
Why Big Alcohol Can't Police Itself

A Review of Advertising Self-Regulation in the Distilled Spirits Industry

A Marin Institute Report



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Executive Summary

For this study, Marin Institute examined the Distilled Spirits Council of the United States (DISCUS) *Code of Responsible Marketing Practices* reports from 2004-2007. The Federal Trade Commission (FTC) has indicated its continued reliance on voluntary industry self-regulation as the main mechanism to ensure responsible marketing practices. Yet no systematic review of the alcohol industry's oversight process has previously been published, either by government or in the academic literature. This analysis attempts to fill that void. Our major findings include the following:

- Complaints regarding ads from companies with a member on the DISCUS board were three times less likely to be found in violation of the Code.
- The total number of formal ad complaints responded to by DISCUS was 93. During this same four-year period, ad expenditures by spirits companies topped \$1.9 billion.
- The most common complaints by far were about ads with sexual content.
- 31 complaints (19 percent) alleged a violation of Provision 25, which says that ads should not rely on sexual prowess or sexual success.
- 22 complaints alleged that ads overexposed youth.
- The worst "repeat offender" brands were Skyy Vodka (8 complaints) and Svedka vodka (6 complaints).
- The worst repeat offender companies were Diageo (14 complaints) and Campari (11 complaints).
- Of 93 ad complaints, 43 (46%) were found to violate the Code. Of these, 35 (81%) resulted in a change by the advertiser, either by removing the ad, or promising to comply in the future.

Barriers to effective self-regulation include: lack of public awareness, lack of independent review, the subjective nature of guidelines, and lack of penalties and enforcement power. Marin Institute recommends:

1. A truly independent, third-party review body that includes public interest representatives.
2. Objective standards for judging the content of advertisements.
3. Lowering of the current 30 percent placement standard to 15 percent, so that ads are placed only in media where no more than 15 percent of the audience is under the legal drinking age.
4. A public education campaign about the complaint process, with improved access to filing complaints.
5. Adequate federal resources and staffing of the independent review body and educational campaign.
6. Enforcement power and significant penalties beyond requests to pull ads, enforceable by federal law or binding industry agreement.
7. Application of such a system to beer and wine advertising as well.

Background

This study examines the distilled spirits industry's self-regulatory system of compliance with its own marketing code. The industry's trade association, the Distilled Spirits Council of the United States (DISCUS) maintains a *Code of Responsible Marketing Practices*¹ (Code) and responds to complaints about violations of the Code.

While distilled spirits companies spent \$519 million on advertising in 2007,² the industry's advertising oversight process has received little attention in the academic literature. Moreover, the research is clear that youth exposure to alcohol marketing leads to underage drinking.³ The Institute of Medicine recommends that alcohol and advertising companies refrain from marketing practices that have "substantial underage appeal" and that they should "reduce youthful exposure" to alcohol advertising.⁴ It is such recommendations that the industry self-regulatory guidelines are designed to address.

According to DISCUS, the spirits industry established the first "Code of Responsible Practices" shortly after the repeal of Prohibition.⁵ A voluntary agreement, the Code is not legally enforceable. Even though only 80 percent of the spirits industry is a DISCUS member, some non-members also participate in the review process.

Little research exists on the effectiveness of the industry's self-regulatory system. Though the Federal Trade Commission (FTC) has praised DISCUS for its system,⁶ many questions remain. Certain key elements required for effective self-regulation identified in the legal academic literature may be lacking, including: 1) clear and objective standards; 2) independent third party oversight; 3) sufficient motivation for compliance; and 4) meaningful penalties for non-compliance.⁷ This report is an attempt to assess these and other factors related to effective self-regulation of advertising.

This study analyzes the reported complaints made to DISCUS to date. We studied only the distilled spirits industry because the beer industry has thus far published only one report about its code process, and the wine industry has no apparent reporting system.

Methods

Instructions for how to submit a complaint are on the DISCUS website.⁸ The complainant must explain why the advertisement's content or placement violated one or more of the Code's 37 placement or content provisions. The Code's 30 "responsible content" provisions address violations of the ad's visual or written meaning, while the seven "responsible placement" provisions relate to youth audience exposure.

After considering a complaint, the Code review board, by majority vote, determines if the advertisement violates any provisions of the Code. The Code review board comprises five representatives from major alcohol companies, each appointed by the DISCUS board of directors. Once the review board reaches a decision, it communicates that decision to the advertiser. If the board finds that the advertiser violated a provision of the Code, it will urge the advertiser to revise or withdraw the ad. In rare instances, the decision will be made by the DISCUS "Outside Advisory Panel," which consists of three non-industry members. This outside consultation occurred only one time during the period of our review, and thus did not significantly impact the results.⁹

We examined all 7 DISCUS code reports published from 2004 to 2007. (There was one report for 2004, and then the reports became semi-annual starting in 2005.) Each report describes complaints received by DISCUS for the relevant time period. Each complaint alleges that

one or more advertisements violate the DISCUS Code. The reports summarize each complaint, the DISCUS board decision, and the reasoning for the decision. This study only considered the information published in the reports, which are made available on the DISCUS website.¹⁰ (No information is made public about any complaints filed with DISCUS but not considered by the board for some reason, such as not following instructions on how to file a complaint.)

We analyzed each advertisement by year, advertising medium, brand, parent company, complainant, alleged violation, decision, conclusion, DISCUS board representation, and DISCUS membership. Brand ownership and board membership were defined by who the parent companies and board members were at the time of the decision. Pearson chi-square tests and odds ratios were used to determine any significant differences between board membership and code violation decisions.

For purposes of this study, an advertisement was considered to violate the Code if the board decided it violated at least one provision of the Code. The complaint's outcome or conclusion was determined by whether or not the marketing practice was changed in response to the board's decision. In some cases, the advertiser chose to remove the advertisement before the board reached a decision, making the complaint moot.

Results

From 2004 to 2007, the DISCUS review board reported receiving 78 complaints, for an average of 19.5 per year. These 78 complaints identified a total of 93 individual advertisements, an average of 23.25 advertisements complained about per year. (Some complaints identified more than one ad.) Alcohol industry members filed 56% of the complaints, while individuals,

third party organizations, and public officials submitted the remainder.

Of the various forms of media, complaints were most often made related to print ads (44%), following by web ads (22.5%), billboards (15%), and television commercials (7.5%). (See Table 1)

Table 1: *Complaints by type of ad medium*

AD MEDIUM	COMPLAINTS
Print	41
Web	21
Billboard	14
TV Commercial	7
Unclear	4
Combination	2
Promotion	2
Product placement	2

Code Provisions Most Frequently Alleged To Be Violated

Next, we examined which code provisions were most likely to be complained about. In most cases, a complaint alleged that more than one Code provision was violated. In total, complaints alleged that 93 ads violated 159 Code provisions. Complaints frequently alleged that both the responsible content and responsible placement provisions were violated. Of the responsible content provisions, complaints most frequently cited provision 25 ("sexual prowess and sexual success"), followed by provision 21 (not reflecting "contemporary standards of good taste"). Often complaints used both provisions 25 and 21 to criticize a single advertisement. Of the responsible placement provisions, complaints most frequently cited provision 3, which prohibits targeting audiences with more than 30% of underage

Table 2: Code provisions most frequently complained about

RESPONSIBLE CONTENT PROVISION	COMPLAINTS
25: relies on sexual prowess or sexual success as a selling point; depicts promiscuity or sexually lewd images or language	31
21: does not reflect generally accepted contemporary standards of good taste	24
22: degrades the form or status of women, men, minorities, religious or other groups	10
13: depicts intoxication or alcohol being consumed irresponsibly	10
7: promoted to individuals below the drinking age	6
14: contains curative or therapeutic claims not permitted by law	4
RESPONSIBLE PLACEMENT PROVISION	COMPLAINTS
3: placed where less than 70% of the audience is above the legal drinking age	22
7: placed within 500 feet of a place of worship or school	8

drinkers, followed by provision 7, which prohibits advertisements from being within 500 feet from a school or place of worship. (See Table 2)

Brands and Companies Most Complained About

We also examined which brands were most often complained about. Topping the list was Skyy Vodka with 8 complaints, followed by Svedka with 6 complaints and Patron Tequila with 5 complaints. Bacardi Rum and Hennessy each had 4 complaints. Brands with 3 complaints included Absolut Vodka, Sauza Tequila, and Seagram’s Gin. Brands with 2 complaints included Alize, Belvedere, Captain Morgan, Evan Williams, Jagermeister, Smirnoff Ice, and Smirnoff Vodka. The remaining 43 brands each received one complaint. (See Table 3)

Of the most-complained about companies, Diageo had 14 complaints, while Campari had 11 complaints. A higher number of complaints usually meant there were a greater number of violations found for the company. Brands from Bacardi USA, Moet Hennessey, and Patron Spirits were each the source of five complaints. Constellation appeared 4 times. (Constellation acquired Svedka from Spirits Marque One

Table 3: Brands most frequently complained about

BRAND	COMPLAINTS
Skyy Vodka	8
Svedka	6
Patron Tequila	5
Bacardi Rum	4
Hennessy	4

in 2007.) Companies with three complaints included Allied Domecq Spirits & Wine (a company that has been bought), Beam Global Spirits & Wine, Heaven Hill Distilleries, Pernod Ricard USA, Spirits Marque One, The Absolut Spirits Co., and William Grant & Sons, Inc. We did not analyze if the number of complaints filed against a company was significant compared to the company's spirits market share. (See Table 4)

Table 4: Companies most frequently complained about

COMPANY	COMPLAINTS
Diageo	14
Campari	11
Bacardi USA	5
Moet Hennessy	5
Patron Spirits	5
Constellation	4

Complaint Outcomes and Code Violations

Of the 93 advertisements, 42 (45%) concerned DISCUS members, and 51 (55%) concerned non-DISCUS members. In all, the DISCUS board found 43 advertisements (46%) violated the Code, while it found 41 ads (44%) did not violate the Code. In 9 cases, the board did not need to reach a decision, either because an advertiser removed the ad before the board made a decision, or because the advertisement was no longer in circulation when the board received the complaint. In one case, the board would not make a decision because the complaint concerned product placement in a television show still in production. Of the 43 advertisements found in violation of the code, 35 (81%) resulted in a change on the part of the advertiser, by changing or removing the advertisement, or by promising to comply with the code in the future. In all of the 41 advertisements not found in violation, advertisers

made no change. No significant differences were found between provisions and outcome. In other words, no provisions had a higher likelihood of resulting in a violation than others.

Connection Between Board Member Representation and Outcome

Of all complaints, 34% involved a distilled spirits company with a representative on the DISCUS board. Of those, the board found 13% in violation of the DISCUS code. Of the remaining advertisements without a board member connection, 52% violated the DISCUS code. This result constitutes a significant difference between decisions made about advertising from a company with a representative on the DISCUS board and decisions made about advertising from a company without such a representative.

The odds ratio between board membership and the board's decision was 3.0, which means that if the company complained about did not have a seat on the board, it was three times more likely to be found in violation. In other words, if the company does have a seat on the board, it is three times less likely to be found in violation. (Significance at 95% level.)

The odds ratio between when the complainant is an industry member and the board decision is 12.7, which means that complaints made by industry members are 12.7 times more likely to be found in violation than those brought by others. (Significance at 99.9% level.)

Discussion

Lack of Public Awareness

Between 2004 and 2007, the spirits industry spent more than \$1.9 billion dollars on marketing.¹¹ Hundreds of thousands of distilled spirits advertisements appear in magazines,

on billboards, television, and other venues. On cable TV alone, 200,792 commercials for distilled spirits aired between 2004 and 2007.¹² In addition, during 2004-2006, close to 6,000 ads were placed in magazines, with spending topping \$654 million in that medium.¹³ And yet, only 93 ad complaints were reported by DISCUS over the four-year period, 2004-2007.

The DISCUS complaint process is unknown to the public at large and even most public interest advocates. In addition, complaints made to media owners such as TV stations are not logged or reported about. While the spirits industry spends money on “drink responsibly” messages, no effort is made to advertise its complaint system.

Differences in Media

While most spirits advertisements appear on television, the DISCUS complaints were disproportionately about print ads. Of all ads complained about, 44% involved print media. Perhaps print ad violations are more easily spotted by the public and competitors, compared to the fleeting medium of a television commercial. Web advertisements comprised the second most frequent subject of complaints (22.5%), and billboards came in third, again suggesting that such media are easier to monitor than TV and other forms of marketing. Therefore, it should certainly not be assumed that because some forms of marketing received few to no complaints (for example, event promotions or in-store displays), such techniques are violation-free.

Sex Sells

Surprisingly, most complaints involved only 8 of the 37 DISCUS Code provisions. (See **Table 2**) Not all provisions received equal numbers of complaints; in fact, 8 provisions received no complaints at all. Provision 25, regarding the use of sexual success, came up most frequently.

Image 1: *This Campari ad was determined by DISCUS to not violate provision 25 (appealing to sexual prowess or sexual success) or provision 21 (advertising should reflect contemporary standards of good taste).*



Complaints about provision 25 almost always also contained complaints about other similar provisions. Provision 21, the second most common provision complained about, was often used in conjunction with Provision 25 to argue an advertisement was not in “good taste.” (See **Image 1**) Provisions 13 and 22 also often came up because the advertisements were alleged to be unnecessarily appealing to sexuality also degraded women and depicted irresponsible alcohol consumption. Taken together, these four provisions account for 47% of all provisions cited. While provisions 13, 21, and 22 did not always apply to advertisements using sexuality, the majority of the time they did. This suggests that the spirits industry should reconsider its use of sexuality to sell products.

Lack of Objective Guidelines

Advertising's high degree of subjectivity poses a major challenge in regulation. For example, the Code allows "amorous gestures or other attributes associated with sociability and friendship" but not "reliance upon sexual prowess or sexual success as a selling point." Also, the provisions do not allow advertisements to depict "graphic or gratuitous nudity, overt sexual activity, promiscuity, or sexually lewd or indecent images or language." All of these phrases lend themselves to subjective interpretation. Some researchers have suggested that the Codes are purposefully subjective so that alcohol companies can continue their advertising practices without criticism.¹⁴

While this study did not attempt to evaluate the "correctness" of the board's decisions (given the subjective nature of such an attempt¹⁵), in numerous cases, it was unclear why the board determined no Code violation occurred. For example, the board found that a Skyy Vodka ad with a woman in a swimsuit suggestively grabbing a waiter's tie did not violate the Code. Similarly, the board found that an ad featuring the actress Salma Hayek in a revealing cocktail dress did not appeal to sexuality. Another Skyy Vodka ad featured many bare legs and arms extended outward holding drinks, with the rest of the bodies hidden by curtains (**see Image 2**); once again the DISCUS board found no violation. (And in this case the "Outside Advisory Council" was even consulted.) Such scenarios seem to obviously use sex or sexual prowess as a selling point and yet the DISCUS board did not find them in violation.

In addition, provision 21 states "Beverage alcohol advertising and marketing materials should reflect generally accepted contemporary standards of good taste." The words "contemporary" and "good taste" lend themselves to a wide range of interpretations.

Image 2: This Skyy Vodka advertisement was determined by DISCUS to not violate provision 25 (appealing to sexual prowess or sexual success).



Provision 7 states that distilled spirits "should not be advertised or promoted by any person... who is made to appear to be below the legal purchase age." Provision 13 states spirits advertising "should not depict situations where beverage alcohol is being consumed excessively or in an irresponsible manner," and that "they should not promote the intoxicating effects of beverage alcohol consumption." However, many ads featuring drinking often suggest irresponsible drinking. Provision 22 prohibits advertising that "degrades the image" of various groups; once again, a highly subjective clause.

The Code's placement standards may be more objective. For example, one can measure a billboard's distance from a school. However, quantifiability alone does not necessarily

confer effectiveness. For example, responsible placement provision 3 advises that ads should be placed only where at least 70% of the audience is of legal drinking age. But 30% of an audience of major media is still a large number, and this standard has been criticized for over-exposing youth.¹⁶ In its 2003 report on underage drinking, the Institute of Medicine recommends that the alcohol industry “move toward a 15 percent threshold for television advertising.”¹⁷

Lack of Independent Review and Penalties

In the Federal Trade Commission's 1999 assessment of industry self-regulation, the agency explicitly recommended third-party review, saying: “industry should create independent external review boards with responsibility and authority to address complaints.”¹⁸

While it's true that since 1999, industry trade groups have put complaint systems in place, the FTC seems to have retreated from its earlier position, claiming, “It's not clear that the presence of company representatives on the review boards inherently biases the complaint process in industry's favor.”¹⁹ Indeed, our results showed that companies with a representative on the DISCUS board have a three times lower chance of being found in violation of the Code. It seems common sense that having industry members police itself is a recipe for biased decision making.

Also, companies may be ambivalent about complaints because no penalties exist if they are found in violation. This could explain the repeat offenders, the brands and companies that received more complaints than others. With penalties, companies might not continue to violate the same provisions with subsequent ads. The brands Skyy Vodka and Svedka received the most complaints, while Diageo and Campari topped the company complaints. Perhaps the brands and companies most complained about have questionable marketing practices, or perhaps they spend more on marketing. This study did not control for market share or money spent on advertising. Nevertheless, without meaningful penalties, what motivation does a company have to comply with the code?

Finally, the DISCUS self-regulatory system only operates once an advertisement has already run. Thus, the system does not prevent companies from releasing ads that violate the code. Moreover, since there is no penalty for violating the code, there is no apparent deterrent effect. In addition, it can take weeks from when a complaint is received to when the board makes a decision. In some cases, this leads to complaints becoming moot because the advertisement has run its course. Even if the DISCUS board could instantly arrive at a decision, it would still not prevent offensive advertisements from being released to the public.

Recommendations

The DISCUS system for monitoring irresponsible marketing practices needs to be replaced with an independent system of regulation and oversight. The Federal Trade Commission has indicated that self-regulation is favorable to government mandates. For self-regulation to be effective there must be a viable threat of government regulation.²⁰

Therefore, because the evidence leads us to be skeptical about continued reliance on voluntary actions, Marin Institute recommends that the FTC increase its oversight and that the following steps be taken to improve the system:

1. A truly independent, third-party review body that includes public interest representatives.
2. Objective standards for judging the content of advertisements.
3. Lowering of the current 30 percent placement standard to 15 percent, so that

ads are placed only in media where no more than 15 percent of the audience is under the legal drinking age.

4. A public education campaign about the complaint process, with improved access to filing complaints.
5. Adequate federal resources and staffing of the independent review body and educational campaign.
6. Enforcement power and significant penalties beyond requests to pull ads, enforceable by federal law or binding industry agreement.
7. Application of such a system to beer and wine advertising as well.

The alcohol industry serves its shareholders, and thus puts profits first. It's up to government to provide a mechanism for adequate oversight that protects the public from irresponsible advertising by the alcohol industry.

This report was prepared by Lina Gomes and Michele Simon, with assistance from Simon Rosen and Bruce Livingston.

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