

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

Civil Action No. \_\_\_\_\_

DANIEL SHELTON, D/B/A SHELTON	)
BROTHERS,	)
	)
Plaintiff	)
	)
v.	)
	)
	)
MAINE BUREAU OF LIQUOR	)
ENFORCEMENT; JEFFREY AUSTIN, in his	)
official capacity as Supervisor of the Maine	)
Bureau of Liquor Enforcement; LORI	)
NOLLETTE, in her official capacity as Liquor	)
Tax Auditor,	)
	)
Defendants.	)

**COMPLAINT**  
**(INJUNCTIVE RELIEF REQUESTED)**

Plaintiff Daniel Shelton, d/b/a Shelton Brothers, brings this civil action for declaratory and injunctive relief, and complains as follows:

**INTRODUCTION**

1. Plaintiff Daniel Shelton, d/b/a Shelton Brothers, sought label registration for three beer labels, but his application was denied because Defendants determined that the labels contained “undignified or improper illustrations,” according to 226 Code of Maine Rules Chapter 7.3 (“Rule 7.3”). One of these labels features Santa Claus sitting on a barrel, another of the labels features a detail of a well-known French painting, and the third features a watercolor by a prominent Belgian artist inspired by the beer it labels. The beer label illustrations constitute protected expression under the First Amendment to the United States Constitution, and

Defendants' refusal to approve them for registration is a content-based prior restraint in violation of the First Amendment of the United States Constitution. Rule 7.3, insofar as it vests state officials with the authority to censor protected speech, is unconstitutional on its face. Rule 7.3 is also unconstitutional as applied to the labels at issue because denying registration of these particular labels goes beyond any substantial government interest.

### **JURISDICTION AND VENUE**

2. This action seeks to vindicate rights protected by the First and Fourteenth Amendments to the United States Constitution and is brought under 42 U.S.C. § 1983. The Court has jurisdiction of this civil rights action under 28 U.S.C. § 1331(a) and § 1343(a)(3), (4).

3. This Court also has jurisdiction pursuant to 28 U.S.C. §§ 2201, 2202 to declare the rights of the parties and to grant all further relief found necessary and proper.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b).

### **PARTIES**

5. Plaintiff Daniel Shelton ("Shelton") is a resident of Massachusetts. He does business as Shelton Brothers, which has a business address at 205 Ware Road, Belchertown, Massachusetts 01007. Shelton is a specialty beer importer with a special focus on the small-batch hand-crafted beers of Belgium, France, Germany, and Great Britain. Shelton works with breweries that give special attention to tradition and the natural art of beer-making. Shelton believes that artistic labels are a natural and effective complement to hand-crafted beers. Labels such as the ones at issue in this case have expressive artistic value independent of the beer contained in the bottles they label.

6. Defendant Maine Bureau of Liquor Enforcement a bureau of the Maine Department of Public Safety, created under 28-A M.R.S.A. § 82. It oversees the enforcement of liquor laws including the approval of beer labels for registration.

7. Upon information and belief, Defendant Jeffrey Austin is a resident of Maine and currently serves as the supervisor of the Maine Bureau of Liquor Enforcement. He is being sued only in his official capacity.

8. Upon information and belief, Defendant Lori Nollette is a resident of Maine and currently serves as a Maine Liquor Tax Auditor. She is being sued only in her official capacity.

9. At all relevant times, the government officials identified in this complaint as Defendants were acting under color of state law.

**FACTS COMMON TO ALL COUNTS**

10. On or about August 25, 2006, Shelton applied to the State of Maine Department of Public Safety, Bureau of Liquor Enforcement for Certificates of Approval and label registration for a number of beers, including “Santa’s Butt Winter Porter,” “*Les Sans Culottes*,” and “*Rosé de Gambrinus*,” pursuant to 226 Code of Maine Rules Chapter 5.1.

11. “Santa’s Butt Winter Porter” is produced by the Ridgeway Brewing Company of Oxfordshire, England. A true copy of the label for “Santa’s Butt Winter Porter” is attached as Exhibit 1. The label depicts Santa Claus viewed from behind, while looking over his shoulder. Santa Claus is holding a pint of beer in one hand and a list in the other; in Christian folklore, Santa Claus possesses a list of who is naughty and who is nice. Santa is surrounded by toys in the label’s illustration, suggestive of the central trope in the Santa Claus narrative—the delivery of toys on the eve of Christmas to all children whose names appear in the “nice” column in the aforementioned list. Santa Claus is depicted sitting on a barrel in the illustration, and while it is

impossible to calculate from the illustration, the barrel appears to hold approximately 2 hogsheads or 126 gallons; a barrel of this size is called a “butt”, which overlaps semantically with the rear-view of Santa Claus to produce an amusing pun.

12. Upon information and belief, the Maine Bureau of Liquor Enforcement has approved other beer labels illustrated with Santa Claus.

13. *Les Sans Culottes* is a French blond ale produced by Brasserie La Choulotte. A true copy of the label for *Les Sans Culottes* is attached as Plaintiff’s Exhibit 2. This label is illustrated with a detail of Eugène Delacroix’s famous painting “*La Liberté guidant le peuple*” (“Liberty leading the people”). “Liberty leading the people” was painted in July 1830 to commemorate the revolution that replaced the Bourbon king with the “citizen-king” Louis-Philippe. The painting was considered scandalous at the time of its unveiling, largely because of the depiction of Liberty as a bare-chested woman holding a *tri-colour* (the French revolutionary flag) in one hand and a bayoneted rifle in the other. The painting is not considered scandalous today, and it is one among countless renderings of nudes and semi-nudes in art history. Critics generally regard the figure as a mixture of allegory and realism and, thus, as precursor to modern period. The painting was hung in the Louvre in 1874, where it is still displayed and is viewed by millions of visitors annually. An engraved rendering from this painting, featuring the bare-breasted Liberty, appeared on France’s 1994 “100 franc” note. The name of the beer refers to an earlier revolutionary period in French history. In the late-eighteenth and early nineteenth century, French peasants were called “*sans culottes*” (meaning “without knee-length pants”) by the aristocracy because they wore long baggy trousers instead of the tight knee-length britches worn by the aristocracy. Eventually, *les sans-culottes* became a revolutionary movement with a distinctive costume, who threw their support behind Robespierre during the reign of terror.

14. “*Rosé de Gambrinus*” is a Lambic beer produced by Brasserie Cantillon of Brussels, Belgium. Lambic is a beer that is unique to Belgium, a country with more different varieties of beer than any other. A true copy of the label for “*Rosé de Gambrinus*” is attached as Exhibit 3. The illustration on the label is based on a watercolor painting by the renowned Belgian artist Raymond Coumans. Coumans’s commission to produce the painting instructed him to drink a bottle of “*Rosé de Gambrinus*” and then to paint what came to mind. The painting depicts Gambrinus, a legendary King of Flanders who is strongly associated with beer and brewing. The nude female figure on Gambrinus’s lap symbolizes beer.

15. On September 20, 2006, a letter signed by Defendant Lori N. Nolette, a Liquor Tax Auditor in the Maine Department of Public Safety Bureau of Liquor Licensing, was sent to Shelton, stating that the labels for “Santa’s Butt Winter Porter,” “*Les Sans Culottes*,” and “*Rosé de Gambrinus*” were not approved for registration. A true copy of that letter is attached as Exhibit 4. The letter states: “These labels are not being approved under Title 28-A, Rules & Regulations, Chapter 7, Rule 7.3. This rule states ‘advertisements of liquor shall not contain and undignified or improper illustrations.’” Defendants have provided no further explanation of why the illustrations are considered undignified or improper, nor have Defendants made any reference to standards used to make such determinations. A true copy of Rule 7.3 is attached as Exhibit 5.

16. All the beers that are the subject of this complaint have labels that are approved by the Federal Bureau of Alcohol, Tobacco and Firearms (“ATF”). Under 27 C.F.R. § 7.29, ATF approval requires a showing that the labels do not contain any statement that is “obscene or indecent.”

**COUNT ONE**  
**(Violation of the First Amendment: As-Applied Challenge)**

17. Plaintiff repeats the allegations contained in paragraphs 1 through 16.

18. Plaintiff's labels are not misleading or deceptive, and qualify as constitutionally protected speech.

19. Defendants' denials of Plaintiff's applications constitute content-based prior restraint on speech. As such, these denials violate the First Amendment to the United States Constitution, as applied to the States through the Fourteenth Amendment.

20. In denying Plaintiff's applications, Defendants acted under color of State law.

**COUNT TWO**  
**(Violation of the First Amendment: Facial Challenge)**

21. Plaintiff repeats the allegations contained in paragraphs 1 through 20.

22. The regulations of the Maine Bureau of Liquor Enforcement, specifically Rule 7.3, upon which Defendants have relied to deny registration of Plaintiff's labels are unconstitutional on their face, as they contain impermissibly vague standards that vest unfettered discretion in State officials to censor Constitutionally-protected free speech in violation of the First Amendment. Specifically, the Bureau's regulations prohibit labels that contain any "undignified or improper illustration," which sets forth an unconstitutionally vague standard. 226 Code Me. R. § 7.3.

**COUNT THREE**  
**(Violation of the Fourteenth Amendment: Equal Protection)**

23. Plaintiff repeats the allegations contained in paragraphs 1 through 22.

24. Defendants' denial of Plaintiff's applications constitutes a violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution because Defendants have approved labels of similarly-situated applicants.

25. In denying Plaintiff's applications Defendants acted under color of state law.

WHEREFORE, Plaintiff Daniel Shelton respectfully requests that the Court:

- (a) preliminarily and permanently enjoin all Defendants from taking any steps to prohibit the sale or marketing of the subject beers under the federally-approved labels depicted in Exhibits 1 through 3, and related promotional materials, or under substantially similar labels and materials;
- (b) annul Defendants' denials of Plaintiff's applications for Certificates of Approval and label registration, and declare all three labels to be approved and registered in accordance with 226 Code Me. R. § 5.1;
- (c) invalidate 226 Code Me. R. § 7.3 as facially invalid under the First Amendment to the U.S. Constitution;
- (d) award Plaintiff reimbursement of his attorney's fees and costs from Defendants pursuant to 42 U.S.C. § 1988; and
- (e) grant such further relief as this Court may deem just and proper.

**VERIFICATION**

I certify under penalty of perjury that the foregoing is true and correct.

/s/ Daniel Shelton  
Daniel Shelton,  
Plaintiff

Dated: November 30, 2006

/s/ Zachary L. Heiden  
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*Attorneys for Plaintiff Daniel Shelton d/b/a/  
Shelton Brothers*

**CERTIFICATE OF SERVICE**

The undersigned certifies that he has electronically filed this date the foregoing Verified Complaint with the Clerk of the Court using the CM/ECF system and by mailing a copy of the Verified Complaint via U.S. Mail, postage prepaid to counsel for Defendants at:

Maine Department of the Attorney General  
6 State House Station  
Augusta, Maine 04333

Dated: November 30, 2006

/s/ Zachary L. Heiden  
Zachary L. Heiden  
Maine Civil Liberties Union Foundation