

Department of Health and Human Services

OFFICE OF  
INSPECTOR GENERAL

YOUTH AND ALCOHOL:  
CONTROLLING ALCOHOL ADVERTISING  
THAT APPEALS TO YOUTH



Richard P. Kusserow  
INSPECTOR GENERAL

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# EXECUTIVE SUMMARY

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## PURPOSE

This inspection examined (1) the Federal, State, alcohol industry, and national television networks' advertising and marketing regulations and standards, (2) the monitoring of these regulations and standards, and (3) the application of the regulations and standards to five current alcohol advertisements.

## BACKGROUND

In response to concerns about youth alcohol consumption, Surgeon General Antonia Novello requested that the Office of Inspector General (OIG) provide information about alcohol advertising practices and the current system governing them. These concerns mirror one of Department of Health and Human Services Secretary Louis Sullivan's goals, which is to reduce the prevalence of alcohol problems among children and youth.

In a national survey of junior and senior high school students, the OIG found that students notice alcohol advertisements and especially like those that spotlight attractive people, make drinking look like fun, and feature attractive or exotic settings. Other researchers have found that alcohol advertisements can affect youth attitudes about alcohol. For example, one study found that students exposed to beer commercials were more likely to think beer is "cool" or "macho." Recent public opinion polls show that the public believes alcohol advertising adversely affects underage youth and influences them to drink. Because of alcohol's potential for abuse, both public and private sectors have placed restrictions on its promotion and sale.

In this study, we interviewed Federal agencies, State Alcoholic Beverage Control (ABC) agencies, alcohol trade associations and an industry-supported organization, an advertising industry organization, and the three largest national television networks. We asked about their regulations or standards for alcohol advertising and the enforcement of the regulations and standards. Using a case study approach, we selected five current print and television advertisements for alcoholic beverages and asked respondents about (1) the application of their regulations or standards to the ads, (2) the likelihood that they would take action to change the ads, and (3) their suggestions for improving the ads. We asked researchers and public interest groups who study alcohol and advertising for their opinions on current alcohol advertising practices and their specific comments about the five selected ads.

## FINDINGS

### *FEDERAL REGULATION*

- ▶ Federal jurisdiction is fragmented among several agencies.
- ▶ Federal regulations do not specifically prohibit alcohol advertisements that appeal to youth.
- ▶ The Bureau of Alcohol, Tobacco and Firearms' enforcement authority is limited.

### *STATE REGULATION*

- ▶ States have difficulty adopting legislation to control alcohol advertising.
- ▶ State regulations are limited in their application.

### *ALCOHOL INDUSTRY CONTROLS*

- ▶ Alcohol industry standards do not effectively restrict advertisements that appeal to youth.
- ▶ Alcohol industry standards are unenforceable.

### *TELEVISION NETWORK CONTROLS*

- ▶ Network enforcement is based on negotiation with advertisers.

### *CASE STUDY*

- ▶ Regulations and standards have not deterred advertisers from using advertisements that appeal to youth.

## ISSUES FOR CONSIDERATION

Based on a review of the findings in this report, the OIG developed a list of issues for consideration that could help eliminate alcohol advertisements that appeal to youth.

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# INTRODUCTION

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## PURPOSE

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In a national survey of junior and senior high school students, the OIG found that students notice alcohol ads and especially like those that spotlight attractive people, make drinking look like fun, and feature attractive or exotic settings.<sup>1</sup> Other researchers have found that alcohol ads can affect youth attitudes about alcohol. For example, one study found that students exposed to beer commercials were more likely to think beer is "cool" or "macho."<sup>2</sup>

### *Alcohol Marketing's Effect on Youth*

The public has expressed concern about the marketing of alcoholic beverages to youth. The concern about alcohol marketing (which includes advertising, labeling, and promotions) focuses on youth-oriented advertising, promotional items, and events sponsored by the alcohol industry. In a recent public opinion poll conducted on behalf of the Century Council, an alcohol industry-supported organization, the Wirthlin Group found that 73 percent of respondents believe that alcohol advertising is a major contributor to underage drinking. Additionally, the majority of Americans think the alcohol industry is "on the wrong track," one of the reasons being that alcohol "ads

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<sup>1</sup>U.S. Department of Health and Human Services, OIG-OEI, Youth and Alcohol: A National Survey--Drinking Habits, Access, Attitudes, and Knowledge, OEI-09-91-00652, June 1991.

<sup>2</sup>Lawrence Wallack, Diana Cassidy, and Joel Grube, "T.V. Beer Commercials and Children: Exposure, Attention, Beliefs, and Expectations About Drinking as an Adult," AAA Foundation for Traffic Safety, Fall 1990.

target the young."<sup>3</sup> In an opinion poll conducted for the Bureau of Alcohol, Tobacco and Firearms (BATF), more than 80 percent of respondents believe that alcohol advertising influences youth to drink alcoholic beverages.<sup>4</sup>

Because of concerns about youth alcohol use and lack of knowledge about alcohol, Congress proposed the Sensible Advertising and Family Education Act of 1990. This legislation would not restrict the content of alcohol ads, but it would require a balanced message in the ads with health warnings and toll-free numbers for information about the risks associated with alcohol.

Broadcasters acknowledge that advertising can affect youth. According to the National Association of Broadcasters (NAB), "the impact of advertising on radio and television audiences, particularly kids, cannot be overstated. Clever jingles, flashy lights, fast talking, and quick pacing, all contribute to the message of commercials."<sup>5</sup> While alcohol ads may not be aimed at the underage youth market, according to NAB, "youngsters still absorb the message."

Controversy remains, however, over the effects of alcohol advertising. While studies have not consistently shown that advertising increases adult alcohol consumption, some researchers believe that exposure to alcohol advertising affects youth's attitudes about alcohol's role in society. Researchers have not reached consensus on the interpretations of these findings.

### *Concern for Certain Advertising Messages*

Concern over alcohol advertising arises because much alcohol advertising goes beyond describing the specific qualities of the beverage to creating a glamorous, pleasurable image that may attract youth. Research indicates that youth are attracted to certain types of alcohol ads.<sup>6</sup> Alcohol advertising critics oppose ads that appeal to youth by

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<sup>3</sup>The Wirthlin Group, "A National Benchmark Survey of Public Attitudes Toward Beverage Alcohol," prepared for the Century Council, Vol. 1, September 1990, p. 13.

<sup>4</sup>Opinion Research Corporation, "Final Report of Findings of Research Study of the Public Opinion Concerning Warning Labels on Containers of Alcoholic Beverages," conducted for BATF, Vol. 1, December 1988, p. 14.

<sup>5</sup>NAB, "Kidsummit Against Drugs," November 18, 1987.

<sup>6</sup>P.P. Aitken, et al., "Television Advertisements for Alcoholic Drinks Do Reinforce Under-age Drinking," British Journal of Addiction, Vol. 83, 1988, pp. 1399-1419; Charles Atkin and Martin Block, "Content and Effects of Alcohol Advertising," prepared for BATF, Pub. No. PB82-123142, Springfield, Va: National Technical Information Service, 1981; Lisa R. Lieberman and Mario A. Orlandi, "Alcohol Advertising and Adolescent Drinking," Alcohol Health and Research World, Vol. 12, No. 1, 1987, pp. 32-33; Kimberly Neuendorf, "Alcohol Advertising and Media Portrayals," Journal of Studies on Alcohol, Vol. 45, 1984, pp. 93-100.

- (1) making lifestyle appeals, (2) making sexual appeals, (3) using sports figures, and (4) showing risky activities.

*Lifestyle appeals.* The aim of a lifestyle ad is to get consumers to identify with the image created. According to one report, young people are constantly seeking role models and attractive lifestyles to emulate.<sup>7</sup> These ads associate wealth, success, social approval, and leisurely life with drinking. The ads are emotional rather than factual. An example is an ad that shows beautiful men and women on a tropical island with no cares in the world.

*Sexual appeals.* These ads use sexuality as a direct appeal. Ads feature attractive models wearing lingerie or couples in an embrace.<sup>8</sup> The ads usually make little or no mention of the products' contents or taste. According to the Center for Science in the Public Interest (CSPI), direct sexual appeals in ads are more favorably received by young people than by adults.<sup>9</sup> The CSPI claims that advertising with sexual appeals plays on the feelings of sexual inadequacy of young people.

*Sports figures.* Many alcohol advertisers concentrate ads in sports broadcasts, sponsor athletic events, own or sponsor professional teams, and use athletes in commercials. Sports figures are common youth heroes. Youth receive a positive message about alcohol use through sports figure promotion of alcohol products.<sup>10</sup> Examples of sports themes are ads featuring former professional athletes and ads showing friends getting together for weekend sports such as softball.

*Risky activities.* These ads may show people shooting rapids, climbing mountains, boating, skiing, or driving race cars. Many ads associate alcohol with the exciting activity by interspersing action scenes and shots of the product or by showing alcohol as a reward for the activity. Studies by Atkin and Block find that people interpret more than an association between the activity and the product; many believe that the actors have consumed the product, or it is acceptable for people to drink and do the activity.<sup>11</sup>

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<sup>7</sup>Michael Jacobson, Robert Atkins, and George Hacker, The Booze Merchants, Center for Science in the Public Interest, 1983, p. 104.

<sup>8</sup>George A. Hacker, Ronald Collins, and Michael Jacobson, Marketing Booze to Blacks, Center for Science in the Public Interest, 1987, pp. 28-29.

<sup>9</sup>CSPI, "Omnibus Petition for Regulation of Unfair and Deceptive Alcoholic Beverage Advertising and Marketing Practices," Submitted to the FTC, 1985, p. 11.

<sup>10</sup>Lieberman and Orlandi, p. 32.

<sup>11</sup>Atkin and Block, pp. 332-334.

## *Controls on Alcohol Advertising*

Because of alcohol's potential for abuse, both public and private sectors have placed restrictions on its promotion and sale. As part of these efforts, some organizations have placed controls on alcohol advertising in an attempt to assure that alcohol ads do not target young people. Restrictions on alcohol advertising come primarily from (1) Federal regulations, (2) State regulations, (3) alcohol industry organization standards, and/or (4) national television network standards.<sup>12</sup>

At the Federal level, the Federal Alcohol Administration (FAA) Act gives primary responsibility to the Department of Treasury's BATF. The BATF regulates the permits, labels, and advertising of wine, distilled spirits, and, to some extent, malt beverages. The Food and Drug Administration (FDA), in the Department of Health and Human Services, has authority over labeling of wine beverages containing less than 7 percent alcohol and can affect the content of some point-of-sale advertising. The Federal Trade Commission (FTC) has the more general authority to regulate deceptive or unfair commercial practices. This authority extends to alcohol advertising and marketing activities, such as student spring break promotions.

The Twenty-First Amendment to the U.S. Constitution repealed Prohibition and gave States the responsibility for regulating alcoholic beverages. As a result, some States have regulations that permit their Alcoholic Beverage Control (ABC) agencies to monitor and control alcohol advertising.

The Beer Institute, the Wine Institute, and the Distilled Spirits Council of the United States (DISCUS) have developed separate advertising codes and standards for their members. An industry-supported, non-profit organization, the Century Council, has developed advertising standards intended to apply to all three sectors of the alcohol industry (beer, wine, and distilled spirits) effective October 1, 1991.

After the dissolution of the NAB Television Code in 1982, the development and administration of advertising standards were left to the networks and stations.<sup>13</sup> Three major national television networks (ABC, NBC, and CBS) adopted standards for alcohol ads, which they contend uphold their commitment to viewers for quality programming.

More information about the Federal, State, alcohol industry organization, and television network roles is contained in the Findings section of this report.

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<sup>12</sup>"Alcohol industry organizations" and "industry organizations" refer to alcohol trade associations (the Beer Institute, the Wine Institute, and the Distilled Spirits Council of the United States) and the Century Council.

<sup>13</sup>George Gerbner, "Stories that Hurt: Tobacco, Alcohol, and Other Drugs in the Mass Media," Youth and Drugs: Society's Mixed Messages, Office of Substance Abuse Prevention Monograph-6, 1990, p. 65.



## METHODOLOGY

To obtain an understanding of the government regulations and voluntary standards that control alcohol advertising, we conducted structured in-person and telephone interviews with BATF, FTC, FDA, State ABC agencies, alcohol trade associations, the Century Council, the American Association of Advertising Agencies, and three national television networks (ABC, NBC, and CBS). We selected the three television networks because they have national advertising standards. During the interviews, we asked respondents about (1) the organization's regulations or standards for alcohol advertising, (2) the effectiveness of these criteria, and (3) suggestions for improving the system of control over alcohol advertising. We also contacted researchers and public interest groups in the fields of alcohol abuse and advertising in order to discern their opinions about alcohol advertising practices.<sup>14</sup>

We reviewed Federal laws, regulations, and rulings to determine the extent of Federal authority and jurisdiction. We researched State liquor laws in the Commerce Clearinghouse Liquor Control Law Reporter to determine the applicable State laws that regulate alcoholic beverage advertising. We also reviewed alcohol and media organization advertising standards to compare the industries' codes and standards.

To understand how the respondents' regulations or standards apply to specific advertising practices, we selected five current television and print ads for alcohol. We asked that respondents respond as they would to complaints about each of the ads. Because we wanted to focus on how regulations and standards apply to alcohol advertising practices and techniques, rather than ads for specific products, respondents were asked to respond to all the ads, even those for which they do not have responsibility. We specifically stated, "If the ad is for a product the [organization] does not represent, please review the ad as if it were for [beer/wine/wine coolers/distilled spirits]." We asked respondents about: (1) the application of their regulations or standards to the five alcohol ads, (2) the likelihood that they would take any action to change these ads, and (3) suggestions for changing or improving the ads. We asked interest groups if any aspects of the ads might be particularly attractive or misleading to youth. Results of the case study incorporate both comments from interviews and written responses. Appendix B lists the individuals and organizations contacted for the case study, and Appendix A summarizes their responses.

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<sup>14</sup>The term "interest groups" will be used throughout the report to refer to researchers and public interest groups in the fields of alcohol abuse and advertising.







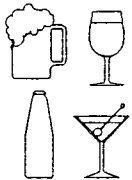
# FEDERAL REGULATION





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## FEDERAL JURISDICTION IS FRAGMENTED AMONG SEVERAL AGENCIES

Several Federal agencies have responsibility for regulating alcoholic beverages. The BATF regulates the permits, labels, and advertising of wine, distilled spirits, and, to some extent, malt beverages. The FDA has authority over labeling of wine beverages containing less than 7 percent alcohol. The FTC prohibits deceptive and unfair advertising and marketing of all alcoholic beverages. It has concurrent jurisdiction with BATF, but FTC generally defers to BATF's decisions. The following chart outlines how responsibility for alcoholic beverages is divided among the Federal agencies.

### THREE FEDERAL AGENCIES SHARE RESPONSIBILITY

	ADVERTISING	LABELING	PROMOTIONS
<b>BATF</b>	 	 <b>2</b> 	
<b>FDA</b>			
<b>FTC*</b>			

 **MALT BEVERAGES**  
 **WINE 7% AND OVER**  
 **WINE BEVERAGES UNDER 7%**  
 **DISTILLED SPIRITS**

- ★ The FTC has authority over all alcohol marketing practices (advertising, labeling, and promotions), but usually defers to agencies that have more specific jurisdiction (see discussion on p. 7).
- 1 For malt beverages, BATF's authority is limited in certain States.
- 2 The BATF requires the Surgeon General's health warning on all alcoholic beverages and the alcoholic content on all wines containing over 0.5 percent alcohol.

While BATF has the specific responsibility for alcoholic beverage permits, labels, and advertising, it does not have complete control over all types of alcoholic beverages. For example, Federal law does not require malt beverage producers to hold a permit although permits are required for wine and distilled spirits producers and importers. Federal law also limits BATF's authority over malt beverage labeling and advertising

in States that do not have enabling legislation (see detailed discussion of BATF's jurisdiction on p. 8). Also, wine coolers do not fall entirely under BATF's jurisdiction because the FAA Act definition of wine does not include beverages, such as wine coolers, containing less than 7 percent alcohol by volume. The BATF's jurisdiction over wine coolers is limited to requiring that the Surgeon General's health warning and the alcoholic content appear on the labels.

Since wine coolers do not meet the definition of wine, they are treated as a "food" and come under FDA's jurisdiction. The FDA regulates the labeling, but not the advertising, of wine coolers. Although the FDA has no authority over advertising practices per se, it can affect the content of point-of-sale advertising, such as posters that accompany the product or advertising tags placed around the necks of bottles.

Congress granted FTC general authority to prevent deceptive and unfair business practices, including marketing and advertising. While FTC has jurisdiction over the advertising, labeling, and promotion of all alcoholic beverages, it will defer in individual cases if BATF or FDA has specific regulations or makes specific decisions regarding a product. For example, if BATF approves a product label and decides it is not deceptive, FTC generally defers to BATF's decision. Because BATF and FDA regulations do not address wine cooler advertising, FTC has sole jurisdiction.

One alcoholic beverage illustrates the confusion among the Federal jurisdictions. A drink called "Passion" (available in Purple, Pink, Peach, and Tropical flavors) contains grain alcohol in some areas of the country and substandard wine in others.<sup>15</sup> The BATF has jurisdiction over the grain alcohol version of Passion. The FDA, on the other hand, has jurisdiction over the labeling of the substandard wine mixture, which contains less than 7 percent alcohol. The FTC can consider questions that neither BATF nor FDA address. This could include such issues as whether the promotion of a plastic squeeze-bottle that accompanies 2-liter bottles of Passion is an unfair or deceptive practice.

## **FEDERAL REGULATIONS DO NOT SPECIFICALLY PROHIBIT ALCOHOL ADVERTISEMENTS THAT APPEAL TO YOUTH**

The primary goal of the BATF and FTC regulations regarding advertising is to ensure that consumers receive truthful and accurate information about products. The FDA does not have regulations that specifically address alcoholic beverages or advertising practices.

The BATF regulations prohibit advertising claims that are deceptive, misleading, disparaging of a competitor's product, obscene, or indecent. They do not specifically address alcohol advertising and youth. Although one BATF ruling prohibits showing a

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<sup>15</sup>The BATF defines substandard wine in 27 C.F.R. 4.21(h)(2) as wine that fails to have the composition, color, and clean vinous taste and aroma of normal wines, has an excess volatile acidity, or has excess added water or sugar.

prominent athlete consuming a malt beverage, this ruling does not concern the issue of an athlete's appeal to youth. Instead, BATF is simply concerned with misleading consumers about alcohol's effect on athletic ability. The BATF regulations also do not address targeting youth or promoting alcohol at events.

The FTC prohibits commercial practices that are deceptive or unfair. An example of a practice that would be unfair to underage youth is an offer to send away for a 6-pack of beer without having to prove age. The FTC also addresses marketing and advertising that affect health and safety. Recently, FTC (in conjunction with BATF and FDA) investigated the Canandaigua Wine Company that produces Cisco, a wine with 20 percent alcohol. The marketing practices for Cisco were in question because several young people were hospitalized for overdoses of Cisco. In this case, the promotion and packaging of Cisco misled consumers to believe it was a wine cooler. Generally, the FTC is not concerned with alcohol ads that use emotional appeals or lifestyle themes because the Commission's jurisdiction is limited to deception and unfairness and does not extend to issues of taste and public mores.

#### THE BATF'S ENFORCEMENT AUTHORITY IS LIMITED

The BATF has faced several barriers in enforcing its regulations. Most importantly, the FAA Act limits BATF's authority over malt beverage marketing practices, including labeling and advertising. Because the FAA Act does not require basic permits for brewers, BATF lacks an important enforcement tool.

The Penultimate Paragraph of the FAA Act<sup>16</sup> limits BATF's jurisdiction over malt beverages to States that have enacted legislation similar to BATF's. Without State regulations that mirror BATF's regulations, BATF has no ability to regulate malt beverage labeling or advertising. The 25 States that have adopted the FAA Act pose no problems for BATF. Also, some States have adopted parts of the FAA Act. On the other hand, BATF's capability is extremely limited in States that have no laws concerning alcohol advertising.

Because Federal law does not require malt beverage producers, i.e. brewers, to hold basic permits, BATF's ability to achieve compliance from brewers is compromised. Brewers hold no permits for BATF to suspend or revoke in case of violations, which means that BATF must resort to criminal prosecution. According to a BATF official, "The brewers know that [BATF] can only take limited action against them."

The BATF is seeking ways to expedite enforcement. An enforcement action against the Coors Light slogan -- "Won't Slow You Down" -- continued for 2 years before BATF sought alternative methods. The BATF obtained permission from the Department of Justice (DOJ) to seek an injunction through the civil courts. The BATF then threatened Coors with civil court action. Within a matter of weeks, Coors

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<sup>16</sup>27 U.S.C. 205.

and BATF agreed to a settlement. The BATF plans to use similar civil proceedings in several cases of malt liquor ads that refer to the strength of the product.

*The BATF has limited control of the nation's "No. 1 strongest malt"*

If you want to see the rap singer Ice Cube, you can go to a movie about Los Angeles gangs, Boyz N the Hood, or you can simply stay tuned and watch television ads for St. Ides malt liquor. The St. Ides ads contain overt references to street gangs, sexual conquest, and the malt liquor's strength. Listen closely and you will hear: *in a black can, why don't ya grab a 6-pack and get your girl in the mood quicker and get your jimmy thicker with St. Ides malt liquor.*

While Federal alcohol advertising regulations forbid practices in the St. Ides ad, such as promoting its alcoholic strength and disparaging a competitor's product, BATF's authority over malt beverages is limited in certain States. Because California, for example, has no law that prohibits promoting alcoholic strength, BATF cannot act against the St. Ides campaign in that State. A BATF official expressed frustration that "when a State like California does not have enabling legislation, 10% of the American population is not being protected." The St. Ides ads are currently under investigation by BATF in other States.

## STATE REGULATION

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### STATES HAVE DIFFICULTY ADOPTING LEGISLATION TO CONTROL ALCOHOL ADVERTISING

Each State has the authority to regulate alcoholic beverage advertising. Twenty-nine out of the 50 State and the District of Columbia ABC administrators believe that restricting alcohol ads can be effective in reducing advertising's youth appeal. However, only 17 States have regulations that prohibit ads with youth appeal.

Pressures on State legislators from vested interests can be a barrier to regulating alcohol advertising. According to one State official, "Passing these regulations [prohibiting alcohol advertising and promotions on college campuses] was a bloody battle." Another State official found strong lobbyists opposing legislation that would have prohibited alcohol ads on television. According to the official, representatives from the alcohol industry threatened to discontinue the television broadcast of all sports programming, including the Super Bowl. In the face of this pressure, the legislation did not pass.

Disagreements within a State also can inhibit an ABC's attempt to control advertising. For example, the Washington State Liquor Control Board has been very active in attempts to restrict alcohol advertising. Early this year, however, a proposal by the Washington State Medical Association to restrict ads that imply "liquor enhances. . . professional or social achievement of any kind" failed to gain the support of the Board.<sup>17</sup> Critics of this legislation claimed there was insufficient evidence of the effect of alcohol advertising on consumption. Additionally, the board members decided that the State already had taken enough precautions to prevent alcohol ads from appealing to youth.

### STATE REGULATIONS ARE LIMITED IN THEIR APPLICATION

Problems with the wording of regulations and the nature of short-term, national ad campaigns diminish the effectiveness of State controls. Narrow definitions limit the application of many State regulations that attempt to prevent the appeal of alcohol advertising to youth. For example, Utah prohibits ads or promotional schemes that are "primarily or especially appealing" to underage youth. However, an ad is not in violation of the law if it appeals to 25-year-old adults just as much as it appeals to 13-year-old adolescents. This means alcohol ads could contain themes that appeal to youth (such as cartoons or youth-oriented music) as long as at least some adults also find the ad appealing.

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<sup>17</sup>Jay Matthews, "Washington State Rejects Ban on Alcohol Advertising," Washington Post, January 31, 1991.

In other States, the regulations are so unclear that it is difficult to agree on their interpretation. Virginia's provision reads, "No advertising shall contain any statement, symbol, depiction or reference that would tend to induce minors to drink." Little consensus exists on which ads violate this regulation. According to a State ABC official, "We have various regulations on advertising, and for the most part, they are completely ineffective because of difficulties with definitions."

Logistics can cause problems with enforcement, even if there is a clear violation of State law. The short duration of some advertising campaigns, combined with the time it takes for the State ABC to take action, can mean an ad will run despite the fact it is in violation. In Texas, the Anheuser-Busch "Budman" campaign violated State law that bars the use of contests or sweepstakes to induce purchase of alcoholic products. When State officials realized Anheuser-Busch had continued the "Budman" campaign in spite of the law, the ABC issued a cease-and-desist order and began steps to suspend Anheuser-Busch's license to sell beer within the State. However, because the campaign was scheduled to end on Labor Day, "the matter will probably be moot before the [ABC] can hold a hearing."<sup>18</sup> The campaign has now ended and Anheuser-Busch still holds its license to sell beer in Texas. Additionally, the wide scope of national campaigns often limits a State's ability to control advertising. While States can regulate the content of alcohol advertising originating within their boundaries, they cannot restrict advertising originating in other States.

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<sup>18</sup>Marj Charlier, "Anheuser's Budman Promotion Creates Big Brouhaha in Texas," Wall Street Journal, August 19, 1991, B1.

*In some cases, a State can be more timely and effective than the BATF*

The BATF and the New York Attorney General have had varied success in seeking discontinuance of the Coors Light "Won't Slow You Down" campaign. While BATF spent 2 years corresponding with Coors and had to obtain DOJ's permission to seek an injunction, the State Attorney General filed a suit and within a year was able to limit Coors' future advertising practices.

In 1983, Coors developed the slogans "Won't Slow You Down" and "No Slowin' Down" as part of an ad campaign showing active men and women involved in several types of athletic activities. This campaign suggests that Coors Light will not impede a consumer's physical abilities, although alcohol is a depressant on the central nervous system.

The New York Attorney General's Bureau of Consumer Frauds and Protection office issued an Assurance of Discontinuance to Coors for the "Won't Slow You Down" campaign. Coors withdrew its ads based on the threat of litigation, since it appeared that the ads violated the false and misleading provision in the State General Business Law. Coors agreed to phase out the slogan by October 1, 1991, and not to use the Silver Bullet jet, race car, or any ads portraying these items or any sports equipment in the State of New York.

New York State's action against Coors was independent of BATF's involvement. Greater coordination between BATF and the States' Attorneys General could improve effectiveness in the future.



# ALCOHOL INDUSTRY CONTROLS

## ALCOHOL INDUSTRY STANDARDS DO NOT EFFECTIVELY RESTRICT ADVERTISEMENTS THAT APPEAL TO YOUTH

Alcohol trade associations (the Beer Institute, the Wine Institute, and DISCUS) have developed separate alcohol advertising codes and standards for their members. The Century Council provides alcohol advertising standards for its members in all three sectors of the alcohol industry (beer, wine, and distilled spirits). Each of the advertising codes and standards has youth-related provisions.<sup>19</sup> The following table compares each organization's provisions related to youth appeal:

**INDUSTRY ADVERTISING GUIDELINES:  
A COMPARISON OF YOUTH-RELATED PROVISIONS**

ALCOHOL ADVERTISEMENTS SHOULD NOT BE DIRECTED TO APPEAL TO YOUTH, BY:	BEER INSTITUTE	DISCUS	WINE INSTITUTE	CENTURY COUNCIL
HAVING A PARTICULAR YOUTH APPEAL		X	X	X
ENCOURAGING UNDERAGE DRINKING	X			
SHOWING UNDERAGE MODELS		X	X	X
SHOWING UNDERAGE DRINKING	X			
SUGGESTING VIOLATION OF DRINKING AGE LAWS	X			X
ALCOHOL ADS SHOULD NOT USE YOUTH-ORIENTED SUBJECT MATTER, INCLUDING:				
MUSIC			X	
LANGUAGE			X	X
GESTURES			X	X
CARTOON CHARACTERS			X	X
OBJECTS, e.g. TOYS		X		
COMPARISON WITH YOUTH PRODUCTS, e.g. CANDY			X	
ADS SHOULD NOT USE PERSONALITIES TO APPEAL TO YOUTH, SUCH AS:				
YOUTH-ORIENTED PERFORMERS OR HEROES			X	X
SPORTS CELEBRITIES			X	X
SANTA CLAUS OR BIBLICAL CHARACTERS		X		
ALCOHOL ADS SHOULD NOT SHOW DRINKING AS ESSENTIAL TO ACHIEVEMENT, SUCH AS:				
ADULTHOOD			X	
EDUCATION	X			
PERSONAL OR SOCIAL SUCCESS			X	X
ALCOHOL ADVERTISING OR PROMOTIONS SHOULD NOT ATTRACT AN UNDERAGE AUDIENCE, AS FOUND:				
IN THE BROADCAST MEDIA OR MOVIE THEATRES		X		
IN YOUTH-ORIENTED MEDIA		X	X	X
AT YOUTH-ORIENTED EVENTS, e.g. CONCERTS				X
NEAR SCHOOLS OR IN COLLEGE MEDIA				X
ON YOUTH ITEMS, e.g. TOYS, GAMES				X

[X] DENOTES THAT THE ORGANIZATION'S GUIDELINES ADDRESS THIS ITEM

<sup>19</sup>Beer Institute, Brewing Industry Advertising Guidelines, 1984; Wine Institute, Code of Advertising Standards, 1987; DISCUS, Code of Good Practice, 1987; Century Council, The Century Council Code of Responsible Marketing and Advertising Practices, draft, 1991.

While the industry advertising standards purport to guide alcohol advertisers towards responsible behavior, they fail to prevent advertising considered to have youth appeal. Several factors limit the alcohol industry standards' effectiveness in preventing ads that appeal to youth. They include:

- (1) vague standards that do not specify unacceptable practices,
- (2) narrow standards that do not address many ads that may mislead or appeal to youth,
- (3) inconsistency in the definitions of youth appeal, and
- (4) the failure of most industry organizations to address marketing and promotional activities.

Several advertising standards are worded vaguely. Because the standards do not specifically state what practices are unacceptable, advertisers are left with little guidance. The DISCUS Code of Good Practice, for example, covers youth issues with the broad statement that ads should not be "in any manner directed or primarily intended to appeal to persons below the legal drinking age." Although DISCUS interprets the standard to discourage promotional activities on college campuses, this is not evident from reading its code. Also, the terms "directed" or "primarily intended to appeal" are difficult to define.

Although some standards spell out precisely which practices are unacceptable, they are extremely narrow in scope. For example, one of the Century Council's standards discourages advertising and marketing from making claims that "persons cannot solve social, physical, or personal problems without consuming the product." This means ads that state alcohol is essential to solving problems are not allowed. However, ads that indicate alcohol can help a person solve problems, such as the Bass Ale campaign that "it helps you get to the bottom of things," are not prohibited by the standards. Furthermore, the Century Council stipulates that advertising does not violate its standards if it merely portrays attractive, affluent people who appear to be having fun. These stipulations narrow the scope of the Century Council's effectiveness in limiting ads that appeal to youth.

Alcohol industry standards are inconsistent concerning which practices have youth appeal. The Wine Institute and Century Council recognize that a broader scope of advertising practices appeal to youth. For example, while the Wine Institute and Century Council standards discourage the use of cartoon characters, the Beer Institute and DISCUS standards do not. The Beer Institute, in fact, likens its use of cartoons to the use of cartoons in ads for a variety of adult products, including life insurance. Similarly, the Wine Institute and Century Council discourage any use of amateur or professional sports celebrities because of their potential appeal to youth, while the DISCUS and Beer Institute standards have no provisions that restrict the use of sports figures.

Most industry organization standards do not address promotional activities. The Century Council is the only industry organization that discourages promotional practices that primarily appeal to youth. Besides restricting alcohol companies from promotions at youth-oriented events, their standards also restrict product names and logos from appearing on toys, game equipment, or child-sized clothing. Other industry organizations do not address these practices specifically. Notably, the Beer Institute does not prevent promotional items such as Spuds MacKenzie stuffed animals or model race cars carrying the Miller logo.

### **ALCOHOL INDUSTRY STANDARDS ARE UNENFORCEABLE**

Voluntary provisions and persuasion are the extent of the industry organizations' enforcement of their advertising standards. Once an advertising practice has been brought to the attention of the Beer or Wine Institutes, resolution of the issue is limited to nonthreatening persuasion. Members have discretion over how to respond to concerns about irresponsible advertising. The DISCUS Code Review Board clarifies discrepancies over interpretation of the standards and informs the advertiser, leaving any action to the discretion of the advertiser. The Beer Institute simply refers concerns "to the party being complained about to see if they want to do anything." In response to our questions about several beer ads, the Beer Institute refused to get involved and referred our questions to the advertisers, most of whom did not respond. The Century Council plans to have members perform self-evaluations of their advertising practices vis-a-vis the standards. A Century Council representative explained that while the chairman can persuade members to change their advertising, the Council has "gone as far as it can according to legal counsel."

Alcohol industry organizations believe they cannot penalize members for advertising code or standards violations, because of concerns about antitrust laws. In a 1978 letter to the Wine Institute, FTC stated that because the Wine Institute's standards are strictly voluntary they present no antitrust concern. According to FTC, antitrust laws allow some voluntary restrictions of advertising themes considered socially undesirable, unless an undue restraint of trade results from the restriction. The Wine Institute is concerned that its standards, when enforced, would restrict competition. This concern was reinforced in 1982, when DOJ determined that the NAB Television Code appeared to limit advertising artificially, thereby restricting trade and violating antitrust laws.

# TELEVISION NETWORK CONTROLS

## NETWORK ENFORCEMENT IS BASED ON NEGOTIATION WITH ADVERTISERS

While networks maintain advertising standards to ensure quality programming for viewers, they also must attract advertising revenues to stay in business. Television networks rely solely on advertising revenues, and a great proportion -- approximately \$700 million in 1989 -- comes from beer and wine advertisers.<sup>20</sup> Without alcohol advertising, many networks would undergo financial problems and be forced to curtail programming, especially sports programs.<sup>21</sup> In order to walk the thin line between maintaining responsible advertising and revenues, the networks:

- (1) negotiate with advertisers concerning the content of advertising;
- (2) allow their standards to be interpreted by local station managers, enabling them to attract more local advertising revenue; and
- (3) are gradually loosening their interpretation of responsible advertising.

The networks negotiate with advertisers concerning the interpretation of their standards. Negotiation is fostered because advertisers and networks need each other for exposure and revenues, respectively. At least half of the ads reviewed by networks require further documentation or revision. CBS has found that ad agencies are very cooperative and responsive to suggestions for revisions. In one case, they asked an advertiser to move the child in an alcohol ad into the background to make any reference to children incidental. At times in the negotiation process, the advertisers convince the networks that the standards do not warrant changes in their ads. Overall, the networks reject only a very small percentage of alcohol ads. Even in the complaint process, the networks work closely with the advertisers to reach a compromise. The network wants to sustain good relations with its viewers and advertisers. It is in the best interests of the network to act as a mediator for resolution.

Although networks have national standards to control the appeal of alcohol advertising to youth, these standards do not apply to local stations. Network standards serve as models for the network-owned stations, affiliates, and independent stations. These stations interpret the standards in light of local interests and the need to attract local advertisers.

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<sup>20</sup>Communication with NAB, January 8, 1991.

<sup>21</sup>Statement of Edward O. Fritts of NAB, before the Senate Subcommittee on Alcoholism and Drug Abuse, Committee on Labor and Human Resources, February 7, 1985.

The current trend has been to loosen network standards even further. According to an article in the Wall Street Journal, one network's standards are weakening in response to advertiser pressure.<sup>22</sup> The ABC network, which has lost advertising revenue due to the recession and to competition from independent and cable networks, has decided to relax its longstanding standards in order to attract more advertisers. So far, these revisions to the alcohol advertising standards have allowed advertisers to suggest off-screen drinking. According to the Wall Street Journal, it appears likely that the other large networks will follow ABC's lead to loosen standards.

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<sup>22</sup>Joanne Lipman, "ABC to Relax Longstanding Guidelines for Ad Content," Wall Street Journal, September 5, 1991, B1.

## CASE STUDY

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### REGULATIONS AND STANDARDS HAVE NOT DETERRED ADVERTISERS FROM USING ADVERTISEMENTS THAT APPEAL TO YOUTH

The current system fails to address the public's concern that alcohol ads appeal to youth. After viewing a selection of five current ads for alcoholic beverages, interest groups cited several techniques and themes that appeal to youth. For the most part, however, government, alcohol industry, and network respondents made no reference to youth appeal in the ads. Their regulations and standards do not prevent these types of ads from reaching the public.

Interest groups took issue with the ads because they believe the ads use

- ▶ lifestyle appeals,
- ▶ sex,
- ▶ fantasy,
- ▶ fast cars,
- ▶ cartoons,
- ▶ fast music, and
- ▶ current slang

which all appeal to youth. In most cases, interest groups believed revisions would not improve the ads. Whether or not the ads intentionally appeal to youth, these respondents suggest that these elements can be eliminated by allowing only "tombstone advertising." "Tombstone advertising" restricts ads to depicting the product, its name, the price, and where it is available.

Federal agencies did not comment on any issues of youth appeal in the five ads. The BATF cited regulations that require the depiction of an approved label and mandate the disclosure of the responsible advertiser and class of the product. The BATF refused to comment on the St. Ides ad because comments might interfere with a pending investigation. The FTC officials said they were unable to comment on the specific ads because of their law enforcement authorities and ongoing investigations.

Representatives of the alcohol industry did not find that any of the ads appealed to youth or violated advertising standards. Most gave no response. The Beer Institute refused to respond to hypothetical complaints about ads. All of the alcohol industry organizations refused to comment on the ads for products not advertised by their members, in spite of our request that they respond as if the ads were for members' products.

The networks raised concerns about the taste, youth appeal, and hazardous activities in the ads, but did not say they would reject them. The networks did not reply formally to the survey because of alleged concerns over client confidentiality.

Appendix A contains a description of the five ads and the actual responses from interest groups, BATF, the alcohol industry organizations, and the national networks. Appendix B lists the respondents for this case study.

## ISSUES FOR CONSIDERATION

Based on a review of the findings in this report, the Office of Inspector General has identified some issues for consideration that could help eliminate alcohol advertisements that appeal to youth. While this list is not comprehensive, it should provide a basis for discussion of alcohol advertising controls.

### Federal Regulation

1. Should the Federal Alcohol Administration (FAA) Act be amended to give BATF more authority over malt beverage producers? For example, the FAA Act could be amended to require that brewers hold basic permits, or BATF's jurisdiction could be extended to all States without requiring that States have enabling legislation.
2. Should the FAA Act be amended to give BATF regulatory authority over wine beverages containing less than 7 percent alcohol by volume?
3. Should the FDA's ingredient labeling requirement be extended to apply to all alcoholic beverages?
4. Should BATF adopt regulations that forbid alcohol advertising that appeals to youth including specific practices, such as the use of cartoons?
5. Should BATF adopt regulations that restrict certain types of alcohol promotional activities?
6. Should BATF consider restricting alcohol advertising to "tombstone advertising" (depicting only the product, its name, its price, and where it is available) to prevent alcohol ads that appeal to youth?
7. Should the Federal government require that alcohol advertisers fund counter-advertising to promote public awareness of the dangers of alcohol?
8. Can the Federal government ensure that enforcement of industry codes and standards does not violate First Amendment rights and antitrust laws?
9. Can the Federal government work in cooperation with States, the alcohol industry, the advertising industry, national television networks, and other media to eliminate alcohol ads that use lifestyle appeals, sexual appeals, sports figures, and risky activities?



### State Regulation

1. Should the 25 States and the District of Columbia that have not yet adopted the FAA Act (or portions thereof) do so in order to increase BATF's ability to enforce Federal malt beverage regulations?
2. How can States use their authority to regulate intra-State advertising in a more timely and effective manner?
3. What special measures must States take to regulate national broadcast advertising campaigns aired by stations in their States?
4. Is there any way that States can control advertising broadcast by stations outside the State?
5. Should States adopt clear regulations that forbid alcohol advertising that appeals to youth including specific practices, such as the use of cartoons?
6. Should States consider restricting alcohol advertising to "tombstone advertising" (depicting only the product, its name, its price, and where it is available) to prevent alcohol ads that appeal to youth?

### Alcohol Industry

1. Should alcohol industry codes and standards be more specific about what is unacceptable advertising?
2. How can the alcohol industry avoid narrow interpretations of its standards?
3. Can and should the alcohol industry develop one uniform advertising code for all alcoholic beverages?
4. Should alcohol industry standards be expanded to include promotional activities?
5. What else can the alcohol industry do to improve standards that restrict alcohol advertising's appeal to youth?
6. Should the alcohol industry be responsible for self-policing its advertising practices?
7. How can the alcohol industry be held accountable to the public for its advertising practices?
8. How can the alcohol industry make its standards enforceable?

9. Should advertising agencies be held accountable to their trade associations for advertising practices?

### Networks

1. Should network-owned stations, independents, affiliates, and cable stations have consistent standards for all alcohol ads on television?
2. Should the television networks consider strengthening their standards restricting alcohol advertising that appeals to youth?
3. Should television networks consider restricting alcohol advertising to "tombstone advertising" (depicting only the product, its name, its price, and where it is available) to prevent alcohol ads that appeal to youth?
4. Should networks be responsible for enforcing advertising standards?
5. Can the television networks work in cooperation with the Federal government, States, the advertising industry, and other media to eliminate alcohol ads that use lifestyle appeals, sexual appeals, sports figures, and risky activities?

# APPENDIX A

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## CASE STUDY ADS AND RESPONSES

This appendix contains examples of the five ads from the case study, and responses from interest groups, BATF, the alcohol industry organizations, and the national networks.

We obtained the storyboards duplicated here from Radio TV Reports. The print ad appeared in a June 1991 publication.

ST. IDES MALT LIQUOR -- ICE CUBE  
RESPONDENT COMMENTS

*Interest*

*Groups:*

Interest groups point out the use of a rap celebrity:

- ▶ Ice Cube, a rap artist and movie star, uses the language and music of inner-city youth.
- ▶ St. Ides promotes heavy consumption with 40-ounce bottles.
- ▶ Ice Cube models public drinking, which is illegal in many urban areas.

*BATF:*

The BATF refused to comment on the ad due to a pending investigation.

*DISCUS:*

Refused to comment.

*Beer*

*Institute:*

Refused to comment.

*Wine*

*Institute:*

Refused to comment.

*Century*

*Council:*

Refused to comment.

*Networks:*

The networks might consider the use of a rapper as youth appeal. CBS has turned down one ad with a rap group because the members appeared young, yet rap music in general is not prohibited. NBC standards do not allow making appeals to youth or referring to the strength of the beverage. NBC also considers "the specific racial association to offend general taste and propriety."

BUDWEISER -- BUDMAN 4TH OF JULY  
RESPONDENT COMMENTS

*Interest*

*Groups:* Interest groups decry Budweiser's use of a superhero:

- ▶ As a superhero, Budman embodies strength, courage, and manhood, which capitalize on youths' sense of invulnerability.
- ▶ The contest encourages consumption. If you buy more of the product, you increase the likelihood of winning.
- ▶ The bright comic book colors attract children's attention.
- ▶ The context is a treasure hunt, a children's game.

*BATF:* The BATF finds the ad in compliance. As long as the ad contains information about the responsible advertiser and class of product and portrays a true reproduction of an approved label, the ad is in compliance with BATF regulations.

*DISCUS:* Refused to comment.

*Beer*

*Institute:* Refused to comment.

*Wine*

*Institute:* Refused to comment.

*Century*

*Council:* Refused to comment.

*Networks:* Refused to comment.

MILLER GENUINE DRAFT -- RUSTY WALLACE  
RESPONDENT COMMENTS

*Interest*

*Groups:* Interest groups warn that the ad links drinking with hazardous driving:

- ▶ This commercial mixes drinking, driving, and the high-risk setting of racing through town on wet streets.
- ▶ Rusty Wallace, a racing celebrity, has been noticed by everyone in town depicting his high status and use as a role model.

*BATF:* The BATF is concerned only about the class of the product, and this ad does not appear to state the class of the product as regulations require.

*DISCUS:* Refused to comment.

*Beer*

*Institute:* Refused to comment.

*Wine*

*Institute:* Refused to comment.

*Century*

*Council:* Refused to comment.

*Networks:* Two networks are concerned with the use of race car drivers in alcohol ads. While NBC does not allow active athletes or the association of drinking and driving in alcohol ads, they do not consider race car drivers to be athletes and find it acceptable for a company to tout its sponsorship of a race car. Although CBS forbids ads that intersperse actual race footage with product shots, they aired this ad in 1990.

MALIBU -- DUNCAN  
RESPONDENT COMMENTS

*Interest*

*Groups:*

Interest groups criticize the use of a cartoon and outlandish humor:

- ▶ The cartoon reflects the popular "Far Side (Gary Larson) type humor and drawing."
- ▶ The characters are at the beach surfing and windsurfing, two high risk activities that have a youthful appeal.
- ▶ The slogan that the taste is "slightly off the map" appeals to notions of independence and rebellion among youth.

*BATF:*

The BATF finds the ad in compliance.

*DISCUS:*

DISCUS finds the ad consistent with its standards. The DISCUS Code Review Board notes the characters in the ad do not appear to be underage. It considers surfing and windsurfing to be sports enjoyed by persons of all ages and points out that the average age of a Nobel prize winner for the last 30 years is 59 years.

*Beer*

*Institute:*

Refused to comment.

*Wine*

*Institute:*

Refused to comment.

*Century*

*Council:*

Refused to comment.

*Networks:*

NBC considers animation or cartoons in ads to have youthful appeal and believes this ad has insufficient disclosure that Malibu is an alcoholic beverage.

COORS LIGHT -- JOGGING MAN  
RESPONDENT COMMENTS

*Interest*

*Groups:* Interest groups take issue with the sexual images and beach scenes:

- ▶ The ad presents women in an overly sexual and demeaning way.
- ▶ The language of the ad tells viewers that drinking is right anywhere, anytime.
- ▶ The setting of the ad at the beach is inappropriate since "30 to 50 percent of drownings are alcohol-related."<sup>23</sup>

*BATF:* The BATF finds the ad in compliance as long as the ad contains information about the responsible advertiser and class of product and portrays a true reproduction of an approved label.

*DISCUS:* Refused to comment.

*Beer*

*Institute:* Refused to comment.

*Coors:* Coors maintains the ad is in compliance with regulations and industry standards.

*Wine*

*Institute:* Refused to comment.

*Century*

*Council:* Refused to comment.

*Networks:* CBS considers hazardous activities to include running in the surf or swimming with alcohol. CBS will not allow models standing in the water with alcohol.

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<sup>23</sup>Source: Marin Institute interview held July 30, 1991.



# APPENDIX B

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## RESPONDENTS FOR THE CASE STUDY

### *Federal Agencies*

Bureau of Alcohol Tobacco and  
Firearms (BATF)  
Federal Trade Commission (FTC)  
Food and Drug Administration (FDA)

### *Alcohol Industry Organizations*

Beer Institute  
Century Council  
Distilled Spirits Council of the United  
States (DISCUS)  
National Wine Coalition  
Wine Institute

### *Advertising Association*

American Association of Advertising  
Agencies (AAAA)

### *Networks*

ABC Network  
CBS Network  
NBC Network

### *Interest Groups*

Advocacy Institute  
Center for Science in the Public  
Interest (CSPI)  
Dr. Jean Kilbourne  
Marin Institute  
National Council on Alcoholism and  
Drug Dependence  
National Council for Drug-Free  
Schools  
National Families in Action  
National Parent Teacher Association  
Prevention Research Center  
Dr. Lawrence Wallack