

WISCONSIN COURT CONTINUES TREND AGAINST “ATTRACTIVE ADVERTISING” SUITS

by
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The Wisconsin Court of Appeals recently joined a consistent line of trial and appellate courts¹ in holding that parents seeking to impose liability for illegal underage drinking purportedly caused by “attractive advertising” of alcohol beverages fail to state a claim. In *Tomberlin v. Adolph Coors Co. et al.*, Appeal No. 2006AP1302 (Wis. Ct. App. Oct. 25, 2007), the appellate court affirmed the earlier dismissal of a putative class action filed against various brewers, distillers, and importers. Ms. Tomberlin’s claims in the case centered on the defendants’ advertising and the appeal it might have to some minors. Ms. Tomberlin had sought to have alcohol advertisers pay a putative class of parents the money that underage persons spent buying alcohol illegally from retailers or complicit adults.

The Court of Appeals affirmed the lower court’s finding that Ms. Tomberlin had failed to plead facts establishing standing to sue. First, the court rejected Ms. Tomberlin’s argument that she had suffered a direct compensable money loss when her child, without her knowledge or consent, illegally purchased alcohol beverages with money the child received from her. The court found no authority for the proposition that “a parent may recover damages from one who persuades a child to spend the child’s own money for a product or purpose the parent disfavors.” *Id.* at ¶4.

The court also rejected Ms. Tomberlin’s alternative argument that a parent providing funds for support suffers a compensable injury if the child receiving such funds spends them on something other than their intended purpose. The court noted that to find standing under these circumstances could open the door to litigation by parents any time a child is persuaded to spend support funds on candy, videogames, or baseball cards. *Id.*

The Court of Appeals also rejected Ms. Tomberlin’s suggestion that she had a cognizable legal interest in “protecting her children against Defendants’ advertising and marketing targeted at her children.” *Id.* at ¶5. The court specifically found that even if defendants had marketed products to children as alleged in the class action complaint, such conduct “does not actionably interfere with the parent-child relationship.” *Id.* at ¶5

¹*Kreft v. Adolph Coors Co.*, No. 05-CA-2315 (Colo. Ct. App. Oct. 4, 2007); *Alston v. Advanced Brands and Importing Co.*, Nos. 06-1836/3367 (6th Cir. July 17, 2007); *Hakki v. Zima Co., et al.*, No. 06-CV-467 (D.C. Ct. App. June 26, 2007); *Bertovich v. Advanced Brands & Imp. Co.*, 2006 WL 2382273 (N.D. W. Va. Aug 17, 2006); *Alston v. Advanced Brands & Importing Co.*, 2006 WL 1374514 (E.D. Mich. May 19, 2006); *Hakki v. Zima Co.*, 2006 WL 852126 (D.C. Super. Mar. 28, 2006); *Tomberlin v. Adolph Coors Co.*, Case No. 05CV545, slip op. (Wis. Cir. Feb. 16, 2006); *Eisenberg v. Anheuser-Busch, Inc.*, 2006 WL 290308 (N.D. Ohio Feb. 2, 2006); *Kreft v. Zima Beverage Co.*, Case No. 04cv1827, slip op. (Colo. Dist. Sept. 16, 2005); and *Goodwin v. Anheuser-Busch Cos.*, 2005 WL 280330 (Cal. Super. Ct. Jan. 28, 2005), *appeal dismissed*, (Cal. Ct. App. Aug. 17, 2006).

In concluding that dismissal of Ms. Tomberlin's claims was proper, the Court of Appeals quoted with approval the trial court's observation that plaintiff never alleged that she had been prevented from exercising other options available to her to curb the influence of defendants' lawful advertising – options that included:

- “monitoring what communications her minor child has been exposed to,”
- “communicating with her minor child to counter the images and influences presented by mass advertising and marketing of defendants' products,” and
- “exercising control over her minor child's finances to prevent the child from purchasing the defendants' products.”

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