

Brewvies cited for serving alcohol while showing 'Deadpool,' set to sue Utah A.G. and DABC

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Brewvies • Serving beer can't void constitutional protection, attorney says.



Ryan Galbraith | Tribune file photo Brewvies in Salt Lake City allows patrons to eat food and drink alcoholic beverages while w

By Christopher Smart The Salt Lake Tribune · April 20, 2016 2:35 pm

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What happens when you mix alcohol with movies with an R-rating for nudity or sexual content?

In Utah, you get fined and your license can be suspended.

Recently, Brewvies — the theater in Salt Lake City where moviegoers can sip the beverage of their choice — found out again that "Deadpool" (rated R) combined with Moose Drool (4.1 percent by weight) equals a spanking from the attorney general's office and the Department of Alcoholic Beverage Control (DABC).

UPDATE: [Brewvies sues the DABC, claiming First Amendment violations.](#)

It isn't the first time Brewvies has been punished by the DABC. Previously, after the screening of "The Hangover Part II," the theater was slapped with a fine of \$1,627.

For the "Deadpool" violation, Brewvies faces a fine up to \$25,000 and a 10-day suspension of its liquor license.

A DABC commission hearing is scheduled for later this month.

Brewvies, apparently, has had enough and issued an ultimatum Monday to the attorney general. It seeks the repayment of the fine for "The Hangover Part II," a notice of action for "Deadpool" be rescinded, and a promise that no such enforcement action will take place in the future.

The DABC may not be agreeable. In a July 1, 2015, letter to Brewvies, Sheila Page, an assistant attorney general representing DABC, stated that Brewvies must adhere to Utah law that disallows movies that are R-rated for sex or nudity where alcohol is served.

"The statutory prohibitions found in the Attire, Conduct and Entertainment Act governs conduct of DABC licensees and specifically addresses the showing of films, still pictures, electronic reproductions, or other visual reproductions depicting sex acts, simulated sex acts, genitals, etc," she stated.

On Feb. 26, three undercover agents from the Utah Bureau of Investigation went to Brewvies. They ordered beer and entered the theater, according to their report.

The results of the investigation by Officer Bradley Buck states: "The male and female characters are shown having sex while nude."

In another instance, according to the report, there is a brief scene of male full-frontal nudity.

The investigation narrative also includes the final credits where "a drawing of the main character (male) is shown as he rides on the back of a unicorn, he rubs its horn briefly until the horn shoots out rainbows (simulating orgasm)."

Nonetheless, that content is protected by the First Amendment, according to Salt Lake City attorney Rocky Anderson, the municipality's former mayor, who represents Brewvies. In a letter Monday to the attorney general and the DABC, Anderson said the state is apparently operating on "the misperception (and erroneous legal advice) that the DABC can constitutionally restrict the showing of films protected by the U.S. Constitution and the Utah Constitution."

Anderson pointed to the 1996 case of "44 Liquormart, Inc. v. Rhode Island," in which the U.S. Supreme Court held that the 21st Amendment (which repealed Prohibition) cannot decrease in any manner First Amendment protections, whether or not alcohol is involved.

The Utah agencies may be confused, Anderson said, by the 1972 ruling in "California v. LaRue." That case involved establishments where topless and bottomless dancers, nude entertainers, and films displaying sexual acts are shown.

"Obviously, the offending conduct under consideration in LaRue was universes apart from the showing of a film, 'Deadpool,' " Anderson said. "[Deadpool] is still being shown throughout the state of Utah, and is receiving extremely positive reviews."

In the letter, Anderson urged the attorney general to "immediately withdraw the Notice of Agency Action [against Brewvies for screening ['Deadpool']] and to provide assurance that no further actions threatening fines or any other disciplinary actions or punishments will be undertaken by DABC."

Further, Anderson said, Brewvies wants "The Hangover II" fine returned with interest and an apology for threats made to theater owners on behalf of the DABC.

Not least, Anderson said, his client is ready to take legal action if the attorney general does not respond Monday.

"If we do not hear from you, we will have no choice but to file a lawsuit for declaratory and injunctive relief, damages, attorneys' fees, and costs."

A spokesman for the attorney general said his office has received the letter; it is up to the DABC to determine what action should be taken.

A spokeswoman for the DABC said the agency would have no comment before the matter comes before the commission.

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