

February 2013

## Thomas & Thomas E-News

Welcome to our first e-news of 2013.

### **Patty-gate!**

You will have seen in the national press the purported 'crack down' by Westminster Council on their burgers - better known in some places as 'Patty-gate'. An abatement/improvement notice was served on Davy's Wine Bar which is now the subject of an appeal, although Westminster seem to be saying that it is more a matter of risk assessment and judgment, rather than an outright ban in all circumstances.

This is reminiscent of the Council's service of health and safety notices on the vast majority of crispy duck ovens in the West End a few years ago. That was also the subject of an appeal when we were successful in getting the notices withdrawn on behalf of a number of Chinese restaurants in Westminster. The important point arising from all of this is that you should be aware of all risks relevant to your business, including food, temperatures, health and safety, and of course licensing and planning.

### **Persistent Under-age Sales**

Police and trading standard officers are adopting stricter enforcement policies for premises found persistently selling alcohol to children. Premises found guilty of two underage sales within a three month period face serious sanctions. These may include a suspension of the Premises Licence and a maximum fine of £20,000. Alternatively, operators can agree a voluntary closure order to fend off a full prosecution. However, even if a voluntary closure is agreed, some Police forces are threatening to review Premises Licences on top of other sanctions.

We have assisted a number of operators in avoiding prosecutions and these tough penalties. This includes drafting and implementing due diligence procedures, training programmes and in-house policies dealing with underage sales. It is essential operators have policies and procedures in place to help demonstrate a due diligence defence in the event of a first offence underage sale. Although please be warned there is no due diligence defence for persistent underage sales, so extra care should be taken to avoid underage sales altogether!

### **Government Consultation: Alcohol Fuelled Crime and Anti-Social Behaviour**

The Government are proposing yet another raft of new legislation. There is currently a Home Office consultation on the proposals, including:

- **Minimum Unit Pricing** – the aim is legitimate enough, to ensure 'alcohol can only be sold at a sensible and responsible price'. The suggested minimum unit price is 45p. The Government are targeting cheap price alcohol, such as white cider, although this may inadvertently catch wine sold in promotions such as Marks & Spencer's 'Dine in for £10'.
- **Ban of multi buy promotions** – again this is aimed at tackling irresponsibly priced alcohol. The proposals would apply to the off-trade only.

- **Mandatory Conditions** – in 2010 a number of mandatory conditions were imposed on Premises Licences to restrict irresponsible drinking. The Government are asking whether these conditions go far enough. There is a strong view in the trade that no more conditions should be imposed.
- **Health as a licensing objective for cumulative impact policies** – the introduction of the health licensing objective was rejected in previous consultations but is a licensing objective in Scotland. If introduced, the Government are seeking to empower local authorities to use the health objective to target areas with a high density of licensed premises and form Cumulative Impact Policies as result – like Westminster’s ‘Stress Area’. This could impose further burdens on operators with premises within these areas.
- **Freeing up responsible business with ancillary sales** – businesses selling alcohol as a small part of their business, for example a guest house providing a ‘welcome drink’, may not be as tightly regulated as other licensed premises. Defining ‘ancillary sales’ could be difficult but the proposals are welcome, perhaps allowing businesses such as hairdressers and spas to sell alcohol without a personal licence holder.

The consultation does include some welcome relaxations. For example, **deregulation of community events**; an **increase of 12 TENs a year to 18**; and possible **exemptions to the requirement to sell hot food and drink between 23.00 to 05.00**. The consultation can be found here: [Consultation](#).

### **2am Tube**

Many operators will have noticed TFL’s proposals to operate the tube until 2am at weekends, starting in 2015. This would undoubtedly improve late night dispersal across London and may help operators wishing to apply for later hours and possibly lead to some council’s relaxing their Cumulative Impact Policies

### **Mouth of the Month**

We (and we suspect you) are sick and tired of seeing the growth and intensification of supermarkets and off-licences selling cheap price alcohol with little or no responsibility or consideration for the local amenity. It is, in our view, absolutely ridiculous that alcohol can be purchased in a West End supermarket and then drunk immediately outside, in the streets, in the parks or even outside other licensed premises.

Action needs to be taken by the City Council to reduce the proven public nuisance caused by these uses and relax the policies in respect of responsible on-sale operations who are being unfairly compared and treated by the proliferation of off-licences selling cheap booze.

### **Premises Licence Spring Cleaning**

The New Year is a perfect time to tidy up your Premises Licence. If you would like to meet one of our partners to discuss any of the following issues free of charge please do get in touch:

- Extensions of hours.
- Removal of burdensome and redundant conditions.
- Change in layout.
- New licensable activities.

- Temporary Event Notices.
- Training and due diligence.

#### **What we've been up to ...**

- Obtaining a 24 hour Premises Licence for **Obliv** on the 32nd Floor of The Shard. The new concept comes from the operators of Zuma and Roka, who will open their rotisserie and grill restaurant, with a lounge bar, in Spring 2013. <http://the-shard.com/restaurants>
- Successfully applying for a 24 hour licence for **Duck and Waffle** in Heron Tower. <http://duckandwaffle.com/>
- Continuing to advise **Hawksmoor** (<http://thehawksmoor.com/>) and **Burger & Lobster** (<http://www.burgerandlobster.com/>) on their expansions.

If you have any queries in respect of the above or any other matter, please contact one of the partners

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