

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,  
Hans and Tina Unrau ) CONCLUSIONS OF LAW,  
SHOP N GO ) AND ORDER  
775 Southgate )  
Pendleton, Oregon 97801 )  
- - - - - )  
Umatilla County )

A hearing in the above matter was held on the 17th day of November, 1983, in Pendleton, 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. Hans and Tina Unrau have held a Package Store (PS) license at SHOP N GO, 775 Southgate, Pendleton, Oregon, at all dates relevant to the Findings of Fact below.

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

- a. ORS 471.315(1)(g) (knowing sale to person under 21 years of age).
- b. ORS 471.130(1) (failure to check identification or take Statement of Age).

3. The events described below occurred on the evening of September 14, 1983 unless otherwise noted.

4. Debra Smith was born on February 16, 1963. She was 20 years of age on September 14, 1983.

5. Debra Smith appeared under 21 years of age on September 14, 1983 due to her youthful facial features. Ms. Smith is approximately five-feet-one-inches tall and weighs about 120 pounds.

6. Debra Smith purchased two bottles of champagne in the Shop N Go from Licensee Tina Unrau at about 8:00 p.m. on September 14, 1983. Licensee Unrau did not ask Ms. Smith's age, did not ask Ms. Smith for identification and did not ask Ms. Smith to fill out a Statement of Age card.

7. Debra Smith had been purchasing alcoholic beverages at the Shop N Go on a regular basis since early 1983. In approximately March, 1983, Ms. Smith began working at a business near the Shop N Go. As Ms. Smith was a frequent customer at the Shop N Go, she became acquainted with the Licensees and she and the Licensees recognized each other.

8. Debra Smith has never shown any false identification at the Shop N Go. The only time she presented any identification at the premises was one occasion prior to February 16, 1983, when she showed her true Oregon driver's license to Hans

Unrau. This license showed Ms. Smith's true birth date. Ms. Smith attempted to chat with Mr. Unrau in an effort to keep him from looking at the license closely.

9. Ms. Smith has attempted to purchase alcoholic beverages at various grocery stores in Umatilla County. She is successful in purchasing alcoholic beverages approximately half the time. On occasions when stores have asked her whether she was 21 years of age without requiring identification, she has said that she was 21.

10. When Tina Unrau observed through the windows of the Shop N Go that Commission Inspectors had apprehended Debra Smith with the two bottles of champagne, Mrs. Unrau remarked that she had been going to check Ms. Smith's identification but had not. She stated she wondered how old Ms. Smith was.

#### DISCUSSION

There was directly conflicting testimony between the Licensees and Debra Smith concerning whether Debra Smith had ever shown a false driver's license at the Shop N Go.

Both of the Licensees testified that on separate occasions Debra Smith had shown a false driver's license to them with a photo of Ms. Smith and a birth date indicating her to be 21 years of age.

Debra Smith maintains she had never shown any false identification to the Licensees. Ms. Smith testified that the only time she had ever shown identification to the Licensees was one occasion prior to February 16, 1983 when she had produced her real Oregon Driver's License showing her to be only 19 years of age. The issue of whether Ms. Smith ever showed any false

identification to the Licensees then turns directly on the credibility of the Licensees versus Ms. Smith.

The Commission finds Debra Smith to be more credible than the Licensees. The testimony of both Licensees was vague or had inconsistencies on the point of false identification. Mrs. Unrau could not recall whether the supposed false identification was from Washington or Idaho. She could not recall when the false identification was presented. Mr. Unrau testified that Ms. Smith showed him a false Washington Driver's License in March or April, 1983. However, Ms. Smith first purchased alcoholic beverages at the Shop N Go prior to February 16, 1983. In contrast to the Licensees' testimony, Ms. Smith's testimony was consistent, detailed and certain.

The Commission concludes, taking the credibility of the witnesses into account, that the evidence fails to establish the Licensees' contention that Ms. Smith had shown a false driver's license to them on an earlier occasion.

#### 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 purchaser of alcoholic liquor was under the age of 21 years. Plaid Pantries, Inc. v. OLCC, 16 Or. App. 199, 203 (1974).

A knowing sale by the Licensees to Debra Smith on September 14, 1983 has been established. There is reasonable ground

to conclude that Licensee Tina Unrau knew Debra Smith was under 21 years of age because Ms. Smith appeared under 21. The Licensees have not established that Ms. Smith had shown acceptable false identification to them on an earlier occasion. A violation of ORS 471.315(1)(g) is therefore concluded to have occurred.

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).

A violation of ORS 471.130(1) is established. At the time of the September 14, 1983 sale, there was reasonable doubt that Debra Smith had reached 21 years of age because she appeared under 21 due to her youthful facial features. The Licensees failed to establish their contention that Ms. Smith

had shown a false driver's license to them on an earlier occasion.

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).

FINAL ORDER

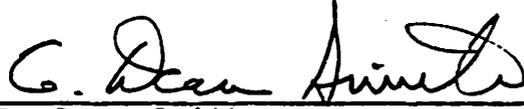
It is hereby ordered that the Package Store Licensee held by Hans and Tina Unrau at the Shop N Go Market, 775 Southgate, Pendleton, Oregon, be SUSPENDED for five (5) days or that a fine of \$325 be paid in lieu of said suspension.

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

days of the date of this Order, otherwise the suspension must be served.

Dated this 28th day of February, 1984.



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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.