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FEDERAL COURT DISMISSES MILK SUIT FILED BY ANIMAL-RIGHTS ACTIVISTS (Physicians Comm. for Responsible Medicine v. General Mills)

The U.S. District Court for the Eastern District of Virginia this week dismissed a lawsuit by animal rights activists who are seeking to stop advertisements being run by the milk industry.

The decision was a victory for the Washington Legal Foundation (WLF), which filed a brief urging dismissal of the suit, *Physicians Committee for Responsible Medicine v. General Mills*. The district court agreed with WLF that Virginia law does not permit private citizens to seek injunctions against advertisements with which they disagree.

In its brief, WLF had also argued that the suit threatened 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 was being pursued by an animal rights group that is masquerading as a medical group," said WLF Chief Counsel Richard Samp after reviewing the court's decision. "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 targeted 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) challenged the validity of the scientific studies that form the basis for the industry's advertising. PCRM and one of its members filed suit 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 was that the court issue an injunction against any further promotion of the weight-loss claims.

The district court agreed with WLF 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, the court held. Only government authorities should be permitted to invoke the "public interest" as a basis for shutting down an advertising campaign, the court 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. Because the district court dismissed the case on statutory grounds, it did not need to reach WLF's First Amendment arguments.

WLF's brief noted that WLF 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.

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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.