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HOT TOPICS IN FOOD & BEVERAGE LAW

PRESENTER



Elizabeth A. DeConti, Esq.

- Elizabeth is a shareholder with the Tampa office of GrayRobinson where she 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. She also handles food law issues.
- Elizabeth's trial experience includes commercial, dram shop, 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 and beverage industry, and concentrates on regulatory compliance, as well as advertising and promotional law. Elizabeth also drafts contracts related to advertising, distribution, importation, and related issues associated with the food and beverage industry.

Alcohol Beverage Marketing



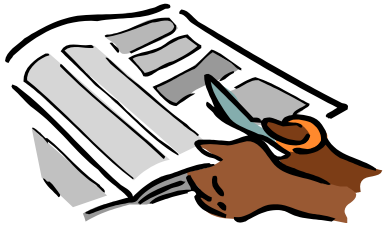
Served in *fine* establishments and questionable joints everywhere.

Your friends at Jack Daniel's remind you to drink responsibly.
JACK DANIEL'S and OLD NO. 7 are registered trademarks of Jack Daniel's, Lynchburg, Tennessee. © 2011 Jack Daniel's Distillery.



Elizabeth DeConti.

Alcohol Beverage Marketing: What is Regulated?



- Brand Equity Messages
- Coupons and Rebates
- Combination Offers with food and other products
- Contests/Sweepstakes
- Direct Mail – both snail and electronic
- Next Generation/Digital Media



The Three Tier System in the United States

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



- Wholesalers/Distributors (*e.g.*, Southern Wine & Spirits, Republic National, Glazer's)



- Retailers (*e.g.*, Ralph's, Winn-Dixie, T.G.I. Friday's, State Stores)



Legal Landscape

- Federal Law

- Federal Alcohol Administration Act, 27 U.S.C. § 201 et seq.
- Code of Federal Regulations
- Broad Overview for States to Follow

- State Law

- Statutes enacted by state legislatures
- Administrative regulations promulgated by state agencies
- Specific guidelines
- Every state is different
- For legal issues, go by state, not by chain.

Legal Concept of Tied House Evil

- Suppliers may not exert undue influence over retailers
- Suppliers may not give retailers “things of value”
- Suppliers may not pay or credit the retailer for any advertising, display, or distribution service



MENUS

- Point of Sale Exception
 - Temporary vs. Permanent
- Issues with Supplier Funding
 - Covers
 - Food
 - Printers vs. Digital

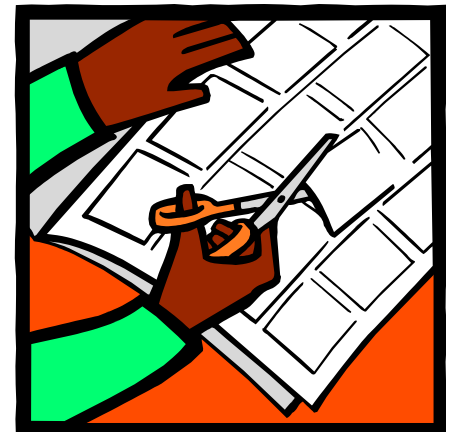
Consumer Product Tastings

- **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
- **Role of Third Parties**



Coupons and Rebates as a Popular Form of Beverage Marketing

- Suppliers generally fund
- Tied house laws and regulations apply
- Rules vary from state to state, and by segment (beer, wine, spirits)
- Some states prohibit coupons of any kind
- Popular state concerns include inducement, below cost/predatory pricing, attracting minors, exclusion



Sweepstakes

- Common issues:
 - Purchase Requirements
 - Dollar/Value Limitations on Prizes
 - Degree to Which Retailers May Participate
 - Different Rules for Beer, Wine, and Spirits, especially in Control States
- New CA law

The Role of Social Media



- Legal Considerations
 - Enforcement issues
 - “Virtual” Jurisdictional Boundaries
 - Brand Image:
Minors/Temperance
 - Viral Content: Are recipients of your tweets, posts, etc. intended users?

Happy Hour Promotions



- May be regulated at 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

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

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