



# Alcohol Beverage Advertising

What Every Industry Member Should Know



# TTB Disclaimer

This information is being presented to help the public to understand and comply with the laws and regulations that the Alcohol and Tobacco Tax and Trade Bureau (TTB) administers.

It is not intended to establish any new, or change any existing, definitions, interpretations, standards, or procedures regarding those laws and regulations.

In addition, this presentation may be made obsolete by changes in laws and regulations.

Please consult the applicable laws and regulations for the most current requirements.

Sample documents (such as records, returns, and labels) are for illustrative purposes only and contain fictitious data.



# Agenda

- In this session we will cover:
  - TTB's Advertising Authority
  - What is Advertising?
  - Mandatory Information
  - Prohibited Practices
  - Health-Related Statements
  - Role of Social Media
  - Trade Practice Concerns
  - Common issues

See 27 U.S.C. 205(f)



# TTB Advertising Authorities

- Federal Alcohol Administration Act (FAA Act)
  - 27 U.S.C. 205(f)
- Title 27 Code of Federal Regulations
  - Wine (part 4)
  - Distilled Spirits (part 5)
  - Malt Beverages (part 7)



# What is Advertising?

- Any written or verbal statement, illustration, or depiction which is in, or calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail. . .

See 27 CFR 4.61, 5.232, 7.232



# Examples of Advertisements

## Includes, But Not Limited To:

- Magazines, newspapers, circulars, mailers, trade booklets, or sales pamphlets or other publications
- Alcohol beverage menus, wine cards, leaflets, shelf cards





# Examples of Advertisements (continued)

## Includes, But Not Limited To:

- Hang tags, pamphlets, and other matter that accompany the container
- Representations on cases and cartons





# Examples of Advertisements (continued)

## Includes, But Not Limited To:

- Billboards and signs (indoor and outdoor)
- TV and radio







# Examples of Advertisements (continued)

## Includes, But Not Limited To:

- Websites, online pop-up advertisements
- Social networking services (e.g., Facebook, LinkedIn, Snapchat)





# Examples of Advertisements (continued)

## Includes, But Not Limited To:

- Media sharing sites (e.g., YouTube, Vimeo, TikTok, Instagram)
- Social media influencers





# Examples of Advertisements (continued)

## Includes, But Not Limited To:

- Blogs, Microblogs (Twitter, Blogger, Tumblr)
- Mobile applications
- Links, QR codes, Augmented Reality





# Mandatory Information

## Wine

- Responsible advertiser (name and city/state, or name and contact information such as a telephone number, website, or email address)
- Class, & type designation or distinctive designation (same as it appears on label).

For example:

- Red wine, white wine, sparkling wine, cider
- Cabernet Sauvignon, Chardonnay
- Champagne, Bordeaux
- Red wine with natural flavors; white wine with natural and artificial flavors

See 27 CFR 4.62



# Mandatory Information (continued)

## Distilled Spirits

- Responsible advertiser (name and city/state, or name and contact information such as a telephone number, website, or email address)
- Class & type designation or distinctive designation (same as it appears on label). For example:
  - Whisky, gin, brandy
  - Vodka, bourbon whisky, cognac
  - Neutral spirits with natural flavor and caramel color; vodka with natural flavors
- Alcohol content (percentage by volume)
- Percentage of neutral spirits and name of commodity

See 27 CFR 5.233



# Mandatory Information (continued)

## Malt Beverages

- Responsible advertiser (name and city/state, or name and contact information such as a telephone number, website, or email address)
- Class & type designation or distinctive designation (same as it appears on label)
  - Beer, ale, lager, porter, stout
  - Raspberry ale; stout brewed with pumpkin and cinnamon; malt beverage with natural flavors

See 27 CFR 7.233



# Mandatory Information Exceptions

- If advertisement refers to a general line of products or all of the products of one company, by the company name or by the brand name common to the products, the only mandatory information required is the responsible advertiser (name and city/state, or name and contact information such as a telephone number, website, or email address) Responsible advertiser name.
  - Examples:





# Mandatory Information Exceptions

(continued)

- On consumer specialty items (items designed to be carried away by the consumer), the only information necessary is the company name of the responsible advertiser or brand name of the product.
  - Examples:







# Prohibited Practices

- False or untrue statements
- Misleading statements, irrespective of falsity, that create a misleading impression or are likely to mislead consumers
- Statements disparaging a competitor's products
- Representations that are obscene or indecent
- Misleading guarantees
  - Money-back guarantees are **not** prohibited
- Statements suggesting a wine or malt beverage product contains or is distilled spirits

See 27 CFR 4.64, 5.235, and 7.235



# Prohibited Practices (continued)

- Representations of the Armed Forces or flags that create a misleading impression
- Statements inconsistent with labeling
  - Label depicted on an advertisement must be a reproduction of an approved label
- Untrue or misleading health-related statements
- Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the appropriate TTB officer finds to be likely to mislead the consumer

See 27 CFR 4.64, 5.235, and 7.235



# Health-Related Statements

## Includes:

- Specific health claims and directional statements
- General references to alleged health benefits from the consumption of alcohol
- Representations or claims that imply that a physical or psychological sensation results from consuming the alcohol product
- Statements and representation of nutritional value (**not** Statement of Average Analysis or Serving Fact Statement)

See 27 CFR 4.64(i), 5.235(d), and 7.235(e)



# Health-Related Statements (continued)

- Evaluated on a case-by-case basis
- May not be untrue or create a misleading impression as to effects on health of alcohol consumption
- May require disclaimer or qualifying statement
- Disclaimer must appear as prominent as the statement

See 27 CFR 4.64(i), 5.235(d), and 7.235(e)



# Health-Related Statements (continued)

A specific health claim is **not** misleading if it is truthful and adequately substantiated by **scientific or medical** evidence, **and—**

- Details the categories of individuals to whom the claim applies
- Discloses health risks associated with both moderate **and** heavier levels of alcohol consumption
- Outlines categories of individuals for whom any levels of alcohol consumption may cause health risks

This information must appear as part of and as prominent as the specific health claim

See 27 CFR 4.64(i), 5.235(d), and 7.235(e)



# Health-Related Statements (continued)

## **Advertising Suggesting an Alcohol Beverage has Energizing Effects**

- Statements fall under health-related statements (i.e., physical or psychological effect)
- Statements reviewed on case-by-case basis, taking into account totality of advertisement
- Generally, such statements will be viewed as misleading



# Health-Related Statements (continued)

## More Examples of Misleading Health-Related Statements

- Ginseng – helps with chronic fatigue syndrome
- Taurine – plays a major role in stabilizing heartbeat
- Guarana – maintaining stamina, physical endurance, and aiding in rejuvenation
- This fruit wine will help your memory
- Wine is healthier
- No headaches
- Hangover-free



# Statement of Average Analysis (SAA) or Serving Facts Statement (SFS)

Any advertisement that makes any type of calorie or carbohydrate claim must include an SAA (TTB Ruling 2004-1) or a SFS (TTB Ruling 2013-2 and 2020-1)

PER 12 FL. OZ. — AVERAGE ANALYSIS [FOR 12 FL. OZ. MALT BEVERAGE BOTTLE]

Calories	110
Carbohydrates	3.2 grams
Protein	0.5 grams
Fat	0.0 grams

Or

<b>Serving Facts</b>	
Serving Size	5 fl oz (148 ml)
Servings Per Container	5
Amount Per Serving	
<b>Calories</b>	120
<b>Carbohydrate</b>	3g
<b>Fat</b>	0g
<b>Protein</b>	0g





# Statement of Average Analysis or Serving Facts Statement (continued)

## AVERAGE ANALYSIS

- Serving size
- Calories
- Carbohydrates
- Protein
- Fat

## SERVING FACTS

- Serving size
- Servings per container
- Alcohol content (optional)
- Calories
- Carbohydrates
- Protein
- Fat



# Role of Social Media

- Industry Circular 2022-2
- Advertising through social media
- Requires all mandatory information
  - Typically place in a readily apparent location, e.g., the **About** section for name and address
  - May also be included in a clearly marked link
- Cannot contain any prohibited statements



# Role of Social Media - Influencers

- What are social media influencers (SMIs)?
  - Individuals on social media who have viewers or followers and use their influence to persuade their followers to purchase products



Image by DCStudio on Freepik

See TTB Industry Circular 2022-2



# Role of Social Media - Influencers

- **Is this an advertisement?**

- If the posts directly or indirectly advertise an industry member, brand, or specific product, we may consider such posts made by the SMI to be advertisements.
- In making this determination, we will consider:
  - Whether or not an industry member directly, indirectly, or through an affiliate published, disseminated, or caused to be published or disseminated, any advertisement; in this case, the SMI's posts

**OR**

- If the SMI was compensated directly or indirectly by the industry member in return for the endorsement

See TTB Industry Circular 2022-2



# Role of Social Media - Influencers

- **What are the rules?**
  - Same as other advertisements
    - All mandatory statements (although a link is ok)
    - No prohibited practices



# Common Issues

- Missing mandatory information
  - Required class, type, or distinctive designation (statement of composition)
  - Alcohol content (in the case of distilled spirits)
- Labels depicted in ads don't match the COLAs
- Calorie or carbohydrate claims without a SAA/SFS
- Misleading or unsubstantiated health claims



# Advertising Trade Practices

- It is unlawful for an industry member to induce, directly or indirectly, a retailer to purchase its alcohol beverages to the exclusion of alcohol beverages offered for sale by other persons.
  - Industry member paying or crediting a retailer for any advertising is an inducement and may lead to a tied house violation.
  - Industry member providing anything of value, including marketing or advertising support, to a retailer is an inducement and may lead to a tied house violation; however, there are exceptions.

See 27 U.S.C. 205(b) and 27 CFR part 6



# Advertising Trade Practices (continued)

## Advertising Related Exceptions

- Product displays (such as wine bins, racks, barrels, casks, shelving or similar items) may be given to a retailer if:
  - Total value may not exceed \$300 per brand (transportation and installation costs excluded).
  - All product displays must bear advertising matter about the product or the industry member permanently inscribed or securely affixed.
  - Product displays may be conditioned upon the purchase of only the quantity of product necessary for the initial completion of such display.
  - No other condition can be imposed.

See 27 CFR 6.21(c), 6.83





# Advertising Trade Practices (continued)

## Advertising Related Exceptions

- **Point of sale advertising material** – Items designed to be used in a retail establishment to attract consumer attention to products of the industry member. Items include posters, placards, inside signs (electric, mechanical or otherwise), window decorations, trays, coasters, mats, menu cards, meal checks, paper napkins, foam scrapers, back bar mats, thermometers, clocks, calendars, and alcoholic beverage lists or alcohol beverage menus.
- **Consumer advertising specialties** - Items designed to be carried away by the consumer. Examples include T-shirts, caps, visors, leaflets, blotters, pencils, shipping bags, matches, printed recipes, ash trays, coasters, etc.
- **Conditions and Limitations:**
  - All items must bear industry member advertising matter which is permanently inscribed or securely affixed. Retail name and address may also appear on point of sale advertising materials.
  - The industry member may **not** pay or credit retailer for using or distributing these materials.

See 27 CFR 6.21(c), 6.84



# Advertising Trade Practices (continued)

## Advertising Related Exceptions

- **Outside signs** – An industry member may provide a retailer with an outside sign provided that:
  - The sign must bear industry member advertising matter permanently inscribed or securely affixed;
  - The retailer may **not** be compensated, directly or indirectly such as through a sign company, for displaying the signs; and
  - The cost of the signs may not exceed \$400.

See 27 CFR 6.21(c), 6.102



# Advertising Trade Practices (continued)

## Advertising Related Exceptions

- **Certain Equipment** – Promotional glassware (or similar containers made of other material) may be sold by an industry member. For example, glassware given to a retailer would be considered an inducement.
  - Price must be not less than the cost to the industry member who initially purchased them.
  - Price must be collected within 30 days of sale.

See 27 CFR 6.21(c), 6.88



# Advertising Trade Practices (continued)

## Advertising Related Exceptions

- **Advertising service** – Industry member may list the names and addresses of two or more unaffiliated retailers selling its products:
  - The price may not be listed (except where the State or a political subdivision is the exclusive retailer), and
  - The listing is the only reference to the retailers in the ad and is relatively inconspicuous in relation to the advertisement as a whole, and
  - The advertisement may not refer to a single retailer except where the retailer is an agency of a State or a political subdivision of a State.

See 27 CFR 6.21(c), 6.98



# Pre-Market Review

- TTB's Market Compliance Office (MCO) offers a pre-market review option
- Once a COLA is approved, send us the proposed advertising
- We will review and provide guidance, either to help get the advertisement into compliance, or let you know if it is compliant
- Email images/files and COLA number that corresponds to the advertisement to [Market.Compliance@ttb.gov](mailto:Market.Compliance@ttb.gov)



# Contact Information

## **Trade Investigations Division Market Compliance Office**

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