

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

PATRICK L. BAUDE,)	
LARRY J. BUCKEL,)	
KITTY BUCKEL,)	
J. ALAN WEBBER,)	
JAN WEBBER,)	
WHITE OWL WINERY, Inc., and)	
CHATEAU GRAND TRAVERSE, Ltd.)	CIVIL ACTION
)	
Plaintiffs,)	NO: 1:05-cv-0735-JDT-TAB
)	
v.)	
)	
DAVID L. HEATH, in his official capacity)	
as Chairman of the Indiana Alcohol)	
and Tobacco Commission)	
)	
Defendant)	

ANSWER TO COMPLAINT

Defendant, David L. Heath, Chairman of the Indiana Alcohol and Tobacco Commission, by counsel, Steve Carter, Attorney General of Indiana, by Robert B. Wentz, Deputy Attorney General and Chad C. Duran, Deputy Attorney General, answers the Plaintiffs' Complaint as follows:

JURISDICTION

1. In response to paragraph 1 as set forth in the Complaint, the Defendant admits that the Plaintiffs purport to bring this action pursuant to 28 U.S.C. §§ 1331 and 1343 (a)(3), but denies that the Plaintiffs are entitled to any relief for alleged violations of rights and privileges under the United States Constitution.

2. In response to paragraph 2 as set forth in the Complaint, the Defendant admits that this Court has the power to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, but denies that the plaintiff is entitled to any such relief.

PLAINTIFFS

3. The Defendant is without sufficient knowledge to form a belief as to the truth of the material allegations contained in paragraph 3 of the Complaint and therefore denies the same.

4. The Defendant is without sufficient knowledge to form a belief as to the truth of the material allegations contained in paragraph 4 of the Complaint and therefore denies the same.

5. The Defendant is without sufficient knowledge to form a belief as to the truth of the material allegations contained in paragraph 5 of the Complaint and therefore denies the same.

6. The Defendant is without sufficient knowledge to form a belief as to the truth of the material allegations contained in paragraph 6 of the Complaint and therefore denies the same.

DEFENDANT

7. In response to paragraph 8 as set forth in the Complaint, the Defendant admits that the Plaintiffs purport to sue David Heath in his official capacity.

8. The Defendant admits the material allegations contained in paragraph 8 of the Complaint.

9. The Defendant admits the material allegations contained in paragraph 9 of the Complaint.

COMMERCE CLAUSE VIOLATION COUNT 1:
DISCRIMINATION AGAINST OUT-OF-STATE WINERIES WITH
RESPECT TO SALES TO CONSUMERS

10. The Defendant admits that the holder of a farm winery permit may engage in the scope of commercial activities delineated in I.C. 7.1-3-12-5. The Defendant denies any further allegations in paragraph 10 of the Complaint.

11. In response to paragraph 11 as set forth in the Complaint, the Defendant admits that it will issue a farm winery permit to applicants who meet the requirements of I.C. § 7.1-3-12-3 and §7.1-3-12-4 and the general requirements of Title 7.1 and, conversely, that it will not issue a farm winery permit to applicants who do not meet these requirements. The Defendant further states that he is not aware that White Owl Winery or Chateau Grand Traverse, or any other winery located outside of Indiana has ever made an application for a farm winery license and can neither admit or deny whether such a hypothetical application would be rejected or denied. Accordingly the allegations in paragraph 11 must be denied

12. The Defendant admits the allegations in paragraph 12 of the Complaint as neither White Owl Winery, Chateau Grand Traverse, or any other winery located outside of the State of Indiana is the holder of an Indiana farm winery permit.

13. The Defendant is without sufficient knowledge to form a belief as to the truth of the material allegations contained in paragraph 13 of the Complaint and therefore denies the same.

14. The Defendant is without sufficient knowledge to form a belief as to the truth of the material allegations contained in paragraph 14 of the Complaint and therefore denies the same.

15. The Defendant is without sufficient knowledge to form a belief as to the truth of the material allegations contained in paragraph 15 of the Complaint and therefore denies the same.

16. The Defendant states that paragraph 16 of the Complaint alleges a conclusion of law to which an admission or denial is not required.

17. The Defendant states that paragraph 17 of the Complaint alleges a conclusion of law to which an admission or denial is not required.

18. The Defendant is without sufficient knowledge to form a belief as to the truth of the material allegations contained in paragraph 18 of the Complaint and therefore denies the same.

19. The Defendant states that paragraph 19 of the Complaint alleges a conclusion of law to which an admission or denial is not required.

COMMERCE CLAUSE VIOLATION COUNT II:
DISCRIMINATION AGAINST OUT-OF-STATE WINERIES WITH RESPECT
TO SALES TO LICENSED RETAIL WINE SELLERS

20. The Defendant states that paragraph 20 alleges a conclusion of law to which an admission or denial is not required. However, the Defendant further states that the holder of a farm winery permit may engage in the scope of commercial activity defined by I.C. 7.1-3-12-5.

21. The Defendant admits that it will issue a farm winery permit to applicants who meet the requirements of I.C. § 7.1-3-12-3 and §7.1-3-12-4 and the general

requirements of Title 7.1 and, conversely, that it will not issue a farm winery permit to applicants who do not meet these requirements. The Defendant further states that he is not aware that White Owl Winery or Chateau Grand Traverse, or any other winery located outside of Indiana has ever made an application for a farm winery license and can neither admit or deny whether such a hypothetical application would be rejected or denied. Accordingly the allegations in paragraph 21 must be denied.

22. The Defendant admits the allegations in paragraph 22 of the Complaint as neither White Owl Winery, Chateau Grand Traverse, or any other winery located outside of the State of Indiana is the holder of an Indiana farm winery permit.

23. The Defendant is without sufficient knowledge to form a belief as to the truth of the material allegations contained in paragraph 23 of the Complaint and therefore denies the same.

24. The Defendant is without sufficient knowledge to form a belief as to the truth of the material allegations contained in paragraph 24 of the Complaint and therefore denies the same.

25. The Defendant states that paragraph 25 of the Complaint alleges a conclusion of law to which an admission or denial is not required.

26. The Defendant hereby denies each and every allegation contained in the Complaint not specifically admitted or denied.

WHEREFORE, the Defendant requests that Plaintiffs take nothing by way of their Complaint, that judgment be entered in favor of the Defendant and that this Court dismiss this action with prejudice, and for all other just and proper relief.

ADDITIONAL DEFENSES

First Additional Defense

The Complaint is barred in whole or in part for the Plaintiffs' failure to state a claim upon which relief can be granted.

Second Additional Defense

The Complaint is barred in whole or in part as this case is not yet ripe for adjudication of the Plaintiffs' claims.

Third Additional Defense

This Complaint is barred in whole or in part as the Plaintiffs have failed to exhaust their administrative remedies.

Fourth Additional Defense

This Complaint is barred in whole or in part pursuant to *Lawson v. Hill*, 368 F.3d 955 (7th Cir. 2004), as the Plaintiffs have failed to present this Court with a justiciable claim.

Respectfully submitted,

STEVE CARTER
Indiana Attorney General
Attorney No. 4150-64

By: */s/ Robert B. Went*e

Robert B. Went, Atty No. 1182-29
Deputy Attorney General

/s/ Chad C. Duran

Chad C. Duran, Atty. No. 18615-53
Deputy Attorney General

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing was filed electronically on this 8th day of August 2005. Notice of this filing will be sent to the parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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