

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,
Plaid Pantry, Inc.) CONCLUSIONS OF LAW,
PLAID PANTRY STORE NO. 11) AND ORDER
10130 SW Hall Boulevard)
Tigard, OR 97223)
- - - - -)
Washington County)

A hearing in the above matter was held on the 16th day of December, 1983, in Salem, Oregon, before Hearings Examiner Douglas Crumme'. The Licensee 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 January 24, 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. Plaid Pantry, Inc. has held a Package Store (PS) license at PLAID PANTRY STORE NO. 11, 10130 SW Hall Boulevard,

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

2. The Commission's Enforcement Division has charged the Licensee with the violation of the following:

- a. ORS 471.315(1)(g) (knowing sale to minor).
- b. ORS 471.130(1) (failure to check identification or take Statement of Age where reasonable doubt existed that purchaser of alcoholic beverages was at least 21 years of age).

3. Steven John Burnard was born on April 13, 1964. Mr. Burnard was 19 years of age on August 20, 1983.

4. Steven Burnard is about six feet, two inches tall and weighs approximately 130 pounds. Mr. Burnard appears under 21 years of age because of his youthful face and thin, youthful build.

5. Steven Burnard and an acquaintance entered Plaid Pantry Store No. 11 at about 11:25 p.m. on August 20, 1983. Mr. Burnard purchased a quart of Schlitz Stout Malt Liquor from clerk Vincent Vissichelli.

6. Mr. Burnard and his acquaintance left the store and walked to their car.

7. Washington County Sheriff's Deputy Clarence Howe observed from his marked patrol car across the street as Steven Burnard and his acquaintance walked out of the Plaid Pantry Store to their car. Concluding that the gentlemen may have purchased alcoholic beverages, Deputy Howe drove his car across the street to the Plaid Pantry parking lot and parked next to

the car that Mr. Burnard was in. Deputy Howe took 15 to 20 seconds to make a radio call. He got out of his car, walked around to the car that Mr. Burnard was in and talked to Mr. Burnard.

8. Deputy Howe determined that Mr. Burnard had purchased the Schlitz Stout Malt Liquor. Deputy Howe conducted a search of Mr. Burnard for identification. Deputy Howe did not find any identification that indicated a birthdate for Mr. Burnard other than his true birthdate of April 13, 1964.

9. After looking for identification, Deputy Howe took Mr. Burnard back into the store.

10. Mr. Vissichelli did not ask to see Mr. Burnard's identification or ask Mr. Burnard about his age when Vissichelli sold the quart of Schlitz Stout Malt Liquor to Mr. Burnard.

11. Plaid Pantry, Inc. conducts training classes for all new employees. The classes cover requiring identification from youthful-appearing persons attempting to purchase alcoholic beverages. Employees are shown films and receive instruction about acceptable identification. At the training class, Plaid Pantry employees are advised of the company's policy that only a driver's license or an Oregon Department of Motor Vehicle's photo identification card will be accepted as proof of age by a youthful-appearing person. If no such identification is furnished, no sale is to be made.

12. New Plaid Pantry employees are advised of the company's policy that it may suspend any employee involved in an allegation of breaking the liquor laws.

13. Vincent Vissichelli went through the training class for new employees and received the instructions described in the two Findings of Fact above.

14. Plaid Pantry supervisors periodically visit Plaid Pantry stores to check up on employees' procedures for checking identification. During these visits, supervisors review with the employees the appropriate procedures to be used in checking for identification.

DISCUSSION

1. There was contradictory evidence from minor Steven Burnard and clerk Vincent Vissichelli about whether Mr. Vissichelli had requested any identification from Mr. Burnard on August 20, 1983 when the sale of Schlitz Malt Liquor was made.

Mr. Vissichelli stated on August 20, 1983 to Deputy Howe that Mr. Burnard had shown a State of Oregon identification card with a photo on it that indicated a birthdate making Mr. Burnard over 21 years of age. Mr. Vissichelli stated to Deputy Howe that Mr. Burnard had his thumb over the photo at the time he presented the card to Mr. Vissichelli. Mr. Vissichelli later made the same statements to Commission Enforcement Division Inspector Larry Tuthill when Mr. Tuthill interviewed Mr. Vissichelli.

In contrast to Mr. Vissichelli's version of the facts, Steven Burnard stated to Officer Howe on August 20, 1983 and

subsequently to Inspector Tuthill that there was no discussion of any sort about age or identification at the time Mr. Burnard purchased the Schlitz Malt Liquor on August 20, 1983. Mr. Burnard gave this same account in his sworn testimony at the Commission's December 16, 1983 hearing.

The Commission has concluded that Mr. Burnard's account of the events should be accepted. Mr. Burnard appeared at the hearing and testified under oath. Mr. Vissichelli did not appear at the hearing and so his statements about the events were not under oath. (Mr. Vissichelli had left the state by the day of the hearing and was not called as a witness.) Some significance must be attached to the fact that Officer Howe was not able to locate any false identification when he searched Steven Burnard shortly after Mr. Burnard left the Plaid Pantry store. It is recognized, however, that Mr. Burnard had sufficient opportunity to hide any false identification in the car before he was contacted by Officer Howe.

In determining to accept the testimony of Mr. Burnard over the hearsay attributed to Mr. Vissichelli, the Commission also attached significance to the account by Mr. Vissichelli that Mr. Burnard had his thumb over the photo on the identification presented at the time of sale. It seems unlikely that Mr. Vissichelli would make a sale to a person of questionable age who holds his thumb over the photograph of the identification presented.

The Commission recognizes that Steven Burnard would have an interest in lying about using false identification to purchase alcoholic beverages. Balanced against this, however,

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would be Mr. Vissichelli's interest in trying to cover up any violation of the liquor laws so as to avoid suspension from work or being cited into court.

Because of the various considerations discussed above, the Commission concluded that the primary weight should be given to the sworn testimony of minor Burnard.

2. A petition for party status was made at the hearing by John Piacentini, sole stockholder of the licensed corporation. The Commission finds Mr. Piacentini has a personal financial interest in the outcome of the hearing as a result of his status as sole stockholder in the licensed corporation. The Commission's staff did not oppose the petition. The Commission issued a proposed ruling at the hearing that the petition be granted. Mr. Piacentini participated as a party.

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 Licensee violated ORS 471.315(1)(g) through the sale of bottled Schlitz Stout Malt Liquor by the Licensee's employee Vincent Vissichelli to minor Steven Burnard on August 20, 1983. There is reasonable ground to believe the sale was made

with the knowledge that Mr. Burnard was under 21 years of age because Mr. Burnard looked under 21 due to his youthful facial features and thin stature. Mr. Vissichelli did not request or see any identification from Mr. Burnard. The sale therefore constituted a violation.

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 Licensee violated ORS 471.130(1) when its clerk Vincent Vissichelli sold a quart of Schlitz Stout Malt Liquor to Steven Burnard on August 20, 1983. There was reasonable doubt that Mr. Burnard was under 21 years of age due to his youthful

facial features and thin stature. Mr. Vissichelli did not request or view any identification from Mr. Burnard. Therefore a violation was committed.

ULTIMATE CONCLUSIONS OF LAW

1. 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 Licensee's PS license for the violations of ORS 471.315(1)(g) (knowing sale to a minor) and ORS 471.310(1) (failure to check identification).

The Commission concludes that this violation is mitigated by the factors indicated in Findings of Fact Nos. 11 through 14. The violations here are a case of the clerk failing to follow the Licensee's clear and strict instructions about checking for identification.

FINAL ORDER

It is hereby ordered that the Package Store (PS) license held by Plaid Pantry, Inc., at Plaid Pantry Store No. 11, 10130 SW Hall Boulevard, Portland, Oregon, be SUSPENDED for five (5) days or that a fine of \$325.00 be paid 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 10th day of February, 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.