

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Tiwi Supermarket
Licence Number:	80903294
Complaint:	Director of Licensing
Hearing:	Complaint pursuant to section 48 of the <i>Liquor Act</i> -Breach of Licence Condition (book up of liquor) contrary to section 110 of the <i>Liquor Act</i>
Heard Before:	Mr John Flynn (Acting Chairman) Mr Paul Costigan Ms Brenda Monaghan
Date of Hearing:	24 February 2005
Date of Decision:	24 February 2005
Appearances:	Complainant: Mr Rob Perry Licensee: Mr Peter Elliot

Background

1. This matter came before the Commission on 24 February 2005 with respect to the hearing of six complaints brought against the licensee of Tiwi Supermarket, Mrs Jannie Grau Mathers –principally relating to allegations of “book-up” of liquor sales.
2. At the commencement of the hearing, Counsel for the licensee, Mr Peter Elliot, indicated that following discussions with Counsel for the Director of Licensing, Mr Rob Perry, his client intended to enter an admission to 4 of the 6 complaints on the intimation from Mr Perry that the remaining 2 complaints would be withdrawn. The hearing proceeded on this basis and complaints 1 and 6 were withdrawn.
3. The remaining complaints 2, 3, 4 and 5 related to allegations that the licensee of the Tiwi Store, through her employees, engaged in the practice of book-up of liquor for customers on four occasions between Saturday, 29 May 2004 and Wednesday, 27 October 2004, contrary to the “Credit” condition of the Tiwi Store liquor licence.
4. The “Credit” condition of the liquor licence 80903294, granted to Ms Jannie Mathers of the Tiwi Supermarket states:

“Without the written consent of the Commission, no liquor shall be sold for consumption off or away from the licensed premises unless payment for the sale shall be made before or at the time of the supply or delivery of the liquor....

“Following the point-of-sale processing of the sale by credit card or debit card, the licensee shall not retain possession of the card or store any data or information taken from or in any way relating to the card except only as may be essential for the purpose of completing the transaction with the licensee’s bank in accordance with normal commercial practice. Without in any way limiting the generality of this requirement, in no circumstances shall the licensee seek to know or record a purchaser’s PIN in relation to any card or bank account.”

5. The complaints can be summarised as follows:
 - 5.1 Complaint 2: About 3.15pm on Saturday, 29 May 2004 an employee of the Tiwi Supermarket sold liquor, being a single 750ml bottle of Melbourne Bitter beer, to Mr Campbell Darwin by way of utilising a credit facility known as "book-up" in that the purchase was recorded in a book retained for the purpose of recording grocery purchases and Mr Campbell's debit card was retained by the store. His Personal Identification Number (PIN) was also known by the storekeeper from previous grocery transactions.
 - 5.2 Complaint 3: About 11.30am on Friday, 4 June 2004 an employee of the Tiwi Supermarket sold liquor, being six 375ml cans of Melbourne Bitter beer, to Ms Kerry Stewart by way of utilising a credit facility known as "book-up" in that the purchase was recorded in a book retained for the purpose of recording grocery purchases and Ms Stewart's debit card was retained by the store. Her PIN was also known by the storekeeper from previous grocery transactions.
 - 5.3 Complaint 4: About 12.10pm on Thursday, 8 July 2004 an employee of the Tiwi Supermarket sold liquor, being one 4 litre cask of Buronga Ridge wine, seven 375ml cans of Melbourne Bitter beer and six 375ml cans of Jim Beam and Cola, to Mr Ignatius Narjic by way of utilising a credit facility known as "book-up" in that the purchase was recorded in a book retained for the purpose of recording grocery purchases and Mr Narjic's debit card was retained by the store. His PIN was also known by the storekeeper from previous grocery transactions.
 - 5.4 Complaint 5: About 1.30pm on Wednesday, 27 October 2004 an employee of the Tiwi Supermarket sold liquor, being six 375ml cans of Jim Beam and Cola and one 4 litre cask of Buronga Ridge wine, to Ms Virginia Barnyala by way of utilising a credit facility known as "book-up" in that the purchase was recorded in a book retained for the purpose of recording grocery purchases and Ms Barnyala's debit card was retained by the store. Her PIN was also known by the storekeeper from previous grocery transactions.
6. At the hearing on 26 February 2004 and following acceptance of the admissions of Complaints 2 to 5, the Commission gave an oral decision through the Acting Chairman, Mr John Flynn. The content of that decision is now provided in writing below.

Reasons for Decision

7. The Commission accepts the plea to breach licence conditions 2, 3, 4, and 5.
8. Had the matter been contested and the breaches found to have occurred, the Commission would have imposed a lengthy suspension.
9. We view the matter of supply of alcohol on book-up to anybody to be a serious breach of the licence conditions, as does the Legislation as emphasised by the recent amendments to the Liquor Act (see Division 2A which commenced on 1 September 2004).
10. We view the suspension as proposed by Mr Perry as being very tolerant or lenient in view of the seriousness of the breach. We note that there was a repeat of the breach after inspectors had been on the premises on the 12th May 2004 and the last breach on 27 October 2004 occurred after the legislation had changed to incorporate the special provisions relating to book-up of liquor. At the very least, we are of the view that there was a complete lack of supervision or direction given by the licensee to her employees.
11. In favour of the Licensee, it can be said that the voluntary suspension in opening hours she has imposed over the past few weeks is commendable, as is the new system ensuring that grocery purchases are individually itemised. These measures are indicative of a responsible attitude and we would sincerely hope that they continue. Mrs Mathers has also provided us with glowing references as to her honesty and integrity.

12. We view the suspension proposed jointly by the parties as being exceedingly light and instead suspend the licence for a period of one week from Thursday 24th March 2005 to Wednesday 30th March 2005 inconclusive.

John Flynn
Acting Chairman