

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

SOUTHERN WINE & SPIRITS OF)
AMERICA, INC.; SOUTHERN WINE)
& SPIRITS OF MISSOURI, INC.;)
HARVEY R. CHAPLIN; WAYNE E.)
CHAPLIN; PAUL B. CHAPLIN; AND)
STEVEN R. BECKER;)

Plaintiffs,)

v.)

Case No. _____

DIVISION OF ALCOHOL AND TOBACCO)
CONTROL; LAFAYETTE E. LACY,)
SUPERVISOR OF ALCOHOL)
AND TOBACCO CONTROL;)

Defendants.)

COMPLAINT

COME NOW the Plaintiffs, by and through the undersigned counsel, and for their Complaint against Defendants, respectfully state as follows:

PARTIES

1. Plaintiff Southern Wine & Spirits of America, Inc. (“SWSA”) is a Florida corporation with its principal place of business in Miami, Florida.

2. Plaintiff Southern Wine & Spirits of Missouri, Inc. (“Southern Missouri”) is a corporation organized under the laws of the State of Missouri, and is a wholly owned subsidiary of SWSA.

3. Plaintiff Harvey R. Chaplin is a natural person over the age of 21, a United States citizen, and a Florida resident. Harvey R. Chaplin is the Chairman and Chief Executive Officer

of SWSA and Southern Missouri. Harvey R. Chaplin is also a shareholder and director of SWSA. Harvey R. Chaplin is also a director of Southern Missouri.

4. Plaintiff Wayne E. Chaplin is a natural person over the age of 21, a United States citizen, and a Florida resident. Wayne E. Chaplin is the President and Chief Operating Officer of SWSA and Southern Missouri. Wayne E. Chaplin is also a shareholder and director of SWSA; and, a director of Southern Missouri.

5. Plaintiff Paul B. Chaplin is a natural person over the age of 21, a United States citizen, and a Florida resident. Paul B. Chaplin is a director of SWSA and Southern Missouri. Paul B. Chaplin, as a trustee and beneficiary of a trust created for his benefit, is also a shareholder of SWSA.

6. Plaintiff Steven R. Becker is a natural person over the age of 21, a United States citizen, and a Florida resident. Steven R. Becker is a shareholder of SWSA; and, a director and the Executive Vice President and Treasurer of SWSA and Southern Missouri.

7. Defendant Division of Alcohol and Tobacco Control (“Division”) is a division within the Department of Public Safety of the State of Missouri, with its principal offices located in Jefferson City, Cole County, Missouri.

8. Defendant Lafayette E. Lacy is the Supervisor of Alcohol and Tobacco Control (“Supervisor”) and is sued only in his official capacity as Supervisor. The Supervisor maintains his principal office in Jefferson City, Cole County, Missouri.

9. The Supervisor is the Chief Executive Officer of the Division, and he has the power and duty to determine whether applications for wholesale liquor licensure in the State of Missouri shall be approved or disapproved.

JURISDICTION AND VENUE

10. This is a civil action challenging the constitutionality of Missouri state statutes under the United States Constitution, and it seeks to redress a deprivation, under color of state law, of rights, privileges and immunities secured by the Constitution of the United States. Furthermore, Plaintiffs seek to secure equitable relief and to recover their attorneys' fees under federal law providing for the protection of civil rights. Accordingly, this Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), and 1343(a)(4). This Court also has the authority to grant the requested declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202.

11. Venue is proper in this district under 28 U.S.C. § 1391(b), because a substantial part of the events or omissions giving rise to the claims arose within this district. Venue is also proper under 28 U.S.C. § 1391(b), because Defendants maintain their offices and reside in this district.

12. For the reasons set forth above, Civil Divisional Venue is proper in this division under Western District Local Rule 3.2.

BACKGROUND FACTS

13. Southern Wine & Spirits of America, Inc. ("SWSA") is the largest distributor of wine, spirits, beer and various non-alcoholic beverages in the United States; the company and its subsidiaries operate in 32 states and the District of Columbia.

14. SWSA holds a Missouri license as a liquor solicitor, number 57179, issued by Defendants (hereinafter the "LS license"). Pursuant to the LS license, SWSA may sell all kinds of intoxicating liquors to wholesalers in Missouri.

15. Prior to obtaining the Missouri LS license, SWSA applied to the Division and of the predecessor to the Supervisor for the LS license. Based on information and belief, the Division and/or the predecessor to the Supervisor would have conducted criminal background checks for all of the officers of SWSA. Thereafter, the Division and the predecessor to the Supervisor approved SWSA's LS license application.

16. Plaintiffs Harvey R. Chaplin, Wayne E. Chaplin, Paul B. Chaplin, and Steven R. Becker (collectively "the individual Plaintiffs") are all residents of Florida, and together they own either individually or as trustees and beneficiaries of trusts created for their benefit over 97% of the voting shares and more than 51% of all of the shares of SWSA.

17. The individual Plaintiffs wish to enter the market for the wholesale of alcoholic beverages in Missouri. To that end, the individual Plaintiffs participated with SWSA to create Plaintiff Southern Missouri as a wholly owned subsidiary of SWSA on March 24, 2011. Plaintiff Southern Missouri is a Missouri corporation created for the purpose of operating as a wholesaler and/or distributor of alcoholic beverages in the state of Missouri.

18. On or about July 1, 2011, Plaintiff Southern Missouri filed an application for Wholesaler Liquor License with the Division and/or the Supervisor to obtain a Missouri wholesaler's license, which is necessary for Plaintiff Southern Missouri to operate as a wholesaler and/or distributor of all kinds of alcoholic beverages in Missouri ("Application").

19. On or about July 11, 2011, the Division and/or the Supervisor denied the Application on the grounds that Plaintiff Southern Missouri is not eligible for licensure pursuant to §311.060, RSMo, particularly the resident corporation requirement set forth in §311.060.2(3), RSMo.

RESIDENCY REQUIREMENTS
FOUND IN CHAPTER 311, RSMO

20. Section 311.060.2(3) states that “[n]o wholesaler license shall be issued to a corporation for the sale of intoxicating liquor containing alcohol in excess of five percent by weight, except to a resident corporation as defined in this section.” This type of license is referenced in the application of the Division as “Wholesaler-Solicitor, all kinds” or an “LWS.”

21. The term resident corporation is defined at § 311.060.3, RSMo, as follows:

A “resident corporation” is defined to be a corporation incorporated under the laws of this state, all the officers and directors of which, and all the stockholders, who legally and beneficially own or control sixty percent or more of the stock in amount and in voting rights, shall be qualified legal voters and taxpaying citizens of the county and municipality in which they reside and who shall have been bona fide residents of the state for a period of three years continuously immediately prior to the date of filing of application for a license, provided that a stockholder need not be a voter or a taxpayer, and all the resident stockholders of which shall own, legally and beneficially, at least sixty percent of all the financial interest in the business to be licensed under this law[.]

22. The term financial interest is defined at § 311.060.4, RSMo, as follows:

The term “financial interest” as used in this chapter is defined to mean all interest, legal or beneficial, direct or indirect, in the capital devoted to the licensed enterprise and all such interest in the net profits of the enterprise, after the payment of reasonable and necessary operating business expenses and taxes, including interest in dividends, preferred dividends, interest and profits, directly or indirectly paid as compensation for, or in consideration of interest in, or for use of, the capital devoted to the enterprise, or for property or money advanced, loaned or otherwise made available to the enterprise, except by way of ordinary commercial credit or bona fide bank credit not in excess of credit customarily granted by banking institutions, whether paid as dividends, interest or profits, or in the guise of royalties, commissions, salaries, or any other form whatsoever.

23. To summarize, pursuant to the above cited provisions, in order to qualify as a resident corporation, and to qualify for a LWS license in Missouri, an applicant must meet the

following requirements: 1) The corporation must be a Missouri corporation; 2) All of the officers and directors of the corporation must have been Missouri residents for three straight years immediately prior to the date of filing of the application; 3) All of the officers and directors of the corporation must be qualified legal voters and taxpaying citizens of the State of Missouri, as well as of the city and county in which they reside; 4) Sixty percent (60%) of the stock in the corporation must be legally or beneficially owned or controlled by entities who have been residents of the State of Missouri for at least three years; 5) The stockholders who are Missouri residents shall own, legally and beneficially, at least sixty percent (60%) of all the “financial interest” in the corporation.

24. The above cited provisions of Chapter 311, RSMo, will be referred to collectively herein as the “residency requirements.”

25. Significantly, Missouri does not restrict licenses for beer wholesalers to resident corporations; consequently, beer wholesalers do not need to meet the residency requirements.

26. In fact, the residency requirements only apply to two specific licenses, a Wholesaler-Solicitor, all kinds (LWS) license and a Wholesaler-Solicitor, 22% alcohol or less (22WS) license.

27. The residency requirements facially discriminate against non-resident entities by requiring that a corporation be a Missouri corporation to qualify for a LWS license and by prohibiting foreign entities from owning more than 40% of equity interest of a Missouri LWS wholesaler.

28. The residency requirements facially discriminate against non-resident individuals by requiring that all officers and directors of an entity seeking a Missouri LWS license be

Missouri residents and qualified legal voters and taxpaying citizens of Missouri, as well as of the city and county in which they reside.

29. The residency requirements facially discriminate against entities in which more than 40% of the entity is owned by non-residents of Missouri by prohibiting them from obtaining the required LWS license necessary for participating in the wholesale markets for alcoholic beverages in Missouri. The provisions also facially discriminate against individuals who are non-residents of Missouri by prohibiting them from owning more than 40% of the stock in an entity that seeks to obtain the LWS license necessary to participate in the wholesale markets for alcoholic beverages in Missouri.

30. The provisions setting forth the residency requirements impinge upon the free flow of interstate commerce by basically excluding from the market all non-Missouri residents and entities.

31. There is no justification or rational basis for Missouri to impose the residency requirements.

32. The effect of the residency requirements is to protect Missouri resident corporations holding a LWS license from out-of-state competition, and the requirements serve no legitimate interest or concern for the safety of Missourians that cannot be served by alternative, nondiscriminatory measures.

33. The effect of the residency requirements is to exclude from the Missouri market all corporations whose nonresident stockholders hold more than 40% of equity interest in the corporation and the requirements serve no legitimate interest or concern for the safety of Missourians that cannot be served by alternative, nondiscriminatory measures.

34. The effect of the residency requirements is to exclude from the Missouri market all business entities other than those that are created in Missouri and the requirements serve no legitimate interest or concern for the safety of Missourians that cannot be served by alternative, nondiscriminatory measures.

35. The effect of the residency requirements is to prohibit any person other than a Missouri resident from serving as an officer or director for an entity with an LWS license or an entity seeking an LWS license and the requirements serve no legitimate interest or concern for the safety of Missourians that cannot be served by alternative, nondiscriminatory measures.

36. Against this backdrop, Plaintiffs bring this action for declaratory judgment and permanent and interim injunctive relief. All of the allegations made herein are incorporated as bases for the causes of action and relief requested below.

COUNT I—DECLARATORY JUDGMENT UNDER 28 U.S.C. § 2201

37. This case involves an actual controversy between Plaintiffs and Defendants regarding the constitutionality of the residency requirement provisions of the Missouri Liquor Control Law, including, but not limited to, § 311.060, RSMo.

38. The Division's and/or Supervisor's denial of the Application on the basis that Plaintiff Southern Missouri does not satisfy the residency requirements set forth in the above-referenced sections has injured Plaintiff SWSA's and Plaintiff Southern Missouri's right to engage in interstate commerce. The Division's and/or Supervisor's denial of the Application on this basis also injures the individual Plaintiffs' constitutionally protected privilege of owning stock and owning a business in the United States and of being an officer or director of such business. The Division's and/or Supervisor's denial of the Application on this basis also denies Plaintiffs' constitutionally protected privilege of equal protection of the laws.

39. For the reasons stated above, Plaintiffs are entitled to a declaration that the Division and/or Supervisor are estopped from enforcing § 311.060, RSMo, against Plaintiffs. Plaintiffs are further entitled to a declaration that the residency requirement provisions of the Missouri Liquor Control Law, including, but not limited to, § 311.060, RSMo, are invalid and unenforceable under the Equal Protection Clause, the Commerce Clause and the Privileges and Immunities Clause of the United States Constitution.

COUNT II—VIOLATION OF THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983

40. The Division and/or the Supervisor, acting under the color of state law, have intentionally denied Plaintiff Southern Missouri's Application for the license necessary to conduct business as a wholesaler and/or distributor of alcoholic beverages in the state of Missouri pursuant to the residency requirement provisions of the law.

41. The Division's and/or Supervisor's denial of Plaintiff Southern Missouri's Application on the basis of the residency requirements foreseeably deprived Plaintiffs of the right to engage in interstate commerce in violation of the Commerce Clause, Article I, § 8, of the United States Constitution. The Division's and/or Supervisor's denial of Plaintiff Southern Missouri's Application also foreseeably deprived the individual Plaintiffs of the privilege of owning and engaging in business across state lines in violation of the Privileges and Immunities Clause, Article IV, § 2, of the United States Constitution. The Division's and/or Supervisor's denial of Plaintiff Southern Missouri's Application on the basis of the residency requirements foreseeably deprived Plaintiffs of equal protection of the laws in violation of the Equal Protection Clause, Amendment XIV, of the United States Constitution.

42. As a result of these deprivations in violation of the United States Constitution, Plaintiffs are entitled to relief under 42 U.S.C. § 1983. Specifically, Plaintiffs are entitled to

injunctive relief prohibiting the Division and/or Supervisor from continuing to enforce the residency requirement provisions of the Missouri Liquor Control Law, including, but not limited to, § 311.060, RSMo. Without relief from this Court, the Division and/or Supervisor, acting under the color of state law, will continue to subject Plaintiffs to the deprivation of rights, privileges and immunities guaranteed by the United States Constitution.

COUNT III—EQUITABLE AND ANCILLARY RELIEF UNDER 28 U.S.C. § 2202

43. Plaintiffs are entitled to equitable and ancillary relief, including a preliminary and permanent injunction against the Division and/or Supervisor, their agents, and employees from enforcing the residency requirement provisions of the Missouri Liquor Control Law, including, but not limited to, § 311.060, RSMo, against Plaintiffs in violation of their rights, privileges, and immunities under the United States Constitution.

44. Permanent injunctive relief is justified because Plaintiffs have no plain, adequate, or complete remedy to speedily redress the deprivations of their constitutional rights other than through injunctive relief.

45. Preliminary injunctive relief is justified because: 1) Plaintiffs are likely to succeed on the merits of their claims; 2) the continued enforcement of the residency requirement provisions of the Missouri Liquor Control Law, including, but not limited to, § 311.060, RSMo, will cause Plaintiffs irreparable harm; 3) the balance of the hardships weigh in favor of granting preliminary injunctive relief; and 4) enjoining the enforcement of the cited statutory provisions is in the public interest.

46. Pursuant to 28 U.S.C. § 2202 and the Court's equitable powers under 42 U.S.C. § 1983 and other federal law, this Court should grant Plaintiffs' request for preliminary and permanent injunctive relief, enjoining the Division and/or Supervisor, their agents and their

employees from enforcing the residency requirement provisions of the law, including, but not limited to, § 311.060, RSMo, against Plaintiffs in violation of their rights, privileges, and immunities under the United States Constitution.

COUNT IV—CLAIM FOR ATTORNEYS’ FEES

47. This is an action to enforce Plaintiffs’ constitutional and civil rights under 42 U.S.C. § 1983.

48. An award of reasonable attorneys’ fees as part of Plaintiffs’ costs is therefore justified under 42 U.S.C. § 1988(b). Plaintiffs’ claim for attorneys’ fees is cumulative, and therefore, increases the longer it takes to resolve this dispute.

PRAYER

Plaintiffs respectfully request that Defendants be cited to appear and answer the allegations made in this Complaint. Plaintiffs further request:

a. That, after a hearing, the Court enter a preliminary and permanent injunction prohibiting the Division and/or Supervisor, their agents, and their employees from enforcing the residency requirement provisions of the Missouri Liquor Control Law, including, but not limited to, § 311.060, RSMo, against Plaintiffs pending a final hearing in this case; and

b. That, after a hearing, the Court enter a preliminary injunction ordering the Division and/or Supervisor, their agents, and their employees to complete the processing of the Application to determine compliance with the law, notwithstanding the residency requirement provisions, including, but not limited to, § 311.060, RSMo; and

c. That, upon final hearing, the Court enter an injunction permanently prohibiting the Division and/or Supervisor, their agents, and their employees from enforcing the residency

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI**

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Western District of Missouri.

The completed cover sheet must be saved as a pdf document and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff (s):	Southern Wine & Spirits of America; Southern Wine & Spirits of Missouri, Inc.; Harvey Chaplin; Wayne E Chaplin; Paul B Chaplin and Steven R Becker	Defendant (s):	Division of Alcohol and Tobacco Control; Lafayette E. Lacy, Supervisor of Alcohol and Tobacco Control
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County of Residence: Outside State of Missouri

County of Residence: Cole

County Where Claim For Relief Arose: Cole

Plaintiff's Atty(s):

Defendant's Atty(s):

Diana Carter , Attorney (Southern Wine & Spirits of America; Southern Wine & Spirits of Missouri, Inc.; Harvey Chaplin; Wayne E Chaplin; Paul B Chaplin and Steven R Becker)

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CHALLENGE TO A MISSOURI STATUTE, RULE, OR REGULATION

II. Basis of Jurisdiction:

3. Federal Question (U.S. not a party)

III. Citizenship of Principal Parties

(Diversity Cases Only)

Plaintiff:- N/A
Defendant:- N/A

IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **950 Constitutionality of State Statute**

VI.Cause of Action: **28 U.S.C. Sections 2201 and 2202. Request for Declaratory Judgment, Claim under 42 U.S.C. 1983.**

VII. Requested in Complaint

Class Action:

Dollar Demand:

Jury Demand: **No**

Signature: Diana C. Carter

Date: 07/12/2011

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, print this form, sign and date it and submit it with your new civil action. **Note: You may need to adjust the font size in your browser display to make the form print properly.**

Revised: 05/09/06