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STEPHEN R. MINAGIL, ESQ.  
NEVADA BAR NO. 1312  
P. O. BOX 3902  
LAS VEGAS, NEVADA 89127  
(702) 759-1360  
Attorney for Plaintiff

**FILED**  
**AUG 3 11 55 AM '07**  
*Clara*  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*\*

LAWRENCE SANDS, D.O., M.P.H. )  
As District Health Officer )  
For Clark County, Nevada )  
Plaintiff, )  
v. )  
BENT BARREL, INC. )  
doing business as BILBO'S BAR AND GRILL )  
Defendant. )

Case No. A540305  
Dept. No. XXI

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an ORDER GRANTING PRELIMINARY  
INJUNCTION was duly entered in the subject action on the 7<sup>th</sup> day of June,  
2007, and the attached is a true and correct copy thereof.

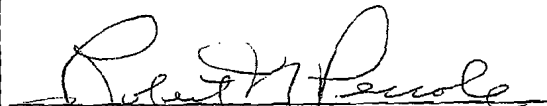
DATED this 8 day of June, 2007.

*SR*  
STEPHEN R. MINAGIL, ESQ.  
Nevada Bar No. 1312  
P. O. Box 3902  
Las Vegas, Nevada 89127  
Attorney for Respondent

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RECEIPT OF COPY

RECEIPT OF COPY of the foregoing NOTICE OF ENTRY OF ORDER is hereby acknowledged this 11<sup>th</sup> day of June, 2007.



Robert N. Peccole, Esq.  
8981 W. Sahara Avenue, Suite 120  
Las Vegas, NV 89117  
Attorney for Defendant  
Bent Barrel, Inc.

ORIGINAL

FILED

JUN 7 4 32 PM '07

*Cheryl [Signature]*  
CLERK OF THE COURT

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ORDR

DISTRICT COURT  
CLARK COUNTY, NEVADA

LAWRENCE SANDS, D.O., M.P.H.  
As District Health Officer  
For Clark County, Nevada

Plaintiff(s)

vs.

BENT BARREL, INC.,  
Doing business as BILBO'S BAR AND  
GRILL

Defendant(s)

Case No. A540305

Dept. No. XXI

**ORDER GRANTING PRELIMINARY INJUNCTION**

The above entitled matter having come before the Court on June 6, 2007, pursuant to Plaintiff's Motion for Preliminary Injunction, Plaintiff Dr. Lawrence Sands, represented by Stephen R. Minagil, Esq., and Defendant Bent Barrel, Inc., represented by Robert N. Peccole, Esq., and the Court having reviewed all papers and pleadings on file, having heard argument of counsel and good cause appearing therefore;

FINDINGS

1  
2 1. Plaintiff Lawrence Sands, D.O., M.P.H. serves as the district health officer for Clark County,  
3 Nevada, and as such is the health authority as defined in NRS 202.2485.

4  
5 2. Defendant Bent Barrel, Inc., is the owner and/or operator of that certain indoor place of  
6 employment and business giving or offering food for sale, with alcoholic beverages, to the public or  
7 guests at 8699 West Charleston Boulevard, Las Vegas, Nevada 89117, and commonly known as  
8 Bilbo's Bar and Grill.

9  
10 3. The Nevada Clean Indoor Air Act, codified as NRS 202.2483, provides at sections (1) and  
11 (6) as follows:

12 1. Except as otherwise provided in subsection 3, smoking tobacco in any form  
13 is prohibited within indoor places of employment including, but not limited to,  
14 the following:

- 15 (a) Child care facilities;  
16 (b) Movie theatres;  
17 (c) Video arcades;  
18 (d) Government buildings and public places;  
19 (e) Malls and retail establishments;  
20 (f) All areas of grocery stores; and  
21 (g) **All indoor areas within restaurants. (emphasis added)**

22 6. "No Smoking" signs or the international "No Smoking" symbol shall be  
23 clearly and conspicuously posted in every public place and place of employment  
24 where smoking is prohibited by this Act. Each public place and place of  
25 employment where smoking is prohibited shall post, at every entrance, a  
26 conspicuous sign clearly stating that smoking is prohibited. **All ashtrays and  
27 other smoking paraphernalia shall be removed from any area where  
28 smoking is prohibited. (emphasis added)**

29 4. Defendant Bent Barrel, Inc., violated NRS 202.2483, including on April 12, 2007, and  
thereafter, by wilfully failing to remove ashtrays and other smoking paraphernalia from an area  
where smoking is prohibited.

1 5. Defendant Bent Barrel, Inc., advised Plaintiff's representatives on April 12, 2007, and April  
2 24, 2007 (through counsel) that it will not remove ashtrays and matches from an area inside Bilbo's Bar  
3 and Grill where smoking is prohibited.

4 6. The Nevada Clean Indoor Air Act, as a civil regulatory scheme, is not impermissibly  
5 vague according to the standards mandated by the Constitutions of the United States and the State of  
6 Nevada.

7 7. NRS 202.2483(6) specifically provided Defendant Bent Barrel, Inc., notice that it was in  
8 violation of the statute for having ashtrays and other smoking paraphernalia in an area where smoking  
9 was prohibited.

10 8. The term "other smoking paraphernalia" in NRS 202.2483(6) is not unconstitutionally vague  
11 when read in context of the Nevada Clean Indoor Air Act's statutory scheme. A person of common  
12 intelligence would know that the term "other smoking paraphernalia" included, at a minimum, a book  
13 of matches. As such, Defendant Bent Barrel, Inc., was given adequate and fair notice that providing  
14 matches at the bar was in violation of the Nevada Clean Indoor Air Act.

15 9. Defendant Bent Barrel, Inc.'s advertising of its business on matchbooks and ashtrays  
16 concerns lawful activity protected by the First Amendment.

17 10. The governmental interest, as expressed by Nevada voters, in limiting exposure to  
18 secondhand smoke is substantial and is advanced by the Nevada Clean Indoor Air Act's requirement  
19 that a business where smoking is prohibited remove all ashtrays and other smoking paraphernalia.

20 11. The Constitution provides less protection for commercial speech than other areas of  
21 protected speech. The removal of ashtrays and matches potentially used as advertising is not a violation  
22 of Defendant Bent Barrel, Inc.'s First Amendment right to commercial speech as such restriction is no  
23 more extensive than necessary to serve the substantial government interest of mitigating the effects and  
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1 exposure to secondhand smoke. Defendant Bent Barrel, Inc., has numerous other means of engaging  
2 in protected commercial speech, including displaying and distributing nonprohibited items with the  
3 Bilbo's name and/or logo such as swizzle sticks, coasters, glasses, and napkins. Defendants may  
4 make ashtrays and matchbooks available in areas where smoking is not prohibited.

5  
6 12. The Nevada Clean Indoor Air Act, when examined in its entirety, provides a rational  
7 basis for the distinction between businesses with a nonrestricted gaming license and businesses with  
8 a restricted gaming license. Defendant Bent Barrel, Inc., is the holder of a restricted gaming license  
9 and is, therefore, subject to the restrictions in the act.

10 13. The body of the Nevada Clean Indoor Air Act is not broader than its title nor is it the  
11 type of "log rolling" legislation that Article 4, Section 17 of the Nevada Constitution protects  
12 against.

13  
14 14. Defendant Bent Barrel, Inc., has presented no legal authority to demonstrate that the  
15 alternate provisions of the proposed smoking ban resulted in the disenfranchisement of Nevada  
16 voters or to support their claim that this translates into the Nevada Clean Indoor Air Act being  
17 unconstitutional.

18  
19 15. Defendant Bent Barrel, Inc., failed to present legal authority for the proposition that  
20 information provided to voters was misleading and deceptive and failed to analyze or discuss how  
21 such assertion equates to a constitutional defense to the Nevada Clean Indoor Air Act's requirement  
22 that businesses remove all ashtrays and other smoking paraphernalia from areas where smoking is  
23 prohibited.

24  
25 16. The Nevada Clean Indoor Air Act does not make an appropriation or otherwise require  
26 the expenditure of money, and accordingly, the prohibition specified in Article 19, Section 6 of the  
27 Nevada Constitution is not applicable.

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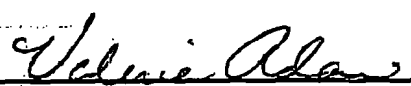
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17. Plaintiff Dr. Lawrence Sands, as the health authority for Clark County, Nevada, is obligated by law to enforce the civil provisions of the Nevada Clean Indoor Air Act and has no adequate remedy at law as Defendant Bent Barrel, Inc.'s conduct has constituted a persistent and continuous violation of the act that was designed to protect the public from the effects and exposure to secondhand smoke.

**ORDER**

Based on the foregoing findings, IT IS HEREBY ORDERED that Plaintiff Dr. Lawrence Sands' Motion for Preliminary Injunction is GRANTED AS FOLLOWS: Defendant Bent Barrel, Inc., doing business as Bilbo's Bar and Grill, and its agents and employees, shall immediately remove all ashtrays and matches from the areas where smoking is prohibited by the Nevada Clean Indoor Air Act.

DATED this 7 day of JUNE, 2007.

  
\_\_\_\_\_  
VALERIE ADAIR  
District Court Judge XXI