

2009 TTB Expo Presentation

Alcohol Advertising and Marketing

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TTB Overview

- TTB's Advertising Authority
- What is Advertising?
- Alcohol Beverage Advertising Program
- Mandatory Information
- Prohibited Statements/Practices
- Health-Related Statements

TTB Authorities

- Federal Alcohol Administration Act (FAA Act)
 - 27 U.S.C. 205(f)
- 27 Code of Federal Regulations
 - Wine (part 4)
 - Distilled Spirits (part 5)
 - Malt Beverages (part 7)

What is Advertising?

- Any written or verbal statement, illustration, or depiction which is in, or calculated to induce sales in interstate or foreign commerce, or is disseminated by mail whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or any written, printed, graphic, or other matter accompanying the container, representations made on cases, billboard, sign, or other outdoor display, public transit card, other periodical literature, publication, or in a radio or television broadcast, or in any other media

Alcohol Beverage Advertising Program

- TTB O 5100.1A, Alcohol Beverage Advertising Program (ABAP)
- 6 Specialists
- One commodity per year/3-year cycle
- Purchase randomly selected advertisements (print, outdoor, TV & radio)
- Identify websites for industry members randomly selected by statistician

ABAP (Continued)

FY 2008 Results for Distilled Spirit Ads

- 82% of all ads were in compliance
- Top Reasons for Non-Compliance:
 - 45% missing alcohol content
 - 58% missing responsible advertiser's name, address

Mandatory Information

- Responsible advertiser (name, city/state)
- Class & type designation or distinctive designation (same as it appears on label)
- Alcohol content (distilled spirits)
- Percentage of neutral spirits and name of commodity (distilled spirits)

27 CFR 4.62, 5.63, and 7.52

Prohibited Practices

- False or untrue statements or misleading statements
- Statements disparaging a competitor's products
- Representations that are obscene or indecent
- Misleading guarantees. Money back guarantees are not prohibited
- Use of "strong" and similar words (malt beverages)

27 CFR 4.64, 5.65, and 7.54

Prohibited Practices (Continued)

- Flags, seals, coats of arms, crests and other insignia
- Name of living individual of public prominence
- Statements inconsistent with labeling
 - Label depicted on a bottle must be a reproduction of an approved label
- Untrue or misleading health related statements

27 CFR 4.64, 5.65, and 7.54

Health-Related Statements

Health-Related Statements

- Includes:
 - Specific health claims and directional statements
 - General references to alleged health benefits from the consumption of alcohol
 - Representations or claims that imply that a physical or psychological sensation results from consuming the alcohol product
 - Statements and representation of nutritional value (not Statement of Average Analysis)

Health-Related Statements (Continued)

- Evaluated on a case-by-case basis
- May not be untrue or create a misleading impression as to effects on health of alcohol consumption
- May require disclaimer or qualifying statement
- Disclaimer must appear as prominent as the statement

Health-Related Statements (Continued)

- Health claim is **not** misleading if it is truthful and adequately substantiated **and**
 - Detailed with respect to whom it applies
 - Discloses health risks associated with both moderate **and** heavier levels of alcohol consumption
 - Outlines categories of individuals for whom any levels of alcohol consumption may cause health risks
 - This information must appear as part of and as prominent as the specific health claim

Health-Related Statements (Continued)

Alcohol Beverages with “Energy” Ingredients

- Statements may fall under health-related statements (i.e., physical or psychological effect)
- In May 2005, TTB issued industry guidance on labeling and advertising of these products
 - Can’t imply stimulating or energizing effect
 - Can’t imply consumers can drink more of the product without feeling the effects of the alcohol

Health-Related Statements (Continued)

Examples of Health-Related Statements

- ABC Beer is energized using natural caffeine
- Alcohol fueled with energy
- Liquid Power
- Powered by caffeine
- High levels of Alc/Energy

Health-Related Statements (Continued)

More Health-Related Statements

- Body buzz beverage
- Want a good beer *and* need a boost?
- Nobody wants to be tired when you're partying
- Say hello to an endless night of fun
- Go longer

Health-Related Statements (Continued)

More Health-Related Statements

- Caffeine and Ginseng were selected to help give a quick boost and increase stamina
- Ginseng – helps with chronic fatigue syndrome
- Taurine – plays a major role in stabilizing heartbeat
- Guarana – maintaining stamina, physical endurance and aiding in rejuvenation

Health-Related Statements (Continued)

Examples of Health-Related Statements

- This fruit wine will help your memory
- Wine is healthier
- No headaches
- Packed with nutrients, this Acai contains 57% more antioxidants than pomegranates and 30% more than heart healthy red wine

Statement of Average Analysis (SAA)

- Any advertisement that makes any type of calorie or carbohydrate claim needs the SAA (TTB Ruling 2004-1)
- Statement of Average Analysis
 - Serving size
 - Protein
 - Carbohydrates
 - Fat
 - Calories

Contact Information

- Advertising, Labeling & Formulation Division
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Federal Trade Commission

FTC Act

- FTC Act:
 - . . . *unfair or deceptive* acts or practices in or affecting commerce, are hereby declared unlawful **15 U.S.C. § 45**
- The FTC shares, with TTB, jurisdiction over alcohol advertising and marketing

FTC Deception Standard

- **Four steps:**
 - if, when considered by a consumer acting reasonably
 - the ad contains a representation
 - that is material
 - and misleading
- **Includes omissions, unsubstantiated claims**
- **Cases, informal advice**

Constellation

- Wide Eye: 30% ABV
- Contains caffeine
- “This is your wake up call”
- “When you party with Wide Eye, it will seem like the rest of the world is sleepwalking”

Constellation

- Compliant allegations:
 - ads claimed that consumers who drank Wide Eye would remain alert
 - this claim is unsubstantiated

Constellation

- Order prohibits CBI from representing, without adequate substantiation:
 - that consumers who drink Wide Eye (or any other alcohol product containing a stimulant) will remain alert while drinking
 - that any ingredient in an alcohol product will counteract the effects of alcohol

Promoting Strong Self-Regulation

- **2008 Alcohol Report:**
 - Third FTC study of alcohol self-regulation since 1999
 - Data on 12 largest suppliers

Promoting Strong Self-Regulation

- Alcohol ad placement standard:
 - Minimum 70% 21+ audience composition for ad placements
 - Protocols for making placements including what data to check, how to do post-audits

Promoting Strong Self-Regulation

2008 findings on placement:

- 92.5% of studied TV, radio, magazine, and newspaper ads met the 70% target
- Under the 70% standard, the aggregate audience – that is, the audience data for all ads, put together – was 86% above the LDA

Promoting Strong Self-Regulation

2008 placement recommendations:

- Suppliers should improve training, record keeping, oversight of media buyers and others to raise compliance levels
- Suppliers need to keep both baseline and aggregate audience in mind when making placements

Promoting Strong Self-Regulation

External review of complaints:

- FTC previously asked industry to adopt external review of complaints
- Major beer, wine, and spirits associations now have review boards
- If review boards conclude that an ad violates the code, industry members should comply

What Advertisers Should Be Aware of ...

- Lack of coordination with media buyers, other tiers
- Content issues (Santa, t-shirts)
- Smaller advertisers as well as large ones may receive FTC orders in the future

Contact Information

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Complaints:

1-877-FTC-HELP