

Surgeon General David Satcher has communicated his concern that mentioning health benefits on a bottle would send ``mixed messages," according to a senior administration official.

Sen. Strom Thurmond, R-S.C., who helped write the alcohol warning labels that have been in place for a decade, urged federal regulators last spring not to approve any watered-down label. He also introduced a bill that would strengthen the required warning labels.

In July 1997, the Health and Human Services Department wrote the Bureau of Alcohol, Tobacco and Firearms, which is part of the Treasury Department, urging the bureau to delay approval of the labels.

But some winemakers said a change in the label can touch on the positive effects of wine while also stressing responsible behavior.

``What's coming to pass is recognition that responsible, moderate, temperate consumption of wine in particular can have a place in our daily life," said Eric Wente of Wente Vineyards in Livermore, Calif.

The USDA's dietary guidelines note that ``current evidence suggests that moderate drinking is associated with a lower risk for coronary heart disease in some individuals."

The guidelines also point out that higher levels of alcohol intake can raise the risk for high blood pressure, stroke, heart disease, certain cancers and accidents, as well as possibly causing cirrhosis of the liver and damage to the brain and heart.

Those who drink should do so in moderation, the guidelines recommend. This is defined as no more than one drink per day for women and no more than two drinks per day for men. Five ounces of wine is considered a drink, according to the guidelines.

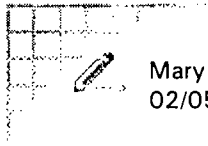
AP-NY-02-05-99 0252EST

W. J. Wollin

I ran this by Neal Wollin who handles this at Treasury.

Q. What is the Administration's response to Senator Thurmond's opposition to the Treasury Department's decision to allow two new health messages on wine bottles and Senator Thurmond's announcement that he will introduce legislation to transfer authority over wine labeling from the Treasury Department to the Department of Health and Human Services?

A. The Administration shares Senator Thurmond's concern that the public must not be misled about the effects of alcohol. The consequences of the misuse of alcohol are grave and we will do all we can to avoid confusion in the minds of consumers. The Treasury Department did not feel it had the statutory authority to disapprove these labels given its authority in this area is limited to prohibiting statements that are false and misleading. We look forward to examining Senator Thurmond's proposal and working with the Senator and others to investigate appropriate next steps.



Mary L. Smith
02/05/99 01:16:03 PM

Wine
Labels

Record Type: Record

To: Thomas L. Freedman/OPD/EOP

cc:

Subject: wine

FYI

Wine Label May List Health Benefits

By KALPANA SRINIVASAN Associated Press Writer

WASHINGTON (AP) -- Scientific studies have suggested it, and now winemakers finally may get a chance to tout it through their labeling: A glass or two of the grape each day could be good for you.

The Treasury Department today was expected to announce proposed changes in wine labels to include references to some of the positive health effects of drinking wine, according to a senior administration official, who spoke on condition of anonymity.

"I think it's a very major accomplishment," said John DeLuca, president of the San Francisco-based Wine Institute, which has pushed for to add wording about the health effects of wine. "We have every expectation it will be done."

DeLuca said the approved statement would read: "To learn the health effects of wine consumption, send for the federal government's Dietary Guidelines for Americans." He said it would give a mailing address and a Web site.

Wine labels already warn that pregnant women should not drink alcohol and that alcohol can impair driving and cause health problems. But they say nothing about studies suggesting that moderate alcohol intake can reduce the risk of heart disease in some people.

The change would not become final until after a public comment period that could last 90 days and a review by the Treasury Department.

Federal health officials and some senators already have voiced their concern that such a label would purport to make a health claim about wine or would encourage excessive drinking.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

*Wine
Labeling*

Fax

To: Mary Smith From: Karen Korn ~~Blue~~
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TREASURY



NEWS

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FOR IMMEDIATE RELEASE
February 5, 1999

Contact: Office of Public Affairs
(202) 622-2960

TREASURY ANNOUNCES ACTIONS CONCERNING LABELING OF ALCOHOLIC BEVERAGES

The Treasury Department and its Bureau of Alcohol Tobacco and Firearms announced Friday three specific actions concerning the labeling of alcoholic beverages. The three were:

- Treasury and ATF are launching an effort to develop legislation to strengthen its authority over alcohol labels as a way of deterring alcohol beverage marketing directed to underage persons and to prevent alcohol abuse. In doing so, it will consult closely with HHS, industry and health groups.
- ATF is publishing in the Federal Register a notice of proposed rulemaking prohibiting alcohol beverage containers that mislead consumers about the alcohol character of the product particularly those that appear to be marketed to underage persons.
- ATF approved two new statements for wine labels that had been requested by wine producers, but only after modifications.

"Treasury is continuing its efforts to combat underage drinking and will work to strengthen our authority to ensure that products are neither targeted at nor provided to minors," said Treasury Under Secretary for Enforcement James E. Johnson.

With regard to the legislation, Treasury will consider a number of options, including whether to require the Government Warning Statement on alcohol beverage products be rotated among different messages, and whether to require all alcohol advertisements to carry a Government Warning Statement. Treasury will also look at other legislative proposals to strengthen its authority over alcohol marketing practices targeted at underage consumers or that encourage alcohol abuse.

ATF is immediately seeking comment on a rule to stop the misleading packaging of alcohol products, especially those that would be attractive to children. Examples of this would be products that resemble frozen flavored ice products, gelatin products and non-alcoholic fruit sodas and drinks.

RR-2937

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Also today, two statements were approved for wine labels. The two statements are:

- "The proud people who made this wine encourage you to consult your family doctor about the health effects of wine consumption."
- "To learn the health effects of wine consumption, send for the Federal Government's Dietary Guidelines for Americans, Center for Nutrition Policy and Promotion, USDA, 1120 20th Street, NW, Washington, DC 20036 or visit its WEB site: <http://www.usda.gov/fcs/cnpp.htm>

Alcohol beverage labels are approved by ATF to make sure they do not contain statements or representations that are likely to mislead consumers about the product. ATF worked with industry to modify their proposed statements to meet these criteria.

"Under existing law, ATF can only deny labeling statements if they are false or misleading," said Treasury General Counsel Ed Knight. He said ATF determined that the labeling statements approved today met the factual standards as not being false or misleading because these statements do not make any health claim, but simply direct consumers to sources for information about the health effect of alcohol consumption.

In an effort to determine consumers' perceptions of the two statements, ATF relied on a survey of current wine drinkers conducted by the Substance Abuse and Mental Health Service Administration's Center for Substance Abuse Prevention, an office within the U.S. Department of Health and Human Services. The findings indicate that for most of those who participated in the study, drinking patterns would not be influenced by the message on the label.



DIRECTOR

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

MAR 12 1998

Honorable Strom Thurmond
United States Senate
Washington, DC 20510-4001

Dear Senator Thurmond:

This is in response to your March 4, 1998, letter. I share your concern that the public must not be misled about the effects of alcohol. The devastation on our roads caused by drunk drivers and the adverse health effects of alcohol abuse are too grave to allow there to be any confusion in the minds of consumers.

The Bureau of Alcohol, Tobacco and Firearms (ATF) has always enforced a very strict policy regarding health claims on alcohol beverage labels. ATF has never approved an affirmative health claim on a label. Our authority in this area is limited to prohibiting statements which are false or misleading. Our position remains that any reference to health benefits is misleading absent a full and detailed disclosure of the many serious health detriments of alcohol consumption. No label has ever met this standard. We have no plans to ease our strict policy regarding substantive health claims in the labeling or advertising of alcohol beverages. Indeed, we are vigorously defending a lawsuit that challenges our policy on First Amendment grounds.

Our dilemma with the two pending labels is that they do not make any claims about the health benefits of alcohol consumption. In fact, ATF refused to approve previous versions of these labels that referred to "health benefits." Now the labels merely refer consumers to their doctor or the Federal Government's "Dietary Guidelines" for more information about the "health effects" of wine.

There is no statutory prohibition on health claims in alcohol labels or advertisements. The Alcohol Beverage Labeling Act preempts only health statements required by State law. Because it does not preempt the presence of other health related statements, we can only rely on

Honorable Strom Thurmond

our ability to control statements that are "likely to mislead the consumer." See 27 U.S.C. § 205(e)(1). Moreover, the courts have construed this authority very narrowly.

As you know, ATF deferred final action on this matter pending the results of a consumer survey commissioned by the Center for Substance Abuse Prevention (CSAP), a component of the U.S. Department of Health and Human Services (HHS). CSAP recently released the main findings of its consumer survey. One of the findings was that "neither of the two labels . . . would likely induce wine drinkers to alter their drinking pattern, quantitatively or otherwise." The CSAP survey did not provide evidence that the proposed wine labels would tend to encourage the consumption of wine for health reasons. Furthermore, the survey provided no evidence that the labeling statements would mislead consumers as to the health consequences of alcohol consumption. Without any evidence that the proposed labeling statements tend to mislead consumers regarding the health consequences of alcohol consumption, ATF has no legal basis for rejecting these labels.

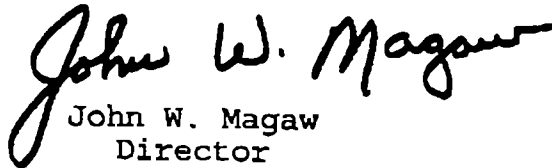
I have given this matter very serious consideration, but I do not believe we have the statutory authority to disapprove these labels. Nevertheless, I am concerned that we may soon see more aggressive attempts to make affirmative health claims for alcohol. In recent months, we have noted that the Food and Drug Administration has allowed drug manufacturers to air television commercials on the health benefits of certain prescription drugs so long as they are accompanied by disclosures of the health risks of such products. The alcohol industry may be tempted to follow this lead. In order to address this problem head-on, I have directed a comprehensive review of all of our labeling and marketing policies. If necessary, we will seek appropriate additions to our legislative authority to deal with this issue. We hope to continue to work closely with you, Congress, and HHS to ensure that the public is fully informed about all of the risks of alcohol consumption.

-3-

Honorable Strom Thurmond

I know this issue is of great concern to you. I would be happy to meet with you to discuss those concerns and ways that we may address them.

Sincerely yours,


John W. Magaw
Director

STROM THURMOND
SOUTH CAROLINACOMMITTEES
ARMED SERVICES CHAIRMAN
JUDICIARY
VETERANS' AFFAIRS

United States Senate

WASHINGTON, DC 20510-4001

March 20, 1998

PRESIDENT PRO TEMPORE
UNITED STATES SENATEHonorable Albert Gore, Jr.
Vice President of the United States
Old Executive Office Building
Washington, D.C. 20501

Dear Mr. Vice President:

As you know, alcohol abuse is a serious problem in our Country. For years, drunk driving, underage drinking, drinking during pregnancy, and alcoholism have had devastating effects on the health and safety of our citizens. You and I worked hard together in 1988 to pass bipartisan legislation that requires alcohol containers to carry a government health warning on the label describing some of the dangers of alcohol consumption.

The Bureau of Alcohol, Tobacco & Firearms (BATF) is considering a proposal that will allow two new labels on bottles of wine. These labels indicate that drinking wine has health benefits. If these new labels are approved, they will directly undermine the effect of the current warning label. I am very concerned that a health claims statement on any bottle of alcohol will lead people to believe that it is a good idea to drink more alcohol. The public health consequences of such a reaction are clearly unacceptable.

I have expressed my concerns regarding this issue to Treasury Secretary Robert Rubin and BATF Director John Magaw. Because you were instrumental in passing the warning label legislation ten years ago, I strongly urge you to contact Secretary Rubin and Mr. Magaw to voice your opposition to this new wine label proposal.

Thank you for your attention to this matter.

With kindest regards and best wishes,

Sincerely,

Strom Thurmond

Strom Thurmond

ST/lx

Regards to your lovely family,



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Assistant Secretary for Health
Office of Public Health and Science
Washington D.C. 20201

JUL - 9 1997

Mr. John W. Magaw
Director
Bureau of Alcohol, Tobacco and Firearms
Department of the Treasury
650 Massachusetts Avenue, N.W.
Washington, D.C. 20226

Dear Mr. Magaw:

I have received your July 1 letter on the addition of so-called "directional health effects labels" for wine. I am disappointed by the manner in which our concerns about the potentially damaging effect of these label statements on public health have been considered. The proposal under consideration is a thinly disguised attempt to make an affirmative health claim. Modest grammatical changes can not alter the intent of the label's sponsors to provide balance to the federally mandated Surgeon General's warning. I am deeply concerned that your approval of the label statements in their current form could be construed by the public as encouraging the consumption of alcoholic beverages.

Furthermore, your explanation 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. I am unaware of any major body of consumer marketing research which confirms that such directional referrals result in substantial numbers of consumers requesting and reading the government publication. More likely, consumers will interpret the plain meaning of the words which at best offer no useful information about the health effects of wine consumption and at worst would reinforce existing inaccurate knowledge about moderation and the health effects resulting from consumption of alcoholic beverages. If the objective is to inform consumers, let us work together to develop a sound and effective initiative.

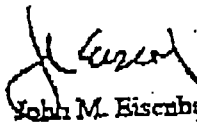
As you know, the Department's Chief of Staff and several members of my staff met with senior Treasury Department officials about this matter on June 18, 1997. We elaborated on our objections to your agency's approval of these labels in their current form. We offered to assist in gathering information and suggested that you may wish to request the wine industry to voluntarily submit any market research they had which had a bearing on this subject. Thus, I am dismayed by, and disagree with your statement that the proposed labels are consistent with the Government warning label and would not otherwise tend to mislead consumers. Your conclusion to proceed with the proposed directional labels is a subjective judgement - one which is within the discretion of your statutory authority but one which is inconsistent with the public's health.

Page 2 - Mr. John W. Magaw

Since our last meeting, we have asked the National Institute on Alcohol Abuse and Alcoholism (NIAAA) to review the literature on public attitudes towards "moderate consumption." The NIAAA confirms that there is wide variability and misunderstanding among consumer and health professionals on this point. Directional labeling which fails to define moderation in accordance with the Dietary Guidelines would tend to reinforce current levels of misunderstanding and undermine our Department's and the Administration's public health goals. Furthermore, evidence suggests that the Guidelines are an inadequate source of information for consumers or health professionals to make fully informed choices. More valid and comprehensive documents on "health effects" of alcoholic beverages are available, and we would be pleased to share them with you.

I again urge you to defer final action on these proposals until additional information has been gathered to address the Department's concerns about the effect on public health. We would be pleased to meet with you to discuss these issues in more detail and believe it would be helpful to include the senior leadership of both Departments as well as senior scientists from the NIAAA.

Sincerely yours,



John M. Eisenberg, M.D.
Acting Assistant Secretary for Health

COMMITTEES
D SERVICES, CHAIRMAN
JUDICIARY
VETERANS' AFFAIRS

United States Senate

WASHINGTON, DC 20510-4001

March 20, 1998

3-20-98

President William J. Clinton
The White House
1600 Pennsylvania Avenue, Northwest
Washington, District of Columbia 20500

Dear Mr. President:

I am writing concerning a matter of great interest to me and one that potentially effects the health of millions of Americans.

As you may already be aware, Secretary Rubin and I are in disagreement regarding a change to wine labeling regulations that the Bureau of Alcohol, Tobacco & Firearms is proposing at the whim of the wine industry. More specifically, this change would allow information on labels that would suggest there is a health benefit associated with alcohol. This proposal, and the Treasury Department's seeming willingness to enact it, causes me great concern.

My objections to this change are extremely strong and based on a number of considerations, not the least of which is that permitting this change would be tantamount to getting the federal government into the business of marketing wine. Furthermore, I am deeply concerned that allowing language on labels that imply the health benefits of consuming alcohol are greater than the risks might encourage people to begin drinking, or drinking in greater quantities than they already do.

Mr. President, your commitment to working to promote health among Americans and to protect our children against harmful products is commendable. I am certain that if you were to review the correspondence and materials I have collected in the last nine months, you would agree with me that the proposal currently being considered by Secretary Rubin and the Treasury Department should be abandoned immediately.

Thank you for your attention and interest in this matter and I hope you will urge Secretary Rubin to cease his consideration of this proposal.

With kindest regards and best wishes,

Respectfully,

Strom Thurmond

Strom Thurmond

ST/jd

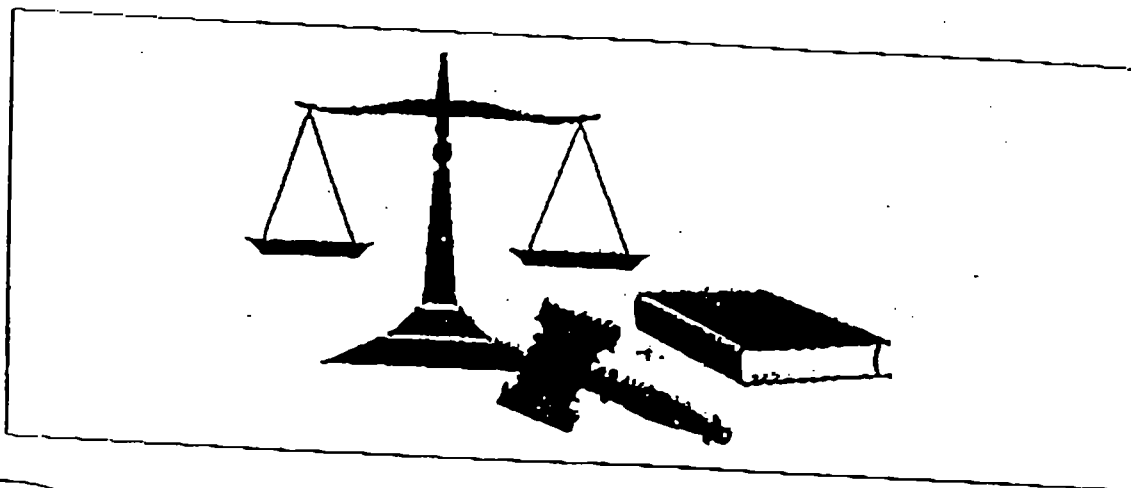
*Your support will
benefit the children of America.*

OFFICE OF THE CHIEF COUNSEL
Bureau of Alcohol, Tobacco and Firearms
Room 6100
Washington, DC 20226
FAX # (202) 927-8673

FROM: Stephen McHale

**VOICE MAIL: (202) 927- 8211

DATE: 3/24

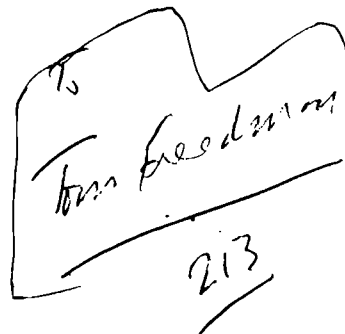


TO: Rah Weiner

FAX # 456-1647

No. OF PAGES (including cover sheet): 10

FOR YOUR INFORMATION: []



COMMENT: Per conversation.

3/04/98 12:51

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SEN. THURMOND

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PRESIDENT PRO TEMPORE
UNITED STATES SENATESEN. THURMOND
SOUTH CAROLINA

United States Senate

WASHINGTON, DC 20510-4001

COMMITTEES:

ARMED SERVICES CHAIRMAN

JUDICIARY

VETERANS' AFFAIRS

March 4, 1998

Mr. John W. Magaw, Director
Bureau of Alcohol, Tobacco and Firearms
Department of the Treasury
650 Massachusetts Avenue, N.W.
Washington, D.C. 20226

Dear Mr. Magaw:

It is my understanding that the Bureau of Alcohol, Tobacco and Firearms (BATF) is considering approval of a proposal for new health claim statements on wine labels. As I have indicated before, this proposal should be defeated.

Alcohol containers currently display a label warning consumers of the health related dangers of alcohol consumption. Any subsequent message that suggests other health effects simply undermines the purpose of the warning label.

I read with great interest the main findings of the series of focus groups and survey interviews conducted by the Center for Substance Abuse Prevention (CSAP) regarding the proposed labels. The findings indicate that "wine drinkers would be no more likely to seek health information as a result of reading these labels." If this is true, then the objective of the labels' message is a failure and would yield no real benefit to the consumer. My concern is that while the consumer may not seek additional health information, the suggestion that there are additional health benefits may thwart the effect of the current warning label. Further, the CSAP findings indicate that several members of the focus group decided to increase their wine intake after learning through the media that moderate consumption of wine may have positive health effects. "In some cases binge drinking resulted." If this is the case, then I am convinced that should the labels actually succeed in leading consumers to believe that there are positive health effects of drinking wine, many of those consumers will decide to drink irresponsibly. The CSAP survey clearly indicates that these proposed labels yield no benefit, but do pose a possible danger to public health.

If it is your position that the BATF does not have a legal basis for denying approval of these labels, then I seriously question whether BATF is the appropriate agency to have jurisdiction over alcohol labeling. The issues surrounding public health and labeling require a level of experience and expertise that BATF apparently may not possess. Therefore, I am considering introducing legislation that transfers alcohol

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SEN. THURMOND

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labeling authority from the BATF to the Food and Drug Administration (FDA).

I thank you for your attention to this matter and look forward to your reply.

With kindest regards and best wishes,

Sincerely,

Strom Thurmond

Strom Thurmond

ST/lx

*This is a serious matter.
Please give it your personal
attention.*

DEPARTMENT OF THE TREASURY

WASHINGTON, D.C.

March 6, 1998

SECRETARY OF THE TREASURY

The Honorable Robert C. Byrd
United States Senate
Washington, DC 20510-6025

Dear Senator Byrd:

Thank you for your letter asking that the Bureau of Alcohol, Tobacco and Firearms (ATF) should not approve any wine label that might mislead consumers about the health consequences of drinking alcohol. ATF Director John Magaw and I agree with you. ATF has never approved an alcohol beverage label containing a substantive claim that alcohol consumption results in health benefits.

For many years, ATF has told the industry that any labels or advertisements bearing discussions of the health effects of alcohol consumption must be so qualified, balanced, detailed, and specific that they will not in any respect mislead consumers about the health risks of drinking. This is a difficult standard to satisfy and no label has met it to date. Given the limited size of a label, it would be very hard to do so. ATF has no plans to change its strict policy with respect to substantive health claims and is vigorously defending a lawsuit filed by the Competitive Enterprise Institute challenging that policy.

Two labels have been submitted to ATF for review that direct consumers to their doctor or the Federal Government-published "Dietary Guidelines for Americans" for information about the health effects of wine. While neither label makes a substantive health claim, the public health community expressed a concern that the labels might nonetheless encourage the consumption of alcohol beverages for health reasons.

In deference to these concerns, ATF decided it was important to obtain data that established how consumers would tend to interpret directional health-related statements on alcohol beverage labels. In September, the Substance Abuse and Mental Health Service Administration's Center for Substance Abuse Prevention (CSAP), a component of the U.S. Department of Health and Human Services, conducted a series of focus groups and survey interviews with individuals who identified themselves as current wine drinkers. The findings indicate that for most of those who participated in the study, drinking patterns would not be influenced by the proposed labeling statements.

- 2 -

The survey did show that there was variability in how wine drinkers define the phrase "moderate" drinking. While the proposed wine labels themselves did not appear to influence consumption, the survey indicates that some heavy drinkers may use their independent knowledge of the health effects of drinking to justify their own consumption levels.

Based upon ATF's own analysis of the two labels and upon the results of the CSAP survey, ATF has made a final determination that the labels do not mislead consumers. Consequently, ATF plans to approve the use of the two labels.

ATF will continue to closely watch the use of these and any similar statements in labeling and advertising to ensure that consumers are not misled about the health effects of alcohol consumption.

Thank you again for writing.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. E. Rubin", with a long horizontal flourish extending to the right.

Robert E. Rubin

03/26/98 THU 10:56 FAX 202 927 8673 ATF CHIEF COUNSEL 000000

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

March 6, 1998

The Honorable Strom Thurmond
United States Senate
Washington, DC 20510-4001

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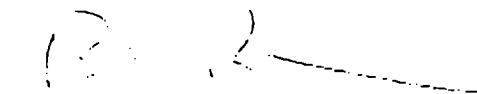
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Robert E. Rubin

SEN. THURMOND
SOUTH CAROLINAPRESIDENT PRO TEMPORE
UNITED STATES SENATECOMMITTEES:
ARMED SERVICES, CHAIRMAN
JUDICIARY
VETERANS' AFFAIRS

United States Senate

WASHINGTON, DC 20510-4001

Wine Labels

March 4, 1998

Mr. John W. Magaw, Director
Bureau of Alcohol, Tobacco and Firearms
Department of the Treasury
650 Massachusetts Avenue, N.W.
Washington, D.C. 20226

Dear Mr. Magaw:

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SEN. THURMOND

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Sincerely,

Strom Thurmond

Strom Thurmond

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WASHINGTON, D.C.

March 6, 1998

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In deference to these concerns, ATF decided it was important to obtain data that established how consumers would tend to interpret directional health-related statements on alcohol beverage labels. In September, the Substance Abuse and Mental Health Service Administration's Center for Substance Abuse Prevention (CSAP), a component of the U.S. Department of Health and Human Services, conducted a series of focus groups and survey interviews with individuals who identified themselves as current wine drinkers. The findings indicate that for most of those who participated in the study, drinking patterns would not be influenced by the proposed labeling statements.

The survey did show that there was variability in how wine drinkers define the phrase "moderate" drinking. While the proposed wine labels themselves did not appear to influence consumption, the survey indicates that some heavy drinkers may use their independent knowledge of the health effects of drinking to justify their own consumption levels.

Based upon ATF's own analysis of the two labels and upon the results of the CSAP survey, ATF has made a final determination that the labels do not mislead consumers. Consequently, ATF plans to approve the use of the two labels.

ATF will continue to closely watch the use of these and any similar statements in labeling and advertising to ensure that consumers are not misled about the health effects of alcohol consumption.

Thank you again for writing.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. E. Rubin", with a long horizontal flourish extending to the right.

Robert E. Rubin

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

March 6, 1998

The Honorable Strom Thurmond
United States Senate
Washington, DC 20510-4001

Dear Senator Thurmond:

Thank you for your letter asking that the Bureau of Alcohol, Tobacco and Firearms (ATF) should not approve any wine label that might mislead consumers about the health consequences of drinking alcohol. ATF Director John Magaw and I agree with you. ATF has never approved an alcohol beverage label containing a substantive claim that alcohol consumption results in health benefits.

For many years, ATF has told the industry that any labels or advertisements bearing discussions of the health effects of alcohol consumption must be so qualified, balanced, detailed, and specific that they will not in any respect mislead consumers about the health risks of drinking. This is a difficult standard to satisfy and no label has met it to date. Given the limited size of a label, it would be very hard to do so. ATF has no plans to change its strict policy with respect to substantive health claims and is vigorously defending a lawsuit filed by the Competitive Enterprise Institute challenging that policy.

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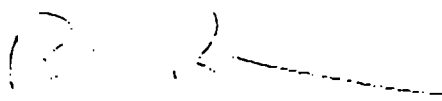
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Sincerely,



Robert E. Rubin



DIRECTOR

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

MAR 12 1998

Honorable Strom Thurmond
United States Senate
Washington, DC 20510-4001

Dear Senator Thurmond:

This is in response to your March 4, 1998, letter. I share your concern that the public must not be misled about the effects of alcohol. The devastation on our roads caused by drunk drivers and the adverse health effects of alcohol abuse are too grave to allow there to be any confusion in the minds of consumers.

The Bureau of Alcohol, Tobacco and Firearms (ATF) has always enforced a very strict policy regarding health claims on alcohol beverage labels. ATF has never approved an affirmative health claim on a label. Our authority in this area is limited to prohibiting statements which are false or misleading. Our position remains that any reference to health benefits is misleading absent a full and detailed disclosure of the many serious health detriments of alcohol consumption. No label has ever met this standard. We have no plans to ease our strict policy regarding substantive health claims in the labeling or advertising of alcohol beverages. Indeed, we are vigorously defending a lawsuit that challenges our policy on First Amendment grounds.

Our dilemma with the two pending labels is that they do not make any claims about the health benefits of alcohol consumption. In fact, ATF refused to approve previous versions of these labels that referred to "health benefits." Now the labels merely refer consumers to their doctor or the Federal Government's "Dietary Guidelines" for more information about the "health effects" of wine.

There is no statutory prohibition on health claims in alcohol labels or advertisements. The Alcohol Beverage Labeling Act preempts only health statements required by State law. Because it does not preempt the presence of other health related statements, we can only rely on

Honorable Strom Thurmond

our ability to control statements that are "likely to mislead the consumer." See 27 U.S.C. § 205(e)(1). Moreover, the courts have construed this authority very narrowly.

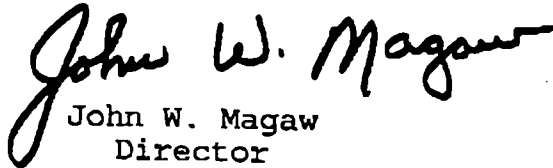
As you know, ATF deferred final action on this matter pending the results of a consumer survey commissioned by the Center for Substance Abuse Prevention (CSAP), a component of the U.S. Department of Health and Human Services (HHS). CSAP recently released the main findings of its consumer survey. One of the findings was that "neither of the two labels . . . would likely induce wine drinkers to alter their drinking pattern, quantitatively or otherwise." The CSAP survey did not provide evidence that the proposed wine labels would tend to encourage the consumption of wine for health reasons. Furthermore, the survey provided no evidence that the labeling statements would mislead consumers as to the health consequences of alcohol consumption. Without any evidence that the proposed labeling statements tend to mislead consumers regarding the health consequences of alcohol consumption, ATF has no legal basis for rejecting these labels.

I have given this matter very serious consideration, but I do not believe we have the statutory authority to disapprove these labels. Nevertheless, I am concerned that we may soon see more aggressive attempts to make affirmative health claims for alcohol. In recent months, we have noted that the Food and Drug Administration has allowed drug manufacturers to air television commercials on the health benefits of certain prescription drugs so long as they are accompanied by disclosures of the health risks of such products. The alcohol industry may be tempted to follow this lead. In order to address this problem head-on, I have directed a comprehensive review of all of our labeling and marketing policies. If necessary, we will seek appropriate additions to our legislative authority to deal with this issue. We hope to continue to work closely with you, Congress, and HHS to ensure that the public is fully informed about all of the risks of alcohol consumption.

Honorable Strom Thurmond

I know this issue is of great concern to you. I would be happy to meet with you to discuss those concerns and ways that we may address them.

Sincerely yours,


John W. Magaw
Director

Q. What is the Administration's response to Senator Thurmond's opposition to the Treasury Department's decision to allow two new health messages on wine bottles and Senator Thurmond's announcement that he will introduce legislation to transfer authority over wine labeling from the Treasury Department to the Department of Health and Human Services?

A. The Administration shares Senator Thurmond's concern that the public must not be misled about the effects of alcohol. The consequences of the misuse of alcohol are grave and we will do all we can to avoid confusion in the minds of consumers. The Treasury Department did not feel it had the statutory authority to disapprove these labels given its authority in this area is limited to prohibiting statements that are false and misleading. We look forward to examining Senator Thurmond's proposal and working with the Senator and others to investigate appropriate next steps.

Neal Wollin

Wollin
622-6587

Wine
Labels

Senator's Efforts Threaten Wine Makers' Celebration

By DAVID STOUT

WASHINGTON, Feb. 28 — When the Federal Government said on Feb. 5 that wine makers could put educational labels on their bottles, there was rejoicing in the nation's vineyards.

For too long, wine had been wrongly characterized as inherently dangerous or even sinful, said John De Luca, the president and chief executive of the Wine Institute. "The label approval represents a defining new chapter in the evolution of Federal policy toward wine in America."

The powerful trade association of California vintners struggled for years to achieve the breakthrough. Luck and timing played a part. So did some statements, official and unofficial, that sounded innocuous at the time but were anything but that.

In any event, the "defining new chapter" is hardly the last word.

Senator Strom Thurmond, Republican of South Carolina, has proposed legislation that would overturn the Feb. 5 decision by the Treasury Department's Bureau of Alcohol, Tobacco and Firearms, whose mission is to regulate the marketplace and collect taxes on alcohol rather than monitor health effects.

Mr. Thurmond would transfer labeling authority to the Department of Health and Human Services and tax wine more heavily to finance studies of its ill effects. He called the new labels "health statements" that are a danger to the public.

The labels approved on Feb. 5 do not talk about health "benefits." That word was prohibited. One label, offered by the Wine Institute, says, "To learn the health effects of wine consumption, send for the Federal Government's Dietary Guidelines for Americans." The other, proposed by a California vintner, reads, "The proud people who made this wine encourage you to consult your family doctor about the health effects of wine consumption."

Mr. De Luca, who described himself as a wine lover, said the institute is straightforward about the pitfalls of alcohol abuse, and that it would fight Mr. Thurmond.

The institute is well financed and has the ear of many on Capitol Hill, including the California Congressional delegation. For now, the wine makers can imply, if not state outright, that wine is good for you.

Top officials of the Department of Health and Human Services tried to head off the new labels. In mid-1997, Dr. John M. Eisenberg, then Acting Assistant Secretary for Health, wrote John W. Magaw, director of the Bureau of Alcohol, Tobacco and Firearms, that the labeling idea was "a thinly disguised attempt to make an affirmative health claim."

Dr. Eisenberg, now director of the health department's Agency for Health Care Policy and Research, warned that labels "could be construed by the public as encouraging the consumption of alcoholic beverages."

Surgeon General David Satcher conveyed similar misgivings to the Treasury Department. "Our concern was about the balance of the message," he recalled last week. He said he feared that despite the neutral tone of the labels too many people

would misread them as an encouragement to drink, an unfortunate message when some scientists have recommended classifying alcoholic beverages as carcinogens and when alcohol abuse by teen-agers and college students is high.

But the Treasury Department's General Counsel, Ed Knight, said it was powerless to block labels that were not false or misleading. Moreover, Dr. Eisenberg's arguments had already been undercut by a predecessor in the Department of Health and Human Services.

In a sense, the wine makers' real victory came on Jan. 2, 1996. That day, the new edition of the Dietary Guidelines for Americans was issued. The guidelines are updated every five years by a joint committee of the Departments of Agriculture and Health and Human Services and influence nutritional planning.

The new guidelines contained some new language on alcohol. They referred to mounting evidence that moderate drinking may lower the risk of heart disease for some individuals. Even more significantly, they said, "Alcoholic beverages have been used to enhance the enjoyment of meals by many societies throughout human history."

The guidelines' new stance on alcohol drew wide publicity and opened the door for wine makers to campaign for promotional labels. And the wine people had a strong ally: Dr. Philip Lee, then the Assistant Secretary of Health. "In my personal view, wine with meals in moderation is beneficial," he said that day in 1996, to the dismay of some people concerned about alcohol abuse. Several weeks later, the doctor said he had not meant to detract from the guidelines' warnings about alcohol.

Dr. Lee grew up in California wine country (his father had a small vineyard) and learned to enjoy wine with meals. "I was open to looking at new evidence," said the doctor, head of the Institute for Health Policy Studies at the University of California at San Francisco.

Three people who toiled in the background were also crucial to the wine industry's breakthrough. They made up the Dietary Guidelines subcommittee on alcohol. "How incredibly naive we were," one member, Dr. Marion Nestle, recalled.

Dr. Nestle, who heads the Department of Nutrition and Food Studies at New York University, said she and the other subcommittee members, Dr. Irwin Rosenberg and Dr. John Suttie, thought the Dietary Guidelines' stronger emphasis on a low-fat diet and a high-exercise life style was more important than references to alcohol.

Asked whether he anticipated the wine industry's exploitation of the new guidelines, Dr. Rosenberg, who is dean of nutrition at Tufts University, replied: "No, not at all. It caught all of us by surprise."

But Dr. Suttie, the retired chairman of the Nutrition Department at the University of Wisconsin, said he was not that surprised. He said he agreed with Dr. Lee that the previous guidelines had an excessive "moralistic flavor."

(Dr. Satcher and all three subcommittee members emphasized their respect for Dr. Lee, notwithstanding

his comments in 1996.)

The first Dietary Guidelines, published in 1980, stated that if a person drank, he or she should do so only moderately. The second edition, in 1985, contained similar language. The third, in 1990, retained the previous language and stated pointedly that alcohol was not recommended.

But by 1995, scientists and doctors could not ignore the increasing evidence of the benefits of moderate drinking, at least for some people. So the guidelines referred to them, while retaining the earlier caveats.

As for the reference to wine's enhancement of meals, Dr. Rosenberg said it was written into the guidelines merely to justify having any language about alcohol in the first place.

In any event, the timing was lucky for the wine interests: the new guidelines came out soon after a segment of the CBS News program "60 Minutes" explored the relatively low incidence of heart disease among the French and raised the possibility that it was due to the French fondness for red wine.

Trying to overturn a decision allowing educational labels on wine bottles.

When it announced approval of the labels, the Bureau of Alcohol, Tobacco and Firearms pointed to a survey of current wine drinkers, conducted by the Department of Health and Human Services, which found that the drinking habits of most would not be affected.

But no one has suggested that the Wine Institute sought the new labels to reduce wine consumption, and several people close to the issue wondered how many drinkers would bother to obtain the Dietary Guidelines, which emphasize the importance of "moderation."

Authorities on alcohol abuse agree that some people wishfully equate "moderate" drinking with their own habits, whether they have four drinks a week or four before dinner. The Dietary Guidelines define "moderate" as no more than one drink a day for women, two for men.

It seems fitting that wine bottles bearing the new labels will continue to bear older labels, mandated by the Federal Government for the past decade, warning pregnant women not to drink and drinkers not to drive. The labels, conflicting in purpose if not exactly in content, symbolize the contradictions about alcohol: the liquid that complements a holiday roast or warms a gathering of friends can set off domestic violence, ruin careers and lives.

Dr. Rosenberg said he would prefer to see no mention of alcohol in the next edition of the guidelines.

Mr. Thurmond said he was pleased that beer brewers and makers of hard liquor had not sought labels like those won by the wine interests. The Treasury Department has conceded that if they do they will be on strong ground, because the guidelines regard beer, wine and spirits as the same.

Finally, Dr. Suttie suggested, tongue in cheek, that if wine is good for the heart, maybe grape juice is too. "Although I haven't seen a stampede for it," he said.

U.S. Says It Caught A Chinese Smuggler Seeking Gyroscopes

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By DAVID E. SANGER

WASHINGTON, Feb. 28 — Federal agents in California quietly arrested a Chinese citizen last week and charged him with trying to obtain a component vital to missile guidance systems. Officials said the arrest shed light on what many in Washington say is an effort by China to smuggle American technology to improve the accuracy of its weapons.

The news came as Secretary of State Madeleine K. Albright arrived today in Beijing, where she is likely to complain of a missile buildup by China in her talks with leaders there.

The Customs Service has yet to make a public announcement of the arrest of the man, Yao Yi, but Federal officials and a criminal complaint filed in Federal District Court in Boston say Mr. Yao tried to buy fiber-optic gyroscopes from a Massachusetts defense contractor.

After the State Department refused to approve the deal, Mr. Yao dealt with another Boston company, which promised to help get the gyroscopes out of the United States. But that company was a dummy corporation set up as part of a sting operation by the Customs Service.

Federal officials are trying to determine whether Mr. Yao, who was arrested while attending a conference on fiber optics in San Diego, was working as an entrepreneur or as a purchaser for the Chinese military. During the transaction, Mr. Yao said he was representing a Beijing firm called Lions Photonics and insisted that the gyroscopes were destined for a Chinese university that was working on a railroad project.

While such gyroscopes can be used in railroad projects, Federal officials are skeptical, because an associate of Mr. Yao's said they also were seeking infrared sensors, which are commonly used in missiles to detect heat-generating targets.

One Federal official said using this kind of gyroscope for a railroad project "would be like flying an F-14 to the grocery store."

The arrest of Mr. Yao, who is believed to be 33, came only hours after the Clinton Administration, in an unrelated case, decided to prevent Hughes Electronics from exporting to China a \$450 million communications satellite ordered by a Singapore consortium with links to officers of the Chinese Army.

The State and Defense Departments said they feared that the satellite and the technology to launch it into a precise orbit could further improve the accuracy of Chinese missiles.

And as Mr. Yao was being escorted into Federal court in San Diego on Friday for a hearing at which he agreed to be transferred to Boston to face charges, the Pentagon delivered a report to Congress detailing China's buildup of tactical missiles on its coast facing Taiwan.

The report concluded that China was "still decades" away from being able to project military force far beyond its borders but that its cruise

and ballistic missiles "will give Beijing the 'credible intimidation' needed to accomplish political and military goals without having to rely on overwhelming force-on-force superiority."

In the gyroscope case, a man identified by authorities as an associate of Mr. Yao, a Canadian citizen of Chinese origin, Collin Xu, was arrested two weeks ago in Boston. The authorities charge that he took delivery of the fiber-optic gyroscopes, all but one of which was a dummy, and he is being held without bail.

Mr. Xu pleaded not guilty. His lawyer, Richard M. Egbert, declined to discuss the case on Friday, saying, "The facts will come out when we develop them."

An affidavit filed in Boston by a customs agent, Timothy N. Gildea, asserts that Lions Photonics first sought to buy four advanced gyroscopes in December 1997 from a Massachusetts company that is not identified in the complaint.

Officials familiar with the case say the company was Fibersense Technology Corporation of Canton, Mass., which makes fiber-optic gyroscopes for the military, chiefly for missiles, aircraft and space vehicles.

The complaint says the company told Mr. Yao and Mr. Xu, who said the gyroscopes would be used for a "superspeed train navigation system," that they would need permission from the State Department because the gyroscopes were on the State Department's munitions list, a compilation of technologies that can be exported only with a license.

Two such applications were filed in May 1998, one listing the end user as Zhejiang University, and another listing the final user as Changsha Rail University, both in China. The

applications were immediately denied by the State Department, which noted that China was a "prohibited destination" for the gyroscopes.

In August a new order was received by the Massachusetts company for nearly identical equipment, listing a new company as the purchaser: Micro Techland in Montreal. An exemption to the State Department licensing rules permits the shipment of some types of equipment without a license to Canadian companies for use in Canada.

Their suspicions aroused, officials at the military manufacturer alerted the Customs Service, which soon began its sting operation. Mr. Yao was referred to officers of the agency's dummy company.

The undercover operation soon received an identical order for the gyroscopes. An expert on military gyroscopes, who spoke on condition of

anonymity, said the type the Chinese were trying to purchase were "tactical" gyroscopes used on missiles, on the gun turrets of tanks and sometimes on railroads.

For months the undercover company negotiated with its Chinese customers by E-mail, arguing over price, specifications and even warranty conditions.

The final order amounted to about \$70,000, and at one point, according to partial transcripts of the conversations included in the criminal complaint, Mr. Xu asked, "Do you also do infrared sensors?"

Mr. Xu ultimately picked up the gyroscopes in the Boston area, Federal officials say, and was arrested on his way to a Federal Express office. On Feb. 19, Mr. Yao entered the United States, and he was arrested on Monday night in San Diego.

The New York Times

MONDAY, MARCH 1, 1999