons are not ill and he has to check the washroom. One of the challenges of this location is to keep drug dealers out and to ensure the patrons are not doing drugs. When the door control person leaves to do these rounds, there is a chain across the door to prevent people coming in. However, frequently people duck under the chain and enter. He had given instructions to the door control person to be vigilant and, following this occurrence, he terminated that person's employment.

He acknowledged that one answer to this could be to employ more staff. However, he stated that this is not a money making business and that he is just trying to break even. For the most part, his sales are glasses of beer at \$1.50 each. He stated that if it was not for the one year left on the lease, he would relocate. He has had the business for sale for years and has not had any offers.

Mr. Afshari submitted that the monetary penalty of \$1,000 was too high for this location. He also submitted that a one day licence suspension, falling on a Friday, would be even more onerous because he could lose patrons in addition to the loss of revenue. He asked me to consider something less than \$1,000.

Penalty

Pursuant to ss. 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 license or rescind or amend existing terms and conditions
- impose a monetary penalty
- order a licensee to transfer a license

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*.

It appears that the licensee did not fully understand the jurisdiction of the general manager in imposing penalties. While I have an option, in exceptional circumstances, of imposing no penalty, I do not have the option of imposing a penalty that is less than the minimums required by the Regulation.

I find that there are no exceptional circumstances in this case to warrant not imposing a penalty. The licensee has had contravention notices or warnings issued for similar occurrences over the past year. The licensee has attended a compliance meeting with the branch to discuss the problem of minors and the need to check identification. While I may have some sympathy with the licensee for the number of difficulties he encounters in this area of town, the nature of the area does not in any way lessen the importance of ensuring that minors do not frequent the liquor primary establishments. The legislature has spoken in clear terms about the seriousness of this contravention and the penalties that are to be enforced. If there are further contraventions within a year, the penalties increase: for a second contravention, the penalty is 3 to 6 days licence suspension; for a third contravention, the penalty is 6 to 9 days licence suspension.

As noted above, this is considered to be a first contravention. I have given weight to the compliance history only to the extent that it demonstrates the branch has told the licensee in the past of concerns about minors and checking for identification.

Order

Pursuant to section 20(2) of the *Act*, concerning licence No. 004141, for the contravention on July 11, 2003, failure to request identification from a person appearing to be under the age of 25 years, contrary to section 45(2) of the Regulations, I order Man Kei Enterprises Ltd. to pay a monetary penalty of \$1,000, to be paid no later than November 30, 2003.

Original signed by

Enforcement Hearing Adjudicator

DATE: October 10, 2003

cc: Vancouver Police Department

Liquor Control and Licensing Branch, Vancouver Office
Attention: Wendy Jones, Regional Manager

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