Self-Regulation in the Alcohol Industry

Report of the Federal Trade Commission

June 2008

FEDERAL TRADE COMMISSION[1]

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1 The Commission vote to issue this Report was 4-0, with Commissioner Harbour concurring in part and dissenting in part. Commissioner Harbour's statement is attached to the Report.

2 With special thanks to Dawne Holz, Division of Consumer & Business Education, for formatting this Report for publication.

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Executive Summary

Underage alcohol use is a widespread problem with significant health and safety consequences. This is the third Federal Trade Commission report on efforts by the alcohol industry to reduce the likelihood that alcohol advertising will target youth, by its placement or content. This report provides data about how industry members allocate promotional dollars; data on compliance with the industry's advertising placement standard (requiring that at least 70 percent of the audience for advertising consist of adults 21 and older); analysis of external review of advertising complaints; and an update on the FTC's "We Don't Serve Teens" campaign. The report is based on the responses to Special Orders issued to twelve major alcohol suppliers, comments submitted in response to two Federal Register notices, and discussions with a wide range of stakeholders. It provides alcohol supplier data in an aggregate or anonymous fashion.

Allocation of promotional expenditures and related self-regulatory efforts. The Special Orders directed the suppliers to report 2005 expenditures in 22 categories; the suppliers also described efforts to reduce the likelihood that expenditures would be targeted to those below the legal drinking age ("LDA"). The data provided by the suppliers show that about 42 percent of promotional funds are used for television, radio, print, and outdoor advertising; about 40 percent are used to help wholesalers and retailers promote alcohol to consumers; about 16 percent are used for sponsorships; and the final 2 percent are directed to other efforts, such as Internet advertising, other digital promotions, and product placement. It appears that the suppliers keep self-regulatory responsibilities in mind as they engage in promotional efforts, even in cases where the self-regulatory codes do not expressly apply. Nevertheless, as described below, the Commission recommends improvements in standards and practice.

Compliance with the 70 percent placement standard. Prior to 2003, the industry codes permitted placing advertisements in media where as little as 50 percent of the audience was composed of adults and did not specify any placement protocol to support this standard. Between 2000 and 2003, at the Commission's recommendation, the alcohol industry modified its self-regulatory codes to require suppliers to check reliable audience composition data before placing an ad and to make a placement only if that data showed that, historically, at least 70 percent of the audience consisted of adults 21 and older. The Special Orders required the companies to describe their placement practices, and to provide data showing the composition of the audience (that is, number and percent of persons below and above the LDA) for each individual television, radio, magazine, and newspaper advertising placement disseminated in the first six months of 2006.

The responses showed that the suppliers directed their media buyers to follow the steps set forth in the self-regulatory codes, and to conduct periodic after-the-fact audits to determine whether the placements had, in fact, met the 70 percent standard. Advertising placement can be an uncertain process, as it relies on data about past audiences to predict the future. Nevertheless, more than 92 percent of all television, radio, and print advertising placements for which data were available had an LDA audience composition of 70 percent or better when they ran. Further, about 97 percent of total alcohol advertising "impressions" (that is, individual exposures to an advertisement) were due to placements that met the 70 percent target, as placements that missed the target were concentrated in media with smaller audiences. In the first half of 2006, more than 85 percent of the aggregate audience for the twelve suppliers' advertising consisted of adults above the LDA, although some individual companies' aggregates were a few points lower.

External review of advertising. Self-regulation is most effective when an advertiser's internal mechanisms for fostering code compliance are supplemented by a system in which another entity provides consistent, impartial, objective, and public resolution of disputes about whether a particular practice violates code standards. Per earlier FTC recommendations, the three major industry trade associations now have systems for external review of complaints about code compliance. In 2006, the review boards considered twenty-six complaints. Trade association members complied with review board conclusions in all cases where the review board determined that a member had violated the code.

Underage access to alcohol. Restrictions on teen access to alcohol are a proven way to reduce teen drinking. The FTC developed the "We Don't Serve Teens" ("WDST") program to provide parents and other responsible adults with information about the importance of restricting teen alcohol access. A wide range of public and private entities, including federal and state government representatives, consumer groups, the advertising industry, and the alcohol industry, joined the Commission in 2007 to spread the word, "Don't serve alcohol to teens. It's unsafe. It's illegal. It's irresponsible."

Analysis and recommendations. It is evident that the twelve major suppliers have engaged in good faith efforts to respond to the FTC's earlier recommendations, implementing the 70 percent placement standard for print and broadcast media and adopting systems of external review. The Commission believes that additional steps can be taken to reduce the likelihood of targeting those under the legal drinking age, as follows:

- *Advertising in traditional media.* The 70 percent placement standard is consistent with the 2000 census data, showing that approximately 70 percent of the American public is 21 or older. The industry has been largely successful at meeting the 70 percent standard, and, as a result, more than 85 percent of the audience for alcohol advertising placed by the twelve suppliers in the first half of 2006 consisted of persons 21 and older. Thus, the Commission does not recommend a change in the 70 percent standard at this time. Individual suppliers should consider aggregate audience composition when making placements, however, and the trade associations should consider the results of the 2010 Census, when they become available. Further, the Commission has identified practices that will facilitate better advertising placement management, potentially increasing the proportion of placements that meet the 70 percent target. These include:

  - trade association adoption of consistent and transparent systems for interpreting demographic data;
  - regular training of company personnel about audience composition data, including training by the trade associations on practices calculated to increase compliance with the placement standards;
  - "hands on" management of media buyers; and
  - maintenance of records that reflect actual buys and show the source of post-placement demographic data.

- *Internet advertising.* (1) Supplier sites. Suppliers who operate websites to promote their brands should use neutral age-entry screens, complemented by tracking tools to prevent minors from back-clicking to change their birth date once they realize that they have been blocked from an alcohol company website based on their age. (2) Online alcohol sales. Sites that sell alcohol should use age-verification technologies to ensure that alcohol is not shipped to underage purchasers. (3) Advertising on independent sites. The suppliers generally applied an informal 70 percent standard when placing advertising on independent sites, and the wine industry's 70 percent standard applies to all media, including the Internet. In the course of this study, the Commission staff recommended that the codes of the beer and distilled spirits industries be modified to extend the 70 percent placement standard to Internet advertising, and to include buying guidelines for Internet advertisements.
- *Other digital advertising.* Other digital advertising currently accounts for only a small fraction of expenditures, but is likely to grow in importance over the coming years. As alcohol marketing efforts expand into new digital areas, such as email and mobile marketing, it is important that suppliers continue to expand their age-screening and verification processes.

- *Sponsorships.* All self-regulatory codes should specify a 70 percent placement standard for sponsorship of events.
- *Product placement in films.* The Commission recommends that suppliers work with film producers to incorporate available demographic data into the analysis of prospective product placements, and place only in films that the producer has a good-faith belief will meet the 70 percent standard.
- *Expenditures to help others promote alcohol.* These expenditures are subject to the existing placement and content provisions of the codes, and are regulated at the state and federal levels. The Commission will continue to monitor this aspect of alcohol marketing, but it does not appear that additional self-regulatory provisions are needed now.
- *External review of complaints.* The Commission recommends that all of the trade associations accept online complaints, competitor complaints, anonymous complaints, and complaints about non-member advertising.
- *Youth access to alcohol.* The Commission continues to encourage all stakeholders concerned about underage alcohol use to support social responsibility efforts, such as WDST, that are designed to reduce youth access to alcohol and the subsequent alcohol-related injury.

Commission commitment to ongoing monitoring. Historically, the Commission has relied on informal inquiries and periodic major studies to monitor self-regulation. The Commission is now implementing a new monitoring system. Each year, the Commission will send compulsory process orders to between two and four suppliers, including smaller suppliers, seeking information about advertising and marketing practices, systems used to prevent deceptive and unfair marketing, and compliance with self-regulatory guidelines. This procedure will allow the Commission to appraise the industry's response to this report's recommendations; evaluate alcohol marketing efforts in new media; and consider efforts to reduce the likelihood that alcohol advertising in such new media will target youth.

I. Introduction

A. Background

Underage alcohol use is a persistent problem, giving rise to concerns about youth exposure to alcohol marketing. This is the third FTC report on activities related to alcohol and youth, including the status of alcohol industry initiatives to reduce the likelihood that alcohol advertising will target youth.[1] This report provides, for the first time, significant data about how industry members allocate their promotional dollars, and information about self-regulatory efforts related to these expenditures. The report also provides comprehensive information about compliance with the voluntary advertising placement standard adopted by the alcohol industry in 2003, and analyzes the status of external review of advertising complaints. Finally, it provides an update on the FTC's "We Don't Serve Teens" campaign to reduce underage access to alcohol from social sources.

This report is based on the responses to Special Orders issued to twelve major alcohol suppliers, public comments submitted in response to two Federal Register notices,[2] and discussions with a wide range of stakeholders. Exhibit A is a copy of the Special Order issued to the alcohol suppliers.

B. Scope of the Problem

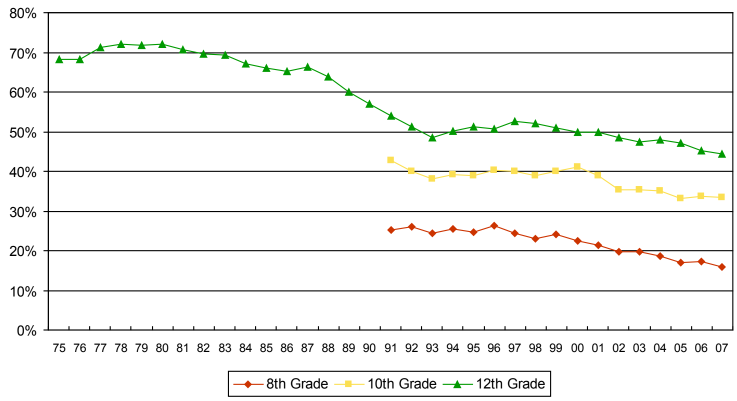
Underage drinking is a leading public health and social problem in the United States, associated with the three leading causes of death among youth – unintentional injury, homicide, and suicide. A recent study by the Centers for Disease Control and Prevention ("CDC") paints a disturbing picture of the risks associated with youth drinking. These include driving after drinking; riding with a driver who has been drinking; sexual activity and pregnancy of self or partner; tobacco use; interpersonal violence; consideration of or attempt at suicide; and use of marijuana, cocaine, or inhalants.[3] Binge drinkers are even more likely to engage in these risky behaviors.[4] There also is a relationship between academic problems and drinking.[5]

In 2007, about 16 percent of 8th graders, 33 percent of 10th graders, and 44 percent of 12th graders reported drinking in the past thirty days.[6] Although current teen drinking levels are unacceptably high, they have declined substantially over time, as shown in Figure 1.[7]

Once youth start to drink, they are likely to report engaging in drunkenness or binge drinking (defined as the consumption of 5 or more drinks on the same occasion), as shown by Figure 2.[8] Teens drink a wide range of alcohol types, including beer, distilled spirits, wine, and flavored beverages.[9]

Figure 1

Percent of High School Students Reporting Alcohol Use in the Past 30 days, Long-term Trends

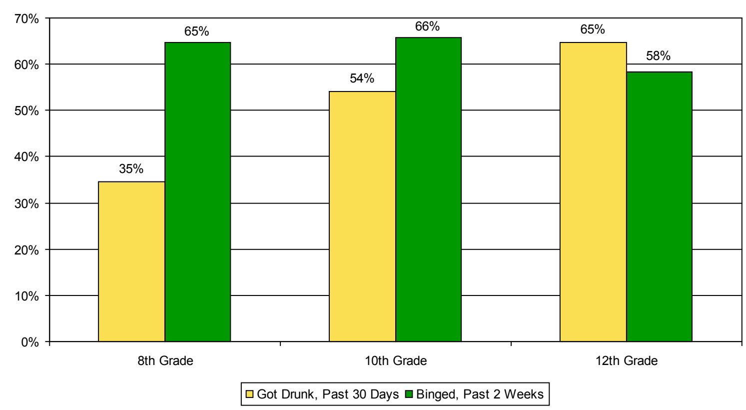


Source: The Monitoring the Future study, the University of Michigan.

Recent federal efforts reinforce the conclusion that underage drinking is an issue of national importance. The Sober Truth About Preventing Underage Drinking Act ("STOP Act"), signed into law in 2006, called for a focused national effort to reduce underage drinking,[10] including a "coordinated approach to prevention, intervention, treatment, enforcement, and research."[11] The Surgeon General's *Call to Action to Prevent and Reduce Underage Drinking* ("*Call to Action*"), issued in 2007, called for reduced societal acceptance of underage drinking, delay of drinking initiation, and reduction of negative consequences related to youth drinking.[12] It emphasized that alcohol use must be understood in the context of adolescent development, taking into account the processes of maturation, the influence of social systems, and individual characteristics.[13]

Figure 2

Levels of Binging and Drunkenness Among Teens Who Drink



Source: The Monitoring the Future study, the University of Michigan.

C. The FTC and Alcohol Industry Self-Regulation

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").[14] The codes contain provisions relating to both the content and the placement of marketing efforts. The FTC's two prior alcohol marketing studies, published in 1999 and 2003, evaluated compliance with, and the appropriateness of, alcohol industry voluntary self-regulatory guidelines designed to reduce the likelihood that alcohol advertising will, by its content or placement, target consumers below the legal drinking age. The

1999 Report identified a number of promising practices relating to advertising placement and content and external review of complaints about compliance with code provisions.[15] The 2003 Alcohol Report announced that, at the Commission's recommendation, the industry had adopted improved standards for where advertising could be placed, requiring that at least 70 percent of the audience for each advertisement consist of adults 21 and over, based on reliable data. The 2003 Alcohol Report also noted that one segment of industry had improved external review of code compliance; the Commission encouraged the other industry segments to adopt systems for external review of complaints, particularly complaints about underage appeal of alcohol advertising.[16]

After 2003, the Commission continued its active monitoring and review of alcohol advertising and compliance with the self-regulatory guidelines. The FTC staff worked with industry trade associations and individual companies to facilitate compliance with the new 70 percent advertising placement standard and to encourage improvement in external review of compliance. Following media stories about promotions for drinking games, the FTC staff worked with the trade associations to facilitate rapid adoption of code provisions to prohibit such practices.

In March 2006, the agency announced the initiation of this study.[17] In January 2007, following completion of the process set forth by the Paperwork Reduction Act, the Commission issued Special Orders to the twelve alcohol suppliers that were identified by public sources as the top spenders on alcohol advertising in "measured media" (television, radio, print, and outdoor advertising) in 2005.[18] *See* Exhibit A.

The Special Orders required submission of: contact information and other background data (Specification 1); advertising expenditure data (Specification 2); advertisement placement data (Specification 3); and information on external enforcement mechanisms (Specification 4). In addition, the staff requested that the suppliers and the trade associations submit substantial additional information that would "flesh out" the responses to the Special Orders. The Commission's findings are set forth below.

II. Study of Industry Self-Regulation

A. Supplier Background Information[19]

In 2005, the twelve suppliers that received Special Orders sold over 2.4 billion cases of alcohol,[20] representing about 73 percent of U.S. alcohol supplier sales by volume in 2005. Their pre-tax sales revenues were approximately $30.8 billion.[21] They sold 1,133 brands or brand extensions, including 246 wines, 169 beers, 659 distilled spirits, and 59 alternative beverages (such as premixed cocktails and flavored malt beverages).

B. Advertising and Promotional Expenditures

The FTC's 1999 Alcohol Report had estimated, based upon marketing documents provided for a few brands, that measured media expenditures might account for only one-third of alcohol brand promotional budgets. The Special Orders directed the twelve suppliers to report the dollar amount they expended during the calendar year 2005 on the advertising, merchandising, or promotion of beverage alcohol products in the United States in 22 categories.[22]

The purpose of the request was to identify generally 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. In addition to providing expenditure data, the companies provided examples of programs supported by expenditures, particularly expenditures in lesser-known categories, and described efforts to reduce the likelihood that such expenditures would be targeted to those below the legal drinking age ("LDA").

1. Response Summary

The companies reported just over $3 billion in advertising and promotional expenditures in 2005, presented below in descending order of prevalence:[23]

Table 1

Industry-wide Allocation of Advertising and Promotion Expenditures

Category	% of Total Industry Expenditure	Amount Spent (in Thousands)	Minimum % of Company Expenditure	Maximum % of Company Expenditure
Television	25.97%	$825,915	1.43%	36.48%
Other Point-of-Sale Advertising and Promotions	18.84%	$599,105	0.00%	53.17%
Sponsorship of Sporting Events, Sports Teams, or Individual Athletes	10.95%	$348,340	0.26%	20.71%
Promotional Allowances	7.49%	$238,200	0.00%	58.87%
Specialty Item Distribution	7.02%	$223,423	0.17%	27.56%
Retail Value-Added	5.99%	$190,481	0.00%	13.43%
Outdoor	5.62%	$178,795	2.99%	12.96%
Public Entertainment: Not Sports Related	5.07%	$161,301	0.73%	13.45%
Radio	5.01%	$159,504	0.00%	12.24%
Magazine	4.36%	$138,784	1.00%	13.47%
Supplier-Sponsored Internet Sites	1.08%	$34,501	0.05%	2.35%
Newspaper	0.91%	$28,815	0.22%	1.96%
Other Internet Sites	0.77%	$24,498	0.00%	2.78%
Transit	0.41%	$13,109	0.00%	1.35%
Direct Mail	0.30%	$9,464	0.00%	2.99%
Product Placements	0.11%	$3,398	0.00%	0.82%
Other Digital	0.06%	$1,797	0.00%	0.17%
Telemarketing	0.02%	$684	0.00%	0.14%
Spring Break Promotions	0.02%	$482	0.00%	0.06%
Total Reportable	**100.00%**	**$3,131,130**[24]		
Cross Categories				
Sports and Sporting Events	26.33%	$837,335	0.00%	45.80%
Social Responsibility Programs and Messages	3.50%	$111,219	0.00%	5.31%

2. *Traditional Media*

Traditional advertising on television and radio and in magazines and newspapers accounted for just over 36 percent of expenditures. The self-regulatory codes of the three trade associations specify that ads should be placed during radio and television programming or in print media only if at least 70 percent of the audience is reasonably expected to consist of persons of legal drinking age and older ("LDA adults").[25] The BI and DISCUS codes – which govern the practices of the twelve suppliers evaluated during this study – include buying guidelines that identify appropriate demographic data to consider when making television, radio, and magazine purchases.[26] Part II.C of this report evaluates industry compliance with this standard.

3. Outdoor Advertising

Outdoor advertising (such as billboards) represented about 5.6 percent of expenditures. Transit advertising (such as ads at bus stops and other transportation facilities) represented about 0.4 percent of expenditures. The BI Code and the DISCUS Code specify that outdoor stationary advertising may not be located within 500 feet of elementary and secondary schools or places of worship; the WI Code does not address the placement of outdoor ads.[27]

4. Sponsorships

Sponsorships accounted for 16.3 percent of expenditures. Two-thirds of these funds were directed at sponsoring sports events (*e.g.*, football, baseball, or auto racing), sports teams, and individual athletes.[28] The other third was directed to non-sports events, such as sponsorship of concerts and comedians. The BI Code provides that advertising and marketing is prohibited at any event where "most" of the audience is expected to be below the legal drinking age; the DISCUS Code requires that 70 percent of the audience for sponsored events consist of LDA adults; and the WI Code requires that advertising not "use entertainment or sports celebrities having a particular appeal to persons" below the LDA.[29] If sponsored events are carried on television or radio, the promotions also are subject to the code placement provisions applicable to advertising in those media.

5. Expenditures to Help Others Promote Alcohol Products

Suppliers rarely sell alcohol directly to consumers; instead, they sell to wholesalers (also known as distributors), 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 sports 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 wholesalers and retailers promote their products to consumers.

Nineteen percent of expenditures were devoted to the other point-of-sale ("POS") category, meaning expenditures by suppliers to produce promotional materials used by retailers engaged in either on-premise or off-premise sales. POS expenditures fell into three general categories. The first was inexpensive items such as temporary signs of all sizes, display racks, table tents, coasters, and napkins. The second was permanent or semi-permanent materials such as neon signs, branded furniture, lighting, and mirrors. The third was promotional events, such as product tastings and bar nights, intended to promote brand trial. In most cases, POS promotional items are installed by a wholesaler, rather than the supplier.

The specialty item and retail value-added categories represented 13.2 percent of expenditures. Specialty items include items other than alcohol that are distributed to consumers at retail; examples are branded clothing or glassware. Retail value-added refers to promotions where a consumer gets a free alcohol or non-alcohol item with a purchase, such as a free bottle of wine or a bottle opener.

Promotional allowances represented 7.5 percent of expenditures. Promotional allowances are funds provided by a supplier to its wholesalers or, infrequently, to retailers. Wholesalers use these funds for a variety of purposes, including the purchase (from the supplier) of POS materials, installation of POS materials at retail, the purchase of local advertising, and the conduct of local marketing programs. Some suppliers provide lump-sum grants to wholesalers in advance; others reimburse the wholesaler for money actually spent.

The suppliers appear to keep self-regulatory provisions in mind when providing assistance to local marketing efforts. One supplier stated:

> We require a distributor to propose . . . a promotional program to our local sales or marketing employees for approval. We require our employees to fully evaluate the program to ensure compliance with local regulations, [the self-regulatory code], as well as compliance with [the supplier's] internal marketing code. Often our local employee will involve the Legal Department if there are any questions or concerns. Similarly, if the local promotion involves media purchases, all purchases must be pre-cleared with [the supplier's director of media services] . . . . In addition, in states where we have contracts with our distributors, we require the distributor to abide by the applicable [self-regulatory codes].

Many of these expenditures are subject to provisions of the Federal Alcohol Administration Act ("FAA Act"), and implementing regulations thereunder, designed to preserve retailer independence from suppliers and wholesalers.[30] In addition, the states heavily regulate retailers' acceptance and use of POS, specialty and retail-value-added items, and promotional allowances from wholesalers and suppliers.[31]

6. Internet

Internet promotions represented only 1.9 percent of expenditures; this likely reflects the relatively low cost of Internet marketing, rather than its potential reach. Just over half of the funds dedicated to Internet marketing supported company-sponsored sites; the remainder was directed to promotions on other sites.

a. Company-Sponsored Sites

In the case of company-sponsored sites, the Commission previously recommended that companies limit access to those users stating that they are over 21, for example, by entering a birth date indicating an age of 21 or older to gain admission.[32] It also recommended that sites featuring content likely to have strong appeal to minors, or that permit alcohol purchases online, consider use of age-verification technologies, *i.e.*, systems that instantly compare the consumer's personal information to electronic databases of government and commercial information, to verify that the identified consumer is 21 or older.[33]

The twelve companies that received the Commission's Special Orders operate 223 websites to promote their brands.[34] Of these, 197 websites require the user to input his or her date of birth to gain entry to the site; if a user indicates an age under 21, the site will prohibit access, often redirecting the browser to a consumer education website.[35] Another ten company-operated websites require the user to certify that he or she is 21 or older (by checking a box). Finally, sixteen company-operated websites do not screen for age in any manner.

One alcohol company uses age-verification technology on a company-owned site. In February 2007, Anheuser-Busch launched an online entertainment network, Bud.TV (www.budtv.com). The company is using an age-verification system to limit entry to the site.[36]

b. Online Alcohol Sales

Four of the suppliers that received the Commission's Special Orders operate websites that offer consumers the ability to purchase alcohol online, either directly from the company, or by linking to a third-party alcohol vendor. In response to Commission recommendations, these companies now all either employ age-verification technologies in connection with online sales or perform a similar check after the potential purchaser has phoned or faxed in his or her personal information.

c. Advertising on Independent Sites

Alcohol suppliers also advertised widely on independent sites. In 2006, the self-regulatory codes applied to Internet advertising but did not specify a 70 percent placement standard or include an Internet buying guideline. Nonetheless, most individual companies advised the Commission that they followed a 70 percent standard for placing advertising on independent sites. They made placement decisions in light of a site's demographic data for the prior two or three months, as measured by one or both of two Internet data measuring services.[37] For websites not so measured, several companies required third-party verification that the target site met the 70 percent placement standard; another assumed that websites based on magazines or television programs shared the demographics of the magazine or program at issue. In addition, some prominent websites used filtering mechanisms to direct alcohol ads only to users whose registration information identified them as being 21 or older.[38]

7. Telemarketing, Mail, and Digital Communications

Three categories of expenditures reflecting communication with individual consumers – telemarketing, direct mail, and other digital advertising – accounted for 0.4 percent of expenditures. Telemarketing, according to suppliers, referred to use of "on hold" messages when consumers call a company, either for general inquiries or in connection with sweepstakes (some states require a 1-800 number for sweepstakes). Direct mail – either U.S. mail or electronic – as reported by suppliers, was used to communicate with consumers who joined a product club. Other digital advertising consisted of email and text messaging communications with customers; only consumers who consented to such messages were included in the promotions.

Suppliers used a variety of means to reduce the likelihood of communicating with those under the legal age. One supplier maintained a database of registered users who opted-in to receive emails; it used an outside contractor to conduct age verification and eliminated from the database those not verified to be 21 or older. Another supplier required that consumers seeking to send text messages "voting" on the appearance of an advertising campaign first enter their date of birth; if the date of birth showed the consumer to be less than 21, the vote was rejected. A third supplier sent emails to website visitors who had entered a date of birth showing that they were LDA adults to gain entry to the site, who thereafter opted-in for email communications. Several companies' forward-to-a-friend campaigns required that the email recipient connect to the company's websites through a gateway page that screened for the recipient's age. Finally, one company's digital marketing policy sought to limit transfer of advertising content to underage users by creating content that could not be copied (*e.g.*, through right-clicking and using the "save as" feature); this company also included statements in close proximity to the downloadable advertising content, prohibiting the sharing of such content with persons under the legal drinking age.

8. Spring Break

Spring break promotions represented 0.02 percent of expenditures. According to the Special Order responses, spring break activities were limited to licensed retail establishments; materials supplied for these activities included special bar signs and branded product give-aways.

9. Product Placement

Product placements accounted for 0.1 percent of expenditures. A product placement most often consists of making product or other branded items available for use as props in movies or television programs. Less often, suppliers have provided cross-promotional support for films, in the form of advertising, website development, and specialty item distribution.

Product placements on television are treated in the same manner as advertising on television, that is, they are appropriate only if the available data supports the conclusion that at least 70 percent or more of audience members will be LDA adults. In the case of films, suppliers advised that product placement decisions have been made on a case-by-case basis, based upon review of the proposed script.[39]

10. Cross-Category Analysis

a. Sports and Sporting Events

Suppliers estimated, from across the previously identified categories, that 27 percent of all promotional expenses were directed to sports and sporting events. This includes expenditures to sponsor teams or events as well as the placement of advertising during sports programming.

Three percent of supplier expenditures were made in connection with college sports. The BI Code permits marketing on college campuses or at college-sponsored events if permitted by the school.[40] DISCUS and WI prohibit marketing on college campuses.[41]

b. Social Responsibility Programs and Messages

The Special Orders required the suppliers to estimate expenditures to support social responsibility programs and messages. The expenditures reported in this category could, but did not necessarily, duplicate expenditures reported in prior categories (such as television and print ads). On average, suppliers reported that an amount equal to about 3.5 percent of 2005 promotional expenditures were dedicated to these efforts.[42]

C. Advertising Placement

The placement provisions of the BI Code and the DISCUS Code include a protocol, as well as a placement standard. They require the companies to check audience composition data before placing an ad, and permit a placement only if specific demographic data identified in the buying guidelines show that 70 percent or more of the audience has, over the past six months to a year (depending on the medium), consisted of LDA adults.[43] The responses to the Special Orders provided information about the extent to which industry adopted procedures consistent with the placement provisions, as well as whether they were successful in attaining an LDA audience composition of 70 percent or higher when the advertisement actually ran.

1. Placement Procedures

It appears that all twelve of the suppliers made good-faith efforts to implement the protocols described in the codes. They directed their media buyers[44] to review the available demographic data before placing ads, and to place ads only if the data showed that the audience historically met the 70 percent standard.[45] Before placing in television, the suppliers directed their buyers to consider the syndicated demographic data for the past six months for the program in which the advertisement would appear, except in the case of small cable networks, where data were available only for three- to six-hour dayparts. Before placing on radio, they directed the buyers to consider the audience composition data for the past six months for the standard daypart in which the advertisement would appear. Before placing in magazines, the suppliers directed the buyers to consider the most recently published syndicated data about the audience for that publication; if the publication was not measured by a syndicated data source, the suppliers relied on other data, as identified in the codes. If a supplier learned that a magazine's readership fell below the 70 percent standard, it would stop advertising in that magazine, or place ads only in a special "21 plus" edition of the publication.[46] Some suppliers also considered other factors when placing ads, to reduce the likelihood of reaching an underage audience. For example, most directed magazines not to place ads in issues that featured underage persons on the cover; others prohibited ads on wrestling or animated programs on television.

Some of the suppliers purchased advertising as much as a full year in advance; in such cases, suppliers and media buyers generally re-reviewed data before the placement actually occurred. If updated data showed that the audience had changed, the outlet was placed on a "no-buy" list until it came into compliance.[47]

2. Placement Results

The preceding paragraphs discussed the procedures that the companies followed, and the data they considered, *before* making a placement. The Special Orders required the companies also to provide data showing the composition of the audience (that is, number and percent of persons below and above the LDA) for each individual television, radio, magazine, and newspaper advertising placement that occurred in the first six months of 2006.[48]

The combined data for the twelve suppliers are summarized in Table 2, below.

Table 2

Summary of Placement Data

	Column A: Placements That Met Target	Column B: Impressions From Placements That Met Target	Column C: Proportion of Aggregate Audience 21+
All Ads	92.50%	97.12%	86.22%
Television	93.94%	97.45%	85.68%
Radio	92.04%	95.11%	88.12%
Newspapers	99.77%	100.00%	91.80%
Magazines	98.51%	98.99%	86.34%
Targeted Ads: African American	94.17%	96.86%	87.99%
Targeted Ads: Hispanic	92.85%	94.35%	83.30%

First, the Commission evaluated what percentage of the twelve suppliers' placements met the 70 percent target, industry-wide. As shown in Column A of Table 2, 92.5 percent of all television, radio, and print advertising placements for which data were available hit the 70 percent target, that is, had an LDA audience composition of 70 percent or higher.[49] This included about 94 percent of television advertisements, 92 percent of radio advertisements, 99 percent of newspaper advertisements, and 98 percent of magazine advertisements. Among placements that did not meet the 70 percent target, most (about two-thirds) had an LDA audience of 60 percent or higher.

Second, the Commission evaluated "impressions" data; impressions are the number of persons exposed to an ad. Some programs and print media have large audiences and thus result in many advertising impressions, whereas others have small audiences and result in few impressions. For example, an advertisement on a local radio or special interest cable network generally will result in far fewer impressions than an advertisement shown on national network television.

Column B in Table 2 shows what proportion of the suppliers' advertising impressions results from placements that met the 70 percent target. Overall, about 97 percent of total alcohol advertising impressions were due to advertising placements that met the 70 percent target, including about 97 percent of television impressions, 95 percent of radio impressions, and nearly all newspaper and magazine impressions. Further, less than 0.6 percent of impressions occurred as a result of advertising with less than a 60 percent adult audience.

Column C in Table 2 shows the percentage of the aggregate audience for alcohol ads that was composed of persons 21 and older (as opposed to underage persons) ("aggregate LDA composition"). Overall, about 86 percent of audience members for the measured advertising was 21 or older. Further, among individual suppliers, the aggregate LDA composition ranged from a low of 83.2 percent to a high of 87.8 percent.

The Commission also collected data about advertising targeted to African-American or Hispanic audiences.[50] Among placements targeted to African-American audiences, 94 percent met the 70 percent target, and among placements targeted to Hispanic audiences, 92.8 percent met the 70 percent target, as shown in Column A. More than 87 percent of the audience for African-American-targeted advertising, and more than 83 percent of the audience for advertising targeted to Hispanic audiences, was composed of persons 21 or older, per Column C. Further, among individual suppliers, the aggregate LDA composition ranged from a low of 82.8 percent to a high of 100 percent for ads targeted to an African-American audience, and from a low of 78.8 percent to a high of 89.1 percent for advertising targeted to a Hispanic audience.

3. Motor Sports Promotions

Concerns have been raised about alcohol advertising and promotions related to the National Association of Stock Car Auto Racing, or NASCAR, given recent statements by NASCAR that this sport is highly popular with youth.[51] The Special Order responses confirm that several suppliers sponsor motor sports teams or events, or advertise during motor sports programming. The Commission's study shows that nearly all (98 percent) of motor sports programs on which alcohol advertising appeared in the first half of 2006 had a 70 percent or higher LDA audience; in the aggregate, about 92 percent of the audience for these programs was composed of LDA adults.[52] According to available data, the audience attending NASCAR events is 85 percent above the LDA.[53]

D. External Review of Compliance

1. Background

To increase the effectiveness of self regulation, prior Commission reports recommended supplementing suppliers' internal mechanisms for fostering code compliance with an external system for resolving disputes about whether a particular advertisement violates the code.[54] The Commission recommended that such a system: (1) be impartial and objective; (2) be public; and (3) apply standards consistently.[55] Specification 4 of the Commission's Special Orders directed the companies to provide detailed information about the status of third-party review, including information about complaints reviewed by the BI, DISCUS, or WI review boards in 2006.[56] The Commission considered the responses in light of public comments asking that: (1) the Commission evaluate whether industry members comply with review board recommendations; (2) industry members be barred from the review boards, in order to eliminate bias in industry's favor; and (3) fines be assessed for code violations, in order to increase deterrence.[57]

2. External Review Procedures

The DISCUS review board is made up of senior member company representatives. It also has an Outside Advisory Board that is available to break a tie when the review board cannot reach a majority decision.[58] DISCUS will consider complaints filed by consumers or competitors about advertising of any member's spirits, wine, and beer brands, as well as about advertising for non-members' spirits brands. DISCUS will consider complaints lodged anonymously. The DISCUS website, www.discus.org, contains the DISCUS Code, buying guidelines, information about the outside advisory board, and the decisions of the review board, which are published semi-annually. It does not permit complaints to be filed online, however.

The Wine Institute adopted third-party review in September 2005. The WI requires that complaints about wine advertising be reviewed first by an internal panel of association 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.[59] The WI website, www.wineinstitute.org, contains the text of the WI Code, a flowchart outlining the complaint review process, and information on how to file a complaint. It also states that findings of the review process will be published on the WI website. The WI considers complaints about WI member products only. The WI will consider complaints by competitors, but it will not take anonymous complaints.

The Beer Institute implemented its external review system in February 2006. The five-member BI review board is comprised wholly of non-industry personnel, drawn from the advocacy, legal, and marketing communities.[60] Under the BI's review process, complaints are first considered by the relevant brewer; complainants who are dissatisfied with the brewer's response may then file a formal complaint with the BI review board. The BI website, www.beerinstitute.org, contains the text of the advertising code and buying guidelines, decisions of the review board, and the review board's annual reports.[61] The site's homepage contains a clearly labeled, prominent link to this information. The BI permits online complaint submissions (the other trade associations do not); the BI's website contains the online form, as well as a downloadable print-and-send complaint form. The BI does not accept anonymous complaints. The BI accepts complaints about non-member company advertising, and sends them to the non-member company for its consideration; to date, no complainant has asked for further consideration of a non-member's advertising by the BI review board. The BI does not accept competitor complaints.[62]

3. Review Board Decisions and Compliance

In 2006, the review boards of the three industry trade associations considered a total of twenty-six complaints alleging that suppliers had violated the placement or content provisions of the codes. The results are shown in Table 3, below:[63]

Table 3

External Review - 2006

	Complaints Considered	**Decisions Adverse to Advertiser (#, %)**	**Company Compliance with Review Board Decision (#, %)**
DISCUS			
–Complaints about member ads	12	4 (33%)	4 (100%)
–Complaints about non-member ads	10	8 (80%)	6 (75%)
Beer Institute	4[64]	0	not applicable
Wine Institute	0[65]	not applicable	not applicable
Total	26	12 (46%)	10 (83%)

As shown in Table 3, the review boards agreed with the complainants in 12 of the 26 cases (46 percent). In all cases where the complaint pertained to advertising by a member of the trade association at issue, the member complied with the review board decision. Additionally, in 75 percent of cases involving non-members, DISCUS was able to persuade the advertiser to comply with the findings of the DISCUS review board.

III. Youth Alcohol Access

Limiting youth access to alcohol is demonstrated to be effective in reducing and preventing underage drinking and drinking-related problems.[66] Experts attribute the substantial long-term reductions in teen drinking depicted in Figure 1 of this report to the adoption, in the 1980's, of laws limiting alcohol purchases to persons 21 and older.[67] Indeed, teen drinking rates have declined along with teen perceptions that alcohol is easily available to them.[68]

Today, most teens who drink alcohol obtain it from social sources (from older friends or siblings, at parties where adults are present, or by taking it from their own homes, or those of friends, with or without permission),[69] although older adolescents may also obtain it from commercial sources.[70] In its 2003 Alcohol Report, the Commission stated that the availability of alcohol to teens could only be reduced by changing adult attitudes about teen use.[71] The Institute of Medicine and the Surgeon General also called for increased attention to youth access to alcohol and a change in adult attitudes about youth drinking.[72]

In October 2006, the Commission launched the "We Don't Serve Teens" ("WDST") consumer education program, spreading the message, "Don't serve alcohol to teens. It's unsafe. It's illegal. It's irresponsible." WDST is a government program targeted to parents and other responsible adults. The WDST website, www.dontserveteens.gov, summarizes the available data about teen drinking rates and risks, provides links to state drinking age laws, and describes efforts parents can undertake to protect their children from alcohol-related harm. The site rebuts common assertions about teen drinking – such as the pervasive myth that European teens drink less than American teens.[73] The materials on the website – including public service announcements ("PSAs") for television, radio, and print media – are available in English and Spanish, free of charge. Following the launch, public and private partners identified on the website helped deliver the WDST message to a broad range of constituencies.

In September 2007, the Commission sponsored WDST Week, designed to dramatically heighten awareness of the program by concentrating PSAs and media events in a short period of time. The Commission obtained substantial help in this effort. The alcohol and advertising industries disseminated thousands of WDST PSAs across the nation, on billboards, radio, and television, and in magazines and newspapers.[74] National print media including *Time*, *U.S. News and World Report*, *Newsweek*, *Good Housekeeping*, and *Travel & Leisure* featured WDST ads. On radio, the WDST message was delivered by PSAs featuring state attorneys general and FTC personnel (in both English and in Spanish). On television, the WDST message was delivered via a television ad, also available in both English and Spanish, that can be seen on the WDST website. In seventeen states, state attorneys general participated in WDST press conferences that also featured law enforcement, state alcohol regulators, consumer groups, and industry members; these events generated numerous follow-up articles about the importance of limiting teen access to alcohol in local media.[75] Further, in the weeks and months before the press events, alcohol industry members worked to deliver WDST retail materials (including cold case clings and lapel pins for sales staff) to tens of thousands of retail outlets nationwide.[76] A complete list of 2007's WDST Week participants, and examples of the print and billboard PSAs, are attached as Exhibit B. WDST Week generated more than 1.1 billion advertising impressions for the WDST program, with a market value of over $9 million.

IV. Analysis and Recommendations

A. Placement of Advertising

Alcohol suppliers devote a substantial proportion of promotional expenditures to traditional television, radio, and print media advertising.[77] The suppliers have implemented the placement procedures – including the review of available audience demographic data before making placements and the conduct of periodic post-placement audits – that were added to the codes in 2003. Further, the post-placement data show that more than 92 percent of the placements met the 70 percent target when they ran and more than 97 percent of impressions were due to advertisements that met this target.[78]

Advertising placement relies on historical data to make decisions about the future. Some placement shortfalls – instances when the audience turns out to be different than expected – are likely to be unavoidable, given the nature of the available data.

First, audience composition can change unexpectedly due to programming modifications or competitive factors. In the case of television, national audience demographic data are updated at least monthly and companies can adjust their purchases frequently. Radio data, however, are updated only twice per year, and magazine data are updated only once per year.[79] As a result, advertisements placed on radio and in magazines may run for many months before a company learns of the need to modify a placement.

Second, audience composition data consist of statistical projections from surveys of samples of media users. In the current environment, many media compete for the attention of viewers. In the case of niche media – such as local radio, local television, and small cable networks – the sample from which audience share is projected can be very small.[80] This produces "bounce," which is defined as "a change in station ratings from one [ratings] book to the next that is the result of a sampling error rather than any real change" in audience demographics.[81] Indeed, the study data showed that network television advertisements, where the sample sizes are larger, were far less likely to miss the 70 percent target, as compared to local station advertisements.[82] Bounce appears likely to have contributed to some of the shortfalls seen in the 2006 radio and television data. Upcoming technological improvements in radio[83] and television[84] audience measurements may, over time, produce improvements in the placement process.

The Commission believes, however, that placement management difficulties also contributed to the shortfalls seen in the 2006 data, as described in Part II.C.2, above. In the course of the study, there were instances when data submitted by the suppliers were flawed; the Commission therefore required the submission of corrected and additional data.[85] It appeared that some company personnel did not understand the audience composition data well enough to evaluate the data critically and identify potential problems. These kinds of problems may be avoided in the future with minor improvements in the placement system, as discussed further below.

Some stakeholders have urged the Commission to recommend changes in the placement standard. Two alternative proposals have been put forward. The first proposal calls for limiting advertisements to media where 85 percent of audience members twelve and older are above the legal age (hereafter, the "85 percent baseline standard").[86] Others have recommended that the industry adopt a 75 percent LDA baseline standard for television, radio, and print advertisements, coupled with a minimum aggregate average LDA audience composition of 85 percent per brand and medium ("75 percent baseline/85 percent aggregate" standard), consistent with a commitment made by Beam Global Spirits and Wine ("Beam Global") in 2007.[87] The Surgeon General's *Call to Action* did not call for a change in the placement standard but emphasized that the placement of alcohol advertising, promotions, and other means of marketing should not disproportionately expose youth to messages about alcohol.[88]

A change in the placement standard would require the suppliers to modify their advertising plans. If a 75 percent baseline standard had been in place in 2006, it would have required the suppliers to relocate about 12 percent of their placements.[89] An 85 percent baseline standard would require more significant modifications.[90]

Proponents of the 85 percent baseline standard argue that under the current regime, youth are disproportionately exposed to alcohol advertising – that is, they argue that, per capita, youth see more television, radio, and print alcohol advertising than do adults. In support of their argument, they rely on an analysis that purports to compare alcohol advertising "gross rating points" ("GRPs," a measure of advertising exposure) reaching youth and adults. The proponents' own data, however, appear to show that the primary audience for alcohol advertising is of legal drinking age. For example, under the current 70 percent placement standard, young LDA adults see more alcohol advertising than do youth.[91] Further, as proposed, the 85 percent baseline standard would prohibit alcohol advertisements in media where more than 15 percent of audience is aged 12 to 20, but it would permit an unlimited number of children ages 2 to 11 to be in the audience. Such an approach does not appear sufficiently protective of young children.[92]

Of course, a change in the baseline standard is intended to reduce underage impressions. It is unclear, however, that this is an assured result. Advertising expenditure and placement decisions are a function of numerous factors, including decisions by existing suppliers to introduce new brands or increase their budgets for existing brands, as well as decisions by new entrants to engage in advertising; indeed, each year, several hundred new alcohol brands are introduced in the United States, sometimes accompanied by significant advertising and marketing support.[93] Further, the placement standards apply to individual placements; they do not and cannot control the total level of alcohol advertising and promotional expenditures that occur. If the standard were raised, an advertiser seeking to reach a certain number of young LDA adults[94] could (subject to budget constraints) run advertisements on a greater number of programs. Even if each of the programs met an 85 percent standard, total underage exposure could increase.

An effective alcohol self-regulatory guideline should be designed to prevent industry members from targeting youth without undue restriction of avenues for marketing to the legitimate adult audience.[95] The 70 percent standard is grounded in the 2000 census data (showing that approximately 70 percent of the U.S. population is 21 and older).[96] Despite the placement shortfalls identified previously, when the audience data for television, radio, and magazine advertisements disseminated by the twelve suppliers were aggregated, more than 85 percent of the combined audience during the time period for which data were collected consisted of LDA adults; each individual company's advertising reached at least an 83 percent LDA adult audience. Thus, it appears that the current 70 percent baseline standard has helped to ensure that alcohol advertising is not disproportionately directed to those below the legal drinking age, as recommended by the Surgeon General's *Call to Action*.

Recommendation. Upon consideration of the record – including the comments received during the study, the placement data, the potential costs and benefits of a modified standard, and the risk of unintended adverse consequences – the Commission is not recommending a change in the baseline placement standard at this time. The Commission does, however, recommend that individual suppliers consider aggregate audience composition (that is, what percent of the overall alcohol advertising audience, aggregated across placements, is of legal age) when making placements.[97] Further, the Commission urges the trade associations to consider the results of the 2010 Census, when they become available.[98]

Finally, the Commission has identified practices that will facilitate better management of placements consistent with the self-regulatory codes. These include:

- adoption by the trade associations of consistent and transparent systems for interpretation of the demographic data;[99]
- regular training of company personnel about audience composition data, including training by the trade associations about practices calculated to ensure compliance with the placement standards;
- "hands on" management of media buyers; and
- maintenance of records that reflect actual buys and show the source of post-placement demographic data.

Such changes are essential to facilitate a level playing field, improve the media buying process, and increase the integrity of self-regulatory codes.

B. Internet Advertising

As discussed in Part II.B.1, above, Internet promotions represented less than two percent of company marketing expenditures in 2005. Nonetheless, these expenditures may grow substantially over time, as they have for other industries.

1. Supplier Sites

In the 2003 Alcohol Report, the Commission recommended that supplier sites require visitors, at a minimum, to input their date of birth to gain entry to the site, and deny entry if a user indicates an age under 21.[100] The three industry codes require age screening on company-operated Internet sites.[101] The Commission's survey of sites operated by the twelve suppliers revealed that about 88 percent of the websites promoting the companies' alcohol brands required consumers to enter their birth date, and denied entry to consumers identified as younger than the LDA.[102] Only four percent of the alcohol company websites surveyed included a check-box age certification; seven percent did not screen for age at all.

Recommendation. As the Commission has advised in the children's online privacy arena,[103] website operators should be mindful of the potential for underage consumers to falsify their ages, and take care to install effective age-screening mechanisms. In addition to including a neutral age entry screen on all sites promoting alcohol brands, alcohol companies should consider using tracking tools to prevent minors from back-clicking to change their birth date once they realize that they have been blocked from an alcohol company website based on their age. In addition, the Commission reiterates its admonition that companies avoid online content that is likely to appeal to minors. When such content is unavoidable, companies should consider instituting age-verification, as recently used by Anheuser-Busch, rather than simple screening mechanisms.[104]

2. Online Alcohol Sales

Only a minority of the suppliers in this study engaged in online alcohol sales; the suppliers who engaged in such sales have adopted age-verification technologies. The Commission does not have data showing the extent to which suppliers and other industry members who were not a part of this study engage in direct shipping of alcohol. Online alcohol sales are an important means of competition for small vintners whose brands are not widely distributed by wholesalers, but present special concerns about youth access to alcohol. The WI code recommends, but does not require, that member websites employ third-party age verification, and has an arrangement with a third-party vendor to provide age-verification services to WI members who choose to use it.[105] Major delivery companies have adopted special provisions for shipment of alcohol, including conspicuous labeling and an adult signature requirement to ensure that the recipient of alcohol shipments is an LDA adult;[106] some states mandate use of these systems.[107]

Recommendation. The Commission recommends that companies engaged in online alcohol sales use procedures to ensure that alcohol is not shipped to underage purchasers.[108]

3. Advertising on Third-Party Sites

Alcohol suppliers advertised widely on independent sites and, as previously noted, they have generally applied an informal 70 percent placement standard when making placements on such sites. Further, the WI code already applies a 70 percent standard to Internet placements. With the advent of readily available and apparently reliable Internet audience demographic data, it is appropriate for BI and DISCUS also to adopt a formal self-regulatory guideline for this medium.

Recommendation. In the course of this study, the Commission staff recommended that the BI and DISCUS codes be modified formally to extend the 70 percent baseline placement standards to Internet advertising, and to adopt specific buying guidelines for Internet advertisements.[109] BI and DISCUS adopted such guidelines; they are attached to this report as Exhibits C and D.

DISCUS's Internet/Digital Buying Guidelines, effective January 1, 2008, apply to all paid and unpaid advertising placements made by or under the distiller's control. DISCUS's guidelines specify that distillers use a consistent syndicated audience measurement tool as their primary data source; advertisements are to be placed based on a site's most recent three-month unique audience average. For unmeasured sites, distillers must obtain an independent demographic survey based on the most recent three-month unique audience site average. Alternatively, if a site incorporates a registration mechanism, the distillers may limit advertising placements to a site's registered users who are of the legal drinking age. Distillers also may direct advertisements to registered users age twenty-one and above on sites that do not otherwise meet the placement standard. DISCUS's guidelines direct companies to conduct post-placement audits of Internet advertising placements, and to take appropriate corrective measures, as soon as is practicable, when a placement does not meet the placement standard.

BI's new Internet Buying Guidelines, effective for placements made after January 1, 2008, apply to all paid and unpaid placements on third-party websites. When a single purchase is made for advertisements on multiple websites, the placement standard and the buying guidelines apply to each website independently. The BI's guidelines require brewers, in most instances, to use a consistent, recognized, Internet audience measurement source to make advertising placement decisions. Placements are deemed appropriate when the unique audience of monthly visitors for the two most recent consecutive monthly reports prior to placement meets or exceeds the 70 percent standard. For new or unmeasured websites, brewers may use audience composition data for sites that appear to be in the same category and have similar content. Brewers also may direct advertising placements to websites that are able to restrict dissemination of advertisements to registered users who are of the legal drinking age. Finally, brewers must conduct post-placement audits of actual placements on measured websites at least twice each year.

These new guidelines are flexible, taking into account the evolving nature of the Internet audience measurement services. Because Internet audience data are readily available on an up-to-date basis, the Commission urges companies to monitor their Internet placements frequently, and to take immediate action to pull, or otherwise adjust, advertisements that do not comply with the placement standard.

C. Other Digital Advertising

Other digital advertising, too, will likely grow in importance over the coming years.

Recommendation. As alcohol marketing efforts expand into new digital areas, such as email and mobile marketing, it is important that suppliers continue to expand their age-screening and verification processes, as well. Using currently available technologies, such as directing emails or text messages only to persons who have opted-in to a registered 21+ database, or using third-party age-verification services to eliminate from a company's marketing databases persons not verified to be above the legal drinking age, suppliers can reduce the likelihood that alcohol advertising will be directed to an inappropriate audience.

D. Sponsorships

Sponsorships are a common vehicle for promoting alcohol. Currently, however, the BI and WI codes do not articulate a 70 percent placement standard for events.

Recommendation. The Commission recommends that the BI and WI codes be modified to apply a 70 percent placement standard for sponsorship of events, as well as placements in print and broadcast media.

E. Product Placement in Films

The general standards for placing advertising on television also apply to product placement in television programs. Product placement in movies, however, presents a more difficult subject for self-regulation because it is difficult to predict, when a movie is being produced, what its ultimate audience will be. In 1999, the Commission recommended that companies make product placements only in films that would be rated “R” or “NC-17” or, if unrated, had a mature theme.[110] This standard has not proved entirely satisfactory. Some companies placed alcohol products in films expected to have an “R” rating, only to learn later that the producer modified the film to obtain a “PG-13” rating. More importantly, movie ratings may not relate well to the age of film attendees.[111] As a result, it does not appear that a film’s expected rating is a workable way to gauge the appropriateness of product placements.

The suppliers reported that they consider product placements in film on a case-by-case basis, in light of the proposed script. Some companies considered demographic information about past films as part of this process. Currently, there are three filmgoer demographic databases, including one that surveys audience members ages two and older, and another that surveys audience members twelve and older. Although these data relate to films that have already been released, they may also be informative regarding the likely audience for future, similar films.

Recommendation. The Commission recommends that industry members work with film producers to incorporate available audience demographic data into the case-by-case analysis of prospective product placements, and place only in films that the producer has a good faith basis for believing will have an audience consisting of at least 70 percent LDA adults.

F. Expenditures to Help Others Promote Alcohol to Consumers

The supplier submissions reveal that efforts to assist others to promote alcohol play a significant role in alcohol marketing. Combined expenditures for point-of-sale, retail-value-added, specialty items, and promotional allowances accounted for 26 percent of expenditures by the twelve suppliers included in this study. These expenditures are subject to the existing placement and content provisions of the self-regulatory codes. Moreover, it appears that these efforts are regulated at the federal and state level. While the Commission will continue to monitor this aspect of alcohol marketing, it does not appear that additional self-regulatory provisions are necessary at this time.

G. External Review

Much progress has been made to improve external review since the Commission's 2003 Alcohol Report. By the close of 2006, all three segments of the alcohol industry had established frameworks for consideration of complaints about alcohol advertisements.

Public comments have urged that industry members be barred from the review boards to eliminate a bias in industry's favor, and that fines should be assessed for code violations to increase deterrence.[112] Although the Commission will continue to monitor this issue, it does not appear that such changes are currently necessary. The BI's review system is the only one that is fully comprised of outside experts. It is not clear, however, that the presence of company representatives on the review boards inherently biases the complaint process in industry's favor. DISCUS's review board, composed solely of industry members, rejected alcohol advertisements more often than did the Beer Institute's review board.[113] In 100 percent of cases where the DISCUS review board found that a DISCUS member had committed a code violation, the advertiser took responsive action. The only two instances where the advertiser failed to respond involved non-member companies.

Recommendation. Certain changes are likely to increase the usefulness and reach of the complaint review process. Currently, only BI allows complaints to be submitted online.[114] The Commission recommends that DISCUS and WI also accept online complaints. Active consideration of advertising by non-member companies, as has been done by WI and DISCUS on occasion, substantially increases awareness of and compliance with the self-regulatory codes, particularly by new alcohol marketers. Permitting competitor complaints makes the system more vigorous, as it does not rely solely on consumers to identify problems. Finally, permitting complaints to be submitted anonymously facilitates complaint submission by persons who might otherwise shy away from the process.

H. Youth Alcohol Access

Although legal drinking age laws have substantially reduced teen drinking since their adoption in the 1980s, too many teens still drink, as shown by Figure 1. Reduced teen access to alcohol is essential to further progress on this point. Public education and law enforcement are both critical to this effort. Advertising has undeniable power to shape public opinion and consumer behavior. The Commission's "We Don't Serve Teens" program brings the power of advertising to bear on the issue of teen access to alcohol. It has benefitted from the support of federal government departments, many state regulators, the advertising community, and consumer groups, as well as the alcohol industry.

Recommendation. The Commission continues to encourage all stakeholders concerned about underage alcohol use to support social responsibility efforts, such as WDST, that are designed to reduce youth access to alcohol and the consequent alcohol-related injury.

V. Conclusion

The Commission has promoted self-regulation of alcohol marketing to reduce the likelihood that such marketing will, by its content or placement, target those under the LDA. The Commission has recommended self-regulation in a variety of contexts.[115] A well-constructed self-regulatory regime has 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 to 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 protections provided by the First Amendment to the U.S. Constitution.[116] The Commission continues to believe, therefore, that alcohol industry self-regulation must play a prominent role in addressing concerns about alcohol marketing and youth. The Commission looks forward to the industry's adoption of its recommendations.

The government also has a role, however. Over the past decade, the Commission has actively monitored self-regulation within the alcohol industry, both formally and informally. Ongoing outreach and studies such as this one have allowed the Commission to evaluate compliance with code provisions and to make recommendations for improvement, when appropriate. These efforts have helped inform the Commission's recommendations, and ultimately resulted in the adoption of code provisions containing an improved placement standard (including a protocol for making placements); a requirement that suppliers conduct periodic internal audits of past placements; and systems for external review of complaints about compliance with code provisions.

Having completed the current study, the Commission will implement a new system for monitoring alcohol advertising self-regulation. Each year, the Commission will send compulsory process orders to between two and four suppliers, seeking information about advertising and marketing practices, systems used to prevent deceptive and unfair marketing, and compliance with self-regulatory guidelines. This procedure will allow the Commission to appraise the industry's response to the recommendations contained in this report. It also will permit the Commission to evaluate alcohol marketing efforts in new media, and to consider efforts to reduce the likelihood that alcohol advertising in such new media will target youth.

In the past, the Commission's alcohol industry monitoring has focused primarily on the practices of the largest suppliers, an approach that may have suggested that smaller companies were immune from scrutiny. Future inquiries will include small as well as large suppliers. The Commission believes that this new monitoring system will support the self-regulatory efforts of the three trade associations.

Endnotes

1. The prior two studies are: 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").

2. The Federal Register notices were published in March and October 2006. *See* Federal Trade Commission, Agency Information Collection Activities, 71 Fed. Reg. 11,659 (Mar. 8, 2006), *available at* http://www.ftc.gov/os/2006/03/P064505ProposedInfoRequeststoBeverageAlcoholManufacturers.pdf; and Federal Trade Commission, Agency Information Collection Activities, 71 Fed. Reg. 62,261 (Oct. 24, 2006), *available at* http://www.ftc.gov/os/2006/10/P064505frnotice_inforeqalcoholads.pdf. The public comments, submitted in response to the notices, are posted on the FTC website at http://www.ftc.gov/os/comments/beveragealcoholadvertise/index.shtm and http://www.ftc.gov/os/comments/alcoholmanufacadstudy/index.shtm.

3. J.W. Miller et al., *Binge Drinking and Associated Health Risk Behaviors Among High School Students*, 119 Pediatrics 76-85 (2007), *available at* http://www.pediatrics.org/cgi/content/full/119/1/76.

4. *Id.*

5. Experts disagree, however, whether it is youth drinking that leads to academic failure, or academic failure that increases youth drinking. CDC's study concludes that drinking increases the likelihood of academic failure, citing data showing that students who report receiving "mostly A's" are three times more likely to be nondrinkers than binge drinkers; those who report receiving "mostly D's or F's" are more likely to be binge drinkers than nondrinkers. *Id*., Table 3. On the other hand, researchers with the Monitoring the Future ("MTF") project at the University of Michigan looked at long-term data and concluded that academic failure occurs prior to and predicts teen drinking. *See* J.G. Bachman et al., *The Education-Drug Use Connection: How Successes and Failures in School Relate to Adolescent Smoking, Drinking, Drug Use, and Delinquency* (2007); Press release, University of Michigan, Early School Success Protects Against Teen and Young Adult Drug Use (Oct. 4, 2007), *available at* http://monitoringthefuture.org/pressreleases/jgbpr04oct07.pdf.

6. L.D. Johnston et al., *Monitoring the Future National Results on Adolescent Drug Use: Overview of Key Findings* (2007) ("*2007 MTF Results*"), at Table 3, *available at* http://www.monitoringthefuture.org/data/07data/pr07t3.pdf.

7. *2007 MTF Results, supra* note 6, at Figure 14, *available at* http://www.monitoringthefuture.org/data/07data/fig07_14.pdf. The *2007 MTF Results* show that, as compared to 1996, alcohol use by 8th graders has declined by 39 percent; use by 10th graders has declined by 17 percent; and use by 12th graders has declined by 12 percent. *2007 MTF Results*, Table 3, *available at* http://www.monitoringthefuture.org/data/07data/pr07t3.pdf. Some have suggested that this decrease is due only to changes in drinking by boys, but data show that drinking by teen girls has also decreased. Specifically, between 1996 and 2007, drinking rates for 8th grade girls dropped from 25.8 percent to 16 percent; for 10th grade girls, the rate dropped from 38.3 percent to 33.3 percent; and for 12th grade girls, the rate dropped from 46.9 percent to 41.4 percent. *See* L.D. Johnston, P.M. O'Malley et al., *Demographic Subgroup Trends for Various Licit and Illicit drugs, 1975-2006* (Monitoring the Future Occasional Paper No. 60), at Tables D-64-66, *available at* http://monitoringthefuture.org/pubs/occpapers/occ67.pdf; L.D. Johnston et al., *Monitoring the Future National Survey Results on Drug Use, 1975–2007, Volume I: Secondary School Students* (2008, forthcoming) (NIH Publication No. to be determined), Table 4-7.

8. *2007 MTF Results*, *supra* note 6, Tables 3 and 4, *available at* http://www.monitoringthefuture.org/data/07data/pr07t3.pdf and http://www.monitoringthefuture.org//data/07data/pr07t4.pdf.

9. Teens reported using the following kinds of alcohol in the 30 days prior to participating in the 2007 MTF survey:

Grade	Beer %	Spirits %	Wine %	Wine Coolers %	Flavored Alcohol %
8	12.2	n/c	n/c	n/c	12.2
10	24.4	n/c	n/c	n/c	21.8
12	36.6	34.1	14.1	12.7	29.1

n/c= information not collected

L.D. Johnston et al., *Monitoring the Future National Survey Results on Drug Use, 1975–2007, Volume I: Secondary School Students* (2008, forthcoming) (NIH Publication No. to be determined), Tables D-75, D-76, D-77, D-81, D-83, D-85, D-86, D-87, D-89.

MTF also surveys alcohol use by older teens and adults. It reported that in 2006 (the most recent year for which data are available), 24 percent of study participants ages 19-30 reported drinking flavored alcohol beverages in the past 30 days and 56.8 percent reported drinking them in the past year. L.D. Johnston et al., *Monitoring the Future National Survey Results on Drug Use, 1975–2006, Volume II, College students and adults ages 19–45* (NIH Publication No. 07-6206) (2007), Figure 4-1, *available at* http://monitoringthefuture.org/pubs/monographs/vol2_2006.pdf (page 103 of 326).

10. Sober Truth On Preventing Underage Drinking Act, Pub. L. No. 109-422, 120 Stat. 2890 (Dec. 20, 2006), *available at* http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ422.109. Among other things, the STOP Act directs the Secretary of the Department of Health and Human Services to issue two reports to Congress each year. The first is a report on federal efforts to reduce underage drinking, including identification of evidence-based best practices to prevent underage drinking and treat those who need help as a result of youth drinking. *Id.* at Section 2(c)(1)(F). The second is a report on state laws and programs to prevent youth access to alcohol. *Id*. at Section 2(c)(2).

11. *Id*. at Section 2(b)(1).

12. Department of Health and Human Services, *The Surgeon General's Call to Action to Prevent and Reduce Underage Drinking* (2007) at 1-27, *available at* http://www.surgeongeneral.gov/topics/underagedrinking/calltoaction.pdf.

13. *Id*. at 75.

14. Wine Institute Code of Advertising Standards, *available at* http://www.wineinstitute.org/initiatives/issuesandpolicy/adcode/details; Beer Institute Advertising and Marketing Code, *available at* http://www.beerinstitute.org/BeerInstitute/files/ccLibraryFiles/Filename/000000000384/2006ADCODE.pdf; Distilled Spirits Council of the United States Code of Responsible Practices for Beverage Alcohol Advertising and Marketing Guideline, *available at* http://www.discus.org/responsibility/code/read.asp.

15. 1999 Alcohol Report, *supra* note 1.

16. 2003 Alcohol Report, *supra* note 1, at 11, 13.

17. *See supra,* note 2.

18. The Commission identified the companies based on publicly available data regarding measured media spending by alcohol companies in 2005. *See* Adams Beverage Group, *Adams Beer Handbook 2006*, at 126 (2006); Adams Beverage Group, *Adams Liquor Handbook 2006*, at 233 (2006); Adams Beverage Group, *Adams Wine Handbook 2007*, at 122-30 (2007). The companies that received the Special Orders (and examples of their brands) are:

    Anheuser-Busch Companies, Inc. (Budweiser, Busch, Michelob, and Rolling Rock beers, Bacardi Silver flavored malt beverage)
    Miller Brewing Co., Inc. (Miller, Icehouse, and Foster's beers)

Molson Coors Brewing Co. (Molson, Coors, and Killian's beers)
Heineken USA, Inc. (Heineken and Amstel Light beers)
Diageo North America (Smirnoff vodka, Jose Cuervo tequila, Guinness beer, Beaulieu Vineyards and Sterling wines, Smirnoff Twist flavored malt beverages)
Bacardi U.S.A., Inc. (Bacardi rums, Bacardi pre-mixed cocktails, Grey Goose vodka)
Pernod Ricard USA (Chivas Regal, Beefeater, Mumm and Perrier-Jouët wines)
Brown-Forman Corp. (Jack Daniels, Southern Comfort, Fetzer and Bolla wines)
Constellation Brands (Corona and St. Pauli Girl beers, Robert Mondavi and Inglenook wines, Black Velvet whiskey, ChiChi's pre-mixed cocktails)
InBev USA (Stella Artois, Bass, and Beck's beers)
Absolut Spirits Company, Inc. (Absolut vodka)
Beam Global Spirits & Wine, Inc. (Jim Beam bourbon, Sauza tequila, Gilbey's gin, and DeKuyper cordials; at the time the study commenced, Beam also owned several wine brands, since sold).

19. In response to comments, Specification 1(d) required the suppliers to provide data regarding the demographics of persons under 21 located in the U.S. who have tasted, used, or purchased the company's brands. *See* Exhibit A, Specification 1(d). The request called for data prepared or received by them on or after January 1, 2003 and excluded publicly available data, such as data published by the government or advocacy groups. One of the twelve suppliers possessed data that technically fell within the scope of the request; it was in the form of summary survey data on behaviors and habits of panels of 26,000 to 78,000 consumers, in which fewer than 3 percent and more often less than .01 percent of participants (depending on the survey company and the year) were under 21. All data were provided in an anonymous aggregate form; the company received no information on individual consumers. In some cases, the company received data sets that included information on consumers aged "18-24" or "18-34," as well as older age breaks; it was not possible, however, to extract from this information any data that were specific to alcohol purchase, tasting, or use by 18-20 year olds. As of 2007, data on consumers under 21 will no longer be provided to the company at issue. None of the other suppliers that received Special Orders had information responsive to this specification.

20. For the purposes of this report, a "case" is 9 liters or 2.25 gallons.

21. Consumer expenditures to purchase alcohol are substantially more than this, given price mark-ups at the wholesale and retail levels, as well as taxes. Retail sales in 2005 were $92.5 billion for beer, $58 billion for distilled spirits, and $26 billion for wine. Adams Beverage Group, *Adams Beer Handbook 2007* (2007) at 189.

22. *See* Exhibit A, Specification 2 and Appendix A.

23. It was not always possible for suppliers to precisely allocate expenditures as set forth in Specification 2. For example, differences in company accounting systems and promotional item labeling sometimes meant that items destined for retail outlets could be classified as non-sports public entertainment events, other point of sale, or specialty items. In addition, expenditure data were often incomplete for brands that had changed ownership.

24. Because some expenditures were reported in more than one category, the sum of the categories is higher than actual total expenditures ($3.18 billion versus $3.13 billion).

25. BI Code, ¶ 3(c); DISCUS Code, Responsible Placement, ¶ 3; WI Code, ¶ 3.4.

26. BI Code, Buying Guidelines, *available at* http://www.beerinstitute.org/BeerInstitute/files/ccLibraryFiles/FILENAME/000000000441/ADCODEBUYINGGUIDELINES2006.pdf; DISCUS Code, Demographic Data/Advertising Placement Guidelines, *available at* http://www.discus.org/pdf/DemographicGuidelinesRevised3-06.pdf.

27. BI Code, ¶ 11; DISCUS Code, Responsible Placement ¶ 7.

28. Part II.B.10.a of this report provides additional information about sports sponsorships.

29. BI Code ¶ 3(e); DISCUS Code, Responsible Placement ¶¶ 4, 5; WI Code, ¶ 3.8.

30. *See* FAA Act, 27 U.S.C. §§ 205(b) (tied house provision) and (c) (commercial bribery provision), *available at* http://www.ttb.gov/trade_practices/tied_house.shtml and http://www.ttb.gov/trade_practices/commercial_bribery.shtml and 16 C.F.R. §§ 6.81-84, 91-93, 95, 98, 99, 101(b) & 102.

31. A partial list of such state laws and regulations follows; the laws or regulations may also be complemented by other advisory information such as opinion letters or decisions. *Alabama*: Ala. Admin Code r.20-X-6.12, -7.01(f) & (g), -7.03(c) & (d), -7.11, -8.03, -8.04, -8.06, -8.07. *Alaska*: Alaska Stat. § 04.16.015. *Arizona*: Ariz. Stat. § 4-243(B)(2) & (3); Ariz. Comp. R. & Regs. 19-1-206, -210, 19-1-226(A)(1), (B)(3) & (M). *Arkansas*: Ark. Code § 3-5-104; Ark. ABC Reg. §§ 1.79(1), 2.28(4), (6), (10), & (13), 3.17. *California*: Cal. Bus. & Prof. Code §§ 23363.1 & .2, 23386, 23790.5, 25503.2, .5, .6, .8, & .27, 25611.1, 25612.5; Cal. Code Reg. tit. 4, div. 1, §§ 52 & 106(c), (d), (e), (i), & (j). *Colorado*: Col. Rev. Stat. § 12-47-901; Col. Liq. Reg. §§ 47-100, -316, -320, -322(B), & -416. *Connecticut*: Conn. Gen. Stat. § 30-20; Conn. Agencies. Reg. §§ 30-6-A32a, -A33, -A40, & 30-6-B21. *Delaware*: Del. ABCC Rules 2, 15, 27. *District of Columbia*: D.C. Code § 25-735(c), -736(c) & (d); D.C. Mun. Regs. tit. 23, §§ 903, 904. *Florida*: Fla. Stat. §§ 561.42(1), (11), (12), & 565.17; Fla. Admin. Code § 61A-1.010, -4.018; Ind. Bull. 97-09 & 99-05. *Georgia*: Ga. Comp. R. & Regs. r. 560-2-2.06, .16, .28, .45, .48, .55, & .58, r.560-2-3.36. *Hawaii*: Haw. Rev. Stat. §§ 281-42(a)(3), (4), & (8), 281-42(c), 281-85; Hon. Liq. Reg. § 3-84-85.1; Maui Liq. Reg. § 08-101-109. *Idaho*: Idaho Code §§ 23-313, -1033; Idaho Liq. Reg. 15.10.01 at §§ 004.17, 004.19, 021.8; 021.11 to 021.15; 022.02. *Illinois*: 235 ILCS Ch. 5, para. 6-6; *see also* ILCC Trade Practice Policies 2, 3, 9, 10 & 25. *Indiana*: Ind. Code § 7.1-1-3-16(f); Ind. Admin. Code tit. 905, r.1-5.2-1 to r.1-5.2-10, -12, -14, -15, & -17. *Iowa*: Iowa Code § 123.186; Iowa Admin. Code r.185-16.1; 16.3 to 16.5, 16.9(123), 16.10(123), 16.11(123) to 16.16(123). *Kansas*: Kan. Stat. § 41-709(b); Kan. Admin. Regs. §§ 14-10-1(a), 14-10-6, 14-10-8, -10, -11(b), -12 to -14. *Kentucky*: Ky. Rev. Stat. §§ 244.240, .250, .260, 244.461, .590, & .804, Ky. Admin. Reg. §§ 1:070; 1:090; 1:100, 2:005. *Louisiana*: La. Admin. Code tit. 55: VII, § 317(B), (C). *Maine*: 28-A M.R.S.A. §§ 708(5), 708-A; Me. Liq. Regs. §§ 3.3, 4.13(A), 7.10 to 7.14, & 15.3, .4. *Maryland*: Md. Code [Alc. Bev.] Art. 2B, §12-104; Md. Code Regs. §§ 03.02.05.04, .05, .08, .10, & .13. *Massachusetts*: Mass. Liq. Reg. §§ 2.03, .06(8), .08, & 4.03(h). *Michigan*: Mich. Admin Code r. 436.1035, .1313, .1315, .1317, .1319, .1321, .1323, .1325, & .1329. *Minnesota*: Minn. Stat. §340A.308, 340A.5071; Minn. R. 7515.0300(5)-(7), 7515.0760(2), (3). *Mississippi*: Miss. Code § 67-1-77; Miss. Liq. Reg. Subpart 01, Ch. 12 §§ 101-03. *Missouri*: Mo. Rev. Stat. §§ 311.070.3 to 311.070.5, 311.070.7 to 311.070.9, and 311.355. *Montana*: Mont. Code § 16-3-241, 16-3-244; Mont. Admin. R. §§ 42.11.205, 42.11.243 to 42.11.245, 42.11.111, 42.11.251, 42.13.211, and 42.13.221. *Nebraska*: Neb. Rev. Stat. §§ 53-123.02, 53-168; Neb. Admin. R. & Regs. §§ 237-6-001, -002, -016. *Nevada*: Nev. Rev. Stat. §§ 369.485, 597.225. *New Hampshire*: N.H. Rev. Stat. §§ 179:28-:31(II), 179:44; N.H. Code (Admin. R.) (Liq. Comm.) §§ 402.02 -.04, 405.0 -.05, 508.09, 508.10. *New Jersey*: N.J. Rev. Stat. §§ 33:1 to 43(b); N.J. Admin. Code tit. 13, §§ 2-24.2, .5-.7, .11, 2-23.16, 2-24.5, 2-24.11. *New Mexico*: N.M. Stat. § 60-8A-1(B)(3); 15 NMAC 10.5.1 at § 11.3.4 to 11.3.6; 11.3.7; N.M. Rev. Stat. §§ 60-6A-4 to -7. *New York*: NYCCRR, tit. 9, 83.1 to 83.4, 85.15, 86.1 to 86.5, 86.8, .9, .12-.16, and .17; N.Y. [Alco. Bev. Cont.] Law § 101-b(3)(a). *North Carolina*: 4 N.C. Admin. Code 2S.1006, .2S.1010 to 2S.1012, 2S.1020, 2T.0101(2), .2T.0712, 2T.0713, 2T.0716. *North Dakota*: N.D. Cent. Code § 5-01-11; N.D. Reg. §§ 81-12-01-10, -11. *Ohio*: Ohio Rev. Code § 4301.22; Ohio Admin. Code §§ 4301:1–32, -43(A), (B), -44, -45, & -46(D). *Oklahoma*: Okla. Stat. tit. 37, §§ 534-36, 537(B)(3); Okla. Liq. Reg. §§ 45:10-3-24, -25. *Oregon*: Or. Code §§ 471.398, .400-01, & .750(2); Or. Admin. R. 845-006-0350, 845-013-0001 (3), (4), (5), 845-013-0010, -0025, -0030, -0040, -0050, -0060, -0075, -0090(3)(c), 845-015-0165(3)(a), -0175, -0177. *Pennsylvania*: 47 Pa. Stat. §§ 4-305(a), 4-493, 4-498; 40 Pa. Admin. Code §§ 5.30, 5.32(h), 13.42, 13.43, 13.51-.53, 13.81, 13.201, & 13.211. *Rhode Island*: R.I. Gen. Laws § 3-7-4.1; R.I. Liq. Regs. 1(d), 13, 29, 36. *South Carolina*: S.C. Code §§ 61-6-1035, -1540, -1560, -1640, -2980, 61-9-940. *South Dakota*: S.D. Regs. §§ 64:75:04:10, 11, 13, 14. *Tennessee*: Tenn. Code §§ 57-3-404, 57-3-406; Tenn. Comp. R. & Regs. §§ 0100-3-.06, -3-.14, 0100-6-.03. *Texas*: Tex. [Alc. Bev.] Code §§ 52.01, 102.02, 102.07; Tex. Admin. Code tit. 16, §§ 45.101; 45.106, 45.109, 45.112, 45.113, 45.117, 45.120. *Utah*: Utah Code § 32A-12-603(4). *Vermont*: Vt. Liq. Regs.: Advertising, §§ 1, 5, 7; Wholesale Dealers and Certificate Holders and Vt. Manufacturers §§ 9, 15. *Virginia*: 3 VAC 5-20-20, -30, -60 -90. *Washington*: Wash. Rev. Code §§ 66.28.010(2), 66.28.040, 66.28.045, 66.28.155; Wash. Admin. Code §§ 314-52-040, -080, -085, -090, & -113. *West Virginia*: W.Va. Reg. §§ 175-1-2.19, -2.21, -5.1.3, -5.4.1, -5.4.5, -5.4.6, & 176-1-7. *Wisconsin*: Wis. Stat. § 125.33. *Wyoming*: Wyo. Stat. § 12-5-403; Wyo. Admin. Code Ch. 20, § 8.

32. 2003 Alcohol Report at 17.

33. *Id.* at 18. These systems rely on data in electronic records containing consumer information (including date of birth), such as voter registrations, court filings, license applications, auto and property transaction records, motor vehicle violation header records, and credit headers.

34. The companies operate an additional six websites providing corporate information (*e.g.,* financial information, annual reports, and corporate contact information) that were not considered for the purpose of this analysis.

35. However, if the user subsequently attempts to re-enter the site by providing a birth date showing him to be of legal age, the websites generally do allow entry; most websites neither permanently nor temporarily barred (*e.g.,* through use of a "cookie") underage users from entering a different, older, age.

36. Further, users may not back-button during that web session in order to attempt to reenter the Bud.TV site with a different, older, age.

37. Currently, two primary services measure Internet audience demographics, Nielsen/NetRatings (NNR), and comScore Media Metrix (comScore). They use differing data collection technology and different sampling approaches. In some cases, one will report that a website has a 70 percent or greater legal age audience, but the other will not. The Media Rating Council, a media and advertising industry trade association responsible for accrediting audience measurement services, is auditing the NNR and comScore systems.

38. Concerns have been raised about alcohol ads on social networking sites, given the popularity of these sites with teenagers. MySpace carries alcohol ads, but under a long-standing policy, now codified in a January 14, 2008 agreement with 49 state attorneys general, the site does not deliver them to registered users who have stated that they are under 21 years of age. *See Joint Statement on Key Principles of Social Networking Sites' Safety,* appendix A, at 2, *available at* ago.mo.gov/newsreleases/2008/pdf/MySpace-JointStatement0108.pdf. Unregistered users are assumed to be below the LDA and alcohol ads are not delivered to them. MySpace does not independently verify age information; however, the MySpace/Attorney General agreement calls upon the site to organize an industry-wide Internet Safety Technical Task Force aimed at finding and developing online identity authentication tools. *Id.* The social networking site Facebook currently does not accept advertising from alcohol companies in the United States. *See* Facebook Advertising Guidelines, Part 7 ("Content Restrictions") ("We do not accept advertising referencing, facilitating or promoting . . . Liquor, beer, or wine. . ."), *available at* http://www.facebook.com/ad_guidelines.php. The site does accept such advertising in other countries.

39. The BI Code specifically provides that product placement should not be made where the primary characters are under the legal drinking age or the primary themes are, because of their content or presentation, especially attractive to persons below the legal drinking age beyond the general attractiveness such themes have for persons above the legal drinking age. BI Code, ¶ 12.

40. BI Code, ¶ 10.

41. DISCUS Code, Responsible Placement, ¶ 6; WI Code, ¶ 3.5.

42. The 2003 Alcohol Report provides information about some of these responsibility efforts, at notes 69-72.

43. BI Code, Buying Guidelines, *available at* http://www.beerinstitute.org/BeerInstitute/files/ccLibraryFiles/FILENAME/000000000441/ADCODEBUYINGGUIDELINES2006.pdf; DISCUS Code, Demographic Data/Advertising Placement Guidelines, *available at* http://www.discus.org/pdf/DemographicGuidelinesRevised3-06.pdf.

44. One company owns its media buyer.

45. The available television demographic data provide information about viewers ages two and older. Currently, the available radio data provide information about listeners age 12 and older, although the service that provides such measurements is in the process of introducing a new technology that will measure listeners six and older in some markets. *See* note 83, *infra*. Newspaper demographic data are available for readers 18 and older. Finally, two syndicated sources, Mediamark Research, Inc. ("MRI") and Simmons Research, provide magazine demographic data. Syndicated audience composition data are available only for magazines that are willing to pay to be included in the audience measuring survey. Data on the composition of audience members ages

12 and older are available for only 80 national magazines; these data are updated once per year. Data on the composition of the audience 18 and older are available for many more magazines, but these data are of limited utility for the purpose of measuring what percentage of a magazine's audience is below the legal age, unless they show in a convincing manner that the magazine skews to an older (for example, predominantly 30+) audience. The companies did not advertise in teen-targeted magazines, such as *Teen Vogue* and *Cosmo Girl*.

46. These special editions, not available on newsstands, typically are sent only to subscribers 21 and above. In addition, DISCUS member ads do not appear in school library subscription editions of *Newsweek, People, Sports Illustrated, Time*, and *U.S. News & World Report.* DISCUS, *Magazine Special Binding Initiative*, *available at* http://www.discus.org/pdf/MAGAZINE_SPECIAL_BINDING_INITIATIVE_description.pdf.

47. The suppliers also conducted periodic, after-the-fact audits of a random portion of past placements to verify that they met the 70 percent target; if not, they took corrective action as required by the BI Code at ¶ 3(c) and the DISCUS Code, Responsible Placement ¶ 3.

48. Special Orders, Section 3(B) and Appendix A.II (instructions). The order required submission of quarterly average data for television and radio, and annual average data for magazines and newspapers. For example, for a television placement made in February 2006, the companies were ordered to provide data showing the average audience composition data for that program, in that time slot, for the quarter that spanned January 1-March 31, 2006.

49. The Commission's analysis is based on placements for which complete demographic data (including both the absolute numbers of audience members younger than 21 and 21 and older, plus audience composition percentages) were provided. The syndicated data services cover only major media; they do not, for example, measure the audiences for radio stations in numerous small markets, for local magazines, or for small cable networks such as hotel television. Further, even for television and radio markets that are measured, the syndicated data sources will not provide an audience estimate if the number of apparent viewers falls below a particular threshold. If impressions data were not provided, the Commission could not include the placement in its analysis.

50. This analysis was conducted in response to comments asking whether the suppliers' minority-targeted advertising complied with the 70 percent placement standard. *See* the Commission's October 24, 2006 Federal Register notice, *supra* note 2, at 62,263 and 62,265.

51. Letter to Deborah Platt Majoras from George A. Hacker, Alcohol Policies Project, Center for Science in the Public Interest ("CSPI") (July 13, 2005).

52. Data provided are for advertising on NASCAR, CASCAR (NASCAR's Canadian counterpart), Craftsman Truck, and Formula 1 racing television programs.

53. Data provided by ESPN Sports Poll, a service of TNS Sport.

54. 1999 Alcohol Report at 14-15; 2003 Alcohol Report at 9.

55. 2003 Alcohol Report at 9.

56. *See* Exhibit A, Specification 4.

57. *See* comments of the Center on Alcohol Marketing and Youth ("CAMY"), the National Association of Attorneys General Youth Access Committee, and Ziming Xuan, *available at* http://www.ftc.gov/os/comments/alcoholmanufacadstudy.

58. DISCUS's Outside Advisory Board currently is comprised of Joan Z. Bernstein, former Director of the FTC's Bureau of Consumer Protection; Constantine W. Curris, President of the American Association of State Colleges and Universities; and Richard Glitter, former Vice President of Advertising Standards and Program Compliance for NBC. In addition to serving as a tie-breaker for code review deliberations, the outside advisory board also provides guidance about Code implementation and, if requested, provides confidential non-binding guidance to DISCUS members about draft advertising copy.

59. If the internal committee cannot agree on whether a violation has occurred, the committee may refer the question to a separate and independent third-party reviewer.

60. The current BI review board members are Rory Davis, former Executive Vice President, National Association of Broadcasters; William Cunningham, PhD, Professor of Marketing, University of Texas at Austin; Gloria Rodriguez, President and CEO, Comunicad, and past chairwoman, National Hispana Leadership Institute; and Paul G. Summers, former Attorney General, State of Tennessee.

61. The BI review board published its first annual report, detailing advertising complaints considered in calendar year 2006, on January 31, 2007. *See* Beer Institute's 2006 Annual Report, *available at* www.beerinstitute.org/tier.asp?bid=284.

62. In addition to participating in the BI review process, Heineken USA has an independent complaint review process. Established in December 2004, Heineken's independent review board is comprised of three members with experience in advertising, alcohol regulation and policy, and adolescent behavior. Complaints about Heineken's marketing activities are first forwarded to this review board, each member of which independently considers the matter. In 2006, Heineken referred complaints about two advertisements to its review board, which recommended that no action be taken in either instance. Heineken communicated the board's decision in writing to both complainants, informing them that if they were dissatisfied with the decision, they were free to submit a formal complaint to the Beer Institute's review board.

63. In July 2007, the WI wrote to the Walt Disney Company regarding its plans to market a wine with the name *Ratatouille*, in connection with the release of the company's G-rated animated film of the same name. Although Disney was not a member of the WI, the organization cited provisions of its Code prohibiting advertising with a particular appeal to persons below the legal drinking age and the use of cartoon characters that are predominantly popular with children. Disney decided not to distribute the product. *See* "Costco Pulls Ratatouille Wine: Plans for Cartoon-character-inspired Wine Label Shelved After Suggestions That the Wine Could Be Attractive to Minors" (July 31, 2007), *available at* http://www.winespectator.com/Wine/Features/0,1197,3921,00.html.

64. In March 2006, an advocacy organization submitted a complaint to the BI about a brewer's ad that ran during the 2006 Super Bowl. Because the advertiser had ceased running the ad by the time the complaint was received, the BI review board declined to consider the complaint. At the recommendation of the Commission staff, BI subsequently modified its complaint process so that complaints about discontinued advertisements are not automatically barred from review board consideration. Under the modified procedures, complaints about discontinued advertisements will be considered unless the brewer notifies the BI review board that it had permanently discontinued dissemination of the ad more than 30 days prior to receipt of the complaint and took all reasonable steps to withdraw the ad from the marketplace.

65. The WI received two complaints about wine advertising in early 2007 but no review occurred because the complaints related to non-member brands.

66. National Research Council, Institute of Medicine, *Reducing Underage Drinking: A Collective Responsibility* 163 (2003) ("*IOM Study*").

67. *See, e.g.*, A.C. Wagenaar, *Effects of Minimum Drinking Age Laws: Review and Analysis of the Literature from 1960 to 2000*, J. Stud. Alcohol, Supplement No. 14, 206, at 219 (2002); H.D. Holder, *Supply Side Approaches to Underage Drinking: An Assessment of the Scientific Evidence* (2003); *IOM Study, supra* note 66, at 458-89.

68. See 2007 MTF Results, *supra* note 6, at Figure 14, *available at* http://monitoringthefuture.org/data/07data/fig07_14.pdf. The press release accompanying the 2007 MTF Results noted that reported alcohol availability rates have declined most significantly among 8th graders. In 1996, 75 percent of 8th graders thought they could get alcohol if they wanted some, but by 2007 the number had fallen to 62 percent. MTF, *Overall, Illicit Drug Use by American Teens Continues Gradual Decline in 2007* (Dec. 11, 2007), at 5, *available at* http://monitoringthefuture.org/pressreleases/07drugpr.pdf.

69. *See* M.O. Hearst et al., "*Who needs liquor stores when parents will do? The importance of social sources of alcohol among young urban teens*," 44 Prev. Med. 471 (2007) (sixth to eighth graders who drank alcohol

reported getting it from parents, older teens, other adults, or by taking it from a home without permission); American Medical Association, *Teen Drinking Key Findings* (2005), *available at* http://www.alcoholpolicymd.com/pdf/poll_080805.pdf (reporting that in survey by Teenage Research Unlimited of youth 13 to 18, two out of three said it was easy to get alcohol from their own home without a parent being aware of it; one out of four teens reported that they had been at a party where teens were drinking in front of a parent); DISCUS, *Underage Alcohol Access* (2003) (reporting that survey by Teenage Research Unlimited showed that 65 percent of 10- to 18-year-olds who drank in the past year got alcohol from family and friends). *See also IOM Study, supra* note 66 at 168 (according to the IOM, parties, friends, and adult strangers are the most frequent sources of alcohol among college students and older adolescents).

Given that teens most often obtain alcohol from an intermediary source (rather than directly from a retail outlet), it is unclear the extent to which they have the ability to choose a particular type or brand. Their alcohol use may be based on availability.

70. The IOM reported that use of commercial sources appears to be much higher among college students, in urban settings, and where possession and purchase laws are relatively weak or unenforced. *IOM Study, supra* note 66, at 169.

71. 2003 Alcohol Report at 23-24.

72. *IOM Study*, *supra* note 66, at 116-17, 170; *Call to Action*, *supra* note 12, at 39. The STOP Act requires an annual survey of state efforts to reduce underage alcohol access, including underage alcohol access from commercial and social sources. STOP Act, *supra* note 10, Section 2(c)(1)(F).

73. Data show that European teens have high levels of alcohol use and intoxication. *See* National Institute on Alcohol Abuse and Alcoholism, Alcohol Research and Health, Vol. 28, No. 3 (2004/2005) "Scope of the Problem," at Figure 2, *available at* http://pubs.niaaa.nih.gov/publications/arh283/111-120.htm.

74. Press events were coordinated by The Century Council in sixteen states, and by Students Against Destructive Decisions in one state. No entity has provided funds to the FTC in connection with the WDST program.

75. *See, e.g.*, *AG Launches "We Don't Serve Teens Week*,*"* WFMZ-TV News, Sept. 18, 2007, *available at* http://wfmz.com/view/?id=151957; Editorial, "*Don't Serve Teens Week" Emphasizes Responsibility*, Sept. 13, 2007, *available at* www.battlecreekenquirer.com (in "archives" for "2007" search "We Don't Serve Teens"); *AG Hood Spot Tells Adults to Stop Giving Minors Alcohol*, SunHerald.com, Sept. 11, 2007, *available at* http://www.sunherald.com/news/breaking_news/story/139706.html; S. Israelsen, *Letting Teens Drink is Illegal, Parents Warned*, Deseret Morning News, Sept. 8, 2007, *available at* http://deseretnews.com/article/1,5143,695210966,00.html; *State: NC Wine Distributors Launch Statewide Campaign Against Underage Drinking,* Lincoln Tribune, Oct. 20, 2007, *available at* http://www.lincolntribune.com/modules/news/article.php?storyid=7262.

76. The Century Council, Wine and Spirits Wholesalers of America, and American Beverage Licensees, and their members, were involved in delivery of program materials to retail outlets.

77. *See*, *supra,* Part II.

78. Again, this analysis addresses only the placements for which complete data were provided, as described in note 49, *supra*.

79. Magazine data for the portion of the audience that is eighteen or older are updated twice per year, but the critical data on magazine readers ages twelve to seventeen are updated only annually.

80. According to Alan Wurtzel of NBC Universal, "The sample sizes now are so small for some of the niche cable networks that if only one regular viewer happens to go on vacation, it could significantly affect the ratings." *See* D. Bauder, "*Nielsen to Triple TV Sample*," Sept. 27, 2007, quoting Alan Wurtzel of NBC Universal, *available at* http://www.huffingtonpost.com/huff-wires/20070926/tv-nielsen-expansion/. Changes in consumer use of media, including use of TiVo and other time-delay technologies, have resulted in disputes about the proper way to measure audiences. D. Leonhardt, "*Bar the Door. TV Ads Want Your TiVo*," N.Y. Times, May 17, 2006, *available at* http://www.nytimes.com/2006/05/17/business/media/17leonhardt.html?ex=1305518400&e

n=e0ce9a4bad830abd&ei=5090&partner=rssuserland&emc=rss<br%20/>. The syndicated measuring services are working to adopt improvements in radio and television survey technology, including movements away from the diary system of audience measurement, and toward electronic systems, that are calculated to address these problems. These changes include tripling the size of the national TV sample and use of electronic people meters in additional local TV markets. *See* D. Bauder, *supra*. For additional information about audience composition measurements, see notes 82 and 83, below.

81. J.G. Webster, *Ratings Analysis: The Theory and Practice of Audience Research* (2005), at 217.

82. About 2.4 percent of advertisements shown on national television missed the 70 percent target; by contrast, 6.5 percent of advertisements shown on local television missed the target. Currently, the national television audience projections, as well as projections for audiences in the top 20 percent of local markets, are based on data from electronic "people meters" that are kept on top of television sets. In most local televison markets, however, audiences are estimated based on paper diaries sent out four times a year during "sweeps" periods that usually occur around February, May, July, and November. The diary system relies on consumers' recollections about media use and has been criticized as unreliable. Further, the diary surveys do not measure the local audience for programs (such as specific sports events) that appear only outside the sweeps periods. It is for this reason that the DISCUS and BI buying guidelines previously have recommended that suppliers refer to national audience composition data, where available, when making decisions on the placement of local television advertising. In the course of this study, it was clear that some companies nonetheless had relied on local data when national data were available. This likely contributed to the number of local placements that appeared to miss the 70 percent target.

For additional information regarding audience samples, see Nielsen Media, *Products and Services*, "National Audience Sample" and "Local Audience Samples," *available at* http://www.nielsenmedia.com/nc/portal/site/Public/menuitem.4f84194d341befbc3a81e810d8a062a0/?vgnextoid=e3f6da86b0715010VgnVCM100000880a260aRCRD.

83. The company that measures radio audience composition is in the process of replacing a diary-based measuring system with portable "people meters" that will permit monthly radio demographic data on audience members ages six and older in major markets. Radio audience demographics traditionally have been calculated based on responses to written diaries that rely on consumer recollections about media use. A new portable people meter (PPM) system will use a passive device to track consumer exposure to inaudible codes embedded in radio signals. Carried throughout the day by participants, the PPM device can track when and where they are exposed to radio signals, and are expected to be more reliable. *See* Arbitron, *The Portable People Meter*, *available at* http://www.arbitron.com/portable_people_meters/home.htm. In addition to providing previously unavailable information on the presence of younger audience members (which may, as a practical matter, reduce the number of radio dayparts and stations that meet the 70 percent standard), these new data will allow advertisers to make more rapid adjustments when a change in audience occurs.

84. The company that measures television audience demographics is tripling the size of the sample on which it makes its projections. This change is likely to increase the stability of the television audience data, including cable audience data. For information about the planned increase in the sample size, see K. Bachman, MediaWeek, *Nielsen Nat'l PM TV Panel to Triple In Size* (Sept. 26, 2007), *available at* http://www.mediaweek.com/mw/news/recent_display.jsp?vnu_content_id=1003646903.

85. For example, some suppliers provided radio audience data for eight- to twelve-hour time segments, rather than for Arbitron's standard three- to six-hour time segments (dayparts). The Commission has previously cautioned that longer dayparts may obscure time segments when the audience is unusually young. *See* 1999 Alcohol Report at note 15. The Commission required suppliers that made this kind of error to submit data pertaining to the standard daypart in which the advertisement ran, or, if a company was not certain precisely when during the eight- to twelve-hour segment the advertisement ran, it was required to provide "worst case scenario" data (that is, data for the period of time when the audience composition was at its youngest). Also as part of the study, the Commission requested backup data for a sample of advertisements from each company. At that juncture, some companies learned for the first time that advertisements had not been placed as reported by a media buyer, or had been placed at a different time than reported; they were required to supplement their responses

with corrected data. Additional data problems that had to be addressed in the course of the study are discussed in note 96, *infra*.

86. *See, e.g.*, CAMY, *Striking A Balance: Protecting Youth from Overexposure to Alcohol Ads and Allowing Alcohol Companies to Reach the Adult Market* (July 2005), at 5-5, *available at* http://camy.org/research/striking/striking.pdf; Comment, National Association of Attorneys General, Youth Access to Alcohol Committee (Nov. 22, 2006), *available at* http://www.ftc.gov/os/comments/beveragealcoholadvertise/526363-00061.pdf.

87. In April 2007, Beam Global issued a public letter to the state attorneys general stating that effective January 1, 2008, it would implement a 75 percent baseline/85 percent aggregate standard for advertising. *See* Letter to Attorneys General from Thomas J. Flocco, Beam Global (Apr. 23, 2007). The state attorneys general and the CSPI have applauded these commitments. *See* Letter to Thomas J. Flocco, Beam Global, from National Association of Attorneys General (May 7, 2007); Letter to Deborah Platt Majoras, Chairman, from George A. Hacker, Alcohol Policies Project, CSPI (May 9, 2007).

88. The *Call to Action* noted that the FTC was conducting a study to evaluate this issue. *Call to Action, supra* note 12, at 44.

89. This represents the total of the placements that had a legal age composition lower than 70 percent (about 7.5 percent of placements) plus the placements that had a legal age audience composition of between 70 and 75 percent (about 4.7 percent of placements).

90. The proposed 85 percent standard excludes audience members 2 to 11 from the analysis. In the case of advertisements on television, the data obtained by the Commission showed the number and percentage of audience members ages 2 to 20, but it did not show what proportion of these persons were ages 2 to 11 as opposed to ages 12 to 20. If one assumes that *all* of the underage audience members for the television ads were ages 12 to 20, the suppliers would have had to relocate about 35 percent of their placements. This represents the total of the placements that had a legal age composition lower than 70 percent (about 7.5 percent of placements) plus the placements that had a legal age audience composition of between 70 and 85 percent (about 28 percent of placements).

91. The argument that GRP data prove that youth are overexposed to alcohol advertising has been set forth in numerous studies published by CAMY over the past several years. *See, e.g.,* CAMY, *Radio Daze: Alcohol Ads Tune in Underage Youth* (Apr. 2003), *available at* http://camy.org/research/files/radio0303.pdf; *see also* 2003 Alcohol Report at note 47.

Gross rating points measure the total volume of delivery of a media message to a target audience. They are calculated by multiplying the percentage of an audience reached by the number of times reached (known as frequency). Thus, for example, 100 GRPs could be the result of reaching 100 percent of the target audience one time, one percent of the target audience 100 times, or any other combination equaling 100. *See, e.g.*, A. Cherney, Strategic Marketing Analysis (2nd Ed.), at 120.

Comparing GRPs works only if the "audience" reached by advertising is correctly identified. Alcohol marketing documents reviewed by the Commission in the course of its investigations and studies very often identified campaign targets as being "adults 21-25," "adults 21-29," or "men 21-34." CAMY's data have repeatedly shown that youth per capita alcohol advertising exposure is *lower* than young LDA adult per capita exposure. *See*, *e.g.*, CAMY, *Youth Exposure to Alcohol Advertising on Television and in National Magazines, 2001 to 2006* (Dec. 2007), at 19, 20 (Tables 6 and 7) (compare GRPs for "Youth Ages 12-20" with "Young Adults Ages 21-34"), *available at* http://camy.org/research/tvmag1207/tvmag1207.pdf; CAMY, *Is "Spillover" Exposure of Youth to Alcohol Advertising an Inevitable Consequence?* (Working Paper, Sept. 20, 2007). Calculations that purport to compare per capita alcohol advertising exposure of all adults 21+ and older, *e.g.*, that include even adults 50+, are unpersuasive because they rely on including, in the calculation of the average, those who are far outside the intended target.

92. CAMY states that children under twelve should be excluded from the placement analysis because they "generally do not drink alcohol, have a low level of awareness of alcohol advertising, and are not being overexposed to alcohol advertising." *Id*. At least one study, however, suggests that young children are attuned

to the presence of alcohol in the environment at an early age. M.A. Dalton, *Use of Cigarettes and Alcohol by Preschoolers While Role-playing as Adults*, Arch. Pediatr. Adolesc. Med., Vol 159, 854 (Sept. 2005) (concluding that "preschoolers have already begun to develop behavioral expectations regarding the use of cigarettes and alcohol"). Indeed, ten percent of children have drunk alcohol at least once by age ten. *Call to Action, supra* note 12, at 3, Figure 1.

93. *See* Adams Beverage Group, *Handbook Advance* (2007), at 20, 92, and 125 (showing 200 new spirits introductions, 257 new wine introductions, and 42 new beer introductions in 2006). New entrants can engage in substantial advertising. *See*, *e.g.*, K.W. Bieler, *Behind the [yellow tail] phenomenon, How it happened and what's next?* (Mar. 2006), *available at* http://www.bevnetwork.com/monthly_issue_article.asp?ID=152 (discussing the introduction of [yellow tail] wines into the United States).

94. Alcohol brands often are targeted to adults in a narrow age range, such as "adults 21-29." *See* note 91, *supra.*

95. As the Commission previously has stated:

    Restrictions in advertising self-regulatory codes that are reasonably designed to prevent the targeting of advertising to underage persons are unlikely to violate the antitrust laws. First, the conduct targeted by the restrictions – advertising of alcohol to underage persons – is not the kind of activity the antitrust laws were designed to protect. While advertising is an important part of the competitive process, selling alcohol to underage persons is not; it is unlawful and thus not a legitimate form of competitive activity. Second, there are many means by which advertising messages can reach persons who are of legal age. So long as the means available for marketing to adults is not unduly restricted, legal age consumers will continue to have access to product information, and sellers can continue to compete for their patronage.

    See 1999 Alcohol Report, at Appendix H.

96. U.S. Census Bureau, Census 2000, Sex by Single Years of Age (PCT12), *available at* http://factfinder.census.gov/servlet/DTTable?_bm=y&-geo_id=01000US&-ds_name=DEC_2000_SF1_U&-mt_name=DEC_2000_SF1_U_PCT012.

97. In the course of future monitoring, the Commission will consider whether it is appropriate to recommend formal adoption of an 85 percent aggregate annual average standard. Such a requirement may be unnecessary, as many of the major companies already appear to operate at this level. At the same time, it is unclear what effect such a standard would have on small suppliers that engage in only occasional advertising.

98. Although the U.S. Census Bureau issues estimated population data annually based upon projections from the Census 2000 data, the next official census will not be conducted until 2010.

99. In some instances, suppliers appear to have relied on out-of-date audience composition estimates, until the Commission alerted them to the fact that newer data were available. If the trade associations obtained the estimates, and promptly shared them with members, erroneous placements could better be avoided. Additionally, there is a need to develop common systems for evaluating data. For example, data originally provided by one audience measurement service purported to show audience figures in the negative numbers, or cumulative audience composition (that is, underage plus 21+ percentages) of more than 100 percent. The trade associations should work with the audience measurement services to resolve these kinds of issues.

100. 2003 Alcohol Report at 18.

101. *See* BI code, ¶ 3.g; DISCUS code, Responsible Content, ¶ 9 ("Websites"); WI code, ¶ 5.2.

102. *See supra,* Part II.B.6.a.

103. *See* FTC, *Implementing the Children's Online Privacy Protection Act: A Report to Congress* (Feb. 2007), *available at* http://www.ftc.gov/reports/coppa/07COPPA_Report_to_Congress.pdf ("2007 COPPA Report to Congress").

104. In its 2007 COPPA Report to Congress, the Commission noted the absence of age-verification technologies that might be used to prevent children under age 13 from accessing websites that are not intended for their use or viewing. *See id.* at 1, 12. The Commission's assessment of the age-verification technology landscape was

directed at the current inability to accurately verify the identities of young children, given the lack of available public records information on them. Indeed, the agreement entered into between MySpace and 49 state attorneys general in January 2008 recognizes this fact, and envisions the creation of a task force, comprised of Internet businesses, identity authentication experts, non-profit organizations, and technology companies charged with "finding and developing online identity authentication tools." *See Joint Statement on Key Principles of Social Networking Sites' Safety*, at 1, *available at* ago.mo.gov/newsreleases/2008/pdf/MySpace-JointStatement0108.pdf. By contrast, adult age-verification tools, such as the one used by Anheuser-Busch to verify the LDA status of visitors to the BudTV website, rely upon information about U.S. adults contained in databases of government and commercial information, and have long been in use.

105. WI code, ¶ 5.3.

106. *See* FedEx Alcohol Shipping (Wine) Requirements, *available at* www.fedex.com/us/wine/requirements.html?link=4; UPS Wine Program, *available at* http://www.ups.com/wine (all wine shipments must be shipped using UPS's "delivery confirmation adult signature required" service). While it does not appear to have a formal alcohol shipment program, DHL will only accept shipment of beverage alcohol from licensed distributors and requires an adult signature upon delivery. *See* List of Prohibited & Restricted Commodities, *available at* http://www.dhl-usa.com/resources/Prohibited_Restricted_Commodities.pdf.

107. *See* FTC Staff, Letter to the Hon. Paula Dockery (Florida State Legislature) (Apr. 10, 2006), *available at* http://www.ftc.gov/os/2006/04/V060013FTCStaffCommentReFloridaSenateBill282.pdf (commenting in support of proposed Florida legislation, SB 282) ("Dockery Letter"); *see also* Letter to the Hon. Eric D. Fingerhut (Ohio Senate) (Mar. 22, 2006), *available at* http://www.ftc.gov/os/2006/03/V060010CommentReOhioSB179DirectShipmentofWine.pdf (commenting in support of proposed Ohio legislation, SB 179, and noting that, under the bill, the individual ordering the wine to be delivered must be at least 21 and must personally sign a document acknowledging the wine's receipt at time of delivery).

108. In a recent letter on proposed state legislation, the FTC staff stated that a requirement that the vendor use an approved age-verification process at the time of purchase, plus conspicuous package labeling requiring that an adult sign for delivery of alcohol, was an effective safeguard against the direct shipping of alcohol to minors. *See* Dockery Letter, *supra* note 107.

109. The issue required significant consideration of the quality and reliability of the data provided by the two primary sources of Internet demographic data, Nielsen/NetRatings and comScore Media Metrix. *See supra* note 37.

110. 1999 Alcohol Report at 17.

111. The Commission obtained data about the audience composition of six popular films in theaters during the month of October 2006. These data showed that three films with a PG-13 rating (*Flyboys*, *The Guardian*, and *The Illusionist*) had LDA audiences composition rates of between 70 and 90 percent, whereas only 60 percent of the R-rated film *Jackass Number Two* was above the LDA. The remaining two films, which were R-rated, did have a 21+ audience composition that exceeded 70 percent (*Little Miss Sunshine* and *The Departed*).

112. *See* comments of CAMY, the National Association of Attorneys General Youth Access Committee, and Ziming Xuan, *available at* http://www.ftc.gov/os/comments/alcoholmanufacadstudy.

113. No complaints were submitted to the Wine Institute's review board in 2006.

114. *See* http://www.beerinstitute.org/tier.asp?bid=258 (BI online complaint submission form).

115. For more information about FTC promotion of self-regulation to address consumer economic, health, and safety issues, see, for example, FTC Staff of the Bureau of Consumer Protection, *Comment to NACHA – The Electronic Payments Association*, Apr. 2007, *available at* http://www.ftc.gov/os/opinions/070423staffcommenttonacha.pdf; FTC, *Prepared Statement of the FTC on Marketing Violent Entertainment to Children: Self-Regulation and Industry Practices in the Video Game Industry*, June 2006, *available at* http://www.ftc.gov/os/2006/06/P994511MarketingViolentEntertainmenttoChildren-TheVideoGameIndustry06142006.pdf; FTC and DHHS, *Perspectives on Marketing, Self-regulation and Child Obesity: A Report on a Joint Workshop of*

the Federal Trade Commission and the Department of Health and Human Services, Apr. 2006, *available at* http://www.ftc.gov/os/2006/05/PerspectivesOnMarketingSelf-Regulation&ChildhoodObesityFTCandHHSReportonJointWorkshop.pdf; *see also* Deborah Platt Majoras, Chairman, *Food for Thought: The FTC and Market Influences on Consumer Health*, Apr. 2007, *available at* http://www.ftc.gov/speeches/majoras/070412FDL_DK.pdf; Deborah Platt Majoras, Chairman, *Self-Regulation in the Infomercial Industry: Moving Forward*, Apr. 2006, *available at* http://www.ftc.gov/speeches/majoras/060503eraspeech.pdf.

116. There is undoubtedly a compelling national and state interest in reducing underage alcohol use, given the substantial risks associated with youth drinking. Further, the Commission has jurisdiction to challenge specific alcohol marketing practices, if there is reason to believe that they are deceptive or unfair pursuant to 15 U.S.C. § 45(a)(1) and (n).

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 on price advertising of prescription drugs).

Subsequent to the Court's decision in *Lorillard*, federal and state courts have struck down statutory limits on alcohol advertising. *See 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 scheme failed to materially advance the asserted government interest); *Educ. Media Co. at Virginia Tech., Inc. v. Swecker*, No. 3:06CV396, slip op. at 31 (E.D. Va. Mar. 31, 2008) (striking down state regulations prohibiting alcohol advertising in college papers); *see also Fulsom 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).

Exhibit A: Order to File Special Report

OMB Control No. 3084-0138
Expires: 12/31/09[1]

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Deborah Platt Majoras, Chairman
Pamela Jones Harbour
Jonathan Leibowitz
William E. Kovacic
J. Thomas Rosch

FTC Matter No. P064505

ORDER TO FILE SPECIAL REPORT

Pursuant to a resolution of the Federal Trade Commission dated [insert], entitled *"Resolution Directing Use of Compulsory Process*," a copy of which is enclosed, [insert target name], hereinafter referred to as "the company," 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 provided in the Special Report will assist the Commission in preparing a report regarding beverage alcohol advertising expenditures and alcohol industry self-regulatory efforts.

The Special Report should restate each item of this Order with which the corresponding answer is identified. If any specification cannot be answered fully, provide the information that is available and explain in what respects and why the answer is incomplete. **The Special Report and all accompanying documentary responses should be bates-stamped.** For purposes of this Special Report, the term "the company" includes any parent, subsidiary, or affiliated companies located in the United States.

Please supply the information and documents requested in the following Specifications,

---

[1] For your information, under the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. For this information request, that number is 3084-0138.

consistent with the Definitions and Instructions contained on Appendix A.

SPECIFICATIONS

1. 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 by name, address, and state of incorporation, the company. 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 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 the calendar year 2005, and for each brand or variety, state total sales for calendar year 2005 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, 2003 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 brand advertised or sold by the company.

2. Report the dollar amount expended during the calendar year 2005 by the company, including the entities identified in Specification 1.B., above, on the advertising, merchandising, or promotion of beverage alcohol products in the United States in <u>each</u> 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
   H. Company-sponsored Internet Sites
   I. Other Internet Site Advertising
   J. Other Digital Advertising
   K. Specialty Item Distribution

L. Public Entertainment Events: Not Sports-Related
M. Sponsorship of Sporting Events, Sports Teams, or Individual Athletes
N. Other Point-of-Sale Advertising and Promotions
O. Spring Break Promotions
P. Product Placements
Q. Retail Value-Added Expenditures
R. Telemarketing
S. Promotional Allowances
T. Total Reportable Expenditures
U. Sports and Sporting Events
V. Social Responsibility Programs and Messages

3. Provide the information set forth below with regard to advertising placements:

A. Describe fully the procedures used by the company, including the entities identified in response to Specification 1.B., above, to facilitate compliance with the guidelines contained in the voluntary advertising codes of the Beer Institute, the Distilled Spirits Council of the United States, and the Wine Institute, providing that television, radio, and print ads should appear only in media where 70% or more of the audience consists of adults 21 and over. In the response, indicate which of the 3 voluntary codes the company follows; whether the company follows another code, such as a company code, that addresses advertising placement; what databases are relied on in making placement decisions; how often post-placement data are reviewed to verify that a placement complied with the guideline and what steps are taken if a compliance shortfall is identified; and, 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 placement will occur.

B. With regard to each instance of dissemination by the company, including the entities identified in response to 1.B., above, of an advertisement during the period January 1, 2006 to June 30, 2006, on television, on radio in measured markets, in magazines, and in newspapers, provide the advertisement's name; the brand advertised; the name of the media and location of dissemination; the date and time that the advertisement appeared; the name of the show during, or in conjunction with, which the advertisement appeared; and the actual demographics of the audience (persons under 21, and persons 21 and over), in absolute numbers and percentages, for that dissemination, consistent with the directions in Appendix A.II. In responding to this Specification 3.B., please mark by use of an asterisk each dissemination that was targeted specifically to Hispanic consumers and mark by the use of a pound sign each dissemination that was targeted specifically to African-American consumers.

C. Based upon the responses to Specification 3.B., provide the following summary information regarding the code compliance of placements made by the company during the period January 1, 2006 to June 30, 2006 in each of the four advertising categories (all television ads; all radio ads in measured markets; all magazine ads; and all newspaper ads):

i. The total number of advertisement disseminations;
ii. The total number of persons reached;
iii. The number of advertisement disseminations that complied with the 70% guidelines, and, with regard to these compliant disseminations, the total number of persons reached, the number of persons 21 and over reached, and the number of persons under 21 reached; and
iv. The number of advertisement disseminations that did not comply with the 70% guideline and, with regard to these noncompliant disseminations, the total number of persons reached, the number of persons 21 and over reached, and the number of persons under 21 reached.

D. Repeat the analysis performed in Specification 3.C.:
i. With regard to those disseminations identified in Specification 3.B. as targeted specifically to Hispanic consumers; and
ii. With regard to those disseminations identified in Specification 3.B. as targeted specifically to African-American consumers.

E. Provide copies of all documents relied on to support the company's responses to Specifications 3B., 3C., and 3D., above.

4 Describe in detail the enforcement mechanism(s) available as of December 31, 2006 regarding possible violations of the voluntary advertising code of the industry trade association(s) of which the company is a member (*e.g.*, the Beer Institute, the Distilled Spirits Counsel of the United States, and/or the Wine Institute). With regard to each complaint about the company's advertising, promotion, or marketing forwarded for independent review under the procedures set forth by the Beer Institute, Distilled Spirits Council of the United States, or Wine Institute at any time between January 1, 2006 and December 31, 2006, provide a copy of the complaint, any document reflecting the recommendation or decision of the reviewer, and describe what action, if any, the company took in response to the recommendation or decision of the reviewer.

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

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.

Deborah Platt Majoras
Chairman

SEAL

Date of Order:

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-3213
Washington, D.C. 20580
(202) 326-2125 phone
(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 22 Categories set forth in Specification 2 of the Order to File Special Report. Please provide information for each Category in thousands of dollars. Expenditures may be rounded to the nearest thousand 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) spot advertising placed on (i) broadcast, (ii) cable, or (iii) satellite television. This Category excludes expenditures in connection with product placements (defined in Category P).

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 P).

C. Magazine Advertising

Definition: Advertising placed in magazines or other print media; this Category excludes newspaper advertising (defined in Category D) and direct mail advertising (defined in Category G).

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) and direct mail advertising (defined in Category G).

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), public entertainment events: not sports-related (defined in Category L), sponsorship of sporting events, sports teams, or individual athletes (defined in Category M), or other point-of-sale advertising and promotions (defined in Category N).

G. Direct Mail Advertising

Definition: Advertising circulars or other printed matter that is 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-sponsored Internet sites

Definition: Any company-sponsored Internet site that contains information about the company's beverage alcohol brands or beverage alcohol products, and that can be accessed by computers located in the United States, regardless of where the site is located or the Internet address of the site or page.

I. Other Internet Site Advertising

Definition: Advertising on Internet sites other than company-sponsored Internet sites, including, but not limited to, hyperlinks, banner or pop-up advertisements, sponsored-text advertising, search keywords, and advertising in chat rooms, weblogs, bulletin boards, listservs, and on social networking sites.

J. Other Digital Advertising

Definition: Advertising and promotional content visible on personal computers and other digital devices, including PDAs (personal digital assistants) and 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 or "text") messaging, instant messaging (IM), picture messaging, multimedia messaging, mobile broadcasts, and downloads or podcasts.

K. 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** among expenditures for 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 retail value-added programs (defined in Category Q).

L. 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 among (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), Internet or digital programming (defined in Categories H, I, and J), sponsorship of sporting events, sports teams, or individual athletes (defined in Category M), and other point-of-sale advertising and promotions (defined in Category N).

"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. Furthermore, for purposes of this Order, the term "underage" means younger than twenty-one (21) years of age.

M. 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), Internet or digital programming (defined in Categories H, I, and J), public entertainment events: not sports-related (defined in Category L), and other point-of-sale advertising and promotions (defined in Category N).

N. Other Point-of-Sale Advertising and Promotions

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 specialty item distribution (defined in Category K), public entertainment events: not sports-related (defined in Category L), spring break promotions (defined in Category O), and retail value-added expenditures (defined in Category Q).

O. Spring Break Promotions

Definition: Expenditures for advertising and promotion of college "spring break" events, including vacation trips, cruises, beach or pool parties, and on-premise and off-premise events where beverage alcohol can be purchased. This Category may include expenses reported in response to other categories; if so, indicate which expenses also are reported elsewhere.

P. 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, 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.

Q. Retail Value-Added Expenditures

Definition: Expenditures for promotions involving: (1) 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 (2) 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.

R. 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.

S. 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-R above, which expenditures should be reported in the appropriate Category. Allocate such expenditures among payments to (a) retailers and (b) wholesalers/distributors.

T. Total Reportable Expenditures

Definition: The figure provided for total reportable expenditures should equal the sum of the expenses listed in Categories A-S above.

U. Sports and Sporting Events

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 among (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-S and totaled in Category 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 M, would also be reported in Category U. Do not report any expenditures in this Category that have not also been reported in Categories A-S.

V. Social Responsibility Programs and Messages

Definition: Expenditures for social responsibility programs and messages. The expenditures reported in this Category may be duplicative of expenditures listed for Categories A-S and totaled in Category T.

II. Audience Demographics Definitions

These instructions shall be used in responding to Specification 3.B.'s request for the actual demographics of the audience for an advertisement:

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 are not available, provide the quarterly average demographic data for the daypart in which the ad appeared.

B. Radio ads. Provide the quarterly average demographic data for the daypart during which the ad appeared. In responding to this Specification, use Arbitron standard dayparts unless data for a shorter period of time are available.

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. 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.

III. Due Dates for Responses

Responses to this Order are due on a rolling basis, as follows:

A. Response to Specification 1: 30 days after the issuance of this order.
B. Response to Specification 2: 45 days after issuance of this order.
C. Response to Specification 3.A.: 30 days after issuance of this order.
D. Response to Specification 3.B.: 45 days after issuance of this order.
E. Response to Specifications 3.C. and 3.D.: 50 days after issuance of this order.
F. Response to Specification 3.E.: 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).
G. Response to Specification 4: Within 30 days after issuance of this order, or January 10, 2007, whichever is later.

IV. Instructions for Production of Responses

All responses should be provided in electronic form (by CD, DVD, or as email attachments), formatted as Word or Word Perfect documents, with the exception of the responses to Specifications 1.C., 2, 3.B., 3.C., and 3.D., which should be provided electronically (by CD or DVD) on an Excel Spread Sheet, labeled fully to indicate the specification to which the provided data responds; and responses to Specification 1.D., which should be provided in electronic form (by CD, DVD or as email attachments), formatted as Word, Word Perfect, or PDF documents.

Exhibit B: We Don't Serve Teens Week (2007) Participants and Promotional Materials

Federal Trade Commission

File a Complaint | Order Publications | Privacy Policy | FTC Search

WE DON'T SERVE TEENS
WWW.DONTSERVETEENS.GOV

Did you know?

In 2006, 63 percent of eighth graders reported that alcohol is “fairly easy” or “very easy” to get.

Today is June 20, 2008

En Español

21 Is the Legal Drinking Age
Learn about laws that reduce teen drinking

State Laws
Links to state-by-state legislation

Dangers of Teen Drinking
What can happen to teens who drink

Stopping Easy Access
Steps you can take to reduce teens' access to alcohol

Alcohol Advertising
Talk to your kids about alcohol ads

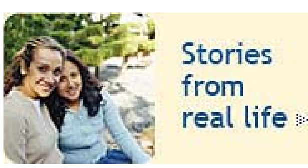
Answering Questions About Alcohol
What to say to neighbors and friends

How can you help?

Everyone can do something:

- **Individuals & Organizations**
- **Media**
- **Retailers**
- **Law Enforcement**

Get Campaign Materials



We Don’t Serve Teens Week Participants

To the many organizations and individuals who are taking part in We Don’t Serve Teens week — thank you! We appreciate the state and local officials identified below, the National Association of Broadcasters, the Outdoor Advertising Association of America, the Magazine Publishers of America, Students Against Destructive Decisions, The Century Council, Distilled Spirits Council, Beer Institute, Wine and Spirits Wholesalers of America, and many others, for contributing their time, effort, and resources. The following is a partial list of We Don’t Serve Teens Week participants.

State officials

- Attorney General Troy King, Alabama
- Attorney General Terry Goddard, Arizona
- Congresswoman Lucille Roybal-Allard, California
- Attorney General John Suthers, Colorado
- Lt. Governor Michael Fidele, Connecticut
- Attorney General Thurbert Baker, Georgia
- Attorney General Steve Carter, Indiana
- Attorney General Paul Morrison, Kansas
- Attorney General Greg Stumbo, Kentucky
- Attorney General Charles Foti, Louisiana
- Attorney General Martha Coakley, Massachusetts
- Attorney General Mike Cox, Michigan
- Attorney General Jim Hood, Mississippi
- Attorney General Jay Nixon, Missouri
- Attorney General Catherine Cortez Masto, Nevada
- Attorney General Gary King, New Mexico
- Attorney General Marc Dann, Ohio
- Attorney General Tom Corbett, Pennsylvania
- Attorney General Patrick Lynch, Rhode Island
- Attorney General Henry McMaster, South Carolina
- Attorney General Larry Long, South Dakota

- Attorney General Robert Cooper, Tennessee
- Attorney General Mark Shurtleff, Utah
- Attorney General Bob McDonnell, Virginia
- Attorney General Rob McKenna, Washington
- Attorney General J.B. Van Hollen, Wisconsin

Governors who have issued WDST proclamations to date — and D.C.'s Mayor, too

- Governor Palin, Alaska (PDF)
- Governor Riley, Alabama (PDF)
- Governor Schwarzenegger, California (PDF)
- Governor Ritter, Colorado (PDF)
- Governor Rell, Connecticut (PDF)
- Governor Minner, Delaware (PDF)
- Governor Crist, Florida (PDF)
- Governor Perdue, Georgia (PDF)
- Governor Lingle, Hawaii (PDF)
- Governor Otter, Idaho (PDF)
- Governor Blagojevich, Illinois (PDF)
- Governor Daniels, Indiana (PDF)
- Governor Sebelius, Kansas (PDF)
- Governor Fletcher, Kentucky (PDF)
- Governor Blanco, Louisiana (PDF)
- Governor Baldacci, Maine (PDF)
- Governor O'Malley, Maryland (PDF)
- Governor Patrick, Massachusetts (PDF)
- Governor Granholm, Michigan (PDF)
- Governor Pawlenty, Minnessota (PDF)
- Governor Barbour, Mississippi (PDF)
- Governor Blunt, Missouri (PDF)
- Governor Schweitzer, Montana (PDF)
- Governor Heineman, Nebraska (PDF)
- Governor Gibbons, Nevada (PDF)
- Governor Corzine, New Jersey (PDF)
- Governor Richardson, New Mexico (PDF)
- Governor Spitzer, New York (PDF)
- Governor Henry, Oklahoma (PDF)

- Governor Carcieri, Rhode Island (PDF)
- Governor Sanford, South Carolina (PDF)
- Governor Gregoire, Washington (PDF)
- Governor Doyle, Wisconsin (PDF)
- Mayor Fenty, District of Columbia (PDF)

Television, cable, and radio industry members

- National Association of Broadcasters
- Galavisión
- The Golf Channel
- A&E/History Channel
- Discovery Networks
- Lifetime
- Bravo
- USA Network
- Verizon FiOS
- YES Networks
- Adlink (LA)
- Fox Sports Florida
- Sunshine Network
- Time Warner, Cox, Comcast, and Charter local market cable systems
- National radio networks and over 140 local radio stations across the country

Magazines

- Magazine Publishers of America
- Good Housekeeping
- Newsweek
- PEOPLE
- Time
- US News & World Report
- Gotham
- Travel & Leisure
- THE WEEK
- Ocean Drive
- Boston Dig
- Chicago Reader
- Cleveland Scene

- Denver Westword
- Minneapolis City Pages
- Philadelphia Weekly
- Phoenix New Times
- San Diego Reader
- Seattle Weekly
- Seattle Stranger
- Tuscon Weekly
- Village Voice

News Media

- New York Times
- USA TODAY
- other newspapers across the country

Outdoor advertisers

- Outdoor Advertising Association of America, with over 3,000 outdoor signs across the country

Sports teams

- The Washington Redskins
- The Boston Red Sox
- The Chicago White Sox

Digital media

- Conerstone Entertainment
- MSN
- VH1
- Comcast - E! Networks
- SportsIllustrated.com
- Heavy.com
- Salon.com
- AskMen.com
- Evite
- Gay.com/Planetout
- AOL.com
- Yahoo
- Dennis Digital

- CBS SportsLine

Industry member partners who helped coordinate activities and distribute WDST materials

- The Century Council
- Distilled Spirits Council
- Wine and Spirits Wholesalers of America
- Beer Institute
- many individual alcohol beverage companies

Additional participants who helped coordinate activities and spread the We Don’t Serve Teens message

- Students Against Destructive Decisions
- National Consumers League
- U.S. Department of Treasury Alcohol and Tobacco Tax and Trade Bureau
- National Liquor Law Enforcement Administration
- National Association of Beverage Control Authorities
- American Beverage Licensees
- U.S. Department of Labor/Working Partners for an Alcohol- and Drug-Free Workplace
- U.S. Department of Transportation National Highway Traffic Safety Administration
- U.S. Department of Education Office of Safe and Drug Free Schools

Don't serve alcohol to teens.
It's unsafe. It's illegal. It's irresponsible.

Sample Billboard, Sept. 2007

Washington Metropolitan Area Transit Authority, Washington, DC, Sept. 2007

The Washington Post, Page A-13, Sept. 10, 2007

U.S. News and World Report, Page 52, Sept. 10, 2007

DON'T SERVE ALCOHOL TO TEENS.

It's unsafe. It's illegal.
It's irresponsible.

WWW.**DONT**SERVE**TEENS**.GOV

Time Magazine, Page 8, Sept. 17, 2007

We Don't Serve Teens

2007 Order Form
30-Sheet

The Federal Trade Commission has designated the week of September 10th as "National We Don't Serve Teens Week" to coincide with back to school activities. A wide array of industry, media, government, and other interested groups are supporting this FTC initiative to put the national spotlight on underage drinking prevention by publicizing the "We Don't Serve Teens" campaign in communities across the country with free campaign media materials. The FTC's "We Don't Serve Teens" campaign addresses the issue of underage access to alcohol, with the message to adults that providing alcohol to teens is unsafe, illegal and irresponsible.

Production and shipping of 30-sheets will be provided and paid for by Century Council.
Inner cities and liquor stores are specifically targeted.

Please allow 10-12 business days for delivery after your order has been received.

Quantity

Ship To:

Company: ____Date:_________

Address (street only, no PO Boxes):

____

City:____________________________________State: _____Zip: _________

Phone: ____________________ Ext: ______ Fax: ____________________

Attention: ____

Email:____

Mail order form to:
Circle Graphics Attn: Order Entry Department
120 Ninth Avenue Longmont, CO 80501

Or Fax: 303-532-2384 Attn: Order Entry Department

oaaa
Outdoor Advertising Association of America

Exhibit C: Beer Institute Internet Buying Guidelines

Internet Buying Guidelines

A. The demographic standard in Guideline 3c of the Code applies to all paid and bonus placements by brewers on internet websites operated by others. Where a single purchase is made for placements on multiple websites, the demographic standard and these guidelines apply to each website independently.

B. It is recognized that methodologies for rating internet websites as well as specific measurements of the various forms of Internet advertising are still evolving. Brewers will utilize a consistent internet audience measurement source recognized by the advertising industry (such as, but not limited to, comScore or Nielsen NetRatings) to determine whether advertising placements on websites are reasonably expected to meet the demographic standard in Guideline 3c of the Code. When the source regularly used by a brewer does not measure a particular site, other recognized rating systems may be relied upon.

C. For measured websites, a placement will be considered appropriate if the audience of monthly unique visitors meets or exceeds the demographic standard in Guideline 3c in each of the two most recent, consecutive monthly reports available at the time the placement is purchased.

D. If a placement is made on a website 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 website does not meet the standard.

E. For new or unmeasured web sites, placements may be made using audience composition data for measured websites 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 website content and information on the purpose and target audience of the website prior to purchase of advertising and obtaining confirmation from the website operator that its internal data indicates that the website meets the demographic standard.

F. Downloaded content and content that can be forwarded to others by e-mail directly from brewer websites or from brewer placements on websites operated by others shall include a term of use instructing those downloading or e-mailing such content that they should not forward the content to persons under the legal drinking age.

G. Brewers will conduct post-audits of actual placements on measured web sites at least twice a year to determine whether they met the demographic standard found in Guideline 3c.

Exhibit D: DISCUS Internet Buying Guidelines

Effective January 1, 2008
Subject to Semi-Annual Post
Audit of Random Placements

INTERNET/DIGITAL BUYING GUIDELINE

In developing this guideline, the DISCUS Code Review Board met with experts in the field, syndicated "internet" demographic data sources and various media companies to obtain their respective best thoughts in devising a "buying guideline" for this medium to implement the 70% 21 years of age and older demographic provisions of the Code. As a result of a host of meetings and discussions, the Board developed the internet/digital buying guideline set forth below that will apply to advertising and marketing materials placed on that medium on and after January 1, 2008. Placements on this medium also will be subject to the Code's provision for semi-annual after-the-fact audits of a random portion of past advertising/marketing placements. To the best of our knowledge, we are the first trade group to issue an internet buying guideline that will be used across an entire industry.

The guideline was designed to anticipate many different scenarios and circumstances for the use of this medium. For example, for new websites not measured by a syndicated data source, the guideline provides that one could use the website's "registered user" database to place advertising or marketing materials to individuals 21 years of age and older viewing the website. Alternatively for new websites, the guideline provides for the option of obtaining from the publisher of the website an independent demographic survey using the most recent three-month site average of available audience data of unique visitors. If those options are not available, the bottom line would be no advertising on that new website. In many ways, the digital guideline is similar to the "unmeasured magazine" initiative whereby maiden/new publications intended for general circulation (even if it is a prototype of another magazine) require a third-party survey of subscribers before an advertisement placement. If there is nothing to measure, then there will be no ad placement pursuant to this Code initiative.

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//NetRatings, 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 70% 21 years of age and 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 and 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 their advertising or marketing materials to users 21 years of age and 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 show 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.

STATEMENT OF COMMISSIONER PAMELA JONES HARBOUR
CONCURRING IN PART AND DISSENTING IN PART
Regarding the 2008 Report on Self-Regulation in the Alcohol Industry
File No. P064505

Today the Commission issues its third report on self-regulation in the alcohol industry. This report reflects excellent work by Commission staff, and I concur in the Commission's decision to release it. I dissent in part, however, because I would prefer that the Commission take a tougher stance against alcohol advertising to underage audiences. Specifically, I disagree with the Commission's recommendation that the industry maintain the current 70 percent baseline standard for alcohol advertising.

Underage drinking is a serious public health and safety issue in the United States. Alcohol consumption is the leading drug problem among our youth. According to *The Surgeon General's Call to Action to Prevent and Reduce Underage Drinking*, approximately 50 percent of young people have had an alcoholic drink by age 15, and approximately 90 percent have done so by age 21.[1] Harsh statistics quickly shatter the myth that alcohol is a "safe" drug for young people. Each year, more than 5,000 youths die of alcohol-related injuries involving underage drinking.[2] Beyond this startling death toll, underage drinking also is associated with an increased risk of physical and sexual assault, academic failure, and illicit use of other drugs.[3] The consequences of underage drinking can be devastating for young people, their parents, and their communities.

Popular culture – especially consumer advertising – idealizes the effects of alcohol and increases the pressure on young people to engage in underage drinking. To counteract this powerful influence, the alcohol industry must shoulder some responsibility for reducing youth exposure to alcohol advertising.

The industry has taken important steps in the right direction. In 2003, at the Commission's recommendation, the three major alcohol industry trade associations adopted improved self-regulatory standards for the placement of alcohol advertising in print, radio, and television media. According to these standards, at least 70 percent of the audience for each advertisement must consist of adults of legal drinking age. Since 2003, Commission staff has actively monitored alcohol advertising, working with industry trade associations as well as individual companies, to facilitate compliance with the 70 percent standard.

Today's report identifies practices that may improve the management of alcohol advertising placements and thus increase the industry's compliance with the 70 percent standard. At this time, the Commission does not recommend a change in the baseline standard itself. The report

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[1] U.S. DEP'T OF HEALTH AND HUMAN SERVS., THE SURGEON GENERAL'S CALL TO ACTION TO PREVENT AND REDUCE UNDERAGE DRINKING 3 (2007), *available at* http://www.surgeongeneral.gov/topics/underagedrinking/calltoaction.pdf.

[2] *Id.* at 10.

[3] *Id.* at 10-11.

recognizes, however, that alternative standards have been proposed. For example, the National Association of Attorneys General and the Center on Alcohol Marketing and Youth at Georgetown University each have proposed a standard that would limit alcohol advertising placements to media where 85 percent of audience members twelve and older are above the legal drinking age. Other organizations have proposed a 75 percent baseline standard.

The alcohol industry should enhance its current self-regulatory guidelines by raising the baseline standard for alcohol advertisements to 75 percent, as at least one alcoholic beverage company already has done. Today, our young people are tempted by a "'Mardi Gras culture' that equates heavy drinking, sexual exhibitionism and fun."[4] A more stringent standard would further limit tween and teen exposure to "images of sassy promiscuity"[5] contained in alcohol advertising, which would help to curb the dangerous health and safety effects of underage drinking.

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4 Janet Maslin, *Between Drinks, A Coming of Age*, N.Y. TIMES, Feb. 7, 2005, at E1 (quoting KOREN ZAILCKAS, SMASHED: STORY OF A DRUNKEN GIRLHOOD (2005)), *available* at 2005 WLNR 1682157.

5 *Id.*

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