

whether or not the advertisement as a whole presents truthful and non-misleading information regarding the risks associated with alcohol consumption. Furthermore, the use of any buttons, shelf talkers, table tents, and similar items that excerpt any portion of the NIAAA publication or the Dietary Guidelines, or that are based on any other publication or article about the health consequences of alcohol consumption, will be closely scrutinized to determine if they tend to mislead consumers about the serious risks associated with alcohol consumption.

XVI. Are Health-Related Directional Statements Misleading?

As previously noted, the vast majority of the commenters addressed the issue of health-related directional statements, such as the ones approved by ATF in 1999, rather than the issue of substantive health claims. Approximately 355 commenters expressed support for the use of directional statements on alcohol beverage labels. Many commenters stated that directional statements are not substantive health claims and that they merely refer consumers to other sources for information about the effects on health of alcohol consumption. As such, the commenters maintain that directional statements are not misleading to consumers. On the other hand, most of the approximately 120 comments in opposition to the use of health claims also opposed the use of health-related directional statements in the labeling and advertising of alcohol beverages.

A. Comments and Testimony in Favor of the Use of Health-Related Directional Statements

Most of the comments in support of directional statements shared the view set forth in the Wine Institute's comment as follows:

Directing consumers to consult with their doctors or to refer to the Dietary Guidelines regarding the health effects of wine consumption constitutes a responsible and neutral message. Far from misleading the public, such statements are designed to educate and empower each individual to make fully informed choices regarding the consumption of wine. (Comment 401).

The Wine Institute's comment also stated that health-related directional statements were "certainly not misleading because they do not constitute substantive health claims in the first instance." They cited the CSAP survey, which concluded that the drinking patterns of 88.3% of the participants would not be influenced by

directional statements, with an additional 3.9% indicating they would drink less.

In response to ATF's question of whether the negative consequences of alcohol consumption and abuse disqualified alcohol beverages from entitlement to health claims or health-related statements, the Wine Institute submitted extensive summaries of scientific studies on moderate consumption of wine and alcohol for the Dietary Guidelines Review Process. An updated compilation of that submission was attached to their comment. The Wine Institute stated that it "fully subscribes to an open and vigorous dialogue driven by the findings of the scientific community on the health effects of alcohol consumption."

The Wine Institute submitted a supplemental comment in which it stated that it wished "to underscore how critical it is to make the distinction between health-related statements and those in which a substantive claim of health benefits is advanced. A substantial number of submissions you have received to date appear to blur this crucial difference and argue against directional labels by incorrectly classifying such labels as health claims." (Comment 401b).

Mr. John DeLuca, President and CEO of the Wine Institute, testified at both the Washington, DC and San Francisco, California hearings. Mr. DeLuca stated that he believed that wineries have a First Amendment right to use the directional label, and pointed to the CSAP survey as evidence that consumers would not increase consumption as a result of directional statements. (April 25, 2000; Washington, DC, page 32). He urged the empowerment of the public through dissemination of information, and urged that the public should be trusted "to handle this information." (*Id.* at pages 32–33).

When asked about substantive health claims, Mr. DeLuca stated that "we are not trying to sell wine as health food or as a medicine." (*Id.* at page 37). He said that "we should be erring on the side of making it as hard as possible for someone to make a health claim. It really is not the province of the industry to be talking that way. We want third-party peer review journals research to be what is presented to the public, not what we put to the public." (*Id.* at page 38). In response to a question about whether the directional statements were perceived as health claims, Mr. DeLuca stated that the Wine Institute had withdrawn its original label submission, which included the phrase "health benefits," because they "knew it was

going to lead to a cascade of criticism" and that the phrase "health effects" came from the Appropriations Committee's language in appropriating funds for NIH and NIAAA to research the effects on health of moderate drinking. (*Id.* at page 40).

When asked about consumer reaction to the directional statements, Mr. DeLuca noted that only 17 companies had received approval from ATF for using directional statements before the moratorium went into effect—5 received approval for the Dietary Guidelines statement, and 12 utilized the family doctor statement. (May 23, 2000; San Francisco, CA, pages 14–15). Mr. DeLuca stressed that the Wine Institute did not encourage wineries to use the label, noting that "[w]e always thought of this as a voluntary option for our members. They were designed primarily for public policy, not for public relations, a distinction with an enormous difference." (*Id.* at 15).

The AVA, a trade association of American wineries representing approximately 600 members, also noted that it had been involved on behalf of one of its members in the ATF review process for the directional statements approved in 1999. (Comment 417). AVA stated that it agreed with the applicant, Mr. Patrick Campbell, that the directional statement "makes no claim, pro or con, therapeutic or curative, true or false. The COLA [certificate of label approval] makes no claim at all. It merely (and sensibly) encourages consumers to consult with their family doctor about their personal use of the product. * * * Since this COLA makes no claim, questions about its potential to mislead are irrelevant." (Comment 417). The President of AVA, Mr. Simon Siegl, testified at the public hearings in support of a winery's right to use a directional label. (April 26, 2000; Washington, DC, page 65).

Many winemakers also commented in support of the use of directional statements. Some emphasized the neutral content of the directional statements. The Associated Vintage Group asked "what can be a better message than referring them [consumers] to our own government's nutritional guides or, even better, checking with their doctors." (Comment 173). Mr. Kent Rosenblum commented that "[d]irectional labels do not constitute health claims, and government survey data indicate no changes in drinking patterns would occur." (Comment 151). He then went on to note that "[t]here is a developing scientific consensus that moderate wine and alcohol consumption can be part of