LEGAL UPDATES

PUBLISHED: NOVEMBER 9, 2026

Influence Responsibly: How Alcohol Brands Can Build Buzz Without Creating Legal Headaches

Service

Alcohol Beverage

Industry

Financial Services & Capital Markets

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Social media has become a powerful marketing tool by changing the way consumers discover and engage with alcohol brands. In the past, alcohol advertising was dominated by television, print magazines, sponsorships, and point-of-sale promotions. Today, brands are increasingly using platforms including Instagram, TikTok, YouTube, Facebook, X, podcasts, livestreams, and influencer partnerships to engage consumers, increase visibility, and encourage brand engagement. The fact that a promotion appears on social media, however, does not make it any less of an advertisement. In fact, regulators are increasingly focused on digital marketing campaigns, particularly those involving influencers. Recent guidance from the Alcohol and Tobacco Tax and Trade Bureau (TTB) makes clear that alcohol advertising rules apply to social media content just as they apply to more traditional advertising channels. For marketers of alcoholic beverages, then, a successful social media strategy requires more than just creative content; it requires a robust compliance program.

Influencers Create Unique Compliance Risks

Influencer marketing is particularly attractive because consumers often view posts by influencers as more relatable than traditional advertising. A recommendation from a creator often feels more authentic than a polished commercial; influencers also have the flexibility to showcase cocktails, educate consumers about products, and create content that can reach highly targeted audiences. For alcohol brands, this means they can reach consumers where they already spend their time.

That same relatability and authenticity, however, can also create regulatory risk. That's because, from a compliance perspective, it doesn't matter where

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the message appears. TTB has expressly stated that its advertising regulations apply to alcohol advertisements in any medium, including social media platforms, blogs, media-sharing sites, and influencer content. In other words, a sponsored Instagram post is treated no differently than, say, a television commercial or magazine advertisement. As a result, alcohol marketers using influencers to advertise their products must consider the same requirements that apply to their other advertising channels, including required disclosures, prohibitions on misleading claims, state advertising restrictions, and industry standards.

In addition to alcohol-specific regulations, influencer campaigns must comply with the Federal Trade Commission (FTC) endorsement rules. Material connections between a brand and an influencer must be clearly disclosed; such connections include not only payment, but also compensation in the form of things like free products, travel accommodations, and event invitations. Hidden sponsorships not only create legal risk, but can also damage consumer trust when they are eventually discovered.

Online ads should include disclosures such as "#ad," "#sponsored," or similar clear and conspicuous language if a material connection exists. Importantly, FTC disclosure obligations are separate from alcohol advertising requirements; compliance with one does not satisfy the other.

Age-Gating Remains Essential

Although age-gating requirements vary depending on the platform and applicable standards, alcohol advertisers should take reasonable measures to prevent underage audiences from viewing promotional content—including content created by influencers. Many industry codes recommend affirmative age-verification on websites and encourage advertising practices designed to minimize exposure to individuals below the legal drinking age. Age-gated social media accounts, where available, are considered a best practice. With that in mind, brands should carefully evaluate audience demographics before selecting influencers, since an influencer whose audience makeup includes a significant underage following may present substantial compliance concerns.

Responsible Drinking Messaging Matters

TTB's federal advertising regulations impose substantive requirements on alcohol advertising and prohibit false, misleading, deceptive, and certain other representations—and, again, these requirements apply to advertisements disseminated through any medium, including social media.

Separately, self-regulating industry codes also emphasize responsible consumption and adult-directed marketing. For example, the Distilled Spirits Council of the United States (DISCUS) Code of Responsible Practices contains specific responsible-content provisions, including an affirmative responsibility statement, and its digital-marketing provisions separately advise a 73.8% legal-purchase-age audience standard for certain media placements. The Beer Institute Advertising and

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Marketing Code similarly provides that beer advertising should not suggest that laws governing the sale or consumption of beer may be disregarded, nor should it promote alcohol abuse or inappropriate consumption. The Wine Institute Code of Advertising Standards likewise emphasizes responsible content and placement and the promotion of wine to only those of legal drinking age. In addition, from a marketing perspective, consumption statements such as, "Please Drink Responsibly" or "Enjoy Responsibly" reinforce that the brand is targeting adult consumers and promoting responsible use. Consumers increasingly expect brands to demonstrate social responsibility, making these messages valuable from both a compliance and a brand-reputation perspective. However, these statements should not be treated as a substitute for compliance with TTB's substantive advertising rules concerning appropriate age-directed placement.

Content That Can Trigger Regulatory Concerns

Influencer content can present elevated risk because content creators may include lifestyle imagery that a brand would not ordinarily use in traditional advertising. Indeed, many enforcement actions involve issues that arise from imagery rather than express claims. Even subtle background imagery can become problematic if it appears to endorse unsafe or unlawful conduct.

Careful review of social media content is especially important on platforms heavily used by younger audiences. Brands should be particularly cautious about content that associates alcohol consumption with activities requiring alertness, coordination, or judgment, such as driving or operating vehicles or machinery, swimming, boating, and sports with a high potential for injury, such as skiing or skateboarding. And although social media rewards attention-grabbing content, alcohol brands should resist the temptation to promote "more is better" messaging by reviewing content to ensure that it does not encourage overconsumption, glorify intoxication, suggest rapid consumption, or promote binge drinking through contests or other means.

Finally, what looks trendy to a marketer may look youth-oriented to a regulator. Alcohol advertisements should not be designed to appeal primarily to minors; imagery depicting cartoon-style characters, youth-oriented themes or memes, juvenile humor, or individuals who appear to be underage should all be avoided. This includes holiday imagery that appeals to children, such as ads depicting Santa Claus, reindeer, snowmen, or presents. And, of course, brands should avoid imagery that could be interpreted as promoting illegal conduct or combining alcohol with controlled substances.

Best Practices for Influencer Campaigns

The most effective compliance programs address influencer content **before** it goes online. Prior to launching any campaign, a brand should ensure that its agreement with the influencer covers (1) compliance with alcohol advertising laws; (2) compliance with social media guidelines concerning

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prohibited content; (3) compliance with FTC disclosure requirements; (4) compliance with audience-demographic requirements; and (5) content review and brand approval rights before publication. Brands might also consider training for their influencers regarding alcohol advertising regulations and industry codes prior to the creation of any content.

Conclusion

Social media and influencer partnerships are becoming central to how alcohol brands build awareness, tell their stories, and connect with consumers. The brands that succeed will not be those that avoid influencer marketing; rather, it will be the brands that manage it thoughtfully. By selecting the right creators, establishing clear guidelines, and monitoring content for compliance with TTB and other regulations, alcohol companies can harness the power of influencer marketing while both protecting their brand and complying with the law.

Alcohol brands would do well to remember that while influencer marketing can be extraordinarily effective, it is not a regulatory shortcut. Social media content is advertising, and brands and influencers alike may be held accountable when promotional content does not comply with applicable laws or industry standards. By establishing guardrails early, alcohol brands can leverage the power of social media while minimizing both regulatory and reputational risk.

What This Means for You

In-house counsel and marketing leaders at alcohol brands should treat influencer agreements as a compliance checkpoint, not just a creative one. Before a campaign launches, confirm the influencer agreement addresses alcohol advertising compliance, FTC disclosure obligations, audience-demographic review, and brand approval rights over content. Build in training for influencers on applicable advertising codes, and review planned content—including background imagery—for anything that could suggest underage appeal, overconsumption, or unsafe conduct. Treating these as standing requirements, rather than one-off reviews, will reduce both regulatory and reputational exposure as influencer marketing continues to grow.

Contact Us

We routinely advise alcohol beverage brands on advertising, labeling, and influencer marketing compliance. Contact Tracey Gonzalez or your Husch Blackwell attorney if you want to discuss these developments or their impact on your social media and influencer marketing programs.

This article provides general legal information. It does not constitute legal advice to the reader and does not create an attorney-client relationship between the reader and Husch Blackwell LLP. The reader should seek legal advice if they have questions about how this legal information may apply to their own circumstances.

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