

Brewvies seeks restraining order against state liquor regulators

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Brewvies cinema pub is seeking a temporary restraining order against the Utah Department of Alcoholic Beverage Control after being cited for selling alcohol while screening the movie "Deadpool."

The violation could mean a fine of up to \$25,000 and a 10-day suspension of Brewvies' liquor license.

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 fined \$1,627.

On Thursday, Brewvies filed for a temporary restraining order in federal court. The cinema pub also is seeking a preliminary injunction and a permanent injunction based on the First Amendment.

The cinema pub filed suit last week based on constitutional protections of free speech.

Brewvies' attorney, Rocky 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."

In a July 1, 2015, letter to Brewvies, Sheila Page, an assistant attorney general representing the DABC, stated that Brewvies must adhere to Utah law that prohibits showing movies that include 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.

According to Thursday's filing, Brewvies will suffer irreparable injury. "The defendants' [the DABC] continuing threat to punish Brewvies for exercising its free-speech rights under the United States and Utah constitutions ... has caused a chilling effect and is an ongoing irreparable injury that will continue if a temporary restraining order and a preliminary injunction are not granted."

Further, the action states that any inconvenience to the DABC is outweighed by the injury to the cinema pub "because the DABC will still be free to regulate alcohol in ways that do not violate the First Amendment."

The DABC entered a stay order Friday, saying it will take no action against Brewvies for the duration of the litigation.

A status conference is set for Tuesday morning before Judge David Nuffer.

A spokesman for Attorney General Sean Reyes said his office had no comment regarding the petition for the restraining order.

But in a statement released Friday, Dan Burton said the attorney general does not make the law.

"Our duty is to defend both the state agency and the laws that are passed by the people. We will continue to advise DABC and defend its enforcement of current state law," Burton said. "The proper channel for changing state law is through the legislative process."

Earlier this week, John Harper, a Democrat who is seeking to oust the Republican Reyes, told the DABC Commission that the A.G. should have been aware of an Idaho case involving Meridian Cinemas, which, much like Brewvies, was cited for serving alcohol during a showing of a movie with sex and nudity.

Rather than allowing the case to proceed, Idaho officials agreed to hold off enforcing the state statute until its Legislature could examine it closer.

Harper said the lawyers in the Idaho case cited a 9th Circuit Court of Appeals decision that clearly established that state liquor regulations could not trump freedom-of-speech provisions allowed under the First Amendment.

Anderson had cited 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 First Amendment protections, whether or not alcohol is involved.

On Mondays during the month of May, the cinema pub will present "Brewvies Fights for Civil Rights!" — a free film-buff series. It includes "The People vs. Larry Flynt," "The Majestic," "The Fifth Estate," "Good Night and Good Luck" and "Footloose."

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