

Advertisement: SunnyD Vodka Seltzer advertising and marketing material

Advertiser: Harvest Hill Beverage Company (Non-DISCUS Member)

Complainant: Private citizen

Complaint Summary:

The complainant alleges that the SunnyD Vodka Seltzer advertising and marketing material discussed below runs afoul of Responsible Content Provision Nos. A1 and A2.



Responsible Content Provision 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.”

Responsible Content Provision No. A2 provides that “[m]arketing that primarily appeals to individuals under the age of 21 is inappropriate. Advertising and marketing materials are considered to ‘primarily appeal’ to persons below the legal purchase age if they have special attractiveness to such persons beyond the general attractiveness for persons of legal purchase age.”

The complainant states that “[t]he company that makes the product, Sunny D, has come out with a ready to drink alcoholic option. And as the company specifically targets children with all of their products, I feel it is highly improper to be selling a product containing alcohol when you're also marketing to underage children.”

Code Review Board Decision:

In response to the alleged violations of RCP Nos. A1 and A2, the advertiser stated that “Harvest Hill Beverage Company and its subsidiary American Beverage Corporation (‘Harvest Hill’) understands its responsibility to consumers of all ages and appreciates the opportunity to address concerns related to the launch of SunnyD Vodka Seltzer through this forum. We have carefully reviewed the complaint and we hope that the following response displays our commitment and adherence to the standards embodied under the Code of Responsible Practices of the Distilled Spirits Council of the United States (DISCUS).”

The advertiser relayed that “[a]s a beverage manufacturer whose products are enjoyed across the demographic and age spectrum, we are especially well positioned to determine whether a marketing activity is age appropriate. SunnyD has held iconic status in the domain of consumer beverage products for decades. We have taken great care to ensure that our packaging and

marketing of SunnyD Vodka Seltzer shows that it is intended to be purchased and consumed by adults of legal drinking age. Additionally, our advertising and marketing materials have special attractiveness to consumers of legal age rather than minors.”

The advertiser further stated that “SunnyD Vodka Seltzer advertising and marketing reflects that it was developed and marketed to appeal specifically to consumers 21 years of age or older. The opening paragraph of a recent Food & Wine article succinctly highlights a primary marketing approach for this product: *If you've ever needed proof that '90s nostalgia is still in full force, there's this: Today, SunnyD announced it is launching the SunnyD Vodka Seltzer. It's a smart strategic move, as kids who were raised on SunnyD commercials in the '80s and '90s can now legally drink the beverage with booze. (SunnyD Vodka Seltzer is Here, Stacey Leasca, Food & Wine March 7)*”

The advertiser continued by noting that “[a]s the article indicates, we developed SunnyD Vodka Seltzer to appeal to the nostalgia of an older demographic of legal drinking age and took care to responsibly distinguish the alcoholic seltzer from our traditional products. We did this by packaging SunnyD Vodka Seltzer in 12 oz. aluminum cans like other alcoholic seltzer beverages on the market today, the only SunnyD product sold in cans. This is an important and intentional distinction as our traditional SunnyD products are packaged in plastic containers of various sizes, including the iconic 1-gallon plastic bottle that most consumers associate with the traditional brand. Aside from the different use of material, the packaging used for SunnyD Vodka Seltzer employs modified logos and color schemes to further differentiate between the two products. Included in this response are illustrations of these separate products.”

The advertiser also stated that “[i]n addition, the label on the can clearly and prominently indicates that the contents contain alcohol in four (4) separate areas on the front of the packaging. Specifically, the four separate references to alcoholic contents include (1) ‘CONTAINS ALCOHOL’ in all caps typeface, positioned at the top of the can; (2) ‘VODKA SELTZER’ in all caps typeface positioned in the middle of the can; (3) ‘4.5% ALC/VOL’ in all caps positioned toward the bottom of the can; and (4) ‘VODKA WITH REAL FRUIT JUICE, SPARKLING WATER, NATURAL ORANGE FLAVOR AND OTHER NATURAL FLAVORS’ positioned at the bottom of the can. The outer carton of each pack of cans also includes alcohol warning references. These statements appear in varying sizes, positions and contrasting colors, all clearly reinforcing that this is an alcoholic beverage meant solely for adults. The fact that SunnyD Vodka Seltzer is intended to appeal to individuals over the age of 21 is further evidenced by prominent references to the products calorie content ‘95 CALORIES’ and ‘0g SUGAR,’ both important considerations to the target demographic when considering purchases of alcoholic beverages. All other SunnyD products contain sugar. In contrast, the packaging for traditional SunnyD does not have the same statements and artwork and is packaged utilizing entirely different materials and formats when compared to SunnyD Vodka Seltzer. Often, traditional SunnyD products and SunnyD Vodka Seltzer are not sold in the same retail establishments. When they are sold in the same stores, they are sold in wholly separate sections of the store.”

The advertiser continued by relaying that “[t]he foregoing factors, when considered together, clearly demonstrate that SunnyD Vodka Seltzer is targeted towards, and primarily appeals to, adults of legal drinking age. SunnyD Vodka Seltzer's primarily appeals to adults of legal drinking age and our advertising and marketing materials do not have special attractiveness to individuals under the age of 21.”

Additionally, the advertiser stated that “[t]he complainant incorrectly states that Harvest Hill Company ‘specifically targets children with all of their products.’ Harvest Hill has for many years produced and sold a number of nonalcoholic and alcoholic products under the brands Juicy Juice, Fruit20, Nutrament, Daily's Cocktails, Veryfine, Little Hug Fruit Barrels, Guzzler, Big Burst and SunnyD. In all cases, care is taken to ensure that advertising and marketing of the different brands and products primarily appeal either to adults of legal drinking age in the case of alcoholic products or to consumers of all ages in the case of non-alcoholic products. Like Harvest Hill, there are a myriad of other manufacturers in the marketplace with both family-oriented brands and alcoholic beverage brands including Coca-Cola, PepsiCo/Mountain Dew, Simply Lemonade, Reed's, Topo Chico and others. Like SunnyD, these brands incorporate modifications of existing logos into their alcoholic beverage branding. We are confident that these brands, like Harvest Hill, take great care and consideration in ensuring separate advertising and marketing strategies for their various products.”

The advertiser concluded that “[f]or the reasons set forth above, SunnyD Vodka Seltzer primarily appeals to adults of legal purchase age - including numerous and unambiguous alcohol statements on the product, different and artwork and other factors - and does not primarily appeal to children and persons under the legal purchase age through any 'special attractiveness' to this young demographic. Additionally, there is no evidence of consumer confusion or evidence of deception. Media write-ups have correctly observed the public perception of SunnyD Vodka Seltzer; that this product is targeted toward nostalgic SunnyD drinkers in the Gen X and Millennial age groups.”

The Code Review Board examined SunnyD Vodka Seltzer’s marketing, advertising and packaging, as well as the advertiser’s response, and agreed with the complainant that, when taken and viewed together, the advertising, marketing and packaging overtly invokes the same branding employed for the SunnyD non-alcohol orange drink, whose target audience is primarily individuals under 21 years of age.

In arriving at its decision, the Board concluded that the label design on the SunnyD Vodka Seltzer packaging shares an identical logo and color scheme with the traditional SunnyD product, which heightens the propensity for confusion between the beverage alcohol brand extension and the popular beverage developed and marketed for children. In that regard, the Board noted that, had a different logo and/or font been utilized with a color scheme distinct from that used with the traditional SunnyD product, it may not have evoked the same connection and thus the primary appeal to children. The Board noted that it was not the use of the SunnyD name itself that ran afoul of the Code and recommended alterations to the product

marketing and packaging to ensure that the SunnyD Vodka Seltzer branding is distinctly separate from the non-alcohol beverage that is primarily marketed to those under legal purchase age.

Action by Advertiser: The advertiser agreed to review the labeling and packaging for SunnyD Vodka Seltzer in light of the Board's decision.

Status: Closed.