NATIONAL CONSUMERS LEAGUE
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June 7, 2023

Director
Regulations and Rulings Division
Alcohol and Tobacco Tax and Trade Bureau
1310 G Street NW, Box 12
Washington, DC 20005

Re: Consideration of Updates to Trade Practice Regulations
Docket no. TTB-2022-0011

The National Consumers League and the undersigned consumer, public health, medical and nutrition organizations are supporters of the rigorous oversight of the alcohol industry by the Alcohol and Tobacco Tax and Trade Bureau (TTB), which must balance the competing needs of raising revenue and protecting consumers.

TTB's oversight is especially warranted now that large, globally recognized soft drink brands with significant market power have recently been approved to enter the alcohol market for the first time. While we appreciate that the alcohol industry has long-standing policies to ensure that their products are not marketed to underage consumers, we are concerned that the lines between alcoholic and non-alcoholic beverages are becoming blurred as global soft drink brands enter the alcohol marketplace.

The likely consequence is an increase in underage drinking,[1] especially since alcoholic soft drinks, which may contain 5 percent alcohol by volume or more,[2] tend to be inexpensive, are packaged in single-serving containers and tap into young people's connection to brands they have grown up with. Additionally, some of these products come in brightly colored cans with fruity flavors that appeal to teens and use characters from movies and popular culture to gain the attention of younger consumers.[3]

Underage drinking is not only illegal but poses significant health risks to adolescents, from alcohol-related traffic crashes and alcohol-induced brain damage to suicide.[4] For this reason, we urge TTB to update its trade practice regulations to expressly prohibit soft drink companies from paying slotting fees for premier shelf space for their alcoholic sodas, hard seltzers, and ready to drink cocktails. This action is necessary to ensure that middle school and high school age youth do not have ready access to boozy versions of soft drinks sold in supermarkets, convenience stores, and other retail venues.

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[1] Siegel M, Chen K, DeJong W, Naimi T, Ostroff J, Ross C et al. Differences in alcohol brand consumption between underage youth and adults – United States, 2012. Substance Abuse. 2015;36(1):106-112. 3.

[2] https://www.nytimes.com/2023/02/21/health/alcohol-soft-drinks-health-risk.html

[3] Alcohol Rehab Guide. Alcohol Industry Markets To Teens With Sweet, Fizzy Alcopops. June 25, 2018.

[4] National Institute on Alcohol Abuse and Alcoholism. Underage Drinking: A Major Public Health Challenge. Alcohol Alert No. 59, April 2003.

We are aware that there are significant differences between standard, legal marketing practices in the soft drinks versus the alcohol industry regarding use of slotting fees. When it comes to traditional soft drinks, many large companies pay large slotting fees to retailers to ensure their products are prominently displayed and act as distributors for these products. This is the opposite of how the alcohol industry operates where current practices strictly prohibit providing retailers with inducements.[5] The rationale is this practice could constitute an illegal use of market prominence to promote alcoholic beverages.

As we understand the law, soft drink companies are not allowed to pay for premiere shelving for alcoholic beverages, a policy we wholeheartedly support. However, significant issues exist regarding how retailers separate alcoholic and non-alcoholic versions of soft drink products carrying similar brand names and logos. There are documented instances where traditional soft drink brands and their alcohol-containing versions are being placed side by side in store aisles, as well as instances of alcoholic products being marketed next to children's products,[6] which underscore the need for regulatory action.

Therefore, as TTB considers updates to its alcohol trade regulations, we urge the agency to issue regulations that prohibit soft-drink slotting fees from being used to secure more prominent placement of alcoholic soft drinks – especially when these products might be confused with traditional soft drinks containing no alcohol.

Finally, it's important to note the alcohol industry is built upon a three-tier system that separates producers, distributors, and retailers. This balances market power and provides horizontal checks and balances that ensure proper regulation of the industry. It has come to our attention that one company, Pepsi, may have entered into an agreement with another supplier to produce its alcoholic products and for Pepsi's subsidiary Blue Cloud Distributing to distribute it.[5] If that is the case, the arrangement raises serious questions about possible violations of the three-tier system, especially given vertical integration in the soft drink industry and manufacturers' market power.

Our organizations urge TTB to take these issues seriously and provide the requisite regulatory oversight for soft drink companies entering the alcohol industry. The health and safety of the nation's teens and adolescents require regulatory firewalls that continue to ensure alcoholic products are not marketed to underage consumers.

Thank you for your attention to our concerns.

Sincerely,

Alcohol Justice
Alliance for Better Children's Diets
Consumer Reports
Families USA
Global Liver Institute
HealthyWomen
National Alliance for Hispanic Health
National Association of Pediatric Nurse Practitioners
National Consumers League
National League for Nursing

[5] https://www.govinfo.gov/content/pkg/USCODE-2020-title27/pdf/USCODE-2020-title27-chap8-subchapI-sec205.pdf
[6] https://pluribusnews.com/news-and-events/soft-drinks-swerve-into-alcohol-lane-tests-liquor-regulations/