
DISTILLED

SPIRITS

COUNCIL

OF THE

UNITED

STATES

SEMI-ANNUAL CODE REPORT

Third Edition for the period July 2005 through December 2005

CODE OF RESPONSIBLE PRACTICES
FOR BEVERAGE ALCOHOL
ADVERTISING AND MARKETING

www.distilledspirits.org

February 2006

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. For this reporting period, DISCUS members were:

Allied Domecq Spirits & Wine USA, Inc.

Bacardi U.S.A., Inc.

Barton Incorporated

Brown-Forman Corporation

Cruzan International, Inc.

Diageo

Sidney Frank Importing Co., Inc.

Future Brands LLC

(joint venture of Beam Global Spirits & Wine, Inc.
and The Absolut Spirits Company, Incorporated)

Luxco, Inc.

McCormick Distilling Co., Inc.

Moët Hennessy USA

Remy Cointreau USA, Inc

Pernod Ricard USA

Suntory International Corp.

TABLE OF CONTENTS

OPEN LETTER TO INTERESTED PARTIES	1
---	---

PUBLIC REPORT

CANADIAN CLUB	2
Content Complaint • Member	
CAPTAIN MORGAN.	3
Content Complaint • Member	
PATRÓN TEQUILA	4
Placement Complaint • Nonmember	
SKYY VODKA	5
Content Complaint • Nonmember	
SKYY VODKA	6
Content Complaint • Nonmember	
TOMMY GUNS VODKA	7
Content Complaint • Nonmember	
IVANABITCH VODKA	8
Content and Placement Complaints • Nonmember	

OTHER CODE REVIEW BOARD ACTIVITIES

UNAUTHORIZED R.J. REYNOLDS PROMOTION	9
THIRD-PARTY RETAIL DEPARTMENT STORE PROMOTIONS/ BRAND-LOGOED APPAREL	10
MAGAZINE SPECIAL BINDING INITIATIVE.....	10
REVISIONS TO THE DEMOGRAPHIC DATA/ ADVERTISEMENT PLACEMENT GUIDELINES	11
• Post Audits	
• Unmeasured Magazines	

BACKGROUND

HISTORY OF THE DISCUS CODE	12
CURRENT DISCUS CODE AND ORIGIN OF PUBLIC REPORT	13
CODE REVIEW BOARD PROCESS	14
HOW TO FILE A COMPLAINT	15
CODE REVIEW BOARD.....	16
OUTREACH ACTIVITIES	17
OUTSIDE ADVISORY BOARD.....	18

Open Letter to Interested Parties:

We are pleased to issue the third Report of activities of the DISCUS Code Review Board. This Report makes public Code Review Board actions for the period of July 1, 2005 through December 31, 2005. For this reporting period, the Code Review Board received complaints about 7 advertisements involving advertising or marketing subject to the DISCUS Code of Responsible Practices for Beverage Alcohol Advertising and Marketing. From time to time, the Board also receives complaints or inquiries regarding materials that fall outside the scope of the Code but, nonetheless, bring to industry members' attention issues they address. During this reporting period, two such situations occurred and are included in a separate section of the Report.

Unique within 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. Each complaint about a member company advertisement or distilled spirits advertisement of a non-DISCUS member is reviewed by the Code Review Board with 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. Throughout the decades, there has been 100% compliance by DISCUS members with the Board's decisions.

For over 70 years, distillers have abided by a voluntary advertising code and have revised the Code 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. The Code also now applies to the beer and wine brands, as well as to the distilled spirits brands, marketed by DISCUS members.

The October 2003 Code revisions provide, among other things, that beverage alcohol advertisements be placed only in media where at least 70 percent of the audience is reasonably expected to be 21 years of age and older, the legal purchase age. To implement this standard, the Code Review Board prepared detailed guidelines for the placement of advertisements in various media and for periodic, random after-the-fact audits of past placements to verify compliance with the demographic standard. Since October 2003, the Board has reviewed and fine-tuned these guidelines to address magazines not measured by a syndicated data source by requiring third-party independent demographic audits of those magazines (effective October 1, 2006) and to provide for semi-annual audits of random past placements using one quarter of data where available (effective January 1, 2006).

Consistent with our objective to direct our advertising to adults, DISCUS members have committed to the removal of their advertisements from the school library/program copies of *Newsweek*, *People*, *Sports Illustrated*, *Time*, and *U.S. News & World Report* by securing special bindings of those publications, which we understand are the magazines most commonly subscribed to by school libraries. As a consequence, DISCUS member companies voluntarily will refrain from advertising on the inside and back covers (premium advertising space) of these magazines, each of which exceeds the 70% demographic standard set by the DISCUS Code, if their covers cannot be segregated out for special bindings of school library copies. This initiative will become effective July 1, 2006 for copies of these magazines destined for this venue.

We believe this Semi-Annual Report is an important element of our longstanding corporate responsibility efforts. Providing a semi-annual report about complaint decisions allows the public at large to better evaluate and appreciate the DISCUS 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

THIRD PUBLIC REPORT

Advertisement:	Newspaper photos of Canadian Club Whiskey promotional event with Mr. Chris Moneymaker signing autographs for individuals under the age of 21 at a Pennsylvania Liquor Control Board Wine & Spirits Store
Advertiser:	Allied Domecq Spirits & Wine USA, Inc. (DISCUS member)
Complainants:	Third-party organizations, Harrisburg, Pennsylvania Third-party organization, Philadelphia, Pennsylvania
Complaint Summary:	Complainants believe the promotional event violates Responsible Content Provision No. 3 of the DISCUS <u>Code</u> : “Beverage alcohol advertising and marketing materials should not depict a child or portray objects, images or cartoon figures that primarily appeal to persons below the legal purchase age,” Responsible Content Provision No. 6: “Beverage alcohol products should not be advertised or marketed in a manner associated with the attainment of adulthood or the ‘rite of passage’ to adulthood,” Responsible Content Provision No. 7: “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,” and Responsible Content Provision No. 8: “No brand identification, including logos, trademarks or names, should be used or licensed for use on clothing, toys, games, or game equipment, or other items intended for use primarily by persons below the legal purchase age.”
Code Review Board Decision:	<p>Upon receipt of the complaint, advertiser investigated the situation and informed the Board that, by signing autographs for individuals under the age of 21, Mr. Moneymaker breached his agreement with the advertiser to comply fully with all provisions of the DISCUS <u>Code</u> regarding his participation in the Canadian Club tour.</p> <p>The Board found that the actions of Mr. Moneymaker in signing autographs for individuals under the age of 21 during the Canadian Club event were in violation of the overriding principle of the DISCUS <u>Code</u>, to market beverage alcohol products to adults in a responsible and appropriate manner.</p>
Action by Advertiser:	The advertiser now has instituted additional safeguards to prevent such occurrences at future events, including directing Canadian Club brand representatives on-site to intercede to avoid similar circumstances in the future.
Status:	Resolved: Responsive action taken.

Advertisement: Captain Morgan “Anthem” broadcast advertisement with the tagline “Got a little Captain in ’em”

Advertiser: Diageo (DISCUS member)

Complainant: Member of the public, Ava, Missouri

Complaint Summary: Complainant described the advertisement as showing “a dentist or dental assistant that pulls her leg and the chair in the dental office reclines back with a patient in it and states that she has had her Captain Morgan.” Complainant believes the advertisement violates Responsible Content Provision No. 15 of the DISCUS Code: “Beverage alcohol advertising and marketing materials should contain no claims or representations that individuals can attain social [or] professional...success...as a result of beverage alcohol consumption.”



Code Review Board Decision: The Code Review Board did not find the advertisement in violation of the Code. In the Board’s view, the statement “Got a little Captain in ’em” in the advertisement relates to the attitude of Captain Morgan drinkers and does not relate to consumption of the product. In fact, the advertisement itself does not depict drinking Captain Morgan or any other beverage alcohol product.

Action by Advertiser: None required

Status: Not applicable

Advertisement: Patrón Tequila advertisement in November 7, 2005 newsstand edition of ESPN The Magazine

Advertiser: The Patrón Spirits Company (Non-DISCUS member)

Complainant: Public Official, Augusta, Maine

Complaint Summary: Complainant believes 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: Upon receipt of the complaint, advertiser informed the Board that the advertiser placed the advertisement in the newsstand edition of ESPN The Magazine based upon data provided to the advertiser by ESPN, which differed from MRI data.

Consolidated MRI TwelvePlus demographic information indicate that ESPN The Magazine readership did not meet the 70% demographic provision and the advertisement placement was found in violation of Responsible Placement Provision No. 3 of the DISCUS Code.

Action by Advertiser: Advertiser informed the Code Review Board that, effective immediately, the advertiser will discontinue placements in ESPN The Magazine.

Status: Resolved: Responsive action taken.

Advertisement: SKYY Vodka “Cabana” print advertisement

Advertiser: SKYY Spirits, LLC (Non-DISCUS member)

Complainants: Industry member
Member of the public, Vista, California

Complaint Summary: Complainants believe 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. Accordingly, advertising and marketing materials should not contain or depict: graphic or gratuitous nudity;...promiscuity; or sexually lewd or indecent images.”



Code Review Board Decision: In response to the Board’s letter advising advertiser of the complaint, advertiser disagreed that “images of legs and arms shown holding drinks in a celebratory toast” constitutes a conflict with the Code’s sexual prowess or sexual success provision.

The Code Review Board could not reach a majority decision and forwarded the complaint to the Outside Advisory Panel in accordance with the procedures set forth in the Code. The Panel did not find the advertising copy in violation of the Code.

The Panel, however, expressed its concern that the advertising execution was very close to the line in terms of violating Responsible Content Provision No. 25 in that the advertising execution possibly could imply or suggest nudity or the use of sex as a selling point. The Outside Advisory Panel urged that these possible implications be taken into account in developing future advertising and marketing materials. The Code Review Board agreed with the Panel’s advice.

Action by Advertiser: None required

Status: Not applicable

Advertisement: SKYY Vodka billboard advertisement

Advertiser: SKYY Spirits, LLC (Non-DISCUS member)

Complainant: Member of the public, San Diego, California



Complaint Summary: Complainant described the advertisement as “a billboard demonstrating a man fully dressed in a tuxedo pouring vodka onto a woman lying down on a pool float dressed only in a bathing suit.”

Complainant believes the advertisement violates Responsible Content Provision No. 22 of the DISCUS Code: “Beverage alcohol advertising and marketing materials should not degrade the image, form, or status of women,” Responsible Content Provision No. 16: “Beverage alcohol products should not be advertised or marketed in any manner associated with abusive or violent relationships,” 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,” 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. Accordingly, advertising and marketing materials should not contain or depict...promiscuity.”

Code Review Board Decision: In response to the Board’s letter advising advertiser of the complaint, the advertiser forwarded to the Board a picture of the billboard in question, noting that “the bottle is being poured into a glass, not onto the model.” The advertiser does not share the complainant’s view that the advertisement is in poor taste, is degrading, communicates excessive consumption, or depicts abusive relationships or sexual promiscuity.

In the Board’s view, the advertisement showing a fully-clothed man pouring vodka into a glass, which a woman is holding while wearing a dress on a pool float, did not depict degrading content, excessive consumption, promiscuity, sexual prowess, or violent or abusive relationships. The Code Review Board did not find the advertisement in violation of the Code.

Action by Advertiser: None required

Status: Not applicable

Advertisement: Tommy Guns Vodka website advertising and marketing materials

Advertiser: Alphonse Capone Enterprises
(Non-DISCUS member)

Complainant: Industry member

Complaint Summary: Complainant believes the advertising and marketing materials violate Responsible Content Provision No. 16 of the DISCUS Code: “Beverage alcohol products should not be advertised or marketed in any manner associated with...violent...situations,” Responsible Content Provision No. 17: “Beverage alcohol advertising and marketing materials should not imply illegal activity of any kind” and Responsible Content Provision No. 19: “Beverage alcohol advertising and marketing materials should not be associated with anti-social or dangerous behavior.”



Code Review Board Decision: In response to the Board’s letter advising advertiser of the complaint, advertiser disagreed with the complaint stating that these materials “merely refer to a period of time in the history of the United States.” Further, the advertiser asserts the use of the Tommy Gun bottle is “merely a reference to an earlier historical time in our country’s history when both bootleggers and law enforcement officials used it as part of their activities.” In addition, the advertiser does not believe that referring to history, both the “Roaring ‘20s” and “Prohibition,” can be viewed as antisocial or dangerous behavior in a “present time” concept. In the Code Review Board’s view, the use of a gun-shaped bottle and the depiction of guns and bullet holes in the Tommy Guns Vodka advertising and marketing materials imply violent, illegal activity, and found the advertising and marketing materials in violation of Responsible Content Provisions Nos. 16, 17 and 19 of the Code. The Board did not find the historical references to the Prohibition Era or the Roaring 20s to be inconsistent with the Code.

Action by Advertiser: No further response from the advertiser once informed of the Board’s decision

Status: Board continues to urge the advertiser to revise these advertising and marketing materials in light of the Code’s provisions.

Advertisement: Ivanabitch Vodka website advertising materials

Advertiser: International Spirits, LLC
(Non-DISCUS member)

Complainant: Industry member

Complaint Summary: Complainant believes the advertisement violates Responsible Content Provision No. 23 of the DISCUS Code: “Beverage alcohol advertising and marketing materials should not contain any lewd or indecent...language,” Responsible Content Provision No. 22: “Beverage alcohol advertising and marketing materials should not degrade the image, form, or status of women,” Responsible Content Provision No. 21: “Beverage alcohol advertising and marketing materials should reflect generally accepted contemporary standards of good taste,” 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.”



Complainant also asserts these materials are inconsistent with Responsible Content Provision No. 2 and Responsible Placement Provision No. 2 pertaining to advertising and marketing materials “primarily appealing to persons below the legal purchase age.”

Code Review Board Decision: Advertising copy was found in violation of Responsible Content Provisions Nos. 23, 22, 21, and 13 due to the use of lewd language and references to irresponsible consumption, and in violation of Responsible Content Provision No. 2 and Responsible Placement Provision No. 2 due to the website references to dorm rooms and the advertiser’s spring break promotions.

Action by Advertiser: No response from the advertiser

Status: Board continues to urge the advertiser to revise these advertising and marketing materials in light of the Code’s provisions.

OTHER CODE REVIEW BOARD ACTIVITIES

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 is followed by an increasing number of non-member distilled spirits marketers.

The Code applies to all advertising and marketing activities including brand advertising, consumer communications, promotional events, packaging, labels, and distribution and sales materials. The provisions of the Code also 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, as well as every type of promotional or marketing activity or event, including all product placements.

There are some situations that have come to the Board's attention that fall outside the scope of the Code because they do not involve advertising or marketing by DISCUS members. Nevertheless, in keeping with their longstanding commitment to responsibility, the Code Review Board took action to address these matters. During the last reporting period, two such situations occurred and are summarized below. In addition, this section discusses the new magazine special binding initiative and revisions to the demographic data/advertisement placement guidelines.

UNAUTHORIZED R.J. REYNOLDS PROMOTION

The Code Review Board received an inquiry from three State Attorneys General regarding a R.J. Reynolds tobacco promotion condoning excessive drinking that included liquor brands of DISCUS member companies.

The promotion tagline "It's your Birthday. Drinks on us." apparently directed to individuals aged 18 and older and the language on the recipe coasters promoting excessive and irresponsible consumption, standing alone or together, simply are not acceptable.

If the promotion had been conducted by or with the consent of a DISCUS member company, there would have been a violation of the DISCUS Code. Upon investigation of this matter, the Board learned that Reynolds never sought nor received permission from any member company regarding the promotion in question. This fact was confirmed by a Reynolds executive, who also stated that Reynolds did not seek permission from any brand owner for this promotion.

Consequently, the Board concluded that this Reynolds promotion falls outside the scope of the DISCUS Code because the promotion was conducted by Reynolds without the consent or involvement of DISCUS members. The Code Review Board responded to the Attorneys General from New York, Maryland and California con-

demning the tobacco promotion and soliciting the Generals' assistance to urge Reynolds to immediately halt the campaign.

This campaign also was criticized by the director of the PIRE Center for the Study of Law and Enforcement Policy, a nonprofit institute that focuses on alcohol policy: "These promotions by RJR harm efforts by public health, law enforcement and alcohol industry groups seeking to reduce levels of intoxication and binge drinking among young adults."

The Attorneys General, upon receiving the Board's response, sent a joint letter to the Reynolds CEO demanding that the tobacco company immediately cease the promotion. Shortly thereafter, Reynolds informed the Attorneys General that it would cease the campaign.

The Code Review Board applauded the joint efforts to end this RJR promotion. While the Reynolds promotion is not subject to the Code, the references to distilled spirits in this promotion blemished the reputation of our industry's longstanding commitment to responsibility since one could mistakenly believe that distillers somehow were affiliated with this promotional activity.

THIRD-PARTY RETAIL DEPARTMENT STORE PROMOTIONS/ BRAND-LOGOED APPAREL

The Board received several inquiries about beverage alcohol brand-logoed t-shirts in retail department stores' "Back to School" advertising circulars, as well as a few inquiries about the department stores' website display or in-store display of these t-shirts. These inquiries related to the actions of third-party retailers and therefore fall outside the scope of the Code.

Nevertheless, as soon as our member companies learned of these placements, they contacted the department stores to obtain their assurances that such inappropriate placements would not occur in the future. For example, the retail department stores immediately removed these "Back to School" advertising materials from their website and

committed to review future print advertising and website placement to guard against such errors. Where a retail department store displayed brand-logoed apparel in their Juniors' department, the store agreed to remove the apparel from that department or return any inventory of this merchandise to their respective vendors at our members' request.

Separately, our members have measures in place with the objective of having their licensed goods sold in appropriate venues and have undertaken a review of the controls in their respective licensing agreements to help ensure that apparel with beverage alcohol logos are marketed to individuals of legal purchase age.

MAGAZINE SPECIAL BINDING INITIATIVE

DISCUS members have committed to the removal of their advertisements from the school library/program copies of *Newsweek*, *People*, *Sports Illustrated*, *Time*, and *U.S. News & World Report* by securing special bindings of those publications, which we understand are the magazines most commonly subscribed to by school libraries. As a consequence, DISCUS member companies voluntarily will refrain from advertising on the inside and back covers of these magazines (premium advertising space) if their covers cannot be segregated out for special bindings of school library copies.

For example, *Time* is one of the top magazines for spirits advertisements with an over 88% 21+ demographic. By this initiative, DISCUS members will refrain from advertising on the inside or back covers of 4 million copies of *Time*, in order to remove their advertisements from school library copies. This initiative will become effective July 1, 2006 for copies of these magazines destined for this venue.

REVISION OF DEMOGRAPHIC DATA/ADVERTISEMENT PLACEMENT GUIDELINES TO IMPLEMENT THE RESPONSIBLE PLACEMENT PROVISIONS OF THE CODE

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, after-the-fact audits of a random portion of past placements to verify that such placements were in compliance with the 70% adult demographic provision. DISCUS has developed in consultation with media buying experts detailed guidelines to meet this demographic standard.

Since the issuance of the 2003 Code, the Board has reviewed the implementation and application of the Code’s placement guidelines and has fine-tuned them accordingly. These enhanced guidelines include changes to post audits (effective January 1, 2006) and also establish guidance for advertising in unmeasured magazines (effective October 1, 2006).

- The placement guidelines now require, at a minimum, semi-annual post audits for advertisements placed or aired on or after January 1, 2006 to verify that past placements met the Code’s demographic standard. Previously, periodic audits were required. This new

baseline will produce greater robustness in monitoring placements.

- The guidelines for post audits, when originally crafted, required using two quarters of data subsequent to the placement to verify compliance with the demographic provision. After further review and in consultation with media experts, the Board deemed one quarter of data (the quarter in which the advertisement ran) to be more appropriate data to evaluate the placement, thereby allowing quicker corrective action if necessary.
- An issue first addressed in the March 2005 Semi-Annual Report involved the provision of conflicting demographic data to advertisers by the publisher of XXI, a magazine that was not measured by MRI 12+ or Simmons. In response, the Board developed an initiative to require unmeasured magazines to furnish to potential beverage alcohol advertisers demographic survey data conducted by an independent third-party.

This initiative now is included in the media placement guidelines whereby advertisements will be placed in subscription-based magazines not measured by a syndicated source only after the magazine has provided an independent measurement of their subscribers and these data demonstrate compliance with the 70% 21+ placement standard. This initiative, as well as the other revisions to the placement guidelines, are posted on the DISCUS website.

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. To that end, 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; and
- New provision prohibiting advertising that associates drinking with “rite of passage” to adulthood.

Throughout its long history, 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. In its September 2003 Report to Congress entitled “Alcohol Marketing and Advertising,” the FTC concluded that the distilled spirits industry’s advertising is directed to adults and that the distilled spirits 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.

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.

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.

CURRENT CODE 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 applies to all of the over 2,800 distilled spirits, beer and wine brands marketed by DISCUS members, and is followed by an increasing number of non-member distilled spirits marketers.

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.

Further, the Code provides for the issuance of semi-annual reports. For decades the Code Review Board has effectively addressed complaints about distilled spirits advertising but the decisions were never made public and, as a consequence, the rigor of the Board's review process and adherence to the Board's decision were not widely known.

This new transparency allows the public at large to better evaluate and appreciate our Code review process. In fact, industry watchdogs and the media have taken notice of the distilled spirits industry's approach to self-regulation, calling it a model for other industries, including food product manufacturers and the pharmaceutical industry.

The FTC also 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.

In 2005, following the release of the first DISCUS Semi-Annual Report, the director of the FTC's alcohol advertising program told *The Washington Post* that self-regulation permits the spirits companies to "address things that couldn't be touched by a government agency because of the First Amendment." The director called this a "fabulous thing," noting that "[t]his is a far step above and beyond what other companies are doing."

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.
- 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 process described above will continue to be used for any complaints questioning DISCUS member company advertising and/or marketing materials.

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.

The following procedures are 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 is 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 with the advertisement and/or marketing materials in question appended to the complaint to ensure that they are processed properly and expeditiously.

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 staff acting as the 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 the Report continues to involve outreach efforts about the provisions of the Code. These efforts were directed at familiarizing all interested parties with the Code and increasing awareness of the Code and the Code Review Board complaint process.

Over 700 copies of the second Semi-Annual Report published last July 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, other industry members, 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, ten 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.

In addition, the DISCUS Code Review Board met with the Tax and Trade Bureau, the Federal agency with oversight of beverage alcohol labeling and advertising, to discuss the review process and the provisions of the Code, in particular, how they relate to the labeling of beverage alcohol products. The Board urged the Bureau to link to the Code on its website.

We continue to urge Federal and 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.

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 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. Ms. Bernstein most recently was appointed to undertake a complete review of the Self-Regulatory Guidelines for the Children’s Advertising Review Unit (CARU) of the Council of Better Business Bureaus.

During her tenure at the FTC, 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 40 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 P. Gitter is a former network executive with 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.

DISTILLED
SPIRITS
COUNCIL
OF THE
UNITED
STATES

www.distilledspirits.org

1250 Eye Street, N.W., Suite 400
Washington, D.C. 20005
Phone: 202/628-3544
Fax: 202/682-8877