SELF-REGULATION in the ALCOHOL INDUSTRY

A Review of Industry Efforts to Avoid Promoting Alcohol to Underage Consumers

Federal Trade Commission
September 1999

Federal Trade Commission

Robert Pitofsky, Chairman
Sheila F. Anthony, Commissioner
Mozelle W. Thompson, Commissioner
Orson Swindle, Commissioner

Authors

Janet M. Evans, Bureau of Consumer Protection, Division of Advertising Practices
Richard F. Kelly, Bureau of Consumer Protection, Division of Advertising Practices

Advisors

Joseph Mulholland, Bureau of Economics
Genevieve Fu, Bureau of Economics
Abbe Goldstein, Bureau of Consumer Protection, Division of Advertising Practices
Jeanne Sullivan, Bureau of Consumer Protection, Division of Advertising Practices
Carolyn Shanoff, Bureau of Consumer Protection, Consumer and Business Education
David Balto, Bureau of Competition

TABLE OF CONTENTS

Advertising Content
Product Placement
Online Advertising
College Marketing

best prevailing industry practices, the industry can improve compliance without sacrificing advertising industry's program. Operating since 1971, the National Advertising Division (NAD) of the Council of Better Business Bureaus expeditiously investigates complaints about the truthfulness of advertising made by consumers or competitors.[(8)] An advertiser that disagrees with the NAD's conclusion may appeal to the National Advertising Review Board (NARB), which includes members from inside and outside the industry.

Compliance with the NAD/NARB process is voluntary. Remarkably, NAD has handled over 3,500 cases since 1971, and in virtually all cases advertising found to be misleading has been discontinued or modified voluntarily. When an advertiser refuses to abide by a NAD decision, the matter often is referred to the FTC or another law enforcement agency. When appropriate, the FTC takes enforcement action.

Another aspect of this self-regulatory system is especially striking: NAD and NARB decisions are made public. This enhances the credibility of the program and provides valuable information to consumers and other industry members.

Self-Regulation in the Alcohol Industry

Each year the alcohol industry spends more than a billion dollars on television, radio, print, and outdoor advertising.[(9)] (*See* Appendix B.) Self-regulation plays an important role in the alcohol industry's overall efforts to address concerns that alcohol advertising not be directed to an underage audience.(10) At the heart of this effort are three trade associations. The Beer Institute represents the interests of more than 200 brewers who produce more than 90 percent of the beer brewed in America as well as the importers of a majority of the imported beer consumed here. The Distilled Spirits Council of the United States (DISCUS) represents most of the major U.S. distilled spirits marketers; its members produce over 85 percent of the distilled spirits sold in America. The Wine Institute represents over 300 California vintners; its members market over 75 percent of the wine sold in America and most of the American wines sold abroad. All three associations have voluntary advertising codes, with similar provisions about the placement and content of ads designed to prevent the marketing of alcohol to underage consumers. (Appendix D.) In addition, some beverage alcohol companies have their own self-regulatory guidelines. (Appendix E.) In most cases, the company guides parallel those of the trade associations, although some address specific issues such as marketing at college "spring break" locations. The codes are widely disseminated throughout the industry to promote awareness and compliance.

III. AaluabCOHOL INDUSTRY ADVERTISING CODES -180.4 -27.6 TTD /F1 12 Tf

a company's product will be featured in a television program, film, or music video is common across the alcohol industry.[30] In 1997-98, the eight reporting companies made product placements in 233 motion pictures and in one or more episodes of 181 different TV series.[31]

DISCUS revised its code in 1995 to prohibit many of the college marketing practices that had been criticized -- including advertising on campuses and in college newspapers -- and to restrict other forms of campus marketing activities to licensed retail establishments.(44)

able to show that nearly all of their ads were shown to a majority legal-age audience. Two companies, however, entirely failed to obtain the age demographic data needed to evaluate their code compliance. Moreover, two other companies' data showed weeks when a large portion of ads (for one, 25 percent of its TV ads, for another, 11 percent of its radio ads) were shown to a majority underage audience.[46]

Only 30 percent of the U.S. population is under the age of 21, and only ten percent is age 11 to 17.(47) The 50 percent standard, therefore, permits placement of ads on programs where the underage audience far exceeds its representation in the population. Given this age composition of the population, large numbers of underage consumers can be exposed to alcohol ads even though a majority of the audience is of legal age.(48) For example, the special reports indicate that alcohol ads have been placed on at least three of the 15 television shows reported to have the largest teen audiences.[49] These shows may be among the best ways to reach teens, although they often have a majority legal-age audience.

Additionally, limitations in the available audience composition data can hinder companies'

Since substantial underage exposure comes with any practical placement standard, compliance with the codes' content provisions is critical.[(53)] The codes' content standards appear to require that companies contrast an ad's appeal to adults with its appeal to minors, and reject only those campaigns that are *more* appealing to those under the legal drinking age.

It is clear that industry makes a significant effort to comply with the codes' content standards. Alcohol companies rely on internal marketing and legal personnel, or ad agencies, to identify ad copy that might appeal primarily to children.(54) The special reports document many instances where content was rejected or revised out of concern it is clear that they deny requests to place alcohol products in films and TV programs that show underage drinking. Still, alcohol product placement has occurred in "PG" and "PG-13" films with significant appeal to teens and children (including films with animal and "coming-of-age" themes); in films for which the advertiser knew that the primary target market included a sizeable underage market; and on eight of the 15 TV shows most popular with teens.(62)

Best Practices: A few companies have taken steps to reduce the likelihood that a substantial underage audience will see their products promoted in movies and on television. They restrict product placements to movies that are "R" rated (or, if unrated, those with similarly mature themes) and prohibit placements in films and programs in which an underage person is a primary character. One company also prohibits promotional placements in movies and shows that deal strictly with college life.

Online Advertising

The Internet presents a special challenge for industry members in their efforts to prevent alcohol advertising and marketing to minors. Children under 18 represent a large and rapidly growing segment of the online community. One recent survey reported 18.5 million children online, including 9.5 million teens between 13 and 17.(63)

Most industry members comply with the provisions of the two codes (Beer and Spirits) that govern online alcohol advertising. A Commission staff review of 30 industry web sites revealed that most (24) post the age reminders required by the codes.(64) The Beer Institute and DISCUS also provide the web site addresses of their members to companies that produce parental control software, and many major Internet Service Prproviff reviand many majroviff rjd

The Current Situation

codes provide important protections, improvements are needed to ensure that the goals of the industry codes are met. The following are the Commission's recommendations:

- **Industry should provide for third-party review.** The industry should create independent external review boards with responsibility and authority to address complaints from the public or other industry members.
- **Industry should raise standards for ad placement.** The industry should raise the current standard that permits advertising placement in media where just over 50 percent of the audience is 21 or older. Because the 50 percent standard permits alcohol advertising to reach large numbers of underage consumers, some members of the industry already have raised their own placement standards, prohibiting ads where as few as 25 percent of the audience is underage. To ensure compliance with the higher placement standard, companies should measure their compliance against the most reliable up-to-date audience composition data available.

- **Trade associations and industry members should adopt and build upon the "best practices" of companies described in this report.** These measures are demonstrated to be feasible and effective at reducing the risk that alcohol advertising will appeal to youth:
  - *For ad placement:* Maintain "no buy" lists barring placement on TV series and in other media with the largest underage audiences, and conduct regular after-the-fact audits of a sample of past placements to verify that past ad placements were in compliance.
  - *For ad content:* Raise the content standard by barring ads with substantial appeal to underage consumers, even if they also appeal to adults, or by targeting ads to persons 25 and older.
  - *For product placement:* Reduce the likelihood that alcohol product placement will occur in media with substantial underage appeal by restricting movie placements to films rated "R" or "NC-17" (or unrated films with similarly mature themes), prohibiting placements in films where an underage person is a primary character, and applying the standards for placing traditional ads to product placement on TV.
  - *For online advertising:* Use available mechanisms to prevent underage access to web sites, avoid content that would attract underage consumers, and post consumer education messages about underage and irresponsible drinking.
  - *For college marketing:* Further curb on-campus advertising and sponsorships and spring break marketing, and encourage licensed retail establishments to advertise responsibly.

The recommended changes would promote the goals underlying the codes as well as improve public confidence in industry's efforts to self-police. The Commission looks forward to the industry's implementation of these recommendations.

ENDNOTES

1.

(October 19, 1998).

3. The special reports were filed by eight beverage alcohol companies in response to Commission orders issued in August 1998 under Section 6(b) of the Federal Trade Commission Act (FTC Act), 15 U.S.C. § 46(b). The companies are: Anheuser-Busch, Inc.; Bacardi-Martini USA, Inc.; Brown-Forman Corporation; Coors Brewing Company, Inc.; Diageo plc; Miller Brewing Company, Inc.; Stroh Brewery Company, Inc.; and Joseph E. Seagram & Sons, Inc. The special reports provide lengthy documentation showing how the eight companies interpret and implement the provisions of the self-regulatory advertising codes.

While the special reports provide valuable information about the eight companies, they do not necessarily reflect the practices of the many other companies that advertise and market beverage alcohol in the United States. Excluded from the scope of this report are the advertising and promotional practices of wholesalers and local retailers (including bars and restaurants), and alcohol sales over the Internet.

4. The Commission received information from a wide range of sources, including the American Academy of Pediatrics; The Arc; Beer Institute; Center for Media Education; Center for Science in the Public Interest; Century Council; Center on Alcohol Advertising; Distilled Spirits Council of the United States; Magazine Publishers of America; Marin Institute; National Association of Alcoholism and Drug Abuse Counselors; National Beer Wholesalers Association; National Council on Alcoholism and Drug Dependence, Inc.; and the Wine Institute.

5. *See* Appendix F.

6. Over the years, the FTC, using its statutory authority to protect consumers from "unfair or deceptive acts or practices," 15 U.S.C. § 45, has issued a number of consent orders and adjudicated a number of law enforcement actions against marketers of alcohol beverages. It has used its deception authority to prohibit a variety of misrepresentations about alcohol products, and its unfairness authority to prohibit advertising that causes or is likely to cause substantial injury to consumers that is not outweighed by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers. Advertising that is neither deceptive nor unfair falls outside the Commission's authority.

The FTC's prior alcohol cases include: *Allied Domecq Spirits and Wine Americas, Inc.*, C-3858 (March 5, 1999) (consent order) (deceptive 'low alcohol beverage' claim for a premixed cocktail containing 5.9 percent alcohol by volume); *Beck's North America, Inc.*, C-3859 (March 5, 1999) (consent order) (unfair depiction of

7. A governmental restriction on speech that proposes a commercial transaction must satisfy four criteria to

27. *Beer Code,* Guideline 4(a).

28. *Spirits Code, Responsible Content ¶ 3.*

29. *Wine Code,* Guideline 3(b).

30. For background information about product placement, see *The Place to Be*, P.R. Central: Online News and Intelligence, available at http://www.prcentral.com/rmjf97product.htm.

31. In addition, some appearances of alcohol brands on television and in films occur without alcohol company approval.

32. As one company representative stated, "If alcohol is going to be used in a show, I want it to be *my* brand." Research submitted by the alcohol companies indicates that several brands gained popularity after being featured, for example, in music videos. After Red Stripe Beer was featured in the film *The Firm*, the advertiser reported a 50 percent increase in sales. *The Place to Be*, *supra* note 29.

33. Product placements may involve traditional fees and/or alternative forms of payment. For example, one company that made many alcohol product placements in films in 1997-98 had paid fees (ranging from a few thousand dollars to tens of thousands of dollars) for half of the placements, and provided large amounts of its product for other placements. Payment may also be made in the form of valuable cross-promotions (*e.g.*, dissemination of product "theme ads" that also promote the film).

34. These agents review scripts and negotiate placements; some commit to achieving a minimum number of placements in exchange for their compensation.

35. *On Line Advertising Reaches $544.8 Mil, New Report Says*, Advertising Age, August 3, 1998 (reporting on the release of *InterWatch 1997: Trends in Internet Advertising*, by InterMedia Advertising Solutions).

36. *Branding on the Net*, Business Week, November 9, 1998, at 76, 84.

37. "Hits" are different from "visitors." Hits count the number of times, for example, that a visitor logs onto various pages of a web site, opens a file, leaves a message, or downloads a screen saver. Thus, a visitor may have multiple hits on a web site each time he visits.

38. *See* Center for Media Education (CME), *Alcohol and Tobacco on the Web: New Threats to Youth* (March 1997); CME, *Alcohol Advertising Targeted at Youth on the Internet: An Update* (October 1998) [hereinafter *Alcohol Advertising Targeted at Youth on the Internet*].

39. *Beer Code*, Guideline 4(h).

40. *Spirits Code, Responsible Content* ¶ 7.

41. *Beer Code*, Guideline 4(h); *Spirits Code, Responsible Content* ¶ 8.

42. *Spirits Code, Scope*; *Beer Code*, Guideline 1.

43. The investigation began following reports of questionable alcohol marketing practices on college campuses and at "spring break" destinations frequented by hundreds of thousands of college students. Advocacy groups and campus officials sharply criticized some alcohol companies for running ads tied to "rush" weeks for fraternities and sororities, hiring campus representatives to target fraternities and sororities with special keg promotions, and sponsoring spring break activities promoting, among other activities, the excessive use of alcohol beverages. The Commission closed its investigation after reporting its general findings to Congress. *See*

44. *Spirits Code*, *Responsible Placement* ¶¶ 3, 4.

45. *Beer Code*, Guideline 13.

46.

54. Companies disseminate the codes to their employees and ad agencies so that those who are involved in the preparation and approval of their advertising are aware of the requirements.

55. While companies do not directly test the appeal of their ads on persons under 21, the reports reveal that some company-sponsored consumer research directly inquired into respondents' first experimentation with alcohol. Other companies conduct research on 21 and 22 year olds who indicate that they now drink less of the company's brand than they did before they were of legal age to determine what campaign themes are likely to regain consumer loyalty.

In one focus group study of young adults including 21 year olds, the moderator's guide for conducting the research included questions designed to determine when and what the participants first drank, why they selected that drink, and under what circumstances. The study report traces the drinking patterns of these respondents over time. The analysis begins in high school and sets forth the major stages and motivations for drinking -- as a rite of passage, to bond with friends and get "buzzed," to consume what was "in," to socialize with the opposite sex, to be mature and suave, to get wild and crazy, or to get wasted. The study notes that beverage popularity was often influenced by appearance or mention in popular music and videos. Another study done by the same company asked legal-age participants to imagine a party scene using a particular alcohol beverage. One brand's party was envisioned to be at a fraternity house, attended by persons as young as 18, with the party being described as "fun" and for "(g)etting into a light stupor."

56. One focus group report presented the reactions of four groups of consumers 21 and slightly older and two groups of older consumers to proposed radio ads. One execution using hip hop music received "widespread and fairly strong" criticism because of its appeal to the underage. One participant commented, "So if you bring in hip hop, you tend to bring in children." Another said, "I think the biggest problem I have with it is that it's selling to kids and teenagers."

57. One of the special reports included research on a particular ad campaign testing consumers age 21 and 22. The testing was designed to evaluate if the campaign was effectively communicating the intended message, that the company's brand was for "young, hip people." In the course of answering questions about the message of the campaign, respondents noted that while some versions of the campaign were intended only for persons 21 or slightly older, other very similar executions "could be for a younger audience." The ad that research participants believed could be intended for persons under 21 was disseminated at least one time after the research was concluded. *See also infra* note 57.

58. *See* Bruce Horovitz and Melanie Wells, *Ads for Adult Vices Big Hit with Teens*, USA Today, January 31, 1997, at A-1 (*USA Today* survey of 534 teens found that certain beer ads had very high recognition and very high appeal among teens -- over 90 percent in some instances -- although only a minority of teens said the commercials made drinking more appealing or made them want to use the product; because of limitations of the

61. An official at the company stated: "We look at a campaign and ask, would this 'work' to market a kid's product? If the answer is yes, we don't use that campaign."

62. *See* Farhi, *supra* note 48 (listing TV shows most popular with teens in fall 1998).

63. Cyber Dialogue Inc., *American Internet User Survey* (AIUS) (December 1998). Information about AIUS is available at http://www.cyberdialogue.com/products/isg/aius/index.html. By 2002, the number of teens online (age 13-18) is projected to be 16.6 million, a 97 percent increase from 1998. Jupiter Communications, *Kids and Teens to Spend $1.3 Billion Online in 2002* (June 7, 1999 press release), available at http://www.jup.com/jupiter/press/releases/1999/0607.html.

According to a 1998 survey, nearly 65 percent of teenagers (age 12-19) have used or subscribed to online services at home, at school, in the library, at a friend's home, or elsewhere. *Study Shows Two-Thirds of All Teenagers Now Wired*, InternetNews.com, June 1, 1998 (reporting on data from Simmons Teen Age Research Study (STARS)), available at http://www.internetnews.com/IAR/article/0,1087,12_6351,00.html; Simmons Market Research Bureau, *STARS 1998: Simmons Teen Age Research Study*, Version B at 18 (survey question 46A regarding online/interactive computer services). Nearly 30 percent had been on the Internet within the previous 30 days. Simmons Market Research Bureau, *STARS 1998: Know the Teen Market* (informational materials provided to Commission staff).

64. Some of the age reminders, however, are not clear and prominent, but are obfuscated in other text or printed in small type. The questionnaire used by FTC staff for reviewing the web sites is attached at Appendix G.

65. Several sites post links to web sites such as www.netparents.org which provides online safety tips for parents.

66. Annenberg Public Policy Center, *National Survey Shows Parents Deeply Fearful About the Internet's Influence on Their Children* (May 4, 1999 press release), available at http://appcpenn.org/internet.

67. *See Alcohol Advertising Targeted at Youth on the Internet*, *supra* note 37. The special reports and the FTC staff survey of web sites also identified such promotional techniques.

68. The CME survey of 77 alcohol web sites found that 43 percent of the beer sites and 72 percent of the distilled spirits sites included some type of age restriction statement (either a reminder of the legal drinking age, as required by the Beer and Spirits Codes, or a filter). *See Alcohol Advertising Targeted at Youth on the Internet*, *supra* note 37.

69. Over 40 percent of college students are binge drinkers, and rates of "drinking to get drunk" and frequent drunkenness among college students have increased in recent years. Henry Wechsler et al., *Changes in Binge Drinking and Related Problems Among American College Students Between 1993 and 1997: Results of the Harvard School of Public Health College Alcohol Study*, 47 J. Am. College Health 57, 61-62 (1998), available at http://www.hsph.harvard.edu/cas/1998_rpt.htm. The National Association of Attorneys General (NAAG) has recently turned its attention to the problem of binge drinking among college students. NAAG's March 1999 Spring Meeting addressed the prevalence of binge drinking on college campuses and various efforts by states and universities to address this problem.

70. Through such sponsorships, a brewer can display signage in college stadiums, place advertisements in game programs, use the school's mascot in company advertising, and run ads on college stations during sporting events. *See* Jim Naughton, *Colleges Eye Restrictions on Promotions by Brewing Companies*, Chronicle of Higher Education, January 9, 1998. Sponsorships can be lucrative for the educational institution. *See id.* (describing $225,000 sponsorship offer); Kay Hawes, *A brewing dilemma on campus: Schools wrestle with beverage companies' sponsorship of college sports*, NCAA News & Features, April 6, 1998 (stating that one brewer's sponsorship of a large university's sports program placed it among the top six largest corporate sponsors for that university), available at http://www.ncaa.org/news/19980406/active/3514n01.html.

71. David S. Anderson and Angelo F. Gadaleto, *Results of the 1997 College Alcohol Survey: Comparison with 1994 Results and Baseline Year* (George Mason University, Fairfax, Virginia; West Chester University, West Chester, Pennsylvania) (1997) [hereinafter *1997 College Alcohol Survey*].

The Inter-Association Task Force on Alcohol and Other Substance Abuse Issues (IATF), a collaboration of higher education associations, has guidelines to help college administrators govern marketing of alcohol beverages on college campuses. The guidelines provide that on-campus alcohol marketing should conform to the institution's code of student conduct and not be associated with campus events without the knowledge or consent of the institution. IATF's Guidelines for Beverage Alcohol Marketing on Campus are available at http://www.iatf.org.

72. The Higher Education Amendments of 1998 included as "the sense of Congress" that colleges and universities "should adopt a policy to discourage alcoholic beverage-related sponsorship of on-campus