

LEISURE UPDATE

Drink more and save more?

Britain's biggest high street pub chain recently cut the price of a pint of beer to levels not seen since 1989 in a move which added to the debate on binge drinking. The move highlights how difficult times are in the industry and flies in the face of recent Government efforts to cut binge drinking by limiting price-led promotions.

In January JD Wetherspoon, which runs more than 700 pubs under the Wetherspoons and Lloyds No 1 brands, cut the price of a pint of Greene King IPA and a bottle of San Miguel premium lager to 99p.

The depth and length of the price cuts has caused a stir among rival high street operators, many of whom are expected to respond with similar cuts.

Don Shenker, the chief executive of Alcohol Concern, said: "Understandably in the economic climate, businesses need to be competitive and people are worried by living costs. However, alcohol is not an ordinary commodity like bread or milk. Alcohol causes harm to the nation's health and economy, and there appears to be a strong link between cheap alcohol and the high levels of binge drinking in the UK."

Wetherspoon strongly rejected any suggestion that its price cuts would exacerbate irresponsible drinking. Keith Down, the finance director, said: "Greene King IPA has a relatively low strength and tends to be an older person's drink rather than a session ale. We've been very careful about the products we've chosen."

But it seems obvious that there would be some sort of link between such promotions and binge drinking. The Home Affairs Committee in their October 2008 report 'Policing in the 21st Century' stated "alcohol-related crime places a heavy burden on police resources and diverts officers away from dealing with other types of crime. There is limited evidence of the effect of the Licensing Act 2003 on the total number of alcohol-related offences, but there is certainly a strong perception amongst police forces that alcohol-related violence is on the increase."

But it is not the threat of tighter legislation or restrictions on alcohol promotions which worries the industry. Figures show the rate of pub closures running at around 36 per week. Pubs will close for a variety of reasons, one of which may be the revocation of the licence. If, for example, there is a high instance of crime and disorder linked to the premises, the local authority can be asked to review the licence.

In October 2008 the Department of Culture, Media and Sport revealed that over 1,000 reviews of licences **(continued on page 2)**

Foot Anstey sponsors Food and Drink Award

Foot Anstey was delighted to sponsor an award at the recent Devon Life Food & Drink Awards 2008, hosted by Judy Spiers. Pictured is Karen Plumbley-Jones presenting the award for Best Entrepreneur/Innovative Product of the Year to Miles Blood Smyth of the Exmouth Mussel Company.



(continued from front page)

were completed during the year up to March 2008 and of those, in only 15% of the reviews was the licence actually taken away. So there is a wider problem causing the high number of public house closures.

In reality, the Wetherspoons' promotion is unlikely to have a noticeable effect on crime levels. Instead, it is indicative of a wider issue facing the industry. The problem is not an increase in crime. The smoking ban coupled with the economic downturn and cheaper supermarket prices is hitting the pub industry where it hurts, and slashing prices is seen as the only way to get customers back in the bar.

For further information, Jodie Baker, solicitor can be contacted on 01752 675513 or email jodie.baker@foot-ansteys.co.uk



VAT traps for leisure businesses

Two recent cases on VAT illustrate the importance of paying attention to detail where tax is concerned.

The VAT and Duties Tribunal recently made a decision relating to the VAT treatment of takings from coin operated machines. A VAT registered business owned coin-operated snooker tables which were located in a students' union bar. The business accounted for output tax on the gross takings and shared the balance with the student union on a 70/30 basis.

The business took the view that the 30% student union share of the takings was exempt from VAT, being a supply by a non-profit making body of services linked with sports or physical education. They therefore sought a refund of output tax on the amounts they had paid to HMRC.

HMRC refused. They argued that it was the business that was making a taxable supply (of facilities to play snooker). The students' union was not making any supplies and so no part of the supply was exempt from VAT. Without any documentation in place HMRC relied on the facts of the arrangement – in particular that it was the taxable business which had sole access to the cash boxes of the tables and was responsible for the maintenance of the tables.

Businesses which provide coin-operated machines of any type in other organisations' premises – such as pubs, leisure centres and colleges – should make sure that it is agreed who will be responsible for accounting for output tax on the takings and ensure that any such agreement is carefully documented.

Another case in the VAT Tribunal looked at a situation where a school had granted a lease over a sports field for

a peppercorn rent to a tenant company, which operated a commercial leisure centre on the site. This entitled the school to use the sports facilities located in the leisure centre.

The tribunal held that this was a barter transaction – the school was granting the lease as consideration for the tenant company's supply of the leisure facilities. The grant of the lease by the school was an exempt transaction but the provision of the sporting facilities by the tenant company was standard rated. As a result, the tenant company had to account for output tax on the value of the services it provided to the school, even though no cash had passed in either direction.

The case is also an important reminder that, from a Stamp Duty Land Tax (SDLT) perspective, no cash consideration is not the same as there being no consideration at all. If a buyer provides services, the chargeable consideration is the open market value of those services (Finance Act 2003, Schedule 4, paragraph 11).

If you have any questions about VAT for your business, please contact Sarah Anderson, solicitor on 01752 675105 or email sarah.anderson@foot-ansteys.co.uk

Are the days of 'kids go free' offers numbered?

Yet more radical changes to consumer law were introduced during 2008 which outlawed unfair or misleading business practices.

The Consumer Protection from Unfair Trading Regulations 2008 (the 'Regulations') (which apply to the supply of goods and services) put a general ban on unfair commercial practices and protect consumers from unscrupulous businesses who make false or misleading claims about their products. There are 31 unfair practices that are always prohibited.

Practices that are **always** prohibited include selling scratch cards for a prize draw of a holiday, knowing that none of the cards made available for sale would 'win'. Describing a product as 'free' but the consumer has to incur a cost (such as delivery) to claim the 'free' product is prohibited. Aggressive selling is also always prohibited.

Other practices may be unfair depending on the circumstances. For example, where a consumer buys a product (which he would not normally buy) as he was encouraged or coerced by

the unfair practice. Examples may be 'buy one get one free' or 'children go free' offers made by supermarkets and leisure operators where the price has been inflated to cover the second product cost or if the customer has no choice but to buy the two products together.

Genuine offers that do not mislead consumers and which are not unfair are still permitted. If you haven't already, you should make sure that compliance is one of your New Year's resolutions. Failure to do so may result in criminal prosecution, fines or even imprisonment.

For further information or advice, please contact Rachel Robinson, solicitor on 01392 685214 or email rachel.robinson@foot-ansteys.co.uk

Building projects: quick resolution of disputes

With difficult economic times now upon us, those with empty and sometimes derelict properties on their land are often keen to capitalise by investing in building or renovation works so as to enable them to be let as holiday homes or flats.

Unfortunately however, any type of building project has the potential for generating disputes. Such disputes have often involved the parties in considerable time and cost being incurred in matters where quite often the sums at issue are relatively small. Furthermore, the delay which resolving such issues could cause has the potential for causing yet further disruption to the work.

The good news now for a party who regrettably encounters disputes on this type of project is that they have the potential for achieving a quick and relatively cheap method of resolution without the necessity of going to court or, worse, arbitration. In 1996, Parliament introduced legislation in the form of the Housing Grants, Construction and Regeneration Act 1996 which provided that all written construction contracts were required to incorporate particular provisions providing that either party to the contract should have the right to refer a dispute which had arisen to an independent adjudicator, who would ordinarily be required to reach a decision on the matter referred to him within 28 days (or longer if the parties agreed). This decision, which would be made after the adjudicator had received written and sometimes oral submissions, would then be enforceable immediately subject to the right of the parties to go off to court or arbitration (as their contract allowed) in due course.

As such, say you have a dispute with your builder as to the scope of the renovations which are to be undertaken at a barn which you are turning into a holiday cottage. The builder claims that an element of the work which he is undertaking is new and not within his original price; you say that it forms part of the original work which he contracted to perform. Rather than letting the impasse delay the project, you would have the right to refer the dispute to an adjudicator who could determine the issue and make a binding decision on the matter within 28 days. That decision would (assuming you are successful) require the builder to undertake the works as part of the original contract sum albeit that he could go off to court or arbitration at a later stage to challenge the decision. The advantage of adjudication is that the dispute has been resolved quickly and any delay to the project is minimalised.

If you have a construction issue you would like to discuss, please contact Chris Hoar, partner on 01392 685393 or email chris.hoar@foot-ansteys.co.uk

Chris has recently joined Foot Anstey from niche construction lawyers Shadbolt. He heads up Foot Anstey's construction team and is able to provide specialist legal advice relating to all building and engineering matters.

Recovering possession from squatters

Finding squatters have moved into premises or on to land can pose a real headache for property owners. We set out the options to consider.

Common law remedies

The first step for an owner who finds squatters have occupied their property is to simply ask them to leave. If they do not, and the premises are not residential, an owner can consider taking steps to make life sufficiently unpleasant that the squatters leave without the need for legal proceedings. Such steps can include the disconnection of services or painting out windows but it is always advisable to err on the side of caution. It is important that an owner does nothing which might cause a breach of the peace.

If the squatters are absent from the property (including residential premises) at any time, it is open to the owner to take possession back by changing the locks. However, an owner must bear in mind that changing the locks is a criminal offence if there is anyone in the premises who is opposed to them doing so.

The Criminal Justice and Public Order Act 1994

This Act grants the police powers to remove squatters in certain, limited, circumstances.

For example, the police may move squatters on from open land (but not the public highway) if they have brought six or more vehicles on to the land or if they have caused damage or have used threatening or abusive words or behaviour against the owner or anyone acting on his behalf. Not leaving as soon as is reasonably practical is an arrestable offence. The police have powers to seize vehicles.

The Act also makes it an arrestable offence not to leave residential premises when requested to do so by a lawful

occupier who has been displaced by squatters (admittedly a rather rare phenomenon) or any person who can prove a genuine intention to occupy the premises.

The 1994 Act is clear. However, persuading hard-pressed police forces to exercise their powers of arrest in relation to squatters on private land can be extremely difficult.

Summary possession proceedings

If neither the common law nor the 1994 Act assist, owners can issue possession proceedings in the local court. Proceedings are appropriate and effective to recover possession from squatters in all circumstances.

The timescale for possession proceedings against squatters is likely to be 1 - 2 weeks for open land or commercial premises and 2 - 3 weeks for residential premises which, by usual litigation standards, is very swift.

Securing the property

Once possession has been recovered, preventing a recurrence of illegal occupation is a priority. Vehicles can be prevented from entering open land by excavating trenches or erecting barriers. Residential premises should be secured by good locks and possibly also by fitting lockable shutters or intruder alarms. Of course the best way to deter squatters is to keep premises occupied and in use.

For further information or advice on any property matter, please contact Tracy Bailey, solicitor on 01392 685270 or email tracy.bailey@foot-ansteys.co.uk

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Senate Court
Southernhay Gardens
Exeter
EX1 1NT

t: +44 (0) 1392 411221
f: +44 (0) 1392 685220
DX: 8308 EXETER

21 Derry's Cross
Plymouth
Devon
PL1 2SW

t: +44 (0) 1752 675000
f: +44 (0) 1752 675500
DX: 118102 PLYMOUTH 2

The Quad
Blackbrook Park Avenue
Blackbrook Business Park
Taunton
TA1 2PX

t: +44 (0) 1823 625600
f: +44 (0) 1823 625678
DX: 97177 TAUNTON (Blackbrook)

Princes House
Princes Street
Truro
Cornwall
TR1 2EY

t: +44 (0) 1872 243300
f: +44 (0) 1872 242458
DX: 81200 TRURO

enquiries@foot-ansteys.co.uk
www.foot-ansteys.co.uk

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