Brent Civic Centre
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Wembley
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To Brent Licensing by email

30th July 2019

LICENSING ACT 2003
Licence Representation in connection with Licence: Review - Reference: 201473

Dear Sir/Madam,

Applicant: Paul Lee, Snr. Enforcement Officer Brent & Harrow Trading Standards Service
Premises: Food and Wine, 246 – 248 Neasden Lane, London, NW10 0AA.

I certify that I have considered the application shown above and I wish to make a representation as an:

officer of Brent and Harrow Trading Standards Service, Brent Civic Centre, Wembley HA9 OFJ, in whose area the premises are situated, which is authorised for the purposes of exercising its statutory function as a 'Responsible Authority' under the Licensing Act 2003.

The Brent and Harrow Trading Standards Service representation is concerned with the licensing objective;

- **1) the prevention of crime and disorder**
- **4) the protection of children from harm**

REPRESENTATION

On Thursday 18th July 2019, I was contacted by Brent Council Licensing Enforcement Officer; Susana Figueiredo. Ms Figueiredo informed me over the phone that she and her Police colleagues; PC Willcock and PC Scott had discovered a quantity of what they believed to be non-compliant 'niche' tobacco products.

Ms Figueiredo sent me photographs of the products and in my opinion the products were indeed 'niche' smokeless tobacco products intended to be placed in the mouth or inhaled through the nose.

Whilst these products are 'smokeless' they must be correctly labelled and have the specific statutory health warning applied to them in the prescribed format. It was clear from the photographs that none of the 3 separate tobacco products complied with the Labelling requirements of the Tobacco and Related Products Regulations 2016.

The 4 photographs that Ms Figueiredo sent to me (referenced as document 4 - sf/002 to sf/005) also show that the non-compliant tobacco products are stored in containers that were originaly intended for storing and dislaying children's sweets such as lollipops and bubble-gum. Whilst it would appear that these containers were located behind the till area adult orientated products and those that contain addictive substances such as Nicotine should not be stored in containers appealing to children. It is possible that mistakes concerning the identification of products can be made and that age restricted products could be inadvertently sold to children under the age of 18. Such mistakes are more likely to occur at premises where other illegal activities are taking place and where there is a lack of control managerial at the premises. Having such non-complaint tobacco products stored in unrelated containers can also, in my experience indicate that a business is deliberately attempting to hide or disguise 'illicit' products from the relevant enforcement agencies.

The Police Officer subsequently seized 31 packs of Red Cobra, 8 packs of Arabic snuff and 23 packs of green snuff.

A witness statement from PC Wilcock pertaining to the discovery and seizure of the tobacco products is included in this representation and referenced as document.

Later the same day Ms Figueiredo handed me sealed bags MPSC38392339, MPSC3892338 and MPSC3839338 containing the various non-complaint tobacco products. I photographed these products and produce 3 printed copies of the photos as exhibits PDL/1, PDL/2 and PDL3 (included as document 2). I then booked the sealed bags into our evidence store.

It is a criminal offence for 'a person' to breach a provision of the Tobacco and Related Products Regulations 2016, and this would include the provision for smokeless tobacco products to have the specific health warning **"This tobacco product damages your health and is addictive"** applied to them in the correct format. A breach of the aforementioned legislation can result in a person being found guilty of the offence receiving a penalty on summary conviction, to imprisonment for a term not exceeding three months, or a fine or both, or on conviction on indictment to imprisonment for a term not exceeding 2 years, or a fine, or both.

Later the same day Ms Figueiredo emailed me a photograph (ref sf/001 –document 6) of the tobacco product display gantry in the shop which was clearly open and tobacco products were clearly able to be seen. If there was no request by a person to the person serving in the shop to show or sell a tobacco product it would considered to be an 'unrequested' display. Ms Figueiredo has produced a witness statement relating to her observing the tobacco products in the display gantry which is included in this representation as document 4.

An unrequested display of a tobacco product is contravention of the The Tobacco Advertising and Promotion (Display) (England) Regulations 2010 (as amended) and is an offence contrary to The Tobacco Advertising and Promotion Act 2002 (as amended). Any person, including shop managers and shop assistants, found guilty of these offences is liable: on summary conviction in a Magistrates' Court in a Magistrates' Court to an unlimited fine or imprisonment for a term not exceeding six months, or both or on conviction on indictment in the Crown Court to a term not exceeding two years, an unlimited fine or both.

The above evidences that the following licensing oblectives are not being upheld:

1) the prevention of crime and disorder
4) the protection of children from harm

As a responsible authority and taking into consdideration the seriouness of this issue and how it can be directly associated with other associated issues at the premise we would support the premise licence review application by Brent Councils Licensing Team and recommendation **to Revoke the Premises Licence.**

If revocation is not considered appropriate in this case then I would recommend that the following conditions should be placed on the licence:

1. All stock purchased for retail sale should only be sourced from established businesses who are able to evidence legal compliance for their goods and that invoices and receipts for said goods are provided to ensure traceability.

2. Copies of invoices and receipts for stock purchased shall be kept for a minimum of 6 years and made available to authorised officers upon request.

List of Documents -

Document - 1

Paul Lee – Copy of witness statement

Document - 2

3 printed photographs of seized tobacco products handed to TS - (PDL/1, PDL/2 and PDL/3)

Document -3

Witness statement of PC Wilcock

Document – 4

4 printed photographs of non-compliant tobacco products in the shop – sf/002, sf/003, sf/004 and sf/005

Document -5

Witness statement of Susana Figueiredo

Document – 6

Printed photograph of tobacco product display ganty doors open – sf/001

Paul Lee

Senior Enforcement Officer
Brent and Harrow Trading Standards Service

Doc 1

LONDON BOROUGHS OF BRENT AND HARROW

TRADING STANDARDS SERVICE

Witness Statement

(C.J.Act 1967 - S.9, M.C. Act 1980 – ss5A(3)(a) and 5B, M.C. Rules 1981 r.70)

Statement of: Paul Lee

Age if under 18: Over 18

Occupation: Senior Trading Standards Enforcement Officer

This statement (consisting of ~~3~~ 4 PDL page(s) signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated 22 July 2019

Signature .....Paul Lee.....

I am employed by the London Borough of Brent, as a Senior Trading Standards Enforcement Officer.

On Thursday 18th July 2019, I was contacted by Brent Council Licensing Enforcement Officer; Susana Figueiredo. Ms Figueiredo informed me over the phone that she and her Police colleagues; PC Willcock and PC Scott had discovered a quantity of what they believed to be non-compliant 'niche' tobacco products.

Ms Figueiredo sent me photographs (ref. sf/002, sf/003, sf/004 and sf/005) of the products and in my opinion the products were indeed 'niche' smokeless tobacco products intended to be placed in the mouth or inhaled through the nose.

Signature .....Paul Lee.....

E31 Sept 2003

Whilst the products seen in the photographs are 'smokeless', they must be correctly labelled and have the specific statutory health warning applied to them in the prescribed format. It was clear from the photographs that none of the 3 separate tobacco products complied with the labelling requirements of the Tobacco and Related Products Regulations 2016. I Informed Ms Figueiredo of my opinions and she informed me that the Police Officers working with her were going to seize the non-compliant tobacco products.

The 4 photographs that Ms Figueiredo sent to me (referenced as sf/002 to sf/005) also show that the non-compliant tobacco products are stored in containers that were originally intended children's sweets such as lollipops and bubble-gum. Whilst it would appear that these containers were located behind the till area, adult orientated products and those that contain addictive substances such as Nicotine should not be stored in containers appealing to children. It is possible that mistakes concerning the identification of products can be made and that age restricted products could be inadvertently sold to children under the age of 18. Such mistakes are more likely to occur at premises where other illegal activities are taking place and where there is a lack of management controls at the premises.

Having such non-complaint tobacco products stored in such containers can also in my experience indicate that a business is deliberately attempting to hide of disguise 'illicit' products from the relevant enforcement agencies.

Later the same day Ms Figueiredo handed me sealed bags MPSC38392339, MPSC3892338 and MPSC3839338 containing the various non-complaint tobacco products. I photographed

Signature .....Paul Lee.....

E31 Sept 2003

these products and I produce 3 printed copies of the photos as exhibits PDL/1, PDL/2 and PDL3. I then booked the sealed bags into our evidence store.

It is a criminal offence for 'a person' to breach a provision of the Tobacco and Related Products Regulations 2016, and this would include the provision for smokeless tobacco products to have the specific health warning **"This tobacco product damages your health and is addictive"** applied to them in the correct format. A breach of the aforementioned legislation can result in a person being found guilty of the offence receiving a penalty on summary conviction, to imprisonment for a term not exceeding three months, or a fine or both, or on conviction on indictment to imprisonment for a term not exceeding 2 years, or a fine, or both.

Later the same day Ms Figueiredo emailed me a photograph (ref sf/001) of the tobacco product display gantry in the shop which was clearly open and tobacco products were clearly able to be seen and would therefore be considered to be 'displayed'.

An unrequested display of a tobacco product is contravention of The Tobacco Advertising and Promotion (Display) (England) Regulations 2010 (as amended) and is an offence contrary to The Tobacco Advertising and Promotion Act 2002 (as amended). Any person, including shop managers and shop assistants, found guilty of these offences is liable: on summary conviction in a Magistrates' Court in a Magistrates' Court to an unlimited fine or

Signature .....

E31 Sept 2003

imprisonment for a term not exceeding six months, or both or on conviction on indictment in the Crown Court to a term not exceeding two years, an unlimited fine or both.

Paul Lee

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Signature .....Paul Lee.....

E31 Sept 2003

PDL/1 Paul Lee 18/7/14 DOC 2

MPSC38392339

Exhibit No:	Office/OCU:	Cust No:	Internal Ref(s):
Ex book No:			Lab Ref No.
Description of exhibit:		I IDENTIFY THIS EXHIBIT AS THAT REFERRED TO IN MY STATEMENT	
		Signature:	
From Place/Person:		Signature of further Witness(es)	
Taken by:	Time:	Sealed by:	
Date:		Date:	Time:

POC/2 Part-le 18/7/19 DOC 2

PDC/3 Parlee 18/7/19. DOC2

MPSC38392338

Exhibit No:	Office/OCU:	Cust No:	Internal Ref(s).
Ex book No:			Lab Ref No.
Description of exhibit:		I IDENTIFY THIS EXHIBIT AS THAT REFERRED TO IN MY STATEMENT	
		Signature:	
From Place/Person:		Signature of further Witness(es)	
Taken by:		Sealed by:	
Date:	Time:	Date:	

DOC 6 - SF/001

18/7/14

Doc 3

WITNESS STATEMENT

CJ Act 1967, s.9; MC Act 1980, ss.5A(3)(a) and 5B; Criminal Procedure Rules 2005, Rule 27.1

Statement of **PC Vicky Wilcock** ..... URN: | 01 | SC | | 19 |

Age if under 18 **Over 18**..... (if over 18 insert 'over 18') Occupation: **Police Officer 231347** .....

This statement (consisting of: **2** pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything in it which I know to be false, or do not believe to be true.

Signature: ..... Date: 18th July 2019

Tick if witness evidence is visually recorded ☐ *(supply witness details on rear)*

I am the above named officer attached to the Licensing Team based at South Harrow Police Station. I am making this statement in relation to Food & Wine, 246-248 Neasden Lane, NW10 0AA.

On Thursday 18th July 2019 at approx. 0945 hours I attended Best One with PC Scott and Susana Figueiredo of Brent council licensing to serve notification of a review of the licence and to request CCTV footage as Figueiredo had reason to believe that they had sold a large bottle of Strongbow Cider to a street drinker who was intoxicated.

On arrival we found one male working behind the till counter. He was informed of the purpose of our visit and called someone that he said was in the wash room. The premises now in consultation period for a review of the licence which has been applied for by the council licensing officer.

As we often find non-duty smuggled tobacco in off licence venues I asked the male behind the counter to come out from behind the counter so that area could be checked to establish if any offences were being committed. I looked behind the counter saw two plastic tubs (formerly used to contain children's confectionary) filled with small bags of a dark green powder. On closer inspection they appeared to be bags of snuff tobacco

Snuff is a kind of smokeless tobacco made from ground up tobacco leaves. Rather than being burned and smoked, snuff is inhaled into the front of the nose in powdered form by the user. This delivers a quick nicotine hit. The health warning on the packaging must:

- appear on both the front and back surfaces of the pack
- cover 30% of the area of each of those surfaces
- be in black Helvetica bold type on a white background
- be in a font size which ensures that the text occupies the greatest possible proportion of the surface area reserved for it
- appear at the centre of that area
- be parallel to the main text on the surface concerned
- comply with the general conditions applicable to all health warnings on tobacco products

As all of these tobacco items appeared not to be packaged according to The Standardised Packaging of Tobacco Products Regulations 2015 they were sealed in police evidence bags and seized to be handed over to Brent trading standards.
31 x Red Cobra (missing standardised health warnings)
These were sealed in MPS evidence bag MPSC38392339
8 x Arabic Snuff (missing standardised health warnings)
These were sealed in MPS evidence bag MPSC38392338
23 x Green Snuff (missing standardised health warnings)

Signature: ..... Signature witnessed by: .....

Continuation of Statement of **Vicky Johnson** .....

These were sealed in MPS evidence bag MPSC38392337

Also of note during the visit was that the tobacco storage display was also left open. There were no sales of this type of tobacco during or visit, of which we were there for around 30-45 minutes. This was only closed when the council officer obtained a photo of it.

Signature: ..... Signature witnessed by: .....

DOC 4

DOC 4 - SF/002

18/7/14

Doc 4

Doc 4 – 5f/003

Paul e

DOC 4

DOC 4 - SF/004

[illegible] 18/7/19

DOC 4 – SF/005 Paul 18/7/19

DOC 4

Doc 5

Form LP70-Brent

Brent

Witness Statement

CJ Act 1967, s9;

MC Act 1980, ss5A(a) and 5B;

MC Rules 1981, r70;

UPRN: | | | | | |

Statement of: .....Susana Figueiredo.....

Age of if under 18..... (if over 18 insert 'over 18').....

Occupation: .....Enforcement officer.....

This statement (consisting of ..... page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything which I know to be false or do not believe to be true.

Dated the:.....18.07.2019.....

Signature: .....

I am employed by the London Borough of Brent as a Licensing Officer. My duties include enforcing the Licensing Act 2003. On 18th July 2019 at approximately 9.30hrs I entered Food & Wine, 246-248 Neasden Lane, NW10 0AA to carry out an inspection. At approximately 9.45hrs, two customers entered the premises and asked to top up their household gas meter card by £20. They did not ask for any tobacco but the door to the tobacco display gantry was both open when they entered the premises and was still open after they left. I attached a photograph taken of the door open after the customers left the premises (sf001).

Signature:..... .....Signature Witnessed by::.....

Doc 6

SP/001