

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

EDUCATIONAL MEDIA COMPANY AT)
VIRGINIA TECH, INC., and THE)
CAVALIER DAILY, INC.)

Plaintiffs,)

v.)

SUSAN R. SWECKER, ETHER H.)
VASSAR, and PAMELA O'BERRY)
EVANS, Commissioners, Virginia Alcoholic)
Beverage Control Commission, W. CURTIS)
COLEBURN, III, Chief Operating Officer,)
Virginia Department of Alcoholic Beverage)
Control, and FRANK MONAHAN, Director,)
Law Enforcement Bureau of the Virginia)
Department of Alcoholic Beverage Control,)

Defendants.)

Civil No. _____

COMPLAINT

Preliminary Statement

1. This is an action under 42 U.S.C. § 1983 and the First Amendment to the United States Constitution challenging certain regulations promulgated and enforced by the defendants, officials of the Virginia Department of Alcoholic Beverage Control, pertaining to the advertisement of alcoholic beverages. Plaintiffs seek a declaration that the regulations violate the First Amendment and an injunction against their continued enforcement.

Jurisdiction

2. This action arises under the Constitution of the United States and 42 U.S.C. § 1983. This Court has jurisdiction pursuant to Article III of the United States Constitution and 28 U.S.C. § 1331. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.

Parties

3. Plaintiff Educational Media Company at Virginia Tech, Inc. (“EMCVT”) is a nonprofit, 501(c)(3) Virginia corporation that owns several print and broadcast media outlets, including the Collegiate Times, a student-run newspaper at the Virginia Polytechnic Institute and State University (“Virginia Tech”).

4. Plaintiff The Cavalier Daily, Inc. is a nonprofit, 501(c)(3) Virginia corporation and publisher of The Cavalier Daily, a student-run newspaper at the University of Virginia (“UVA”).

5. Defendants Susan R. Swecker, Ether H. Vassar, and Pamela O’Berry Evans are Commissioners of the ABC Board. They are sued in their official capacities.

6. Defendant W. Curtis Coleburn, III, is the Chief Operating Officer of the Department of Alcoholic Beverage Control (“ABC”) and Secretary to the ABC Board. As such, he is responsible for the day-to-day operations of ABC. He is sued in his official capacity.

7. Defendant Frank Monahan is the director of the Law Enforcement Bureau of ABC. As such, he is responsible for the enforcement of regulations promulgated by the ABC Board. He is sued in his official capacity.

8. At all relevant times, all defendants have acted and continue to act under color of state law.

Factual Allegations

The ABC Regulations

9. ABC Regulations permit the advertisement of beer, wine and mixed beverages in the print or electronic media with the following exceptions: (1) All references to mixed beverages are prohibited except the following: “Mixed Drinks,” “Mixed Beverages,” “Exotic Drinks,” “Polynesian Drinks,” “Cocktails,” “Cocktail Lounges,” “Liquor” and “Spirits”; (2) The following terms or depictions thereof are prohibited unless they are used in combination with other words that connote a restaurant and they are part of the licensee’s trade name: “Bar,” “Bar Room,” “Saloon,” “Speakeasy,” or references or depictions of similar import; and (3) Any references to “Happy Hour” or similar terms are prohibited. 3 VAC 5-20-40A.

10. ABC regulations further prohibit all advertisements of “beer, wine, and mixed beverages” in “college student publications” unless made in reference to a dining establishment. The statute defines a “college student publication” as “any college or university publication that is prepared, edited or published primarily by students at such institution, is sanctioned as a curricular or extra-curricular activity by such institution and which is distributed or intended to be distributed primarily to persons under 21 years of age.” 3 VAC 5-20-40B

11. Any person or entity which advertises in violation of 3 VAC 5-20-40 thereby commits a Class 1 misdemeanor, a crime which is punishable by up to twelve months in prison and/or a fine of as much as \$2,500.

Educational Media Company at Virginia Tech

12. Plaintiff EMCVT is a 501(c)(3) nonprofit Virginia corporation that owns several student-run media organizations, including the Collegiate Times.

13. The ABC Standards Committee considers the Collegiate Times to be a “college student publication” subject to the restrictions of 3 VAC 5-20-40.

14. Four issues of the Collegiate Times are published per week (Tuesday through Friday) during the fall and spring semesters and one issue is published per week (Thursdays) during the summer semester.

15. The Collegiate Times has a daily circulation of approximately 14,000 during the fall and spring semesters and 5,000 during the summer. This includes a substantial number of readers who are age twenty-one or older.

16. Copies of the Collegiate Times are distributed free of charge to the Virginia Tech community (comprised of graduate, undergraduate, and professional students, as well as full- and part-time faculty, and full- and part-time staff) and are available at approximately 73 rack locations throughout the Virginia Tech campus.

17. Copies of the Collegiate Times are also available off-campus, at rack locations around Blacksburg, Virginia and in the neighboring town of Christiansburg.

18. The Collegiate Times' annual budget consists almost exclusively of the revenue it generates through advertising. In 2005, about 98.7% of the paper's budget came from advertising.

19. The Collegiate Times informs its advertising representatives that advertisements for alcoholic beverages are not allowed in the paper and instructs them not to try to place such ads.

20. Nevertheless, since 3 VAC 5-20-40 has been in effect, several local businesses have contacted the Collegiate Times and expressed interest in placing advertisements for alcoholic beverages in the paper. The Collegiate Times has had to turn these businesses away.

21. The same businesses that are completely prohibited from placing advertisements for alcoholic beverages in the Collegiate Times are able to advertise in competing, non-student newspapers, such as The Roanoke Times.

22. The Roanoke Times is widely available to students under the age of twenty-one (21), who may subscribe to the paper and have it delivered to their dorm rooms, apartments, or houses. The Roanoke Times is also available free of charge at the Virginia Tech library.

23. Separate and apart from other newspaper advertisements, underage students at Virginia Tech are frequently exposed to alcohol advertisements on the radio, on television, and on the Internet.

24. 3 VAC 5-20-40 imposes a significant financial burden on EMCVT. The regulation has precluded the Collegiate Times from running advertisements for alcoholic beverages and thereby cut off a major source of revenue.

25. Not only does 3 VAC 5-20-40 impose a substantial financial burden on EMCVT, it also significantly infringes upon the editorial independence of the Collegiate Times by prohibiting the editors of the paper from accepting and publishing truthful advertisements for lawful products—namely, those relating to alcohol.

The Cavalier Daily, Inc.

26. Plaintiff The Cavalier Daily, Inc. is a nonprofit Virginia corporation and publisher of The Cavalier Daily, a student-run newspaper at UVA.

27. Pursuant to its articles of incorporation and bylaws, The Cavalier Daily's Board of Directors is comprised of not more less than five nor more than seven directors, which include its Editor-in-Chief, Executive Editor, Chief Financial Officer, Managing Editor, and Operations manager. These individuals also serve as the Managing Board for The Cavalier Daily newspaper, which is

responsible for making all decisions regarding the substantive and advertising content of The Cavalier Daily.

28. Upon information and belief, defendants consider The Cavalier Daily to be a “college student publication” as defined by 3 VAC 5-20-40.

29. Five issues of The Cavalier Daily are published each week during the fall and spring semester and approximately 10,000 copies are distributed free of charge to the UVA community (comprised of undergraduate, graduate, and professional students, as well as full- and part-time faculty, and full- and part-time staff) each day. A substantial number of these readers are age twenty-one or older.

30. Copies of The Cavalier Daily are available at various locations throughout the UVA campus and at local bars and restaurants in the city of Charlottesville.

31. The annual budget for The Cavalier Daily is comprised almost exclusively of the revenue it generates through advertising.

32. At least two local bars have expressed interest in placing alcohol advertisements in the paper. The Cavalier Daily has had to inform these businesses that they cannot accept their advertisements because they are prohibited from doing so by 3 VAC 5-20-40. Furthermore, there is a burgeoning wine industry growing around Charlottesville, and the paper expects that, were it not for 3 VAC 5-20-40, local wineries would advertise in The Cavalier Daily.

33. The same businesses that are completely prohibited from placing advertisements for alcoholic beverages in The Cavalier Daily are able to advertise in competing non-student newspapers such as C-Ville Weekly, which, like The Cavalier Daily, is a free weekly paper widely available to students under the age of twenty-one (21).

34. Separate and apart from other newspaper advertisements, underage students at UVA are frequently exposed to alcohol advertisements on the radio, on television, and on the Internet.

35. 3 VAC 5-20-40 imposes a significant financial burden on The Cavalier Daily, Inc. It precludes them from placing alcoholic beverage advertisements in The Cavalier Daily and thereby deprives them of a major source of revenue.

36. Not only does 3 VAC 5-20-40 impose a substantial financial burden on The Cavalier Daily, Inc., it also significantly infringes upon the editorial independence of The Cavalier Daily by prohibiting the paper's Managing Board from accepting and publishing truthful advertisements for lawful products—namely, those relating to alcohol.

Ineffectiveness of 3 VAC 5-20-40

37. 3 VAC 5-20-40 does not alleviate the harm of either underage drinking or alcohol abuse to a material degree.

CLAIMS FOR RELIEF

Count I

38. Plaintiffs re-allege and fully incorporate herein paragraphs 1 - 37.

39. Both 3 VAC 5-20-40A(1) – which prohibits all references to “Mixed Drinks,” “Mixed Beverages,” “Exotic Drinks,” “Polynesian Drinks,” “Cocktails,” “Cocktail Lounges,” “Liquor,” and “Spirits” in the print or electronic media – and 3 VAC 5-20-40A(2) – which prohibits the use or depiction of terms such as “Bar,” “Bar Room,” “Saloon,” and “Speakeasy” in the print or electronic media – prohibit a substantial amount of truthful advertising for lawful goods and services.

40. Neither 3 VAC 5-20-40A(1) nor 3 VAC 5-20A(2) advances any substantial government interest, nor is either regulation adequately tailored to serve any governmental interest.

41. 3 VAC 5-20-40A(1) and 3 VAC 5-20-40A(2) violate the plaintiffs' rights of free speech and freedom of the press under the First and Fourteenth Amendments to the United States Constitution, and 42 U.S.C. § 1983.

Count II

42. Plaintiffs re-allege and fully incorporate herein paragraphs 1 - 37 .

43. 3 VAC 5-20-40B, which prohibits the advertisement of beer, wine, or mixed beverages in college student publication unless in reference to a dining establishment does not advance any substantial governmental interest;

44. 3 VAC 5-20-40B does not advance any substantial governmental interest and is not adequately tailored to achieve any governmental interest.

45. 3 VAC 5-20-40B unjustifiably imposes a financial burden on a particular segment of the media, namely, college student publications.

46. 3 VAC 5-20-40B violates plaintiffs' rights to freedom of speech and of the press under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court grant the following relief:

A. Enter a declaratory judgment that 3 VAC 5-20-40 violates Plaintiffs' right to freedom of speech in violation of the First Amendment to the United States Constitution;

B. Issue preliminary and permanent injunctive relief prohibiting Defendants, their employees, agents and assigns from enforcing 3 VAC 5-20-40 against Plaintiffs or anyone else;

C. Award plaintiffs' their reasonable costs and attorney's fees pursuant to 42 U.S.C. §1988; and

D. Enter such other relief as this Court deems just and deserving.

Respectfully Submitted,

EDUCATIONAL MEDIA COMPANY AT VIRGINIA TECH, INC.
THE CAVALIER DAILY, INC.

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