HARMONIZING ALCOHOL ADS

ANOTHER CASE FOR INDUSTRY SELF-REGULATION

by Thomas A. Hemphill

IN THE FALL OF 1995, TBWA Chiat/Day, a New York City advertising agency, began pitching a potential ad campaign for Seagram's Absolut vodka, the number one selling distilled spirit in the United States. It aimed the pitch at a number of cable television networks, including CNN, Comedy Central, E!, and Bravo. The marketing probe by Seagram America initiated what has become a direct challenge to a voluntary broadcast ban, begun in 1936 for radio and in 1948 for television, by the Distilled Spirits Council of the U.S. (DISCUS). The Washington, D.C.-based national industry association, to which Seagram belongs, represents liquor producers and marketers. Liquor producers have resented for years the fact that beer and wine manufactures have more freedom to advertise on television and radio.

Seagram's challenge puts the liquor industry on a collision course with the government. Federal and state governments have threatened the tobacco industry with new advertising restrictions, taxes, and other regulations. Alcohol is likely the next target. The liquor industry thus must form a strategy to secure a more "level playing field" with the beer and wine distributors in light of possible government action and the possible need for a new regime of self-regulation.

CHALLENGING THE BAN

The liquor industry in America initiated its self-imposed ban on radio advertising as a concession to those angered by the repeal of Prohibition. The beer and wine industries, not looked upon with quite the disfavor as hard liquor, saw no need for initiating such a restriction. But falling sales in the past decades has put the liquor industry at a greater competitive disadvantage and made the move to change the self-imposed broadcast ad ban seem more imperative.

In June 1996, Seagram aired its first television commercial on NBC affiliate KRIS-TV in Corpus Christi, Texas, touting Crown Royal Canadian whiskey. In October 1996, Seagram began running radio commercials for a new product, Lime Twisted Gin. Grand Metropolitan PLC's Paddington Corp., distiller of Baileys Original Irish Cream, followed Seagram's lead. It instructed its New York City advertising agency, Interpublic Group, to inquire about airing liquor advertisements to local television stations. Another spirits distiller, Sidney Frank Importing Co., soon followed the lead of its two competitors. Moreover, in October 1996, the *Wall Street Journal* reported that a majority of DISCUS members supported a recision of the voluntary broadcast ban.

But increased liquor industry broadcast activity elicited vocal criticism from the political front. Both President Clinton and Federal Communications Commission (FCC) Chairman Reed E. Hundt assailed Seagram's for proposing to air television commercials. In his 15 June 1996 weekly radio address to the nation, the President announced that he was "disappointed" that a major company would air television ads and expose "our children to liquor before they know how to handle it or can legally do so." He strongly urged Seagram's return to the voluntary association ban. In a subsequent letter to Hundt, President Clinton requested that the FCC, the independent federal agency that regulates the nation's radio, television, wire, and cable industries, conduct an inquiry into the issue of liquor advertising on television.

Seagram's distilled spirits advertising efforts soon crystallized public opposition on the broader issue of television alcoholic beverage advertising. In May 1996, Representative Joseph Kennedy II (D-Mass.) proposed legislation to restrict alcoholic beverage advertising on television between 7:00 A.M. and 10:00 P.M. to product-only shots with voice-overs. In June 1996, Kennedy announced proposed legislation that would essentially codify the DISCUS voluntary ban into law and remove distilled spirits commercials from the airwaves. In September 1996, Mothers Against Drunk Driving (MADD), a national volunteer organization dedicated to changing behavior and laws toward drunk driving, requested that Chairman Hundt have the FCC investigate the link between alcoholic beverage advertising and teenage drunk driving. In October 1996, the FCC began inquiring about the Seagram's television spots that aired on four local stations. The inquiry followed letters received at the FCC earlier in the month from the National Council on Alcoholism and the Center for Science in the Public Interest (CSPI). Both health-oriented public interest

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"It won't bother us if we're not allowed to aim our ads at the kids. The adults are easier to fool anyway."

groups urged public hearings on "how current advertising of all alcoholic beverages on television affects young people."

At a 7 November 1996 DISCUS meeting, an eight-member policy board, representing about 90 percent of the distilled spirits sold in the United States, voted unanimously to rescind the self-imposed voluntary television and radio advertising ban. The association viewed the media advertising ban as an anachronism, embraced at a time when the liquor industry was attempting to make peace with neoProhibitionist groups. DISCUS announced that its decision was designed to "end discrimination against distilled spirits products" and give liquor marketers equal opportunity to broadcast media presently used by beer and wine advertising. But the decision was not without further political repercussions.

THE PUBLIC RESPONSE

The response from the White House and Capitol Hill to the DISCUS decision was immediate. President Clinton, in his 9 November 1996 weekly radio address, compared alcohol companies to cigarette manufacturers and exhorted the industry to "get back on the ban." Senate Majority Leader Trent Lott (R-Miss.) joined the President in condemning the recision of the ban, calling the decision "a big mistake." Hundt, who described the decision as "disappointing for parents and dangerous for kids," called on television executives to reject all liquor advertising. Kennedy characterized the DISCUS decision as "outrageous" and promised to reintroduce his legislation to regulate alcoholic beverage broadcast advertising.

The Federal Trade Commission (FTC) initiated an investigation of the impact on American youth of televised advertising of alcoholic beverages. During its history, the FTC, the independent federal agency charged with preventing unfair or deceptive trade practices, has frequently ordered companies to cease advertising that exploits young people. Television commercials under investigation by the FTC include those for Stroh Brewery Co., Miller Brewing Co., and Anheuser-Busch as well as Seagram Americas liquor products. All three breweries have subsequently pulled their ads from MTV. The current FTC probe will probably be based on the "unfair advertising" rationale that was previously used by the agency to investigate the cigarette industry in 1994. Using that approach, the FTC would attempt to prove that Seagram ads target underage audiences and have a corresponding harmful effect on them. But in a *Wall Street Journal* interview on 8 November 1996, Jodie Bernstein, director of the FTC's Bureau of Consumer Protection said that "it would be hard to make the case" that liquor should be treated differently than beer and wine. As long as [the advertising] is not deceptive or unfair, it would be hard to differentiate."

At the state level, the attorney general of Alaska petitioned the FCC to adopt a rule prohibiting television and radio stations from broadcasting advertisements for distilled spirits. Following Alaska's lead, ten other states and Puerto Rico filed similar petitions with the FCC. Public interest groups were equally vocal in their criticism. CSPI sent out Community Action Kits to assist 750 community groups across the nation to protest the DISCUS decision. Then president-elect, now president of MADD, Karolyn Nunnalee, announced that MADD planned to formally complain to the FCC about the DISCUS decision and would support legislation limiting alcohol advertising. According to Hundt, "a huge number" of public interest groups proclaimed that "hard liquor should not be on the airwaves."

The broadcast industry quickly responded to the criticism from Washington and the calls for advertising restraint. The National Association of Broadcasters, which represents the television and radio networks, issued a statement saying it was "disappointed" with the DISCUS decision despite its "staunch support of the First Amendment rights of broadcasters to advertise legal products." Representatives of three of the four major networks, ABC, CBS, and Fox, quickly announced that they would refuse to accept liquor commercials while NBC left the decision up to its station general managers, although the network recommended against it.

Major cable channels, such as ESPN, MTV, Lifetime, and Turner Broadcasting System announced that they would not accept liquor spots. Other independent networks, such as Gannett, Cox Broadcasting, LIN Television, and Freedom Communications also announced that they did not accept liquor advertisements and have no plans to change their policy. Only the Black Entertainment Television and Continental Cablevision networks agreed to accept liquor commercials. Major radio station groups, such as CBS/Westinghouse/Infinity Broadcasting and American Radio Systems issued blanket rejections of distilled spirits advertising, even though they previously had broadcast them without consumer complaint.

THE POLITICAL AFTERMATH

In early December 1996, the National Advertising Review Council (NARC), a unit of the Council of Better Business Bureaus responsible for industry self-regulation, announced that it was considering establishing a voluntary code of advertising conduct and a new organizational unit to review complaints about whether advertising for products like cigarettes and alcoholic beverages influences use by minors. But by late December, after the Beer Institute expressed serious concern that beer would be unfairly stigmatized if it were lumped with other "unrelated" products, NARC backed away from its proposal. The Council concluded that it was not presently feasible to begin investigating complaints that advertising for products targeted to adults might also be influencing minors.

THE FCC, SAID CHAIRMAN HUNDT, HAS JURISDICTION TO ENSURE THAT BROADCASTERS OPERATE IN THE "PUBLIC INTEREST."

At a 13 March 1997 House Appropriations Committee hearing, Representative Michael Forbes (R-N.Y.) engaged Hundt in a debate over the Chairman's efforts to involve the commission in the television liquor advertising dispute. Forbes asserted that the FTC has jurisdiction over advertising. Hundt replied that the FTC has jurisdiction over false and deceptive advertising but that his intention was to open an FCC inquiry into more general questions about the liquor industry's decision to broadcast ads. The FCC, said Hundt, has jurisdiction to ensure that broadcasters operate in the "public interest." The FTC, replied Forbes, has the power to "safeguard the public." The New York congressman expressed "great concern" about the FCC's "very powerful ability to intimidate," and suggested that Hundt's conduct bordered on censorship.

Representative John Dingell (D-Mich.), the ranking Democratic member of the House Commerce Committee, said in a March speech before the American Advertising Federation's annual government affairs conference, that "it might be prudent (for the liquor industry) to reconsider" their abandonment of a self-imposed ban on broadcast advertising. Dingell also questioned Hundt's stance on broadcast liquor ads and commented that regulation by Congress or the FTC is a more likely solution.

Acknowledging that a vote on an advertising ban is unlikely, Kennedy's new tactic is to enlist the National Institutes of Health's National Institute of Alcohol Abuse and Alcoholism, part of the U.S. Department of Health and Human Services, to undertake a comprehensive study of the effect of alcoholic beverage advertising on those below legal drinking age.

In March 1997, the Center for Media Education, a Washington, D.C. children's advocacy group, accused distilled spirits and beer companies of using over two dozen World Wide Web sites to promote their products to underage audiences. Pointing out Internet sites that include music audios and interactive games, the Center is requesting that Congress and federal regulators investigate the alcoholic beverage industry's on-line advertising.

On 1 April 1997, President Clinton again went on record strongly encouraging the distilled spirits industry to reinstate its voluntary broadcast advertising ban. He praised Hundt for considering "any and all actions that would protect the public interest in the use of the public airwaves." In a letter to Hundt, the President asked the commission to explore the effects on children of the distilled spirits industry's decision to advertise on television and to determine an appropriate response. However, the President did not request that the FCC inquiry include beer and wine broadcast advertising.

On 9 July 1997, the FCC deadlocked in a two to two vote on a motion to authorize an investigation into the advertising of distilled spirits on television. At the time of the vote, one seat was vacant on the five-member commission. The tie effectively killed the measure for 1997. While Hundt and Commissioner Susan Ness voted for the measure, Commissioners James H. Quello and Rachelle B. Chong opposed it. Commissioners Quello and Chong cited two reasons for their votes: the commission's lack of jurisdiction over the societal effects of broadcast advertising and the concern that the commission's inquiry would duplicate an investigation underway at the FTC.

In January 1998, the National Institute on Alcohol Abuse and Alcoholism released a major study (forty-three thousand interviews) on alcohol abuse among American youth. According to the study results, young people who began drinking before age fifteen were four times more likely to develop alcohol dependence (alcoholism) than those who began drinking at age twenty-one. The risk that a person would develop alcohol abuse, defined as a maladaptive drinking pattern that repeatedly causes life problems, was more than doubled for persons who began drinking before age fifteen compared with those who began drinking at age twenty-one.

Commenting on the study results, U.S. Secretary of Health and Human Services Donna E. Shalala urged, "prevention agencies, communities, businesses (especially the alcohol beverage industry), schools, and parents need to act together and to tell our young people unequivocally and with one voice that underage drinking is dangerous and wrong." In addition, the Secretary warned that "we need to avoid glamorization of drinking, including misleading linkages between sports and alcohol."

THE INDUSTRY TAKES NOTICE

It was beer rather than liquor producers that acted first to stem the criticism that was starting to focus on alcohol in general. In September 1997, the Beer Institute updated its *Advertising & Marketing Code* to include language requiring brewers to review Nielsen or other recognized television audience demographic data at least twice a year to insure that advertisements are placed where viewers are older than the legal drinking age. However, the revised code offers no acceptable target percentage of adult viewers. The Beer Institute also altered its code to require that its members' Internet sites be available to adults only. To that end, it will provide to manufacturers of parental control software the names and web site addresses of all Beer Institute member web sites. Moreover, brewers will post reminders at appropriate locations in their web site indicating that brewer products are intended only for consumers of legal drinking age.

In November 1997, the newly appointed FCC Chairman William Kennard indicated his interest in the possibility of an inquiry into distilled spirits advertising on television. Besides Chairman Kennard, commission holdover Susan Ness was a previous supporter of an investigation and Commissioner Gloria Tristani was reported to be leaning toward an inquiry. Shortly after becoming Chairman, Commissioner Kennard was petitioned by the 250-member Coalition for the Prevention of Alcohol Problems to examine all alcoholic beverage advertising. Not surprisingly, industry groups such as DISCUS, the American Association of Advertising Agencies, and the Association of National Advertisers expressed their displeasure with Chairman Kennard's endorsement of the investigation.

COMPETITIVE MARKET FORCES MOTIVATED THE DISTILLED SPIRITS INDUSTRY, TO LIFT ITS VOLUNTARY BAN OF BROADCAST ADVERTISING AND RISK SOCIAL SCORN AND MORE REGULATION.

But in December 1997, Hiram Walker & Sons, a leader among spirits companies advertising on television and radio, announced a $5 million radio advertising campaign for 1998 spotlighting its Canadian Club whiskey. Hiram Walker & Sons has previously advertised Kahlua mixed drinks on television and radio and Cutty Sark Scotch whiskey on radio.

INDUSTRY MOTIVES

Competitive market forces motivated Seagram Americas, and eventually the distilled spirits industry, to lift its voluntary ban of broadcast advertising and risk social scorn and more regulation. Distilled spirits, wine, and beer are the three subsectors of the alcoholic beverage industry. But distilled spirits has been the victim of hard economic times. Since 1979, that industry's best selling year, domestic sales of distilled spirits have declined from about 200 million nine-liter cases to 135 million cases in 1996. From 1970 to 1995, the distilled spirits market share of the alcoholic beverage industry dropped from 44 percent to 29 percent, while beer's market share increased from 45 percent to 59 percent. Since 1979, liquor sales have declined 32 percent while beer and wine sales are up 5 percent.

According to a August 1997 issue of *Beverage Industry,* a national trade publication, distilled spirits industry analysts offer a number of reasons for the decline: the evolution of active, health-conscious lifestyles; increased consumer sensitivity to DWI (Driving While Intoxicated) traffic laws; a general trend by consumers away from high-proof beverages; and increased competition from alternative beverages, both alcoholic and nonalcoholic. Moreover, most of the sales volume loss has been in whiskeys ("brown" goods), while vodka, rum, and tequila ("white" goods) have been expanding their market shares.

Since the early 1990s, the distillers have been planning a new strategy to halt the decline in sales of their products. In a twenty-seven page memorandum, written in the fall of 1995, entitled "The Use of Electronic Media for Brand Promotion and Advertising," Seagram executives outlined a marketing strategy to abandon its compliance with the voluntary ban against broadcast advertising. Seagram officials debated the high cost of television air time versus print advertising.

But marketing executives presented convincing evidence that television advertising had built sales, taken share away from competitors, and increased brand awareness for other consumer products, including Canon cameras, Playtex tampons, and Habitrol nicotine patches. Seagram executives chose a strategy of quietly creeping on the broadcast airwaves with a series of ads on cable or local stations, instead of releasing a major announcement saying that Seagram would no longer adhere to the industry ban and immediately run a high profile television commercial for Absolut vodka.

In its memorandum, Seagram staff noted that there were risks to their marketing strategy. Television stations might be unwilling to accept advertising for liquor ads fearing public criticism and possible federal regulatory retaliation targeted to alcoholic beverage advertising in general. Moreover, any threat to the $626 million in annual spending (1995) by the beer industry on television advertising is a major concern of television broadcasters. But with industry sales suffering a fifteen-year decline, innovative marketing measures targeting the "Generation X," under thirty year old consumer needed to be embraced to stymie further market erosion. While the distillers have initiated million dollar print advertising campaigns to attract that market segment, the media that most effectively reach "Generation X" are television and radio.

Internationally, the trend for distilled spirits advertising has been towards greater freedom to advertise. In 1995, the Federal Court of Canada struck down legal prohibitions against liquor advertising on television and radio. The British ended their voluntary television ban on distilled spirits advertising in 1996. Belgium recently allowed television advertising for liquor containing up to 20 percent alcohol content.

A major stimulus encouraging the November 1996 DISCUS decision came on 13 May 1996, when the U.S. Supreme Court, in *44 Liquormart, Inc. v. Rhode Island*, reversed the First Circuit Court's decision that Rhode Island's laws prohibiting off-premises advertisement of liquor prices were valid . That landmark decision makes it much more difficult for legislators to restrict truthful commercial speech, thus establishing a precedent for more stringent evidentiary requirements underlying future advertising regulations. Therefore any new law that imposes a comprehensive ban on television or radio liquor commercials will probably not survive First Amendment judicial review (see "Cheers to the Court," *Regulation*, Winter 1997).

The distilled spirits industry's stated desire is to compete against beer and wine products on "a level playing field." Some alcoholic beverage industry analysts believe that the distillers are following a win-win political strategy. If their efforts to advertise on television and radio succeed, the playing field becomes level. If regulators begin a crackdown on alcoholic beverage broadcasting, the distillers benefit from reduced advertising by the wine and, especially, the beer industry. Other alcoholic beverage analysts believe that the distillers long-term strategy is to get on television now to guarantee a place when the next wave of technological advances occurs in home electronics, for example, the Internet.

REGULATORY STRATEGIES

The public policy controversy over the broadcast airing of distilled spirits commercials has reached an important regulatory juncture. It is likely that liquor producers will face or be forced to accept one of a number of regulatory arrangements. It is useful to evaluate political feasibility, legal standing, and relevance to the competitive industry environment of those options. They include the following:

BY SEEKING GREATER ACCESS TO ADVERTISING, DISTILLERS COULD BE FOLLOWING A WIN-WIN POLITICAL STRATEGY.

Reinstate the voluntary distilled spirits broadcast advertising ban. The competitive environment that exists within the alcoholic beverage industry precludes a return to the DISCUS voluntary self-regulation regime. While political pressure from the President and Congress has been vocal, the threat of public policy retaliation has been insufficient to warrant an industry retreat. The FCC was stymied in its attempt at a formal inquiry in 1997; with new commissioners indicating an interest in investigating distilled spirits advertising, 1998 could be the year for an FCC investigation.

The coming FTC inquiry will be limited to a circumscribed area of deceptive advertising. FTC Chairman Robert Pitofsky believes that "there's not much difference between hard liquor, wine, and beer when they involve ads to audiences that are underage." Advocacy efforts of public interest groups against the distilled spirits industry have been intense but, due to an emphasis on curbing alcoholic beverage broadcast advertising for wine, beer, and distilled spirits, somewhat diffuse.

Develop a voluntary code of advertising and marketing conduct for the distilled spirits industry useful as broadcast guidelines. To reassure critics concerned with alcohol abuse and underage drinking, DISCUS recently revised its advertising and marketing Code of Good Practice to include a list of twenty-six provisions aimed at promoting responsible spirits ad placement and content. Under the Code's responsible placement of ads, the association has strongly recommended that advertising and marketing efforts not be directed at less-than-minimum legal purchase age audience or be targeted at events where most of the audience is below the minimum legal purchase age. In recognition of concerns about the appeal of tobacco advertising to children, DISCUS members have adopted responsible content guidelines to abstain from the use of cartoons and other images associated with children. The group has long recommended that its members not use Santa Claus or religious figures in their ads. The Code of Good Practice is an important guide for members of the distilled spirits industry but probably insufficient to assuage the concerns of most critics of alcoholic beverage broadcast advertising.

Harmonize advertising and marketing self-regulation codes across the alcoholic beverage industry. In April 1997 DISCUS called on the President to convene a meeting of the alcoholic beverage industry (i.e., distilled spirits, brewers, and vintners) and broadcasting industry (television and radio) for the purpose of developing a common code of advertising. Currently each subsector of the alcoholic beverage industry has its own code governing advertising and marketing practices addressing issues of social responsibility and underage drinking. A common code will offer clear guidelines on alcoholic beverage advertising for the broadcast industry. That position has support in Congress from many in the Republican majority, including the chairman of the House Subcommittee on Telecommuni-cations, Trade, and Consumer Protection, W.J. Tauzin (R-La.). The proposal has not generated support from the White House, the Beer Institute, the Wine Institute, or public interest groups. Nevertheless, this regulatory strategy merits serious consideration as a possible solution to the dispute.

Seek direct government regulation of alcoholic beverage broadcast advertising. The efforts by critics of alcoholic beverage broadcast advertising to initiate a regulatory response so far have met failure. The President's efforts to involve the FCC in hearings on the distilled spirits issue have been stymied. The Republican-controlled Congress has not exhibited an appetite for hearings that will probably not result in any legislative remedy. Because of the virtually nonexistent probability of passing any regulatory bill, Democrats are not introducing any legislation for consideration. The political influence of the alcoholic beverage industry cannot be ignored either. For 1995 and 1996, the top thirty beer, wine, and distilled spirits companies contributed over $1.6 million to the political campaigns of Congressional and presidential candidates. The National Beer Wholesalers Association accounted for over $1 million of that financing, with the bulk of the contributions going to Republicans. Finally, the recent Supreme Court rulings upholding First Amendment rights of advertisers' free speech would make it difficult, if not impossible, for Congress or regulatory agencies to place broad restrictions on alcoholic beverage advertising—especially since studies have not proven a link between advertising and alcohol consumption.

*Face a broadcast media refusal to accept distilled spirits advertising. T*he reasons that the major broadcast companies have steadfastly refused to air commercials for distilled spirits are grounded in economics, not corporate social responsibility. The motivations for that position are a fear of public outcry and the threat of losing beer industry advertising revenue. Presently, only about fifty local and cable television stations are airing liquor ads. But the public outcry to an expansion of distilled spirits commercials could lead to a diminished presence of alcoholic beverage advertising and reduced broadcast revenue if the broadcast media came under tighter regulatory restraint.

According to the *New York Times* 12 January 1997, Robert Johnson, chairman of BET Holdings Inc., the producer of the Black Entertainment Television cable network, believes that the major television networks refused to accept commercials for another reason: they did not want to anger Hundt, who was deciding whether to make broadcasters pay, through a bid auction, for the hundreds of new channels that will become available once television goes digital. In April 1997, the FCC decided to grant broadcasters access to the new digital frequencies without having them purchase, at an anticipated loss of as much as $10 billion to the U.S. Treasury, the broadcast rights from the federal government. Now each broadcaster will have the opportunity to reassess the regulatory environment and decide whether First Amendment rights and increased revenue from airing liquor spots will justify the ensuing public criticism, including that of new FCC Chairman William Kennard who believes that the lifting of the distilled spirits voluntary ban on television and radio advertising should at least be debated in an open forum. Of course, adverse publicity could enhance the threat of federal regulatory intervention limiting financially lucrative beer industry advertising.

ALCOHOL WARNING LABELS, MINIMUM DRINKING AGE LAWS, AND DRUNK DRIVING LAWS DO NOT DISTINGUISH AMONG DISTILLED SPIRITS, BEER, AND WINE.

THE CASE FOR INDUSTRY SELF-REGULATION

From a public policy perspective, industry self-regulation and the harmonization of advertising and marketing codes across the alcoholic beverage industry might be the best option to head off regulation in the future that could seriously harm the industry. Industry self-regulation is defined by the University of Maryland's Anil K. Gupta and Butler University's Lawrence J. Lad, as "a regulatory process whereby an industry-level, as opposed to a governmental body or a firm-level, organization, such as a trade association or professional society, sets and enforces rules and standards relating to the conduct of firms in the industry." While the "free rider" problem—where "renegade" firms in the industry do not abide by the self-regulating regime and therefore benefit at the expense of complying firms—and antitrust policies have restricted the widespread implementation of industry self-regulation in the United States, there are empirical examples of such regulatory schemata involving various levels of government intervention and industry self-regulation.

According to Harvard University's David A. Garvin, the regulatory spectrum includes pure self-regulation (motion picture and television rating and censorship); self-regulation plus government provision of technical information (voluntary product standards and the National Bureau of Standards); self-regulation plus government policing of deceptive practices (securities industry self-regulation and the Securities and Exchange Commission); and self-regulation plus an autonomous government agency with rule-making authority (National Advertising Review Council and the FTC). Garvin recommends that the greatest potential for industry self-regulation lies in "mixed systems that combine industry rule-making with federal "oversight." Gupta and Lad concur with Garvin that "some form of government oversight and threat of direct regulation often coexist alongside industry self-regulation."

Currently, the distilled spirits, beer, and wine segments of the alcoholic beverage industry each have their own voluntary code of responsible advertising and marketing practices: the *Code of Good Practice for Distilled Spirits Advertising and Marketing* (Rev. 1996) (DISCUS); the *Advertising & Marketing Code* (Rev. September 1997) of the Beer Institute; and the *Code of Advertising Standards* (Rev. May 1987) of the Wine Institute. Each subsector's code addresses, to varying degrees, issues concerning underage drinking and responsible product imagery.

While the present controversy centers on distilled spirits broadcast advertising, the larger public policy issue for the broadcast industry is addressing criticism of alcoholic beverage advertising and marketing practices. The broadcast industry, which is regulated by an FCC charged with "public interest" stewardship, needs the voluntary self-regulating mechanism as well as political protection that a common code of responsible advertising and marketing offers a significant revenue source. But there are two important issues supporting the development of a common industry code which require further explanation: the measured effects of alcoholic beverage advertising and the concept of beverage equivalency.

The hypothesis that alcoholic beverage advertising is closely linked with an increase in alcohol use or abuse has been intensely researched. The FTC has reviewed the scientific literature on "cause-and-effect" between advertising and alcoholic beverage consumption and "found no reliable basis to conclude that alcohol advertising significantly affects consumption, let alone abuse." The evidence suggests that alcohol advertising only shifts consumers allegiance from one brand to another. Dr. Morris E. Chafetz, founding director of the National Institute of Alcohol Abuse and Alcoholism, U.S. Department of Health and Human Services recently editorialized that "there is not one single study—not one study in the United States or internationally—that credibly connects advertising with an increase in alcohol use or abuse. Any assertion or assumption that alcohol ads increase use and abuse is fantasy, not fact."

The second point to consider is the concept of beverage alcohol equivalence. A standard serving of beer, wine, and spirits, i.e., a twelve-ounce can of beer, a five-ounce glass of wine, and a 1.5 ounce cocktail of eighty proof spirits, all contain the same absolute amount of alcohol. The National Institute on Alcohol Abuse and Alcoholism, the Departments of Agriculture, Transportation, and Education, MADD, the

"None for Richard. Alcohol activates his reptilian brain"

National Council on Alcoholism and Drug Dependence, Blue Cross/Blue Shield, and the National Alcohol Beverage Control Association all measure beverage alcohol equivalence using the standard serving criteria. Moreover, alcohol warning labels, minimum drinking age laws, and drunk driving laws do not distinguish among distilled spirits, beer, and wine. In spite of that, beverage alcohol equivalence consensus, the Beer Institute emphasizes the so-called "obvious, significant differences between beer and hard liquor." The Wine Institute "strongly reject(s) the erroneous premise that equates wine, beer, and distilled spirits as simply quantitative variations of 'alcohol.'" Nevertheless, from a public policy perspective, "alcohol is alcohol is alcohol."

The alcoholic beverage industry is feeling the fallout from the Food and Drug Administration's 1995 regulations restricting the advertising, promotion, distribution, and marketing of cigarettes to teenagers. Moreover, the proposed $368.5 billion agreement reached by state attorneys general, public health officials, and the tobacco companies to settle lawsuits by states and individuals also includes industry provisions to restrict cigarette advertising and monetary penalties if the percentage of youth smoking fails to decline.

As another so-called "sin" product, alcoholic beverages are always vulnerable to public criticism—especially when it concerns youth. In 1996, according to statistics compiled by the National Highway Traffic Safety Administration, 21 percent of the fifteen to twenty years old drivers who were killed in crashes were legally intoxicated, with a blood alcohol level of 0.10 g/dl or higher. Further, almost 30 percent of those drivers who were killed, while not legally drunk, had been drinking.

It is important to note that in both the categories of drivers killed and drivers involved in fatal automobile crashes, the numbers of drivers fifteen to twenty years old who were intoxicated dropped by 54 percent between 1986 and 1996—the largest decline of any age group. That seems to imply that, while policy makers are correct to act aggressively to prevent highway deaths caused by drunk driving, worries that liquor advertising could lead to increased accidents is premature. Yet public interest groups like MADD and their Clinton administration and congressional allies are keeping a sharp focus on the alcoholic beverage industry's advertising and marketing practices.

Forestalling government regulation would be a primary motivator for industry self-regulation. The need for a common code of advertising and marketing practices is justified by the FCC's threat to restrict alcoholic beverage broadcast advertising under the agency's legislative mandate for establishing and monitoring moral standards. An FCC regulatory decree could limit the hours when such advertising could be aired or influence the nature of commercial advertising.

How would the alcoholic beverage industry self-regulation process unfold? Under the auspices of the National Advertising Review Council, the Distilled Spirits Council of the United States, Inc., the Beer Institute, and the Wine Institute might meet with the National Association of Broadcasters to establish a voluntary code of advertising and marketing practices for the alcoholic beverage industry. The alcoholic beverage common code would incorporate salient aspects of the existing sector codes of responsible advertising and marketing practices. The broadcast industry would evaluate the common code and request further guideline clarification where needed.

There could be pressure for alcoholic beverage producers to supplement such an approach with an advisory committee of stakeholders, representing, for example, the FCC, FTC, Congress, the White House, and public interest groups. Such a group could review and, where needed, offer constructive criticism of the proposed industry guidelines. Creation of such a committee might help to reduce pressure for government action against the industry. On the other hand, the industry might feel that acting on its own will reduce pressure enough to avoid government controls. In any case, a committee could create a dangerous precedent, blurring further freedom of speech, free exchange, and the rule of law.

After the iterative code development process is complete, the final product will be a set of voluntary guidelines that will be consistently applied by all members of the broadcast media and will ostensibly defuse the threat of increased government regulation.

CONCLUSION

The alcoholic beverage industry is one of the most highly regulated sectors of the American economy. But based on exhaustive scientific evidence and expert opinion, there is no apparent need for further federal regulation of alcoholic beverage broadcast advertising. The First Amendment right to truthfully advertise a legal product will continue to allow the alcoholic beverage industry to market their spirits, wine, and beer over the broadcast airwaves. Yet the political climate is ripe to further broadcast restrictions. Supporting this assertion is a *Wall Street Journal*/NBC News Poll released 24 April 1998, which reveals that 44 percent of Americans polled believe the federal government is doing too little to regulate alcohol. That contrasts with 38 percent of those polled who believe the same about tobacco. And even if the alcohol industry could hold off regulators for a time, it could be bled dry by court costs and other costs of defending its interests.

Providing the broadcast industry with a common code of responsible alcoholic beverage advertising and marketing practices is an extension of the industry tradition of self-regulation. The broadcast industry needs guidelines that will be applied to all alcoholic beverage products. Because of the "public interest" nature of its business, the broadcasters are more susceptible to political pressure. The broadcast industry's fear is that widespread airing of liquor commercials will lead to a public backlash that could eliminate highly profitable beer advertising.

While not presently a threat to the status quo, distilled spirits could gradually increase their presence on the broadcast airwaves. A common code could offer the broadcasters the mechanism to stymie the political controversy, the threat of further government regulation, and the potential loss of revenue from foregone beer advertising. The common code will build on the already established subsector codes. Notwithstanding, each alcoholic beverage industry subsector can voluntarily exceed the common code's recommended advertising and marketing practices.

Responding to public concerns has traditionally been a charge that the alcoholic beverage industry has voluntarily embraced. Recognition of the true nature of that public concern should bring a consensus on extending the successful use of voluntary distilled spirits, beer, and wine industry subsector advertising and marketing self-regulation to the alcoholic beverage industry.

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