

November 5, 2002

Mr. Bradley Buckles
Director
Bureau of Alcohol, Tobacco, and Firearms
Treasury Department
650 Massachusetts Avenue, NW
Room 8290
Washington, D.C. 20226

Re: Liquor-Branded “Malternative” Beverages

Dear Director Buckles:

The marketing and labeling of the flavored, ready-to-drink alcoholic beverages known popularly as “alcopops” or “malternatives,” especially those that bear the brand names of hard-liquor companies, are causing rampant confusion among consumers and state regulators. Manufacturers of those drinks cultivate and welcome that confusion, because by letting consumers think one thing about these products (namely, that they contain expensive high-end liquor) and by letting regulators think another (namely, that they are malt-based drinks like beer), these companies effectively have the best of both worlds.

The Bureau of Alcohol, Tobacco, and Firearms (ATF) is complicit in fostering that confusion by failing to design regulations that recognize the unique nature of “alcopop” drinks, and the danger they present to consumers. Once again, we urge ATF to promulgate regulations that simultaneously remedy adult consumers’ confusion over liquor-branded “alcopops” and to stop marketing tactics whose *raison d’etre* is to build hard-liquor brand loyalty among underage drinkers.

1. Source of alcohol

The exact source of alcohol in these beverages is unclear and needs to be determined by ATF in the course of its ongoing investigation. ATF needs to determine what portion of the alcohol in these drinks comes from fermented malt and what portion comes from distilled spirits or alcohol-containing flavoring agents. That is a question that should have been answered before these drinks were allowed to be labeled as liquor and marketed as malt beverages. Further delay only compounds the confusion and possible deceptive labeling and lost tax revenues.

As you know, state regulators have asked ATF for guidance in this area. “Alcopop” manufacturers seek to be taxed as if alcopops were malt beverages, and they seek to advertise,

market, and distribute alcopops as if they were malt beverages. But just calling these drinks malt beverages or “malternatives” does not necessarily make them so. ATF needs to satisfy itself whether these drinks are as much like beer as their makers claim. We have seen numerous news and other reports that suggest that a considerable portion of the alcohol content of those products derives from spirits rather than from beer fermentation.

2. Using liquor-brand names on alcopops deceives consumers.

In an April 8, 2002 “Industry Circular,” ATF held that the use of liquor brand names and logos on product packaging, bottles and labels, and in advertising for “malternatives” “*is not in itself misleading* (italics added).” There was absolutely no evidentiary foundation for ATF to have made that assertion then. There is now, though, evidence that conclusively proves consumers are indeed misled, and that ATF erred.

Last month, CSPI commissioned Global Strategy Group to conduct research on consumer perceptions of liquor-branded alcopops. That survey (a copy of the key findings is enclosed) found widespread confusion among adults (and confirmed similar findings among teens) about the nature of “alcopop” drinks. In fact, large pluralities believe that those beverages are more like liquor than beer or wine. For example:

- Adults are five times more likely to believe that Bacardi Silver is more like liquor (49%) than beer (9%) and 38% are unsure; and
- Adults are three times more likely to believe that Smirnoff Ice is more like liquor (47%) than beer (14%) and 29% are unsure.

ATF acted correctly in prohibiting alcopop labels from expressly claiming these drinks contain rum, vodka, or other distilled spirits. But ATF clearly erred in concluding that consumers are not misled by the liquor brand names on the labels. As a result, many adult consumers think they’re getting something they’re not.

That deception alone should be reason enough for ATF to reverse course. But the more ominous consequence of ATF’s error is that millions of underage persons have been moved into the liquor industry’s marketing cross hairs, as these liquor-brand names gain beer-like ubiquity.

For more than a year and a half, CSPI has shared our research and concerns with ATF and other federal agencies. Last July, we provided data that demonstrated that young Americans have high exposure to alcopop ads, including those “alcopops” that bear the brand names of hard liquors like Bacardi, Smirnoff, or Stolichnaya. We showed you, for instance, that 62 percent of teens, compared to 46 percent of adults, have seen advertising for Smirnoff Ice; and that 40 percent of teens, compared to 27 percent of adults, have seen advertising for Bacardi Silver.

In May 2001 we alerted ATF to product characteristics, label designs, and product shelf placement that appeared to target underage drinkers and ease their ability to find and buy the beverages.

Last month, more than 35 organizations joined CSPI in urging an expansion of ATF's current investigation of "alcopops" to include public health and safety considerations and an examination of the effects of widespread and burgeoning television advertising of those products on underage persons. We repeat that call today.

We also reiterate our request that ATF take immediate action to end consumer confusion about alcopop products. In particular, we urge ATF to end liquor companies' exploitation of beer distribution, promotion, and tax standards to market their products more effectively to beer consumers, including underage youth, if ATF finds that they contain substantial amounts of alcohol derived from distilled and not beer-fermented sources.

Further delay, in the face of expanding marketing budgets for "alcopops" and the resultant consumer deception, would be unconscionable.

We look forward to your reply.

Sincerely,

George A. Hacker
Director
Alcohol Policies Project