

Minutes of Licensing Panel 1

9th February 2016 at 1.00pm
at the Sandwell Council House, Oldbury

Members in attendance: Councillor Allen (Chair);
Councillors Lewis and Tranter.

Matters Delegated to the Panel

4/16

Minutes

Resolved that the minutes of the meeting held on 14th January, 2016 be confirmed as a correct record.

5/16

Application for a review of the Premises Licence in respect of Mariwan Limited t/a Sklep Europa, 8-10 Carters Green, West Bromwich, B70 9LW

Present: David Elliott (Local Authority Solicitor);

Following a request from the representative for the Premises License Holder consideration of this matter was adjourned to the 7th March 2016.

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6/16

Application for a review of the Premises Licence in respect of Inter Food and Wine, 386-388 Bearwood Road, Smethwick, B66 4EX

Present: Aron Goode (Licensing Manager);
Bob Cooper (Trading Standards);
Heath Thomas (Representing the applicant);
Hassan Tekdemir (Designated premises Supervisor);
Hayri Yucetas (Business Partner);
David Elliott (Local Authority Solicitor).

The Panel considered an application from Sandwell Trading Standards for a review of the Premises Licence in respect of Inter Food and Wine, 386-388 Bearwood Road, Smethwick, B66 4EX on the grounds of prevention of crime and disorder.

The premises had been the subject of a review in January 2009 following the sale of alcohol to an underage person during a test purchase exercise. At that time nine conditions were added to the licence.

Since 3rd September 2015 Demirtas Ltd had held the Premises Licence. The Designated Premises Supervisor was Mr Hasan Tekdemir.

On 10th October 2015, Inter Food, 386-388 Bearwood Road, Smethwick was visited as part of an intelligence led investigation into the sale and supply of illicit tobacco from retail premises. The visit involved the use of specialist tobacco detection dogs; the premises was also inspected for counterfeit or illicit alcohol.

Officers arrived at the premises and introduced themselves to the sales assistant, Huseyin Tekdemir. Mr Tekdemir advised there were no illicit cigarettes on the premises and the visit commenced with a visual inspection of the sales counter area which concentrated on the alcohol and tobacco displays. A microwave oven was opened and found to contain 2 blue plastic carrier bags inside which were 59 packs of cigarettes of various brands on which no duty had been paid.

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An identical blue plastic carrier bag was also discovered behind the shop counter containing a further 41 packs of illicit cigarettes. The sniffer dog led officers to a cupboard under the sink unit where a secret compartment contained approximately 560 packs of cigarettes on which no duty had been paid. The brands of these cigarettes were identical to those found earlier in the microwave and under the counter. An open cigarette packet was also discovered which contained cannabis leaves, this was found to belong to Huseyin Tekdemir.

A further 14 packs of cigar wraps were found on display adjacent to the tobacco display and neither these nor the cigarettes found previously bore the appropriate UK health and fiscal markings and were therefore considered to be illicit products not intended for supply in the UK. Huseyin Tekdemir offered no explanation for these products being found on the premises.

As a result of these findings Mr Hasan Tekdemir, the Designated Premises Supervisor and a Director of Demirtas Limited, was contacted and invited to interview under caution. Mr Tekdemir explained that he had taken over the business in August 2015 but that shortly afterwards his sister had been taken ill and that he had consequently spent a considerable amount of time away from the shop. During his absence he claimed to have left the shop in charge of his fellow director, Hayri Yusetta and his 19 year old son, Netin. He stated that he had no idea that illicit cigarettes had been stored on the premises and were being offered for sale and that this must have happened during his absence.

The representative for the Designated Premises Supervisor advised the Panel:

- Netin had only worked in the premises for approximately ten weeks and had been approached by a stranger who had visited the shop and offered him the opportunity of making extra money from the sale of illicit cigarettes. Netin had admitted that his intention was to sell the cigarettes to some friends in London, but denied ever selling them on the premises;
- that the interviews had taken place under caution, and the seriousness of the matter had been fully understood by all parties. The representative highlighted Netin appeared to be genuinely remorseful for his actions and the explanation of the three parties interviewed had been consistent;

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- both Mr Tekdemir and Mr Yusetta denied having any knowledge of the illicit cigarettes or their hiding places;
- Netin had been immediately dismissed and had returned to London;
- Netin and the other two staff members had received training with regard to underage customers;
- the cannabis leaves found within a cigarette pack had belonged to Huseyin Tekdemir, again without the knowledge of the business partners. Huseyin Tekdemir had been disciplined in regard to his actions and it had been made clear to him that it was inappropriate. The two other staff members, of which Huseyin Tekdemir was one had not been aware of the actions of Netin;
- as the premises was open between 07:00- 23:00 hours it was extremely difficult for the owners to be on site constantly. Mr Hassan Tekdemir had a part time job, since the business was in the early stages of establishment. Mr Yusetta had responsibility for stocking the premises and in order to obtain desirable stock would travel to London regularly;
- Netin's actions had caused considerable distress to his family. Netin's intentions had not been malicious – he had been tempted by the extra money. Netin was embarrassed and ashamed;
- Mr Yusetta was now retaining all stock receipts to present to the business accountant every three months. This would enable him to produce a paper trail to Trading Standards if requested and evidence that stock had been obtained legitimately;
- the representative for the designated Premises Supervisor requested that the Panel steered clear of the power to revoke the licence, as the premises relied heavily on alcohol sales.

The Panel took advice from its legal advisor before adjourning to consider the matter.

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Having considered the Licensing Officer's report, representations made by all parties and legal advice given by the Local Authority's Solicitor, the Panel was minded to impose revised conditions on to the premises licence in respect of Inter Food and Wine, 386-388 Bearwood Road, Smethwick, B66 4EX.

The reasons for the decision were as follows:-

- to uphold the licensing objectives and, in this particular case, the prevention of crime and disorder;
- the Panel accepted that over 600 packets of non-duty paid packets of cigarettes had been found on licensed premises during a random search. There had been no intelligence complaints, specific or anonymous, and there had been no failed test purchases of non-duty paid tobacco;
- the non-duty paid tobacco was not exposed for sale. However, a large amount had been found on the premises;
- training systems, if in existence, had not been evidenced to the Panel;
- it was noted that the Premises Licence Holder and Designated Premises Supervisor had been in place since 3rd September 2015;
- the explanation offered was that Netin Yucetas had taken it upon himself to store the illicit items at the premises after procuring them from an unidentified stranger, notwithstanding that he knew that he was jeopardising the business;
- on balancing the evidence the Panel, whilst taking a serious view of the circumstances, took the view that the imposition of these additional conditions on this occasion was appropriate and proportionate, particularly taking into account there had been no failed test purchases, no complaints and the tobacco was not exposed for sale, and the Company had not actually been running the premises for long.

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The revised conditions would ensure that staff would be trained with regard to the law relating to illicit alcohol and tobacco, a personal licence holder being present on the premises during all times licensable activities were authorised to take place and that Netin Yucetas would have no involvement with the business.

Resolved the premises licence that in respect of Inter Food and Wine, 386-388 Bearwood Road, Smethwick, B66 4EX be modified with the following revised/additional conditions:-

- Condition 8 will read “Any other staff at the premises are to have documented training covering the law relating to under-age sales and as regards illicit alcohol and tobacco by the DPS/PLH”;
- Condition 9 will be replaced by “A Personal Licence Holder shall be present on the premises during all times licensable activities are authorised to take place”
- Condition 10 will be added stating “Netin Yucetas shall have no involvement with the business at all”.

In making its decision the Panel took into account the Licensing Act itself, the Section 182 Guidance and noted that it must carry out all its functions under the Act with a view to promoting the licensing objectives. It also took into account the Human Rights Act 1998.

All parties would be advised of their right of appeal and should they wish to exercise that right, must do so within 21 days of receiving notice of the decision in writing.

(Meeting ended at 2.20pm)

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