

DISTILLED
SPIRITS
COUNCIL
OF THE
UNITED
STATES

SEMI-ANNUAL CODE REPORT

Fifth Edition for the period July 2006 through December 2006

CODE OF RESPONSIBLE PRACTICES
FOR BEVERAGE ALCOHOL
ADVERTISING AND MARKETING

www.discus.org

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The Distilled Spirits Council of the United States, Inc. (DISCUS) is a national trade association representing producers and marketers of distilled spirits and importers of wine sold in the United States. In 1973, DISCUS was formed as a result of the merger of three organizations—The Bourbon Institute, The Distilled Spirits Institute and The Licensed Beverage Industries, Inc.—that had been in existence for decades.

The members of DISCUS represent nearly 80% of all distilled spirits sold in this country. For this reporting period, DISCUS members were:

Bacardi U.S.A., Inc.

Barton Incorporated

Brown-Forman Corporation

Cruzan International, Inc.

Diageo

Sidney Frank Importing Co., Inc.

Future Brands LLC

(joint venture of Beam Global Spirits & Wine, Inc.
and The Absolut Spirits Company, Incorporated)

Luxco, Inc.

McCormick Distilling Co., Inc.

Moët Hennessy USA, Inc.

Rémy Cointreau USA, Inc.

Pernod Ricard USA

Suntory International Corp.

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Open Letter to Interested Parties:

We are pleased to issue the fifth Report of complaint decisions by the Distilled Spirits Council's Code Review Board, the spirits industry's advertising compliance review body. This Report makes public Code Review Board actions for the period of July 1, 2006 through December 31, 2006. For this reporting period, the Board received complaints about 16 advertisements involving advertising or marketing materials subject to the DISCUS Code of Responsible Practices for Beverage Alcohol Advertising and Marketing.

Unique within the beverage alcohol industry, the DISCUS Code provides for a Code Review Board that is charged with reviewing complaints about advertising material in the marketplace. Each complaint about a member company advertisement for a beer, wine or distilled spirits product marketed by that company or a distilled spirits advertisement of a non-DISCUS member is reviewed by the Code Review Board with identical consideration and priority status. After receiving a complaint, the Code Review Board determines whether the advertisement is consistent with the provisions of the Code. If a provision of the Code has been violated, the Board urges that the advertisement be revised or withdrawn. Throughout the decades, there has been 100% compliance by DISCUS members with the Board's decisions and overwhelming compliance by non-DISCUS members. As has been the case historically, the majority of advertisements subject to complaints continue to be generated by industry members.

Providing for a Semi-Annual Report of complaint decisions allows the public at large to better evaluate and appreciate our longstanding review process, which the Federal Trade Commission has pointed to as a model of self-regulation. The Report also serves as an effective tool to familiarize non-DISCUS member distillers with the provisions of the Code, as well as educating cable companies, broadcasters, magazine publishers, and other media outlets about its provisions. To that end, DISCUS hosted a Media Buying Summit during this reporting period with the objective of enhancing industry-wide compliance with the Code's 70% 21 years and older demographic placement provisions.

This Summit brought together industry leaders to share best practices to implement these provisions with featured speakers from major media research firms that analyze demographic media audiences, as well as showcased separate panels concerning buying advertising space for radio, television, print, and digital media. To the best of our knowledge, DISCUS is the first industry group to hold such a Summit and over 60 members and nonmembers were in attendance.

This Media Buying Summit is just one example of the many initiatives undertaken by the Code Review Board demonstrating our ongoing commitment to an effective, evolving advertising and marketing Code. Since its inception over 70 years ago, the core principle of the Code has been and remains to market our products to adults in a responsible and appropriate manner. Consistent with this core objective, the Code Review Board continues its outreach efforts to educate all interested parties about the Code and its review process.

Third party groups are taking advantage of our self-regulatory process by utilizing their websites as a mechanism for their constituencies to lodge Code complaints. Each complaint received via a third party website or otherwise is responded to separately. We welcome this additional opportunity to showcase our Code and again urge State and Federal government officials and other interested parties to take advantage of our self-regulatory process by linking directly to the DISCUS Code (<http://www.discus.org/responsibility/code.asp>) on their websites.

Sincerely,



Peter H. Cressy
President/CEO
Distilled Spirits Council

FIFTH PUBLIC REPORT

Advertisement:	Silver Patrón Tequila advertisement in the July 2006 newsstand edition of <u>Spin</u>
Advertiser:	The Patrón Spirits Company (Non-DISCUS member)
Complainant:	Third-party organization, Washington, D.C.
Complaint Summary:	Complainant believes the placement of the advertisement violates Responsible Placement Provision No. 3 of the DISCUS <u>Code</u> providing that “[b]verage alcohol advertising and marketing should be placed in broadcast, cable, radio, and print communications only where at least 70 percent of the audience is reasonably expected to be above the legal purchase age (determined by using reliable, up-to-date audience composition data).”
Code Review Board Decision:	<p>In responding to the complaint, a media buying representative for the advertiser questioned the robustness of the consolidated MRI TwelvePlus data and subsequently agreed that the MRI TwelvePlus data are the best information available to meet the demographic placement provision of the <u>Code</u>.</p> <p>Consolidated MRI TwelvePlus demographic information indicates that <u>Spin</u> magazine readership did not meet the 70% 21 years and older demographic provision of the <u>Code</u> and the Code Review Board therefore found the advertisement placement in violation of Responsible Placement Provision No. 3 of the DISCUS <u>Code</u>.</p>
Action by Advertiser:	The advertiser agreed to no longer place advertising in the newsstand edition of <u>Spin</u> and to ensure that any future placements will appear in the subscription-only edition of <u>Spin</u> to meet the 70% demographic provision unless the most recent available MRI TwelvePlus data meet this provision.
Status:	Resolved: Responsive action taken

Advertisement: Hennessy Very Special Cognac advertisement in the July 2006 newsstand edition of Spin

Advertiser: Moët Hennessy USA, Inc.
(DISCUS member)

Complainant: Third-party organization, Washington, D.C.

Complaint Summary: Complainant believes the placement of the advertisement violates Responsible Placement Provision No. 3 of the DISCUS Code providing that “[b]verage alcohol advertising and marketing should be placed in broadcast, cable, radio, and print communications only where at least 70 percent of the audience is reasonably expected to be above the legal purchase age (determined by using reliable, up-to-date audience composition data).”

Code Review Board Decision: In responding to the complaint, the advertiser indicated that its media buying agency incorrectly advised that the newsstand edition of Spin met the 70% audience demographic standard of the Code. The advertiser subsequently discovered that the media buying agency had not utilized MRI TwelvePlus data.

Consolidated MRI TwelvePlus demographic information indicates that Spin magazine readership did not meet the 70% 21 years and older demographic provision of the Code and the Code Review Board therefore found the advertisement placement in violation of Responsible Placement Provision No. 3 of the DISCUS Code.

Action by Advertiser: The advertiser agreed to no longer place advertising in the newsstand edition of Spin and to ensure that any future placements will appear in the subscription-only edition of Spin to meet the 70% demographic provision unless the most recent available MRI TwelvePlus data meet this provision.

Status: Resolved: Responsive action taken

Advertisement: 1800 Tequila print ad: “A little bit older a whole lot bolder. The ultimate body shot”

Advertiser: SKYY Spirits, LLC
(Non-DISCUS member)

Complainants: Industry member
Member of the public, Newton, Massachusetts

Complaint Summary: Complainants believe that the advertisement, specifically the image of the man licking the woman’s shoulder, violates Responsible Content Provision No. 25 of the Code providing that “beverage alcohol advertising and marketing materials should not rely upon sexual prowess or sexual success as a selling point for the brand” and “should not contain or depict...promiscuity;” and Responsible Content Provisions No. 22 and No. 23 providing, respectively, that beverage alcohol advertising and marketing materials “should not degrade the image, form, or status of women” and “should not contain any lewd or indecent images or language.”



Code Review Board Decision: In responding to the complaints, the advertiser disagreed with the complainants’ assessment that the advertisement depicts promiscuity, relies upon sexual prowess or success as a selling point for its brand, degrades women, or contains lewd or indecent images or language. The advertiser stated that the woman depicted in the advertisement is “clearly in control” and “a powerful female portrayal and not ‘degrading.’”

After careful deliberation, the Code Review Board did not find the advertisement in question to be a violation of the DISCUS Code. The Board did not find that the content or composition of the advertisement depicts promiscuity or relies upon sexual prowess/sexual success as a selling point for the brand in question. Nor did the Board find the advertisement itself to be lewd or indecent, or to be degrading to the image, form or status of women.

Action by Advertiser: None required

Status: Not applicable

Advertisement: Smirnoff Ice billboard advertisement with the tagline “California Streamin’ Free Music from Smirnoff Ice”



Advertiser: Diageo
(DISCUS member)

Complainant: Member of the public, San Diego, California

Complaint Summary: Complainant believes that the Smirnoff Ice promotion “clearly is targeting youth with the offer of free music downloads” and runs afoul of Responsible Content Provision No. 3 of the DISCUS Code providing that “[b]everage alcohol advertising and marketing materials should not...primarily appeal to persons below the legal purchase age.”

Code Review Board Decision: In responding to the complaint, the advertiser provided the Board with the following information about the promotion in question. First, in order to receive a free music download, an individual must purchase a specially-marked package of Smirnoff Ice and the legal purchase age is 21 and older. Second, the purchaser then locates a code found inside a sticker that firmly is affixed to the package of Smirnoff Ice. Third, the purchaser then must go to the www.smirnoffice.com website (entry requires age verification) and enter this code to acquire an activation code.

Only with this activation code is the purchaser allowed to obtain a free music download from the eMusic website. According to Summer 2006 Nielsen//NetRatings @ Plan data, 93% of eMusic’s audience is 21 years of age and older.

After careful deliberation, the Code Review Board did not find a violation of the DISCUS Code.

Action by Advertiser: None required

Status: Not applicable

Advertisement: Jose Cuervo advertising on MySpace.com website

Advertiser: Diageo
(DISCUS member)

Complainant: Industry member

Complaint Summary: Complainant believes that the placement of the Jose Cuervo advertising on MySpace.com violates Responsible Placement Provision No. 3 providing that “[b]everage alcohol advertising and marketing should be placed in broadcast, cable, radio, and print communications only where at least 70 percent of the audience is reasonably expected to be above the legal purchase age (determined by using reliable, up-to-date audience composition data).”

Code Review Board Decision: In responding to the complaint, the advertiser provided the Code Review Board with syndicated demographic data published by comScore, with a survey basis of over 100,000 survey respondents for MySpace.com. These demographic data showed 78.1% of visitors to MySpace.com were 21 years of age or older.

Based upon the data, the Code Review Board did not find a violation of the DISCUS Code.

Action by Advertiser: None required

Status: Not applicable

Advertisement: Patrón Tequila broadcast advertisement with the tagline “The Perfect One Night Stand”

Advertiser: The Patrón Spirits Company (Non-DISCUS member)

Complainants: Member of the public, Petaluma, California
Public official, Olympia, Washington
Industry member



Complaint Summary: Complainants believe that the advertisement in question violates Responsible Content Provision No. 25 providing that “beverage alcohol advertising and marketing materials should not rely upon sexual prowess or sexual success as a selling point for the brand. Accordingly, advertising and marketing materials should not contain or depict...overt sexual activity; promiscuity; or sexually lewd or indecent images or language.” One of the complainants also pointed to Responsible Content Provision No. 23 providing that “[b]everage alcohol advertising and marketing materials should not contain any lewd or indecent images or language.”

Code Review Board Decision: In responding to the complaints, the advertiser disagreed with the complainants’ assessment that the advertisement relies upon sexual prowess or sexual success as a selling point for its brand. In the advertiser’s view, there is a common societal level of acceptance towards the subject matter depicted in the advertisement, particularly among the brand’s target audience. The advertiser stated that its new “Simply Perfect” advertising campaign relies upon insight that individuals naturally debate their ideas about what is “perfect” to them and the subjects of this campaign are presented in a tasteful and intelligent manner.

After careful deliberation, the Code Review Board found that the “The Perfect One Night Stand” advertisement violates Responsible Content Provision No. 25 of the DISCUS Code. In the Board’s view, the depiction of a man and a woman in bed with an open bottle of tequila at the foot of the bed, and clothes and undergarments strewn on the floor in front of the bed linked the consumption of alcohol to sexual prowess. The Board therefore found the advertisement to be in violation of the DISCUS Code in terms of using sexual prowess as a selling point for the brand. (Given the scope of Responsible Content Provision No. 25 that covers sexually lewd or indecent images, the Board determined it was unnecessary to reach a separate conclusion regarding Responsible Content Provision No. 23.)

Action by Advertiser: The advertiser immediately withdrew the advertisement execution.

Status: Resolved: Responsive action taken

Advertisement: Patrón Tequila broadcast advertisement “The Real Thing vs. Battery Operated”

Advertiser: The Patrón Spirits Company (Non-DISCUS member)

Complainant: Industry member



Complaint Summary: Complainant believes that the advertisement in question violates Responsible Content Provision No. 25 providing that “beverage alcohol advertising and marketing materials should not rely upon sexual prowess or sexual success as a selling point for the brand. Accordingly, advertising and marketing materials should not contain or depict...overt sexual activity; promiscuity; or sexually lewd or indecent images or language.”

Code Review Board Decision: In responding to the complaint, the advertiser disagreed with the complainant’s view that the advertisement relies upon sexual prowess or sexual success as a selling point for its brand. In the advertiser's view, there is a common societal level of acceptance towards the subject matter depicted in the advertisement, particularly among the brand's target audience. The advertiser stated that its new “Simply Perfect” advertising campaign relies upon insight that individuals naturally debate their ideas about what is “perfect” to them and the subjects of this campaign are presented in a tasteful and intelligent manner.

After careful deliberation, the Code Review Board found that the advertisement violates Responsible Content Provision No. 25 of the DISCUS Code because the gestures of the female model in the advertisement in conjunction with the respective taglines “Real Thing” and “Battery Operated” connote overt sexual activity.

Action by Advertiser: The advertiser immediately withdrew the advertisement execution.

Status: Resolved: Responsive action taken

Advertisement: The Margarita King billboard and website advertising materials with the tagline “King Me Baby and Sip Maturely”

Advertiser: The Margarita King Inc.
(Non-DISCUS member)

Complainant: Industry member

Complaint Summary: Complainant believes that the advertising and marketing materials for The Margarita King, depicting a baby bottle nipple and a woman consuming product from a baby bottle, violate Responsible Content Provision No. 21 providing that “[b]everage alcohol advertising and marketing materials should reflect generally accepted contemporary standards of good taste.”

Code Review Board Decision: In responding to the complaint, the advertiser stated that The Margarita King advertising and marketing materials were intended to convey humor and to deliver information about responsible drinking in a light-hearted manner. In that regard, the visual in the advertising campaign (the nipple) was to match The Margarita King’s tagline “King Me Baby and Sip Maturely.”



After careful deliberation, the Code Review Board found that the depiction of a baby bottle nipple and the image of a woman consuming product from a baby bottle in The Margarita King’s advertising materials violate Responsible Content Provision No. 21 of the DISCUS Code. Although the Board appreciated the stated intent of the campaign, the use of a baby bottle and baby bottle nipple images in association with a beverage alcohol product are misplaced and inappropriate. Further, the use of this imagery with the tagline did not clearly convey the intended message of responsibility.

Action by Advertiser: The advertiser removed from the brand’s website the materials referenced in the complaint depicting a woman consuming The Margarita King from a baby bottle. The Margarita King also has discontinued these billboard executions.

Status: Resolved: Responsive action taken

Advertisement: Sauza Tequila billboard advertisement

Advertiser: Beam Global Spirits & Wine, Inc. (DISCUS member)

Complainant: Member of the public, San Diego, California



Complaint Summary: Complainant believes that the advertisement violates Responsible Content Provision No. 22 providing that “[b]verage alcohol advertising and marketing materials should not degrade the image, form, or status of...any ethnic, minority,...or other group.” The complainant believes “[i]t is degrading to see the Alcohol industry using such ads to promote their products, by using significant holidays for Mexican/Latino culture, such as the promotion of Cinco de Mayo and Mexican Independence Day as drinking holidays has confused the public about their true significance.”

Code Review Board Decision: In response to the complaint, the advertiser disagreed with the complainant’s assessment that the advertising execution degraded or demeaned the Mexican or Latino culture.

After careful deliberation, the Code Review Board did not find the advertisement in question to be a violation of Responsible Content Provision No. 22 of the DISCUS Code. Based upon its review of the advertisement and the provisions of the Code, the Board did not find that the content or composition of the advertisement degrades the form or status of the Mexican/Latino culture.

Action by Advertiser: None required

Status: Not applicable

Advertisement: Bong Vodka website advertising and marketing materials

Advertiser: Bong Spirit Company, LLC
(Non-DISCUS member)

Complainant: Member of the public, New York, New York

Complaint Summary: Complainant believes that the marketing of a distilled spirit in a bottle shaped as a bong, which is “a device used to smoke marijuana,” is “irresponsible” and violates Responsible Content Provision No. 17 providing that “[b]verage alcohol advertising and marketing materials should not imply illegal activity of any kind.”



Code Review Board Decision: In responding to the complaint, the advertiser disagreed that they “market a distilled spirit in a device used to smoke marijuana.” The advertiser views the nature of their concept as “pop icon imagery’ that represents a history and lifestyle of creative expression, which dates back a hundred years to [their] vodka’s origination in Holland.” Further, the advertiser stated that “there is nothing illegal or obscene about the use of the word ‘bong.’”

After careful deliberation, the Code Review Board respectfully disagreed with the advertiser and found that, although the marketing materials make no specific illicit drug references, the marketing of a distilled spirit in a bottle shaped as a bong, which is a device commonly known to be used to smoke marijuana, in conjunction with using the word “bong” in the brand name implies illegal activity and therefore violates Responsible Content Provision No. 17 of the DISCUS Code.

Action by Advertiser: No further response from the advertiser once informed of the Board’s decision.

Status: Board continues to urge the advertiser to revise these advertising and marketing materials in light of the Code’s provisions.

Advertisement:

Website content material and a print advertisement for a Jagermeister sponsored music performance appearing at third-party retailer nightclub



Advertiser:

Sidney Frank Importing Co., Inc.
(DISCUS member)

Complainant:

Industry member

Complaint Summary:

Complainant believes that two photographs of individuals with members of a band posted on the advertiser’s website violate Responsible Content Provision No. 7 providing that “[b]everage alcohol products should not be advertised...by any person who is below the legal purchase age.”

Complainant believes that a print advertisement for a Jagermeister sponsored music performance at a nightclub stating for “all ages” violates Responsible Placement Provision No. 4 providing that “[a]ppropriate measures and best efforts should be taken so that beverage alcohol advertising and marketing are not specifically aimed at events unless at least 70 percent of the audience is reasonably expected to be above the legal purchase age.”

Code Review Board Decision:

In responding to the complaint regarding the photographs of individuals with band members, the advertiser believes that these materials fell outside the scope of Responsible Content Provision No. 7 because none of the photographs were taken by the advertiser’s personnel and Jagermeister was not advertised in the photographs, nor were the individuals appearing in the photographs models or actors employed by the advertiser. In response to the Code Review Board’s inquiry, the advertiser stated that, in one of the photographs, the individual depicted was above the legal purchase age; however, in the second photograph, one of the individuals may be below the legal purchase age.

The advertiser also stated that the print advertisement for “all ages” was placed and executed by a third-party retailer nightclub and that the advertiser had no direction or control over the retailer’s advertising.

After careful deliberation, the Code Review Board did find a violation of Responsible Content Provision No. 7 pertaining to the second photograph. Materials posted on a company’s advertising website fall within the scope of the Code and therefore implicate the Code’s provisions. The Board, however, did not find a violation of Responsible Placement Provision No. 4 because the third-party retailer nightclub’s advertising was not under the direction or control of the advertiser and therefore falls outside the scope of the DISCUS Code.

Action by Advertiser:

The advertiser immediately removed the second photograph from its website upon learning of the complaint. Advertiser also implemented an additional layer of review and approval to its internal compliance process prior to the posting of photographs on its website to ensure compliance with the Code.

Status:

Resolved: Responsive action taken

Advertisement: SKYY Vodka advertisement in October 9, 2006 newsstand edition of ESPN The Magazine

Advertiser: SKYY Spirits, LLC
(Non-DISCUS member)

Complainant: Industry member

Complaint Summary: Complainant believes the placement of the advertisement violates Responsible Placement Provision No. 3 of the DISCUS Code: “Beverage alcohol advertising and marketing should be placed in broadcast, cable, radio, and print communications only where at least 70 percent of the audience is reasonably expected to be above the legal purchase age (determined by using reliable, up-to-date audience composition data).”



Regarding the content of the advertisement, the complainant asserts that the advertisement is inconsistent with Responsible Content Provision No. 25 of the Code providing that “beverage alcohol advertising and marketing materials should not rely upon sexual prowess or sexual success as a selling point for the brand” and “should not contain or depict...promiscuity.” In that regard, the complainant points to the clothing and the position of the female model in the advertisement insofar as she is wearing a slit, revealing dress and is standing (straddling) between a man’s legs in a forward pose with her right leg lifted and bent outside the man’s left leg.

Code Review Board Decision: In responding to the complaint, the advertiser stated that consolidated MRI TwelvePlus 2006 data showed that ESPN The Magazine readership met the 70% 21 years and older demographic provision of the Code. Regarding the content of the advertisement, the advertiser disagreed that the advertisement depicted sexual prowess or promiscuity.

After careful deliberation of the complaint, the Board did find the advertisement in violation of Responsible Placement Provision No. 3 of the DISCUS Code because, at the time that advertisement was placed, the available MRI TwelvePlus demographic data was for 2005 and, according to that data, readership for ESPN The Magazine did not meet the 70% demographic provision of the Code. The Board, however, did not find the advertisement in violation of Responsible Content Provision No. 25 of the DISCUS Code. In the Board’s view, the advertisement did not rely upon sexual prowess or sexual success as a selling point for the brand, and did not depict promiscuity.

Action by Advertiser: The advertiser agreed to ensure that any future placements will appear in publications that meet the 70% demographic provision.

Status: Resolved: Responsive action taken

Advertisement: Maximus Vodka advertisement

Advertiser: Atlantic Brands Inc.
(Non-DISCUS member)

Complainant: Industry member

Complaint Summary: Complainant believes that the Maximus advertisement violates Responsible Content Provision No. 21 providing that “[b]everage alcohol advertising and marketing materials should reflect generally accepted contemporary standards of good taste;” Responsible Content Provision No. 22 providing that “[b]everage alcohol advertising and marketing materials should not degrade the image, form, or status of women..., or other group;” Responsible Content Provision No. 23 providing that “[b]everage alcohol advertising and marketing materials should not contain any lewd or indecent images or language;” and Responsible Content Provision No. 25 providing that “[b]everage alcohol advertising and marketing materials...should not contain or depict: graphic or gratuitous nudity; overt sexual activity; promiscuity; or sexually lewd or indecent images.”



Code Review Board Decision: In responding to the complaint, the advertiser stated that the advertising execution had been used globally for almost ten years in trade publication journals and was placed in good faith. Nevertheless, the advertiser stated that, if the advertising execution was found to be inappropriate in view of the provisions of the DISCUS Code, of which the advertiser was not familiar with until the complaint was lodged, the advertiser would withdraw the campaign.

After careful deliberation, the Code Review Board found that the advertisement was in violation of Responsible Content Provisions Nos. 21, 22, 23, and 25.

Action by Advertiser: The advertiser withdrew the campaign and will keep the provisions of the Code in mind when executing future advertising.

Status: Resolved: Responsive action taken

Advertisement: Evan Williams advertisement with the tagline “The longer you wait... the better it gets.”

Advertiser: Heaven Hill Distilleries, Inc.
(Non-DISCUS member)

Complainant: Member of the public, South Saint Paul,
Minnesota

Complaint Summary: Complainant believes that the advertisement violates Responsible Content Provision No. 18 of the Code providing that “[b]everage alcohol advertising and marketing materials should not portray beverage alcohol being consumed by a person who is engaged in, or is immediately about to engage in, any activity that requires a high degree of alertness or physical coordination;” and Responsible Content Provision No. 20 providing that “[b]everage alcohol advertising and marketing materials should not portray, encourage or condone driving any motor vehicle while intoxicated.”



Regarding Responsible Content Provision No. 18, the complainant states: “The ad depicts Evan Williams bourbon with boat-based anglers. The US Coast Guard estimates at least 30 percent of all fatal boating accidents are directly related to the use of alcohol. Alcohol adversely affects balance, visual acuity, night and color vision, judgment and risk taking behavior. Also on the ‘modern’ image on the right side of the ad, no life jacket is on the angler - implying that since there is one on the left side depicting the old time fisherman, life jackets are somehow old fashioned or no longer needed.” Regarding Responsible Content Provision No. 20, the complainant states: “While drinking and boating is still legal in most states, it is frowned upon as a safety hazard.”

Code Review Board Decision: In responding to the complaint, the advertiser disagreed with the characterization of the advertisement and stated that they took great care to guard against the suggestion that either angler is consuming or has consumed alcohol. The advertiser stated that neither the before or after aging images shows any consumption nor the insinuation of consumption.

The advertiser stated that the specific execution depicts Evan Williams-sponsored professional angler Mr. Jason Quinn on the right side of the advertisement and an angler from years past on the left with the expression “The longer you wait... the better it gets,” suggesting that angling is a hobby that “gets better with age” – similar to Bourbon’s aging benefits. (The advertiser also noted that this campaign, employed since 2001, references age as a benefit across a variety of circumstances (coal to diamond, foal to thoroughbred, TV of past to TV of present).)

The advertiser stated that the suggestion that its marketing materials would characterize safety as “old fashioned” or “no longer necessary” is erroneous. In that regard, the advertiser stated that the model is compliant with relevant safety regulations according to the “2006 Elite Series, Majors and Classic Official rules” under “5. Safety” issued by BASS.

These rules provide in pertinent part that: “During the official practice and competition, each competitor must wear a Coast Guard-approved chest-type life preserver. This preserver must be worn at all times the combustion engine is operating. This preserver must be strapped, snapped or zippered securely and maintained in that condition until the combustion engine is shut off.” The advertiser pointed to the fact that the combustion engine in the advertisement was shut off and that Mr. Quinn thus conforms to the BASS Elite Series rules.

After careful deliberation, the Code Review Board respectfully disagreed with the complainant’s assessment and did not find a violation of the DISCUS Code. The advertisement does not depict or portray beverage alcohol being consumed by any person in the advertisement. The Board also did not find the advertisement condoned driving a motor vehicle while intoxicated.

Action by Advertiser:

None required

Status:

Not applicable

Advertisement:	Smirnoff Vodka product placement in the James Bond film “Casino Royale”
Advertiser:	Diageo (DISCUS member)
Complainants:	Members of the public: 117 complaints (only the following locations were provided by complainants): Ahoskie, Albuquerque, Ann Arbor, Arlington, Atlanta, Aurora, Beltsville, Bethesda, Binghamton, Boca Grande, Boone, Brick, Brookfield, Burlingame, Burlington, California, Canton, Chapel Hill, Chardon, Charlotte, Chattanooga, Chicago, Clifton Park, Coeur d'Alene, Columbia, Coppel, Cornish, Craft, Durant, Edmond, El Paso, El Sobrante, Elkhart, Endicott, Fairview Park, Foxholm, Franklin Grove, Freeport, Gloversville, Grand Junction, Grand Rapids, Grande Prairie, Greene, Hamptonville, Hauser, Haysville, Hickory, Jacksonville, Justice, Kansas City, Kenosha, Latrobe, Lewiston, Livonia, Long Beach, Louisville, Midland, Milwaukee, Minot, Missoula, Morganton, Morgantown, Mount Clemens, Nampa, New Castle, Newton, Noblesville, North Bay (Ontario), North Kingstown, Olathe, Omaha, Petaluma, Pisgah Forest, Pittsboro, Reading, Riverdale, Rochester, Royal Oak, San Diego, San Francisco, San Rafael, Seattle, Spring, Springfield, St. Louis, Stockholm, Stuttgart, Topeka, Tucson, Vergennes, Vinita, Waipahu, Warren Center, Wernersville, Westmoreland, Wichita, Wisconsin Dells, Wyandotte, Yellow Springs
Complaint Summary:	Complainants believe that the Smirnoff Vodka product placement in the James Bond film “Casino Royale” that was rated PG-13 violates Responsible Placement Provision No. 3 of the DISCUS <u>Code</u> providing that “[b]verage alcohol advertising and marketing should be placed in broadcast, cable, radio, and print communications only where at least 70 percent of the audience is reasonably expected to be above the legal purchase age (determined by using reliable, up-to-date audience composition data).”
Code Review Board Decision:	<p>In responding to the complaint, the advertiser provided the Code Review Board with the following information about the product placement in question. Before deciding whether or not to have a product placement in this movie, the advertiser obtained demographic data for the most recent James Bond films, “Die Another Day” (2002) and “The World is Not Enough” (1999). These data showed that over 70% of individuals who saw these films were 21 years of age or older. In addition, before the advertiser executed the product placement, the studio for this James Bond film affirmed that the demographic placement provision whereby all advertising should be placed in a medium only where at least 70% of the audience is reasonably expected to be above the legal purchase age would be complied with in developing the film program.</p> <p>After careful deliberation, the Code Review Board did not find the product placement to be a violation of the DISCUS <u>Code</u> in that available demographic data showed that viewership for the last two James Bond films met the 70% 21 years and older demographic provision of the <u>Code</u>. The Board concluded that these historical data provided a reasonable basis for the product placement in question consistent with the provisions of the <u>Code</u>.</p>

[The advertiser obtained demographic data from MRI, a syndicated data source, for the James Bond films, “Die Another Day” (2002) and “The World is Not Enough” (1999). For the James Bond 2002 film, “Die Another Day,” the 2003 Fall MRI demographic data show 88.64% of the individuals who saw the film in the theater were 21 years of age or older. For the James Bond 1999 film, “The World is Not Enough,” the 2000 Fall MRI demographic data show 90.33% of the individuals who saw the film in the theater were 21 years of age or older.

MRI data measure individuals 18 years of age and older, with a database of approximately 26,000 respondents and has a database for 12 to 17 years of age, but does not collect information on movie titles. Simmons Market Research Bureau data measure individuals 18 years of age and older, with a database of approximately 25,000 respondents and also collects 12 to 17 years of age data from a much smaller universe of approximately 2,500 respondents for certain movie titles. Simmons combined Fall 2003 12+ demographic data for the James Bond “Die Another Day” 2002 film showed 73.5% of the individuals who saw the film in the theater were 21 years of age or older. Simmons 18+ demographic data for “The World Is Not Enough” 1999 film showed 88% of the individuals who saw the film in the theater were 21 years of age or older. Simmons did not collect 12+ data for that film.]

Action by Advertiser:

None required

Status:

Not applicable

Advertisement: Bacardi Limón billboard advertisement

Advertiser: Bacardi U.S.A., Inc.
(DISCUS member)

Complainant: Member of the public, National City, California

Complaint Summary: Complainant believes the placement of the advertisement violates Responsible Placement Provision No. 7 of the DISCUS Code providing that “[b]everage alcohol advertising should not be placed on any outdoor stationary location within five hundred (500) feet of...[a] secondary school” because of its proximity to Sweetwater High School in National City, California.

Code Review Board Decision: In response to the complaint, the advertiser immediately instructed its billboard placement company to measure the distance between the billboard and the high school. The billboard placement company reported that the billboard measured 720 feet from the school.

The Code Review Board therefore did not find the placement to be a violation of the DISCUS Code.

Action by Advertiser: None required

Status: Not applicable

BACKGROUND

HISTORY OF THE DISCUS CODE

Within months of the repeal of Prohibition, leaders in the distilled spirits industry approved their first voluntary Code of Responsible Practices. Throughout the decades, the Distilled Spirits Council's Code of Responsible Practices has embodied the high standards and commitment to responsibility that have been the touchstone of DISCUS member company advertising practices.

The provisions of the Code apply to every type of print and electronic media, including the Internet and any other on-line communications, used to advertise or market beverage alcohol. These provisions also apply to every type of promotional or marketing activity or event, including all product placements.

By this Code, DISCUS members hold themselves to a standard higher than mandated by any law or regulation. Since October 27, 1934, the distillers' voluntary Code has been revised and updated as the marketplace and technology have changed. For example, the Code was revised in 1998 to include specific provisions regarding websites and other on-line communications.

Similarly, as society and social mores have changed, the Code has evolved. To that end, enhanced Code changes to the responsible content provisions include:

- More explicit provisions prohibiting depictions of excessive drinking and use of sex as a selling point;
- Incorporation of responsible drinking statements in advertisements, marketing materials and promotional events, where practicable;
- Increased age requirement for models/actors in advertisements — must be at least 25 years old;
- Provision prohibiting advertising that associates drinking with “rite of passage” to adulthood.

Throughout its long history, the core principle of the voluntary DISCUS Code has been and remains to market our products to adults in a responsible and appropriate manner.

The Federal Trade Commission, the lead Federal agency

with advertising oversight, has commended the DISCUS Code on several occasions. In its September 2003 Report to Congress entitled “Alcohol Marketing and Advertising,” the FTC concluded that the distilled spirits industry’s advertising is directed to adults and that the distilled spirit industry’s self-regulatory measures are “rigorous” and effective. As part of the Report, the FTC also examined the Code Review Board process, finding that the Board’s actions “provide a critical review of spirits company compliance with the DISCUS Code.”

Many of the latest enhancements to the 2003 Code were developed in response to the FTC’s suggestions to improve the self-regulatory system. For example, the 2003 Code includes the following new provisions: a 70% adult (legal purchase age of 21 years and older) demographic; post-audits of advertisement placements; and the establishment of an outside advisory board as part of its compliance and complaint process.

In addition to member company internal and external training sessions, each DISCUS member has established an internal process to ensure compliance with the Code. Consistent with the provisions set forth in the Code, this process includes a separate review of advertising and marketing materials by a company employee who is not in the marketing department or who is not involved in the development of the advertising or marketing materials to the extent possible given a company’s size and organizational structure.

The FTC also has pointed to the benefits of industry self-regulation, concluding that it is realistic, responsive and responsible; can deal quickly and flexibly with a wide range of advertising issues without the rigidity of government regulation; and is particularly suitable in light of the First Amendment issues that otherwise would be raised by government regulation of advertising.

DISCUS members are committed to the responsible placement and content of their brand communications. Towards this end, DISCUS members voluntarily pledge to conduct their advertising and marketing in accordance with the provisions of the Code. DISCUS members recognize that it is not possible to cover every eventuality and therefore agree to observe the spirit, as well as the letter, of this Code.

CURRENT DISCUS CODE AND ORIGIN OF PUBLIC REPORT

The enhanced Code, the result of a year-long review, reflects the determination of DISCUS member companies to be responsive to the changing technology and culture of modern times. The 2003 Code applies to all of the over 2,800 distilled spirits, beer and wine brands marketed by DISCUS members, and is followed by an increasing number of non-member distilled spirits marketers.

The 2003 Code also incorporates several revisions to its content provisions, including more precise language regarding the sexual content of advertising, and also continues many of its longstanding prohibitions, such as not advertising or marketing in college newspapers.

The October 2003 Code revisions provide, among other things, that beverage alcohol advertisements be placed only in media where at least 70 percent of the audience is reasonably expected to be 21 years of age and older, the legal purchase age.

To implement these standards, the Code Review Board prepared detailed guidelines for the placement of advertisements in various media and for periodic, random after-the-fact audits of past placements to verify compliance with the demographic standard.

Since October 2003, the Board has reviewed and fine-tuned these guidelines to address general circulation magazines not measured by a syndicated data source by requiring third-party independent demographic surveys of those magazines (effective October 1, 2006) and to provide for semi-annual audits of random past placements using one quarter of data where available.

During this reporting period, we experienced an increase in queries regarding implementation of the guidelines to address general circulation magazines not measured by a syndicated data, as well as an increased awareness of the guidelines in general. In that regard, we are being contacted by individual magazines concerning how to comply with our protocol and we welcome these inquiries.

Consistent with our objective to direct our advertising to adults, DISCUS members have committed to the removal

of their advertisements from the school library subscription copies of *Newsweek*, *People*, *Sports Illustrated*, *Time*, and *U.S. News & World Report* by securing special bindings of those publications, which we understand are the magazines most commonly subscribed to by school libraries. As a consequence, DISCUS member companies voluntarily will refrain from advertising on the inside and back covers of these magazines (premium advertising space), each of which exceeds the 70% demographic standard set by the DISCUS Code, if their covers cannot be segregated out for special bindings of school library subscription copies. This initiative became effective July 1, 2006 for subscription copies of these magazines destined for this venue.

Further, the Code provides for the issuance of semi-annual reports. For decades, the Code Review Board has effectively addressed complaints about distilled spirits advertising but the decisions were never made public and, as a consequence, the rigor of the Board's review process and adherence to the Board's decision were not widely known.

To make the distilled spirits industry's review process more transparent and understandable to the public, a decision was made in 2003 by DISCUS and its member companies to publish semi-annual public reports detailing complaints against specific advertisements, decisions of the industry's internal review board and actions taken by each advertiser.

This new transparency allows the public at large to better evaluate and appreciate our Code review process. In fact, industry regulators, watchdogs, critics and the media have taken notice of the distilled spirits industry's approach to self-regulation, calling it a model for other industries, including food product manufacturers and the pharmaceutical industry.

In 2005, following the release of the first DISCUS Semi-Annual Report, the director of the FTC's alcohol advertising program told *The Washington Post* that self-regulation permits the spirits companies to "address things that couldn't be touched by a government agency because of the First Amendment." The director called this a "fabulous thing," noting that "[t]his is a far step above and beyond what other companies are doing."

In June 2006, the Semi-Annual Report was the recipient of the best “Business Ethics Communications” award by *PR News* Corporate Social Responsibility (CSR) Awards. The CSR Awards honor corporations and their partners that have implemented and executed highly successful CSR campaigns in the last 12 months. *PR News* called the CSR Awards “the global standard in corporate citizenship and communications worldwide.”

In May of that same year, DISCUS also was named a finalist in the American Business AwardsSM Best Corporate Social Responsibility Program” category for our public

reporting system. The American Business AwardsSM program is the only national, all-encompassing business awards program honoring great performances in the workplace.

We believe we are the first private trade group representing American business to issue a report on the proceedings of how an industry regulates itself according to its internal Code. The overall objective of the Semi-Annual Reports is to encourage full compliance with the Code and Code Review Board decisions across the entire distilled spirits industry and to ensure our longstanding commitment to responsible advertising is understood.

CODE REVIEW BOARD PROCESS

Unique within the beverage alcohol industry, the DISCUS Code provides for a Code Review Board that is charged with reviewing complaints about advertising material in the marketplace.

Historically, the Code Review Board process has worked as follows:

- When a complaint or inquiry is received, the Code Review Board is convened usually by conference call to exchange views and deliberate upon the advertisement in question.
 - The complainant often requests not to be identified. Each Code Review Board member describes his/her views regarding the advertisement and casts a vote concerning whether the advertisement is or is not a violation of the Code.
 - If the Code Review Board finds a particular advertisement violates the Code's provisions, the advertiser is so informed either orally or in writing.
 - Responsive action from the advertiser generally occurs quickly so that, if a change is required, the advertisement in question is either withdrawn or revised forthwith.
 - The Code Review Board's decision and the advertiser's response will be summarized in the Semi-Annual Report.
- The staff liaison for the DISCUS Code will notify the advertiser of the complaint.
 - The advertiser will have 15 business days to respond and will be invited to participate in the Code Review Board's discussion of the complaint.
 - The Code Review Board will convene to consider the complaint and the advertiser's response, and render a decision. The Code Review Board will proceed in its deliberations even if the advertiser has not responded after the time period noted above.
 - The advertiser will be notified of the Board's decision and the Board will be available to answer questions or assist with compliance.
 - The Code Review Board's decision and the advertiser's response will be summarized in the Semi-Annual Report.

The process described above is subject to change and may be revised from time to time.

For member company advertisements, historically the average time between receipt of a complaint and Code Review Board action has been a matter of days, but could take up to two to four weeks, a timeframe that also included responsive action by the advertiser. At present, the response time from receipt of a complaint to final resolution is on average less than a week. For non-DISCUS member companies, the process could take up to two months.

The process described above will continue to be used for any complaints questioning DISCUS member company advertising and/or marketing materials.

The following procedures are utilized for any complaints involving distilled spirits advertising and/or marketing materials by non-DISCUS members:

HOW TO FILE A COMPLAINT

If you have any questions regarding the Code of Responsible Practices for Beverage Alcohol Advertising and Marketing or a concern about a particular advertisement or marketing material subject to the Code, please write to the DISCUS Code Review Board, 1250 Eye Street, N.W., Suite 400, Washington, D.C. 20005. The contact person for the Code Review Board is Lynne Omlie. She serves as the staff liaison for the Code Review Board and can be reached at 202/682-8824 or by email at lomlie@discus.org.

The DISCUS Code is posted on the DISCUS website for ease of reference at <http://www.discus.org/responsibility/code.asp>. We request that complaints be made in writing with the advertisement and/or marketing materials in question appended to the complaint to ensure that they are processed properly and expeditiously.

CODE REVIEW BOARD

The Code Review Board is comprised of senior member company representatives elected by the DISCUS Board of Directors, and is chaired by one of those representatives, with DISCUS acting as the staff liaison. The current members of the Code Review Board are:

- Ms. Carolyn L. Panzer, Chairperson, Diageo
- Ms. Mary E. Barrazotto, Brown-Forman Corporation
- Mr. John R. Frank, Sidney Frank Importing Co., Inc.
- Mr. Michael Lurie, Barton Incorporated
- Mr. Thomas R. Lalla, Jr., Pernod Ricard USA
- Mr. Matt Stanton, Future Brands LLC
- Mr. Frederick J. Wilson, III, Bacardi U.S.A., Inc.

The main function of the Code Review Board is to review complaints and inquiries about particular advertising and/or marketing materials in terms of whether their content and placement are consistent with the Code's provisions. This undertaking not only encompasses DISCUS members' advertisements, but also extends to all distilled spirits advertising and/or marketing in the United States.

The Code Review Board also periodically reviews the Code to ensure that its provisions reflect the evolving marketplace, technological changes and current social mores. Suggested revisions and/or expansions to the Code are offered and made consistent with the overriding principle of the Code – to market our products to adults in a responsible and appropriate manner.

OUTSIDE ADVISORY BOARD

The DISCUS Code provides for an Outside Advisory Board charged with the following functions: (1) to provide confidential, nonbinding guidance to DISCUS members about draft advertising copy and/or marketing materials prior to execution concerning whether these draft materials would be consistent with the Code (i.e., pre-vetting advice); and (2) to serve as tie-breakers in the event the Code Review Board cannot reach a majority decision about a particular advertisement or promotional execution under review.

Our three outside advisors are distinguished experts from government, academia and broadcasting:

Ms. Joan “Jodie” Bernstein, currently with the Washington, D.C. law firm Bryan Cave, has a distinguished history of government service. Ms. Bernstein served as Director of the Federal Trade Commission’s Bureau of Consumer Protection from 1995 to 2001, where she was involved in every facet of advertising for the goods and services sold in the United States. Ms. Bernstein most recently was appointed to undertake a complete review of the Self-Regulatory Guidelines for the Children’s Advertising Review Unit (CARU) of the Council of Better Business Bureaus.



During her tenure at the FTC, Ms. Bernstein oversaw the FTC’s 1999 Report to Congress on alcohol advertising and self-regulation. Ms. Bernstein was the leading force in creating the National Advertising Review Council of the Better Business Bureaus, established in 1971 to review advertising copy to ensure that it is truthful and accurate.

Dr. Constantine “Deno” Curris, a leader among academic administrators, currently serves as the President of the American Association of State Colleges and Universities, a national association of over 400 public colleges and universities. AASCU, founded in 1965, is governed by an elected board of 15 university presidents and chancellors.



Dr. Curris has 40 years of service in higher education, including serving as President of Clemson University for over four years, University of Northern Iowa for 12 years and Murray State University in Kentucky for 10 years. Dr. Curris is a strong advocate for public higher education and its students, and a proponent of the qualitative strengthening of higher education institutions in order to meet public needs and expectations in the 21st Century. He has been and is actively engaged in addressing problems of alcohol abuse among college students.

Mr. Richard P. Gitter is a former network executive with 34 years of experience in the broadcast industry, including 25 years overseeing network advertising standards and compliance. Most recently, Mr. Gitter served as Vice President, Advertising Standards and Program Compliance for NBC where he reviewed commercials and programming to ensure compliance with Federal regulations and network policies. Mr. Gitter is a former member of the Board of Directors of the Council of Better Business Bureaus and the Radio Code Board of the National Association of Broadcasters.



RECENT OUTREACH ACTIVITIES

The major focus of Code Review Board activities during the period covered by the Report continues to involve outreach efforts about the provisions of the Code. These efforts were directed at familiarizing all interested parties with the Code and increasing awareness of the Code and the Code Review Board complaint process.

Over 1,000 copies of the fourth Semi-Annual Report published last July with explanatory materials were sent to State Alcohol Beverage Control officials, the Attorneys General of each State, officials at colleges and universities across the country, Federal agency officials, members of Congress, State legislators, industry trade association leaders, non-DISCUS member distillers, other industry members, health officials, and advocacy groups. Additionally, materials regarding the Code and the Semi-Annual Report were sent to nearly 100 non-DISCUS member micro-distilleries to familiarize them with the provisions of the Code and the Code Review Board process.

These outreach efforts were supplemented by personal visits and presentations to various groups, such as meetings with the National Conference of State Liquor Administrators (NCSLA), the National Alcohol Beverage Control Association (NABCA), government officials on both the Federal and State levels, and various industry trade association leaders. In addition, DISCUS also was a presenter at the 2006 Autumn meeting of the International Federation of Wines and Spirits (FIVS), a worldwide organization representing all sectors of the wine, spirits and beer industries. DISCUS was provided an opportunity to showcase the Code and to demonstrate how self-regulation works before this audience that included EU officials.

To date, eleven State Alcohol Beverage Commissions have the DISCUS website link on their websites, as do NCSLA and NABCA, and the Commonwealth of Pennsylvania has the DISCUS Code of Responsible Practices link

on its website. The FTC also references the DISCUS Code on its new “We Don’t Serve Teens” website (<http://www.dontserveteens.gov>). By linking to the DISCUS website or hyperlinking directly to the DISCUS Code, it is easier for government officials and other interested parties to refer any inquiries or concerns about a particular advertisement to the DISCUS Code Review Board. To facilitate this process we have provided language to utilize in linking to the DISCUS Code.

We continue to urge Federal and State officials and other interested parties to include the Code (<http://www.discus.org/responsibility/code.asp>) on their websites. If an individual has a concern about a particular advertisement for a beer, wine or distilled spirits brand marketed by a DISCUS member or a distilled spirits advertisement of a non-DISCUS member, the Code Review Board welcomes the opportunity to review that advertisement.

During this reporting period, DISCUS also had an opportunity to work with industry members and media-buying companies to bolster understanding of the DISCUS media placement guidelines at the DISCUS-hosted Media Buying Summit in November.

This Summit brought together industry leaders to share best practices to implement and enhance industry-wide compliance with the DISCUS Code’s 70% 21 years and older demographic placement provisions. The Summit featured speakers from Arbitron, Nielsen, MRI, and comScore, major media research firms that analyze demographic media audiences. The conference showcased separate panels concerning buying advertising space for radio, television, print, and digital media. To the best of our knowledge, DISCUS is the first industry group to hold such a Summit, with over 60 member and non-member attendees.

DISTILLED
SPIRITS
COUNCIL
OF THE
UNITED
STATES

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