

INTRO TO ALCOHOL BEVERAGE REGULATORY LAW AND RELATED COMPLIANCE ISSUES

WHAT WILL WE COVER TODAY?

- Brief history of alcohol regulation
- Current Federal & State regime of alcohol regulation
- Alcohol Beverage Advertising / Promotional Issues
- Universally Applicable Advertising Guidelines

BUT FIRST - WHAT IS AN ADVERTISEMENT?

- Any written or verbal illustration or statement;
- Which is in, or calculated to induce sales in interstate or foreign commerce, or is disseminated by mail;
- Whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or any written, printed, graphic, or other matter, accompanying the container, representations made on cases, billboard, sign, or other outdoor display, public transit card, other periodical literature, publication, or in a radio or television broadcast, or in **any other media**.

BRIEF HISTORY OF ALCOHOL REGULATION

18th Amendment established Prohibition in 1919

- But it didn't work - the law was widely ignored, and people drank anyway.
- Alcohol was made illegally or smuggled into the country.
- Organized crime and corruption flourished.

21st Amendment ratified in 1933 - ended prohibition

- Concurrent Federal and States Power
- Each state given control and licensing power
- Each State's rights are not absolute

ESTABLISHMENT OF THE THREE-TIER SYSTEM

Acts as a safety net to provide checks and balances in the way alcohol is distributed & sold to retailers as well as consumers. Takes control away from manufacturer; gives it to retailer.

- Tier 1 - Producers – manufacture beer, wine, & spirits
- Tier 2 – Distributors – buy beer, wine, & spirits from producers then sell to retailers
- Tier 3 – Retailers – sell beer, wine, & spirits to consumers

CONCEPT OF TIED-HOUSE PROHIBITIONS

Generally speaking, an *industry member* may not, directly or indirectly, provide an unpermitted *thing of value* to a *retailer*, subject to specific exceptions [ownership; trade practices].

DUAL SYSTEM OF FEDERAL & STATE ALCOHOL REGULATION

Intended to moderate the evils that led to prohibition while protecting consumers and collecting revenue.

FEDERAL: TTB ENFORCEMENT

- Collect and protect the revenue by collecting taxes owed
- Protect the public by ensuring alcohol beverages are produced, labeled, advertised in accordance with Federal law
- *Active trade practice investigation effort is ongoing in partnership with several states**

FEDERAL: FTC ENFORCEMENT

- Advertising and trade practices where TTB cannot act – CAN-SPAM, new advertising media, testimonials & endorsements
- Federal policy to encourage voluntary compliance (Beer Institute Code; Wine Institute's Code of Advertising Standards; DISCUS Code)
- Demographic requirements : 71.6% above the LDA

State: control state vs. license state: *The states vary greatly in their approach to alcoholic beverage regulation. (e.g. OR vs. CA)*

ALCOHOL BEVERAGE ADVERTISING / PROMOTIONAL ISSUES

Many alcohol beverage promotion are restricted or prohibited in many states, such as...

Coupons, giveaways, sweepstakes and contests, print and broadcast advertisements, exterior signage, point-of-sale materials, sampling and tasting programs, and *public consumer facing events*.

Supplier advertising—including sponsored content—may not refer to a specific retailer's name *But retailer advertising may refer to the brands carried by the retailer.*

SOCIAL MEDIA / DIGITAL MARKETING

Special laws have not been written! Yet digital marketing is subject to enhanced regulatory scrutiny. Concerns of the regulators include:

- Reaches broad audience – immediately
- Privacy concerns
- Tied-house concerns
- Age control challenges
- Intellectual property concerns

FTC is VERY interested in industry activities: Report on Advertising in the Alcohol Industry. Purpose of study:

- Monitor marketing and efforts to avoid targeting youth
- Promotes effective self-regulation
- Educate Congress, the Commission, industry, and the public

Information sought from industry

- Background info including brands, sales, marketing expenditures
- Placement practices including demographic data for all TV, radio, magazine, newspaper and internet placements (extra attention paid to online/social media/other digital activities)
- FTC published a report on the findings with recommendations for best practices

UNIVERSALLY APPLICABLE ADVERTISING GUIDELINES

- Advertising shall comply with the laws, regulations, and self regulatory codes
- Advertising shall be sensitive to Generally Accepted Contemporary Standards of Public Decency, Good Taste
- Advertising shall portray alcohol consumption in a responsible manner.
- Advertising shall not Infringe Intellectual Property, Publicity and/or Privacy Rights of Others.

ADVERTISING SHALL COMPLY WITH ALL APPLICABLE LAWS, REGULATIONS, AND SELF-REGULATORY CODES.

- Any applicable state or federal laws, rules and regulations
- Relevant industry advertising guidelines
- Wine Institute's Code of Advertising Standards
- DISCUS Code of Responsible Practices
- Beer Institute Advertising and Marketing Code
- Advertising must be truthful and not misleading
- Content must be consistent with FTC Guidelines, including but not limited to the Guides Concerning the Use of Endorsements and Testimonials in Advertising.
 - *I am an employee [or representative] of _____.*
 - Include a hash tag notation:
 - *#emp (employee); #spon (sponsored); #paid (paid)*

ADVERTISING SHALL BE SENSITIVE TO GENERALLY ACCEPTED CONTEMPORARY STANDARDS OF DECENCY.

For example, the content must *not*:

- Contain derogatory references towards race, sexual preference, gender, minorities, or religious affiliations;
- Contain nudity, sexually explicit content, violence, abuse, or offensive subject matter;
- Use profanity or vulgar language;
- Promote, depict, or feature criminal or illegal activities, drug use, drug dealing, gambling, theft, fraud, or abusive, threatening or obscene conduct.

ADVERTISING SHALL PORTRAY ALCOHOL CONSUMPTION IN A RESPONSIBLE MANNER.

- Advertising shall not use unacceptable depictions or portrayals of alcohol and shall only directed towards adults of legal drinking age who choose to drink.

ADVERTISING SHALL NOT INFRINGE IP, PUBLICITY AND/OR PRIVACY RIGHTS OF OTHERS.

Advertising must not:

- Contain illegal or unauthorized copies of copyrighted works;
- Include photographs or videos without obtaining prior consent. All photographs or videos require signed authorization from the individuals pictured or recorded;
- Violate the privacy rights, publicity rights, copyrights, trademark rights, contract rights or any other rights of any person;
- Make derogatory references towards its own products, any competitor or such competitor's products, or any other individual, company, or brand;
- Incorporate trademarked materials (e.g., company names, sports teams, TV shows, movies, celebrities, songs, works of art, recipes, etc).

WHAT DOES ALL THIS REGULATION BOIL DOWN TO?

- Manufacturers CANNOT favor or discriminate against particular retailers.
- Suppliers and distributors CANNOT provide "things of value" to retailers.
- Don't deceptively advertise.
- Don't appeal to youth.
- Don't promote alcohol as good for your health.
- Don't promote over-consumption.
- Don't suggest alcohol makes you successful or makes life better.
- Don't relate to motor vehicles or activities that require skill.

REFERENCE / AUTHORITIES LINKS:

Federal permitting process for a winery:

<https://www.ttb.gov/wine/index.shtml>
https://www.ttb.gov/wine/federal_app.shtml

Federal guidance on social media advertising:

<https://www.ttb.gov/advertising/alcohol-beverage.shtml>
https://www.ttb.gov/industry_circulars/archives/2013/13-01.html

Oregon Winery Licensing Process and related state law:

https://www.oregon.gov/olcc/LIC/pages/winery_license.aspx
https://www.oregon.gov/olcc/Pages/laws_and_rules.aspx

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