

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

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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.**

*Elizabeth DeConti.*

# 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

# But Wait! There's more ...

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



# 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?

# 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

# 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)

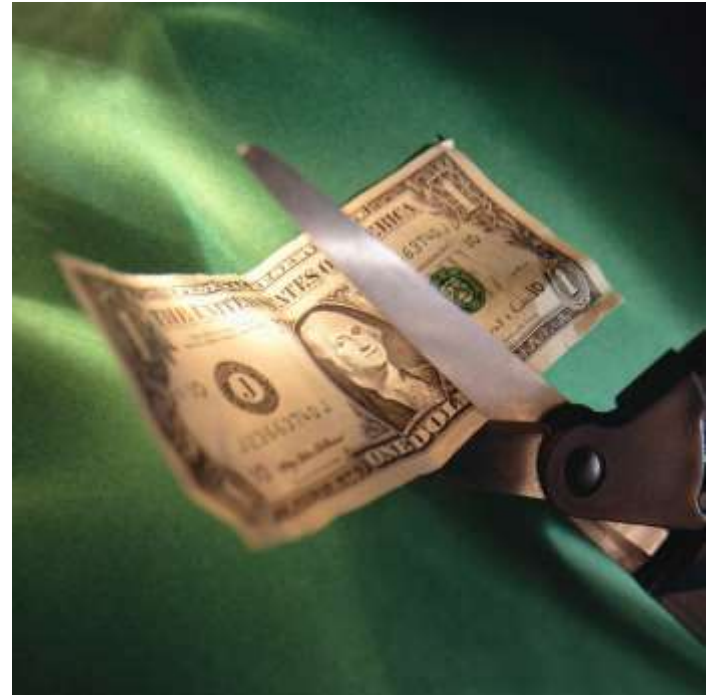


Retailers

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

# 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





# 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;

# 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.



# 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

# Equipment

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



# 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

# 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

# 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*

# 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



# 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

# 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

# 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

# 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

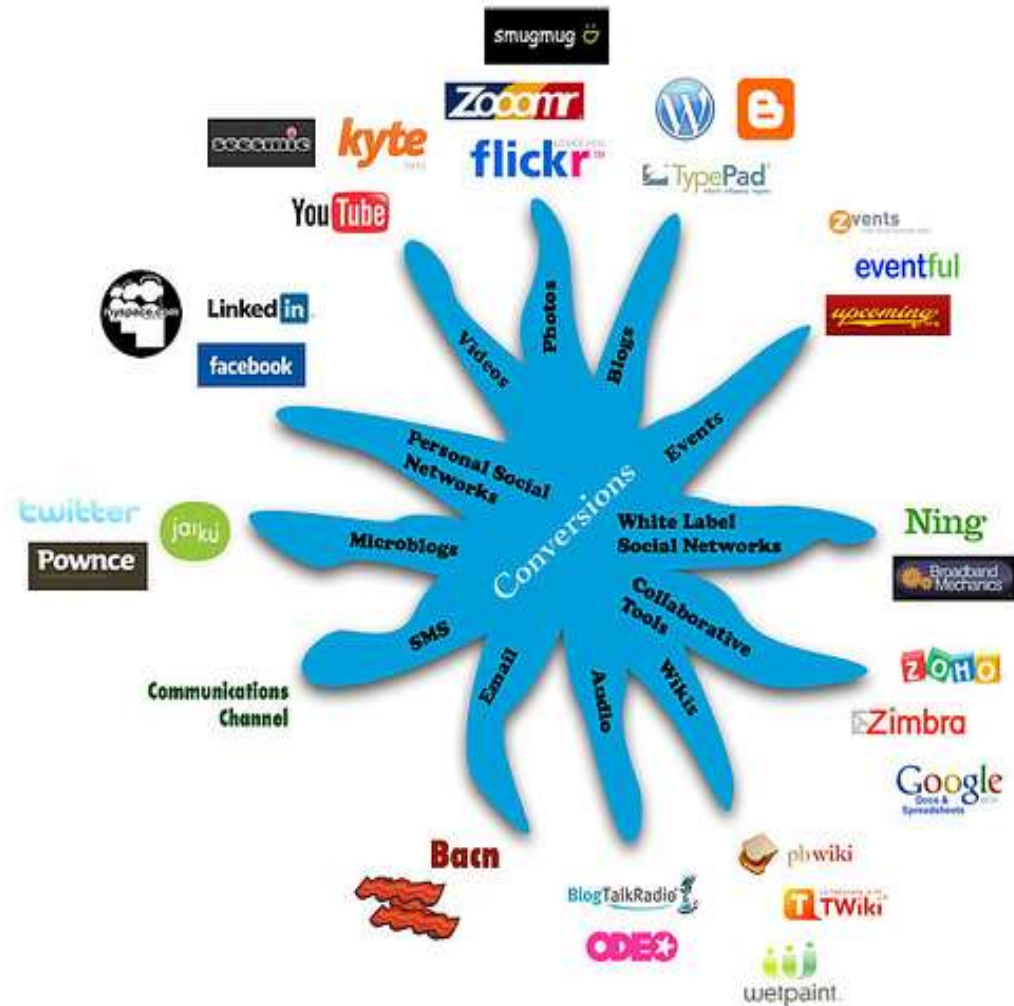
# SOCIAL MEDIA PROMOTIONS

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



# 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



# 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

# 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:  
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# Session Evaluation



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