STAYING LEGAL WITH SOCIAL MEDIA

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Please note this does not constitute legal advice.
Agenda

1. Advertising and social media
   a) Federal Rules
   b) California Rules
2. Advertising for events
3. Other state laws – major markets
4. Wine Institute’s advertising guidelines
Regulating Agencies

TTB

FTC

ABC
Social media is subject to TTB’s advertising regulations.

Therefore, federal mandatory statements and prohibited practices for advertisements apply to social media.
Promote transparency and accountability.

**General Rule:**
- Name, city, and state of licensee responsible for the advertisement.
- Information should be placed in a logical location that is easily viewable/accessible by viewers.

**Applied to Social Media:**
- Information placed on profile or “about” sections.
- Not required for in each post/tweet.
- If material can be downloaded, the statement must be included in the downloadable content.
Promoting Transparency & Accountability
**Objective:** Protect consumers and deter unfair business practices.

**Advertisements cannot include:**
- False, untrue or misleading statements
- Disparaging competitor’s products
- Statement, design, or representation that wine has intoxicating qualities
- Obscene statement, design, or representation
- Misleading health statements
- Statements inconsistent with the label
- Reference to an illegal event

*For a complete list of restrictions, see 27 CFR 4.64 ([www.ecfr.gov](http://www.ecfr.gov))
FTC Endorsement Guides

- Social media “influencers” advertising brands is a growing trend.
- Post(s) must disclose any “material connection” between the endorser and marketer of a brand. “Material connection” is commonly established by payment or contract.
- Disclosure must be clear. Disclosure like “Thanks [Brand],” or “#partner” to mean that the post is sponsored is not sufficient.
- FTC has conducted audits and issued warning letters to influencers who violate their endorsement guidelines.
- Guidelines apply to marketers and endorsers!
• TTB may view social media posts driving business to a single retailer as tied house violations.

• Most state laws mirror TTB tied house prohibitions.

• There are a number of tied house exceptions in TTB regulations and state regulations.

• Be sure to identify an exception that applies to the specific event/activity.
Naming Retailer(s) in Social Media Advertisements

Can list the names and addresses of 2+ unaffiliated retailers provided:

(a) The advertisement does not also contain the retail price of the product (except where the exclusive retailer is a State/political subdivision of a State);

(b) The listing is the only reference to the retailers in the advertisement and is relatively inconspicuous in relation to the advertisement as a whole, and;

(c) The advertisement does not refer only to one retailer or only to retail establishments controlled directly or indirectly by the same retailer.

Code: 27 CFR § 6.98
Examples of Naming Retailer(s)

- Walmart and Sam’s Club both sell your products and you list both on a retailer list.

- Since Walmart owns Sam’s Club, the two retailers are affiliated. Therefore, a retailer list which only lists Sam’s Club and Walmart would not constitute a lawful listing.

- "Unaffiliated" means there is no common ownership and they are not members of the same buying group or advertising cooperative.
Social Media Laws in California
Social Media Laws in California

• Like federal law, directing business to a single retailer may be considered a tied house violation under CA law.

• A supplier who directs business using social media can be the subject of a California ABC investigation.

• Under California law social media is regulated as any other advertising.
“[T]he same rules apply to social media that apply to all other forms of advertising, communications and promotion for alcoholic beverages”

Matthew Botting, ABC General Counsel
(Napa Valley Vintners Bulletin, November 10, 2014)
California Tied House Laws

- Winegrower cannot give thing of value to on-sale or off-sale alcohol retailer. *(ABC Act Sec. 25500, 25502).*

- Advertising is a thing of value.

- “No supplier of alcoholic beverages directly or indirectly, shall participate with a retailer in paying for an advertisement placed by the retailer...” *(CA ABC Rule 106)*... **Unless a specific exception applies!**
CA ABC: Retailer Listings, CA Bus. Prof. Code 25500.1

(a) Must list two or more unaffiliated on-sale or off-sale retailers (names, addresses, phone numbers, email addresses, websites, etc.) provided that conditions are met:

(1) The listing does not contain the retail price of the product.
(2) The listing is the only reference to the on-sale or off-sale retailers in the direct communication.
(3) The retailers listed are independent from one another.
(4) The listing is made, or produced, or paid for, exclusively by supplier.

Caution: The general “retailer listing rule” does not give wineries complete freedom to mention retailers in their social media posts.
Advertising for Winery Events At Retailer Premises (prior to 1/1/2019)

The following is an overview of advertising for:

- **Instructional Events at On-Premises Retailers** (25503.57)
- **Winemaker Dinners at On-Premises Retailers** (25503.4)
- **Instructional Tastings at Type 86 Licensed Off-Premises Retailers** (25503.56)

<table>
<thead>
<tr>
<th>Permitted</th>
<th>Prohibited</th>
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</thead>
<tbody>
<tr>
<td>Name, address, of host retailer, but must be relatively inconspicuous in relation to ad as a whole.</td>
<td>No laudatory references to the retailer.</td>
</tr>
<tr>
<td>Name of wines featured</td>
<td>No retail price of the wines.</td>
</tr>
<tr>
<td>Time, date, and location and other info regarding the event itself</td>
<td>No pictures or illustrations of retailer’s premises.</td>
</tr>
</tbody>
</table>
We hold dinner at Restaurant. Here is address. 7:30 PM
Advertising for Winery Events
At Retailer Premises (effective 1/1/2019)

The following is an overview of advertising for the same events governed by 25503.4, 25503.56, and 25503.57 only.

<table>
<thead>
<tr>
<th>Permitted</th>
<th>Prohibited</th>
</tr>
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<tbody>
<tr>
<td>Name, address, <strong>telephone number</strong>, email address, internet Web site address, any other electronic media of host retailer, but must be relatively inconspicuous in relation to ad as a whole.</td>
<td>No laudatory references to the retailer.</td>
</tr>
<tr>
<td>Name of wines featured</td>
<td>No retail price of the wines.</td>
</tr>
<tr>
<td>“Still” pictures, illustrations, and depictions of retailer’s premises, personnel, and customers</td>
<td>No videos.</td>
</tr>
<tr>
<td>Time, date, and location and other info regarding the event itself</td>
<td></td>
</tr>
<tr>
<td><strong>Can repost (including retailer posts) so long as post is compliant.</strong></td>
<td></td>
</tr>
</tbody>
</table>

Source: Esq, John Trinidad, DPF Law
Join us at Zeus Restaurant for a g. Cuneo winemaker dinner on 1/24. Monte, 2500 SE Clinton Street, Portland. Click on the link above for reservations. Hope to see you there!
Green light
Green light
Considerations for Promoting an Event at Retailer:

1. When holding event at retailer, understand which **tied-house exception** you fall under, comply with those rules.

2. Purpose of the ad is to get people to **the event**.

3. Make the ad primarily **about the winery**, not the retailer.

4. Scrub for laudatory statements (esp. in reposts).
Like, comment or repost - Green light?

One of the most fun, random nights in LA that ___ and I have had in a long time! Got invited to a Pop Up Restaurant that travels around the country. The day of we were given the address and password for the door. Not knowing a soul we entered a beautiful loft downtown LA, had the most amazing cuisine, delicious cocktails thanks to @buffalotrace and met 20 new people from all walks of life (including a guy that look liked he was a part of Devo, no joke) We walked away with new friends and satisfied tummies! Thank you so much @placeinvaders for an incredible night!!
TTB Industry Circular states, “content created by a third party and reposted by an industry member, is part of the fan page and therefore considered to be part of the advertisement.”

- Retweeting, reposting, and sharing another post is adopting the content as your own.

- Limited safe harbor for posts made by others.
Red Light
Instagram “Influencer” Post-Green Light?
Green light
Posting to Facebook – Green Light?

Treat your taste buds (and wallet) to a Wagyu Burger paired with Cabernet for only $25 now until November 23 at The Capital Grille.
http://bit.ly/1Ejarlo #WineWednesday
Red Light
Logistical info for event at retailer - Green Light?

Come taste some of the Petaluma Gap's finest wines along with food pairings and VIP seminars. Tickets here: https://goo.gl/1Hrs8E

Join Us
FOR THE WIND TO WINE FESTIVAL
AT THE SHERATON PETALUMA
SUN 11/6
AT 11 AM
Green Light
I just had the best California Sauvignon Blanc of my life thanks to @WineryX. @WineryY, step it up! Very disappointing compared to this phenomenal Sauvignon!!!
Retweets are endorsements!

WARNING

Disclaimers do not replace the need to follow alcohol beverage advertising regulations.

• You can **not** retweet this because it does not comply with the mandatory statements prescribed in Section 4.64: “Any statement that is disparaging of a competitor's products.”
Red Light
Caution!!!

17/20 licensees have different privileges than 02 licensees. For example, 17/20 holders are not permitted to conduct on or off-sale tastings, contests or sweepstakes.

17/20 License

A wine and beer wholesaler license in combination with a retail license for off-sale consumption. In combination, you can only sell wine to retailers and consumers off-premise.

Type 02 License

Only allows winery to serve and sell wine from its own licensed premises.
Can a 17/20 licensee post this on Instagram?

“Share this post and be entered into a sweepstakes to win a paid vacation to Maui!”
Red Light
Suppliers are permitted to advertise on social media about an event if:

- Two unaffiliated retailers are listed
- Price of the wine is not included
- The listing is the only reference to the licensee
- The retailer is relatively inconspicuous in relation to the entire advertisement
- **No picture or illustration of the retail establishment**
- No laudatory references

*Source:* [NY Regulations, Title 9, Subtitle B, Chapter I, Subchapter E, Part 86, Section 86.10.]
Suppliers may include the names of retail licensees on social media advertisements provided advertisement lists:

• Two (2) or more unaffiliated retail licensees.
• The portion of the advertisement identifying retailers shall be relatively inconspicuous
• The purpose of placing the advertisement shall not be to underwrite any retailer's event or the cost of any retail publication.

Source: [FL Regulations, Chapter 61A-1, Section 61A-1.01015.]
Kentucky, North Carolina & Minnesota Social Media Advertising

- These states allow social media advertising generally without guidance.

- However, Minnesota requires pre-approval of all advertising via a submission to the board.
The Following States Address Social Media:

**Colorado**
- [Regulation 47-316 (C) page 20](#)
- [Regulation 47-322 (B) (C) pages 24-27](#)

**Florida**
- [Declaratory Statement 2014-001-Winemaker Dinners](#)

**Illinois**
- [Social Media Advertising, 235 ILCS 5-6/6(iv)](#)

**Kentucky**
- [804 KAR 1:100. General Advertising Practices/Social Media](#)

**Louisiana**
- [Social Media Advisory](#)

**Michigan**
- [MLC Section 436.1610](#)

**New York**
- [Advertising Names of Retailers, 9-CRR-NY 86.10 Advisory #2014-8 Events at Retail Establishments](#)

**Pennsylvania**
- [Advertising Advisory](#)

**Texas**
- [Cooperative Advertising FAQ Marketing Practices Bulletin- “Wine, Beer and Other Alcoholic Beverage Tastings at Retail Accounts”](#)

**Washington, D.C.**
- [Quick Guide: Advertisements, Discounts, Gifts, and Other Promotions](#)
Colorado Advertising a Retailer(s)

- A winery may utilize social media to provide information to the public that benefits an individual retailer if that information were not allowed in traditional advertising mediums.

- Supplier can offer a “thing of value” to a retailer. For example, paying for a winemaker dinner announcement at the retailer’s location in the media.

  » Regulations 47-316(C), 47-322(B) and 47-322 (C)
Colorado: Advertising Event at Retailer

**Situation:** A winery is hosting a wine sampling event at a hotel. The event is open to the public.

The winery pays Google Ads for the advertisement and could be seen on social media. Ad includes:

- Name of hotel
- Location
- Time
- Wine Varietal
Green Light
Best Practices

• Have a Social Media Policy
  
  a) Who can post?
  
  b) What they have to do when they post?
  
  c) What kind of content needs to be reviewed before posting or sharing?
  
  d) Regular review of social media posts.
Best Practices

• **Know Your Exceptions + Do’s and Don’ts** – retailer locators, event-based exceptions, responsible content.

• **Decide How Conservative/Creative You Want to Be** – “But everyone else is doing it!” Every business has different risk profiles.

• **Engage with Your Audience about YOUR BRAND, Not Your Retailers’ Brand!**
Wine Institute’s Advertising Guidelines
#THANKYOU

For any additional information, please contact Tracy Genesen-
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