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3 Alcohol Tiers

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## Course Evaluation

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**Understanding the 3 Tiers of the Alcohol Industry: The Promotional Perspective**  
Elizabeth DeConti, Gray Robinson

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*For each question, please circle the answer that comes closest to your opinion.*

**1-strongly disagree      2-disagree      3-neutral      4-agree      5-strongly agree**

⤴ This program was presented in a lively, stimulating way	1	2	3	4	5
⤴ The content was interesting and informative	1	2	3	4	5
⤴ The information presented will be useful to me	1	2	3	4	5

⤴ **What other topics in this area should we consider for next year?**

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⤴ **Other Comments?**

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Your comments will ensure a successful program next year. Thank you.  
Please place this form in the designated box located in each session.

**Elizabeth A. DeConti**

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Ms. DeConti is a shareholder in the Tampa office and is a member of the firm's Alcohol Beverage and Food Team. Prior to joining GrayRobinson, she was a partner with the Tampa office of Holland & Knight and a judicial clerk for the Honorable Antoinette L. Dupont, Chief Judge of the Connecticut Appellate Court. She earned her B.A. *cum laude* and with Distinction in Renaissance Studies from Yale University in 1993 and then received her J.D. *cum laude* in 1996 from the University of Miami School of Law, where she was a Harvey T. Reid Scholar.

Awarded the highest rating assigned by Martindale-Hubbell Law Directory "AV", Ms. DeConti focuses her practice on litigation and compliance matters related to the rules, regulation and business practices that govern the marketing, sale, and consumption of malt beverages; wine, distilled spirits, and other regulated products in the alcohol, food and dairy industry. She is also a circuit court mediator certified by the Supreme Court of Florida.

Ms. DeConti's trial experience includes commercial, franchise, intellectual property, and ADA cases litigated on behalf of major breweries, alcohol suppliers, wholesalers, retailers, and other members of the hospitality industry in state and federal courts and administrative agencies throughout the United States. In addition to her court experience, she represents many clients in alternative dispute resolution. She also advises clients on issues pertaining to trade regulation and marketing practices in the food, beverage and dairy industry, and concentrates on regulatory compliance, as well as advertising and promotional law. Ms. DeConti also drafts contracts related to advertising, distribution, importation, and related issues associated with the food, beverage and dairy industry.

In addition, she is fluent in Italian and French, and advises European clients on international and domestic matters. Ms. DeConti's international experience has included the negotiation, sale and purchase of Italian wineries, liaising with Italian law firms on litigation matters pending in Italy and the United States, representation of several German breweries, and advising and counseling foreign entities seeking to import products from Western Europe into the United States.

Ms. DeConti is a member of The Florida Bar and The Connecticut Bar, and is admitted to practice before the United States Supreme Court, the United States Court of Appeals for the Eleventh Circuit, as well as the U.S. District Courts for the Northern, Middle, and Southern Districts of Florida. Additionally, she is a member of the American Bar Association, the Federal Bar Association, and the Hillsborough County Bar Association. She is also a frequent lecturer to the alcohol beverage and hospitality industries.

**EDUCATION:**

- Yale University, B.A. Renaissance Studies (cum laude with Distinction, 1993)
- University of Miami School of Law, J.D. (cum laude, 1996)
  - Harvey T. Reid Scholar

**PROFESSIONAL:**

- The Florida Bar
- The Connecticut Bar
- Certified Circuit Court Mediator
- American Bar Association
- Federal Bar Association
- Hillsborough County Bar Association
- Selected as top attorney by *Super Lawyers 2006*

**COURT ADMISSIONS:**

- Florida (1996)
- Connecticut (1997)
- United States District Courts for the Middle, Northern and Southern Districts of Florida
- United States Court of Appeals for the Eleventh Circuit
- United States Supreme Court

**PUBLICATIONS:**

- *Food and Beverage Liability Update* – Thursday, February 2, 2006
- *Beverage Marketing* - Tuesday, January 11, 2005
- *Ingredients of a Food Related Lawsuit* - Tuesday, January 4, 2005
- *An Introduction to Food Liability* - Wednesday, December 1, 2004
- *Liability Arising From Service of Alcohol Beverages to Minors and How to Avoid It* - Thursday, October 7, 2004
- *What is Dram Shop Liability?* - Tuesday, August 3, 2004
- *Food & Beverage Liability Issues* - Monday, June 21, 2004
- *Beer, Bad Oysters, and Other Pitfalls: A Food and Beverage Liability Update* - Thursday, January 22, 2004
- *Emerging Trends in Dram Shop Liability Law* - Friday, January 24, 2003
- *Michigan Liquor Control Commission Issues Bulletin Restricting Combination Package Of Wine* - Wednesday, November 22, 2000
- *Iowa Undergoes Review Of Alcohol Rules And Regulations* - Thursday, June 1, 2000
- *Wineries Win First Round In Attack On Illinois' New Wine and Spirit Franchise Law* - Wednesday, March 1, 2000
- *Automobile Forfeiture Laws Crack Down on Drunk Drivers* - Sunday, December 19, 1999

**CIVIC:**

- American Cancer Society, Greater Tampa – Member, Operating Board (2002 – 2006)
- American Heart Association of Tampa Bay – Board of Directors (1999 – Present)
- Yale Club of Tampa Bay – Director (2001 – Present)
- Tampa Hope Lodge – Member, Capital Campaign Committee (2001 – 2002)
- Sacred Heart Church - Parishioner

**LANGUAGES:**

- Italian
- French

## Understanding the Three Tiers of the Alcohol Industry: The Promotional Perspective

The Hospitality Law Conference  
February 8-10, 2012  
Houston, Texas

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## Presenter

ELIZABETH A. DECONTI, ESQ.



- Shareholder with the Tampa office of GrayRobinson, P.A.
- Practice focus on litigation and compliance matters related to the rules, regulation and business practices that govern the marketing, sale, and consumption of malt beverages, wine, distilled spirits, and other regulated products.
- Advises clients on issues pertaining to trade regulation and marketing practices in the food and beverage industry, and concentrates on regulatory compliance, as well as advertising and promotional law.
- Analyzes and evaluates alcohol beverage promotions on behalf of suppliers, retailers and third party marketers in traditional and digital formats.



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## Alcohol Beverage Marketing: What is Included?

- Billboards – both traditional and electronic
- TV and Radio Ads
- Print Ads in Newspapers and Magazines
- Coasters and Other “Trinkets and Trash”
- Coupons
- Product samplings/tastings
- Contests/Sweepstakes
- Direct Mail – both snail and electronic



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## But Wait! There's more ...

- Interior/Exterior Signs
- Bar/Trade Spending
- Combination Packaging
- Happy Hour
- Social Media



*Elizabeth DeGoniti*

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## Questions to Consider When Planning a Promotion

- 1) Are there regulations governing who pays for this promotion?
- 2) Are there legal limitations as to the cost or value of the promotion?
- 3) Are there restrictions as to the content?
- 4) Are there restrictions as to the manner and location of distribution?
- 5) What are the appropriate roles for licensees and any unlicensed partners?

*Elizabeth DeGoniti*

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## Laws on Beverage Marketing

- Federal Law
  - Federal Alcohol Administration Act, 27 U.S.C. § 201 *et seq.*
  - Code of Federal Regulations
- Individual States: The 21<sup>st</sup> Amendment of the U.S. Constitution allows them to regulate alcohol within their borders
  - Statutes enacted by state legislatures
  - Administrative regulations promulgated by state agencies
  - Agency enforcement policies

*Elizabeth DeGoniti*

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## The Three Tier System in the United States

**Manufacturers/Suppliers**  
(e.g., Anheuser-Busch, Jim Beam, Kendall Jackson)



**Wholesale/Distributors**  
(e.g., Glazer's, Republic Beverage, Southern Wine & Spirits)



**Retailers**  
(e.g., T.G.I. Friday's, W Hotels, Ralph's, ABC Fine Wines & Spirits)

*Elizabeth DeLoanti*

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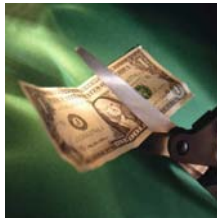
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## Tied House Evil!

- Protects retailers from undue influence
- Prevents manufacturers from giving retailers "things of value"
- Prohibits manufacturers from paying or crediting the retailer for any advertising, display, or distribution service



*Elizabeth DeLoanti*

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## 27 U.S.C. § 205(f) Restrictions on Alcohol Advertising Content

### DON'TS:

- Don't disparage a competitor alcohol beverage manufacturer/product;
- Don't put anything in the advertisement that is designed to be attractive to minors or that could be construed as attractive to minors;
- Don't make any representation about an alcohol product that is or could be construed as false, misleading, obscene or indecent;
- Don't make any claim or representation about an alcohol product that is inconsistent with the product's labeling;

*Elizabeth DeLoanti*

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## Advertising “Don’ts” (continued)

- Don’t make any representations about an alcohol beverage product that indicates the product influences health, strength, athletic ability, or any other physical factors;
- Don’t make any price comparison between one brand of alcohol beverage and another
- Don’t make any representation about an alcohol beverage product that is inconsistent with the spirit of safe driving programs.



*Elizabeth DeGoniti*

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## Point of Sale Materials And Consumer Specialty Items

- Exceptions to Tied House rules
- May be given or sold to retailers by manufacturers under certain conditions
- Point of Sale materials are for retail premises – e.g., wine lists, coasters, bar backs
- Consumer specialty items are for patrons – e.g., ashtrays, hats, T-shirts
- State restrictions likely will govern issues such as the dollar value of items to be provided/sold, and whether and/or in what manner retailer names/logos may be featured

*Elizabeth DeGoniti*

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## Equipment

- Federal definition (27 C.F.R. § 6.88) includes glassware, dispensing accessories, carbon dioxide, ice
- Sell vs. Give
- Installation, cleaning, and servicing



*Elizabeth DeGoniti*

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## Product Sampling

- Sampling is for the trade
- Quantities are limited
- Who may give and who may receive
- Should be new brands or those not previously purchased

*Elizabeth DeGoniti*

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## Consumer Tastings

- Tastings are for consumers
- Permits and/or prior notice to state regulatory agency may be required
- Areas of regulation:
  - Who pays for product
  - Who pours product
  - Quantities
  - Location
  - Frequency

*Elizabeth DeGoniti*

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## Advertisements in Print Media

Issues to consider:

- Whom does the advertising benefit?
- Who is paying for the ad?
- Will there be cooperative advertisement concerns?
- Do any recognized exceptions apply?

*Issues apply in electronic media now, also*

*Elizabeth DeGoniti*

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### Coupons as a Popular Form of Beverage Marketing

- Manufacturers or retailers may fund
- Tied house laws and regulations apply
- Instantly-redeemable or rebate variety
- Coupon rules vary from state to state, by segment, and for on- or off-premises
- Some states prohibit coupons of any kind
- Popular state concerns include inducement, below cost/predatory pricing, attracting minors, exclusion

*Elizabeth DeGoniti*

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### Contests and Sweepstakes

- Rules vary by state
- Most have general law and alcohol specific law
- Think about means of entry, traditional and social
- General uniform prohibitions:
  - No purchase necessary
  - No alcoholic beverages as prizes
  - Industry members and their employees and family members may not participate

*Elizabeth DeGoniti*

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### Retailer Incentive Contests

- Suppliers offer trips, televisions, cash and prizes to induce retailer employees to sell their products
- Some states prohibit as tied house violation (prohibited thing of value/exclusion)
- Small minority of states allow under specified conditions

*Elizabeth DeGoniti*

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## Retailer Entertainment

- Usually event tickets are allowed (sports, theater, concerts) along with reasonable food and drink
- How much is too much?
- Individual states regulate based on tied house laws

*Elizabeth DeGoniti*

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## Happy Hour

- May be regulated at the state, county, and/or city level
- Laws are directed at temperance concerns
- Common areas of regulation and prohibitions:
  - freebies and “two-for-ones”
  - discounts in one area of the restaurant only
  - specials directed at particular groups

*Elizabeth DeGoniti*

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## SOCIAL MEDIA PROMOTIONS

- Any electronic media platform linking participating groups of consumers on an interactive basis
  - Facebook
  - Twitter
  - GroupOn
  - foursquare



*Elizabeth DeGoniti*

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## THE INDUSTRY VIEW

- What opportunities do social media platforms present for marketing or promoting alcohol beverages?

- Direct consumer access
- Demographic maximization
- Event and accessibility coordination



*Elizabeth DeConiti*

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## LEGAL ISSUES PRESENT IN SOCIAL MEDIA

- Compliance with the rules of multiple jurisdictions;
- Inadvertent tied-house "benefit" conveyed on retailer;
- Possible sale of alcohol without a license;
- Inadvertent targeting of minors
- Temperance
- Intellectual property
- Privacy policies

*Elizabeth DeConiti*

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## Conclusion

- Alcohol Beverage Marketing is a highly regulated area
- Federal, state, and local laws may apply
- Watch for Tied House issues, such as cooperative advertising and impermissible things of value
- Be mindful of temperance concerns, especially in social media

Any questions, please call me at (813) 273-5159 or email me at: [elizabeth.deconiti@gray-robinson.com](mailto:elizabeth.deconiti@gray-robinson.com)

*Elizabeth DeConiti*

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