

Congress of the United States
Washington, DC 20515

September 26, 2005

Administrator John Manfreda
Alcohol and Tobacco Tax and Trade Bureau
Department of the Treasury
P.O. Box 14412
Washington, D.C. 20044-4412

Re: Attention Notice No. 41 - Information on Alcohol Beverages

We support the Alcohol and Tobacco Tax and Trade Bureau's (TTB) consideration of changes to alcohol labeling policy. In particular, we appreciate TTB issuing an advanced notice of proposed rulemaking concerning the use of a "Serving Facts" panel on alcohol beverage labels.

We urge TTB to permit the voluntary disclosure of information valuable to consumers about the nutritional contents of alcohol products. By allowing all alcohol beverage labels to include a "Serving Facts" panel, consumers will benefit by receiving valuable information about standard serving size, servings per container, alcohol per serving, allergens and other nutritional information, including the disclosure of calories, fat, carbohydrates, and protein. We believe that there is consumer demand for this information because it will allow them to more easily make informed and responsible decisions about the effects of consuming alcohol.

Given the First Amendment, the legality of the disclosure of this information on labels is unquestionable. Ten years ago, the U.S. Supreme Court, in *Rubin v. Coors*, 514 U.S. 476 (1995), put to rest the question of the permissibility of disclosure of alcohol content information on labels. There the Court held as unconstitutional a provision of the Federal Alcohol Administration Act abridging a brewer's right to provide the public with accurate information about the alcoholic content of malt beverages. As the Court stated:

"...the free flow of commercial information is "indispensable to the proper allocation of resources in a free enterprise system" because it informs the numerous private decisions that drive the system...Indeed, we observed that a "particular consumer's interest in the free flow of commercial information ... may be as keen, if not keener by far, than his interest in the day's most urgent political debate."

Similarly, in *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484 (1996), the U.S. Supreme Court held that a statutory prohibition against advertisements that provided the

public with accurate information about retail prices of alcoholic beverages was also unconstitutional. The Court's analysis in that case is also relevant here.

It is the State's interest in protecting consumers from "commercial harms" that provides "the typical reason why commercial speech can be subject to greater governmental regulation than noncommercial speech." ... Yet bans that target truthful, nonmisleading commercial messages rarely protect consumers from such harms....

Precisely because bans against truthful, nonmisleading commercial speech rarely seek to protect consumers from either deception or overreaching, they usually rest solely on the offensive assumption that the public will respond "irrationally" to the truth.... The First Amendment directs us to be especially skeptical of regulations that seek to keep people in the dark for what the government perceives to be their own good. That teaching applies equally to state attempts to deprive consumers of accurate information about their chosen products:

"The commercial marketplace, like other spheres of our social and cultural life, provides a forum where ideas and information flourish. Some of the ideas and information are vital, some of slight worth. But the general rule is that the speaker and the audience, not the government, *504 assess the value of the information presented...."

We couldn't agree more. As experience has shown, consumers are **not** confused by truthful and accurate information on their product labels. The petition by the Center for Science & the Public Interest and the National Consumers League, along with 67 other organizations and 8 leading public health authorities, seeking mandatory disclosure of this information illustrates this point.

Policymakers have implored the industry to voluntarily label its products with serving size, alcohol content per serving and caloric and other important information. For example, in 2003, two former Secretaries of Health and Human Services, Joseph Califano and Luis Sullivan, and two former Surgeons General, Julius Richmond and David Satcher, jointly called for voluntary industry labeling of this sort. TTB should facilitate the voluntary disclosure of this information.

Finally, including serving size information on alcohol beverages is consistent with consumer information guidelines published by the U.S. Department of Education, the National Institute on Alcohol Abuse and Alcoholism, the National Highway Traffic Safety Administration, the Centers for Disease Control and Prevention, and statements by several Surgeons General. Many public health and consumer groups have also published serving size information, including the American Medical Association, American Dietetic Association, National Consumers League, American Heart Association, American Council on Science and Health, National Council on Alcoholism and Drug Dependence, Insurance Institute for Highway Safety and Mothers Against Drunk Driving.

TTB should allow manufacturers of alcohol beverage products to provide their consumers with this information to help individuals make responsible drinking decisions. Consumers want to be able to look at the label of an alcohol beverage and quickly know and understand important information about what they are consuming. We are certain that TTB is capable of promulgating a rule that will permit manufacturers to voluntarily disclose this important and accurate information in a clear and concise manner.

Please keep us advised of any further developments in this regard. We are particularly interested in any information you gather concerning the degree to which the industry voluntarily adopts this new labeling practice.

Sincerely,

Judy Biggert David Dorn