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**COURT URGED TO REJECT MILK SUIT  
FILED BY ANIMAL-RIGHTS ACTIVISTS**  
*(Physicians Comm. for Responsible Medicine v. General Mills)*

The Washington Legal Foundation today urged the U.S. Court of Appeals for the Fourth Circuit in Richmond to uphold the dismissal of a lawsuit by animal rights activists who are seeking to stop advertisements being run by the milk industry.

In a brief filed in *Physicians Committee for Responsible Medicine v. General Mills*, WLF argued that the suit threatens to undermine manufacturers' commercial speech rights. WLF argued that if a manufacturer can be subjected to expensive lawsuits filed by activists who do not like statements the manufacturer makes on issues of public importance, then significant amounts of truthful speech will be chilled as manufacturers become increasingly unwilling to comment on such issues.

"This suit is being pursued by an animal rights group that is masquerading as a medical group," said WLF Chief Counsel Richard Samp after filing WLF's brief. "Their real objection is not to the milk industry's ads, but to what they view as the industry's inhumane treatment of cows. We should not allow the judicial process to be abused in this manner," Samp said.

The suit targets a recent milk industry advertising campaign that advocates increased consumption of dairy products as a method of losing weight. The Physicians Committee for Responsible Medicine (PCRM) challenges the validity of the scientific studies that form the basis for the industry's advertising. PCRM and one of its members filed suit in federal district court in Virginia against a number of dairy product manufacturers and industry groups, arguing that the weight-loss claim was false and violated Virginia's consumer protection and false advertising laws. Their principal request is that the federal courts issue an injunction against any further promotion of the weight-loss claims.

The district court dismissed the suit in November 2006, finding that it failed to state a cause of action under Virginia law. The plaintiffs appealed that dismissal to the Fourth Circuit.

In its brief, WLF argued that Virginia law does not permit individuals to obtain injunctions against speech. Individuals are permitted to sue to recover losses they may have incurred by relying on a false advertisement; but individuals should not be permitted

to serve as "private attorneys general" with authority to determine what types of advertisements should be banned, WLF argued. Only government authorities should be permitted to invoke the "public interest" as a basis for shutting down an advertising campaign, and even then it is a power that should be used sparingly, WLF said.

WLF also argued that the First Amendment protects against the use of injunctions in cases of this sort. WLF argued that suits such as PCRM's potentially could have a significant chilling effect on the willingness of product manufacturers to speak out on issues of public importance, such as whether increases in consumption of dairy products are good for one's health. WLF argued that the First Amendment guards against tort liability systems that chill inordinately large amounts of speech. WLF argued that under the doctrine of constitutional avoidance, the district court should interpret Virginia law as prohibiting awards of injunctive relief in suits brought by individuals against product manufacturers -- in order to avoid the First Amendment difficulties that would arise if a contrary interpretation were adopted.

WLF noted that it was taking no position in the on-going debate over whether consuming dairy products can contribute to weight loss. WLF argued that that debate should be taking place in science laboratories, not in the courts.

The Washington Legal Foundation is a public interest law and policy center with supporters in all 50 states. WLF devotes a significant portion of its resources to defending commercial speech rights. WLF also filed a brief in the case when it was before the district court.

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For further information, contact WLF Chief Counsel Richard Samp, 202-588-0302. A copy of WLF's brief is posted on its web site, [www.wlf.org](http://www.wlf.org).