

# HOWREY & SIMON

Attorneys at Law  
1299 Pennsylvania Ave., N.W.  
Washington, D.C. 20004-2402  
(202) 783-0800  
FAX (202) 383-6610

December 9, 1994

In Los Angeles  
(213) 892-1800

Department of the Treasury  
Attn: Disclosure Services  
Room 1054  
Washington, D.C. 20220

Re: FOIA Request for Records Related to Regulations Governing Wine Advertising and Labeling 27 C.F.R. §§ 4.39 (a)(7), (a)(9) and § 4.64 (a)(9)

Dear Sir or Madam:

Under the Freedom Of Information Act (FOIA), 5 U.S.C. §§ 552 *et. seq.*, I am requesting access to all information available from your agency under FOIA regarding the rulemaking proceedings that led to the promulgation of three current Bureau of Alcohol, Tobacco and Firearms regulations.

Those three regulations presently are promulgated at 27 C.F.R. §§ 4.39(a)(7) & (9)(1994) and § 4.64(a)(9)(1994). 27 C.F.R. § 4.39 (a)(7) bars use of a label on wine that contains:

Any statement, design, device, or representation (other than a statement of alcohol in conformity with § 4.36), which tends to create the impression that a wine:

- (i) Contains distilled spirits;
- (ii) Is comparable to a distilled spirit; or
- (iii) Has intoxicating qualities.

However, if a statement of composition is required to appear as the designation of a product not defined in these regulations, such statement of composition may include a reference to the type of distilled spirits contained therein.

27 C.F.R. § 4.39(a)(9) provides that:

Any word in the brand name or class and type designation which is the name of a distilled spirits product or which stimulates, imitates, or created the impression that the wine is so labeled is, or is similar to, any product customarily made with a distilled spirits base. Examples of such words are: "Manhattan," "Martini," and "Daiquiri" in a class and type designation or brand name of a wine cocktail; "Cuba Libre," "Zombie," and "Collins" in a class and type designation or brand name of a wine specialty or wine highball; "creme," "cream," "de," or "of" when

used in conjunction with "menthe," "mint," or "cacao" in a class and type designation or a brand name of a mint or chocolate flavored wine specialty.

Finally, 27 C.F.R. § 4.64(a)(9) prohibits

the advertisement of wine that contains any word in the brand name or class or type designation which is the name of a distilled spirits product or which simulates, imitates, or creates the impression that the wine is so labeled is, or is similar to, any product customarily made with a distilled spirit base.

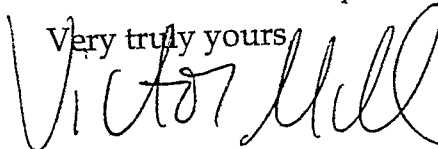
These provisions initially were promulgated by the Department of the Treasury in TD 6976. The Department published a proposed rulemaking on November 15, 1966, at 31 Fed. Reg. 14556. A final rule was published on October 8, 1968 at 33 Fed. Reg. 15024-25. In the final rule, the Internal Revenue Service indicated that at least one hearing was held on those rules, on January 16, 1967, in Washington, D.C.

Specifically, I am requesting to review any comments submitted by anyone in response to the notice of proposed rulemaking published on November 15, 1966 and any record of the hearing on that proposed rulemaking that was scheduled for January 16, 1967 and any other hearing regarding these proposed rules.

I would greatly appreciate if I could obtain access to these documents as soon as possible. Please notify me when you know the approximate volume of the materials involved, as it may be more practical for me to inspect the originals than to have copies made of all of the materials. Of course, Howrey & Simon will reimburse the your agency for reasonable costs associated with this request.

If you require any further information about the scope of this request in order to locate the requested materials, please feel free to call me at (202) 383-7328.

Very truly yours



Victor J. Miller