IPCPR FEDERAL ALERT

IPCPR, CAA & CAA File Lawsuit Against FDA Today

Three major cigar and tobacco industry associations file suit against FDA's deeming rule

CAA, IPCPR, & CRA ask District Court of Washington D.C. for declaratory injunction

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WASHINGTON D.C. - The three major cigar and tobacco industry associations filed suit Thursday against the United States Food and Drug Administration's "Deeming Rule." The Cigar Association of America, International Premium Cigar and Pipe Retailers Association, and the Cigar Rights of America are asking the District Court for the District of Columbia for a declaratory injunction "vacate, set aside and enjoin the enforcement of the final rule" because it is violates numerous federal statutes as well as the federal rulemaking process. A full copy of the filing, which details nine counts against the FDA and the United States Department of Health and Human Services, can be found here.

"Just over one month ago, our three associations pledged to work together to develop the appropriate response to the FDA's new deeming rule. After a thorough and detailed legal review, we are challenging this unlawful regulatory action in federal court to protect the statutory and constitutional rights of our industry and its members. The fact that all three of our organizations are acting in one voice speaks to the urgency and seriousness of this action," said Mark Pursell, CEO of the International Premium Cigar and Pipe Retailers Association.

The complaint challenges:

- FDA's improper application of the February 15, 2007 grandfather date to cigars and pipe tobacco, which subjects those products to more intrusive regulations than cigarettes and smokeless tobacco
- FDA's impermissible assessment of a tax in the form of user fees, and its allocation of these user fees only to cigars and pipe tobacco and not to other newly deemed products
- FDA's failure to perform an adequate cost-benefit analysis to take into account the effects of the Final Rule on small businesses as is required by the Regulatory Flexibility Act
- FDA's unjustified decision to require cigar health warning labels to be 30% of the two principal display panels of packages
- FDA's unlawful designation of tobacconists who blend finished pipe tobacco or create cigar samplers of finished cigars as "manufacturers," which subjects those businesses to greater regulation than if they were "retailers"
- FDA's incorrect decision to regulate pipes as "components" or "parts" rather than as "accessories"

"The FDA ignored the law to craft these expansive and sweeping regulations and cannot justify many of the arbitrary and capricious regulations it purports to enact," said Glynn Loope, Executive Director of Cigar Rights of America. "This lawsuit is a specific and detailed challenge to the FDA's unprecedented assertion of rulemaking authority. "We are acting in one voice to protect the legal rights of our industry at all levels, from the manufacturer, the community retail tobacconist, to the adult patrons of cigars."

Speaking about the lawsuit, Cigar Association of America President Craig Williamson said, "We all worked in good faith to inform and educate the FDA on the unique nature of our industry, its members and our consumers. We hoped the FDA would craft a flexible regulatory structure that accounted for the uniqueness of our industry. Instead, we got a broad, one-size-fits-all rule that fails to account for how cigars and premium cigars are manufactured, distributed, sold and consumed in the United States. The FDA exceeded its statutory authority and violated the federal rulemaking process when crafting this set of broad and sweeping regulations. This challenge asserts nine violations of federal law and rulemaking authority. We are asking the court to enjoin the enforcement of this unlawful regulatory scheme. We are confident that when the court reviews our case on its merits, we will prevail."

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