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BEFORE THE LIQUOR CONTROL COMMISSION  
OF THE STATE OF OREGON

In the Matter of the )  
Application for a )  
Dispenser Class A (DA) )  
License by: )  
M.A.T., Inc. )  
CHUG-A-MUG )  
1716 NW 23rd Avenue )  
Portland, Oregon 97210 )  
- - - - - )  
Multnomah County )

FINAL  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER

A hearing in the above matter was held on the 9th day of March, 1983, in Portland, Oregon, before Hearings Examiner Allen R. Scott. The Applicant appeared in person and was represented by Alex Christy, Attorney at Law, Portland, Oregon. The Commission was not represented by legal counsel. The Commission having considered the record of the hearing, the Proposed Order of the Hearings Examiner, and the entirety of the Criteria for the Issuance and Maintenance of Licenses and applicable statutes and regulations, enters the following:

FINDINGS OF FACT

1. Licensee seeks a Dispenser Class A (DA) license at the CHUG-A-MUG, 1716 NW 23rd Avenue, Portland, Oregon 97210. Licensee currently holds a Retail Malt Beverage (RMB) license at this premises.

2. The Commission's Staff has recommended that the application be denied based upon OAR 845-05-030(1), 845-05-040(1), 845-05-040(3)(f) (sufficient licensed premises; gross sales; limited dining facilities; no banquet facilities), 845-05-040(2)(b), 845-05-040(2)(c) (not unique; area adequately

served by existing dispenser outlets), 845-05-040(3)(b) (applicant provides primarily fast foods, short order foods), 845-05-040(3)(e), 845-05-040(A)(B) (operated primarily as a tavern emphasizing entertainment and sale of alcoholic liquor).

3. Applicant's premises is currently a tavern. It consists of one room containing seating for approximately 80 patrons at tables and at the bar. It contains several pool tables and electronic entertainment devices.

4. No entertainment other than a juke box is present in the premises. Applicant is contemplating live Western music if a DA license is granted.

5. The premises is open seven days a week from 6:00 a.m. to approximately 1:00 a.m.

6. The premises has food available at all times while it is operating. The current menu contains hamburgers and several other sandwiches, deep fried shrimp, scallops, and oysters, fried chicken, and three breakfast items.

7. If the DA license is granted, Applicant will offer the following menu: four steak dinners ranging in price from about \$4.95 to \$9.95; several other dinners such as breaded veal cutlet, grilled ham steak, roast sirloin, and grilled pork chops. Three seafood dinners will be offered, with the cheapest at \$4.00. Several salads will be offered, as well as fried chicken, hamburgers, sandwiches, spaghetti, chili, and desserts. The premises will also offer a breakfast menu with traditional breakfast items.

8. Applicant has recently put in a steam table in order to offer more complete meals than are now offered. Applicant has also replaced one of the pool tables with a table and chairs for dining. If the license is granted, Applicant will remove all pool tables and add additional dining tables and chairs. The seating in the premises will be approximately 150.

9. Sales at the premises have been as follows during the past 12 months:

<u>MONTH</u>	<u>FOOD</u>	<u>BEER/WINE</u>	<u>TOTAL</u>
<u>1982</u>			
March	\$1,986	\$4,867	\$6,853
April	1,712	7,144	8,856
May	1,665	4,493	6,159
June	1,575	5,434	7,009
July	2,531	6,555	9,086
August	2,129	5,597	7,726
September	1,665	5,590	7,255
October	2,486	5,605	8,091
November	1,671	4,851	6,522
December	1,362	3,961	5,323
<u>1983</u>			
January	1,421	4,988	6,409
February	1,092	6,353	7,445
Average	\$1,775	\$5,453	\$7,228

10. Applicant estimates that if a Dispenser Class A license is granted, average monthly sales at the premises will be as follows: food - \$11,369; alcoholic beverages - \$12,786; total - \$24,155.

11. The City of Portland, with a population of 368,100, presently contains 290 DA licenses and 24 DB licenses. Multnomah County, with a population of 564,500, has 351 DA outlets and 28 DB outlets.

12. Applicant receives many requests for hard liquor from patrons. Many have indicated that the nearby dispenser outlets do not provide them with the food service that they seek.

13. The nearest dispenser outlets to the Applicant's premises are the following:

<u>OUTLET</u>	<u>TYPE OF LICENSE</u>	<u>DISTANCE AND DIRECTION FROM CHUG-A-MUG</u>
Beaver Cafe	DA	2 blocks northwest
Caper's	DC	4 blocks south
2601 Restaurant	DA	8 blocks northwest
Red's Sidetrack	DA	6 blocks north
Memories Northwest *	DA	4 blocks northwest

\* Currently closed with request to relocate.

14. Average monthly sales at DA premises in Multnomah County and the City of Portland have been as follows:

	<u>FOOD</u>	<u>ALCOHOLIC BEVERAGES</u>	<u>TOTAL</u>
Multnomah County	\$36,806	\$19,695	\$56,401
City of Portland	33,541	18,734	52,275

15. Applicant offered petitions containing approximately 330 names of patrons who support the application. It also offered two letters from individuals or business concerns who express favorable views.

16. Applicant's premises is located in a area in which many of the people are blue-collar workers. Many of them like the simple food and relatively low prices offered at the Chug-A-Mug.

17. If the license is granted, Applicant plans to change the name of the premises to The Omega Cafe.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The existence of sufficient licensed premises in the locality set out in an application shall weigh against granting the application. For purposes of this section, the applicant's community will be a 10-mile radius for dispenser licenses and a two-mile radius for other licenses, unless the applicant establishes that a substantial portion of the patronage of the premises is or would be from a larger or smaller area. OAR 845-05-030(1).

The evidence establishes that Portland and Multnomah County contain considerably more than one Dispenser Class A outlet per 2,000 population. Although these geographic areas do not correspond to an area within a 10-mile radius of Applicant's premises, the large number of such premises in the City and County may be some indication of sufficiency in service.

Applicant presented evidence that some of the people who patronize the establishment do not feel that the existing dispenser outlets in the area provide the kind of service that they desire. Nevertheless, the Commission concludes that that evidence is not enough to overcome indications of sufficiency of such service. The Commission therefore concludes that this criterion is a basis for denying the application.

2. An application for a dispenser license may be granted or denied on the basis of comparison with other existing dispenser licenses in the same city or county or with other pending applications for such licenses anywhere in the state. OAR 845-05-040(1).

Unfavorable consideration may be given to an applicant if applicant's premises will provide lesser services, facilities, and economic benefit to the area or to the general public, as indicated by actual or reasonably projected number of patrons served, seating

capacity, banquet facilities, hours of operation, number of employees, extent of investment in facilities, amenities or other such characteristics. Gross sales figures may be used as a basis for determining the number of patrons served. OAR 845-05-040(3)(f).

Sales at Applicant's premises are presently much lower than sales at existing dispenser outlets. Applicant's estimate of sales if the license is granted, which project a 600 percent increase in food sales, are not particularly persuasive. In any event, even these projections would leave sales far below sales at existing premises.

Applicant argues that ORS 472.114(1) (relating to legislative intent as to gross sales, size of premises and size of community) indicates that gross sales are not conclusive. The Commission notes, however, that this provision merely indicates that the OLCC need not consider sales or projected sales as a basis for granting or denying a license. It does not bar the Commission from doing so in a particular case.

The evidence also establishes that Applicant's premises contains no banquet facilities and has relatively small seating for dining, even with removal of the pool tables and the addition of tables for dining.

The Commission concludes that these criteria provide a basis for denying the license.

2. Preference in licensing may be given to an applicant showing that the premises will provide dining service or atmosphere which is unique or substantially different in quality or type from that offered by other licensees within a 20-mile radius as indicated by menu, decor and amenities, entertainment or other such characteristics. OAR 845-05-040(2)(b).

Applicant established that many people who live or visit the area in which the premises is located like the food served at the Chug-A-Mug and that some complained about food at other premises in the area. However, the Commission does not believe that this is sufficient to establish that the premises should be given some preference as "unique," given the fact that the food is traditional American food. Applicant did not assert that the decor, amenities, or entertainment at the premises would be unique in the area.

3. Unfavorable consideration may be given to an applicant if applicant will provide primarily fast foods, short order foods, such as hamburgers, sandwiches, pancakes, eggs and pizza, or other foods with which distilled liquor drinks are not normally ordered. OAR 845-05-040(2)(b).

Applicant's present food service consists almost exclusively of foods which can reasonably be described as fast foods or short order foods. His proposed menu is considerably broader, containing a number of full dinners, as well as sandwiches and other "short order" or "fast foods." The Commission concludes that the evidence does not establish that Applicant will provide primarily such fast foods if the license is granted. This criterion thus is not a basis for denying the license.

4. Unfavorable consideration may be given to an applicant if the applicant's premises will be operated primarily as a tavern rather than as a restaurant, as indicated by factors emphasizing:

The sale of entertainment by means of pool tables, coin-operated game machines, legal card games or other games of chance. OAR 845-05-040(3)(e)(A).

The sale of alcoholic liquor to a greater degree than food service. OAR 845-05-040(3)(e)(B).

There is no evidence to indicate that subsection (A) quoted above is a basis for denying the license. Applicant proposes to take out the pool tables and game machines; there is no evidence that card games or other games of chance are present in the premises. This subsection, therefore, is not relevant.

Subsection (B) is relevant. The premises is presently a tavern operation. Sales of beer and wine far exceed sales of food. Applicant estimates that food sales would still be somewhat less than half of total sales if the Dispenser Class A license is granted. These projections have no particular persuasiveness to the Commission, given the fact that Applicant proposes only relatively minor changes in the premises. He proposes that the premises will remain one large room with no partitions between dining and drinking areas. He does propose to take out the pool tables and machines and to institute a much broader menu. However, the Commission infers from the evidence that the premises will not change its character radically, and that the projections therefore estimate an unrealistically high proportion of food sales. It is more likely that, although food sales would undoubtedly increase, sales of alcoholic beverages will remain substantially greater than sales of food if the license is granted. The Commission concludes that the evidence does establish that the premises will remain primarily a tavern operation emphasizing the sale of alcoholic

liquor to a greater degree than food service. This criterion is therefore a basis for denying the license.

ULTIMATE CONCLUSIONS OF LAW

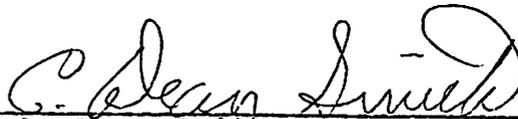
The application for a Dispenser Class A license should be denied because the Applicant's premises will serve fewer patrons than existing premises, because the area in which the premises is located is adequately served by existing premises, because Applicant's premises will not provide greater services than existing premises, and because Applicant's premises will remain primarily a tavern operation emphasizing the sale of alcoholic liquor over food service. OAR 845-05-030(1), 845-05-040(1), 845-05-040(3)(f), 845-05-040(2)(b), 845-05-040(2)(c) and 845-05-040(3)(e)(A)(B).

FINAL ORDER

It is hereby ordered that the application for a Dispenser Class A (DA) license by M.A.T., Inc. in the trade name Chug-A-Mug, 1716 NW 23rd Avenue, Portland, Oregon 97210, be DENIED.

It is further ordered that due notice of such action, stating the reasons therefor, be given as provided by law.

Dated this 23rd day of May, 1983.



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C. Dean Smith  
Administrator  
OREGON LIQUOR CONTROL COMMISSION

NOTICE: You are entitled to Judicial Review of this Order. Judicial Review may be obtained by filing a Petition for Review within 60 days from the service of this Order. Judicial Review is pursuant to the Provisions of ORS Chapter 183.