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9/23/05

John J. Manfreda
Alcohol and Tobacco Tax and Trade Bureau
1310 G Street NW – Third Floor
Washington, DC 20220

Dear Mr. Manfreda:

The American Beverage Licensees (ABL) thanks you for the opportunity to submit the following comments regarding TTB's White Paper on nutrient and alcohol content information on labels and in advertising. ABL represents more than 20,000 off-premise licensees in the "open" or "license" states and on-premise proprietors in markets across the nation.

On behalf of its members, ABL suggests TTB discontinue plans outlined in its White Paper. The proposed rulemaking is arbitrary and possibly misleading for our customers; creates an ambiguous and unworkable situation for on-premise establishments; and requires more study as the resulting consequences could have unforeseen and profound effects on the beverage alcohol retail industry. We encourage TTB to examine this subject through a formal rulemaking process.

ABL asks you to consider the following:

TTB's proposed labeling exposes retailers to increased litigation risks.

Should mandatory labeling regulations creep to on-premise sites, more problems would occur.

It is impractical and inappropriate to ask small establishments to regulate their "free pour" practices. Retailers responsibly cater to countless variations in customer preferences, which would make it nearly impossible to calculate, and then label, the innumerable nutrient and alcohol-content permutations. Placement of any such information begs the question: Where will they be forced to list such information? On menus, table tents, or wall posters?

The added burden of dealing with myriad variables would put retailers at risk of the kinds of lawsuits that have been threatened against food sellers, such as ice cream stores. Further potential for frivolous litigation against retailers would present itself through alcohol content labeling. Unless protected by safe harbor language, retailers would potentially be open to lawsuits from irresponsible consumers involved in drunk driving accidents, claiming to have been misled by confusing alcohol labeling. Whether these absurd suits would find success is irrelevant; the potential for costly litigation defense itself would cause retailers undue harm.

A driving force behind this proposal is an anti-alcohol agenda.

TTB has acknowledged that it has, in part, undertaken this unprecedented step at the request of the Center for Science in the Public Interest (CSPI). This group's history indicates that its anti-alcohol agenda rests outside the American mainstream, and that it seeks to include this bias in government-sanctioned warning labels.

CSPI's alcohol policy director has shamefully accused winemakers of "hawking America's costliest and most devastating drug." Its newsletter has asserted that "the last thing the world needs is more drinkers, even moderate ones." It has demanded hefty increases in beer taxes, increasingly burdensome marketing restrictions, and even poster sized warning labels placed in restaurants.

There is no evidence that a mandatory labeling scheme will be met with significant consumer use with regard to this issue, but there is little doubt the industry would bear a substantial cost.

The aforementioned organization claims on its own website that web-based labeling is inadequate because "Few, if any consumers actually take the time to go on-line or make a call when directed by label information."

Mandatory nutritional labeling has proven a monumental failure in the area of packaged-food labeling. Evidence suggests this information is used by only a small number of consumers.

No less an authority than Food and Drug Administration Commissioner Lester Crawford acknowledged in 2004 that food labeling appears to be utilized by only a small minority of consumers. With respect to package labeling, and its uncorrelated effect on obesity rates in the United States, Crawford said in 2004:

What we did in making nutrition labeling mandatory did not help obesity. In fact, some people would say it hurt ... The first thing we notice is this contradiction about the fact that we had mandatory nutrition labeling for ten years, and the situation got steadily worse during that time.

In addition to anti-alcohol groups, it has come to ABL's attention that other parties may be seeking the prescriptions recommended in the TTB White Paper to some degree for promotional advantages. ABL would see it as a major blow to the credibility of TTB should interests of those simply seeking to increase their market share prevail in this discussion, and the results manifest themselves in the form of government sanctioned nutritional scare tactics.

TTB's proposed labeling exposes ABL members to increased costs.

CSPI acknowledges that per-SKU cost of altered labels can reach \$2,600, according to the FDA. For ABL members, who can carry thousands of SKUs, and who must make payroll for our valued team members from modest profit margins, this increased cost is not inconsiderable.

In addition, there are foreseeable operational, regulatory, enforcement, and tort problems if package labeling requirements are extended to ABL establishments. And given CSPI's history of seeking restaurant menu labeling after successfully attaching labels to packaged food products, there is significant cause for concern that on-premise licensees would soon face unworkable requirements.

TTB's White Paper is an inappropriate vehicle to discuss this issue.

The use of TTB's White Paper as a guide for the rulemaking process minimizes public scrutiny and avoids rigorous scientific debate. It is not appropriate for an issue of such complexity and great importance to the ABL's 20,000

members. Moreover, ABL shares the concerns posed by other organizations that TTB's White Paper is questionable on legal grounds.

It should be noted, therefore, that the serious issue of mandatory nutrient and alcohol content labeling is by no means settled and requires a significant amount of future investigation and discourse. ABL believes this discourse can only be appropriately carried out through a formal rulemaking process.

ABL recognizes that there is not unanimity within the beverage alcohol industry on the matter of the TTB White Paper. However, beverage alcohol producers, distributors, retailers and consumers would benefit from a more formal rulemaking process.

Sincerely,



Harry G. Wiles
Executive Director