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Allen, Ellen L.  
From: Bertman, Michael [Michael.Bertman@diageo.com]  
Sent: Tuesday, October 21, 2003 10:39 AM  
To: nprm@ttb.gov  
Subject: Chief

Chief  
Regulations and Procedures Division  
Alcohol and Tobacco Tax and Trade Bureau  
P.O. Box 50221  
Washington, DC 20091-0221  
(Attn: Notice No. 4)

Dear Sirs (Libertuci, Foster, Bacon, Manfreda)

I write in support of the majority standard (51%) formulation for flavored malt beverages and to vigorously oppose the Draconian .5% standard as it is punitive and would jeopardize the future of the existing flavored malt beverage market, a market that you, because of your approval authority, helped create.

Reliance on one's regulator for guidance on how to approach the development of new products is an integral part in the alcoholic beverage industry. Notice Number 4 undermines this notion and will have a chilling impact on future innovation in this industry. Hundreds of millions of dollars have been spent on the development of this popular beverage alcohol category. Every dollar spent has been done in reliance to long-standing policies that you administer. Your internal documents have acknowledged the use of flavors in beer products for decades and as late as fall, 2000 ATF (now TTB) personnel re-affirmed this acknowledgement and again reaffirmed the unlimited use of flavors in flavored malt beverages in a meeting with industry. Now you intend to pull the rug out from under this investment, which is patently unfair.

The notion that you raise in Notice Number 4 that there is something sacrosanct about a .5% standard is ludicrous. You undermined this standard in Rule 96-1 by promulgating a 1.5% standard for products above 6% ABV. Do you all know more about the code today than you did in 1996? I think not. Anything below 1.5% is punitive and has no basis in recent policy.

The majority standard is a reasonable compromise between the status quo and those who want to use this rulemaking for competitive gain. I urge you to keep a level playing field level. Giving the major brewers such a distinct advantage is regulating in the market place at its worst.

I haven't even mentioned the plight of High Falls Brewing Company and City Brewing in my comment. I am confident that their submissions will suffice to tell their story. To proffer a regulation that jeopardizes these two entities would be a tragedy. The government should reward the entrepreneurial spirit not undermine it by un-needed over regulation. Support the majority standard, Notice Number 4 acknowledges that it is allowable under the law.

Regards,  
Mike Bertman  
6112 Holly Tree Drive  
Alexandria, VA 22310

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