



DISTILLED SPIRITS COUNCIL OF THE UNITED STATES ANTITRUST COMPLIANCE POLICY

This document sets forth the antitrust compliance policy of the Distilled Spirits Council of the United States (“DISCUS” or the “Council”).

It is DISCUS policy to adhere to all state, federal, and non-U.S. antitrust and competition laws. To that end, DISCUS implemented a strict antitrust compliance program that provides antitrust guidance and protocols to its members. All DISCUS members are required to adhere to the guidance and the protocols under the DISCUS antitrust compliance policy.

The protocols provide for, in appropriate settings, use of and adherence to pre-set agendas at DISCUS meetings and events, presence of legal counsel monitors as deemed appropriate at meetings, and legal counsel oversight in planning for conference calls, publications, correspondence and other activities. Agendas and minutes of meetings and calls among members should be prepared (as appropriate), and DISCUS Legal Department should review and approve such agendas and minutes.

The antitrust guidelines are presented at the outset of all appropriate meetings and have been provided to all association members to always ensure 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 DISCUS Legal Department should you have any questions regarding this antitrust compliance policy.

Background on the Antitrust Policy

The antitrust laws prohibit coordinated conduct 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, criminal liability for violating the antitrust laws.

While trade associations are typically formed to serve entirely lawful objectives (as DISCUS is), the members must be especially cognizant of the antitrust laws because meetings, events, and communications of the association provide opportunities for potentially improper coordinated conduct. 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 coordinated conduct among competitors that unreasonably restrains trade. Some such conduct, including competitor agreements on price (or “price-fixing”), are prosecuted as criminal offenses. The coordination does not need to be a formal, written agreement. A violation may be alleged based merely on contextual indications that could be suggestive of improper coordination. 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.

Notably, it is permissible under the antitrust laws for industry participants (even 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.

To mitigate the risk of even an appearance of improper coordination, certain topics should not be discussed at association meetings, formally or informally. Such topics include:

- any matters involving pricing or price-related features,
- any matters involving costs of production or supply, including costs of raw materials,
- any allocation of customers or territories,
- any agreement to not poach employees or fix wages,
- any refusals to deal with specific suppliers or customers.

There are, of course, many beneficial, procompetitive, productive, and entirely lawful activities in which trade associations 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.

DISCUS has instituted and rigorously follows a strict antitrust compliance program. Given even the discussion of a sensitive subject can be seen as an invitation to stray further into potentially unlawful 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.

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