
Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Beck's North America, Inc. ("BNAI"), a Delaware corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

The Commission's complaint in this matter concerns two television advertisements for Beck's Beer that depict young adults drinking alcohol on a sailing ship, while engaging in activities that allegedly pose a substantial risk of injury. BNAI has ceased disseminating the ads that are the subject of the complaint.

The challenged advertisements depict young adults partying and drinking beer on a schooner at sea. On the deck of the boat is a large bucket of ice, filled with bottles of Beck's Beer. Almost all of the passengers are holding bottles of beer, with one male passenger with a bottle of beer in hand standing precariously on the bowsprit (a spar extending almost horizontally off the bow of the boat), and others sitting or leaning on the edge of the bow, where there is no railing.

Because of the significant risks of drinking while boating, the U.S. Coast Guard has recently initiated a public education campaign designed to encourage boat operators and passengers to "boat safe and sober." In this case, the challenged ads depict individuals combining drinking with activities--bowriding and standing on a bowsprit--that could constitute negligent boat operation under federal and state boating safety statutes. In addition, the advertising is inconsistent with the provisions of the Beer Institute Advertising and Marketing Code, which provides that "[b]eer advertising . . . should not portray or imply illegal activity of any kind," and "[b]eer advertising . . . should not associate or portray beer drinking before or during activities which require a high degree of alertness or coordination."

Paragraph five of the complaint describes the challenged advertisements as depicting individuals drinking Beck's beer while engaging in acts that require a high degree of alertness and coordination to avoid falling overboard. This conduct is inconsistent with the Beer Institute's own Advertising and Marketing Code and may also violate federal and state boating safety laws. It alleges that the risks associated with such activities while boating are greatly increased by consumption of alcohol. It notes that even low and moderate blood alcohol levels sufficiently affect coordination and balance to place passengers at increased risk of falling overboard and drowning, and that many persons are unaware of this increased risk. This paragraph also notes that as many as one-half of all boating fatalities are alcohol-related, including an average of 60 recreational boat fatalities annually from falling overboard while drinking. Accordingly, respondent's depiction of this activity in its advertisements 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. As a result, the complaint

alleges that respondent's practice was an unfair act or practice.

The Commission has substantial concern about advertising that depicts conduct that poses a high risk to health and safety. As a result, the Commission will closely scrutinize such advertisements in the future.

The consent order contains provisions designed to remedy the violations charged. Part I of the order prohibits respondent from future dissemination of the television advertisements attached to the complaint as Exhibits A and B, or of any other advertisement that a) depicts a person having consumed or consuming alcohol on a boat while engaging in activities that pose a substantial risk of serious injury from falling overboard or b) depicts activities that would violate 46 U.S.C. § 2302(c). The cited statute, 46 U.S.C. § 2302(c), makes it illegal to operate a vessel under the influence of alcohol or illegal drugs.

The remaining parts of the order contain standard record keeping (Part II); order distribution (Part III); notification of corporate change (Part IV); compliance report filing (Part V) and sunset (Part VI) provisions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.