

2. Directional Statements Undermine the Mandatory Government Warning Statement and May Be in Violation of the Alcoholic Beverage Labeling Act

NCADD's comment stated that the directional statements approved by ATF in 1999 "are misleading and potentially confusing to consumers in juxtaposition to the federally mandated government warning on all alcoholic beverage containers sold in the United States." (Comment 15). Similarly, MADD commented that "[t]he public and particularly youth are being given a mixed message with the inclusion of 'health messages' in alcohol advertising and on warning labels and the net result is consumer confusion." (Comment 20). MADD also noted that "[w]arning labels on alcoholic beverages were created for a specific purpose—to make the consumer aware of the potential harm they could suffer as a result of the use or abuse of the product."

The United Communities Against Drug & Alcohol Abuse commented that "Congress has already required a warning statement on alcoholic-beverage containers. Any other reference to health impacts or benefits is likely to confuse consumers and undermine the impact of the existing warning statement." (Comment 31). The American Council on Alcohol Problems urged ATF "not to contribute to confusion by allowing any insinuation of health benefits from alcohol consumption." (Comment 37).

Dr. Thomas Greenfield, a psychologist, testified in opposition to the use of health-related statements. He stated he was principal investigator of the Impact of Alcoholic Beverage Warning Labels Research Project from 1991–1997. He stated that research showed that the mandatory Government warning statement had "fragile but beneficial effects" and that "one must be concerned that a vague health effects message, by implication positive, may wipe out the small gains in reminding the public of situational hazards of drinking when driving or pregnant, and also the health risks." (May 24, 2000; San Francisco, CA, pages 182–183). He suggested that in order to be truly neutral, a directional statement "should have a tone that would be to look at the health risks and health benefits, and potential health benefits. And one would have to do it in such a way that it emphasized that—which is, we believe, strongly the case—that the health benefits [are] * * * relatively small in comparison to the health harms." (*Id.* at page 191).

CSPI commented that if ATF allowed any health claim or health-related

statement on a label, it "should be worded and displayed in a manner that does not overshadow, contradict, or undermine the government warning label. For example, the claim should appear in the same type size and style as the government warning label, and should not contain any claim that contradicts any of the statements in the warning label." (Comment 400).

Senator Thurmond testified that the purpose of the ABLA was to provide "a clear, non-confusing reminder of the health hazards associated with alcohol consumption." (April 25, 2000; Washington, DC, page 17). Senator Thurmond suggested that "the two directional statements which the ATF approved last year dilutes the required warnings and, worse, may be seen as the government's endorsement of drinking. As one of the authors of the Alcohol Beverage Labeling Act, let me stress that the intent of the legislation was to exclude such misleading statements." *Id.* In response to the First Amendment concerns raised by some individuals, Senator Thurmond suggested that at a minimum, "groups supporting health-related statements should be required to prove beyond any reasonable doubt that such claims are not misleading and do not detract from the government warning." (*Id.* at page 18).

In addition to Senator Thurmond's comment, a letter signed by Senators Thurmond, Byrd, and Helms supported a ban on all health-related statements and directional health statements on labels. (Comment 526). In this comment, the three Senators stated that the directional statements approved by ATF in 1999 "dilute the required government warning and mislead consumers. In fact, these labels might inappropriately be seen as the government's endorsement of alcohol consumption." The comment also noted the difficulty of presenting a balanced statement on the effects on health of alcohol consumption on an alcohol beverage label. The Senators stated that "Congress has spoken clearly on this important public health issue. The purpose of the ABLA should not be subverted."

3. Directional Statements Are Misleading Because Drinkers Are Unlikely To Seek Health Information

Many commenters suggested that the directional statements were misleading because the CSAP consumer survey established that consumers who read the directional labels were unlikely to seek additional information from their doctors or send for the Dietary Guidelines. For example, CSPI argued that "referring consumers to a government publication which offers

balanced information is only credible if there is a reasonable likelihood that such referral will in fact result." (Comment 400). CSPI suggested that "according to consumer research, few people would actually look at or write for the Dietary Guidelines on the basis of the label language." CSPI and others questioned whether consumers would get complete information from either the Dietary Guidelines or their doctors.

Similar points were raised in the testimony of Mr. James Mosher on behalf of the California Council on Alcohol Policy, a nonprofit membership organization dedicated to promoting public health approaches to the prevention of alcohol-related problems. Mr. Mosher argued that the directional labels were inherently misleading and thus did not constitute protected commercial speech under the First Amendment. Because the directional statements themselves make no claim about the effects on health of alcohol consumption, Mr. Mosher suggested that the key to determining whether they would mislead consumers depends upon "the sources to be consulted, the likelihood of consumers actually consulting them, and the possibility that the wording will lead to consumer confusion, misleading or deceptive impressions." (May 23, 2000; San Francisco, CA, page 92).

4. Directional Statements Are Misleading Because Drinkers Are Likely To Rationalize Their Consumption Patterns

As previously mentioned, several doctors who have been certified by the American Society of Addiction Medicine commented in opposition to the use of both health claims and health-related directional statements in the labeling and advertising of wines. These commenters suggested that health claims and directional statements could be misconstrued by problem drinkers in order to rationalize their own levels of consumption. For example, one doctor suggested that these statements could be misconstrued by consumers, because "consumers, especially those with a vulnerability to alcoholism, may take the message as an endorsement of excessive drinking." Accordingly, he urged that ATF "prohibit the alcoholic-beverage industry from making these misleading and potentially dangerous claims." (Comment 167).

Another medical doctor urged ATF to rescind approval of the directional labeling statements, stating that "[a] brief message on any beverage container will not provide consumers with adequate information about use of alcohol for health-related reasons. Due