

IN THE MATTER

of the Sale of Liquor Act 1989

AND

IN THE MATTER

of an application by **GEM OFFICE SUPPLIES LIMITED** pursuant to s.41 of the Act for renewal of an off-licence in respect of premises situated at 27 Morningside Drive, St Luke's, Auckland known as "Gem Office Products Depot"

BEFORE THE ALCOHOL REGULATORY AND LICENSING AUTHORITY

Chairman: District Court Judge J D Hole

Member: Ms J D Moorhead

HEARING at AUCKLAND on 22 August 2014

APPEARANCES

Mr G P Goulding and Mr D M Poole – agents for the applicant

Mr S G Galvin – Auckland District Licensing Inspector – in opposition

RESERVED DECISION OF THE AUTHORITY

Introduction

[1] This decision relates to an application dated 30 September 2013 for the renewal of an off-licence in respect of premises at 27 Morningside Drive, St Luke's, Auckland known as "Gem Office Products Depot". The business trades as an office products and supplies retailer. The hours authorised for the sale of liquor are between 8.30 am and 5.00 pm Monday to Friday inclusive.

[2] A waiver in terms of s.111 of the Act is granted in respect of the following matters:-

- (a) The correct name of the licensee is "Gem Office Supplies Limited";
- (b) The application recorded David Michael Poole (Gem Office Products Depot) as the applicant;
- (c) The public notice recorded the applicant as "Gem Office Products Depot Limited".

[3] It is accepted that the application and public notice should have recorded the applicant as "Gem Office Supplies Limited". The deficiency was not wilful.

Reporting Agencies

[4] Neither the Police nor the Medical Officer of Health opposed the application.

[5] The Inspector did oppose the application. He claimed that the applicant was not entitled to an off-licence in terms of s.36(2)(b) of the Act as, in his opinion, the sale of liquor was not an appropriate complement to the kinds of goods sold in the premises.

Authority's Decision and Reasons

[6] *Prima facie* the applicant does not come within any of the types of premises in respect of which off-licences may be granted. These are set out in s.36 of the Act.

[7] However, the applicant argued that it was entitled to an off-licence by virtue of s.36(2)(b) of the Act. This entitles the Authority or a District Licensing Agency to grant an off-licence in respect of premises if the Authority or District Licensing Agency is satisfied “(b) *that the sale of liquor would be an appropriate complement to the kind of goods sold in the premises*”.

[8] The applicant is an office products supply company. Its sales take place off the premises. Most of the products sold are stationery and office supply products and equipment.

[9] It also sells cafeteria and cleaning products and included in this category are fruit juices and other non alcoholic drinks. Cafeteria and cleaning products constitute approximately 7.6% of total revenue and the non-alcoholic drinks constitute approximately 4% of total revenue. Thus, the sale of non-alcoholic drinks constitutes a very small proportion of the total revenue. It was with reference to these products that the applicant claimed that alcohol was a complement.

[10] The applicant argued that it was developing its business into a “*one-stop shop*” for its customers. Thus, a business might order various office supplies and in the process could include non-alcoholic drinks and alcohol. The sale of alcohol together with the other products constituted a convenience or service supplied by the applicant to its customers.

[11] The original licence was granted without opposition by the then Auckland District Licensing Agency. This decision relates to the first renewal of the licence. The business carried on pursuant to the licence was undertaken by the applicant on a trial basis to ascertain if there was a market for the sale of “complementary” alcohol. When the licensee discovered that the Inspector doubted that the premises were eligible for an off-licence, sales of alcohol ceased pending this decision.

[12] *Combined Rural Traders Society Limited v Batcheler and ors*, CIV-2008-409-1813 involved an application by a stock and station agency at Ashburton which sought to sell beer, wine and spirits from the site in conjunction with a range of rural merchandise of the type one normally associates with the agricultural industry. Several hundred different rural product lines were involved. The High Court on appeal concluded that the sale of alcohol was not an appropriate complement to the kind of goods sold in the premises.

[13] The argument for the appellant in that case was similar to that of the applicant here. Both argued that the sale of alcohol would constitute a convenience or service to customers. The High Court confirmed that in terms of s.36(2)(b) convenience or service is not the test. It is the kind of goods that is relevant. See also *The Warehouse Limited* [2008] NZLLA 1673.

[14] In this case, the sale of alcohol has nothing to do with the kind of goods sold by the applicant. Non-alcoholic drinks constitute a very small part of the overall business of the applicant. The vast majority of products sold by the applicant have nothing to do with alcohol.

[15] Accordingly, the application cannot be granted because the applicant's business does not qualify for an off-licence. The application is refused.

DATED at WELLINGTON this 23rd day of September 2014

A E Cannell
Deputy Secretary