

**Liquor Commission of Western Australia
(*Liquor Control Act 1988*)**

Applicant: Commissioner of Police
(*represented by Mr David Leigh Of State Solicitors Office*)

Respondents: Red Cee Pty Ltd
Winter Holdings (WA) Pty Ltd
(*both represented by Mr Peter Fraser of Dwyer Durack Lawyers*)

White Dee Pty Ltd
(*represented by Mr Jon Sainken, Director*)

Commission: Mr Jim Freemantle (Chairperson)
Mr Seamus Rafferty (Deputy Chairperson)
Ms Helen Cogan (Member)

Matter: Complaint for disciplinary action pursuant to
section 95 of the *Liquor Control Act 1988*

Premises: Club Red Sea
85 Rokeby Road
Subiaco

Date of Determination: 7 March 2014
(On papers)

Determination:

- (1) Pursuant to section 96(1)(m) of the *Liquor Control Act 1988*, the respondent is to pay a monetary penalty of \$10,000 and shall lodge within 30 days of the date of this determination evidence of payment of the penalty.
- (2) The conditions set out in paragraph 9.5 of this determination are imposed on the licence either as additional conditions or variations to the existing conditions.

Background

1. On 14 December 2012, the Commissioner of Police ("the Police") lodged a section 95 complaint with the Liquor Commission ("the Commission") against the respondent companies constituting the licensee of the Premises (nightclub licence number 607007492) alleging breaches of section 95 of the *Liquor Control Act 1988* ("the Act") and asserting that there was a proper cause for disciplinary action.
2. On 4 January 2013, the Police lodged an addendum to the complaint lodged on 10 December 2012 alleging a further breach of section 95 of the Act and asserting there was proper cause for disciplinary action.
3. The complaint and its addendum related to alleged breaches by the Licensee which occurred prior to 28 May 2013 when a transfer of the licence took place from the Licensee to Red Cee Pty Ltd and Winter Holdings (WA) Pty Ltd ("the Current Licensees").
4. Lengthy discussions between the Police and the Current Licensees (only) resulted in a Minute of Consent Order executed on behalf of the Complainant and the Respondent dated 21 November 2013 which was lodged with the Commission.
5. The parties acknowledge that for some time prior to and following the transfer of the licence on 28 May 2013 neither White Dee Pty Ltd nor the directors or shareholders of White Dee Pty Ltd have had any involvement with the liquor licence for the premises or alternatively the operation and management of the premises.

Submissions on issue of no adverse findings against White Dee Pty Ltd

6. On 4 December 2013, the Commission wrote to the parties requesting submissions in relation to the issue of no adverse findings to be recorded against White Dee Pty Ltd. This issue had been noted by Mr Fraser in his letter dated 26 November 2013 to the Commission.
7. On 20 January 2014, White Dee Pty Ltd lodged lengthy and detailed submissions in relation to the issue of no adverse findings to be recorded against White Dee Pty Ltd. These submissions went into detail concerning the relationship and dealings between the licensee White Dee Pty Ltd and the current licensees and asserting essentially that the continuing presence of White Dee Pty Ltd as a licensee prior to the transfer of the licence on 28 May 2013 was an unfortunate technicality due largely to long delays in structuring new lease provisions between Winter Holdings (WA) Pty Ltd and the landlord of the premises, negotiating the machinations of the Act and satisfying the requirements of the Liquor Licensing Division.
8. On 29 January 2013, the Police lodged lengthy and detailed submissions in relation to the issue of no adverse findings to be recorded against White Dee Pty Ltd, stating in essence that the only relevant issue was that White Dee Pty Ltd was a constituent of the licensee at all relevant times.

Determination

9. The Commission has considered the submissions made in relation to the issue of no adverse findings to be recorded against White Dee Pty Ltd and finds that:
 - 9.1 the submissions made on behalf of White Dee Pty Ltd in relation to the discussions concerning internal matters between the 3 companies constituting the licensee and the current licensee are not relevant to the issue of whether any order can be made by the Commission in relation to the licensee in respect of the alleged breaches which took place between July 2009 and September 2012 at a time when White Dee Pty Ltd and the current licensees constituted the licensee. Put simply, White Dee Pty Ltd was a constituent part of the Licensee at the relevant times referred to in the complaint.
 - 9.2 The submission made by the Police that a ground of complaint which alleges that a licensee has contravened a requirement of the Act, can only be made against all of the persons who jointly hold the single, indivisible liquor licence, is persuasive.
 - 9.3 Accordingly, the Commission rejects the assertion by White Dee Pty Ltd to make no findings against it as a part of these disciplinary proceedings on the basis that it did not have “effective control” after June 2009.
 - 9.4 On the balance of probabilities and as conceded by the current licensee’s grounds 1, 2, 3 and 4 of the complaint are made out and there is proper cause for disciplinary action in respect of those grounds. Allegations in respect of grounds 5 and 6 of the complaint have been withdrawn.
 - 9.5 The Commission is satisfied that the complaint can be properly disposed of by imposing a monetary penalty \$10,000 pursuant to section 96(1)(m) of the Act. Furthermore, in accordance with the Minute of Consent Orders lodged with the Commission and pursuant to section 96(1)(b) and (c) of the Act, the Commission imposes the following conditions on the licence either as additional conditions or variations to existing conditions as is required:

Entirety of the Premises

- a. In respect of the entirety of the premises:

Crowd Controllers

- i. Crowd controllers, licensed under the *Securities and Related Activities (Control) Act 1996*, are to be employed at a ratio of three (3) crowd controllers for the first 100 patrons, and one crowd controller for each additional 50 patrons or part thereof.
- ii. The licensee is required to only engage crowd controllers who have successfully completed a course of training in responsible practices in the sale, supply and service of liquor recognised by

the Licensing Authority (i.e. the nationally accredited Provide Responsible Service of Alcohol (SITHFAB009A).

- iii. Security personnel/crowd controllers (licensed under the *Securities and Related Activities (Control) Act 1996*), are to be present to monitor the licensed premises and the behaviour of patrons arriving and departing the premises from 8pm (or the time of opening the premises if after 8pm), until one (1) hour after trading ceases. While these personnel have no authority over the patrons when they are away from the licensed premises, their presence may assist in the orderly dissipation of patrons once they leave the premises.
- iv. Crowd controllers are required to wear a high visibility-style uniform.

Metal Detector

- v. Walk-through metal detector, satisfactory to the Commissioner of Police or his delegate, must be installed at the entries to the Premises.
- vi. The walk-through metal detectors must be in operation at all times when the Premises is trading, and must be used to screen every person entering the Premises.
- vii. Every activation of the walk-through metal detectors must be investigated to positively identify the cause of the activation.
- viii. Investigation of each activation of the walk-through metal detectors shall be carried out by requesting the person who caused the activation to remove metallic objects from their person, and undergo a further scan using a hand held metal detector.
- ix. Any person found to be carrying an offensive/illegal weapon, or who refuses to identify the source of an activation of a walk-through metal detector when requested, or who declines to be scanned by passing through a walk-through metal detector, must be refused entry to the Premises.
- x. In the event that the walk-through metal detectors are not operational, all persons entering the Premises must be scanned at the entrance with hand held metal detectors.

- xi. All hand held detectors used must be approved by the Commissioner of Police or his Delegate.
- xii. Every activation of the hand held metal detectors must be investigated to positively identify the cause of the activation. This shall be done by requesting the person who caused the activation of the hand held metal detector to remove metallic objects from their person and undergo a further scan utilising the hand held metal detectors.
- xiii. Any person who is found to be carrying an offensive/illegal weapon, or who refuses to identify the source of an activation of a hand held metal detector when requested, or who declines to be further scanned by a hand held metal detector, must be refused entry to the Premises.
- xiv. All refusals of entry to the Premises must be recorded in the incident register maintained by the licensee.
- xv. The incident register must be in a format approved in writing by the Commissioner of Police or his delegate.

Video Surveillance System

- xvi. A video surveillance system must be in place and operational. The system must comply with the minimum requirements identified in the "Minimum Standards – Closed Circuit Television ("CCTV) Security System" Policy or with requirements otherwise approved by the licensing authority. In accordance with the Policy, it is expected that this system will provide and record continuous images of the entrances to the premises from 8pm (or the time of opening the premises if after 8pm), until 1 hour after trading ceases.
- xvii. Images recorded by the CCTV video surveillance system must be retained for a minimum of 30 days and the licensee shall ensure that no person is able to delete or alter any recordings within 30 days. The licensee must make images recorded by the CCTV surveillance system available for viewing or removal by the Police or other persons authorised by the Director.

Other conditions

- xviii. In addition to the two unrestricted managers currently required under the conditions of the licence, the licensee shall ensure that

a person designated as a Responsible Service of Liquor Marshall ("RSA Marshall") shall be employed at all times the premises is open for trade. The RSA Marshall is to monitor both staff and patron behaviour to ensure that responsible service of liquor practices are being followed and that liquor is being consumed responsibly.

xix. The provisions of Section 112 of the Act are varied so that no liquor may be supplied or consumed on the licensed premises outside of the permitted trading hours, except in accordance with the provisions of Section 112(1) (a).

xx. On a day other than Sunday, patrons are prohibited from entering and re-entering the premises after 3am.

Club Red Sea

b. In respect of that portion of the Premises trading as "Club Red Sea" (being the second floor of the Premises, ordinarily accessed from Rokeby Road):

i. The maximum number of persons permitted on the second floor of the Premises is 200 persons at any one time or such lesser number imposed by the City of Subiaco under the *Health (Public Buildings) Regulations 1992 (Certificate of Approval)*.

ii. The licensee shall not sell or supply liquor for consumption on the licensed premises:

(1) in any glass, can, bottle or other container ("vessel(s)") with a measurement capacity exceeding 750mls.

(2) being spirits or spirit-based beverages, in vessels with a measurement and capacity exceeding 425mls;

(3) in short or tall tumbler glasses, unless served in polycarbonate glassware.

(4) after 01:30am in non-standard measures of spirits or liqueurs (i.e. no more than 50mls of spirits, liqueurs, or combinations of spirits and liqueurs) in any one vessel.

(5) presented in such a way that would encourage the rapid consumption of liquor (for example, but not limited to,

unadulterated spirits or liqueurs in a shot glass, or a 30ml serve of unadulterated spirits or liqueurs in any vessel); or

(6) by virtue of their emotive title, such as laybacks, shooters, test tubes, jelly shots, blasters or bombs.

Gold Bar

c. In respect of that portion of the Premises trading as “Gold Bar” (being the first floor of the Premises, ordinarily accessed from the rear of the Premises via an external staircase):

i. The maximum number of persons permitted on the first floor of the Premises is 150 persons at any one time or such lesser number imposed by the City of Subiaco under the *Health (Public Buildings) Regulations 1992* (Certificate of Approval).

ii. The licensee shall not sell or supply liquor for consumption on the Premises:

- (1) in any glass, can, bottle or other container (“vessel(s)”) with a measurement capacity exceeding 750mls;
- (2) presented in such a way that would encourage the rapid consumption of liquor (for example, but not limited to, unadulterated spirits or liqueur in a shot glass, or a 30ml serve of unadulterated spirits or liqueur in any vessel); or
- (3) by virtue of their emotive title, such as laybacks, shooters, test tubes, jelly shots, blasters or bombs.

iii. Premium Champagne, wines, spirits and cocktails must be available for purchase during all hours of trade.

iv. A strict dress code is to be in operation at all times. Such dress code shall include a prohibition on T-shirts, and male sandals or male open shoes.

v. Pre-mixed ready to drink liquor, such as (but not limited to) Jack Daniels and Coke, Jim Beam and Coke, Bundaberg Rum and Coke and UDL vodka mixers are not permitted to be served upon the Premises.

vi. The following styles of music are not permitted to be played upon the Premises:

- (1) non-commercial rap;

(2) drunk; and

(3) non-commercial rhythm and blues

where the reference to non-commercial is a reference to music which is not played on commercial radio stations.

A handwritten signature in dark ink, appearing to read "Jim Freeman". The signature is stylized with a large, looped initial "J" and a horizontal line extending to the right.

JIM FREEMANTLE
CHAIRPERSON