



Reference: 2011/01802/01SRAP

Hearing:

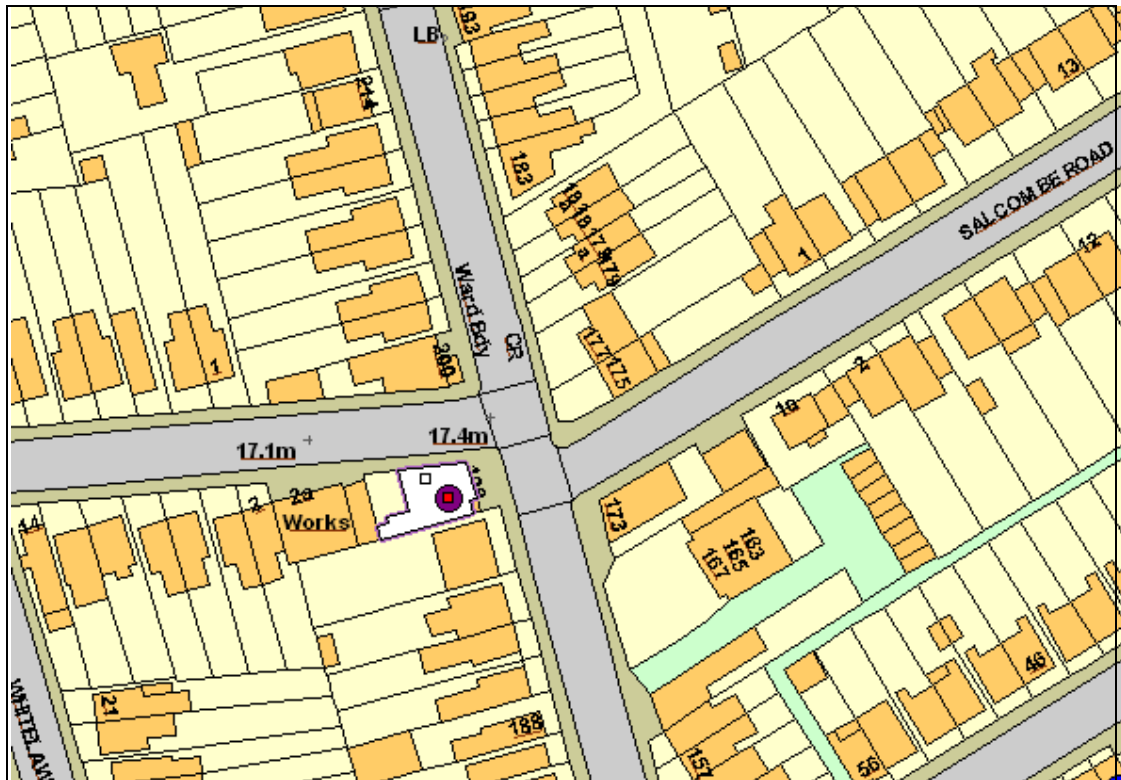
8th September 2011

Application for Review of Premises Licence

Premises Name: Foundry Lane Food Market
 Premises Address: 198 Foundry Lane Southampton SO15 3LE

Application Date: 19th July 2011
 Application Received Date: 19th July 2011

Application Valid Date: 19th July 2011



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Representation From Responsible Authorities

Responsible Authority	Satisfactory?	Comments
Child Protection Services - Licensing	Yes	

Hampshire Fire And Rescue - Licensing	Yes	
Environmental Health - Licensing	No response received	
Planning & Sustainability - Building Control - Licensing	No response received	
Planning & Sustainability - Development Control - Licensing	No response received	
Hampshire Constabulary - Licensing	No response received	
Trading Standards - Licensing	No	

Other Representations

Name	Address	Contributor Type
None		

Legal Implications

1. Part 3 of the Licensing Act 2003 provides that a responsible authority of a resident or business in the vicinity (interested party) may apply for review of a premises licence.
2. The grounds of review applications must relate to one or more of the licensing objectives.
3. In such circumstances, the applicant for the review must serve a copy of the review application on the holder of the premises licences, the City Council and each of the responsible authorities.
4. On receipt of the application for review, the officers will consider its validity, under delegated powers. Reasons for rejection, in whole or in part, include:
 - that the grounds for review are not relevant to one or more of the licensing objectives and;
 - (in the case of an application not made by a responsible authority), that the application is frivolous, vexatious or repetitious.
5. The City Council must, within one day of receiving the application for review, display a prescribed notice of the review application on the outside or adjacent the premises; the notice must remain on display for 28 days and any interested party in the vicinity

6. Unless the applicant, licence holder, interested parties and responsible authorities agree that a hearing is unnecessary, the City Council is then required to hold a hearing to consider the review.
7. The sub-committee, in considering the application for review, must have regard to the adopted Statement of Licensing Policy and evidence before it at the hearing.
8. The Licensing Act 2003 provides that, in determining an application for review, the sub-committee may take any (or none) of the following steps, as it considers necessary:
 - modify the conditions of the licence;
 - exclude a licensable activity from the scope of the licence;
 - remove the designated premises supervisor;
 - suspend the licence for a period not exceeding three months;
 - revoke the licence.
9. The Licensing Act 2003 makes provision for appeal to the Southampton Magistrates' Court against the sub-committee's decision in relation to an application for review.
10. In considering this application the sub-committee will sit in a quasi-judicial capacity and is thus obliged to consider applications in accordance with both the Licensing Act 2003 (Hearings) Regulations 2005, and amending secondary legislation and the rules of natural justice. The practical effect of this is that the sub-committee must make its decision based on evidence submitted in accordance with the legislation and give adequate reasons for reaching its decision.
11. Copies of the application for review and the Police objection are annexed to this report.
12. The sub-committee must also have regard to:-
13. *Crime and Disorder Act 1998*

Section 17 of the Crime and Disorder Act 1998 places the Council under a duty to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.
14. *Human Rights Act 1998*

The Act requires UK legislation to be interpreted in a manner consistent with the European Convention on Human Rights. It is unlawful for the Council to act in a way that is incompatible (or fail to act in a way that is compatible) with the rights protected by the Act. Any action undertaken by the Council that could have an effect upon another person's Human Rights must be taken having regard to the principle of proportionality - the need to balance the rights of the individual with the rights of the community as a whole. Any action taken by the Council which affects another's rights must be no more onerous than is necessary in a democratic society. The matters set out in this report must be considered in light of the above obligations.

eSOUTHAMPTON CITY COUNCIL

Application for the review of a premises licence or club premises certificate under the Licensing Act 2003

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I Southampton City Council Trading Standards Service

(Insert name of applicant)

apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description Foundry Lane Food Market, 198 Foundry Lane, Southampton	
Post town Southampton	Post code (if known) SO15 3LE

Name of premises licence holder or club holding club premises certificate (if known) Shirish Chotai

Number of premises licence or club premises certificate (if known) 2005/00175/01SPRC
--

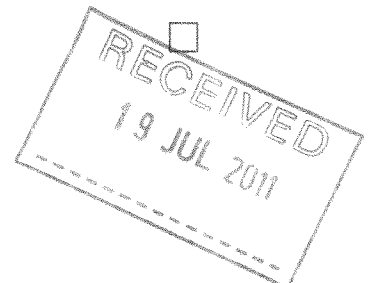
Part 2 - Applicant details

I am

Please tick yes

1) an interested party (please complete (A) or (B) below)

- | | |
|---|--------------------------|
| a) a person living in the vicinity of the premises | <input type="checkbox"/> |
| b) a body representing persons living in the vicinity of the premises | <input type="checkbox"/> |
| c) a person involved in business in the vicinity of the premises | <input type="checkbox"/> |



(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address Lucas Marshall Trading Standards Service Southampton City Council Civic Centre Road Southampton SO14 7LY
Telephone number (if any) 02380 834930
E-mail address (optional) lucas.marshall@southampton.gov.uk

This application to review relates to the following licensing objective(s)

Please tick one or more boxes

- | | |
|---|-------------------------------------|
| 1) the prevention of crime and disorder | <input checked="" type="checkbox"/> |
| 2) public safety | <input checked="" type="checkbox"/> |
| 3) the prevention of public nuisance | <input type="checkbox"/> |
| 4) the protection of children from harm | <input type="checkbox"/> |

Please state the ground(s) for review (please read guidance note 1)

The Prevention of Crime and Disorder
Public Safety

On 11th May 2011 counterfeit vodka was found at Foundry Lane Food Market, 198 Foundry Lane, Southampton.

Counterfeit vodka is often produced from industrial alcohol which is imported into the UK. It is diluted and packed in bottles which are copies of a variety of brands. Clearly controls over the quality of the product are not as strict as would be found at a distillery producing the genuine product: the alcoholic strength is often not as declared, and there is sometimes visible residue in the bottles. Nationally issues have been reported regarding excessive levels of methanol in some counterfeit vodka, which has poisoned some consumers. Appropriate UK Duty would also not have been paid on counterfeit vodka.

Offences can be committed under the Food Safety Act 1990, The Trade Marks Act 1996 and the Consumer Protection from Unfair Trading Regulations 2008 for selling and the possession for sale of counterfeit vodka. Under Section 144 of the Licensing Act 2003 a Premises Licence Holder commits an offence if he/she knowingly keeps or allows to be kept, on any relevant premises, any goods which have been imported without payment of duty or which have otherwise been unlawfully imported.

Paragraph 11.26 of the October 2010 Amended Guidance issued under Section 182 of the Licensing Act 2003 states that "there is certain criminal activity that may arise in connection with licensed premises, which the Secretary of State considers should be treated particularly seriously." Which includes "the use of the licensed premises for the sale of smuggled tobacco and alcohol".

It is considered that the holder of the premises licence has not fulfilled the duty under the Licensing Act 2003 to prevent crime and to protect public safety. We are therefore applying to review the licence.

In the supporting information we give more details and state the conditions we would wish to see added to the licence in order to promote the above licensing objective.

Please provide as much information as possible to support the application
(please read guidance note 2)

On 11th May 2011 I conducted a routine inspection at Foundry Lane Food Market, 198 Foundry Lane, Southampton. During the inspection I examined bottles of spirits. Spirits with a strength of over 30% which are in bottles of 35cl or more must bear a UK Duty stamp. A genuine stamp will fluoresce under ultra violet light. I checked for fluorescence and found that the UK Duty stamps on 5 brands of vodka, namely Absolut, Sobieski, Five lakes, Wyborowa, and Zubrovka vodka did not fluoresce. One bottle of the Wyborowa also appeared to have dark particles present in it, which led me to believe that it might be counterfeit. I sampled a total of 10 bottles and submitted one from each brand to the Public Analyst. The Public Analyst subsequently confirmed that the samples were counterfeit. They were also found to be deficient in alcoholic strength. The Certificates of Analysis relating to the samples are appended to this Review.

On 30th June 2011 I conducted a recorded interview with Shirish Chotai, the Premises Licence Holder at Foundry Lane Food Market. He claimed that he had purchased the vodka about 15-18 months ago. He had been looking for Polish brands as there is a large Polish community in the area that his shop is located. He had been given details of a supplier of Polish vodkas by fellow traders. He phoned the suppliers, who he knows as Jem and Walter, and they delivered a case (6 bottles) of each brand for which he paid £9-£10 pounds per bottle. He said that he had requested a receipt but the supplier had failed to provide one.

It is not acceptable that a premises licenced by this Authority should become a market place for illegal goods. I would therefore request that the following conditions are imposed on the premises licence to promote the licensing objectives:

- "The Premises Licence Holder must keep complete records, such as invoices, receipts and delivery notes, relating to alcohol obtained by him for sale from his shop. Records must include the name, address and telephone number of the supplier, the date of supply, the products supplied, and their prices. Where items have been delivered to his shop by a vehicle details of the vehicle registration, the name of the delivery person and contact details including the name, address and telephone number for the business must be kept. These details must be available on request to Responsible Authorities within 24 hours. The Premises Licence Holder must be able to identify who supplied the alcohol present at his premises "

- "A CCTV system shall be installed and maintained in the licensed premises. As a minimum, it shall enable surveillance of both external and internal areas of the premises including entrances and exits. Recordings from the system shall be of a quality acceptable as evidence in a court of law and shall be securely retained at the licensed premises for a minimum period of 30 days after the recording, and shall be surrendered to Hampshire Constabulary, the Licensing Authority, or Trading Standards immediately on request."

- I would also ask that the licence is suspended for a period of one month, both as a deterrent and to give the Premises Licence Holder a period of time in which to put the above conditions into effect.

Please tick yes

Have you made an application for review relating to this premises before

If yes please state the date of that application

Day Month Year

--	--	--	--	--	--	--	--

If you have made representations before relating to this premises please state what they were and when you made them

N/A

- Please tick yes**
- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate
 - I understand that if I do not comply with the above requirements my application will be rejected

IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

Part 3 – Signatures (please read guidance note 3)

Signature of applicant or applicant's solicitor or other duly authorised agent (See guidance note 4). **If signing on behalf of the applicant please state in what capacity.**

Signature

.....

Date 19th July 2011

.....

Capacity Trading Standards Officer

.....

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 5)

Lucas Marshall
Trading Standards Service
Southampton City Council
Civic Centre Rd

Post town

Southampton

Post Code

SO14 7LY

Telephone number (if any) 02380 834930

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional) lucas.marshall@southampton.gov.uk

Notes for Guidance

1. The ground(s) for review must be based on one of the licensing objectives.
2. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
3. The application form must be signed.
4. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
5. This is the address which we shall use to correspond with you about this application.
6. See separate guidance for responsible authorities' details.



TRADING STANDARDS SERVICE WITNESS STATEMENT

(C J Act 1967 S.9; MCA 1980 ss5A(3)(a) and 5B; Criminal Procedure Rules 2010 (Rule 27)

STATEMENT OF: **LUCAS MARSHALL**

AGE IF UNDER 18: **OVER 18**

This statement (consisting of 2 page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated the 1 day of July 2011 Signature: _____

~~..... being unable to read the statement,
I of
.....read it to him/her before he/she signed it.
Dated the day of 2011. Signature:~~

A My name is Lucas Marshall. I am employed by Southampton City Council as a Trading Standards Officer. On 11 May 2011 I conducted a routine inspection at Foundry Lane News, Food & Wine, 198 Foundry Lane, Southampton. During the inspection I examined bottles of

B spirits. Spirits with a strength of over 30% which are in bottles of 35cl or more must bear a UK Duty stamp. A genuine stamp will fluoresce under ultra violet light. I checked the stamps on a number of bottles for fluorescence, using an ultraviolet light, and found that the UK Duty stamps

C on 5 brands of vodka, namely Absolwent, Sobieski, Five Lakes, Wyborowa and Zubrovka vodka did not fluoresce. One bottle of the Wyborowa also appeared to have dark particles present in it, which led me to believe that it might be counterfeit. I took the spirits as food samples, which

D were referenced with sample numbers 012123, 012124, 012125, 012126 and 012127. I submitted a bottle of each brand to the Public Analyst. He subsequently confirmed that the samples were counterfeit. They were also found to be deficient in alcoholic strength. On 30

E June 2011 I conducted a recorded interview with Shirish Chotai, the Premises Licence Holder at Foundry Lane News, Food & Wine, in accordance with the Police and Criminal Evidence Act

ST1(1)HQ

Signature: _____




INVESTOR IN PEOPLE

PAGE NO: 2 CONTINUATION OF STATEMENT DATED: 11/05/07 2011

BY: LUCAS MARSHALL

A 1984 and associated Codes of Practice. The interview was conducted in the interview room at Trading Standards Service, 7 Civic Centre Road, Southampton. I produce a copy of the interview CD as Exhibit LM/1,

Signature:

B

C

D

E

F

G

ST1(2)HQ



Scientific Service

Consulting Scientists & Public Analysts
 Property, Business and Regulatory
 Hyde Park Road, Southsea, Hampshire PO5 4LL
 Telephone (023) 9282 9501
 Fax (023) 9281 8347

FOOD SAFETY ACT 1990

CERTIFICATE OF ANALYSIS OR EXAMINATION CARRIED OUT UNDER FOOD SAFETY (SAMPLING AND QUALIFICATIONS) REGULATIONS 1990

To: Lucas Marshall Southampton City Council, Civic Centre,
 Southampton, Hampshire, SO14 7LY

I, the undersigned, Public Analyst for Southampton City Council, certify that on 26/05/2011 the sample marked:

<u>Date sample taken</u>	<u>Reference number, description etc.</u>	<u>Weight/measure</u>
11/05/2011	012127a	700ml
10:00	ZUBROVKA VODKA	

Place of Sampling: PREMIER, FOUNDRY LANE, SOUTHAMPTON

was received by me from you (the person named above)

I certify that the sample was analysed by me or under my direction and the results are as follows:-

Alcohol % v/v	:	36.4
Methanol g/100L alc	:	5.34

My opinion and observations are:-

The declared alcoholic strength was 40% volume.

The uncertainty of measurement is 0.4% alcohol by volume.

The difference between the amount of alcohol found and the amount declared taking into account the uncertainty of measurement was 3.2% by volume. This difference is outside the permitted tolerance of 0.3% alcohol by volume prescribed in The Food Labelling Regulations 1996 for vodka.

The sample had an alcohol content of 2.9% volume less than the minimum permitted.

H M Revenue and Customs requires all bottles of spirits with a strength of 30% alcohol by volume or more, of a capacity of 35cl or more, to bear a duty stamp if they are removed to home use in the UK. Under ultraviolet light the central section of every duty stamp should fluoresce yellow.

The bottle had a capacity of 70cl. The duty stamp did not fluoresce..

In my opinion the lack of fluorescence of the duty stamp shows that the sample is not Zubrovka brand vodka as retailed in the United Kingdom.

I further certify that the sample had undergone no change which would affect my results, opinion or observations.

Certified by me this 10th day of June 2011, at Southsea

Signature:



Name: SHAYNE DYER
PUBLIC ANALYST

Official address/Telephone No: As Letterhead

Unless you request otherwise this specimen will be disposed of 28 days from the date of this report.



Scientific Service

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To: Lucas Marshall Southampton City Council, Civic Centre,
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I, the undersigned, Public Analyst for Southampton City Council, certify that on 26/05/2011 the sample marked:

<u>Date sample taken</u>	<u>Reference number, description etc.</u>	<u>Weight/measure</u>
11/05/2011 10:00	012123 ABSOLWENT VODKA	700ml

Place of Sampling: Premier, Foundry Lane, Soton

was received by me from you (the person named above)

I certify that the sample was analysed by me or under my direction and the results are as follows:-

Alcohol % v/v	:	36.6
Methanol g/100L alc	:	4.33

My opinion and observations are:-

The declared alcoholic strength was 40 % volume.

The uncertainty of measurement is 0.4% alcohol by volume.

The difference between the amount of alcohol found and the amount declared taking into account the uncertainty of measurement was 3% by volume. This difference is outside the permitted tolerance of 0.3% alcohol by volume prescribed in The Food Labelling Regulations 1996 for vodka.

The sample had an alcohol content of 2.7% volume less than the minimum permitted.

10 June 2011

Lab ref: 169015

Page 1 of 2

H M Revenue and Customs requires all bottles of spirits with a strength of 30% alcohol by volume or more, of a capacity of 35cl or more, to bear a duty stamp if they are removed to home use in the UK. Under ultraviolet light the central section of every duty stamp should fluoresce yellow.

The bottle had a capacity of 70cl. The duty stamp did not fluoresce.

In my opinion the lack of fluorescence of the duty stamp shows that the sample is not Absolut brand vodka as retailed in the United Kingdom.

I further certify that the sample had undergone no change which would affect my results, opinion or observations.

Certified by me this 10th day of June 2011, at Southsea

Signature:



Name: SHAYNE DYER
PUBLIC ANALYST

Official address/Telephone No: As Letterhead

Unless you request otherwise this specimen will be disposed of 28 days from the date of this report.

H M Revenue and Customs requires all bottles of spirits with a strength of 30% alcohol by volume or more, of a capacity of 35cl or more, to bear a duty stamp if they are removed to home use in the UK. Under ultraviolet light the central section of every duty stamp should fluoresce yellow.

The bottle had a capacity of 70cl. The duty stamp did not fluoresce.

In my opinion the lack of fluorescence of the duty stamp shows that the sample is not Sobieski brand vodka as retailed in the United Kingdom.

I further certify that the sample had undergone no change which would affect my results, opinion or observations.

Certified by me this 10th day of June 2011, at Southsea

Signature:



Name: SHAYNE DYER
PUBLIC ANALYST

Official address/Telephone No: As Letterhead

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 (SAMPLING AND QUALIFICATIONS) REGULATIONS 1990

To: Lucas Marshall Southampton City Council, Civic Centre,
 Southampton, Hampshire, SO14 7LY

I, the undersigned, Public Analyst for Southampton City Council, certify that on 26/05/2011 the sample marked:

<u>Date sample taken</u>	<u>Reference number, description etc.</u>	<u>Weight/measure</u>
11/05/2011 10:00	012125a FIVE LAKES VODKA	1000ml

Place of Sampling: PREMIER, FOUNDRY LANE, SOUTHAMPTON

was received by me from you (the person named above)

I certify that the sample was analysed by me or under my direction and the results are as follows:-

Alcohol % v/v	:	34.1
Methanol g/100L alc	:	< 0.10

My opinion and observations are:-

The declared alcoholic strength was 37.5% volume.

The uncertainty of measurement is 0.4% alcohol by volume.

The difference between the amount of alcohol found and the amount declared taking into account the uncertainty of measurement was 3% by volume. This difference is outside the permitted tolerance of 0.3% alcohol by volume prescribed in The Food Labelling Regulations 1996 for vodka.

The sample had an alcohol content of 2.7% volume less than the minimum permitted.

10 June 2011
 Lab ref: 169017

Page 1 of 2

H M Revenue and Customs requires all bottles of spirits with a strength of 30% alcohol by volume or more, of a capacity of 35cl or more, to bear a duty stamp if they are removed to home use in the UK. Under ultraviolet light the central section of every duty stamp should fluoresce yellow.

The bottle had a capacity of 100cl. The duty stamp did not fluoresce.

In my opinion the lack of fluorescence of the duty stamp shows that the sample is not Five Lakes brand vodka as retailed in the United Kingdom.

I further certify that the sample had undergone no change which would affect my results, opinion or observations.

Certified by me this 10th day of June 2011, at Southsea

Signature: _____

Name: SHAYNE DYER
PUBLIC ANALYST

Official address/Telephone No: As Letterhead

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To: Lucas Marshall Southampton City Council, Civic Centre,
 Southampton, Hampshire, SO14 7LY

I, the undersigned, Public Analyst for Southampton City Council, certify that on 26/05/2011 the sample marked:

<u>Date sample taken</u>	<u>Reference number, description etc.</u>	<u>Weight/measure</u>
11/05/2011	012126a	700ml
10:00	WYBOROWA VODKA	

Place of Sampling: PREMIER, FOUNDRY LANE, SOUTHAMPTON

was received by me from you (the person named above)

I certify that the sample was analysed by me or under my direction and the results are as follows:-

Alcohol % v/v : 36.9
 Methanol g/100L alc : 4.50

My opinion and observations are:-

The declared alcoholic strength was 40% volume.

The uncertainty of measurement is 0.4% alcohol by volume.

The difference between the amount of alcohol found and the amount declared taking into account the uncertainty of measurement was 2.7% by volume. This difference is outside the permitted tolerance of 0.3% alcohol by volume prescribed in The Food Labelling Regulations 1996 for vodka.

The sample had an alcohol content of 2.4% volume less than the minimum permitted.

10 June 2011
 Lab ref: 169018

Page 1 of 2

H M Revenue and Customs requires all bottles of spirits with a strength of 30% alcohol by volume or more, of a capacity of 35cl or more, to bear a duty stamp if they are removed to home use in the UK. Under ultraviolet light the central section of every duty stamp should fluoresce yellow.

The bottle had a capacity of 70cl. The duty stamp did not fluoresce..

In my opinion the lack of fluorescence of the duty stamp shows that the sample is not Wyborowa brand vodka as retailed in the United Kingdom.

I further certify that the sample had undergone no change which would affect my results, opinion or observations.

Certified by me this 10th day of June 2011, at Southsea

Signature:



Name: SHAYNE DYER
PUBLIC ANALYST

Official address/Telephone No: As Letterhead

Unless you request otherwise this specimen will be disposed of 28 days from the date of this report.