

FEDERAL AGENCY ALLOWS SOME HEALTH CLAIMS ON ALCOHOL PRODUCT LABELS

by
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On March 3, 2003, the federal Alcohol and Tobacco Tax and Trade Bureau (TTB) adopted regulations that for the first time will allow alcohol beverage manufacturers to include on their product labels information regarding health benefits from consumption of alcohol. The new rules are laden with caveats; they require, for example, that any health claims include extensive disclaimers to ensure that consumers are not misled. Nonetheless, the regulations are a substantial step forward in the longstanding effort by the Washington Legal Foundation (WLF) and others to convince federal regulatory agencies that they are subject to First Amendment constraints.

Federal law requires that alcohol beverage manufacturers obtain approval for all labeling from TTB (the successor to the Bureau of Alcohol, Tobacco and Firearms (ATF)) before distributing their products. The pre-approval requirement led to a de facto ban on all health-related claims because ATF never approved labels that included such claims. In 1999, after several scientific studies demonstrated that moderate wine consumption could lower the risk of heart disease, ATF approved two "directional labels" — labels that directed consumers to consult with their doctors or government studies regarding "the health effects of wine consumption." But even that modest step met with a firestorm of criticism from health organizations, and ATF thereafter imposed a moratorium on all health claims while it considered the issue further. ATF's October 1999 proposed regulations generated numerous comments, including extensive comments from WLF in support of applying the First Amendment broadly to any regulation of alcohol labels.

While the final regulations adopted by TTB do not go as far as WLF would have liked, they are an important step in recognizing that the First Amendment imposes significant restrictions on the power of a government agency to prohibit truthful speech. TTB categorically rejected calls from groups such as the Center for Science in the Public Interest (CSPI) to impose an absolute ban on health claims. CSPI essentially argued that consumers could not be trusted with such information. Rejecting that approach, TTB ruled that truthful, health-related information should be permitted so long as it is accompanied by disclaimers sufficient to ensure that consumers are not misled. For example, TTB said, if consumers are to be informed of potential health benefits from moderate alcohol consumption, they must also be made aware

of adverse health effects.

The pro-First Amendment rationale underlying TTB's new regulations is fully applicable to other government regulators, including the Food and Drug Administration (FDA) and the Securities and Exchange Commission. The FDA has been among the most reluctant of federal agencies in recognizing the First Amendment rights of the entities it regulates. For example, FDA continues to enforce strict rules that make it very difficult for food producers to include health-related information on food labels; FDA would do well to follow the example of TTB.

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