Northern Territory Licensing Commission

Reasons for Decision

Proceeding:	Application to substitute premises pursuant to Section 46A of the *Liquor Act 1978*
Applicant:	Spartacus Pty Ltd
Heard Before:	Mr Peter Allen, Chairman Ms Shirley McKerrow Mr Brian Rees
Date of Hearing:	27 & 28 May 2002
Date of Decision:	24 June 2002
Appearances:	Ms Sue Porter for the Applicant Mr Lex Silvester for Fugitives' Drift Pty Ltd Mr Peter McNabb for Northern Territory Police Mr Peter Wilson assisting the Commission

The application is to substitute the premises of the licence formerly held by Raytom Pty Ltd at the premises titled "Petty Sessions" situated at the ground floor of NT House, corner of Mitchell and Bennett Streets, Darwin, to the premises known as "Blush" situated at 85 Mitchell Street. The applicant is the licensee of Blush.

The applicant is also the holder of the Petty Sessions licence. The transfer of the licence from Raytom Pty Ltd to the applicant was approved by the Chairman as the delegate of the Commission on 21 May 2002. Prior to and at the time of transfer of the Petty Sessions licence, the licence was in suspension having been suspended due to Raytom ceasing to trade on or about 1 October 2001. The Commission suspended the licence on 9 October 2001.

The proceedings was not a hearing pursuant to Part V of the *Liquor Act 1978* but a process adopted by the Commission to assist its investigations; the Commission investigating as is its statutory duty, the proximity of the premises and the public effect of the proposed substitution. The advertisement of the application forms part of the investigative process as do the "notices of hearing" issued to respondents to the advertisement. The notices of hearing represent an invitation to attend and be heard, an opportunity to be taken advantage of if so desired, not a legal right provided by the Act.

The Commission has considered all submissions made in the course of the proceedings and we are positively persuaded by an element of Mr Silvester's submissions that the Commission lacks the powers necessary to dispose of the application by way of s.46A.

Specifically, Mr Silvester argues that s.46A "clearly implies or carries with it the idea that the licensee will be the licensee of a *functional trading premises".* A study of the definitions in the Act is both informative and persuasive. A licensee is defined as a person who holds a licence issued under Part III that is "*in force* for the time being". (Emphasis added).

The Petty Sessions licence is in suspension, pursuant to s.66(1)(c), and a licence which is suspended "*shall have no effect"* until the suspension is revoked; s.66(3) refers. It is the Commission's view that a licence that has *no* effect under the Act must logically be seen to have no force under the Act. The licence nevertheless exists as a licence, not having been cancelled, but is not "in force for the time being" and therefore, can have no statutory effect.

The transfer of the licence from Raytom Pty Ltd to Spartacus Pty Ltd is lawful. The Act enables the application for transfer to be made by the "holder" of a licence, as distinct from a "licensee". Conversely an application for substitution requires the applicant to be a "licensee", which by

definition is not simply the holder of a licence but a holder whose licence has the status of being “in force for the time being”.

It is for these reasons that the Commission is positively persuaded that the holder of a licence that has been suspended cannot be a competent applicant for substitution. Being the holder of the licence is not enough; the licence has to be in force, and a licence under suspension cannot be in force because it is denied any effect as a licence by s.66(3).

The Commission is cognisant that this decision may well leave the applicant as the holder of two licences, one in force for Blush, now known as Madison on Mitchell and one for Petty Sessions, a licence not in force for the time being.

As mindful as we are of the difficulties such a situation may present to the applicant we stand persuaded to the extent that we see no lawful outcome available other than to dismiss the application.

Peter R Allen
Chairman