



Neutral Citation Number: [2025] CIGC (Civ) 20

Cause No: G 2022-0185

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION

BETWEEN:

THE KING

(On the application of GT RETAIL SUPPLIERS LTD)

Applicant

-and-

- (1) THE DEPARTMENT OF COMMERCE AND INVESTMENT**
- (2) THE LIQUOR LICENSING BOARD**
- (3) THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS**

Respondents

Appearances:	Ms Kathleen Ryan of Ryan Law Chambers for the Applicant Ms Celia Middleton, Crown Counsel, Attorney General's Chambers for the Respondents
Before:	The Honourable Justice Jalil Asif KC
Heard:	27 November 2024
Judgment:	5 June 2025

Judicial review—sale of low alcohol drinks without liquor licence—proper interpretation of definition of intoxicating liquor in Liquor Licensing Act—whether shandy is intoxicating liquor—whether unfair, unreasonable or irrational to enforce Liquor Licensing Act in respect of shandy but not in respect of other low alcoholic drinks—whether applicant entitled to damages for value of lost stock

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JUDGMENT

A. Introduction

1. This is a claim for judicial review by the Applicant, GT Retail Suppliers Ltd (“GT Retail”), against decisions by the First Respondent, the Department of Commerce & Investment (“the DCI”), and the Second Respondent, the Liquor Licensing Board (“the Board”), that a particular low alcohol drink distributed by GT Retail within the Cayman Islands cannot be sold without a liquor license. The claim raises an issue regarding the meaning and effect of the provisions of the Liquor Licensing Act (2019 Revision) in relation to the sale of low alcohol drinks in the Cayman Islands. The question is whether the interpretation of the Act by the DCI, and the refusal by the Board of GT Retail’s appeal against that decision, were correct or should be quashed. In addition, GT Retail seeks damages for the value of its stock which it says became unsellable as a result of the decisions of the DCI and the Board. It is common ground between the parties that the Third Respondent should not have been joined in the proceedings, and I dismiss it from the action.
2. The materials before me comprise the application for judicial review, the first affidavit of Mr Philson George, one of GT Retail’s directors, which was sworn on 12 August 2022, the first affidavit of Ms Claudia Brady, the DCI’s head of compliance and enforcement at the relevant time, sworn on 21 November 2022, Mr George’s third affidavit sworn in response on 19 March 2024, and the skeleton arguments prepared by each side for the hearing.
3. I express my gratitude to Mr George for the hard work that he has clearly devoted to researching the relevant law and formulating GT Retail’s arguments. I am also grateful to Ms Ryan and Ms Middleton for their helpful written and oral submissions.
4. This case has had an unfortunately delayed route to determination, both before and after proceedings were instituted. The decisions of the DCI giving rise to GT Retail’s claim occurred in September and October 2021. GT Retail submitted its appeal against those decisions to the Board in early December

2021. It appears that the Board rejected GT Retail's appeal on 15 December 2021. However, there was a significant delay in early 2022 before the Board communicated its decision to GT Retail on 12 May 2022. Following that, several months passed while the parties prepared and responded to a letter before action, and then GT Retail applied for leave to pursue a claim for judicial review. Once leave was granted on 21 September 2022, the parties served their initial affidavits, but the matter then went to sleep. On 5 March 2024, it came before me for directions in light of the Respondents' contention that the Notice of Motion was served out of time. I set a timetable leading to that issue being determined in April 2024, but the hearing was not in fact listed until 10 June 2024. I gave judgment on 21 June 2024 (corrected on 5 July 2024) rejecting the Respondents' contention that the claim was time barred. On 30 September 2024, I gave directions to the final hearing on 27 November 2024. I am conscious that the time that has elapsed between the hearing and delivery of this judgment has contributed further to the regrettable delay in the resolution of the matter.

B. The factual matrix

5. There are limited areas of factual dispute between the parties; the main disagreement concerns the interpretation and application of the relevant law. I can therefore set out the relevant factual matrix in summary form as follows.
6. GT Retail is an ordinary resident company carrying on business within the Cayman Islands. Its primary business is the wholesale importation and distribution of goods to local businesses for onward retail sale. Amongst other products, GT Retail is the local distributor of Banks Shandy. This is a low alcohol shandy drink with an alcoholic content of 0.9% ABV.
7. GT Retail commenced importing Banks Shandy in December 2020. It sold the drinks to Fosters on a wholesale basis. Fosters stocked Banks Shandy in several branches of its supermarket. Neither GT Retail nor Fosters have a liquor license. GT Retail and Fosters considered that a liquor license was not necessary to be able to sell Banks Shandy under the terms of the Liquor Licensing Act.
8. In July 2021, Fosters confirmed this with an officer from Customs & Border Control. In response to a query from Fosters regarding Banks Shandy and another similar drink called Baba Roots that Fosters was selling or considering selling, the officer stated:

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“In order to determine whether the above items are considered alcoholic beverages, we need to look at the definition of alcoholic beverage.

*A **Shandy** consists of beer mixed with a lemon or a lemon-lime flavored beverage. ... Because of the low alcohol content of shandies, **they are exempted from laws governing the sale of alcoholic beverages.***

Although the Cayman Islands does not have a definition of ‘alcoholic beverages’, we can take guidance from the UK.” (emphasis added)

9. The Customs officer then set out a definition from the UK, which indicated that an alcoholic beverage must have an alcohol content of more than 1.2% by volume. He continued that “shandy” would be considered a “low alcohol” beverage as it contains an alcohol content of 1.2% or less. The officer concluded his email with an indication of the tariff code that would be applied to calculate the duty payable when importing such a shandy. Fosters responded that they would leave the products on their shelves as they are not considered alcoholic beverages. The correspondence was copied to other government officers, with no comment from any of them.

10. Two months later, on or about 2 September 2021, officers from the DCI visited one of Fosters stores in response to a complaint that Fosters was selling Banks Shandy. The officers informed Fosters that it needed a liquor license in order to be able to sell Banks Shandy, and that Fosters was contravening the Liquor Licensing Act by selling it. Fosters provided the DCI with a copy of its exchange of correspondence with the officers at Customs & Border Control indicating that Banks Shandy was exempt from the Liquor Licensing Act. Ms Leith Bodden of the DCI replied that the DCI is the agency responsible for liquor licensing and the sale of liquor in the Cayman Islands. She continued:

“Alcoholic beverages under the Liquor Licencing Law (2019 Revision) is [sic] determined by proof which is defined as being 0.5727 of its volume. So it would have to be under the 0.5727 alcoholic volume to be sold without a liquor license.”

11. Fosters therefore removed Banks Shandy from sale. Fosters informed GT Retail and requested that it uplift the product from all Fosters stores, which GT Retail did. GT Retail complains that it was not thereafter able to sell the drinks, which have a short shelf-life, with the result that about 300 cases were wasted, causing GT Retail a financial loss of between about CI \$5,000-9,000.

12. On 6 September 2021, the DCI confirmed to GT Retail orally that Banks Shandy is an alcoholic beverage, as defined by the Liquor Licensing Act. The DCI also stated that it was in the process of

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obtaining legal advice. It appears that the DCI wished to obtain confirmation that its view of the law was correct.

13. On 10 September 2021, GT Retail wrote to the DCI disputing that the sale of Banks Shandy drinks was within the scope of the Liquor Licensing Act. GT Retail argued that there is no definition of “*alcoholic beverage*” in the Act. It contended that Banks Shandy contains less than 25% beer and so should not be classified as beer. GT Retail also quoted the definition of “*proof*” within s.2 of the Act and pointed out that it applied to distilled alcoholic liquors, and that Banks Shandy is not distilled and so not within the definition of “*proof*” in s.2 of the Act. GT Retail argued that the DCI’s view that Banks Shandy can only be sold without a liquor license if its alcohol content is below 0.5727 percent by volume was incorrect.
14. GT Retail said that the DCI did not have a legal basis to prohibit the sale of Banks Shandy by Fosters and asserted that the DCI’s decision had had a huge negative financial effect on all parties. GT Retail pointed out that the drinks had a short shelf-life and requested the DCI’s urgent attention to the matter.
15. Ms Brady responded to GT Retail on 7 October 2021. She said that someone had complained to the DCI about the sale of Banks Shandy by Fosters. The DCI officers had instructed businesses not in possession of a liquor license to discontinue sale of the Banks Shandy “*temporarily until further notice*”. Ms Brady indicated that the DCI had intervened because it was concerned that the drinks could be obtained by people who are underage. She added that the Board had also considered the issue at a meeting on 13 September 2021 and had cautioned businesses not to sell Banks Shandy without a license while the Board obtained legal advice. Ms Brady stated that the DCI had now obtained legal advice. She set out the definition of “*intoxicating liquor*” from s.2 of the Act and stated that it covered “*all forms of intoxicating liquor*”. The DCI’s letter concluded:

“... all intoxicating liquors irrespective of the alcohol content once their description contains potable spirits, wines, beer, ale, porter, stout, cider, perry and other malt liquor can only be sold by a person or entity possession a liquor license ...”

Ms Brady added that GT Retail also needed a liquor license as the distributor of Banks Shandy.

16. On 4 November 2021, GT Retail submitted an appeal against the DCI’s decision to the Appeals Tribunal of the Trade & Licensing Board. This appears to have been passed back to the DCI on the

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basis that it was misdirected. On 6 December 2021, Ms Brady informed GT Retail that it should direct its appeal to the Board. GT Retail re-submitted its appeal to the Board during early December 2021.

17. GT Retail followed up with Ms Brady on 8 February 2022 and she confirmed on 10 February 2022 that she had not received any communication concerning GT Retail's appeal. On 28 March 2022, GT Retail contacted Ms Brady again seeking an update on its appeal. Ms Brady sent an email the same day with an unidentified attachment, which may have been a decision letter on the appeal – the email does not state. However, she then recalled that email. On 31 March 2022, GT Retail responded asking Ms Brady to confirm that she intended to recall the email. She appears to have informed GT Retail that she needed to revise the contents of the attachment. This comes from subsequent correspondence in the evidence, but I do not have a copy of any communication from Ms Brady to that effect. GT Retail followed up with Ms Brady again for an update on its appeal on 1 May 2022. On 12 May 2022, Ms Brady sent a letter to GT Retail by email.
18. The hearing bundle includes a letter from the DCI to GT Retail dated 20 March 2022. I infer that this is the letter that was attached to Ms Brady's email of 12 May 2022, and that it is a revised version of the document that she originally sent by email on 28 March 2022.
19. The letter stated that the Board had considered GT Retail's appeal at a meeting on 15 December 2021 and had upheld the decision to prohibit the sale of Banks Shandy. The letter recorded that this decision was based on s.3 of the Act and the advice the Board had received that a liquor license is required to distribute Banks Shandy.
20. GT Retail delivered a detailed letter before action to the Chairman of the Board on 25 July 2022. The letter argued that the Board's decision was wrong in law. GT Retail asserted that:
 - 20.1 the DCI and the Board had misdirected itself on the applicable law and had acted ultra vires and disproportionately; and
 - 20.2 the DCI and the Board had acted in a discriminatory manner in singling out Banks Shandy when it continued to allow the sale of many other drinks that are within the definition of "*intoxicating liquor*" in s.3 of the Act – GT Retail gave the example of Heineken 0.0 beer.This has continued to be GT Retail's position at the hearing before me.

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21. The Attorney General's Chambers responded to GT Retail on 10 August 2022 on behalf of the DCI and the Board rejecting GT Retail's complaints. It indicated that the DCI had no discretion as the Act mandates the possession of a liquor license in order to be able to sell intoxicating liquor.
22. On 17 August 2022, GT Retail filed its application for leave to apply for judicial review. Leave was granted on 9 September 2022 and GT Retail filed its Notice of Originating Motion for judicial review on 23 September 2022.
23. In her first affidavit in opposition to the claim for judicial review, sworn on 21 November 2022, Ms Brady makes certain assertions regarding the DCI's and the Board's thinking. In particular, she says:

*"11. **The First Respondent**, during the course of an investigation, visited the premises of Fosters Food Fair Airport store. The investigation revealed that **an intoxicating liquor as defined by the Liquor Licensing Act (2019 Revision) ('the Act')**, namely Banks Shandy was being exposed for sale in the supermarket.*

...

*17. ... There can be no doubt from alcoholic content (namely 0.9 alc./vol) that **Banks Shandy is an intoxicating liquor, as defined by the Act.***

...

*19. ... **the Second Respondent** ... correctly interpreted the Act and also found that **Banks Shandy, is based on the manufacturer's description, an intoxicating liquor.** ...*

...

*22. I am advised and verily believe that as the manufacturer of Heineken 00 indicates, that the beverage does not contain any alcohol. Accordingly, the sale of that beverage does not fall under the jurisdiction of the First and Second Respondents. **It is not an intoxicating beverage as defined in the Act.** The product is alcohol free. It would therefore fly in the face of common sense, logic and reason to suggest that it is an intoxicating liquor.*

23. I am further advised and I verily say that Kombucha as described in the First Affidavit of Philson George does not fall within the definition of intoxicating liquor. The process by which it is made leads to natural fermentation of sugars in the product. This fermentation results in alcohol occurring naturally. The natural process occurs while the product is 'sitting'. It is not manufactured with alcoholic content. This natural alcohol production is not the same as a product which is manufactured for the purpose of alcohol production such as rum, or vodka, or a beverage which is manufactured from a mixture of beer and juice such as Banks Shandy. This makes Kombucha distinguishable in this way.

31. The gravamen of the Applicant's case is that it disagrees with the characterisation of a drink consisting of beer and juice as an intoxicating liquor; and it contends that it is not an alcoholic beverage, notwithstanding the manufacturer of same indicating that the drink in question contains 0.9% alcohol per volume. I verily believe that the Applicant is adopting an unrealistic position [sic] which flies in the face of common sense and logic." (emphasis added)

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C. The Law

C.1 *The Liquor Licensing Act (2019 Revision)*

24. Section 2 of the Liquor Licensing Act includes the following definitions:

“Definitions

2. In this Law —

...

‘intoxicating liquor’ includes every description of potable spirits, wines, beer, ale, porter, stout, cider, perry and other malt liquor;

...

‘proof’ means, in relation to distilled alcoholic liquor, a mixture of alcohol and water having a specific gravity of 0.91984 and containing 0.495 of its weight, or 0.5727 of its volume, of absolute alcohol;”

25. The Act does not contain any definitions of “wines”, “beer”, “ale”, “porter”, “stout”, “cider”, “perry” or “malt liquor”, each of which must therefore be given their normal English meaning. The Act does not refer to “shandy” anywhere.

26. Section 3 of the Act states:

“3.(1) The disposal, exposure for sale or offer for sale of any intoxicating liquor shall only be carried out —

(a) by the holder of a licence under this Law; ...”

D. Analysis

27. As this case is an application for judicial review, I remind myself that my primary focus should be on the lawfulness of the decision making of the DCI and of the Board. This includes the question whether the DCI and the Board correctly understood and applied the relevant law.

D.1 *The DCI’s decision on 2 September 2021*

28. On 2 September 2021, officers from the DCI advised or warned Fosters that it could not sell Banks Shandy without a liquor license. The contemporaneous explanation for this was provided in Ms Bodden’s email dated 2 September 2021, which is set out in paragraph 10 of this judgment.

29. Ms Brady's affidavit, sworn over a year later, provides a different explanation, related to the characterisation of Banks Shandy as an intoxicating liquor as defined in the Act. However, there is no evidence that this formed any part of the DCI's thinking on 2 September 2021. The only contemporaneous evidence is the email of 2 September 2021, coupled with the DCI's indication that it intended to obtain legal advice. The inference that I draw is that it was the subsequent obtaining of legal advice that put the DCI onto the path of arguing that Banks Shandy was within the definition of "intoxicating liquor" in the Act, as set out in Ms Brady's affidavit.
30. I therefore conclude that the reason for the DCI's decision on 2 September 2021 that Fosters could not sell Banks Shandy without a liquor license was as stated in Ms Bodden's email.
31. Ms Middleton accepted in her submissions on behalf of the Respondents that Ms Bodden's reference to "*proof*" in her justification on 2 September 2021 for the DCI's actions was incorrect. It was not clear to me whether Ms Middleton also accepted that the DCI's decision on 2 September 2021 was flawed for that reason.
32. In my judgment, the reason for the DCI's decision on 2 September 2021 as stated by Ms Bodden is legally incorrect, and unreasonable, in three ways.
- 32.1 First, it is clear from the terms of the definition of "*proof*" in s.2 of the Act that the concept of "*proof*" is only relevant to alcoholic drinks produced by distillation. There is no suggestion that Banks Shandy is produced by distillation. Ms Bodden therefore applied a criterion in the Act that was inapplicable to the product in question.
- 32.2 Secondly, Ms Bodden appears to have understood the reference in the definition of "*proof*" to 0.5727 as being a percentage, i.e. that a drink would have to have less than 0.5727% ABV to be sold without a liquor license. That is not the meaning of the definition of "*proof*" in s.2 of the Act. The absence of a reference to a percentage within the definition indicates that the statements as to the weight and volume of alcohol in the definition are intended to be ratios of the proportion of non-alcoholic liquid to alcohol within the liquor. These ratios must range between 0, i.e. no alcohol, and 1, i.e. 100% alcohol. Thus, the reference to 0.5727 of alcohol by volume as a ratio is equivalent to 57.27% ABV. Ms Bodden therefore applied the criterion incorrectly.

32.3 Thirdly, there is nothing in the Act that prohibits sales of alcoholic drinks based on “proof”. The only reference to “proof” in the Act, apart from in the definitions, is in s.20 of the Act controlling the storage on licensed premises of spirits with a strength of less than 75% proof. Therefore, Ms Bodden applied the criterion in a way that was not provided for in the Act.

33. Accordingly, the decision on 2 September 2021 by Ms Bodden that Fosters should be instructed that it could not sell Banks Shandy without a liquor license for the reason that she expressed related to “proof” was unreasonable and legally wrong and should be quashed.

D.2 The DCI’s decision communicated on 7 October 2021

34. By October 2021, the DCI’s basis for objecting to the sale of Banks Shandy had changed to the conclusion that Banks Shandy was within the definition of “intoxicating liquor” in the Act. In her letter dated 7 October 2021, Ms Brady stated that:

“... all intoxicating liquors irrespective of the alcohol content once their description contains potable spirits, wines, beer, ale, porter, stout, cider, perry and other malt liquor can only be sold by a person or entity possession a liquor license ...”

Ms Brady said that the definition of “intoxicating liquor” from s.2 of the Act covers “all forms of intoxicating liquor”. The DCI thus considered that Banks Shandy was within the definition of “intoxicating liquor” in s.2 of the Act and any sale of Banks Shandy was therefore caught by the prohibition in s.3 of the Act. This is also the position taken by Ms Brady in her affidavit in opposition to the judicial review, as set out earlier in this judgment.

35. GT Retail contends that the DCI’s interpretation of ss.2 and 3 of the Act and its application of that interpretation was unfair, *Wednesbury* unreasonable, irrational and discriminatory to Banks Shandy for the following reasons:

35.1 GT Retail contends that shandy is not within the definition of “intoxicating liquor” in s.2 of the Act.

35.2 GT Retail complains that the DCI allows the sale of no-alcohol beers without the need for any liquor license, despite such drinks being within the definition of “intoxicating liquor” in s.2 because they are a form of “beer”.

- 35.3 The DCI allows the sale of alcoholic drinks such as Baba Roots and kombucha without a liquor license, apparently on the basis that they are not within the definition of “*intoxicating liquor*”, despite each of them containing alcohol.
36. In support of GT Retail’s argument, Mr George exhibited:
- 36.1 a photograph of a bottle of Heineken 0.0, which expressly describes the contents of the bottle as “*beer*”;
- 36.2 a photograph of a label from a bottle of Synergy Kombucha, which states:
*“**Please note:** Kombucha is a fermented tea that has naturally occurring alcohol. ...”*
- 36.3 a photograph of a bottle of Baba Roots, which describes the contents as “*herbal beverage*” and states:
“Low Alcohol – May Contain up to 1.2% vol.”
37. As previously set out, “*intoxicating liquor*” is defined in s.2 of the Act as:
*“‘**intoxicating liquor**’ includes every description of potable spirits, wines, beer, ale, porter, stout, cider, perry and other malt liquor;”*
38. Neither party addressed me on the principles to be applied when seeking to construe the definition of “*intoxicating liquor*” in s.2 of the Act. I therefore apply the well-known principles of statutory interpretation, which I summarise from *Bennion, Bailey and Norbury on Statutory Interpretation* as follows:
- 38.1 The starting point is the text of the enactment. The court should presume that the grammatical meaning is the meaning intended by Parliament, which may include what is necessarily implied by the language used. If the enactment has a plain meaning, then effect should be given to that meaning unless there is something to modify, alter or qualify that meaning.
- 38.2 The text must be read in its context within the Act, in its legal, social and historical context, and applying common sense. It should be construed to give effect to the legislative purpose, where that can be identified. The legislative purpose may be to provide a remedy against an identified or identifiable mischief, in which case the court should construe the enactment accordingly.

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- 38.3 The consequences of a particular construction should be considered and will reflect on the validity of that construction. In particular, a construction that makes the enactment effective should be preferred to one that defeats the legislative purpose.
39. The first point is that the purpose of defining the term “*intoxicating liquor*” in the Liquor Licensing Act is simply to identify the kinds of drinks that fall within that definition and to provide a shorthand reference to such drinks for use elsewhere within the Act. As defined in s.2 of the Act, “*intoxicating liquor*” is a statutory term that does not necessarily have its ordinary English language meaning.
40. Secondly, the types of drink set out as part of the definition are indicative of the general nature of drinks that are intended to fall within the definition. The use of “*includes*” and “*other malt liquor*” has the result that the definition is not closed. The common thread that connects all of the types of drink listed is that they involve fermentation at some stage within their production. However, it is notable that the definition does not provide a minimum alcohol content for a drink to fall within the definition of “*intoxicating liquor*”; indeed, there is no reference in the definition to the drink having to contain any alcohol at all to fall within it.
41. It is certainly possible for non-alcoholic drinks to be within the definition of “*intoxicating liquor*”; set out in s.2 of the Act. The definition of “*beer*” in the Oxford English Dictionary is as follows:

“1.a. [Old English-] An alcoholic drink brewed from malted grain (typically barley) and often flavoured with hops. ...

Once the use of hops in brewing became widespread in England, beer chiefly came to designate a hopped beverage as distinguished from ale prepared without hops, a distinction which lasted until the 18th cent. The word is now widely used as a generic term for alcoholic drinks brewed from grain, including lager, and also for non-alcoholic versions of such drinks. ...

1.b. [1584-] With preceding distinguishing word usually denoting the chief ingredient of the drink or a substance used to flavour it, as in cherry beer, dandelion beer, elderflower beer, etc. Occasionally also applied to non-alcoholic drinks, medicinal infusions, etc., which resemble or are prepared using beer.”

Thus, the modern meaning of “*beer*” is not limited to drinks containing alcohol. Similarly, there are manufacturers who now supply alcohol-free spirits and wines. Drinks of these kinds would appear to be within the definition of “*intoxicating liquor*” in s.2 of the Act, giving effect to its plain words.

42. Nevertheless, I conclude that notwithstanding the omission of any reference to drinks having an alcohol content, it is implicit within the definition of “*intoxicating liquor*” that they do contain alcohol. I reach that conclusion for two reasons:

42.1 First, the term being defined, namely “*intoxicating liquor*”, carries with it the implication that the kinds of drinks referred to should have an intoxicating effect. Otherwise, the use of “*intoxicating*” in the defined term would have no utility and would be potentially misleading. Thus, the kinds of drinks that are the focus of the Act are alcoholic drinks.

42.2 Secondly, and more importantly, the context in which “*intoxicating liquor*” is subsequently used within the Act indicates that the legislative purpose is to control the supply of drinks which may have an intoxicating effect, i.e. drinks that contain alcohol:

- (a) section 21 of the Act controls the supply of “*intoxicating liquor*” to persons under 18 years old;
- (b) section 25 of the Act prohibits the supply of “*intoxicating liquor*” to persons who are drunk or disorderly; and
- (c) section 41 of the Act contains the power of the court to make restriction orders to prevent persons subject to such an order from obtaining and drinking “*intoxicating liquor*”, with penalties for anyone who knowingly supplies or aids and abets the supply of alcohol to someone subject to a restriction order.

The mischief at which these sections are aimed is preventing consumption or over-consumption of alcohol by persons whom Parliament has determined should not have access to alcohol, whether that is for their own benefit or the benefit of society more widely. The legislative purpose of these three sections is not met by including alcohol-free drinks within the definition of “*intoxicating liquor*”. If it did include such drinks, then situations where the supply of the drink in question could not conceivably have any intoxicating effect on the person in question because of the lack of any alcoholic content, would still be within the scope of ss.21, 25 and 41, including exposing the supplier to potential criminal penalties. This is illogical and strongly points away from that interpretation of the definition of “*intoxicating liquor*” in s.2 of the Act.

43. I therefore conclude that alcohol-free versions of spirits, wines, beers etc are not within the definition of “*intoxicating liquor*” in s.2 of the Act. GT Retail’s complaint that the DCI and the Board acted

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unfairly, unreasonably and irrationally by failing to take any action in relation to the offer for sale in unlicensed premises of Heineken 0.0 beer does not succeed.

44. The next question to consider is whether Banks Shandy is within the scope of the definition of “*intoxicating liquor*” in s.2 of the Act. The Oxford English Dictionary indicates that “*shandy*” means a mix of beer or ginger beer with lemonade. GT Retail stated in its letter to the DCI on 10 September 2021 that Banks Shandy contains less than 25% beer. The question is therefore, does the fact that Banks Shandy contains less than 25% beer have the result that it is no longer accurately captured by the phrase “... *every description of ... beer*”? I do not consider that Banks Shandy can be said no longer to be a form of beer as result of being a mixture of up to 25% beer with lemonade. There might be a level at which the proportion of beer within the mixture is so low that the drink can properly be described as lemonade with some beer flavouring. However, I do not need to reach a conclusion on that question as there is no suggest that the proportion of beer within Banks Shandy is of that order of magnitude. Whatever that lower limit might be, Banks Shandy comfortably exceeds it.
45. Even if I were wrong on that, I would still conclude that Banks Shandy is within the definition of “*intoxicating liquor*” in s.2 of the Act. This is because the definition is not closed, as explained above, and because it is necessary to have regard to the legislative intention of controlling the supply of drinks containing alcohol. That legislative intention is achieved by including drinks such as Banks Shandy within the meaning of “*intoxicating liquor*” as required by the use of “*includes*”.
46. I therefore conclude that the DCI was right to decide on 7 October 2021 that the sale of Banks Shandy required a liquor license and that Fosters and GT Retail were not legally permitted to sell Banks Shandy without one.

D.3 Unfair, unreasonable, irrational and discriminatory application of the law?

47. However, that is not the end of the matter. GT Retail complains that the DCI’s application of the law to Banks Shandy whilst not taking any action in relation to the sale of other low alcohol drinks by those without a liquor license, such as Baba Roots and kombucha, was unfair, Wednesbury unreasonable, irrational and discriminatory.

48. I deal with the last of these complaints first, because it can speedily be dismissed. GT Retail's complaint of discrimination is based on clause 16 of the Constitution. That prohibits:

"... affording different and unjustifiable treatment to different persons on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, age, mental or physical disability, property, birth or other status."

49. Whatever other criticisms may be made of the DCI's approach, it cannot be said that the DCI treated GT Retail differently on any of the grounds set out in clause 16 of the Constitution or on any similar grounds. I therefore conclude that the DCI's complaint of discrimination must fail.

50. Turning to the question of unfairness, unreasonableness and irrationality in the application of the law, the DCI's position on this, as expressed by Ms Brady, is contradictory.

50.1 In her letter dated 7 October 2021, Ms Brady said that the definition of "intoxicating liquor" in s.2 of the Act covered "all forms of intoxicating liquor". Ms Brady indicated that the DCI had become involved because it was concerned about the possible supply of alcoholic drinks to people who are underage. This is consistent with the legislative purpose that I have identified above.

50.2 On the other hand, in her affidavit filed in this matter, Ms Brady says:

"23. ... Kombucha ... does not fall within the definition of intoxicating liquor. The process by which it is made leads to natural fermentation of sugars in the product. This fermentation results in alcohol occurring naturally. The natural process occurs while the product is 'sitting'. It is not manufactured with alcoholic content. This natural alcohol production is not the same as a product which is manufactured for the purpose of alcohol production such as rum, or vodka, or a beverage which is manufactured from a mixture of beer and juice such as Banks Shandy. This makes Kombucha distinguishable in this way."

51. Ms Brady's attempt to distinguish kombucha from Banks Shandy (or other types of alcoholic drink) does not stand up to analysis. The alcohol in spirits, wines, beers etc is all produced by natural fermentation. The fact that that fermentation may take place in large vessels before the drink is then bottled or canned, rather than in the individual bottle or can, as is apparently the case with kombucha, makes no difference. They are all drinks containing alcohol, which are intended by their manufacturer to contain alcohol, where the fact that they contain alcohol is part of their desired characteristics, and where overconsumption may have an intoxicating effect.

52. More importantly, Ms Brady's approach ignores the legislative intent behind the Liquor Licensing Act, namely, to control the supply of alcoholic drinks, and her own explanation of the reason why the DCI took action in relation to Banks Shandy. That legislative intent applies however the alcohol in the drink gets there. It is irrational to treat kombucha as outside the legislative scheme in the way that Ms Brady suggests whilst at the same time treating Banks Shandy as within it. The protection of underage persons from alcohol is not achieved by treating kombucha as being exempt from licensing control but treating Banks Shandy as within it.
53. Ms Brady does not address the position of Baba Roots, which, according to the photographs of its bottle put into evidence by Mr George, contains up to 1.2% ABV, and which the DCI has not prevented from sale by those without a liquor licence.
54. In my judgment, the DCI's approach to its decision making in relation to enforcing the Act in respect of Banks Shandy whilst at the same time ignoring or not enforcing the Act in respect of kombucha and Baba Roots is unfair, *Wednesbury* unreasonable and irrational. This is reinforced by the recognition of the Attorney General's Chambers in its letter dated 22 October 2022 referenced at paragraph 21 of this judgment that the DCI does not have a discretion whether or not to enforce the Act because s.3 of the Act mandates that a liquor license is required in order to be able to sell intoxicating liquor. Unless and until Parliament revises the scheme in the Liquor Licensing Act to relax the controls on the sale of low alcohol drinks, drinks of that kind are subject to the full rigour of the Act and cannot legally be sold by those who do not have a liquor license.
55. The consequence of that finding is that the DCI's decision on 7 October 2021 to enforce the Liquor Licensing Act against GT Retail in respect of Banks Shandy whilst not enforcing it in respect of other alcoholic drinks, must be quashed. As a result, the Board's refusal of GT Retail's appeal must also be quashed.

D.4 GT Retail's claim for damages

56. Whilst I have found in favour of GT Retail in relation to the unfair and irrational application of the Liquor Licensing Act to its sale of Banks Shandy, I do not consider that this is a case where it is appropriate to order that the DCI should pay damages in respect of GT Retail's wasted stock that it uplifted from Fosters. My reason for this is that I have quashed the DCI's decision because the DCI

was applying the Act unfairly and irrationally by not enforcing it in respect of other alcoholic drinks, not because the Act did not apply to Banks Shandy. If the DCI had been applying the Act properly and uniformly, as it should have done, then GT Retail would still not have been able to sell Banks Shandy to Fosters and Fosters would still not have been able to sell it to retail customers without a liquor license. Thus, the outcome for GT Retail would not have been any different.

E. Disposal

57. For the reasons I have set out earlier in this judgment, I hold that:

57.1 The decision of the DCI on 2 September 2021 to prevent the sale of Banks Shandy by GT Retail (and Fosters) was wrong in law and must be quashed.

57.2 The decision of the DCI on 7 October 2021 to continue to prevent the sale of Banks Shandy by GT Retail (and Fosters) was unfair and irrational and must be quashed.

57.3 The decision of the Board on 15 December 2021 to dismiss GT Retail's appeal against the decisions of the DCI was wrong in law and must be quashed.

57.4 I dismiss GT Retail's claim for damages.

58. I invite counsel to indicate within 7 days of handing down of this judgment: (a) whether they wish to be heard on costs and any consequential matters, providing their agreed available dates and time estimate for a hearing; or (b) whether they will provide written submissions on those points within 14 days. In either case, counsel should provide a draft order, agreed, if possible, in advance of the hearing or with their written submissions.

Dated 5 June 2025



**THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT**