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Industry Circulars 2024-1

October 30, 2024**Number: 2024 - 1**

Use of Social Media in the Advertising of Alcohol Beverages

To: Proprietors of Bonded Wineries, Bonded Wine Cellars, Taxpaid Wine Bottling Houses, Beverage Distilled Spirits Plants, Breweries, Importers, Wholesalers, and Others Concerned.

1. Purpose

This circular reminds industry members and others that the Alcohol and Tobacco Tax and Trade Bureau's (TTB) advertising regulations under the Federal Alcohol Administration Act (FAA Act), in 27 CFR parts 4, 5, and 7, apply to all advertisements (as defined in the regulations) in any media, including social media. This circular also provides a basis for voluntary compliance with the FAA Act and the TTB advertising regulations with regard to social media, both in terms of required mandatory statements and prohibited practices or statements. This circular modifies and supersedes TTB Industry Circular 2022-2. We have updated this circular to address the use of links and link sharing sites to satisfy the mandatory advertising requirements as well as to address the various forms of social media used in the advertising of alcohol beverage products under the provisions of the FAA Act and TTB regulations.

2. Authority

Section 105(f) of the FAA Act, 27 U.S.C. 205(f), authorizes the Secretary of the Treasury to prescribe regulations for the advertising of wine, distilled spirits, and malt beverages.[1] The FAA Act requires that these regulations, among other things, provide the consumer with adequate information as to the identity and quality of the product advertised; identify the person responsible for the

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advertisement; and, in the case of distilled spirits only, disclose the alcohol content and, for certain distilled spirits, the use of neutral spirits. See 27 U.S.C. 205(f)(2) and (3).

The FAA Act also requires that such regulations prevent consumer deception; prohibit, irrespective of falsity, statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters that are likely to mislead consumers; prohibit statements that are disparaging, false, misleading, obscene, or indecent; and prohibit statements that are inconsistent with any statement on the labeling of the products so advertised. See 27 U.S.C. 205(f)(1), (4) and (5).

TTB's FAA Act advertising regulations are found in 27 CFR part 4, subpart G; part 5, subpart N; and part 7, subpart N; for wines, distilled spirits, and malt beverages, respectively. More specifically, the regulations contained in 27 CFR 4.62, 5.233, and 7.233 require certain mandatory statements (such as responsible advertiser name and address) to appear in advertisements for wines, distilled spirits, and malt beverages, respectively; and the regulations contained in 27 CFR 4.64, 5.235, and 7.235 prohibit certain advertising practices and statements from appearing in such advertisements. In the case of malt beverages, TTB's advertising regulations apply to the extent that State law imposes similar requirements with respect to the advertising of malt beverages introduced into or received into the particular State.

3. Background

TTB reviews for compliance advertisements for certain alcohol beverages² that appear in various forms of media, including print, television, outdoor, and social media.

The development of social media created new forms of advertising that are interactive, allowing consumers and industry members to generate content and create links between various social media outlets. These outlets include, but are not limited to, social network services (such as Facebook, LinkedIn, etc.), media sharing sites (such as Instagram, TikTok, YouTube, etc.), , crowdfunding sites (such as GoFundMe, Kickstarter, etc.), comment sections directly on sites, and applications (apps) for mobile devices. With the emergence and growth of these types of media outlets, TTB has expanded the breadth of its advertising reviews.

4. Discussion

TTB advertising regulations state that no industry member³ shall, directly or indirectly or through an affiliate, publish or disseminate or cause to be published or disseminated an advertisement that is in, or calculated to induce sales in, interstate or foreign commerce unless the advertisement conforms to the regulatory requirements. The scope of the regulations is very broad, covering all methods of disseminating an advertisement, including "by electronic or internet media² and by "any other printed or graphic matter." See 27 CFR 4.60, 5.231, 7.231. The definition of "advertisement" includes any written or verbal statement, illustration, or depiction that is in, or calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail. The regulations list specific examples of advertising, including those appearing in the "internet or other electronic site or social network" and those in "any other media." See 27 CFR 4.61, 5.232, and 7.232. TTB considers "any other media" as specified in the regulations to apply to advertising in all types of media, including social media.

This industry circular is intended to assist industry members in ensuring that advertisements for alcohol beverages covered under the FAA Act that appear in social media comply with the FAA Act and the TTB advertising regulations. Because of rapidly changing technology and the ongoing evolution of social media, this is not intended to be an all-inclusive list of the types of social media covered by the regulations. However, the general principles set out in this circular should be applied to other types of social media that have been or will be developed.

We also note that this circular provides general information regarding TTB's enforcement of the advertising provisions of the FAA Act and TTB regulations. TTB evaluates specific advertisements on a case-by-case basis under the advertising provisions.

a. General Requirements.

Mandatory Information:

*Name, city, state
Statement of class
Alc Content*

As mentioned above, TTB considers content posted on social media by an industry member to be advertising subject to the provisions of the FAA Act and TTB regulations. As such, the advertisement must include all mandatory statements required by the regulations in §§ 4.62, 5.233, and 7.233.

Generally, TTB views the **entire page or site (i.e., the "home" page and all sub or tabbed pages** directly associated with the "home" page) as a single advertisement. Accordingly, mandatory statements need only appear once on the page, either on the "home" page or on any sub or tabbed pages directly associated with the "home" page; however, such statements must be conspicuous and readily legible, clearly a part of the advertisement, and readily apparent to the persons viewing the advertisement. See 27 CFR 4.63, 5.234, and 7.234.

TTB strongly recommends that, for the benefit of consumers, advertisers consider placing mandatory statements in a readily apparent location where a viewer would most logically expect to find information. For example, consumers may expect to find the name and contact information in the "profile" or "about" section or the section that provides information about the business (currently on Facebook, for example, this would be the "About" section). For other mandatory statements such as class and type and in the case of distilled spirits the alcohol content, consumers may expect to find this information on the page where the specific product is being advertised, sometimes the "shop" section or "products" section.

Use of Linked Content for Mandatory Information:

TTB recognizes that some social media, such as social network services and media sharing sites, restrict the space available to provide mandatory information. TTB's objective is to ensure consumers are provided with mandatory information in a manner that is readily legible, apparent, and conspicuous to the consumer. On social media platforms, a link that directs consumers to a page containing the mandatory product information satisfies this objective while reducing the burden on our regulated industry. The link should be clearly named or marked to indicate that the mandatory company and/or product information can be found by clicking on the link (for example, "Product Information"). The link should take the user directly

to the mandatory information, and the information should be readily apparent, conspicuous, and legible. The link should not require the consumer to take additional steps to view the mandatory information, for example, creating an account or signing in to another social media platform. The link also should not take the user to a more general website that would require additional actions to find the information. On social media platforms where there are restrictions on the number of links that can be directly shared, a link to a link sharing site or reference landing webpage (for example LinkTree) where the product information link is prominently displayed satisfies the requirement to provide mandatory information.

If mandatory information is provided via a link on a social media platform, the social media advertisement must still contain sufficient information about the product to ensure that it is not misleading. For example, if a product requires a statement of composition, such as, “vodka with natural flavors,” and the advertisement refers to such product only as “vodka,” the full statement of composition would be required to appear as part of the product advertisement so consumers are not misled about the identity or quality of the product.

Exceptions:

There are certain exceptions to the mandatory information requirements for advertising. If the advertising refers to a general product line or to all of the company’s products, whether by the company’s name or by the brand’s name common to all of the product line, the only mandatory information necessary is the responsible advertiser’s name, city, and State or the name and other contact information (such as telephone number, website, or email address) where the responsible advertiser may be contacted. See §§ 4.62(c), 5.233(e), and 7.233(c). For example, the exception would apply if a brewery’s social media site generally advertises the brewery by its company name or by brand name but does not advertise specific products. In this case, the only mandatory information required would be the name and address of the responsible advertiser. If, instead, the advertising is focused on at least one product, or lists specific information about one or more products, this exception would not apply, and all of the mandatory information would be required.

Prohibited practices:

The regulations in §§ 4.64, 5.235, and 7.235 regarding prohibited practices or statements apply to all advertisements including those on social media. Any information or images that an industry member posts to its own page or site, or to a third-party page or site, is considered advertising and therefore subject to these provisions. This includes content created by another party that is reposted or “liked” by the industry member. For example, a study or article “reposted” to an industry member’s social media page is considered part of the advertising. Also, content “liked” by an industry member, or any other similar action taken that would cause the content to show up in the feed of their page followers, would also be subject to the prohibited practices provisions.

b. Websites and Mobile Websites.

Industry members often have websites on which they advertise their products. Websites (either traditional or social media) often have a mobile version that is meant to be viewed via a mobile device. This mobile version may differ from the version of the website that is intended to be viewed on a desktop computer. Consequently, both websites and mobile websites must comply with the TTB advertising regulations, as described above. TTB generally views each website and mobile website, and their respective subpages, as a single advertisement and views them in totality to determine compliance with the TTB advertising regulations.

c. Social Network Services (Facebook, LinkedIn, etc.)

A social network service is a service, platform, or site where users communicate and share media, such as pictures, videos, music, articles, and blogs with other users. Many industry members have created pages on social network services for their company and/or a particular brand. The purpose of the page is to induce sales and increase brand awareness and loyalty by allowing industry members to communicate directly with consumers in an interactive manner. Users of the social network service can follow the company or brand, creating a link between their own page and the industry member's page. Consequently, these pages must comply with all of the regulatory requirements that apply to advertisements, as described above. TTB generally views these sites and posts on them as a single advertisement and views them in their totality to determine compliance with the TTB advertising regulations.

d. Media Sharing Sites (Instagram, YouTube, etc.).

Media sharing sites allow individuals or companies to post media (such as photographs, gifs, videos) to a website to be viewed and commented on by the public. TTB considers such sites and posts on them to be a single advertisement; however, where photographs or videos are posted to a site and are not associated with a profile section that bears mandatory information regarding the product, the industry member must include the mandatory statements within the photos or videos themselves.

This also applies if the industry member allows viewers to download or share video content, since the industry member is then considered to have disseminated the video content. When the industry member has both a profile section and individual videos, the mandatory statements should appear on both to ensure it is readily apparent to the persons viewing the advertisement. For example, if the video is downloadable or shared on other platforms and does not contain, or link back to, the mandatory information, it would be non-compliant.

e. Blogs.

A blog is a type of site intended for public viewing that an individual or company maintains and updates with entries that may include commentary, events, videos, or pictures. Many blogs are interactive and allow visitors to leave comments and/or messages. If a blog is associated with a website or other social media page, TTB will view the site or page in its totality as a single advertisement, and the mandatory information need only be stated once. If the blog is published

separately from the website, or disseminated electronically (such as by email), it must contain the mandatory information.

f. Microblogs (X, Tumblr, etc.)

A microblog differs from a traditional blog in that posts are typically very short. Microblog posts often include short sentence fragments, images, hashtags, and/or links to videos. Commercial microblogs are designed to promote websites, services, or products, similar to other social network sites. The public can “follow” an industry member’s microblog posts, which will then appear on their own microblog page or be sent to a mobile phone or other device.

Many microblog services have character limitations of approximately 140-280 characters. Due to these character limitations, TTB has determined that it may be impractical to require mandatory statements to appear in every industry member microblog post; however, the mandatory statements must appear in the advertisement in a manner that is readily apparent, conspicuous and legible. For example, industry members may include the mandatory statements on their microblog profile page, or use a descriptive link that takes the user directly to a separate webpage containing all mandatory statements.

g. Crowdsourcing/Crowdfunding Sites (Kickstarter, GoFundMe, etc.)^[3]

Some industry members use crowdfunding websites, which are designed to raise capital from individual investors by soliciting donations. These websites may have media, such as pictures or videos, which describe either the business or products, and may link back to other websites associated with the business. Similar to social network services, content regarding the industry member’s alcohol beverage products on its crowdfunding page is considered an advertisement and therefore subject to the TTB advertising regulations.

h. Mobile Apps

Some industry members are creating applications (apps) that can be downloaded to consumers’ mobile phones or other devices. These apps may provide drink recipes, assist consumers with finding locations where a product is served/sold, or provide other information related to an alcohol beverage that the consumer may find of interest. We consider mobile apps related to alcohol beverages that industry members publish, or cause to be published, to be advertisements subject to the TTB advertising regulations.

i. Linked Content/Quick Response Codes/Augmented Reality.

Industry members frequently post links to other websites or pages on their social media advertisements (including social network services, media sharing sites, blogs, microblogs, crowdfunding sites, mobile websites, and mobile applications). These linked websites or pages would be considered part of the advertisement and must comply with TTB’s advertising regulations, including those concerning prohibited practices or statements.

An industry member also may provide links to other websites or pages for other brands of alcohol beverage products or alcohol beverage companies for which it is the responsible advertiser. In that case, TTB would consider the linked website or page as a separate advertisement that must contain all necessary mandatory information and comply with the prohibited practices regulations.

Examples covered under this section include but are not limited to:

QR Codes

Industry members may enable consumers to access content by including a quick response code (or QR code) on a label or other advertisement, thus allowing consumers to scan the QR code with their mobile device to access the additional content. Content accessible by a QR code on a label or advertisement must comply with the TTB advertising regulations as specified above.

Augmented Reality

Similar to linked content and QR codes, industry members may use augmented reality associated with their label or other advertisement. Augmented reality generally refers to a technology that superimposes a computer-generated image on a user's view of the real world, providing a composite view. This is typically done by using an associated application on a smartphone or other device and a product label or advertisement; however, it may appear outside of this context as well. Using augmented reality, when a smartphone's camera is aimed at a product label, actions appear to occur and may include a video-like presentation. Augmented reality advertising content must comply with the TTB advertising regulations as specified above.

When linked content, QR codes, or augmented reality are only accessible using the alcohol beverage product's label or advertisement that already contains all mandatory information, there is no additional requirement for mandatory information to be displayed.

j. Social Media Influencers.[4]

Social Media Influencers (SMIs) are personas on social media who have audiences or followers on social media platforms who sometimes use their influence to persuade their audience to purchase products. Material produced by SMIs, on behalf of an alcohol beverage industry member for the purpose of inducing sales of that industry member's products in interstate or foreign commerce, must comply with the TTB advertising regulations as specified in the general section above. These individuals may be compensated (monetary payments, provision of free products, etc.) for their endorsement of a product, or for product placement as part of an associated activity. For example, an SMI with a focus on cooking may be compensated to use a particular brand of wine in instructional videos when demonstrating a recipe. These posts, which may include text or other media, will typically appear on the SMI's own social media account or page, instead of appearing on the industry member's social media account or page.

If the posts directly or indirectly advertise an industry member, brand, or specific product, TTB may consider such posts made by the SMI to be advertisements. In making this determination, TTB 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.

Industry members must ensure that SMI posts include all mandatory advertising statements. This may be satisfied with a clearly marked link to another webpage that contains all mandatory information, as discussed above. If an industry member advertises on an SMI page that restricts the use of external links, a tag to the industry member's page within that platform, for example using the @ symbol, will satisfy the mandatory information requirements as long as the industry member's page is compliant.

5. Discussion

If you have any questions concerning this circular, please contact the Market Compliance Office by phone at (202) 453-2251, extension 4, or by e-mail at market.compliance@ttb.gov.

Mary G. Ryan

Administrator

Alcohol and Tobacco Tax and Trade Bureau

[1] The advertising regulations apply to wine, distilled spirits, and malt beverages as defined in the FAA Act. See 27 U.S.C. 211.

[2] The advertising regulations for distilled spirits and malt beverages were modified by T.D. TTB-176, effective March 11, 2022, to provide "by electronic or internet media" as a method of advertisement dissemination and "internet or other electronic site or social network" as an example of modern advertising. Similar changes to the wine regulations are in progress. See 87 FR 7526.

[3] This industry circular addresses crowdsourcing/crowdfunding only with respect to advertising.

[4] In addition to TTB requirements, the Federal Trade Commission (FTC) also has specific requirements relating to social media influencers and endorsements. For additional information, please see the FTC website at www.ftc.gov.



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Circular Letter

15-03

To: Manufacturers and Wholesalers of Alcoholic Beverages

Subject: Advertising using Social Media

Purpose: To provide guidance to Manufacturers and Wholesalers of Alcoholic Beverages in utilizing social media to advertise alcoholic beverages and events at a retailer's establishment.

Background: There is an ever increasing reliance on social media as a means of communication for businesses to promote their products and services. Advertising of alcoholic beverages by licensees is constrained by Board Regulations. Additionally, the advertisement of retailer activity by manufacturers and wholesalers of alcoholic beverages is further restricted by the tied house statute (4.1-216).

Held: Manufacturers and wholesalers of alcoholic beverages are responsible for the content of their own social media postings and messages. A licensee may promote its own business and products in a lawful manner.

Manufacturers and wholesalers may post information listing at which retail establishments their products are available for purchase, provided the information is limited to: (1) the retailer's name, address, telephone number, website address and (2) all retailers that carry the products are included in the listing.

Manufacturers and wholesalers may post information concerning upcoming events to be held at a retail establishment so long as (1) the event involves the products they manufacture or distribute, (2) the manufacturer or wholesaler is authorized by Board regulation or statute to be present and participating in the event (i.e. tasting event), (3) the manufacturer or wholesaler intends to participate in the event and (4) any information posted on a social media site is limited to the name, address, telephone and website address of the retail licensee at which the event is to be held.

Questions regarding this topic should be addressed to your Compliance Senior Special Agent or compliance@abc.virginia.gov

Travis G. Hill
Chief Operating Officer/Secretary to the Board.