

SELF-REGULATION in the ALCOHOL INDUSTRY

A Review of Industry Efforts to Avoid Promoting Alcohol to Underage Consumers

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TABLE OF CONTENTS

[EXECUTIVE SUMMARY](#)

[I. INTRODUCTION](#)

[II. ADVERTISING SELF-REGULATION](#)

[The Benefits of Self-Regulation](#)
[Self-Regulation in the Alcohol Industry](#)

[III. ALCOHOL INDUSTRY ADVERTISING CODES](#)

[Advertising Placement](#)
[Advertising Content](#)
[Product Placement](#)
[Online Advertising](#)
[College Marketing](#)

[IV. CODE IMPLEMENTATION AND BEST PRACTICES](#)

[Advertising Placement](#)

[Advertising Content](#)
[Product Placement](#)
[Online Advertising](#)
[College Marketing](#)

[V. CODE ENFORCEMENT: THE NEED FOR INDEPENDENT REVIEW](#)

[VI. RECOMMENDATIONS](#)

[ENDNOTES](#)

[APPENDIX A](#): Underage Alcohol Use and Risks

[APPENDIX B](#): Alcohol Advertising Expenditures


[APPENDIX C](#): Public Service Activities by the Beverage Alcohol Industry

[APPENDIX D](#): Beverage Alcohol Industry Self-Regulatory Codes 

[APPENDIX E](#): Beverage Alcohol Company Advertising and Marketing Guidelines 

[APPENDIX F](#): FTC Orders to File Special Reports, Sent to Beer, Distilled Spirits and Wine Producers



[APPENDIX G](#): Alcohol Web Site Survey Form 

[APPENDIX H](#): Application of Antitrust Principles to Industry Voluntary Efforts to Restrict Marketing to Underage Persons

[APPENDIX I](#): Foreign Regulation and Self-Regulation of Alcohol Advertising

EXECUTIVE SUMMARY

This report responds to a recent request from the Congressional Committees on Appropriations that the FTC examine the effectiveness of the alcohol industry's voluntary guidelines for advertising and marketing to underage audiences. The report provides company-specific information, supplied in response to orders by the Commission, only in an aggregate or anonymous fashion.

Underage alcohol use is a significant national concern. Last year, a third of twelfth graders reported binge drinking. Moreover, while underage alcohol use levels decreased from about 1980 to 1993, those decreases have stopped and some important markers of underage alcohol use appear to be on the rise. Finding ways to deter alcohol use by those under 21 is a constant challenge for the beverage alcohol industry -- including beer, wine and distilled spirits producers -- as well as for government agencies and consumer organizations.

One important industry initiative involves voluntary self-regulatory codes intended to prevent alcohol advertising and marketing that appeal to underage consumers. Self-regulation is a realistic, responsive and responsible approach to many of the issues raised by underage drinking. It can deal quickly and flexibly with a wide range of advertising issues and brings the accumulated experience and judgment of an industry to bear without the rigidity of government regulation. The Commission regards self-regulation as particularly suitable in this area, where government restriction -- especially if it involves partial or total advertising bans -- raises First Amendment issues.

The industry presently seeks to minimize the extent to which underage consumers are exposed to and attracted by alcohol advertising by employing self-regulatory codes. Information supplied by trade associations and eight key industry members leads the Commission to conclude that for the most part, members of the industry comply with the current standards set by the voluntary advertising codes, which prohibit blatant appeals to young audiences and advertising in venues where most of the audience is under the legal drinking age. In addition, many individual companies follow their own internal standards that exceed code requirements when they are deciding what their ads should say and where they should be placed.

While the current codes provide important protections, improvements are needed both in code standards and implementation to ensure that the goals of the industry codes are met.

The Commission recommends the following:

- ***Third-Party Review:*** The industry should create independent external review boards with responsibility and authority to address complaints from the public or other industry members. This fundamental change would demonstrate to those in the industry -- as well as to consumers -- that code compliance is a high priority and that all members are held to reasonably consistent standards. Currently, none of the codes provides for an independent assessment of the merits of a complaint or follow-up procedures for complaint resolution.
- ***Ad Placement:*** The industry should raise the current standard that permits advertising placement in media where just over 50 percent of the audience is 21 or older, and members should be able to demonstrate their compliance with that higher standard. Because the 50 percent standard permits alcohol advertising to reach large numbers of underage consumers, some companies already have raised their own internal placement standards, prohibiting ads where as little as 25 percent of the audience is underage.
- ***Best Practices:*** Several industry members have put into place practices that reduce the likelihood that their advertising and marketing will reach -- and appeal to -- underage consumers. All industry members should adopt and build upon these "best practices," as follows:
 - *For ad placement:* Bar placement on TV series and in other media with the largest underage audiences, and conduct regular audits of previous placements.
 - *For ad content:* Prohibit ads with substantial underage appeal, even if they also appeal to adults, or target ads to persons 25 and older.
 - *For product placement in movies and TV:* Restrict the placement of alcohol products for which some form of payment is made⁽¹⁾ to "R" and "NC-17" rated films (or, if unrated, to films with similarly mature themes) and apply the standards for placing traditional advertising to product placement on TV.
 - *For online advertising:* Use available mechanisms to block underage access and avoid content that would attract underage consumers.
 - *For college marketing:* Curb on-campus and spring break sponsorships and advertising.

The beverage alcohol industry has an opportunity to make its self-regulatory programs more effective and credible. By strengthening enforcement mechanisms, raising the standard for the legal-age audience for ads beyond the 50 percent level, and adopting the

best prevailing industry practices, the industry can improve compliance without sacrificing legitimate advertising and marketing activities.

I. INTRODUCTION

"The conferees are aware of concerns about the impact of alcohol advertising on underage drinking, and understand that the FTC is engaged in the ongoing monitoring of the advertising and marketing practices of manufacturers of beverage alcohol. The conferees expect the FTC to emphasize these activities, investigate when problematic practices are discovered, encourage the development of effective voluntary advertising codes, and report their findings back to the Committees on Appropriations."

-- The Conference Report on the Federal Trade Commission's Fiscal Year 1998 Appropriation Bill⁽²⁾

This report, which responds to the Committees' request, is based on "special reports" filed by eight key industry members whose budgets, taken together, account for an estimated 80 percent of the alcohol advertising in traditional media.⁽³⁾ It also is based on discussions with industry trade associations about their self-regulatory efforts, a staff review of alcohol company web sites, and information provided by interested government and consumer groups.⁽⁴⁾ As the companies were advised at the onset, in order to address confidentiality concerns the information provided by the companies is presented only in an aggregate or anonymous fashion.⁽⁵⁾

The report discusses the benefits of self-regulation in general, describes key provisions of the alcohol industry's voluntary advertising codes, considers those areas where self-regulation is successful and where it falls short, and recommends steps the industry could take to strengthen member compliance with the codes. The report evaluates the application of the industry codes to the placement and content of advertising, as well as product placement, online advertising, and college marketing.

II. ADVERTISING SELF-REGULATION

The Benefits of Self-Regulation

For decades, the FTC has recognized the important role that effective self-regulation can play and has worked with many industry groups to develop sound self-regulatory initiatives. These programs complement the Commission's law enforcement efforts to stop "unfair or deceptive acts or practices."⁽⁶⁾ The net effect is greater consumer protection in the marketplace.

Well-constructed industry self-regulatory efforts offer several advantages over government regulation or legislation. Self-regulation often can be more prompt, flexible, and effective than government regulation. It can permit application of the accumulated judgment and experience of an industry to issues that are sometimes difficult for the government to define with bright line rules. With respect to advertising practices, self-regulation is an appropriate mechanism because many forms of government intervention raise First Amendment concerns.⁽⁷⁾

One especially effective model of self-regulation that has stood the test of time is the

advertising industry's program. Operating since 1971, the National Advertising Division (NAD) of the Council of Better Business Bureaus expeditiously investigates complaints about the truthfulness of advertising made by consumers or competitors.⁽⁸⁾ An advertiser that disagrees with the NAD's conclusion may appeal to the National Advertising Review Board (NARB), which includes members from inside and outside the industry.

Compliance with the NAD/NARB process is voluntary. Remarkably, NAD has handled over 3,500 cases since 1971, and in virtually all cases advertising found to be misleading has been discontinued or modified voluntarily. When an advertiser refuses to abide by a NAD decision, the matter often is referred to the FTC or another law enforcement agency. When appropriate, the FTC takes enforcement action.

Another aspect of this self-regulatory system is especially striking: NAD and NARB decisions are made public. This enhances the credibility of the program and provides valuable information to consumers and other industry members.

Self-Regulation in the Alcohol Industry

Each year the alcohol industry spends more than a billion dollars on television, radio, print, and outdoor advertising.⁽⁹⁾ (See Appendix B.) Self-regulation plays an important role in the alcohol industry's overall efforts to address concerns that alcohol advertising not be directed to an underage audience.⁽¹⁰⁾ At the heart of this effort are three trade associations. The Beer Institute represents the interests of more than 200 brewers who produce more than 90 percent of the beer brewed in America as well as the importers of a majority of the imported beer consumed here. The Distilled Spirits Council of the United States (DISCUS) represents most of the major U.S. distilled spirits marketers; its members produce over 85 percent of the distilled spirits sold in America. The Wine Institute represents over 300 California vintners; its members market over 75 percent of the wine sold in America and most of the American wines sold abroad. All three associations have voluntary advertising codes, with similar provisions about the placement and content of ads designed to prevent the marketing of alcohol to underage consumers. (Appendix D.) In addition, some beverage alcohol companies have their own self-regulatory guidelines. (Appendix E.) In most cases, the company guides parallel those of the trade associations, although some address specific issues such as marketing at college "spring break" locations. The codes are widely disseminated throughout the industry to promote awareness and compliance.

III. ALCOHOL INDUSTRY ADVERTISING CODES

While many factors may influence an underage person's drinking decisions, including among other things parents, peers and the media, there is reason to believe that advertising also plays a role.⁽¹¹⁾ Thus, the self-regulatory codes of the beverage alcohol industry provide that alcohol advertising and marketing efforts should not be directed to an audience that is primarily underage. Because substantial numbers of youngsters inevitably are exposed to alcohol advertising, the codes also provide that the content of the ads should not appeal primarily to an underage audience.

Advertising Placement

Although each code expresses the concept differently, industry members interpret code placement provisions to require that more than 50 percent of the audience for their advertising be over 21. The Beer Code prohibits placing ads in media where "most of the audience" is expected to be below the legal drinking age.⁽¹²⁾ The Spirits Code prohibits advertising from being placed in "any communication intended to appeal primarily" to individuals below the legal purchase age.⁽¹³⁾ The Wine Code specifies that wine advertising should not appear in programs or media "specifically oriented" to consumers below the legal drinking age.⁽¹⁴⁾

To facilitate compliance, the Beer Code requires that members use audience composition data that reflect the percentage of viewers over the legal purchase age *and* that the data be updated and reviewed every six months.⁽¹⁵⁾ The Wine and Spirits Codes do not contain similar requirements. However, whether or not the codes expressly require it, audience composition data are the only effective measure of compliance with the code placement provisions. These data are readily available from independent monitoring services.⁽¹⁶⁾

Advertising Content

The content provisions of the codes complement the placement restrictions, providing an important level of protection for consumers below the legal drinking age who may be exposed to alcohol advertising. For example, the Beer and Spirits Codes prohibit advertisers from using advertising content that is "intended to appeal primarily" to underage consumers.⁽¹⁷⁾ According to the Beer Code, "primary appeal" is defined as "special attractiveness to such persons above and beyond the general attractiveness it has for persons above the legal purchase age, including young adults above the legal purchase age."⁽¹⁸⁾ The Wine Code prohibits ads that have "particular appeal" to those under 21.⁽¹⁹⁾

The special reports filed with the FTC indicate that members of the distilled spirits and wine industries interpret the content provisions of their codes the same way that members of the beer industry interpret the Beer Code. Additionally, they indicate that intent need not be proven to demonstrate a violation, despite the codes' references to intent.⁽²⁰⁾

The codes expressly prohibit the use of certain characters or people in alcohol ads: actors under 25 (Beer⁽²¹⁾); children (Spirits⁽²²⁾); Santa Claus (Beer and Spirits⁽²³⁾); actors who appear to be under 21 (Beer and Spirits⁽²⁴⁾); actors who appear to be under 25 (Wine⁽²⁵⁾); and sports celebrities or "current or traditional heroes of the young" (Wine⁽²⁶⁾). At the same time, cartoon characters or similar images are allowed in ads as long as:

- their use is not "intended to appeal primarily" to people below the legal drinking age (Beer⁽²⁷⁾);
- they are not "popular predominantly with children" (Spirits⁽²⁸⁾); or
- they are not "specifically associated with or directed toward" those below the legal drinking age (Wine⁽²⁹⁾).

Product Placement

The practice of making alcohol products, logos, and signage available to producers so that

a company's product will be featured in a television program, film, or music video is common across the alcohol industry.⁽³⁰⁾ In 1997-98, the eight reporting companies made product placements in 233 motion pictures and in one or more episodes of 181 different TV series.⁽³¹⁾ Product placement can have significant promotional value for the alcohol company.⁽³²⁾ Producers, in turn, rely on product placements to give their work a more authentic look. In some instances, they may receive some form of consideration for using the product, in the form of direct payment, goods, or assistance with promotion.⁽³³⁾ Additionally, many industry members who participate in this practice retain agents or staff internal divisions specifically responsible for making product placements.⁽³⁴⁾ While none of the codes specifically addresses product placement, the beverage alcohol associations indicate that the standard placement and content provisions of the codes apply to the placement of alcohol products in films and TV programs.

Online Advertising

Members of the beverage alcohol industry have created over 100 commercial web sites to promote their products. The content of these sites varies widely, from little more than basic brand information to chat rooms, "virtual bars," drink recipes, games, contests, and merchandise catalogues. A recent marketing report indicated that beer and wine companies spent approximately \$1 million on Internet advertising in 1997.⁽³⁵⁾ One major brand's web site was reported to be receiving 180,000 visitors per month,⁽³⁶⁾ while another company report noted that its web site received over 21 million hits between 1995 and early 1997.⁽³⁷⁾

Although online advertising can be an effective and legal way to reach adults, many alcohol sites have been criticized because they are easily accessible by underage consumers and because some of their content likely is attractive to teens.⁽³⁸⁾ The Wine Institute's code does not address online advertising, but the Beer Institute in 1997 and DISCUS in 1998 modified their codes to:

- require advertisers to include on their web sites "reminders" that "brewer products are intended only for those of legal purchase age" (Beer Code⁽³⁹⁾) or "a reminder of the legal purchase age" (Spirits Code⁽⁴⁰⁾);
- offer beverage alcohol web site addresses to operators of parental control software companies (the Spirits Code also promises to give web site information to parents who request it);⁽⁴¹⁾ and
- clarify that the marketing provisions of the codes apply to web sites, including code provisions prohibiting advertising content that is "intended to appeal primarily" or is "particularly attractive" to kids.⁽⁴²⁾

College Marketing

An FTC staff investigation into the advertising and marketing of alcoholic beverages on campuses 10 years ago revealed that some firms in the industry were directing advertising and promotions to an on-campus audience that may have been largely underage.⁽⁴³⁾ In response to the inquiry, many members of the industry adopted voluntary guidelines that directly address alcohol promotions on campus and at "spring break" destinations.

DISCUS revised its code in 1995 to prohibit many of the college marketing practices that had been criticized -- including advertising on campuses and in college newspapers -- and to restrict other forms of campus marketing activities to licensed retail establishments.⁽⁴⁴⁾ The Beer Institute revised its code in 1992 to continue to allow its members to advertise on college campuses and at college-sponsored events "only when permitted by appropriate college policy."⁽⁴⁵⁾ The Wine Institute has not revised its code to address on-campus marketing practices, although according to the Institute, its code's placement provisions apply to marketing practices in all settings.

IV. CODE IMPLEMENTATION AND BEST PRACTICES

A strong and visible program of self-regulation is the most responsive and responsible approach to many of the concerns associated with alcohol beverage advertising and underage consumers. Meaningful industry self-regulatory programs can deal quickly and flexibly with a broad range of advertising issues. They can resolve difficult questions, such as whether the content of a certain ad may be unduly attractive to children, without raising the constitutional issues that less flexible government regulation might raise.

In the last 10 years, the beverage alcohol industry has responded voluntarily to FTC staff investigations with changes to its codes. In addition to the changes addressing college marketing described above, examples of voluntary industry responses to problematic practices include:

- *Withdrawing ads from television programs with majority underage audiences:* In the mid-1990's, FTC staff investigated the placement of beer ads on cable network programming that had majority underage audiences. The companies withdrew the ads from the programming at issue, and the Beer Institute adopted the requirement that demographic data be reviewed periodically to reduce the likelihood that the problem would recur.
- *Applying code protections to Internet ads:* In 1997, FTC staff reviewed alcohol web sites, which some industry observers believed were potentially attractive to minors. At the time, it was unclear whether web sites were covered by the industry advertising codes. Responding to these concerns, the Beer Institute and DISCUS modified their codes to clarify that they applied to advertising online.

Although the current codes provide many important protections, some provisions could be strengthened to better ensure that alcohol advertising is not directed to underage consumers. Additionally, the special reports submitted to the FTC by the alcohol companies demonstrate that some industry members do not fully comply with the codes' provisions. Several companies, however, have adopted practices -- "best practices" -- that, if implemented industry-wide, would make the codes more effective and more credible. A discussion of the limitations in the code provisions and implementation and the companies' strategies to address them follows.

Advertising Placement

The special reports submitted to the FTC by the eight alcohol companies reflect mixed compliance with the codes' requirement that alcohol ads be placed only in media where more than 50 percent of the audience is of legal purchase age. Half of the companies were

able to show that nearly all of their ads were shown to a majority legal-age audience. Two companies, however, entirely failed to obtain the age demographic data needed to evaluate their code compliance. Moreover, two other companies' data showed weeks when a large portion of ads (for one, 25 percent of its TV ads, for another, 11 percent of its radio ads) were shown to a majority underage audience.⁽⁴⁶⁾

Only 30 percent of the U.S. population is under the age of 21, and only ten percent is age 11 to 17.⁽⁴⁷⁾ The 50 percent standard, therefore, permits placement of ads on programs where the underage audience far exceeds its representation in the population. Given this age composition of the population, large numbers of underage consumers can be exposed to alcohol ads even though a majority of the audience is of legal age.⁽⁴⁸⁾ For example, the special reports indicate that alcohol ads have been placed on at least three of the 15 television shows reported to have the largest teen audiences.⁽⁴⁹⁾ These shows may be among the best ways to reach teens, although they often have a majority legal-age audience.

Additionally, limitations in the available audience composition data can hinder companies' ability to determine how many underage persons are in the audience for an ad. For some media, the available demographic information does not measure the youngest portion of the audience. Radio audience demographics do not measure listeners under 12, who account for 17 percent of the population, and most magazine audience demographics do not measure those under 18, who account for 26 percent of the population.⁽⁵⁰⁾ As a result, the underage audience may be larger than the demographics information reveals.

Best Practices: The special reports filed with the Commission indicate that some individual beverage alcohol companies have adopted ad placement policies that go beyond minimum code requirements in order to minimize underage exposure to their ads.

First, several companies have raised the standard for ad placement. Instead of adhering to the 50 percent requirement, these companies require a 60 to 70 percent legal-age audience for print media, a 55 to 60 percent legal-age audience for radio, and a 70 to 75 percent legal-age audience for television placements. This practice has two benefits: it provides a margin to compensate for limitations in audience composition data; and it minimizes the number of underage consumers reached by the alcohol advertising without unduly interfering with the advertiser's ability to reach a legal-age audience.⁽⁵¹⁾

Second, some companies regularly review their past ad placements -- as often as each quarter -- and change their plans to avoid media that may not meet the 50 percent standard.⁽⁵²⁾ Although these companies occasionally run ads in majority underage venues, their after-the-fact review procedures ensure quick discovery and correction. For example, periodic audits are useful in radio advertising, where changes in format and school season can result in sudden, substantial increases in underage audience composition.

Third, some alcohol advertisers maintain "no buy" lists of programs and magazines that are popular with underage audiences. Company lists vary but typically include animated, family, or teen-theme television programs and magazines -- in short, vehicles that are likely to be effective ways to reach underage consumers.

Advertising Content

Since substantial underage exposure comes with any practical placement standard, compliance with the codes' content provisions is critical.⁽⁵³⁾ The codes' content standards appear to require that companies contrast an ad's appeal to adults with its appeal to minors, and reject only those campaigns that are *more* appealing to those under the legal drinking age.

It is clear that industry makes a significant effort to comply with the codes' content standards. Alcohol companies rely on internal marketing and legal personnel, or ad agencies, to identify ad copy that might appeal primarily to children.⁽⁵⁴⁾ The special reports document many instances where content was rejected or revised out of concern that it might have been especially attractive to children. The reports also show that most companies conduct consumer research, on persons 21 and over, to determine the effectiveness of proposed ad campaigns with the target audience.⁽⁵⁵⁾ Companies often (but not always) will modify or reject a campaign if a research participant *volunteers* the opinion that an ad is "juvenile" or would attract those under 21.⁽⁵⁶⁾

The codes' standards permit advertising that has substantial appeal to teenagers, as long as it is equally appealing to audiences over 21. The special reports show that the reporting companies target 21 year olds for some brands -- in fact, some companies' internal marketing documents discuss the importance of attracting new drinkers, noting that many consumers continue to drink, at least occasionally, the brands with which they started. Yet, the advertising campaigns targeted to 21 year olds also are likely to appeal to those under 21.⁽⁵⁷⁾ Indeed, existing research and media reports have raised the question of whether several current or recent ad campaigns have high appeal to teens and even young children.⁽⁵⁸⁾

Although the codes prohibit marketing that promotes irresponsible drinking,⁽⁵⁹⁾ documents provided with the company reports suggest that campaigns for a few of the brands targeted to 21 year olds may not comply with these provisions. Some marketing materials alert consumers to the usefulness of a brand for heavy drinking occasions -- for example, promoting new or existing drinking rituals, or using ad language designed to communicate subtly the potency of the product. One company's market planning report noted that the top objective of 21-26 year old drinkers was "to get wild, blitzed and be crazy."⁽⁶⁰⁾

Best Practices: Some companies have adopted strategies that reduce the likelihood that an ad will have substantial appeal to underage consumers. One company avoids ad content with substantial appeal to underage, by rejecting ad content -- an idea, song or character -- that would be effective to promote a child- or teen-targeted product.⁽⁶¹⁾ Additionally, some companies limit the "spillover" appeal to a younger audience by setting the target audience for certain brands at age 25. They use campaign themes that are less likely to appeal to those under 21 by avoiding, for example, campaigns emphasizing a "wild" party theme. This practice also is consistent with code provisions that promote the responsible use of alcohol.

Product Placement

Companies state that they consider code standards when making product placements, and

it is clear that they deny requests to place alcohol products in films and TV programs that show underage drinking. Still, alcohol product placement has occurred in "PG" and "PG-13" films with significant appeal to teens and children (including films with animal and "coming-of-age" themes); in films for which the advertiser knew that the primary target market included a sizeable underage market; and on eight of the 15 TV shows most popular with teens.[\(62\)](#)

Best Practices: A few companies have taken steps to reduce the likelihood that a substantial underage audience will see their products promoted in movies and on television. They restrict product placements to movies that are "R" rated (or, if unrated, those with similarly mature themes) and prohibit placements in films and programs in which an underage person is a primary character. One company also prohibits promotional placements in movies and shows that deal strictly with college life.

Online Advertising

The Internet presents a special challenge for industry members in their efforts to prevent alcohol advertising and marketing to minors. Children under 18 represent a large and rapidly growing segment of the online community. One recent survey reported 18.5 million children online, including 9.5 million teens between 13 and 17.[\(63\)](#)

Most industry members comply with the provisions of the two codes (Beer and Spirits) that govern online alcohol advertising. A Commission staff review of 30 industry web sites revealed that most (24) post the age reminders required by the codes.[\(64\)](#) The Beer Institute and DISCUS also provide the web site addresses of their members to companies that produce parental control software, and many major Internet Service Providers (ISP's) -- AOL, ATT WorldNet, Bell Atlantic, Prodigy, and CompuServe -- offer filtering programs to parents that can block access to commercial alcohol web sites.[\(65\)](#) Currently, however, only one-third of parents use filtering software.[\(66\)](#)

There are, of course, no foolproof measures to prevent underage access to inappropriate web sites. Companies therefore need to give special attention not only to restricting access, but to ensuring that web site content is not attractive to underage consumers. Many alcohol web sites feature one or more promotional techniques -- contests, games, cartoon and cartoon-like characters, chat rooms and bulletin boards -- that underage visitors may find attractive and that alcohol companies generally do not use in other forms of advertising.[\(67\)](#)

Best Practices: Some alcohol companies have taken extra steps in an attempt to address concerns about underage use of online alcohol sites. First, after the industry modified its codes, several companies eliminated or reduced web site content that underage consumers might have found attractive. For example, they dropped bulletin boards and/or chat rooms, often after inappropriate messages were posted.

Second, several companies make efforts to restrict underage access. Five of the 30 sites reviewed by the Commission staff seek to block younger consumers by requiring visitors to enter their age and denying access to those who enter an age under 21.[\(68\)](#) One company reported that nearly 10,000 visitors received a "virtual bounce" from its web site after entering an age under 21. Another company plans to ask for age information at various

places on its web site and deny access to anyone who does not enter the same age each time.

Finally, a few sites supplement their beverage promotional efforts with messages discouraging underage and irresponsible drinking. These sites include many of the same materials that the industry members use in their responsibility campaigns (*see* Appendix C), as well as links to other web sites that carry messages about responsible drinking.

College Marketing

Advertising on campuses remains a source of concern given the presence of a significant underage audience on most campuses and the high incidence of abusive college drinking.⁽⁶⁹⁾ (*See* Appendix A.) Company sponsorship of teams and athletic events -- allowed under the Beer Code if permitted by the college -- continues, producing substantial revenue for colleges and universities.⁽⁷⁰⁾ Nonetheless, the number of campuses that restrict on-campus alcohol beverage advertising is growing. In a recent survey of 300 campuses, 72 percent said they prohibit on-campus alcohol advertising and 62 percent specifically prohibit industry sponsorship of athletic events.⁽⁷¹⁾ In the last year, the U.S. Congress, the U.S. Department of Health and Human Services, and others have called for an end to many or all of these arrangements.⁽⁷²⁾

Ads by local retail establishments are not subject to the codes or the direct control of the alcohol companies, but they can damage industry efforts to foster responsible drinking. One bar ad placed recently in a college paper invited customers to "Walk Over. Crawl Back."⁽⁷³⁾ According to a 1997 survey, three-quarters of campus newspapers accept advertising from off-campus bars and other licensed retail establishments.⁽⁷⁴⁾

Best Practices: DISCUS and a growing number of colleges and universities prohibit marketing activities on campus, and most companies have stopped sponsoring special spring break activities (such as beach promotions and outdoor concerts) although the codes do not mandate it. These companies restrict their activities to bars and other licensed retail establishments where it is expected that most of the audience will be over the legal purchase age. In addition, some industry members are encouraging local licensed establishments to advertise responsibly and not promote excessive drinking.⁽⁷⁵⁾

V. CODE ENFORCEMENT: THE NEED FOR INDEPENDENT REVIEW

The company special reports make clear that most industry members seek to comply with current code requirements. They instruct those that prepare and place the ads, design the web pages, and handle the product placements, that it is important to comply with the code provisions. Despite their efforts, however, compliance is not universal. Indeed, in the preparation of this report, a number of instances of code violations were uncovered.

Experience in other industries suggests that independent mechanisms for evaluating compliance, particularly in the face of complaints from the public or competitors, ensure that industry members are held to reasonably consistent standards. The beverage alcohol industry associations would do well to put external enforcement procedures into place not only to promote code compliance, but also to improve public confidence in the industry's efforts to police itself.

The Current Situation

The Beer and Wine Institutes refer complaints they receive about a member's advertising to that member for review and action.⁽⁷⁶⁾ The referring body does not independently assess the merits of a complaint and no follow-up procedures exist to require the individual company to notify either the institute or the complaining party of the resolution.

DISCUS has a five-member Review Board that considers complaints received about member advertising and marketing. Findings of the majority of the review board are communicated to the member and, when appropriate, to all members of the DISCUS Board of Directors.⁽⁷⁷⁾ Occasionally, even absent an outside complaint, DISCUS has undertaken informal inquiries and urged members to discontinue practices that it believed had potential appeal to underage persons.

The beverage alcohol industry's enforcement mechanisms fall short of the advertising industry's model for effective self-regulation, the National Advertising Division of the Council of Better Business Bureaus, Inc., and its appeal board, the National Advertising Review Board. The system under the Beer and Wine Codes, where complaints are passed along to the member, does not provide for an impartial, objective consideration of the merits. The DISCUS procedure, where complaints are considered by a review board within the trade association, is superior to this model, but raises concerns that the responsibility of the association to represent its members in the best light might conflict with its responsibility under the code to criticize member behavior. No code provides for any "public" notice of a complaint or its resolution.

Finally, the current system does not ensure that code standards are applied consistently when complaints are considered. For example, one company routinely responds to consumer complaints about ad content by stating that it complies with placement standards and that there is no evidence that advertising significantly affects a child's drinking decisions. This type of response appears to fall short of objectively establishing the advertiser's compliance with the code's content provisions. Additionally, a trade association responded to a complaint charging that an ad appealed to underage consumers by stating that the icon depicted in the ad had been approved by the U.S. Trademark Office and the Bureau of Alcohol, Tobacco and Firearms (ATF), but did not address whether use of the icon violated code provisions. Neither the Trademark Office nor ATF has the authority to reject labels or icons due to potential youth appeal. Review by an expert, independent party presumably would avoid errors like these.

The industry trade associations have expressed concerns that third-party review and other self-regulatory improvements identified in this report would violate the antitrust statutes. In fact, while the antitrust laws prohibit collusive conduct that unreasonably restricts competition and harms consumers, they do not bar reasonable self-regulation designed to prevent alcohol advertising from being targeted to underage persons. (*See* Appendix H.)

VI. RECOMMENDATIONS

Through its self-regulatory codes, the industry seeks to minimize the extent to which underage persons are exposed to and attracted by alcohol advertising. While the current

codes provide important protections, improvements are needed to ensure that the goals of the industry codes are met. The following are the Commission's recommendations:

- **Industry should provide for third-party review.** The industry should create independent external review boards with responsibility and authority to address complaints from the public or other industry members.
- **Industry should raise standards for ad placement.** The industry should raise the current standard that permits advertising placement in media where just over 50 percent of the audience is 21 or older. Because the 50 percent standard permits alcohol advertising to reach large numbers of underage consumers, some members of the industry already have raised their own placement standards, prohibiting ads where as few as 25 percent of the audience is underage. To ensure compliance with the higher placement standard, companies should measure their compliance against the most reliable up-to-date audience composition data available.
- **Trade associations and industry members should adopt and build upon the "best practices" of companies described in this report.** These measures are demonstrated to be feasible and effective at reducing the risk that alcohol advertising will appeal to youth:
 - *For ad placement:* Maintain "no buy" lists barring placement on TV series and in other media with the largest underage audiences, and conduct regular after-the-fact audits of a sample of past placements to verify that past ad placements were in compliance.
 - *For ad content:* Raise the content standard by barring ads with substantial appeal to underage consumers, even if they also appeal to adults, or by targeting ads to persons 25 and older.
 - *For product placement:* Reduce the likelihood that alcohol product placement will occur in media with substantial underage appeal by restricting movie placements to films rated "R" or "NC-17" (or unrated films with similarly mature themes), prohibiting placements in films where an underage person is a primary character, and applying the standards for placing traditional ads to product placement on TV.
 - *For online advertising:* Use available mechanisms to prevent underage access to web sites, avoid content that would attract underage consumers, and post consumer education messages about underage and irresponsible drinking.
 - *For college marketing:* Further curb on-campus advertising and sponsorships and spring break marketing, and encourage licensed retail establishments to advertise responsibly.

The recommended changes would promote the goals underlying the codes as well as improve public confidence in industry's efforts to self-police. The Commission looks forward to the industry's implementation of these recommendations.

ENDNOTES

1. This would have no effect on a media director's decision to depict alcohol use in a movie or television show.
2. H.R. Conf. Rep. No. 105-405 (1997), 143 Cong. Rec. H10860 (November 13, 1997). This request was reiterated in the 1998 conference agreement. H.R. Conf. Rep. No. 105-825 (1998), 144 Cong. Rec. H11332

(October 19, 1998).

3. The special reports were filed by eight beverage alcohol companies in response to Commission orders issued in August 1998 under Section 6(b) of the Federal Trade Commission Act (FTC Act), 15 U.S.C. § 46(b). The companies are: Anheuser-Busch, Inc.; Bacardi-Martini USA, Inc.; Brown-Forman Corporation; Coors Brewing Company, Inc.; Diageo plc; Miller Brewing Company, Inc.; Stroh Brewery Company, Inc.; and Joseph E. Seagram & Sons, Inc. The special reports provide lengthy documentation showing how the eight companies interpret and implement the provisions of the self-regulatory advertising codes.

While the special reports provide valuable information about the eight companies, they do not necessarily reflect the practices of the many other companies that advertise and market beverage alcohol in the United States. Excluded from the scope of this report are the advertising and promotional practices of wholesalers and local retailers (including bars and restaurants), and alcohol sales over the Internet.

4. The Commission received information from a wide range of sources, including the American Academy of Pediatrics; The Arc; Beer Institute; Center for Media Education; Center for Science in the Public Interest; Century Council; Center on Alcohol Advertising; Distilled Spirits Council of the United States; Magazine Publishers of America; Marin Institute; National Association of Alcoholism and Drug Abuse Counselors; National Beer Wholesalers Association; National Council on Alcoholism and Drug Dependence, Inc.; and the Wine Institute.

5. See Appendix F.

6. Over the years, the FTC, using its statutory authority to protect consumers from "unfair or deceptive acts or practices," 15 U.S.C. § 45, has issued a number of consent orders and adjudicated a number of law enforcement actions against marketers of alcohol beverages. It has used its deception authority to prohibit a variety of misrepresentations about alcohol products, and its unfairness authority to prohibit advertising that causes or is likely to cause substantial injury to consumers that is not outweighed by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers. Advertising that is neither deceptive nor unfair falls outside the Commission's authority.

The FTC's prior alcohol cases include: *Allied Domecq Spirits and Wine Americas, Inc.*, C-3858 (March 5, 1999) (consent order) (deceptive 'low alcohol beverage' claim for a premixed cocktail containing 5.9 percent alcohol by volume); *Beck's North America, Inc.*, C-3859 (March 5, 1999) (consent order) (unfair depiction of consumers drinking while engaging in dangerous activity on a boat) (Commr. Swindle dissenting); *Canandaigua Wine Co.*, 114 F.T.C. 349 (1991) (consent order) (deceptive low alcohol claims for high alcohol fortified wine); *ACME Breweries*, 47 F.T.C. 1213 (1951) (deceptive nutritional claims); *Brewing Industry Foundation*, 40 F.T.C. 817 (1945) (consent order) (deceptive health benefit claims); *Minnesota Brewers Association*, 39 F.T.C. 615 (1944) (consent order) (14 related matters) (deceptive nutritional and energy claims); *Manhattan Brewing Co.*, 37 F.T.C. 376 (1943) (deceptive statements of origin); *Midland Distilleries, Inc.*, 26 F.T.C. 374 (1938) and *Selected Kentucky Distillers, Inc.*, 26 F.T.C. 960 (1938) (deceptive use of term 'distillery'); and *Prendergast-Davies Co., LTD.*, 26 F.T.C. 859 (1938) (deceptive use of term 'distillery' and statements of origin).

Other federal agencies share jurisdiction over alcohol marketing practices. The Department of Treasury's Bureau of Alcohol, Tobacco and Firearms (ATF) has authority over most alcohol beverage labeling and advertising under the Federal Alcohol Administration Act, 27 U.S.C. § 205; among its responsibilities is the requirement to pre-approve alcohol labels. Wines containing less than 7 percent alcohol by volume fall outside the regulatory authority of ATF and are subject to Food and Drug Administration labeling provisions under the Federal Food, Drug and Cosmetic Act. See U.S. Food and Drug Administration, *FDA Compliance Policy Guides*, Sec. 510.450 (1996). The Federal Communications Commission has jurisdiction under the Federal Communications Act to consider whether the practices of radio and television broadcast station licensees, including running commercials, are in the public interest. See 47 U.S.C. §§ 307, 309. The federal agencies coordinate their activities involving alcohol advertising and labeling to avoid conflicts or duplication of effort.

States also have jurisdiction over alcohol marketing. See generally *Compilation of Malt Beverage Laws and Regulations* (2nd ed.), prepared for the Wholesale Beer Association Executives and the National Beer Wholesalers Association by Gary M. Nateman; Distilled Spirits Council of the United States, Inc., *Summary of State Laws & Regulations Relating to Distilled Spirits* (30th ed.) (January 1998).

7. A governmental restriction on speech that proposes a commercial transaction must satisfy four criteria to survive First Amendment scrutiny: 1) the speech must concern lawful activity and not be misleading; 2) the asserted governmental interest in restricting it must be substantial; 3) the restriction must directly and materially advance the governmental interest asserted; and 4) the restriction must be no more extensive than necessary to serve that governmental interest. *Central Hudson Gas & Elect. Corp. v. Public Serv. Comm'n of New York*, 447 U.S. 557, 566 (1980). See also *Greater New Orleans Broadcasting Association, Inc. v. United States*, No. 98-387, 1999 U.S. LEXIS 4010 (June 14, 1999) (striking down FCC regulation prohibiting broadcast advertising of lawful private casino gambling); *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484 (1996) (striking down state ban on alcohol price advertising).

8. NAD decisions are reported in the NAD Case Reports, issued ten times per year. Press releases and other information regarding the NAD self-regulatory system, including the appeals process and operations of the Children's Advertising Review Unit, are available at <http://www.bbb.org/advertising/index.html>.

9. M. Shanken Communications, Inc., *The U.S. Beer Market: Impact Databank Review and Forecast* (1998 ed.), at 321 (Table 7-3) (reporting media advertising expenditures).

10. Although not the focus of this report, the media also engage in self-regulation relating to alcohol advertising. The broadcast networks (ABC, CBS, NBC, Fox, UPN and WB) prohibit distilled spirits advertising but permit beer and wine advertising, which must not encourage excessive or underage drinking. Some networks also prohibit alcohol ads in or adjacent to "family programs." Cable networks that target their programming in substantial part to an underage audience (e.g., Fox Family, Nickelodeon) do not accept alcohol advertising. In some instances, local cable systems retain the ability to place a limited number of ads on cable channels each day. As a result, an alcohol ad does from time to time appear on one of these child-oriented channels. A number of cable networks are members of the Cabletelevision Advertising Bureau, whose voluntary guidelines provide that beer and wine advertising is acceptable, and that distilled spirits advertising will be considered on a case-by-case basis.

11. Economic theory predicts, and various empirical research studies confirm, that advertising can influence consumer demand for products. See generally Robert McAuliffe, *Advertising, Competition, and Public Policy*, at 33-46 (1987); Bureaus of Consumer Protection and Economics, Federal Trade Commission, *Recommendations of the Staff of the Federal Trade Commission: Omnibus Petition for Regulation of Unfair and Deceptive Alcoholic Beverage Advertising and Marketing Practices*, Docket No. 209-46 Appendix A at 1-3 (March 1985) [hereinafter *1985 FTC Staff Report*]. An example is where alcohol ads are used to "associate the brand with activities the target group is apt to enjoy and identify with and [so] conclude that the brand is for someone like them." Joseph Fisher, *Advertising, Alcohol Consumption, and Abuse: A Worldwide Survey* (1993) [hereinafter *Fisher 1993*], at 24. Although most of the effect of advertising is on particular brands, advertising can also produce overall increased demand for products in the category.

In well-established product markets such as beverage alcohol, many factors influence consumer buying, making it difficult to isolate and scientifically demonstrate a positive and statistically significant effect of advertising on overall product demand. In the case of alcohol, the largest body of research consists of econometric studies designed to evaluate the relationship between changes in advertising and changes in population-wide alcohol consumption or abuse. Although some of these studies find a relationship between advertising and consumption, many do not. See *Fisher 1993, supra*, at 96-116; U.S. Department of Health and Human Services, *Ninth Special Report to the U.S. Congress on Alcohol and Health* (June 1997), at 287-89; see also *1985 FTC Staff Report, supra*, Appendix A at 9, 10.

While econometric study is an important tool for evaluating the effect of an individual factor on a multi-factor result, efforts to measure the effects of differing levels of alcohol advertising on overall consumer behavior face significant methodological challenges. These difficulties have been described in prior Commission testimony before Congress, in a prior report by the National Institute on Alcoholism and Alcohol Abuse, and by economists. See *Health Warnings on Alcoholic Beverage Advertisements: Hearing Before the Subcommittee on Transportation and Hazardous Materials of the Committee on Energy and Commerce on H.R. 4493*, U.S. House of Representatives, 101st Cong., 2nd Sess. 35-41 (1990) (statement of FTC Chairman Janet Steiger); Susan E. Martin, *Introduction to The Effects of the Mass Media on the Use and Abuse of Alcohol*, at v (Susan E. Martin, ed.) (NIAAA Research Monograph No. 28, NIH Pub. No. 95-3743) (1995); Henry Saffer, *Alcohol Advertising and Alcohol Consumption: Econometric Studies*, in *id.*, at 82, 95. Further, the econometric research focuses only on the effect of advertising on population-wide alcohol consumption, and thus it may not effectively test for the very small part represented by underage consumption. (For data regarding beverage

consumption by age group, see M. Shanken Communications, Inc., *The U.S. Distilled Spirits Market: Impact Databank Review and Forecast* (1998 ed.), at 381 (Tables 7-13 and 7-14), 385 (Table 7-22)). In short, the generally inconclusive nature of the empirical research does not rule out the existence of a clinically important effect of advertising on youth drinking decisions. This is consistent with previous findings. See *supra* 1985 FTC Staff Report.

12. *Beer Code*, Guideline 4(d).

13. *Spirits Code, Responsible Placement* ¶ 2.

14. *Wine Code*, Guideline 3(c). The Wine Institute has declined to identify a numerical standard for compliance with its placement provisions, but individual members have stated that they interpret the Wine Code's placement language to require a majority legal-age audience.

15. *Beer Code*, Guideline 3. The requirement that audience composition data reflect legal-age viewers was adopted because the standard television demographic data purchased by alcohol companies is compiled on an age 18-34 basis.

16. For television, data are available for two to four hour "dayparts," and for specific programs. TV daypart data are less useful for the purpose of measuring compliance with the codes, since the data are averaged over several programs, and thus may not accurately reflect an underage audience for an individual program. For radio, data are available either on an overall basis (generally, either 24 hours or 6 a.m. to midnight), or for dayparts consisting of four to six hour segments. Overall radio data are not useful for the purpose of measuring compliance with the codes, since they do not reveal the presence of a majority underage audience during a particular daypart in which an alcohol ad was broadcast. For example, a company submission showed that a station with an average overall audience underage composition of 17 percent nonetheless had a majority (60-67 percent) underage audience during weekday evening and Sunday dayparts.

17. *Beer Code*, Guidelines 4(a), (b); *Spirits Code, Responsible Content* ¶ 2.

18. *Beer Code*, Guideline 4(a). Additional guidance on interpreting essentially the same language had been in the advertising code of a fourth industry organization, the Century Council, followed by many beer, wine and spirits companies until 1997. It provided:

Factors to be considered in determining compliance with this paragraph include -- (I) demographic or survey data demonstrating the primary appeal of the matter in question to underage persons, and -- (ii) evidence of the substantial use of the symbol, language, gesture, cartoon, or animated character in media intended for those below the legal drinking age.

Guideline II.C.4. and n.7. The Century Council's Code was discontinued in 1997, when the Council was reorganized to represent the distilled spirits industry alone. Century Council members are presumed to follow the Spirits Code.

19. *Wine Code*, Guideline 3.

20. Some consumer groups point to the difficulty of proving intent under the codes as one reason for not submitting complaints about alcohol advertising to the code groups. Clarification of the codes' intent language, to convey that intent is not required for a violation, would help to resolve any uncertainty.

21. *Beer Code*, Guideline 4(e).

22. *Spirits Code, Responsible Content* ¶ 3.

23. *Beer Code*, Guideline 4(c); *Spirits Code, Responsible Content* ¶ 4.

24. *Beer Code*, Guideline 4(e); *Spirits Code, Responsible Content* ¶ 6.

25. *Wine Code*, Guideline 3(a).

26. *Wine Code*, Guideline 3(g), (f).

27. *Beer Code*, Guideline 4(a).
28. *Spirits Code, Responsible Content* ¶ 3.
29. *Wine Code*, Guideline 3(b).
30. For background information about product placement, see *The Place to Be*, P.R. Central: Online News and Intelligence, available at <http://www.prcentral.com/rmjf97product.htm>.
31. In addition, some appearances of alcohol brands on television and in films occur without alcohol company approval.
32. As one company representative stated, "If alcohol is going to be used in a show, I want it to be *my* brand." Research submitted by the alcohol companies indicates that several brands gained popularity after being featured, for example, in music videos. After Red Stripe Beer was featured in the film *The Firm*, the advertiser reported a 50 percent increase in sales. *The Place to Be*, *supra* note 29.
33. Product placements may involve traditional fees and/or alternative forms of payment. For example, one company that made many alcohol product placements in films in 1997-98 had paid fees (ranging from a few thousand dollars to tens of thousands of dollars) for half of the placements, and provided large amounts of its product for other placements. Payment may also be made in the form of valuable cross-promotions (*e.g.*, dissemination of product "theme ads" that also promote the film).
34. These agents review scripts and negotiate placements; some commit to achieving a minimum number of placements in exchange for their compensation.
35. *On Line Advertising Reaches \$544.8 Mil, New Report Says*, Advertising Age, August 3, 1998 (reporting on the release of *InterWatch 1997: Trends in Internet Advertising*, by InterMedia Advertising Solutions).
36. *Branding on the Net*, Business Week, November 9, 1998, at 76, 84.
37. "Hits" are different from "visitors." Hits count the number of times, for example, that a visitor logs onto various pages of a web site, opens a file, leaves a message, or downloads a screen saver. Thus, a visitor may have multiple hits on a web site each time he visits.
38. See Center for Media Education (CME), *Alcohol and Tobacco on the Web: New Threats to Youth* (March 1997); CME, *Alcohol Advertising Targeted at Youth on the Internet: An Update* (October 1998) [hereinafter *Alcohol Advertising Targeted at Youth on the Internet*].
39. *Beer Code*, Guideline 4(h).
40. *Spirits Code, Responsible Content* ¶ 7.
41. *Beer Code*, Guideline 4(h); *Spirits Code, Responsible Content* ¶ 8.
42. *Spirits Code, Scope; Beer Code*, Guideline 1.
43. The investigation began following reports of questionable alcohol marketing practices on college campuses and at "spring break" destinations frequented by hundreds of thousands of college students. Advocacy groups and campus officials sharply criticized some alcohol companies for running ads tied to "rush" weeks for fraternities and sororities, hiring campus representatives to target fraternities and sororities with special keg promotions, and sponsoring spring break activities promoting, among other activities, the excessive use of alcohol beverages. The Commission closed its investigation after reporting its general findings to Congress. See *Oversight of FTC's Shared Responsibilities: Hearing Before the Subcommittee on Transportation and Hazardous Materials of the House Committee on Energy and Commerce*, 102nd Cong., 1st Sess. 75-80 (1991) (Statement of FTC Chairman Janet Steiger). During the Commission's inquiry, Congress passed the Drug-Free Schools and Communities Act, which provided for the revocation of all federal funding to any college that failed to implement a program to prevent alcohol abuse.

44. *Spirits Code, Responsible Placement* ¶¶ 3, 4.

45. *Beer Code, Guideline 13*.

46. In our analysis, we credited nonstandard demographic information, such as survey information provided by small cable networks that are not measured by the independent audience monitoring services. However, we did not credit television daypart data when more reliable information was available. Similarly, we did not credit full-day audience radio age composition data, given the fact that it is not representative of the audience composition of specific time segments within the day. *See supra* note 15.

With regard to print, limitations of the available demographic data discussed in the text make it somewhat difficult to gauge the under and over 21 readership of magazines and newspapers. With this significant caveat, all of the reporting companies submitted information showing that they complied with code provisions for placements in print media. Indeed, the special reports suggest that, except for magazines directed to an underage audience and a few sports magazines, most magazines and all major newspapers have measured legal-age readership shares that substantially exceed 50 percent.

47. Bureau of the Census, U.S. Department of Commerce, PPL-91, Appendix A: Resident Population - Estimates by Age, Sex, Race and Hispanic Origin (August 1998).

48. Moreover, the special reports filed with the FTC indicate that television programs with a 50 percent or larger legal-age audience nationwide may have a majority underage audience in individual television markets.

49. Nielsen Media Research collects data on the shows most popular with teens. *See Paul Farhi, On TV, a Prime Time for Teens*, Washington Post, October 21, 1998, at A1 (identifying shows most popular with teens in fall 1998, and reporting one to two million viewers age 12-17 for these shows). Ads are also often placed in magazines promoted as effective ways to reach underage readers, though a majority of their readers are legal-age. In fact, placements regularly are made in magazines that promote themselves to advertisers as being among the "10 best sellers in college bookstores."

50. Bureau of the Census, *supra* note 46. Standard audience demographics are collected to allow advertisers of general market products to determine whether they are reaching their target audience. The youngest portion of the population often is not measured because it is not pertinent to this analysis.

51. The company reports indicate that large numbers of TV programs (both network and cable), and large numbers of radio dayparts, have audiences that consist 70 percent or more of persons over 21. In addition, the reports show that in 1998, the following special programs had legal-age viewership in excess of 75 percent: the American Music Awards; the Grammy Awards; the Olympics; and the Super Bowl.

Higher placement standards provide the identified benefits, however, only if the advertiser purchases adequate demographic data, that is, daypart data for radio and program data for TV. *See supra* note 15. Currently, some companies with higher placement standards do not purchase adequate demographic data, and as a result remain unable to determine what portion of their audience is below the legal age.

Industry members have noted that the Commission uses a "50 percent standard" in determining whether an ad is directed primarily to an inappropriate audience in its 900 Number pay-per-call rule, 16 C.F.R. § 308. Under that rule, however, the Commission considers not only whether more than 50 percent of the audience for the ad consists of children under 12, but also whether the program on which the ad appears is directed to children. 16 C.F.R. § 308.3(e)(3). Similarly, industry need not limit itself to the 50 percent standard when delineating the appropriate venue for placement of ads.

52. Although the special reports suggest that post-placement review can be costly, they also show that an advertiser who does not engage in regular post-placement review of audience demographics may continue to run ads on programs with a majority underage audience, sometimes for long periods. For example, one company ran ads on a program for months after available data showed that the program had majority underage audiences.

53. Ads for beverage alcohol, even if properly placed, can reach a large underage audience. One company's report indicates that over a period of several months, underage viewer exposures to its network TV ads alone (not including spot TV, cable, radio, print, or other promotions) numbered several hundred million.

54. Companies disseminate the codes to their employees and ad agencies so that those who are involved in the preparation and approval of their advertising are aware of the requirements.

55. While companies do not directly test the appeal of their ads on persons under 21, the reports reveal that some company-sponsored consumer research directly inquired into respondents' first experimentation with alcohol. Other companies conduct research on 21 and 22 year olds who indicate that they now drink less of the company's brand than they did before they were of legal age to determine what campaign themes are likely to regain consumer loyalty.

In one focus group study of young adults including 21 year olds, the moderator's guide for conducting the research included questions designed to determine when and what the participants first drank, why they selected that drink, and under what circumstances. The study report traces the drinking patterns of these respondents over time. The analysis begins in high school and sets forth the major stages and motivations for drinking -- as a rite of passage, to bond with friends and get "buzzed," to consume what was "in," to socialize with the opposite sex, to be mature and suave, to get wild and crazy, or to get wasted. The study notes that beverage popularity was often influenced by appearance or mention in popular music and videos. Another study done by the same company asked legal-age participants to imagine a party scene using a particular alcohol beverage. One brand's party was envisioned to be at a fraternity house, attended by persons as young as 18, with the party being described as "fun" and for "(g)etting into a light stupor."

56. One focus group report presented the reactions of four groups of consumers 21 and slightly older and two groups of older consumers to proposed radio ads. One execution using hip hop music received "widespread and fairly strong" criticism because of its appeal to the underage. One participant commented, "So if you bring in hip hop, you tend to bring in children." Another said, "I think the biggest problem I have with it is that it's selling to kids and teenagers."

57. One of the special reports included research on a particular ad campaign testing consumers age 21 and 22. The testing was designed to evaluate if the campaign was effectively communicating the intended message, that the company's brand was for "young, hip people." In the course of answering questions about the message of the campaign, respondents noted that while some versions of the campaign were intended only for persons 21 or slightly older, other very similar executions "could be for a younger audience." The ad that research participants believed could be intended for persons under 21 was disseminated at least one time after the research was concluded. *See also infra* note 57.

58. *See* Bruce Horowitz and Melanie Wells, *Ads for Adult Vices Big Hit with Teens*, USA Today, January 31, 1997, at A-1 (*USA Today* survey of 534 teens found that certain beer ads had very high recognition and very high appeal among teens -- over 90 percent in some instances -- although only a minority of teens said the commercials made drinking more appealing or made them want to use the product; because of limitations of the sample the results of this survey are not projectable); Campell Mithus Esty, *National Study Reveals Kids Favorite TV Ads* (March 24, 1998 news release) (Minneapolis ad agency survey reporting children's favorite commercials showed children age 9-17 ranked ads for a major beer company first, ahead of ads for Pepsi, Coke and McDonald's); *see also* Laurie Leiber, *Commercial and Character Slogan Recall by Children Aged 9 to 11 Years* (Center on Alcohol Advertising, Trauma Foundation at San Francisco General Hospital) (1996) (pilot study of 221 fourth and fifth graders found higher recall of the slogan used by the characters in one alcohol ad campaign than the slogans associated with Tony the Tiger or Smokey Bear; only Bugs Bunny's "Eh, what's up Doc?" had a higher recall level than the alcohol slogan, which over 70 percent of students recalled), available at <http://www.igc.org/trauma/alcohol/ads>.

59. The Beer Code prohibits promotions depicting situations where beer is being consumed "excessively" or "in an irresponsible way" and forbids ads suggesting that "intoxication is acceptable conduct." *Beer Code*, Guideline 2 (b), (c). The Spirits Code prohibits showing the consumption of a distilled spirits product "abusively or irresponsibly" or promoting the "intoxicating effects" of beverage alcohol consumption. *Spirits Code, Responsible Content* ¶¶ 9, 11. The Wine Code prohibits depicting situations showing wine or wine cooler consumption "in quantities . . . inappropriate for moderate and responsible use" or describing the "effects" that the alcohol content of wine or wine coolers may produce. *Wine Code*, Guideline 1(f), (a).

60. Another company's research showed that its brand was most favored by "party animals" who "like getting wild."

61. An official at the company stated: "We look at a campaign and ask, would this 'work' to market a kid's product? If the answer is yes, we don't use that campaign."

62. See Farhi, *supra* note 48 (listing TV shows most popular with teens in fall 1998).

63. Cyber Dialogue Inc., *American Internet User Survey* (AIUS) (December 1998). Information about AIUS is available at <http://www.cyberdialogue.com/products/isg/aius/index.html>. By 2002, the number of teens online (age 13-18) is projected to be 16.6 million, a 97 percent increase from 1998. Jupiter Communications, *Kids and Teens to Spend \$1.3 Billion Online in 2002* (June 7, 1999 press release), available at <http://www.jup.com/jupiter/press/releases/1999/0607.html>.

According to a 1998 survey, nearly 65 percent of teenagers (age 12-19) have used or subscribed to online services at home, at school, in the library, at a friend's home, or elsewhere. *Study Shows Two-Thirds of All Teenagers Now Wired*, InternetNews.com, June 1, 1998 (reporting on data from Simmons Teen Age Research Study (STARS)), available at http://www.internetnews.com/TAR/article/0,1087,12_6351,00.html; Simmons Market Research Bureau, *STARS 1998: Simmons Teen Age Research Study*, Version B at 18 (survey question 46A regarding online/interactive computer services). Nearly 30 percent had been on the Internet within the previous 30 days. Simmons Market Research Bureau, *STARS 1998: Know the Teen Market* (informational materials provided to Commission staff).

64. Some of the age reminders, however, are not clear and prominent, but are obfuscated in other text or printed in small type. The questionnaire used by FTC staff for reviewing the web sites is attached at Appendix G.

65. Several sites post links to web sites such as www.netparents.org which provides online safety tips for parents.

66. Annenberg Public Policy Center, *National Survey Shows Parents Deeply Fearful About the Internet's Influence on Their Children* (May 4, 1999 press release), available at <http://appcpenn.org/internet>.

67. See *Alcohol Advertising Targeted at Youth on the Internet*, *supra* note 37. The special reports and the FTC staff survey of web sites also identified such promotional techniques.

68. The CME survey of 77 alcohol web sites found that 43 percent of the beer sites and 72 percent of the distilled spirits sites included some type of age restriction statement (either a reminder of the legal drinking age, as required by the Beer and Spirits Codes, or a filter). See *Alcohol Advertising Targeted at Youth on the Internet*, *supra* note 37.

69. Over 40 percent of college students are binge drinkers, and rates of "drinking to get drunk" and frequent drunkenness among college students have increased in recent years. Henry Wechsler et al., *Changes in Binge Drinking and Related Problems Among American College Students Between 1993 and 1997: Results of the Harvard School of Public Health College Alcohol Study*, 47 J. Am. College Health 57, 61-62 (1998), available at http://www.hsph.harvard.edu/cas/1998_rpt.htm. The National Association of Attorneys General (NAAG) has recently turned its attention to the problem of binge drinking among college students. NAAG's March 1999 Spring Meeting addressed the prevalence of binge drinking on college campuses and various efforts by states and universities to address this problem.

70. Through such sponsorships, a brewer can display signage in college stadiums, place advertisements in game programs, use the school's mascot in company advertising, and run ads on college stations during sporting events. See Jim Naughton, *Colleges Eye Restrictions on Promotions by Brewing Companies*, Chronicle of Higher Education, January 9, 1998. Sponsorships can be lucrative for the educational institution. See *id.* (describing \$225,000 sponsorship offer); Kay Hawes, *A brewing dilemma on campus: Schools wrestle with beverage companies' sponsorship of college sports*, NCAA News & Features, April 6, 1998 (stating that one brewer's sponsorship of a large university's sports program placed it among the top six largest corporate sponsors for that university), available at <http://www.ncaa.org/news/19980406/active/3514n01.html>.

71. David S. Anderson and Angelo F. Gadaletto, *Results of the 1997 College Alcohol Survey: Comparison with 1994 Results and Baseline Year* (George Mason University, Fairfax, Virginia; West Chester University, West Chester, Pennsylvania) (1997) [hereinafter *1997 College Alcohol Survey*].

The Inter-Association Task Force on Alcohol and Other Substance Abuse Issues (IATF), a collaboration of

higher education associations, has guidelines to help college administrators govern marketing of alcohol beverages on college campuses. The guidelines provide that on-campus alcohol marketing should conform to the institution's code of student conduct and not be associated with campus events without the knowledge or consent of the institution. IATF's Guidelines for Beverage Alcohol Marketing on Campus are available at <http://www.iatf.org>.

72. The Higher Education Amendments of 1998 included as "the sense of Congress" that colleges and universities "should adopt a policy to discourage alcoholic beverage-related sponsorship of on-campus activities." H.R. 6, 105th Cong. § 119 (b)(5) (1998) (enacted). In January 1998, Health and Human Services Secretary Donna Shalala, in a speech before the National Collegiate Athletic Association (NCAA), called for an end to all alcohol beverage sponsorships of college sporting events "to sever the tie between college sports and drinking." (The NCAA already prohibits the sale of alcohol at NCAA championship events.) Secretary Shalala's speech is available at <http://waisgate.hhs.gov/cig-bin/waisgate?WAISdocID=033384400+24+0+0&WAISaction=retrieve>.

In July 1998, a Commonwealth of Virginia Task Force on Drinking by College Students issued recommendations to counter alcohol abuse on college campuses, including recommendations concerning advertising and promotion practices. The Task Force's recommendations are available at <http://www.oag.state.va.us/Special%20Projects/Student%20Drinking/recommendations.htm>.

73. Ads like these have been criticized because they appear to encourage excessive drinking. *See Educators Look to End Alcohol Abuse on Kentucky College Campuses*, Alcohol Beverage Control, Vol. 52, No. 41, at 3-4 (October 12, 1998). *See also* Debra F. Erenberg and George A. Hacker, *Last Call for High-Risk Bar Promotions That Target College Students: A Community Action Guide* (Center for Science in the Public Interest, Washington, D.C.) (1997).

Similarly, other promotions not directly advertising alcohol products sometimes appear to encourage underage drinking. One alcohol company (not one of the eight reporting companies) sponsors web sites for tour operators that promote spring break trips to Mexico and elsewhere for college and high school students. One web site notes that the legal drinking age in Mexico is lower and asks whether the crowded bars at one U.S. destination (South Padre Island, Texas) will be able to keep 18-20 year olds from drinking:

The bad news is that the drinking age in Texas is 21 (like that of any US state), the good news is that most of the clubs allow 18 year olds in for fun but no alcohol. Is this practical? Can they really keep 18-20 year olds from drinking in a jammed bar? You be the judge.

(Citation omitted).

74. *1997 College Alcohol Survey*, *supra* note 70. About 20 percent of college papers that accept beverage alcohol advertising prohibit promotion of "Happy Hours" or price specials. *Id.*

75. For example, at NAAG's March 1999 Spring Meeting, alcohol industry representatives noted their efforts to discourage "all you can drink" promotions at local bars.

76. *Beer Code, Code Compliance and Dissemination*. Wine Institute complaint procedures were described to Commission staff by the Institute; they are not set forth in the Wine Code.

77. *Spirits Code, Code Review Board*.