
DISTILLED
SPIRITS
COUNCIL
OF THE
UNITED
STATES

SEMI-ANNUAL CODE REPORT

Seventh Edition for the period July 2007 through December 2007

CODE OF RESPONSIBLE PRACTICES
FOR BEVERAGE ALCOHOL
ADVERTISING AND MARKETING

www.discus.org

March 2008

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:

Bacardi U.S.A., Inc.

Barton Incorporated

Brown-Forman Corporation

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.

Moët Hennessy USA, Inc.

Rémy Cointreau USA, Inc.

Pernod Ricard USA

Suntory International Corp.

TABLE OF CONTENTS

OPEN LETTER TO INTERESTED PARTIES 1

PUBLIC REPORT

- DOWNUNDER VODKA 2
CONTENT COMPLAINT / NONMEMBER
- BELVEDERE VODKA 3
CONTENT COMPLAINT / MEMBER
- VOLTA VODKA 5
CONTENT COMPLAINT / NONMEMBER
- SKYY VODKA 7
CONTENT COMPLAINT / NONMEMBER
- WIDE EYE 8
CONTENT COMPLAINT / MEMBER
- SKYY VODKA 9
CONTENT COMPLAINT / NONMEMBER
- SEAGRAM'S DISTILLERS RESERVE GIN AND GIN & JUICE 10
PLACEMENT AND CONTENT COMPLAINT / MEMBER
- CAMPARI 13
CONTENT COMPLAINT / NONMEMBER

BACKGROUND

HISTORY OF THE DISCUS CODE 14

CURRENT DISCUS CODE AND ORIGIN OF PUBLIC REPORT 15

INTERNET/DIGITAL BUYING GUIDELINE 17

CODE REVIEW BOARD PROCESS 19

HOW TO FILE A COMPLAINT 20

CODE REVIEW BOARD 21

OUTSIDE ADVISORY BOARD 22

RECENT OUTREACH ACTIVITIES 23

Open Letter to Interested Parties:

We are pleased to issue the seventh Report of complaint decisions by the Distilled Spirits Council's Code Review Board, the spirits industry's advertising compliance review body. This Report makes public Code Review Board actions for the period of July 1, 2007 through December 31, 2007.

For this reporting period, the Board received 8 complaints involving 10 advertisements subject to the DISCUS Code of Responsible Practices for Beverage Alcohol Advertising and Marketing. Throughout the decades, there has been 100% compliance by DISCUS members with the Code Review Board's decisions and overwhelming compliance by non-DISCUS members. During this reporting period, there was a 100% compliance rate with the Board's decisions among DISCUS members and nonmembers alike.

The DISCUS Code provides for a Code Review Board that is charged with reviewing complaints about advertising and marketing materials in the marketplace. The Code applies to all of the distilled spirits, beer and wine brands marketed by DISCUS members and is followed by non-member distilled spirits marketers. Each complaint reviewed by the Board, whether lodged by a private citizen, third-party organization, government official, or an industry member, is given identical consideration and priority status. After receiving a complaint, the Board determines whether the advertisement is consistent with the provisions of the Code and, if a provision of the Code has been violated, the Board urges that the advertisement be revised or withdrawn.

Our goal is to increase awareness of the Code by all means and to ensure compliance with its provisions in all venues. Issuance of this Report allows the public at large to better evaluate and appreciate our longstanding review process. More importantly, it serves as an effective tool to familiarize non-DISCUS member distillers with the provisions of the Code, as well as to educate cable companies, broadcasters, magazine publishers, and other media outlets about its provisions.

We also welcome this additional opportunity to urge State and Federal government officials and other interested parties to take advantage of our self-regulatory process by linking to the DISCUS Code (<http://www.discus.org/responsibility/code.asp>) on their websites as a means to refer inquiries or concerns to the Code Review Board for rapid consideration.

Sincerely,



Peter H. Cressy
President/CEO
Distilled Spirits Council

SEVENTH PUBLIC REPORT

Advertisement: Downunder Vodka print advertisement

Advertiser: Heartland Spirits Group
(Non-DISCUS member)

Complainant: Industry member

Complaint Summary: The complainant believes that the advertisement with the tagline “Perfect for Any Pouch” runs afoul of Responsible Content Provision Nos. 21, 22 and 25 of the DISCUS Code due to its overtly sexual and suggestive nature featuring a model with her bare breasts exposed, pants unbuttoned and a bottle of Downunder being slipped into her pants.



Responsible Content Provision Nos. 21, 22 and 25 provide, respectively, that beverage alcohol advertising and marketing materials “should reflect generally accepted contemporary standards of good taste;” “should not degrade the image, form, or status of women, men, or of any ethnic, minority, sexually-oriented, religious, or other group;” and “should not contain or depict...sexually lewd or indecent images or language.”

Code Review Board Decision: After careful deliberation, the Code Review Board found that the Downunder Vodka advertisement violated Responsible Content Provision Nos. 21, 22 and 25 of the DISCUS Code. In the Board’s view, the advertisement is overtly sexual and suggestive in nature, degrading and is not in keeping with generally accepted contemporary standards of good taste.

Action by Advertisers: The advertiser immediately pulled the referenced Downunder Vodka advertisement and will no longer use this advertising execution.

Status: Resolved: Responsive action taken

Advertisement: Belvedere Vodka television commercial

Advertiser: Moët Hennessy USA, Inc.
(DISCUS member)

Complainant: Third party group,
San Rafael, California



Complaint Summary: The complainant believes, based upon viewing a snippet of the commercial, that the Belvedere Vodka advertisement depicts the illegal destruction of property and therefore violates Responsible Content Provision No. 17 of the DISCUS Code, which provides that [b]verage alcohol advertising and marketing materials should not imply illegal activity of any kind.”

Code Review Board Decision: In responding to the complaint, the advertiser respectfully disagreed with the complainant’s assessment of the commercial. The advertiser noted that the complainant did not specify what activity depicts the illegal destruction of property. If it relates to the scripted scene where the artist and musician, Vincent Gallo, draws on a painting, the advertiser noted that this action by Mr. Gallo was performed with the hostess’ consent and is not illegal activity.

The advertiser stated that, for destruction of property to be illegal, two elements must be present; first, it must be done with malice and intent to destroy and, second, it must be without the owner’s permission. In that regard, the hostess was looking on as Mr. Gallo did his work and immediately approved, remarking in a voice clearly audible in the commercial, “Vincent, it’s fabulous, darling!” Further, the advertiser noted that Mr. Gallo’s drawing on the painting in this advertisement is fully consistent with his artwork that has been shown in respected museums and art galleries.

According to the advertiser, Mr. Gallo is a well-known avant-garde artist/musician/actor/director who has scripted, directed and starred in his own movies, including the 1998 cult favorite, “Buffalo 66.” In the art world, he is known for his figurative paintings in the 1980s. The Hara Museum of Contemporary Art in Tokyo recently mounted a survey of Mr. Gallo’s art, entitled “The Vincent Gallo Retrospective 1977-2002,” which featured some 120 paintings, drawings and photographs by Mr. Gallo, including the artist’s paintings on manhole covers and the frieze-like still lifes that he exhibited in 1985 at Annina Nosei Gallery in SoHo.

In summary, the advertiser stated that nothing in the commercial reflects that Mr. Gallo’s drawing on the painting was done maliciously, with the intent to destroy or without the hostess’ consent or approval. The advertiser also stated that the fire sprinkler system going off during the commercial was triggered accidentally and not caused by any illegal activity.

After careful deliberation and upon reviewing a copy of the entire commercial advertisement and the advertiser's response, the Code Review Board did not find a violation of Responsible Content Provision No. 17 providing that "[b]everage alcohol advertising and marketing materials should not imply illegal activity of any kind." The Board concluded that Mr. Gallo's drawing on the painting was done in the presence of the hostess and with her approval.

Action by Advertiser: None required

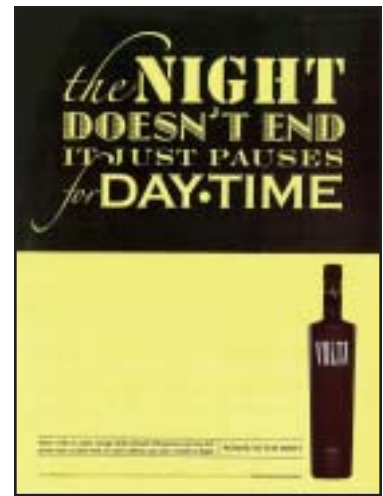
Status: Not applicable

Advertisement: Volta Vodka advertising materials

Advertiser: White Rock Distilleries, Inc.
(Non-DISCUS member)

Complainant: Industry member

Complaint Summary: The complainant believes the statements made on the Volta Vodka Info website page that include phrases such as: “nature’s herbal energy boosters;” “stimulant;” “temporarily restores alertness;” “wards off drowsiness;” “offers the physical and mental stimulation...without the stomach upset;” “energy drinks;” “to increase the body’s stamina and resistance to stress;” “to maintain stamina and increase physical endurance;” “detoxifying essential amino acid acts as a metabolic transmitter to strengthen cardiac contractility;” “utilized by the body for a variety of metabolic processes;” and “essential to human health” constitute curative or therapeutic claims that abridge Responsible Content Provision No. 14 of the DISCUS Code. Responsible Content Provision No. 14 provides that “[b]verage alcohol advertising and marketing materials should not contain any curative or therapeutic claim except as permitted by law.”



With regard to the print advertisement, the complainant believes the statements: “*the* NIGHT DOESN’T END IT JUST PAUSES *for* DAY-TIME;” “energy vodka;” “Infused with guarana, taurine and yerba mate;” and “Loaded with so much caffeine, any more would be illegal” also run afoul of Responsible Content Provision No. 14. These statements also appear on the home page of the Volta Vodka website.

Code Review Board Decision: In responding to the complaint with regard to the print advertisement, the advertiser stated that the tagline, “*the* NIGHT DOESN’T END IT JUST PAUSES *for* DAY-TIME” is a headline – not descriptive brand copy and they do not feel it is inappropriate. With regard to the statement “infused with guarana, taurine and yerba mate,” the advertiser stated that this statement is true because Volta Vodka does contain all of these natural herbs. The advertiser stated that the formula and the Flavor Ingredient Data Sheet (FIDS) for Volta Vodka approved by the Tax and Trade Bureau show that these natural herbs are in the product.

After careful deliberation, the Board found that the Volta Vodka print advertisement subject to the complaint violated Responsible Content Provision No. 14 of the DISCUS Code. In that regard, the Board concluded that the advertisement viewed as a whole and with such statements as “energy vodka” and “Loaded with so much caffeine, any more would be illegal” implies that the consumption of Volta Vodka will have a stimulating or energizing effect.

The Board also concluded that statements on the Volta Vodka website subject to the complaint violate Responsible Content Provision No. 14 of the DISCUS Code. The advertiser stated that these phrases were culled from various sources, such as wikipedia.com, dictionary.com, encyclopedia.com, and reference.com, in order to describe the ingredients contained in Volta Vodka so that consumers who may have allergenic sensitivities would be informed of the ingredients in the product. With due respect, the Board concluded that a listing of the Volta Vodka ingredients would accomplish that goal without implying or promoting the curative or therapeutic effects of consuming Volta Vodka.

Action by Advertiser:

The advertiser took responsive action for the print advertisement and the website advertising.

Status:

Resolved: Responsive action taken

Advertisements: Skyy Vodka website advertisements

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

Complainant: Industry member

Complaint Summary: The complainant believes that both advertisements rely upon sex as a selling point for the brand and points to Responsible Content Provision No. 25 of the DISCUS Code, which provides that “beverage alcohol advertising and marketing materials should not rely upon sexual prowess or sexual success as a selling point for the brand.”



“#81 In the Home Movie Series 11”

Regarding the “#81 In the Home Movie Series 11” advertisement, the complainant believes that the female model has a “come hither” expression on her face, taken together with the use of the video camera and the way the female model and her dress are positioned, convey “sexually lewd undertones” and rely upon sexual prowess as a selling point for the brand.



“#74 In the Shade Series 7”

Regarding the “#74 In the Shade Series 7” advertisement, the complainant believes that the way the female model is pulling on the male waiter’s tie and the expression on the waiter’s face make it appear that the female model is seducing the waiter. The complainant also believes that, because the female model is in a bathing suit and the male model is a waiter, the advertisement conveys the impression that she is “taking advantage of him.” Therefore, the complainant believes that the advertisement relies upon sexual prowess as a selling point for the brand.

Code Review Board Decision: In responding to the complaint, the advertiser disagreed with the complainant’s assessment that the advertisements rely upon sex as a selling point for the brand. The advertiser stated that the “advertisements show women genuinely having fun and being playful while enjoying SKYY cocktails.”

After careful deliberation, the Code Review Board did not find a violation of the DISCUS Code.

Action by Advertiser: None required

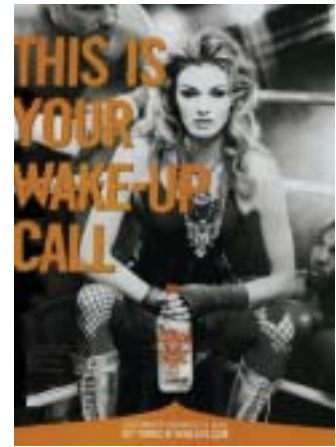
Status: Not applicable

Advertisement: Wide Eye advertising materials

Advertiser: Barton Incorporated
(DISCUS member)

Complainants: Industry members

Complaint Summary: The complainants believe that these advertising materials run afoul of the DISCUS Code's Responsible Content Provision No. 14 providing that “[b]everage alcohol advertising and marketing materials should not contain any curative or therapeutic claim except as permitted by law.” The complainants pointed to the tagline “This is your wake-up call” in conjunction with the brand’s caffeinated schnapps campaign.



In that regard, it also was noted by one of the complainants that Wide Eye is highlighting the caffeine in the beverage and implying that it will serve as a product that will wake you up. Concerning the same point, one of the complainants referenced the following statement in the website materials: “When you party with the world’s first caffeinated schnapps, it’ll seem like the rest of the world is sleepwalking through life.” One of the complainants also expressed the concern that the product itself is called “Wide Eye” again making the claim that it is a product that will keep you awake.

Code Review Board Decision: In responding to the complaint, the advertiser stated that the Tax and Trade Bureau approved the brand name “Wide Eye” and the specific statement “I am your wake-up call” on the product’s label as part of the Bureau’s label approval process. The advertiser stated that the website containing the above-referenced statement was posted without clearance and prior internal review in violation of the advertiser’s procedures.

After careful deliberation, the Code Review Board found: (1) no violation of Responsible Content Provision No. 14 regarding the “Wide Eye” brand name and (2) no violation of Responsible Content Provision No. 14 for the tagline “This is your wake-up call” on the grounds that the Tax and Trade Bureau explicitly approved the brand name and the tagline “I am your wake-up call;” the latter of which has the same substantive import of “This is your wake-up call.”

Regarding the statement that was posted on the website “[w]hen you party with the world’s caffeinated schnapps, it’ll seem like the rest of the world is sleepwalking through life,” the Board found that this website statement was in violation of Responsible Content Provision No. 14.

Action by Advertiser: Immediately upon learning of the website posting, the advertiser brought down the website for requisite review and removed the referenced statement from the website. The advertiser has instituted additional review procedures to ensure compliance with the Code.

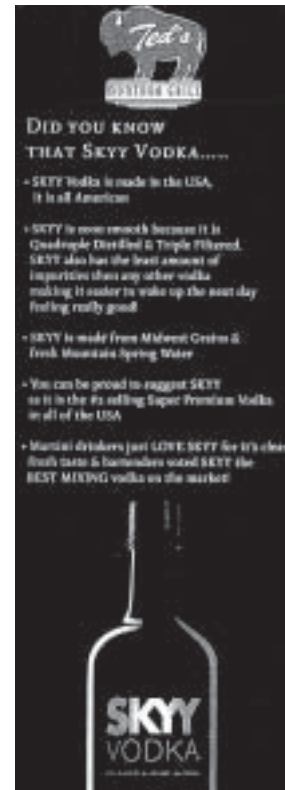
Status: Resolved: Responsive action taken

Advertisement: Skyy Vodka / Ted's Montana Grill advertisement

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

Complainant: Industry member

Complaint Summary: The complainant believes the tagline on a Ted's Montana Grill advertisement, "Skyy also has the least amount of impurities than any other vodka making it easier to wake up the next day feeling really good!" constitutes a curative or therapeutic claim and points to Responsible Content Provision No. 14 of the DISCUS Code. Responsible Content Provision No. 14 provides that "[b]verage alcohol advertising and marketing materials should not contain any curative or therapeutic claim except as permitted by law."



Code Review Board Decision: Immediately upon learning of the complaint, Skyy Spirits undertook an investigation regarding Skyy's participation, if any, in the development of Ted's Montana Grill's advertisement. Skyy Spirits also contacted Ted's Montana Grill and requested that the advertising materials be pulled and discarded. After learning of their involvement in the development of the advertisement, Skyy Spirits took full responsibility.

After careful consideration and based upon the followup information provided by Skyy Spirits, the advertisement was found in violation of Responsible Content Provision No. 14 of the DISCUS Code.

Action by Advertiser: Immediately upon learning about these Ted's Montana Grill advertising materials, Skyy Spirits requested and received confirmation that these materials were pulled and discarded.

Status: Resolved: Responsive action taken

Advertisements: Seagram's Distillers Reserve
Gin and Gin & Juice
billboard advertisements

Advertiser: Pernod Ricard USA
(DISCUS member)

Complainant: Member of the public,
Atlanta, Georgia



Complaint Summary: The complainant believes that the location of the Seagram's Distillers Reserve Gin and Gin & Juice Billboard advertisements (located in Atlanta, Georgia at 2132 and 2192 Campbellton Road, respectively) run afoul of Responsible Placement Provision No. 7 of the DISCUS Code, which provides that "[b]everage alcohol advertising should not be placed on any outdoor stationary location within five hundred (500) feet of an established place of worship or an elementary school or secondary school except on a licensed premise."

Regarding the individual depicted in the Seagram's Gin & Juice billboard advertisement, the complainant believes that the "young man's age is so ambiguous that he could reasonably be mistaken for a teenager," implicating Responsible Content Provision No. 7. Responsible Content Provision No. 7 provides that "[b]everage 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. To help ensure that individuals in beverage alcohol advertising are and appear to be above the legal purchase age, models and actors employed should be a minimum of 25 years old, substantiated by proper identification and should reasonably appear to be over 21 years of age."

The complainant also believes that the advertisement promotes "the use of alcohol to achieve a certain status/behavior" in that the advertisement "ties the 'cool' factor to alcohol consumption" implicating Responsible Content Provision No. 15. Responsible Content Provision No. 15 provides that "[b]everage alcohol advertising and marketing materials should contain no claims or representations that individuals can attain social, professional, educational, or athletic success or status as a result of beverage alcohol consumption."

Code Review Board Decision: In response to the complaint, the advertiser stated that its agreement with its billboard placement company requires compliance with the provisions of the DISCUS Code. Upon receipt of the complaint, the advertiser immediately contacted the billboard placement company to confirm compliance and was advised that the placement of the billboard advertisements were not located within five hundred (500) feet of an established place of worship or elementary school or secondary school.

Concerning the Code's content provisions in question, the advertiser stated that the Gin & Juice billboard advertisement was a part of the advertiser's May 2007 "What do you bring to the party?" interactive advertising campaign website. The campaign had two elements: (1) a consumer website posting and (2) a billboard contest.

The advertiser stated that the campaign offers consumers 21 years of age and older an opportunity to express their individual styles by submitting digital photographs of themselves along with a statement reflecting their style – “What they bring to the party” – to the website. The advertiser included a compliance control element in the site whereby only consumers who represented that they were 25 years of age or older were allowed to actually post their photographs and comments on the website.

The official rules and the terms and conditions of the contest, which included the minimum 25 years of age requirement, were posted on the website. The advertiser independently verified the age of the contestants by running a records check described more fully below.

Consumers between 21 to 24 years of age were permitted a different and more limited type of participation. They were not permitted to post their picture or comments on the website, instead those consumers received a morphed picture by a system generated e-mail.

For consumers 25 years of age and older, the campaign offered these consumers a reward in addition to an opportunity to post their photographs and comments. Each digital image submitted was “morphed” into a stylized line drawing. Consumers 25 years of age and older submitting photographs and comments were entered into a contest, with the winning submissions to be used in a national “What do you bring to the party?” media campaign. In order to participate in the billboard campaign, each winner selected had to complete a notarized affidavit form in which they attested, among other things, that they were 25 years of age or older, provided their social security number, and consented to a background search.

The advertiser stated that the Seagram’s Gin & Juice billboard in question featured a 29-year old individual from Atlanta, Georgia, who submitted an eligibility affidavit and consented to a background check. The background investigation included age verification, employment and criminal justice system records checks.

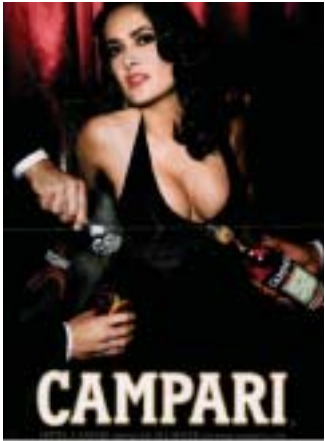
Regarding Responsible Placement Provision No. 7 of the DISCUS Code, the distance between the two billboards and the Hamilton E. Holmes Elementary School and the D.M. Therrell High School is more than five hundred (500) feet. Based upon these facts, the Board found that the placements of the Seagram’s Distillers Reserve Gin and Seagram’s Gin & Juice billboards were consistent with the Code’s provisions.

Regarding the image of the individual in the Seagram’s Gin & Juice billboard advertisement, after careful deliberation, the Code Review Board did not find a violation of Responsible Content Provision No. 7. The age of the individual was documented in the individual’s eligibility affidavit and independently verified as 29 years of age.

Regarding Responsible Content Provision No. 15, the Board did not find that the advertisement “[t]ies partying to alcohol consumption” or “[t]ies the ‘cool’ factor to alcohol consumption.” In the Board’s judgment, the “cool factor” reflects the individual’s personal style – what the individual brought to the party (as he said “I Bring the NY/ATL Style”), and that his individual style was not the result of beverage alcohol consumption.

Action by Advertiser: None required

Status: Not applicable

Advertisement:	Campari print advertisement	
Advertiser:	Skyy Spirits, LLC (Non-DISCUS member)	
Complainant:	Industry member	
Complaint Summary:	Complainant believes that the advertisement relies upon sex as a selling point for the brand and points to Responsible Content Provision Nos. 25 and 21 of the DISCUS Code . Responsible Content Provision Nos. 25 and 21 provide, respectively, that “beverage alcohol advertising and marketing materials should not rely upon sexual prowess or sexual success as a selling point for the brand” and “[b]everage alcohol advertising and marketing materials should reflect generally accepted contemporary standards of good taste.”	
Code Review Board Decision:	<p>In responding to the complaint, the advertiser disagreed with the complainant’s assessment that the advertisement relies upon sex as a selling point for the brand. The advertiser stated that “[t]he advertisement expresses cocktail culture in a tasteful and refined setting. It does not rely upon ‘sexual prowess’ or ‘sexual success’ as a selling point. The portrayed woman is wearing a stylish cocktail dress and is being served a Campari cocktail.”</p> <p>With regard to the complainant’s assessment that the advertisement is inconsistent with generally accepted contemporary standards of good taste, the advertiser disagreed and stated that “[t]his ad portrays an elegant, sophisticated woman in a modern cocktail setting in which Campari can be consumed.”</p> <p>After careful deliberation, the Code Review Board did not find a violation of the DISCUS Code.</p>	
Action by Advertiser:	None required	
Status:	Not applicable	

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 advertising and marketing practices. Throughout the decades, the Distilled Spirits Council's Code has embodied the high standards and commitment to responsibility that have been the touchstone of DISCUS member company advertising practices.

The provisions of the Code apply to every type of print and electronic media, including the Internet and any other online 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.

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 online 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 the 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;
- 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% 21 years of age and older (the legal purchase age) demographic standard; 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.

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. 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 the DISCUS Code.

CURRENT DISCUS 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.

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 these standards, 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 finetuned these guidelines to address general circulation magazines not measured by a syndicated data source by requiring third-party independent demographic surveys 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. As described in a separate section of the Report, we now have a specific, detailed guideline for advertising and marketing materials placed on the internet/digital medium, effective January 1, 2008.

During this reporting period, we experienced an increase in queries regarding implementation of the guidelines to address general circulation magazines not measured by a syndicated data source, as well as an increased awareness of the guidelines in general. In that regard, we are being contacted more and more by individual magazines concerning how to comply with our protocol and we welcome these inquiries.

Consistent with our objective to direct our advertising to adults, DISCUS members have committed to the removal of their advertisements from the school library subscription 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 refrain from advertising on the inside and back covers of these magazines (premium advertising space), 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 subscription copies. This initiative became effective July 1, 2006 for subscription copies of these magazines destined for this venue.

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 decisions were not widely known.

To make the distilled spirits industry's review process more transparent and understandable to the public, a decision was made in 2003 by DISCUS and its member companies to publish semi-annual public reports detailing complaints against specific advertisements, decisions of the industry's internal review board and actions taken by each advertiser.

This new transparency allows the public at large to better evaluate and appreciate our Code review process. In fact, industry regulators, watchdogs, critics, 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.

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."

In June 2006, the Semi-Annual Report was the recipient of the best “Business Ethics Communications” award by *PR News* Corporate Social Responsibility (CSR) Awards. The CSR Awards honor corporations and their partners that have implemented and executed highly successful CSR campaigns in the last 12 months. PR News called the CSR Awards “the global standard in corporate citizenship and communications worldwide.”

In May of that same year, DISCUS also was named a finalist in the American Business AwardsSM “Best Corporate Social Responsibility Program” category for our public

reporting system. The American Business AwardsSM program is the only national, all-encompassing business awards program honoring great performances in the workplace.

We believe we are the first private trade group representing American business to issue a report on the proceedings of how an industry regulates itself according to its internal Code. The overall objective of the Semi-Annual Reports is to encourage full compliance with the Code and Code Review Board decisions across the entire distilled spirits industry and to ensure that our longstanding commitment to responsible advertising is understood.

INTERNET/DIGITAL BUYING GUIDELINE

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

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

- i.) Scope: The internet/digital buying guideline applies to all paid and unpaid (including value-added) placements made by or under the control of the advertiser, including advertising on third-party websites, video advertisements, audio mentions, internet banners, pop-ups, sponsorships, user-generated content (including blogs), and other types of internet/digital advertising or marketing.
- ii.) Use of a syndicated data source: Purchase or place using “2 +” syndicated audience composition data, such as comScore or Nielsen//NetRatings, based upon the most recent three-month site average of available audience data of unique visitors (where seasonal fluctuations are evident, prior year data also should be taken into account if available).
 - (a) An advertiser consistently will use one of these syndicated data sources as its primary demographic measurement by brand and an alternate syndicated data source will be used only when the advertiser’s primary source does not measure that particular medium.
 - (b) Given that the methodologies and measurements of internet/digital media are evolving, this data source guideline will be reviewed as further developments warrant and, if appropriate, revised accordingly.
- iii.) Independent measurement of unmeasured medium: If the digital medium is not measured by a syndicated data source, the advertiser prior to purchasing or placing an advertisement or any marketing materials shall obtain from the publisher of the medium an independent demographic survey based upon the most recent three-month site average of available audience data of unique visitors conducted by a third-party research company using established research methods.
- iv.) More specific data to meet the demographic standard: Where the average of the syndicated audience composition data or an independent third-party survey over the three-month time period (as described in subsection iii above) does not show a 70% 21 years of age and older (LPA) demographic, the advertiser can use the website’s “registered user” database to place their advertising or marketing materials to users 21 years of age and older if the website has that capability.

- v.) Unmeasured medium with a “registered user” database: If the digital medium is not measured by a syndicated data source or an independent third-party survey as described in subsection iii above, but has a “registered user” database that can link a user to an age, the advertiser can use the website’s “registered user” database to place their advertising or marketing materials to users 21 years of age and older.
- vi.) “Limited edition” websites: For “one-time” only, event-specific and/or other similar websites, the advertiser shall review and evaluate comparable websites, the proposed content of the website in question, data provided by the publisher regarding the target audience, and any other relevant factor to project a reasonable expectation of the demographic audience prior to purchasing or placing an advertisement or any marketing materials.
- vii.) Compliance standard: A placement will be considered appropriate when the percentage of unique visitors reflected in the above-referenced data shows that the placement is in compliance with the Code.
- viii.) Post audits: A past placement will be considered appropriate where demographic data for the month(s) in which the placement ran show an LPA audience composition that was in compliance with the Code.
- ix.) Post audit corrective measures for future placements: In the event that the post audit indicates that the placement did not meet the LPA demographic standard, the advertiser will, as soon as practicable, make schedule adjustments, cancellations, or other appropriate changes to comply with the standard in future placements.

CODE REVIEW BOARD PROCESS

Unique within the beverage alcohol industry, the DISCUS Code provides for a Code Review Board, which has been operational for decades, charged with reviewing complaints about advertising material in the marketplace.

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

- When a complaint is received, the Code Review Board notifies the advertiser and convenes 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 Code Review Board's decision and the advertiser's response will be summarized in the Semi-Annual Report.

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

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 has 15 business days to respond and is invited to participate in the Code Review Board's deliberation of the complaint. (DISCUS members are expected to respond forthwith and also are invited to participate in the Board's deliberations. Board members have no vote upon complaints lodged against their advertisements.)
- 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 is notified of the Board's decision in writing and the Board is 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.

For member company advertisements, historically the average time between receipt of a complaint and Code Review Board action has been a matter of days, but could take up to two to four weeks, a timeframe that also included responsive action by the advertiser. At present, the response time from receipt of a complaint to final resolution is on average less than a week. For non-DISCUS member companies, the process could take up to two months.

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 contact the DISCUS Code Review Board, c/o Lynne Omlie, 1250 Eye Street, N.W., Suite 400, Washington, D.C. 20005 or email Lynne Omlie, the DISCUS Code Review Board staff liaison, at lomlie@discus.org.

We request that complaints be made in writing, identify the provisions of the Code in question and provide an explanation for the basis of the complaint. The advertisement and/or marketing materials in question should be appended to the complaint to ensure that it is processed properly and expeditiously.

To access the DISCUS Code and its provisions:
<http://www.discus.org/responsibility/code/read.asp>

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.
- Mr. Michael Lurie, Barton Incorporated
- Mr. Thomas R. Lalla, Jr., Pernod Ricard USA
- Mr. Matt Stanton, 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 and/or marketing 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.

OUTSIDE ADVISORY BOARD

The DISCUS Code provides for an Outside Advisory Board charged with the following 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. In 2006, she 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. Most recently, Ms. Bernstein was the recipient of the Better Business Bureau International Torch award for Consumer Leadership for significantly advancing marketplace trust through her consumer advocacy initiatives and her outstanding leadership in the area of advertising self-regulation.



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.

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 41 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.



RECENT OUTREACH ACTIVITIES

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 1,000 copies of the sixth Semi-Annual Report 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. Additionally, materials regarding the Code and the Semi-Annual Report were sent to nearly 100 non-DISCUS member micro-distilleries to familiarize them with the provisions of the Code and the Code Review Board process.

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), government

officials on both the Federal and State levels, and various industry trade association leaders.

To date, eleven State Alcohol Beverage Commissions have the DISCUS website link on their websites, as do NCSLA and NABCA, and the Commonwealth of Pennsylvania has the DISCUS Code link on its website.

The FTC also references the DISCUS Code on its new “We Don’t Serve Teens” website (<http://www.dontserveteens.gov>). By linking to the DISCUS website or hyperlinking directly to the DISCUS Code, it is easier for government officials and other interested parties to refer any inquiries or concerns about a particular advertisement to the DISCUS Code Review Board. To facilitate this process, we have provided language to utilize in linking to the DISCUS Code.

We continue to urge Federal and State officials and other interested parties to include the Code (<http://www.discus.org/responsibility/code.asp>) on their websites. If an individual has a concern about a particular advertisement for a beer, wine or distilled spirits brand marketed by a DISCUS member or a distilled spirits advertisement of a non-DISCUS member, the Code Review Board welcomes the opportunity to review that advertisement.

DISTILLED
SPIRITS
COUNCIL
OF THE
UNITED
STATES

www.discus.org

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