



September 19, 2008

Chairman Kevin J. Martin
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Submitted Online 9-19-08

RE: In the Matter of Sponsorship Identification Rules and Embedded Advertising
MB Docket No. 08-90

Dear Commissioner Martin:

Marin Institute appreciates the opportunity to comment on the issue of sponsorship identification rules and embedded advertising, specifically with regards to the integration of alcoholic beverages into content shown on television. The societal problems associated with alcohol greatly exceed those of other products regularly advertised on television. Because of these concerns, the FCC must be particularly vigilant in evaluating how to best regulate embedded advertisements for alcohol products in order to protect the public's interest.

Marin Institute is a nonprofit organization fighting to protect the public from the impact of the alcohol industry's negative practices. We monitor and expose the alcohol industry's harmful activities related to products, promotions, and political influence.

Over our 20+ years, we have consistently heard from constituents who are increasingly concerned with the amount of alcohol images shown on television. Whether in the form of traditional commercials, sports sponsorship, or embedded into programming, viewers of all ages are continually being exposed to glamorized images of drinking, with virtually no messages about potentially harmful consequences. From a public health perspective, this distorted messaging serves to normalize a behavior that carries many adverse impacts. While it is currently unclear how pervasive the use of embedded advertising is with regard to alcohol, we do know the overall use of embedded advertising is on the rise.¹

¹ Nielsen Media Research, Product Placements Rose 6% in First Quarter, *Nielsen Reports*, May 5, 2008.

Given these increases, coupled with the connection of youth exposure to alcohol ads and underage drinking,² along with the power of story to influence attitudes towards behavior and products,³ the FCC should use its subpoena power to investigate the pervasiveness of embedded alcohol advertisements in programming and take action to restrict this practice. FCC has the legal authority and public interest duty to pay particular attention to alcohol in this matter. As a result, Marin Institute recommends that FCC must:

1. Pay particular attention to alcohol as a harmful product when establishing new rules regarding sponsorship identification of embedded advertisements;
2. Require concurrent disclosure for all embedded alcohol advertisements;
3. Limit embedded advertisements for alcoholic beverages to the hours between 10 pm and 6 am;
4. Require cable programming to meet the same sponsorship identification rules imposed on broadcast television for embedded alcohol advertisements;
5. Require that movies shown on television meet the same sponsorship identification rules for embedded alcohol advertisements as programming produced for broadcast on television.

1. The FCC must pay specific attention to alcohol as a harmful product when establishing new rules regarding sponsorship identification.

While alcohol is a legal product, it is also a dangerous drug. Unlike Post-it notes or iPods, or even Coca-Cola, alcohol poses serious health and safety risks to both individual drinkers and the general public. Moderate to high alcohol use contributes to illnesses as varied as liver cirrhosis, esophageal cancer, pancreatitis, and epilepsy, as well as a variety of serious injuries. Drinking also plays a significant role in violent crimes such as sexual assaults, domestic violence, and child abuse.⁴ Every year on America's roadways, alcohol use takes the lives of thousands of innocent victims. Alcohol-related motor vehicle crashes kill someone every 31 minutes and injure someone every two minutes.⁵ The societal cost of alcohol use also includes the devastating financial toll, mostly in form of lost productivity. The economic costs associated with alcohol in the U.S. likely exceed \$200 billion per year.⁶

² Hastings G, et al, "Alcohol Marketing and Young People's Drinking: A Review of the Research," *Journal of Public Health Policy* (2005) 26, 296-311; and Grube, Joel W. *Television Alcohol Portrayals, Alcohol Advertising, and Alcohol Expectancies Among Children and Adolescents*, in: *The Effects of the Mass Media on the Use and Abuse of Alcohol*, U.S. Department of Health and Human Services (1995).

³ Dal Cin, S, Zanna MP, and Fong GT, *Narrative Persuasion and Overcoming Resistance*, in: Knowles, E and Linn J (eds), *Resistance to Persuasion* (2004).

⁴ Rosen, SM, Miller, TR, Simon, M (2008). The Cost of Alcohol in California, *Alcoholism: Clinical and Experimental Research* Vol. 32 No. 11.

⁵ National Highway Traffic Safety Administration (2006), available at: <http://www.cdc.gov/ncipc/factsheets/driving.htm>.

⁶ Harwood, H. Updating Estimates of the Economic Costs of Alcohol Abuse in the United States: Estimates, Update Methods, and Data, Report prepared by The Lewin Group for the National Institute on Alcohol Abuse and Alcoholism, 2000.; and Rosen, SM, Miller, TR, Simon, M (2008). The Cost of Alcohol in California, *Alcoholism: Clinical and Experimental Research* Vol. 32 No. 11.

It is in recognition of such problems associated with alcohol use that governments at every level consider alcohol an inherently dangerous product warranting regulation. Alcohol is heavily regulated at the state and local levels. State and local power to regulate alcohol resides in both the Twenty-first Amendment and the police power to protect the general welfare. However, the federal government must take action in areas where states and localities do not have authority to act, and are otherwise at the mercy of the federal government, such as with regulating the airwaves.

The FCC is charged with regulating the airwaves in the public interest. The current sponsorship identification rules are thus intended to protect the public interest by knowing who is paying to air commercials or other program material on broadcast television and cable and radio. In the case *Red Lion Broadcasting Co. v. FCC*⁷ the Supreme Court interpreted this mandate as putting the rights of the viewing public ahead of those entities broadcasting the message. As a result, the FCC is well within its power to place restrictions on broadcasting that are in the public's interest, but not necessarily the broadcasters'.

Given the strong public interest in minimizing the societal costs associated with alcohol, and the inability of states to regulate what is broadcast on television, the FCC must acknowledge that embedded advertising for alcohol is not in the public interest. Indeed, protecting the public interest through limiting exposure to advertising of dangerous products is not without precedent. As part of the Master Settlement Agreement, the tobacco industry agreed to not pay for product placement in movies, television, theater, video games, or other performances.⁸ While this agreement is not binding on the FCC, it functions as an acknowledgement that not all advertising messages are always suitable for the public.

The alcohol industry also recognizes this concept as is evidenced by its self-regulatory advertising standards; however as the amount of alcohol ads increase on television (particularly cable), it appears that these voluntary standards are little more than window dressing. Moreover, industry's oversight system is inherently biased and unworkable.⁹ As a result, the FCC can and must step in and investigate the pervasiveness of embedding alcohol advertisements in programming and then take appropriate action to restrict the practice in order to fulfill its mandate to protect the public interest.

⁷ *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969).

⁸ Master Settlement Agreement Section III(e) and Smokeless Tobacco Master Settlement Agreement Section III(e).

⁹ See, *Why Big Alcohol Can't Regulate Itself: A Review of Advertising Self-Regulation in the Distilled Spirits Industry*, a Marin Institute Report (September 2008).

2. The FCC must require concurrent disclosure for all embedded alcohol advertisements.

The current sponsorship identification rules are based on the public's right to know the identity of the sponsor when consideration has been provided in exchange for airing programming. Allowing advertisers to embed advertisements into programming without adequate disclosure undermines this right. With regards to alcohol, this right to know is only further reinforced by a need to know. As a result, the FCC must require concurrent disclosure for all embedded alcohol advertisements.

As described above, alcohol is a dangerous product which carries with it significant health and societal costs. Given these costs and risks, the government has a substantial interest in taking action that will reduce these problems. The practice of embedding alcohol advertisements into television programs is of particular concern given the mounting evidence regarding the power of narrative to influence viewers' attitudes towards products and behaviors. As people become more accepting, they are more likely to identify with the use of a product or a behavior. With alcoholic beverages, this is particularly troublesome because increased use means increased health and safety problems. It was due to these concerns that the Institute of Medicine recommended in 2003 that product placement of alcoholic products be at a minimum explicitly disclosed.¹⁰ Without concurrent disclosure, viewers are likely to misinterpret what they are watching as the normal use of a potentially dangerous product rather than an advertisement for alcohol. Only by requiring concurrent disclosure of embedded alcohol advertisements can the FCC break the spell of the narrative and ensure that people are aware that they are in fact watching a paid advertisement.

Finally, there is significant authority for the FCC to require the concurrent disclosure of embedded advertisements for alcohol products. While messages from advertisers are protected by the First Amendment, such speech is afforded a lower level of scrutiny than is political speech because advertising is commercial, an area which is traditionally subject to government regulation. To receive protection, the product must be legal and the advertisements cannot be misleading. Given the potential for misleading embedded messages (for example, that drinking has no consequences), the FCC should require that embedded alcohol advertisements be concurrently disclosed. Such a requirement benefits the public by alerting them to paid consideration and even advertisers by ensuring that an advertisement for alcohol is not misleading.

3. The FCC must limit the embedding of alcohol advertisements in television programs to the hours between 10 pm and 6 am.

Currently the FCC applies a concept called "safe harbor" to limit younger viewers' access to programming that is potentially indecent or profane. Only between the hours of 10 pm and 6 am can television stations broadcast material that might be unsuitable

¹⁰ National Research Council and Institute of Medicine (2003), *Reducing Underage Drinking, A Collective Responsibility*. Washington DC: National Academies Press (p. 143).

for younger viewers. The reasoning is that fewer young viewers will be watching television during these hours, and thus are less likely to be exposed to objectionable material. The FCC should apply the same approach to embedded alcohol advertisements to protect younger viewers from exposure to alcohol advertising.

Alcohol is a dangerous drug, particularly for underage youth. Underage drinking is responsible for approximately 5,000 deaths per year among people under age 21.¹¹ Also, underage drinking can cause harm to the developing brain, which continues to mature into the mid- to late-twenties. Moreover, research shows that a person who starts drinking before age 15 is four to five times more likely to have alcohol problems later in life than someone who waited until age 21 to start drinking.¹² As a result, the government has a substantial interest in preventing underage drinking.

The connection between youth exposure to alcohol ads and underage drinking has been well documented. Quite simply, the more ads kids see, the more likely they are to drink, and to drink to excess.¹³ The Institute of Medicine recommends that alcohol and advertising companies refrain from marketing practices that have “substantial underage appeal” and that they should “reduce youthful exposure” to alcohol advertising.¹⁴

Given this indisputable science and previous recommendations, the FCC should do its part to regulate alcohol advertisements to limit underage exposure. Previous legal precedent has held that the government is entitled to take necessary steps to protect underage youth.¹⁵ By limiting the hours during which embedded alcohol advertisements can be broadcast, the FCC will help limit the exposure of younger viewers to commercialized and one-sided messages about drinking. Advertisers will still have the opportunity to show embedded ads for alcohol between 10 pm and 6 am, along with the usual forms of television advertising; hence such a rule is not overly broad.

Also, by limiting the time during which embedded alcohol advertisements can be broadcast, the FCC will enable parents to better control the messages their children are exposed to. Unlike standard commercials which can be muted, skipped, or explained, embedded advertising appear during the show itself. As a result, younger viewers will be exposed to these messages despite a parent’s best effort. Similarly, youth are less capable of understanding the different types of persuasion used by advertisers. Even

¹¹ U.S. Department of Health and Human Services, *The Surgeon General’s Call to Action To Prevent and Reduce Underage Drinking*, U.S. Department of Health and Human Services, Office of the Surgeon General, 2007.

¹² DeWit DJ, Adlaf EM, Offord DR, Ogborne AC. Age at first alcohol use: A risk factor for the development of alcohol disorders, *The American Journal of Psychiatry*, 2000; 157:145-150.

¹³ How does alcohol affect the world of a child? National Institute on Alcohol Abuse and Alcoholism website: <http://www.alcoholfreechildren.org/gs/pubs/pdf/statbooklet.pdf>. See also: Hastings G, et al, “Alcohol Marketing and Young People’s Drinking: A Review of the Research,” *Journal of Public Health Policy* (2005) 26, 296-311.

¹⁴ National Research Council and Institute of Medicine (2003), *Reducing Underage Drinking, A Collective Responsibility*. Washington DC: National Academies Press.

¹⁵ See *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 (2001); *Anheuser-Busch, Inc., et al. v. Schموke, Mayor et al.*, 517 U.S. 1206 (1996); and *Anheuser-Busch, Inc., et al. v. Schموke, Mayor et al.*, 101 F.3d 325 (1996).

with concurrent disclosure for embedded alcohol advertisements, younger viewers will likely have difficulty understanding the difference between a character's use of a product and an advertisement. For these reasons limiting embedded alcohol advertising to the hours between 10 pm and 6 am is reasonable and necessary.

4. The FCC must require that the sponsorship identification rules for embedded alcohol advertisements that apply to broadcast television also apply to cable.

Over the years, the amount of programming on cable television has continually grown. This increase has been accompanied by a shift of viewers from broadcast to cable television. Given this shift, the FCC must move to regulate this growing area of cable television in the same manner that it regulates broadcast television if it is to adhere to its mandate to protect the public interest.

Moreover, the FCC should be concerned with the increase in alcohol advertising on cable television. While the distilled spirits industry has had a self-imposed voluntary ban on advertising on broadcast television, spirits companies do advertise on cable. Thus, it appears that the alcohol industry is actively exploiting the less regulated world of cable television. Compounding the problem of this increase in alcohol advertising on cable television is the fact that youth are a significant part of the viewing audience.

Currently, the vast majority of the alcohol advertisements on television that youth are exposed to are shown on cable television. According to the Center on Alcohol Marketing and Youth, almost two-thirds (63%) of ads that overexposed youth in 2007 (defined as shows where more than 30% of the viewing audience is underage) were on cable television. Such placements generated 95% of youth overexposure to alcohol advertising on television.¹⁶ Given the connection between the number of advertisements seen by youth and underage drinking, (as explained earlier) the FCC should be especially concerned about this trend.

Since cable programmers such as the CW, a cable channel watched particularly by younger viewers, have actively pursued new advertising methods such as "content wraps" and "cwikies," it is highly likely that advertisements for alcohol products are being embedded into programs that youth are regularly watching. For example, the popular CW television series *Gossip Girl* often includes storylines depicting teenagers consuming alcohol. These depictions of underage drinking often include the use of, or are coupled with, images of specific brands. Whether these product placements are paid for by the alcohol industry is currently unclear. As a result the FCC needs to use its subpoena power to investigate the extent to which product placement of alcohol is occurring on cable television.

¹⁶ Center on Alcohol Marketing and Youth, *Youth Exposure to Alcohol Advertising on Television, 2001 to 2007*, (2008), available at: <http://www.camy.org/research/tv0608/>.

Moreover, if the depictions of alcohol use and inclusion of specific alcohol brands on cable programs such as *Gossip Girls* are in fact embedded advertisements, then the alcohol industry may be violating its own voluntary codes. For example, the depiction of alcohol being consumed irresponsibly and promotion of underage drinking are not allowed under industry guidelines, and yet such depictions are regular occurrences on some cable shows. By paying for the integration of alcohol into programming, the alcohol industry is able to connect its products in positive ways with behavior that is otherwise unacceptable. By allowing cable programming to go unregulated with regard to embedded alcohol advertisements, the FCC will be allowing the alcohol industry to expose young people to one-sided messages showing the glamorous use of alcohol.

Finally, embedded advertisements offer advertisers new opportunities to influence viewers that they previously could not reach. Premium cable channels such as HBO and Showtime have built a subscription base by offering programming to viewers without commercial interruptions. In recent years, these channels have increased the amount of original content they produce. In turn, this original content offers these premium cable channels the opportunity to earn revenue by embedding advertisements into their programs without the knowledge of their viewers. Some examples of alcohol brands being depicted on shows on HBO include the integration of Absolut Vodka into several storylines of the series *Sex and the City*, as well as regular consumption of Budweiser products in the show *Entourage* and *True Blood*. Whether these channels are in fact receiving payment for embedding specific brands into their shows is unclear, and hence investigation by the FCC is necessary. If the inclusion of these products in these shows is a result of payment by advertisers, then again the alcohol industry may be violating its voluntary code and the public would unexpectedly be exposed to advertisements. As a result, the sponsorship identification rules for embedded alcohol advertisements on broadcast television must also apply to cable programming.

5. The FCC must require that sponsorship identification rules for embedded alcohol advertisements that apply to broadcast television also apply to movies shown on television.

Movies feature a large number of branded products, many of which are alcohol.¹⁷ While not all appearances or references to specific brands may be paid advertisements, it is clear that viewers of all ages are being regularly exposed to these images. Given that the distribution chain of movies¹⁸ regularly leads to movies being broadcast on television, and that film studios plan to profit from these showings, movies shown on television must meet the sponsorship identification rules for embedded alcohol advertisements if the public interest is to be protected.

¹⁷ Schiller, G, Tie-ins often sobering for liquor firms, *THR.com*, August 1, 2005; Graser, M, *The Spy Who Loves Brands*, *Advertising Age*, November 17, 2006.; Kilday, G, Key Arts grasp 'Identity,' *THR.com*. May 3, 2004.

¹⁸ The distribution chain for movies generally follows a set path. First movies are shown in theaters. Several months later the DVD becomes available. Next the movie appears on pay-per-view television, followed by premium cable networks and then finally being broadcast on television.

Additionally, the FCC needs to take into account that movies are often edited for television. As a result of editing, a movie initially intended for an older audience may come to be viewed by a younger audience through airing on television. Because the embedded advertisements for a product such as alcohol may be less objectionable when included in a movie that received R rating, they may become increasingly objectionable as it reaches a younger audience. Examples of movies containing prominently displayed or consumed alcohol brands include, Smirnoff and Heineken in *James Bond: Casino Royale* (PG-13, 2006); Budweiser in *Dodgeball* (PG-13, 2004) and *Wedding Crashers* (PG-13, 2005); Heineken in *Austin Powers: The Spy Who Shagged Me* (PG-13, 1999) and *Matrix Reloaded* (R, 2003); Coors in *Scary Movie 3* (PG-13, 2003), Stolli Vodka in *Bad Santa* (R, 2003); Michelob and Jack Daniel's in *The Island* (PG-13, 2005); Maker's Mark in *Spider-Man 2* (PG-13, 2004); and Tecate in *Hellboy II: The Golden Army* (PG-13, 2008). While the R-rated movies during their theatrical release were intended for older audiences, the messages regarding the alcoholic products contained in the movies have the potential of reaching younger viewers through television broadcast. As a result, the FCC should consider how embedded advertisements for alcohol could continue to reach audiences if the sponsorship identification rules do not apply to movies shown on television.

Conclusion

In determining sponsorship identification rules for embedded advertising, the FCC should give special attention to alcohol because it is a potentially dangerous drug. Youth are especially vulnerable to alcohol advertising messages and need increased protection. By adopting the suggestions outlined in these comments, the FCC can help reduce the devastating societal and personal effects associated with harmful drinking. Thank you again for the opportunity to comment on this matter.

Respectfully submitted,

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