

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE B 8 MARCH 2022

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE B HELD ON TUESDAY 8 MARCH 2022 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Diane Donaldson in the Chair;

Councillors Mike Sharpe and Adam Higgs.

ALSO PRESENT

Bhapinder Nandhra – Licensing Section
Joanne Swampillai – Legal Services
Katy Townshend – Committee Services

(Other officers were also present for web streaming purposes but were not actively participating in the meeting)

1/080322 **NOTICE OF RECORDING/WEBCAST**

The Chairman advised, and the Committee noted, that this meeting would be webcast for live or subsequent broadcast via the Council's Internet site (www.civico.net/birmingham) and that members of the press/public would record and take photographs except where there are confidential or exempt items.

2/080322 **DECLARATION OF INTERESTS**

Members were reminded that they must declare all relevant and pecuniary and non-pecuniary interests arising from any business to be discussed at this meeting. If a disclosable pecuniary interest is declared a Member must not speak or take part in that agenda item. Any declarations will be recorded in the minutes of the meeting.

There were no interests declared.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/080322 No apologies were submitted.

MINUTES

4/080322 The Minutes of the meeting held on 5 October 2021 at 1000 hours and 5 October 2021 at 1200 hours were circulated, and confirmed and signed by the Chairman.

LICENSING ACT 2003 PREMISES LICENCE – REVIEW – B&G WINES (T/A MAX CONVEIENCE STORE), 135 MONYHULL HALL ROAD, BIRMINGHAM, B30 3QG.

On Behalf of the Applicant

Martin Williams – TS (Trading Standards)

On behalf of those making representations

Chris Jones – WMP (West Midlands Police)
Gary Callaghan – LEO (Licensing Enforcement Officer, BCC)

The Premises Licence Holder did not attend.

* * *

The Chairman introduced the Members and officers present and the Chair asked if there were any preliminary points for the Sub-Committee to consider.

The Chairman then explained the hearing procedure prior to inviting the Licensing Officer, Bhapinder Nandhra, to outline the report.

The Chair invited the applicant to make their submission and Martin Williams, TS made the following statements: -

- a) That TS received a complaint from the public on 11th December 2021. They said they had purchased a fake bottle of wine from the premises. The Yellow Tail Chardonnay did not taste as it should have.
- b) The customer went back to the store and the worker wouldn't help or listen to the customer and an argument broke out.
- c) Officers from TS and WMP visited the premises to follow up the complaint.
- d) The trading name of the store was different to that on the licence.
- e) The man behind the till was not the PLH but was an employee in charge at the time.
- f) The employee called his wife from upstairs to assist him.

Licensing Sub-Committee B – 8 March 2022

- g) The officers explained to the employee why they were visiting.
- h) Paul Ellson gave him a notice explaining their powers and rights.
- i) They checked the alcohol on display and found 4 bottles of counterfeit Yellow Tail wine which was on display at the front of the shop. They also found other Yellow Tail wine in the storeroom that was counterfeit.
- j) They removed the bottles for inspection, and they were confirmed by the brand holder to be counterfeit.
- k) In total 12 bottles were seized from the shop.
- l) The inspection took place on 13 December 2021.
- m) The consumer bottles were also confirmed to be counterfeit.
- n) It was difficult to assess how much counterfeit wine had already been sold.
- o) Yellow Tail counterfeit wine had been in supply for over a year now, and they only responded to complaints or issues so it could have been going on for some time.
- p) Sometimes people didn't complain, they just switched brands and that would damage the brand reputation.
- q) Counterfeit wines also had the potential to be harmful.
- r) The product was confirmed to be of lesser quality but was not harmful.
- s) They had gone up the chain to try and stop the issues, but still some bottles remained in the hands of suppliers and retailed.
- t) The investigation had shown that no counterfeit products were in the hands of genuine suppliers. The products were sold by organised criminal gangs.
- u) Any retailers buying the products would be aware of their source, no tax.
- v) Further the premises had no previous history of complaints.
- w) The employee was clearly more than just an employee as EH (Environmental Health) had received a new business operator application on 14 May 2021 and his name was down as the sole trader at the time.
- x) Due to the poor management, irresponsible attitude and no contact from the premises TS wanted the Committee to consider the range of options available to them.
- y) The only contact they had received was from a representative who emailed on 3rd March that he was concerned he had purchased counterfeit products and wanted his money back.

The Chairman then invited Chris Jones WMP to make his submissions and he made the following statements: -

- a) That on 13 December 2021 officers visited the premises and recovered 12 bottles of counterfeit branded wine which was found in different areas of the shop.
- b) From his experience the fact the bottles were in different places in the premises would suggest they were left over bottles from a bigger amount. Cases are usually sold out the back of a van, and they were not usually split.
- c) The brand owner confirmed that they bottles were all counterfeit.
- d) The complaint was that the wine didn't taste right. The customer returned to the shop to tell them, and they would not take any responsibility or look into the complaint.
- e) The purchase and sale of counterfeit products cannot be made without knowing as the products were usually paid for in cash, non-duty paid or tax. Therefore, it wasn't usually included in the company accounts.
- f) He did some research on the internet about the impact of fraudulent sales of alcohol. Crime Stoppers stated that it cost the government millions yearly.
- g) Luckily the products weren't harmful.
- h) Customers believed the products to be from a well-known brand and then it was nothing like the expected. Brand customers believed they were buying a genuine product and it resulted in a negative effect for the brand; reduced sales, possibly putting jobs at risk.
- i) Other retailers couldn't compete because prices were usually much cheaper.
- j) The general public were impacted as no tax was being paid and it was taking money from public funds.
- k) WMP recommended revocation.

Gary Callaghan was then invited to make his submission and he made the following statements: -

- a) From a Licensing perspective they had serious concerns in respect of this premises.
- b) The alcohol was purchased knowingly, wasn't from a cash and carry and therefore no tax or duty was paid on the products. The premises were simply trying to maximise profits.

Licensing Sub-Committee B – 8 March 2022

- c) The public had an expectation that the products were fit for consumption, yet the premises wouldn't have known whether it was safe when they purchased it.
- d) The PLH had fallen well below the standard expected by a licence holder.
- e) They were also not sure who was running the premises or who was responsible, no transfer had taken place.
- f) Licensing Enforcement had serious concerns.
- g) The Committee should consider all options available to them, however, he strongly recommended revocation as the appropriate action.

The Chairman invited all parties to make a closing submission, all parties made a closing statement: -

Gary Callaghan: -

- It was clear alcohol was purchased from a non-legitimate source and the only thing to do was revoke the licence.

Chris Jones: -

- The purchase and subsequent sale was a deliberate act to maximise profits, and by doing so they had not promoted the licensing objectives.
- The premises put profit above legal and moral responsibilities.
- They had no confidence in the premises therefore their recommendation was to revoke the licence.

Martin Williams: -

- That he had no confidence in both parties involved in running the premises.

The Members, Committee Lawyer and Committee Manager conducted the deliberations in a separate private session and the decision of the Sub-Committee was announced and a copy of that decision was sent to all parties as follows;

5/080322

RESOLVED:-

That, having reviewed the premises licence held under the Licensing Act 2003 by Mr Veergathipillai Uthayasooriya in respect of B & G Wines (trading as Max Convenience Store), 135 Monyhull Hall Road, Birmingham B30 3QG, upon the application of the Chief Officer of Weights and Measures, this Sub-Committee hereby determines

- that the Licence be revoked, and
- that Mr Veergathipillai Uthayasooriya be removed as designated premises supervisor

in order to promote the licensing objectives in the Act - namely the prevention of crime and disorder, and public safety.

The Sub-Committee's reasons for revoking the licence and removing the designated premises supervisor are due to concerns expressed on behalf of the Chief Inspector of Weights and Measures, as outlined fully in the Report.

At the start of the meeting the Senior Licensing Officer informed the Sub-Committee that the licence holder Mr Gurparkash Nijjar had surrendered the licence; thereafter Mr Veergathipillai Uthayasooriya had made an application to transfer the licence into his name, and also was to be the named designated premises supervisor. Under ss42 and 43 of the Licensing Act 2003, such an application took effect immediately. The Sub-Committee therefore noted that Mr Uthayasooriya was both the licence holder and the designated premises supervisor for the premises.

Both Mr Nijjar and Mr Uthayasooriya were invited to attend the meeting. Neither of them did, and neither of them were represented.

The Report summarised the background to the incident. An officer of the Trading Standards department of the City Council also attended the meeting and told the Sub-Committee about the bottles of counterfeit alcohol which had been discovered during an inspection of the premises carried out by Trading Standards officers in December 2021.

The need for an inspection had arisen after a member of the public, who had purchased alcohol from the premises, contacted Trading Standards to report his concerns that the alcohol, namely 'Yellow Tail' branded wine, was not the genuine product. This person had tried to raise this as a complaint directly with the shop, but said that "the man had refused to listen". In due course, an investigation confirmed that the branded wine was indeed counterfeit, yet had been sold by the premises as the legitimate product. Twelve counterfeit bottles were seized from the shop; this was in addition to the counterfeit bottle already sold to the customer who had reported it.

Trading Standards advised the Sub-Committee that counterfeit alcohol subverts the normal supply chains of legitimate trade, as it is controlled by criminal organisations who seek to maximise profit by avoiding legitimate controls and systems. It is worse than "non-duty paid" alcohol, as it is specifically manufactured to look like genuine brands, and therefore to mislead consumers into making purchases of substandard products. (It should of course be noted that no duty will have been paid on the products either).

It was the recommendation of Trading Standards that the Sub-Committee should look at all options when making their decision, and in particular that the Sub-Committee should ensure that there was confidence that the management of the shop would not engage in, and encourage, criminal activity; criminal activity affected not only the citizens of Birmingham, but also respectable businesses and companies. Trading Standards confirmed that they had no confidence in either Mr Nijjar or Mr Uthayasooriya.

The Sub-Committee noted that the person on duty in the shop at the time of the inspection had been Mr Uthayasooriya; moreover, whilst dealing with the officers, he had called his wife to come downstairs from the flat situated directly above the premises. Whilst he had described himself as an 'employee' to officers, the Sub-Committee noted from the Report that in May 2021, which was seven months before the date of the inspection, Mr Uthayasooriya had submitted a new Food Business Operator application to the City Council in his own name; on this application, he had described himself as a sole trader.

The application for review was fully endorsed by West Midlands Police. The Police advised the Sub-Committee that usually the purchase and sale of counterfeit alcohol is made via cash transactions, and often "from the back of a van" - therefore with no traceability, and of course no UK duty being paid. Traders acting unscrupulously in purchasing counterfeit alcohol cannot have any idea of the provenance of such alcohol, or even if it is fit for human consumption. The Sub-Committee considered that the only intention behind such practices was to maximise profit by tricking consumers. This was directly in contravention of the licensing objectives of the prevention of crime and disorder, and public safety.

The Police also observed that the victim in the sale of counterfeit alcohol is not only the consumer, but the brand itself. These underground activities cause damage to the 'Yellow Tail Wine Company' brand, destroying consumer confidence in their products and putting their business at risk in these uncertain times. It also affected the livelihood of legitimate traders in the vicinity; they would find themselves disadvantaged and unable to compete with a premises which was not supplying genuine duty-paid products. The Sub-Committee agreed that counterfeit products damaged the reputation of successful businesses; as such they took a very dim view of it.

West Midlands Police made representations advising that the licence should be revoked as the premises had demonstrated that it prioritised profit over the upholding of the licensing objectives. These views were endorsed by Licensing Enforcement, who attended the meeting and informed the Sub-Committee that the style of trading shown fell far below the standard expected. Licensing Enforcement also recommended that the correct course was revocation of the licence.

The Sub-Committee had grave concerns about the manner in which this premises had been operating, and agreed with Trading Standards that the operation had been managed in a way that was not merely irresponsible, but also illegal.

After hearing all the evidence, the Sub-Committee determined that the purchase and sale of counterfeit alcohol was indeed so serious that it could not be tolerated, and therefore resolved to revoke the licence as recommended by the responsible authorities. The actions of those at the premises did not inspire any confidence whatsoever that they understood the licensing objectives. The Sub-Committee agreed with Trading Standards that it was impossible to have any confidence that either person was capable of upholding the licensing objectives. The Police and Licensing Enforcement had endorsed all the submissions made by Trading Standards.

The Members of the Sub-Committee gave consideration as to whether they could modify the conditions of the licence, or suspend the licence for a specified period, but were not satisfied, given the evidence submitted, that the licensing objectives would be properly promoted following any such determination, for the reasons set out above.

A determination to revoke and to remove the designated premises supervisor would follow the Guidance issued by the Secretary of State under section 182 of the Licensing Act 2003. There were no compelling reasons to depart from the Guidance on this occasion. To take some other course (other than revocation and removal of the designated premises supervisor) ran the risk of sending a message that sales of counterfeit alcohol were not a serious matter, or that there would be no consequences for such a failure, which the Sub-Committee was not prepared to do.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the Guidance issued under s182 of the Licensing Act 2003 by the Secretary of State, the application for review, the written representations received and the submissions made at the hearing by those representing the Chief Inspector of Weights & Measures, West Midlands Police, and Licensing Enforcement.

All parties are reminded that under the provisions contained within Schedule 5 to the Licensing Act 2003, there is the right of appeal against the decision of the Licensing Authority to the Magistrates' Court, such an appeal to be made within twenty-one days of the date of notification of the decision.

The determination of the Sub-Committee does not have effect until the end of the twenty-one day period for appealing against the decision or, if the decision is appealed against, until the determination of the appeal.

The meeting ended at 1038 hours.