

DISTILLED
SPIRITS
COUNCIL
OF THE
UNITED
STATES

February 6, 2006

Mr. Francis W. Foote
Director
Regulations and Rulings Division
Tax and Trade Bureau
1310 G Street N.W., Room 200E
Washington, D.C. 20220

Re: Notice No. 53 – Use of the Word “Pure” or Its Variants on Labels or in Advertisements of Alcohol Beverage Products/Request for Comments

Dear Mr. Foote:

On behalf of the Distilled Spirits Council of the United States, Inc. (DISCUS), a national trade association representing producers and marketers of distilled spirits and importers of wines sold in the United States, we welcome the opportunity to respond to the Bureau’s proposal to amend its regulations governing the use of the term “pure” or its variants on the labeling or in the advertising of beverage alcohol products. For the reasons set forth below, the prohibitions in Sections 5.42(b)(5) and 5.65(a)(8) of 27 C.F.R. pertaining to the use of the word “pure” for distilled spirits should be rescinded and the Bureau should employ the same approach to the use of the word “pure” for distilled spirits as it currently does for beer and wine.

With a full portfolio of beverage alcohol products, DISCUS members support a nondiscriminatory, equitable approach to all the products regulated by TTB. Other Federal agencies, including the Department of Health and Human Services and the Department of Agriculture as reflected, for example, in the Dietary Guidelines for Americans, and the Federal Trade Commission, treat all beverage alcohol products equally. To that end, we applaud the Bureau’s initiative to revisit the restrictive scheme regarding the use of the word “pure” for distilled spirits products.

As the Bureau recognizes, TTB does not impose similar restrictions regarding the use of the word “pure” for beer or wine products. We know of no regulatory objective or concern regarding use of the word “pure” warranting disparate treatment of distilled spirits labeling and advertising versus beer and wine labeling and advertising. The Bureau does not have, nor should it have, separate or different tests as to what constitutes deception, a misleading statement, a disparaging statement of a competitor’s product, a health claim, or a health-related statement for the beverage alcohol products it regulates.



Sections 105(e) and 105(f) of the Federal Alcohol Administration (FAA) Act already afford the Bureau sufficient statutory authority to address the use of the word "pure" across all beverage alcohol categories. The Bureau's approach to wine and beer approved COLAs with statements such as "100% Pure Strawberry Wine," "Pure Pilsner Beer," "Pure Spirit Rouge," and "Pure Bavarian Beer" has not placed the Bureau in a quandary in terms of permissible or impermissible statements under the Act. Nor has the Bureau's historical experience in approving COLAs and other materials that use the word "pure" for beer and wine products necessitated additional regulatory requirements.

The Bureau's authority and experience should be used in an even-handed, equitable and nondiscriminatory fashion for all beverage alcohol products -- beer, wine and distilled spirits. The lifting of the prohibitions regarding the use of the word "pure" for distilled spirits only will require the Bureau to apply the same standard to evaluate the use of the word "pure" as it currently does for beer and wine.

For 70 years, the Federal government has allowed beer and wine labels and advertisements to use the word "pure" without the regulatory impediments imposed upon distilled spirits for the use of that very same word. We are unaware that this approach to beer and wine labeling and advertising has caused any confusion or that TTB or its predecessors have received any complaints about its longstanding policy toward beer and wine.

Simply put, the current restrictive approach to the use of the word "pure" for distilled spirits is unnecessary, superfluous and arbitrary. There is no supportable or justifiable reason for the regulatory imbalance and we urge that the Bureau repeal its "pure" regulations in Part 5. The use of the word "pure" in distilled spirits labeling and advertising should be evaluated upon the same basis as the use of that word for beer and wine labeling and advertising.

Regarding the specific questions posed by the Bureau in its advance notice, DISCUS provides the following responses:

- A. What does the general public consider the word "pure" to mean when used on labels and in advertisements of alcohol beverage products? Does its use convey information to the consumer about the identity and quality of the product? Does its use convey information about the alcohol content of a product?

The meaning of the word "pure" is entirely dependent upon the context in which that word is used. Consequently, this question, as well as the other questions posed in the instant notice, cannot be responded to in an informed, substantive fashion since the meaning of the word "pure" only can be derived from the manner in which it is used.

The general public has long been exposed to the use of the word "pure" in the labeling and advertising of a host of products. The use of this word ranges from describing the contents of a product, such as "pure vanilla extract," to "puffery" statements about a product such as

“pure indulgence.” The use of the word “pure” also is part of common cultural parlance such as “pure poetry” or “pure luck.” These few examples demonstrate that what may be misleading or deceptive, or basically jargon, intrinsically is dependent upon the context in which the word “pure” is used.

In that same vein, in determining whether or not an advertisement is deceptive, the Federal Trade Commission “looks at the ad from the point of view of the ‘reasonable consumer’ – the typical person looking at the ad. Rather than focusing on certain words, the FTC looks at the ad in context – words, phrases, and pictures – to determine what it conveys to consumers.” (See FTC “Advertising Practices Frequently Asked Questions: Answers for Small Business” at 4 (April 2001).) In sum, consumer perception and/or understanding of the use of the word “pure” will depend upon the manner in which it is used.

- B. TTB considers variants of the word “pure” such as “pureness,” “purest,” and “purity” to fall within the purview of the pure regulations. Are these variants misleading and, if so, should TTB amend the regulations to prohibit their use? Should TTB limit the scope of the pure regulations to the word “pure” only?

TTB’s current distilled spirits regulations regarding “pure” should be repealed. TTB has sufficient statutory authority to prohibit misleading and deceptive statements without relying upon an inequitable, discriminatory approach to distilled spirits. Any prohibitions concerning the use of the term or its variants would be inappropriate and unnecessary. (See Response to Question A.)

- C. Would the use of terms or claims such as “pure vodka,” “pure whisky,” “vodka with exceptional purity” on distilled spirits labels and in advertisements mislead consumers? Would the use of similar terms or claims on wine and malt beverage products mislead consumers?

No. For example, “pure vodka” truthfully would convey to consumers that the vodka is free from adulterants and other harmful ingredients. (See Response to Question A.)

- D. Should TTB amend the pure regulations to allow the use of the word “pure” and its variants on distilled spirits labels and in advertisements if the statements are truthful? How can TTB substantiate the truthfulness of such claims? How should pure be defined?

TTB should repeal its distilled spirits prohibitions regarding the use of the word “pure” altogether and treat “pure” claims for distilled spirits in the same manner as it treats “pure” claims for beer and wine. (See Response to Question A.)

- E. Should TTB permit the use of the word “pure” or its variants on distilled spirits product labels and in advertisements if those products meet a certain standard? If so, what should that standard be?

TTB's current distilled spirits regulations regarding "pure" should be repealed. TTB has sufficient statutory authority to prohibit misleading and deceptive statements for the beverage alcohol products it regulates. Any prohibitions concerning the use of the term or its variants would be inappropriate and unnecessary. (See Response to Question A.)

F. What would be the impact of allowing the use of these terms?

For 70 years, the Federal government has allowed beer and wine labels and advertisements to employ the word "pure." We are not aware that this policy has caused any confusion and, to the best of our knowledge, TTB and its predecessors have received no complaints about its longstanding policy towards beer and wine.

G. Should TTB prohibit the use of the word "pure" and its variants on labels and in advertisements for malt beverages and wine products? Why or why not?

TTB should repeal the current prohibitions applied to distilled spirits products and continue its sensible policy allowing the use of the word "pure" on the labeling of and in the advertising of beer and wine products. (See Response to Question A.)

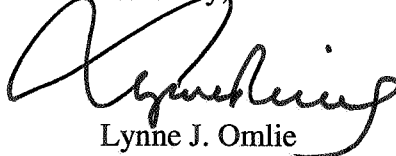
Conclusion

There is no justifiable basis for differing treatment between or among distilled spirits, beer and wine regarding the use of the word "pure." The Bureau's approach to the use of this word should apply across the board and in equal fashion to all beverage alcohol products.

To that end, the current prohibitions regarding the use of the word "pure" that apply only to distilled spirits should be repealed. The Bureau's historical approach vis-à-vis the word "pure" on the labeling and in the advertising of beer and wine products also should govern distilled spirits.

We appreciate the opportunity to comment upon the Bureau's advance notice. As always, we stand ready to assist TTB in whatever way possible. If you have any questions concerning our comment and/or otherwise, please do not hesitate to call.

Sincerely,



Lynne J. Omlie
General Counsel