

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

In The Matter Of the Hearing Of:

JOON BOM KIM
PDQ, INC.
d/b/a PDQ DELI
5318 128TH ST SE
PUYALLUP, WA 98446

LICENSE NO. (UBI) 6021133290010001

OAH No. 2008-LCB-0034
LCB No. T-497

FINAL ORDER OF THE BOARD

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

1. A formal hearing was held on September 25, 2008 at the licensee's timely request regarding an Administrative Violation Notice issued on April 16, 2008.
2. On July 16, 2008 the Board issued a Complaint alleging that on April 15, 2008 the Licensee, or employee(s) thereof, sold and/or allowed to be sold tobacco products to a person under the age of eighteen (18) contrary to RCW 26.28.080 and WAC 314-10-050.
3. At the hearing the Education and Enforcement Division of the Board was represented by Assistant Attorney General Brian Considine and Licensee Joon Bom Kim represented himself.
4. On November 3, 2008 Administrative Law Judge James D. Stanford entered his Findings of Fact, Conclusions of Law and Initial Order in this matter which sustained the Complaint.
5. No exceptions were filed by the parties

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 heretofore made and entered in this matter be, and the same hereby are, adopted as Findings of Fact, Conclusions of Law and Final Order of the Board, so that PDQ Inc. d/b/a PDQ Deli located at 5318 128th Street SE in Puyallup, Washington shall be subject to a monetary penalty of one hundred dollars (\$100.00) due on or before February 6, 2009. 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

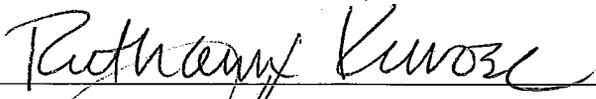
Attention: Monika Taylor

PO Box 43094

Olympia, WA 98504-3094

DATED at Olympia, Washington this 7th day of January, 2009.

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.

No matter will be reconsidered unless it clearly appears from the petition for reconsideration that (a)

there is material clerical error in the order or (b) there is specific material error of fact or law. 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 Martha P. Lantz, 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).

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

IN THE MATTER OF:)
) OAH No. 2008-LCB-0034
JOON BOM KIM) LCB No. T-497
PDQ INC.)
d/b/a PDQ DELI) FINDINGS OF FACT,
5318 128th ST SE) CONCLUSIONS OF LAW
PUYALLUP, WA 98446) AND INITIAL ORDER
)
LICENSE NO. (UBI) 6021133290010001)
_____)

STATEMENT OF THE CASE

Pursuant to notice duly given, an administrative hearing was held before James D. Stanford, duly appointed administrative law judge, at the Office of Administrative Hearings, 2420 Bristol Court SW, Olympia, Washington, on the 25th day of September, 2008, in the matter of the tobacco violation appeal of PDQ Deli, Inc., doing business as PDQ Deli, and Joon Bom Kim, owner and president.

The Liquor Control Board (board) was represented by Brian Considine, assistant attorney general. PDQ, Inc. (licensee) and appeared through was represented by Joon Bom Kim.

On April 15, 2008, liquor enforcement officer Kandra Ordiway issued a tobacco violation notice to the licensee alleging that the corporation had violated RCW 26.28.080 and WAC 314-10-050 by having sold a tobacco product to a person under the age of eighteen years. Upon its receipt of the tobacco violation notice, the licensee, acting through Joon Bom Kim, timely requested an administrative hearing.

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**LIQUOR CONTROL BOARD
BOARD ADMINISTRATION**

On July 16, 2008, the board issued a complaint alleging that the licensee had provided tobacco products to a person under eighteen years of age in violation of RCW 26.28.080. The licensee was duly notified of the time and the place of the proceedings. There were five exhibits admitted and testimony offered by four witnesses.

The administrative law judge, having considered the entire record in this proceeding, including the arguments of the respective representatives, now enters the following findings of fact:

FINDINGS OF FACT

1. At all times material hereto, PDQ Deli, Inc., a Washington corporation, has been the holder of a retailer's license to sell tobacco products in Washington, unique business identification (UBI) number 6012233290010001, while doing business as PDQ Deli at 5318 128th Street E, Puyallup, Washington. PDQ Deli, Inc. is owned by Joon Bom Kim.

2. The board operates a continuous program of tobacco compliance checks wherein operatives under the age of eighteen years attempt to purchase tobacco products from retail tobacco vendors. Each of these compliance checks is supervised by a liquor enforcement officer or a police officer. If an operative who is under the age of eighteen years is able to purchase a tobacco product from a licensed retail tobacco vendor, the board, acting through a liquor control agent, may issue a tobacco violation notice to the business making the sale.

3. On April 15, 2008, the board conducted tobacco compliance checks in Pierce County under the supervision of liquor enforcement sergeant Jackie Eliason and liquor

enforcement officer Kandra Ordiway. The operative under the age of eighteen years who was assigned to attempt to purchase a tobacco product from a licensed retail vendor was T. L., who was born January 5, 1991, was seventeen (17) years of age. T. L. has the appearance of a male at or near his chronological age of seventeen years. T. L. had taken no steps to make himself look older than his true age. On April 15, 2008, T. L. had no card of identification on his person when he entered the PDQ Deli.

4. On April 15, 2008, at approximately 6:55p.m., T. L. entered the PDQ Deli at 5318 128th Street E. in Puyallup, Washington. T. L. went directly to the counter where cigarette products were available for sale to the public. The counter was attended by Misty M. Belden, an experienced sales clerk. T. L. requested one pack of Marlboro cigarettes. Misty M. Belden asked T. L. to produce a card of identification. When T. L. explained that he had no card of identification, Misty M. Belden asked him to identify his date of birth. T. L. immediately responded that he was born on January 5, 1990, an incorrect date. Misty M. Belden obtained a pack of Marlboro cigarettes from its place of storage behind the counter offered it to T. L. T. L. tendered payment in the amount of \$6.08 for the pack of Marlboro cigarettes. Misty M. Belden accepted the payment from T. L. and allowed him to leave the PDQ Deli with the pack of Marlboro cigarettes.

5. After he left the store, T. L. gave the pack of Marlboro cigarettes to sergeant Jackie Eliason.

6. Sergeant Eliason and enforcement officer Ordiway entered PDQ Deli and confronted the seller, Misty M. Belden. During this confrontation, Misty M Belden admitted that she made the sale of a tobacco product to T. L., an underage person.

7. Liquor officer Kandra Ordiway reviewed the board's record of its operating history and determined that PDQ Deli, Inc., doing business as PDQ Deli, had no previous recorded violations for having made the sale of a tobacco product to a person under the age of eighteen years within two years. On April 16, 2008, liquor enforcement officer Ordiway issued a tobacco violation notice to the licensee.

8. Soon Bon Kim, owner of the licensed premises, testified that his business does not intend to sell age restricted products to underage persons. He was not present on the premises when the sale was made and Misty M. Belden has left his employment.

From the foregoing findings of fact, the administrative law judge now enters the following conclusions of law:

CONCLUSIONS OF LAW

1. It is unlawful for any person 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. No person may sell or give or in any way provide tobacco products to any person under eighteen years of age. WAC 314-10-050(1).

2. The evidence in this case clearly establishes that on April 15, 2008, the licensee, acting through an employee, sold cigarettes, a tobacco product, to a person under the age of eighteen years from the PDQ Deli in violation of RCW 26.28.080. The board has consistently held that licensees are responsible for the operation of their licensed premises in compliance with the laws and rules of the board.

3. The liquor control board may suspend or revoke a retailer's license held by a business at any location, or may impose a monetary penalty as set forth in subsection (2)

of this section, if the liquor control board finds that the licensee has violated RCW 26.28.080. RCW 70.155.100(1).

4. Where a statute makes it an offense to do a particular thing, and is silent concerning the intent with which the thing is done, a person commits the offense when he or she does the forbidden thing, even if he or she has no evil or wrongful intent beyond that which is implied from the doing of the prohibited act. By making the sale of a tobacco product to a person under the age of eighteen years, Misty M Belden committed an act forbidden by RCW 26.28.080 while employed at the PDQ Deli, a licensed cigarette retailer.

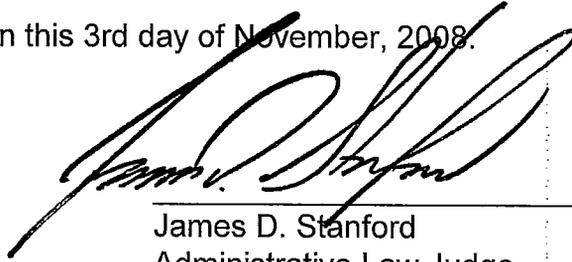
5. For a violation of RCW 26.28.080, the liquor control board may impose a monetary penalty upon any licensed cigarette retailer. RCW 70.155.100(2). For the first violation of RCW 26.28.080 within a two-year period, a monetary penalty of one-hundred dollars (\$100). RCW 70.155.100(2)(a)(i). For its first tobacco violation within a two year period, the imposing of a monetary penalty under RCW 70.155.020(2)(a)(i) against PDQ Deli, Inc., doing business as PDQ Deli, is deemed to be in the public interest.

From the foregoing conclusions of law, NOW THEREFORE,

INITIAL ORDER

IT IS HEREBY ORDERED That in the public interest and for a first violation of RCW 26.28.080 within two years there shall be and hereby is imposed upon PDQ Deli, Inc, doing business as PDQ Deli, and Joon Bom Kim a monetary penalty in the amount of one-hundred dollars (\$100).

Dated at Olympia, Washington this 3rd day of November, 2008.



James D. Stanford
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 and WAC 10-08-211, 314-29-010(4)(b) and 314-42-080(1).

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 and within twenty (20) days of the date of service of the initial order.

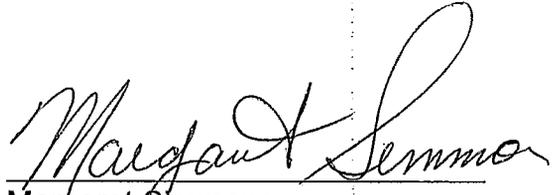
A copy of the petition for review must be mailed to all of the other parties and their representatives at the time the petition is filed. Within (10) ten days after service of the petition for review, any of the other parties may file a response to that petition with the liquor control board. WAC 314-42-080(3). 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, and any exceptions filed by the parties will be circulated to the board members for review. WAC 314-29-010(4)(c).

Following this review, the board will enter a final order WAC 314-29-010(4)(d). Within ten 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.

I Margaret Simmons declare that I mailed a true and exact copy of the Findings of Fact, Conclusions of Law and Initial Order to the following parties, postage prepaid this 3rd day of November 2008 at Olympia, Washington.


Margaret Simmons
Legal Secretary

Boon B. Kim
PDQ Deli
5318 128th St E
Puyallup, WA 98446

Brian Considine
Assistant Attorney General
1125 Washington St SE
PO Box 40100
Olympia, WA 98504-0100

Sgt Jackie Eliason
Washington State Liquor Control Board
3000 Pacific Ave SE
PO Box 43076
Olympia, WA 98504-3076

World Language Service
PO Box 1716
Milton, WA 98354

Office of Administrative Hearings
Executive Assistant Roni Pettit
PO Box 42488
Olympia, WA 98504-2488

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

In the Matter of:

JOON BOM KIM
PDQ INC
d/b/a PDQ DELI
5318 128TH ST SE
PUYALLUP, WA 98446

LICENSE NO (UBI) 6021133290010001.

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

I hereby certify that I have this day served a copy of this document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent.

DATED at Olympia, Washington, this 3rd day of November, 2008


Representative, Office of Administrative Hearings

OAH NO. 2008-LCB-0034
NO. T-497

NOTICE TO PARTIES

The attached administrative law judge's findings of fact, conclusions of law and initial order are not effective until a final order of the Washington State Liquor Control Board is issued.

All parties hereto shall have twenty (20) days from the date of service of these proposals to file exceptions as provided by RCW 34.05.464 and WAC 314-29. Exceptions shall be filed in triplicate with the Liquor Control Board, 3000 Pacific Avenue S.E., P.O. Box 43076, Olympia, WA 98504-3076. The exceptions must be received on or before November 23, 2008. Replies to exceptions shall be filed with the Board within ten (10) days of the date of service of exceptions as provided by WAC 314-29. One copy of the exceptions or replies must also be served upon all other parties of record, or their attorneys, with proof of service as required by WAC 314-29.

After reviewing the entire record including exceptions, replies, briefs and legal arguments, if any, the board will affirm, reverse or modify these proposals by a final order of the board.