



Policy

Trading Name

Disclaimer

This Policy is designed to provide information in regard to the subject matter covered, and with the understanding that the Director of Liquor Licensing is not passing legal opinion or interpretation or other professional advice. The information is provided on the understanding that all persons undertake responsibility for assessing the relevance and accuracy of its contents.

Introduction

Section 116 of the *Liquor Control Act 1988* ('the Act') imposes obligations on licensees in respect of various documents that must be kept on the premises, displayed and produced to an authorised officer. Among these particular obligations are provisions relating directly to the trading name under which a business may be carried on.

This policy provides guidance as to the legislative provisions relevant to trading names.

Legislative Provisions

Section 116(3) of the Act states that -

"A person shall not carry on business for which a licence is required under any name other than that of the licensee unless the Director has approved the use of the name."

This provision prohibits a licensee from conducting the business under a licence other than with a trading name approved by the Director.

The carrying on of a business incorporates the overall conduct and operation of the business and includes things that are generally done as elements of an ongoing concern. Therefore, the advertising associated with that business and the branding of the physical premises, are things done in an effort to maintain the viability of a business. As such, both form part of the "*carrying on of business*" for the purposes of the Act.

Operational Application

In the context outlined above, although it is possible that different parts of a licensed premises may be known by different names, only one business is being carried on under a licence attached to a premises, and therefore, any advertising in respect of that premises must be consistent with the approved trading name.

As a consequence, only the following advertising, promotion and branding of the business under the licence will be considered acceptable by the Director—

1. All **print** media advertising and any internet promotions must make reference to the approved premises trading name (for example, ZZZ Buying Group at the ABC Hotel, Nell's Bar at the ABC Nightclub, or Meg's Restaurant at the ABC Estate Vineyard). Where the promotion relates to a buying group advertisement published on behalf of all the members of that buying group (for example, a 'ZZZ Buying Group' specials advertisement) and the members are not listed individually in that advertisement, notice of a website and/or

telephone hotline service where customers can identify the approved trading name of the nearest buying group member, is to be provided.

In the case of a producer's cellar door operating under an extended trading permit (ETP), the advertisement must refer to the approved trading names of all producers involved in the cellar door outlet or the trading name approved by the Director for this outlet.

2. Any **radio or television** advertising must make reference to the approved premises trading name as set out in point 1, except where the promotion relates to a buying group advertisement published on behalf of all the members of that buying group (for example, a 'ZZZ Buying Group' specials advertisement). In such a case, the provisions relating to a website and/or telephone hotline service as set out in point 1 apply.

In the case of a producer's cellar door operating under an ETP, the advertisement must refer to the approved trading names of all producers involved in the cellar door outlet or the trading name approved by the Director for this outlet.

3. **On-premises advertising and branding:** the licensee is permitted to identify different parts of a licensed premises by different names. However, in these circumstances, the licensee must display the approved signage as is required by section 116(5) of the Act, in a conspicuous position at the external entrance to each part of the premises. For example, if the drive-thru bottleshop is branded as part of a buying group different from the approved trading name, then the licensee must have the required section 116(5) signage displayed in a conspicuous position at the entrance of the bottleshop; or if a room or area of a premises is promoted under a different name, then the required section 116(5) signage is required at any external entrance to this room or area of the premises.

In regard to cellar door operations involving more than one producer, signage must, as a minimum, be displayed in a conspicuous position at the external exit/entry points to each part of the premises providing the following details:

- i. Class of Licence: Producer's Licence.
- ii. Type of Permit: Cellar Door Extended Trading Permit.

It should be noted that as a general principle, the licensing authority will not approve a trading name that suggests a manner of trade that is not generally authorised under that particular licence, as this would convey to the public an expectation of a service not consistent with the prescribed purpose of that type of licence.

For example, the holder of a restaurant licence is bound by the requirement that the primary and predominant purpose of the licence must be the regular supply of meals to customers while sitting at a table, or at a fixed structure used as a table. An application for a restaurant to include the word 'bar' in its trading name, does not accurately reflect the business conducted under that licence as there is no provision for patrons to consume liquor at a bar.

Change of Premises Name

Should a licensee wish to change the approved trading name at any time, an application can be made to the licensing authority under section 116 of the Act to change the approved trading name.

In the case of an ETP to operate a collective cellar door outlet, approval can be sought as part of the ETP application to operate under a trading name that is different to the licensees' approved trading name. Should this not be sought as part of the original ETP application, or should the licensees wish to change the approved trading name at a later date, an application must be lodged with the licensing authority.

To assist applicants in lodging this type of application, an application kit containing a lodgement guide, information bulletin and form is available from the department's website: www.rgl.wa.gov.au or by telephoning (08) 9245 1888.

Non-compliance

If a licensee fails to comply with this requirement, the licensing authority may decide to:

- 1) issue an infringement under section 167 of the Act to the licensee; or
- 2) lodge a section 95 complaint for disciplinary action against the licensee. Under section 96 of the Act, if such a complaint was upheld by the Liquor Commission, a range of disciplinary action could be imposed including: a reprimand and a fine of up to a maximum of \$60 000.

DIRECTOR OF LIQUOR LICENSING