

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

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FILED

JEFFREY A. APPERSON, CLERK

AUG - 5 2005

U.S. DISTRICT COURT
WEST'N. DIST. KENTUCKY

HUBER WINERY, a division of)
Huber Orchards, Inc., et al,)
Plaintiffs)
v.)
LAJUANA S. WILCHER, in her)
official capacity, et al.,)
Defendants)
_____)

Case No. 3:05CV289-S

**ANSWER OF WINE AND SPIRITS
WHOLESALEERS OF KENTUCKY, INC.**

Comes Intervenor-Defendant, WINE AND SPIRITS WHOLESALEERS OF KENTUCKY, INC., by counsel, and for its Answer to the Complaint herein, states:

1. With respect to the allegations contained in the Introduction, they are denied except to the extent that matters of public record or law are recited.
2. With respect to the allegations contained in numerical paragraph 1, it denies that the Court has jurisdiction to hear the case but admits the remaining allegations to the extent that they purport to summarize what the cited sections state.
3. With respect to the allegations contained in numerical paragraph 2, it denies that this Court has the authority to grant declaratory relief in this case.
4. It is without sufficient information or knowledge on which to form a belief as to the truth of the allegations contained in numerical paragraphs 3, 4, 5, 15, 16, 17, 20, 26 and 27 and, therefore, denies same.

5. It admits the allegations contained in numerical paragraphs 6, 7 (to the extent that Defendant Hudgins is Executive Director of the Kentucky Office of Alcoholic Beverage Control ("ABC"), not Kentucky Department . . .), 8, 10, 12 and 23.

6. With respect to the allegations contained in numerical paragraph 9, it denies that ABC has an office in Jefferson County, Kentucky and admits the remaining allegations.

7. With respect to the allegations contained in numerical paragraph 13 and 24, it denies them except that it admits that Defendants will not issue a small winery or farm winery license to any winery not located in Kentucky.

8. With respect to the allegations contained in the second literary sentence in numerical paragraph 14, it is without sufficient information or knowledge on which to form a belief as to the truth thereof and, therefore, denies same. The remaining allegations in said paragraph require it to engage in legal conclusions, legal analysis and speculation regarding hypothetical questions without reference to unknown needed facts and, therefore, it denies same.

9. With respect to the allegations contained in numerical paragraphs 18 and 25, they require it to engage in legal conclusions, legal analysis and speculation regarding hypothetical questions without any reference to unknown needed facts and, therefore, it denies same.

10. It denies the allegations contained in numerical paragraphs 19, 21 and 28.

11. Any allegation not specifically admitted is denied.

12. The relief requested herein violates 28 U.S.C. § 1341 and the Court lacks authority to grant said relief.

13. Plaintiffs lack standing to raise the claims herein asserted.
14. The Complaint fails to state any claim upon which the relief sought may be granted.
15. Plaintiffs' claims, if any, are barred due to the preemption created by U.S. CONST., AMEND. XXI.
16. Plaintiffs' claims, if any, are barred by reason of the failure to name indispensable parties.
17. Plaintiffs have failed to exhaust their administrative remedies.
18. This Court lacks jurisdiction over the subject matter of this action.
19. The relief sought, if granted, will constitute a taking of the property of the members of Intervenor-Defendant without just compensation and in violation of their right to due process, in violation of federal and Kentucky constitutional provisions.
20. Plaintiffs have no property interest or right subject to protection hereunder.

WHEREFORE, Intervenor-Defendant prays:

1. That the Complaint be dismissed, with prejudice, and that Plaintiffs take nothing thereby;
2. For its costs herein expended, including reasonable attorney fees; and
3. For all other relief to which it may appear entitled.



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