



**Holme Roberts & Owen LLP**  
Attorneys at Law

SAN FRANCISCO

February 6, 2006

BOULDER

Director  
Regulations and Rulings Division  
Alcohol and Tobacco Tax and Trade Bureau  
Attn: Notice No. 53  
P.O. Box 14412  
Washington, D.C. 20044-4412

COLORADO SPRINGS

Re: Comments on Proposed Rulemaking Concerning Use of the Word  
"Pure" on Labels or in Advertisements of Alcohol Beverage Products

To the Director:

DENVER

We represent Skyy Spirits, LLC ("Skyy"). Skyy respectfully submits the following comments in response to the advance notice of proposed rulemaking published by the Alcohol and Tobacco Tax and Trade Bureau ("TTB") with respect to the use of the word "pure," and its variants, on labels or in advertisements of beverage alcohol products.

LONDON

In short, Skyy suggests that labels and advertisements of alcohol beverage products should be allowed to include truthful assertions containing the word "pure" and its variants, such as "purity" or "purest." The use of the word "pure" and its variants is not inherently misleading, and purity – commonly used and understood to mean, simply, the absence of unwanted impurities – is a legitimate point of emphasis for vodka and other spirits manufacturers. "Purity" for vodka is in fact already a competitive battleground, as shown by the widespread use of "purity" claims by dozens of manufacturers, both large and small. Existing laws and labeling regulations adequately protect consumers against untruthful statements of purity, and prevent any chance that the use of the word could be construed as an implied health claim.

LOS ANGELES

MUNICH

*1. Manufacturers Should Be Allowed to Make Truthful Statements About the Content of Their Products*

A vodka manufacturer's use of the words "pure" or "purity" is a testable assertion of fact. It should not, of course, be permissible to make purity claims that are not supported by legitimate test results. But if a manufacturer can support its purity claims with valid test results, then a purity claim is truthful.

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Basic fairness and public policy – not to mention Constitutional guarantees of freedom of speech – support the manufacturer’s right to publish truthful statements about the content of its product.

Because “purity” is a testable assertion of fact, Vodka manufacturers should be allowed to compete on “purity” grounds. The only meaningful way to compete on this issue is to allow labels and advertising that contain the word “pure” and its variants.

2. *Use of the Word “Pure” or its Variants Does Not Imply a Health Claim*

Advertising based on “purity” does not make any health claim, particularly in light of the full context of the advertisements in which such claims are typically made. Such advertisements typically explain the meaning of the “purity” claim – for instance, Skyy has advertised claiming that Skyy vodka has the fewest of certain identified impurities among leading brands and uses pure water. It does not purport to make any connection between the purity of Skyy vodka and any health benefits whatsoever. Given the overall context, consumers should not be confused about the intended meaning of “pure” and its variants, or associate “purity” with a health claim.

Furthermore, even assuming for the sake of argument that consumers might misperceive purity claims as implying that a particular vodka has some health benefit, the mandatory alcohol warnings on labels dispel such a notion.

Finally, spirits manufactures are already allowed to use the term “organic” in the advertising and labeling of distilled spirits provided that they comply with the Department of Agriculture’s National Organic Program rules. 27 C.F.R. § 5.71. Organic claims definitely connote a more healthful product in the minds of consumers. There is no legitimate reason to treat “purity” in a more restrictive manner.

3. *Regulation of the Word “Pure” and its Variants Will Inevitably Lead to Selective Enforcement, and the Expenditure of Resources on a Rule That is Not Rooted In Basic Public Policy*

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Given the absence of a sound public policy behind a ban on the use of “pure” and its variants, regulation will likely lead to confusion on the part of manufacturers, and selective enforcement of the regulation. “Purity” is obviously important to consumers, as shown by the wide array of purity claims already made by manufacturers. If the word itself is banned (or the word and its variants), certain manufacturers will inevitably attempt to regain competitive advantage by using “pure” synonyms – this would needlessly lead to a cycle of rulemaking governing an ever-expanding list of words that might mean “pure.” Since there is no sound reason to ban a purity claim to begin with, it makes no sense to launch into such a process.

#### *4. Responses to Specific Questions Posed*

A. “Purity” claims are about the absence of unwanted substances (“impurities”). At least with respect to vodka, the public understands the word “pure” to mean the absence of “congeners” – primarily fusel oils. Vodka manufacturers compare themselves with their competitors by publishing test results setting forth the presence of these congeners by parts per million – the fewer congeners, the more “pure” a vodka can claim to be. “Pure” is similarly understood with respect to other products – namely, the absence of unwanted ingredients, or “impurities.”

B. There is no sound reason to limit regulation to only the word “pure,” while allowing use of inherently similar variants such as “pureness,” “purity,” or “purest.” As suggested above, this is the sort of regulation that causes confusion, and which inevitably leads to selective enforcement.

C. As set forth more fully above, Skyy submits that the use of “pure” with respect to vodka is not inherently misleading, but rather a testable assertion of fact.

D. TTB should amend the regulations to allow for truthful assertions including the word “pure” and its variants. There are recognized testing methods in the industry for measuring the purity of distilled spirits, and the TTB may rely on those tests for substantiating the truthfulness of such claims.

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E. The TTB should not attempt to create “standards of purity” for distilled spirits, but may continue to recognize the veracity of certain testing methods. If such standards are to be adopted, they should be based on the testing methods already used in the industry.

F. Because purity claims are already widespread in the industry, the impact of allowing the use of “pure” and its variants would be to eliminate unnecessary confusion caused by the current regulations and to save TTB resources currently allocated to enforcement of the regulation. The impact of an outright ban on the use of these terms, however, would be more substantial. A significant number of vodka and other spirits manufacturers make purity claims in their advertising. In fact, no fewer than 25 manufacturers advertise the purity of their products. A ban on the use of any “purity” claims would force manufacturers to scrap existing advertising campaigns and generate new ones. The attendant costs to manufacturers of revising their advertising campaigns would be significant.

G. Skyy submits that truthful assertions containing the word of “pure” and its variants are also appropriate with respect to labels and advertising for malt beverages and wine products.

Respectfully submitted,



James Wesley Kinnear