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FEDERAL DEVELOPMENTS

Federal Trade Commission Gives Industry Self-Regulation of Advertising Practices a Thumbs-Up

The FTC on June 26, 2008 released the long-anticipated third in a series of *ad hoc* reports on alcoholic-beverage industry advertising and marketing practices (previous reports were done at the request of Congress in 1999 and 2003). In several respects the document falls woefully short of the rigorous review of alcohol advertising practices that is needed.

The report is accessible online at: <http://www.ftc.gov/opa/2008/06/alcoholrpt.shtm>

The FTC report, "Self-Regulation in the Alcohol Industry," uncritically heaps praise on the industry's compliance with voluntary advertising code standards, finding that 92 percent of all ads (television, radio, and print) met a 70 percent adult standard and that 97 percent of total advertising impressions (exposures to advertising) were due to ad placements that met the 70 percent adult target. According to the report, in the first half of 2006, more than 85% of the aggregate audience studied through its "special orders" to alcohol marketers consisted of adults.

In making its findings, the FTC ignored problems with industry codes, including their vagueness and permissiveness. In particular, the FTC failed to consider that, in recent years, the beer and liquor industry voluntary codes have been significantly liberalized; for example, the Beer Institute code since 2006 permits the use of parody and humor in beer advertising to legitimize the portrayal of illegal and dangerous activities in connection with beer consumption. The DISCUS code, which once forbade liquor advertising on television, now allows that practice.

The FTC report also lauds industry responsiveness to past

recommendations urging the establishment of "third party review mechanisms," ignoring the view of consumer and public health groups that: a) "third party" review boards cannot be truly independent if their members are all appointed and paid by industry, and that; b) the review process lacks accountability without any sanctions for violations.

The only significant code improvement recommended by the FTC involves a request for industry to adopt a 70 percent adult placement requirement for sponsorships.

Nonetheless, one FTC Commissioner got it right. The dissenting view of Commissioner Pamela Jones Harbour calls for tightening industry voluntary advertising placement standards from the current 70 percent adult threshold to 75 percent, in keeping with Jim Beam Global's best-practice example. But even that standard fails to match advocates' efforts to establish a voluntary standard that limits the underage audience for each ad placement to 15 percent or less.

The report does provide some useful information on alcohol advertising and marketing expenditures, underscoring the need for regular, systematic tracking and longitudinal trend analysis of industry advertising practices, something the FTC already does for tobacco.

TTB Mulls Labeling Decision

Since the end of January, when the comment period on its proposed rule on alcohol labeling ended, the Alcohol and Tobacco Tax and Trade Bureau (TTB) of the U.S. Treasury Department has been reviewing hundreds of comments and, apparently, looking for a way to appease the many political forces that have urged varying viewpoints regarding the

issue. TTB spokespeople have suggested that they plan to issue a final rule by the end of the year.

Problems remain: TTB's proposed rule would not even have required alcohol content disclosure on the suggested informational panel, instead permitting three possible variations of the "Serving Facts" panel; it would not have required a statement of the Dietary Guidelines definition of moderate – or low-risk – drinking on the label; it would have required listing of fat, protein, and carbohydrate content, regardless of their likely absence from the beverage. More troubling, TTB provided little, if any, research basis for its policy conclusions and its design of the label.

Dozens of House members signed onto a beer-industry inspired letter forcefully opposing the inclusion of "standard drinks" or the amount of fluid ounces of alcohol per drink on the label, both of which are favorites of the liquor industry, particularly mega-marketer, Diageo. Liquor forces, hoping to advance their "equalization" agenda, also circulated a Hill letter to Treasury, pushing a definition of a "standard drink" and the amount of alcohol per serving. Several House members and two Senators signed on.

Senators Lautenberg (D-NJ) and Murkowski (R-AK) separately wrote TTB recommending that the informational panel include a disclosure of alcohol content; that the informational panel be uniform for all beverages; and that fat and protein content in alcoholic beverages be disclosed only when a specified threshold amount of each is met. The Senators also "strongly urged" TTB to conduct, and/or solicit, survey and focus group research to determine consumer understanding and response to varying label content and designs.

Some public health groups, such as Shape Up, America; Consumer Federation of America (CFA); and the National Consumers League, and notables (former U.S. Representative Richard Armey and former U.S. Senator George McGovern), encouraged by political operatives representing Diageo, also weighed in, pushing for label action by TTB that provides standard drink information. Others (CSPI, American Medical Association, National Council on Alcoholism and Drug Dependence, American Dietetic Association, and also CFA) met with TTB Director John Manfreda and staff in February to push for additional research and label consistency. At this point it is unclear whether TTB is listening, or to whom it is listening.

CSPI will monitor developments and continue to advocate for more research to develop a labeling regime that will provide useful, conspicuous, and easily understandable information about alcoholic beverages that will help consumers to measure and moderate their alcohol consumption.

SAMHSA Reports on Underage Drinking

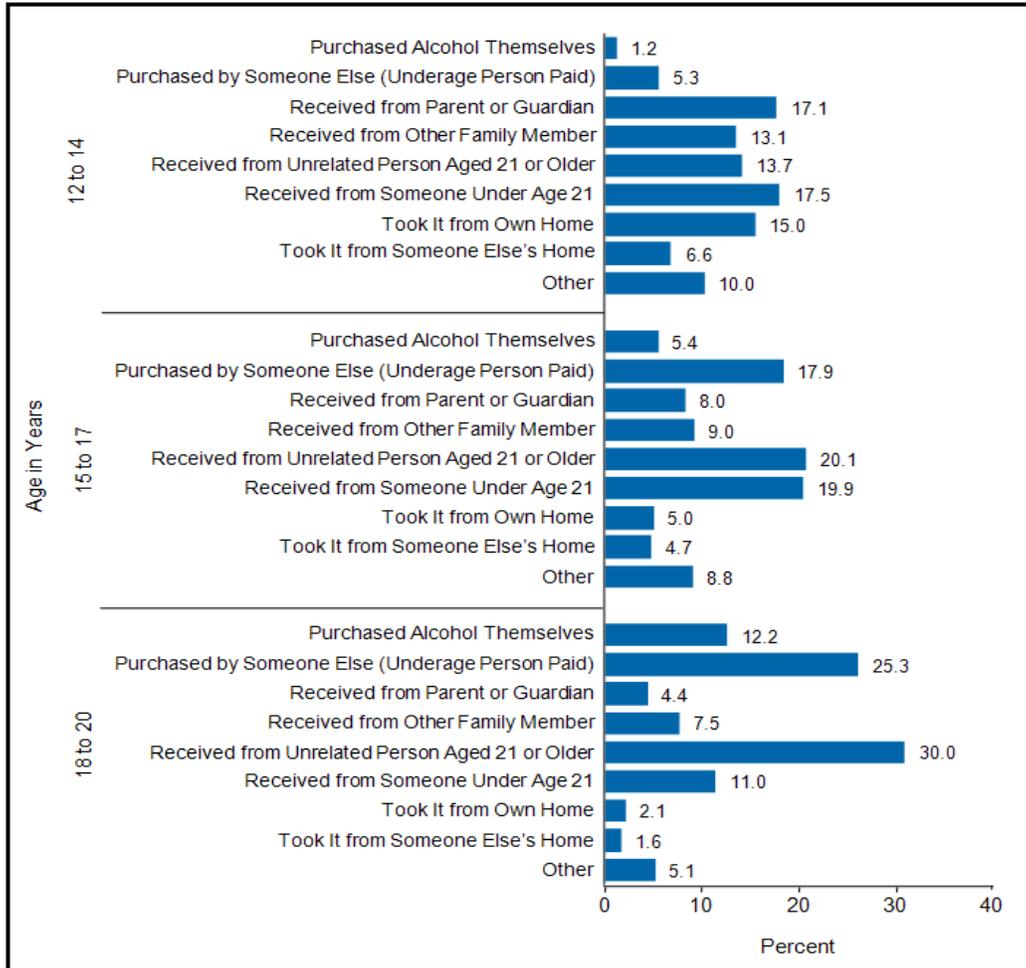
On June 26, 2008, SAMHSA issued a report summarizing underage drinking findings from the 2002-2006 National Surveys on Drug Use and Health (NSDUH). The document reveals little that is not already well known: that rates and prevalence of underage alcohol use have improved little in recent years, and that underage drinkers obtain most of their alcohol from adults.

The report finds that about one-third of current underage drinkers paid for the alcohol the last time they drank, including 9.3% percent who purchased the alcohol themselves and about 21.6% who gave money to someone else to purchase it. The remaining two-

thirds of underage drinkers said they got the alcohol for free on their last drinking occasion. Methods of obtaining alcohol also vary considerably depending on

the age of underage drinkers, with older teens more likely to obtain alcohol themselves from commercial sources or from unrelated persons over age 21.

The following chart summarizes the findings on youth access to alcohol:



“Source of Alcohol Used in the Past Month among Current Drinkers Aged 12 to 20, by Age: 2006” (From: “Underage alcohol use: Findings from the 2002-2006 National Surveys on Drug Use and Health,” SAMHSA, 2008). Online at: <http://oas.samhsa.gov/underage2k8/toc.htm>

FY 2009 Appropriations Update

Following is the status of underage drinking prevention programs authorized by the \$18M STOP Act and funded in the annual Labor-HHS-Education appropriations bill:

HOUSE (Subcommittee-passed levels) - \$15M, of which:

Under SAMHSA:

- \$1M for the Ad Council/SAMHSA PSA campaign
- \$1M for the Inter-Agency Coordinating Committee for the Prevention of Under Drinking (ICCPUD), to carry out coordination and reporting activities
- \$5M for community-based coalition enhancement grants

Under CDC, Division of Chronic Disease Prevention and Health Promotion:

- \$3M for carrying out the Surgeon General's recommendation of independent monitoring of youth exposure to alcohol advertising

Under the National Programs Portion of the Safe and Drug-free Schools and Communities program:

- \$5M for campus-community underage drinking prevention enhancement grants

SENATE – (Full Committee-passed levels) - \$7M, of which:

Under SAMHSA:

- \$1M for the Ad Council/SAMHSA PSA Campaign
- \$1M for ICCPUD coordination and reporting
- \$5M for community-based coalition enhancement grants

Note: The FY2008 funding level for STOP Act programs was \$5.5M:

- \$1M for the Ad Council/SAMHSA PSA Campaign
- \$0.5M for ICCPUD coordination and reporting
- \$3M for community-based coalition enhancement grants

Both the House and Senate also included some helpful report language. For example, with regard to the PSA campaign, both the House and Senate versions include requests for SAMHSA to report annually on the “the production, broadcasting, and evaluation of the [PSA] campaign, the effectiveness of the campaign in reducing underage drinking, the need for and likely effectiveness of an expanded adult-oriented media campaign, and the feasibility and likely effectiveness of a national youth-focused media campaign to combat underage drinking.”

The House and Senate Appropriations Committees have also approved their respective versions of the FY 2009 funding bill for programs in the Departments of Commerce, Justice, and Science (CJS). Those bills include funding for the Enforcing Underage Drinking Laws (EUDL) Program. Under the House Appropriations Committee-approved spending bill, the EUDL program would not receive any funding, representing a \$25 million cut. The Senate Appropriations Committee recommended that the

EUDL program receive \$25 million, the same as last year’s funding.

Next steps for the annual funding process in Congress remain unclear. The House and Senate Appropriations Committees are expected to continue work in July prior to the month-long August recess. However, it is likely that Congress will pass a continuing resolution (CR) that will extend program funding at FY 2008 levels until early 2009. At that point, the new Congress would be tasked with completing the FY 2009 bills or extending the CR.

Because money is so tight, advocates for underage drinking prevention will have to work hard to maximize funding levels for underage drinking prevention programs when House and Senate negotiators meet to reconcile their respective versions of the annual funding bills.

Text and status of the FY 2009 appropriations bills can be found at:

<http://thomas.loc.gov/home/approp/app09.html>

STATE DEVELOPMENTS

State Alcohol-Tax Efforts Heat Up

Proposals to raise alcohol taxes at the state level have continued to surface. Some of the most prominent include:

In April, Maine’s [legislature passed and Governor John Baldacci signed](#) a landmark package of tax increases, including measures to raise beer and wine taxes. Revenues will help fund Dirigo, a state health insurance program for small business and the self employed. Maine’s beer taxes rose to \$0.54 per gallon from \$0.25 per gallon and wine taxes

went to \$0.65 per gallon from \$0.30 per gallon, adding about 2.6 cents to the tax per 12-ounce beer and 7 cents for a 750mL bottle of wine. The increase in tax rates is expected to yield \$7.5 million in new revenue for the Dirigo Health Fund in fiscal 2009. Alcohol interests, funded primarily by beer and wine distributors, have launched a campaign to repeal the tax increase by putting the measure before the voters in a statewide referendum.

Allegheny County (Pennsylvania) Chief Executive Dan Oronato [signed a 10% Alcohol Drinks Tax](#) measure into

law on December 10, 2007. Despite a lawsuit from restaurants and other lobby groups and an organized campaign to repeal the tax, the increase took effect in January. The new revenue has helped to subsidize public transit, and as of March 31, had generated close to \$9 million.

In North Carolina, Governor Mike Easley unsuccessfully [proposed new taxes on beer, wine, and spirits](#) to pay for mental health reform in the fiscal 2009 budget. The increase would raise the beer tax approximately 4 cents a can, from 53 cents per gallon to 95 cents per gallon. The wine tax

would increase 4 cents per liter, and the liquor tax would increase from 25 percent of the wholesale price to 29 percent. The state's beer and wine taxes have not been raised in more than 25 years. Governor Easley's proposals would have raised an estimated \$66 million in the next fiscal year, according to his office.

A [bill](#) introduced in Oregon would raise over \$60 million a year to finance prevention, treatment, and law enforcement programs. That legislation proposes a \$0.10 per drink "malt beverage cost recovery fee" on beer sold in Oregon by large breweries (small breweries are exempt). Oregon's current wholesale malt beverage tax has not been raised in the last 30 years.

South Dakota's State Association of County Commissioners, the Municipal League and others have initiated grassroots efforts to increase the wholesale liquor tax by approximately 10 cents per drink. The proposal would be on the ballot for voter consideration in November.

Bills to increase Maryland's lagging alcohol taxes were introduced in both the House and Senate last term. One of the bills, introduced in both houses, would have helped to expand drug and alcohol addiction treatment and prevention programs; the other would have directed the new revenue to the General Fund to offset the repeal of another source of state revenue. Both bills failed. Maryland's alcohol taxes, among

the lowest in the country, have not been raised in more than 30 years.

In California, Jim Beall (D- San Jose) introduced an ambitious state constitutional [amendment](#) to raise the beer tax by 30 cents per drink, or \$1.80 per 6-pack. The increase would generate \$2 billion for earmarked accounts reserved for emergency and trauma care, victim assistance, school counselors and education, prevention programs, law enforcement, mental health services, and advertising to counter beer marketing. California's beer tax has not been raised since 1991, when it was raised by 1.5 cents a can.

ADVOCACY NEWS

Anheuser-Busch Settles with CSPI & State Attorneys General to drop Caffeinated Drinks

Anheuser Busch has agreed to reformulate its caffeinated alcoholic beverages, Tilt and Bud Extra, removing the caffeine, guarana, and ginseng, and is calling on other distillers and brewers to follow its lead. The decision came as part of an [agreement reached with CSPI](#), which had [threatened to file suit](#) over the drinks, and a group of 11 [state Attorneys General](#), which had been independently investigating the brewer.

The settlement agreement also specifies that A-B will: permanently remove the current Tilt and Bud Extra websites and replace them with a new URL after reformulating the products; not encourage combining alcoholic beverages with caffeinated beverages on any

website; and will immediately halt production and distribution of promotional materials for caffeinated alcoholic beverages to wholesalers. The brewer also agreed to pay the state Attorneys General a sum of \$200,000 to pay for the investigation and to help fund underage drinking prevention efforts in the AGs' states.

In attacking the caffeinated, pre-packaged drinks as creating "alert drinks," CSPI and the Attorneys General noted new research documenting the potential increased risk of harms related to mixing alcohol with energy components such as caffeine, guarana, and taurine. CSPI also maintained that the ingredients had not been approved by the Food and Drug Administration for use with alcohol. According to [research conducted at Wake Forest University](#), young consumers of caffeinated alcoholic drinks are at an increased risk of binge drinking, injury, drunk

driving, and sexual assault when compared with drinkers of standard alcoholic beverages, even after adjusting for the amount of alcohol consumed. College students who report drinking caffeinated alcoholic drinks consume significantly more during a typical drinking session and participate in almost twice as many heavy drinking episodes, compared with current drinkers who do not consume caffeinated alcoholic beverages.

CSPI is still awaiting response from MillerCoors (formerly Miller Brewing Co.), which was also served with CSPI's notice of intent to sue last February. MillerCoors markets caffeinated alcoholic beverages under the brand name [Sparks](#), which includes varieties containing 6- or 7- percent alcohol by volume. The products' website features youth-oriented themes, such as a background of lined, school-notebook-paper, recipes for mixed drinks such as the

"Lunchbox," and videos promoting Sparks as breakfast fare. Another link within the site reveals printable coupons for "free high-fives" with a Sparks purchase.

The June 26, 2008 Press Release is accessible online at: <http://www.cspinet.org/new/200806261.html>

Campaign for Alcohol-Free Sports TV Grows

CSPI's effort to reduce the exposure of young people to alcohol advertising in televised sports has continued to grow. Since 2005, 329 colleges and 12 athletic conferences have endorsed the Campaign's "College Commitment" pledge to eliminate

alcohol advertisements from college sports telecasts. The list of supporters includes Arizona State University, Ohio State University, Texas Tech University and the Universities of Florida, Maryland, Minnesota, and Nebraska, as well as scores of Division II and III schools.

Currently, the Campaign is urging the NCAA Executive Committee and Division I Board of Directors to review NCAA advertising policy and take action to eliminate all alcohol advertisements in NCAA sports when those bodies meet in early August. Last April, more than 115 college presidents and a few athletic directors wrote to NCAA president, Myles Brand, seeking

action on alcohol advertising at the upcoming meeting.

NCAA advertising rules prohibit ads for cigarettes, other tobacco products, organizations promoting gambling, and alcoholic beverages, yet they permit ads for beverages with alcohol content of 6% or less (beer)!

For more information about how you can help, please visit <http://www.BeerFreeSportsTV.org>

and the briefing papers: [9 Reasons Why Alcohol Ads Don't Belong in College Sports](#)

[Current NCAA Policy on Televised Beer Advertising is Seriously Flawed](#)

***Washington Report* is the newsletter of the Alcohol Policies Project at the Center for Science in the Public Interest.**

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