A Communication From the Chief Legal Officers
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May 8, 2006

Donald S. Clark
Federal Trade Commission
Office of the Secretary
Room H-135 (Annex J)
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

RE: Alcohol Reports: Paperwork Comment
FTC File No. P064505

Dear Mr. Clark:

We, the undersigned Attorneys General, submit the following Comment in response to the Commission's proposed collection of information from the "ultimate parent company of up to twelve advertisers of beer, wine, or distilled spirits" ["industry member" or "industry members"] regarding their sales and marketing expenditures, compliance with the alcohol industry's self-imposed regulatory code, and the status of the industry's third-party review of complaints about industry advertising. We are concerned about the large number of underage drinkers throughout our nation and the role that the alcohol industry's marketing practices play in promoting the deleterious use of alcohol by our nation's youth. We are convinced that industry should and can do more to reduce the level of underage consumption of alcohol.

We are troubled that, despite asserted alcohol industry action to combat underage drinking, underage alcohol use has remained disturbingly high and relatively constant. In 2004, about 10.8 million persons age 12-20 (28.7%) reported drinking alcohol within the previous 30 days.[1] Moreover, federal government studies report that youth are starting to use and abuse alcohol at an earlier age that ever before. In 2004, 86.9% of the 4.4 million first-time drinkers in this country were younger than 21.[2] Additional studies report a link

[1] Substance Abuse and Mental Health Administration, U.S. Department of Health and Human Services, *Results from the 2004 National Survey on Drug Use and Health: National Findings* (2005), *available at* http://www.drugabusestatistics.samhsa.gov/nsduh/2k4nsduh/2k4results/2k4results.pdf. (last visited Apr. 10, 2006).
[2] *Id.*

between exposure to alcohol advertising and onset of drinking;[3] that exposure to alcohol advertising is positively related to an increase in underage drinking and steeper increases in drinking over time;[4] and that current educational efforts discouraging youth drinking cannot counter the effects of advertising on current and future underage drinkers.[5]

We agree with the Commission that it is in the public interest for it to collect updated data from alcohol advertisers and also think that the proposed information collection is necessary to the FTC's performance of its regulatory functions. We are pleased to respond to the Commission's invitation to suggest ways to enhance the "quality, utility, and clarity of the information to be collected."

I. FTC's Collection of Advertising and Promotional Expenditures by Industry Members

We agree that the Commission should seek sales and advertising information from industry members and encourage the Commission to seek more expanded, expansive, and detailed information from industry members than it has obtained in previous instances. In its 1999 "Review of Industry Efforts to Avoid Promoting Alcohol to Underage Consumers" ["1999 Review"], the Commission noted that "[e]ach year the alcohol industry spends more than a billion dollars on television, radio, print, and outdoor advertising." 1999 Review at text accompanying n.9. In "Underage Drinking in the United States: A Status Report, 2005" ["CAMY Report"], the Center on Alcohol Marketing and Youth reported:

> Alcohol companies spent nearly two billion dollars to advertise alcohol in the measured media of television, radio, print, and outdoor in 2004. (footnote omitted) According to the Federal Trade Commission, these companies spend another two to three times this amount each year on unmeasured marketing activities . . . . (footnote omitted) CAMY Report at 8.

We encourage the Commission to seek and, thereafter, regularly report on detailed industry-member data regarding both measured (e.g., television,[6] radio, print,

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[3] Leslie B. Snyder et al., *Effects of Alcohol Advertising Exposure on Drinking Among Youth,* 160 Arch Pediatr Adolesc Med 18 (2005) *citing to* Phyllis L. Ellickson et al., *Does Alcohol Advertising Promote Adolescent Drinking?*, 100 Addiction 235 (2005).

[4] Leslie B. Snyder et al., Effects of Alcohol Advertising Exposure on Drinking Among Youth, 160 Arch Pediatr Adolesc Med 18 (2005).

[5] *Id.*

[6] Per CAMY, on broadcast networks, the alcohol industry has largely met "its goal of restricting the placement of ads to venues where legal-age adults made up at least 79% of the audience and underage youth represented 30% or less, (footnotes omitted)...but has made little progress on cable networks. In general, the percentage of alcohol ads above the 30% threshold -- looking at broadcast and cable networks and local broadcast television combined -- has remained at the same level from 2001 through 2004. Center on Alcohol Marketing and Youth, *Alcohol Advertising on Television, 2001-2004: The Move to Cable,* (Center on Alcohol Marketing and Youth ed. 2005), *available at*

web-based, and outdoor) and unmeasured (e.g., branded merchandise, product development, sports and entertainment sponsorship, point-of-purchase promotion, product placement, college marketing media, and bar promotion) marketing activities and expenditures.

We also encourage the Commission to seek detailed industry-member data on what percentage of their advertising expenditures they spend on each type of media and where they place that advertising (e.g., on what television and radio programming; in which motion pictures; during which sporting, musical and other performing-arts events). The Commission should also seek industry-member responses regarding what steps members have undertaken to obtain demographic data to ensure compliance with industry standards, as well as the data themselves. The Commission should also seek information from industry members about what steps, in addition to audits of expenditure, sales, and demographic data, they have taken to ensure member compliance with industry standards. Such information should include, at a minimum: whether they compile "no-buy" lists; whether they have put higher-than-required standards in place; and how often and the extent to which they review past placements to monitor whether those ad placements complied with industry standards, all three of which the Commission recommended in its 1999 Review.

II. Industry Member Compliance with 30% Placement Standard

We also encourage the Commission to address industry compliance with the 30% standard contained in the industry's self-regulatory codes. We note, however that even assuming industry member compliance with the current standard, data do not reflect a reduction of the age at which underage drinking begins or the percentage of underage drinkers since the industry's adoption of the standard.

Given the absence of a reduction in underage drinking since the industry adopted the 30% standard, we encourage the Commission to review the appropriateness and utility of the 30% standard, to require industry data that is sufficiently detailed to enable the Commission to analyze the efficacy of, as well as compliance with, the 30% standard, and to explore with the industry and others the reduction of the industry standard from 30% to 15%, which standard would require that alcohol advertising be limited to media where no more than 15% of the audience is age 12-20. This approach would mirror the 2004 recommendation of the Committee on Developing a Strategy to Reduce and Prevent Underage Drinking.[7]

A reduction from the 30% standard to a 15% standard would address youth "overexposure" to alcohol advertising, which occurs when youth are over-represented in

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http://camy.org/research/tv1205/. (last visited Apr. 10, 2006).

[7] National Research Council and Institute of Medicine, *Reducing Underage Drinking: A Collective Responsibility* (Richard J. Bonney & Mary Ellen O'Connell eds., 2004), *available at* http://fermat.nap.edu/books/030908352/html/138.html. (last visited Apr. 11, 2006).

the audience exposed to advertising, relative to their presence in the general population.[8] Specifically with respect to radio and magazine advertising, we encourage the Commission to seek industry-member data on the actual percentage of radio listeners and magazine readers age 12-20 of programs and magazines where the industry member placed alcohol advertisements within a six-month period. This would require the industry member to perform a post-placement audit of its radio and magazine advertisements. This data should be compared to readers and listeners, age 21-24 and 21-34, of the same programs and magazines.

III. Third-Party Compliance Review Mechanisms

In its 2003 Report to Congress on Alcohol Marketing and Advertising, the Commission noted "modest steps" by industry to implement the Commission's 1999 recommendation to incorporate third-party review into its compliance procedures. We agree that the FTC should seek industry data regarding its compliance review mechanisms to aid in its evaluation of the extent, sufficiency, and efficacy of those mechanisms, and its determination of the appropriateness and extent of the current self-regulatory regime.

We encourage the Commission to seek data on what percentage of industry members have pre-publication third-party review mechanisms in place; what percentage of proposed ads fail to pass industry muster and the reasons therefor; and how many ads that pass muster are, thereafter, the subject of consumer, regulator, and/or competitor complaints. The Commission should encourage industry members to implement a full and vigorous pre-publication review and undertake sufficient prophylactic measures to ensure compliance with industry standards. The Commission should also request information from industry members about the responses they have made when they have learned, through post-advertising audits, consumer complaints, or regulator inquiries, that their advertising may have violated industry standards. The Commission should also seek industry-member data on attempts made to seek out and bar ads with substantial appeal to underage consumers; to restrict product placement in motion pictures; and to monitor the content of industry-member and member-supported websites and implement approaches to prevent underage consumers from gaining access to inappropriate portions of those sites

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[8] Radio and magazine demographic data is available only for listeners and readers who are 12 years and older. Readers and listeners between 12 and 20 make up only 15.7% of the American population. However, the voluntary industry standard of 30%, which mirrors the entire population of Americans under the age of 21, is applied to radio and magazines without modification. This allows some industry members to advertise on radio programs and in magazines where the youth audience is nearly double its representation in the population, resulting in youth being significantly over-exposed to alcohol advertisements. In some circumstances, there are more magazine readers age 12-20 than readers age 21-34. Because placement of these advertisements does not violate the current voluntary standard, the Commission should study this situation carefully to determine if the current industry standard is sufficient to protect youth against significant over-exposure to alcohol advertising.

The states have undertaken review of industry member advertisements or other promotional practices that were either not subject to pre-publication review or, in our view, inappropriately passed pre-publication muster. This review demonstrates the need to buttress the self-regulatory efforts of industry and for the Commission to remain active in assessing alcohol advertising for unfair and deceptive attributes. In other consumer protection contexts, the Commission has praised joint state-federal regulatory efforts as the necessary effort of "51 cops on the beat." With the health and lives of this nation's young people at stake, we believe that state, federal, and industry efforts are essential to stem the flow of alcohol to our youth.

Thank you for your consideration of our views. If you have any questions, please feel free to contact Maine Special Assistant Attorney General Jessica Maurer, at (207) 626-8515, or Utah Assistant Attorney General Thom Roberts, at (801) 366-0353.

Respectfully submitted,

G. Steven Rowe
Attorney General of Maine
Co-Chair, NAAG Youth Access to Alcohol Committee

Mark Shurtleff
Attorney General of Utah
Co-Chair, NAAG Youth Access to Alcohol Committee

Terry Goddard
Attorney General of Arizona
Member, NAAG Youth Access to Alcohol Committee

Richard Blumenthal
Attorney General of Connecticut
Member, NAAG Youth Access to Alcohol Committee

Carl Danberg
Attorney General of Delaware
Member, NAAG Youth Access to Alcohol Committee

Mark J. Bennett
Attorney General of Hawaii
Member, NAAG Youth Access to Alcohol Committee

Lawrence G. Wasden
Attorney General of Idaho
Member, NAAG Youth Access to Alcohol Committee

Lisa Madigan
Attorney General of Illinois
Member, NAAG Youth Access to Alcohol Committee

Tom Miller
Attorney General of Iowa
Member, NAAG Youth Access to Alcohol Committee

J. Joseph Curran, Jr.
Attorney General of Maryland
Member, NAAG Youth Access to Alcohol Committee

Zulima V. Farber
Attorney General of New Jersey
Member, NAAG Youth Access to Alcohol Committee

Patricia A. Madrid
Attorney General of New Mexico
Member, NAAG Youth Access to Alcohol Committee

Eliot Spitzer
Attorney General of New York
Member, NAAG Youth Access to Alcohol Committee

Jim Petro
Attorney General of Ohio
Member, NAAG Youth Access to Alcohol Committee

Hardy Myers
Attorney General of Oregon
Member, NAAG Youth Access to Alcohol Committee

Patrick C. Lynch
Attorney General of Rhode Island
Member, NAAG Youth Access to Alcohol Committee

William Sorrell
Attorney General of Vermont
Member, NAAG Youth Access to
Alcohol Committee

Rob McKenna
Attorney General of Washington
Member, NAAG Youth Access to
Alcohol Committee

Patrick J. Crank
Attorney General of Wyoming
Member, NAAG Youth Access to
Alcohol Committee