

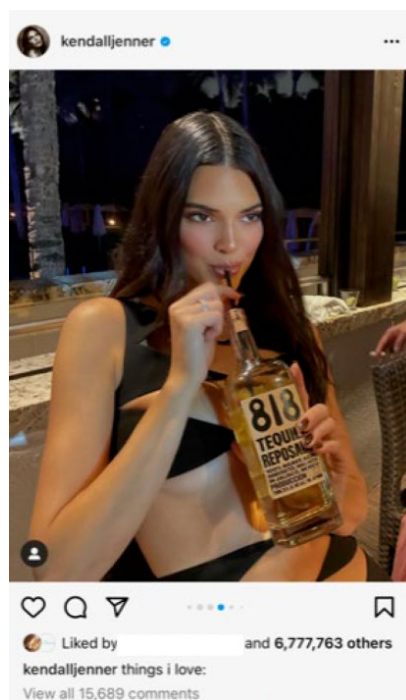
Advertisement: 818 Tequila Instagram brand posts

Advertiser: 818 Spirits (Non-DISCUS Member)

Complainant: Industry member

Complaint Summary:

The complainant believes that the 818 Tequila Instagram brand posts described herein run afoul of Responsible Content Provision No. B1, which 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.”



The complainant states that “818 Tequila’s post—which features Ms. Jenner posing with an open 750 ML bottle of 818 Tequila Reposado in hand, using a straw to consume the alcohol directly from the full-sized bottle—defies such standards of responsible consumption or good taste. As a result, the effect of this picture is clear: glamourizing the overconsumption of alcohol. Indeed, the irresponsibility of this portrayal has been widely reported by individual viewers of the post and the media alike. *See, e.g.:*

- <https://www.buzzfeednews.com/article/stephaniesoteriou/kendall-jenner-backlash-irresponsible-drinking-tequila> (commenting of the post that ‘the way [Jenner]’s consuming the alcohol has left some fans uncomfortable, with Kendall now being accused of promoting ‘irresponsible drinking,’ and further noting that this ‘opinion

[has] proved to be far from unpopular, with another user replying . . . ‘[T]his is a really dangerous picture, honestly. **There’s a reason ‘Drink Responsibly’ exists.**’” (emphasis added);

- <https://www.thedrinksbusiness.com/2022/02/irresponsible-kendall-jenner-slammed-for-drinking-tequila-through-straw/> (aggregating opinions of individual commenters on Reddit, including feedback that ‘[a]s an alcohol brand owner I feel that she shouldn’t really promote excess consumption. **She’s not drinking from a shot glass, but a straw, and an entire bottle seems excessive**’) (emphasis added);
- <https://www.msn.com/en-gb/health/medical/kendall-jenner-accused-of-irresponsible-advertising-after-drinking-her-tequila-from-a-straw/ar-AATrZs?li=AAJsMOW> (noting commenters’ criticism of the image, including that ‘[i]t’s irresponsible drinking to be drinking straight out of the bottle like that’ and ‘[i]t’s rather irresponsible advertising to encourage people to consume alcohol like that’).”

The complainant also states that “[t]he second post is 818 Tequila’s May 23, 2021, brand post on Ms. Jenner’s Instagram account, similarly touting overconsumption (see Addendum A). That post features a series of images in a carousel, the first of which shows Ms. Jenner wielding a bar tray of at least 10 different tumbler-sized glasses that appear to contain substantial pours of 818 Tequila, with only two other individuals captured in the image with her. In the second image in the carousel, Ms. Jenner is again seen holding the same voluminous tray, this time accompanied only by three other individuals, one of whom appears poised as if preparing to drink the tequila in the tumbler glass in the form of an oversized shot. Each of these images promotes and idealizes a lifestyle of overconsumption. In short, these portrayals of 818 Tequila



flout standards of responsible drinking or good taste, in contravention of the DISCUS Code.”

Additionally, the complainant relays that “Ms. Jenner’s ‘personal’ Instagram account is not exempt from the Code’s reach, which ‘applies to all activities undertaken by DISCUS members to advertise and market distilled spirits, malt beverage, and wine brands, as well as non-DISCUS member activities to advertise and market distilled spirits.’ See DISCUS Code Introduction and Scope. In order ‘to observe the spirit, as well as the letter, of th[e] Code,’ see DISCUS Code Introduction and Scope, the standards that apply to 818 Tequila’s or any brand’s ‘official’ social media account must also apply to any marketing through celebrities or social media influencers.”

The complainant added that “[f]rom its launch, 818 Tequila was widely reported as Ms. Jenner’s personal project and business venture,¹ including through her own Instagram account, where the brand’s launch was first announced on February 16, 2021, see Addendum B. Ms. Jenner has also repeatedly associated herself with the brand, including through 14 Instagram account posts in which she has advertised 818 Tequila (see Addendum B), 9 of which directly tag 818 Tequila’s official Instagram account. And, perhaps most notably, the headline of Ms. Jenner’s Instagram account, an area typically used to provide biographical color, includes only one piece of information: a direct link to 818 Tequila’s official Instagram account. 818 Tequila and Ms. Jenner’s Instagram account are, for purposes of brand advertising, one and the same.”

The complainant concluded by stating that “[c]elebrity affiliation with spirits brands, whether in the form of partnership, ownership, or otherwise, has grown exponentially in the last several years,² with no signs of stopping. And brands rely on the outsized social media fanbases of those celebrities to advertise to potentially much larger audiences than the brands’ own social media accounts capture. (Compare, for instance, 818 Tequila’s Instagram account, followed by 839,000 users, with Ms. Jenner’s Instagram account, followed by 220 million users.) The DISCUS Code recognizes that ‘social mores, advertising practices, and technologies have evolved requiring the Code to adapt,’ see DISCUS Code Introduction and Scope, and celebrity ownership of or affiliation with alcohol beverages is exactly the type of evolution that compels Board action and application of the DISCUS Code. To allow otherwise and exempt celebrities from such oversight would gut the DISCUS Code, creating a gaping loophole that would undermine DISCUS’s and its members’ ‘dedicat[ion] to maintaining high standards that steer the industry to responsible advertising practices.’ See DISCUS Code Introduction and Scope. For these

¹ See, e.g., <https://www.thedrinksbusiness.com/2021/02/kendall-jenner-announces-launch-of-her-own-tequila-brand-818/> (Feb. 18, 2021); <https://www.vulture.com/2021/02/kendall-jenner-tequila-818-tiktok.html> (Feb. 17, 2021); <https://metro.co.uk/2021/02/17/kendall-jenner-launches-new-818-tequila-brand-14095547/> (Feb. 17, 2021); <https://www.instyle.com/celebrity/kendall-jenner/kendall-jenner-818-tequila-backlash> (Feb. 17, 2021); <https://www.latimes.com/entertainment-arts/story/2021-02-19/kendall-jenner-tequila-brand-backlash-twitter> (Feb. 19, 2021); <https://www.instyle.com/celebrity/kendall-jenner-818-tequila-problematic-explained> (Feb. 19, 2021).

² See, e.g., <https://www.insider.com/why-so-many-celebrity-tequila-brands-kendall-jenner-george-clooney-2021-3> (Mar. 29, 2021); <https://medium.com/yardcouch-com/celebrity-alcohol-is-changing-the-game-and-only-going-to-get-bigger-2ca3126096a7> (Aug. 26, 2020); <https://cheersonline.com/2021/08/17/9-alcohol-trends-in-2021-22/> (Aug. 17, 2021).

reasons, we respectfully request that the Board evaluate these posts with the same rigor and under the same principles as applied to more-traditional forms of brand advertising, consistent with the provisions and the spirit of the DISCUS Code.”

Code Review Board Decision:

In response to the complaint, the advertiser stated that “[w]e note that the complaining industry member...has attempted to bolster their complaint regarding Ms. Jenner’s February 2, 2022 post, by referencing three dubious internet-based reports, all of which cite back to the same unverified sources on Reddit as a basis for its belief that the posts did not ‘portray beverage alcohol products and drinkers in a responsible manner and should reflect generally accepted standards of good taste.’ Naturally, we agree with the principles behind these statements, but disagree with the application of the standard to the circumstances as argued by the complaining industry member.”

The advertiser noted that “[t]he complaint, from an unnamed industry member, cites three articles as support for its allegations that the picture containing a straw is encouraging ‘overconsumption.’ These articles all seem to come from the same echo chamber all citing the same ‘comments,’ providing no basis for their assertions. The first two referenced articles from ‘buzzfeednews.com’ and ‘thedrinksbusiness.com’ contain no evaluation and appear to have engaged in no research or determination that there is any credible basis for the conclusions drawn in the referenced. These articles, defying all journalistic standards, rely solely on comments posted on a Reddit thread, which are typically unmoderated and allow people to anonymously assert claims or accusations without accountability or any basis from which to establish knowledge or expertise. While we recognize that everyone is entitled to their opinion, and the site like Reddit offer an outlet for those opinions, the reliance of the complainant on the comments of such sites, whether directly or through a secondary source, such as a web-based news article, should be given little credence, and should not be regarded as, in any way, being indicative in any way of public sentiment or scientific evaluation.”

The advertiser continued by relaying that “[t]he third article cited, from msn.com focuses on the same Reddit comments, cites two ostensibly credible sources, but neither of them is relevant to the issues being raised. One source simply (but correctly) opines that “the First Amendment allows for a lot of freedom of speech in general and therefore limits how much the federal government can regulate advertising” and the second is merely a recitation of TTB regulations which are not the subject of the current complaint.”

The advertiser further stated that “we respectfully dispute the assumption that the picture, in and of itself, depicts overconsumption. The single image, taken without context by the complaining industry member does not demonstrate excessive consumption. It does not actually show consumption of the alcohol through a video or any additional photographs shots showing differing levels of liquid in the bottle. Furthermore, this particular photograph is one of a series in the same post does not tag or link to 818 Tequila, and depicts several other images that are unrelated to the 818 Tequila brand. While we respectfully dispute the inferences and

believe that, as presented, the single still image is inconclusive, we understand the potential for confusion regarding this issue. In the interest of avoiding such confusion and given the lack of context, 818 Tequila has reached out to Ms. Jenner and requested that she remove the photograph from the post.”

Regarding the second Instagram post referenced by the complainant, the advertiser relayed that “the complaining industry member clearly mischaracterizes the glassware in the picture and makes presumptions about the contents and size of the glasses. Each of the glasses is only *partially* filled, and no one is actually consuming any of these beverages in either of the identified images. Furthermore, the complaining industry member ignores the perspective of the camera angle, designed to emphasize the glasses, and misinterpreted the presence of the tray, without a reasonable basis, to believe that very few people were consuming many drinks, despite the fact that the balance of the photos in the series depict an event that is clearly larger in scale, with many more attendees. While 818 Tequila strongly disagrees with the complaint, out of an abundance of caution, 818 Tequila has reached out to Ms. Jenner and requested the removal of the first of the referenced photographs from Ms. Jenner’s Instagram account.”

The advertiser stated that “[t]he questions raised in the letter pertaining to the linkage between 818 Tequila and Ms. Jenner are unnecessary, as 818 Tequila does not dispute that Ms. Jenner, as a principal stakeholder in the brand, has the same shared goal of social responsibility that the 818 Tequila brand possesses for purposes of DISCUS analysis. The effort to preemptively single out 818 Tequila and Ms. Jenner as somehow seeking exemption is both erroneous and persecutorial, especially from another industry member. While Ms. Jenner’s personal account is neither managed nor controlled by 818 Tequila, 818 Tequila accepts and agrees that participants across the industry should be responsible for the content that is created. Even if Ms. Jenner’s account was determined to be independent for these purposes, 818 Tequila understands its responsibility to monitor relevant third party content creation, and react in due course.”

The advertiser further noted that “[w]hile 818 Tequila acknowledges the substantial relationship between 818 Tequila and Ms. Jenner, 818 Tequila does not operate or control Ms. Jenner’s Instagram account. Ms. Jenner’s account is extremely active and utilized for a variety of personal and business uses. In the current circumstances, 818 Tequila is constrained by the multiple business interests and public nature of Ms. Jenner’s Instagram account, as well as the technical limitations of Instagram. 818 Tequila has requested the removal of the materials cited above, and expects that such materials will be removed as required, but lacks the control over the account to remove the images itself.”

The advertiser concluded by relaying that “[a]s a new and rapidly growing brand, 818 Tequila is currently developing and implementing additional advertising and social media compliance policies and training protocols designed to further institutionalize compliance and responsibility for all of its stakeholders as well as the general public. 818 Tequila is incorporating DISCUS guidance into its compliance materials and looks forward to continuing its efforts to be a legally compliant and responsible member of the industry in all respects. It continues to be 818

Tequila’s goal to be compliant with all applicable laws, regulations and the DISCUS Code of Responsible Practices for Beverage Alcohol Advertising and Marketing in the mutual best interest of our industry and the general public, and we look forward working with all of our industry and community partners on an ongoing basis.”

After careful consideration of the complaint and the advertiser’s response, the Code Review Board found that the 818 Tequila Instagram brand post on February 2, 2022, violated Responsible Content Provision No. B1 of the DISCUS Code of Responsible Practices for Beverage Alcohol Advertising and Marketing.

In arriving at its decision, the Board concluded that, in this situation, the individual consuming beverage alcohol directly from a bottle (via a straw) containing numerous servings of tequila does not portray these products and drinkers in a responsible manner or promote responsible consumption.

Regarding the 818 Tequila Instagram brand posts on May 23, 2021, the Board concluded that these Instagram brand posts did not violate Responsible Content Provision No. B1. In the Board’s view, these images did not display or promote irresponsible consumption but depicted a host distributing drinks to multiple guests at a party in a reasonable manner.

Action by Advertiser:

Upon receipt of the complaint, the brand owner, 818 Tequila, contacted the third party responsible for the posts and requested removal of the materials cited above. In response to this outreach, the posts were removed. After receiving the Board’s decision, the brand owner indicated they plan to reinstate the May 23, 2021 brand posts that the Board determined were not violations of Responsible Content Provision No. B1. In addition, the brand owner is implementing additional compliance policies and training protocols designed to further institutionalize compliance and responsibility for all its stakeholders.

Status: Resolved. Responsive action taken.