

Committee(s):	Date(s):	Item no.
Licensing	29 July 2015	
Subject: Legal Proceedings against 'Viet Café'	Public	
Report of: Director of Markets and Consumer Protection	For Information	
<p><u>Summary</u></p> <p>This report outlines the steps taken by the licensing team on discovering offences committed by a premises in Eastcheap.</p> <p>The offences concerned selling alcohol without the correct authorisation contrary to s.136 of the Licensing Act 2003. The premises licence had previously been suspended for non-payment of their licence fee and they were in breach of a mandatory condition in that they refused to supply tap water.</p> <p>The matter was taken to court and the licence holder (a limited company) and the Designated Premises Supervisor received between them fines and costs totalling £5,589.</p> <p>Recommendations</p> <p>Members are invited to note the contents of this report.</p>		

Main Report

Background

1. On 4 September 2013 two licensing officers visited the premises of Viet Café, 20 Eastcheap. The purpose of the visit was to ascertain if the premises were selling alcohol as their premises licence had been suspended on 26 June 2012 for non-payment of the annual fee.
2. The premises were suspected of selling alcohol as they were seen by one of the officers on a television programme that was looking at the problems associated with the 'Walkie-Talkie' building. The premises happened to appear in one of the screen shots and wine glasses could be clearly seen on the tables.
3. During the visit officers noticed bottles of beer available for self service in a refrigerator and purchased two. An offence had now been committed by the licence holder and the designated premises supervisor (DPS) by selling alcohol without the correct authorisation contrary to s.136 of the Licensing Act 2003. Officers cautioned the seller and left the premises with a view to continuing the matter under formal interview.
4. Following a number of attempts to arrange a formal interview the DPS finally attended an interview at Walbrook Wharf on 24 October. He was also representing the licence holder as a director of the company DCHH(UK) Ltd.

The premises licence was transferred to them on 13 August 2013. The interview was stopped early as the licensing officers were not convinced that the DPS could fully understand the questions. He was told that a further date would be arranged with an interpreter present.

5. The second interview was arranged for 4 December 2013 having secured the services of a Vietnamese interpreter.
6. In the meantime, on 14 November 2013 the Licensing Service received a complaint by a member of the public concerning the premises Viet Cafe at 20 Eastcheap. The complainant alleged that whilst ordering a meal he asked three times for some tap water. The premises refused to give him tap water and in fact laughed at him stating that, 'We do not serve tap water here'.
7. On the 28 November 2013 the Licensing Service carried out a test purchase which involved the purchase of a meal. After the food was ordered the officer asked for two glasses of tap water and was told by a member of Viet Café's staff that it was a policy of the restaurant not to serve tap water.
8. The premises' DPS was informed of the refusal to supply tap water and told the matter would also be discussed at interview on 4 December. Refusal to supply tap water is in itself a breach of a mandatory condition thus creating the offence of selling alcohol without the correct authorisation contrary to s.136 of the Licensing Act 2003.
9. The legislation creates a statutory defence for the licence holder and DPS of their actions being due to a mistake, reliance on information from another person, an act or omission by another person or some other cause beyond his control. In addition, it would have to be shown by the licence holder and DPS that they took all reasonable precautions and exercised all due diligence to avoid committing the offence.
10. Following the conclusion of the second interview licensing officers were satisfied that the statutory defence could not be relied upon and that the DPS, and thus the licence holder, were culpable of a number of offences. We were satisfied that the DPS had not told the truth during the interview and in fact had gone to great lengths to present a picture aimed at misleading the licensing officers.
11. As a result, it was decided to instigate legal proceedings and the matter was passed to legal services to take forward. Separate charges were taken against the licence holder and the DPS essentially for the sale of alcohol on 4 September 2013, the refusal to give tap water to the complainant and the refusal to give tap water on 28 November 2013.

Result

12. The first time the matter could be actually heard was 9 October 2014 however, following a number of adjournments, the matter was not finalised until 16 June 2015. On all charges the defendants, both the company and the DPS, pleaded not guilty.
13. Costs were sought to cover the time spent by counsel, corporation officers, the use of an interpreter at the interview and the cost of transcribing the interview tape.

14. In relation to the licence holder, he was found guilty on three charges and fined a total of £1,150 plus costs of £1,607 and a victim surcharge of £75 totalling £2,132.
15. In relation to the DPS, he was also found guilty on three charges and fined a total of £1,400 plus costs of £1,957 and a victim surcharge of £100 totalling £3,457.
16. The result was a total penalty of £5,589 justifying the work of the licensing team in their perseverance over a period of 21 months from the date the investigation commenced.

Background Papers:

None

Contact: *Peter Davenport*
Licensing Manager
peter.davenport@cityoflondon.gov.uk | x 3227