

Mailing Date: APR 17 2007

COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ADMINISTRATIVE LAW JUDGE  
FOR THE PENNSYLVANIA LIQUOR CONTROL BOARD

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation Nos. 06-1153
LIQUOR CONTROL ENFORCEMENT	:	and 06-1391
	:	(as consolidated)
v.	:	
	:	Incident Nos. W09-326630
JAKZ INC	:	W09-330655
1996 S 5TH ST	:	
ALLENTOWN PA 18103-4909	:	
	:	LID - 54201
	:	
	:	
LEHIGH COUNTY	:	
LICENSE NO. R-AP-SS-1571	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: Roy Harkavy, Esq.

For Licensee: Theodore J. Zeller, III, Esq.

**ADJUDICATION**

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued two citations, each of which alleges that Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), by permitting the use on the inside of the licensed premises of a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside. The particulars are as follows:

Citation No.	Date of Alleged Violation	Date Citation Issued
06-1153	January 26, 2006	June 5, 2006
06-1391	March 11, 2006	June 9, 2006

The Bureau moved to consolidate the two citations on the basis that they essentially arose out of one investigation during the period January 26, 2006, through March 11, 2006. This motion was granted on December 12, 2006.

A hearing was held on December 8, 2006, in Allentown, Pennsylvania. The parties stipulated to the timely service of the notice letters and the citations.

FINDINGS OF FACT:

1. Liquor Enforcement Officer James Rhinehammer visited the licensed premises at about 10:00 p.m. on January 26, 2006. There were about thirty patrons and two bartenders. Two entertainers were playing guitars, electronically amplified through loudspeakers. About an hour after entering, the officer left the premises and heard the music he had heard inside as far away as 105 paces from the establishment (N.T. 11-12).

2. Officer Rhinehammer entered the premises again at about 12:15 a.m. on March 11, 2006. Two entertainers were performing on drum and guitar, along with microphones. There were four loudspeakers in use. About an hour after entering, the officer left the premises and heard the music he had heard inside as far away as 70 paces from the establishment (N.T. 13-15).

3. Officer Rhinehammer visited the premises on other occasions when he did not observe any violations of the law (N.T. 16-19).

4. In response to complaints from neighbors about noise at the premises, Licensee's president expended some \$43,000 in soundproofing, carpeting, and other renovations intended to correct the problem. The establishment has become more family-friendly, and has gone in a different direction as concerns entertainment (N.T. 21-22).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since April 7, 2005, and has had prior violations, as follows:

Citation No. 05-1474. \$300.00 fine.

1. Loudspeakers could be heard outside. July 2, 2005.

Citation No. 05-1639. \$1,250.00 fine.

1. Sales to a visibly intoxicated person. July 20, 2005.

Citation No. 05-1738 & 05-2674 (consolidated). \$400.00 fine.

1. Loudspeakers could be heard outside. July 31 and November 6, 2005.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of the type found in this case.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Jakz, Inc., License No. R-AP-SS-1571, pay a fine of three hundred dollars (\$300.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

The fine must be paid by treasurer's check, cashier's check, certified check or money order. **Personal checks, which include business-use personal checks, are not acceptable.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail to:

PLCB-Office of Administrative Law Judge  
Brandywine Plaza  
2221 Paxton Church Road  
Harrisburg PA 17110-9661

Dated this 5th day of April, 2007.

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David L. Shenke, J.

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**NOTICE: MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 FILING FEE.**