



**DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES**

DISTILLED SPIRITS COUNCIL OF THE UNITED STATES ANTITRUST COMPLIANCE POLICY

This guidance document sets forth the antitrust compliance policy of the Distilled Spirits Council of the United States.

The antitrust laws prohibit and hold unlawful combinations or conspiracies in restraint of trade. That is, if competitors join together and agree to a course of conduct that is anticompetitive, they may be subject to civil or in some cases even criminal liability for violation of the antitrust laws. Trade associations and similar not-for-profit entities that are formed to serve entirely lawful objectives for their members must be especially cognizant of the requirements of antitrust laws because their members typically are direct competitors, and therefore every time they gather, even for lawful business, the “combination” element of a potential cause of action under antitrust law is arguably satisfied. Therefore, trade association activity comes under careful scrutiny by the U.S. Department of Justice, Federal Trade Commission and other governmental and nongovernmental bodies.

In general, the antitrust laws prohibit many kinds of dealings and agreements among competitors, some of which, including competitor agreements on price (or “price-fixing”), are prosecuted as criminal offenses. There is an exception to these antitrust prohibitions that allows whole industries, including groups of competitors, to join together in political efforts to support or oppose legislation or other government action. Such efforts, however, must be narrowly focused and carefully monitored by legal counsel in order to adhere to the law. An antitrust violation does not require proof of a formal, written agreement. A violation may be alleged based merely on contextual indications that could be suggestive of unlawful activity. For this reason, prudence dictates that trade associations must take special precautionary steps to assure compliance with the antitrust laws and to minimize the risk and avoid even the appearance of unlawful conduct. As an example, certain topics should not be discussed at association meetings, formally or informally. Such topics include any matters involving pricing or price-related features like credit terms, agreements or other arrangements to raise, lower, stabilize or otherwise affect the price of products, the raw materials from which the products are made or other costs related to production.

Discussions about market allocations or arrangements to divide up a market or even to engage in or refrain from certain marketing practices also are strictly off-limits at trade association meetings as these practices also may be anticompetitive and unlawful. Agreements among competitors to boycott or refuse to deal with a

particular supplier or customer or to cease or avoid particular competitively-sensitive practices and, hence, restrain trade and injure competition may be unlawful as well, and so should never be discussed at trade association meetings.

There are, of course, many societally beneficial, procompetitive, productive and entirely lawful activities in which trade associations and similar not-for-profit organizations regularly engage. Chief among these are representation of the industry as a whole regarding the effect of or changes to federal, state and local government laws, rules and other official actions affecting the industry and its members, especially in the realms of legislation, regulation and litigation before the courts. Trade associations also serve the useful and entirely lawful purpose of assisting their members in protecting and advancing the reputation of their products for quality, safety and usefulness under applicable laws and in domestic and international markets. It is for these and similar societally useful, productive and procompetitive purposes that association meetings and discussions are held.

The Distilled Spirits Council has instituted and rigorously follows a strict antitrust compliance program. Since even the discussion of a sensitive subject can be seen as an invitation to stray further into potentially unlawful discussions or conduct – or can, at least, be used as evidence of such misconduct in an antitrust-related challenge – the Council has established protocols governing meetings and conference call discussions among its members that are designed to limit discussions to approved, lawful topics and prevent any occurrence of unlawful discussions or conduct.

These protocols provide for, in appropriate settings, use of and adherence to pre-set agendas, presence of legal counsel monitors as deemed appropriate at association meetings, and legal counsel oversight in planning for conference calls, publications, correspondence and other activities. Meeting agendas are reviewed and minutes of all meetings are prepared and reviewed, as appropriate.

These antitrust guidelines are presented at the outset of all appropriate meetings and have been provided to all association members to ensure at all times that topics discussed among its members in association settings neither lead to nor could be misconstrued as evidence in support of anticompetitive or illegal conduct by participants.

Please contact the Distilled Spirits Council Legal Department should you have any questions regarding this antitrust compliance policy.

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