

**Advertisement:**

Kings County Distillery sponsored Facebook promotion

**Advertiser:**

Kings County Distillery (Non-DISCUS member)

**Complainant:**

Member of the public

**Complaint Summary:**

The complainant believes that the Kings County Distillery promotional sponsored Facebook post described below runs afoul of Responsible Content Provision Nos. A1, A2, A3, B1, and C1.



Responsible Content Provision Nos. A1, A2, and A3 provide, respectively, that beverage alcohol advertising and marketing materials “should primarily appeal to individuals 21 years of age or older,” “that primarily appeals to individuals under the age of 21 [are] inappropriate” (with ‘primarily appeal’ being defined as a special attractiveness to persons below the legal purchase age beyond the general attractiveness for persons of legal purchase age), and “should not be advertised or promoted by any person who is below the legal purchase age.”

Responsible Content Provision No. B1 provides that “beverage alcohol advertising and marketing materials should portray beverage alcohol products and drinkers in a responsible manner and reflect generally accepted contemporary standards of good taste.”

Responsible Content Provision No. C1 provides that beverage alcohol advertising and marketing materials that “depict a child or portrays objects, images, or cartoon figures that primarily appeal to persons below the legal purchase age” would violate the Code.

The complainant states that “I am filing this complaint on the basis of a number of code violations, namely the use of minors in advertising. This is a communication through social media, along with a paid promotion incentive behind it, to increase its reach. There is a child who appears to be under the age of 3 years old holding a bottle of whiskey.”

**Code Review Board Decision:** In response to the complaint, the advertiser stated that “Kings County Distillery is an independently owned and run distillery in Brooklyn, NY focused on American whiskey. To promote Father’s Day gift sets, we ran a \$250 campaign on Facebook featuring a picture of me and my 3 year old son holding different size bottles of bourbon.”

The advertiser further noted that “[p]rior to April 2020 we had never issued any print, broadcast, or social media-based advertising, and had no need for such ads. But with the pandemic, we were required to close our facility to the public. Our bar and restaurant customers closed as well, cutting off a big portion of our business. Some of our retailers thrived with extra business, but many in the heart of New York City where the pandemic hit hardest did not, and our overall sales went down. A New York executive order gave us the opportunity to sell to New York residents online, and we faced new challenges of building an online store for ecommerce, packing and shipping orders, and most pertinently, communicating to our audience that we were available to sell direct online. Hence, we began running Facebook ads.”

The advertiser added “[t]he ad in question ran to consumers 21 and older in the New York City area. We spent \$72.38 to reach consumers suggested using Facebook’s internal algorithm. Facebook approved the ad and flagged no issues with its content. The ad was taken down at 12:05pm on Friday, June 12th after receiving the DISCUS complaint.”

Regarding Responsible Content Provision No. A1, the advertiser noted that “[t]his ad meets that standard. Nothing in this advertisement would appeal to children, who in my experience, like bright colors, animated characters, and melodious music. This is an ad with a monochrome palate featuring a child with a bored expression, as a commentary on fatherhood, for Father’s Day. Furthermore, the ad ran on a platform that specifically constrained the audience to users 21 and older.”

Regarding Responsible Content Provision No. A2, the advertiser stated that “[n]othing appeals to children in this advertisement, and in any case, the ad was not presented to them.”

Regarding Responsible Content Provision No. A3, the advertiser stated that “[t]his is the only standard by which our advertisement fell short. My son is 3 years old and by this standard the ad may be rejected. Accordingly, we removed the advertisement upon receiving the complaint. This is logical guidance and I see no issue with future compliance.”

Concerning Responsible Content Provision No. B1, the advertiser relayed that “[g]enerally accepted contemporary standards of good taste is an essentially meaningless and subjective condition and poses no standard by which a judgment could be made.”

The advertiser further stated “[o]ur audience in Brooklyn (this ad was confined geographically to NYC and 2 adjacent counties) is a progressive and intelligent audience. While I might concede this ad might be offensive in my hometown in a dry county in Kentucky, we did not run the ad in that community. Or perhaps we can agree that geography, cultural climate, and politics play a role in taste and therefore, as an objective standard, it is useless—though that does not excuse far greater transgressions in the spirits industry that make this lame, small example seem, if I may, quite trivial.”

Regarding Responsible Content Provision No. C1, the advertiser stated that “the ad depicts a child, which I understand is disqualifying, but it would be a stretch to assume that means the ad automatically appeals to persons below the legal purchase age. On this aspect of the code, the complaint that this advertisement promotes underage drinking is without any merit, and I would add, preposterous.”

After careful consideration of the complaint and the advertiser’s response, the Code Review Board found that the Kings County Distillery promotional sponsored Facebook post violated Responsible Content Provision Nos. A3, B1, and C1 of the DISCUS Code of Responsible Practices for Beverage Alcohol Advertising and Marketing.

Regarding Responsible Content Provision Nos. A3 and C1, the Code Review Board found that the sponsored Facebook post did depict a child promoting beverage alcohol products in violation of these provisions.

In response to the contention that the Kings County Distillery sponsored Facebook post violated Responsible Content Provision No. B1, the Board concluded that depicting a bottle in the hands of a small child in beverage alcohol marketing materials fails to portray these products in a responsible manner in violation of Responsible Content Provision No. B1.

The Board, however, concluded that this sponsored Facebook post did not violate Responsible Content Provision Nos. A1 and A2. In arriving at its decision, the Board found that the post does not primarily appeal to individuals below the legal purchase age or have a special attractiveness to such persons beyond the general attractiveness for persons of legal purchase age.

**Action by Advertiser:** Upon receiving the complaint, the advertiser removed the sponsored Facebook promotional post.

**Status:** Resolved. Responsive action taken.