

**CITY OF MINNEAPOLIS
CITY COUNCIL
PUBLIC SAFETY & REGULATORY SERVICES COMMITTEE**

In the Matter of the On-Sale Liquor
License, Class B, Held by T.J.
Management of Minneapolis d/b/a
Gabby's Saloon and Eatery

**RESPONDENT'S MOTION TO STAY
ENFORCEMENT OF CONDITION
RESPECTING GABBY'S FREE
DRINK SPECIAL**

T.J. Management of Minneapolis d/b/a Gabby's Saloon and Eatery ("Gabby's") hereby moves the City Council to stay enforcement of the following adverse license condition, which condition was part of the adverse license action taken by the City Council on February 15, 2008, pending a judicial determination respecting the City's authority to impose adverse license conditions upon Gabby's:

- (e) The licensee will eliminate any free drink specials and replace them with reduced drink specials where the drink price would be no less than fifty (50) percent of the regular drink prices.

ARGUMENT

When Gabby's moved the Public Safety & Regulatory Services Committee to recommend a stay of all proposed license conditions, there was yet to be any evidence adduced about the risk of irreparable harm specifically associated with the above-quoted condition. Similarly, there was no such evidentiary record at the time the City Council formally denied Gabby's Request for Stay on all conditions except for condition (d) respecting Gabby's occupancy limit.

Gabby's sought a temporary injunction from the United States District Court to enjoin the City's immediate enforcement of the condition respecting free drink specials, and in the Court's

Order of April 14, 2008, the Court denied Gabby's motion in part on the basis that Gabby's had not first afforded the City Council an opportunity to consider sworn testimony respecting the irreparable harm associated with the City's free drink special restriction.

Accordingly, Gabby's now attaches to this motion and submits to the City Council the Affidavit of Gabby's owner Jeffrey Ormond, the Supplemental Affidavit of Jeffrey Ormond, and the Affidavit of Sue Jeffers respecting the likelihood of irreparable harm which Gabby's will incur should the City immediately impose its free drink special restriction.

The Federal District Court noted in its above-referenced Order that imposition of the free drink restriction may diminish "the number of people who attend Gabby's on Thursdays . . .," and Gabby's understands that this is one of the primary purposes behind the City's imposition of the free drink restriction. Since the City has already stayed its explicit restriction on Gabby's occupancy limit, pending judicial review, staying the instant condition would be consistent with the City's intent to avoid imposing undue damage upon Gabby's business enterprise, pending judicial review of the City's authority to impose adverse license conditions in this case.

Gabby's also respectfully notes that the City has stipulated within these proceedings that Gabby's has not violated its liquor license or any other laws in any respect, including in its conduct and administration of the free drink special during its Thursday Ladies Nights.

CONCLUSION

Gabby's therefore respectfully requests that the City Council stay enforcement of the above-quoted Condition (e), and thanks the City Council for its careful consideration of this matter.

Dated: April 28, 2008



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ATTORNEYS FOR RESPONDENT

allowing for commercial and certain other uses, and I understand that many of the surrounding properties are also zoned for commercial and/or industrial use.

3. In or about 1987, Gabby's introduced its "Ladies Night," a drink special promotion on Thursday evenings that has continued as a regular feature of our business to this day. To the best of my knowledge and belief, Gabby's Ladies Night was the first free drink promotion of its kind in Minneapolis. I know from conversations with my customers and with knowledgeable people in the Twin Cities bar and restaurant community that this promotion contributes substantially to Gabby's goodwill and enjoys high visibility with Gabby's actual and potential customers. Through many years of hard work promoting this special, we have effectively embedded in the minds of a substantial component of the Twin Cities club-going population that Gabby's is the place to be on Thursday nights. Accordingly, Gabby's Ladies Night has become an instrumental part of our business and features prominently in our marketing efforts.

4. Ladies Night attracts a portion of the bar and nightclub market which is also attracted to Gabby's on other nights, especially Saturday nights, when we feature similar music entertainment, which allows us to very effectively cross-market events held on these two nights. Our Thursday Ladies Night business alone generates approximately twenty-five percent of our overall revenue, and our Thursday and Saturday night events together constitute over sixty percent of Gabby's annual gross

revenue. We know that the goodwill from Ladies Night also generates increased business on other nights of the week—not just Saturdays—because, when we first saw success with the Thursday Ladies Night promotion, we immediately saw substantially increased business on every other night of the week.

5. If Gabby's is forced to discontinue its Ladies Night special that our clientele has come to expect, we will lose a substantial portion of the goodwill and favorable reputation that we have built on the strength of this hugely successful promotion. It is my firm belief that once such goodwill is lost, there is no way to retrieve it. In such an event, and based on my two decades of experience in this highly competitive market, I am certain that one or more competing businesses (and there are several in Minneapolis already, such as Spin, Cream and Trocadero, seeking to gain this business) will take advantage of their own specials and attract the large crowds Gabby's will lose. In fact, Spin, Cream and Trocadero, all of which play hip-hop and cater to young African American clientele, are already promoting their own versions of Gabby's Ladies Night promotion and will have an immediate and distinct competitive advantage over Gabby's as the City is not placing any restrictions on the specials those establishments may offer. More importantly, if Gabby's were to lose any significant portion of the critical mass of customers it currently enjoys as a result of the Ladies Night promotion, we will never again be able to reclaim it, as we will have lost the critical reputation and perception as "the place to

be.” Given how instrumental this goodwill is to Gabby’s business, I am of the view that Gabby’s will lose its ability to compete and cease to be a viable business within a very short time after losing its Ladies Night special.

6. Since it was established in 1986, but most particularly since the introduction of Ladies Night in 1987, Gabby’s has frequently reached its full capacity of 689 patrons, most often on Thursday and Saturday nights.

7. Until just about two years ago (including many years in which capacity crowds were routinely attained on Ladies Night and on weekends), Gabby’s clientele was predominantly White. Throughout its existence, Gabby’s has featured Top 40 music in its upstairs nightclub. In recent years popular music has become dominated by hip-hop, a style of music that, in this market at least, attracts a predominantly African-American nightclub clientele. On nights when we feature hip-hop or other music, disc jockeys play music on equipment that moves in interstate commerce, across state lines, and many of our guests come from out of state to attend.

8. Despite our having attracted capacity crowds routinely for many years when we were attracting a generally White crowd, Gabby’s never during those times had any trouble with City licensing officials. However, a short time after our clientele evolved to be a predominantly African American crowd, the City initiated a series of discussions with me, including one in which a City official, Inspector Robert Skomra, Commander of the Second Precinct, “suggested” that Gabby’s change its music

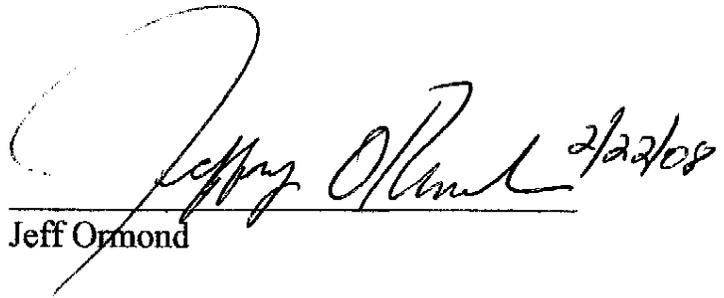
format from hip-hop to some other form of music (country-western music was proposed) in order to avoid potential restriction or revocation of Gabby's license on account of purported off-premises misconduct of its alleged patrons. I told the City at that time that changing the music format would destroy Gabby's business.

9. In these discussions, the City also "suggested" that Gabby's might avoid adverse license action if it voluntarily implemented a dress code, barring patrons from wearing baggy pants, white t-shirts worn as outer garments, and baseball caps—that is, apparel that in my observation is most popular among young, male African American nightclub goers, many of whom are patrons of Gabby's. (It should be noted that Gabby's voluntarily chose to preclude the wearing of white t-shirts as outer garments in our club and requires patrons to check their baseball caps.) I refused to voluntarily accept these conditions that the City proposed, and subsequently the City undertook proceedings to revoke Gabby's liquor license or impose conditions that will effectively shut Gabby's down by limiting its occupancy and/or depriving it of its most profitable business and promotions that drive its substantial goodwill and positive reputation among club goers.

10. I am also of the firm view that conditions the City proposed in lieu of changing Gabby's music format would put me at a severe competitive disadvantage with other bars and nightclubs, and would unduly restrict Gabby's business opportunities, so that any one of the proposed conditions alone would put Gabby's out

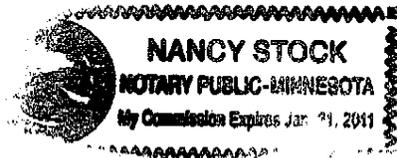
of business. Among the various conditions proposed in this process, the City at one time sought to restrict Gabby's capacity to 400 patrons, which I earlier testified at hearing would by itself destroy Gabby's as a viable business. Subsequently, the City changed this proposed capacity limit to 438, which limit was then adopted as a condition by the City Council on February 15, 2008 and signed into law by the Mayor on February 20, 2008. Imposing a capacity limit of 438 is substantially equivalent to a capacity limit of 400 and will also destroy Gabby's as a viable business, in very short order.

Further affiant saith not.


Jeff Ormond

Subscribed and sworn to before me
this 22 day of February, 2008.


Notary Public



**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
_____ DIVISION**

T.J. Management of Minneapolis, Inc.)	
d/b/a Gabby's Saloon and Eatery,)	Case No.
)	
Plaintiff,)	
)	
v.)	AFFIDAVIT OF SUE JEFFERS IN
)	SUPPORT OF MEMORANDUM FOR
)	TEMPORARY RESTRAINING
City of Minneapolis, a Municipal)	ORDER OR PRELIMINARY
Corporation,)	INJUNCTION
Defendant.)	
)	

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Sue Jeffers, being first duly sworn upon oath, states and deposes as follows:

1. I am a long-time resident of the Twin Cities area. I currently reside in New Brighton, Minnesota. I am very familiar with the Twin Cities' bar, restaurant and nightclub industry, by way of my direct involvement in it as an employee and owner/manager for over 30 years. In addition, for the last three years I have been the Communications Director of the Tavern League of Minnesota, a group which advocates the rights and interests of bar and restaurant owners. I am also very familiar with bar management and marketing and with the liquor licensing laws and ordinances, and the enforcement of same, in the City of Minneapolis. I offer this

affidavit based upon my direct knowledge and personal belief of all matters contained herein.

2. From 1979 until August 2007, I was the owner and operator of Stub and Herb's Bar and Restaurant located at 227 Oak Street S.E., in Minneapolis. Before that, I was an employee at the same establishment from 1977 to 1979. Stub and Herb's has been in operation since 1939 and is a well-known establishment within the Twin Cities. I was only the second owner of this long-standing establishment and, having owned and operated it successfully for nearly 30 years, I learned a great deal about effective marketing and customer service in an industry that is notorious for its high turnover and the fickleness of clientele who are constantly being targeted by competing liquor establishments.

3. As a successful long-time bar owner and operator in Minneapolis, I became very aware of the need to attract, grow and maintain clientele and with those strategies which have proved effective in doing so. The drink special, generally, is among the most tried and true bar marketing strategies. Nearly every bar owner in this market and elsewhere has implemented drink specials of some sort. Often, drink specials are used to attract and retain a particular demographic of the public. However, very few particular drink special strategies have proved to be consistently successful over time. Indeed, every bar owner knows that once a successful promotional strategy is realized, his or her competition will soon mimic the special to wrest away that hard-earned business initially attracted by the particular drink special.

Almost always, the competition is able to erode the business generated by the promotion.

4. In my experience, the most effective, long-term drink specials tend to be those which confer a special sense of place or belonging and with which customers come to identify and to associate with the offering establishment. Ultimately, bar and nightclub owners hope to institutionalize certain specials or promotions, so that their establishments become “the place to go” at given times, be it Friday after work, before sporting events, or the like.

5. Occasionally, a drink special captures the fancy of one or more demographic groups and through time achieves a status whereby it virtually defines that establishment and confers upon it durable, repeat business. If successfully managed, such a special can endure and sustain a franchise for years, even while “copycats” come and go. Gabby’s Ladies Night on Thursdays is an example of this rare phenomenon.

6. I am familiar with Gabby’s Ladies Night special for a number of reasons. First, I believe it was the first free drink promotion of this sort in the Twin Cities, and it is recognized within the local bar and restaurant management community as one of the most highly-successful promotions in the industry. I am also aware of Gabby’s Ladies Night because many of my customers over the years have notified me of their having attended Gabby’s Ladies Night events, and I frequently have heard my customers express their intention to go to Gabby’s Ladies Night after

patronizing Stub and Herb's. The fact that I have heard so much about this drink special at Gabby's from customers over the years, despite Gabby's being located about three miles from Stub and Herb's, is indicative of the unusually strong and enduring goodwill engendered by this promotion. Gabby's Ladies Night special quite clearly is a very strong element of Gabby's positive reputation among bar-goers and is of great value to Gabby's business.

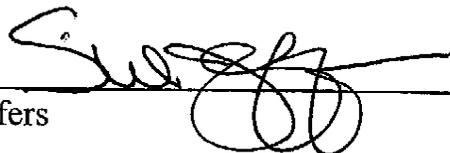
7. In my successful experience running a bar and restaurant in Minneapolis for nearly three decades, I ran many drink specials and I paid very careful attention to the specials and promotions being offered by other establishments. I cannot recall any drink special or other promotion in Minneapolis in the last 20 years that is as well-known and admired, among both the bar management community and within the bar-going community, as is Gabby's Ladies Night. While I am aware of numerous other bars which followed Gabby's footsteps and have established their own Ladies Night, free drink specials—including Sally's on Campus, Spin, Cream, Biff's on Central, Rock in Maplewood, and others—Gabby's Ladies Night continues to reign supreme.

8. In my experience, successful and enduring drink specials like Gabby's Ladies Night not only enhance revenues on the days or nights they are run, but also generate considerable business on other days and nights. Thus, a successful and enduring drink special or other promotion becomes an instrumental part of an establishment's identity (or "brand," if you will) in the community and supplies the kind of goodwill and positive reputation that separates successful businesses (like

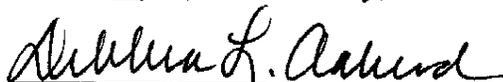
Gabby's and Stub and Herb's) from the vast majority of bars and restaurants that come and go over the short term.

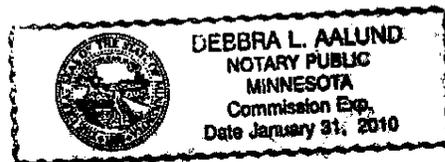
9. By the same token, the loss or discontinuance of a signature promotion can lead to rapid loss of revenue on the day or night the promotion is run, as the defining characteristic that has drawn customers to that venue is gone. Further, it is a virtual certainty that loss of a signature promotion will negatively affect business on other days of the week, as the bar's brand or identity is tarnished and the establishment is no longer perceived as "the place to go" by the targeted clientele. In such an atmosphere, large portions of a bar's clientele quickly may be lost to competitors and may never return in sufficient numbers to again make the business viable. In short, disrupting customer expectations by discontinuing a long-standing, signature promotion, like Gabby's Ladies Night, is a recipe for rapid business loss and closure.

Further affiant saith not.


Sue Jeffers

Subscribed and sworn to before me
this 22nd day of February, 2008.


Notary Public

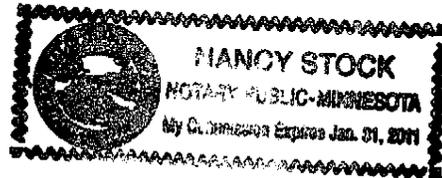


goodwill, as I specifically described in my original Affidavit, and would cause Gabby's irreparable harm.

Dated: March 25 2008.

Jeff Olson

Subscribed and sworn to before me this 25th day of March, 2008.



Nancy Steel
Notary Public