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## Speakout: A&W sign dispute touches root issues

By **Michael S. Woodson**, *Special to the News*  
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Should the courts allow fast-food franchisers to suppress the religious speech of independent and locally owned franchisees? In the town of Frisco, that's the question.

The local A&W franchise's outdoor sign reads, "One quarter pound all beef Coney dogs / chili cheese fries / Proverbs 10:9 / He who walks purely walks securely!" and "What a privilege to carry everything to God in prayer! Psalm 62."

To the press, the Anti-Defamation League implies that franchise owners Reuben and Donna Drebenstedt's postings discriminate against employees and customers on religious or ethnic grounds, but did not say how. The ADL's Evan Zuckerman told the *Summit Daily News*, "The question we've raised is, does the business fall under the laws regarding public accommodation?" Such laws bar businesses serving the public from discriminating by race, religion and other classifications.

However, the Drebenstedts are Messianic Jews, and the ADL's Web site condemns Messianic Jews as having a false interest in Jewish practices. So it is obvious that the ADL disagrees with the Drebenstedts' religion and speech more than they are concerned about accommodation. If A&W's nonkosher menu offends Jewish citizens, wouldn't it raise public accommodation questions by Zuckerman's logic? So, why not complain against A&W? Because the Drebenstedts, being Messianic Jews, are the target.

So the ADL and anonymous individuals complained to A&W about the postings. Then A&W lawyers sent a "cease and desist" letter to the Drebenstedts, demanding that they stop posting Bible verses.

The ADL appears to pit A&W against the Drebenstedts in a contract and trademark conflict to censor them. While trademarked symbols like "A&W" double as commercial speech and property, the Drebenstedts' marquee quintuples as religious exercise, religious speech, a private property right, equal protection, and, due to the controversy, symbolic political expression about free speech. Who should win?

In America, faiths may compete for converts. However, this right doesn't include threatening livelihoods to muzzle the religious

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expression of people of other faiths.

As for A&W, whose speech and property is more important? The big corporation or the small-business person? Which speech is more important: religious or commercial?

The U.S. Supreme Court has limited commercial speech more than individual political or religious speech. The court's precedent also limits religious practice, yet only as needed for public safety.

Religious speech is different, being a hybrid of two rights in one, and has received stronger protection from the court.

Franchisers like A&W may litigate trademark and contract law to censor their franchisees' religious expression, but should they win? If a court enjoins the Drebenstedts' religious postings it could chill religious and political speech in an entire small business sector. It might also violate equal protection and property rights of religious persons forced to choose between civil rights and independent franchise ownership suitable to their experience. Nonreligious franchisees would not face that choice.

And where would the injunctions stop? Should a franchised grocer be forced to remove or hide its kosher food section because it offends a few? Should a court allow itself to enjoin local franchisees from wearing crosses or the Star of David, allegedly to protect a franchiser's trademark? Must a local Hindu franchise owner cover the meditative mark on her forehead to hold a franchise? Must a Muslim franchisee remove her head covering?

Then there is the question of control and independent contracts.

If a corporate seller of franchise rights is allowed to control the speech on signs owned by franchisees, could this make A&W an employer of the Drebenstedts for tax and liability purposes?

In a free marketplace, all religious practitioners may buy their own franchises and post their own religious expressions, be they Fish Fridays or kosher menus. Our small-business and consumer markets are diverse, not only religiously, but in what offends. Therefore, free religious expression by franchisees has little power to hurt a trademark. Contrarily, media buzz over controversial postings probably adds value to the mark.

If California couldn't suppress an offensive anti-draft expletive on the back of a man's jacket in a courthouse, how can a Colorado court suppress scripture on a sign? If we don't like a message in public, the U.S. Supreme Court has held that we can avert our eyes and preserve the First Amendment.

Finally, where is the American Civil Liberties Union while A&W's sharks circle the Drebenstedts?

*Michael S. Woodson is a Denver writer and currently practices law out of state.*



