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ADMINISTRATIVE

Comments of the Bureaus of
Competition, Consumer Protection and Economics
of the Federal Trade Commission*

on

Use of the Word "Light" (Lite)
in the Labeling and Advertising of Wine,
Distilled Spirits, and Malt Beverages
Notice No. 600
Bureau of Alcohol, Tobacco and Firearms

December 31, 1986

* These comments represent the views of the Bureaus of Competition, Consumer Protection, and Economics of the Federal Trade Commission and do not necessarily represent the views of the Commission or of any individual Commissioner. The Commission, however, has authorized the submission of these comments.

Comments on the Use of the Word "Light" (Lite)
in the Labeling and Advertising of Wine,
Distilled Spirits, and Malt Beverages
Notice No. 600, BATF

The Bureau of Alcohol, Tobacco and Firearms ("BATF") proposes to revise its regulations governing the advertising and labeling of "light" or "lite" alcoholic beverages. BATF seeks comments on these regulations,¹ and the staff of the Federal Trade Commission ("FTC") is pleased to provide them.

The mission of the FTC is to foster a competitive marketplace, free of unfair and deceptive practices. Our statutory standard is found in Section 5 of the Federal Trade Commission Act (1938), which prohibits "unfair or deceptive acts or practices in or affecting commerce." We have acquired substantial expertise on issues relating to advertising, mandatory disclosure and product standards.

Our experience with these issues leads us to believe that markets perform most efficiently when consumers are well informed. Truthful advertising plays an important role in this process by providing information in a form that is useful to consumers. We have further found that if consumers value increased information concerning product characteristics, manufacturers whose products have desirable characteristics will have an incentive to provide that information voluntarily.² Regulations that restrict

¹ Fed. Reg. 28,836 (August 12, 1986).

² In some cases, even though there would be net social benefit associated with the provision of product information, manufacturers do not provide it. This phenomenon, a form of "market failure," occurs when manufacturers as a whole would benefit from providing this information to

(footnote continued)

truthful advertising are likely to lead to increased consumer search costs, increased producer costs, and, ultimately, to market inefficiency. As a result, we believe that the government generally need not intervene in the market process except in cases where consumers are misled or deceived.

In this comment we specifically address five provisions of the proposed rule:

1) BATF proposes to loosen some restrictions on comparative advertising of "light" and "regular" products, but retain others. While we generally support this proposal, we are concerned that the proposed rule would not allow certain truthful, nondeceptive comparative claims. Therefore, the proposed rule is more restrictive than necessary and deprives consumers of information they might wish to use in making product choices.

2) BATF proposes to require manufacturers of certain alcoholic beverages that use the term "light" ("lite") in a brand or product name on the label to disclose the calorie content on the front label, and to provide the remainder of an "average analysis statement" (carbohydrate, fat, and protein content) elsewhere on the label. Absent evidence of a significant informational market failure, we do not believe that a mandatory disclosure is justified. However, if any disclosure is required, it should be limited to calorie information in legible type visible anywhere on the label.

(footnote continued)

consumers but, for any one manufacturer, the cost of providing it exceeds the benefit.

Instances of market failure, especially when health or safety issues are involved, often provide sound justification for government regulation or intervention. See, for example, Roger Miller, Intermediate Microeconomics, McGraw Hill, 1978, p. 457.

3) BATF proposes to eliminate the designation "light wine" as a distinct product category. This proposal would impose costs on manufacturers and on consumers who are familiar with the designation "light wine." We are aware of no evidence that consumers are confused by this designation. Since we perceive regulatory costs, and are aware of no benefits, we cannot support this provision.

4) BATF would allow malt beverages containing less than 2.5 percent alcohol to be labeled and advertised as reduced or low alcohol malt beverages. While we view this solution as less desirable than allowing firms to advertise the actual alcohol content of their products, we support this provision which would increase the flow of truthful, nondeceptive information to consumers.

5) BATF seeks comments on whether there should be a calorie limit over which a beer should not be permitted to be called "light," and on whether a "light" product should have a maximum calorie content relative to the firm's regular product. In addition, BATF wants to know whether disclosure of calorie content should be mandated for all alcoholic beverages. We believe that no such restrictions are necessary.

We will comment on these matters in turn.

Regulation of Truthful Comparative Advertising

The statutory language of the Federal Alcohol Administration Act [27 USC 205(f)] prohibits comparative ads that are false, misleading or disparaging of a competitor's product. BATF has previously interpreted this language to prohibit calorie or carbohydrate comparisons other than between

a firm's light beer and either its regular beer or a competitor's light beer. BATF is now proposing to allow other calorie and carbohydrate comparisons between alcoholic beverages,³ but only if (1) an average analysis statement is on the label of the product whose manufacturer is making the comparison, (2) the comparison is to a specific named product, and (3) the serving size is disclosed. Although less restrictive than previous regulations, this proposal still prohibits some truthful comparative advertising claims.

Our research and experience indicates that the better informed the consumer, the more efficiently the market will perform. Restrictions which make it more difficult to engage in truthful comparative advertising will increase the costs of consumer search, lead to inferior consumer choices, and reduce the incentives of manufacturers to produce products with characteristics desired by consumers. Truthful advertising plays a very important and beneficial role in providing consumers with information about product characteristics, particularly new product characteristics. Therefore, we believe that comparative advertising claims should not be restricted unless they are false or misleading.

The proposed regulations would prohibit truthful comparative advertising claims concerning calories unless the advertising firm's product is labeled with an average analysis statement. Thus, the manufacturer of Brand X regular beer could not make a true statement that "Brand X contains fewer calories than Brand Y" unless it disclosed its calorie content and other characteristics on its label. This requirement could raise advertising costs

³ For, example, BATF proposes to allow comparative advertisements for "light" wine, "light" distilled spirits, or "light" beer that state: "brand X contains 100 calories per 12 fluid ounces - 40 calories fewer than brand Y's regular (beer, wine, or distilled spirits)."

for Brand X and deter the manufacturer from providing consumers with useful information.

The proposed regulation would also prohibit comparative advertising claims that did not involve two specific named products. However, we believe that a manufacturer can communicate useful information to consumers by comparing its product with a group of other similar products available on the market. For example, we think consumers would be interested to learn that "Light A has fewer calories than any other light beer" and that consumers would find it useful to know that, even though it is not labeled as "light," "Brand B has fewer calories than several light beers on the market." Similarly, a manufacturer of a regular beer with superior taste might want to communicate to consumers of light beer that they can enjoy this taste without a large calorie penalty. The manufacturer could communicate this by saying "Brand C has only 15 percent more calories than the average light beer." Such a comparison between the advertiser's product and an average is apt to be valuable to consumers.⁴

Similarly, the proposed regulation would prohibit truthful comparisons that do not state the actual number of calories for specified serving sizes. Thus, a manufacturer who simply wanted to say "Light A contains 20 percent fewer calories than Light B" would be required to say instead "Light A contains 88 calories per twelve fluid ounces, 20 percent fewer than Light B."

⁴ BATF may be concerned with possible enforcement difficulties if claims such as "our light beer contains 1/3 fewer calories than the average regular beer" are permitted. Our experience is that it is sufficient for the advertiser to be required to provide a reasonable basis to substantiate its claims when requested. Manufacturers might satisfy this requirement through appropriate survey sampling or through use of existing surveys of beer calorie content. Such sources could provide a reasonable basis for a claim that a beer "contains 1/3 fewer calories than regular beer."

By forcing the manufacturer to say more and to use a particular cluttered format, this requirement could raise the cost and reduce the effectiveness of advertising, and therefore restrict the flow of useful information to consumers. This restriction could be particularly expensive in radio and TV ads, and therefore reduce the communication of useful comparative information in such ads.⁵

We can see no benefits to restricting nondeceptive and truthful comparative claims in advertising. These restrictions could result in greater advertising costs, less comparative advertising, greater consumer search costs, and hence less consumer information, inferior purchase decisions, and ultimately higher prices for consumers.⁶

Disclosure of Calorie Content and Average Analysis
For "Light" Brands

BATF believes that use of the words "light" and "lite" might cause "consumer deception and confusion."⁷ Therefore, BATF proposes to require

⁵ Of course, if companies should make calorie comparisons based on different serving sizes without disclosing that fact, such ads would likely be deceptive or misleading, and could be challenged on a case by case basis. We note that BATF proposes to allow low alcohol malt beverages to make comparative statements of alcohol content (e.g., "this product contains one-third less alcohol than brand X beer") without disclosing the serving size used in the comparison. If BATF should conclude that the elimination of serving size disclosure would not mislead consumers significantly for this category, we do not see why a different conclusion should be reached for other categories.

⁶ If one chose for policy reasons to promote temperance through higher prices for alcoholic beverages, raising prices through taxation could be a more efficient solution than raising prices through increased producer costs.

⁷ Confusion might arise because the word "light" with reference to alcoholic beverages has traditionally referred to both alcohol content or color. "Light wine," as defined by BATF, is wine containing less than 14 percent alcohol.

manufacturers of certain alcoholic beverages who use the term "light" ("lite") in a brand or product name on the label to disclose the calorie content on the brand (front) label in "the correct size of type, separate and apart from other information," and to provide the remainder of an "average analysis statement" (carbohydrate, fat, and protein content) elsewhere on the label.⁸

This regulation would impose several costs on manufacturers of light beer. They would have to design and produce new labels, with a calorie disclosure on the front, separate from the remainder of the average analysis. Information or designs that now appear on the front of the label might have to be moved, changed, or eliminated. To the extent that this other material helps people to make effective choices, such changes could reduce consumer welfare.

The regulation could be most costly to Piel's and Beck's. For many years these manufacturers have sold "light" beers that are not low in calories. They have used the term "light" to distinguish these beers from their "dark" beers. If the proposed regulation goes into effect, these companies would have to change their labels, either by providing calorie information or by modifying the word light (i.e., "Light Color Beer"). To the extent that consumers rely on the word "light" to provide information about characteristics other than calories, consumers would also be injured by the proposed regulation.

⁸ This regulation represents a codification and slight modification of current administrative policies. Most manufacturers who use the term "light" when referring to beer must now include an average analysis statement (including calories) on proposed labels before BATF staff will approve them. The proposed regulation is different in that it would require manufacturers to separate calorie information from the rest of the information contained in the average analysis statement.

We oppose this proposal because we have seen no empirical evidence to suggest that this mandatory disclosure will be beneficial. For example, it would not be difficult to determine (by a market survey, for example) whether significant numbers of "Piel's Light" drinkers wrongly believe they are consuming a low calorie beer. There is also no systematic evidence (either from copy tests or surveys) with respect to the number of beer drinkers in general who are confused by the term "light."⁹ In general, a great many words have multiple meanings, and yet cause little or no confusion when used in context.¹⁰ Therefore, unless we have evidence to suggest that consumers are confused by use of the term "light," there is no reason to believe that this proposed regulation has benefits that will outweigh its costs.

⁹ An FDA telephone survey conducted in 1982 asked consumers "Have you ever seen a food product or beverage labeled light so-and-so." Eighty percent of consumers indicated that they had. They were then asked "What does the word light mean to you when you see it on a food product or beverage?" Seventy percent of those who answered yes to the first question said that the word "light" on food and beverage packages means the product is lower in calories. It is difficult to interpret these results because consumer interpretation of the word "light" might be quite different in the specific context of alcoholic beverages. More generally, the survey evidence does not indicate whether or not the multiple meanings of "light" confuse consumers. Indeed, a TV commercial for a low calorie beer graphically reminded its viewers that asking for a "light" could result in a match being applied to the end of your cigarette, a working torch being placed in your outstretched hand or a powerful searchlight being shone in your eyes. The fact that such contrived confusion is amusing may be due to the fact that, although such misunderstanding is possible, it so seldom happens that when it does we think it is funny.

¹⁰ Many such words apply to foods. For example, "sweet" normally refers to sugar content, but "sweet" butter refers to the absence of salt. "Italian" olive oil is imported from Italy, but "Italian" sausage refers to a type of meat. "Deluxe" often refers to size, but in other cases it suggests added ingredients ("deluxe" pizza or "deluxe" salad oil). In a restaurant setting, "hot" roast beef refers to temperature, but "hot" taco sauce refers to spice content.

The argument against mandatory disclosure is buttressed by economic theory. If calorie information is of substantial interest to customers, theory suggests that companies will supply it voluntarily. In fact, manufacturers of low calorie products often emphasize that attribute in their marketing campaigns. On the other hand, if such information is not of interest, then the proposed disclosure will yield no benefits.¹¹

If BATF does mandate disclosure of calorie content, we suggest that manufacturers be given maximum latitude with respect to the way in which calorie content is allowed to be presented. Restrictions on the format of disclosures may raise costs unnecessarily or make it less likely that consumers will pay attention to them. If low calorie content is a selling point, sellers are likely to know how to communicate this information effectively to buyers. Therefore, we suggest that light beer manufacturers be given considerable latitude with respect to the format of calorie disclosure (in terms of both type size and placement on the label). If consumers want calorie information, they can look for it on the label. Unlike a health warning, it need not be conspicuous but only legible.

Before imposing a costly regulation, BATF should, as a first step, determine whether a significant number of consumers would have any interest in the other information mandated (carbohydrate, fat, and protein

¹¹ In some cases consumers have no "interest" in an area simply because no information is available. If the government provides initial information the public may like the idea and become interested in obtaining more information on the subject. (For example, since the Surgeon General's 1964 Report on the health consequences of tar and nicotine in cigarettes, the public has become increasingly interested in this subject.) However, it is likely that consumers are already reasonably familiar with the concept of calorie content. As a result, initial disclosure of calorie content in beers is unlikely to stimulate significantly demand for further disclosure.

content). Such interest cannot be assumed, especially since fat and protein content is essentially zero for all beers.

Although carbohydrate content varies somewhat between beers, we suspect that it is not of great import to many consumers. In the 1983 Consumer Reports¹² article on beer, for example, the main table comparing beer on various dimensions included the calorie content, but no other element of the average analysis statement. Presumably, the editors decided that interest in calorie content was relatively strong, but that there was too little interest in fat, protein and carbohydrate content to justify taking up space in the table that could be used for more valuable information.

In summary, we see no evidence to suggest that consumers are confused by the term "light" in the context of alcoholic beverages. In addition, to the extent consumers want calorie information, we would expect the market to produce it voluntarily. Therefore, we see no reason to mandate calorie disclosure. However, if a disclosure is mandated, we suggest that manufacturers be given substantial latitude with respect to format. In any event, the rest of the average analysis statement should not be required on "light" beer labels in the absence of evidence that consumers find this information useful. Further, if consumers did find such information useful, manufacturers would have an incentive to provide it voluntarily.¹³ To clutter up a label with valueless disclosures of fat and protein content may increase the number of consumers who believe that labels are not worth reading.

¹² Consumer Reports, July 1983, pp. 342-347.

¹³ In the absence of market failure, manufacturers would provide this information voluntarily.

Elimination of the Designation "Light Wine"

BATF proposes to eliminate the designation "light" for wines containing 14 percent or less alcohol because it believes that many consumers have come to interpret the designation "light wine" to refer to a low calorie wine. In addition, the designation "table wine" is equivalent to "light wine." Because these designations are duplicative, BATF believes that it may not be necessary to preserve both designations.

As we have indicated above, we are not aware of empirical evidence that a significant number of consumers are either confused or misled by the mere fact that the word "light" has multiple meanings. Nor are we aware of evidence that consumers are confused by the term "light wine," that they understand the term "table wine," or that they know the two are synonymous. Evidence on these issues might be obtained through copy tests or market surveys. In the absence of such evidence we oppose elimination of the designation "light wine."¹⁴ Elimination of this designation will harm any manufacturers who have developed brand name loyalty for their "light wines." It will also harm consumers who are familiar with the designation "light wine" and not aware that the designation "table wine" is equivalent.¹⁵

¹⁴ As we noted previously, even if evidence of consumer confusion existed it would not necessarily indicate that a regulatory response is appropriate or that the appropriate response would take the form of a ban on the designation.

¹⁵ BATF also seeks comments with respect to regulation of "light sherry" and "light port." Here (as elsewhere) we suggest that BATF engage in some copy testing or market research in order to determine whether consumers understand these terms, and what the nature of the problem (if any) might be. Such research will provide evidence with respect to the need for regulation.

Low Alcohol Malt Beverages

BATF suggests that malt beverages containing less than 2.5 percent alcohol be allowed to be labeled and advertised as reduced or low alcohol malt beverages. We support this provision, because it will facilitate truthful labeling, increase consumer information, and therefore improve market efficiency. However, we suggest that (in addition) manufacturers of such beverages should be allowed to disclose actual alcohol content at their discretion.

Alcohol content is presently a characteristic about which consumers have limited information. We believe that manufacturers should be allowed to disclose (and advertise) the alcohol content of their products, whether or not the content is less than some threshold amount. Such disclosures could be valuable to those consumers who wish to consume malt beverages but also wish to avoid significant alcohol consumption. However, we understand that this would require a statutory change because, in most circumstances, such disclosures are prohibited by the Federal Alcohol Administration Act [27 USC 205(f)]. The proposed "low alcohol beverage" provision is a step in the right direction.

Matters that BATF does not Propose to Regulate

We agree that BATF should not prohibit use of the word "light" for beers with more than some threshold number of calories. Such a prohibition would unnecessarily prevent manufacturers such as Piel's and Beck's from continuing to designate their light-colored beers as "light." This would raise

their costs by reducing the value of their existing brand name capital and prevent consumers from benefiting from the use of familiar designations. It might also discourage the production of beers with calorie content close to, but above, the threshold.

BATF also seeks comments on whether a "light" product should have a maximum calorie content relative to the firm's regular product. We believe that no such standard is necessary. One disadvantage of such a standard is that it would prevent a company from offering a light beer unless it also offered a regular one.¹⁶ It might also encourage manufacturers to increase the calorie content of their regular beers.

We also agree that BATF should not mandate calorie labeling for all alcoholic beverages. We see no evidence that such a rule is necessary. Indeed, to the extent such information is valuable to consumers, manufacturers with low calorie products already have an incentive to disclose this information voluntarily.

Conclusion

We support BATF's proposals to loosen current restrictions on comparative advertising of certain alcoholic beverages. However, in our view, the proposal does not go as far as it should toward allowing all advertising that is not false or deceptive. We believe that allowing truthful

¹⁶ If firms without a regular beer were exempt from this regulation, then such firms might be discouraged from developing a regular beer. In either event, this regulation might distort manufacturing decisions to the possible detriment of consumers.

comparative advertising will enhance consumer welfare, and make the marketplace more competitive.

We are pleased that BATF does not propose mandatory calorie disclosure for all alcoholic beverages. However, we do not believe that calorie disclosures should be mandated for any beverages. There is no evidence of systematic consumer confusion about calorie content. To the extent consumers place significant value on calorie disclosures, firms already find it in their interest to voluntarily disclose such information, particularly if effective comparative advertising is allowed.

In summary, our analysis convinces us that consumers will benefit most when government regulation of beer advertising is limited to prohibit only false and deceptive claims. Sellers should be allowed to determine for themselves what truthful advertising is of most interest to consumers and what format is most effective in getting their attention.