Self-Regulation in the Alcohol Industry

Report of the Federal Trade Commission

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FEDERAL TRADE COMMISSION

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Executive Summary

This is the fourth Federal Trade Commission report on alcohol industry self-regulatory initiatives designed to address concerns about underage exposure to alcohol marketing. These initiatives are contained in guidelines promulgated by the three major industry trade associations, the Distilled Spirits Council of the United Stated ("DISCUS"), the Beer Institute ("BI"), and the Wine Institute ("WI"). This report provides data about: how industry members allocate marketing expenditures; compliance with its advertising placement standard; online and digital marketing, including privacy practices; product placements in entertainment media; and external review of complaints regarding self-regulatory code compliance. The report is based on responses to Special Orders issued to 14 major alcohol companies, review of studies and data related to underage alcohol use, discussions with a wide range of stakeholders, and comments in response to two Federal Register notices. This report provides alcohol company data in an aggregate, anonymous fashion.

Allocation of marketing expenditures: The Special Orders directed the companies to report advertising and marketing expenditures during calendar year 2011 in 34 categories. The data show that 31.93 percent of expenditures were directed to advertising in traditional media, that is, television, radio, magazine, and newspaper advertising; 28.57 percent of expenditures were directed to point of sale support; 6.8 percent of expenditures were directed to outdoor and transit marketing efforts; 7.9 percent of expenditures were directed to online and digital advertising; and 17.79 percent of expenditures were directed to sponsorships and public entertainment. As compared to data set forth in the 2008 Alcohol Report, the companies spent less on traditional media and substantially more on digital and online advertising.

Advertising placement: The Special Orders directed the companies to report advertising placement practices, and to provide audience composition data (numbers of persons 21 and older, and persons under 21) for each traditional media and online ad placement in the first half of 2011. In the first half of 2011, the voluntary self-regulatory codes required that at least 70 percent of the audience for each ad consist of persons 21 or older ("21+"), based on historic audience data; the Commission evaluated the placement data to determine whether industry complied with this 70 percent standard. In the first half of 2011, 93.1 percent of the placements made by the companies met the 70 percent 21+ audience composition standard. Additionally, 97.3 percent of total advertising impressions (*i.e.*, individual exposures to an advertisement) were due to placements that met the 70 percent standard. Lastly, 85.4 percent of the aggregate audience for all 14 companies' advertising consisted of persons 21+. The Commission commends the industry for its adoption, in mid-2011, of a 71.6 percent 21+ standard for new advertising purchases, and it expects all industry members to adhere to this new standard.

Online and other digital marketing: The Special Orders required the companies to submit substantial information about their online and digital marketing practices, both on sites owned or controlled by the companies (websites and social media pages) and on sites owned by others (such as sports, entertainment, and news sites). The information collected concerned the industry's efforts to avoid targeting youth as well as the companies' privacy practices. The companies provided narratives describing their practices as well as hundreds of pages of sceenshots depicting website pages, including age gates, registration forms, privacy policies, and other online campaign materials.

Ads placed on sites owned by others (such as news, entertainment, and sports sites) are subject to the alcohol industry's advertising placement standard. In the first half of 2011, 99.5 percent of alcohol ads placed on such sites had an audience that met the 70 percent 21+ standard.

Company websites are "age gated," meaning that a consumer must either enter a date of birth showing legal age status, or (less often) certify to being 21+, before entry into the site is permitted. Facebook, too, is age gated, limiting alcohol company page viewing and "likes" to persons previously registered as 21+, and delivering alcohol ads only to persons so registered. More recently, Twitter and YouTube have also adopted age-gate technologies for alcohol advertising. Companies that market on Twitter appear to use either a customized pop-up age gate, or the new Twitter age-gating tool; in contrast, not all companies appear to take advantage of the technologies offered by YouTube. The Commission encourages all alcohol companies to take advantage of existing age-gating technologies and to continue to develop such technologies as new media emerge.

Entities engaging in online and digital marketing need to take privacy concerns into account, particularly if they collect consumer information in any form. Alcohol industry members appear to have considered privacy impacts in the marketing of their products. Based upon the information submitted to the Commission, it appears that consumers are generally advised, in the context of online registration opportunities, of how their information will be used; that consumers must opt-in to receive further communications; and that they have the ability to readily opt-out when they want to stop receiving marketing information. Although the companies did not provide comprehensive information about the scope of their data security protections, it appears that consumer data are transmitted and maintained in reasonably secure environments, and shared only with company agents (such as e-mail contractors and sweepstakes fulfillment companies) who also have committed to maintain the security of the data.

Use of cookies and tracking tools on brand websites appears to be limited to those needed to permit re-entry of consumers who previously provided a date of birth indicating that they are 21+, or to determine optimal site content and facilitate browsing within a site. From the information provided, it appears that they do not attempt to tie tracking codes to individual consumer data, use these codes to deliver future advertising to consumers, or track underage consumers in any manner.

The company websites included privacy policies. Nonetheless, in many instances, current privacy policies on alcohol websites are lengthy and difficult to understand.

Product placements: The Special Orders required the companies to provide information about product placements in entertainment media vehicles. In the first half of 2011, eleven of the 14 companies made 576 product placements, primarily in television shows or films. Placement decisions are made on a case-by-case basis that includes review of information including a script synopsis, a description of how the product will be used, and available audience information.

External review of complaints: Each of the three major alcohol industry trade associations has a procedure for external review of complaints regarding alcohol advertising. Since 2008, however, only DISCUS has received any complaints; in all cases involving complaints about DISCUS member practices, and in the majority of cases involving nonmembers, the advertiser has agreed to comply with the DISCUS review board decision on the complaint.

Recommendations and Conclusion: The Commission recommends that the alcohol industry adopt the recommendations set forth in this report, which include:

1. Placement

    a. In evaluating the results of post-placement audits, particular attention should be paid to instances where audience composition data for individual placements for a brand, in particular media, appear to have compliance levels below 90 percent. If lack of compliance is due to wide fluctuations in measured audience composition due to small sample size, the company should consider using a higher audience threshold at the time of placement to maximize the likelihood of post-placement compliance with the 71.6 percent audience composition standard.

    b. Traditionally, the service that provides audience demographic data for radio only provided data regarding audience members 12 and older ("12+"). Over the past few years, the service began providing data on audience members 6 and older ("6+") in larger markets. In those markets where 6+ data is now available, companies should review this information in connection with placements.

2. Online and other digital media

   a. Age gates on company websites should require consumers to enter their date of birth, rather than simply asking consumers to verify that they are of legal drinking age.

   b. The Commission encourages industry members to take advantage of age-gating technologies offered by social media, particularly YouTube, and to continue to develop such technologies as new media emerge.

   c. The Commission recommends that the companies make significant efforts to develop brief, consumer-friendly privacy policies and disclosures to provide better transparency to consumers about the collection and use of their data.

   d. Companies should take steps to reduce the possibility of code violations resulting from user-generated content, including use of blocking technologies and frequent monitoring (including live monitoring when possible) to identify and remove violative content.

3. External review of complaints

   a. BI should permit competitor complaints, as DISCUS and WI already do, to make its system more robust.

4. Efforts to facilitate compliance with the codes

   a. Individual companies should continue their efforts to promote compliance with the codes, including ongoing training and development of compliance manuals for staff.

   b. In addition, industry as a whole should continue to participate in cross-company efforts to facilitate code compliance and assist industry members (including those that do not belong to one of the trade associations) to keep abreast of new developments and best practices. For example, the Commission commends efforts, such as the DISCUS "Media Summits," that bring together representatives of spirits, beer, and wine companies, as well as demographic services, new media outlets, and representatives of companies that provide compliance tools.

The Commission further urges those who are concerned about alcohol marketing, such as state alcohol regulatory authorities and consumer advocacy organizations, to participate in the industry's external complaint review systems when they see advertising that appears to violate an industry code provision. Finally, given the importance of reducing underage access to alcohol, the Commission urges industry and those concerned about underage drinking to use the free "We Don't Serve Teens" alcohol education materials available on DontServeTeens.gov.

The Commission continues to support self-regulation of alcohol marketing to reduce underage targeting. The Commission looks forward to the industry's adoption of the recommendations in this report. The agency will continue to actively monitor self-regulation within the alcohol industry, both formally and informally.

I. Introduction

A. Background

Underage alcohol use is a persistent problem in the United States, giving rise to concerns about youth exposure to alcohol marketing. This is the fourth FTC report on alcohol and youth, including the status of alcohol industry initiatives to reduce the likelihood that alcohol advertising will target youth.[1] This report provides significant information on how industry members allocate their promotional dollars; self-regulatory efforts related to these expenditures; compliance with the 70 percent adult audience composition standard for advertising placements; the status of external review of advertising complaints; and product placement in entertainment media. It also provides, for the first time, information about digital marketing practices, including the scope of activities, efforts to reduce youth access, and industry privacy practices. Further, the report includes the results of two small studies that the Commission conducted in 2009 and 2010.[2] It concludes with recommendations for industry and others.

This report is based on responses to Special Orders issued to 14 major alcohol suppliers, public comments submitted in response to two Federal Register notices,[3] review of studies and data relating to underage alcohol use (including recommendations of public health authorities), and discussions with a wide range of stakeholders. Appendix A of this report contains a copy of the Special Order issued to the alcohol suppliers.

B. Alcohol Industry Self-Regulation and Prior FTC Studies

The three major alcohol supplier trade associations – the Beer Institute ("BI"), the Distilled Spirits Council of the United States ("DISCUS"), and the Wine Institute ("WI") – have adopted voluntary advertising and marketing codes (hereafter referred to collectively as the "codes" and individually as "BI Code," "DISCUS Code," or "WI Code"). The codes contain provisions relating to the content and placement of alcohol marketing efforts, including guidelines designed to reduce the likelihood that alcohol advertising will, by its content or placement, target consumers below the legal drinking age ("LDA"). In addition, BI and DISCUS have issued companion documents to the codes. BI has issued Buying Guidelines that set forth the demographic data that should be reviewed before making advertising placements in various media, including digital media. DISCUS has issued both Buying Guidelines and a Guidance Note on Responsible Digital Marketing Communications.[4]

The FTC's prior alcohol marketing studies evaluated compliance with, and the appropriateness of, the then-current alcohol industry voluntary self-regulatory guidelines, insofar

as the guidelines addressed concerns about underage targeting. The 1999 Alcohol Report found poor compliance with the then-existing placement standard, which required that 50 percent of the audience for alcohol ads consist of adults 21 years of age or older ("21+" or "LDA adults"). It identified a number of promising practices relating to advertising placement, content, and external review of complaints about compliance with code provisions.[5]

The 2003 Alcohol Report found that companies had achieved 99 percent compliance with the then-existing 50 percent placement standard. More importantly, the report announced that starting in 2004, the industry would follow an improved placement standard, requiring that LDA adults constitute at least 70 percent of the audience for each alcohol ad. The Commission recommended additional improvements, including adoption of better systems for external review of complaints, and it cautioned industry about the need to ensure that alcohol ad content not have undue appeal to minors.[6]

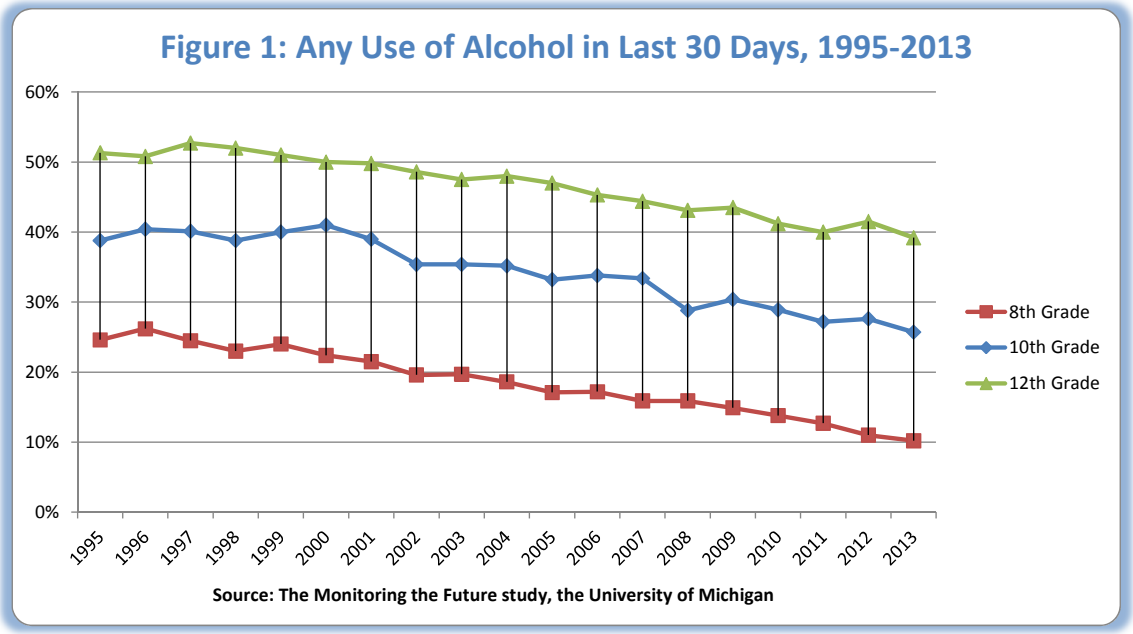
The 2008 Alcohol Report found that 92.5 percent of the individual *ad placements* (an ad placement is one appearance of an ad, for example, in one issue of a particular magazine title, or on a specific television show on a particular date and time) made during the the first six months of 2005 complied with the 70 percent adult placement standard. Because problem placements were clustered in smaller media (such as local television and radio), 97 percent of alcohol advertising *impressions* (an impression occurs when one person sees a placement on a single occasion) were due to compliant ads. It also found that when *all* audiences for *all* alcohol ads were aggregated, more than 85 percent of the total audience consisted of adults 21+. The report found that the industry had adopted the recommended systems for external review of complaints. The 2008 Alcohol Report also urged industry to commit to reconsider its placement standard when the 2010 Census data were released.[7]

C. Scope of the Problem: Underage Drinking in America

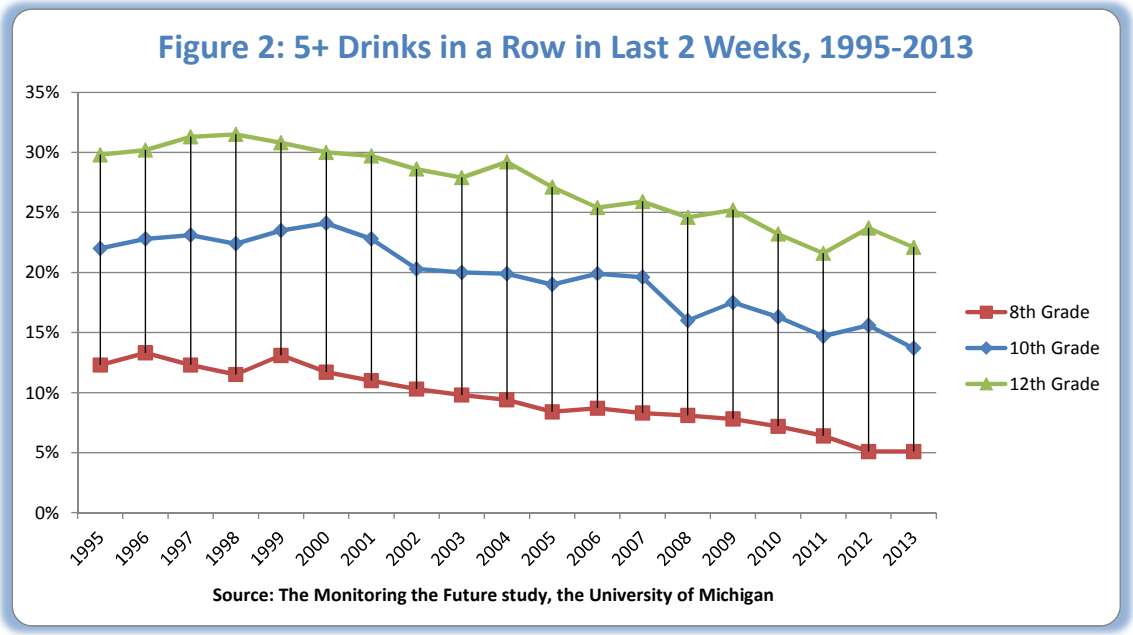
Underage drinking is a major public health problem. It is a leading contributor to death from injuries, which are the main cause of death for people under age 21. Each year, approximately 4,700 young people die from causes related to alcohol use.[8] A recent study reports that in 2008, approximately 36,600 underage persons were hospitalized for alcohol use disorder; many of them had also incurred a physical injury.[9] The average length of stay for these hospitalizations was 4.9 days with average total charges of $19,210.[10] The total cost for underage hospitalizations due to alcohol use disorder was approximately $755 million.[11]

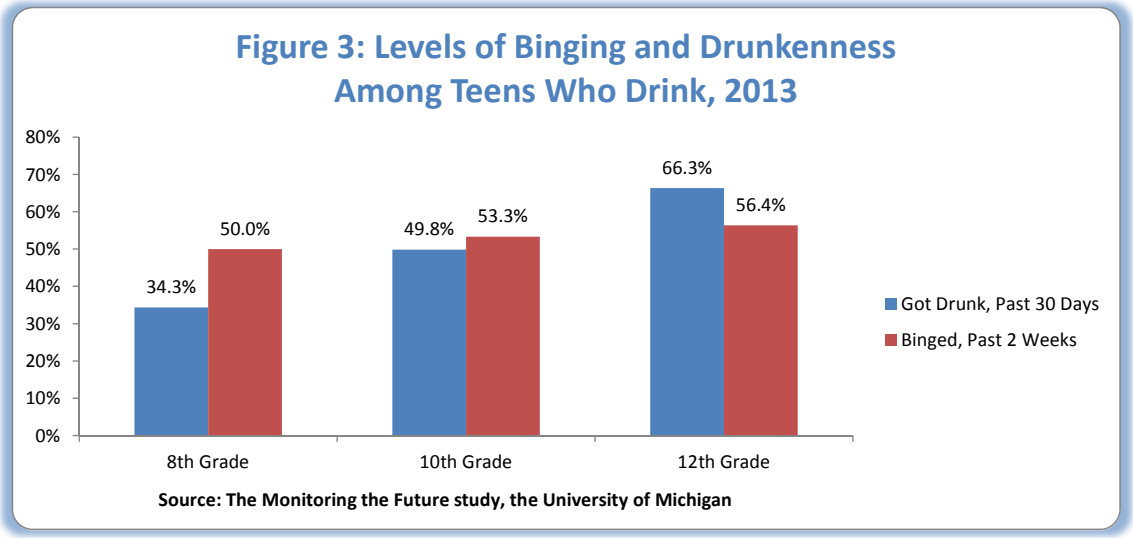
Underage drinking contributes to a number of other risks. When adolescents drink, they are more likely to engage in risky sexual behavior resulting in outcomes such as unplanned

pregnancies and sexually transmitted diseases.[12] In addition, underage drinking increases the risk of physical and sexual assault.[13] It is associated with tobacco and illicit drug use,[14] as well as academic failure.[15] Starting to drink at an earlier age is associated with greater odds of experiencing motor vehicle crash involvement, unintentional injuries, and physical fights while drinking.[16] Finally, the National Institute on Alcohol Abuse and Alcoholism ("NIAAA") reports that there is concerning evidence from small-scale human brain imaging studies that underage drinking can harm the developing brain.[17] In the long term, heavy alcohol use by teens can alter the trajectory of brain development and cause lingering cognitive defects; it remains unknown whether these defects are permanent.[18]



In 2013, 10.2 percent of 8th graders, 25.7 percent of 10th graders, and 39.2 percent of 12th graders reported drinking in the past thirty days, as seen in Figure 1. Similarly, 5.1 percent of 8th graders, 13.7 percent of 10th graders, and 22.1 percent of 12th graders reported binge drinking (defined as having five or more drinks in a row) in the previous two weeks, as seen in Figure 2.[19] Older adolescents tend to binge drink at a greater rate than younger adolescents. Rates of drunkenness and binge drinking among teens who drink are depicted in Figure 3.[20] Fortunately, teen alcohol use and binge drinking have significantly declined since 1995. (Figures 1 and 2). The decrease in rates of binge drinking since 1995 appears to coincide with long-term increases in teens' disapproval of weekend binge drinking.[21]





The major U.S. surveys of adolescent alcohol use ask about category consumption, but not brand consumption. According to the Monitoring the Future Study, teens drink a wide range of alcohol types, including beer, distilled spirits, wine, and flavored alcohol.[22] By 12th grade, reported rates of beer and spirits consumption are nearly equal.[23] In a recent small survey, where youth ages 13 to 20 were asked what brands of alcohol they consumed in the past 30 days, 25 brands were responsible for nearly half of all alcohol consumption by that age group. In that survey, category consumption was highest for beer (42.5 percent), followed by spirits (35.8 percent), flavored alcohol (16.1 percent), and wine (5.7 percent).[24] Together, these data suggest that teens find all categories of alcohol to be appealing.

According to the 2011 National Survey on Drug Use and Health ("2011 NSDUH"), about 70 percent of underage drinkers reported that they did not pay for the alcohol they drank.[25] Instead, they obtained it from an unrelated person of legal drinking age (38.2 percent), another underage person (19.1 percent), parents, guardians, or other adult family members (21.4 percent), or by taking it from their own or someone else's home (9.8 percent).[26] Among the 30 percent of underage drinkers who paid for their alcohol, 22.4 percent gave money to someone else to purchase the alcohol, while 7.7 percent purchased it themselves.[27] Most underage drinkers reported that they drank in someone else's home (57 percent) or their own home (28.2 percent).[28] Underage girls were much more likely than boys to drink at a bar, restaurant, or club (11.4 versus 6.6 percent).[29]

There has been a long-term decline in adolescents' perceptions of the availability of alcohol, particularly in the younger grades.[30] In 1996, 75.3 percent of 8th graders reported that alcohol was "very easy" or "fairly easy" to obtain.[31] This rate fell to 56.1 in 2013.[32] Over 90 percent of 10th graders reported that alcohol was "very easy" or "fairly easy" to obtain in 1996.[33] In 2013, this rate was 77.2 percent.[34] Although these levels remain too high, they represent improvement.

D. Context: The U.S. Alcohol Market

Issues related to underage alcohol use are complex in part because alcohol use is legal for persons 21 and older. Indeed, according to the 2011 NSDUH, approximately 123.7 million consumers 21+, or about 56.5 percent of the U.S. adult population, reported past month alcohol use.[35] Without doubt, too many adults drink to excess,[36] potentially harming themselves and others.[37] Nonetheless, as noted by NIAAA staff, "Alcohol is tightly woven into the fabric of American society. Most adults who drink alcohol drink moderately and responsibly without complications; some can even derive modest health benefits."[38]

Adults consume a range of alcohol products. Table 1 presents the results of a proprietary industry survey of alcohol consumers 21+.[39]

Table 1: Adult Alcohol Consumption, 2012

Population Segment	Beer	Wine	Champagne/ Sweet Wine	Spirits	Flavored Malt Beverages
Caucasian	42%	34%	12%	41%	16%
African-American	39%	31%	17%	48%	19%
Hispanic	61%	32%	17%	55%	20%

Less than a quarter of adult consumers reported drinking only wine, only beer, or only spirits; the rest drink beverages from two or more categories.[40]

Alcohol preferences are in flux. Although beer continues to be the product that consumers identify as what they drink "most often,"[41] per capita consumption of beer has declined, and per capita consumption of wine and spirits has increased, over the past decade.[42]

Further, trends within the beer,[43] wine,[44] and spirits[45] categories reveal substantial consumer interest in flavor options and, in the case of beer and spirits, in super-premium products.[46]

Overall, U.S. alcohol supplier gross revenues were nearly $60 billion in 2011.[47] Suppliers market aggressively to capture these revenues, as is clear from the expenditure data reported in Section II.B. below. Industry-wide, media experts estimate that beer advertisers are responsible for 66.9 percent of marketing expenditures, spirits advertisers for 28.8 percent, and wine advertisers for 4.3 percent.[48]

The companies conduct a variety of research on alcohol consumers 21+ as part of their efforts to evaluate campaign effectiveness.[49] The surveys generally focus on key performance indicators related to brand or ad *awareness* (unaided, aided, message association), *favorability* (for example, is this a brand you reject, consider, might purchase, or is it already one of your top three brands), and *attributes* (*i.e.*, characteristics that marketers believe are attractive to the target audience). Each brand has different attributes.[50]

The companies use such survey data to determine which key performance indicators are most highly correlated with brand consideration and future purchase intent. By comparing changes in key performance indicators over time, and/or comparing movement in key performance indicators between consumers who are exposed to campaigns in particular media and consumers not so exposed, the companies can evaluate which messages resonate and how to allocate media dollars in the future. Data show a variety of results, depending on brand and campaign. Some campaigns produce no impacts on perception or consumption. Other data appear to show that, for some brands, persons not exposed to advertising experience a decrease in brand perceptions and/or reported consumption over time.[51]

More recently, some marketers have used sophisticated tools that do not depend on self-reported consumer behavior. For example, one tool allows marketers to compare the relationship between expenditures for various kinds of marketing efforts and sales volumes in various outlets (including off-premise and on-premise). Further, a major research company has a large database of consumers who have agreed to permit tracking of their Internet surfing behavior and to scan their purchases; as a result, marketers can compare the actual purchase behaviors of consumers

who have been exposed to an online advertising campaign with the purchase behaviors of consumers who were not exposed to that campaign.[52]

II. Current Study Results

In March 2011, the FTC announced the initiation of the current study,[53] and in April 2012 the FTC issued Special Orders to 14 major alcohol marketers.[54] The Special Orders required submission of contact information and other background data (Specification 1); advertising expenditure data (Specification 2); advertising placement practices and audience composition data (Specification 3); digital marketing practices and data collection (Specification 4); and lesser-known media program descriptions (Specification 5). *See* Exhibit A.

A. Supplier Background Information

In 2011, the 14 companies involved in this study sold 1,679 brands or brand varieties. They reported stripped sales (*i.e.*, sales net of taxes) of $37.8 billion due to U.S. distribution of 2.6 billion cases (9-liter or 2.25-gallons) of alcohol in 2011.[55] This represents approximately 79 percent of the alcohol volume sold by U.S. suppliers in 2011.

B. Alcohol Marketing Expenditures

The Special Orders directed the suppliers to report the dollar amount they expended during the calendar year 2011 on the advertising, merchandising, or promotion of beverage alcohol products in the United States in 34 categories. *See* Exhibit A, Specification 2 and Attachment B (reporting spreadsheet). The purpose of the request was to identify what kinds of marketing efforts the suppliers engage in, so that the Commission could evaluate the extent to which current self-regulatory provisions address these efforts. The Special Orders also directed the suppliers to provide examples of programs supported by expenditures and to describe self-regulatory efforts designed to reduce the likelihood that marketing would be targeted to those below the LDA of 21. *See* Exhibit A, Specifications 3A, 5A.

The companies reported $3.45 billion in marketing expenditures in 2011,[56] representing approximately 9.5 percent of stripped sales income.[57] Reported category expenditures are as follows:

Table 2: Expenditures, 2011

Category	Total Amount Spent (in thousands)	% of Total Industry Expenditure	Min % Spent By Any Company	Max % Spent By Any Company
Traditional Media				
TV National	$778,751	22.54%	0.00%	45.97%
TV Regional/Local	$101,101	2.93%	0.00%	7.19%
Radio	$126,601	3.66%	0.10%	6.64%
Magazine Advertising	$83,533	2.42%	0.45%	19.24%
Newspaper Advertising	$13,220	0.38%	0.00%	0.92%
Expenditures to Help Others Promote Alcohol				
Point of Sale Total	$987,076	28.57%	11.97%	51.39%
Promotional Allowances	$159,396	4.61%	0.00%	19.05%
Outdoor and Transit				
Transit Advertising	$28,941	0.84%	0.00%	6.90%
Outdoor Advertising	$205,830	5.96%	0.15%	14.05%
Online and Digital				
Company-Owned/Operated Internet Site Advertising	$71,294	2.06%	0.54%	16.08%
Other Internet Site Advertising	$188,372	5.45%	0.16%	9.72%
Other Digital Advertising	$13,307	0.39%	0.00%	18.42%
Sponsorships				
Public Entertainment: Not Sports-Related	$217,341	6.29%	0.85%	25.57%
Sponsorship of Sporting Events, Sports Teams, or Individual Athletes	$397,321	11.50%	0.21%	20.46%
Additional Categories				
Direct Mail Advertising	$2,528	0.07%	0.00%	0.53%
Spring Break Promotions	$543	0.02%	0.00%	0.17%
Product Placements	$4,145	0.12%	0.00%	0.81%
In-Cinema Advertising	$2,320	0.07%	0.00%	0.54%
Telemarketing	$32	0.00%	0.00%	0.83%
Other	$73,077	2.12%	0.00%	15.04%
TOTAL REPORTED SUM	**$3,454,738**	**100.00%**		
Cross-Category Expenditures				
Sport and Sporting Events	$989,669	28.65%	0.00%	55.37%
Social Responsibility Programs and Messages	$100,880	2.92%	0.00%	7.47%

1. Traditional Media

Advertising in traditional media – television, radio, magazines, and newspapers – accounted for 31.93 percent of expenditures.[58] Although these data are not directly comparable to the information for 2005 reported in the 2008 Alcohol Report,[59] it appears that television's share of expenditures has remained fairly steady. There have been decreases, however, in the shares of alcohol advertising dollars devoted to radio (down from 5.01 percent in 2005 to 3.66 percent in 2011), magazines (down from 4.36 percent to 2.42 percent), and newspapers (down from 0.91 percent to 0.38 percent).

As of January 2011, the self-regulatory codes of the three trade associations specified that ads should be placed on television or radio, or in magazines and newspapers, only if at least 70 percent of the audience was reasonably expected to consist of persons of legal drinking age or older (referred to hereafter as "70 percent 21+"). The trade associations have since raised this standard and now require that 71.6 percent of the audience be 21+.[60] In addition, the BI and DISCUS codes include buying guidelines that identify the appropriate demographic data to consider before purchasing ad space.[61] Part II.C. of this report discusses the specifics of the buying guidelines and evaluates industry compliance with the 70 percent 21+ standard.

2. Expenditures to Help Others Promote Alcohol Products

Suppliers rarely sell alcohol directly to consumers. Instead, they sell to distributors (also known as wholesalers), who in turn sell to retailers. Retailers fall into two categories. They may serve alcohol for immediate use "on premise," as in the case of restaurants, bars, and stadiums. Or, they can sell product for use "off premise," as in the case of liquor, grocery, and convenience stores. Several of the categories identified in the Special Orders sought information about supplier expenditures to help distributors and retailers promote their products to consumers.

The point of sale category expenditure data reported in Table 2 reflects the sum of "specialty items," "retail value added," and "point of sale: other." According to the company reports, 23.71 percent of reported expenditures were devoted to "point of sale: other" and "specialty items" as defined in the Special Orders (down from 25.86 percent in 2005).[62] Together, these two subcategories reflect expenditures for branded materials used by retailers engaged in either on-premise or off-premise sales, including temporary and permanent signage, display racks, neon signs, furniture, lighting, mirrors, and glassware, as well as the net cost (deducting payments by consumers) of distributing items such as t-shirts, hats, can openers, printed recipes, key chains, and coupons.[63] In addition, just over $168 million, or 4.86 percent of industry-wide expenditures, were for "retail value added," that is, promotions where a consumer who purchases

an alcohol product also receives another item at no additional cost, such as drinking glasses, a martini shaker, a coupon for food, or a sample of another alcohol product. This represents a small decrease from the reported 5.99 percent of expenditures for 2005 reported in the 2008 Alcohol Report. Expenditures in these categories are subject to the content and placement provisions of the self-regulatory codes[64] and vetted by company legal staff for compliance. The states also regulate retailers' acceptance and use of specialty and retail value added items.[65]

Just 4.61 percent of expenditures were devoted to promotional allowances – funds the suppliers provide to the distributors – a substantial decrease from the 7.49 percent share reported in 2005. Distributors may use these funds to purchase local advertising, in-store signage, the execution of local marketing programs, and production of coupons. Some suppliers provide lump-sum grants to distributors in advance; others reimburse distributors for money already spent. Where a supplier has a contract with a distributor, it can require the distributors to abide by the applicable self-regulatory codes. Otherwise, federal and state laws require that the distributor determine how the funds are used.[66]

3. Outdoor and Transit

Outdoor and transit expenditures accounted for 6.8 percent of reported marketing expenditures, a slight increase over the 2005 allocation of 6.03 percent. The self-regulatory codes require that outdoor stationary advertisements be placed no closer than 500 feet from any elementary or secondary school or place of worship.[67]

4. Online and Digital

Overall, the companies expended 7.9 percent of their funds for online and other digital marketing – four times as much as the amount devoted to these media in 2005. Of this, 2.06 percent was devoted to company-owned and -operated sites, such as company websites and company pages on social media; less than a third of the funds related to company-owned and -operated site marketing was expended on company pages in social media such as Facebook, Twitter, and YouTube. Additionally, 5.45 percent of expenditures were devoted to advertising on sites owned by others (such as banner and similar ads); less than one fifth of these funds were allocated to social media. Finally, 0.39 percent of expenditures were devoted to "other digital advertising," such as mobile marketing, emails, and apps. Section II.D. of this report contains a detailed discussion of the companies' online and digital marketing efforts, including relevant code provisions, efforts to avoid targeting youth, and privacy practices.

5. Sponsorships

Sponsorships and public entertainment accounted for 17.79 percent of expenditures (up from 16.02 percent in 2005). Two-thirds of these funds were directed at sports events (*e.g.*, football, baseball, racing), sports teams, and individual athletes. The other third was directed to non-sports events, such as concerts and other entertainment.

Sponsorships are subject to the codes' placement and content provisions.[68] If sponsored events are carried on television or radio, the broadcasts are subject to the placement provisions for marketing in those media.[69]

6. Additional Categories

Aggregate expenditures for direct mail, spring break,[70] and in-cinema advertising, and product placements in entertainment media, were less than 0.3 percent of expenditures. Product placements are discussed more fully in section II.E. below.

Companies also reported 2.12 percent of expenditures in the "other" category. These expenditures covered items such as fees paid to advertising agencies, production agencies, and public relations agencies; warehousing for point of sale materials; costs for redemption of coupons for non-alcohol items; sampling; and trade shows and conventions.

7. Cross-category Expenditures

a. Sports

Almost 29 percent of the companies' overall expenditures – including on TV and radio, in print media, for point of sale and specialty items, online, or through sponsorships – related to sports.[71] This is about 2 percentage points over 2005.

b. Social Responsibility

The companies reported that 2.92 percent of their cross-category expenditures were devoted to social responsibility programs and messages. These funds support a wide variety of efforts, including designated driver and safe ride home programs, and support of The Century Council,[72] TEAM Coalition,[73] Alcohol Beverage Medical Research Foundation,[74] the National Center of DWI Courts,[75] and The Health Alliance on Alcohol.[76] In addition, it includes the dollar value of advertising space devoted to carrying the Federal Trade Commission's "We Don't Serve Teens" consumer alcohol education messaging, further discussed in Section III.D., below, as well as company media campaigns promoting responsible drinking.

C. Advertising Placement

1. Introduction

The voluntary self-regulatory codes of the alcohol industry contain provisions designed to limit where alcohol advertising and marketing may appear, to reduce underage targeting. As of January 2011, all three of the trade associations required that 70 percent of the audience for advertising consist of LDA adults (in late May 2011, following release of the newest census data showing that 71.6% of the U.S. population is now 21+, the standard was raised to 71.6 percent for new ad purchases).[77] The BI and DISCUS codes also include protocols (also known as buying guidelines) that set forth what kinds of demographic data should be consulted before making a placement, and what kinds of auditing the companies should conduct after the fact.[78]

The Special Orders required the 14 companies to provide information about industry and company guidelines used to facilitate compliance with advertising placement guidelines, databases used to make advertisement placement decisions, the frequency of post-placement data reviews to verify that advertising placements complied with the guidelines, and whether any additional safeguards were used. *See* Exhibit A, Specification 3A. Additionally, the Commission ordered the companies to provide information regarding each advertisement placed between January 1, 2011 and June 30, 2011 on television and radio, in magazines, newspapers, and on the Internet. Specifically, for each ad placed, the Commission asked for the advertisement's name; brand advertised; name of the medium and location of dissemination; date and time that the advertisement appeared; name of the show during, or in conjunction with, the advertisement appeared (where applicable); actual demographics of the audience (*i.e.*, number of persons 21+ and number of persons 20 and under (20-)) for that dissemination; and source of the data reported. *See* Exhibit A, Specification B and Appendices C1-C7 (reporting spreadsheets).

2. Placement Procedures and Post-Placement Audit Requirements

According to the responses to Specification 3A, the companies followed the provisions set forth in the self-regulatory codes relating to placing ads and auditing ad placements after the fact. As required by the codes, media buyers reviewed the available demographic data before placing ads, and placed ads only if the data showed that the audience met the historical 70 percent standard. The placement process is as follows:

i. Prior to placing an advertisement on national television, the companies direct their buyers to review syndicated demographic data for the past two quarters (i.e., six months) for the program in which the ad will appear, if available; otherwise, for the daypart in which it will appear.[79]

ii. Prior to placing an advertisement on local television, the companies direct their buyers to review local or regional audience composition data for the past two quarters for the program or daypart in which the ad will appear.[80]

iii. Prior to placing radio advertisements, companies direct buyers to consult the past six months of audience data for the daypart in which the ad is to appear.[81]

iv. Prior to placing magazine advertisements, buyers check the following data: for large magazines, data from recognized measurement services that provide age 12+ or 18+ audience composition data; in the case of smaller media, reliance on readership data provided by the publisher, or comparable audience data from a similar publication.[82]

v. Prior to placing newspaper advertisements, companies direct their buyers to review audience composition data for the most recent rating period.[83]

vi. Prior to placing digital advertisements, buyers are directed to review audience data for the past two consecutive months, or the past three consecutive months, depending on which code is followed.[84] If an advertisement is placed on a new digital medium, or if an advertisement is placed on an unmeasured digital medium, the companies must consult audience data provided by the operator or publisher or review data for one or more comparable media outlets.[85]

Eleven of the 14 companies have additional safeguards in place, such as "no-buy" lists and media content review, to increase the likelihood that ads are placed in media with an audience composition that complies with the codes.[86]

The DISCUS Code requires companies to conduct post-placement audits on a semi-annual basis for all media except print and digital, for which annual audits are required.[87] The BI Code requires semi-annual post-placement audits for all advertising media.[88] If a post-placement audit reveals that an advertisement did not meet the placement standard, the company should take appropriate action to prevent a re-occurrence.[89]

3. Placement Results[90]

The preceding paragraphs primarily discussed the *procedures* that the companies followed, and the data they considered, prior to making a placement. The Special Orders also required the companies to provide data showing the composition of the audience (that is, number of persons 21+ and 20-) for every individual advertisement disseminated in the first half of 2011. Table 3, below, sets forth the 14 suppliers' aggregated audience composition data for alcohol advertising on television, radio, print, and measured online media.[91] These aggregated data do not include impressions for age-gated online media, which are addressed separately.

Table 3: Placement Summary, January-June 2011

Medium	Ethnicity	Column A: Placements That Met Target	Column B: Impressions From Placements That Met Target	Column C: Proportion of Aggregate Audience 21+
All Measured Media	all	93.1%	97.3%	85.4%
National TV	all	94.6%	97.3%	84.7%
Local TV	all	98.0%	97.5%	87.9%
Radio 6+	all	91.2%	92.0%	84.4%
Radio 12+	all	92.9%	96.8%	89.2%
Magazine	all	99.4%	99.4%	88.2%
Newspaper	all	100%	100%	95.6%
Online Measured	all	99.5%	98.7%	84.5%
All Measured Media	African-American	87.3%	94.4%	81.4%
All Measured Media	Hispanic	91.0%	97.0%	81.1%

As shown in Column A, in the first half of 2011, about 93 percent of the television, radio, print, and online advertising *placements* for which data were available had an LDA adult audience composition of 70 percent or higher (a placement is one appearance of an ad in a specific medium, such as one appearance on a particular television show at a particular date and time, or one appearance in an issue of a particular magazine title). This included over 94 percent of ads on national television,[92] 98 percent of ads on local television, 91 percent of ads in radio 6+ markets and almost 93 percent of ads in radio 12+ markets,[93] over 99 percent of ads in magazines, 100 percent of ads in newspapers, and over 99 percent of ads placed on measured Internet media.

Column A treats all placements equally. Placements are not equal, however – an advertisement on a local radio station will reach a far smaller audience than an advertisement shown on a popular television show. Accordingly, the Commission also evaluated the data from the point of view of "impressions"; an impression occurs when one person is exposed to a particular placement. Column B sets forth the proportion of impressions generated from placements that met the 70 percent target. It shows that over 97 percent of alcohol advertising impressions in measured media were due to placements that met the 70 percent target. This included over 97 percent of impressions due to national and local television ads, 92 percent of impressions from ads in radio 6+ markets, nearly 97 percent of impressions from ads in radio 12+ markets, over 99 percent of impressions from ads in magazines, 100 percent of impressions

from ads in newspapers, and over 98 percent of impressions from ads on measured, non-age-gated Internet sites.

Column C shows what proportion of the *total* audience for all alcohol ads disseminated by the 14 companies studied consisted of persons 21+ ("aggregate audience 21+") during the study period, both in particular media and overall. In the first half of 2011, over 85 percent of the aggregate audience for all alcohol ads placed during the study period consisted of persons 21+.

The Special Orders also required the companies to provide data regarding advertising specifically targeted to minority audiences. As shown in Table 3, about 87 percent of ads specifically targeted to African-American audiences and 91 percent of ads specifically targeted to Hispanic audiences met the 70 percent placement target (Column A). Because these shortfalls in compliance often occurred in media with very small audiences, however, over 94 percent of the impressions from ads targeted to African-American audiences, and 97 percent of impressions from ads targeted to Hispanic audiences, were due to placements that met the 70 percent target (Column B).[94]

D. Online and Other Digital Marketing

In addition to the placement information identified above, the Special Orders required the companies to submit substantial information about their online and digital marketing practices, both on sites owned or controlled by the companies (company websites and branded social media pages) and on sites owned by others (such as sports, entertainment, and news sites).[95] The information collected provided a snapshot of how and where the industry markets in the online and digital arena, and set forth the industry's efforts to avoid targeting youth in these arenas, including age-gating efforts (further described below), as well as privacy practices. The FTC staff also obtained information about self-regulatory guidelines relating to online and other digital marketing from the trade associations.

Two of the three alcohol industry trade associations have adopted guidelines for their members' marketing practices on digital media. In September 2011, DISCUS adopted a Guidance Note on Responsible Digital Marketing Communications. It provides that digital marketing communications should be placed only in media where 71.6 percent of the audience is expected to be 21+. For any website or page controlled by the brand, the company should require age verification before communicating with a visitor. Brand advertisers must regularly monitor and moderate user-generated content on their pages. Communications intended to be forwarded by users should be accompanied by instructions that they should not be forwarded to users under the legal purchase age.[96] The DISCUS Code further states that digital

marketing must respect user privacy and that promotions should be transparently identified as such. Brands may only collect user information from users who affirm that they are of legal purchase age. Brands must also employ a mechanism to allow users to "opt-in" to receive direct digital marketing communication and to "opt-out" if they no longer wish to receive such communication. Advertisers may not sell or share personal information with third parties and they must clearly communicate how personal data will be collected and used, although the Code does not discuss the prominence of these communications. Advertisers should encourage users to read the brand's privacy statement before submitting information. Finally, the brands must protect user information from loss or theft.[97]

The BI Code was amended to add Digital Media Guidelines in February 2011. It too provides that advertising placement in digital media is permissible where there is no dialogue between a brewer and user, and 71.6 percent of the audience is expected to be adults of legal drinking age. For digital media where there is dialogue between the brewer and user, placement is permissible only if the brewer confirms the user is of legal drinking age either by asking the user to enter his or her birthdate or by restricting access to the website to users of legal drinking age through registration. Content that users may share with others should include instructions not to forward to persons under the legal drinking age. Brewers must monitor user-generated content on a regular basis and remove any content that does not comply with the code.[98] The code also requires brewers to post privacy policies on their websites. In addition, they must require users to verify that they are of legal drinking age before they collect information about that user. Brewers may not sell personal information about users and they must store that information securely. Finally, brewers must employ a mechanism to allow users to opt-in to receive direct communication as well as to opt-out of continuing to receive such communication.[99]

Specification 4 of the Special Orders required companies to provide substantial information regarding their digital marketing practices. *See* Exhibit A, Specifications 4(a) and (b). Specification 4(a) required, for each company-owned or -operated website maintained in 2011, the site name and address; identification of information collected and/or maintained from visitors; description of how such information is used to deliver advertising to consumers in the future; restrictions or prohibitions on use of collected information; efforts to deter entry by persons under age 21; analytics or technologies used to identify or profile visitors to the website; and policies governing site content, including user-generated content. Specification 4(b) required information regarding all other Internet site and digital advertising campaigns conducted in 2011, including a description of each campaign, identification of information collected and/or maintained from consumers; restrictions on the use of such information; mechanisms used

to deter entry by persons under age 21; tracking practices with respect to any consumer of any campaign identified as being under age 21; analytics or technologies used to identify or profile consumers of each campaign; and company policies governing campaign content including user-generated content. In response to the Special Orders, the companies provided narrative information as well as hundreds of pages of sceenshots depicting website pages, including age gates, registration opportunities, privacy policies, and other online campaign materials.

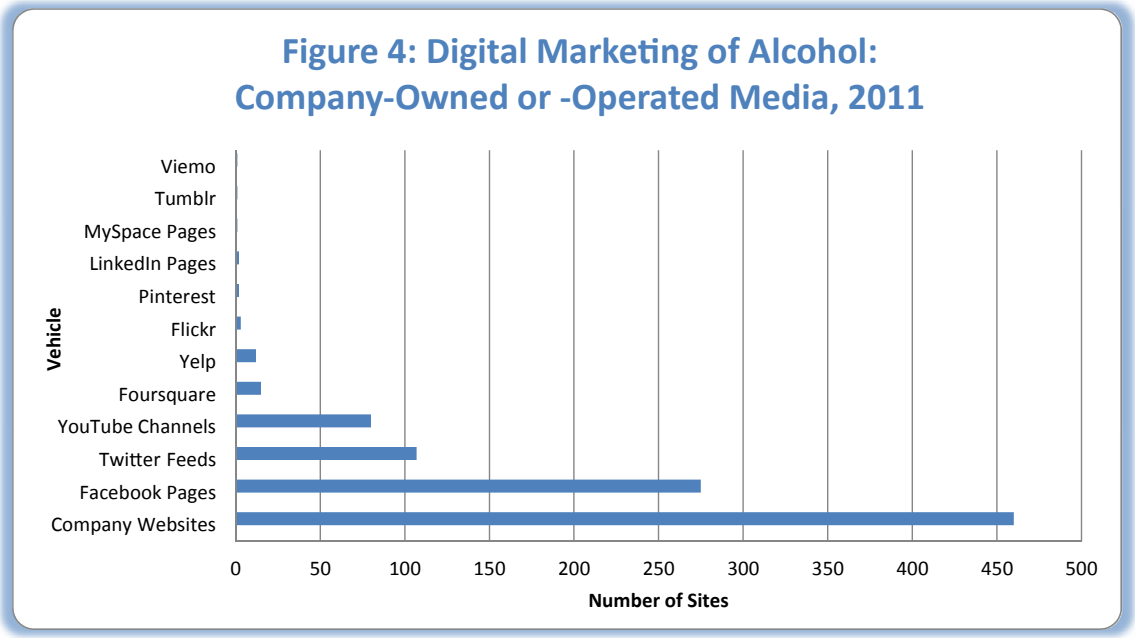
The Commission considered the responses to Specification 4(a) and 4(b) from two perspectives. First, it evaluated the extent to which the industry self-regulatory efforts limit youth exposure to alcohol marketing. Second, it evaluated the companies' privacy practices.

Alcohol industry online marketing expenditures have quadrupled since 2005. In the first half of 2011, alcohol advertising in measured, non-age-gated online media generated approximately 11.5 billion impressions. In addition, it is possible that as many as 50 billion impressions occurred due to alcohol marketing on age-gated online media, which include company brand websites, company sponsored pages in social media, and advertising placed in social media (*i.e.*, the "right hand side" of Facebook pages).[100] The internal research the companies supplied made clear that they were still trying to figure out "what works" with digital marketing, *i.e.*, what content reverberates best in social media, what form of video ad is more likely to be clicked on, and what mix of traditional media and digital is most efficient. It also made clear that digital marketing may change the overall dynamic of advertising. According to research sponsored by the Interactive Advertising Bureau, online ads boost recall of TV ads by 33 percent.[101] One alcohol company's research confirmed this phenomenon – it reported that organic search (such as Google queries) and social media (including Facebook, online sentiment, and offline word of mouth) amplified traditional marketing effects by 10 percent, and that nearly 40 percent of radio's impact was due to this synergy.

1. Company-Owned or -Operated Media

a. Scope of Activity

As used in this Report, the term "company-owned or -operated media," includes company websites ("www.brandx.com"), company-controlled pages, channels, and feeds on social media ("www.facebook.com/brandx"; "www.youtube.com/brandx"), and company-branded applications. Figure 4 depicts the scope of online marketing in alcohol company-owned or -operated digital space in 2011.



b. Brand Websites

i. Landing Page Information and Age Gates

The companies involved in this study operated 461 brand websites in 2011. The landing pages of company websites require that a visitor self-verify that he or she is of legal drinking age by responding to some sort of "age gate," before the visitor may enter the site and view its content. If the consumer indicates an age below 21, entry is refused.[102] Most company websites require that the consumer enter date of birth at the age gate; however, about 13 percent of the websites simply ask the user to check a box indicating that he or she is at least 21 years old, and one website merely asks whether the visitor is of legal drinking age in the country where he or she is located.[103] If the consumer passes the age gate, the company places a cookie denoting LDA status on the visitor's computer; the cookie may last for a few hours or for much longer, depending on the company. The reporting companies also use cookies to analyze site traffic, pages viewed, and revisits. According to the companies, these cookies are not used for the delivery of future advertising and are not provided to unrelated third parties. The companies also report that they do not engage in further tracking of consumers who fail the age gate.

ii. Registration Opportunities, Delivery of Future Advertising, and Data Security

Once a consumer has passed the age gate, many sites offer the opportunity to register to join a mailing list, to participate in activities such as sweepstakes or brand surveys, or to submit a

request for information. Registration forms typically collect the consumer's date of birth, name, street address, email address, brand preferences, and/or phone number. Only if a consumer again indicates an age of 21+ may he or she register.[104]

In addition, registration forms either require the consumer to affirmatively check "yes" to receiving further information from the company, or the form gives notice, above the "submit" button, that by submitting registration information to the company, the visitor agrees to allow the company to either respond to the consumer's inquiry or to receive marketing messages by email or regular mail.

Most companies will then place the consumer information in a relationship database, relying on the consumer's self-verification of LDA status. However, three companies reported using third-party age verification systems for one or more purposes. Third-party age verification services compare information provided by a consumer to proprietary databases to determine if the consumer is of legal drinking age. Two companies require third-party age verification before the company responds with any kind of marketing message.[105] The third company requires third-party age verification for any consumer who wishes to order wine online. According to one company, its third-party verification service was able to confirm LDA status 83 percent of the time. Among verification failures, only 3 percent were due to a finding that the consumer was under 21; the remaining 14 percent could not be verified due to issues such as use of an initial for the first name, placement of the last name in the first name box, or an invalid or incomplete street address. For further discussion of third-party verification in the context of consumer access to websites and to relationship databases, see Section III.B.1.b.

Thirteen of the companies maintained databases containing consumer information. All of these companies stated that the data were kept secure. Five additionally stated that data were encrypted for transmission, three stated that data were maintained in secure servers, one stated that it engaged in "appropriate physical, electronic, and managerial practices," two stated that they complied with "prevailing industry standards," one stated that data were "kept, accessed, and maintained in accordance with privacy laws," and one company described using "locked cage security" combined with a requirement of management approval to gain access, where the level of access was based on the role of the person being provided with access.

iii. Tracking and Analytics

Thirteen of the 14 companies' brand websites collect consumers' browsing history for the purpose of analyzing visitation patterns. Most companies reported using an application such as Google Analytics to obtain aggregated, anonymized data about the source of website traffic (*e.g.*,

referrals from another URL or a search engine), number of site visits, pages visited, time spent, visitors' operating systems, networks, browser profiles, and transactional data.

All 14 companies stated that they do not track visitors who identify themselves as being under age 21, except for the purpose of restricting self-identified underage users from the website's content.

All of the companies stated that they do not use third-party advertising networks for online behavioral advertising on their websites or sponsored pages on social media.[106]

iv. Site Content Management

All of the companies reported that their website content is reviewed for compliance with code provisions before posting. Ten companies reported permitting user-generated content ("UGC") on one or more their websites. These companies either review such content prior to posting or "promptly" remove inappropriate content after posting. Some companies review their websites as frequently as twice a day, while others may take anywhere from 24 hours to five days to catch inappropriate content.

v. Posted Privacy Policies

All but two of the reporting companies' 461 brand websites included a privacy policy page; some also included a terms and conditions page that included passages relevant to privacy. The overwhelming majority of these pages share common features: they are long and complex, contain internally inconsistent provisions, and often appear to offer fewer privacy protections than the companies' submissions suggest consumers actually receive.

All of the company privacy policies provide some kind of notice that they may collect consumers' personally identifiable information through the registration process, correspondence, or sweepstakes entries. They vary in their statements regarding what can happen with personal information. One company claims not to disclose personal information to third parties at all, while four state that they could disclose personal information to third parties after prior notice to, and consent from, the consumer. Three companies claim to disclose personal information only to "affiliated" companies, and three others will disclose this information to "group" companies. One company states that it would disclose personal information to "unaffiliated" companies with prior consent. Two companies state that they do not need consumers' prior consent to disclose personal information to "affiliated companies" for marketing purposes (although the consumer may opt out later), but that they will secure consent if the companies are making the marketing-related disclosures to "unaffiliated" companies. Six other companies may disclose

personal information to third-party "marketing partners" with prior consent or the ability to opt-out. Finally, four companies indicate that they may disclose non-personally identifiable website usage information to third-party marketing partners, such as advertisers serving up ads on the websites, despite the fact that company websites do not, in fact, appear to contain ads for third-party products. In some cases, a brand's privacy policy promises confidentiality for personal information, while the website's terms and conditions states the exact opposite. Also, some brands' privacy policies purportedly extend to related mobile apps, yet the policies disclaim liability for personal information collected by app vendors such as Apple or Google. The companies' privacy policies either explicitly disclaim confidentiality for user-generated content or are silent on the issue.

Most sites also give notice that they collect non-personally identifiable information related to consumers' use of the website, such as IP addresses[107] or browsing patterns, and state that the companies may aggregate these data for purposes of improving the browsing experience[108] or analyzing visitation patterns.[109] One company's privacy policy expressly states that its website does not use spyware or adware to track consumers' general Internet usage.

c. Company-Operated Pages, Channels, and Feeds on Social Media

The 14 alcohol companies also sponsor numerous pages, feeds, channels, and videos on social networking, photo-sharing, and video-hosting sites such as Facebook, Twitter, YouTube, Foursquare, and Tumblr, as depicted in Figure 4, above. Facebook is, by far, the most used of these channels.

Consumers arrive at branded social media from a variety of venues. Most online banner ads include links to branded company social media pages, and branded websites and social media pages offer cross-links to one another.[110]

Company-sponsored research provides insights into consumer use of brand-controlled social media and perceptions of its value to consumers. According to the companies' research, Facebook can drive a brand's "point of view," reinforce loyalty, and increase brand engagement, but success of a fan page depends on the quality of the content, including how often the page is updated. Brand fans like feeling part of the brand community, enjoy seeing what other fans are saying, and like to share their affinity with others. They like contests with fan-to-fan interactions, promotions, and give-aways. One company said that consumers are engaged by posts asking them to "fill in the blank" (such as "how do you plan to spend your weekend,") or multiple choice questions ("check which one of the flavors below you like best").

Data on the relationship between being a fan and brand loyalty or consumption are mixed. Two surveys suggested that brand fans reported stronger connections to, and greater spending on, the brands, but other studies found that fan status did not result in increased consumption. This may be due in part to the fact that consumers often are fans of several competing alcohol websites. It may also be that, for brands with very high demand already, the addition of a brand page will only maintain demand, not increase it.

i. Efforts to Limit Youth Access to Company-Operated Social Media Pages

The major social media have been shown, by independent demographic measuring firms, to have adult audience compositions in excess of 70 percent. Approximately 76 percent of Facebook's audience, 78 percent of YouTube's audience, and 79 percent of Twitter's audience are 21+.[111]

In addition, Facebook restricts visitation of alcohol brand pages to U.S. consumers who have previously registered as being 21+; it also only permits placement of alcohol ads on pages of persons previously registered as 21+. Underage visitors may not view a friend's "likes" of such pages. Companies with Twitter feeds previously used customized pop-ups that required entry of country of origin and date of birth before a consumer could follow those feeds; in 2012, Twitter developed a date of birth entry technology available to all alcohol companies.[112]

YouTube offers companies the option to require either date of birth entry, or to limit alcohol channel visitation to registered U.S. YouTube consumers who are 21+. In late 2012, YouTube adopted tools allowing alcohol companies to place ads in the search results of consumers who have previously registered with the service and indicated that they are 21+. About 40 percent of YouTube users are registered. Not all companies have taken advantage of these tools. Three companies indicated that visitors must be registered as 21+ to view promoted videos. Two other companies reported that they include a disclaimer on their YouTube videos stating that, by viewing the video, the user represents he or she is of legal drinking age.

ii. Information Collection, Data Security, Tracking, and Analytics

None of the companies reported collecting personal information from consumers who merely visit their branded social media sites.[113] Social media sites offer abundant opportunities for registration, whether for further emails, contests, or sweepstakes. Such information is treated in the same manner as registration data collected on brand websites.

Ten companies reported access to anonymized, aggregated data about the number and frequency of Facebook "likes," the demographics of likers, and likers' page activity. Several

companies have access to similar usage data for their Twitter followers. One company reported that it receives aggregated demographic information about the registered user views and the number of views of YouTube videos. Another company reported access to aggregated brand activity across Facebook, Twitter, and YouTube. One company also reported that it uses Facebook's Insight tool to get a snapshot of the gender and regional breakdown of a brand's fan community.

iii. Content Management

Legal staff review company-created content before posting. Most companies reported that they actively monitor UGC on their Facebook, Twitter, and other social media accounts throughout the day or at least several times a week. One company reported that it rejects about 8 percent of all UGC, usually because it contains profanity, encourages excessive consumption, or involves unauthorized advertising or spam.

iv. Privacy policies

The companies reported that the privacy policies of the social media and video-sharing websites apply to any personal information that users choose to share on the company-operated pages and feeds. Only one company also posted privacy information on its Facebook page.

2. Other Internet Site and Digital Advertising

The companies reported on hundreds of campaigns that included advertising on sites owned by others, including search engines, online news and entertainment sites, music services, etc. In addition, they placed advertising in social media such as Facebook and YouTube – banner ads, home page take overs, pre-roll (*i.e.*, ads presented to consumers before they can see the content they searched for) and links.[114]

Many advertising campaigns included a mobile component, including mobile banner ads, QR codes, location-based "check-ins" through Foursquare, SMS text ads, text-based trivia games, and mobile apps. Eight companies reported that they had published mobile apps for their brands in 2011. Examples of mobile apps included a sweepstakes sign-up app, a pedometer, a pub finder, a product locator, a taxi finder, and games or activities related to drinking the product.

a. Efforts to Limit Youth Exposure

In the case of sites that are measured by the audience composition services and not age-gated, the companies require information showing that the age composition of the site visitors is consistent with the placement standard. As demonstrated in Table 3, in the first half of 2011,

they achieved very high (over 99 percent) levels of compliance with the 70 percent 21+ audience composition standard then in effect.

The major social media have adopted age-gating technology, as previously discussed. Further, apps for three of the companies were available only through Facebook. In the case of other apps, companies relied on either the age-gate mechanisms at Apple's iTunes store and/or employed an additional age-gate process before consumers could use an app. For campaigns based on SMS texts, QR codes, and location-based social networking, the companies asked for date of birth information.

b. Data Collection and Aggregation

After clicking through an ad, consumers are usually provided with a link to a company-operated website or the brand's Facebook page. Some ad campaigns provide consumers with the opportunity to register for sweepstakes or contests; information collected in this manner is treated in the same way as information collected at company-owned or -operated websites. No company collected personally identifiable information from users merely clicking through advertising, unless or until they arrived at a company-operated website or a company social media page.

Several companies reported that they track aggregated click-through rates and visitation time at third-party websites to evaluate their advertising campaigns. One company's internal research showed that the click-through rate for static creatives, such as banner ads, can be up to two times lower than for rich (interactive) media, but that banner ads are more efficient in driving traffic to a brand website. Another company's research showed wide variation in the success of email campaigns; for one campaign, only three percent of consumers who had opted into email communications clicked through to the promotion web page, compared to 60 percent in a different campaign.

The companies appear to have a variety of approaches to the collection of personal information through mobile apps. One company reported that it does not collect personal information for its apps, two reported not having access to personal information of users who download apps through Apple iTunes, one reported that it retains personal information if the consumer opts in, and one claimed that it collects personal information only if the app involves a contest.[115] One company reported that in-app advertising on Apple iOS devices was delivered only to users registered with iTunes as age 21+. No company reported having used personal information collected through apps or SMS text campaigns to target consumers with future marketing messages.

E. Product Placement in Entertainment Media

Specification 5B of the Special Orders required the companies to provide information regarding product placements made in entertainment vehicles between January 1, 2011 and June 30, 2011. For the purpose of Specification 5B, "product placement" was defined as "permitting, promoting, or procuring the integration of any beverage alcohol product, logo, signage, trade name, or package into a television or radio program, motion picture, music video, music recording, online virtual world, electronic game, or other form of entertainment programming."[116] Table 4 summarizes the companies' responses to this specification.

Table 4: Product Placement, January-June 2011

Placement Type	Number of Placements	Fee Associated with Placements
TV		
in-kind only	374	$0
fee paid only	12	$32,502
fee plus in-kind	32	$1,028,543
Film		
in-kind only	118	$0
fee paid only	11	$55,746
fee plus in-kind	11	$375,000
Music video		
in-kind only	10	$0
fee paid only	2	$140,000
fee plus in-kind	0	$0
Radio		
in-kind only	0	$0
fee paid only	5	$10
fee plus in-kind	0	$0
Other		
in-kind only	0	$0
fee paid only	1	$35,000
fee plus in-kind	0	$0
TOTAL	**576**	**$1,666,801**

In many cases, more than one company made a product placement in the same film or show. Although there were 140 reported product placements in films, only 81 different films

actually featured product placements during the study period. Similarly, although there were 418 television product placements, these appeared in only 109 television shows.

"In-kind" placements are those where goods or commodities are provided, such as neon or tin signs, branded glassware, dummy bottles, and cases, liters, or fifths of alcohol. There were 545 in-kind placements during the reporting period. "Fee" placements are those where a company provided monetary consideration in connection with a placement. There were 74 fee placements (*i.e.*, 12.8 percent of the total) during the reporting period.

As required by the codes, prior to making product placements, companies reviewed various information about the entertainment vehicle, including content, script synopses, a description of how the product would be used, and audience composition data to the extent available. The companies reviewed script synopsis to make sure that placements would not be made in vehicles that: (1) depict illegal behavior (such as drunk driving) or irresponsible consumption, (2) depict underage consumption or underage purchasing of alcohol, (3) depict alcoholism or alcohol abuse (unless in conjunction with a positive, responsible-use message), or (4) are specially attractive to persons under 21.[117] With regard to anticipated audience, during the first half of 2011, prior to television placements, companies reviewed past audience composition data for that particular television show, or data from a comparable show, to ensure the composition met the historic 70 percent 21+ audience composition standard (now 71.6 percent). Prior to film placements, companies reviewed available information and only placed products where there was a good faith basis for believing the film would have an audience meeting the demographic standard.[118]

Not all appearances of alcohol in entertainment vehicles are condoned or approved by the alcohol companies. As noted in the 1999 Alcohol Report, code standards regarding product placements in entertainment vehicles "have no effect on a media director's decision to depict alcohol use in a movie or television show."[119] For example, the 2011 film *Flight* told the story of a severely alcoholic airplane pilot. It depicted numerous alcohol products. The producer refused to obscure the featured alcohol product logos and packaging despite an industry complaint.[120]

F. External Review of Complaints Regarding Code Compliance

Self-regulation is most effective when internal company mechanisms for fostering code compliance are supplemented by an external system for resolving disputes about whether a particular advertisement violates code provisions. Such systems need to: (1) be impartial and objective; (2) provide for public notice of the results; and (3) apply standards consistently.[121] As of 2006, all three trade associations had implemented procedures for external review of complaints.[122] The three trade associations provided information about review board activities and compliance between January 2009 and December 2012.

DISCUS has a review board comprised of at least five senior representatives of member companies. It also has an outside advisory board that is available to break a tie if the review board cannot reach a majority decision. DISCUS considers complaints filed by consumers or competitors about advertising of any member's spirits, wine, or beer brands, as well as of advertising for non-members' spirits brands.[123] Review board decisions are posted on the DISCUS website.[124] The DISCUS review board has considered 20 complaints since 2009. It has found violations in response to three of eight complaints about DISCUS member companies; all members found to have violated the code agreed to take appropriate responsive action. DISCUS has considered 12 complaints regarding non-member advertising; in ten of these cases, it found violations. DISCUS was successful in persuading 90 percent of non-members who were found to have violated the code to take appropriate responsive actions.

The Wine Institute review board is comprised of a rotating panel of three WI officers. If this committee finds that an advertisement violates the WI Code, the vintner may elect to have the advertisement reviewed by an independent third-party reviewer.[125] Complaints are accepted from consumers, WI members, or competitors, and must pertain to a WI member's products. Findings are published on the WI website.[126] The Wine Institute has received no complaints about advertising since 2008.

The Beer Institute has a three-person Code Compliance Review Board ("CCRB") consisting of non-industry personnel drawn from the academic, marketing, and legal professions.[127] When a complaint is filed with the CCRB, it is first sent to the relevant brewer; only if the complainant is dissatisfied with the brewer's response does the CCRB consider the complaint. Competitor complaints are not accepted. CCRB decisions, and any brewer response, are posted on the website and published in a biennial report.[128] Between 2009 and 2012, only one consumer requested review of a complaint by the CCRB; in that case, the CCRB found that the advertiser had not violated the Code.[129] All other complaints were resolved at the advertiser level.

III. Analysis

A. Advertising Placement

In the first half of 2011, as shown in Table 3, Column A, 93.1 percent of the companies' placements complied with the 70 percent LDA 21+ placement standard then in effect. This represents a small improvement over 2005, when 92.5 percent of placements hit the 70 percent LDA 21+ target. The proportion of impressions from placements that met the target (97.3 percent) was about the same as 2005, when 97.1 percent of impressions were due to ads that met the target.

Advertising placement relies on historical audience composition data to make decisions about the future. Some placement shortfalls – instances when the audience turns out to be younger than predicted by the historical information – will inevitably occur. Such instances are more likely when dealing with media with small audiences, where smaller sample sizes (*i.e.*, the sample of audience members from which the entire audience's composition are predicted) can result in data that are less stable across survey periods.

This phenomenon is most evident in the radio data reported by the companies. Considered on a placement-by-placement basis, based on the data provided in response to the Special Orders, radio, which often has very small audiences, had the lowest levels of compliance (91.2 percent of ads in 6+ radio markets, and 92.9 percent of ads in radio 12+ markets).[130] These data are very similar to the data presented in the 2008 Alcohol Report. By contrast, measured online advertising has very large sample sizes and more stable data, and the companies were able to achieve over 99 percent compliance in that medium.

The self-regulatory codes have provisions that call on the companies to conduct regular audits of past placements, and to address compliance shortfalls.[131] With such audits, the companies should be able to reduce the incidence of compliance shortfalls, even in small audience media.

Pursuant to the FTC Act, the Commission may not reveal the placement data for individual companies and brands. Therefore, although the company submissions revealed the brand, ad name, medium, and audience composition for each advertising placement, the Commission may only report that data in aggregate form. Nevertheless, Commission staff evaluated the data to identify those instances where audience composition data for particular brands, in particular media, appeared to have compliance levels below 90 percent, and contacted the individual companies to identify the cause of those specific problems and to determine what steps they had taken to prevent recurrence, consistent with the requirements of the codes.[132]

The placement data reflected in this report pertains to compliance with the 70 percent adult composition standard in effect during the first half of 2011. The Commission's 2008 Alcohol Report recommended that industry consider the results of the 2010 Census data when they became available.[133] In May 2011, following release of the newest census data showing that 71.6 percent of the U.S. population is now 21+,[134] BI, DISCUS, and WI adopted a 71.6 percent LDA 21+ audience composition standard for future advertising purchases.[135] This change in the placement standard will require the suppliers to modify their advertising plans to some extent. If a 71.6 percent adult audience composition standard had been in effect in the first half of 2011, industry members would have needed to relocate about 1.7 percent of their placements. Over half of these would have been in radio 6+ markets.[136]

B. Digital Marketing

1. Placement and Content Provisions

a. Placement on Measured, Non-Age-Gated Online Media

The industry was highly successful in limiting placement of advertising on measured, non-age-gated online media to venues (such as news, entertainment, and sports sites owned by entities other than the alcohol advertiser) where 70 percent or more of the audience consisted of adults. Over 99 percent of placements on these sites complied with the standard. *See* Table 3, supra.

b. Placement on Age-Gated Sites and Media

For entry into company brand websites (*i.e.*, "www.brandx.com"), industry relies on age gating consisting of consumer self-verification of age. For access to content on social media websites where there is a "dialogue" between an industry member and a consumer (*i.e.*, "www.facebook.com/brandx"), the companies rely on age gating consisting of prior registration showing that the consumer is 21+, combined with data provided by independent demographic measuring firms showing the audience for the service overall is at least 71.6 percent 21+. Such efforts are designed to produce an audience that is 100 percent adult.

The reported information suggests that age gates can deter access to content on alcohol supplier websites. One company's research indicated that the age gate at a popular brand website turned away about 38 percent of visitors. Research by another company revealed that 33 percent of visitors to a mobile brand page did not pass through the age gate.

Of course, these age gate solutions will not work if consumers lie about their age, and in surveys, as many as half of teens admit to lying about their age online in order to access a website or service.[137] Facebook requires that consumers be 13 or older to register, and it is known that millions of children have misrepresented their ages in order to access that service.[138] However, Facebook's popularity with youth and adults alike may be unique, and there are no data on the extent to which underage consumers misrepresent their age as being 21+ in order to access alcohol brand websites or alcohol-controlled social media pages.

Some have suggested that companies should require third-party age verification (rather than consumer self-verification) before permitting access to age-gated alcohol websites and social media pages.[139] The Commission has previously recommended third-party age verification before consumers can purchase alcohol online.[140] This is an important means of verifying that

alcohol purchasers are, in fact, of legal age, as required by law in all 50 states. Moreover, it is appropriate, and a best practice, to engage in third-party age verification of consumers who have registered to receive further communications with a company. At the same time, the Commission is skeptical of the argument that all consumers should be required to provide personal data, beyond country of residence and date of birth, in order to view typical online alcohol marketing content. In considering suggestions such as this, the Commission must balance concerns about youth exposure to alcohol marketing with the rights of adults to see advertising that interests them without having to surrender additional personal information. The Commission recommends that all alcohol industry age gates require entry of date of birth, rather than simply asking consumers to verify that they are 21+.

The Commission also commends the industry for its work to promote adoption of age gates with new media, such as Twitter and YouTube. Although it appears that all of the companies that market on Twitter are using some form of age-gate, the same is not true of all companies marketing on YouTube. The Commission encourages all alcohol companies to take advantage of these age-gating technologies, and to continue to develop such technologies as new media continue to emerge.

c. *User-Generated Content*

Companies should consider the frequency with which they monitor user-generated content. Such content, although not created by the brands, can be found on the brand websites and social media pages. Frequent monitoring can catch and remove inappropriate user-generated content. A live moderation system would be most accurate in capturing language that violates industry codes of conduct. However, smaller companies can incorporate various strategies to prevent inappropriate user-generated content. Companies can post clear statements as to what language and topics will be deemed inappropriate and removed from their sites. Companies can also create and use blocking technologies that segregate content based on use of particular terms, so that it can be reviewed for code compliance before it appears publicly.

2. *Privacy Considerations*

Based upon the information submitted, including the documentation provided in response to the Special Orders, it appears that for the most part, alcohol industry members have considered privacy impacts in the marketing of their products.[141] This information appears to support the conclusion that, at least in the context of online registration opportunities, consumers are generally advised of how their information will be used; that consumers must opt-in to receive further communications; and that they have the ability to readily opt-out when they want to

stop receiving marketing information. As the Commission has previously noted, data collected and stored in databases requires reasonable security protections. Although the companies did not provide comprehensive information about the scope of their data security protections, it appears that the companies have policies in place to ensure that consumer data are transmitted and maintained in reasonably secure environments, and shared only with company agents (such as e-mail contractors and sweepstakes fulfillment companies) who also have committed to maintain the security of the data. Use of cookies and tracking tools on brand websites appears to be limited to those needed to permit re-entry of consumers who previously provided a date of birth indicating they are 21+, or to determine optimal site content and facilitate browsing within a site. From the information provided by the companies, it appears that they do not attempt to tie tracking cookies to individual consumer data, use these cookies to deliver future advertising to consumers, or track underage consumers in any manner.

The Commission commends the BI and DISCUS for their adoption of self-regulatory code provisions relating to privacy and information security. The codes appropriately require that company websites include privacy policies. Nonetheless, in many instances, current privacy policies on alcohol websites are lengthy and difficult to understand. The Commission recommends that the companies make significant efforts to develop brief, consumer-friendly privacy policies and disclosures to provide better transparency to consumers about the use of their data. This is particularly necessary on mobile sites. In addition, in the context of alcohol-sponsored social media pages, it is a best practice to remind consumers of the public nature of their postings.

C. External Review of Advertising Complaints

The three major alcohol trade associations have adopted procedures for external review of complaints regarding advertising. The systems are most effective when consumers and competitors take advantage of them and submit complaints, as demonstrated by the DISCUS experience. The Commission urges those concerned about alcohol marketing, including state alcohol regulators and public advocacy organizations, to consider submitting a complaint to the appropriate trade association when they see advertising that appears to violate the code. The Commission also urges BI to permit competitor complaints.

D. Youth Access to Alcohol

Limiting youth access to alcohol is a highly effective way of preventing underage drinking. Since the adoption of the legal drinking age of 21, teen drinking has declined dramatically.[142] Still, most teens who drink obtain alcohol from an unrelated person of legal drinking age

or an adult family member.[143] Accordingly, the Commission's "Don't Serve Teens" alcohol education program reminds adults of the importance of complying with the legal drinking age of 21. The program includes a website, www.DontServeTeens.gov, that provides information in English and Spanish on the rates and risks of teen drinking, Questions and Answers about teen drinking, and free downloadable campaign artwork including web banners, posters, radio public service announcements, and outdoor advertising artwork (including, starting in 2011, downloadable transit art). In the years since the program was launched, Don't Serve Teens has been commended by the U.S. House of Representatives and the U.S. Senate.[144]

The Commission enlisted a wide range of entities to help deliver the Don't Serve Teens message. Between 2008 and 2012, numerous state alcohol regulators, alcohol wholesalers and distributors, schools, police departments, and community organizations helped by posting Don't Serve Teens decals nationwide.

Further, with the Commission's encouragement, alcohol industry members have disseminated substantial Don't Serve Teens messaging, generating millions of impressions for the program. For example, in 2011 and 2012, many alcohol companies conducted month-long Don't Serve Teens campaigns in one or more cities, placing ads on billboards, radio, transit shelters, and in print and digital media. These included campaigns in Boston, Chicago, Columbus, Denver, Louisville, Milwaukee, St. Louis, and Westchester, New York. Companies also have placed Don't Serve Teens ads on national digital sites and in national magazines. *See* Exhibit C for examples of campaign executions. Often, these activities are coordinated with local government, including alcohol regulators and law enforcement, and include press events designed to encourage local officials to speak publicly about the importance of complying with the legal drinking age.

In 2012, as part of its commitment to the National Health Promotion and Disease Prevention Council, the FTC pledged to continue to expand awareness of the Don't Serve Teens message among states, industry, schools, and law enforcement.[145] Although the Commission will no longer distribute free decals, it will continue to support digital tools. Among other things, industry members have already begun planning to conduct campaigns in cities across the country in Fall 2013 and Spring 2014.

IV. Recommendations and Conclusions

The Commission recommends that the alcohol industry adopt the recommendations set forth in this report, which include:

1. Placement

   a. In evaluating the results of post-placement audits, particular attention should be paid to instances where audience composition data for individual placements for a brand, in particular media, appear to have compliance levels below 90 percent. If lack of compliance is due to wide fluctuations in measured audience composition due to small sample size, the company should consider using a higher audience threshold at the time of placement to maximize the likelihood of post-placement compliance with the 71.6 percent audience composition standard.

   b. Traditionally, the service that provides audience demographic data for radio only provided data regarding audience members 12 and older ("12+"). Over the past few years, the service began providing data on audience members 6 and older ("6+") in larger markets. In those markets where 6+ data is now available, companies should review this information in connection with placements.

2. Online and other digital media

   a. Age gates on company websites should require consumers to enter their date of birth, rather than simply asking consumers to verify that they are of legal drinking age.

   b. The Commission encourages industry members to take advantage of age-gating technologies offered by social media, particularly YouTube, and to continue to develop such technologies as new media emerge.

   c. The Commission recommends that the companies make significant efforts to develop brief, consumer-friendly privacy policies and disclosures to provide better transparency to consumers about the collection and use of their data.

   d. Companies should take steps to reduce the possibility of code violations resulting from user-generated content, including use of blocking technologies and frequent monitoring (including live monitoring when possible) to identify and remove violative content.

3. External review of complaints

   a. BI should permit competitor complaints, as DISCUS and WI already do, to make its system more robust.

4. Efforts to facilitate compliance with the codes

    a. Individual companies should continue their efforts to promote compliance with the codes, including ongoing training and development of compliance manuals for staff.

    b. In addition, industry as a whole should continue to participate in cross-company efforts to facilitate code compliance and assist industry members (including those that do not belong to one of the trade associations) to keep abreast of new developments and best practices. For example, the Commission commends efforts, such as the DISCUS "Media Summits," that bring together representatives of spirits, beer, and wine companies, as well as demographic services, new media outlets, and representatives of companies that provide compliance tools.

The Commission further urges those who are concerned about alcohol marketing, such as state alcohol regulatory authorities and consumer advocacy organizations, to participate in the industry's external complaint review systems when they see advertising that appears to violate an industry code provision. Finally, given the importance of reducing underage access to alcohol, the Commission urges industry and those concerned about underage drinking to use the free "We Don't Serve Teens" alcohol education materials available on DontServeTeens.gov.

The Commission continues to support self-regulation of alcohol marketing to reduce the likelihood that such marketing will target those under the legal drinking age. In the past, the Commission has relied on appropriately monitored industry self-regulation to address a range of issues.[146] In addition, the World Health Organization has recognized the role of self-regulatory and co-regulatory frameworks to address concerns about alcohol marketing.[147] A self-regulatory regime has several advantages over government regulation. It conserves limited government resources and is more prompt and flexible than government regulation, given the substantial time required to complete an investigation or adopt and enforce a regulation. Finally, self-regulation is an appropriate response to concerns about the impact of alcohol advertising on youth, in light of the substantial protections afforded advertising by the First Amendment to the U.S. Constitution.[148]

The most effective self-regulatory regimes set appropriate standards of conduct, actively monitor member practices, have mechanisms for independent assessment of complaints and incentives to comply, and continually assess the need to address evolving issues.[149] The alcohol industry has made significant efforts toward implementing these models. Since 1999, the alcohol industry has substantially improved in self-regulation, including adoption on two occasions of higher placement standards, adoption of media buying guidelines and audit provisions, and

adoption of systems for third-party review of advertising complaints. Further, BI and DISCUS acted proactively to adopt provisions designed to address concerns related to digital marketing and privacy.

The Commission looks forward to the industry's adoption of the recommendations set forth above. The agency will continue both formal and informal monitoring of self-regulation within the alcohol industry.

Endnotes

1. The prior three reports are: Federal Trade Commission ("FTC"), Self-Regulation in the Alcohol Industry (June 2008), *available at* http://www.ftc.gov/os/2008/06/080626alcoholreport.pdf ("2008 Alcohol Report"); FTC, Alcohol Marketing and Advertising (Sept. 2003), *available at* http://www.ftc.gov/os/2003/09/alcohol08report.pdf ("2003 Alcohol Report"); and FTC, Self-Regulation in the Alcohol Industry (Sept. 1999), *available at* http://www.ftc.gov/reports/alcohol/alcoholreport.shtm ("1999 Alcohol Report").

   The Commission also uses law enforcement tools to address concerns about alcohol marketing. The following are activities undertaken since the publication of the 2008 Alcohol Report.

   In 2009, the Commission settled a case against Constellation Brands, Inc. ("CBI"), in connection with its marketing of a caffeinated alcohol beverage, Wide Eye schnapps. The complaint alleged that CBI deceptively represented that drinking Wide Eye would keep consumers alert; the order prohibits CBI from making unsubstantiated claims that alcohol will keep consumers alert or that any ingredient in a beverage alcohol product will counteract alcohol's intoxicating effects. *See* Constellation Brands, Inc., *available at* http://www.ftc.gov/os/caselist/0923035/index.shtm.

   In 2010, the FTC sent warning letters to four manufacturers of caffeinated malt beverages, in coordination with U.S. Department of Treasury's Alcohol and Tobacco Tax and Trade Bureau and the U.S. Food and Drug Administration. The companies removed the caffeine from the products. *See* http://ftc.gov/opa/2010/11/alcohol.shtm.

   In 2012, Commission staff issued a closing letter, resolving its investigation of Devotion Spirits, Inc. regarding a vodka product promoted for its protein content. *See* Letter from Mary K. Engle, Associate Director, FTC Division of Advertising Practices, to Mark S. Ullman (Oct. 3, 2012), *available at* http://www.ftc.gov/os/closings/staff/121003devotionspiritscltr.pdf.

   In 2013, the Commission issued a complaint and final Decision and Order against Phusion Projects, LLC in connection with the marketing of the supersized 12 percent alcohol by volume product, Four Loko. *See* Phusion Projects, LLC, FTC Dkt. No. C-4382, *available at* http://www.ftc.gov/os/caselist/1123084/index.shtm.

2. *See infra* notes 54 (identifying companies that received Special Orders in 2009 and 2010), 55 (dollar and volume sales by these companies), 57 (marketing expenditures by these companies), and 90 (summary of placement compliance by these companies).

3. The Federal Register notices were published in April and November 2011. *See* FTC, Agency Information Collection Activities; Proposed Collection; Comment Request, 76 Fed. Reg. 10,596 (Feb. 25, 2011), *available at* http://www.gpo.gov/fdsys/pkg/FR-2011-02-25/pdf/2011-4196.pdf; and FTC, Information Collection Activities; Request for OMB Review; Comment Request, 76 Fed. Reg. 73,640 (Nov. 29, 2011), *available at* http://www.ftc.gov/os/fedreg/2011/11/111129agencyinfoalcohol.pdf.

4. These documents are contained in Exhibit B. They are also available online: WI Code, *available at* http://www.wineinstitute.org/initiatives/issuesandpolicy/adcode/details; BI Code, *available at* http://www.beerinstitute.org/assets/uploads/BI-AdCode-5-2011.pdf; BI Buying Guidelines, *available at* http://www.beerinstitute.org/assets/uploads/AdCodeBuyingGuidelines_w-LogoFINAL2011.pdf; DISCUS Code, *available at* http://www.discus.org/assets/1/7/May_26_2011_DISCUS_Code_Word_Version1.pdf; DISCUS Buying Guidelines, *available at* http://www.discus.org/assets/1/7/Enhanced-Expanded_Buying_Guidelines_Updated_5-26-11_to_reflect_new_demographic_standard.pdf; DISCUS, Guidance Note on Responsible Digital Marketing Communications ("DISCUS Guidance Note"), *available at* http://www.discus.org/assets/1/7/DISCUS_Digital_Communications_Guidelines.pdf.

5. 1999 Alcohol Report, *supra* note 1.

6. 2003 Alcohol Report, *supra* note 1 at 11, 13.

7. 2008 Alcohol Report, *supra* note 1, at 19. The industry's 70 percent alcohol advertising placement standard in effect in 2008 was based on the results of the 2000 U.S. Census, showing that 70 percent of the U.S. population

was 21 or older. The U.S. Census is conducted once per decade. Although revised population estimates are published annually, these annual data are based on statistical projections, rather than a new population survey.

8. Center for Disease Control and Prevention, Alcohol Related Disease Impact (ARDI) application, 2008, *available at* http://apps.nccd.cdc.gov/DACH_ARDI/Default.aspx.

9. Jason Y. Kim, Hospitalization for Underage Drinkers in the United States, 50 J. Adolescent Health 648, 649 (2012). This article reports that in 2008, there were 699,506 nonobstetric hospital discharges among 15- to 20-year-olds, of which 39,619 (5.6 percent) had an alcohol use disorder diagnosis.

10. *Id*.

11. *Id*.

12. U.S. Department of Health and Human Services, The Surgeon General's Call to Action to Prevent and Reduce Underage Drinking (2007), 10, *available at* http://www.surgeongeneral.gov/library/calls/underagedrinking/calltoaction.pdf.

13. *Id*.

14. *Id*. at 11.

15. *Id*.

16. Ralph W. Hingson et al., Age of Drinking Onset and Injuries, Motor Vehicle Crashes, and Physical Fights after Drinking and When Not Drinking, 33 Alcohol Clin. Exp. Res. 5 (May 2009) at 2, *available at* http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3383090.

17. Aaron White, Program Director, College and Underage Drinking Epidemiology and Foundation Research, NIAAA, Underage Drinking: Acute and Chronic Effects of Alcohol on the Adolescent Brain (Mar. 7, 2013). NIAAA is one of the 27 institutes and centers that comprise the National Institutes of Health (NIH). NIAAA supports and conducts research on the impact of alcohol use on human health and well-being. It is the largest funder of alcohol research in the world.

18. *Id.*

19. Lloyd D. Johnston et al., Monitoring the Future National Results on Adolescent Drug Use: Overview of Key Findings, 2013 (forthcoming 2014) (hereafter, "2013 MTF Results"), *available at* http://www.monitoringthefuture.org/data/13data.html#2013data-drugs, at Table 3 (http://www.monitoringthefuture.org/data/13data/13drtbl3.pdf) and Table 4 (http://www.monitoringthefuture.org/data/13data/13drtbl4.pdf). According to the press release announcing the 2013 MTF Results:

    The use of alcohol by teens has dropped dramatically over roughly the past two decades – particularly among the youngest teens – and continues to drop in 2013. . . . All three grades are now at the lowest point that they have been at least since the mid-1990s, and likely longer.

    Press Release, University of Michigan, American Teens More Cautious About Using Synthetic Drugs 6 (Dec. 18, 2013) (hereafter, "Press Release, University of Michigan"), *available at* http://www.monitoringthefuture.org/pressreleases/13drugpr.pdf.

20. The data in Figure 3 were derived from the 2013 MTF Results, *supra* note 19, Tables 3 (http://www.monitoringthefuture.org/data/13data/13drtbl3.pdf) and 4 (http://www.monitoringthefuture.org/data/13data/13drtbl4.pdf).

21. See 2013 MTF Results, *supra* note 19, at Tables 9 (http://www.monitoringthefuture.org/data/13data/13drtbl9.pdf) (8th grade), 10 (http://www.monitoringthefuture.org/data/13data/13drtbl10.pdf) (10th grade), and 11 (http://www.monitoringthefuture.org/data/13data/13drtbl11.pdf) (12th grade).

22. Teens reported using the following kinds of alcohol in the 30 days prior to participating in the 2013 MTF survey:

Grade	Beer %	Spirits %	Wine %	Wine Coolers %	Flavored Alcohol %
8	6.8	n/c	n/c	n/c	6.3
10	18.4	n/c	n/c	n/c	15.5
12	30.8	30.1	11.5	11.3	21.0

n/c= not collected.

E-mail from Ginger Maggio, Research Assistant, Monitoring the Future, to Janet M. Evans (Dec. 20, 2013, 5:00 PM EST) (on file with the Commission). The Monitoring the Future questionnaires ask respondents to report on consumption of "flavored alcoholic beverages like Mike's Hard Lemonade, Smirnoff Ice, Bacardi Silver, wine coolers, etc. . . (Do not include regular liquor, beer, or wine.)" Institute of Social Research, University of Michigan, Monitoring the Future, Questionnaire Responses From the Nation's High School Seniors 2011 (2013) at 216, *available at* http://monitoringthefuture.org/datavolumes/2011/2011dv.pdf.

23. *Id*.

24. Michael Siegel et al., Brand-Specific Consumption of Alcohol Among Underage Youth in the United States, Alcohol Clin. Exp. Res. 1-9 (2013), *available at* http://sph.bu.edu/insider/images/stories/siegelmanuscript.pdf. For this study, researchers surveyed 1,032 young people, ages 13 to 20, who had consumed alcohol in the past 30 days. Survey participants completed a self-administered questionnaire. According to the results, the ten brands most commonly consumed by underage drinkers, in descending order of prevalence, were Bud Light (beer), Smirnoff malt beverages (flavored malt beverages), Budweiser (beer), Smirnoff vodkas (spirits), Coors Light (beer), Jack Daniel's bourbons (spirits), Corona Extra (beer), Mike's (flavored malt beverages), Captain Morgan rums (spirits), and Absolut vodkas (spirits).

25. U.S. Department of Health and Human Services, 2011 NSDUH, Summary of National Findings, at 3, *available at* http://www.samhsa.gov/data/NSDUH/2k11Results/NSDUHresults2011.pdf. NSDUH is an annual nationwide survey involving interviews with approximately 70,000 randomly selected individuals aged 12 and older.

26. *Id.*

27. *Id*.

28. *Id*. at 40.

29. *Id*. at 40-41.

30. *See*, Press Release, University of Michigan, *supra* note 19.

31. 2013 MTF Results, *supra* note 19, at Table 12 (http://www.monitoringthefuture.org/data/13data/13drtbl12.pdf).

32. *Id*.

33. 2013 MTF Results, *supra* note 19, at Table 13 (http://www.monitoringthefuture.org/data/13data/13drtbl13.pdf).

34. *Id*. Perceived ease of availability has also declined among 12th graders, although less substantially (from 95% in 1995, the first year this question was posed of 12th graders, to 89.7% in 2013). 2013 MTF Results, *supra* note 19, at Table 14 (http://www.monitoringthefuture.org/data/13data/13drtbl14.pdf).

35. 2011 NSDUH, Detailed Tables, Table 2.78A and 2.78B, *available at* http://www.samhsa.gov/data/NSDUH/2011SummNatFindDetTables/NSDUH-DetTabsPDFWHTML2011/2k11DetailedTabs/Web/HTML/NSDUH-DetTabsTOC2011.htm. This includes 60.9 percent of adult (21+) Caucasians, 47.3 percent of adult African Americans, 47.9 percent of adult Hispanics, and 43.6 percent of adult Asians. *Id.*, Table 2.80B.

36. According to the 2011 NSDUH, 23 percent of adults reported engaging in binge drinking and 6.5 percent reported heavy alcohol use. *Id*., Table 2.80B. For the purposes of the NSDUH, binge alcohol use is defined as drinking five or more drinks on the same occasion (*i.e*., at the same time or within a couple of hours of each other) on at least one day in the past 30 days. Heavy alcohol use is defined as drinking five or more drinks on the same occasion on each of five or more days in the past 30 days; all heavy alcohol users are also binge alcohol users.

37. *See generally* NIAAA, Alcohol Alert No. 83, Preventing Alcohol Abuse and Alcoholism, An Update (2011), *available at* http://pubs.niaaa.nih.gov/publications/AA83/AA83.htm; and NIAAA, Alcohol Alert No. 71, Alcohol Research, A Lifespan Perspective (2008), *available at* http://pubs.niaaa.nih.gov/publications/AA74/AA74.htm.

38. Vivian Faden, Ph.D., Director, Office of Science Policy and Communications, NIAAA, Underage Drinking: Understanding and Impacting the Landscape (Mar. 7, 2013) (webinar presentation).

39. These data represent the results of a survey of more than 15,000 alcohol consumers who were asked about consumption habits in the prior four weeks. It is designed to be nationally representative of the target groups (*i.e.*, Caucasian, Hispanic, and African American consumers 21+) by gender, age, education, race, and religion.

40. According to this survey, 19 percent of Caucasians, 21 percent of African Americans, and 24 percent of Hispanics drink exclusively wine, beer, or spirits. *Id.* Allocation information is not available for Asian Americans.

41. Gallup News Service, Gallup Poll Social Series: Consumption Habits (Aug. 1, 2013), *available at* http://www.gallup.com/poll/163787/drinkers-divide-beer-wine-favorite.aspx. According to this annual survey of consumers 18+, in 2001, 46 percent of U.S. consumers who reported alcohol consumption identified beer as the alcohol beverage they drank most often, followed by wine (31 percent) and distilled spirits (18 percent). By 2013, responses to the same question revealed that consumers reported consumption of beer most often (36 percent), followed by wine (35 percent), and spirits (23 percent). (In 2001, four percent reported equal consumption of all categories and one percent had no opinion; in 2013, three percent reported equal consumption in all categories, one percent reported "other" and two percent had no opinion.)

42. Per capita consumption of beer (which typically contains between four percent and six percent alcohol by volume, or "ABV") dropped from 21.7 gallons in 2000 to 20.3 gallons in 2011. Over this same period, per capita consumption of wine (which typically contains between 12 and 14 percent ABV) increased from 1.9 gallons to 2.4 gallons, and per capita consumption of spirits (which typically contains 40 percent ABV) increased from 1.26 gallons to 1.54 gallons.

    Brewers Almanac (2012), at 24, *available at* http://www.beerinstitute.org/br/#br_beer-statistics/brewers-almanac.

43. Between 2007 and 2011, the craft beer category increased from four percent to six percent of the beer market, while the super-premium category increased from 4.4 percent to 5.4 percent, and the premium category decreased from 51 percent to 48 percent. Beer Marketers Insights, 2012. *See also* Erik Kain, The Rise of Craft Beer in America (Sept. 16, 2011), *available at* http://www.forbes.com/sites/erikkain/2011/09/16/the-rise-of-craft-beer-in-america/ (citing the 2011 Beer Handbook). Generally, premium refers to beers that command a price premium of 10 percent or more over a benchmark mainstream beer; super-premium beers are even more expensive; and craft beers are those produced by a brewery that is small (producing less than seven million barrels annually), independent (no more than 24 percent ownership by another brewer that is not a craft brewer), and uses traditional brewing methods.

44. According to the Wine Institute, "the most impressive percentage gains were Muscat/Moscato now up close to 4 percent market share, and growing by 73 percent in volume, and sweet red, close to a 1 percent share, with growth over 200 percent." Wine Institute, 2011 California Wine Shipments in U.S. Reach All-Time High (Mar. 22, 2012), *available at* http://www.wineinstitute.org/resources/pressroom/03222012. A spokesperson for Nielsen commented that "millennial consumer[s], age 21-34 who make up 26 percent of legal drinking age Americans, continue to be the wine sales growth driver, while Baby Boomers continue to be the largest

contributor to sales. . . [c]onsumers are finding quality and value in the wine category, and continue to experiment with sweet reds, unoaked wines, wine blends, and other diverse offerings." *Id*.

45. In 2012, flavored spirits products represented 27 percent of U.S. spirits volume and 46 percent of spirits category growth. DISCUS, 2012 Industry Review, *available at* http://www.discus.org/assets/1/7/Distilled_Spirits_Industry_Briefing_Feb_6.pdf. According to proprietary industry documents, "the strategic introduction of new flavors can drive incremental volume to a brand."

    About a quarter of spirits consumers 21+ report flavored vodka consumption in the past month. For example, among spirits consumers 21+, past month flavored vodka consumption was reported by 24 percent of Caucasians, 29 percent of African Americans, and 23 percent of Hispanics. Rates are higher among drinkers ages 25-39 with some college education and an income over $50,000 per year. Further, according to a 2009 proprietary survey of 2,425 past month flavored vodka consumers 22 and older, 34 percent were ages 22-29, 34 percent were ages 30-39, and 33 percent were ages 40-49.

    In addition, among spirits consumers 21+, about one fifth report flavored rum consumption in the past month. This includes 20 percent of Caucasians, 21 percent of African-Americans, and 21 percent of Hispanics. The last few years have also seen the introduction of flavored line extensions to well-established whiskey, gin, and tequila brands.

    Among price segments, the super-premium spirits category experienced nearly nine percent growth in 2012, compared to nearly five percent for the premium category and about two percent each for the value and premium categories.

46. *See supra* notes 43 and 45.

47. DISCUS, Annual Industry Review 2012, Support Tables, *available at* http://www.discus.org/assets/1/7/2012-Market-Segmentation-Tables.pdf. The stripped sales (*i.e.,* sales net of taxes) reported in Section II.A. can be as little as 80 percent of gross revenues.

48. Kantar Media Intelligence, Measured Advertising Spending by Beverage Alcohol and Type 2010 and 2011 (2012).

49. For example, one large company surveys 300 adults ages 21-55 per week, every week of the year. Another large company surveys approximately 8,640 adults per year. In other instances, companies focus on the results of specific campaigns. One, for example, surveyed 1,441 adults 21+ to determine the response of exposed and unexposed consumers to a single digital campaign.

50. Examples of brand attribute questions in the beer category are: is for guys who know what they want; is for guys who like to take risks; is a beer that makes occasions better; is a beer you want to be seen drinking; tastes better than other brands; would recommend to a friend; is different from other beers; is prestigious; or is worldly. Examples of brand attribute questions in the wine category are: is a casual, yet sophisticated wine; the right brand of wine for me and my friends; is a treat/reward for myself; is a truly unique and exclusive brand; is award-winning; has eco-friendly packaging; is a brand that offers something different; and is made by a winery that's been around a long time. Examples of brand attribute questions in the spirits category are: innovative; a brand that inspires/excites me; a bold brand; a creative brand; a stylish brand; a brand worth paying more for; a brand for really good times with friends; a brand that is popular; and a brand that is authentic.

51. Surveys of consumers 21+ also reveal what kinds of marketing they believe are relevant to their purchase decisions for various alcohol types or brands. In one survey, for example, spirits consumers 21+ reported that sources of advertising awareness included, in order of prevalence, mass media (particularly TV), print (primarily magazines), and on-premise (in stores, bars/clubs/restaurant) followed by billboards, Internet, and social media. In another survey, wine consumers 21+ reported that they rely on recommendations from friends and family, ratings, restaurant and store recommendations, packaging/labeling, in-store displays, environmental/responsible bottle claims, ads, blogs, and social networks. Comparable data were not provided for beer consumers.

52. One company using this technology conducted a large marketing campaign on major online sites. The campaign, which cost $2.4 million, delivered 242 million impressions; 86 percent of consumers exposed to the campaign were 24 years of age or older. The company reported a 28 percent increase in sales of its products in households exposed to its campaign, as compared to sales in households not so exposed.

53. *See supra* note 3.

54. The Companies that received these orders, and some of their best-known brands, were:

    Anheuser-Busch Companies, Inc. (malt beverages: Budweiser, Bud Light, Michelob);
    Bacardi USA (spirits: Bacardi rum, Grey Goose vodka);
    Beam Inc. (spirits: Jim Beam bourbon, Sauza tequila; Skinnygirl cocktails);
    Brown-Forman (spirits: Southern Comfort, Jack Daniels whiskey, Southern Comfort liqueur; wine: Sonoma-Cutrer);
    Campari USA (spirits: Skyy vodka, Wild Turkey bourbon);
    Constellation Brands Inc. (spirits: Svedka vodka, Black Velvet whiskey; wine: Arbor Mist and Estancia; malt beverages: Corona, Modelo);
    Diageo (spirits: Smirnoff vodka, Tanqueray gin, Jose Cuervo tequila; malt beverages: Guinness, Red Stripe, Smirnoff Ice; wines: Sterling Hill and Blossom Hill);
    Heaven Hill Distilleries, Inc. (spirits: Burnett's vodka, Admiral Nelson spiced rum);
    Heineken USA Inc. (malt beverages: Heineken, Amstel, Tecate);
    Jackson Family Wines (wines: Kendall-Jackson, Taylor Peak);
    Mark Anthony Brands, Inc. dba Mike's Hard Lemonade Co. (malt beverage: Mike's Hard Lemonade);
    Miller Coors LLC (malt beverages: Miller, Coors, Molson, Blue Moon, Sparks);
    Pernod Ricard USA, Inc. (spirits: Absolut vodka, Beefeater gin; wines: Jacobs Creek, Wyndham Estate); and
    William Grant & Sons (spirits: Stolichnaya vodka, Milagro tequila).

    These companies were 14 of the 17 largest alcohol advertisers in the United States in 2010; the other three companies in the top 17 – Boston Beer, Patron Spirits, and Moet Hennessey – received Special Orders in either 2009 or 2010, as described below.

    In the 2008 Alcohol Report, the Commission committed to conducting smaller studies in the years when no major alcohol study was underway. Consistent with this commitment, the Commission issued Special Orders to three companies in 2009 and to another three in 2010. The companies that received these orders, and their best known brands, were:

    Boston Beer (malt beverages: Boston Lager, Sam Adams, Twisted Tea);
    Moet Hennessy USA (spirits and wine: Hennessy Cognac, Moët & Chandon champagne);
    North American Breweries (malt beverages: Genesee Beer, Labatt);
    The Patron Spirits Company (spirits: Patron Tequila);
    Terlato Wine Group (wines: Rutherford Hill, Chimney Rock); and
    W.J. Deutsch (wine: [yellowtail]).

55. In 2011, U.S. alcohol suppliers sold 3,375 million cases of alcohol. *See* BI, Industry Volumes, 2012, *available at* http://www.beerinstitute.org/br/#br_beer-statistics/latest-statistics; WI, 2011 California Wine Shipments in U.S. Reach All-Time High (Mar. 22, 2012), *available at* http://www.wineinstitute.org/resources/pressroom/03222012; DISCUS, Industry Review Support Tables 2011, *available at* http://www.discus.org/assets/1/7/2011_Review_Tables_Revised.pdf.

    The companies studied in 2009 and 2010 (*see supra* note 54) sold a total of 178 brands, reported a combined total of $2.7 billion in sales, and distributed 74 million cases of alcohol.

56. The various companies' accounting systems sometimes allocate expenditures in a different way than is set forth in the Special Orders. Some companies report items such as branded signage, display cases, and coasters in the "point of sale: other" category, while others report them in the "specialty item" category. Other companies do not distinguish transit expenditures from other outdoor spending.

57. The six smaller companies studied in 2009 and 2010 (*see supra* note 54) reported combined marketing expenditures of $254 million, representing approximately 9.4 percent of stripped sales income.

58. In 2011, within national television, approximately 42 percent of expenditures were allocated to broadcast TV and 58 percent to cable. Within regional/local television, approximately 73 percent of expenditures were devoted to broadcast and 27 percent to cable. Within radio, 96 percent of expenditures were allocated to stations measured by the major demographic services, 1.3 percent to unmeasured radio, and 3 percent to satellite radio.

59. In that study, the Commission collected 2005 expenditure data from 12 companies. In this study, we collected 2011 data from 14 companies, including five companies (Campari, Heaven Hill, Kendall-Jackson, Mark Anthony, and William Grant) not involved in the 2008 study.

60. This represents the percentage of the U.S. population aged 21+, according to the 2010 U.S. Census. DISCUS Code, Responsible Placement, ¶ 3; BI Code, ¶3(c); WI Code, Responsible Placement, ¶ 1(b).

61. *See supra* note 4.

62. According to the submissions, expenditures attributed to the point of sale: other category totaled $435,078,500, or 12.59 percent of industry-wide expenditures; expenditures attributed to the specialty item category totaled 383,989,220 or 11.11 percent of industry-wide expenditures. *See supra* note 56 with regard to variations in company accounting practices.

63. Most of the specialty items are distributed at retail outlets, whether on or off premise. It appears, however, that a portion of the specialty item expenditures were for distribution of branded non-alcohol merchandise to consumers from company websites, company gift shops, or in the form of sweepstakes awards.

64. *See generally* DISCUS Code, BI Code, WI Code, *supra* note 4. For example, the BI Code requires that advertising and marketing materials avoid elements that appeal primarily to persons under the drinking age, taking into account elements including symbols, language, music, gestures, entertainers, cartoon characters, or groups. BI Code, ¶ 3(c). The DISCUS Code, among other things, specifies that 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 LDA, and that DISCUS members should limit the manufacture of brand logo apparel to adult sizes. DISCUS Code, Responsible Content, ¶¶ 3, 9. The WI Code provides that wine promotions should be "adult-oriented and socially responsible" and should not use music, language, gestures, cartoon characters, depictions, or images that are popular predominantly with children. WI Code, Responsible Content, ¶¶ 1, 3.

65. 2008 Alcohol Report, n.31.

66. *Id*. at 7 & nn.30, 31.

67. BI Code, ¶ 12 (also restricting billboards within 500 feet of a playground); DISCUS Code, Responsible Placement, ¶ 8; WI, Responsible Placement, ¶ 5.

68. DISCUS Code, Scope (guidelines apply to sponsorships) and Responsible Placement ¶ 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 71.6 percent of the audience is reasonably expected to be of legal purchase age."); BI Code, Guidelines ¶¶ 1 ("These guidelines apply to all Brewer advertising and marketing materials"), 3(e) ("Beer should not be advertised or marketed at any event where most of the audience is reasonably expected to be below the legal drinking age."), 10(a); WI Code, Responsible Placement, Preamble ("all advertising in all forms – including . . . sponsorships" shall adhere to both the letter and the spirit of the code), ¶ 6 ("Wine advertising should not be placed at events unless at least 70 percent of the audience who are intended to view the advertising is reasonably expected to be above the legal drinking age.")

69. *See* DISCUS Code, Media Buying Guidelines, ¶ 2; BI Code, ¶ 3(c); WI Code, Responsible Placement, ¶ 1(a).

70. Expenditures in the spring break category related solely to marketing in licensed retail establishments.

71. The WI, DISCUS and BI codes differ in their treatment of advertising in connection with college sports. The WI code specifies that member ads should not be placed on college premises or in newspapers published by, or primarily for, a college; its members may, however, advertise in licensed retail establishments located on campus and may participate in programs organized by or for graduate or professional schools or alumni organizations. WI Code, Responsible Placement 1(c). The DISCUS Code provides that members' alcohol products should not be advertised or marketed in college newspapers, or on campuses, except for licensed retail establishments located on such campuses, and that member-sponsored alcohol promotions should not be conducted in an on-campus licensed retail establishment owned or operated by a college or university. DISCUS Code, Responsible Placement ¶¶ 6, 7.

    The BI Code permits advertising and marketing on college campuses (including in college-owned media) and at college-sponsored events if permitted by the college. BI Code, Guideline 10. A review of the demographic information submitted regarding college sports suggests that the audience for college sports ranges substantially. The audience for nationally televised college sports, playoff and bowl games, ranges from 79 percent to 91 percent 21+ adults. The audience for locally televised college sports generally ranges from 72 percent to 86 percent 21+ adults.

72. The Century Council sponsors programs designed to reduce underage drinking, binge drinking, and drunk driving. *See* http://www.centurycouncil.org/.

73. TEAM Coalition focuses on reducing excessive drinking and increasing responsible fan behavior at sports and entertainment facilities. *See* http://www.teamcoalition.org/.

74. ABMRF supports medical research and communications regarding the effects of alcohol consumption. *See* http://www.abmrf.org/.

75. The National Center of DWI Courts fosters the development of district court dockets dedicated to changing the behavior of the alcohol/drug dependent offenders arrested for driving while impaired. *See* http://www.dwicourts.org/.

76. The Health Alliance on Alcohol offers parents and mentors a resource for alcohol facts and conversation starters that are designed based on a child's age. *See* http://healthallianceonalcohol.com/.

77. *See infra* note 135.

78. *See generally* Exhibit B.

79. *See* BI Buying Guidelines, Television Guidelines ¶¶ A, B, and D; DISCUS Buying Guidelines, ¶ II (A)(i-ii). For national and local television, companies rely on audience composition data provided by The Nielsen Company ("Nielsen"). Nielsen provides audience data for persons 2 and older ("2+"). On television, a "daypart" is a several-hour period of time such as primetime or late night.

80. *See* BI Buying Guidelines, Television Guidelines, ¶ C; DISCUS Buying Guidelines, ¶ II(A)(i-ii).

81. *See* BI Buying Guidelines, Radio Guidelines ¶ D; DISCUS Buying Guidelines, ¶ II (B)(ii). The companies generally rely on data provided by Arbitron, Inc. ("Arbitron") for radio. Arbitron provides different data, depending on the size of the radio market. In the largest 48 markets it now uses portable people meters ("PPMs"), small devices worn by participants, to record the radio signal exposure of consumers 6 and older ("radio 6+" markets); data are made available monthly. PPM measurement was implemented in phases between 2008 and late 2010. In 227 second tier markets, it provides data based on diaries compiled by consumers 12 and older ("radio 12+" markets) either twice or four times per year. E-mail from Neil Schwartz, Scarborough Research, Arbitron, Inc., to authors (May 23, 2013, 02:56 EST) (on file with the Commission); E-mail from Neil Schwartz, Scarborough Research, Arbitron, Inc. to authors (March 1, 2013) (on file with the Commission); *see also Arbitron Ratings and Usage Data Usage Guidelines*, *available at* http://arbitron.mediaroom.com/index.php?s=65; *A Short History of PPM Radio Measurement, Arbitron*, 2008, *available at* http://rope.zscb.fimc.net/pdfs/Short%20Summary%20Diary%20vs%20PPM.pdf.

    The smallest radio markets are not measured. In the case of radio, examples of dayparts are AM drive time, Monday-Friday, and PM drive time, Monday-Friday.

82. *See* BI Buying Guidelines, Magazine Guidelines, ¶ B; DISCUS Buying Guidelines, ¶ II (C)(iii). For placements in magazines, companies generally rely on data provided by Mediamark Research Inc., Scarborough, and BPA Worldwide. These companies provide data regarding print media usage by consumers 12 and older, or 18 and older, depending on the publication at issue.

83. *See* BI Buying Guidelines, Newspaper Guidelines, ¶ B; DISCUS Buying Guidelines, ¶ II (E)(ii). For newspapers placements, companies generally rely on data provided by Mediamark Research Inc.

84. *See* BI Buying Guidelines, Digital Media Guidelines, ¶ C; DISCUS Buying Guidelines, ¶ II (F)(ii). For Internet placements, companies rely on audience composition data provided by comScore and Nielsen. ComScore and Nielsen provide data for persons 2+.

85. *See* BI Buying Guidelines, Digital Media Guidelines, ¶ F; DISCUS Buying Guidelines, ¶ II (F)(iii).

86. For example, some companies prohibit any ads on particular cable networks and/or radio stations, and one company will not place advertisements on a particular cable network during the summer months, out of concern that the audience demographics skew younger.

87. *See* DISCUS Code, Responsible Placement, ¶ 3.

88. *See* BI Code, Guidelines, ¶ 3(c)(iii).

89. The DISCUS Code states that:

    Internal, semi-annual after-the-fact audits of a random portion of past placements should be undertaken to verify that such past placements were in compliance with this Code and to take appropriate, corrective action for future placements.

    DISCUS Code, Responsible Placement, ¶ 3. Corrective actions include making schedule adjustments, cancellations, or "other appropriate changes to comply with the standard in the future." DISCUS Buying Guidelines, ¶ 2. The BI Code states that:

    The Brewer placing advertising or marketing materials in digital media, in magazines, in newspapers, on television and on radio shall conduct periodic after-the-fact audits, at least semi-annually where possible, of substantially all of its placements. If a Brewer learns that a placement did not meet the Code standard, it will take steps to prevent a reoccurrence. These steps may include, but are not limited to: investigating exceptions; canceling placements with unacceptable audience composition; reallocating purchases to a different and acceptable time slot; contacting the media outlet/station with regard to placement errors or possible reporting errors; reemphasizing audience composition requirements with media buyers and media outlets; and continued monitoring of a program or time slot to determine whether buys should be canceled or reallocated.

    BI Code, ¶ 3(c)(iii).

90. Among the companies studied in 2009 and 2010, 96 to 98 percent of placements met the 70 percent 21+ target.

91. In the first half of 2011, within measured media, 69.1 percent of alcohol advertising impressions were due to television, 7.5 percent to radio, 7 percent to print, and 16.3 percent to measured, non-age-gated online media. Together, these measured media generated 70.8 billion alcohol advertising impressions. By contrast, the measured media advertising placed in or on television, radio, magazines, and newspapers by the 12 companies studied in the 2008 Alcohol Report generated 69.4 billion impressions in the first half of 2005. Online media impressions were not collected for the 2008 Alcohol Report.

92. In 2011, television shows that carried alcohol ads included the Superbowl (80 percent 21+ during the study period); CSI (90 percent); Saturday Night Football (89 percent); Jimmy Kimmel Live (77 percent); The Colbert Report (73 percent in prime time, 80 percent during late night); Chelsea Lately (85 percent); The Office (83-90 percent, depending on time of day); Family Guy (74 percent), and Real Housewives of New Jersey (89 percent).

93. *See supra* note 81.

94. With regard to ads specifically targeted to an African-American audience, the rate of national TV compliance with the 70 percent standard was 2.45 percent better than the compliance rate for TV ads overall; compliance rates for magazine, newspaper, radio 12+, and online measured ads were the about the same (plus or minus 1.2 percent) as the compliance rates for ads in these media overall. There were no local TV ads specifically targeted to African-American audiences. However, the compliance rate for African-American-targeted ads in radio 6+ markets was 4.7 percentage points lower than the overall compliance rate for radio 6+ ads.

    With regard to Hispanic-targeted ads, the rates of compliance with the 70 percent standard for local TV, radio 12+, magazine, newspaper, and online measured sites were approximately the same (plus or minus 1.03 percent) as the compliance rates for ads in these media overall. However, the compliance rate for national TV was 3.3 percentage points lower, and the compliance rate for radio 6+ was 1.3 percentage points lower, than the rates for ads in these media overall.

    See *infra* note 132 for further information with regard to radio placement compliance shortfalls.

95. Some entities have raised concerns about potential youth targeting and privacy implications of alcohol marketing in online and digital media. In a 2010 white paper, The Center for Digital Democracy ("CDD"), in conjunction with Berkeley Media Studies Group, issued a report showing examples of online marketing by industry members. That report characterized online alcohol marketing as having three core aspects: (a) engagement, *i.e*., the creation of a marketing environment where consumers interact with brands and integrate them into their personal and social relationships; (b) data collection and behavioral targeting, such as digital advertising campaigns that encourage users to provide personal information in order to participate in a contest; and (c) a "360-degree strategy" that aims to keep consumers continuously plugged into alcohol advertising campaigns, whether online or in the real world. CDD, Alcohol Marketing in the Digital Age (May 2010), *available at* http://www.digitalads.org/documents/BMSG-CDD-Digital-Alcohol-Marketing.pdf. CDD requested that the Commission investigate the alcohol industry's online practices, including data collection, online profiling, youth targeting practices, and the adequacy of age verification techniques. *Id*. at 18. The state attorneys general and the Center for Alcohol Marketing and Youth ("CAMY") also asked the Commission to research the youth targeting and privacy aspects of online alcohol marketing. These latter two requests, submitted during the comment period prior to issuance of the 6(b) orders, are available at http://ftc.gov/os/comments/alcoholstudy2011-pra/00071-58515.pdf (state attorneys general) and http://ftc.gov/os/comments/alcoholstudy2011-pra/00070.html (CAMY).

96. *See generally* DISCUS Guidance Note, *supra* note 4.

97. *Id.*

98. *See* BI Code Guideline ¶13.

99. *Id*.

100. This data must be considered with caution. It includes the reported audience for company-sponsored Facebook pages; however, some companies had only incomplete data for the first half of 2011 (because they were made available for only six months and lost if not recorded by the company at that time) whereas a few other companies could provide only global data, rather than data limited to the U.S. audience. Further, data regarding visitors to company-sponsored pages is not directly comparable to the impressions data provided by the companies for online measured media and traditional broadcast media. For example, Facebook page success can be measured in terms of total fans, new fans, various measures of fan engagement (numbers of comments, likes, and shares), and engagement rate (engagements per thousand fans).

101. WARC, Online Ads Boost TV Recall (Feb. 28, 2013), *available at* http://www.warc.com/ Content/News/N31072_Online_ads_boost_TV_recall_.content?CID=N31072.

102. Some brand websites redirect visitors who enter an age under 21 to sites that offer information about the risks of underage drinking, such as www.centurycouncil.org or the company's own responsibility page.

103. Four companies, accounting for 85 brands, place a cookie on the computer of a visitor who twice fails to enter an age over 21 that prevents the consumer from back-clicking and entering an age over 21. One company had

two websites that did not require the consumer to enter any age information before viewing the site content; these sites have since added age gates.

104. A few sites offer a tell-a-friend service that allows registered users to provide email contact information on friends so that the company can forward promotional information to the friend. About 88 percent of these sites percent permit back-clicking in the tell-a-friend services, which requires entry of both the sender's and the recipient's dates of birth.

105. One of these companies also requires third-party age verification before a consumer can claim a large sweepstakes prize.

106. Third-party advertising networks select and deliver targeted advertisements across the Internet on websites that participate in their networks. They use various means, including cookies and web beacons, to track consumers' activities and associate those activities with a particular computer or device.

107. Privacy policies for six companies state that they collect consumers' IP addresses.

108. Privacy policies for two companies state that they place a cookie on the user's computer solely to streamline the browsing experience.

109. Privacy policies for 12 companies state that they place a cookie on the user's computer to both assess the browsing experience and track website usage information.

110. In one company-sponsored survey, consumers reported that they most often become brand fans after seeing that a friend liked the brand, actively searching social media for the brand page, or clicking on an ad for the brand.

111. Pinterest and Tumblr also have LDA adult audience compositions that exceed 70 percent.

112. E.J. Schultz, *New Twitter Tool Gives Green Light to Alcohol Brands*, Advertising Age, June 4, 2012 at 1.

113. All of the companies reported that they did not permit placement of advertising network cookies on the computers of visitors to their company-operated social media pages.

114. Internet sites that carried alcohol ads during the study period included ESPN (at least 83 percent 21+ in 2011); Playboy (82 percent); Pandora (88 percent); Batanga (78 percent); Urban Daddy (99 percent); Google (76 percent); Univision (77 percent); VEVO (81 percent); Rolling Stone (87 percent); Hulu (77 percent); SB Nation (86 percent); Fox Sports (88 percent); CNN Money (96 percent); Wired (91 percent); NBC (87 percent) and Cosmopolitan (81 percent).

115. In cases where consumers provided personal information to enter a sweepstakes or contest, the companies usually linked to the privacy policies on the brand websites, which were lengthy and not necessarily formatted for mobile screens.

116. *See* Exhibit A, Specification 5B, n.4.

117. *See* BI Code, 14, Product Placement, ¶ a-f; DISCUS Code, Product Placements, ¶ 32(a-f); WI Code, Responsible Placement, ¶ 3(b-c).

118. *See* BI Code, 14, Product Placement, ¶ f; DISCUS Code, Product Placements, ¶ 32(f). The Commission evaluated the television shows in which companies had made product placements against the audience composition data submitted in response to Specification 3B. All of the television shows where companies placed products had an adult audience composition well above the historic 70 percent standard, and the current 71.6 percent standard.

    The codes do not limit placements to films rated "R" or "NC-17," although some companies appear to request information about the anticipated rating as part of their analysis of whether to approve a placement or not. As mentioned in the 2008 Alcohol Report, however, film ratings may not relate well to the age of film attendees. 2008 Alcohol Report at 23 & n. 111.

119. 1999 Alcohol Report, Executive Summary at iii.

120. Anthony McCartney *et al*., Anheuser-Busch Asks Paramount Pictures To Remove Budweiser From Denzel Washington Movie 'Flight' (2012), *available at* http://www.huffingtonpost.com/2012/11/05/budweiser-flight-removal-paramount_n_2080328.html.

121. *See* 2003 Alcohol Report at 8-9.

122. *See* 2008 Alcohol Report at 14-15.

123. DISCUS Code, Code Review Board, *available at* http://www.discus.org/assets/1/7/May_26_2011_DISCUS_Code_Word_Version1.pdf.

124. *See* http://www.discus.org/responsibility/recentcodereview/ (recent review board decisions) and http://www.discus.org/responsibility/code/ (semiannual code reports).

125. Wine Institute, Complaint Review Process, *available at* http://www.wineinstitute.org/initiatives/issuesandpolicy/adcode/reviewprocess.

126. Wine Institute, Complaint Review Process, *available at* http://www.wineinstitute.org/initiatives/issuesandpolicy/adcode/reviewprocess.

127. CCRB Annual Report 2010-2011, *available at* http://www.beerinstitute.org/assets/uploads/2010_AR.pdf.

128. *See* http://www.beerinstitute.org/bi/responsibility-programs#bi_responsibility-programs/advertising-marketing-code.

129. *See* CCRB Annual Report 2009, *available at* http://www.beerinstitute.org/assets/uploads/08_09_AR.pdf.

130. *See* Table 3.

131. *See supra* note 89.

132. *See supra* note 89 with regard to code requirements relating to audit results.

    The majority of compliance problems the Commission identified involved radio. *See supra* Table 3. As noted in the text, radio audiences tend to be smaller than audiences for other media, and thus radio audience data is based on smaller sample sizes with less stability.

    Some compliance shortfalls involved the 15 markets that shifted from 12+ measurements to 6+ measurements in late 2010; ads appropriately purchased prior to the shift based upon the historic 12+ data (ads are often purchased well in advanced of airing) became noncompliant once the 6+ data were available. Other compliance shortfalls occurred because media buyers continued to review only the 12+ data despite the availability of 6+ data.

    The companies should review 6+ audience data for radio, in those markets where they are available. One company's data suggested that, as compared to the 12+ measurement system, the implementation of the 6+ audience measurements increased the measured underage audience composition by anywhere from 0.4 to 4.8 percent, depending on the market. (Whether this affected compliance depended upon the audience for actual programming, however; by way of example, if the audience were already 75 percent 21+ under the 12+ radio diary system, it is unlikely that the program would become be noncompliant once the 6-11 audience was also measured.)

    In a few cases, involving radio station time slots with particularly small audiences (for example, 3,000 persons or less), apparent noncompliance may have been due to rounding errors that occurred when audience data was converted to thousands, as requested by the Special Orders. In future studies, the Commission will request that actual audience composition data, rather than rounded data, be provided.

133. 2008 Alcohol Report at 19.

134. The results of the 2010 U.S. Census that showed population data by age were released on May 26, 2011.

135. DISCUS, Distillers Adopt 71.6% 21+ Demographic Placement Standard (May 26, 2011), *available* at http://www.discus.org/distilled-spirits-industry-updates-advertising-guidelines-based-on-newly-released-census-

data/; BI, Beer Institute Revises Advertising Standard Based on New U.S. Census Data (May 26, 2011) (on file with the Commission); WI, Wine Institute Code of Advertising Standards (June 2011), *available at* http://www.wineinstitute.org/initiatives/issuesandpolicy/adcode/details.

136. Adoption of the 71.6% placement standard will reduce the underage audience composition for each individual advertisement that is placed, and thus address concerns about direct targeting. It may or may not reduce the overall number of alcohol ads seen by youth, which is influenced by factors such as the number of companies advertising, their marketing budgets, and the size of the media in which ads are placed.

137. The survey did not indicate what service teens were attempting to access. *See* Amanda Lenhart et al., *Teens, Kindness and Cruelty on Social Network Sites*, Pew Research Center's Internet & American Life Project, at 56, *available at* http://pewinternet.org/~/media/Files/Reports/2011/PIP_Teens_Kindness_Cruelty_SNS_Report_Nov_2011_FINAL_110711.pdf (last visited Apr. 23, 2013).

138. *See That Facebook Friend Might Be 10 Years Old, and Other Troubling News*, Consumer Reports (June 2011), *available at* http://www.consumerreports.org/cro/magazine-archive/2011/june/electronics-computers/state-of-the-net/facebook-concerns/index.htm (last visited Apr. 23, 2013); *MinorMonitor Surveys 1,000 Parents of Children on Facebook, Shares Results on Realities, Parental Concerns*, *available at* http://www.minormonitor.com/2012/04/minormonitor-surveys-1000-parents-of-children-on-facebook-shares-results-on-realities-parental-concerns/ (last visited Apr. 23, 2013).

139. *See supra* Section II.D.1.ii for a discussion of third-party verification technologies. This process has been recommended by one of the third-party age verification vendors and by CAMY (during a press call regarding the CDD report, *see supra* note 95). During the same press call, however, CDD's representative opposed this concept due its privacy implications.

140. *See* 2003 Alcohol Report at 18, 20.

141. *See generally* FTC, Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers, Mar. 2012, *available at* http://ftc.gov/os/2012/03/120326privacyreport.pdf.

142. 2013 MTF Results, *supra* note 19, at Figure 14 (http://www.monitoringthefuture.org/data/13data/13drfig14.pdf); H.D. Holder, Supply Side Approaches to Underage Drinking: An Assessment of the Scientific Evidence (2003); IOM Study, Washington, DC: The National Academies Press (2004).

143. 2011 NSDUH results, *supra* note 25, at 26.

144. *See* S. Res. 318, 110th Cong. (2007); H. Res. 1042, 110th Cong. (2008).

145. National Prevention Council Action Plan: Implementing the National Prevention Strategy (June 2012), *available at* http://healthyamericans.org/assets/files/National%20Prevention%20Council%20Action%20Plan_FINAL%20for%20prin%20pt%202t.pdf.

146. For more information about FTC promotion of self-regulation to address consumer economic, health, and safety issues, see, for example, FTC, A Review of Food Marketing to Children and Adolescents: Follow-Up Report, Dec. 2012, *available at* http://ftc.gov/os/2012/12/121221foodmarketingreport.pdf; FTC, Facing Facts: Best Practices for Common Uses of Facial Recognition Technologies, at 10, *available at* http://www.ftc.gov/os/2012/10/121022facialtechrpt.pdf; FTC, Marketing Violent Entertainment to Children: A Sixth Follow-up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries, A Report to Congress, Dec. 2009, *available at* http://www.ftc.gov/sites/default/files/documents/reports/marketing-violent-entertainment-children-sixth-follow-review-industry-practices-motion-picture-music/p994511violententertainment.pdf.

147. World Health Organization, Global Strategy to Reduce the Harmful Use of Alcohol (2010), *available at http://who.int/substance_abuse/alcstratenglishfinal.pdf*.

148. There undoubtedly are compelling national and state interests in reducing underage alcohol use, given the substantial risks associated with youth drinking. Further, the Commission has jurisdiction to challenge

particular alcohol marketing practices, if there is reason to believe they are deceptive or unfair pursuant to 15 U.S.C. § 45(a)(1) and (n). *See supra* note 1.

Nonetheless, applicable case law suggests that regulation of alcohol advertising to address underage appeal could face significant challenges in court. The Supreme Court has ruled that alcohol advertising and marketing receive the same protections as advertising for other products. *See 44 Liquormart Inc. v. Rhode Island*, 517 U.S. 484, 514 (1996) (striking down a state ban on alcohol price advertising); *Rubin v. Coors Brewing Co*., 514 U.S. 476, 497-98 (1995) (striking down a federal law that prevented alcohol content claims on beer labels).

The Court also has ruled that non-deceptive commercial speech enjoys substantial First Amendment protections. *See, e.g.*, *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 553-66 (2001) (striking down state restrictions on tobacco advertising despite arguments that they were needed to protect children); *Bolger v. Youngs Drug Prods. Corp*., 463 U.S. 60, 73 (1983) (striking down federal law prohibiting mailing of unsolicited contraceptive advertisements); *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 770 (1976) (invalidating a state ban of price advertising of prescription drugs). Commercial speech is protected by the First Amendment even when it may be offensive to some. The Court has ruled that the government lacks authority to suppress offensive speech, such as sexually suggestive advertising. *Carey v. Population Svcs. Int'l*, 431 U.S. 678, 701 (1977) (striking ban on advertisements for contraceptive products).

Subsequent to the Court's decision in *Lorillard*, federal and state courts have struck down statutory limits on alcohol advertising. *See Educ. Media Co. at Virginia Tech., Inc. v. Insley*, No. 12-2183, 2013 WL 5345772 (4th Cir. Sept. 25, 2013) (striking down Virginia regulations prohibiting alcohol advertising in college student publications, noting the regulations were more extensive than necessary because they prohibited large numbers of adults who are 21 years of age or older from receiving truthful information about a product they are legally allowed to consume); *Pitt News v. Pappert*, 379 F.3d 96, 111 (3d Cir. 2004) (striking down a state law banning payment for alcohol advertisements in communications media affiliated with an educational institution, such as a college paper or college football program); *Eller Media Co. v. City of Cleveland*, 326 F.3d 720 (6th Cir. 2003) (striking down a city ban on most billboard advertising for alcohol); *Utah Licensed Bev. Assoc. v. Leavitt*, 256 F.3d 1061, 1074 (10th Cir. 2001) (striking down restrictions on wine and spirits advertising because the regulatory regime failed to materially advance the asserted government interest); *Authentic Beverages Co., Inc. v. Texas Alcoholic Beverage Comm'n*, 835 F. Supp. 2d 227 (W.D. Tex. 2011) (striking down Texas regulations defining certain terms, finding Texas's choice of statutory definitions and nomenclature did not wholly preclude First Amendment review under the commercial speech doctrine); *Fulson v. City of Jasper*, 279 Ga. 260, 262-63 (2005) (striking down regulations that prohibited advertising of alcohol prices and brand names, noting that the regulations were more extensive than necessary, given the availability of other means to reduce alcohol consumption).

149. Examples of effective self-regulatory regimes include the Advertising Self-Regulatory Council (ASRC), http://www.asrcreviews.org/ and its divisions: the National Advertising Division (NAD), http://www.asrcreviews.org/category/nad/, the Children's Advertising Review Unit (CARU), http://www.asrcreviews.org/category/caru/, and the Electronic Retailing Self-Regulatory Program (ERSP), http://www.asrcreviews.org/category/ersp/.

Exhibit A: Special Orders

OMB Control No. 3084-0160

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
J. Thomas Rosch
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen

FTC Matter No. P104518

ORDER TO FILE SPECIAL REPORT

Pursuant to a resolution of the Federal Trade Commission dated September 2, 2010, entitled "*Resolution Directing Use of Compulsory Process*," a copy of which is enclosed, [insert target name], hereinafter referred to as "the company,"[1] is ordered to file a Special Report with the Commission no later than the dates specified in Appendix A.III. hereto, containing the information and documents specified herein.

The information in the Special Report will assist the Commission in its ongoing review of beverage alcohol advertising and marketing and alcohol industry self-regulatory efforts. Documents submitted in compliance with this Order that are marked "confidential" will not be disclosed without first giving you ten days' notice of the Commission's intention to do so, except as provided in Sections 6(f) and 21 of the FTC Act, 15 U.S.C. §§ 46(f) and 57b-2. Furthermore, no documents containing confidential commercial or financial information within the meaning of Section 6(f) of the FTC Act may be disclosed publicly without your consent.

The Special Report should restate each item of this Order with which the corresponding answer is identified. If any specification cannot fully be answered, provide the information that is available and explain in what respects and why the answer is incomplete. **The Special Report and all accompanying responses should be bates-stamped.**

Please supply the information and documents requested in the following Specifications, **consistent with the Definitions and Instructions contained in Appendix A.**

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[1] For purposes of this Order, the term "the company" includes all of the entities identified in response to Specification 1.B., below.

SPECIFICATIONS

Specification 1. Company Background Information, Brands, and Data

Provide the following background information:

A. Identify by full name, business address, telephone number, and official capacity, the officer of the company who has prepared or supervised the preparation of the company's response to this Order.

B. Fully identify the entity responding to this Order by company name, address, and state of incorporation. In addition, identify each subsidiary, joint venture, affiliated company, partnership, or operation under an assumed name that is owned in whole or in part by the company and that engages in the manufacturing, labeling, advertising, promoting, offering for sale, or sale of any beverage alcohol product in the United States.

C. Identify by name each individual beverage alcohol brand or variety sold by the entities identified in subparagraph 1.B. above, during calendar year 2011, and for each brand or variety, state total sales, net of taxes ("stripped sales"), during calendar year 2011 in dollars and in number of 9-liter or 2.25-gallon cases sold.

D. Produce all documents dated, prepared, or received by the company on or after January 1, 2011 that contain data not otherwise publicly available regarding the demographics of persons under 21 located in the U.S. who have tasted, used, or purchased any beverage alcohol brand manufactured, advertised, or sold by the company.

Specification 2. Expenditures

Report in Appendix B to this Order[2] the dollar amount expended during calendar year 2011 by the company, whether directly or through its agents, on the advertising, merchandising, or promotion of beverage alcohol products in the United States in each of the categories set forth below (*as defined in Appendix A.I.*):

A. Television Advertising
B. Radio Advertising
C. Magazine Advertising
D. Newspaper Advertising
E. Transit Advertising
F. Outdoor Advertising
G. Direct Mail Advertising

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[2] An electronic version of Appendix B, an Excel spreadsheet, is provided on the included CD.

H. Company-Owned or Operated Internet Sites
I. Other Internet Site Advertising
J. Other Digital Advertising
K. Point-of-Sale Advertising: Specialty Item Distribution
L. Point-of-Sale Advertising: Retail Value-Added Expenditures
M. Point-of-Sale Advertising: Other
N. Promotional Allowances
O. Public Entertainment Events: Not Sports-Related
P. Sponsorship of Sporting Events, Sports Teams, or Individual Athletes
Q. Spring Break Promotions
R. Product Placements
S. In-Cinema Advertising
T. Telemarketing
U. Other
V. Sports and Sporting Events (Cross-Category)
W. Social Responsibility Programs and Messages (Cross-Category)

Specification 3. Advertising Placements

Provide information relating to the placement of advertising:

A. With regard to procedures used by the company, whether directly or through its agents, to facilitate compliance with the advertising placement guidelines contained in the voluntary advertising codes of the Beer Institute, the Distilled Spirits Council of the United States, and/or the Wine Institute, state:

(i) Which of the 3 voluntary codes the company follows;
(ii) Whether the company follows another code, such as a company code, that addresses advertising placement;
(iii) What databases are relied on in making advertising placement decisions;
(iv) How often post-placement data are reviewed to verify that an advertising placement complied with the guidelines, and what steps are taken if a compliance shortfall is identified; and
(v) What additional safeguards are in place (such as use of "no buy" lists, use of higher placement standards, media content review, or others) to reduce the likelihood that a non-compliant advertising placement will occur.

B. With regard to each instance of dissemination by the company (including the entities identified in response to Specification 1.B., above) or its agents of an advertisement during the period January 1, 2011 to June 30, 2011, on television and radio, in magazines, in newspapers, and on the Internet, provide on the spreadsheet included in Appendix C to this Order[3] the following information, *consistent with the*

[3] An electronic version of Appendix C, which has separate Excel spreadsheets for TV

directions in Appendix A.II:

(i) The advertisement's name;
(ii) The brand advertised;
(iii) The name of the medium and location of dissemination;
(iv) The date and time that the advertisement appeared;
(v) The name of the show during, or in conjunction with, which the advertisement appeared, where applicable;
(vi) The actual demographics of the audience (number of persons under 21, and number of persons 21 and over) for that dissemination; and
(vii) The source of the data reported.

In responding to Specification 3.B., please indicate, in the manner instructed on the spreadsheets included in Appendix C, each dissemination that was primarily targeted to Hispanic consumers and each dissemination that was primarily targeted to African-American consumers.

C. Provide copies of all documents relied on to support the company's responses to Specification 3.B. above.

Specification 4. Digital Marketing Practices and Data Collection

A. Provide information relating to Company-Owned or Operated Internet Sites:

(i) Identify by name and URL each website service operated by or on behalf of the company, whether directly or through its agents, at any time during calendar year 2011.
(ii) With respect to each URL identified, please indicate what information, if any, is collected and/or maintained from a visitor to the site and by whom, including but not limited to: at the initial landing page, or during or after any registration process. Describe how such information is used to deliver advertising to consumers in the future.
(iii) State any restrictions or prohibitions, contractual, technological, or otherwise, on the company's and each third party's collection or use of information collected and/or maintained from a visitor to each website identified above.
(iv) For each website identified, describe in detail the mechanism(s) used, if any, by the company to deter entry by persons under age 21.
(v) Describe the company's information collection, maintenance, aggregation,

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National Placements, TV Regional/Local Placements, Radio Placements in 6+ PPM Markets, Radio Placements in 12+ Markets, Magazine Placements, Newspaper Placements, and Internet Placements, is provided on the included CD.

and tracking practices with respect to any visitor identified as being under age 21.

(vi) For each website identified, provide a screen shot of the site's landing page, as well screen shots for each page of the website, if any, that depicts an age-screening mechanism; and provide a screen shot of the privacy policy posted on the site.

(vii) Describe in detail any analytics or technologies used to identify or profile visitors to the website and how that information is used.

(viii) Describe company policies, including standards as well as methods and frequency of monitoring and enforcement, governing the content of Company-Owned or Operated Internet Sites, including user-generated content.

B. Provide information relating to Other Internet Site and Other Digital Advertising Campaigns:

(i) Identify all Other Internet Site (*as defined in Appendix A.I.I.*) and Other Digital Advertising (*as defined in Appendix A.I.J.*) campaigns promoting any of the company's brands listed in response to Specification 1.C. above at any time from January 1, 2011 to June 30, 2011. For each campaign identified, provide samples of (or list and describe in detail, if providing samples is not practicable), the specific advertising and/or promotional activities involved.

(ii) With respect to each campaign: indicate what information, if any, is collected and/or maintained from any consumer, including but not limited to threshold information, and information collected and/or maintained during or after any registration process; identify each entity that collects such information, and describe how such information is used to deliver advertising to consumers in the future; and provide a screenshot of the privacy policy made available to consumers with regard to that campaign.

(iii) State any restrictions or prohibitions, contractual, technological, or otherwise, on the company's and each third party's collection or use of information collected and/or maintained from each campaign.

(iv) For each campaign, describe in detail the mechanism(s) used, if any, by the company to deter entry by persons under age 21.

(v) Describe the company's information collection, maintenance, aggregation, and tracking practices with respect to any consumer of any campaign identified as being under age 21.

(vi) Describe in detail any analytics or technologies used to identify or profile consumers of each campaign, and how that information is used.

(vii) Describe company policies, including standards as well as methods and frequency of monitoring and enforcement, governing the content of each campaign, including user-generated content.

C. Provide all marketing or consumer research studies sponsored or commissioned by the company since January 1, 2010 through the date of your completed response regarding Company-Owned or Operated Internet Sites, Other Internet Sites, or Other Digital Advertising, including the effectiveness of any particular types of campaigns in increasing interest in or consumption of any of the company's brands.

Specification 5. Lesser-Known Media Program Descriptions

A. If the company reported expenditures in Specification 2, Categories G (Direct Mail Advertising), J (Other Digital Advertising), K (Point-of-Sale Advertising: Specialty Item Distribution), L (Point-of-Sale Advertising: Retail Value Added), N (Promotional Allowances), O (Public Entertainment Events: Not Sports Related), P (Sponsorship of Sporting Events, Sports Teams, or Individual Athletes), Q (Spring Break Promotions), R (Product Placements), S (In-Cinema Advertising), T (Telemarketing), U (Other), or W (Social Responsibility Programs and Messages), briefly describe the types of programs and events funded by efforts in each such category, as well as what efforts the company engages in to ensure that such funds are expended consistent with the voluntary advertising codes of the company, the Beer Institute, the Distilled Spirits Council of the United States, and/or the Wine Institute.

B. With respect to Product Placements[4] for the period from January 1, 2011 to June 30, 2011, please identify, in the manner instructed on the spreadsheet included in Appendix D, the type of entertainment vehicle in which a product placement was made, the title of the specific entertainment vehicle, the specific brand advertised in each such placement; and any consideration paid in connection with such placement. Describe in detail the mechanism(s) used, if any, by the company, to reduce the likelihood that persons under age 21 were exposed to such vehicles or product placements.

Penalties may be imposed under applicable provisions of federal law for failure to file Special Reports or for filing false reports.

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[4] For purposes of Specification 5.B. only, "product placement" is defined as "permitting, promoting, or procuring the integration of any beverage alcohol product, logo, signage, trade name, or package into a television or radio program, motion picture, music video, music recording, online virtual world, electronic game, or other form of entertainment programming."

The Special Report responses called for in this Order are to be filed on or before the dates set forth on Appendix A.III.

By direction of the Commission.

Jon Leibowitz
Chairman

SEAL

Date of Order: April 6, 2012

The Special Report required by this Order, or any inquiry concerning it, should be addressed to the attention of:

Janet M. Evans
Division of Advertising Practices, Federal Trade Commission
NJ-3212
Washington, D.C. 20580
(202) 326-2125 phone (Evans)
(202) 326-3259 facsimile
jevans@ftc.gov

Appendix A

DEFINITIONS AND INSTRUCTIONS

I. Reportable Expenditure Definitions

These definitions of reportable advertising, merchandising, or promotion expenditures track the Categories set forth in Specification 2 of the Order to File Special Report. Please provide information for each category in dollars. In responding to Specification 2, *exclude expenditures targeted to the trade*, such as expenditures for promotions in trade magazines or password-protected Internet sites targeted to the trade.

A. Television Advertising

Definition: Television advertising on broadcast, cable, or satellite channels, including spot ads, long-form commercials, and sponsored programming (such as televised events bearing the name of or stated to be sponsored by an alcohol brand or company); **allocate** such expenditures among: (a) advertising placed for national distribution on: (i) broadcast, (ii) cable, or (iii) satellite television; and (b) regional or local advertising placed on: (i) broadcast, (ii) cable, or (iii) satellite television. This category *excludes* expenditures in connection with Product Placements (defined in Category R).

B. Radio Advertising

Definition: Radio advertising including spot ads, long-form commercials, and sponsored programing (such as radio broadcast events bearing the name of or stated to be sponsored by an alcohol brand or company); **allocate** such expenditures among: (a) advertising on subscription based satellite radio channels; (b) advertising in markets where the audience is measured by a syndicated data source (such as Arbitron); and (c) advertising in unmeasured markets. This Category *excludes* expenditures in connection with Product Placements (defined in Category R).

C. Magazine Advertising

Definition: Advertising placed in magazines or other print media. This category *excludes* Newspaper Advertising (defined in Category D), Direct Mail Advertising (defined in Category G), and Spring Break Promotions (defined in Category Q).

D. Newspaper Advertising

Definition: Advertising placed in newspapers, including national, regional, and local papers, and advertising placed in free-standing inserts to newspapers. This Category *excludes* expenditures for Magazine Advertising (defined in Category C), Direct Mail Advertising (defined in Category G), and Spring Break Promotions (defined in Category Q).

E. Transit Advertising

Definition: Advertising on or within private or public vehicles and all advertisements placed at, on or within any bus stop, taxi stand, transportation waiting area, train station, airport, or any other transportation facility.

F. Outdoor Advertising

Definition: Advertising on billboards; signs, placards or posters placed on outdoor street furniture, kiosks, shopping malls (whether open-air or enclosed), pay telephone booths, parking space bumpers or other advertising in parking lots or garages, or trash receptacles; airplane banners; and any other advertisements placed outdoors regardless of their size. This category *excludes* expenditures in connection with Transit Advertising (defined in Category E), Point-of-Sale Advertising: Other (defined in Category M), Public Entertainment Events: Not Sports-Related (defined in Category O), or Sponsorship of Sporting Events, Sports Teams, or Individual Athletes (defined in Category P).

G. Direct Mail Advertising

Definition: Advertising circulars or other printed matter that are sent directly through the mail to consumers. This category *excludes* expenditures in connection with Magazine Advertising (defined in Category C) and Newspaper Advertising (defined in Category D).

H. Company-Owned or Operated Internet Sites

Definition: Any company-owned or operated Internet site (including any site operated by an agent on the company's behalf) that contains information about the company's beverage alcohol brands or beverage alcohol products, and that can be accessed by persons located in the United States, regardless of where the site is located or the Internet address of the site or page. This category *includes but is not limited to* official company or brand Internet sites, and company-sponsored pages (including brand pages), videos, channels, or feeds on Internet sites such as Facebook, YouTube, Twitter, Four-Square, Tumblr, etc. Expenditures include but are not limited to the cost of developing, creating, maintaining, monitoring, and updating the site, page, banner, or other form of on-line advertising. **Allocate** these expenditures between (a) sites other than social media and (b) social media sites.

I. Other Internet Site Advertising

Definition: Advertising on Internet sites other than Company-Owned or Operated Internet Sites, that can be accessed by persons located in the United States, including, but not limited to, the use of hyperlinks, banner or pop-up advertisements, mouseovers, streaming video, sponsored-text advertising, search keywords, and advertising in chat rooms, weblogs, bulletin boards, listservs, in online virtual worlds, on social networking sites, on social gaming sites, and/or on video sharing sites. Expenditures include but are not limited to the cost of developing,

creating, maintaining, monitoring, and updating the site, page, banner, or other form of on-line advertising. **Allocate** these expenditures between (a) advertising on sites other than social media and (b) advertising on social media sites.

J. Other Digital Advertising

Definition: Advertising and promotional content visible on, or that can interact with, personal computers (PC) and other digital devices, including personal digital assistants, portable media players, portable gaming devices, wireless tablet computers, or mobile phones, whether or not Internet-enabled. This category *includes but is not limited to* expenditures for electronic mail (email) messages, short message service (SMS text) or multimedia (MMS) messaging, instant messaging (IM), microblogging (*e.g.*, tweets, twit-backs on Twitter), tell-a-friend viral messaging, picture messaging, user-generated content (such as messages, photos, or videos) that is posted by the company, bar code print ads that can interact with mobile phones, mobile broadcasts, mobile video, mobile or PC applications and widgets, games, downloads, podcasts, or "webisodes." This category excludes expenditures in connection with Company-Owned or Operated Internet Sites (defined in Category H) and Other Internet Site Advertising (defined in Category I).

K. Point-of-Sale Advertising: Specialty Item Distribution

Definition: All net costs (deducting payments by consumers) of distributing items other than beverage alcohol products, whether distributed by sale, redemption of coupons, or otherwise. **Allocate** these expenditures between items that (a) bear the name, logo, or any portion of the package of any brand or variety of beverage alcohol product sold by the company and (b) do not bear the name, logo, or any portion of the package of any brand or variety of beverage alcohol products sold by the company. *Exclude* costs associated with distributing non-alcohol items in connection with Point-of-Sale: Retail Value-Added Expenditures (defined in Category L). This category *excludes* expenditures in connection with Spring Break Promotions (defined in Category Q).

L. Point-of-Sale Advertising: Retail Value-Added Expenditures

Definition: Expenditures for promotions involving: (a) free beverage alcohol products (*e.g.*, buy two, get one free), whether or not the free beverage alcohol products are physically bundled together with the purchased beverage alcohol products, including all expenditures and costs associated with the value added to the purchase of beverage alcohol products (*e.g.*, all associated excise taxes paid on the free beverage alcohol products); and (b) free non-alcohol products items (*e.g.*, buy two, get a can opener) including all expenditures and costs associated with the value added to the purchase of beverage alcohol products. This category *excludes* expenditures in connection with Spring Break Promotions (defined in Category Q).

M. Point-of-Sale Advertising: Other

Definition: Expenditures for advertising and promotions at on-premise or off-premise locations where beverage alcohol can be purchased. This category *excludes* expenditures in connection with Point-of-Sale: Specialty Item Distribution (defined in Category K), Point-of-Sale: Retail Value-Added Expenditures (defined in Category L), Public Entertainment Events: Not Sports-Related (defined in Category O), Sponsorship of Sporting Events, Sports Teams, or Individual Athletes (defined in Category P), and Spring Break Promotions (defined in Category Q).

N. Promotional Allowances

Definition: Allowances paid to retailers or wholesalers/distributors for development and distribution of consumer-directed advertising and promotional efforts, but *excluding* expenditures specifically designated to be expended for advertising and promotions in Categories A-M and O-T, which expenditures should be reported in the appropriate category. **Allocate** such expenditures between payments to (a) retailers and (b) wholesalers/distributors. This category *excludes* expenditures in connection with Spring Break Promotions (defined in Category Q).

O. Public Entertainment Events: Not Sports-Related

Definition: Public entertainment events that are not sports-related, such as appearances by musicians, comedians, celebrities, or other entertainers or public figures, bearing or otherwise displaying the company name or logo, the name, logo, or any portion of the package of any of the company's beverage alcohol brands, or otherwise referring or relating to beverage alcohol, including all expenditures made by the company in promoting and/or sponsoring such events; **allocate** these expenditures between (a) adult-only facilities and (b) general audience facilities. This category *excludes* expenditures in connection with Television or Radio Advertising (defined in Categories A and B), Company-Owned or Operated Internet Sites, Other Internet Site Advertising, and Other Digital Advertising (defined in Categories H, I, and J, respectively), Point-of-Sale Advertising: Other (defined in Category M), and Sponsorship of Sporting Events, Sports Teams, or Individual Athletes (defined in Category P). "Adult-only facility" means a facility or restricted area (whether open-air or enclosed) where the operator ensures or has a reasonable basis to believe that no underage person is present and includes company-sponsored private parties and event hospitality tents. A facility or restricted area need not be permanently restricted to adults in order to constitute an adult-only facility, provided that the operator ensures or has a reasonable basis to believe that no underage person is present during the event or time period in question. For purposes of this Order, the term "underage" means younger than twenty-one (21) years of age.

P. Sponsorship of Sporting Events, Sports Teams, or Individual Athletes

Definition: Sponsorship of sporting events, sports teams, or individual athletes. "Sports teams or individual athletes" includes but is not limited to competitors in football, basketball,

baseball, soccer, hockey, tennis, wrestling, golf, karate, judo, weight lifting, volleyball, skiing, skating, sailing, boating, equestrian, rodeo, automobile, race car, funny car, motorcycle, bicycle, truck, monster truck, tractor-pull, fishing, and hunting events, competitions, tournaments, and races. This category *excludes* expenditures in connection with Television and Radio Advertising (defined in Categories A and B), Company-Owned or Operated Internet Sites, Other Internet Site Advertising, and Other Digital Advertising (defined in Categories H, I, and J, respectively), Point-of-Sale Advertising: Other (defined in Category M), and Public Entertainment Events: Not Sports-Related (defined in Category O).

Q. Spring Break Promotions

Definition: Expenditures for advertising and promotion of college or university "spring break" events, including vacation trips, cruises, beach or pool parties, and on-premise and off-premise events where beverage alcohol can be purchased.

R. Product Placements

Definition: The dollar value of consideration provided in connection with permitting, promoting, or procuring the integration of any beverage alcohol product, logo, signage, trade name, or package into a television or radio program, motion picture, music video, music recording, online virtual world, electronic game, or other form of entertainment programming; such expenditures would include, for example, the dollar value of alcohol beverages or logoed items (such as clothing or signage) provided, or expenditures by the company to cross-promote a film or program in which a placement occurs. This category *excludes* expenditures incurred to screen requests for product placements.

S. In-Cinema Advertising

Definition: Expenditures for advertising and promotions delivered prior to or in conjunction with the viewing of a motion picture in a cinema. This category *excludes* expenditures in connection with Public Entertainment Events: Not Sports-Related (defined in Category O), Product Placements (defined in Category R), or any other category listed above.

T. Telemarketing

Definition: Expenditures associated with the placement of telephone calls for the purpose of selling a good or service or the maintenance or operation of incoming telephone lines that allow consumers to participate in any promotion or hear pre-recorded product messages, but excluding costs associated with having customer service representatives available for responding to consumer complaints or questions.

U. Other

Definition: Any advertising or promotional expenditures not covered by another

category. Specify the total amount on Appendix B, and briefly describe the subject matter of each such expenditure.

V. Sports and Sporting Events (Cross-Category)

Definition: "Sports and sporting events" include but are not limited to football, basketball, baseball, soccer, hockey, golf, tennis, wrestling, karate, judo, weight lifting, volleyball, skiing, skating, sailing, boating, equestrian, rodeo, automobile, race car, funny car, motorcycle, bicycle, truck, monster truck, tractor-pull, fishing, and hunting events, competitions, tournaments, and races. Report all items including but not limited to all expenditures connected with or related to the sponsoring, advertising, or promotion of sports or sporting events, including support of an individual or a group sports or racing team, and purchase of, or support for, sports or racing equipment, uniforms, sports or racing facilities and/or training facilities, and all expenditures for advertising including but not limited to print, television, radio, billboards, or banners in the name of the company or any of its beverage alcohol products in a sports or racing facility, on a scoreboard or in conjunction with the reporting of sports or racing results; and all expenditures connected with the production, offer, sale, or provision without fee of all functional promotional items at or in connection with a sporting or racing event, including but not limited to, clothing, hats, bags, posters, sporting or racing goods, and equipment. **Allocate** between (a) expenditures for college sports and sporting events and (b) all others. The expenditures reported in this category are intended to be duplicative of expenditures listed above for Categories A-T. For example, televised ball games sponsored by an alcohol brand, reported in Category A, and untelevised events for a sponsored sports teams, reported in Category P, would also be reported in Category V. Do not report any expenditures in this category that have not also been reported in Categories A-T.

W. Social Responsibility Programs and Messages (Cross-Category)

Definition: Expenditures by the company to support social responsibility programs and messages. The expenditures reported in this category may or may not be duplicative of expenditures listed for Categories A-T.

II. Audience Demographics Directions

These directions shall be used in responding to Specification 3.B.'s request for the *actual* demographics of the audience for an advertisement. In formatting data in response to Specification 3.B., please use the model spread sheet attached as Appendix C to this Order.

A. Television ads. Provide, for the program in which or adjacent to which the ad appeared, the quarterly average demographic data for that program in that timeslot; if program-specific data is not available, provide the quarterly average demographic data for the daypart in which the ad appeared. Thus, for ads appearing in March 2011, the company should provide the average program data for the period from January 1, 2011 to March 31, 2011. For regional or local ads, allocate the total audience reported consistent with the available national audience

breakdown, where national data is available.

B. Radio ads. Provide the quarterly average demographic data for the daypart during which the ad appeared. Thus, for ads appearing in March 2011, the company should provide the average program data for the period from January 1, 2011 to March 31, 2011. In responding to this Specification, use Arbitron standard dayparts unless data for a shorter period of time is available. Provide responses only for ads placed in measured radio markets.

C. Magazine ads. Provide average demographic data for the 12-month period during which the ad appeared, if the ad was placed in the standard national edition. Thus, for ads appearing during calendar year 2011, provide data measuring that period's audience, if available. If the ad was placed in a 21+ or other specialized edition, identify the edition and explain its demographics.

D. Newspaper ads. Provide average demographic data for the 12-month period during which the ad appeared. If the demographics of the newspaper are unmeasured, so specify.

E. Internet ads. For Company-Owned or Operated Internet Sites, provide the number of unique visitors *by month* for each site for the period January 1, 2011 to June 30, 2011. For advertising on Internet sites other than those that are Company-Owned or Operated Internet Sites, provide the average demographic data for *each month* in which the ad appeared.

III. Due Dates for Responses

Responses to this Order are due on June 11, 2012, except with regard to responses to Specification 3.C., which are due within 5 days following receipt from the FTC staff of a written request to provide such documents (but not before timely submission of audience composition data in response to Specification 3.B.).

IV. Instructions for Production of Responses

All responses should be provided in two (2) printed copies and in electronic form (by CD, DVD, or as email attachments) and should be labeled fully to indicate the Specification to which the provided data responds. Electronic responses to Specifications 1.A., 1.B., 1.D., 3.A., 4, and 5.A. should be formatted as Adobe Acrobat, Microsoft Word, or WordPerfect documents. Electronic responses to Specification 1.C. should be provided on an Excel spreadsheet. Electronic responses to Specification 2 should be provided on the Excel spreadsheet included as Appendix B to this Order. Electronic responses to Specification 3.B. should be provided on the Excel spreadsheet included as Appendix C to this Order. Electronic responses to Specification 5.B. should be provided on the Excel spreadsheet included as Appendix D to this Order.

Appendix B: 2011 Expenditures

CATEGORY	DOLLAR VALUE (000)
Television Advertising: National Broadcast	
Television Advertising: National Cable	
Television Advertising: National Satellite	
TV NATIONAL TOTAL	
Television Advertising: Regional/Local Broadcast	
Television Advertising: Regional/Local Cable	
Television Advertising: Regional/Local Satellite	
TV REGIONAL/LOCAL TOTAL	
Radio Advertising: Subscription-based Satellite	
Radio Advertising: Measured Markets	
Radio Advertising: Unmeasured Markets	
RADIO TOTAL	
Magazine Advertising	
Newspaper Advertising	
Transit Advertising	
Outdoor Advertising	
Direct Mail Advertising	
Company-Owned or Operated Internet Sites: Other Than Social Media	
Company-Owned or Operated Internet Sites: Social Media	
COMPANY-OWNED OR OPERATED INTERNET SITES TOTAL	
Other Internet Site Advertising: Other Than Social Media	
Other Internet Site Advertising: Social Media	
OTHER INTERNET SITE ADVERTISING TOTAL	
Other Digital Advertising	
Point of Sale Advertising: Logo-bearing Items	
Point of Sale Advertising: Non-logo Bearing Items	
Point of Sale Advertising: Retail Value-Added Expenditures	
Point of Sale Advertising: Other	
POS TOTAL	
Promotional Allowances	
Public Entertainment Events: Not Sports-Related Adult-Only	
Public Entertainment Events: Not Sports-Related General Audience	
PUBLIC ENTERTAINMENT TOTAL	
Sponsorship of Sporting Events, Sports Teams, or Individual Athletes	
Spring Break Promotions	
Product Placements	
In-Cinema Advertising	
Telemarketing	
Other	
Cross Categories	
Sports and Sporting Events	
Social Responsibility Programs and Messages	

Appendix C1: TV National Placements

Ad Name	Brand Advertised	Ethnicity*	Medium Name	Medium Location	Ad Date	Ad Time	Show Name	IMPRESSIONS (000)		Data Source and Date
								21+	20-	
Hoot and Howl or "Q3 Rotation"	XYZ Lite Beer	0	USA	Cable TV	5/29/11	11:29PM	Law & Order: SVU	1,911	215	Nielsen National Average Data for Q2 2011

* 0 = not primarily targeted to African Americans or Hispanics, 1 = primarily targeted to African Americans, 2 = primarily targeted to Hispanics

The model data provided on the first line of this Attachment is intended to serve as an example only and is not intended to represent any specific data, or to endorse any specific data source, that the FTC expects to receive from the company.

Appendix C2: TV Regional/Local Placements

Ad Name	Brand Advertised	Ethnicity*	Medium Name	Medium Location	Ad Date	Ad Time	Show Name	IMPRESSIONS (000)		Data Source and Date
								21+	20-	
Swingin' High or "Rotation A"	New Shiraz	2	WUSA	Miami	02/11/11	1:11:00 AM	NASCAR Ice Tea Race	41	3	Where available, local audience allocated consistent with Nielsen National Data for Q1 2011. Otherwise, most recent local data.

* 0 = not primarily targeted to African Americans or Hispanics, 1 = primarily targeted to African Americans, 2 = primarily targeted to Hispanics

The model data provided on the first line of this Attachment is intended to serve as an example only and is not intended to represent any specific data, or to endorse any specific data source, that the FTC expects to receive from the company.

Appendix C3: Radio Placements in 6+ PPM Markets

Ad Name	Brand Advertised	Ethnicity*	Medium Name	Medium Location	Ad Date	Ad Time	Show Name	IMPRESSIONS (000)		Data Source and Date
								21+	20-	
Living Life or "Rotation A"	Pepper Tequila	1	KESS-FM	Dallas TX CVG	4/15/11	7:14:00 PM	n/a	709	22	Arbitron Dallas Market Average Data Q2 2011

* 0 = not primarily targeted to African Americans or Hispanics, 1 = primarily targeted to African Americans, 2 = primarily targeted to Hispanics

The model data provided on the first line of this Attachment is intended to serve as an example only and is not intended to represent any specific data, or to endorse any specific data source, that the FTC expects to receive from the company.

Appendix C4: Radio Placements in 12+ Markets

Ad Name	Brand Advertised	Ethnicity*	Medium Name	Medium Location	Ad Date	Ad Time	Show Name	IMPRESSIONS (000)		Data Source and Date
								21+	20-	
Living Life or "Rotation A"	Pepper Tequila	1	KWOW	Knoxville, TN	4/15/11	7:14:00 PM	n/a	709	22	Arbitron Knoxville Market Average Data Q2 2011

* 0 = not primarily targeted to African Americans or Hispanics, 1 = primarily targeted to African Americans, 2 = primarily targeted to Hispanics

The model data provided on the first line of this Attachment is intended to serve as an example only and is not intended to represent any specific data, or to endorse any specific data source, that the FTC expects to receive from the company.

Appendix C5: Magazine Placements

Ad Name	Brand Advertised	Ethnicity*	Medium Name	Medium Location	Ad Date	IMPRESSIONS (000)		Data Source and Date
						21+	20-	
At the Dock	Old Boatsman Beer	1	STANDING	National	01/12/11	616	84	MRI consolidated TwelvePlus data for 2011
Dinner Party	Spiced Rum	0	ROLLING PEBBLE (21+ Ed	National	04/02/11	548	0	Purchased Custom 21+ Edition (Verified 21+ Subscriber) for 2011
Good Times	Merlot	0	SOUTHERN LIFE	Gulf Coast	03/15/11	1,046	276	A21+ Provided by 3rd Party Clements Readership Study for 2011

* 0 = not primarily targeted to African Americans or Hispanics, 1 = primarily targeted to African Americans, 2 = primarily targeted to Hispanics

The model data provided on the first line of this Attachment is intended to serve as an example only and is not intended to represent any specific data, or to endorse any specific data source, that the FTC expects to receive from the company.

Appendix C6: Newspaper Placements

Ad Name	Brand Advertised	Ethnicity*	Medium Name	Medium Location	Ad Date	IMPRESSIONS (000)		Data Source and Date
						21+	20-	
Full page standard	Basic Beer	2	San Diego Reader	San Diego, CA	04/20/11	327	25	2011 San Diego Scarborough Release Study
Night In	Cabernet	0	The New York Times	National	02/15/11	39,000	4,000	2011 MRI data

* 0 = not primarily targeted to African Americans or Hispanics, 1 = primarily targeted to African Americans, 2 = primarily targeted to Hispanics

The model data provided on the first line of this Attachment is intended to serve as an example only and is not intended to represent any specific data, or to endorse any specific data source, that the FTC expects to receive from the company.

Appendix C7: Internet Placements

Ad Name	Brand Advertised	Ethnicity*	Medium Name	Medium Location	Ad Date or Flight Date(s)	IMPRESSIONS (000)		Data Source and Date
						21+	20-	
Beer banner	Old Boatsman Beer	0	CNN.com	National	May, 2011	5,264	345	comScore 2+ Average Data for 06/11
Mix it!	Blended Tequila	0	Facebook.com	National	Mar 24-31, 2011	6,714	0	Ad directed to Facebook.com database of registered users 21+

* 0 = not primarily targeted to African Americans or Hispanics, 1 = primarily targeted to African Americans, 2 = primarily targeted to Hispanics

The model data provided on the first line of this Attachment is intended to serve as an example only and is not intended to represent any specific data, or to endorse any specific data source, that the FTC expects to receive from the company.

Appendix D: Product Placements

Brand Advertised	Type of Entertainment Vehicle*	Title of Entertainment Vehicle	Consideration Paid in Dollar Value (000) or In-Kind Item(s)
Evans Spirits Brands	Television program	Cheers the Remake	Provided branded neon signs and 3 cases of product (in kind)

* Specify the type of entertainment vehicle by television program, film, radio program, music video, song, online virtual world, game, or other.

Exhibit B: Self-regulatory Codes

BEER INSTITUTE ADVERTISING AND MARKETING CODE

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.

In the United States, beer is a mature product category with broad cultural acceptance and a history of memorable and distinctive advertising that, because of its humor and creativity, has long been a favorite among American adult consumers. Advertising and marketing materials are legitimate efforts by Brewers to inform consumers of the particular styles and attributes of numerous beers and other malt beverages that are available. Brewer advertising and marketing also foster competition, persuade adult consumers of legal drinking age to try particular brands, and maintain customer loyalty.

Brewers should employ the perspective of the reasonable adult consumer of legal drinking age in advertising and marketing their products, and should be guided by the following basic principles, which have long been reflected in the policies of the brewing industry and continue to underlie this Code:

- 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.
- Brewers should adhere to contemporary standards of good taste applicable to all commercial advertising and consistent with the medium or context in which the advertising appears.
- Advertising themes, creative aspects, and placements should reflect the fact that Brewers are responsible corporate citizens.
- Brewers strongly oppose abuse or inappropriate consumption of their products.

The term "beer" as used in this Code, covers all types of malt beverages including, but not limited to, beers, ales, porters, stouts, flavored malt beverages, and various specialty products. The production, distribution, and sale of beer in the United States are subject to extensive laws and regulations, enforced by federal, state, and local governments. Federal and state laws establish a three-tiered distribution system for beer. The first tier is composed of Brewers and beer importers, which are referenced throughout this Code as "Brewers." The second tier is made up of wholesale distributors, and the third tier includes a wide range of licensed retail outlets, at which beer is sold to consumers. 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.

Guidelines

1. These guidelines apply to all Brewer advertising and marketing materials, including all beer-branded digital advertising and marketing materials created by or under the control of the Brewer. In applying these guidelines, creative elements are to be considered in the overall context of the advertisement or marketing materials. Humor, parody, satire, and all other advertising themes and devices should be readily identifiable as such by reasonable adults of legal drinking age.

   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 awareness, abuse, drunk driving, underage drinking, or over-consumption.

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. Although beer advertising and marketing materials may show beer being consumed (where permitted by media standards), advertising and marketing materials should not depict situations where beer is being consumed rapidly, excessively, involuntarily, as part of a drinking game, or as a result of a dare.

   c. Beer advertising and marketing materials should not portray persons lacking control over their behavior, movement, or speech as a result of consuming beer or in any way suggest that such conduct is acceptable.

   d. Beer advertising and marketing materials should not portray or imply illegal activity of any kind by an individual prior to, during, or after the individual consumes, purchases, or is served beer, unless the portrayal or implication of illegal activity is a basic element or feature of a parody or spoof and is readily identifiable as such.

   e. Beer advertising and marketing materials should not portray beer drinking before or during activities, which for safety reasons, require a high degree of alertness or coordination.

   f. Retail outlets where beer is served or sold portrayed in advertising should not be depicted as unkempt or unmanaged.

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 adult consumers of legal drinking age. Advertising or marketing materials should avoid elements that appeal primarily to persons under the legal drinking age. Advertising and marketing materials appeal primarily to persons under the legal drinking age if they have special attractiveness to such persons beyond their general attractiveness for persons above the legal drinking age.

   a. In considering whether beer advertising and marketing materials appeal primarily to persons under the legal drinking age, Brewers should take into account the following elements among others:

      - Symbols
      - Language

- Music
- Gestures
- Entertainers or celebrities
- Cartoon characters
- Groups or organizations

b. Beer advertising and marketing materials should not depict Santa Claus.

c. Beer advertising and marketing materials must meet the following criteria:

i. Placements made by or under the control of the Brewer in magazines, newspapers, on television, on radio, and in digital media in which there is no dialogue between a Brewer and user, may only be made where at least 71.6% of the audience is expected to be adults of legal drinking age. A placement will be considered compliant if the audience composition data reviewed prior to placement meets the percentages set forth above.

ii. Placements made by or under the control of the Brewer in digital media in which there is a dialogue between a user and a Brewer may only be made where a user confirms that he or she is of legal drinking age. Confirmation may vary depending upon available technology but includes either: 1) disclosure of a user's birth date or other method of active confirmation prior to viewing an advertisement by or communicating with a Brewer; or 2) restriction of the site to users of legal drinking age through registration. The offer of downloadable content by a Brewer that can be permanently accessed by a user without viewing a Brewer's owned or controlled compliant digital media site or a third-party compliant digital media site, must similarly meet the standard set forth in this Section 3(c)(ii).

iii. The Brewer placing advertising or marketing materials in digital media, in magazines, in newspapers, on television and on radio shall conduct periodic after-the-fact audits, at least semi-annually where possible, of substantially all of its placements. If a Brewer learns that a placement did not meet the Code standard, it will take steps to prevent a reoccurrence. These steps may include, but are not limited to: investigating exceptions; canceling placements with unacceptable audience composition; reallocating purchases to a different and acceptable time slot; contacting the media outlet/station with regard to placement errors or possible reporting errors; reemphasizing audience composition requirements with media buyers and media outlets; and continued monitoring of a program or time slot to determine whether buys should be canceled or reallocated.

iv. Digital media includes all beer-branded digital advertising and marketing placements made by or under the control of the Brewer in all forms, including but not limited to Brewer owned or controlled or third-party Internet and/or mobile sites, commercial marketing e-mails, downloadable content (including downloadable desktop features), SMS and MMS messaging, and social media sites.

v. Buying Guidelines for the implementation of this section will be distributed in conformance with the dissemination provisions of this code.

d. Models and actors employed to appear in beer advertising and marketing materials should be a minimum of 25 years old, substantiated by proper identification, and should reasonably appear to be over 21 years of age.

e. Beer should not be advertised or marketed at any event where most of the audience is reasonably expected to be below the legal drinking 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.

f. 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 drinking age.

g. 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 digital media without parental supervision. To facilitate this exercise of parental responsibility, the 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 beer-branded Web sites and will post reminders at appropriate locations in their Web sites 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. Content that can be shared with others directly from a Brewer's digital media site or a Brewer-controlled third party digital media site shall include terms of use instructing users that such content should not be shared with persons under the legal drinking age.

4. Beer advertising and marketing materials should not make the following 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 advertising and marketing materials may portray beer as a part of personal and social interactions and experiences, and a brand may be portrayed in appropriate surroundings, as a superior choice to compliment a particular occasion or activity. Beer advertising and marketing materials should not, however, claim or represent that individuals cannot obtain social, professional, educational, athletic, or financial success or status without beer consumption.

d. Beer advertising or marketing materials should not claim or represent that individuals cannot solve social, personal, or physical problems without beer consumption.

5. Beer advertising and marketing materials:

a. Should not contain language or images that are lewd or indecent in the context presented and the medium in which the material appears.

b. May contain romantic or flirtatious interactions but should not portray sexually explicit activity as a result of consuming beer.

6. Beer advertising and marketing materials should not contain graphic nudity.

7. Beer advertising and marketing materials should not employ religion or religious themes.

8. Beer advertising and marketing materials should not disparage competing beers.

   a. Comparisons or claims distinguishing competing beers should be factual.
   b. Beer advertising and marketing materials should never suggest that competing beers contain objectionable additives or ingredients.

9. Beer advertising and marketing materials should not disparage anti-littering and recycling efforts. 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.

10. *College marketing*
Beer advertising and marketing materials on college and university campuses, or in college-owned 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*
      i. Brewer sponsored events: Brewer sponsorship of on-campus events or 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 beer.
      ii. 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 drinking age. Distribution of these items will therefore take place only at licensed retail establishments or where distribution is limited to those over the legal drinking age, and otherwise conforms to applicable laws and institutional policies.
      iii. 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 drinking age, or otherwise conforms to applicable laws and institutional policies.
   b. *Brewer sales representatives*
      Brewer sales representatives who undertake sales calls on or near a college campus must be adults of legal drinking age, and shall conduct sales activities in conformity with this Code.

11. *User-Generated Content in Digital Media*
User-generated content that is posted on beer-branded digital media sites made by or under the control of a Brewer shall be monitored for compliance with this Code on a regular basis. If noncompliant user-generated content is discovered on these sites, the Brewer will take appropriate action.

12. *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.

13. *Internet Privacy Policy*
Brewers shall maintain Internet privacy policies that are publicly available on their Web sites. These policies will govern the collection of personal information from legal drinking age consumers on Brewer Web sites. Before they collect information from any consumer, Brewers will require that individual to verify that they are of legal drinking age. Brewers will not collect any information from consumers who identify themselves as below the legal drinking age. Brewers will not sell the personal information they collect from legal drinking age consumers. Brewers shall keep consumer information secure and require that any third parties retained by Brewers that have access to Brewer consumer information also keep such consumer information secure. Brewers shall also employ a mechanism for consumers to opt-in to receive communications from a Brewer as well as an opt-out feature to stop receiving such communications. Consumer information collected by Brewers is intended to be used for business purposes only.

14. *Product placement*
Movies and television programs frequently portray consumption of beer and related signage and props in their productions. Brewers encourage producers to seek approval before using their products, signage, or other props in artistic productions. While producers sometimes seek prior approval from Brewers, 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 producers who seek Brewer approval or those Brewers who seek placement opportunities, product placement will be guided by the following principles:

a. Case-by-Case Approval: 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, Brewers 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 people below the legal drinking age. Consistent with that philosophy, Brewers will not approve product placement which portrays purchase or consumption of their products by persons who are under the legal drinking age.
d. Primary appeal to persons below the legal drinking age: Brewers discourage underage drinking and do not intend for their products to be purchased or consumed illegally. Consistent with that philosophy, Brewers will not approve product placement where the primary character(s) are under the legal drinking age or the primary theme(s) are, because of their content or presentation, specially attractive to persons below the legal drinking age beyond the general attractiveness such themes have for persons above the legal drinking age.
e. Portraying alcoholism/alcohol abuse: Brewers do not want their products to be abused. Consistent with that philosophy, Brewers 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.

f. Measured media: Brewers will not request or approve a product placement in any measured media unless the placement is consistent with the Buying Guidelines that accompany this Code and at least 71.6% of the audience is reasonably expected to be adults of legal drinking age.

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 that an advertisement or marketing practice is inconsistent with a provision of the Code, the Institute's longstanding practice is to promptly refer such complaints in writing to the member company or to non-member Brewers for review and a response. To facilitate this process, the Beer Institute maintains a toll-free number (1-800-379-2739) and a Web site at www.BeerInstitute.org.

If the proponent of a complaint is dissatisfied with the response received from a Beer Institute member or a non-member Brewer, further consideration may be requested by the Beer Institute Code Compliance Review Board. The Board is composed of individuals with a variety of experience who are independent of the brewing industry. The Board will review complaints from the perspective of the reasonable adult consumer of legal drinking age and decide whether or not such complaints identify advertisement(s) or marketing material(s) that are inconsistent with one or more of the guidelines in the Code. Board decisions will be posted on the Beer Institute Web site.

Copies of this code shall continue to be given to brewery employees, wholesale distributors and outside agencies whose responsibilities include advertising and marketing beer, as well as to any outside party who might request it.

Beer Institute
122 C Street, N.W., Suite 350
Washington, DC 20001-2150
202-737-2337

BUYING GUIDELINES FOR THE IMPLEMENTATION OF SECTION 3(C) OF THE BEER INSTITUTE ADVERTISING AND MARKETING CODE

Brewers shall use the following guidelines when purchasing or placing advertising in magazines, television, radio, newspapers or digital media.

Magazine Guidelines

A. For the purchase of print advertisements in magazines, Brewers will use 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, Brewers will use the 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;

D. Placement of print advertisements in editions of magazines that are published for subscribers 21 years of age or older will be deemed compliant with the Code.

Television Guidelines

A. For advertising buys on national network programs, Brewers will use national audience composition data for the program;

- For new national network programs, Brewers will use national audience composition data for comparable programs.

B. For advertising buys on national syndicated or national cable programs, Brewers will use national audience composition data for the program or daypart being bought;

- For new national syndicated or new national cable programs, Brewers will use national audience composition data for comparable programs or daypart being bought.

C. For advertising buys not included in "A" or "B", Brewers will use applicable national audience composition data for the program or daypart being bought. Where there is no applicable national audience composition data, Brewers will use applicable local or regional audience composition data for the program or daypart being bought;

- For new programs not included in "A" or "B" of these Television Guidelines, Brewers will use applicable national audience composition data for the program or daypart being bought. Where there is no applicable national audience composition data, Brewers will use applicable local or regional audience composition data for the program or daypart being bought.

D. A placement will be considered appropriate when data for two consecutive rating periods show that the program or daypart being bought is in compliance with the Code;

E. Advertising audience composition audits for compliance with age demographic standards in the Beer Institute Code should use the same data source that was used to place the ad.

Radio Guidelines

A. Audience composition restrictions apply to all paid and bonus spots including rotators, negotiated and agreed upon mentions, liners, tags, billboards, and any other type of announcement;

B. For diary and PPM audited radio stations, Brewers will use the Average Quarter Hour (AQH) Persons measurement in Arbitron reports by using Arbitron's 21+ Composition Report;

C. Time periods in which radio spots may be placed shall be in the following Arbitron standard dayparts or other time periods as specified below that satisfy the code provision that 70% of the audience composition is 21 years of age or older, based on Arbitron's 21+ Composition Report:

1. Arbitron standard dayparts:

i.	AM Drive – Monday thru Friday	6:00 a.m. – 10:00 a.m.
ii.	Midday – Monday thru Friday	10:00 a.m. – 3:00 p.m.
iii.	PM Drive – Monday thru Friday	3:00 p.m. – 7:00 p.m.
iv.	Evening – Monday thru Friday	7:00 p.m.- 12:00 midnight
v.	Monday through Friday	12:00 midnight – 6:00 a.m.
vi.	Sat. & Sun.	6:00 a.m. – 10:00 a.m.
vii.	Sat. & Sun.	10:00 a.m. – 3:00 p.m.
viii.	Sat. & Sun.	3:00 p.m. – 7:00 p.m.
ix.	Sat. & Sun.	7:00 p.m. – 12:00 midnight
x.	Sat. & Sun.	12:00 midnight – 6:00 a.m.

2. Any period of time adjacent to an Arbitron standard daypart that is also purchased, provided that each additional hour independently satisfies the Code provision that 70% of the audience composition is 21 years of age or older;

3. Any period of two or more consecutive hours, provided that each hour independently satisfies the Code provision that 70% of the audience composition is 21 years of age or older;

4. Only one form of audience measurement may be used in the evaluation of a station. If both PPM and diary methods are available for auditing, PPM data should be used.

D. A placement will be considered appropriate in a diary measured market when data for each rating period covering the previous six months from the day the ad placement is made shows that the time period purchased satisfies the Code provision that 70% of the audience composition is 21 years of age or older;

E. A placement will be considered appropriate in a PPM measured market when data for each rating period covering the previous two months from the day the ad placement is made shows that the time period purchased satisfies the Code provision that 70% of the audience composition is 21 years of age or older.

F. As new Arbitron reports become available during the term of an agreement to purchase future radio spots, Brewers will review the new data to determine whether spots purchased under the agreement continue to satisfy the Code provision that 70% of the audience composition is 21 years of age or older by using Arbitron's 21+ Composition Report. If not, Brewers will, as soon as practicable, make schedule adjustments, cancellations, or other appropriate changes to comply with the "70% standard" for the duration of the agreement;

G. For unaudited radio stations, radio spots placed will be considered appropriate if they meet these guidelines through use of audience compositional data from time periods for comparable stations in comparable markets.

Newspaper Guidelines

A. The demographic standard found in Guideline 3(c) of the Code applies to all paid and bonus placements in the print editions of daily, Sunday, and weekly newspapers including advertising supplements, magazine sections, and other forms of advertising added to or delivered with newspapers.

B. Prior to the purchase of print advertisements in newspapers distributed nationally, regionally, or locally, Brewers will use audience composition data from an audience measurement source recognized by the advertising industry (such as, but not limited to Scarborough Research and Mediamark Research, Inc.). Data for the most recent rating period available will be used to determine that placements are reasonably expected to meet the demographic standard.

C. For advertising placements in unmeasured newspapers, Brewers will use subscription data and/or other data from comparable newspapers.

D. For advertising placements in new newspapers, Brewers will use subscription data and/or other data from comparable publications.

E. A placement will be considered appropriate when data supplied by the sources referenced in (B), (C), or (D) above shows that the readership or subscriber base of the newspaper is reasonably expected to meet the demographic standard.

F. Brewers will conduct post-audits of a representative sample of actual placements in measured newspapers at least annually to determine whether they met the demographic standard in Guideline 3(c) of the Code. For newspapers that are not measured on a regular basis, Brewers should make reasonable efforts to obtain survey or other information that is available.



Digital Media Guidelines

A. These Buying Guidelines adopt the criteria set forth in section 3(c) of the Code. The Guidelines apply to all beer-branded digital advertising and marketing placements made by or under the control of the Brewer in all forms of digital media, which include but are not limited to third-party Internet and/or mobile sites, commercial marketing e-mails, downloadable content (including downloadable desktop features), SMS and MMS messaging, and social media sites.

B. Where a single purchase is made for placements in multiple third-party digital media, the criteria set forth in section 3(c) of the Code and these Guidelines apply to each medium or site independently.

C. For measured digital media, a placement will be considered appropriate if the audience of monthly unique visitors meets or exceeds the criteria set forth in section 3(c) of the Code in each of the two most recent, consecutive monthly reports available at the time the placement is purchased.

D. It is recognized that methodologies for rating digital media, and specific measurement tools for advertising in various forms of that media are still evolving. Brewers will use a consistent audience measurement source recognized by the advertising industry (such as, but not limited to, ComScore and Nielsen NetRatings) to determine whether digital media placements are reasonably expected to satisfy the Beer Institute Advertising and Marketing Code and these Buying Guidelines. When the audience measurement source regularly used by the Brewer does not measure a particular medium or site, other sources recognized by the advertising industry may be relied upon.

E. If a placement is made on a Web site where the dissemination of such placement is restricted only to registered users of that site age 21 or over, such placements will be deemed compliant with the demographic standard, even if the overall audience for the unrestricted content on the Web site does not meet the standard.

F. For new or unmeasured digital media, placements may be made using audience composition data for measured digital media in the same category and with similar content and/or by taking other reasonable measures to predict audience composition. Such steps include, for example, reviewing media content and information on the purpose and target audience of the specific medium or site prior to purchase of advertising and obtaining confirmation from the operator of the digital media that its internal data indicates that the medium or site meets the demographic standard.

G. Brewers will conduct post-audits of actual placements in measured digital media at least twice a year to determine whether they met the demographic standard found in paragraph 3(c) of the Code.

CODE OF RESPONSIBLE PRACTICES

FOR BEVERAGE ALCOHOL
ADVERTISING AND MARKETING

DISTILLED
SPIRITS
COUNCIL
OF THE UNITED STATES, INC.

www.discus.org

MAY 26, 2011

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 of legal purchase age 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 of legal purchase age who choose to drink.

- DISCUS members encourage responsible decision-making regarding drinking, or not drinking, by adults of legal purchase age, and discourage abusive consumption of their products. DISCUS members urge that adults of legal purchase age 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 (e.g., movies, television programs, music videos, video games) and sponsorships. Sponsorships are commercial, contractual agreements between a beverage alcohol company (the sponsor) and a sponsored party or sponsorship property establishing an association between the sponsor's brands or products and the sponsored party or sponsorship property in return for rights to promote this association.

- 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.

Overview of the Code Review Process

- For more than 70 years, distillers have abided by a voluntary Code of advertising practices. First adopted in 1934, the Code now includes over 40 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.

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, print, and internet/digital communications only where at least 71.6 percent of the audience is reasonably expected to be of 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, semi-annual after-the-fact audits of a random portion of past placements should be undertaken to verify that such past placements were in compliance with this Code and to take appropriate, corrective action for future placements.

- Detailed demographic data/advertisement placement guidelines have been developed to implement the responsible placement provisions, which are posted on the DISCUS website and updated periodically to reflect the most current and appropriate data.

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 71.6 percent of the audience is reasonably expected to be of 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 71.6 percent of the audience attending those venue events is reasonably expected to be of 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. Supplier-sponsored beverage alcohol promotions should not be conducted in an on-campus licensed retail establishment owned or operated by a college or university.

8. Beverage alcohol advertising should not be placed on any outdoor stationary location within five hundred (500) linear feet of an established place of worship, 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. Beverage alcohol advertising and marketing materials must comply with all aspects of the Code regardless of where these materials are placed; for example, the nature or subject matter of a particular publication is not relevant.

2. The content of beverage alcohol advertising and marketing materials should not primarily appeal 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 of 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 21 years of age and older.

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.

9. DISCUS members should limit the manufacture of brand logoed apparel, and the licensing of member company trademarks used in connection with the sale of brand logoed apparel, to only adult sizes.

Websites

10. Age affirmation mechanisms, utilizing month, day and year, should be employed for DISCUS member-controlled beverage alcohol advertising and marketing websites. They also should contain a reminder of the legal purchase age.

11. 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.

12. Each DISCUS member-controlled website with advertising or marketing materials should provide a link to a responsible decision-making site.

13. DISCUS member-controlled websites that contain downloadable advertising or marketing content should include instructions to individuals downloading the content that they should not forward these materials to individuals below the legal purchase age and also should include on the downloadable content a responsible drinking statement where practicable.

Social Responsibility

14. 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.

15. 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.

16. Beverage alcohol advertising and marketing materials should not contain any curative or therapeutic claim except as permitted by law.

17. 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.

18. Beverage alcohol products should not be advertised or marketed in any manner associated with abusive or violent relationships or situations.

19. Beverage alcohol advertising and marketing materials should not imply illegal activity of any kind.

20. 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.

21. Beverage alcohol advertising and marketing materials should not be associated with anti-social or dangerous behavior.

22. 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

23. Beverage alcohol advertising and marketing materials should reflect generally accepted contemporary standards of good taste.

24. 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.

25. Beverage alcohol advertising and marketing materials should not contain any lewd or indecent images or language.

26. Beverage alcohol advertising and marketing materials should not employ religion or religious themes.

Sexual Prowess and Sexual Success

27. 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

28. On-premise promotions sponsored by DISCUS members should encourage responsible consumption by those adults who choose to drink and discourage activities, including those drinking games, that reward or encourage excessive/abusive consumption.

29. Where supplier sampling is permitted, DISCUS members should ensure that appropriate measures are employed to safeguard against underage drinking, including ensuring that individuals conducting the sampling on behalf of the supplier are of legal purchase age.

30. 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.

31. Beverage alcohol advertising and marketing materials should not use the term "spring break" or sponsor events or activities that use the term "spring break" except if those events or activities are located at a licensed retail establishment.

Product Placements

32. Movies, television programs, music videos, and video games frequently may portray the consumption of beverage alcohol products and related signage in their productions. For those DISCUS members who seek placement opportunities, product placements will be guided by the following principles:

    a. Case-by-case assessment: DISCUS members should approve or reject a product placement on a case-by-case basis based upon the information about the movie, television program, music video, or video game available at the time provided by the project's producers.

    b. Portrayal of drinking and driving: Driving while intoxicated is against the law and beverage alcohol advertising and marketing materials should not portray, encourage or condone driving any motor vehicle while intoxicated. DISCUS members should not approve a product placement where the characters engage in illegal or irresponsible consumption of their products in connection with driving.

    c. Underage drinking: DISCUS members strongly oppose underage drinking. DISCUS members should not approve a product placement which portrays the purchase or consumption of their products by persons who are below the legal purchase age.

    d. Primary appeal to persons below the legal purchase age: DISCUS members should not approve a product placement where the primary theme(s), because of its content or presentation, is especially attractive to persons below the legal purchase age beyond the general attractiveness such theme(s) has for persons of legal purchase age.

    e. Portraying alcoholism/alcohol abuse: DISCUS members should not approve a product placement where characters use their products irresponsibly or abusively or where alcoholism is portrayed, unless the depiction supports a responsible-consumption message.

    f. Measured media: DISCUS members should not request or approve a product placement in any measured media unless the placement is consistent with the responsible placement provisions of the Code.

Alcohol Content

33. 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

34. 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 establish and conduct a training program for employees involved in the advertising or marketing of a member company's brands, including appropriate initial and recurrent training.

3. 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 DISCUS Board of Directors 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 DISCUS Board of Directors.

Code Review Board Process

1. **Complaint Review**

   - All complaints involving advertising and/or marketing materials of the distilled spirits, beer and wine brands marketed by a DISCUS member company and distilled spirits products of a nonmember company are forwarded to the DISCUS Code Review Board for their review and consideration. Complainants are afforded the option of anonymity in processing their complaint.

   - Upon receipt of a complaint, the Code Review Board staff liaison notifies the advertiser and invites the advertiser to respond to the complaint and to participate in the Board's review of the complaint to answer any questions. DISCUS members are expected to respond forthwith. Non-DISCUS members have 15 business days to respond.

   - The Code Review Board convenes to consider the complaint and the advertiser's response, and then deliberates and renders a decision. The Code Review Board proceeds in its deliberations usually within a week for DISCUS member company complaints and after the time period noted above has elapsed for non-DISCUS member complaints even when the advertiser has not responded.

   - The advertiser is notified of the Board's decision and, if a violation has occurred, the Board urges the advertiser to revise or withdraw the advertisement forthwith. The Board is available to answer questions or assist with compliance.

   - The Code Review Board's decision and the advertiser's response are summarized in the Semi-Annual Code Report described below.

This process is reviewed periodically and may be revised when warranted.

2. **Media Summits and Other Training Seminars**

   - To increase awareness of the Code and to incorporate best practices in complying with its provisions, DISCUS will host on a periodic basis "Media Summits" and other training seminars for both DISCUS member companies and non-DISCUS member companies, and their respective advertising agencies, media buyers and other external consultants.

Semi-Annual Code Report

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

How to File a Complaint

- Questions regarding the Code or a concern about a particular advertisement or marketing material subject to the Code should be sent to the DISCUS Code Review Board, c/o Lynne Omlie, 1250 Eye Street, N.W., Suite 400, Washington, D.C. 20005 or emailed to Lynne Omlie, the DISCUS Code Review Board staff liaison, at lomlie@discus.org.

- Complaints should be made in writing, identify the provisions of the Code in question and provide an explanation for the basis of the complaint. The advertisement and/or marketing materials in question should be appended to the complaint to ensure that it is processed properly and expeditiously.

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 the 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.

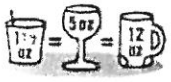
DISTILLED SPIRITS COUNCIL

OF THE UNITED STATES, INC.

www.discus.org

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A FACT ABOUT ALCOHOL CONTENT:



DISCUS CODE
MEDIA "BUYING" GUIDELINES:
DEMOGRAPHIC DATA/ADVERTISEMENT PLACEMENT GUIDELINES

Set forth below are the Code's "buying" guidelines regarding the placement of advertisements in all mediums (e.g., TV, radio, magazine, newspaper, internet/digital communications) and the requirement for semi-annual, random after-the-fact audits (post audits) of placements to meet the demographic standard where at least 71.6% of the audience is reasonably expected to be 21years of age or older (the legal purchase age (LPA) audience composition).

I. Media placement and the 71.6% 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 71.6%;

ii) The advertiser conducts internal, semi-annual after-the-fact audits of a random portion of past placements to verify that such placements were in compliance with the 71.6% 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; and

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. Syndicated audience composition data, such as comScore or Nielsen Online (formerly Nielsen//NetRatings), for internet/digital communications also are published on a more frequent basis and are taken into account in

these guidelines for purposes of advertisement placement and post audits.

II. Media placement and audience composition data

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

i) Use of a syndicated data source: 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) Compliance standard: 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 the quarter in which the placement ran show an LPA audience composition that was in compliance with the Code

v) Post audit corrective measures for future placements: In the event that the post audit indicates that the placement did not meet the LPA demographic standard, the advertiser will, as soon as practicable, make schedule adjustments, cancellations, or other appropriate changes to comply with the standard in future placements

B. For Radio:

i) Scope: The radio buying guideline applies to all paid and bonus spots including rotators, negotiated and agreed upon mentions, liners, tags, billboards, and any other type of announcement

ii) Use of a syndicated data source: For audited radio stations, purchase by daypart using the Average Quarter Hour (AQH) Persons measurement in Arbitron quarterly reports based upon the last two quarters of such data (where seasonal fluctuations are evident, prior year data also should be taken into account if available):

(a) Time periods in which radio spots may be placed shall be in the following Arbitron standard dayparts or other time periods as specified below:

i. AM Drive Monday thru Friday 6:00 a.m. - 10:00 a.m.
ii. Midday Monday thru Friday 10:00 a.m. - 3:00 p.m.
iii. PM Drive Monday thru Friday 3:00 p.m. - 7:00 p.m.

iv. Evening Monday thru Friday 7:00 p.m. - 12:00 midnight
v. Monday thru Friday 12:00 midnight - 6:00 a.m.
vi. Sat. & Sun. 6:00 a.m. - 10:00 a.m.
vii. Sat. & Sun. 10:00 a.m. - 3:00 p.m.
viii. Sat. & Sun. 3:00 p.m. - 7:00 p.m.
ix. Sat. & Sun. 7:00 p.m. - 12:00 midnight
x. Sat. & Sun. 12:00 midnight - 6:00 a.m.

(b) 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

(c) Any period of time adjacent to an Arbitron standard daypart that is also purchased, provided that each additional hour independently satisfies the Code provision that 71.6% of the audience composition is 21 years of age or older

(d) Any period of two or more consecutive hours, provided that each hour independently satisfies the Code provision that 71.6% of the audience composition is 21 years of age or older

iii) Unmeasured stations: 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 audience compositional data from time periods for comparable stations in comparable markets

iv) Compliance standard: 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 the quarter in which the placement ran show an LPA audience composition that was in compliance with the Code

vi) Post audit corrective measures for future placements: In the event that the post audit indicates that the placement did not meet the LPA demographic standard, the advertiser will, as soon as practicable, make schedule adjustments, cancellations, or other appropriate changes to comply with the standard in future placements.

C. For Magazines:

i) Use of a syndicated data source: 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) More specific data regarding audience composition also meet this standard, such as subscription-only or a "21+" subscriber special edition of the publication

iii) Unmeasured magazines not of general circulation: 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 target readership audience or data for similar publications (see section D below for "unmeasured magazines" intended for general circulation, including maiden/new publications, even if it is, for example, a prototype of another magazine)

iv) Compliance standard: 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

vi) Post audit corrective measures for future placements: In the event that the post audit indicates that the placement did not meet the LPA demographic standard, the advertiser will, as soon as practicable, make schedule adjustments, cancellations, or other appropriate changes to comply with the standard in future placements

D. Independent measurement of unmeasured magazine demographic profiles:

i) Magazines intended for general circulation that are not measured by a syndicated data source, such as MRI or Simmons, and have or are intended to have a subscriber base should have an independent measurement of their subscribers, which meets the following criteria:

ii) A demographic survey of subscribers should be conducted periodically for established magazines and for new magazines before consideration of an advertisement placement (and again for new magazines once the subscriber base has stabilized; for example, after initial subscribers have had an opportunity to renew would be appropriate in the latter instance)

iii) Survey of magazine subscribers must be conducted by an independent third party research company using established research methods, such as the ABC Subscriber Study Audit requirements

iv) Survey supplier and date survey was conducted must be identified

v) Sample should be at least 300 in-tab (tabulated) respondents with the sample frame fully reported

vi) Sample must be pulled on an nth name basis from all eligible names on the publication's full subscriber file for U.S. only. No complimentary copies, international, business addresses, demographic, or regional edition splits (unless these copies also are used for the advertising)

vii) Subscribers, not other household members, should be asked to fill out and return the survey

viii) Actual age, year of birth or check off for appropriate bracket of age are acceptable, as long as the age bracket identifies 21 as a starting point (for example, 21-34 versus 18-24)

ix) Upon the receipt of the independent demographic survey, a potential advertiser will evaluate the audit in conjunction with other factors prior to purchasing an advertising placement, such as the content of the magazine, similar or comparable publications, the "pass along" rate and/or circulation distribution of similar or comparable publications

E. For Newspapers:

i) Scope: This guideline applies to all paid and bonus placements in the print editions of daily, Sunday and weekly newspapers intended for general circulation that have or are intended to have a subscriber base, including advertising supplements, magazine sections and other forms of advertising added to or delivered with newspapers

ii) Use of a syndicated data source: Prior to the purchase of print advertisements in newspapers distributed nationally, regionally or locally, review audience composition data utilizing an audience measurement source recognized by the advertising industry (such as, but not limited to, Scarborough Research and Mediamark Research, Inc.). Data for the most recent rating period available will be reviewed to determine that placements are reasonably expected to meet the demographic standard

iii) Unmeasured newspapers: If the newspaper is not measured by a syndicated data source (e.g., a new newspaper or a newspaper not measured by Scarborough Research or Mediamark Research, Inc.), use target readership audience or subscription data provided by the publisher and/or data for similar newspapers

iv) Compliance standard: 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

vi) Post audit corrective measures for future placements: In the event that the placement did not meet the LPA demographic standard, the advertiser will, as soon as practicable, make schedule adjustments, cancellations, or other appropriate changes to comply with the standard in future placements

F. For Internet/Digital:

i) Scope: The internet/digital buying guideline applies to all paid and unpaid (including value-added) placements made by or under the control of the advertiser, including advertising on third-party websites, video advertisements, audio mentions, internet banners, pop-ups, sponsorships, user-generated content (including blogs), and other types of internet/digital advertising or marketing

ii) Use of a syndicated data source: Purchase or place using "2 +" syndicated audience composition data, such as comScore or Nielsen Online, based upon the most recent three-month site average of available audience data of unique visitors (where seasonal fluctuations are evident, prior year data also should be taken into account if available)

(a) An advertiser consistently will use one of these syndicated data sources as its primary demographic measurement by brand and an alternate syndicated data source will be used only when the advertiser's primary source does not measure that particular medium

(b) Given that the methodologies and measurements of internet/digital media are evolving, this data source guideline will be reviewed as further developments warrant and, if appropriate, revised accordingly

iii) Independent measurement of unmeasured medium: If the digital medium is not measured by a syndicated data source, the advertiser prior to purchasing or placing an advertisement or any marketing materials shall obtain from the publisher of the medium an independent demographic survey based upon the most recent three-month site average of available audience data of unique visitors conducted by a third-party research company using established research methods

iv) More specific data to meet the demographic standard: Where the average of the syndicated audience composition data or an independent third-party survey over the three-month time period (as described in subsection iii above) does not show a 71.6% 21 years of age or older (LPA) demographic, the advertiser can use the website's "registered user" database to place their advertising or marketing materials to users 21 years of age or older if the website has that capability

v) Unmeasured medium with a "registered user" database: If the digital medium is not measured by a syndicated data source or an independent third-party survey as described in subsection (iii) above, but has a "registered user" database that can link a user to an age, the advertiser can use the website's "registered user" database to place its advertising or marketing materials to users 21 years of age or older

vi) "Limited edition" websites: For "one-time" only, event-specific and/or other similar websites, the advertiser shall review and evaluate comparable websites, the proposed content of the website in question, data provided by the publisher regarding the target audience, and any other relevant factor to project a reasonable expectation of the demographic audience prior to purchasing or placing an advertisement or any marketing materials

vii) Compliance standard: A placement will be considered appropriate when the percentage of unique visitors reflected in the above-referenced data shows that the placement is in compliance with the Code

viii) Post audits: A past placement will be considered appropriate where demographic data for the month(s) in which the placement ran show an LPA audience composition that was in compliance with the Code

ix) Post audit corrective measures for future placements: In the event that the post audit indicates that the placement did not meet the LPA demographic standard, the advertiser will, as soon as practicable, make schedule adjustments, cancellations, or other appropriate changes to comply with the standard in future placements

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

Effective May 26, 2011

Distilled Spirits Council's Guidance Note
on
Responsible Digital Marketing Communications

Introduction

This Guidance Note for responsible digital marketing communications is an integral part of the Distilled Spirits Council's Code of Responsible Practices for Beverage Alcohol Advertising and Marketing and should be read in conjunction with its provisions.

The members of DISCUS recognize the increasingly important role of digital marketing and believe it provides valuable and appropriate tools to reach adult consumers. As an extension of our commitment to market our brands responsibly to adults and to respect their privacy, we have developed additional principles relevant to digital marketing to reach users of legal purchase age.

Digital marketing activities are in a stage of evolutionary development, where new trends are likely to occur rapidly. This Guidance Note will therefore be reviewed on a regular basis and updated whenever necessary.

Scope

The Guidance Note applies to branded digital marketing communications (paid and unpaid) of DISCUS member companies, including but not limited to communications on websites such as social network sites and blogs, as well as mobile communications and applications.

Basic Principles

1. Digital marketing communications are intended for adults of legal purchase age.

2. Digital marketing communications should be placed only in media where at least 71.6% of the audience is reasonably expected to be of the legal purchase age.

3. Digital marketing communications on a site or web page controlled by the brand advertiser that involve direct interaction with a user should require age affirmation by the user prior to full user engagement of that communication to determine that the user is of legal purchase age.

4. User-generated content on a site or web page controlled by the brand advertiser must be monitored and moderated on a regular basis.

5. Digital marketing communications that are intended to be forwarded by users should include instructions to individuals downloading the content that they should

not forward these materials to individuals below the legal purchase age.

6. Digital marketing communications must respect user privacy.

7. Digital marketing communications and product promotions must be transparent as brand marketing by being identified as such.

Definitions and Guidance to Implement Principles

1. **Direct interaction** is a two-way communication between the user and the brand advertiser on a site or web page controlled by the brand advertiser. It occurs when the user affirmatively interacts with the brand advertiser, such as responding to a direct communication from the brand advertiser.

2. **Age affirmation** is a process or a mechanism by which users provide their full date of birth (month, day and year) and, when appropriate, country of residence to affirm they are of legal purchase age. Age affirmation mechanisms may vary depending upon available technology and examples could include, among other things, an age affirmation page, an email or instant messaging age affirmation, or the use of a site's "registered user" database of users of legal purchase age.

   If a user enters a date of birth that indicates they are under the legal purchase age, access to a member-controlled website should be denied and visitors should be given an appropriate message and/or directed to an information website on responsible drinking, such as those found at The Century Council's webitse (http://www.centurycouncil.org) or on the site itself.

3. **User Generated Content (UGC)** is material (including text, pictures, audios, and videos) that has not been created by the brand advertiser, but by a user. UGC that appears on a site or web page controlled by the brand advertiser should be monitored each business day or, at a minimum, every five business days. When content is determined to be inappropriate, the inappropriate material should be removed promptly. A disclaimer should appear saying that all inappropriate content generated by users will be removed from the site or web page over which the brand advertiser has control.

4. **"Forwardable" content** is any branded digital content placed on a site in a manner that is designed or enabled to be shared, such as with a share, download or email "button click." Such content should include instructions to individuals downloading the content that they should not forward these materials to individuals below the legal purchase age.

5. **Social Responsibility Statements** should be included in all digital marketing communications where practicable.

6. **Privacy policies** govern the collection of personal information from adults of legal purchase age and encompass any direct digital marketing or advertising whether conducted through a social networking site, website or other digital channel and must ensure the following:

   - Prior to the collection of any information, the brand advertiser will require that individual to affirm that they are of legal purchase age and user information only can be collected from those individuals who are of the legal purchase age.
   - The brand advertiser shall employ a mechanism for a user to "opt-in" before receiving a direct digital marketing communication and to "opt-out" to discontinue receiving such direct communications.
   - Clear information must be provided about collection and use of personal data. Under no circumstances will the information collected be sold or shared with third parties unrelated to the brand advertiser.
   - Users should be encouraged to read the privacy statement before submitting their information.
   - Measures will be taken to keep user information secure and protected from loss or theft.

Effective September 30, 2011

Our Initiatives

Overview
State Shipping Laws for Wineries
Sustainable Winegrowing
Issues and Policy
- Ad Code
- Dietary Guidelines
- Pierce's Disease
- Reference Library
- TCA Factsheet
- TTB Carbohydrate Labeling

California Wine Export Program
Meetings and Workshops

State Shipping Laws (Direct Shipping)
Sustainable Winegrowing
Discover California Wine
Videos and News

Home > Our Initiatives > Issues and Policy > Ad Code > Code of Advertising Standards

Code of Advertising Standards

PREAMBLE

Since ancient times, wine has been appreciated as an enhancement to meals and a beverage of enjoyment by cultures throughout the world. Members of the Wine Institute are proud of their wines and are committed to ensuring their wines are promoted responsibly to those adults who choose to consume them.

We have a right to advertise and promote our wines to consumers of legal drinking age. Along with this right comes the responsibility and commitment to market our wines to adults in a responsible and appropriate manner. This commitment includes the responsible content and placement of all communications concerning our wines.

Informal principles of good advertising practice for the winegrowing industry were first adopted in 1949. 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 – including, but not limited to Internet, mobile and other digital marketing communications, product labels, packaging, direct mail, point-of-sale, outdoor, displays, sponsorships, promotions, radio, television, movies, video, print media and product placements – shall adhere to both the letter and the spirit of this Code.

GUIDELINES

These guidelines shall apply to all active members of Wine Institute. "Wine" as used in this Code means wine and wine coolers.

RESPONSIBLE CONTENT:

1. Wine advertising shall encourage the responsible consumption of wine and shall be adult-oriented and socially responsible. Therefore wine advertising shall not depict or describe in its advertising:

a. The consumption of wine for the effects the 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 be intoxicated 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 and responsible use of wine and a responsible lifestyle. Association of wine use in conjunction with feats of daring or activities

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Harvest & Winegrowing ▸
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State Shipping Laws ▸
Statistics ▸
Sustainable Winegrowing ▸
Wine Fact Sheets ▸
Wine Industry Jobs ▸
Wine Institute 2013-14 Dues ▸
Wine Institute Membership ▸
Wine Institute Members' Site ▸

requiring high degree of skill is specifically prohibited.

f. Wine in quantities inappropriate to the situation or inappropriate for moderate and responsible use.

g. Wine advertising should not depict or encourage illegal activity of any kind.

2. Advertising of wine has traditionally depicted persons enjoying their lives and illustrating the role of wine in a mature lifestyle. Any attempt to suggest that wine directly contributes to success or achievement is unacceptable. Therefore, the following restrictions shall apply:

a. Wine shall not be presented as being essential to personal performance, social attainment, achievement, success or wealth.

b. The use of wine shall not be directly associated with social, physical or personal problem solving.

c. Wine shall not be presented as vital to social acceptability and popularity.

d. It shall not be suggested that wine is crucial for successful entertaining.

3. Any advertisement which has particular appeal to persons below the legal drinking age is unacceptable, even if it also appeals to adults. Therefore, wine advertising shall not:

a. Show models and personalities as wine consumers in advertisements who are or appear to be under the legal drinking age. Such models shall be 25 years of age or older.

b. Use music, language, gestures, cartoon characters, or depictions, images, figures, or objects that are popular predominantly with children or otherwise specifically associated with or directed toward those below the legal drinking age, including the use of Santa Claus or the Easter Bunny.

c. Be presented as being related to the attainment of adulthood or associated with "rites of passage" to adulthood.

d. Suggest that wine is similar to another type of beverage or product (e.g., milk, soda, candy) having particular appeal to persons below the legal drinking age.

e. Use entertainment or sports celebrities having a particular appeal to persons below the legal drinking age. These selections should be substantiated by research demonstrating the basis for selection and periodically evaluated.

4. Wine advertising shall in no way suggest that wine be used in connection with operating motorized vehicles such as automobiles, motorcycles, boats, snowmobiles, or airplanes or any activities that require a high degree of alertness or physical coordination.

5. Wine advertising shall make no curative or therapeutic claims except as permitted by law.

6. Comparative advertising claims shall be truthful and appropriately substantiated and shall not be disparaging of a competitor's product.

7. Wine advertising shall not degrade, demean, or objectify the human form, image or status of women, men, or of any ethnic, minority, religious or other group or sexual orientation. Advertising shall not

exploit the human form, or feature sexually provocative images.

8. Wine advertising shall not be directed to pregnant women. Wine advertising shall not portray excessive drinking.

9. Wine advertising shall not reinforce nor trivialize the problem of violence in our society. Therefore, wine advertising shall not associate wine 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, wine advertising when appropriate should include food.

11. Wine advertising and marketing materials should reflect generally accepted standards of good taste.

RESPONSIBLE PLACEMENT

1. Wine advertising is intended for adults of legal drinking age who choose to drink. Wine should not be advertised or marketed in any manner directly or primarily appealing to persons below legal drinking age. Therefore, wine advertising shall not be placed in media with substantial underage appeal and shall not:

a. Appear in children or juvenile magazines, newspapers, television programs, radio programs or other media specifically oriented to persons below the legal drinking age.

b. Appear in any media where more than 28.4% of the audience is underage (determined by using reliable, up-to-date audience composition data).

c. Be placed on the premises of college and university campuses or in newspapers published by, or primarily for, a college or university. However, members may advertise in licensed retail establishments located on such campuses or may participate in programs organized by or for graduate or professional schools or alumni organizations.

2. Wine advertising shall be placed in digital media as follows:

a. Members shall be mindful that online advertising may be viewed by underaged individuals and shall take steps to ensure that online content remains consistent with provisions of this code.

b. A member should employ an age affirmation mechanism on the homepage that restricts access only to viewers who affirm their legal drinking age before access to any area of the site. Any linkage to a member website page that bypasses its home page should include an age affirmation mechanism.

c. Member websites should employ a third party age verification mechanism that will verify the legal drinking age of online purchasers of wine at the point of purchase.

3. Members placing products in visual media, regardless of the visual media's rating, shall strive to depict wine appropriately and consistently with other provisions of this code. Members placing product shall be guided by the following principles:

a. Product placement decisions shall be made on a case-by-case basis based upon the information about the movie, television program, music video, or video game available at the time provided by the project's producers;

b. Product placements shall not be made where the characters engage in illegal or irresponsible consumption of wine in connection with driving, where characters use wine irresponsibly or abusively, or where alcoholism is portrayed; and

c. Product placements shall not portray the purchase or consumption of wine by persons who are below the legal drinking age.

4. To the extent feasible, wine 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.

5. Wine advertising should not be placed on any outdoor stationary location within five hundred (500) linear feet of an established place of worship, an elementary school or secondary school except on a licensed premise.

6. Wine advertising should not be placed at events unless at least 70 percent of the audience who are intended to view the advertising is reasonably expected to be above the legal drinking age.

7. Detailed advertisement placement and buying guidelines have been adopted and are posted on the Wine Institute website. These guidelines are updated periodically to reflect the most current and appropriate data.

Amended:
April 1978
May 1987
September 1993
December 2000
September 13, 2005
June 2011

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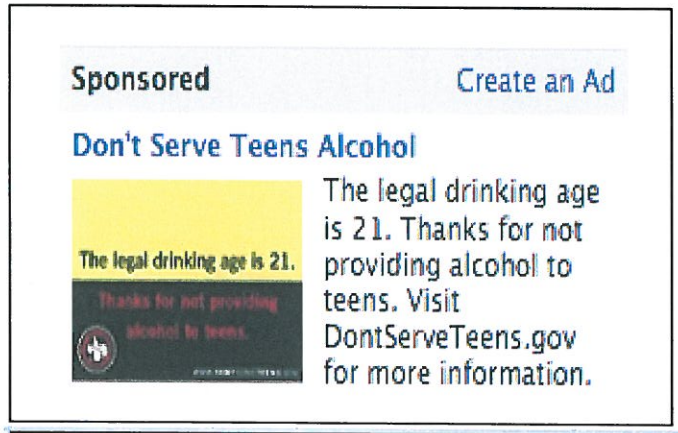
Exhibit C: Industry Executions of We Don't Serve Teens Campaign 2011-2012




The legal
drinking age is
21
Thanks
for NOT providing
alcohol to teens


The legal
drinking age is
21


The legal
drinking age is
21
Thanks
for NOT providing
alcohol to teens
ClearChannel
DontServeTeens.gov





2012 National CSR/FTC Print Scorecard

Publication	Brand	Added-Value Description	Positioning Added-Value ($)	Circ
Women's Health	FTC	1/2 page in September issue	32.4	1,617,737
Food and Wine	FTC	1 bonus page in August issue	35.0	347,854
Golf Magazine	FTC	1 bonus page in September issue	59.0	1,425,490
Us Weekly	FTC	1 bonus page in 9/24 issue	46.7	1,977,250
The Fader	FTC	1 bonus page in August/September issue	7.0	97,500
Running Times	FTC	1 bonus page in August Issue	5.2	127,441
Bicycling	FTC	1 bonus page in August Issue (regional)	17.5	446,925
Golf Digest	FTC	1 bonus page in August Issue	77.4	1,678,538
Men's Health	FTC	1 bonus page in September issue	68.5	1,918,387
Real Simple	FTC	1 bonus page in August Issue	72.8	2,031,596
Sports Illustrated	FTC	1 bonus page in September issue	91.0	3,204,945
Runner's World	FTC	1 bonus page in September issue	28.8	726,016
		Total Value	541.4	



Federal Trade Commission
ftc.gov