

NSW Independent Liquor & Gaming Authority

Mr Tony Michael Licensee, Royal Hotel	Mr Dimitri Argeres Director, Compliance & Enforcement, DCITHS	Sergeant Robert Creamer NSW Police
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26 July 2024

Dear Sir/Madam

Reference No.	DOC24/171051
Applicant	Mr Tony Michael
Application for	Review of a decision made under section 75 of the <i>Liquor Act 2007</i> by a delegate of the Secretary of the (then) NSW Department of Enterprise, Investment and Trade
Licence Name	Royal Hotel
Licensee	Mr Tony Michael
Licence no.	LIQH400105207
Licence type	Liquor - hotel licence
Premises	16-20 South St, GRANVILLE, NSW 2142 AUSTRALIA
Date of reviewable decision	20 October 2023
Legislation	Section 36A of the <i>Gaming and Liquor Administration Act 2007</i>

Decision on application to review delegated decision of the Secretary Royal Hotel, Granville

Our decision

We have decided to **confirm** the delegate's decision.

Background

On 5 and 9 September 2023, Liquor & Gaming NSW (L&GNSW) conducted inspections of the Royal Hotel, Granville following complaints from three members of the public regarding the hotel's external gaming signage. The inspections identified that the hotel had several external and internal signs using cartoon imagery ostensibly promoting the hotel's restaurant, 'Mr Choy's Wok'.

The inspectors who attended the hotel formed a view that the imagery used in these signs is imagery that relates to a gambling franchise or gambling business, or that it otherwise can reasonably be taken to draw attention to the availability of approved gaming machines at the hotel. Such signage is prohibited under section 44 of the

Gaming Machines Act 2001 (the Act), while the publication of gaming machine advertising is prohibited under section 43 of the Act.

The inspectors formed this view on the basis that the name and imagery used by the hotel was materially extremely similar to that used in the 'Choy's Kingdom' electronic gaming machine, produced by Aristocrat Gaming.

The delegate's decision

Mr Dimitri Argeres Director, Compliance & Enforcement, a delegate of the Secretary, for the (then) Department of Enterprise, Investment and Trade was satisfied that, on the basis of the evidence collected during the inspections of the hotel, the imagery employed in the signage relating to 'Mr Choy's Wok' is imagery that relates to a gambling franchise or gambling business. The delegate was also satisfied that the use of this imagery in the hotel's signage increases the risk of gambling-related harm occurring.

Having regard to the above, the delegate was satisfied that regulatory intervention was required to address the potential risk of harm arising from the operation of the licensed premises and therefore determined to issue a direction under section 75 of the *Liquor Act 2007* on 20 October 2023.

Under the written direction the hotel was required to:

1. cease the use of any material, including (but not limited to) takeaway menus using the Mr Choy character imagery.
2. remove, switch off (if digital), alter or conceal any external signage displaying the Mr Choy character imagery.
3. remove any imagery depicting the Mr Choy character from the hotel's website and/or any of the hotel's social media platforms.

Review and stay application

On 23 October 2023, the Authority received an application to review the decision made by Mr Dimitri Argeres as a delegate of the Secretary, for the (then) Department of Enterprise, Investment and Trade.

Stay application

A stay of the delegate's decision was also sought by the review applicant on the basis that:

- the restaurant is independently owned and operated from the owners and operators of the hotel.
- the costs associated with changing signage, menus, websites and social media pages would be considerable.
- there has been no evidence provided that demonstrates an actual risk.
- the matter has not been sufficiently investigated.
- for the restaurant to continue to trade and operate, if a stay is not granted, they would have to change their imagery, signage etc immediately which would therefore make any successful appeal redundant.
- the issue of the section 75 written direction was premature in circumstances where the investigation into the matter had not been completed.

On 25 October 2023, we determined to refuse the stay application.

Review application

The applicant sought a review of the delegate's decision for the following reasons:

- the ordinary meaning of the words "materially extremely similar", as referred to in the notice, would suggest that there is no distinguishable difference between the two sets of images, however, there are the following differences between the images:
 - the font and outline of the words 'Choy's Kingdom' and 'Mr Choy's Wok' are different.
 - the 'Choy' in 'Choy's Kingdom' is depicted as holding bags of coins or money, which relates to gaming, whereas 'Mr Choy' is holding either dumplings or a wok, consistent with a Chinese restaurant.
 - the head piece worn by the character in Choy's kingdom is different and more elaborate than Mr Choy.
 - the colour of the garment in the character in Choy's kingdom is a dark crimson colour whereas Mr Choy is wearing a red garment with yellow symbols all throughout.
 - the eyebrows of the characters are different.
 - the character in Choy's Kingdom has a black moustache and a black goat patch where Mr Choy has a brown goat patch that looks nothing like the Choy's Kingdom character.
 - the character in Choy's Kingdom appears to look younger than the Mr Choy character.
 - the use of Wok compared to Kingdom.
 - Mr Choy has an open mouth smile compared to the closed mouth of the Choy's Kingdom character.
- if the copyright/trademark owner of 'Choy's Kingdom' was of the view that Mr Choy's was materially extremely similar then they would have taken steps to protect those rights, however no such steps have been taken.
- the notice contends that the imagery in the hotel signage increases the risk of gambling related harm however no evidence was provided in support of that content nor was reference made to the risk or harm specifically in relation to the premises.
- the restaurant is operated and owned independently of the hotel. The hotel received two notices to produce, however the owner of the restaurant was not contacted by L&GNSW in relation to the matter.
- the matter was not sufficiently investigated.
- the hotel does not detract from the amenity of community life and the responsible development of the entertainment and hospitality industries but is instead going over and beyond and has turned the premises into a family orientated community-based location.
- the hotel has implemented policies over and above the minimum requirements for harm minimisation in its gaming plan of management.

Submissions and consultation

On 26 February 2024, the Office of ILGA invited submissions from the review applicant, L&GNSW and NSW Police. On 7 March 2024, L&GNSW advised that they did not intend to make a submission in response. No submissions were received from the review applicant or NSW Police.

Our findings

On 19 June 2024, we considered the review application and agreed with the delegate that the use of the imagery increases the risk of gambling-related harm occurring. While there may be some subtle differences in the restaurant's images, the images are materially extremely similar to that used in the 'Choy's Kingdom' electronic gaming

machine, produced by Aristocrat Gaming and therefore a breach of sections 43 and 44 of the Act.

As such, we confirm the delegate's decision for the Royal Hotel, Granville, dated 20 October 2023.

Relevant legislation

We are satisfied that the review applicant is able to lodge the review application in accordance with section 36A(2) of the *Gaming and Liquor Administration Act 2007* (GALA Act).

We are satisfied that the decision under section 75, to which the review application relates, is reviewable for the purposes of section 36A(1)(iii) of the GALA Act.

We are satisfied that the decision to confirm the delegate's decision has been made in accordance with the Authority's powers under section 36A(4) of the GALA Act.

The material we considered

In determining the review application, the following material was considered:

Material before the delegate:

- NSW Police complaint dated 31 August 2023
- Numerous public complaints lodged in September 2023
- Licensing L&GNSW complaint dated 21 September 2023
- 4 file notes and supporting images
- section 75 direction dated 20 October 2023

Review application and submissions:

- review application dated 23 October 2023

This decision will be published in accordance with section 36C of the GALA Act.

If you have any questions

Please contact the Office of ILGA at office@ilga.nsw.gov.au if you have any questions.

Yours sincerely



Caroline Lamb

Chairperson

For and on behalf of the **Independent Liquor & Gaming Authority**