BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

In The Matter Of the Hearing Of: PAK-AM ENTERPRISES, INC. d/b/a SMOKE PLUS 1220 N STATE ST BELLINGHAM, WA 98225-5016 Licensee UBI: 6017290010010002 TVN: 3B0193A	OAH NO. 2010-LCB-0076 LCB NO. T-522 FINAL ORDER OF THE BOARD

The above-captioned matter coming on regularly before the Board, and it appearing that:

1. On October 6, 2010 the Board issued a Complaint alleging that on June 29, 2010 the above-named Licensee, or employee(s) thereof, gave, sold, and/or supplied tobacco to a person(s) under the age of eighteen (18), contrary to RCW 26.28.080 and is subject to the penalties set out in RCW 70.155.100.

2. A formal hearing was held on March 31 and April 15, 2011 at the Licensee's timely request.

3. At the hearing, the Licensee was represented by President Javed Iqbal of Pak-Am Enterprises d/b/a Smoke Plus. Assistant Attorney General Tim Ford represented the Education and Enforcement Division of the Board.

4. On June 8, 2011, Administrative Law Judge Jason H. Grover entered his Findings of Fact, Conclusions of Law and Initial Order in this matter, which sustained the violation.

5. No exceptions were filed by the parties

Washington State Liquor Control Board
3000 Pacific Ave, S.E.
P.O. Box 43076
Olympia, WA 98504-3076
Phone: 360-664-1602

6. The entire record in this proceeding having been reviewed by the Board, and the Board having fully considered said record and being fully advised in the premises; NOW THEREFORE,

IT IS HEREBY ORDERED that the Administrative Law Judge's Findings of Fact, Conclusions of Law and Initial Order for case T-522 is adopted.

IT IS HEREBY FURTHER ORDERED that the Complaint filed in case T-522 is sustained and that the above-named Licensee, Pak-Am Enterprises, Inc. d/b/a Smoke Plus shall be subject to a monetary penalty of one hundred dollars ($100.00) due within 30 days of this order. Failure to comply with the terms of this Order will subject the Licensee to further disciplinary action.

Payment should be sent to:

Washington State Liquor Control Board
PO Box 43085
Olympia, WA 98504-3085

DATED at Olympia, Washington this 9th day of August, 2011.

WASHINGTON STATE LIQUOR CONTROL BOARD

Reconsideration. Pursuant to RCW 34.05.470, you have ten (10) days from the mailing of this Order to file a petition for reconsideration stating the specific grounds on which relief is requested. A petition for reconsideration, together with any argument in support thereof, should be filed by mailing or delivering it directly to the Washington State Liquor Control Board, Attn: Kevin McCarroll, 3000 Pacific Avenue Southeast, PO Box 43076, Olympia, WA 98504-3076,

with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Board's office. RCW 34.05.010(6). A copy shall also be sent to Mary M. Tennyson, Senior Assistant Attorney General, 1125 Washington St. SE, P.O. Box 40110, Olympia, WA 98504-0110. A timely petition for reconsideration is deemed to be denied if, within twenty (20) days from the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by which it will act on the petition. An order denying reconsideration is not subject to judicial review. RCW 34.05.470(5). The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review.

Stay of Effectiveness. The filing of a petition for reconsideration does not stay the effectiveness of this Order. The Board has determined not to consider a petition to stay the effectiveness of this Order. Any such request should be made in connection with a petition for judicial review under chapter 34.05 RCW and RCW 34.05.550.

Judicial Review. Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).

Washington State
Liquor Control Board

August 10, 2011

Pak-Am Enterprises Inc, Licensee
d/b/a Smoke Plus
1220 N State St
Bellingham, WA 98225-5016

Tim Ford, AAG
GCE Division, Office of Attorney General
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100

RE: ***Final Order of the Board***
Licensee: Pak-Am Enterprises Inc.
Trade Name: Smoke Plus
Location: 1220 N State St, Bellingham, WA 98225-5016
LCB No. T-522
OAH No. 2010-LCB-0076
Administrative Violation Notice No. 3B0193A
License No. (UBI): 601729001001 0002

Dear Parties:

Please find the enclosed Declaration of Service by Mail and a copy of the Final Order of the Board in the above-referenced matter.

The applicable monetary penalty is due by September 9, 2011. Please send payment to WSLCB, P.O. Box 43085, Olympia, WA 98504-3085 and label the check with your License Number and Administrative Violation Notice Number listed above. If you have any questions, please contact me at (360) 664–1602.

Sincerely,

Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)
cc: Mt Vernon Enforcement and Education Division, WSLCB
Amber Harris, Tobacco Violations Coordinator, WSLCB

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF: PAK-AM ENTERPRISES INC d/b/a SMOKE PLUS 1220 N STATE ST BELLINGHAM, WA 98225-5016 LICENSEE UBI NO. 6017290010010002 AVN NO. 3B0193A	LCB NO. T-522 DECLARATION OF SERVICE BY MAIL

I certify that I caused a copy of the FINAL ORDER OF THE BOARD in the above-referenced matter to be served on all parties or their counsel of record by US Mail Postage Prepaid via Consolidated Mail Service for Licensees; by Campus Mail for the Office of Attorney General, on the date below to:

PAK-AM ENTERPRISES INC d/b/a SMOKE PLUS 1220 N STATE ST BELLINGHAM, WA 98225-5016	TIMOTHY FORD, ASSISTANT ATTORNEY GENERAL, GCE DIVISION OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100

DATED this 10th day of August, 2011, at Olympia, Washington.

Kevin McCarroll, Adjudicative Proceedings Coordinator

Washington State Liquor Control Board
3000 Pacific Avenue SE
PO Box 43076
Olympia, WA 98504-3076
(360) 664-1602

RECEIVED
JUN 17 2011
LIQUOR CONTROL BOARD
BOARD ADMINISTRATION

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF: PAK-AM ENTERPRISES, INC. dba SMOKE PLUS 1220 N. State Street Bellingham, WA 98225-5016 Licensee. UBI No. 601729001 TVN 31958	OAH DOCKET NO. 2010-LCB-0076 Agency Case No. T-522 **PROPOSED** FINDINGS OF FACT, CONCLUSIONS OF LAW, AND INITIAL ORDER

I. ISSUES

1.1 Whether the Licensee sold a tobacco product, a pack of Camel cigarettes to an underage Youth Operative on June 29, 2010?

1.2 Whether the assessment of a $100.00 penalty by the Washington State Liquor Control Board is an appropriate penalty for a first violation of RCW 26.28.080 within a two year period under RCW 70.155.100?

II. ORDER SUMMARY

2.1 The Board's Notice of Board Action on Tobacco Violation is **SUSTAINED**.

2.2 The licensee, Pak-Am Enterprises, Inc. dba Smoke Plus located at 1220 N. State Street, Bellingham, WA 98225, shall pay a monetary penalty in the amount of one hundred dollars ($100) as directed by the Board upon issuance of a final order.

\\\

III. HEARING

3.1 **Administrative Law Judge:** Jason H. Grover

3.2 **Appellant:** Pak-Am Enterprises, Inc. dba Smoke Plus

3.2.1 **Appellant's Representative:** Javed Iqbal, president

3.3 **Agency:** Washington State Liquor Control Board's Education and Enforcement Division ("Board")

3.3.1 **Department Representative:** Tim Ford, Assistant Attorney General

3.3.2 **Department Witnesses:** Sergeant Rafael Lucatero, LCB Enforcement Officer; Heidi Weirsma, Community Health Specialist and former Tobacco Prevention Coordinator; and, [redacted] Youth Operative

3.4 **Exhibits:** The Board's Exhibits 1 through 8 were admitted at the time of hearing.

3.5 **Date of Hearing:** March 31 & April 15, 2011.

IV. FINDINGS OF FACT

I find the following facts more probable than not under the preponderance of the evidence standard:

4.1 [redacted] is a student. She has conducted tobacco compliance checks for the Whatcom County Health Department for approximately two years. The purpose of compliance checks is to ensure that licensees are following tobacco laws and not selling tobacco products to minors. Ms. [redacted] has two years experience as a Bellingham Police Explorer and has attended two training academies. She has also received on the job training and instruction on the proper performance of compliance

checks. During the time that she has worked as a Youth Operative, Ms. [redacted] has conducted approximately seventy-two (72) compliance checks.

4.2 Ms. [redacted] has been instructed by her supervisor, Heidi Weirsma, to carry only her ID and money for the purchase while on compliance checks. She has been instructed to provide identification if asked, but not to provide it if it is not requested.

4.3 On June 29, 2010, Ms. [redacted] was seventeen (17) years old. On that date, she conducted a compliance check on Pak-Am Enterprises, Inc. dba Smoke Plus, the licensee above-named.

4.4 Ms. [redacted] was accompanied by her supervisor, Heidi Weirsma, Community Health Specialist and formerly a Tobacco Prevention Coordinator for the Whatcom County Health Department. Ms. Weirsma has also recieved training on compliance checks and on training youth operatives. She has conducted approximately two hundred (200) compliance checks.

4.5 At approximately 2:30 PM on June 29, 2010, Ms. [redacted] and Ms. Weirsma were in Ms. Weirsma's county vehicle outside of the Licensee's place of business located at 1220 N. State Street, Bellingham, Washington 98225. Ms. Weirsma instructed Ms. [redacted] to enter the business and attempt to purchase tobacco,

4.6 Ms. Weirsma waited in the vehicle. Ms. [redacted] exited, carrying her identification (Exhibit 8) and money for the purchase. When she first approached the business, the front door was locked. She began to leave, but a man came out of the store and waived her back in. Ms. [redacted] entered the business and purchased a pack of

Camel cigarettes. The sales clerk did not request her identification, and she did not provide it. Following the purchase, Ms. Weirsma took photographs of the cigarette pack that Ms. [redacted] purchased (Exhibit 6) and of Ms. [redacted] holding the cigarette pack in her right hand (Exhibit 7).

4.7 After completing some paperwork, Ms. Weirsma attempted to make contact with the licensee. She was unable to make contact because the front door was locked.

4.8 Following the compliance check, both Ms. Weirsma and Ms. [redacted] prepared written statements about the compliance checks (Exhibits 2 & 3). The statements and other information were provided to Sergeant Rafael Lucatero, Enforcement Officer for the Liquor Control Board. Based on the information provided, Sergeant Lucatero issued Tobacco Violation Notice ("TVN") 31958 (Exhibit 1, page 2). The TVN was served on the Javed Iqbal, president of Pak-Am Enterprises, Inc. by Sergeant Lucatero at approximately 3:07 PM on July 12, 2010.

4.9 The Licensee filed a timely request for Administrative Hearing on July 27, 2010.

4.10 At the hearing, Mr. Iqbal did not deny that Ms. [redacted] purchased the Camel cigarettes from Pak-Am Enterprises, Inc. He testified that he believed that the sale occurred in May 2010, but he was not served with notice of the violation until two weeks later. He argued that he should have been served on the date of the violation. He testified that he has never had any citations for selling to minors in the past.

\\\

\\\

V. CONCLUSIONS OF LAW

Jurisdiction

5.1 The Office of Administrative Hearings has jurisdiction over the parties and subject matter pursuant to chapters 26.28, 70.155, 82.24, 34.12, and 34.05 RCW, and chapters 10-08 and 314-10 WAC.

5.2 As a seller of tobacco, the licensee is subject to the jurisdiction of the Washington State Liquor Control Board pursuant to RCW 82.24.500, RCW 82.24.550(1), RCW 70.155.100, and RCW 70.155.110. Proceedings involving agency action are adjudicative proceedings under chapter 34.05 RCW. The Board has authority to assign such proceedings to an administrative law judge pursuant to chapter 34.12 RCW. A proper hearing was provided in this case.

5.3 Even prior to the enactment of chapter 70.155 RCW, it was unlawful to "sell or give, or permit to be sold or given to any person under the age of eighteen years any cigar, cigarette, cigarette paper or wrapper, or tobacco in any form." RCW 26.28.080. That same proscription is found in WAC 314-10-050. The Board has the statutory authority to enforce RCW 26.28.080 and chapter 70.155 RCW.

5.4 In applying the above to the case at hand, the undersigned first notes that based on the parties' demeanor, motivation, and logical persuasiveness of the testimony presented, the testimony presented by [redacted] is deemed credible. The foregoing Findings of Fact establish by a preponderance of evidence that on June 29, 2010 the licensee sold a tobacco product (a package of Camel cigarettes) to

Ms. [redacted] a person under the age of eighteen, without requesting identification.

5.5 Each sale of tobacco products to a minor is examined on an individual basis. There is no distinction made between a mistaken or unintentional sale and a deliberate sale; the two situations are treated identically. Thus, despite the lack of prior citations for sales to minors, and while noting such is commendable, such does not negate the sale at issue nor alter the result.

5.6 The Board may suspend or revoke a retailer's license held by a business at any location, or may impose a monetary penalty if it finds that the licensee has violated RCW 26.28.080.

5.7 The violation at issue is a first violation of RCW 26.28.080 within a two-year period. The standard penalty against a licensee for selling tobacco in violation of RCW 26.28.080 for the first time in a two-year period is one hundred dollars ($100). RCW 70.155.080(2)(a)(i). Accordingly, the licensee should be ordered to pay a monetary penalty in the amount of one hundred dollars ($100) by the date to be set by the Board in its final order.

VI. ORDER

From the foregoing Conclusions of Law, NOW THEREFORE:

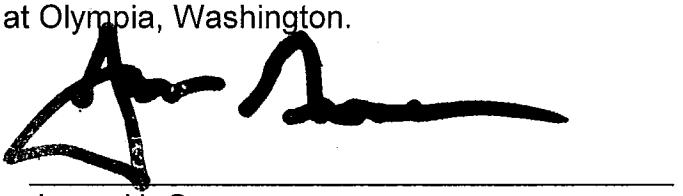
6.1 The Board's Notice of Board Action on Tobacco Violation is **SUSTAINED**.

6.2 The licensee, Pak-Am Enterprises, Inc. dba Smoke Plus located at 1220 N. State Street, Bellingham, WA 98225, shall pay a monetary penalty in the amount of one hundred

\\\

dollars ($100) as directed by the Board upon issuance of a final order.

SERVED on the 8th day of June 2011 at Olympia, Washington.



Jason H. Grover
Administrative Law Judge
Office of Administrative Hearings

NOTICE TO PARTIES

Either the licensee or permit holder or the assistant attorney general may file a petition for review of the initial order with the liquor control board within twenty (20) days of the date of service of the initial order. RCW 34.05.464, WAC 10-08-211 and WAC 314-42-095.

The petition for review must:

(i) Specify the portions of the initial order to which exception is taken;
(ii) Refer to the evidence of record which is relied upon to support the petition; and
(iii) Be filed with the liquor control board within twenty (20) days of the date of service of the initial order.

A copy of the petition for review must be mailed to all of the other parties and their representatives at the time the petition is filed. Within ten (10) days after service of the petition for review, any of the other parties may file a response to that petition with the liquor control board. WAC 314-42-095(2)(a) and (b). Copies of the reply must be mailed to all other parties and their representatives at the time the reply is filed.

The administrative record, the initial order, any petitions for review, and any replies filed by the parties will be circulated to the board members for review. WAC 314-42-095(3).

Following this review, the board will enter a final order. WAC 314-42-095(4). Within ten (10) days of the service of a final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested. RCW 34.05.470 and WAC 10-08-215.

The final decision of the board is appealable to the Superior Court under the provisions of RCW 34.05.510 through 34.05.598 (Washington Administrative Procedure Act).