

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Proposed Suspension of the)	
Package Store (PS))	
License held by:)	FINAL
)	FINDINGS OF FACT,
Kuxeng and May Keu Yongchu)	CONCLUSIONS OF LAW,
MAC'S MARKET)	AND ORDER
5436 N. Willamette)	
Portland, Oregon 97203)	
- - - - -)	
Multnomah County)	

A hearing in the above matter was held on the 7th day of June, 1983, in Portland, Oregon, before Hearings Examiner Douglas Crumme'. The Licensees appeared in person and were not represented by legal counsel. The Commission was not represented by legal counsel.

RECORD OF PREVIOUS VIOLATIONS

NONE.

The Commission having considered the record of the hearing, the applicable law and regulations, the Proposed Order of the Hearings Examiner, Exceptions to the Proposed Order of the Hearings Examiner, and now being fully advised, makes the following:

FINDINGS OF FACT

1. Kuxeng and May Keu Yongchu have held a Package Store (PS) license at MAC'S MARKET, 5436 N. Willamette, Portland, Oregon, at all times relevant to the Findings of Fact below.
2. The Commission's Enforcement Division has charged the Licensees with the violation of the following:
 - a. ORS 471.315(1)(g) (knowingly sold alcoholic liquor to a person under the age of 21 years).

b. ORS 471.130(1) (failed to check identification or take Statement of Age card where there was reasonable doubt that purchaser of alcoholic beverages was 21 years of age).

3. Bruce Ferguson was born on March 1, 1965. Mr. Ferguson was 18 years of age on April 1, 1983.

4. The Findings of Fact below occurred on April 1, 1983 unless otherwise noted.

5. Bruce Ferguson entered Mac's Market at approximately 6:50 p.m. Mr. Ferguson obtained a half-case and a six-pack of beer from the cooler and carried it to the checkout counter. Licensee Kuxeng Yongchu was on duty at the checkout counter.

6. Licensee Kuxeng Yongchu sold the half-case and six-pack of beer to Mr. Ferguson without requesting identification or asking Mr. Ferguson to sign a Statement of Age. Likewise, Mr. Ferguson volunteered no identification.

7. Bruce Ferguson is 5-feet 10-1/2-inches tall and weighs about 185 pounds. Mr. Ferguson has a mustache. He was casually dressed when he purchased the beer as described above in Mac's Market on April 1, 1983.

8. Mr. Ferguson purchased beer in grocery stores without being asked for identification an estimated 20 times between his 17th birthday and April 1, 1983. On three or four occasions, Mr. Ferguson was asked for identification and refused sale.

9. Bruce Ferguson has a stocky build and is rather barrel-chested. He does not have a young face. The Commission finds Mr. Ferguson reasonably appeared to be at least 21 years

of age when he purchased alcoholic beverages in Mac's Market on April 1, 1983.

DISCUSSION

Sr. Inspector Carboneau testified that Mr. Ferguson first caught the Inspectors' attention when he and two other men pulled up in front of Mac's Market in a car and waited out in the car an unusual length of time before Mr. Ferguson entered the store. However, the record indicates that Mr. Ferguson did not behave in any abnormal or furtive manner in the store when he purchased the beer. The Commission's finding that Mr. Ferguson reasonably appeared at least 21 years of age is based on his appearance alone, which is all the Licensees had to go on in making the preliminary decision whether to request identification or ask for a Statement of Age from Mr. Ferguson.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission may cancel or suspend any license if it finds or has a reasonable ground to believe that the licensee, or his or its agent, employee or representative, has knowingly sold alcoholic liquor to a person(s) under the age of 21 years. ORS 471.315(1)(g). The requirement of "knowledge" is satisfied where there is a reasonable ground to believe that the seller knew the purchaser of alcoholic liquor was under the age of 21 years. Plaid Pantries, Inc. v. OLCC, 16 Or. App. 199, 203 (1974).

The Licensees' sale of beer to minor Bruce Ferguson on April 1, 1983 was not knowingly made because Mr. Ferguson reasonably appeared to be 21 years of age at the time of the sale. There is not a reasonable basis to conclude that Licensee Yongchu knew minor Ferguson was under 21 years of age.

2. All licensees, and their agents, representatives and employees, and all service permittees of the Commission, before selling or serving alcoholic liquor to any person about whom there is any reasonable doubt of the persons having reached 21 years of age, shall require such person to produce the person's motor vehicle operator's license or if the license does not bear a photograph of the operator, then an identification card issued by the Oregon Department of Motor Vehicles pursuant to ORS 482.900, et seq. However, if the person has no motor vehicle operator's license or identification card, the licensee, or his agent, representative or employee, or the service permittee shall require such person to make a written statement of age and furnish evidence of the person's true age and identity. Licensees, permittees and employees of licensees must examine all documents submitted as evidence of age and identity by persons of questionable age, shall be responsible for accurately recording the information from any such documents on statement of age forms, and shall refuse to sell or serve any alcoholic liquor to any person offering any altered, erased or falsely represented document of age and identification. ORS 471.130(1), and OAR 845-06-035(5).

Minor Ferguson's appearance did not present reasonable doubt that he was under 21 years of age. Mr. Ferguson has a stocky build and facial appearance that looks older than his true age of 18 years. He reasonably appears to be 21 years of age.

ULTIMATE CONCLUSIONS OF LAW

When there has been a violation of ORS Chapter 471 or 472, or any rule adopted thereunder, upon any premises licensed by the Commission, the Commission may revoke or suspend either the service permit of the employee who violated the law or rule or the license of the licensee upon whose premises the violation occurred, or both the permit and the license. ORS 471.385(3).

The charges against the Licensee for the violations of ORS 471.315(1)(g) (knowing sale to a minor) and ORS 471.130 (failure to request identification or Statement of Age) should be dismissed as noted in the conclusions of law above.

FINAL ORDER

It is hereby ordered that the charges against Kuxeng and May Keu Yongchu, doing business as Mac's Market, 5436 N. Willamette, Portland, Oregon, for the violations of ORS 471.315(1)(g) and ORS 471.130 be DISMISSED.

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 August, 1983.



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.