

Good creative writing on law

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ANSWER

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1.)The agents of the FDA cannot go to Kenobi's store and arrest him. The FDA cannot also impose any fine and jail Kenobi since he did not commit any violation. The facts of the case will show that the new regulation which bans all glass coffee mugs was published in the Federal Register only October 1, 2014 and was supposed to take effect on October 20, 2014. For several years, Kenobi has been known worldwide for his famous glass coffee mugs. He was even featured on acclaimed magazines such as Glass Vogue for being the best glass designer in the world. Even the big Hollywood stars such as George Lucas and Harrison Ford have ordered his glass mugs. For at least five years, he consistently sold 100 glass coffee mugs per year to the maximum of 10, 000 pieces per year. The new law cannot make the previous acts of Kenobi should not be when they were not punishable when he committed the acts. Kenobi did not violate any law at the time when produced and sold the glass mugs since there was no FDA regulation in force that prohibits the manufacture of glass drinking products.

2.) Kenobi can sue the FDA and challenge the regulation by filing a case in court by stating that the agency has committed grave abuse of discretion and exceeded its authority. Kenobi can go to the District Court and raise the argument that FDA does not have the power to determine whether glass drinking products are safe for liquids if ingested by humans in the United States.

Kenobi can also claim that Congress did not grant the FDA the power to enact the regulation to ban all glass drinking products since the regulation is

very broad and sweeping that it has impaired vested rights.

He can also raise the argument that the regulation is unconstitutional since FDA does not have the authority under the law to prohibit the manufacture of glass drinking products since there is no evidence that will show that glass products are harmful to humans when ingested. Another defense that can be raised by Kenobi is that Congress has precluded FDA from asserting jurisdiction over glass products since it contradicts Congressional policy. FDA does not have the broad authority to take whatever action even if there is no evidence that the glass mugs are dangerous to public health.

The duty of the FDA is to regulate food and dietary supplements that are governed by different statutes that were enacted by Congress and subject to the interpretation of the FDA. Under the Federal Food, Drug and Cosmetic Act, the FDA was given the authority to manage the quality of substances that are being sold as food within the country. The FDA also supervises the claims that are found in labels showing the composition and health benefits of certain food products. The FDA has provided specific standards in the exercise of its power. The Congress has given the FDA the authority to use methods to determine if there are violations made on the standards of a given substance category. Thus, before the FDA can enact a regulation, it must have followed the method in enacting regulations since it is Congress which delegated the power to the agency. FDA cannot on its own pass a regulation without complying with the process provided under the Constitution.

The judicial review may be used is the judicial review of administrative acts when FDA has exceeded its authority that was delegated to it by Congress.

The new regulation provides that glass manufacturers must allow inspections or that their products may be banned for containing harmful chemicals that may be dangerous to public health. The act of FDA in enacting the regulation is ripe for judicial review the action of the agency is final even if the decision was made without any formal procedures (Beermann 50). The determination whether the judicial review of the regulation can be immediately promulgated without waiting for an enforcement of an action (Beermann 50). The court can exercise its judicial review power to invalidate the new regulation for being incompatible with the Constitution. The issue is ripe for judicial review since it is a tool for checks and balances in order to supervise the acts of the legislative and its agencies.

Kenobi can sue FDA on the ground of denial of due process since the regulation was published in the Federal Register on October 1, 2014 and took effect on October 20, 2014. The facts will show that the Federal Register did not yet receive any comment from the public regarding the regulation (Fortin, 2011). This only goes to show that the public was not given the opportunity to question the validity of the regulation since the law immediately became effective. The new regulation can also be questioned on the ground that there had been no specific findings made by FDA to establish their claim that “ glass” is dangerous to serve as a holder for liquids and that it contains harmful substances when ingested by humans. As a result, Kenobi’s business will be prejudiced by the regulation since the FDA did not comply with the formal process to enact a regulation.

In fact, FDA miserably failed to justify its claim that glass as holder for beverages, was harmful for the public. Kenobi can also raise the defense that

the said regulation is excessive and cruel for imposing imprisonment of ten days and a fine of \$5, 000 per illegal glass cup produced by manufacturers of glass coffee cups.

3.) The defense will FDA assert to defeat Kenobi's case is to invoke that it had the authority to issue the regulation to promote public health and safety. The FDA can raise that defense that the new regulation is intended to protect the people from the harmful substances that may be found in glass. The FDA can invoke that it has acted within the scope of its authority since the Congress has delegated it the power to enact laws as part of its rule-making function. As an administrative agency, it is empowered by the Constitution to create laws and promulgate the same to protect public health and interest. The FDA can also argue that the new regulation is complete and that it had specifically defined the rules on the determination of harmful substances that can be found in glass drinking products. The method that the FDA used to pass the regulation was in accordance with the Constitution and that the agency's interpretation of the regulation is within its knowledge and specialized expertise. The FDA can also raise the defense that the issue is not ripe for judicial review since not all administrative remedies have been exhausted by Kenobi (Croley, 2009, p. 278).

References:

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- Fortin, N. D. (2011). *Food Regulation: Law, Science, Policy, and Practice*. New

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