

**HEARING BEFORE A PANEL  
OF THE BOARD OF THE  
ALBERTA GAMING AND LIQUOR COMMISSION**

**IN THE MATTER OF the Gaming and Liquor Act  
Revised Statutes of Alberta 2000, Chapter G-1  
current as of November 1, 2010  
and the Regulation**

and

**IN THE MATTER OF 1499546 Alberta Ltd.  
o/a Overtime Broiler & Tap  
100 – 101 Granada Boulevard  
Sherwood Park, Alberta  
T8A 4W2**

**concerning alleged contraventions**

---

<b>DATE OF HEARING:</b>	May 2, 2014
<b>HEARING PANEL:</b>	Mr. J.P. Hansen, Panel Chair Ms. S.L. Green, Panel Member Hon. M.J. Trussler, Panel Member
<b>LICENSEE REPRESENTATIVES:</b>	Mr. F., Director Mr. Y., Shareholder
<b>COMPLIANCE AND SOCIAL RESPONSIBILITY:</b>	Mr. H., Hearing Officer

---

**DECISION OF THE HEARING PANEL**

---

**I. Jurisdiction and Preliminary Matters**

As a result of receiving an incident report dated March 6, 2014, the Compliance and Social Responsibility (CSR) Division of the Alberta Gaming and Liquor Commission (AGLC) imposed an administrative sanction under Section 91(2) of the *Gaming and Liquor Act*, without a hearing, on 1499546 Alberta Ltd. operating as Overtime Broiler & Tap (Overtime), Sherwood Park.

The licensee subsequently applied for a hearing under Section 94(1) of the *Gaming and Liquor Act*. A Hearing Panel of the Board of the AGLC met to hear the following alleged violation:

**Section 82(2)(a) Gaming and Liquor Regulation: Liquor licensee or employee or agent of the licensee directly or indirectly borrowing or receiving as a gift from any liquor supplier or liquor agency money, an advance of money, or any thing of value.**

The licensee and the Hearing Panel were provided with a hearing file containing the incident report dated March 14, 2014 and various documents pertaining to alleged incidents occurring on November 28, 2011, January 13, 2012 and September 13,

2012. Mr. Y. confirmed he received the incident report dated March 14, 2014 and Notice of Hearing dated March 31, 2014. The incident report was entered into evidence by the CSR Division as Exhibit #1.

Mr. H. presented the case on behalf of the CSR Division. Mr. F. and Mr. Y. represented 1499546 Alberta Ltd.

## **II. The Issue**

Did the licensee or employee or agent of the licensee directly or indirectly borrow or receive as a gift from any liquor supplier or liquor agency money, an advance of money, or any thing of value?

## **III. Evidence**

### **Inspector F. – evidence led by Mr. H.**

Inspector F. has been an Inspector with the AGLC for the past eight years. At the time the incident report in question was prepared, he was assigned to an AGLC Task Force to investigate possible inducements in the industry. The investigation regarding Overtime began with Beam Global Canada (Beam Global.) Inspector F. and his partner Inspector C. were tasked with reviewing the documentation from the seven Beam Global representatives in Alberta. During the course of their review they obtained invoices, receipts and credit card statements relating to and in the name of Overtime, regarding menu inserts, menu covers, printed material and promotional items.

There were two separate invoices created by Overtime; one for menu covers/inserts in the amount of \$2350.00 and the other for printing and promotional material in the amount of \$3750.00. The Beam Global representative paid Overtime the amount invoiced using her credit card. A credit card receipt from the Beam Global representative was attached to the invoice in the amount of \$3750.00.

There was a third invoice from Divine Menu Covers Ltd. to Beam Global in the amount of \$2542.05. The invoice was for menu covers and plastic sheet protectors for Overtime. The menu covers and sheet protectors were paid for by Beam Global and then provided to Overtime.

Menus are an essential item to a licensed premises however promotional material and tent cards are not considered essential. The violation by Overtime occurred when overtime created an invoice and then the invoice was paid for by the Beam Global representative using her credit card.

On January 9, 2012 a letter was sent by the AGLC to the industry reminding licensees of the legislation and policies surrounding the acceptances of inducements. An additional letter was sent out a few weeks ago, again providing the industry with information surrounding inducements. Overtime was in operation at the time the letter was sent out on January 9, 2012.

When Inspector F. met with Mr. F. on September 12, 2013 and the invoices in question were presented to him, he did not provide specifics surrounding the invoices. He simply advised that they meet with the Beam Global representative monthly to discuss potential promotional material.

Tent cards are provided by representatives to all licensees in the industry to advertise a particular product. Tent cards do not typically contain the licensee's logo but a generic picture of a product. Individual licensees are responsible for the purchase and payment of any advertising specific to their premises.

### **Inspector F. – cross-examined by Mr. Y.**

The invoices created by Overtime do not specifically indicate what the promotional printing was for. One of the invoices does indicate it was for menus/inserts. A plastic sleeve itself would not necessarily be considered an insert. The printed piece of paper inserted into the plastic cover would be the insert.

Overtime received an item of value from Beam Global. A menu is considered an essential item to a licensed premises. A menu cover is considered part of the menu. An item does not necessarily need to be of a specific value to be considered a benefit to the licensee.

### **Evidence of Mr. Y.**

The regulations are a bit ambiguous. Overtime thought they were in compliance with the regulations. The new menus received from Beam Global are not of a specific value to Overtime. Overtime still has an original menu of their own they can use. The initiative for the new menu was put forth by Beam Global. The new menu and original menu are the same; they are both black leather bound and they both contain plastic inserts for printed material. The only difference is the new menu has a Beam Global brand embossed on the front. The new menu was strictly a benefit for Beam Global. There was no monetary value to Overtime in changing from the old menu to the new menu. If the new menu went missing, they could and would revert to using the old menu.

The invoice for printing and promotional support in the amount of \$3750.00 was for items that are permitted under Section 8.2.12 of the Licensee Handbook. Overtime has an in-house printing and design facility. The majority of other licensees have to send their material out to be printed and the printing is then paid for by the liquor suppliers. In the case of Overtime, as a matter of efficiency, timeliness and cost, they print in-house. Beam Global simply paid Overtime to print the material instead of paying an outside printing company. Menu printing is prohibited under the Licensee Handbook but the invoice in question was for posters and tent cards, which are permitted pursuant to Section 8.2.12 of the Licensee Handbook. Overtime charged Beam Global for the cost of paper, printing and design. The cost to print in-house is well below market value.

The invoice for \$2350.00 was for menu covers/inserts. Mr. Y.'s understanding is that menu printing is prohibited specifically. The invoice was for plastic inserts that cover the pages of the printed menu. Overtime goes through several thousand plastic inserts a year. The printed portion of the menu goes inside the plastic insert. Mr. Y. reads the regulations regularly and perceived Overtime to be in compliance with the regulations. They did not receive menu printing; they simply received a holder for the printed menu.

Overtime was not specifically a party to the invoice in the amount of \$2542.05 from Divine Menu Covers Ltd. to Beam Global. They did receive a menu cover, which does not hold any specific value to Overtime, as they already have a menu. Overtime was not compensated in any way. Beam Global paid the invoice directly; it did not go through Overtime. Overtime did not receive menu printing. Overtime does not consider the menu cover essential to the operation of the business, as they already have the same menu without the Beam Global brand on the front. The new menus are not the property of Overtime they are the property of Beam Global.

Overtime checks the regulations before they pursue any promotional opportunity. They believed they were in compliance with the regulations and policies and were not trying to hide anything. They had no reason to contact the CSR Division because they felt they were in compliance.

### **Mr. Y. – cross-examined by Mr. H.**

If a customer comes into the premises and requests a menu they are provided with the entire booklet including the cover, plastic inserts and printed menu. The new menus are currently being utilized at the premises. The old menus are also available, if required. Beam Global approached Overtime and requested they showcase their brand on the menu cover. If Beam Global requested the new menus be returned, Overtime would use the old menus without the Beam Global brand on the cover.

Overtime did not contact the AGLC for clarification, as Mr. Y. felt the policies were clear; menu printing is prohibited. On the tent cards printed by Overtime, the Overtime logo appears on the tent cards but the cards also include the typical items that would appear on the generic tent cards distributed by liquor suppliers.

### **Mr. Y. – questioned by the Panel**

Overtime produced the tent cards in-house then invoiced Beam Global for the production costs. The amount charged to Beam Global was well below market value. The paper has a value of \$1.75 without printing. With printing, the market value is approximately \$4.00, not including the design fee. Overtime has an agreement with Beam Global and other non-liquor suppliers that they will not use outside printers, for a variety of reasons. The total cost to Overtime to print the tent cards is approximately \$1.75 per sheet. Overtime charged Beam Global \$1.75 per sheet; nothing more. Overtime does not profit from printing the material.

The invoice for \$2350.00 was for plastic inserts that go inside the menu. The invoice from Divine Menu Covers Ltd. in the amount of \$2542.05 also includes an amount for 300 clear vinyl sheet protectors at a unit price of \$0.87. Overtime goes through approximately three to five thousand sheet protectors a year.

Mr. Y. has been involved with Overtime for approximately twenty three years and Mr. F. has been involved for thirty four years. They have never received any AGLC sanctions, until the incident in question. They have met with the AGLC on a number of occasions for various reasons.

If Overtime did not print tent cards and promotional material in-house, Beam Global would provide generic tent cards and promotional material but the material would not contain information specific to Overtime. Beam Global would pay for the material regardless of the printing source.

Overtime does not believe menu covers are essential to the operation of the business. A licensed premises does not have to provide the customer with a bound menu. The menu could be on the wall or the server could recite the menu. The menu covers paid for by Beam Global do have the Overtime logo on the cover. Beam Global made the menu covers specifically for Overtime but it was Beam Global's initiative.

#### **IV. Summation**

##### **Mr. H.**

This incident arose from a widespread investigation conducted by the AGLC Inducement Task Force, which was created in October of 2012. Section 8.2.6(d) of the Licensee Handbook states a liquor supplier may not offer a licensee menu printing or other items essential to the operation of a licensed premises. There are two invoices from Overtime which were paid for by Beam Global, for printing and promotional support plus menu covers and inserts. The third invoice is from Divine Menu Covers Ltd. for menu covers and sheet protectors, which were sold to Beam Global and then provided to the licensee.

Food and liquor menus are required for every licensed premises, as outline in Sections 5.2.1 and 5.4.5 of the Licensee Handbook. The menu contents provided by and/or compensated for by Beam Global to Overtime, form part of the premises liquor and food menu and are an essential item to the operation of the premises. The premises was licensed prior to the letter of warning being sent out by the AGLC on January 9, 2012. An AGLC file check of Overtime did not indicate any difficulty with respect to delivery of the letter to the licensee. The licensee was involved in the negotiations with Beam Global but never considered contacting an AGLC representative for clarification. It is the position of the CSR Division that a violation of the legislation did occur and the licensee should be held accountable.

The CSR Division respectfully requested that, at a minimum, the original administrative sanction previously offered be upheld, which is the value of the inducement, but asked the Panel to consider imposing a higher penalty to act as a deterrent for future licensees.

##### **Mr. Y.**

It was not the intention of Overtime to contravene the regulations and they do not, in fact, believe they are in contravention of the regulations. There are opportunities for different interpretations of the legislation, as there are in most regulatory instances. In this case, Overtime believes their understanding is correct and that printing of menus and production of the physical menu holder are two separate things. No different than the printing of a tent card and a holder for the tent card, which are provided by a liquor supplier.

There has been and continues to be no inducement or agreement between Overtime and Beam Global that Overtime will purchase a specific product or promote a specific brand. Beam Global asked Overtime for the opportunity for brand promotion. Although having a menu is essential to the operation of the premises, the use of the menu cover provided by Beam Global is not essential. Under the regulations, Overtime is not required to have a physical menu to hand to a customer. The menu must only be visible to the public and an AGLC Inspector. The menu cover provided by Beam Global holds no value to Overtime. Overtime can and would continue to use the menu without the Beam Global branding, if required. The only value is to Beam Global.

The invoices in the amount of \$3750.00 and \$2350.00 are clearly permitted under the regulations; printing of tent cards and printing of posters and promotional material. The other invoice from Divine Menu Covers Ltd. was for products ordered by and paid for by Beam Global and the product remains the property of Beam Global.

Overtime submitted that imposing an administrative sanction would be unfair, given the circumstances surrounding the incidents in question.

#### V. Finding

**With respect to the invoice from Overtime to Beam Global in the amount of \$3750.00, the Panel does not make a finding of a violation of Section 82(2)(a) of the Gaming and Liquor Regulation:**

The invoice in the amount of \$3750.00 from Overtime to Beam Global was for printing and promotional support. Pursuant to Section 8.2.12 of the Licensee Handbook, a liquor supplier may provide a licensee with non-essential items including, but not limited to, tent cards and promotional material. Overtime only charged Beam Global for the actual cost of printing and did not profit from the printing. If the material was not printed in-house by Overtime, Beam Global would still provide Overtime with tent cards and promotional material but would pay another company for the printing of the material.

**With respect to the invoice from Overtime to Beam Global in the amount of \$2350.00 and the invoice from Divine Menu Covers Ltd. to Beam Global in the amount of \$2542.05, the Panel makes a finding of a violation of Section 82(2)(a) of the Gaming and Liquor Regulation:**

The Panel was advised by Overtime the invoice in the amount of \$2350.00 from Overtime to Beam Global was for plastic menu inserts. The invoice from Divine Menu Covers Ltd. to Beam Global in the amount of \$2542.05 was for new menu covers for the Overtime printed menu, with Beam Global branding on the front.

Section 82(2)(a) of the Gaming and Liquor Regulation states that a licensee may not receive "any thing of value" from a liquor supplier or liquor agency. "Value" is not specifically defined in the regulation. The Panel is of the view value is determined according to whether the item(s) itself has value, not whether the item is valuable to the licensee. The plastic inserts and menu covers are both items of value, as evidenced by the invoices.

Overtime would have been required to purchase plastic inserts at their own expense if they had not been provided by Beam Global. Overtime indicated they use between three thousand and five thousand inserts per year. Overtime advised the Panel the menu covers paid for by Beam Global were not essential to the operation of the business and were not of specific value to Overtime. Section 8.2.12 of the Licensee Handbook provides a list of non-essential items a liquor supplier may provide to a licensee and menu covers are not on that list. In the opinion of the Panel, the menu cover forms part of Overtime's complete printed menu. The menu covers were created specifically for Overtime by Beam Global and had both the Beam Global brand and Overtime logo on the cover.

#### VI. Penalty

The acceptance of an inducement by a licensee is a serious matter. The Panel is of the view that a sanction equal to the amount of the inducement, in this case \$4892.05, is not a sufficient penalty. It only puts the licensee back in the same position it would have been in if it had not been in contravention of the Gaming and Liquor Regulation.

While the Panel recognizes that Overtime has been in operation for many years and has not had any infractions, licensees have a responsibility to know the legislation under which they operate. The licensee should have called the AGLC to verify that what was being offered by Beam Global was permitted under the regulation.

As a result, in accordance with Section 91(2) of the *Gaming and Liquor Act*, the Hearing Panel imposes the following penalty for a violation of Section 82(2)(a) of the Gaming and Liquor Regulation:

**Penalty:** A \$6500.00 fine to be paid within 6 months of the date of this decision or on or before February, 1, 2015.

Signed at St. Albert this 1<sup>st</sup> day of August, 2014.



---

J.P. Hansen, Hearing Panel Chair