

Decision Number: N/59/210/2025

IN THE MATTER OF

the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER OF

an application by **RAILWAY ROAD HOLDINGS LIMITED** for a **New Off-Licence** pursuant to section 99 of the Act in respect of premises situated at **Unit 57, 124 Hoskyns Road, Rolleston** and to be known as **“The Libation Laboratory”**.

**BEFORE THE SELWYN
DISTRICT LICENSING COMMITTEE**

Chairperson: **Mrs M Redstone**
Members: **Mr S Moore**
Mr C Purcell

HEARING at Lincoln Events Centre on **Thursday 5 December 2024**

APPEARANCES

Mr J Furlong - representing director and shareholder of Railway Road Holdings Limited - Applicant
Mr M Johnson – Inspector - Objector
SC Craddock – NZ Police - Objector
Ms L Bromley – Medical Officer of Health - Objector

RESERVED DECISION OF THE COMMITTEE

INTRODUCTION

[1] This is an application by **RAILWAY ROAD HOLDINGS LIMITED** (**‘the Applicant’** or **‘Applicant Company’** hereafter) for a new Off-Licence in relation to premises situated at Unit 57, 124 Hoskyns Road, Rolleston, to be known as **‘The Libation Laboratory’**. The application was received by the Selwyn District Council Alcohol Licensing team on 18 August 2024.

[2] There were no public objections. The Tri-Agencies objected to the application on the grounds that the Applicant could not establish itself as a manufacturer, and secondly questioned whether, if a manufacturing status could be established, it was the principal business carried on at the applicant's premises.

[3] The Applicant Company has one director and shareholder, James Furlong.

[4] The general nature of the business set out in the Application was Remote Seller.

[5] Prior to the hearing the Inspector had met with the applicant and explained that the holder of a Remote Seller's Licence must be able to establish that 85% of its income would be produced from remote sales.

[6] The Applicant then sought a Manufacturer's Off-Licence with the following trading hours:

Sales through a website to be created at any time on any day.

Pickup from the office of the Applicant on a Thursday and Friday, between the hours of 11.00am and 4.00pm

These hours are less than the default national maximum trading hours for an Off-Licence.¹

THE APPLICANT

[7] On behalf of the Applicant Company, Mr Furlong was sworn. He referred to his Brief of Evidence and explained to the Committee how alcoholic drinks were manufactured on his premises.

[8] Mr Furlong explained that he would receive raw ingredients together with recipes from his clients and his company then followed those exact recipes to produce alcoholic products of various strengths, which were then packaged (mainly in aluminium cans for which the Applicant is the South Island Distributor) and returned to the client for sale.

[9] Following Mr Furlong's meeting with the Tri-Agencies the Inspector emailed Mr Furlong asking him a series of questions about the products he was wanting to manufacture and sell through his website. In response Mr Furlong wrote:

"As the moment we travel to different breweries and package their beer. Being in our unit we will offer a transportable tank where we can send a tank to a brewery in Westport and they will send it back for us to package their product. We will send the finished goods back to them. Wineries will send their wine in IBC containers and we will blend and package and send finished product back to them. Distilleries will send their spirit to us and we will proof it down to 5% (or to *their* requirements) and we will blend and package and send out the finished product. The products that will be sold on the website will be beer that we will be (sic) purchased in keg form from the individual breweries. Alcohol cannot be donated. Similar to what X-Berience in Rolleston does - purchase kegs from breweries and sell riggers. The riggers will have a sticker on them that will have the brewery name and beer style on them. **We will not brew our own beer** (emphasis added). There may be a point where we do 1 or two products under our own label but 1 of these is non-alcoholic and the other is a 5% RTD but we have not decided if we will proceed with it.

As far as Distilling, we do not have the power available or the room to do anything other than manufacture (mix, blend etc) beverages and package them. I think that trading as was from (sic) when we first were setting up the business.

In summary to your initial question of understanding what Alcohol products we will be selling - the same beer as what X-Berience and CBC (in Riverside) are selling. I only want to do about 5-6 different beers otherwise the overheads and extra cleaning is not worth it for the small volume we will be doing."

[10] Mr Furlong advised it would be his intention to set up a website through which he would take orders. He said he would not be using couriers for delivery, or delivering himself so would only be selling to persons who could uplift their orders during the trading hours for which he had applied, being Thursday and Friday between 11:00am and 6:00pm.

¹ Section 43 of the Sale and Supply of Alcohol Act.

THE TRI-AGENCIES

[11] The Tri-Agencies objected to the application on the grounds that they did not consider that the applicant was a manufacturer to whom a licence should be issued.

[12] The Licensing Inspector advised there was no definition of "manufacturing" in the Sale and Supply of Alcohol Act 2012 ("the Act"). He referred the Committee to several cases dealing with the manufacture of alcohol together with a Guideline for Inspectors used by the Auckland City Council.

[13] The Medical Officer of Health and the New Zealand Police supported the view that the application did not meet the criteria for either a Remote Sales Licence or a Manufacturers Off-Licence.

EVALUATION AND FINDINGS

[14] The Committee has in the first instance confined its discussion as to whether the Applicant carries on a business for which a Licence may issue, on the basis that other criteria for a licence set out in paragraph 105 and 106 of the Act become irrelevant until such a finding is made.

[15] At the outset, the Committee accepts the Customs controlled area licence issued pursuant to section 59 of the Customs and Excise Act 2018. The purpose of that Act is set out in Paragraph 3 and is generally to levy excise duty and excise-equivalent duty and to enable the collection of appropriate duties, taxes and levies. In New Zealand there is an excise duty levied in respect of alcohol, tobacco and fuel manufactured in New Zealand.

[16] We refer to Paragraph 5 of the Customs and Excise Act and in particular to the definition of Manufacture:

"manufacture, in relation to goods specified in the Excise and Excise-equivalent Duties Table -

(c)(ii) any of the following processes that takes place on premises that are not licensed, or required to be licensed, under the Sale and Supply of Alcohol Act 2012:

- (A) filtering the goods, diluting the goods, or blending the goods with other goods (whether the other goods are the same as, similar to, or different from the goods);
- (B) putting the goods for the first time into a container (for example, a bag, barrel, bottle, can, cask, drum, or keg) in which they might be presented, or from which they might be dispensed, for sale to the public or any member of the public;
- (C) labelling or marking, for the first time, containers filled with the goods."

[17] The above description indicates to this Committee that the purpose of the Certificate issued to the Applicant by the New Zealand Customs Service is to serve notice that it is at this point in the process that excise tax is payable, i.e. rather than at the point of initial production of the goods that the applicant is required to blend to produce the final alcoholic beverage for sale. It specifically refers to it relating to premises that are not licensed, or required to be licensed, under the Sale and Supply of Alcohol Act 2012.

[18] The applicant has not given evidence as to his ability to manufacture his own products, either beer or RTDs. There is no evidence he is permitted to use recipes provided by his clients to make his own product for sale.

[19] In response to the question in the application "Business Principal Purpose" the applicant responded "Mobile and contract canning as well as contract manufacture of Alcoholic and Non Alcoholic Drinks". "Contract" in the Oxford Dictionary is defined as "a written or spoken agreement, especially one concerning employment, sales, or tenancy, that is intended to be enforceable by law" and gives the example "much of the produce is grown under contract". This suggests that ownership of the goods remains with the person to whom the manufacturer is contracted. There is no suggestion that the Applicant is a manufacturer in his own right leading to an ability to sell his own manufactured products.

[20] We now turn to the Authorities. In Lindale International Distillery Limited [1532/95] at p.9 deals with the issue of "Is Liquor 'Made'?" Having accepted "that distillation and redistillation is occurring on the premises. Records are kept to satisfy the Customs authorities ... There was no challenge as to its qualification as 'liquor' in terms of the s.2 definition in the Act". Judge Gately went on to say:

"Various dictionary definitions of "made" and "manufacture" are suggested by counsel. We find it unnecessary to refer to them in detail. We accept the Concise Oxford Dictionary definition of "made" submitted by Mr Ford meaning inter alia: 'constructed, created or prepared from parts or from other substance'.

In relation to liquor, at one end of manufacture by making is distillation; at the other extreme is little more than the dilution of some form of concentrate, together with packaging and bottling. A variety of intermediate processes are possible, perhaps in separate locations.

"In Liquorette Limited (LLA 1824/93) we decided that the mere dilution of concentrate on the premises could not be regarded as the making or manufacture of liquor. That finding was upheld on appeal by the High Court. We see no reason to alter that view".

[21] In Liquorette Limited [HC 203/94] Judge Blanchard when discussing the definition of the word "manufacture" agreed with the definition taken from the Waitakere City's Sale of Liquor Policy No.12, namely, "the process whereby a substance is worked upon to give the resulting substance a new and distractive character and identity ... as compared with its components or ingredients". Further at page 6:

"Gin was proposed to be made by mixing juniper oil with neutral spirit at high alcohol levels. This would produce concentrated gin which would be diluted with carbon filtered water to 27 per cent alcohol by volume. The juniper oil and the neutral alcohol would be supplied by other persons. So what would be going on upon the premises was simply a mixing of the two products followed by dilution with water".

[22] Mr Furlong said on several occasions that what he intended doing was the same as the business carried on by X-Berience in Rolleston. X-Berience does not hold a manufacturers Off-Licence, but an On-Licence and an Off-Licence for premises which sells alcohol products (mainly craft beers sourced in and around Canterbury) that are not manufactured on the premises.

[23] For the foregoing reasons the Committee does not accept that the Applicant "manufactures" in a sense that would enable a manufacturer's Off-Licence to issue, that the "manufacturing process" carried out at the premises is the principal business carried out at the premises, and that the Manufacturers Certificate issued by NZ Customs Service is issued solely for the purpose of establishing a point in a process at which levies and taxes will be collected and does not in itself seek to influence the issue of a Licence under the Sale and Supply of Alcohol Act.

[24] The application is therefore declined.

DATED at CHRISTCHURCH **this 30th day of January 2025**



Merelyn Redstone
Chairperson
Selwyn District Licensing Committee

