

Advertisement: Skrewball Whiskey TikTok and Instagram Placements and Brand Posts

Advertiser: Skrewball Spirits (Non-DISCUS Member)

Complainant: Industry member

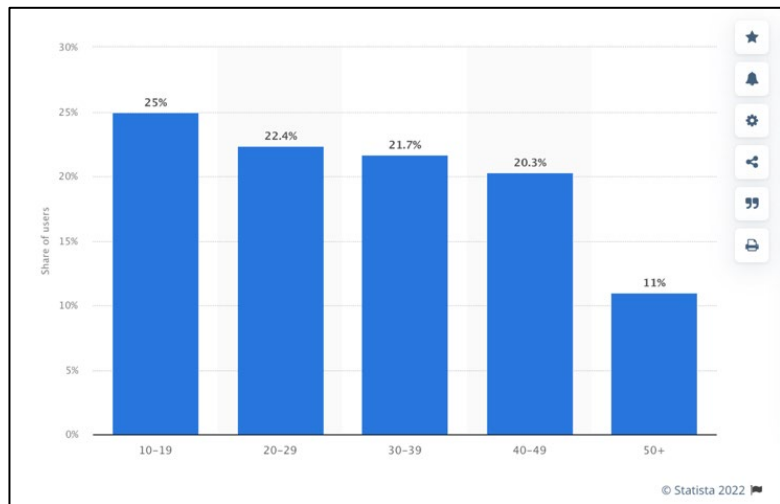
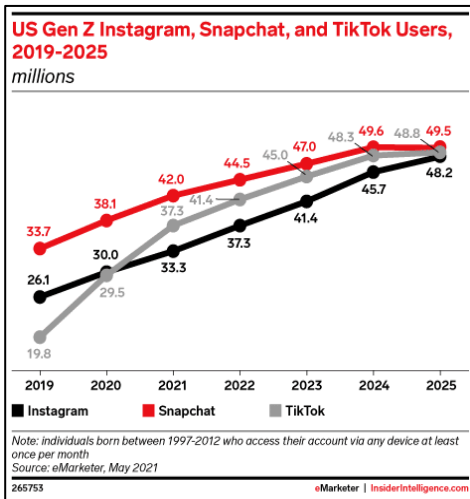
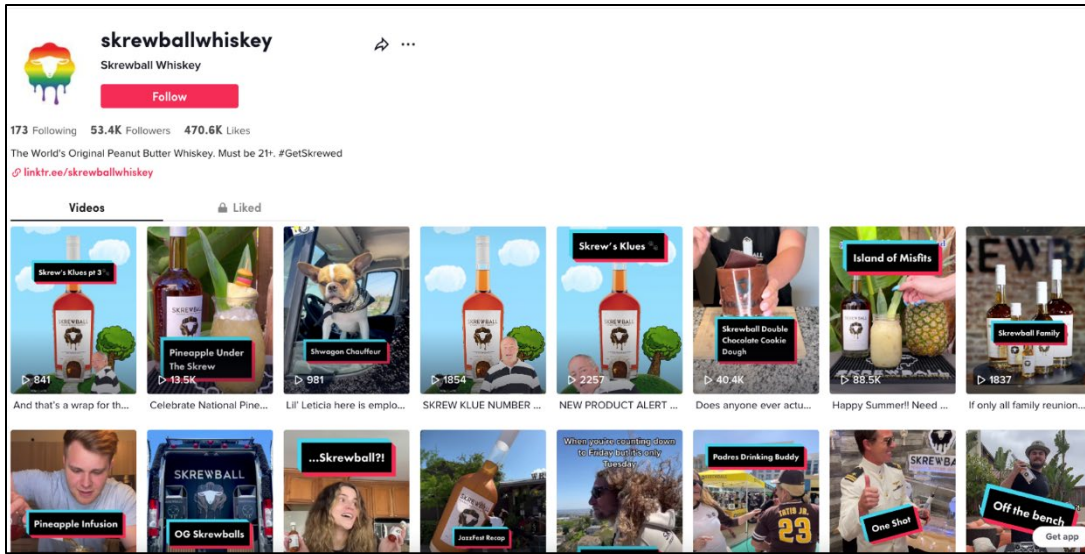
Complaint Summary:

The complainant considers the Skrewball Whiskey placements and brand posts described herein to violate Responsible Placement Provision (RPP) Nos. A1 and A5 and Responsible Content Provision (RCP) Nos. A1, A3, and B3.

The complainant states that, in violation of Responsible Placement Provision No. A1, Skrewball Whiskey, “has an active TikTok user account with over 53,000 followers. This brand account shares branded content to promote their peanut butter flavored whiskey product.” The complainant points to the following sources (<https://blog.hootsuite.com/tiktok-stats/>; <https://sproutsocial.com/insights/tiktok-stats/>) citing that over 47% of TikTok users are ages 10-29 and noting the percentage of Gen Z users on the platform. The complainant also states that “TikTok does not use any age verification tools when new users sign up, in violation of Responsible Placement Provision No. A5,” and cited the following source: <https://www.reuters.com/technology/tiktok-tests-age-rated-content-restrictions-2022-02-08/>.

RPP No. A1 provides that “[b]everage alcohol advertising and marketing materials are intended for legal purchase age adults who choose to drink. Thus, these materials should primarily appeal to individuals 21 years of age or older and best efforts should be taken to ensure they are placed in broadcast, cable, radio, print, and internet/digital communications where at least 71.6 percent of the audience is reasonably expected to be 21 or older.”

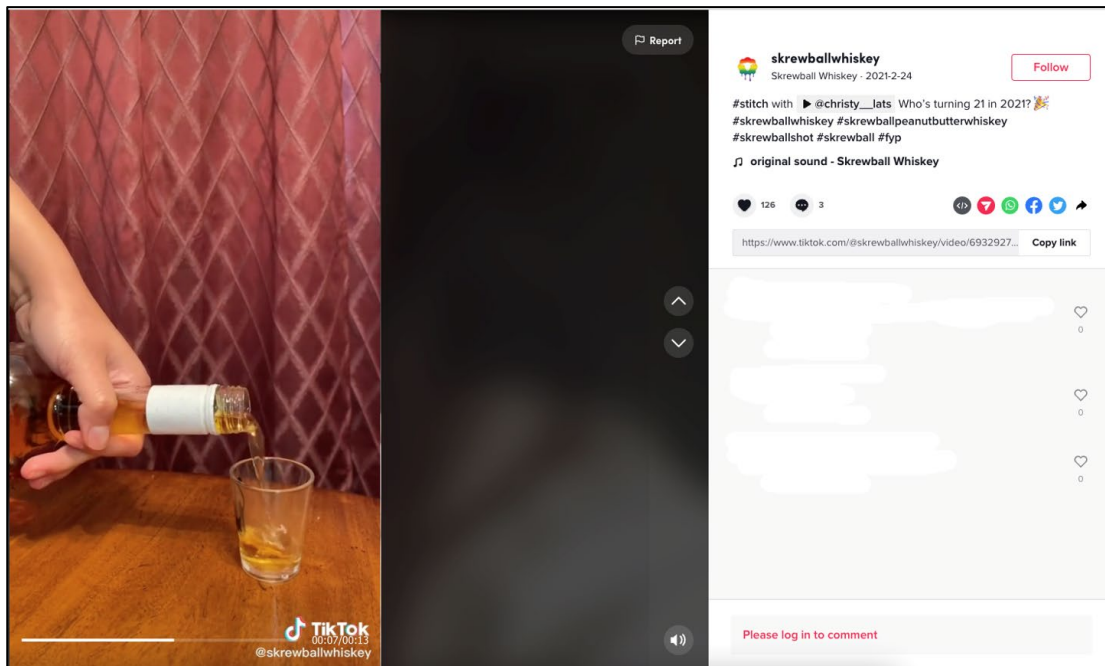
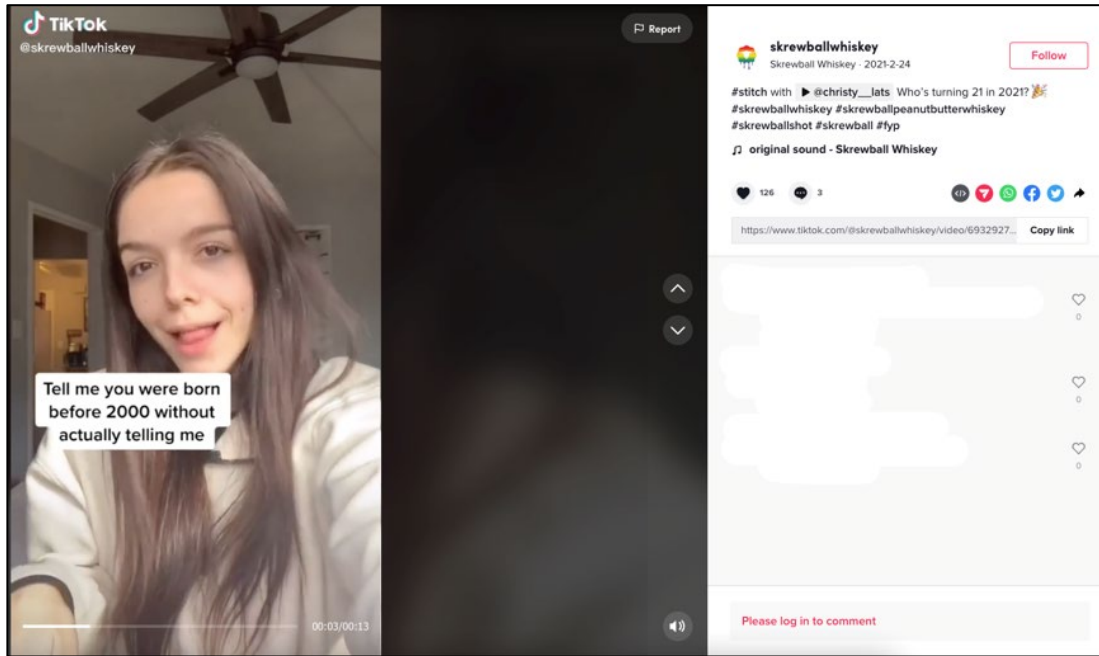
RPP No. A5 provides that “[a]ge affirmation mechanisms, utilizing month, day and year functionality should be employed for DISCUS member-controlled beverage alcohol advertising or marketing websites. Age affirmation mechanisms may vary depending upon available technology. Examples include, but are not limited to, an age affirmation page, an email or instant messaging age affirmation, or the use of a site’s ‘registered user’ database of users of legal purchase age. Member-controlled websites should contain a reminder of the legal purchase age.”



Regarding the February 24, 2021 Skrewball Whiskey TikTok post shown below, the complainant asserts that this TikTok post violates Responsible Content Provision No. A3. The complainant states that “Skrewball Whiskey has an active TikTok user account with over 53,000 followers. A recent brand post was a video they stitched with another TikTok user who is a female who looks younger than 25. The copy references just turning age 21.”

RCP No. A3 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 21 years of age and older. For clarity in applying this provision, athletes, celebrities, spokespersons, and influencers of legal purchase age that are generally recognizable to the

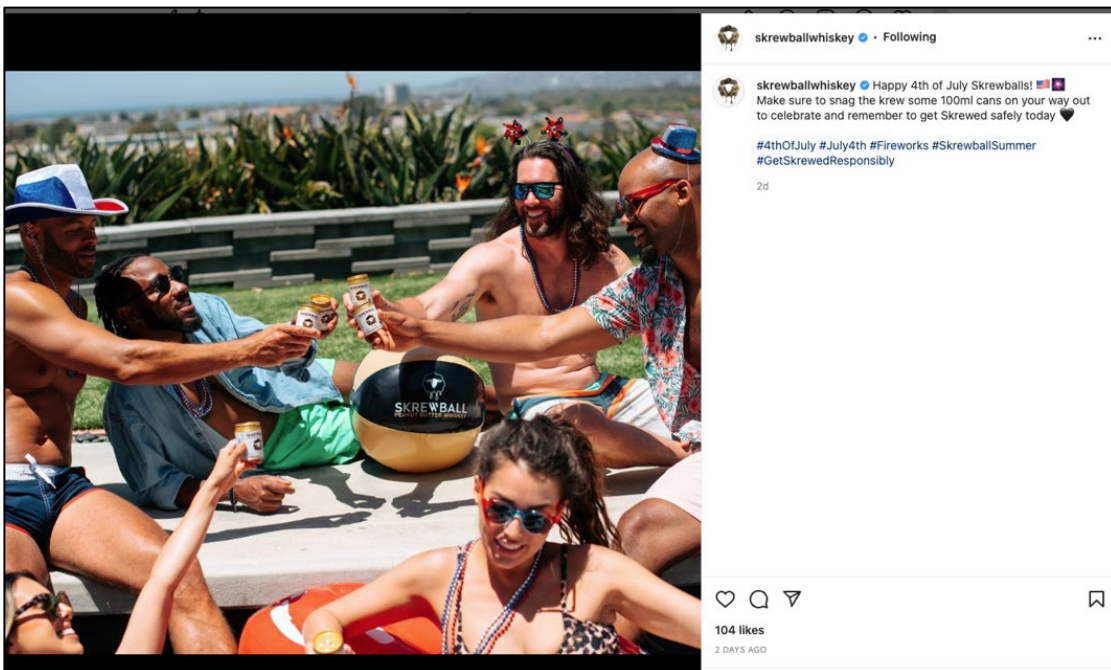
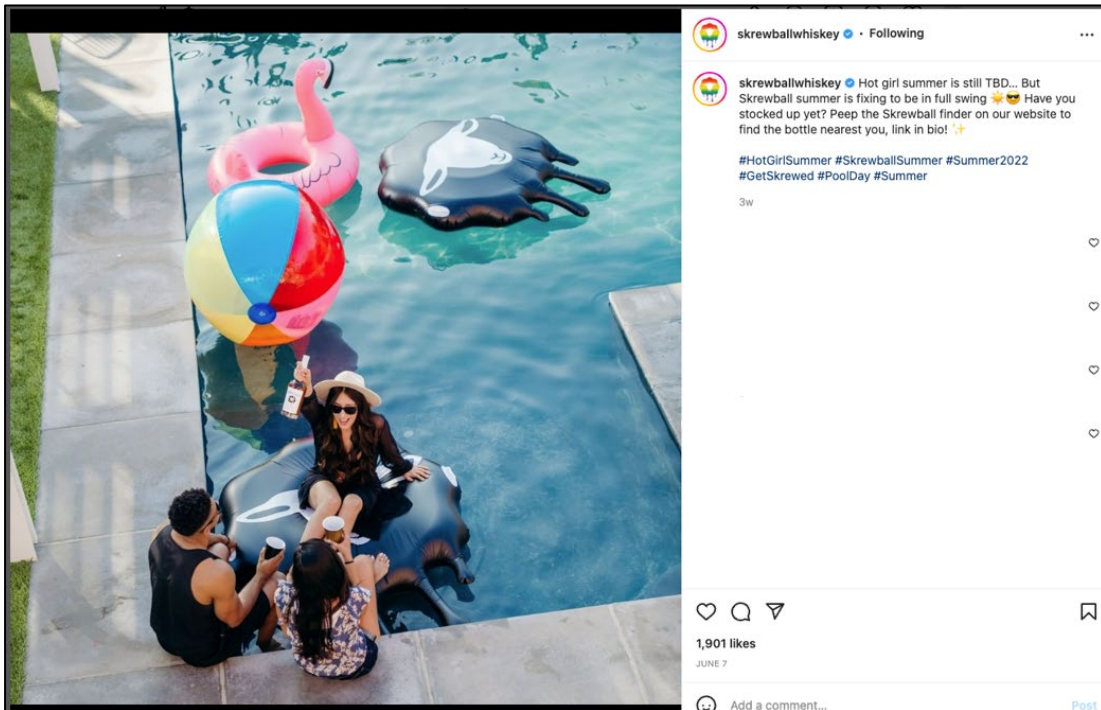
intended audience are not considered models or actors under this provision; however, such individuals should reasonably appear to be 21 years of age or older in any beverage alcohol advertising and should not primarily appeal to persons below the legal purchase age.”



Regarding the June 7, 2022 and July 5, 2022 Skrewball Whiskey Instagram posts shown below, the complainant considers these Instagram posts to violate Responsible Content Provision No. B3. The complainant states that “Skrewball Whiskey has an active Instagram user account with

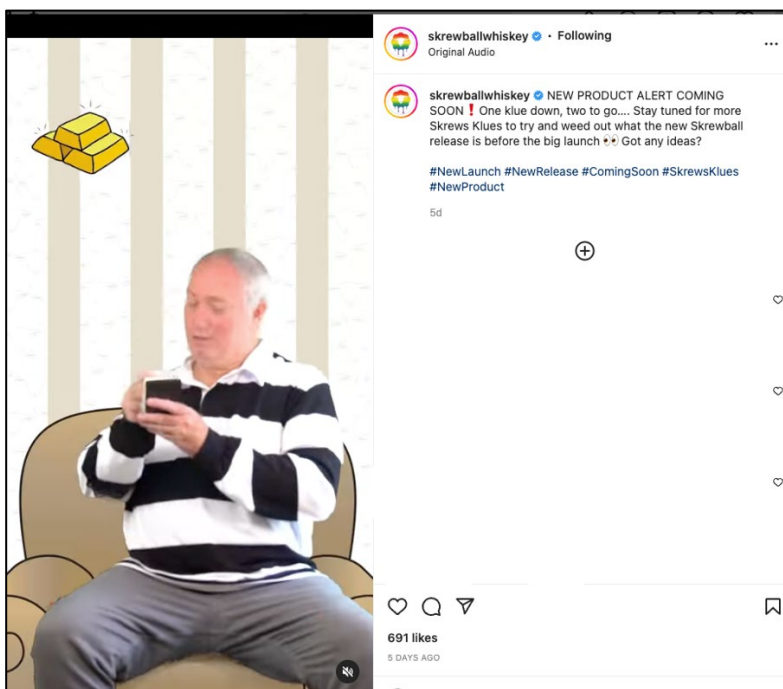
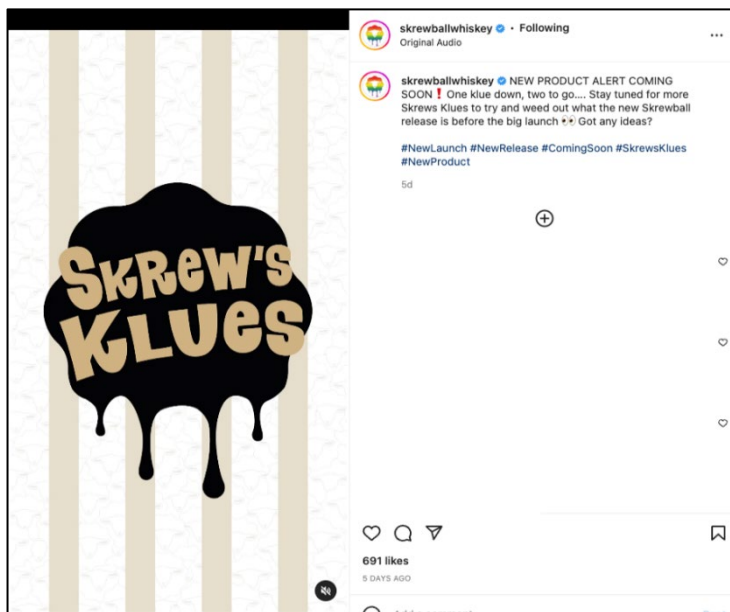
over 46,000 followers. This brand account has recently shared some posts that seem to be in violation of activities that require a high degree of alertness.”

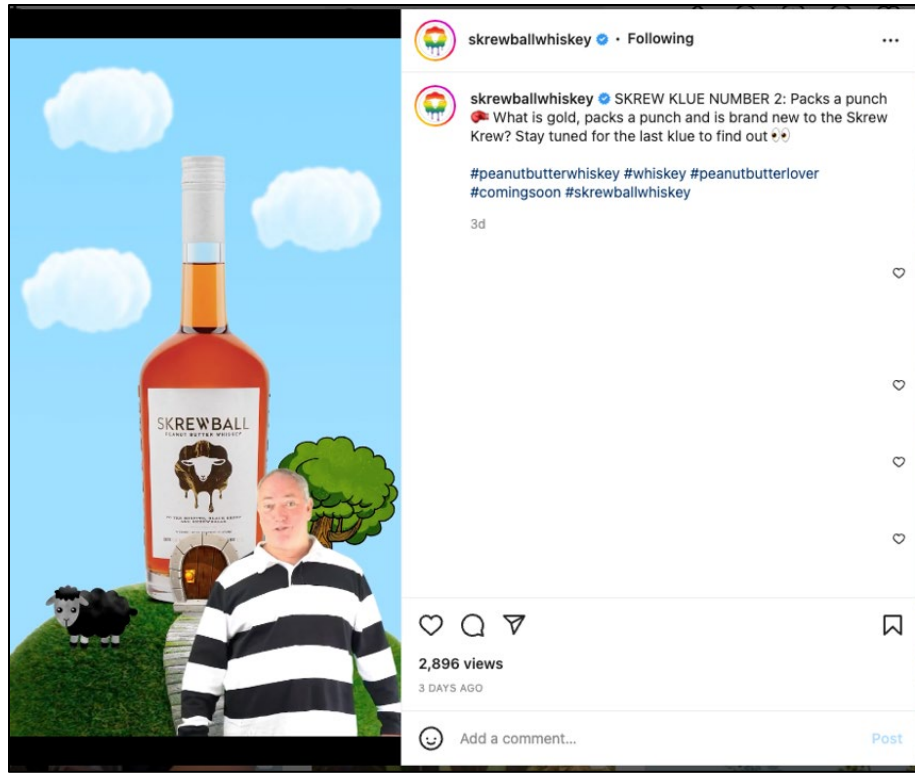
RCP No. B3 provides that “[b]everage alcohol advertising or marketing materials should not portray beverage alcohol being consumed by a person who is engaged in, or is about to engage in, any activity that is illegal or requires a high degree of alertness or physical coordination, such as driving a vehicle.”



Regarding the June 24, 2022 and June 26, 2022 Skrewball Whiskey Instagram posts shown below, the complainant contends these Instagram posts violate Responsible Content Provision No. A1. The complainant relays that “Skrewball Whiskey has an active Instagram user account with over 46,000 followers. This brand account has recently shared some posts that are a play on the children’s program ‘Blue’s Clues,’ and they used ‘Skrew’s Klues’ to announce a new product launch. This seems to be in violation of not primarily appealing to adult audiences.”

RCP No. A1 provides that “[a]ll beverage alcohol advertising and marketing materials, regardless of placement, are intended for legal purchase age adults who choose to drink. The content of beverage alcohol advertising and marketing materials should primarily appeal to individuals 21 years of age or older.”





Code Review Board Decision:

In response to the alleged violations of RPP Nos. A1 and A5, the advertiser stated that “Skrewball reasonably believes that more than 71.6% of Instagram users accessing Skrewball’s page are, in fact, above legal drinking age. It is our understanding that Instagram has age checks for accounts, helping to ensure that users under 21 years of age do not access posts relating to alcohol beverages, and that Skrewball has implemented the available age restriction safeguards. Skrewball understands both Instagram and TikTok use advanced technologies, such as algorithms, to drive users to advertisements and content that are age appropriate. While we do not have full visibility into the technology, it is our understanding that persons under 21 do not generally encounter sponsored alcohol beverage posts and advertisements without intentionally seeking out those posts.”

The advertiser noted that “[i]t is our understanding that many industry members routinely utilize Instagram, TikTok, and other similar social media sites. We do not believe Responsible Placement Provision Nos. A1 and A5 are intended to prohibit advertising on these platforms completely. Instead, it is the content that is most important. In addition to clearly stating that viewers must be 21+, Skrewball always tries to ensure that its content does not appeal to persons under 21.”

The advertiser continued by relaying that “[t]hat said, Skrewball understands that, at this time, TikTok does not utilize some of the additional age checking safeguards implemented by other social media platforms. As such, Skrewball has discontinued posting on TikTok. Skrewball hopes to be able to utilize this platform in the future and welcomes further guidance from DISCUS.”

In response to the alleged violation of Responsible Content Provision No. A3, the advertiser stated that “[t]he TikTok video post at issue is a ‘stitch,’ a unique post that incorporates parts of someone else’s existing post. In this case, the preexisting post was by TikTok influencer ‘christy_lats.’ The influencer’s preexisting post refers to being born before the year 2000 as a prompt for others like Skrewball to make stitches in response to the prompt. The caption to the influencer’s post reads: ‘Where my 90’s babies at? I miss my iPod nano. #90s #80s #millennial.’ Skrewball added its own unique content to the preexisting video in order to make it relate to Skrewball’s products. To be clear, this influencer is in no way associated with Skrewball. Skrewball’s stitch was not intended to appeal to any of this influencer’s followers. Nevertheless, Skrewball removed this post and, as noted above, is not currently posting on TikTok.”

In response to the alleged violation of Responsible Content Provision No. B3, the advertiser stated that “Skrewball has carefully reviewed these posts and respectfully disagree that they violate RCP No. B3. While certain water activities do require a high degree of alertness or physical coordination, sitting pool side and on pool floats are not activities rising to that level. The posts at issue merely depict individuals dipping their feet into a pool and lounging on a pool float. These are not activities requiring any greater need for alertness while consuming alcohol than virtually any other activity during which alcohol is consumed. In fact, most of the individuals are wearing clothes and/or accessories such as jewelry and hats, suggesting that they are not planning to actually get into the water. We note that none of the persons used in the posts are dressed inappropriately or appear to be consuming irresponsibly.”

In response to the alleged violation of Responsible Content Provision No. A1, the advertiser relayed that “[t]he Skrew’s Klues posts were specifically targeted to viewers who watched Blue’s Clues in late 1990s through very early 2000s. Those viewers are not just those who were watching as kids, they are also those caregivers whose children were watching the show. As such, the majority of former Blue’s Clues viewers are well above legal drinking age today. Since the show was never targeted to teens or young adults, it seems unlikely that the social media viewers in that age range, without young children, would find Skrew’s Klues appealing or relatable. In fact, the posts at issue are likely nonsensical to such persons unfamiliar with the show and thus have no appeal to minors. Skrewball certainly never intended Skrew’s Clues to appeal to minors and does not believe it does. Nevertheless, in an effort to show its commitment to responsible advertising, Skrewball has removed these posts pending a decision from the Review Board.”

After careful consideration of the complaint and the advertiser’s response, the Code Review Board found that the Skrewball Whiskey placement and brand posts referenced above violated Responsible Placement Provision Nos. A1 and A5 and Responsible Content Provision Nos. A1,

A3, and B3 of the DISCUS Code of Responsible Practices for Beverage Alcohol Advertising and Marketing.

Regarding the Skrewball Whiskey TikTok placements, the Code Review Board found that the TikTok platform does not meet the 71.6% demographic standard of the Code and does not employ age affirmation mechanisms in violation of RPP Nos. A1 and A5. The Board commended Skrewball Whiskey for removing its TikTok account in response to the complaint, including instructing all social media influencers to not engage on that platform with their products. The Board also welcomed Skrewball's interest in working together to encourage the platform to develop improved responsible placement features.

Regarding the February 24, 2021 Skrewball Whiskey TikTok post, the Code Review Board concluded that the combination of the youthful appearance of the individual in the video and the text in the post relaying "Who's turning 21 in 2021?" suggest that the individual might be below the legal drinking age in violation of the first clause of Responsible Content Provision No. A3, which specifies 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."

Regarding the June 7, 2022 and July 5, 2022 Skrewball Whiskey Instagram posts, while the posts do not show the explicit consumption of Skrewball Whiskey, the Board concluded that the totality of the images would lead a reasonable person to believe that the individuals holding beverage alcohol on floats in the pool and/or in bathing suits have been or are about to consume beverage alcohol and are about to engage in swimming, an activity that requires a high degree of alertness, in violation of Responsible Content Provision No. B3.

In arriving at its decision, the Board considered all the circumstances together, including the individuals holding bottles or cans of Skrewball Whiskey while in or on the edge of the pool and their attire which indicated that they would be engaged in swimming. The Board urges caution when utilizing imagery in advertising materials to ensure that beverage alcohol consumption is not portrayed in connection with any activities that would require a high degree of alertness.

Regarding the June 24, 2022 and June 26, 2022 Skrewball Whiskey Instagram posts, the Board found that, when viewed together, the imagery and tone employed in the Instagram videos appears to invoke and share similar attributes with a well-known show that is primarily aimed at children in violation of RCP No. A1. In arriving at its decision, the Board concluded that, even if there were no references to the well-known children's show, the combination of the cartoonish imagery employed and the vocal affect of the character primarily appeal to those below the legal purchase age.

The Board commended Skrewball Whiskey for taking the proactive measures of removing the advertisements at issue upon receiving the complaint.

Action by Advertiser:

Upon receipt of the complaint, the advertiser removed the Instagram and TikTok posts referenced in the complaint, as well as discontinued their TikTok brand account.

Status: Resolved. Responsive action taken.