



# **Alcohol Marketing and Advertising**

A Report to Congress

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## **Federal Trade Commission, 2003**

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## Executive Summary

The Conferees of the House and Senate Appropriations Committees directed the Federal Trade Commission to study the impact on underage consumers of ads for new flavored malt beverages, and whether the beverage alcohol industry has implemented the recommendations contained in the Commission's 1999 report to Congress regarding alcohol industry self-regulation. This report sets forth the Commission's findings on these subjects.

The Commission's investigation of flavored malt beverages (FMBs) indicates that adults appear to be the intended target of FMB marketing, and that the products have established a niche in the adult market. The investigation found no evidence of targeting underage consumers in the FMB market. FMB marketers placed advertisements in conformance with the industry standard that at least 50% of the advertisement's audience consists of adults age 21 and over. Nevertheless, the 50% placement standard in effect in 2001 and 2002 permitted the ads to reach a substantial youth audience. This is particularly significant where the products and some ad themes may be attractive to minors. Although it is probable that some teens drink FMBs, teen drinking continued to decline during the period when these beverages were being aggressively marketed.

Self-regulation practices in the alcohol industry have shown improvement since issuance of the 1999 Report. The 1999 Report recommended that the industry adopt a third-party review system as an external check on compliance with code standards, particularly to address complaints about underage appeal. The present study provides evidence that the proceedings of the Code Review Board of the Distilled Spirits Council of the United States (DISCUS) provide a critical review of spirits company compliance with the DISCUS Code. Additionally, Coors Brewing Company now participates in a third-party review program run by the Dispute Resolution Division of the Council of Better Business Bureaus, and two other companies have stated that they will adopt alternative approaches to obtain third-party input regarding their compliance with self-regulatory standards. The Commission continues to believe that third-party review provides an important measure of credibility to self-regulation and encourages all companies to adopt some form of an external review process.

The largest improvements have occurred in the area of ad placement. In 2002, the alcohol companies surveyed achieved 99% compliance with the standard that at least 50% of the relevant

media audience be adults. More importantly, the industry now has committed to adhere to a 70% placement standard and to implement post-placement audits.

The study also revealed added industry attention to the issue of ad content. This area is particularly sensitive, given that minors are present in nearly every venue where ads are disseminated. Company documents show many examples of ad concepts being rejected, and ad content being modified, to reduce the likelihood of appeal to minors. Still, a visible minority of beer ads feature concepts that risk appealing to those under 21. Unless care is taken, alcohol ads targeted to young legal drinkers also may appeal to those under the legal age. Because of significant constitutional issues, the Commission continues to recommend enhanced self-regulation to address concerns about alcohol advertising's appeal to minors.

In addition to self-regulation of advertising, a comprehensive alcohol policy also must address the means by which teens obtain alcohol for consumption. Younger minors obtain alcohol primarily from noncommercial sources; this social availability can be addressed by changing adult attitudes about teen use. Changes also are needed to reduce underage alcohol purchases from commercial outlets, a source of alcohol for older minors. Support is needed for the efforts of organizations that can conduct rigorous field studies of the efficacy of alternative approaches to improving enforcement of minimum age purchase laws.

The Commission will continue to monitor alcohol industry self-regulation, particularly the implementation of the new placement standard requiring that adults constitute at least 70% of the audience for advertising. Additionally, the Commission will monitor the effectiveness of third-party review programs and will continue to evaluate new advertising programs that may have undue appeal to underage consumers.

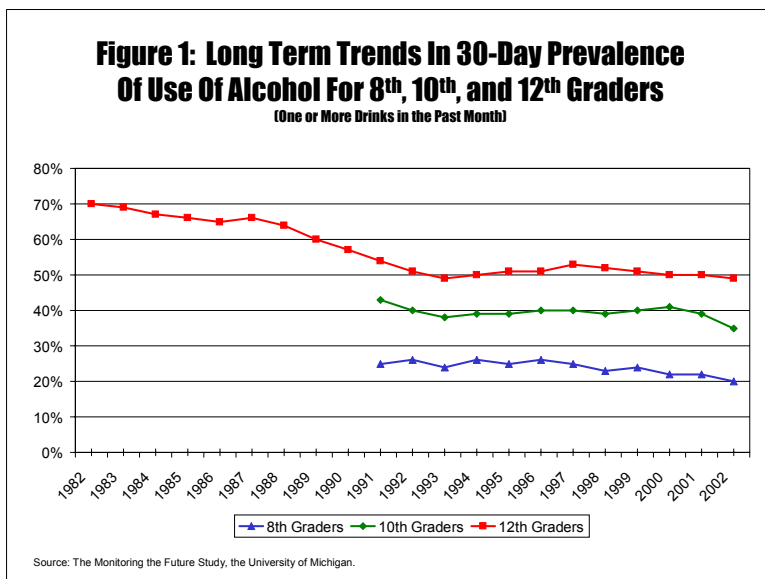
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# I. Introduction

In March 2003, the Conferees of the House and Senate Appropriations Committees directed the Federal Trade Commission to study the impact on underage consumers of the significant expansion of ads for new malt beverages.<sup>1</sup> In addition, the Conferees asked that the Commission study and report on whether the beverage alcohol industry has implemented the recommendations contained in the Commission's 1999 report to Congress regarding self-regulatory efforts to limit the appeal and exposure of alcohol advertising to underage consumers (1999 Report).<sup>2</sup> This report sets forth the Commission's findings on these subjects.

Concerns about the marketing of alcohol reflect the serious costs of underage alcohol use. Underage drinking has declined significantly since all states adopted 21 as the minimum legal drinking age two decades ago, as shown by Figure 1,<sup>3</sup> but drinking by minors remains high. In 2002, one-fifth of 8th graders, over one-third of 10th graders, and nearly half of 12th graders reported drinking within the past 30 days, and significant numbers reported engaging in binge drinking.<sup>4</sup>



The manner in which minors drink places them at risk of significant harm.<sup>5</sup> Excessive drinking is associated with a variety of risky behaviors and injury, including drunk driving accidents, suicide, sexual assault, and high-risk sexual activity.<sup>6</sup> Public health organizations, the government, and the alcohol industry have all recognized that it is important to

reduce underage drinking in order to lessen drinking-related harm.<sup>7</sup>

Given the risks of underage drinking, all involved agree that the alcohol industry advertising must avoid targeting minors. This report evaluates the status of self-regulatory efforts by the industry to meet that goal. Section II addresses the marketing of the new flavored malt

beverages; Section III contains an update on alcohol industry self-regulation; and Section IV contains the Commission's recommendations.

This report's findings are based upon information obtained following issuance of compulsory process orders to nine major alcohol industry members,<sup>8</sup> as well as discussions with a wide variety of entities, including interested consumer groups, researchers, and industry trade associations.<sup>9</sup>

## **II. Flavored Malt Beverages**

### **A. Background**

In recent years, flavored malt beverages (FMBs) have become increasingly popular. These products combine beer and distilled spirits characteristics. To produce a FMB, a brewer starts with a base of beer, uses filtering techniques to remove a portion of the beer taste, and adds flavors derived from spirits to achieve the desired taste and alcohol level. FMBs are marketed in traditional beer bottles, and have an alcohol content of 4% to 6% by volume, similar to other beers.

Marketers introduced citrus-flavored FMBs, including "hard" lemonades in the late 1990's.<sup>10</sup> More recently, brewers have entered into agreements with distillers to introduce spirits-branded FMBs that typically taste like a combination of light beer and citrus or other fruit.<sup>11</sup> Other FMBs have flavors similar to wine coolers or cocktails (such as bourbon and cola).<sup>12</sup>

FMBs are relatively new products. As a result of efforts to introduce them into the marketplace, a disproportionate share of beer advertising expenditures currently are directed to FMBs.<sup>13</sup> As new products have been introduced over the last five years, these expenditures have increased dramatically, from 2% of beer advertising in 1998 to approximately 17% of beer advertising in 2002.<sup>14</sup> During that same period of time, FMB sales grew at a far slower pace, from 1.3% of beer sales in 1998 to approximately 3% of beer sales in 2002.<sup>15</sup> Over this time, total per capita beer consumption has increased modestly, by about 1% per annum; a substantial portion of FMB sales are derived from consumers who have reduced purchases of other malt beverages.<sup>16</sup> See Figure 2 (page 6).

## **B. Prior FTC Investigation of FMB Marketing**

In 2001, in response to a complaint filed by the Center for Science in the Public Interest (CSPI), the FTC conducted an investigation to determine if FMBs were being targeted to minors. Among other things, the Commission staff reviewed whether the products were placed among non-alcoholic beverages in retail outlets; whether the advertising for these newer products was targeted to an underage audience; and whether consumer survey evidence proved that teens were more likely than adults to be aware of and use the products, as alleged in the CSPI complaint.<sup>17</sup>

The investigation was conducted in collaboration with the U.S. Treasury's Alcohol and Tobacco Tax and Trade Bureau (TTB, formerly the Bureau of Alcohol, Tobacco and Firearms). The Commission obtained proprietary information from marketers of the five products identified in CSPI's complaint, including internal documents relating to product development, marketing plans, consumer research, and distribution plans. In addition to a review of the documentation, the investigation included a ten-city survey to determine where the newer malt beverages were placed in retail outlets.

With respect to the placement of FMBs in retail outlets, industry documents obtained by the FTC showed that the alcohol companies had expressly urged distributors to place the products with other alcohol products, generally with imports and microbrews.<sup>18</sup> The FTC/TTB survey of retail outlets in ten cities confirmed that the beverages were not co-mingled with non-alcoholic products in retail outlets.

The Commission's review also found no evidence of intent to target minors with the FMB products, packaging, or advertising. For example, the internal company documentation, including planning materials and consumer research results, demonstrated that the marketers tested alternate product and packaging versions on adults aged 21 to 29 to determine the optimal product taste profiles and packaging styles and that they tested the appeal of advertising by surveying adults above the legal drinking age.

Finally, the Commission reviewed the consumer survey evidence submitted in support of the proposition that the new malt beverages are predominantly popular with minors. The Commission concluded that flaws in the survey's methodology limit the ability to draw conclusions from the survey data.<sup>19</sup>

## **C. Results of Updated FTC Investigation**

In response to the Committee's March 2003 request, the Commission initiated a new review of the advertising and marketing of FMBs. The Commission sent compulsory process requests to nine alcohol industry members, eight of whom market one or more beverages that compete in the FMB category.<sup>20</sup> The compulsory process requests required the companies to produce internal documents relating to the marketing of these products, including documents describing the target audiences and relating to advertising development and placement.

### **1. FMB Ad Placement**

The Commission obtained marketing plans discussing the advertisement placement strategies for the FMBs as well as data showing the age composition of the audience for FMB ads. As discussed below,<sup>21</sup> in 2002 the industry codes required that at least 50% of the audience for alcohol advertising consist of adults aged 21 and over. The Commission's review shows that, in 2002, over 99% of the dollars spent to advertise FMBs on television, radio, and in print media were expended in compliance with this goal.

Although compliance with the 50% standard was quite high, the standard still permitted ads to be placed in venues with a substantial underage audience composition. To limit the likelihood that ads for FMBs (or other alcohol) would appear in such venues, five companies also maintained lists of programs on which they would not place ads ("no buy" lists). Typically, they instructed their media buyers not to place ads on MTV or the UPN network, on wrestling or extreme sports shows, or on teen-oriented shows such as "Malcolm in the Middle," "Gilmore Girls," "Boston Public," "Sabrina," "Grounded for Life," "Celebrity Death Match," "Dawson's Creek," "Moesha," "7<sup>th</sup> Heaven," and "Popular." A sixth company limited the likelihood of placement on teen-oriented shows by requiring a 70% adult audience for placements. Finally, two of the companies marketing FMBs did not advertise their products in print or broadcast media.

The companies' documents showed that on a few occasions, FMB ads appeared on individual episodes of teen-theme shows in individual TV markets in 2002. Given the high overall compliance, however, these incidents appeared to have been inadvertent, rather than deliberate attempts to target teens.

## 2. Content of Advertising for FMBs

The alcohol company documents submitted in response to compulsory process consisted of planning and operational documents prepared in the ordinary course of business. These documents indicate that the companies target advertising for the FMBs to persons of legal drinking age and older. Marketing concepts (including advertising and packaging) are directed to a specific “target” category of consumers. The company documents show that the intended targets for FMBs were above the legal drinking age, generally 21-year-olds to 27- or 29-year-olds.

The companies’ documents further indicate that before ads are disseminated, the alcohol companies often use consumer research to test them for persuasiveness and efficacy.<sup>22</sup> Research participants are screened for target demographic characteristics including age, generally 21 to 29, and are asked a wide range of questions, including questions designed to elicit whether the ad is appealing and whether it communicates that the advertised brand appeals to the target.<sup>23</sup>

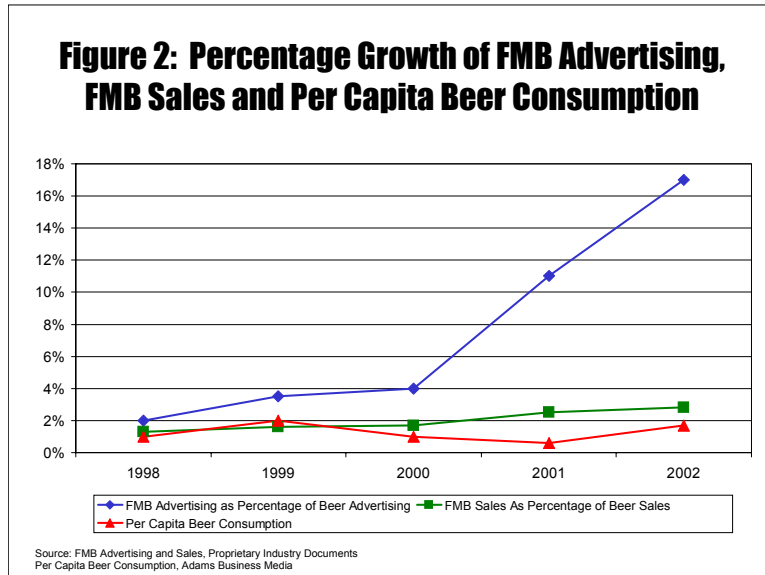
Further, industry-conducted research on consumers over the age of 21 who use FMBs shows that these consumers generally view the FMBs as substitutes for beer, although companies developed them in part to attract consumers who did not like beer’s taste (often women). The research indicates that adult FMB drinkers see the brands as appropriate for use on a wide variety of occasions where they consume alcohol. This research also concludes that consumers are not likely to consume more than two or three FMBs on any occasion because of the products’ sweetness.

To evaluate the success of FMB sales, the industry members rely on survey information about product awareness, trial, and repeat usage among consumers aged 21 to 27, and among older segments.<sup>24</sup> These data show that in 2002, FMBs had substantial sales to adults. Although consumers who are 21 to 27 are the largest single group of FMB users, the majority of FMB drinkers are over the age of 27:

21-27	41%
28-34	22%
35-49	26%
50+	11%

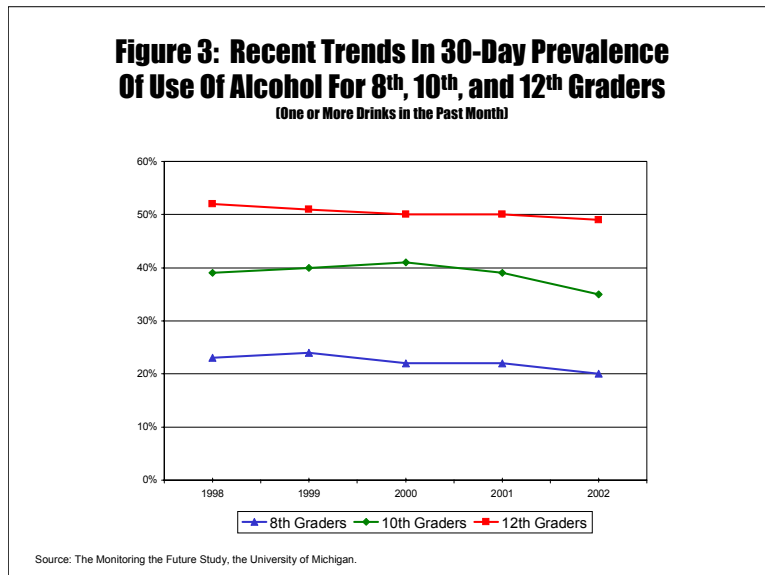
These data also show that users of FMBs are somewhat more likely to be female, a fact which industry attributes to the products' sweeter taste.

In summary, the documents provided by the companies indicate that marketing for FMBs is targeted to adults 21 and over; that companies measure product success in terms of use by adults; and that adults in fact use the products.



### 3. Effect of FMB Marketing on Minors

The Committees also directed the Commission to look at the impact on underage consumers of the expansion of marketing for FMBs. As noted in the 1999 Report, advertising campaigns targeted to 21-year-olds may also appeal to those under 21.<sup>25</sup> Thus, the companies' advertising for FMBs may have had a "spillover" effect on teens, and the products' sweeter tastes seem likely to appeal to teens. The company documents and other evidence available to the Commission did not provide information on the particular impact on minors of this expanded marketing. There also are no reliable survey data on the brands



that teens drink and thus there are no data on whether or how many teens drink FMBs, or the impact of FMB advertising on such drinking.<sup>26</sup> The available data show that, despite increases in FMB advertising, overall drinking by minors decreased between 2000 and 2002.<sup>27</sup> See Figures 2

and 3. In any event, given that many factors influence teen drinking, including individual, family, peer, and environmental factors, it is not clear that changes in drinking trends can be attributed to changes in advertising.<sup>28</sup>

## **D. Conclusion**

The Commission's investigation of the marketing, sale, and use of FMBs indicates that adults 21 to 29 appear to be the intended target of FMB marketing; that the products have established a niche in the adult market; and that FMB ads were placed in compliance with the industry's 50% placement standard. At the same time, the 50% placement standard in effect when these products were introduced permitted the ads to reach a substantial youth audience. Further, some themes attractive to new legal drinkers, as well as the products' sweet tastes, may also be attractive to minors. Although it is probable that some teens drink FMBs, teen drinking continued to decline during the period when these beverages were being aggressively marketed.

The Commission believes, nonetheless, that marketers should exercise strong caution when introducing new alcohol products, to ensure that they are not directed to an underage audience. Further, the Commission continues to recommend that labels for all beverage alcohol products, including FMBs, be required to disclose accurately the alcohol content by volume.<sup>29</sup>

## **III. The Status of Advertising Self-Regulation in the Alcohol Industry**

### **A. The Benefits of Self-Regulation**

Strong and visible self-regulation can play an important role in addressing underage drinking and beverage alcohol marketing concerns. Moreover, meaningful industry self-regulation can address a broad range of advertising issues without raising the constitutional issues that government regulation would pose.<sup>30</sup>

Each of the three major segments of the alcohol industry – beer, wine and spirits – has its own self-regulatory code: the Beer Institute Code, the Wine Institute Code, and the Distilled Spirits Council of the United States (DISCUS) Code.<sup>31</sup> These codes are followed by member

companies as well as non-member smaller organizations.<sup>32</sup> Additionally, many individual companies have codes or practices that go beyond the provisions of the industry codes.

The Commission's 1999 Report reviewed the self-regulatory codes of the alcohol industry and concluded that, although the industry members for the most part complied with their codes, improvements in standards and implementation were needed to reduce the likelihood that alcohol advertising would be directed to underage consumers. The Commission recommended that the alcohol industry improve enforcement mechanisms by adopting third-party review of code compliance; raise the standards for placing alcohol ads; and conduct post-placement audits to verify that ads complied with the new standards. The Commission also recommended that trade associations and industry members adopt and build upon the "best practices" followed by individual companies pertaining to ad content, product placement in media, online advertising, and ad monitoring.<sup>33</sup>

## **B. Current State of Industry Self-Regulation**

For this report, the Commission reviewed documents and interrogatory responses submitted by nine alcohol companies in response to FTC order. This section first reviews recommendations in the 1999 Report and then reviews particular industry efforts to implement those recommendations from September 1999 to the present.

### **1. Enforcement of Self-Regulatory Code Standards**

#### **a. Findings of 1999 Report Regarding Third-Party Review of Advertising Compliance**

The 1999 Report opined that self-regulation is most effective when the alcohol companies' internal mechanisms for fostering code compliance are supplemented by an external mechanism for resolution of disputes about whether a particular practice violates code standards.<sup>34</sup> Moreover, the 1999 Report noted shortcomings with the level of external review of compliance in the alcohol industry. The Beer Institute and Wine Institute forwarded complaints about member compliance to the individual companies but did not follow up to see how the company responded to the complaint. DISCUS had a Code Review Board that reviewed and took action on complaints about member performance, but the process was not made public.<sup>35</sup> As noted in

the 1999 Report, public notice regarding complaint resolution enhances the credibility of self-regulation and provides valuable information to consumers and other industry members.<sup>36</sup> Thus, the Commission recommended that the industry adopt a third-party review system, particularly to address complaints about underage appeal. The Commission recommended that a third-party review system (1) be impartial and objective; (2) be public; and (3) apply standards consistently.<sup>37</sup>

#### b. Third-Party Review After the 1999 Report

The Commission's review reveals modest steps to implement the Commission's recommendation. Some segments of the industry have taken steps to incorporate some form of third-party review in their compliance procedures. Others have not adopted third-party review, believing that it is unreasonably expensive or redundant of existing, internal, multi-level advertising review procedures.

The Commission's review also found that, currently, complaints that advertising appeals to youth are relatively infrequent: From 2001 to 2002, the nine companies that were the subject of the current inquiry received 14,829 complaints, of which 305 (approximately 2%) related to appeal to underage consumers.

##### *i. Review of Coors Brewing Company Advertising*

In the spring of 2002, Coors reached an agreement with the Dispute Resolution Division of the Council of Better Business Bureaus (BBB) to implement a third-party advertising review and complaint resolution program. The BBB program is called the Advertising Pledge Program (APP), and Coors is its first client. The BBB APP is designed to settle disputes involving a participating company's compliance with that company's voluntary advertising pledge concerning marketing or advertising practices. If the BBB APP finds that the company failed to comply with its pledge, then the BBB APP may recommend that the advertising or marketing materials that are the subject of the complaint be modified or discontinued. Final decisions of the BBB APP are publicly reported.

The BBB APP has issued final decisions in two cases involving Coors' ads. In the first case, it rejected an allegation that an advertisement for the FMB Zima featuring a nurse in a tight-

fitting uniform violated Coors' advertising pledge not to use symbols with primary appeal to those under 21. In the second case, it rejected an allegation that music in an ad for Coors beer was primarily popular with teens, as data showed that the artist was predominantly popular with older adults. Nevertheless, the BBB APP ruled that the ad's content, depicting extreme behavior, violated the Coors code commitment to not condone irresponsible behavior and excessive drinking.<sup>38</sup> Coors discontinued the ad.

## *ii. DISCUS Review Activities*

DISCUS has a five-member Review Board that considers complaints received about member advertising and marketing; it generally acts within two to four weeks of receiving a complaint. On occasion, it takes action although no complaint has been filed. Findings of the majority of the Review Board are communicated to the advertiser and, when appropriate, to all members of the DISCUS Board of Directors. Board findings are not made public, however. In 1999, the Commission commended DISCUS for having a system to review complaints about member compliance but noted concern that the process was not made public and questioned whether DISCUS, as an industry representative, was able to provide fully independent review.

Over the past three years, the DISCUS Code Review Board has considered 26 complaints about distilled spirits ads. It found that 19 of the ads were in violation of the DISCUS code. In every case involving a DISCUS member, and in approximately 40% of cases involving a company that is not a DISCUS member, the company advertiser voluntarily discontinued or revised the ad in response to the Board's input.<sup>39</sup>

Four of the complaints considered by the Board involved allegations that ads or promotions for distilled spirits products targeted underage consumers. In the first of the four cases, the Board concluded based upon relevant demographic evidence that the challenged practice did not violate the DISCUS code; in the remaining three cases, it recommended changes in marketing activities to address concerns of appeal to underage consumers.<sup>40</sup>

The Commission's review suggests the DISCUS Review Board's analysis of complaints over the past three years has been rigorous. Further, DISCUS has now determined to make its decisions public, on a semi-annual basis. It has also created an outside advisory board comprised of three persons with extensive expertise in alcohol advertising issues to provide input

on cases where the Code Review Board is unable to reach a majority decision and to provide advice to individual companies, when sought. Appendix E at E-11. These changes will add credibility to the process.

### *iii. New Approaches to External Review*

Although not implementing a system for third-party review of complaints, individual companies have engaged in other efforts to reduce the likelihood of noncompliance with self-regulatory codes. One company will use an outside panel to act as a sounding board for advertising and marketing ideas. The panel, consisting of at least three outside individuals chosen for their expertise in fields such as advertising, communications, marketing, broadcast media, societal norms, and government regulation, will meet three to four times a year to consider ad concepts, often before ads or promotions are created.<sup>41</sup>

Another company has announced plans to adopt a program to incorporate a third-party review system that includes a panel of outsiders who will review its efforts to comply with the company's internal advertising code.

### *iv. Conclusion*

The industry has made modest but important improvements in the area of external review of self-regulatory compliance since the 1999 Report. Coors and members of DISCUS use third-party review systems. Two other companies are in the process of adopting alternatives to third-party review. These alternatives represent an attempt to incorporate, into the advertising process, an outside analysis of code compliance. The Commission will continue to evaluate the effectiveness of these systems as they are implemented.

## 2. Advertising Placement

### a. Findings of 1999 Report

Each of the industry codes has provisions limiting the underage composition of the audience for ads. In 1999, they required that more than 50% of the audience for ads be over 21.<sup>42</sup>

The Commission's 1999 report criticized both this standard and the low level of effort to ensure compliance with it. The Commission noted that because only 30% of the U.S. population is under age 21, the 50% standard permits placement of ads on programs where the underage audience far exceeds its representation in the U.S. population. Moreover, only one-half of the reporting companies could show that nearly all of their ads were shown to a majority legal-age audience; one-quarter of the companies failed to obtain the demographic data needed to evaluate code compliance; and the data for the final one-quarter of companies showed weeks when a large portion of ads were shown to a majority underage audience.<sup>43</sup>

The 1999 Report identified several best practices in alcohol advertising placement that minimize underage exposure. Some companies supplemented ad placement policies with “no buy” lists; had higher standards for placing ads; or reviewed past placements to monitor whether compliance had occurred. The Commission endorsed these best practices and strongly recommended that more industry members raise the standards for placement and conduct periodic after-the-fact audits of placements to identify practices requiring modification.<sup>44</sup>

#### **b. Placement Standards After the 1999 Report**

In response to the 1999 Alcohol report, one major industry member adopted a higher placement standard (60 to 70%, depending on the medium), and another member that previously followed a 70% standard for a few brands applied it company-wide. Additionally, the Wine Institute amended its code to adopt a 70% placement standard.<sup>45</sup>

Nonetheless, from 2000 to the present, the prevailing standard for placement of ads has continued to be 50%, as set forth in the beer and spirits codes. Accordingly, for this report the Commission evaluated compliance with the 50% standard, as it pertained to the brands whose target included 21-year-old consumers.<sup>46</sup> This category includes many beer, wine, and distilled spirits products; FMBs are a subset of this category.

The new data show that alcohol companies have improved placement compliance considerably since issuance of the 1999 Report. The Commission's review showed that in 2002, for brands whose target included 21-year-old consumers, over 99% of dollars spent for television, radio, and print ads were expended in compliance with the 50% standard.<sup>47</sup> (Eight of

the nine companies to whom the Commission issued compulsory process orders disseminated ads for brands whose target included 21-year-olds in 2002.)

While this represents near-perfect compliance with code standards, as the Commission has previously noted, the 50% standard permits large numbers of underage consumers to be exposed to alcohol ads. As in the case with ads for FMB products, five companies complement the 50% standard with “no buy” lists of networks (such as UPN and MTV) and shows on which they would not permit alcohol ad placements, because of high teen interest.<sup>48</sup> Some companies also used higher placement standards to limit the likelihood that ads would appear on shows of this type.

#### c. Adoption of a New Standard

In response to concern regarding advertising placement, the Beer Institute and DISCUS have now modified their standards in important aspects. Specifically, the Beer Institute and DISCUS amended their codes in 2003 to require that adults over 21 constitute at least 70% of the audience for TV, magazine, and radio ads, based upon reliable data.<sup>49</sup> To facilitate compliance, the revised Beer Institute and DISCUS Codes require that members conduct periodic post-placement audits of a portion of placements and to promptly remedy any identified problems. The revised codes are attached as Appendices to this report.<sup>50</sup>

#### d. Conclusion

Adoption of a 70% placement standard for alcohol ads by all three of the industry trade associations represents a significant improvement in placement standards. The requirement to monitor compliance through periodic audits should help to ensure adherence to the standard. These steps represent positive responses to the 1999 Report’s recommendations and the Commission will monitor compliance with these revised provisions.<sup>51</sup>

### 3. Advertising Content

#### a. Findings of the 1999 Report

Some minors are present in nearly every advertising audience; thus, it is important that alcohol advertisers take steps to ensure that alcohol ad content not target youth. Each of the alcohol self-regulatory codes contains several provisions pertaining to the content of ads. With regard to minors, the codes require that ad content not appeal primarily to those under the legal drinking age. They also identify specific content that should be avoided, and in the case of the beer and spirits industries, require that actors in ads be at least 25 years old and appear to be over 21.<sup>52</sup> The 1999 Report recommended that companies target ads to persons 25 and older, or bar ads with substantial appeal to underage consumers, even if they also appeal to adults.<sup>53</sup>

#### b. Self-regulation of Advertising Content After the 1999 Report

Following issuance of the Commission's recommendation to avoid "overflow" appeal to minors by targeting brands to older consumers only, one company introduced a new brand and targeted it to consumers 25 and older. The introduction was not fully successful, a fact that company marketers attributed to the "handcuffs of [the] mature package" and a "25+ media plan [that] limited the initial appeal/ability to secure prime distribution." Accordingly, the company revamped its brand to include the "important 21-24 consumer in the target." Other companies have stated that because many alcohol consumers develop loyalty to alcohol brands by the age of 25, it is necessary to target legal drinkers ages 21 to 24 to ensure market share. As a result, companies are not likely to restrict their targeting of ads to those over the age of 25, except in the case of premium wine and spirits products.

As discussed in the section regarding FMB marketing, the industry documents indicate that alcohol industry members make efforts to target ad content to persons of legal drinking age and over.<sup>54</sup> They direct advertising concepts to a specific "target" category of consumers aged 21 and over, conduct consumer research on adults aged 21 and over to confirm appeal to that target, and measure success by data regarding trial, use, and repeat purchases by consumers of legal age. Further, information previously obtained from the companies during prior investigations has shown that if adult consumers participating in consumer research indicate that an ad conveys

the impression that the brand appeals to persons under the age of 21, the company will withdraw it.

Nonetheless, some advertising targeted to the youngest legal drinkers continues to risk appealing to minors. Companies targeting new legal drinkers should engage in continual efforts to avoid use of ad concepts with potentially strong appeal to underage consumers. Despite some conspicuous ad campaigns with juvenile themes, the documents submitted to the Commission reveal that legal, marketing, and other company staff review marketing efforts during both development and implementation with an eye to code provisions. They evidence a number of instances when content was rejected out of concern about particular appeal to children, and others when ad content was adjusted in an attempt to reduce the likelihood that an ad, once executed, would appeal strongly to minors.<sup>55</sup>

Companies also take steps to address problems identified after an ad is disseminated. Companies rely on consumer complaints to bring problems to their attention. For instance, the Commission's inquiry revealed an instance where, following receipt of complaints that an ad could be interpreted to condone public drinking and vandalism, the company pulled the ad. In another instance, when a complaint from a school alerted an alcohol company to the fact that a billboard operator had placed its ad adjacent to the school playground (contrary to the alcohol company's instructions), the company promptly removed its ad from the billboard.

As noted above, external review processes are also designed to address advertising concerns. The BBB APP and the DISCUS Code Review Board identify concepts that may appeal to youth, and persuade companies to pull problematic ads.

### c. Conclusion

Alcohol company documents provided to the Commission indicate that industry members have policies prohibiting content that targets teens as well as implementation procedures designed to give meaning to these policies. They also suggest that external review procedures can be important if internal procedures fail. Coors, through the BBB, and the distilled spirits companies, through DISCUS, have forms of external review that can serve as an important back-up system to internal review. Accordingly, the Commission continues to recommend that all alcohol companies adopt some form of a formal external review process.

#### 4. Other Marketing Efforts

In addition to content and placement policies, many companies follow policies addressing specific contexts where their product may be advertised, such as through product placements in movies and television, on the Internet, and advertising directed to college students.

##### a. Product Placement

Product placement refers to the practice of providing alcohol products, logoed items, or signage, to a program or film producer for possible prop use. In the 1999 Report, the Commission recommended that product placements be limited to movies rated “R” or having mature themes, and that placements not be made in films and programs where an underage person is a primary character. The Commission also cited as a best practice a company policy that prohibited advertising during shows dealing strictly with college life.<sup>56</sup>

The documents submitted by the companies indicate that the companies generally follow such best practices. In 2002, the companies appeared to restrict alcohol product placements to movies and television shows with mature themes or “R” ratings. They also avoided movies with themes that could particularly appeal to underage consumers such as any “coming of age” movies or those that primarily feature an underage character, and rejected requests to place their products in movies that displayed irresponsible drinking, drunk driving, or college drinking scenes. The revised Beer Institute Code contains a specific provision regarding product placements. It prohibits placements in films depicting underage drinking; irresponsible consumption in connection with driving; as well as placement in films that are particularly attractive to children or have underage primary characters.

##### b. Internet Advertising

The 1999 Report, noting the significant presence of children on the Internet, urged improved efforts to restrict underage access to alcohol company web sites. It recommended that companies avoid Internet content that would be particularly attractive to underage consumers and urged sites to carry messages about responsible drinking. It identified, as a best practice, use of systems to limit access to the sites to users that state that they are over the age of 21.<sup>57</sup>

The nine alcohol companies that were the subject of this inquiry operate more than 80 web sites to promote their brands. The Commission staff reviewed the companies' sites for consistency with the 1999 Report's recommendations. With some exceptions, the content of the web sites is mild. A typical site contains a description of the brand's history and the location where it is produced, depictions of the packaging, beverage-compatible food recipes and serving tips, and an opportunity to shop online for logoed merchandise (*e.g.*, golf shirts, patio umbrellas, and glassware). Some of the sites offer an opportunity to sign up for e-mail messages that contain similar text. Approximately a dozen of the sites have interactive features, such as the opportunity to play a game like dominoes or to click on images of men and women in a cocktail lounge to see what they are saying. These features are presented in a slow-paced, low-key manner; their appeal to today's youth is uncertain. Four of the sites feature more alluring content, *e.g.*, photos of scantily clad models on a beach. Over 90% of the sites feature references to the fact that alcohol is for persons of legal age or contain other responsibility messages.

The Commission also reviewed the sites for response to the Commission's 1999 recommendation to attempt to limit access to users stating they are over the age of 21. All of the brewers' sites and most of the vintners' sites had responded to the recommendation, and featured such a system. Most of the distillers' sites instead required that visitors click on a box stating that they are of legal age before entering the site; however, DISCUS has now modified its code to require use of an age verification mechanism which could consist of requiring visitors to enter a birth date over the age of 21 in order to enter an alcohol advertising site. Three companies provided data showing that between 30% and 70% of consumers exit a site rather than entering their date of birth. It is not known whether this is because they are underage, wish to avoid the inconvenience, or are concerned about privacy. In some cases, if a consumer enters his age and is rejected for being underage, the consumer is automatically sent to a web site promoting responsible drinking practices (such as the Century Council site) or to a site for a non-alcohol product.<sup>58</sup>

In addition to sponsoring branded web sites, some companies place banner ads on web sites operated by others. The documents obtained from two companies that engaged in this practice in 2002 show that such ads are placed on sites shown by reliable data to have adult audiences that

equaled or exceeded 75% (such as NHL.com and Maxim.com) or even 85% (such as Ticketmaster.com and ESPN.com).

Alcohol web sites are different from other alcohol advertising because consumers must seek them out – unlike television or print ads, their content does not appear unsolicited. Further, when the Commission last reviewed this issue, there were no technologies that permitted advertisers to limit site entry to those who could be determined to be of legal age. As a result, the Commission urged alcohol advertisers to limit entry to alcohol web sites to those who entered a date of birth showing that they were 21 or older. The Commission recognizes that some consumers may indicate an inaccurate date of birth. So long as web site content is not likely to appeal to minors, however, the requirement to enter date of birth may be sufficient, as the alternative is to require site visitors to provide sufficient personal information to permit verification of their adult status. The Commission thus continues to urge all industry members to avoid web site content that appeals to minors.

Operators of web sites that feature content likely to have strong appeal to minors, or that permit consumers to order alcohol online, should consider use of age verification technologies. These technologies require the consumer to enter personal identifying information (such as a name and driver's license number); they immediately compare this data to publicly available information in government databases and then limit site access to those consumers demonstrated to be over a specific age (such as 21).<sup>59</sup>

### c. Advertising to College Students

In the 1999 Report, the Commission identified advertising to college students as a source of concern, given the presence of a significant underage audience and the high incidence of abusive college drinking. It cited, as a best practice, restrictions on campus alcohol beverage advertising and raised concerns about ads in campus newspapers placed by off-campus bars that appeared to promote irresponsible drinking.

A substantial minority of college students – approximately 42.5% – are below the legal drinking age, and a 2002 report sponsored by the National Institute on Alcohol Abuse and Alcoholism discussed in depth the issues associated with college drinking and identified potential prevention measures.<sup>60</sup> As of 2003, the Wine Institute and DISCUS codes continue to

prohibit advertising in college newspapers and prohibit marketing activities on campuses, except (in the case of the DISCUS Code) at licensed retail establishments. The Beer Institute Code continues to permit members to sponsor on-campus sports events, but only with the approval of the college and (in the case of public events) where most of the audience is reasonably expected to be 21 or over. The Revised Beer Institute Code also specifies that promotions on college campuses should not portray consumption of beer as being important to education; shall not degrade studying; and shall not encourage irresponsible, excessive, underage, or otherwise illegal alcohol consumption.

With regard to ads local alcohol retailers place in college campus media, most companies now direct the parties engaged in selling their product, including distributors, wholesalers, and sales and marketing personnel to comply with their college marketing policies. The Commission is not aware of any indications of non-compliance with these policies.

With regard to activities specifically targeted to U.S. students at “spring break” locations, whether here or abroad, the alcohol companies surveyed by the Commission now universally limit such promotions to licensed retail locations such as bars and restaurants.<sup>61</sup> A few of the companies stated that when sponsoring on-premise promotions, they take extra steps to prevent underage consumption by having extra security to check identification.<sup>62</sup>

#### d. Direct Shipment of Alcohol to Consumers

Alcohol is typically purchased at a retail outlet or an “on-premise” location. This is consistent with the three-tier system, established after Prohibition and enforced under state laws, which generally requires that alcohol manufacturers sell to retailers and wholesalers, who in turn sell to retailers, and who in turn sell to consumers. Through this system, consumers can obtain the most popular brands of beer, wine, and spirits.

Nevertheless, consumers sometimes seek other avenues to purchase beverage alcohol. They may order alcohol through consumer clubs or from vintners’ web sites.<sup>63</sup> In a recent staff report, the Commission’s staff concluded that state laws banning direct shipment of wine to consumers reduced consumer choice and raised prices. It noted that states that permit interstate direct shipping generally report few or no problems with shipment to minors, with some states applying safeguards to online sales, such as requirements that package delivery companies obtain an adult

signature at the time of delivery, and others developing penalty and enforcement systems to provide incentives for compliance with prohibitions on sales to minors.<sup>64</sup>

Direct shipment remains a very minor part of the alcohol supply system. In the case of wine, an industry expert estimates that at least 90% of wine is sold through the traditional three-tier channels.<sup>65</sup> Data show that over 99.9% of the malt beverages sold in the U.S. is shipped from breweries to beer wholesalers or sold to consumers in brewpubs or tasting rooms at breweries.<sup>66</sup> Similarly, because the vast majority of spirits brands are available through local retail outlets, there has been little demand for direct shipping.<sup>67</sup> The web sites operated by the companies that were the subject of this inquiry do not, except in the case of wine sites, provide for sale of alcohol to consumers. As set forth in the Commission's Wine Report, there is little evidence that teens seek to obtain alcohol through direct shipment. Nonetheless, it is important that direct shippers remain vigilant and that they use tools, such as adult signature requirements and online age verification technologies, to prevent online alcohol sales from being a means of teen access.

#### e. Conclusion

Beverage alcohol is promoted in a myriad of ways. The Commission's review shows that industry members generally consider self-regulatory provisions when engaging in marketing efforts for beverage alcohol. Additionally, the industry trade associations continue to revise self-regulatory guidelines to address changes in marketing methods. The Commission encourages continued attention to these issues and will monitor implementation.

### 5. Consumer Education by Industry

Although precise figures are not available, it appears that on average the beverage alcohol industry spends more than \$50 million annually to sponsor public service activities to combat alcohol abuse and to reduce underage drinking and attendant injury.<sup>68</sup> Some of these programs are sponsored directly by individual alcohol companies; others are sponsored by industry organizations such as the Century Council, the Beer Institute, the National Beer Wholesalers Association, and the Brewers' Association of America. Materials are widely available free of charge and often in different languages.

The alcohol industry's public service efforts include a number of programs and resources aimed at reducing the harm associated with underage and abusive drinking, and to assist enforcement of the legal drinking age and drunk driving laws. They include:

- programs for parents and other adults, to facilitate conversations with children about alcohol issues;<sup>69</sup>
- programs for underage persons, intended to educate adolescents and young adults about the importance of the legal age requirement, responsible drinking, and risks of abuse;<sup>70</sup>
- programs for college administrators, designed to provide guidance to colleges about effective programs to reduce alcohol abuse on college campuses;<sup>71</sup> and
- programs for alcohol beverage retailers and servers, designed to promote enforcement of laws prohibiting sale to minors and to prevent serving underage and intoxicated persons.<sup>72</sup>

These programs are generally developed by professionals in the fields of education, medicine, or alcohol abuse. Many are undertaken in partnership with community organizations, educational groups, law enforcement officials, and the public health community. These programs follow approaches recommended by alcohol research. For example, research shows that parental monitoring protects against alcohol use;<sup>73</sup> industry programs designed to facilitate parent-child communications about alcohol use are intended to promote such monitoring. Research also shows that adolescents and young adults overestimate social norms, that is, peer approval and use of alcohol; these erroneous beliefs are correlated with alcohol use and abuse.<sup>74</sup> Although more study is needed, some studies have shown that well-implemented programs to correct erroneous views of social norms can have a positive effect.<sup>75</sup> Finally, efforts to facilitate enforcement of the legal drinking age are shown to reduce underage alcohol use.<sup>76</sup>

Although more rigorous research regarding the effectiveness of specific programs is needed, the industry's consumer education programs have the potential to help address issues of underage alcohol use. The Commission encourages industry members to maintain links on their web sites to these programs and their materials, to facilitate access to this information.

## **IV. Conclusions and Recommendations**

### **A. Marketing of Flavored Malt Beverages**

The Commission's investigation found no evidence of targeting underage consumers in the marketing of FMBs. Adults 21 to 29 appear to be the intended target of FMB marketing and the products are popular among adults, including those over 27. FMB ads were placed in compliance with the industry's 50% placement standard.

The 50% placement standard in effect at the time these products were introduced permitted the ads to reach a substantial youth audience, however, and ad content that appeals to new legal drinkers, as well as the sweet taste of FMBs, may be attractive to minors. Although there is no information to show the extent to which teens drink these beverages, the Commission believes that marketers should exercise significant caution when introducing new alcohol products, to ensure that they are not marketed to an underage audience.

### **B. Industry Self-Regulation Programs**

Self-regulation practices in the alcohol industry have shown improvement since issuance of the 1999 Report. With regard to external review of code compliance, in 1999 only the DISCUS Code Review Board provided external review of company compliance with self-regulatory guidelines; there was insufficient evidence, however, whether the Code Review Board's program was conducted in a critical and independent fashion, and the Commission criticized the proceedings for being nonpublic. The present review suggests that the DISCUS Code Review Board proceedings do provide an important review of spirits industry compliance with the DISCUS Code; further, DISCUS has now committed to publicize its findings semi-annually and has created an outside advisory group to provide input on certain cases. Additionally, Coors now participates in a third-party review program run by the BBB, and two other companies are adopting alternative mechanisms to obtain external input regarding their compliance with self-regulatory standards.

The largest improvements have occurred in the area of ad placement. In 1999, only half of the companies surveyed were able to demonstrate compliance with placement standards. In 2002, all of the companies achieved 99% compliance with the 50% standard. More important,

the industry now has committed to adhere to a 70% placement standard and to implement post-placement audits.

Additionally, the industry documents show increased attention to the issue of ad content. This area is particularly sensitive, given that minors are present in nearly every context where ads are disseminated. The company documents show many examples of ad concepts being rejected or modified to reduce the likelihood of appeal to minors. Still, a visible minority of beer ads feature concepts that risk appealing to those under 21.

Since the issuance of the 1999 report, the companies also have made improvements in practices relating to product placement, Internet advertising, and marketing on college campuses. Most importantly, the companies that were the subject of this report have ceased sponsoring spring break activities outside of licensed retail establishments.

Though self-regulatory compliance is substantially improved, concerns remain that unless care is taken, alcohol ads targeted to young legal drinkers also may appeal to those under the legal age. Nonetheless, because of significant constitutional issues, the Commission continues to recommend enhanced self-regulation to address concerns about alcohol advertising's appeal to minors.

### **C. Recommendations**

While advertising self-regulation is designed to prevent advertising and marketing practices that target underage consumers and reduce the number of ads seen by minors, a comprehensive alcohol policy also must address the means by which teens actually obtain alcohol for consumption. Research indicates that younger minors obtain alcohol primarily from noncommercial sources such as friends, parents, and other adults. For example, in one survey, 32% of 6th graders, 56% of 9th graders, and 60% of 12th graders reported obtaining alcohol at parties.<sup>77</sup> Social availability of alcohol to teens through parents, friends, and strangers can be addressed only by changing adult attitudes about teen use. Institutions focusing on alcohol issues may wish to consider development of additional programs targeted to adults. For example, wider awareness of the success of the legal drinking age in reducing underage drinking and related injury could influence some adults who provide alcohol to minors.

Second, changes are needed to reduce underage alcohol purchases from commercial outlets. Minimum age purchase laws are implemented by staff at local retail outlets and enforced by law enforcement agencies with limited resources and significant competing responsibilities. Older minors too often are able to obtain alcohol from commercial sources, such as retail stores or bars, although access to alcohol from commercial sources is less likely in states with better enforcement of legal drinking age laws.<sup>78</sup> During this past year, the many stakeholders in the alcohol control process – including state alcohol control agencies; state law enforcement officials; representatives of major retail outlets; and alcohol producers, wholesalers, and distributors – organized under the aegis of the Responsible Retailing Forum (RRF) to evaluate what changes are needed to reduce minors’ ability to purchase alcohol in retail outlets.<sup>79</sup> Support is needed for the efforts of organizations, like RRF, that can conduct rigorous field studies of the efficacy of alternative approaches to improving enforcement of minimum age purchase laws.

The Commission’s review of alcohol industry self-regulation reveals a substantial response to the recommendations contained in the 1999 Report. All industry members need to be active in preventing advertising or marketing that may support or encourage underage alcohol use. Although more could be done to reduce underage exposure to alcohol marketing, increased attention to preventing teen access to alcohol, whether through social or commercial channels, also is needed to address this important issue.

The Commission will continue to monitor alcohol industry self-regulation. In particular, the Commission will monitor the new placement standard requiring that adults constitute 70% of the audience for advertising. Additionally, the Commission will monitor the effectiveness of third-party and other external review programs and will continue to evaluate new advertising programs that may have undue appeal to underage consumers.

## Endnotes

1. The Conferees direct the Commission to study the impact on underage consumers of the significant expansion of new ads for liquor-branded "alcopops" and report the Commission's finding to the Committee within six months of enactment of this Act. The Conferees are also concerned that the alcoholic beverage industry has not implemented all of the recommendations of the 1999 Commission report, 'Self Regulation and the Alcohol Industry,' and that only one industry member has taken action to provide for independent review of complaints about its advertising. The Conferees urge the Commission to encourage the industry to adopt stricter advertising placement standards as well as establish an independent third-party review mechanism to limit the appeal and exposure of alcohol advertising to underage consumers and report back to the Committees on Appropriations no later than six months from enactment of this bill on the status of the implementation of these recommendations and whether further rule-making by the Commission is required.

Consolidated Appropriations Resolution, 2003, Pub. L. No. 108-7, Div. B., Title II (House Subcommittee on Appropriations).

2. *Id.*; see *Self-Regulation in the Alcohol Industry, A Report to Congress From the Federal Trade Commission* (Sept. 1999) [hereinafter "1999 Report"].
3. L.D. JOHNSTON *ET AL.*, NAT'L INST. ON DRUG ABUSE, MONITORING THE FUTURE STUDY, tbls. 2 and 6 (2002), <http://monitoringthefuture.org/data/02data/pr02t2.pdf> and <http://monitoringthefuture.org/data/02data/pr02t6.pdf> (accessed 6/23/03). Nationwide data regarding alcohol consumption by 8<sup>th</sup> and 10<sup>th</sup> graders was first collected in 1991.
4. L.D. JOHNSTON *ET AL.*, NAT'L INST. ON DRUG ABUSE, MONITORING THE FUTURE, NATIONAL RESULTS ON ADOLESCENT DRUG USE: OVERVIEW OF KEY FINDINGS, 2002, NIH PUB. NO. 02-5374 at 47 (2003) [hereinafter MTF 2002]. In 2002, 12.4% of 8<sup>th</sup> graders, 22.4% of 10<sup>th</sup> graders, and 28.6% of 12<sup>th</sup> graders reported consuming five or more drinks in a row in the previous two weeks. *Id.* at 48.
5. *Id.* Also in 2002, 6.7% of 8<sup>th</sup> graders, 18.3% of 10<sup>th</sup> graders, and 30.3% of 12<sup>th</sup> graders reported being drunk in the last 30 days. *Id.* at 47. Binge drinking rates increase until the age of 22, decrease slowly until the age of thirty, and then stabilize at about 25%. For example, Monitoring the Future data show that in 2001, binge drinking was engaged in by 29.7% of 18-year-olds, 36.3% of 19-20-year-olds, 42.4% of 21-22-year-olds, 38.2% of 23-24-year-olds, 33.7% of 25-26-year-olds, 29.2% of 27-28-year-olds, and 27.3% of 29-30-year-olds. Binge drinking by 35- and 40-year-olds is approximately 25%. L.D. JOHNSTON *ET AL.*, NAT'L INST. ON DRUG ABUSE, MONITORING THE FUTURE, NATIONAL SURVEY RESULTS ON DRUG USE, 1975-2001, VOLUME II COLLEGE STUDENTS & ADULTS AGES 19-40, 2001, NIH PUB. NO. 02-5107 at 152 (2002).

6. NAT'L INST. ON ALCOHOL ABUSE & ALCOHOLISM ("NIAAA"), ALCOHOL ALERT NO. 59, UNDERAGE DRINKING: A MAJOR PUBLIC HEALTH CHALLENGE (Apr. 2003), at <http://www.niaaa.nih.gov/publications/aa59.htm>.
7. Healthy People 2010, a nationwide health agenda formulated by federal and state, public and private health experts, includes several goals related to adolescent alcohol abuse. It seeks to increase the age and proportion of adolescents who remain alcohol and drug free; to increase the proportion of adolescents not using alcohol or any illicit drugs during the past 30 days; and to reduce students engaging in binge drinking during the past two weeks. DEP'T OF HEALTH & HUMAN SERV., NAT'L INST. OF HEALTH & SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN., Focus Area 26, HEALTHY PEOPLE 2010 SUBSTANCE ABUSE (Vol. 2: Nov. 2000), at <http://www.healthypeople.gov/Document/HTML/volume2/26Substance.htm> (accessed 6/23/03).
8. The Commission received information in response to orders for compulsory process issued to Anheuser Busch, Inc., Miller Brewing Company, Inc., Coors Brewing Company, Inc., Allied-Domecq PLC, Diageo PLC, Brown-Forman Corporation, E & J Gallo Winery, Mark Anthony Group, and Jim Beam Company. Together, these companies are responsible for an estimated 70% of alcohol sales and 70% of alcohol advertising. Material obtained from industry members that may constitute confidential commercial or financial information under relevant statutes is set forth in an aggregate or anonymous fashion. *See* 15 U.S.C. §§ 46(f), 57b-2 (2002).
9. The staff also received important information from a wide variety of sources, including but not limited to the Center for Science in the Public Interest; Center on Alcohol Marketing and Youth (CAMY); Mothers Against Drunk Driving; Joel W. Grube, Ph.D, Director and Senior Research Scientist of the Prevention Research Center; Thomas Babor, Ph.D, Department Chair of Community Medicine, University of Connecticut Health Center; Governors Highway Safety Association; American Medical Association; Ted R. Miller, Ph.D, Principal Research Scientist, Pacific Institute for Research and Evaluation; Magazine Publishers of America; National Alcohol Beverage Control Association; Responsible Retailing Forum; Heineken Brewing Company; Constellation Brands, Inc.; Bacardi & Company, Ltd.; Boston Beer Company; National Beer Wholesalers Association; Beer Institute; Wine Institute; Distilled Spirits Council of the United States; and the Century Council. Government agencies consulted by the Commission staff include the Alcohol and Tobacco Tax and Trade Bureau of the U.S. Department of Treasury and the National Institute of Alcohol Abuse and Alcoholism of the U.S. Department of Health and Human Services. Additionally, the Commission staff conducted a review of relevant literature.
10. These products include Mike's Hard Lemonade, Rick's Spiked Lemonade, and Doc Otis Hard Lemon.
11. Products in this category include Smirnoff Ice, Bacardi Silver, Sauza Diablo, Stoli Citrona, Skyy Blue, and Tequila.

12. Products in this category include Jack Daniels Country Cocktails.
13. Newly introduced products are typically advertised more heavily than established ones, as are products whose customers are constantly changing. *E.g.*, The Concise Encyclopedia of Economics, Advertising, available at <http://www.econlib.org/library/Enc/Advertising.html> (accessed 6/22/03).
14. Information derived from confidential industry documents.
15. Information derived from confidential industry documents.
16. *Beer Handbook*, ADAMS BUSINESS MEDIA at 170 (2002); industry documents discuss the fact that FMB purchases are “sourced” from consumers who previously bought other kinds of beer or spirits. Overall alcohol consumption (including beer, wine, and spirits) increased by 1.5% per capita between 1996 and 2001, the last year for which such data is available. *Liquor Handbook*, ADAMS BUSINESS MEDIA at 284 (2003).
17. Letter from CSPI, to Robert Pitofsky, former Chairman of the FTC (May 9, 2001) (setting forth CSPI’s allegations that the formulation, labeling, packaging, and marketing of the new malt beverages target an audience of teenage consumers), available at [http://www.cspinet.org/booze/alcopops\\_ftcletter.htm](http://www.cspinet.org/booze/alcopops_ftcletter.htm) (accessed 7/30/03).
18. Under the three-tiered alcohol sales system established after Prohibition, alcohol companies do not deal directly with retailers. Instead, they sell alcohol to distributors, who in turn sell to the retailers. Alcohol manufacturers provide distributors with a range of marketing support, including recommendations for retail shelf placement to maximize product sales.
19. Most important, the format of questions posed to adults and teens differed in a manner that was likely to influence the results. In the course of asking questions about familiarity and use, the survey company asked teens “aided recall” questions, while adults were asked “unaided recall” questions. Commission case law and federal trial manuals indicate that comparison of results using these two different techniques is inappropriate because the aided recall format will generate higher response rates than the unaided recall format. *E.g.*, *Stouffer Foods Corp.*, 118 F.T.C. 746 (1994) (unaided recall questions showed 43 to 60% recall of message; aided recall question elicited 78 to 83% recall). Other questions posed to teens were phrased differently than the questions posed to adults, so that the answers were not comparable. Adults were asked if they had seen, read, or heard ads for “newer alcoholic drinks like hard lemonades and hard ciders.” Teens were asked if they had seen, read, or heard ads for “newer drinks that contain alcohol *and are sweeter than beers*, like hard lemonade, hard cider, *premixed cocktails, or wine coolers*” (emphasis added). Given that the question posed of teens asked about a more well-defined and broader category of beverages, it was likely to generate higher response rates. Thus, the survey does not provide a basis for CSPI’s conclusions about the difference between adult and teen familiarity with and use of FMBs.

The investigation closing letter is available at:  
<http://www.ftc.gov/os/closings/staff/cpsiresponse.htm> (accessed 7/30/03).

20. Miller Brewing Company has marketed Sauza Diablo and Stolichnaya Citrona (in conjunction with Allied Domecq, PLC), Skyy Blue (in conjunction with Skyy Vodka, Inc.), and Jack Daniels Hard Cola (in conjunction with Brown-Forman Corporation); Anheuser Busch, Inc. markets Bacardi Silver, Doc Otis Hard Lemon, and Tequila; Brown-Forman Corporation markets Jack Daniels Hard Cola and Jack Daniels Country Cocktails; Coors Brewing Company, Inc. has marketed Zima and Vibe; Diageo PLC has marketed Smirnoff Ice and Captain Morgan Gold; E & J Gallo Winery markets Bartles & Jaymes; Jim Beam Company markets Jim Beam Classic Cocktails; Mark Anthony Group markets Mike's Hard Lemonade, Mike's Hard Cranberry Lemonade, and Mike's Hard Ice Tea.
21. See Section III(B), *supra*.
22. Some FMB ads contain language designed to communicate that the products are for consumers over 21. One company conducted research on this aspect of the ads, and found that consumers notice and recall this information.
23. Participation is limited to persons who currently drink alcohol (generally, they must have consumed at least one alcohol beverage within the past week; for some surveys, they must drink the brand at issue or related brands). Questions asked include whether the ad indicates that the product is "for people like [you]"; "for [people] 21-27" or one that the consumer would "be comfortable ordering in a bar or club."
24. The companies do not collect data on whether persons under 21 use their products.
25. 1999 Report at 11.
26. Any study of teen brand selection would be very costly, and current data regarding teen alcohol brand choice would be of limited use without an earlier baseline against which comparisons could be made.
27. These unpublished data were provided at the FTC's request by the Monitoring the Future Study, the University of Michigan. Other studies corroborate this finding. See PARTNERSHIP FOR A DRUG-FREE AMERICA, PARTNERSHIP ATTITUDE TRACKING STUDY, TEENS 2002, [http://www.drugfreeamerica.org/acrobat/pats\\_2002.pdf](http://www.drugfreeamerica.org/acrobat/pats_2002.pdf) (showing declines in alcohol use by teens between 2000 and 2002); PRIDE SURVEYS, Pride Questionnaire Report, 2001-02 National Summary, Grades 6-12, at 2 (2002) (showing declines in beer consumption by students in each grade level between 2000-2001 survey and 2001-2002 survey).
28. Researchers have devoted substantial effort to eliciting the diverse and complex factors that contribute to and protect against adolescent alcohol use and adult alcohol abuse. Individual genetic and biologic factors contribute to alcoholism and early initiation of alcohol use. NIAAA, 10<sup>TH</sup> SPECIAL REPORT TO THE U.S. CONGRESS ON ALCOHOL AND HEALTH 169-70 (2000) [hereinafter 10<sup>TH</sup> SPECIAL REPORT]; M. McGue *et al.*, *Origins and Consequences of*

*Age at First Drink*, 25(8) ALCOHOL CLIN. EX. RES. 1166, 1166-67 (2001), available at <http://www.ncbi.nlm.nih.gov/entrez/query.fcgi>. Family and peer influences are critical. Parental drinking influences drinking decisions by young adolescents, while peer influences play an increasing role in decisions by older adolescents. *E.g.*, S.L. Ellickson *et al.*, *Prospective Risk Factors for Alcohol Misuse in Late Adolescence*, 62(6) J. STUD. ON ALCOHOL 773 (2001), available at <http://www.ncbi.nlm.nih.gov/entrez/query.fcgi>. Aspects of parenting, including parental support, monitoring of activity by parents, and positive adolescent-parent communication, appear to play a strong protective role, whether or not there is a family history of alcoholism. *Infra* 10<sup>TH</sup> SPECIAL REPORT at 181-86 (factors influencing adolescent use in families with a history of alcoholism); A.W. Mason, M. Windle, *Family, Religious, School and Peer Influences on Adolescent Alcohol Use: A Longitudinal Study*, 62 J. STUD. ON ALCOHOL 1 (2001), available at <http://www.ncbi.nlm.nih.gov/entree/query.fcgi> (factors influencing adolescent alcohol use generally). A wide range of environmental factors, including legal and cultural standards, also play very important roles. NIAAA, NINTH SPECIAL REPORT TO THE U.S. CONGRESS ON ALCOHOL AND HEALTH 51 (1997).

29. There have been complaints that the names and packaging of spirits-branded FMBs imply that they contain spirits. Consumer research confirms that some but not all consumers believe that FMBs contain spirits. To the extent that the flavors and a portion of the alcohol in spirits-branded FMBs derive in part from distilled spirits, consumers with this understanding are unlikely to be deceived. Nonetheless, improved labeling of FMBs is worthy of consideration. Currently, marketers of FMBs are prohibited from indicating affirmatively that their products contain flavors derived from spirits, and are not required to disclose alcohol content or ingredients. The U.S. Treasury's Alcohol and Tobacco Tax and Trade Bureau is considering issues related to the content and labeling of FMBs. 68 Fed. Reg. 14,292 (proposed March 24, 2003) (to be codified at 27 C.F.R. pts. 7, 25).
30. The Supreme Court has struck down regulatory restrictions on truthful, non-misleading commercial speech in recent cases involving marketing of alcohol, tobacco, and gambling. In *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 501-07 (1998), the Supreme Court stated that while alcohol regulation serves a substantial government interest, any such regulations must be narrowly tailored to serve that interest. Subsequently, in *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 (2001), the Supreme Court struck down Massachusetts regulations of tobacco advertising that included a prohibition on placing outdoor tobacco advertising within 1,000 feet of a school, as well as a provision that tobacco advertising could not be placed lower than five feet from the floor of any retail establishment within 1,000 feet of a school. 533 U.S. at 534-36. The Court explained:

The State's interest in preventing underage tobacco use is substantial, and even compelling, but it is no less true that the sale and use of tobacco products by adults is a legal activity. We must consider that tobacco retailers and manufacturers have an interest in conveying truthful information about tobacco products. In a case involving indecent speech on the Internet we explained that 'the governmental interest in protecting children

from harmful materials does not justify an unnecessarily broad suppression of speech addressed to adults.’

533 U.S. at 564 (citing *Reno v. American Civil Liberties Union*, 521 U.S. 844, 875 (1997) (striking down portions of the Communications Decency Act, prohibiting transmission of obscene or indecent telecommunications to persons under 18). *See also Greater New Orleans Broadcasting Assoc. v. United States*, 527 U.S. 173 (1999) (striking down FCC regulation prohibiting broadcast advertising of lawful private casino gambling); *44 Liquormart, Inc.*, 517 U.S. at 489 (striking down state ban on alcohol price advertising); *Rubin v. Coors*, 514 U.S. 476 (1995) (striking down a ban on accurate alcohol by volume label disclosures for beer); *Utah Licensed Beverage Assoc. v. Leavitt*, 256 F.3d 1061 (10<sup>th</sup> Cir. 2001) (finding that state restrictions on wine and spirits advertising did not pass First Amendment muster because they failed to directly and materially advance the state’s substantial interests in temperance and operation of public businesses).

31. These Codes are attached as Appendices A, B, and C to this Report.
32. For instance, the Brewer's Association of America (BAA), representing small brewers, has adopted the Beer Institute Code. Wine America, the New York Wine and Grape Foundation, the Washington Wine Institute, and the Family Winemakers of California have adopted the Wine Institute Code.
33. *See* 1999 Report, at 16-17. Although some parties initially expressed concerns that such self-regulatory efforts might violate antitrust statutes, that concern is unfounded. Antitrust statutes prohibit collusive conduct that unreasonably restricts competition and harms consumers, but they permit reasonable self-regulatory efforts designed to prevent alcohol advertising from being targeted to underage consumers. *See id.* at 16 & App. H.
34. *Id.* at 14-15.
35. *Id.* at 15.
36. *Id.* at 3.
37. *Id.* at 14-16. As an example of effective third-party review, the Commission cited the operations of the National Advertising Division (NAD) of the Council of Better Business Bureaus, Inc. Since 1971, NAD has expeditiously investigated complaints about the truthfulness of advertising made by consumers or competitors. NAD handles several hundred cases per year, and in virtually all cases where it concludes that advertising is misleading, the advertiser discontinues or modifies its ad voluntarily. NAD decisions are publicly reported in the NAD Case Reports, issued ten times per year. Press releases and other information regarding the NAD self-regulatory system, including the appeals process and operations of the Children’s Advertising Review Unit, are available at <http://www.nadreview.org>.

38. The BBB APP's final decisions are available on the Better Business Bureau's web site at <http://www.bbb.org/app>.
39. The DISCUS Code Review Board sometimes reviews advertisements for consistency with its Code even without a complaint being lodged.
40. The first complaint alleged that a distilled spirits banner advertisement improperly appeared on the United States Ski and Snowboard Association's (USSA) web site. As demographics data for the web site showed that 65% of the viewers were of legal age, the DISCUS Code Review Board found that the ad did not violate the DISCUS Code.

A second complaint regarding a similar issue alleged that an alcohol company was sponsoring a USSA event attended by minors. The advertiser determined that it had been misled about the demographics of the event and committed to sponsor it again only if all contestants were over 21 and the audience consisted primarily of adults over 21.

In a third instance, the Code Review Board alerted an advertiser that web site materials for a liqueur contained language (apparently intended for potential distributors) claiming that the product marketing materials would appeal to "all age groups." The Code Review Board noted that this language was inconsistent with DISCUS Code provisions providing that spirits beverages were for adults only. The advertiser deleted the offending language and added notices to its web site telling visitors that the liqueur was for consumers of legal drinking age.

Finally, DISCUS addressed a complaint about container design. The packaging for an alcohol product resembled a pudding "snack pack"; once the lid was removed, there was nothing on the package that identified it as containing beverage alcohol. Following communications with DISCUS, the manufacturer committed to redesign the package and ensure that the body of the package (not just the lid) featured a prominent alcohol content warning.

41. The panel membership may overlap with the DISCUS Advisory Panel membership.
42. 1999 Report at 5.
43. *Id.* at 9.
44. *Id.* at 10.
45. Wine Institute Code, at 3(d), Appendix C.
46. In the Commission's experience, brands that include 21-year-old consumers in their target audience (*e.g.*, brands with target audiences such as "males 21 to 29") are more susceptible to errors in placement practices, whereas brands with older target audiences are more likely to be advertised in full compliance with the codes' placement standards. Thus, the

Commission requested the data that were most likely to show whether problems had occurred.

47. Recent reports have made clear that alcohol advertising is widely disseminated and often seen by youth. In 2002 and 2003, the advocacy organization, Center for Alcohol Marketing and Youth (CAMY), published several studies regarding teen exposure to alcohol ads, a substantial body of work that represents a helpful contribution to the understanding of alcohol placement issues. *E.g.*, CAMY, *Television: Alcohol's Vast Adland* (Dec. 18, 2002); CAMY, *Overexposed: Youth a Target of Alcohol Advertising in Magazines* (Sept. 24, 2002); CAMY, *Radio Daze: Alcohol Ads Tune in Underage Youth* (Apr. 2, 2003).

CAMY is concerned that children are “overexposed” to alcohol advertising, that is, that children are more likely to see television, radio, and print ads for alcohol than adults are. CAMY bases this concern on the fact that the alcohol ad “gross rating points,” or “GRPs,” for youth are greater than they are for adults in two of the three media (radio and magazines). (GRPs are calculated by multiplying the percentage of a population, such as “adults 21-34,” that has the potential to see an ad, times the number of times individuals are so exposed.)

CAMY’s data confirm, however, that adults are in fact the primary audience for alcohol advertising. In national television ads, for example, CAMY found that alcohol ad GRPs for youth were only 64% of the adult GRPs. *Id.*, at Tbl. 3 (for television advertising, adults are defined as those aged 21 or over). CAMY explained that this data showed that “for every two [alcohol] ads seen by adults, youth saw one.” CAMY, *Television: Alcohol's Vast Adland*, at 8 (emphasis added). For alcohol advertising in radio and magazines, the CAMY data shows that adult GRPs were higher than youth GRPs when the adult group is limited to the more relevant young adult segment (21-34). CAMY, *Overexposed: Youth a Target of Alcohol Advertising in Magazines* at 6 (GRPs of adults aged 21 to 34 higher than GRPs of youth in magazines featuring alcohol ads); CAMY, *Radio Daze: Alcohol Ads Tune in Underage Youth* at 8 (GRPs of adults aged 21 to 34 higher than GRPs for youth on radio featuring alcohol ads).

The CAMY reports suggest an approach under which alcohol marketers would, when placing ads, affirmatively assess the impact on the youth market instead of just the adult market. Advertisers currently do not do this. Although assessing the impact of their ad placements on the youth market might allow alcohol marketers to formulate more refined placement practices, it also would have troubling implications in law enforcement and would risk placing in their hands better information for monitoring the youth market. That is, if they gathered such information, it would be hard to distinguish between deliberate targeting of minors and valid attempts to limit minors’ incidental exposure.

Additionally, the GRP data evaluated by CAMY need to be considered along with other data about advertising exposure. GRP data treat audience segments, like youth 12 to 20 and adults 21 to 75, equally. However, the U.S. adult population as a whole is several times larger than the youth population. Thus, advertisers look not only at GRPs, but also at

“impressions.” Impressions reflect how well a particular audience segment was reached as well as how many consumers are within that audience segment. For example, the young adult population, 21 to 34, is about 50% larger than the youth population, 12 to 20. Even if the GRPs for the two populations are the same, therefore, 50% more impressions reach the adult 21 to 34 population. This distinction is more striking in the case of small audience segments, such as Hispanic youth. CAMY’s report about Hispanic youth reveals that Hispanic teens GRPs for spot radio were slightly larger than the GRPs for adults over 21. CAMY, *Exposure of Hispanic Youth to Alcohol Advertising* (Apr. 20, 2003). When converted to impressions, one can determine that adults over 21 received 20 times more impressions than Hispanic youth. This example shows the potential distortions that can arise from considering the GRP data in isolation.

48. See p. 4, *supra*.

49. The kind of data needed to support a placement depends upon the medium and the available demographic audience. Guidelines that will accompany the revised BI and DISCUS codes indicate that such data includes:

a) For print ads:

- 1) data from a recognized measurement service regarding audience composition aged 12 and over, if available; otherwise,
- 2) data regarding the audience composition aged 18 and over;
- 3) if the medium’s audience composition is unaudited (unmeasured), or the medium is new, data regarding the target readership, subscription data, or data for similar publications.

b) For television ads:

- 1) national network ads: data regarding the national audience composition of the program in its timeslot.
- 2) syndicated cable and local spot ads: national audience composition data for the program or daypart being purchased.
- 3) new shows: national audience composition data for comparable programs in comparable time periods.

c) For radio:

- 1) for audited (measured) stations, data regarding the station's audience during the daypart in which the spot is to air;
- 2) for unaudited stations, data regarding the audience composition of stations with similar formats in comparable markets or regarding the audience composition of the target listenership.

The revised codes provide that a placement will be in compliance if the advertiser 1) had a reasonable basis for the placement at the time it was made, based upon the data set forth above, and 2) promptly addresses any discrepancy upon learning of it. The guidelines are

subject to review, in the event that more accurate measurement technologies become available.

50. *See* Appendices D and E.
51. CAMY has suggested that industry should instead adopt a higher standard, such as 85%. This would, of course, reduce the number of youths exposed to alcohol ads, but it would also prevent the companies from advertising in media where there is substantial adult interest. For example, increasing the standard from 70% to even 80% would mean that alcohol companies could not place ads in magazines such as GQ or on TV broadcasts of some National Basketball Association games. An 85% standard would eliminate such magazines as Ebony, Men's Fitness, and Shape, and TV broadcasts of the National Hockey League games and the remaining National Basketball Association games.
52. Beer Institute Code Section 4; DISCUS Code Section, "Responsible Content." The Wine Institute Code requires that actors in ads appear at least 25 years of age. Wine Institute Code Section 3(a).
53. 1999 Report at 17.
54. *See* Section II(c)(2), *supra*.
55. Companies rejected, for example, proposals to place alcohol brand names on ketchup, skateboards, action figures, and stuffed animals; proposals to include inflatable sleds and animals in displays; a proposal to depict an animated worm and a bird in a print ad; branded restaurant napkins featuring maze, tic-tac-toe, or hangman games; requests to sponsor music groups with strong teen appeal; and requests to use ads when an actor could not be verified to be over 25 or otherwise appeared to be too young. In other instances, companies instructed ad agencies to use only versions of print ads featuring older-appearing actors.
56. 1999 Report, at 12.
57. *Id.* at 13.
58. The Century Council is a not-for-profit organization, funded by distilled spirits companies, that is dedicated to reducing underage drinking problems and drunk driving.
59. Such services are provided by Cybersource Corp. ([http://www.cybersource.com/products\\_and\\_services/verification\\_and\\_compliance\\_services/age\\_verification/](http://www.cybersource.com/products_and_services/verification_and_compliance_services/age_verification/)); Paymentech ([http://www.paymentech.net/sol\\_frapro\\_carnotpre\\_agever\\_page.jspJ](http://www.paymentech.net/sol_frapro_carnotpre_agever_page.jspJ)); and Aristotle International, Inc. (<http://www.kidsheriff.com/home.asp?aid=>).
60. NIAAA, Task Force of the National Advisory Council on Alcohol Abuse and Alcoholism, A CALL TO ACTION: CHANGING THE CULTURE OF DRINKING AT U.S. COLLEGES (2002),

available at: <http://www.collegedrinkingprevention.gov/images/TaskForceReport.pdf> (accessed 7/30/03).

61. There may have been a reduction in spring break activities sponsored by alcohol companies. One company advised the Commission that it conducts no spring break activities outside the U.S., and another company has ceased spring break sponsorship altogether.
62. One company arranged for the Century Council's Blood Alcohol Educator van to be parked at the site of an on-premise promotion.
63. Examples of such web sites include: <http://www.wine.com>; <http://www.geerwade.com>; and <http://www.thewinesellers.com>.
64. The Commission staff's report regarding online wine sales, FEDERAL TRADE COMMISSION, POSSIBLE ANTICOMPETITIVE BARRIERS TO E-COMMERCE: WINE (2003), is available at <http://www.ftc.gov/us/2003/07/winereport2.pdf> (accessed Aug. 13, 2003), [hereinafter WINE REPORT].
65. Telephone Conversation with Wendell Lee, General Counsel, Wine Institute (July 16, 2003).
66. Letter from Arthur J. DeCelle, General Counsel, Beer Institute, to Jonathan J. Rusch, Esq., Special Counsel for Fraud Prevention, U.S. Department of Justice Criminal Division (Apr. 15, 2001) (on file with the Federal Trade Commission).
67. Consumers can also purchase alcohol from web sites such as <http://www.800spirits.com>. These sites do not, however, provide direct shipment, that is, shipment from the distiller. Instead, such sites locate a licensed retailer that can ship a desired brand to a consumer. Additionally, they appear to require any purchaser to provide driver's license and other information showing proof of age.
68. This estimate is based on information provided by the companies that were the subject of the FTC's inquiry. Not all of the reporting companies, however, provided an estimate of expenditures for public service activities. Moreover, expenditures may vary from year to year.
69. Examples of such programs are:  
*Ready or Not: Talking with Kids About Alcohol*, developed in partnership with the Boys & Girls Clubs of America and designed to facilitate communication with children in the middle school years. Besides targeted distribution efforts, the *Ready or Not* videotape is generally available at video stores across the country, available at [http://www.centurycouncil.org/under\\_age/education/ready/](http://www.centurycouncil.org/under_age/education/ready/) (accessed 7/22/03).  
*Family Talk about Drinking*, a guidebook and videotape program that is also distributed directly to third parties, including pediatricians and family practitioners, available at <http://www.familytalkonline.com> (accessed 7/22/03).  
*College Talk: A Parent's Guide on Talking to Your College-Bound Student About Drinking*, is designed to help parents continue communicating openly and honestly with their children

about this issue, as their students prepare for the next phase in independence and begin a life on their own, available at <http://www.collegetalkonline.com/> (accessed 7/22/03).

*Parents, You're Not Done Yet*, a brochure that offers tips to parents of college freshmen for the critical weeks before students leave home. Over three million copies of this brochure have been distributed at over 1,300 colleges around the country, available at <http://www.centurycouncil.org/parents/english.cfm> (accessed 7/22/03).

*Prom Tips for Parents*, a web site developed to facilitate parental conversations with teens to inspire a safe prom night; it also contains access to educational materials designed to prevent underage drinking, available at <http://www.promtips.org> (accessed 7/22/03).

70. Examples of such programs are:

*Make the Right Call*, which features a former emergency helicopter flight nurse who addresses the consequences of underage drinking and driving, available at <http://www.mcquades.com/html/aware.html> (accessed 7/22/03).

*Brandon and Tony Silveria Lecture Program*, a high school program that features Brandon Silveria, a permanently disabled young man who crashed his car after having a few drinks at age 17. Mr. Silveria and his father tour high schools full-time to educate students about the consequences of teen drinking. They are featured in *Brandon Tells His Story*, a videotape distributed widely to high schools, available at <http://www.centurycouncil.org/silveria/> (accessed 7/22/03).

*Alcohol 101 Plus*, an interactive CD-ROM designed to help college students make safer decisions about alcohol. It is set on a "virtual campus" to enable participants to experience different outcomes of alternative drinking decisions. The multi-media cybergame is supplemented by teaching materials and facilitator guides for fraternities and sororities, student-athletes, and peer educators, available at <http://www.alcohol101plus.org/> (accessed 7/22/03).

*Speak Up!*, a video and facilitator guide jointly developed with the National Collegiate Athletic Association to encourage student-athletes to discuss alcohol issues, available at <http://www.centurycouncil.org/speakup.cfm> (accessed 7/22/03).

*The BACCHUS and GAMMA Peer Education Network*, a prevention training model for college students, which promotes safe spring break and other alcohol awareness activities, available at <http://www.iatf.org/baccus.htm> (accessed 7/22/03).

*Blood Alcohol Educator*, an interactive CD-ROM, available in both English and Spanish, designed to educate young adults about their state laws and how drinking affects an individual's blood alcohol concentration level. Before entering the "virtual bar," visitors must click on their home state to learn the legal limit, available at <http://www.b4udrink.org/> (accessed 7/22/03).

71. Such programs include:

*Promising Practices: Campus Alcohol Strategies*, a source book that identifies constructive ways to fight campus alcohol abuse, and includes nearly 300 alcohol abuse prevention programs that have been implemented at public and private schools around the country, available at <http://www.centurycouncil.org/campus/promprac/index.cfm> (accessed 7/22/03).

*Campus Event Notebook*, a guide to help college administrators and legal-drinking-age student leaders plan events associated with the campus community, available at

<http://www.millerbrewing.com/liveresponsibly/data/campusCombined.pdf> (accessed 7/22/03).

72. Such programs include:

*Cops in Shops*, which has been implemented in 42 states and places undercover police officers in stores to deter underage purchases. Program signs warn that police officers may be posing as store employees, thereby discouraging illegal purchase attempts even when police are not present, available at [http://www.centurycouncil.org/under\\_age/retail/cops.cfm](http://www.centurycouncil.org/under_age/retail/cops.cfm) (accessed 7/22/03).

I.D. initiatives (such as *We I.D.* and *No I.D. No Sale No Way*) to help retailers recognize and accept only valid identification. Prominent point-of-sale materials for these programs include posters, decals, and buttons, available at <http://centurycouncil.org/materials/view.cfm?prg=1> (accessed 7/22/03).

*The 2003 Driver License Booklet* displays for retailers reproductions of all current valid license formats. Many states and provinces have multiple designs in circulation at the same time. Even though a new license is issued, it may take several years to phase out previous issues. For each state or province, samples show the most current license format, available at <http://www.millerbrewing.com/liveresponsibly/programs/underAge/driverLBooklet.asp> (accessed 7/22/03).

*Age Verification Devices*, systems that read drivers' licenses and determine whether they are authentic, are being distributed to retailers. These devices have the potential to assist alcohol retail sales personnel.

*21 Means 21*, includes point-of-sale materials that provide a clear message against underage drinking and the underage purchase of alcohol, available at <http://www.coors.com/community/pos.asp> (accessed 7/22/03).

*TIPS (Training for Intervention Procedures)*, is a nationwide alcohol intervention program through which servers learn responsible alcohol service, available at <http://www.gettips.com> (accessed 08/13/03).

73. E.g., A.W. Mason, M. Windle, *supra* note 28 at 1; R.J. DiClemente *et al.*, *Parenting Monitoring: Association with Adolescents' Risk Behaviors*, 2001 PEDIATRICS, Jun. 2001, at 1363, available at <http://www.ncbi.nlm.nih.gov/entrez/query.fcgi> (accessed 6/23/03).

74. E.g., J.P. Read *et al.*, *Making the Transition from High School to College: The Role of Alcohol-related Social Influence Factors in Student's Drinking*, SUBST. ABUSE, Mar. 2002, at 53, available at <http://www.ncbi.nlm.nih.gov/entrez/query.fcgi>; C.A. Carter, W.M. Kahnweiler, *The Efficacy of the Social Norms Approach to Substance Abuse Prevention Applied to Fraternity Men*, J. AM. COLL. HEALTH, Sept. 2000, at 66, available at <http://www.ncbi.nlm.nih.gov/entrez/query.fcgi> (accessed 9/5/03).

75. Studies showing success of such programs include H.W. Perkins, *Social Norms and the Prevention of Alcohol Misuse in Collegiate Contexts*, J. STUD. ALCOHOL SUPPL., Mar. 2002, at 164, available at <http://www.ncbi.nlm.nih.gov/entrez/query.fcgi>; W. DeJong, *The Role of Mass Media Campaigns in Reducing High-Risk Drinking Among College Students*, J. STUD. ALCOHOL SUPPL., Mar. 2002, at 182, available at

<http://www.ncbi.nlm.nih.gov/entrez/query.fcgi>; see also NIAAA, *A Call to Action*, supra note 60. A study showing lack of success for such programs is H. Wechsler, et al., *Perception and Reality: A National Evaluation of Social Norms Marketing Interventions to Reduce College Students' Heavy Alcohol Use* 64 J. OF STUD. ON ALCOHOL 484 (2003), available at [http://www.hsph.harvard.edu/cas/Documents/social\\_norms/484\\_Wechsler.pdf](http://www.hsph.harvard.edu/cas/Documents/social_norms/484_Wechsler.pdf) (accessed 8/13/03).

76. See A.C. Wagenaar & M. Wolfson, *Deterring Sales and Provision of Alcohol to Minors: A Study of Enforcement in 295 Counties in Four States*, 110(4) PUBLIC HEALTH REP. 419 (1995), available at <http://www.ncbi.nlm.nih.gov/entrez/query.fcgi> (accessed 8/13/03).
77. P.A. Harrison et al., *Relative Importance of Social Versus Commercial Sources in Youth Access to Tobacco, Alcohol, and Other Drugs*, PREVENTATIVE MEDICINE, July 2000, at 39, available at <http://www.ncbi.nlm.nih.gov/entrez/query.fcgi> (accessed 8/13/03).
78. D.F. Preusser et al., *Underage Access to Alcohol: Sources of Alcohol and Use of False Identification*, 14 INT'L CONFERENCE ON ALCOHOL, DRUGS, & TRAFFIC SAFETY 1017 (C.Mercier-Guyon ed., Centre d'Etudes et de Recherches en Medecine du Trafic Vol. 3 1997).
79. The RRF is a joint project of Brandeis University's Schneider Institute for Health Policy and Florida State University's Institute for Science and Public Affairs. Some of RRF's activities receive financial support from members of the alcohol industry.

# **Appendix A: Beer Institute Advertising and Marketing Code (1997)**

This code contains the voluntary advertising and marketing guidelines subscribed to by the members of the Beer Institute.

## **Introduction**

Beer is a legal beverage meant to be consumed responsibly. Its origins are ancient, and it has held a respected position in nearly every culture and society since the dawn of recorded history. Advertising is a legitimate effort by brewers to make consumers aware of the particular types, brands, and prices of malt beverages that are available.

Three basic principles, which have long been reflected in the policies of the brewing industry, continue to underlie these Guidelines. First, beer advertising should not suggest directly or indirectly that any of the laws applicable to the sale and consumption of beer should not be complied with. Second, brewers should adhere to standards of candor and good taste applicable to all commercial advertising. Third, brewers are responsible corporate citizens, sensitive to the problems of the society in which they exist, and their advertising should reflect that fact. Brewers strongly oppose abuse or inappropriate consumption of their products.

## **Guidelines**

1. These guidelines apply to all brewer advertising and marketing materials, including Internet and other cyberspace media. These guidelines do not apply to educational materials or televised, printed or audio messages of a non-brand specific nature; nor to materials or messages designed specifically to address issues of alcohol abuse or underage drinking.
2. Beer advertising and marketing materials should portray beer in a responsible manner.
  - a. Beer advertising and marketing materials should not portray, encourage or condone drunk driving.
  - b. Beer advertising and marketing materials should not depict situations where beer is being consumed excessively, in an irresponsible way, or in any way illegally.
  - c. Beer advertising and marketing materials should not portray persons in a state of intoxication or in any way suggest that intoxication is acceptable conduct.
  - d. Beer advertising and marketing materials should not portray or imply illegal activity of any kind.
  - e. Retail outlets or other places portrayed in advertising should be depicted as well kept and respectable establishments.

3. Brewers are committed to the policy and practice of responsible advertising and marketing directed to persons of legal purchase age. To facilitate this commitment, purchases by brewers, directly or indirectly, of Nielsen or other recognized TV viewer composition data shall reflect those viewers over the legal purchase age. Brewers shall review this Nielsen or other recognized TV viewer composition data on a regular basis (at least semi-annually) in order to insure that advertisements are placed in compliance with this code.
4. Beer advertising and marketing materials are intended, for adults of legal purchase age who choose to drink.
  - a. Beer advertising and marketing materials should not employ any symbol, language, music, gesture, or cartoon character that is intended to appeal primarily to persons below the legal purchase age. Advertising or marketing material has a primary appeal to persons under the legal purchase age if it has special attractiveness to such persons above and beyond the general attractiveness it has for persons above the legal purchase age, including young adults above the legal purchase age.
  - b. Beer advertising and marketing materials should not employ any entertainment figure or group that is intended to appeal primarily to persons below the legal purchase age.
  - c. Beer advertising and marketing materials should not depict Santa Claus.
  - d. Beer advertising and marketing materials should not be placed in magazines, newspapers, television programs, radio programs, or other media where most of the audience is reasonably expected to be below the legal purchase age.
  - e. To help insure that the people shown in beer advertising are and appear to be above the legal purchase age, models and actors employed should be a minimum of 25 years old, substantiated by proper identification, and should reasonably appear to be over 21 years of age.
  - f. Beer should not be advertised or marketed at any event where most of the audience is reasonably expected to be below the legal purchase age. This guideline does not prevent brewers from erecting advertising and marketing materials at or near facilities that are used primarily for adult-oriented events, but which occasionally may be used for an event where most attendees are under age 21.
  - g. No beer identification, including logos, trademarks, or names should be used or licensed for use on clothing, toys, games, or game equipment, or other materials intended for use primarily by persons below the legal purchase age.
  - h. Brewers recognize that parents play a significant role in educating their children about the legal and responsible use of alcohol and may wish to prevent their children from accessing Internet web sites without parental supervision. To facilitate this exercise of parental responsibility, Beer Institute will provide to manufacturers of parental control software the names and web site addresses of all member-company web sites. Additionally, brewers will post reminders at appropriate locations in their web site indicating that brewer products are intended only for those of legal purchase age. These locations include entrance into the web site, purchase points within the

- web site, and access into adult-oriented locations within the web site, such as virtual bars.
5. Beer consumption is intended as a complement to leisure or social activity. Beer advertising and marketing activities should not associate or portray beer drinking before or during activities which require a high degree of alertness or coordination.
  6. Beer advertising and marketing materials should not make exaggerated product representations.
    - a. Beer advertising and marketing materials should not convey the impression that a beer has special or unique qualities if in fact it does not.
    - b. Beer advertising and marketing materials should make no scientifically unsubstantiated health claims.
    - c. Beer may be portrayed to be part of personal and social experiences and activities. Nevertheless, beer advertising and marketing materials should contain no claims or representations that individuals cannot obtain social, professional, educational, athletic, or financial success or status without beer consumption; nor should they claim or represent that individuals cannot solve social, personal or physical problems without beer consumption.
  7. Beer advertising and marketing materials should reflect generally accepted contemporary standards of good taste.
    - a. Beer advertising and marketing materials should not contain any lewd or indecent language or images.
    - b. Beer advertising and marketing materials should not portray sexual passion, promiscuity or any other amorous activity as a result of consuming beer.
    - c. Beer advertising and marketing materials should not employ religion or religious themes.
  8. Beer advertising and marketing materials should not disparage competing beers. In the event comparisons are drawn between competing beers, the claims made should be truthful and of value to consumers.
  9. Beer advertising and marketing materials should never suggest that competing beers contain objectionable additives or ingredients.
  10. Beer advertising and marketing materials should not refer to any intoxicating effect that the product may produce.
  11. Beer advertising and marketing materials should not depict the act of drinking.

12. Beer advertising and marketing materials should not show littering or otherwise improper disposal of beer containers, unless the scenes are used clearly to promote anti-littering and/or recycling campaigns.
13. Beer advertising and marketing activities on college and university campuses, or in college media, should not portray consumption of beer as being important to education, nor shall advertising directly or indirectly degrade studying. Beer may be advertised and marketed on college campuses or at college-sponsored events only when permitted by appropriate college policy.

## **Code Compliance and Dissemination**

Each member of the Beer Institute is committed to the philosophy of the Code and is committed to compliance with the Code. When the Beer Institute receives complaints with regard to any member's advertising or marketing, it has long been its practice and it will continue to be its practice to promptly refer such complaints in writing to the member company for its review and action. To facilitate this end, the Beer Institute maintains an 800 number (1-800-379-2739). A copy of this code shall continue to be given to every brewery employee, wholesale distributor and outside agency whose responsibilities include advertising and marketing beer, as well as to any outside party who might request it.

September, 1997 Edition

# **Appendix B: Code of Good Practice for Distilled Spirits Advertising and Marketing (1998)**

## **Preamble**

The Distilled Spirits Council of the United States, Inc. (DISCUS) is the national trade association representing producers and marketers of distilled spirits sold in the United States. The members of DISCUS adopt this Code of Good Practice as guidelines concerning the placement and content of advertising and marketing materials. These guidelines have two overriding principles: (1) to ensure responsible, tasteful, and dignified advertising and marketing of distilled spirits to adult consumers who choose to drink and (2) to avoid targeting advertising and marketing of distilled spirits to individuals below the legal purchase age.

The consumption of beverage alcohol products has played an accepted and important role in the cultural and social traditions of both ancient and modern society. DISCUS members take special pride in their products and their commitment to promoting responsible consumption by those adults who choose to drink. Nevertheless, it is the obligation of each consumer who chooses to drink to enjoy beverage alcohol products in a responsible manner.

The distilled spirits industry acknowledges the problems inherent in abusive consumption of beverage alcohol, and DISCUS members remain committed to combatting alcohol abuse. To that end, the industry has joined with government and civic groups in efforts to encourage responsible use of beverage alcohol products. DISCUS also actively supports informational, educational, research, and treatment initiatives in an effort to better understand, prevent, and combat abuse of its products.

## **Scope**

The producers and members of distilled spirits encourage responsible decision-making regarding drinking of beverage alcohol by adults, and discourage abusive consumption of their products. The distilled spirits industry urges that adults who choose to drink, do so responsibly. Towards this end, DISCUS members pledge voluntarily to conduct their advertising and marketing practices in the United States in accordance with the provisions of this Code. The provisions of the Code apply to every type of print and electronic media, including the Internet and any other on-line communications, used to advertise or market distilled spirits.

DISCUS members recognize that it is not possible to cover every eventuality and, therefore, agree to observe the spirit as well as the letter of this Code. Questions about the interpretation of the Code, member companies' compliance with the Code, and the application of its provisions are directed to the Code Review Board of DISCUS.

## **Responsible Placement**

1. Distilled spirits should not be advertised or marketed in any manner directed or primarily intended to appeal to persons below the legal purchase age.
2. Distilled spirits advertising and marketing should not be placed in any communication intended to appeal primarily to individuals below the legal purchase age.
3. Distilled spirits should not be advertised on college and university campuses or in college and university newspapers.
4. Marketing activities for distilled spirits should not be conducted on college and university campuses except in licensed retail establishments located on such campuses.
5. Distilled spirits advertising and marketing should not be specifically aimed at events where most of the audience is reasonably expected to be below the legal purchase age. Fixed distilled spirits advertising and marketing materials at facilities used primarily for adult-oriented events fall outside its guideline.
6. Distilled spirits advertising should not be placed on any outdoor stationary location with five hundred (500) feet of an established place of worship or an elementary or secondary school except on a licensed premise.

## **Responsible Content**

### **Underage Persons**

1. Distilled spirits advertising and marketing materials are intended for adults of legal purchase age who choose to drink.
2. The content of distilled spirits advertising and marketing materials should not be intended to appeal primarily to individual below the legal purchase age.
3. Distilled spirits advertising and marketing materials should not depict a child or portray objects, images, or cartoon figures that are popular predominantly with children.
4. Distilled spirits advertising and marketing materials should not contain the name of or depict Santa Claus or any religious figure.
5. Distilled spirits should not be advertised or marketed on the comic pages of newspapers, magazines, or other publications.

6. Distilled spirits should not be advertised or promoted by any person who is below the legal purchase age or who is made to appear, through clothing or otherwise, to be below the legal purchase age.
7. Distilled spirits web sites should contain a reminder of the legal purchase age on such web pages as the home page, access sites for the purchase of distilled spirits or brand-logoed consumer merchandise, and access sites depicting consumption of beverage alcohol, for example, a “virtual bar.”
8. Distilled recognize the crucial role parents play in educating their children about the legal and responsible consumption of beverage alcohol. To enable parents who choose to prevent their children from accessing Internet web sites without their supervision, DISCUS will provide those parents and the manufacturers of parental control software upon request the web site address of each member company so that the parent or manufacturer can use this information.

## **Social Responsibility**

9. Distilled spirits advertising and marketing materials should portray distilled spirits and drinkers in a responsible manner. These materials should not show a distilled spirits product being consumed abusively or irresponsibly.
10. On-premise promotions sponsored by distillers should encourage responsible consumption by those adults who choose to drink and discourage activities that reward excessive/abusive consumption.
11. Distilled spirits advertising and marketing materials should not promote the intoxicating effects of beverage alcohol consumption.
12. Distilled spirits advertising and marketing materials should not contain any curative or therapeutic claim except as permitted by law.
13. Distilled spirits advertising and marketing materials should contain no claims or representations that individuals can obtain social, professional, educational, or athletic success or status as a result of beverage alcohol consumption.
14. Distilled spirits should not be advertised or marketed in any manner associated with abusive or violent relationships or situations.
15. Distilled spirits advertising and marketing materials should not imply illegal activity of any kind.
16. No distilled spirits advertising or marketing materials should portray distilled spirits being consumed by a person who is engaged in, or is immediately about to engage in, any activity that requires a high degree of alertness or physical coordination.

17. No distilled spirits advertising or marketing activity should be associated with anti-social or dangerous behavior.
18. Distilled spirits may be portrayed to be part of responsible personal and social experiences and activities, such as the depiction of persons in a social or romantic setting, persons who appear to be attractive or affluent, and persons who appear to be relaxing or in an enjoyable setting.

### **Drunk Driving**

19. Driving while intoxicated is against the law. Distilled spirits advertising and marketing materials should not portray, encourage, or condone drunk driving.

### **Alcohol Content**

20. Distilled spirits advertising and marketing materials should not refer to alcohol content except in a straightforward and factual manner.

### **Good Taste**

21. No distilled spirits advertising or marketing materials should contain advertising copy or an illustration unless it is dignified, modest, and in good taste.
22. No distilled spirits advertising or marketing materials should claim or depict sexual prowess as a result of beverage alcohol consumption.
23. Distilled spirits advertising and marketing materials should not degrade the image, form, or status of women, men, or of any ethnic, minority, sexually-oriented, religious, or other group.
24. Distilled spirits advertising and marketing materials should not employ religion or religious themes, nor should distilled spirits be advertised in publications devoted primarily to religious topics.

## **Code Review Board**

There shall be established and maintained a Code Review Board, which shall meet when necessary to consider complaints lodged by DISCUS members or other interested parties.

The Code Review Board shall be comprised of no less than five (5) members in good standing of the Board of Directors of DISCUS. Each member shall be elected by a majority vote of the Board of Directors.

Findings of the majority of the members of the Code Review Board shall be communicated promptly to the responsible advertiser and in appropriate circumstances to all members of the Board of Directors of DISCUS.

# **Appendix C: Code of Advertising Standards, Wine Institute (2000)**

## **Preamble**

Informal principles of good advertising practice for the winegrowing industry were first adopted in 1949. In recent years, California wine advertisers have desired more specific and significantly stronger standards to reflect the industry's concern with maximum social responsibility.

This code is designed to encourage continued high standards so that California wine advertising may increasingly be viewed as a positive contribution to society.

All advertising in all forms of media – including, but not limited to Internet and other digital or cyberspace media, product labels, direct mail, point-of-sale, outdoor, displays, radio, television and print media – shall adhere to both the letter and the spirit of this Code.

April 1978; May 1987; 1993; Last Amended December 2000

## **Guidelines**

These guidelines shall apply only to voluntary subscribers of this Code of Advertising Standards.

1. Wine and wine cooler advertising shall encourage the proper use of wine. Therefore subscribers to this code shall not depict or describe in their advertising:
  - a. The consumption of wine or wine coolers for the effects their alcohol content may produce.
  - b. Direct or indirect reference to alcohol content or extra strength, except as otherwise required by law or regulation.
  - c. Excessive drinking or persons who appear to have lost control or to be inappropriately uninhibited.
  - d. Any suggestion that excessive drinking or loss of control is amusing or a proper subject for amusement.
  - e. Any persons engaged in activities not normally associated with the moderate use of wine or wine coolers and a responsible lifestyle. Association of wine use in conjunction with feats of daring or activities requiring unusual skill is specifically prohibited.
  - f. Wine or wine coolers in quantities inappropriate to the situation or inappropriate for moderate and responsible use.



4. Code subscribers shall not show motor vehicles in such a way as to suggest that they are to be operated in conjunction with wine or wine cooler use.  
Advertising shall in no way suggest that wine or wine coolers be used in connection with driving motorized vehicles such as automobiles, motorcycles, boats, snowmobiles, or airplanes.
5. Wine and wine cooler advertising shall not be placed in media with substantial underage appeal:
  - a. Subscribers shall be mindful that online advertising may be viewed by underage individuals and shall take steps to insure that online content remains consistent with provisions of this code.
  - b. To the extent possible, subscribers placing products in visual media, regardless of the visual media's rating, shall strive to depict wine appropriately and consistent with other provisions of this code.
  - c. Wine and wine cooler advertising shall not be placed in or directly adjacent to television or radio programs or print media that dramatize or glamorize over-consumption or inappropriate use of alcoholic beverages.
6. Wine and wine cooler advertising by code subscribers shall make no reference to wine's medicinal or caloric values.
7. Wine and wine cooler advertising by code subscribers shall not degrade, demean, or objectify the human form, image or status of women, men, or of any ethnic, minority or other group, or feature provocative or enticing poses.
8. Wine and wine cooler advertising shall not be directed to underage drinkers or pregnant women. Wine and wine cooler advertising will not portray excessive drinking.
9. Wine and wine cooler advertising by code subscribers shall not exploit the human form, feature provocative or enticing poses, nor be demeaning to any individual. Wine and wine cooler advertising by code subscribers shall not reinforce nor trivialize the problem of violence in our society. Therefore, wine and wine cooler advertising shall not associate wine or wine coolers with abusive or violent relationships or situations.
10. A distinguishing and unique feature of wine is that it is traditionally served with meals or immediately before or following a meal.

Therefore, when subscribers to this code use wine advertising which visually depicts a scene or setting where wine is to be served, such advertising where appropriate shall include foods and show that they are available and are being used or are intended to be used.

This guideline shall not apply to the depiction of a bottle of wine, vineyard, label, professional tasting etc. where emphasis is on the product.

# **Appendix D: Beer Institute: Advertising and Marketing Code and Buying Guidelines (2003)**

## **Introduction**

Beer is a legal beverage meant to be consumed responsibly. Its origins are ancient, and it has held a respected position in nearly every culture and society since the dawn of recorded history. Advertising is a legitimate effort by brewers to make consumers aware of the particular types, brands, and prices of malt beverages that are available.

Beer distribution in the United States is subject to extensive laws and regulations, enforced by federal, state and local governments. Federal and state law establishes a three-tiered distribution system for beer, composed of brewers, wholesale distributors, and retail sellers. Companies in each tier of this distribution system are required by law to maintain their commercial independence. The Beer Institute encourages all with whom brewers do business to adhere to the law, as well as this voluntary Advertising and Marketing Code, which is provided annually to the independent distributors which sell their products.

Three basic principles, which have long been reflected in the policies of the brewing industry, continue to underlie these Guidelines. First, Beer advertising should not suggest directly or indirectly that any of the laws applicable to the sale and consumption of beer should not be complied with. Second, brewers should adhere to standards of candor and good taste applicable to all commercial advertising. Third, brewers are responsible corporate citizens, sensitive to the problems of the society in which they exist, and their advertising should reflect that fact. Brewers strongly oppose abuse or inappropriate consumption of their products.

## **Guidelines**

1. These guidelines apply to all brewer advertising and marketing materials, including Internet and other cyberspace media. These guidelines do not apply to educational materials or televised, printed or audio messages of a non-brand specific nature; nor to materials or messages designed specifically to address issues of alcohol abuse or underage drinking.
2. Beer advertising and marketing materials should portray beer in a responsible manner.
  - a. Beer advertising and marketing materials should not portray, encourage or condone drunk driving.
  - b. Beer advertising and marketing materials should not depict situations where beer is being consumed excessively, in an irresponsible way, or in any way illegally.
  - c. Beer advertising and marketing materials should not portray persons in a state of intoxication or in any way suggest that intoxication is acceptable conduct.

- d. Beer advertising and marketing materials should not portray or imply illegal activity of any kind.
  - e. Retail outlets or other places portrayed in advertising should be depicted as well kept and respectable establishments.
3. Brewers are committed to a policy and practice of responsible advertising and marketing. As a part of this philosophy, beer advertising and marketing materials are intended for adults of legal purchase age who choose to drink.
- a. Beer advertising and marketing materials should not employ any symbol, language, music, gesture, or cartoon character that is intended to appeal primarily to persons below the legal purchase age. Advertising or marketing material has a “primary appeal” to persons under the legal purchase age if it has special attractiveness to such persons beyond the general attractiveness it has for persons above the legal purchase age.
  - b. Beer advertising and marketing materials should not employ any entertainment figure or group that is intended to appeal primarily to persons below the legal purchase age.
  - c. Beer advertising and marketing materials should not depict Santa Claus.
  - d. Beer advertising and marketing materials shall only be placed in magazines, on television or on radio where at least 70% of the audience is expected to be adults of legal purchase age. The brewer placing advertising or marketing materials in magazines, on television or on radio shall conduct periodic after-the-fact audits, at least semi-annually, of a random portion of its placements. If a brewer learns that a placement did not meet the Code Standard it will take steps to prevent a reoccurrence. A placement will be considered reasonable if the audience composition data reviewed prior to placement met the percentages set forth above. What constitutes a reasonable basis for placement depends on the medium and available data for that medium. Buying guidelines for the implementation of this section will be distributed in conformance with the dissemination provisions of this code.
  - e. To help insure that the people shown in beer advertising are and appear to be above the legal purchase age, models and actors employed should be a minimum of 25 years old, substantiated by proper identification, and should reasonably appear to be over 21 years of age.
  - f. Beer should not be advertised or marketed at any event where most of the audience is reasonably expected to be below the legal purchase age. This guideline does not prevent brewers from erecting advertising and marketing materials at or near facilities that are used primarily for adult-oriented events, but which occasionally may be used for an event where most attendees are under age 21.
  - g. No beer identification, including logos, trademarks, or names should be used or licensed for use on clothing, toys, games, or game equipment, or other materials intended for use primarily by persons below the legal purchase age.
  - h. Brewers recognize that parents play a significant role in educating their children about the legal and responsible use of alcohol and may wish to prevent their children from accessing Internet Web sites without parental supervision. To facilitate this exercise of parental responsibility, Beer Institute will provide to manufacturers of

- parent control software the names and Web site addresses of all member-company Web sites. Additionally, brewers will require disclosure of a viewer's date of birth at the entry to their websites and will post reminders at appropriate locations in their Web site indicating that brewer products are intended only for those of legal purchase age. These locations include entrance into the Web site, purchase points within the Web site, and access into adult-oriented locations within the Web site, such as virtual bars.
4. Beer consumption is intended as a complement to leisure or social activity. Beer advertising and marketing activities should not associate or portray beer drinking before or during activities which require a high degree of alertness or coordination.
  5. Beer advertising and marketing materials should not make exaggerated product representations.
    - a. Beer advertising and marketing materials should not convey the impression that a beer has special or unique qualities if in fact it does not.
    - b. Beer advertising and marketing materials should make no scientifically unsubstantiated health claims.
    - c. Beer may be portrayed to be part of personal and social experiences and activities. Nevertheless, beer advertising and marketing materials should contain no claims or representations that individuals cannot obtain social, professional, educational, athletic, or financial success or status without beer consumption; nor should they claim or represent that individuals cannot solve social, personal or physical problems without beer consumption.
  6. Beer advertising and marketing materials should reflect generally accepted contemporary standards of good taste.
    - a. Beer advertising and marketing materials should not contain any lewd or indecent language or images.
    - b. Beer advertising and marketing materials should not portray sexual passion, promiscuity or any other amorous activity as a result of consuming beer.
    - c. Beer advertising and marketing materials should not employ religion or religious themes.
  7. Beer advertising and marketing materials should not disparage competing beers. In the event comparisons are drawn between competing beers, the claims made should be truthful and of value to consumers.
  8. Beer advertising and marketing materials should never suggest that competing beers contain objectionable additives or ingredients.
  9. Beer advertising and marketing materials should not refer to any intoxicating effect that the product may produce.

10. Beer advertising and marketing materials should not depict the act of drinking.
11. Beer advertising and marketing materials should not show littering or otherwise improper disposal of beer containers, unless the scenes are used clearly to promote anti-littering and/or recycling campaigns.

## 12. College marketing

Beer advertising and marketing activities on college and university campuses, or in college media, should not portray consumption of beer as being important to education, nor shall advertising directly or indirectly degrade studying. Beer may be advertised and marketed on college campuses or at college-sponsored events only when permitted by appropriate college policy.

### a. On-campus promotions/sponsorships

1. Company sponsored events: Company sponsorship of on-campus events or company promotions at on-campus licensed retail establishments shall be limited to events conducted in accord with this Code, state law, and applicable institutional policies. In their content and implementation, company on-campus promotions and sponsorships shall not encourage the irresponsible, excessive, underage or otherwise illegal consumption of alcohol.
2. Branded products: Beer-branded promotional products such as key chains, clothing, posters or other tangible goods designed to promote specific beer brands, are intended only for adults of legal purchase age. Distribution of these items will therefore take place only at licensed retail establishments or where distribution is limited to those over the legal purchase age, and otherwise conforms with applicable laws and institutional policies.
3. Tastings: Tasting events at which product samples are provided should occur at licensed retail establishments or where distribution is limited to those over the legal purchase age, and otherwise conforms with applicable laws and institutional policies.

### b. Company sales representatives

Company sales representatives who undertake sales calls on or near a college campus must be at least of legal purchase age, and shall conduct sales activities in conformity with this Code.

## 13. Billboards

Billboard advertisements by brewers shall be located at least 500 linear feet from established and conspicuously identified elementary or secondary schools, places of worship or public playgrounds.

## 14. Product placement

Movies and television programs frequently portray consumption of alcohol and related signage and props in their productions. Brewers encourage producers to seek company approval before using their products, signage or other props in artistic productions. While producers sometimes seek prior approval from the companies, the final artistic and editorial

decisions concerning product portrayal are always within the exclusive control of the movie or television producers.

With regard to those who seek company approval, product placement will be guided by the following principles:

- a. Case by Case Approval: Where their approval is sought, brewers will approve or reject product placement in specific projects or scenes on a case by case basis, based upon the information provided by the movie or television program's producers.
- b. Portrayal of drinking and driving: Brewers discourage the illegal or irresponsible consumption of their products in connection with driving. Consistent with that philosophy, the companies will not approve product placement where the characters engage in illegal or irresponsible consumption of their products in connection with driving.
- c. Underage drinking: Brewers discourage underage drinking and do not intend for their products to be purchased or consumed illegally by minors. Consistent with that philosophy, the companies will not approve product placement which portrays purchase or consumption of their products by persons who are under the legal purchase age.
- d. Primary appeal to minors: Brewers discourage underage drinking and do not intend for their products to be purchased or consumed illegally by minors. Consistent with that philosophy, the companies will not approve product placement where the primary character(s) are under the legal purchase age or the primary theme(s) are, because of their content or presentation, particularly attractive to children.
- e. Portraying alcoholism/alcohol abuse: Brewers do not want their products to be abused. Consistent with that philosophy, the companies will not approve product placement where characters use their products irresponsibly or abusively or where alcoholism is portrayed, unless the depiction supports a responsible-use message.

## **Code Compliance and Dissemination**

Each member of the Beer Institute is committed to the philosophy of the Code and is committed to compliance with the Code. When the Beer Institute receives complaints with regard to any member's advertising or marketing, it has long been its practice and it will continue to be its practice to promptly refer such complaints in writing to the member company for its review and action. To facilitate this end, the Beer Institute maintains an 800 number (1-800-379-2739). A copy of this code shall continue to be given to every brewery employee, wholesale distributor and outside agency whose responsibilities include advertising and marketing beer, as well as to any outside party who might request it.

Beer Institute  
122 C Street, NW, Suite 750  
Washington, DC 20001-2150  
202-737-2337

# **Buying Guidelines for the Implementation of Section 3(d) of the Beer Institute Advertising and Marketing Code (2003)**

Brewers shall use the following guidelines when purchasing advertising in magazines or on television or radio.

## **Magazines**

- A. For the purchase of print advertisements in magazines, use of a nationally recognized measurement service providing age 12-plus audience composition data to the extent available, or if not available, age 18-plus audience compositional data, or, if unmeasured subscription data and/or other data from comparable publications;
- B. For the purchase of print advertisements in new magazines, use of subscription data and/or other data from comparable publications;
- C. A placement will be considered appropriate when data supplied by the sources referenced in (A) and (B) above shows that the publication is in compliance with the code.

## **Television**

- A. For national network television advertising buys, use of national audience composition data on the program in the timeslot;
- B. For syndicated, cable or local spot television buys, use of national audience composition data for the program or daypart being bought;
- C. For new buys, use of national audience composition data for comparable programs in comparable timeslots;
- D. A placement will be considered appropriate when data for two consecutive rating periods shows that the program or daypart is in compliance with the Code.

## **Radio**

- A. For audited radio stations, use of audience composition data for the daypart;
- B. For unaudited radio stations, use of audience composition data provided by the station regarding the targeted daypart being bought or compositional data for the daypart of comparable stations in comparable markets;

- C. A placement will be considered appropriate when data for the preceding rating period of at least six months shows that the daypart is in compliance with the Code.

These guidelines will be reviewed from time to time to assure that they are the most accurate measurement available for the audience composition data in question.

# **Appendix E: Code of Responsible Practices for Beverage Alcohol Advertising and Marketing and Buying Guidelines, DISCUS (2003)**

## **Preamble**

- The Distilled Spirits Council of the United States, Inc. (DISCUS) is the national trade association representing producers and marketers of distilled spirits sold in the United States. Some of our members also are producers and marketers of many malt beverage (beer) and wine brands sold in the United States. With a full portfolio of beverage alcohol products, DISCUS members have developed a Code of advertising and marketing responsible practices to provide guidance to all those involved in the promotion of their respective brands.
- DISCUS members are committed to the responsible placement and content of their brand communications. The overriding principle of our Code is to market our products to adults in a responsible and appropriate manner. Towards this end, DISCUS members pledge voluntarily to conduct their advertising and marketing practices in the United States in accordance with the provisions of this Code.
- The consumption of beverage alcohol products has played an accepted and important role in the cultural and social traditions of both ancient and modern society. DISCUS members take special pride in their products and their commitment to promoting responsible drinking by those adults who choose to drink.
- DISCUS members encourage responsible decisionmaking regarding drinking, or not drinking, by adults, and discourage abusive consumption of their products. DISCUS members urge that adults who choose to drink, do so responsibly. Nevertheless, it is the obligation of each consumer who chooses to drink to enjoy beverage alcohol products in a responsible manner.

## **Scope**

- This Code applies to all activities undertaken to advertise and market distilled spirits, malt beverage and wine brands. These activities include brand advertising, consumer communications, promotional events, packaging, labels, and distribution and sales materials.
- The provisions of the Code apply to every type of print and electronic media, including the Internet and any other on-line communications, used to advertise or market beverage alcohol. These provisions also apply to every type of promotional or marketing activity or event, including all product placements.

- DISCUS members recognize that it is not possible to cover every eventuality and, therefore, agree to observe the spirit, as well as the letter, of this Code. Questions about the interpretation of the Code, member companies' compliance with the Code, and the application of its provisions are directed to the Code Review Board of DISCUS.

## **Responsible Placement**

### **Adult Audiences/Underage Persons**

1. Beverage alcohol advertising and marketing materials are intended for adults of legal purchase age who choose to drink.
2. Beverage alcohol products should not be advertised or marketed in any manner directed or primarily appealing to persons below the legal purchase age. (The definition of “primarily appeal” is set forth under the Responsible Content provisions.)
3. Beverage alcohol advertising and marketing should be placed in broadcast, cable, radio, and print communications only where at least 70 percent of the audience is reasonably expected to be above the legal purchase age (determined by using reliable, up-to-date audience composition data).
  - To facilitate these placement commitments, recognized electronic and print composition data should be reviewed on a regular basis (at least annually) in order to ensure that the audience composition data are current and appropriate.
  - Internal, periodic after-the-fact audits of past placements should be undertaken to verify that past advertising placements were in compliance with this Code and to take appropriate, corrective action for future placements.
4. Appropriate measures and best efforts should be taken so that beverage alcohol advertising and marketing are not specifically aimed at events unless at least 70 percent of the audience is reasonably expected to be above the legal purchase age.
5. Fixed beverage alcohol advertising and marketing materials may be placed at venues that are used primarily for adult-oriented events defined as where at least 70 percent of the audience attending those venue events is reasonably expected to be above the legal purchase age.
6. Beverage alcohol products should not be advertised or marketed in college or university newspapers, or on college and university campuses except for licensed retail establishments located on such campuses.
7. Beverage alcohol advertising should not be placed on any outdoor stationary location within five hundred (500) feet of an established place of worship or an elementary school or secondary school except on a licensed premise.

## **Responsible Content**

### **Adult Audiences/Underage Persons**

1. Beverage alcohol advertising and marketing materials are intended for adults of legal purchase age who choose to drink.
2. The content of beverage alcohol advertising and marketing materials should not appeal primarily to individuals below the legal purchase age.
3. Beverage alcohol advertising and marketing materials should not depict a child or portray objects, images or cartoon figures that primarily appeal to persons below the legal purchase age. Advertising or marketing material is considered to “primarily appeal” to persons below the legal purchase age if it has special attractiveness to such persons beyond the general attractiveness it has for persons above the legal purchase age.
4. Beverage alcohol advertising and marketing materials should not contain the name of or depict Santa Claus.
5. Beverage alcohol products should not be advertised or marketed on the comic pages of newspapers, magazines or other publications.
6. Beverage alcohol products should not be advertised or marketed in a manner associated with the attainment of adulthood or the “rite of passage” to adulthood.
7. Beverage alcohol products should not be advertised or promoted by any person who is below the legal purchase age or who is made to appear to be below the legal purchase age. To help ensure that individuals in beverage alcohol advertising are and appear to be above the legal purchase age, models and actors employed should be a minimum of 25 years old, substantiated by proper identification and should reasonably appear to be over 21 years of age.
8. No brand identification, including logos, trademarks or names, should be used or licensed for use on clothing, toys, games, or game equipment, or other items intended for use primarily by persons below the legal purchase age.

### **Websites**

9. Age verification mechanisms should be employed for DISCUS member-controlled beverage alcohol advertising and marketing websites. They also should contain a reminder of the legal purchase age.

10. DISCUS members recognize the crucial role parents play in educating their children about the legal and responsible consumption of beverage alcohol. To enable parents who choose to prevent their children from accessing Internet websites without their supervision, DISCUS will provide those parents and the manufacturers of parental control software upon request the website address of each member company so that the parent or manufacturer can use this information.
11. Each DISCUS member-controlled website with advertising or marketing materials should provide a link to a responsible decision-making site.

## **Social Responsibility**

12. Beverage alcohol advertising and marketing materials should portray beverage alcohol products and drinkers in a responsible manner. Beverage alcohol products and drinkers may be portrayed as part of responsible personal and social experiences and activities, such as the depiction of persons in a social or romantic setting, persons who appear to be attractive or affluent, and persons who appear to be relaxing or in an enjoyable setting.
13. Beverage alcohol advertising and marketing materials should not depict situations where beverage alcohol is being consumed excessively or in an irresponsible manner. These materials should not portray persons in a state of intoxication or in any way suggest that intoxication is socially acceptable conduct, and they should not promote the intoxicating effects of beverage alcohol consumption.
14. Beverage alcohol advertising and marketing materials should not contain any curative or therapeutic claim except as permitted by law.
15. Beverage alcohol advertising and marketing materials should contain no claims or representations that individuals can attain social, professional, educational, or athletic success or status as a result of beverage alcohol consumption.
16. Beverage alcohol products should not be advertised or marketed in any manner associated with abusive or violent relationships or situations.
17. Beverage alcohol advertising and marketing materials should not imply illegal activity of any kind.
18. Beverage alcohol advertising and marketing materials should not portray beverage alcohol being consumed by a person who is engaged in, or is immediately about to engage in, any activity that requires a high degree of alertness or physical coordination.
19. Beverage alcohol advertising and marketing materials should not be associated with anti-social or dangerous behavior.

20. Driving while intoxicated is against the law. Beverage alcohol advertising and marketing materials should not portray, encourage or condone driving any motor vehicle while intoxicated.

## **Good Taste**

21. Beverage alcohol advertising and marketing materials should reflect generally accepted contemporary standards of good taste.
22. Beverage alcohol advertising and marketing materials should not degrade the image, form, or status of women, men, or of any ethnic, minority, sexually-oriented, religious, or other group.
23. Beverage alcohol advertising and marketing materials should not contain any lewd or indecent images or language.
24. Beverage alcohol advertising and marketing materials should not employ religion or religious themes.

## **Sexual Prowess and Sexual Success**

25. Beverage alcohol advertising and marketing materials may depict affection or other amorous gestures or other attributes associated with sociability and friendship. While a brand preference may be portrayed as a mark of good taste and discernment, beverage alcohol advertising and marketing materials should not rely upon sexual prowess or sexual success as a selling point for the brand. Accordingly, advertising and marketing materials should not contain or depict:
- graphic or gratuitous nudity;
  - overt sexual activity;
  - promiscuity; or
  - sexually lewd or indecent images or language.

## **Promotional Events**

26. On-premise promotions sponsored by DISCUS members should encourage responsible consumption by those adults who choose to drink and discourage activities that reward excessive/abusive consumption.
27. Where supplier sampling is permitted, DISCUS members should ensure that appropriate measures are employed to safeguard against underage drinking.
28. DISCUS members should not promote or encourage any drinking in conjunction with reckless and/or irresponsible behavior at an on-premise promotion sponsored by DISCUS members.

## **Alcohol Content**

29. Beverage alcohol advertising and marketing materials should not refer to the alcohol content of a beverage alcohol product except in a straightforward and factual manner or promote the potency of a beverage alcohol product.

## **Social Responsibility Statements**

30. Responsible drinking statements should be included in beverage alcohol advertising, marketing materials and promotional events where practicable.

## **Internal Compliance System**

1. DISCUS members should establish an internal process to ensure compliance with the Code. To the extent possible given a company's size and organizational structure, this process should include a separate review of advertising and marketing materials by a company employee who is not in the marketing department or who was not involved in the development of the advertising or marketing materials.
2. DISCUS members should provide a copy of the Code to advertising agencies, media buyers and other external consultants involved in a member's advertising or marketing activities.

## **Code Review Board**

There shall be established and maintained a Code Review Board, which shall meet when necessary to consider complaints lodged by DISCUS members or other interested parties, including members of the public.

The Code Review Board shall be comprised of no less than five (5) members in good standing of the Board of Directors of DISCUS or his/her designee. Each member shall be elected by a majority vote of the Board of Directors.

Findings of the majority of the members of the Code Review Board shall be communicated promptly to the responsible advertiser and, in appropriate circumstances, to all members of the Board of Directors of DISCUS.

## **Semiannual Code Report**

On a semiannual basis, the Code Review Board will issue a report summarizing complaint decisions and the advertiser's response.

## Outside Advisors

On a voluntary, nonbinding and confidential basis, DISCUS will make available a mechanism whereby beverage alcohol industry member advertisers can seek the guidance of outside advisors concerning any questions an advertiser may have about whether particular advertising or marketing materials are consistent with the Code.

These outside advisors also will be contacted for their respective opinion if the Code Review Board cannot arrive at a majority decision about a particular advertisement or marketing material.

## Code Review Process

- For more than 68 years, distillers have abided by a voluntary Code of advertising practices. First adopted in 1934, the Code now includes 39 provisions regarding the responsible placement and content of beverage alcohol advertising and marketing materials.
- Through these voluntary provisions, DISCUS members hold themselves to a standard higher than mandated by any law or regulation. By this Code, DISCUS members hold all of their beverage alcohol products — distilled spirits, beer and wine — to the same high standard.
- Our commitment to responsibility and self-regulation always has been, and will continue to be, the cornerstone of our advertising and marketing practices.
- A Code Review Board, established under the provisions of the Code, provides a mechanism for any complaints or inquiries regarding all advertising and marketing materials subject to this Code. The Code Review Board has been a functioning and effective component of our voluntary Code for decades.
- If you have any questions regarding the Code of Responsible Practices or a particular advertisement or marketing material subject to the Code, please write to the DISCUS Code Review Board, 1250 Eye Street, N.W., Suite 400, Washington, D.C. 20005.

# **Demographic Data/Advertisement Placement Guidelines to Implement the Responsible Placement Provisions of the DISCUS Code of Responsible Practices for Beverage Alcohol Advertising and Marketing (2003)**

Set forth below are guidelines regarding placement of advertisements in various media and periodic, random after-the-fact audits (post audits) of placements to meet the demographic standard where at least 70% of the audience for TV, print and radio advertisements is reasonably expected to be 21 years of age or older (the legal purchase age (LPA) audience composition).

## **I. Media placement and the 70% LPA standard**

- A. A placement will be considered to be in compliance with this LPA standard if:
  - i) The advertiser has a reasonable expectation, determined by using reliable, up-to-date audience composition data, that the LPA audience composition will be at least 70%;
  - ii) The advertiser conducts internal, periodic after-the-fact audits of a random portion of past placements to verify that such placements were in compliance with the 70% LPA audience composition standard; and
  - iii) The advertiser, upon learning of a non-compliant placement, takes appropriate, corrective action for future placements.
  
- B. A reasonable expectation for meeting this demographic standard takes into account marketplace realities, the medium and available demographic audience composition data, and includes:
  - i) Recognition that a company's media buys generally are determined prior to its upcoming fiscal year for placement during the course of that fiscal year;
  - ii) Recognition that a company's media buys rely upon historical demographic data to estimate the future LPA audience composition;
  - iii) Recognition of the availability and publication intervals of syndicated audience composition data; for example, MRI TwelvePlus data are published annually and Arbitron data are published quarterly, whereas national broadcast networks have the most frequently measured syndicated audience composition data (national Nielsen data) thereby affording, among other things, more data for advertisement placement and for more expeditious after-the-fact audits, as compared to, for example, local (spot) TV and cable, as well as radio and print media.

## II. Media placement and audience composition data

### A. For TV--broadcast (network/local), cable (network/local) and syndication:

- i) Purchase by program (or, if program specific data are unavailable, by daypart/timeslot) using nationwide “2+” audience composition data, such as national Nielsen data, based upon the last two quarters of such data
- ii) For new programs, data for similar programs or time periods
- iii) A placement will be considered appropriate when the above-referenced data show that the placement is in compliance with the Code
- iv) Post audits: A past placement will be considered appropriate where data published or supplied for two consecutive quarters subsequent to the placement show an LPA audience composition that was in compliance with the Code

### B. For print:

- i) Purchase by publication using “12+” audience composition data, such as MRI consolidated TwelvePlus data (designed to allow analysis of “12+” youth and adult readership) or, if unavailable, MRI “18+” data, based upon the last publication of such data
- ii) If the publication is not measured by a syndicated data source (e.g., a new publication or a publication not measured by MRI), data provided by the publisher regarding the target readership audience or data for similar publications
- iii) More specific data regarding audience composition also meet this standard, such as a “21+” subscriber special edition of the publication
- iv) A placement will be considered appropriate when the above-referenced data show that the placement is in compliance with the Code
- v) Post audits: A past placement will be considered appropriate where data published or supplied subsequent to the placement show an LPA audience composition that was in compliance with the Code

### C. For radio:

- i) Purchase by daypart (e.g., “a.m. drive,” “midday,” “afternoon drive,” etc.) using “12+” audience composition data, such as Arbitron data, based upon the last two quarters of such data
- ii) If the station is not measured by a syndicated data source (e.g., a new station or a station not measured by Arbitron), data provided by the station regarding the target listenership audience or data for stations with similar formats in similar markets
- iii) More specific data than daypart can be used for audience composition such as, for example, narrowing the a.m. drive hours from 6:00 a.m.-10:00 a.m. to 8:00 a.m.-10:00 a.m. to determine audience composition

- iv) A placement will be considered appropriate when the above-referenced data show that the placement is in compliance with the Code
- v) Post audits: A past placement will be considered appropriate where data published or supplied for two consecutive quarters subsequent to the placement show an LPA audience composition that was in compliance with the Code

These Guidelines will be reviewed periodically to ensure that they reflect the most current and appropriate recognized electronic and print audience composition data.

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