Northern Territory Licensing Commission

Decision on Penalty

Premises:	Discovery
Licensee:	Rediscover Pty Ltd
Licence Number:	80316240
Complaints:	Complaint Pursuant to Section 48(2) of the *Liquor Act*-Sections 106B and 106C of *Liquor Act*
Heard Before:	Mr Richard O'Sullivan (Chairman) Mr John Brears Mr Wally Grimshaw
Date of Hearing:	20 October 2008
Appearances:	Mr Des Crowe for Licensee Mr Nikolai Christrup for Director of Licensing

Background

1) In its decision of 3 October 2008 in relation to a complaint lodged on behalf of the Director of Licensing ("the Director") the Commission found the complaint of two (2) counts of a breach of Section 106B of the *Liquor Act* ("the Act") proven and one (1) count of a breach of Section 106C of the Act also proven.

2) The breaches occurred on the late hours of 17 November 2007 and the early hours of 18 November 2007 at the Discovery Nightclub. It was proven that a minor referred to as Student A entered the premises and consumed alcohol (in large quantities) and a minor known as Student B entered and purchased alcohol. Both students entered and remained on the premises without questioning from security or other Discovery Nightclub staff.

Matters Taken into Consideration

3) During the hearing on penalty Mr Christrup, Counsel on behalf of the Director, argued that the Licensee was not entitled to a penalty discount as the Licensee had not entered any early guilty plea, had shown little remorse and had falsely postulated that the minors admission into the nightclub may have been enabled by the use of fake ID.

4) It was submitted that the Licensee cannot claim an unblemished record as there have been two (2) prior proven breaches, one relating to conduct of Tequila on Tuesday trading and the other in relation to camera surveillance conditions. The latter, however was overturned by a decision of the Supreme Court.

5) Further, it was submitted that there were also issues with the provision of CCTV footage tapes of the time of the breaches, with the tapes not provided to the Director of Licensing, largely through the fault of the then Nominee and Management of Discovery Nightclub.

6) The defence of how and why minors were able to enter the premises was weak and Mr Christrup referred to a defence of *"they always try to get in"* as not a real or acceptable defence for the breach. The Commission in its decision of 3 October 2008 reaffirmed that the obligation is on the Licensee to prevent minors from entering the premises. The Commission considered this is moreso given the allure such venues place in the minds of minors.

7) Mr Christrup put to the Commission that it should consider the breaches as two (2) separate contraventions of the Act on the one (1) night. The Director has sought a penalty of one (1) month suspension of the licence for the Section 106C offence, supply of liquor to minors and a further one (1) week for each of the Section 106B offences relating to minors unlawfully on premises.

8) In addition the Director has sought that the Commission provide further penalty by requiring, as a licence condition, the Licensee to install an ID system to make it very difficult for minors to enter the premises. This system would also assist in the detection of false or fake ID.

9) Mr Crowe, on behalf of the Licensee, expressed some alarm as to why the Director was seeking a one (1) month penalty for one (1) breach and a further cumulative penalty of two (2) weeks for the other breaches.

10) He advised the Commission that he considered the most recent penalty decision relating to minors on premises at Ducks Nuts was a worse offence, which only resulted in a penalty of two (2) days suspension. In that incident, and to the credit of Discovery, the minors entered Ducks Nuts after being refused entry at Discovery. An aggravating aspect of that breach was that the minors remained on the premises and were served alcohol with the involvement of management and the Nominee. Mr Crowe contended that on this precedent his client warranted a less severe penalty.

11) Mr Crowe stated that an early admission of plea of guilt with relation to Students A and B would have been difficult as it would be a plea based on facts the Licensee was not aware of. There was some confusion over why footage was being sought and the request was not properly processed, nor were the Rediscover Pty Ltd Directors informed at the time. As a result of the Nominee not providing the CCTV footage tapes after being phoned by an Inspector, the Nominee was dismissed by Directors of Rediscover Pty Ltd.

12) He submitted that the incident was not a blatant breach as there were preventative systems in place to detect minors attempting to gain entry.

13) Mr Crowe advised the Commission that the Licensee would accept an appropriate suspension of around two (2) days and he sought this be on two (2) consecutive Mondays. He mentioned that there were contracts in place for entertainment to be provided at Discovery Nightclub on Thursdays, Fridays and Saturdays and the likely cost to be worn if closure occurred on these days would not only be trading losses but likely compensation for entertainment booked on these nights. In excess of forty percent (40%) of weekly revenue is derived from Saturday evening trading with most staff, 40 - 45 employed during this time.

14) Mr Crowe advised the Commission that his client would accept a direction to install an ID system along the lines suggested by Mr Christrup on behalf of the Director. He also sought that the cost of this ID system be taken into account in mitigating any suspension penalty. The ID system referred to by both parties to this penalty hearing is an idEye system provided by ID-Tect Pty Ltd. Mr Crowe advised that the cost of the installation of this system was in the vicinity of $40 000 plus operating and ongoing maintenance costs.

15) Under Section 49(4)(a) of the Act:

Where the Commission conducts a hearing in relation to a complaint pursuant to subsection (2)(c), the Commission may, in addition to any other action the Commission may or is required to take under the provisions of this Act, after that hearing –

(a) amend the conditions of a licence or vary the type of licence.

The Commission in conformity with the Submission on behalf of the Director and the evident agreement of the Licensee, is minded to insert a condition into the liquor licence along the lines of that contained as Annexure A, Exhibit 1, and as approved by the Director.

16) The Commission has carefully weighed up the merits of submissions by both parties and reached a decision on appropriate penalty. While the penalty must be measured to the nature and circumstances of the breach, the Commission is also cognisant of the need to have a general deterrent impact, ie the desired impact of deterring all Licensees from breaching the Act by having minors unlawfully present and consuming alcohol on the premises.

17) The Commission does take into account that the Licensee is now taking the issue of minors on the premises very seriously and consistent with this has, prior to hearing, been considering the introduction of an ID system to minimize the likelihood of minors gaining entry into the licensed premises. It is however, not known whether this consideration of ID was a response to the Director of Licensing undertaking investigations and laying a complaint into the breaches.

18) The Commission was advised that where the ID systems have been introduced in the Territory (Katherine, Alice Springs and Nhulunbuy / East Arnhem) it has been at the cost of government and therefore Rediscover Pty Ltd should be given credit for offering to pay for the ID system at its own cost. The Commission is of the view that ID systems can be a major tool in identifying minors, based on the interstate evidence of success reported in Geelong, Victoria.

19) In considering an appropriate penalty the Commission has weighed up:

- the issues of the gravity of the specific offence;
- the need for a penalty to provide general deterrence;
- the lack of early admission plea;
- the lack of fairness in raising, as a defence, the probability that Students A and B used fake ID to gain entry into the licensed premises;
- the breaches, although on the same evening and early morning, were separate events;
- the non-provision of CCTV footage as sought by an Inspector;
- the lack of prior similar breaches by Discovery;
- the existence of screening measures in place at Discovery Nightclub; and
- the cost to Rediscover Pty Ltd of the introduction of an ID system.

20) In determining penalty the Commission is aware of and has taken into account the financial impact to the Licensee from a combination of suspension and imposition of licence condition to install and operate an ID system of the nature outlined during hearing. The decision to order a trading suspension, inclusive of a Saturday night and install an ID system at an estimated initial capital cost of $40,000, in combination offer considerable financial penalty.

21) A significantly harsher penalty would have been imposed if the Licensee had not agreed to accept a direction to install an ID system.

Decision

22) The Commission re-affirms that it is the Licensee's responsibility to prevent the entry of minors onto the premises and Licensees must have systems in place to prevent this occurring.

23) The Commission suspends the licence of Rediscover Pty Ltd for a full two (2) day trading period inclusive of a Saturday and a further day to be determined by the Director. The suspension is to commence at a time also to be determined by the Director.

24) The Commission requires Rediscover Pty Ltd to introduce an ID system in general conformity to that requested by the Director and for this system to be operative within two (2) months of the date of this decision. This requirement is imposed by way of amendment to the licence of Rediscover Pty Ltd pursuant to Section 49(4)(a) of the Act.

Richard O'Sullivan
Chairman

30 October 2008