Rubin V. Coors Brewing Co. Essay, Research Paper

CASE CITATION: Rubin v. Coors Brewing Co. (514 US 476), 1995

BACKGROUND

?The rules and principals of commercial law are of ancient origin. Throughout the centuries merchants engaged in trade and commerce have recognized customs and usages which regulate and control their conduct. Gradually over the years a body of law developed?? (Robert & Corley, 312) Commercial speech arose in 1942 when the Supreme Court announced that the First Amendment does not protect it. As the years went on, on the ?Bicentennial of our Republic?, the Courts position was reversed and they declared that the First Amendment protects commercial speech. But they court did say that commercial speech should receive less protection then noncommercial speech. That brings us to the definitions of commercial and noncommercial speech.

?Noncommercial speech, embodied in the phrases ?freedom of speech? and ?freedom of expression,? is entitled to virtually full first amendment protection; hence, the speaker is

granted considerable latitude in stating a position?Commercial speech is generally

considered to be communications that have the sale of a product or service as their

ultimate goal. Content regulation of commercial speech is allowed to prevent false,

deceptive, or misleading information from being transmitted?(Boedecker and Morgan, 1).

Some cases that have affected the First Amendment and Commercial speech are: Valentine v. Chrestensen (1942), the U.S. Supreme Court first declared that the Constitution placed no restraints on government regulation of commercial advertising. Until this time there wasn?t anything that distinguished between commercial and noncommercial communications. Then in 1975 in Bigelow v. Virginia the court said that the, ?the government cannot restrict advertising where the commercial activity itself is legal and further noted that the ??activity advertised pertained to constitutional interests?(Boedecker and Morgan, 2). There were limitations placed on time, place, and manner and the court could also enforce rules that dealt with false, deceptive, or misleading advertising. Five years later, the Central Hudson Gas & Electric Corp. v. Public Service Commission (1980) developed a four-part breakdown for commercial speech. Throughout the courts case it used these four steps, ?(1) Determine whether the expression is protected by the First Amendment, that is, does it involve lawful activity and not mislead the audience? (2) Does the government have a substantial interest to be achieved by restricting the speech? (3) Does the regulation directly advance the government?s interest? (4) Is the regulation more extensive then necessary to achieve that interest?? (Boedecker and Morgan, 1) this was a significant move in the direction for commercial speech. ?The currently used Central Hudson test creates an artificial distinction between ?commercial? and ?noncommercial? speech? (Coach, 3). The issues involved in Central Hudson represents a change in direction in terms of deciding what degree of protection to grant commercial statements. It includes a judgement about the importance of regulating the subject matter or activity in question and therefor withdrew some of the protection granted upon commercial speech in the previous year. In summary, more types of communication are moving toward the commercial speech category, which means more first amendment protection for commercial speech. Therefor, there are two problems that marketers face when it come to commercial speech, identifying commercial speech and applying it to the commercial speech standard.

THE ISSUES

In broad terms, is the speech actually commercial? This is one of the simplest issues throughout a commercial speech case. So if the answer is ?yes? and the speech is found to be commercial, then should it receive a lesser degree of protection? Throughout all the commercial speech cases during the years this has been the question. But, the legal issue dealing with the First Amendment in Rubin v. Coors Brewing Co. was, is there a First Amendment right to disclose the alcohol content of beer on the label? The case also dealt with the idea of ?strength wars.? The Bureau of Alcohol, Tobacco, and Firearms (BATF) in the U.S. Treasury Department had prohibited beer labels from displaying alcohol content because of the fact that it would cause companies to have wars, as to which beer had the stronger alcohol content. The courts answer was yes, ?Section 5 of the Federal Alcohol Administration Act, prohibiting beer labels from displaying alcohol content, held to violate commercial speech protections of Federal Constitution?s First amendment.? (Rubin v. Coors Brewing Company Case, LexisNexis, 1)

DECISION/RATIONAL

The majority opinion of the court was that the Federal Alcohol Administration Act of 1935 violates the brewer?s First Amendment rights. Justice Clarence Thomas wrote the majority opinion of the court. The opinion states that the brewer went to the Bureau of Alcohol, Tobacco, and Firearms (BATF) to get permission to use labels that disclosed the alcohol content of the beer. Their application was turned down because it was said to violate the Federal Alcohol administration Act (FAAA). The brewer than filed case saying that their Constitution?s First Amendment Rights were violated. The Court for the District of Colorado stated that the ban was necessary for the mere fact that displaying the alcohol content would cause ?strength wars? between brewers. ?If brewers were free to list the alcohol content then they might try to compete by selling increasingly potent products? (Seligman & Moore, Fortune, 1). After appealing the case, the Tenth Circuit of the Court of Appeals agreed with the District of Colorado in saying that is was necessary to omit the alcohol content from beer labels. However, the District Court questioned the matter of whether there was a relationship between the ban of alcohol content and the goal of avoiding strength wars. After going through several different appeals, the court of appeals came to the conclusion that; ??the Government failed to demonstrate that the prohibition in any way prevented strength wars. The court found that there was no evidence of any relationship between the publication of factual information regarding alcohol content and competition on the basis of such content? (514 U.S. 476, Lexis Nexus, 5). The Supreme Court granted certiorari and reviewed the Tenth Circuit?s decision that violated the First Amendment and they concluded that the ban infringed the respondent?s freedom of speech, and affirmed the court?s decision. (Lexis Nexus, 5) In conclusion, both the District Court and the Court of Appeals found that the Government had failed to present any credible evidence showing that the disclosure of alcohol content would promote strength wars. According to the District Court, nothing that was heard during the trial led them to believe that having alcohol content on the labels will promote strength wars. So they concluded that banning the alcohol content on the labels of malt beverages has really nothing to do with the type of advertising that promotes strength wars (Rubin v. Coors 514 U.S. 476, Lexis Nexis, 9). After the Supreme Court reviewed the case and found that is failed the Central Hudson Test, they affirmed the decisions of the lower courts.

In the case of Rubin v. Coors there was one concurring decision by Justice Stevens. He gave this reason for concurring in the judgement,

I write separately because I am convinced that the constitutional infirmity in the statute is more patent than the Courts opinion indicates. Instead of relying on the formulaic approach announced in Central Hudson Gas & Electric Corporation v. Public Service Commonwealth of N.Y., I believe the Court should ask whether the justification for allowing more regulation of commercial speech than other speech than other speech has any application to this unusual statute (Rubin v. Coors 514 U.S. 476, Lexis Nexis, 10).

According to Stevens the prohibition is unacceptable because commercial speech should not be treated any different under the First Amendment. He stated that the speech at issue here is an accurate statement, on the label of a bottle of beer, of the alcohol content inside. Stevens reiterates that this is what the majority defines as commercial speech. In my opinion I believe that Stevens used an excellent analogy when explaining why this is commercial speech. He said, ??if a non-profit consumer protection group were to publish the identical statement, ?Coors beer has 4.73% alcohol by volume,? on the cover of a magazine, the court would not label the speech as commercial? (Rubin v. Coors 514 U.S. 476, Lexis Nexis, 12). This suggests that the reason the label is considered to be commercial speech is because according to Central Hudson, the intent of the label is to sell a product. In conclusion, Stevens felt as though there were other ways to go about the problem of ?strength wars? without violating the First Amendment. He sees no reason why if varying alcohol strength are lawful then why brewers may not inform their customer that their beverages are stronger or weaker than competing products.

In my opinion, this statute is unconstitutional because, regardless of the standard of review, the First amendment mandates rejection of the Government?s proffered justification for this restriction. Although some regulation of statements about alcohol content that increase consumer awareness would be entirely proper, this statutory provision is nothing more than an attempt to blindfold the public (Rubin v. Coors 514 U.S. 476, Lexis Nexis, 14).

In conclusion, there was basically a majority opinion even though Stevens felt as though there were some more issues to be discussed. In summary was Stevens argued is true, ??truthful speech about alcohol content of beer would be protected by the First Amendment in many contexts, and should not be less protected because it appears on a container label? (Stewart, 2)

SIGNIFICANCE

As to what effect the case had on society, Rubin v. Coors brewing company changed the FAAA regulation on advertising the alcohol content on beer labels. But the decision will also have a major impact on governmental regulation.

The immediate consequences will be that the government will have to prove that any prohibited speech invites some real harm; that the regulation directly advances the interest; and that the regulation is sufficiently tailored to that interest in order for the government to regulate that commercial speech (Cava & Massin, 3).

The decision in this case may also take a step toward the Supreme Court ruling that commercial speech should have the same protection as other speech, except, of course if the commercial speech is false or misleading. This case also has a major impact on the business world, for instance in advertising or marketing. Currently, companies or organizations can publicize any information about their products or services, as long as they are honest, not misleading, and not harmful to government interest. Since this case, marketers will have the right to publicize all kinds of information, even information that has been prohibited in the past (Cava, 3). Another way the case has had an effect, was on a preceding case. In an opinion by Justice Stevens in 44 Liquormart v. Rhode Island, he referred back to the case by saying, ?Last term we held that a federal law abridging a brewer?s right to provide the public with accurate information about the alcoholic content of malt beverages in unconstitutional. We now hold that Rhode Island?s statutory prohibition against advertisements that provide the public with accurate information about retail prices of alcoholic beverages is also invalid? (517 U.S. 484, 1996). So in sum, there wasn?t a drastic change in how the law is used from this case but it did have some effect on society, future cases, and governmental regulations. In my own opinion, I think information pertaining tot his case is very important, because advertising has a huge effect on society and plays a big role on influencing why what consumers buy.

APPENDIX A

A.1. Full Supreme Court Decision

Robert E. Rubin, Secretary of the Treasury, Petitioner v. Coors Brewing Company (514 U.S. 476) 1995.

2. Periodical Literature

a. Contemporaneous Articles

i. News Report

Seligman, Daniel; Moore Alicia Hills. ?The Winding Road to the First Amendment.? Fortune Jul. 1995: 211.

ii. Two Analysis/commentary

Stewart, David O. ? Business Talk: Supreme Court Continues to Struggle with Commercial Speech Doctrine.? ABA Journal 81 Sept. 1995: 40-42

?Rubin v. Coors: Supreme Court Rejects Prohibitionism.? Washington legal Foundation: Legal Opinion Letter 5 June 1995: 1-3.

b. Two additional analysis/commentary

Boedecker, Karl A; Morgan, Fred W. ?The Evolution of First Amendment Protection For Commercial Speech.? Journal of Marketing 59 (1995): 38-48.

Coach, Aaron A. ?Recent Development: Free Speech and Freer Speech: Glickman v. Wileman Bros. & Elliot, Inc., 117 S. Ct. 2130 (1997).? Harvard Journal of Law & Public Policy. 21 Spring 1998: 623-638.

c. One article from scholarly journal

Cava, Anita; Scott S. Massin. ?Marketing and the Law.? Journal of the Academy of Marketing Science 24 Spring (1996): 184-187.

3. Other Literature

a. Reference Book

Rubin v. Coors Brewing Company. Landmark Briefs and Arguments of the Supreme Court of the United Stated: Constitutional Law. Ed. Philip B. Kurland, Gerhard Casper. Vol. 236. University Publications of America, 1994.

b. General Publication Book

Robert, William J., Robert N. Corley. Dillavou and Howard?s Principals of Business Law. New Jersey: PrenticeHall Inc., 1967.

APPENDIX B

SOURCE SUBJECT HEADINGS TOPIC/SUB HEADINGS SUB-SUB HEADINGS

EBSCOhost Commercial Law Rubin and Coors

LexisNexis Case Rubin and Coors

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Library Catalog Subject Commercial Law

Landmark Cases Rubin v. Coors

U.S. Reports Rubin v. Coors

Justices who voted majority:

Thomas

Rehnquist

O?Connor

Scalia

Kennedy

Douter

Ginsburg

Breyer

Ch.J

J.J

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