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DISTILLED

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SPIRITS

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COUNCIL

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# SEMI-ANNUAL CODE REPORT

Eleventh Edition for the period July 2009 through December 2009

CODE OF RESPONSIBLE PRACTICES  
FOR BEVERAGE ALCOHOL  
ADVERTISING AND MARKETING

[www.discus.org](http://www.discus.org)

March 2010

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 70% of all distilled spirits sold in this country. For this reporting period, DISCUS members were:

Bacardi U.S.A., Inc.  
Beam Global Spirits & Wine, Inc.  
Brown-Forman Corporation  
Constellation Brands, Inc.  
Diageo  
Imperial Brands, Inc.  
Luxco, Inc.  
Moët Hennessy USA  
The Patrón Spirits Company  
Pernod Ricard USA  
Rémy Cointreau USA, Inc.  
Sidney Frank Importing Co., Inc.  
Suntory International Corp.

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## Open Letter to Interested Parties:

We are pleased to issue the eleventh 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, 2009 through December 31, 2009. For this reporting period, the Board received two complaints involving advertisements subject to the DISCUS Code of Responsible Practices for Beverage Alcohol Advertising and Marketing.

The DISCUS Code provides for a Code Review Board that is charged with reviewing complaints about advertising and marketing materials in the marketplace. Each complaint reviewed by the Board, whether lodged by a private citizen, third-party organization, government official, or an industry member, is given identical consideration and priority status. After receiving a complaint, the Board determines whether the advertisement is consistent with the provisions of the Code and, if a provision of the Code has been violated, the Board urges that the advertisement be revised or withdrawn.

Issuance of this Report allows the public-at-large to better evaluate and appreciate our longstanding review process. Complaint decisions also are made available pre-publication of this Report through the DISCUS website at <http://www.discus.org/responsibility/recentcodereview.asp>. More importantly, the Report serves as an effective tool to familiarize non-DISCUS member distillers with the provisions of the Code, as well as to educate cable companies, broadcasters, magazine publishers, online media outlets, and other communication channels about its provisions.

To increase awareness of the Code and to incorporate best practices in complying with its provisions, DISCUS hosts free "Best Practices" Media Summits for both DISCUS member companies and non-DISCUS member companies, their respective advertising agencies, media buyers and other external consultants. Exchanging experiences and sharing ideas about the 70% 21 years and older demographic placement and advertising content provisions of the Code has enhanced industry-wide best practice compliance with the Code.

Our next seminar is scheduled for March 25, 2010, and will be a full-day session covering radio, broadcast/cable, print, and internet/digital media placements, with a major focus upon emerging channels of communication. We will have panel discussions on new marketing technologies (mobile, text messaging, twitter/tweeting, smart phone apps, and beyond), social networking sites and a training tutorial on the Code's content provisions with illustrations of various do's and don'ts. Guest speakers will include FTC officials, media experts, and representatives from syndicated data sources, social networking websites, and the advertising community.

Once again, we urge State and Federal government officials and other interested parties to link to the DISCUS Code on their websites as a means to refer inquiries or concerns to the Code Review Board for rapid consideration. If you have any questions about the Code and/or the Code Review Board process, please do not hesitate to contact me.

Sincerely,



Peter H. Cressy  
President/CEO  
Distilled Spirits Council

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## ELEVENTH PUBLIC REPORT

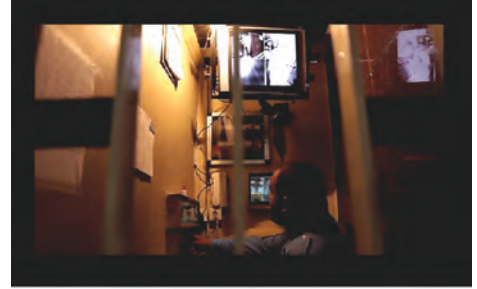
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**Advertisement:** Smirnoff vodka “Be There — Foam Pool” television advertisement

**Advertiser:** Diageo  
(DISCUS Member)

**Complainant:** Industry member

**Complaint Summary:** The complainant believes that the television advertisement runs afoul of Responsible Content Provision Nos. 19, 21 and 23 of the DISCUS Code. There was a 30-second and 15-second execution of this advertisement. The complainant states that “it is not legal to use abandoned, private property, particularly when possessing alcohol.” The complainant believes that this advertisement violates Responsible Content Provision No. 19, which provides that “[b]everage alcohol advertising and marketing materials should not imply illegal activity of any kind.” Further, the complainant states that “showing a group of young people using an abandoned, empty pool, filling it with debris and repeatedly jumping/flipping into it is both anti-social and dangerous behavior.” The complainant believes that this advertisement violates Responsible Content Provision No. 21, which provides that “[b]everage alcohol advertising and marketing materials should not be associated with anti-social or dangerous behavior.” In addition, the complainant states that, for the reasons mentioned above, “this commercial does not reflect generally accepted contemporary standards of good taste.” As a consequence, the complainant believes that this advertisement violates Responsible Content Provision No. 23, which provides that “[b]everage alcohol advertising and marketing materials should reflect generally accepted contemporary standards of good taste.”



**Code Review Board Decision:** In response to the complaint, the advertiser stated that the “foam pool” executions are part of the Smirnoff vodka “Be There” campaign. The advertiser stated that there was no breaking and entering into the pool area located on the roof of the building and that no illegal activities were depicted in the advertisement. The 30-second execution begins with screen shots where the actors are provided entry by a security guard into the building to the rooftop pool. In both the 30-second execution and the 15-second execution, none of the models gained entry

to the pool area illegally. No one accessed the pool area by trespassing the outer perimeter fence (the building's security fence) to the pool area. The advertiser also believes that the advertising executions did not depict anti-social or dangerous behavior because the pool was filled with foam prior to anyone jumping into the pool and no one was consuming any alcohol during those activities. Finally, the advertiser does not believe that the advertisement runs afoul of generally accepted contemporary standards of good taste.

After careful deliberation, the Code Review Board did not find the Smirnoff vodka television advertisement in violation of Responsible Content Provision Nos. 19, 21 or 23. Regarding Responsible Content Provision No. 19, the Board concluded that the individuals in the advertisement were not breaking and entering into the pool area and that the advertisement did not depict illegal activity demonstrated by the fact that the actors were admitted into the building (as depicted in the 30-second execution) and that, in both executions, no one was entering the pool area from the outside perimeter fence.

Although one individual jumped over a fence, the Board noted that it was the fence immediately surrounding the pool and not the building's security fence around the pool area. Further, the dialogue in the advertisement suggests that some of the individuals depicted in the pool scene came from their respective apartments in the building and thereby had legal access to the pool.

Regarding Responsible Content Provision No. 21, the Board concluded that this advertisement was not associated with anti-social or dangerous behavior because the foam-filled pool is comparable to other venues where protective padding is provided to guard against injury.

Regarding Responsible Content Provision No. 23, the Code Review Board did not view the advertisement as inconsistent with contemporary standards of good taste for the reasons stated above.

**Action by Advertiser:** None required

**Status:** Not applicable

**Advertisement:**

Captain Morgan Rum “40 Pack”  
television advertisement

**Advertiser:**

Diageo  
(DISCUS member)

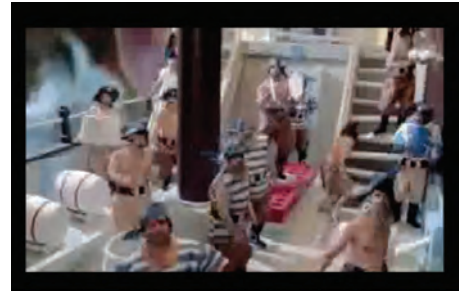
**Complainant:**

Industry Member

**Complaint Summary:**

The complainant believes that the advertisement runs afoul of Responsible Content Provision Nos. 2, 3, 14, and 15 of the DISCUS Code.

The complainant states that the “miniature characters and objects appear[ing] [in the advertisement are] similar to 'Lego'- type children's products” and thereby violate Responsible Content Provision Nos. 2 and 3 providing, respectively, that “[t]he content of beverage alcohol advertising and marketing materials should not primarily appeal to individuals below the legal purchase age” and that “[b]everage alcohol advertising and marketing materials should not depict a child or portray objects, images or cartoon figures that primarily appeal to persons below the legal purchase age.”



The complainant also believes that the “tagline of 'there's 40 shots in this bottle' with all [of the] many shot glasses full on the table” violates Responsible Content Provision Nos. 14 and 15 providing, respectively, that “[b]everage alcohol advertising and marketing materials should portray beverage alcohol products and drinkers in a responsible manner” and that “[b]everage alcohol advertising and marketing materials should not depict situations where beverage alcohol is being consumed excessively or in an irresponsible manner.”

**Code Review Board Decision:**

In responding to the complaint, the advertiser disagreed that the actors in the television advertisement were similar to “Lego” - type children's products or similar objects. The advertiser underscored that the actors were moving, singing and dancing in the video, and dressed in bright colors stylistically akin to Gilbert and Sullivan's comic opera, the Pirates of Penzance.

The advertiser also disagreed that the tagline referring to 40 shots in the bottle and the shot glasses on the table violated the Code's provisions depicting or portraying situations where beverage alcohol is being consumed excessively or in an irresponsible manner. The advertiser stated that the title of the advertisement, “40 Pack,” is significant because there are 40 servings in a 1.75 liter bottle of



Captain Morgan that was featured in the video. The advertiser stated that a point of the advertisement was to convey the relative economic value of a container with 40 servings in it. The advertiser also underscored that there was a correlation between the number of shot glasses on the table and the number of actors in the scene around the table who may choose to consume the product.

After discussion ranging from the realistic or stylistic nature of the actors in the advertisement (and the import thereof) to the complete pouring of a 1.75 liter bottle into the shot glasses on the table, the Code Review Board did not find the advertisement to be in violation of Responsible Content Provision Nos. 2, 3, 14, and 15 of the DISCUS Code.

**Action by Advertiser:**

None required

**Status:**

Not applicable

## BACKGROUND

### HISTORY OF THE DISCUS CODE AND ORIGIN OF THE PUBLIC REPORT

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

By this Code, DISCUS members hold themselves to a standard higher than mandated by any law or regulation. Throughout its long history, the core principle of the voluntary DISCUS Code has been and remains to be the marketing of our products to adults in a responsible and appropriate manner.

To that end, the provisions of the Code apply to every type of print and electronic media, including the internet and any other online 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.

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 online communications.

Similarly, as society and social mores have changed, the Code has evolved. The 2003 enhancements to the Code's responsible content provisions included:

- More explicit provisions prohibiting depictions of excessive drinking and the 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; and

- Prohibiting advertising that associates drinking with “rite of passage” to adulthood.

The 2003 Code revisions also included additional provisions requiring 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; a requirement for post audits of advertisement placements; the establishment of an outside advisory board as part of its compliance and complaint process; and the issuance of public Semi-Annual Reports of complaint decisions.

To implement the 70 percent 21 years and older demographic audience standard, the Code Review Board prepared detailed guidelines for the placement of advertisements in various media and for semi-annual, after-the-fact audits of random past placements using one quarter of data where available to verify compliance with the demographic standard.

Since 2003, the Board has reviewed and fine-tuned these guidelines and also has instituted new initiatives, such as the “unmeasured” magazine initiative 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).

Effective January 2008, the Code Review Board also issued a specific, detailed guideline for advertising and marketing materials placed on the internet/digital medium. To the best of our knowledge, we were the first trade group to issue an internet/digital buying guideline that will be used across an entire industry.

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 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.

\* \* \* \* \*

As discussed above, 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 decisions 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 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.

We believe we were 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 that our long-standing commitment to responsible advertising is understood.

In 2005, following the release of the first DISCUS Semi-Annual Report, the director of the Federal Trade Commission'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 Awards<sup>SM</sup> "Best Corporate Social Responsibility Program" category for our public reporting system. The American Business Awards<sup>SM</sup> program is the only national, all-encompassing business awards program honoring great performances in the workplace.

\* \* \* \* \*

The Federal Trade Commission (FTC), the lead Federal agency with advertising oversight, has commended the DISCUS Code on several occasions. In each of the Commission's in-depth, intensive reviews over the last ten years of the efficacy of industry's self-regulatory systems, the FTC confirmed that self-regulation is working.

For example, 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 spirits 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."

In June 2008, the FTC issued its third report on the effectiveness of our industry's efforts at self-regulation. In that report, the FTC found "high levels of compliance" with the industry's voluntary placement standard requiring advertising materials to be placed only where at least 70 percent of the audience is reasonably expected to be 21 years of age (the legal purchase age) and older and

concluded that the distilled spirits industry's advertising is directed to adults.

Specifically, the FTC found that more than 92 percent of all television, radio and print advertising placements met the 70 percent 21+ demographic standard and about 97 percent of total advertising impressions met the 70 percent standard. The FTC did not recommend a change in the 70 percent standard, noting that the current 70 percent baseline standard is grounded in the 2000 Census data and has helped ensure that alcohol advertising is not disproportionately directed to those below the legal drinking age, as recommended by the Surgeon General's Call to Action.

Finally, the FTC 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.

\* \* \* \* \*

Regarding compliance systems, 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 2009 DISCUS Code expands these outreach efforts to provide for DISCUS hosted "media summits" and other training seminars for industry members and their respective advertising agencies to incorporate best practices in complying with the Code.

Most recently, DISCUS was honored by the National Conference of State Liquor Administrators for its December 2008 Best Practices Media Summit. DISCUS was presented a Best Practices Award for Innovations in Community Collaboration at NCSLA's 2009 annual conference. The awards program is intended to identify and reward those that exemplify the best in the industry.

These Summits are held periodically and are free seminars designed for participants to learn about the best practices in the area of advertising placements and content outlined in the DISCUS voluntary Code. Our next Media Summit is scheduled for March of next year.

NCSLA judged the nominations on several criteria including value to other states; relevance and scope of subject to states and industry; new innovation or new approaches; efficiency in terms of time, money and resources; replicable in other jurisdictions; sustainability; and measurable outcomes or lessons learned.

NCSLA's recognition is extraordinarily meaningful to DISCUS and the spirits industry. The Code continues to be pointed to as a model of self-regulation. These summits are just one of the many ways we strive to enhance awareness and share best practices in adhering to the rigorous content and placement provisions of the DISCUS advertising Code.

\* \* \* \* \*

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 the DISCUS Code.

## 2009 DISCUS Code

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The current 2009 DISCUS Code reflects the determination of DISCUS member companies to be responsive to the changing technology and culture of modern times and builds upon the 2003 Code enhancements. As in the past, the current 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.

Among the key changes in the current Code are:

- Detailed product placements guidelines for movies, television programs, music videos, and video games;
- No supplier-sponsored promotions in licensed establishments on college/university campuses;
- No drinking games rewarding or encouraging excessive/abusive consumption as part of supplier-sponsored promotions;
- Member-controlled websites that contain downloadable advertising or marketing content should include instructions to individuals downloading the content that these materials should not be forwarded to individuals below the legal purchase age and, where practicable, the downloadable content should include a responsible drinking statement;
- DISCUS members should limit the manufacture of brand logoed apparel, and the licensing of member company trademarks used in connection with the sale of brand logoed apparel, to only adult sizes;
- Explicit “spring break” provisions prohibiting the use of the term “spring break” or sponsoring events/activities that use that term except if in a licensed premise;
- DISCUS members should establish and conduct a training program for employees involved in the marketing or promotion of a member company's brands, including appropriate initial and recurrent training;
- New external outreach provisions to provide for DISCUS to host “media summits” and other training seminars for industry members and their respective advertising agencies to incorporate best practices in complying with the Code; and

- More detailed “buying” guidelines for radio and a new “buying” guideline for newspaper placements.

The 2009 Code also was reorganized to ensure that the review process is as user-friendly as possible beginning with the submission of a complaint through publication of the Board's decision in the semi-annual report.

These revisions expand upon the 2003 Code enhancements, which incorporated several revisions to the content provisions, including more precise language regarding the sexual content of advertising, and also continued many of its long-standing prohibitions, such as not advertising or marketing in college newspapers.

To implement the 70 percent 21 years and older demographic audience standard first promulgated in the 2003 DISCUS Code, the Code Review Board prepared detailed guidelines for the placement of advertisements in various media and for semi-annual, after-the fact audits of random past placements using one quarter of data where available to verify compliance with the demographic standard.

These media “buying” guidelines have been reviewed and fine-tuned since 2003 when they were initially promulgated. These detailed guidelines set forth specific rules and data to meet the Code's demographic standard ensuring that at least 70% of the audience is reasonably expected to be 21 years of age or older (the legal purchase age) in all media advertising placements, as well as providing for audits of past placements, with post-audit corrective measures for future placements. These detailed media “buying” guidelines are discussed below and can be accessed via the website at: <http://www.discus.org/responsibility/code.asp>.

The DISCUS Code is the only U.S. code that brings beer, wine and distilled spirits under one tent with the same standards for all products marketed by DISCUS members and continues to extend its already significant compliance and enforcement reach. In that regard, the DISCUS Code is supported by the Kentucky Distillers' Association and the Presidents' Forum, a coalition of producers and importers of beer, wine and spirits, and also is followed by an overwhelming number of other non-DISCUS member distillers. Companies with small portfolios, large portfolios and new entrants historically have abided by the Code and Code Review Board decisions.

## MEDIA “BUYING” GUIDELINES: DEMOGRAPHIC DATA/ADVERTISEMENT PLACEMENT GUIDELINES

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In 2003, the DISCUS Code Review Board released its first set of guidelines to implement the responsible placement provisions of the DISCUS Code. Prior to release of these guidelines, the Board met with experts in the field, syndicated demographic data sources and various media companies to obtain their respective best thoughts in devising guidelines to meet the demographic placement standard where at least 70% of the audience was reasonably expected to be 21 years of age or older (the legal purchase age).

Since that time, the Board has continued to revise and finetune these guidelines. Effective January 2008, the Code Review Board issued a specific, detailed guideline for advertising and marketing materials placed on the internet/digital medium. To the best of our knowledge, we were the first trade group to issue an internet/digital buying guideline that will be used across an entire industry. Last year, the Board issued its latest set of guidelines, which were amended to provide more specific day-parts for radio and a new “buying” guideline for newspaper placements. These enhanced guidelines, which took effect in January 2009, include the rigorous “buying” guidelines that already have been in place.

Set forth below are the Code's “buying” guidelines regarding the placement of advertisements in all mediums (e.g., TV, radio, magazine, newspaper, internet/digital communications) and the requirement for semi-annual, random after-the-fact audits (post audits) of placements to meet the demographic standard where at least 70% of the audience is reasonably expected to be 21 years of age or older (the legal purchase age (LPA) audience composition).

### I. Media placement and the 70% LPA standard

A. A placement will be considered to be in compliance with this LPA standard if:

- i) The advertiser has a reasonable expectation, determined by using reliable, up-to-date audience composition data, that the LPA audience composition will be at least 70%;
- ii) The advertiser conducts internal, semi-annual after-the-fact audits of a random portion of past placements to verify that such placements were in compliance with the 70% LPA audience composition standard; and
- iii) The advertiser, upon learning of a non-compliant placement, takes appropriate, corrective action for future placements.

B. A reasonable expectation for meeting this demographic standard takes into account marketplace realities, the medium and available demographic audience composition data, and includes:

- i) Recognition that a company's media buys generally are determined prior to its upcoming fis-

cal year for placement during the course of that fiscal year;

- ii) Recognition that a company's media buys rely upon historical demographic data to estimate the future LPA audience composition; and
- iii) Recognition of the availability and publication intervals of syndicated audience composition data; for example, MRI TwelvePlus data are published annually and Arbitron data are published quarterly, whereas national broadcast networks have the most frequently measured syndicated audience composition data (national Nielsen data) thereby affording, among other things, more data for advertisement placement and for more expeditious after-the-fact audits, as compared to, for example, local (spot) TV and cable, as well as radio and print media. Syndicated audience composition data, such as comScore or Nielsen Online (formerly Nielsen//NetRatings), for internet/digital communications also are published on a more frequent basis and are taken into account in these guidelines for purposes of advertisement placement and post audits.

## II. Media placement and audience composition data

### A. For TV-broadcast (network/local), cable (network/local) and syndication:

- i) Use of a syndicated data source: Purchase by program (or, if program specific data are unavailable, by daypart/timeslot) using nationwide “2+” audience composition data, such as national Nielsen data, based upon the last two quarters of such data
- ii) For new programs, data for similar programs or time periods
- iii) Compliance standard: A placement will be considered appropriate when the above-referenced data show that the placement is in compliance with the Code
- iv) Post audits: A past placement will be considered appropriate where data published or supplied for the quarter in which the placement ran show an LPA audience composition that was in compliance with the Code
- v) Post audit corrective measures for future placements: In the event that the post audit indicates that the placement did not meet the LPA demographic standard, the advertiser will, as soon as practicable, make schedule adjustments, cancellations, or other appropriate changes to comply with the standard in future placements

### B. For Radio:

- i) Scope: The radio buying guideline applies to all paid and bonus spots including rotators, negotiated and agreed upon mentions, liners, tags, billboards, and any other type of announcement
- ii) Use of a syndicated data source: For audited radio stations, purchase by daypart using the Average Quarter Hour (AQH) Persons measurement in Arbitron quarterly reports based upon the last two quarters of such data (where seasonal fluctuations are evident, prior year data also should be taken into account if available):
  - (a) Time periods in which radio spots may be placed shall be in the following Arbitron standard dayparts or other time periods as specified below:

- i. AM Drive Monday thru Friday  
6:00 a.m. - 10:00 a.m.
- ii. Midday Monday thru Friday  
10:00 a.m. - 3:00 p.m.
- iii. PM Drive Monday thru Friday  
3:00 p.m. - 7:00 p.m.
- iv. Evening Monday thru Friday  
7:00 p.m. - 12:00 midnight
- v. Monday thru Friday  
12:00 midnight - 6:00 a.m.
- vi. Sat. & Sun.  
6:00 a.m. - 10:00 a.m.
- vii. Sat. & Sun.  
10:00 a.m. - 3:00 p.m.
- viii. Sat. & Sun.  
3:00 p.m. - 7:00 p.m.
- ix. Sat. & Sun.  
7:00 p.m. - 12:00 midnight
- x. Sat. & Sun.  
12:00 midnight - 6:00 a.m.

- (b) More specific data than daypart can be used for audience composition such as, for example, narrowing the a.m. drive hours from 6:00 a.m.-10:00 a.m. to 8:00 a.m.-10:00 a.m. to determine audience composition
- (c) Any period of time adjacent to an Arbitron standard daypart that is also purchased, provided that each additional hour independently satisfies the Code provision that 70% of the audience composition is 21 years of age or older
- (d) Any period of two or more consecutive hours, provided that each hour independently satisfies the Code provision that 70% of the audience composition is 21 years of age or older

- iii) Unmeasured stations: If the station is not measured by a syndicated data source (e.g., a new station or a station not measured by Arbitron), data provided by the station regarding the target listenership audience or audience compositional data from time periods for comparable stations in comparable markets
- iv) Compliance standard: A placement will be considered appropriate when the above-referenced data show that the placement is in compliance with the Code
- v) Post audits: A past placement will be considered appropriate where data published or supplied for the quarter in which the placement ran show an LPA audience composition that was in compliance with the Code
- vi) Post audit corrective measures for future placements: In the event that the post audit indicates that the placement did not meet the LPA demographic standard, the advertiser will, as soon as practicable, make schedule adjustments, cancellations, or other appropriate changes to comply with the standard in future placements.

C. For Magazines:

- i) Use of a syndicated data source: Purchase by publication using “12+” audience composition data, such as MRI consolidated TwelvePlus data (designed to allow analysis of “12+” youth and adult readership) or, if unavailable, MRI “18+” data, based upon the last publication of such data
- ii) More specific data regarding audience composition also meet this standard, such as subscription-only or a “21+” subscriber special edition of the publication
- iii) Unmeasured magazines not of general circulation: If the publication is not measured by a syndicated data source (e.g., a new publication or a publication not measured by MRI), data provided by the publisher regarding target readership audience or data for similar publications (see section D below for “unmeasured magazines” intended for general circulation, including maiden/new publications, even if it is, for example, a prototype of another magazine)

- iv) Compliance standard: A placement will be considered appropriate when the above-referenced data show that the placement is in compliance with the Code
- v) Post audits: A past placement will be considered appropriate where data published or supplied subsequent to the placement show an LPA audience composition that was in compliance with the Code
- vi) Post audit corrective measures for future placements: In the event that the post audit indicates that the placement did not meet the LPA demographic standard, the advertiser will, as soon as practicable, make schedule adjustments, cancellations, or other appropriate changes to comply with the standard in future placements

D. Independent measurement of unmeasured magazine demographic profiles:

- i) Magazines intended for general circulation that are not measured by a syndicated data source, such as MRI or Simmons, and have or are intended to have a subscriber base should have an independent measurement of their subscribers, which meets the following criteria:
- ii) A demographic survey of subscribers should be conducted periodically for established magazines and for new magazines before consideration of an advertisement placement (and again for new magazines once the subscriber base has stabilized; for example, after initial subscribers have had an opportunity to renew would be appropriate in the latter instance)
- iii) Survey of magazine subscribers must be conducted by an independent third party research company using established research methods, such as the ABC Subscriber Study Audit requirements
- iv) Survey supplier and date survey was conducted must be identified
- v) Sample should be at least 300 in-tab (tabulated) respondents with the sample frame fully reported



- vi) Sample must be pulled on an nth name basis from all eligible names on the publication's full subscriber file for U.S. only. No complimentary copies, international, business addresses, demographic, or regional edition splits (unless these copies also are used for the advertising)
  - vii) Subscribers, not other household members, should be asked to fill out and return the survey
  - viii) Actual age, year of birth or check off for appropriate bracket of age are acceptable, as long as the age bracket identifies 21 as a starting point (for example, 21-34 versus 18-24)
  - ix) Upon the receipt of the independent demographic survey, a potential advertiser will evaluate the audit in conjunction with other factors prior to purchasing an advertising placement, such as the content of the magazine, similar or comparable publications, the "pass along" rate and/or circulation distribution of similar or comparable publications
- E. For Newspapers:
- i) Scope: This guideline applies to all paid and bonus placements in the print editions of daily, Sunday and weekly newspapers intended for general circulation that have or are intended to have a subscriber base, including advertising supplements, magazine sections and other forms of advertising added to or delivered with newspapers
  - ii) Use of a syndicated data source: Prior to the purchase of print advertisements in newspapers distributed nationally, regionally or locally, review audience composition data utilizing an audience measurement source recognized by the advertising industry (such as, but not limited to, Scarborough Research and Mediamark Research, Inc.). Data for the most recent rating period available will be reviewed to determine that placements are reasonably expected to meet the demographic standard
  - iii) Unmeasured newspapers: If the newspaper is not measured by a syndicated data source (e.g., a new newspaper or a newspaper not measured by Scarborough Research or Mediamark Research, Inc.), use target readership audience or subscription data provided by the publisher and/or data for similar newspapers
  - iv) Compliance standard: A placement will be considered appropriate when the above-referenced data show that the placement is in compliance with the Code
  - v) Post audits: A past placement will be considered appropriate where data published or supplied subsequent to the placement show an LPA audience composition that was in compliance with the Code
  - vi) Post audit corrective measures for future placements: In the event that the post audit indicates that the placement did not meet the LPA demographic standard, the advertiser will, as soon as practicable, make schedule adjustments, cancellations, or other appropriate changes to comply with the standard in future placements
- F. For Internet/digital:
- i) Scope: The internet/digital buying guideline applies to all paid and unpaid (including value-added) placements made by or under the control of the advertiser, including advertising on third-party websites, video advertisements, audio mentions, internet banners, pop-ups, sponsorships, user-generated content (including blogs), and other types of internet/digital advertising or marketing
  - ii) Use of a syndicated data source: Purchase or place using "2 +" syndicated audience composition data, such as comScore or Nielsen Online, based upon the most recent three-month site average of available audience data of unique visitors (where seasonal fluctuations are evident, prior year data also should be taken into account if available)

- (a) An advertiser consistently will use one of these syndicated data sources as its primary demographic measurement by brand and an alternate syndicated data source will be used only when the advertiser's primary source does not measure that particular medium
- (b) Given that the methodologies and measurements of internet/digital media are evolving, this data source guideline will be reviewed as further developments warrant and, if appropriate, revised accordingly
- iii) Independent measurement of unmeasured medium: If the digital medium is not measured by a syndicated data source, the advertiser prior to purchasing or placing an advertisement or any marketing materials shall obtain from the publisher of the medium an independent demographic survey based upon the most recent three-month site average of available audience data of unique visitors conducted by a third-party research company using established research methods
- iv) More specific data to meet the demographic standard: Where the average of the syndicated audience composition data or an independent third-party survey over the three-month time period (as described in subsection iii above) does not show a 70% 21 years of age or older (LPA) demographic, the advertiser can use the website's "registered user" database to place their advertising or marketing materials to users 21 years of age or older if the website has that capability
- v) Unmeasured medium with a "registered user" database: If the digital medium is not measured by a syndicated data source or an independent third-party survey as described in subsection (iii) above, but has a "registered user" database that can link a user to an age, the advertiser can use the website's "registered user" database to place its advertising or marketing materials to users 21 years of age or older
- vi) "Limited edition" websites: For "one-time" only, event-specific and/or other similar websites, the advertiser shall review and evaluate comparable websites, the proposed content of the website in question, data provided by the publisher regarding the target audience, and any other relevant factor to project a reasonable expectation of the demographic audience prior to purchasing or placing an advertisement or any marketing materials
- vii) Compliance standard: A placement will be considered appropriate when the percentage of unique visitors reflected in the above-referenced data shows that the placement is in compliance with the Code
- viii) Post audits: A past placement will be considered appropriate where demographic data for the month(s) in which the placement ran show an LPA audience composition that was in compliance with the Code
- ix) Post audit corrective measures for future placements: In the event that the post audit indicates that the placement did not meet the LPA demographic standard, the advertiser will, as soon as practicable, make schedule adjustments, cancellations, or other appropriate changes to comply with the standard in future placements

These Guidelines will be reviewed periodically to ensure that they reflect the most current and appropriate recognized electronic and print audience composition data.

## RECENT OUTREACH ACTIVITIES

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The major focus of Code Review Board activities during the period covered by this 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 its provisions and the Code Review Board process.

Earlier this year, the DISCUS Code Review Board received NCSLA's 2009 Best Practices Award for Innovations in Community Collaboration for the Media Summit. DISCUS was the only private sector group recognized by NCSLA for best practices. Founded in 1934, NCSLA is a national association comprised of all License States and most Control States and provides a forum for the discussion and dissemination of beverage alcohol information and practices. NCSLA judged the nominations on several criteria, including value to other states; relevance and scope of subject to states and industry; new innovation or new approaches; efficiency in terms of time, money and resources; ability to replicate in other jurisdictions; sustainability; and measurable outcomes or lessons learned.

During this reporting period, the DISCUS Code Review Board also met with representatives of YouTube, MySpace and Facebook to discuss marketing challenges and solutions in the current digital marketing space. This outreach effort by the Code Review Board is one of many engagements to dialogue with experts on traditional and emerging marketing platforms in light of the voluntary provisions of the DISCUS Code.

Some of the overarching themes discussed with the social networking websites were application review, demographics/access control, network content administration, page content administration/moderation, and future trends/developments/resources.

In particular, our discussions included:

- an overview of each platform and what it is used for and how it operates
- the current number of users
- the percentage change in the number of users over the last 5-year period
- the age demographics of the current users
- the percentage change in those demographics over the last 5-year period
- future projections in the number of users/age demographics
- different options for beverage alcohol brand owners to utilize the platform

- the available technology for beverage alcohol brand owners to direct their brand pages and/or advertisements to individuals of legal purchase age (21 years of age)
- current activity specific to the brand owner in monitoring a profile page established by a beverage alcohol brand owner

Our outreach efforts during this reporting period 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, the Semi-Annual Reports with explanatory materials are 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. Materials regarding the Code and the Semi-Annual Report also are sent to non-DISCUS member micro-distilleries to familiarize them with the provisions of the Code and the Code Review Board process.

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.

As a result of our outreach efforts, twelve State Alcohol Beverage Commissions, the FTC, NCSLA, and NABCA link to the DISCUS Code or DISCUS website. The FTC references the DISCUS Code on its "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 language available to utilize should you choose to link to the DISCUS Code.

## CODE REVIEW BOARD PROCESS

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Unique within the beverage alcohol industry, the DISCUS Code provides for a Code Review Board that has been operational for decades, charged with reviewing complaints about advertising materials in the marketplace. Historically, the Code Review Board process has worked as follows:

- All complaints involving advertising and/or marketing materials of the distilled spirits, beer and wine brands marketed by a DISCUS member company and distilled spirits products of a nonmember company are forwarded to the DISCUS Code Review Board for their review and consideration. Complainants are afforded the option of anonymity in processing their complaint.
- Upon receipt of a complaint, the Code Review Board staff liaison notifies the advertiser and invites the advertiser to respond to the complaint and to participate in the Board's review of the complaint to answer any questions. DISCUS members are expected to respond forthwith. Non-DISCUS members have 15 business days to respond.
- The Code Review Board convenes to consider the complaint and the advertiser's response, and then deliberates and renders a decision. The Code Review Board proceeds in its deliberations usually within a week for DISCUS member company complaints and after the time period noted above has elapsed for non-DISCUS member complaints even when the advertiser has not responded. Board members have no vote upon complaints lodged against their advertisements.
- The advertiser is notified of the Board's decision and, if a violation has occurred, the Board urges the advertiser to revise or withdraw the advertisement forthwith. The Board is available to answer questions or assist with compliance.
- The Code Review Board's decision and the advertiser's response are posted on the DISCUS website and published in the Semi-Annual Report. This process is reviewed periodically and may be revised when warranted. 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. On average, the response time from receipt of a complaint to final resolution is less than a week. For non-DISCUS member companies, the process could take up to two months.

## CODE REVIEW BOARD

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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.
- Ms. Pam Frantz, Beam Global Spirits & Wine, Inc.
- Ms. Donna H. Hartman, Rémy Cointreau USA, Inc.
- Ms. Jennifer Long, The Patrón Spirits Company
- Mr. David C. Wagner, Constellation Brands, Inc.
- Mr. Thomas R. Lalla, Jr., Pernod Ricard USA
- Mr. Christopher J. O'Rourke, Moët Hennessy USA, Inc.
- 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 the Code's 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

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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); (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; and (3) to provide overall guidance about the Code's provisions and review process.

Our three outside advisors are distinguished experts from government, academia and broadcasting: Ms. Joan “Jodie” Bernstein, currently with the Washington, D.C. law firm Kelley Drye & Warren, LLP, 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 of the goods and services sold in the United States. In 2006, she 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. Most recently, Ms. Bernstein received the American Lawyer Lifetime Achievement Award and was the recipient of the Better Business Bureau International Torch award for Consumer Leadership for significantly advancing marketplace trust through her consumer advocacy initiatives and her outstanding leadership in the area of advertising self-regulation.



During her tenure at the FTC, Ms. Bernstein oversaw the FTC's 1999 Report to Congress on alcohol advertising and self-regulation. Ms. Bernstein played an important role in the creation of the National Advertising Review

Council of the Better Business Bureaus, established in 1971, which has the responsibility of ensuring that national advertising is truthful and accurate.

Dr. Constantine “Deno” Curris, a leader among academic administrators, served 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 42 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 30 years overseeing network advertising standards and compliance. Most recently, Mr. Gitter served as Vice President of 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.



## HOW TO FILE A COMPLAINT

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If you have any questions regarding the DISCUS Code or a concern about a particular advertisement or marketing material subject to the Code, please contact the DISCUS Code Review Board, c/o Lynne Omlie, Code Review Board Staff Liaison, 1250 Eye Street, N.W., Suite 400, Washington, D.C. 20005 or email Lynne Omlie at lomlie@discus.org.

We request that complaints be made in writing, identify the provisions of the Code in question and provide an explanation for the basis of the complaint. The advertisement and/or marketing materials in question should be appended to the complaint to ensure that it is processed properly and expeditiously.

To access the DISCUS Code and its provisions:  
<http://www.discus.org/responsibility/code.asp>.

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DISTILLED  
SPIRITS  
COUNCIL  
OF THE  
UNITED  
STATES

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[www.discus.org](http://www.discus.org)

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