CITY OF MINNEAPOLIS
LICENSES AND CONSUMER SERVICES
350 SOUTH 5TH STREET, ROOM 1-C, CITY HALL
MINNEAPOLIS, MN 55415

FINDINGS OF FACT
CONCLUSIONS, AND
RECOMMENDATIONS

In the Matter of License No. L235 50037 FUSION
for LIQ ON-SALE C-1 W/SS SERIES 2000

Held by:
FOOD GROUP HOLDINGS LLC
ATTN: LINDSAY BROWN
5858 BLACKSHIRE PATH
INVER GORVE HEIGHTS, MN 55076

11-0858982

Findings of Facts

This matter came before a License Settlement Conference meeting on November 2, 2011. Appearing for the licensee was Mr. Michael Whitelaw, co-owner of Fusion and Mr. Danny Dinovis, Manager of Fusion. Appearing for the Licenses and Consumer services were Manager Grant Wilson, and License Inspector Greg Buenning. Appearing for Police Licensing was Lt. Chris Hildreth. Appearing for the State of Minnesota Department of Public Safety was Special Investigator Scott Mueller. Appearing for the City of Minneapolis City Attorney's Office was City Attorney Joel Fussy. Based on the evidence presented at the hearing, the department makes the following findings of fact:

1. Purchasing beverage alcohol from retail establishment in violation of MCO 259.250 (2)

Minnesota Statute 7515.0520 requires all retailers of beverage alcohol to purchase alcohol for resale from licensed Minnesota manufacturers, brewers, and wholesalers.

2.Failure to keep records and invoices of alcohol sales on your premises in violation of Minneapolis City Ordinance 363.450 and Minnesota Rule 7515.0550.

August 4, 2011: Information received from State of Minnesota that Fusion, 2919 Hennepin was on the State's No-Ship list since April 21, 2011 for delinquent taxes. An inspection of Fusion was conducted on August 4, 2011, by Inspector Greg Buenning and Supervisor Pat Hilden. A 16 ounce can of Surly Furious beer with a "canned on" date of May 23, 2011 was taken as evidence and turned over to Police Licensing. A citation was issued in the amount of $200.00 for violating Minnesota statute of purchasing and included in the citation the business was advised to take steps to get off of the No-Ship list and to also remove all alcoholic beverages that had a production date after April 21, 2011. That citation was paid on August 19, 2011 according to Business Licenses documents.

October 5, 2011: A follow-up inspection was conducted at Fusion due to the fact that they remained on the State of Minnesota's No-Ship list. Prior to going to Fusion Kim Purmann, from the State of Minnesota was contacted via e-mail and she confirmed that Fusion was still on No-Ship list for delinquent taxes. Inspector Greg Buenning and State of Minnesota Special Investigator Scott Mueller conducted the inspection. A 12 ounce bottle of Blue Moon with a production date of September 5, 2011 and a 12 ounce bottle of Two Hearted Ale with a production date of August 3, 2011 were confiscated. Several boxes of Tyku Sake were also found in the liquor storage room. A shipping label on the top box indicated it was shipped to Uptown Drink, 1400 Lagoon Avenue. The distributor on the label was Wirtz Beverage. The Manager, Danny Dinovis said the sake was brought to their business because no one from Drink was there to accept delivery. When he was asked if he could produce receipts for his liquor stock he said he didn't know he had to have receipts on the premises. It was later learned during an interview with Drink Manager, Frank Thalacker that there is always someone at Drink to accept deliveries. Mr. Thalacker also said that Drink does not sell any sake products. Investigator Mueller was going to check into the Wirtz Beverage label to see where products were shipped to.

October 19, 2011: Investigator Mueller came to Business Licenses with a copy of the invoice from Drink for several cases of various sake products. It was later learned that the sake was ordered by Drink. At the time it was believed by what the will-call order was the order would have been picked up by an employee from the company that ordered the product. On this same date Inspector Buenning went to Fusion and met with Manager, Danny Dinovis. Mr. Dinovis said that the sake we found in our previous inspection that he said was delivered there because no one at Drink was there to receive shipment was actually brought there by a Drink employee by accident. He also said that all of the sake was returned to Wirtz Beverages. I checked the sake stock at the bar and compared it to what was on the invoice Investigator Mueller had given to me. Most types of sake, including brands of what was on the invoice was on the shelves behind the bar at Fusion. Photos of product along with UPC codes were taken. Mr. Dinovis and I then went to Drink and I did not see any bottles of sake. I did find one box of sake commonly used to pour into a glass in the storeroom.

October 20, 2011: I called Wirtz Beverage and was told the only product returned from Drink was Dr. Mcgillacudy Vanilla and Bombay Blue Sapphire. No sake was returned. On October 21, 2011 I spoke with Wirtz Salesman, Jeff Van Someren. He told me that he actually delivered the sake order form the invoice to Drink. He said it was on September 27,

2011 and he delivered it to Drink Manager, Rob Germano. He said a barback employee assisted.

Conclusions

1. On two separate occasions inspectors conducted inspections at Fusion which revealed that product that had a production or "born on" date after April 21, 2011 was being stored and available for sale. Alcoholic beverages were therefore purchased from a retailer rather than a wholesaler as required. This is in violation of City of Minneapolis Ordinance 259.250 (2) and Minnesota statute 7515.0520 requiring all retailers of beverage alcohol for resale to be purchase alcohol only from a licensed Minnesota manufacturer, brewer, or wholesaler.

2. The licensee has not paid the $400.00 administrative fine related to the above incident on October 5, 2011.

3. The business could not provide receipts for alcoholic beverages that were on the premises.

Recommendations

Based on the evidence presented at the license settlement conference, Licensing and Consumer Services makes the following recommendations:

1. The ownership of Fusion agrees to pay the $400.00 administrative fine issued for the October 5, 2011 inspection violation.

2. The ownership of Fusion agrees to pay a $2,000.00 imposed fine for the violations from August 5, 2011, and October 5, 2011.
3. The ownership of Fusion agrees to a seven day suspension of their liquor license, which will be stayed provided there are no same or similar violations for a one year period beginning on the effective date of this agreement.

Fusion understands that the holding of a business or liquor license in the City of Minneapolis is both a privilege and a responsibility. A minimum standard shall be met in order to hold such a license. One minimum standard is that a license holder is responsible to ensure that its business operates in compliance with all applicable laws, ordinances, and regulations. It is understood and agreed that any violation of the above Recommendations shall constitute just and proper cause for the immediate imposition of any stayed penalties. It is further understood that compliance with the above Recommendations is a requirement for continuing to hold a license and that failure to comply with any of these conditions may result in additional adverse license action.

I have read and understand the above findings of fact, conclusions, and recommendations. I agree with their contents and I agree with the above noted Recommendations. I understand that the failure of my business to adhere to this agreement may be cause for further suspension, revocation, or denial of my license. I understand that this report must be accepted and approved by the Minneapolis City Council and Mayor.

Based upon the foregoing, this agreement is FREELY & VOLUNTARILY ENTERED INTO IN GOOD FAITH:

Business

Food group Holdings / Fusion

By: _____
(signature)

Its: Owner
(title)

Dated: 11/12, 2011

For the City of Minneapolis:

Grant Wilson

Grant J. Wilson
Manager

Dated: 11-14, 2011