A Communication from the Chief Legal Officers
Of the Following States:

Arizona, Connecticut, Delaware, Guam, Hawaii, Idaho, Illinois, Iowa, Maryland, Massachusetts, Mississippi, Nevada, New Hampshire, New Mexico, New York, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Washington, and Wyoming

April 26, 2011

Donald S. Clark
Federal Trade Commission
Office of the Secretary
Room HB113 (Annex J)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Alcohol Reports: Paperwork Comment; Project No. P114503

Dear Mr. Clark:

We, the undersigned Attorneys General, submit the following Comments in response to the Commission's proposed collection of information from alcohol advertisers regarding compliance with voluntary advertising placement provisions, sales and marketing expenditures, the status of third-party review of complaints regarding compliance with voluntary advertising codes, and alcohol industry data collection practices.

As the Chief Legal Officers of our states, we are concerned about the large number of underage drinkers in our states and the role that the industry's advertising and marketing practices play in promoting underage consumption. The latest data from the U.S. Substance Abuse and Mental Health Services Administration (SAMHSA) show that underage drinking rates have remained relatively flat, hovering between 51% and 49% from 2002 to 2009, indicating little progress in addressing this critical public health problem.[1] At the same time, studies with varying methodological approaches have found that there is an association between exposure to alcohol marketing and youth drinking behavior, even after controlling for variables including parental monitoring and

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1 Substance Abuse and Mental Health Services Administration (SAMHSA). Results From the 2009 National Survey on Drug Use and Health: Volume I. Summary of National Findings. 2010; Rockville, MD: Office of Applied Studies; available at: http://oas.samhsa.gov/NSDUH/2k9NSDUH/2k9Results.htm. Accessed April 8, 2011.

socioeconomic status, and that the more young people are exposed to alcohol advertising and marketing, the more likely they are to drink, or if already drinking, to drink more.[2]

We agree with the Commission that it is in the public interest to collect the information being sought and believe this information is essential to the FTC's performance of its regulatory duties.

I. Collection of Advertising and Promotional Expenditures

As was recommended by Attorneys General in 2006,[3] we believe the FTC should seek advertising and promotional expenditure data on an ongoing and regular basis, not just intermittently. The media landscape is changing daily. To understand how and where the alcohol industry is advertising and the extent to which youth are being exposed to such advertising, the FTC should obtain this advertising and promotional data at least every two to three years if not every year, as it does for the tobacco industry. Moreover, the data collected should include both measured (e.g., television, radio, print, web-based and outdoor) and unmeasured (e.g., branded merchandise, product development, sports and entertainment sponsorship, point-of-purchase promotion, product placement, college marketing promotion, and bar promotion) marketing activities and expenditures.

II. Compliance with Industry Self-Regulatory Placement Standards

We endorse the Commission's proposal to assess industry compliance with the current voluntary 70% placement standard (i.e., where at least 70% of the audience is reasonably expected to be above the legal alcohol purchase age of 21 years). However, in light of new research showing that despite this standard, youth exposure to alcohol advertising on television has grown since 2004 at a rate faster than that of adults or young adults, and given the continued and unacceptably high rates of underage drinking, we urge the Commission to encourage the alcohol industry to move to a standard limiting advertising to media where no more than 15 % of the audience is between the ages of 12 and 20, as recommended in 2004 by the Institute of Medicine's Committee on Developing a Strategy to Reduce and Prevent Underage Drinking.[3]

As the Commission is aware, in 2007, Beam Global Spirits & Wine Inc. followed the recommendation of the Institute of Medicine, which stated companies should adopt a 25 percent threshold for placing their advertising as a first step towards the adoption of a 15

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2 Anderson P, De Bruijn A, Angus K, Gordon R, Hastings G. Impact of alcohol advertising and media exposure on adolescent alcohol use: a systematic review of longitudinal studies. Alcohol and Alcoholism. 2009; 44(3):229-243.

3 See, letters of Attorneys General dated May 6 and November 22, 2006, attached hereto, submitted in response to the FTC's request for comments on collection of information for its previous alcohol advertising report.

percent threshold.[4] Beam also adopted a maximum standard of 15 percent annual aggregate average by brand and by medium. The voluntary actions by this company should be recognized as being instructive for the entire alcohol industry.

Finally, the Commission should include a brand analysis in its coming report. Alcohol beverages are marketed by brand, and not by company. Although the Commission noted repeatedly in its 2008 report that 85% of the exposure to alcohol advertising goes to adults of legal drinking age, this is analogous to issuing traffic tickets on the basis of average driving speeds and dismissing a speeding ticket for all vehicles going 75 miles per hour in a 60 mile per hour zone because the cars next to them were going 50 miles per hour. Averaging the speeders and non-speeders does not mean that all drivers were in compliance. By not seeking brand-specific data, the Commission is failing to give itself and the public a complete and accurate picture of the industry's advertising practices.

III. Data Collection, Including Data Collection with Digital and Social Media Marketing

We are pleased that the FTC is proposing to vigorously pursue data with regard to the alcohol industry's use of digital and social media in marketing. We are aware that at least one brand has announced that it will now use only social media in its advertising efforts,[5] and of another company's extensive, world-wide use of social media for an advertising campaign related to the 2010 World Cup.[6] These two examples suggest a "brave new world" of marketing that will expose millions of American youth to alcohol advertising messages on their cell phones and computers while at the same time taxing regulators' capacity and understanding. It is imperative that the FTC rely not only on industry assurances of responsibility but gather the facts necessary for an independent assessment of what regulatory oversight is appropriate.

Key areas of information about digital and social marketing data that should be sought by the FTC include, but are not limited to, companies' policies and related data concerning:

- How bloggers or other third-party posters on internet sites may use alcohol brand trademarked or copyrighted material,
- Pre-approval of posts on corporate sponsored social media sites,

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4 National Research Council and Institutes of Medicine. Reducing Underage Drinking: A Collective Responsibility. Washington, D.C.: National Academies Press; 2004.

5 Mullman J. Southern Comfort Pours Entire Media Budget Into Digital. Advertising Age. 29 July 2009, available at http://adage.com/article?article_id=138202, accessed April 5, 2011.

6 Anheuser-Busch InBev. Anheuser-Busch InBev Reports Second Quarter and Half Year 2010 Results. 2010; available at: http://www.ab-inbev.com/press_releases/20100812_1_e.pdf. Accessed April 5, 2011.

- Personal information obtained about viewers of corporate-sponsored social media sites,
- Actions taken against posts on corporate-sponsored social media sites that violate voluntary advertising codes, and
- Marketing and promotional statements made by company employees on corporate social media sites.

Thank you for your consideration of our views. If you have any questions, please feel free to contact Maryland Special Assistant Attorney General Marlene Trestman, at 410-576-7219, or Utah Assistant Attorney General Thom Roberts at (801) 538-9600.

Respectfully submitted,

Mark Shurtleff
Attorney General of Utah
NAAG Youth Access to Alcohol
Committee Co-Chair

Douglas Gansler
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Attorney General of Wyoming

A Communication From the Chief Legal Officers
Of the Following States:

Arizona ▪ California ▪ Connecticut ▪ Hawaii ▪ Idaho
Maine ▪ Maryland ▪ New Jersey ▪ New York
Ohio ▪ Vermont ▪ Wyoming

November 22, 2006

via fascimile

Donald S. Clark
Federal Trade Commission
Office of the Secretary
Room H-135 (Annex J)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Alcohol Reports: Paperwork Comment
FTC File No. P064505

Dear Mr. Clark:

We, the undersigned Attorneys General, submit the following Comment in response to the Commission's second request for public comment concerning the proposed collection of information from beverage alcohol advertisers. This letter supplements our May 8, 2006 Comment in response to the Commission's initial request for public comment.

As the Chief Legal Officers of our states, we are very concerned about the large number of underage drinkers throughout our nation and the role that the industry's marketing practices play in promoting underage consumption. Consequently, we support the Commission's proposed requests to beverage alcohol advertisers as most recently published at Federal Register 62261-62266 (October 24, 2006) to collect certain categories of information about sales, marketing expenditures, advertisement placement and external review of voluntary code compliance.

As set forth in our May 8, 2006 Comment, we endorse the Commission's proposal to assess industry compliance with the current voluntary 70% placement standard (where at least 70% of the audience is reasonably expected to be above the legal alcohol purchase age of 21 years). However, as we also explained, given the absence of a reduction in underage drinking since the industry adopted the 70% over 21 (and 30% under 21) standard, we strongly encourage the Commission to go further and review the appropriateness and utility of the current standard and to explore with the industry and others the reduction of the industry standard from 30% under 21 to a standard that would require that alcohol advertising be limited to media where no more than 15% of the audience is age 12-20. This approach would mirror the 2004 recommendation of the National Research Council and Institute of Medicine's Committee on Developing a Strategy to Reduce and Prevent Underage Drinking. We refer you to our earlier Comment at pages 3-4 (copy enclosed) which provides further support for our position.

Again, given the challenge of preventing and reducing underage consumption of alcohol and the importance of this issue to the health of our nation's youth, we applaud the Commission's actions thus far in proposing a requirement for the alcohol industry to disclose sales, marketing, and advertisement placement data. We thank you for your consideration of our supplemental comment.

Respectfully submitted,

G. Steven Rowe
Attorney General of Maine
Co-Chair, NAAG Youth Access to Alcohol Committee

Terry Goddard
Attorney General of Arizona
Member, NAAG Youth Access to Alcohol Committee

Bill Lockyer
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Enclosure: (May 8, 2006 Comment)

cc: via Fax (202) 395-6974
Office of Management and Budget
Attention: Desk Officer for the Federal Trade Commission

A Communication From the Chief Legal Officers
Of the Following States:

Arizona ▪ Connecticut ▪ Delaware ▪ Hawaii ▪ Idaho ▪ Illinois
Iowa ▪ Maine ▪ Maryland ▪ New Jersey ▪ New Mexico
New York ▪ Ohio ▪ Oregon ▪ Rhode Island ▪ Utah
Vermont ▪ Washington ▪ Wyoming

May 8, 2006

Donald S. Clark
Federal Trade Commission
Office of the Secretary
Room H-135 (Annex J)
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

RE: Alcohol Reports: Paperwork Comment
FTC File No. P064505

Dear Mr. Clark:

We, the undersigned Attorneys General, submit the following Comment in response to the Commission's proposed collection of information from the "ultimate parent company of up to twelve advertisers of beer, wine, or distilled spirits" ["industry member" or "industry members"] regarding their sales and marketing expenditures, compliance with the alcohol industry's self-imposed regulatory code, and the status of the industry's third-party review of complaints about industry advertising. We are concerned about the large number of underage drinkers throughout our nation and the role that the alcohol industry's marketing practices play in promoting the deleterious use of alcohol by our nation's youth. We are convinced that industry should and can do more to reduce the level of underage consumption of alcohol.

We are troubled that, despite asserted alcohol industry action to combat underage drinking, underage alcohol use has remained disturbingly high and relatively constant. In 2004, about 10.8 million persons age 12-20 (28.7%) reported drinking alcohol within the previous 30 days.[1] Moreover, federal government studies report that youth are starting to use and abuse alcohol at an earlier age that ever before. In 2004, 86.9% of the 4.4 million first-time drinkers in this country were younger than 21.[2] Additional studies report a link

[1] Substance Abuse and Mental Health Administration, U.S. Department of Health and Human Services, *Results from the 2004 National Survey on Drug Use and Health: National Findings* (2005), *available at* http://www.drugabusestatistics.samhsa.gov/nsduh/2k4nsduh/2k4results/2k4results.pdf. (last visited Apr. 10, 2006).
[2] *Id.*

between exposure to alcohol advertising and onset of drinking;[3] that exposure to alcohol advertising is positively related to an increase in underage drinking and steeper increases in drinking over time;[4] and that current educational efforts discouraging youth drinking cannot counter the effects of advertising on current and future underage drinkers.[5]

We agree with the Commission that it is in the public interest for it to collect updated data from alcohol advertisers and also think that the proposed information collection is necessary to the FTC's performance of its regulatory functions. We are pleased to respond to the Commission's invitation to suggest ways to enhance the "quality, utility, and clarity of the information to be collected."

I. FTC's Collection of Advertising and Promotional Expenditures by Industry Members

We agree that the Commission should seek sales and advertising information from industry members and encourage the Commission to seek more expanded, expansive, and detailed information from industry members than it has obtained in previous instances. In its 1999 "Review of Industry Efforts to Avoid Promoting Alcohol to Underage Consumers" ["1999 Review"], the Commission noted that "[e]ach year the alcohol industry spends more than a billion dollars on television, radio, print, and outdoor advertising." 1999 Review at text accompanying n.9. In "Underage Drinking in the United States: A Status Report, 2005" ["CAMY Report"], the Center on Alcohol Marketing and Youth reported:

> Alcohol companies spent nearly two billion dollars to advertise alcohol in the measured media of television, radio, print, and outdoor in 2004. (footnote omitted) According to the Federal Trade Commission, these companies spend another two to three times this amount each year on unmeasured marketing activities . . . . (footnote omitted) CAMY Report at 8.

We encourage the Commission to seek and, thereafter, regularly report on detailed industry-member data regarding both measured (e.g., television,[6] radio, print,

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[3] Leslie B. Snyder et al., *Effects of Alcohol Advertising Exposure on Drinking Among Youth,* 160 Arch Pediatr Adolesc Med 18 (2005) *citing to* Phyllis L. Ellickson et al., *Does Alcohol Advertising Promote Adolescent Drinking?*, 100 Addiction 235 (2005).

[4] Leslie B. Snyder et al., Effects of Alcohol Advertising Exposure on Drinking Among Youth, 160 Arch Pediatr Adolesc Med 18 (2005).

[5] *Id.*

[6] Per CAMY, on broadcast networks, the alcohol industry has largely met "its goal of restricting the placement of ads to venues where legal-age adults made up at least 79% of the audience and underage youth represented 30% or less, (footnotes omitted)...but has made little progress on cable networks. In general, the percentage of alcohol ads above the 30% threshold – looking at broadcast and cable networks and local broadcast television combined -- has remained at the same level from 2001 through 2004. Center on Alcohol Marketing and Youth, *Alcohol Advertising on Television, 2001-2004: The Move to Cable,* (Center on Alcohol Marketing and Youth ed. 2005), *available at*

web-based, and outdoor) and unmeasured (e.g., branded merchandise, product development, sports and entertainment sponsorship, point-of-purchase promotion, product placement, college marketing media, and bar promotion) marketing activities and expenditures.

We also encourage the Commission to seek detailed industry-member data on what percentage of their advertising expenditures they spend on each type of media and where they place that advertising (e.g., on what television and radio programming; in which motion pictures; during which sporting, musical and other performing-arts events). The Commission should also seek industry-member responses regarding what steps members have undertaken to obtain demographic data to ensure compliance with industry standards, as well as the data themselves. The Commission should also seek information from industry members about what steps, in addition to audits of expenditure, sales, and demographic data, they have taken to ensure member compliance with industry standards. Such information should include, at a minimum: whether they compile "no-buy" lists; whether they have put higher-than-required standards in place; and how often and the extent to which they review past placements to monitor whether those ad placements complied with industry standards, all three of which the Commission recommended in its 1999 Review.

II. Industry Member Compliance with 30% Placement Standard

We also encourage the Commission to address industry compliance with the 30% standard contained in the industry's self-regulatory codes. We note, however that even assuming industry member compliance with the current standard, data do not reflect a reduction of the age at which underage drinking begins or the percentage of underage drinkers since the industry's adoption of the standard.

Given the absence of a reduction in underage drinking since the industry adopted the 30% standard, we encourage the Commission to review the appropriateness and utility of the 30% standard, to require industry data that is sufficiently detailed to enable the Commission to analyze the efficacy of, as well as compliance with, the 30% standard, and to explore with the industry and others the reduction of the industry standard from 30% to 15%, which standard would require that alcohol advertising be limited to media where no more than 15% of the audience is age 12-20. This approach would mirror the 2004 recommendation of the Committee on Developing a Strategy to Reduce and Prevent Underage Drinking.[7]

A reduction from the 30% standard to a 15% standard would address youth "overexposure" to alcohol advertising, which occurs when youth are over-represented in

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http://camy.org/research/tv1205/. (last visited Apr. 10, 2006).

[7] National Research Council and Institute of Medicine, *Reducing Underage Drinking: A Collective Responsibility* (Richard J. Bonney & Mary Ellen O'Connell eds., 2004), *available at* http://fermat.nap.edu/books/030908352/html/138.html. (last visited Apr. 11, 2006).

the audience exposed to advertising, relative to their presence in the general population.[8] Specifically with respect to radio and magazine advertising, we encourage the Commission to seek industry-member data on the actual percentage of radio listeners and magazine readers age 12-20 of programs and magazines where the industry member placed alcohol advertisements within a six-month period. This would require the industry member to perform a post-placement audit of its radio and magazine advertisements. This data should be compared to readers and listeners, age 21-24 and 21-34, of the same programs and magazines.

III. Third-Party Compliance Review Mechanisms

In its 2003 Report to Congress on Alcohol Marketing and Advertising, the Commission noted "modest steps" by industry to implement the Commission's 1999 recommendation to incorporate third-party review into its compliance procedures. We agree that the FTC should seek industry data regarding its compliance review mechanisms to aid in its evaluation of the extent, sufficiency, and efficacy of those mechanisms, and its determination of the appropriateness and extent of the current self-regulatory regime.

We encourage the Commission to seek data on what percentage of industry members have pre-publication third-party review mechanisms in place; what percentage of proposed ads fail to pass industry muster and the reasons therefor; and how many ads that pass muster are, thereafter, the subject of consumer, regulator, and/or competitor complaints. The Commission should encourage industry members to implement a full and vigorous pre-publication review and undertake sufficient prophylactic measures to ensure compliance with industry standards. The Commission should also request information from industry members about the responses they have made when they have learned, through post-advertising audits, consumer complaints, or regulator inquiries, that their advertising may have violated industry standards. The Commission should also seek industry-member data on attempts made to seek out and bar ads with substantial appeal to underage consumers; to restrict product placement in motion pictures; and to monitor the content of industry-member and member-supported websites and implement approaches to prevent underage consumers from gaining access to inappropriate portions of those sites

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[8] Radio and magazine demographic data is available only for listeners and readers who are 12 years and older. Readers and listeners between 12 and 20 make up only 15.7% of the American population. However, the voluntary industry standard of 30%, which mirrors the entire population of Americans under the age of 21, is applied to radio and magazines without modification. This allows some industry members to advertise on radio programs and in magazines where the youth audience is nearly double its representation in the population, resulting in youth being significantly over-exposed to alcohol advertisements. In some circumstances, there are more magazine readers age 12-20 than readers age 21-34. Because placement of these advertisements does not violate the current voluntary standard, the Commission should study this situation carefully to determine if the current industry standard is sufficient to protect youth against significant over-exposure to alcohol advertising.

The states have undertaken review of industry member advertisements or other promotional practices that were either not subject to pre-publication review or, in our view, inappropriately passed pre-publication muster. This review demonstrates the need to buttress the self-regulatory efforts of industry and for the Commission to remain active in assessing alcohol advertising for unfair and deceptive attributes. In other consumer protection contexts, the Commission has praised joint state-federal regulatory efforts as the necessary effort of "51 cops on the beat." With the health and lives of this nation's young people at stake, we believe that state, federal, and industry efforts are essential to stem the flow of alcohol to our youth.

Thank you for your consideration of our views. If you have any questions, please feel free to contact Maine Special Assistant Attorney General Jessica Maurer, at (207) 626-8515, or Utah Assistant Attorney General Thom Roberts, at (801) 366-0353.

Respectfully submitted,

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