IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTHERN INDIANA
(Southern Division)

JOSHUA D. WILKINSON, MICHAEL CENTO,

JENNIFER CENTO, & ALMA MADER BREWING,

Plaintiffs, Case No. 1:26-cv-00248-JPH-MKK

v.

THE HON. THEODORE. E. ROKITA & JESSICA ALLEN

Defendants.

SECOND AMENDED COMPLAINT

Plaintiffs make the following allegations based upon information and belief, except for the allegations pertaining to Plaintiffs, which are based upon personal knowledge.

INTRODUCTION

This is a civil rights action brought pursuant to 42 U.S.C. § 1983 challenging the constitutionality of Indiana laws, regulations, rules, and practices that allow in-state beer producers to sell, deliver, and ship beer directly to Indiana consumers but prohibit out-of-state beer producers from doing so. Out-of-state beer producers, such as Plaintiff Alma Mader Beer Company, and many other beer sellers throughout the United States, cannot sell, ship, and deliver directly to Indiana consumers because this practice is illegal under Indiana law. The Plaintiffs seek a declaratory judgment that this regulatory scheme is unconstitutional because it violates the Commerce Clause and discriminates against out-of-state beer producers engaged in interstate commerce. The Plaintiffs seek an injunction barring the Defendants from enforcing these laws, regulations, rules, and practices and requiring them to allow out-of-state beer producers to sell, ship, and deliver beer directly to Indiana consumers upon the same terms as in-state beer producers.

JURISDICTION

1. This Court has jurisdiction to hear this case pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3), which confer original jurisdiction on federal district courts to hear suits alleging the violation of rights and privileges under the United States Constitution.
2. This Court has authority to grant declaratory and other relief pursuant to 28 U.S.C. §§ 2201 and 2202.

PLAINTIFFS

1. Consumer Plaintiff, Joshua D. Wilkinson, is a resident of Carmel, Indiana, in Hamilton County. He is over the age of twenty-one and is legally permitted to purchase, receive, possess, and drink beer at his residence. He is an aficionado of craft beer and wants to purchase rare beers that are difficult to find. As a consumer of fine and artisanal beer, he would like to purchase craft beer from out-of-state producers in Missouri and other states and have those beers shipped to his residence in Indiana, but Indiana laws, regulations, rules, and practices prohibit out-of-state producers from doing so.
2. Consumer Plaintiffs, Michael and Jennifer Cento, are residents of Indianapolis, Indiana, in Marion County. They are over the age of twenty-one and are legally permitted to purchase, receive, possess, and drink beer at their residence. They are craft beer aficionados who want to purchase rare beers that are difficult to find. As a consumer of fine and artisanal beer, she would like to purchase craft beer from out-of-state producers in Missouri and other states and have those beers shipped to his residence in Indiana, but Indiana laws, regulations, rules, and practices prohibit out-of-state producers from doing so.
3. Alma Mader Brewing is located in Kansas City, Missouri, and maintains an Internet website and has previously handled deliveries and shipping of beer that was purchased from its online store.
4. Indiana law allows for direct shipping and delivery of beer to consumers only from in-state breweries. Deliveries must be made by the brewery's own employees and not by common carriers. Brewery Plaintiffs anticipate that Defendants would enforce current

Indiana laws, regulations, rules, and practices to prevent any attempts to directly ship their products to Indiana consumers.

5. Brewery Plaintiff intends to sell, ship, and deliver beer directly to Indiana consumers, such as Consumer Plaintiffs Joshua D. Wilkinson, Jennifer Cento, and Michael Cento, if the Indiana laws and regulations prohibiting such sales and shipments are removed or declared unconstitutional.
6. The Brewery Plaintiffs intend to collect and pay all taxes that may be due on such interstate shipments and to comply with all other non-discriminatory state laws and regulations, including obtaining licenses if one were available.
7. Because the Consumer Plaintiffs are unable to have desirable craft beer shipped to them from distant states around the country, they are forced to purchase less desirable beer locally.

DEFENDANTS

1. Defendants are sued in their official capacities.
2. Defendant Theodore E. Rokita is the Indiana Attorney General and is generally empowered to enforce Indiana laws. As the chief legal officer of the State, the Attorney General has general charge, supervision, and direction of the State's legal business. Ind. Code Ann. § 4-6-1-6. His duties include prosecuting and defending cases on behalf of the State to promote and protect the State's policies, determinations, and rights. State ex rel. Attorney State ex rel. Sendak v. Marion Cnty. Superior Court, Room No.2, 268 Ind. 3, 5, 373 N.E.2d 145, 147 (1978). He can investigate, commence, and prosecute any civil or criminal suit or action or category of such suits or actions in any of the Federal Courts. Md. Const. art. V § 3(a)(2).

Additionally, the Attorney General is given authority by 27 U.S.C. § 122a to bring civil action for injunction relief against Plaintiffs (and others) to enforce compliance with State law and/or to restrain them from engaging, or continuing to engage, in violations of the Liquor Control Act.

3. Defendant Jessica Allen is the Chairwoman of the Indiana Alcohol, Tobacco, and Cannabis Commission (the "Commission"), which is charged with issuing manufacturer's licenses pursuant to Ind. Code. § 7.1-3-2-2.
4. Defendants are acting under color of state law when they enforce or supervise the enforcement of the statutes and regulations challenged herein.

COUNT I: COMMERCE CLAUSE VIOLATION

1. Plaintiffs repeat and re-allege each of the foregoing paragraphs as if set out fully herein.
2. In the State of Indiana, a resident beer producer may sell, ship, and deliver directly to Indiana consumers any product it manufactures under its license pursuant to Ind. Code Ann., Scope of permit § 7.1-3-2-7 (H). There is no corresponding license available in Indiana that could be issued to out-of-state breweries located in Missouri to allow for sales, shipment, and direct delivery of beer to Indiana consumers, and Indiana laws, regulations, and rules do not allow out-of-state breweries to do so. The effect of Indiana law is to create a ban on Alma Mader and other out-of-state breweries from conducting in business in Indiana.
3. Indiana issues brewery permits that authorize direct sales and shipping to customers only to state residents. Ind. Code Ann., Alcoholic Beverages § 7.1-3-2-1.

4. Defendants and other law enforcement agencies in Indiana intend to enforce the aforementioned laws, regulations, and rules that prohibit out-of-state beer producers in Missouri or Michigan from selling, delivering, and shipping beer directly to Indiana consumers.
5. Joshua D. Wilkinson, Michael Cento, and Jennifer Cento are beer consumers who want the opportunity to buy beer directly from Alma Mater Brewing and other beer producers outside of Indiana, and to have the beer delivered to their residences. Some of these breweries are near the Indiana border and could use their own employees to make deliveries.
6. Consumer Plaintiffs have contacted several out-of-state beer producers, including Alma Mader Brewery, either on the Internet or by phone, to buy beer they cannot find locally, including those of the Plaintiff, Alma Mader Brewery. Each brewery has declined to sell and ship its products directly to consumer plaintiffs because Indiana law prohibits it. As a result of the near-ban on out-of-state breweries shipping and delivering to Indiana consumers, the Consumer Plaintiffs in this case have had to shift their purchases to less desirable local products.
7. Many breweries that produce limited production, specialty, and unusual craft beer are located outside of Indiana. Consumer Plaintiffs cannot afford the time and expense of traveling great distances to out-of-state beer producers to purchase a few bottles of rare beer and personally transport them home.
8. Consumer Plaintiffs have attempted to purchase beer, including beer that they could not obtain locally, from out-of-state beer producers located in states that do not allow direct shipment from non-Indiana breweries and have been denied these purchases.

9. Some beers that they want to buy are only available directly from the non-Indiana beer producers themselves. This includes older, aged beers no longer generally available, and current beers that have sold out locally after receiving favorable reviews, or because few bottles of the limited-production beer were allocated to Indiana and its wholesalers.
10. At present, Brewery Plaintiff is forced to use wholesaler entities at significant additional costs to themselves to make available their products, rare or not, to Indiana consumers such as Consumer Plaintiffs, whereas their counterpart in-state Indiana breweries are not required to make such expenditures. Direct shipping would be a significant cost-savings for Brewery Plaintiff.
11. Consumer Plaintiffs cannot complete the transactions described in paragraphs 20-28 above because the laws, regulations, and practices of Indiana prohibit direct sales and shipments of beer from out-of-state beer producers in select states to in-state consumers, and State officials will not issue any kind of license that would allow such transactions.
12. If Brewery Plaintiff, Alma Mader Brewing, is permitted to sell, ship, and deliver their beer directly to consumers in the State of Indiana, by common carrier it would obtain a license if one were available and would comply with the same rules concerning labeling, shipping, reporting, obtaining proof of age, and paying taxes as imposed upon and adhered to by in-State beer producers.
13. By refusing to allow Brewery Plaintiff, Alma Mader Brewing, to sell, ship, and deliver beer upon the same terms as in-State beer producers, the State of Indiana is discriminating against interstate commerce and protecting the economic interest of

local businesses by shielding them from competition, in violation of the Commerce Clause of the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seek the following relief:

A. Judgment declaring Indiana law, regulations, rules, and practices that prohibit out-of-state beer producers from selling, shipping, and delivering beer directly to Indiana consumers unconstitutional as a violation of the Commerce Clause of the United States Constitution.

B. Judgment declaring the residency requirement in Ind. Code Ann., Scope of permit § 7.1-3-2-7 (H) unconstitutional as a violation of the Commerce Clause of the United States Constitution.

C. An injunction prohibiting Defendants from enforcing those rules and regulations; and requiring Defendants to allow out-of-state beer producers to obtain licenses and to sell, ship, and deliver beer directly to consumers in Indiana.

D. Plaintiffs do not request the State to forego its requirements for licenses to direct ship, and Brewery Plaintiffs would seek to obtain such licenses were they to be made available to them.

E. Plaintiffs do not request that the State be prevented from collecting any tax due on the sale of beer.

F. An award of costs and expenses, including reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.

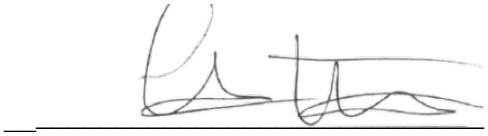
G. Such other relief as the Court deems appropriate to afford Plaintiffs for full relief.

Respectfully Submitted,

EPSTEIN, SEIF, PORTER & BEUTEL



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