

unless they were positive. For example, Dr. Duke, representing the Ethics and Religious Liberty Commission, the moral concerns agency for the Southern Baptist Convention, suggested that the directional statements were misleading because they “create an impression of endorsement of the health claims made by the alcohol industry. \* \* \* The average person would not conclude that the alcohol industry would direct people to information damaging to their claim. Consequently, the average person will assume a doctor would agree that drinking alcohol is good for one’s health.” (April 25, 2000; Washington, DC, 154–155).

Ms. Diana Conti testified on behalf of the American Public Health Association in support of a ban on all health-related statements on labels and in advertisements, other than the required warning statement. Ms. Conti suggested that the directional statement regarding the Dietary Guidelines “provides no specific information, no definition of moderate drinking, and no cautions to those who should not drink. The message is confusing and it’s contradictory to the warning label.” (May 23, 2000; San Francisco, CA, page 106). She stated that “[t]he lack of substantive information creates the impression that the government says moderate wine consumption is good for your health, and few, if any, will actually read the guidelines for the more complete information.” (*Id.* at page 107).

### C. Decision

When ATF approved the directional statements in 1999, it concluded that the record did not establish that the statements would mislead consumers about the risks associated with alcohol consumption. ATF relied heavily upon the CSAP consumer survey, which concluded that the directional statements would not encourage most consumers to alter their consumption levels or patterns.

After careful consideration of the comments and testimony on this issue, it is TTB’s conclusion that while the two directional statements approved in 1999 were worded in a way that was intended to represent a neutral referral to doctors or the Dietary Guidelines for additional information, the statements were capable of being interpreted in a very different fashion. In particular, the statements could be interpreted as encouraging the consumption of alcohol for health reasons.

While the CSAP survey established that the vast majority of consumers would not alter their consumption patterns after exposure to the two directional statements, it did not

explore whether consumers would interpret the statements as encouraging the consumption of alcohol for health reasons. Since TTB has no consumer data on this issue, we must rely upon the secondary data that is available to us, including the opinions of medical and public health experts in the field of alcohol and health.

Initially, TTB would note that many media reports about approval of the directional statements referred to these statements as health claims or references to health benefits. *See* section VII, *infra*. We recognize that these reports only indirectly reflect consumer reactions to the directional statements, and that they may have been influenced by the industry’s or the public health sector’s characterizations of the statements. Nonetheless, to the extent that these media reports both reflect and shape the perceptions of consumers, we believe that these reports are persuasive evidence that the directional statements are perceived by many as making a positive claim about the effects on health of alcohol consumption.

We are also persuaded by the opinions of many of the foremost public health experts in the nation. These public health experts believe that the allegedly neutral directional statements in fact communicated a message that the Government endorsed drinking for health reasons, or that the Dietary Guidelines or a family physician would endorse the consumption of alcohol for health reasons. For example, the former United States Surgeon General testified that he was “concerned that references to the U.S. dietary guidelines on the labels of certain wine products could wrongly lead consumers to conclude that consumption of wine would reduce health risks or that it was recommended by guidelines or by family physicians.” (April 25, 2000; Washington, DC, page 74). Similarly, the American Cancer Society noted that “[w]ith the publicity in the past few years about the health benefits of consuming alcoholic beverages, any less-detailed claim or reference to health impacts or benefits might be interpreted by the uninformed consumer as a suggestion that people should drink alcohol for their health” and concluded that directional labels “may mislead the general public regarding the health benefits of alcohol consumption by providing inadequate information regarding the risks.” (Comment 527). Other commenters, including the American Medical Association and the Marin Institute, supported a ban on directional statements for similar reasons.

TTB also finds persuasive the testimony of many of the foremost

experts on the medical research regarding alcohol and health. For example, Dr. Camargo testified that in his opinion, consumers would interpret the phrase “health effects” to mean “healthy effects.” (April 25, 2000; Washington, DC, pages 90–92). Dr. Criqui offered his opinion that the approved directional statements appear to implicitly endorse the value of alcohol as a pharmacological protective agent, and that consumers interpret the approved statements as substantive health claims meaning that at least for most people drinking is good and has health benefits and that the Government endorses this position. Because the directional statements are recent and come in the context of media discussion about the possible benefits of alcohol consumption, Dr. Criqui stated that the statements are likely to be interpreted as implicitly endorsing alcohol consumption as being potentially healthy, since they do not emphasize or even mention the dangers of alcohol consumption. (May 23, 2000; San Francisco, CA, pages 59–60).

TTB does not disregard the testimony of those medical professionals, including Dr. Apstein, Dr. Finkel, and Dr. Scholten, who testified in favor of the use of directional statements. We agree that industry members have the right to suggest, in labels or in advertisements, that consumers refer to third party sources for additional information regarding the effects on health of alcohol consumption. The question presented is how to make such referrals without misleading consumers.

We would also note that many of the comments in favor of the use of directional statements referred to the need to provide “balance” to the negative message of the health warning statement, and thus implicitly recognized that the directional statements were meant to convey a positive message about the effects on health of alcohol consumption. In this regard, it is noteworthy that in a comment submitted after the hearings were held, Beer Institute suggested that the position of several proponents of directional statements that such statements did not constitute health claims was inconsistent with those same proponents’ attempts “to defend the directional statements by relying on well-known published medical literature that attributes certain health benefits to the moderate consumption of alcohol beverages. Given the history of this issue and the evidence cited by supporters of the directional statements, it seems impossible to characterize the directional statements as anything but health claims subject to the automatic