
DISTILLED

SPIRITS

COUNCIL

OF THE

UNITED

STATES

SEMI-ANNUAL CODE REPORT

Consolidated First Edition for the period January 2004 through December 2004

CODE OF RESPONSIBLE PRACTICES
FOR BEVERAGE ALCOHOL
ADVERTISING AND MARKETING

www.distilledspirits.org

March 2005

The Distilled Spirits Council of the United States, Inc. (DISCUS) is a national trade association representing producers and marketers of distilled spirits and importers of wine sold in the United States. In 1973, DISCUS was formed as a result of the merger of three organizations—The Bourbon Institute, The Distilled Spirits Institute and The Licensed Beverage Industries, Inc.—that had been in existence for decades.

The members of DISCUS represent nearly 80% of all distilled spirits sold in this country. DISCUS members are:

Allied Domecq Spirits & Wine USA, Inc.
Bacardi U.S.A., Inc.
Barton Incorporated
Brown-Forman Corporation
Diageo
Sidney Frank Importing Co., Inc.
Jim Beam Brands Co./Future Brands LLC
McCormick Distilling Co., Inc.
Remy Amerique, Inc.
Pernod Ricard USA
David Sherman Corporation
Suntory International Corp.
Todhunter International, Inc.

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Open Letter to Interested Parties:

We are pleased to issue the first Report of complaint decisions by the DISCUS Code Review Board and the advertisers' response to the Board's recommendations. This Report will make public for the first time Code Review Board decisions and covers the period January 1, 2004 through June 30, 2004 and the period July 1, 2004 through December 31, 2004.

For over 70 years, distillers have abided by a voluntary code of advertising practices. The Code of Responsible Practices for Beverage Alcohol Advertising and Marketing has been revised throughout the decades as social mores, the marketplace and technology have changed. Most recently, the Code was updated in the fall of 2003 and applies to all advertising and marketing materials developed after October 1, 2003. It now includes 39 provisions regarding responsible placement and content of beverage alcohol advertising and marketing materials. We also established an external advisory board comprised of three distinguished experts from government, education and broadcasting who are available to provide guidance in implementing the Code.

Unique among the beverage alcohol industry, the DISCUS Code provides for a Code Review Board that is charged with reviewing complaints about advertising material in the marketplace. The Board has been an integral and functioning component of the Code for decades. To date, the Board's decisions have not been publicly available and, as a consequence, the rigor of the Board's review process and adherence to the Board's decisions have not been widely known. The issuance of public Reports will make the Board's actions more visible, transparent and understandable.

Each complaint about a member company advertisement or a distilled spirits advertisement of a non-DISCUS member is reviewed by this Board. (We use the term "advertisement" as a shorthand for the activities that fall within the scope of the Code, which include consumer communications, promotional events, websites, product placements, and product packaging, as well as brand advertising.) The majority of complaints filed with the Board are from within the industry and all complaints whether from an industry member, individual or third-party group receive identical consideration and priority status.

After receiving a complaint, the Code Review Board determines whether the advertisement is consistent or inconsistent with the provisions of the Code. The Board relays its decision to the advertiser and, if a provision of the Code has been violated, urges that the advertisement be revised or withdrawn. There has been 100% compliance by DISCUS members with Code Review Board decisions and many non-DISCUS members also have voluntarily complied with these decisions.

By providing for a public report about complaint decisions, the operation of our Code also significantly differs from other industry codes. As we understand, we are the first trade group representing American businesses that has issued a public report regarding the proceedings of how an industry regulates itself according to its own internal Code. This new transparency provision will allow the public at large to better evaluate and appreciate our Code review process, which the Federal Trade Commission has pointed to as a model of self-regulation.

Sincerely,



Peter H. Cressy
President/CEO
Distilled Spirits Council

FIRST PUBLIC REPORT

To provide notice to all potentially affected parties, only Code Review Board complaint decisions involving advertising and/or marketing material developed after the new Code's implementation date of October 1, 2003 are contained in this Report.

Due to the fact that advertising is developed months in advance, many advertisements that ran in 2004, particularly in the first half of 2004, did not fall within the scope of the new Code's public report provision. For these reasons, the first Report combines two reporting periods. Upcoming editions of this publication will be issued on a semi-annual basis.

Set forth below are summaries of Code Review Board actions for both of the reporting periods.

January 1, 2004 – June 30, 2004

Advertisement:	Hennessy advertisement in June 2004 newsstand edition of <u>Vibe</u> magazine
Advertiser:	Schieffelin & Co.
Complainant:	Industry member
Complaint Summary:	Placement of the advertisement violates Responsible Placement Provision No. 3 of the DISCUS <u>Code</u> : "Beverage alcohol advertising and marketing should be placed in broadcast, cable, radio, and print communications only where at least 70 percent of the audience is reasonably expected to be above the legal purchase age (determined by using reliable, up-to-date audience composition data)"
Code Review Board Decision:	Consolidated MRI TwelvePlus demographic information indicates that <u>Vibe</u> magazine readership did not meet this 70% provision and the advertisement placement was found in violation of Responsible Placement Provision No. 3
Action by Advertiser:	No response from the advertiser
Status:	Board continued to urge the advertiser to discontinue the referenced placement and advertiser subsequently notified the Code Review Board that any future placements in <u>Vibe</u> after the first quarter of 2005 will appear in the subscription-only edition of <u>Vibe</u> that exceeds the 70% demographic provision

Advertisement: Belvedere advertisement in June 2004 newsstand edition of Vibe magazine

Advertiser: Millennium Import LLC

Complainant: Industry member

Complaint Summary: Placement of the advertisement violates Responsible Placement Provision No. 3 of the DISCUS Code: “Beverage alcohol advertising and marketing should be placed in broadcast, cable, radio, and print communications only where at least 70 percent of the audience is reasonably expected to be above the legal purchase age (determined by using reliable, up-to-date audience composition data)”

Code Review Board Decision: Consolidated MRI TwelvePlus demographic information indicates that Vibe magazine readership did not meet this 70% provision and the advertisement placement was found in violation of Responsible Placement Provision No. 3

Action by Advertiser: Advertiser notified the Code Review Board that it was unaware of the 70% demographic placement provision and, once the advertiser became aware, no future placements were purchased in Vibe magazine in 2004. The Board subsequently was informed that any future placements in Vibe will appear in the subscription-only edition of Vibe that exceeds the 70% demographic provision

Status: Resolved: Responsive action taken

July 1, 2004 – December 31, 2004

Advertisement: Three Olives Cherry Vodka advertisement with the statements/taglines “Remember, tonight is only a success if it ends with breakfast” and “Get out. STAY OUT!”

Advertiser: White Rock Distilleries, Inc.

Complainant: Industry member

Complaint Summary: Content of the advertisement violates Responsible Content Provision No. 13 of the DISCUS Code: “Beverage alcohol advertising and marketing materials should not depict situations where beverage alcohol is being consumed excessively or in an irresponsible manner” and Responsible Content Provision No. 25: “[B]everage alcohol advertising and marketing materials should not rely upon sexual prowess or sexual success as a selling point for the brand”

Code Review Board Decision: None required: Advertiser discontinued the advertisement in response to the Code Review Board’s letter advising advertiser about the complaint

Action by Advertiser: After receipt of the Board’s letter, the advertiser notified its marketing firm to discontinue the advertisement effective immediately

Status: Resolved: Responsive action taken

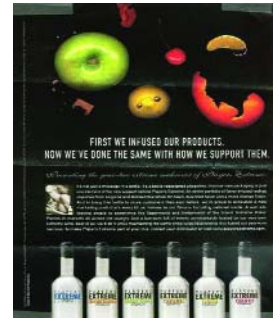


Advertisement: Players Extreme Vodka advertisement with an inset photo depicting a man and a nude woman in a suggestive pose and “The Extreme Flu Shot” syringe marketing materials

Advertiser: Blavod Extreme Spirits

Complainant: Industry member

Complaint Summary: Content of the advertisement violates Responsible Content Provision No. 25 of the DISCUS Code: “[B]everage alcohol advertising and marketing materials should not rely upon sexual prowess or sexual success as a selling point for the brand” and the marketing materials violate Responsible Content Provision No. 14: “Beverage alcohol advertising and marketing materials should not contain any curative or therapeutic claim except as permitted by law”



Code Review Board Decision: Advertising copy and the syringe marketing materials were found in violation of Responsible Content Provisions Nos. 25 and 14, respectively

Action by Advertiser: Advertiser notified the Code Review Board that it adjusted its advertising message and discontinued the referenced print advertisement for 2005. Regarding the use of the syringes, the advertiser stated that it makes no curative or therapeutic claims and specifically marks the outside of “The Extreme Flu Shot” syringes with the ingredients

Status: Board commends the advertiser for discontinuing the advertisement in question and continues to urge the advertiser to discontinue the use of the syringe marketing materials

Advertisement: Chambord Liqueur Royale “Chambord French Martini” print advertisement

Advertiser: Charles Jacquin Et Cie Inc.

Complainant: Industry member

Complaint Summary: Content of advertisement violates Responsible Content Provision No. 25 of the DISCUS Code: “[B]everage alcohol advertising and marketing materials should not rely upon sexual prowess or sexual success as a selling point for the brand”



Code Review Board Decision: Advertising copy was found in violation of Responsible Content Provision No. 25 due to the positioning of the models and the Chambord bottle

Action by Advertiser: No response from the advertiser

Status: Board continues to urge the advertiser to discontinue the referenced advertisement

Advertisement: Jägermeister “Ride This” print advertisement

Advertiser: Sidney Frank Importing Co., Inc.

Complainant: Industry member

Complaint Summary: Content of advertisement violates Responsible Content Provision No. 21 of the DISCUS Code: “Beverage alcohol advertising and marketing materials should reflect generally accepted contemporary standards of good taste” and Responsible Content Provision No. 25: “[B]everage alcohol advertising and marketing materials should not rely upon sexual prowess or sexual success as a selling point for the brand” and “advertising and marketing materials should not...depict overt sexual activity”



Code Review Board Decision: Advertising copy was found in violation of Responsible Content Provisions Nos. 21 and 25 due to the body position of the model in conjunction with the tagline and shot glass

Action by Advertiser: Advertiser believed the advertisement was appropriate and reflected contemporary standards of good taste yet withdrew the advertisement from its print schedule following the Board’s decision. This action is consistent with the advertiser’s commitment to the Code and the Code Review Board process. The Board commends that decision. (Some posters previously made of advertisement may remain in some accounts without advertiser’s knowledge)

Status: Resolved: Responsive action taken

Advertisement: Sex Vodka print and website advertising and marketing materials

Advertiser: TC Specialty Brands, LLC

Complainant: Industry member

Complaint Summary: Content of the advertising and marketing materials violates Responsible Content Provision No. 21 of the DISCUS Code: “Beverage alcohol advertising and marketing materials should reflect generally accepted contemporary standards of good taste” and Responsible Content Provision No. 25: “[B]everage alcohol advertising and marketing materials should not rely upon sexual prowess or sexual success as a selling point for the brand” and “advertising and marketing materials should not contain or depict: graphic or gratuitous nudity; overt sexual activity;...or sexually lewd or indecent images or language”



Code Review Board Decision: The Board understood that the Tax and Trade Bureau had approved the product label; nevertheless, the Board found the associated advertising and marketing materials in violation of Responsible Content Provisions Nos. 21 and 25 due to the combination of the advertising graphics and copy with cherries and the tag line "...You Gettin' Any???", as well as the overt sexual themes and images of the Sex Vodka website

Action by Advertiser: Advertiser agreed to remove the advertising and marketing materials and will rebuild its website, as well as review advertising and marketing materials, in light of the provisions of the Code

Status: Responsive action by the advertiser continues

Advertisement: Svedka Vodka website advertising and marketing materials

Advertiser: Spirits Marque One LLC

Complainant: Industry member

Complaint Summary: Content of the advertising and marketing materials violates Responsible Content Provision No. 21 of the DISCUS Code: “Beverage alcohol advertising and marketing materials should reflect generally accepted contemporary standards of good taste,” Responsible Content Provision No. 25: “[B]everage alcohol advertising and marketing materials should not rely upon sexual prowess or sexual success as a selling point for the brand,” and “advertising and marketing materials should not contain or depict graphic or gratuitous nudity; overt sexual activity, promiscuity; or sexually lewd or indecent images or language,” Responsible Content Provision No. 22: “Beverage alcohol advertising and marketing materials should not degrade the image, form, or status of women,” and Responsible Content Provision No. 13: “Beverage alcohol advertising and marketing materials should not depict situations where beverage alcohol is being consumed excessively or in an irresponsible manner”



Code Review Board Decision: Advertising and marketing materials were found in violation of Responsible Content Provisions Nos. 21, 25, 22, and 13 due to the sexually graphic images and gratuitous nudity depicted in these materials and the degrading images of women, as well as the depiction of irresponsible consumption

Action by Advertiser: No response from the advertiser

Status: Board continues to urge the advertiser to discontinue these advertising and marketing materials

Advertisement: Hennessy advertisements in September and October 2004 newsstand editions of Vibe magazine

Advertiser: Schieffelin & Co.

Complainant: Industry member

Complaint Summary: Placement of the advertisement violates Responsible Placement Provision No. 3 of the DISCUS Code: “Beverage alcohol advertising and marketing should be placed in broadcast, cable, radio, and print communications only where at least 70 percent of the audience is reasonably expected to be above the legal purchase age (determined by using reliable, up-to-date audience composition data)”

Code Review Board Decision: Consolidated MRI TwelvePlus demographic information indicates that Vibe magazine readership did not meet this 70% provision and the advertisement placement was found in violation of Responsible Placement Provision No. 3

Action by Advertiser: Advertiser notified the Code Review Board that the advertiser will no longer place advertisements in the newsstand edition of Vibe and any future placements in Vibe after the first quarter of 2005 will appear in the subscription-only edition of Vibe that exceeds the 70% demographic provision

Status: Resolved: Responsive action taken

Advertisement: Alizé advertisements in September and October 2004 newsstand editions of Vibe magazine

Advertiser: Kobrand Corporation

Complainant: Industry member

Complaint Summary: Placement of the advertisement violates Responsible Placement Provision No. 3 of the DISCUS Code: “Beverage alcohol advertising and marketing should be placed in broadcast, cable, radio, and print communications only where at least 70 percent of the audience is reasonably expected to be above the legal purchase age (determined by using reliable, up-to-date audience composition data)”

Code Review Board Decision: Consolidated MRI TwelvePlus demographic information indicates that Vibe magazine readership did not meet this 70% provision and the advertisement placement was found in violation of Responsible Placement Provision No. 3

Action by Advertiser: No response from the advertiser

Status: Board continues to urge the advertiser to discontinue the referenced placement

Advertisement: Patrón Tequila advertisement in October 2004 newsstand edition of Vibe magazine

Advertiser: The Patrón Spirits Company

Complainant: Industry member

Complaint Summary: Placement of the advertisement violates Responsible Placement Provision No. 3 of the DISCUS Code: “Beverage alcohol advertising and marketing should be placed in broadcast, cable, radio, and print communications only where at least 70 percent of the audience is reasonably expected to be above the legal purchase age (determined by using reliable, up-to-date audience composition data)”

Code Review Board Decision: Consolidated MRI TwelvePlus demographic information indicates that Vibe magazine readership did not meet this 70% provision and the advertisement placement was found in violation of Responsible Placement Provision No. 3

Action by Advertiser: Upon receipt of the Board’s letter, the advertiser purchased no future placements in Vibe magazine in 2004 and subsequently informed the Code Review Board that any future placements in Vibe will appear in the subscription-only edition of Vibe that exceeds the 70% demographic provision

Status: Resolved: Responsive action taken

Advertisement: Navan advertisements in October and November 2004 newsstand editions of Vibe magazine

Advertiser: Marnier-Lapostolle Inc.

Complainant: Industry member

Complaint Summary: Placement of the advertisement violates Responsible Placement Provision No. 3 of the DISCUS Code: “Beverage alcohol advertising and marketing should be placed in broadcast, cable, radio, and print communications only where at least 70 percent of the audience is reasonably expected to be above the legal purchase age (determined by using reliable, up-to-date audience composition data)”

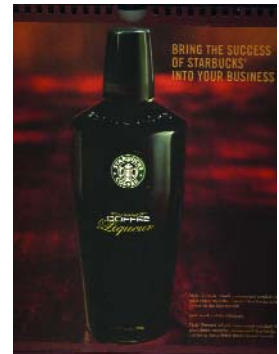
Code Review Board Decision: Consolidated MRI TwelvePlus demographic information indicates that Vibe magazine readership did not meet this 70% provision and the advertisement placement was found in violation of Responsible Placement Provision No. 3

Action by Advertiser: Board continued to urge the advertiser to discontinue the referenced placement and advertiser subsequently notified the Code Review Board that any future placements in Vibe after the first quarter of 2005 will appear in the subscription-only edition of Vibe that exceeds the 70% demographic provision

Status: Resolved: Responsive action taken

Advertisement:

Starbucks™ Coffee Liqueur sales brochure with two footnotes citing age parameters of cordial drinkers 18-49 and Starbucks® coffee shop locations and advertisements



Advertiser:

Jim Beam Brands Co.

Complainants:

Member of the public, Austin, Texas
Third party organization, Austin, Texas

Complaint Summary:

Partnership between Starbucks® and Jim Beam Brands Co. to develop a Starbucks®-branded premium coffee liqueur product violates Responsible Placement Provisions Nos. 1, 2, 6, and 7 and Responsible Content Provisions Nos. 2, 6, 7, and 8 of the DISCUS Code. The following is a summary of the two complaints:



“Beverage alcohol advertising and marketing materials are intended for adults of legal purchase age who choose to drink — Starbucks explicitly states they are targeting 18-49 year old consumers in their in store marketing brochure”

“Beverage alcohol products should not be advertised or marketed in any manner directed or primarily appealing to persons below the legal purchase age — Starbucks is now advertising its brand across from schools, in schools and even has a children’s book with the Starbucks name included”

“Beverage alcohol products should not be advertised or marketed in college or university newspapers, or on college and university campuses except for licensed retail establishments located on such campuses — The Starbucks brand name and stores reside on college campuses and schools”

“Beverage alcohol advertising should not be placed on any outdoor stationary location within 500 feet of an established place of worship or an elementary school or secondary school except on a licensed premise — Photo [above] shows Starbucks brand name [coffee shop located] within 500 feet of an elementary school”

“The content of beverage alcohol advertising and marketing materials should not appeal primarily to individuals below the legal purchase age — Starbucks is directly targeting children with their coffee brand/what’s the difference when you use the same brand name for the liqueur”

“Beverage alcohol products should not be advertised or marketed in a manner associated with the attainment of adulthood or ‘rite of passage’ to adulthood — Starbucks is directly targeting underage for coffee brand while using same brand name for liqueur brand — Is coffee rite of passage to the hard liquor Starbucks product”

“Beverage alcohol products should not be advertised or promoted by any person who is below the legal purchase age or who is made to appear to be below the legal purchase age — Starbucks uses people under 25 years of age to market the Starbucks coffee brand”

“No brand identification, including logos, trademarks or names, should be used or licensed for use on clothing, toys, games, or other items intended for use primarily for persons below the legal purchase age — Starbucks recently announced a new initiative where children’s books will be sold in retail stores — These books will show the same logo as the logo prominently displayed on the liquor bottles”

Code Review Board Decision:

The Code Review Board concluded that the footnotes on the sales brochure were the result of an administrative error and did not have a factual basis and therefore did not violate the Code. If the two footnotes in question had been accurate statements, there would have been a violation.

The Board’s review revealed that, after an extensive approval process and after the brochure was at the printer for production, a decision was made to add several footnotes referencing Starbucks™ Coffee Liqueur survey research. These additions were relayed verbally through multiple personnel in both the Starbucks® and Jim Beam Brands organizations and then verbally to the printer. The mistake was made during production and no proof was created or re-routed.

The first question posed in the survey referenced in the mistaken footnotes was the age of the respondent and, if the individual was not of legal purchase age (21 years of age or older), the interview immediately was terminated. The Board found that neither Jim Beam nor Starbucks® sought or collected information related to marketing Starbucks™ Coffee Liqueur to persons below age 21, the legal purchase age.

Upon learning of the administrative error, the advertiser ordered the brochure removed from circulation.

With the exception of the sales brochure, the points raised in the complaints do not apply to the advertising or marketing of a beverage alcohol product, Starbucks™ Coffee Liqueur.

One of the complaints points to a Starbucks® coffee shop located within 500 feet of an elementary school as a violation of the Code. If there were an outdoor advertisement for Starbucks™ Coffee Liqueur within 500 feet of an elementary school, there would be a violation of the Code; however, that was not the case in this complaint matter.

Starbucks™ Coffee Liqueur is not and will not be sold in any Starbucks® retail store. Starbucks™ Coffee Liqueur only is sold in state-licensed beverage alcohol retail establishments where the purchase and sale of this product is restricted to individuals 21 years of age or older.

Action by Advertiser:

None required

Status:

Not applicable

Advertisement:	Advertisements for Seagram’s Gin, Courvoisier, Alizé, Crown Royal, Christian Brothers Brandy, Hennessy, and Bacardi Razz in the December 2004 edition of <u>XXL</u> magazine
Advertiser:	Pernod Ricard USA for Seagram’s Gin, Allied Domecq Spirits & Wine USA for Courvoisier, Kobrand Corporation for Alizé, Diageo for Crown Royal, Heaven Hill Distilleries for Christian Brothers Brandy, Schieffelin & Co. for Hennessy, and Bacardi U.S.A. for Bacardi Razz
Complainant:	Third party organization, Washington, D.C.
Complaint Summary:	<p>Placements of the advertisements violate Responsible Placement Provision No. 3 of the DISCUS <u>Code</u>: “Beverage alcohol advertising and marketing should be placed in broadcast, cable, radio, and print communications only where at least 70 percent of the audience is reasonably expected to be above the legal purchase age (determined by using reliable, up-to-date audience composition data)”</p> <p>Complainant was told by a representative of <u>XXL</u>, which is an “unmeasured” magazine, <i>i.e.</i>, not measured by a syndicated demographic data source, such as Mediamark Research Inc. (MRI), that its readership survey of 2001-02 was the most recent audience data available and that 56.6% of the readership was 21 years of age or older</p>
Code Review Board Decision:	<p>The Code Review Board contacted each of the seven advertisers and obtained documentation that each of the distilled spirits advertisers prior to placement requested and obtained demographic data from <u>XXL</u>.</p> <p><u>XXL</u> responded to each of these inquiries that the magazine’s readership demographic of individuals 21 years of age or older exceeded 70%. (In the majority of circumstances, either the Executive Publisher or the Publisher of <u>XXL</u> furnished the requested information.)</p> <p>Specifically, <u>XXL</u> informed two of the advertisers that 79% of <u>XXL</u>’s readership was 21 years of age or older. <u>XXL</u> informed five of the advertisers that 76.4% of <u>XXL</u>’s readership was 21 years of age or older.</p> <p><u>XXL</u> also responded to the advertisers’ request for the source of <u>XXL</u>’s readership demographic data, citing a readership study. <u>XXL</u> characterized this readership study differently in its separate responses to each of the distilled spirits advertisers.</p> <p>The Board concluded that the demographic provision in the <u>Code</u> was not violated. The distilled spirits advertisers all took steps in good faith to assure themselves that, prior to purchase, their advertisement placements were in a publication where at least 70% of the audience is reasonably expected to be 21 years of age or older and that assurances to that effect were received from the publication.</p>
Action by Advertiser:	None required
Status:	Outreach by Board to consumer media magazine experts to determine how best to address situations where a magazine’s demographic data are not reported by a syndicated demographic data source to ensure a 70% demographic audience of individuals aged 21 years and older, while taking into account that these magazines often are small circulation, niche and/or new entrants

BACKGROUND

HISTORY OF THE DISCUS CODE

Within months of the repeal of Prohibition, leaders in the distilled spirits industry approved their first voluntary Code of Responsible Practices. Throughout the decades, the Distilled Spirits Council's Code of Responsible Practices has embodied the high standards and commitment to responsibility that have been the touchstone of DISCUS member company advertising practices.

By this Code, DISCUS members hold themselves to a standard higher than mandated by any law or regulation. Since October 27, 1934, the distillers' voluntary Code has been revised and updated as the marketplace and technology have changed. For example, the Code was revised in 1998 to include specific provisions regarding websites and other on-line communications.

Similarly, as society and social mores have changed, the Code has evolved. At one time, the Code contained provisions prohibiting the depiction of women holding a drink. This provision, removed decades ago, would be viewed as paternalistic and sexist today. Throughout its long history, however, the core principle of the voluntary DISCUS Code has been and remains to market our products to adults in a responsible and appropriate manner.

The Federal Trade Commission, the lead Federal agency with advertising oversight, has commended the DISCUS Code on several occasions, most recently in its September 2003 Report to Congress entitled "Alcohol Marketing and Advertising." In this Report, the FTC concluded

that the distilled spirits industry's advertising is directed to adults and that the distilled spirit industry's self-regulatory measures are "rigorous" and effective. As part of the Report, the FTC also examined the Code Review Board process, finding that the Board's actions "provide a critical review of spirits company compliance with the DISCUS Code."

Many of the latest enhancements to the 2003 Code were developed in response to the FTC's suggestions to improve the self-regulatory system. For example, the 2003 Code includes the following new provisions: a 70% adult (legal purchase age of 21 years and older) demographic; post-audits of advertisement placements; and the establishment of an outside advisory board as part of its compliance and complaint process.

The FTC has pointed to the benefits of industry self-regulation, concluding that it is realistic, responsive and responsible; can deal quickly and flexibly with a wide range of advertising issues without the rigidity of government regulation; and is particularly suitable in light of the First Amendment issues that otherwise would be raised by government regulation of advertising.

DISCUS members are committed to the responsible placement and content of their brand communications. Towards this end, DISCUS members voluntarily pledge to conduct their advertising and marketing in accordance with the provisions of the Code.

2003 REVISION AND ORIGIN OF PUBLIC REPORT

The enhanced Code, the result of a year-long review, reflects the determination of DISCUS member companies to be responsive to the changing technology and culture of modern times. The 2003 Code now applies to all of the over 2,800 distilled spirits, beer and wine brands marketed by DISCUS members, and continues to be followed by non-member distilled spirits marketers.

The 2003 Code establishes a 70% adult demographic for all advertising placements — television, radio, print — and for promotional events. By that provision, beverage alcohol advertising should be placed only in media where at least 70% of the audience is reasonably expected to be 21 years of age or older (the legal purchase age for beverage alcohol products). This provision is a substantial increase over the prior 50% placement guideline that was in keeping with the FTC’s “50% standard” in its pay-per-call rules.

The Code also requires internal, periodic after-the-fact audits of a random portion of past placements to verify that such placements were in compliance with the 70% adult (legal purchase age of 21 years of age or older) demographic. DISCUS has developed detailed guidelines, which are posted on our website, to meet this demographic standard.

The 2003 Code also incorporates several revisions to its content provisions, including more precise language regarding the sexual content of advertising, and also continues many of its longstanding prohibitions, such as not advertising or marketing in college newspapers.

Enhanced Code changes to the responsible content provisions include:

- More explicit provisions prohibiting depictions of excessive drinking and use of sex as a selling point;
- Incorporation of responsible drinking statements in advertisements, marketing materials and promotional events, where practicable;
- Increased age requirement for models/actors in advertisements — must be at least 25 years old;
- New provision prohibiting advertising that associates drinking with “rite of passage” to adulthood;
- Expanded scope — two new elements: product labels and sales/distribution materials, as well as the existing scope of all other brand communications, including brand advertising, consumer communications, promotional events, websites, product placements, and product packaging;
- Age verification mechanisms, such as date of birth entries, for member company websites and links to a responsible decision-making site.

The provisions of the Code apply to every type of print and electronic media, including the Internet and any other on-line communications, used to advertise or market beverage alcohol. These provisions also apply to every type of promotional or marketing activity or event, including all product placements. DISCUS members recognize that it is not possible to cover every eventuality and therefore agree to observe the spirit, as well as the letter, of this Code.

CODE REVIEW BOARD PROCESS

Historically, the Code Review Board process has worked as follows:

- When a complaint or inquiry is received, the Code Review Board is convened usually by conference call to exchange views and deliberate upon the advertisement in question.
- The complainant often requests not to be identified. Each Code Review Board member describes his/her views regarding the advertisement and casts a vote concerning whether the advertisement is or is not a violation of the Code.
- If the Code Review Board finds a particular advertisement violates the Code's provisions, the advertiser is so informed either orally or in writing. Often the determinations of the Code Review Board are oral because historically the greatest percentage of Code complaints are from member companies about other member company advertisements.
- Responsive action from the advertiser generally occurs quickly so that, if a change is required, the advertisement in question is either withdrawn or revised forthwith.

The average time between receipt of a complaint and Code Review Board action often is a matter of days, but could take up to two to four weeks, a timeframe that also can include responsive action by the advertiser. For example, the average time between the receipt of a complaint and a decision by the Board was less than 9 days for inquiries received in 2003. Responsive action involving a member company advertisement averaged 17 days from the date of the Code Review Board's decision. In sum, the entire process on average took less than one month.

The overwhelming majority of complaints filed with the

Code Review Board are from within the industry about a competitor's advertisements. For example, over a period from 1999 to 2003, 88% of the complaints were lodged by industry members (23 of the 26 complaints). Three of these complaints were lodged by individuals or third-party groups. Of the 26 complaints, 13 involved DISCUS member company advertisements or marketing materials and the remainder involved non-member companies.

The process described above will continue to be used for any complaints questioning DISCUS member company advertising and/or marketing materials. The following new procedures will be utilized for any complaints involving distilled spirits advertising and/or marketing materials by non-DISCUS members:

- The staff liaison for the DISCUS Code will notify the advertiser of the complaint.
- The advertiser will have 15 business days to respond and will be invited to participate in the Code Review Board's discussion of the complaint.
- The Code Review Board will convene to consider the complaint and the advertiser's response, and render a decision. The Code Review Board will proceed in its deliberations even if the advertiser has not responded after the time period noted above.
- The advertiser will be notified of the Board's decision and the Board will be available to answer questions or assist with compliance.
- The Code Review Board's decision and the advertiser's response will be summarized in the Semi-Annual Report.

The process described above may be subject to change and may be revised from time to time.

HOW TO FILE A COMPLAINT

If you have any questions regarding the Code of Responsible Practices for Beverage Alcohol Advertising and Marketing or a concern about a particular advertisement or marketing material subject to the Code, please write to the DISCUS Code Review Board, 1250 Eye Street, N.W., Suite 400, Washington, D.C. 20005. The contact person for the Code Review Board is Lynne Omlie. She serves as the staff liaison for the Code Review Board and can be reached at 202/682-8824 or by email at lomlie@discus.org.

The DISCUS Code is posted on the DISCUS website for ease of reference at <http://www.distilledspirits.org/industry/code/code.htm>. We request that complaints be made in writing to ensure that they are processed properly and that the advertisement and/or marketing materials in question are appended to the complaint.

CODE REVIEW BOARD

The Code Review Board is comprised of senior member company representatives elected by the DISCUS Board of Directors, and is chaired by one of those representatives, with DISCUS acting as the staff liaison. The current members of the Code Review Board are:

- Ms. Carolyn L. Panzer, Chairperson, Diageo
- Ms. Mary E. Barrazotto, Brown-Forman Corporation
- Mr. John R. Frank, Sidney Frank Importing Co., Inc.
- Ms. Elizabeth Y. Kutyla-Miner, Barton Incorporated
- Mr. Thomas R. Lalla, Jr., Pernod Ricard USA
- Mr. Chris R. Swonger, Allied Domecq Spirits & Wine
- Mr. David C. Wagner, Future Brands LLC
- Mr. Frederick J. Wilson, III, Bacardi U.S.A., Inc.

The main function of the Code Review Board is to review complaints and inquiries about particular advertising and/or marketing materials in terms of whether their content and placement are consistent with the Code's provisions. This undertaking not only encompasses DISCUS members' advertisements, but also extends to all distilled spirits advertising in the United States.

The Code Review Board also periodically reviews the Code to ensure that the Code's provisions reflect the evolving marketplace, technological changes and current social mores. Suggested revisions and/or expansions to the Code are offered and made consistent with the overriding principle of the Code: to market our products to adults in a responsible and appropriate manner.

OUTREACH ACTIVITIES SINCE 2003 REVISIONS

The major focus of Code Review Board activities during the period covered by this first Report involved outreach efforts about the provisions of the new Code. These efforts included training sessions by DISCUS member companies for their employees, advertising agencies, media buyers, and other external consultants involved in a DISCUS member's advertising and/or marketing activities.

Outreach efforts also were conducted to familiarize interested parties with the new Code and increase awareness of the Code Review Board complaint process. Over 800 sets of the 2003 Code with explanatory materials were sent to State Alcohol Beverage Control officials, the Attorneys General of each State, officials at colleges and universities across the country, Federal agency officials, members of Congress, State legislators, industry trade association leaders, non-DISCUS member distillers, health officials, and advocacy groups.

These outreach efforts were supplemented by personal visits and presentations to various groups, such as meetings with the National Conference of State Liquor Administrators (NCSLA), the National Alcohol Beverage Control Association (NABCA), the Joint Committee of the States, the National Association of Attorneys General, the Conference of Western Attorneys General, and various industry trade association leaders.

To date, twelve State Alcohol Beverage Commissions have the DISCUS website link on their websites and the Commonwealth of Pennsylvania has the DISCUS Code of

Responsible Practices link on its website. By linking to the DISCUS website or hyperlinking directly to the DISCUS Code, it is easier for State officials and other interested parties to refer any inquiries or concerns about a particular advertisement to the DISCUS Code Review Board.

To that end, we continue to urge State officials and other interested parties to include the Code on their websites. If an individual has a concern about a particular distilled spirits advertisement or an advertisement for a beer, wine or distilled spirits brand marketed by a DISCUS member, the Code Review Board welcomes the opportunity to review that advertisement.

In addition to member company internal and external training sessions, each DISCUS member has established an internal process to ensure compliance with the Code. Consistent with the provisions set forth in the Code, this process includes a separate review of advertising and marketing materials by a company employee who is not in the marketing department or who is not involved in the development of the advertising or marketing materials to the extent possible given a company's size and organizational structure.

The Code Review Board also proactively provided various parental control programs, such as MSN, Net Nanny, Cyber Patrol, Cyber Sentinel, Cyber Sitter, and Norton Internet Security, with a list of DISCUS member company brand advertising and marketing websites for inclusion in their parental control database.

OUTSIDE ADVISORY BOARD

The new DISCUS Code established an Outside Advisory Board charged with the following two major functions: (1) to provide confidential, nonbinding guidance to DISCUS members about draft advertising copy and/or marketing materials prior to execution concerning whether these draft materials would be consistent with the Code (i.e., pre-vetting advice); and (2) to serve as tie-breakers in the event the Code Review Board cannot reach a majority decision about a particular advertisement or promotional execution under review.

Our three outside advisors are distinguished experts from government, academia and broadcasting:

Ms. Joan “Jodie” Bernstein, currently with the Washington, D.C. law firm Bryan Cave, has a distinguished history of government service. Ms. Bernstein most recently served as Director of the Federal Trade Commission’s Bureau of Consumer Protection from 1995 to 2001, where she was involved in every facet of advertising for the goods and services sold in the United States.

During her tenure, Ms. Bernstein oversaw the FTC’s 1999 Report to Congress on alcohol advertising and self-regulation. Ms. Bernstein was the leading force in creating the National Advertising Review Council of the Better Business Bureaus, established in 1971 to review advertising copy to ensure that it is truthful and accurate. Ms. Bernstein’s government career also included serving as General Counsel of the Environmental Protection Agency and as General Counsel of the Department of Health and Human Services.

Dr. Constantine “Deno” Curris, a leader among academic administrators, currently serves as the President of the American Association of State Colleges and Universities, a national association of over 400 public colleges and universities. AASCU, founded in 1965, is governed by an elected board of 15 university presidents and chancellors.

Dr. Curris has over 38 years of service in higher education, including serving as President of Clemson University for over four years, University of Northern Iowa for 12 years and Murray State University in Kentucky for 10 years. Dr. Curris is a strong advocate for public higher education and its students, and a proponent of the qualitative strengthening of higher education institutions in order to meet public needs and expectations in the 21st Century. He has been and is actively engaged in addressing problems of alcohol abuse among college students.

Mr. Richard Gitter is a former network executive with over 34 years of experience in the broadcast industry, including 25 years overseeing network advertising standards and compliance. Most recently, Mr. Gitter served as Vice President, Advertising Standards and Program Compliance for NBC where he reviewed commercials and programming to ensure compliance with Federal regulations and network policies. Mr. Gitter is a former member of the Board of Directors of the Council of Better Business Bureaus and the Radio Code Board of the National Association of Broadcasters.

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OF THE
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