



For Immediate Release

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FDA URGED TO EXEMPT COMPANY'S WEBSITE FROM LABELING REQUIREMENTS

Today, the Washington Legal Foundation (WLF) filed a formal petition with the Food and Drug Administration (FDA) urging that agency to adopt a rule or policy that would make it clear that health claims and other consumer information which appear on a company's website do not constitute "labeling" of that company's product, and thus, are not subject to FDA's stringent and detailed food and drug labeling requirements. Rather, any such promotional information should be regarded, at best, as advertising, and thus subject in certain circumstances to review by the Federal Trade Commission (FTC) under its "false and misleading" advertising standard. The FTC standard is more consistent with First Amendment protections of commercial speech than FDA labeling requirements.

WLF's filing was prompted by an alarming FDA Warning Letter sent to Ocean Spray Cranberries, Inc. of Massachusetts on January 19, 2001, the last day of the Clinton Administration. The FDA claimed that Ocean Spray's cranberry and grapefruit juices were "misbranded" and subject to seizure simply because of certain health claims and other information that appeared on the company's website, www.oceanspray.com, and related links. The material on Ocean Spray's website which the FDA regulators found offensive and illegal included such truthful statements as: "*Beta-carotene...is a powerful antioxidant...associated with a reduced risk of some cancers. Both the Surgeon General's Report and the National Research Council's Report concluded that eating plenty of foods high in beta-carotene may protect against some epithelial cancers,*" and "*grapefruit pectin (a soluble dietary fiber) may protect against heart disease by lowering blood cholesterol.*" The FDA also claimed that discussion of other findings of published health nutrition studies on the website and related links indicated that the company intends to market its juices as a drug, and thus, must satisfy the myriad requirements of the Food, Drug, and Cosmetic Act for new drugs.

FDA's threat to seize perfectly safe and wholesome fruit juices is not unprecedented. In 1991, then-FDA Commissioner David Kessler ordered the seizure of 12,000 gallons of Citrus Hill Fresh Choice orange juice simply because of the use of the word "fresh" on the label. In fact, the juice was made from concentrate, and was so marked, but in print smaller than that demanded by the FDA.