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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,
Keith and Pamela Moon)	CONCLUSIONS OF LAW,
MOONSHINE MINI MART)	AND ORDER
1303 SW Emigrant)	
Pendleton, Oregon 97801)	
- - - - -)	
Umatilla County)	

A hearing in the above matter was held on the 31st day of January, 1984, in Pendleton, Oregon, before Hearings Examiner Douglas Crumme'. The Licensees appeared in person and was not represented by legal counsel. The Commission was not represented by legal counsel.

The Hearings Examiner, having considered the record of the hearing, the applicable law and regulations and being fully advised, issued a Proposed Order dated February 22, 1984.

No Exceptions were filed to the Proposed Order within the fifteen (15) day period specified in OAR 845-03-050.

RECORD OF PREVIOUS VIOLATIONS

NONE.

Now, therefore, the Commission hereby adopts the Proposed Order of the Hearings Examiner as the Final Order of the Commission, and enters the following:

FINDINGS OF FACT

1. Keith and Pamela Moon have held a Package Store (PS) license at the MOONSHINE MINI MART, 1303 SW Emigrant,

Pendleton, Oregon, at all dates relevant to the Findings of Fact below.

2. The Commission has charged the Licensees with the violation of the following:

- a. ORS 471.315(1)(g) (knowing sale to a minor).
- b. ORS 471.130(1) (failed to check identification or take Statement of Age card before selling alcoholic liquor to a person about whom there was reasonable doubt of such person being 21 years of age).

3. David Lazinka was born on March 2, 1965. Mr. Lazinka was 18 years of age on September 16, 1983.

4. David Lazinka is six-foot-two-inches tall and weighs 150 pounds. Mr. Lazinka appears under 21 years of age because of his slight build, youthful facial features, and youthful mannerisms.

5. David Lazinka purchased 12 cans of Hamm's beer in the Moonshine Mini Mart between 8:00 p.m. and 9:00 p.m. on September 16, 1983. The clerk who sold the beer was Licensee Keith Moon. The Licensee did not question Mr. Lazinka about his age, did not require any identification, and did not require him to sign a Statement of Age form.

6. David Lazinka has a 23 year old brother who looks like him. This brother has been to the Moonshine Mini Mart. However, Mr. Moon is not personally acquainted with Mr. Lazinka's brother and would not necessarily recognize him by sight.

7. The Licensees' standard practice is to require three pieces of identification from any person purchasing alcoholic beverages who appears under 21 years of age.

DISCUSSION

1. Licensee Keith Moon argued at the hearing that there was only hearsay evidence against him. However, the sale in question was evidenced by the testimony of David Lazinka. The Commission found Mr. Lazinka's testimony to be credible. Mr. Lazinka's testimony constitutes direct, non-hearsay evidence of the violation.

2. The Licensees pointed out that their ability to put on any defense was hampered because they were not served a ticket by the Commission in connection with this matter until October 10, 1983. The Licensees were not contacted prior to October 10, 1983 by either the police or the OLCC with notice of the charges of a sale to a minor on September 16, 1983.

It is recognized that this sort of delayed notice would hamper Mr. and Mrs. Moon's ability to put on any evidence about the sale to Mr. Lazinka. However, the Commission is not aware of any requirement that a licensee receive notice sooner than that involved here.

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 violated ORS 471.315(1)(g) through the sale of Hamm's beer to David Lazinka on September 16, 1983. There is reasonable ground to believe Licensee Keith Moon knew Mr. Lazinka was under 21 years of age because Mr. Lazinka appeared under 21 due to his youthful facial features, slight build and youthful mannerisms. The Licensees did not ask Mr. Lazinka for identification, for his age, or to sign a Statement of Age form.

Since Licensee Keith Moon was not acquainted by sight with Mr. Lazinka's older brother, Mr. Moon did not have good grounds to believe David Lazinka was the older Lazinka brother. Thus, a violation is established.

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).

The Licensees violated ORS 471.130(1) through the sale of 12 cans of Hamm's beer to David Lazinka without requiring that Mr. Lazinka furnish identification or sign a Statement of Age form. There was reasonable ground to believe that Mr. Lazinka was under 21 years of age at the time of the sale due to his youthful facial features, slight build and youthful mannerisms. The Licensees did not have any reasonable grounds to conclude Mr. Lazinka was at least 21 years of age. Thus, the violation was committed.

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 Commission may cancel or suspend the Licensees' PS license for the violations of ORS 471.315(1)(g) (knowing sale to a minor) and ORS 471.130(1) (failure to check identification or require Statement of Age).

The Licensees' practice of customarily requiring three pieces of identification, although notable and commendable, is not mitigating under the facts in this case.

FINAL ORDER

It is hereby ordered that the Package Store (PS) license held by Keith and Pamela Moon at the Moonshine Mini Mart, 1303 SW Emigrant, Pendleton, Oregon, be SUSPENDED for seven (7) days or that the Licensees pay a fine of \$455 in lieu of said suspension.

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

If you choose to pay the fine it must be paid within ten (10) days of the date of this Order, otherwise the suspension must be served.

Dated this 12th day of March, 1984.

Douglas Crumme
Douglas Crumme
Hearings Examiner
Hearings Division

William A. Thomas for C. Dean Smith
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.