



**CRAFT
BREWERS**
CONFERENCE
& BrewExpo America

TTB Boot Camp: Advertising

JESSICA BRUST, PROGRAM MANAGER

MAY 7, 2023



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
- 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, Instagram, Snapchat)





Examples of Advertisements (continued)

Includes, But Not Limited To:

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





Examples of Advertisements (continued)

Includes, But Not Limited To:

- Blogs, Microblogs (Twitter, Blogger)
- Mobile applications
- Links and QR codes





Mandatory Information

Wine

- Responsible advertiser (name and city/state, 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
- Exceptions for general lines of wines, all wine products of one company, or specialty items

See 27 CFR 4.62



Mandatory Information (continued)

Distilled Spirits

- Responsible advertiser (name and city/state, 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
- Exceptions for general lines of spirits, all distilled spirits products of one company, or specialty items

See 27 CFR 5.233



Mandatory Information (continued)

Malt Beverages

- Responsible advertiser (name and city/state, 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
- Exceptions for general lines of malt beverages, all malt beverage products of one company, or specialty items

See 27 CFR 7.233



Prohibited Practices

- False or untrue statements or misleading statements
- Statements disparaging a competitor's products
- Representations that are obscene or indecent
- Misleading representations of or relating to analyses, standards, or tests
- 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 Force 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, **and—**

- 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



Health-Related Statements (continued)

- **More Examples of 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

Serving Facts	
Serving Size	5 fl oz (148 ml)
Servings Per Container	5
Amount Per Serving	
Calories	120
Carbohydrate	3g
Fat	0g
Protein	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
 - 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)?
 - 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



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
- Labels depicted in ads don't match the COLAs
- Calorie or carbohydrate claims without a SAA/SFS
- Misleading or unsubstantiated health claims



Trade Practice Reminders

- Industry member advertising that benefits a particular retailer is an **inducement** and may lead to a **tied house violation**
- Listing a retailer on an industry member's social media site is considered **providing a thing of value** and may lead to a **tied house violation**
 - **EXCEPT** where 2 or more unaffiliated retailers selling the industry member's products are listed on the site and is consistent with § 6.98

See 27 CFR 6.21(c) and 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



Contact Information

Trade Investigations Division

Market Compliance Office

1310 G Street, NW, 2nd Floor

Washington, DC 20220

(202) 453-2251

Market.Compliance@ttb.gov

Please take a few minutes to provide feedback on this session:

<https://www.ttb.gov/survey>

