

## Court Strikes Down Parts of Ohio Milk Labels Rule

CINCINNATI (AP) — Dairy processors can make claims that their products are free of a synthetic growth hormone, a federal appeals court ruled Thursday in striking down parts of the state's rule on milk labeling.

Key parts of the state's labeling rule violated First Amendment rights to commercial free speech, a three-judge panel of 6th U.S. Circuit Court of Appeals unanimously ruled.

The Organic Trade Association and the International Dairy Foods Association sued the Ohio Department of Agriculture in 2008 over a state rule on how consumers are informed about whether milk is made from cows that were given a synthetic hormone.

The trade groups argued that the rule is too restrictive. It prohibits composition claims such as "antibiotic-free" and "pesticide-free," violating their free speech rights and impeding interstate commerce, the groups argued.

The appeals court reversed a lower court decision on the free speech issue, concluding that the state's ban is "more extensive than necessary to serve the state's interest in preventing consumer deception." The appeals court agreed with a lower court ruling that the rule does not impede interstate commerce.

The hormone, recombinant bovine somatotropin, is also known as rbST.

The trade groups also challenged the rule's requirement that any dairy processor advertising that "this milk is from cows not supplemented with rbST" must place a disclaimer next to that claim saying the U.S. Food and Drug Administration has found no significant difference between milk coming from cows treated with rbST and those that are not.

The trade groups did not object to the disclaimer but argued that other states allow an asterisk to be used after the claim linking to the disclaimer, which can be placed elsewhere on the label.

The state rule also says the disclaimer must be in seven-point size and in the same font, color and case as the claim.

In its ruling, the appeals court concluded that requiring a disclaimer is "reasonably related to the state's interest in preventing consumers from being deceived by production claims" and that the typeface requirements put no undue burden on

processors.

But the prohibition on the use of an asterisk "lacks a rational basis," the court ruled.

The case was sent back to U.S. District Court for further proceedings consistent with the appeals court decision.

Parties on both sides of the lawsuit expressed satisfaction with the court's ruling.

The state Department of Agriculture said in a statement that it was "pleased that the Sixth Circuit has upheld many aspects of the rule." The department said it was reviewing the decision and would not comment on whether it would pursue the case further.

Christine Bushway, executive director and CEO of the Organic Trade Association, called it a "big win for the consumer.

"The court's decision upholds consumer's rights to receive truthful information about organic production practices on the labels of their milk and other dairy products in Ohio," she said.

Clay Hough, general counsel for the International Dairy Foods Association, said the ruling upholds rights of association members to "make truthful and not misleading claims on their labels."

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