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No Duty To Warn For 'Nonconventional' Alcohol Beverages

Law360, New York (June 27, 2012, 1:34 PM ET) -- I wrote last year about the dismissal of a motorcycle passenger's claim against the maker of a caffeinated alcoholic drink, seeking to hold the company liable for her crash-related injuries. See Cook v. MillerCoors LLC, No. 11-1488 (M.D. Fla.).

The operator of the motorcycle in the accident was killed, and plaintiff Cook, who was a passenger, was injured. Prior to the crash, the driver allegedly had consumed several alcoholic beverages containing caffeine and other stimulants, manufactured by defendant.

Cook argued that such beverages were “uniquely dangerous” because they appeal to younger drinkers and because the addition of caffeine enables one to drink more alcohol without feeling as intoxicated as one normally would. Thus, she alleged, consumers of these beverages are more likely to “engage in dangerous behavior such as driving.”

She asserted the driver did not appear impaired, even though toxicology reports from his autopsy revealed that his blood alcohol level was 0.10 at the time of the crash.

The district court found flaws with the duty, breach and causation elements of the claim. The court found that Cook had not established a duty to warn because “the dangers inherent in alcohol consumption are well-known to the public.”

Readers can readily see why the court was reluctant to make an exception to the rule for the so-called "unconventional" beverage. There are hundreds of alcohol-containing products that are not "conventional" in one way or another, by taste, ingredients, color, manufacturing process, advertising ...To shift responsibility from the person who over-consumes one of these and then drives impaired is to send the absolutely wrong policy message.

Courts have typically recognized no duty on the maker, regardless of plaintiffs' attempt to differentiate either themselves or the product. See, e.g., Malek v. Miller Brewing Co., 749 S.W.2d 521 (Tex. App. 1988) (finding no duty to warn despite claim that advertising led plaintiff to believe that “lite” beer was less intoxicating than other beer); Pemberton v. Am. Distilled Spirits Co., 664 S.W.2d 690 (Tenn. 1984); Greif v. Anheuser-Busch Cos. Inc., 114 F. Supp. 2d 100 (D. Conn. 2000)(particular, alleged tolerance of an individual consumer); MaGuire v. Pabst Brewing Co., 387 N.W.2d 565 (Iowa 1986).

Plaintiff attempted to re-plead her claim, again alleging that the addition of stimulants that mask the intoxicating effects of alcohol was a defect, but also focusing on the supposed risks this formulation posed to youth. The court again found the complaint lacking.

Alcoholic beverages are not considered unreasonably dangerous as defined by the Restatement (Second) of Torts, because the dangers associated with alcohol are well-known. Cook asserted that the risks are not common knowledge to youthful drinkers having experience with conventional alcoholic beverages. This court was not convinced that “the special risks posed to youth” made the drink unreasonably dangerous from the perspective of the general public.

More significantly, Cook’s argument overlooked an important point: The alleged “special risks” manifest themselves only if the consumer chooses to drink in excess. The case law recognizes that anyone who drinks alcohol may become impaired and may not be able to discern his or her impairment. That does not make alcoholic beverages unreasonably dangerous or absolve the drinker of responsibility.

Moreover, the youth allegations did not change Florida law on causation, under which voluntary drinking of alcohol is the proximate cause of an injury, rather than the manufacture or sale of those intoxicating beverages to that person.

As to the warning theory, persons engaging in the consumption of alcoholic beverages may not be able to ascertain precisely when the concentration of alcohol in their blood, breath or urine reaches the proscribed level, they should, in the exercise of reasonable intelligence, understand what type of conduct places them in jeopardy of violating the law.

The degree of intoxication to be expected from any particular brand or formulation of alcoholic beverage does not require a duty to warn, or give rise to a fact question.

The court distinguished Cuevas v. United Brands Co. Inc. as an economic injury claim brought under various consumer protection statutes and warranty theories which focused on the sale of the product allegedly in violation of U.S. Food and Drug Administration rules rather than its consumption.

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