

ALCOHOL ADVERTISING

As you might expect, Michigan follows federal law with respect to alcohol advertising. Those federal laws are set forth below. You should note, however, the following Michigan requirements for contests involving alcohol

Mich Admin Code R 436.1321

Contests and advertising articles.

Rule 21. (1) There shall not be advertising of alcoholic liquor connected with offering a prize or award on the completion of a contest, except upon prior written approval of the commission. (2) Advertising material which does not contain the name of a retail licensee and does not have a secondary value, but explains the production, sale, or consumption of alcoholic liquor may be published and distributed in this state. (3) Alcoholic liquor recipe literature which does not contain the name of a retail licensee may be published and distributed in this state. (4) All gambling devices, including punch boards and games of any description used for advertising purposes, are prohibited.

Federal laws provide numerous detailed instructions for exactly how alcohol advertisements must appear. Federally, the Department of Justice's Bureau of Alcohol, Tobacco and Firearms (BATF) has primary regulatory authority over alcoholic beverage advertising. The Federal Alcohol Administration Act, 27 USC 205(f), prohibits advertisements for distilled spirits, wine or malt beverages that are designed to induce interstate sales of such products and likely to deceive the consumer or disparage competitors. The law's legislative history appears to prohibit both truthful and false disparaging statements.

The federal BATF laws address advertisements for wine, distilled spirits and malt beverages separately, but unless otherwise noted below, the same general rules apply to each. An editorial or other "reading material," for instance a news release, for which the publication receives no money, does not count as advertising under this section. Note, also, that unless a publisher is engaged in the alcohol business either directly or indirectly, federal law explicitly immunizes the publisher from liability for any violations of the BATF rules.

A. Mandatory Statements:

1. Generally: All alcohol advertisements must state the name and address of the "permittee" responsible for its publication or broadcast. Street name and number need not be included – city will suffice.

The ad must contain a "conspicuous statement" of the class, type, or distinctive designation to which the product belongs, corresponding to the statement that must appear on the product's label.

Note, however, that ads referring to a general line of alcohol, or all the alcoholic products of one company – whether by the company name or by the brand name common to all the wine in the line – need only show the name and address of the advertiser. Further, on "consumer specialty items," the only information needed is the company name or brand name of the product.

2. Legibility: All of the mandatory statements listed above must be in lettering or type size sufficient to be “conspicuous and readily legible,” and must be so stated as to be “readily apparent” to the viewer. These statements must clearly be a part of the ad, and not separated in any manner from the remainder of the advertisement. (If the ad discusses two or more products, any mandatory information that differs for each product must be clearly separated in the ad.)

3. Distilled Spirits. If an ad refers to a general distilled spirits line, it need only include the name/address of the responsible advertiser. Specific advertisements for distilled spirits must state the alcohol content in percent-alcohol-by-volume. The ads may also state the alcohol content in degrees of proof *if* the information appears with the percent-by-volume statement, generally in parentheses.

If neutral spirits have been used, the ad must state the percentage and the name of the commodity from which they were distilled. For example, “__% neutral spirits distilled from [name of grain, cane product fruit, etc.]”

B. Prohibitions:

1. Generally: Ads cannot contain any statement or display that:

- is false or untrue, or tends to mislead, for instance by referring to analyses, standards or tests which may be likely to mislead the consumer; or by referring to a guarantee that may mislead the consumer. (Note: money-back guarantees are allowed.)
- disparages a competitor’s products;
- is obscene or indecent;
- states the wine is produced, blended, bottled, packed or sold under or in accordance with any municipal, state or federal government law, regulation or authorization;
- designates the product as beer, lager beer, lager, ale, porter, or stout, if it contains less than ½ % of alcohol by volume.

2. Wine: Wine ads cannot contain any statement or display that:

- provides bonded winecellar / winery numbers, *unless* stated in direct conjunction with the name and address of the person operating that winery or storeroom. Statements of numbers may be made in the following forms only:
 - “Bonded Winecellars No. ____”
 - “Bonded Winery No. ____”
 - “B.W.C. No. ____”
 - “B.W. No. ____”
- relates to alcohol content, or creates the impression that a wine contains distilled spirits, is comparable to a distilled spirit, or “has intoxicating qualities.” However if a statement of composition is required to appear as the designation of a product not defined in these regulations, the statement may include a reference to the type of distilled spirits contained within.

- contains any word in the brand name / class and type designation, which is the name of a distilled spirits product, OR which simulates, imitates or creates the impression that the wine is or is similar to any product customarily made with a distilled spirits base.

3. Distilled Spirits: These ads cannot contain any statement or display that:

- uses the word “pure” unless it refers to a particular ingredient used in production and is truthful, or is part of the name of an organization involved in the alcohol production or bottling process;
- uses the word “double distilled,” “triple distilled,” etc. unless it is truthful. Use of the term “organic” is optional, and must comply with the USDA National Organic Program rules, 7 CFR 205
- Further, one cannot claim that vodka has a “distinctive character, aroma, taste or color.”

4. Malt Beverages: These ads cannot contain any statement or display that:

- uses the words “strong,” “full strength,” “extra strength,” “high test,” “high proof,” “full alcohol strength,” or any other statement touting a high alcoholic content. That said, it CAN tout a low alcohol content, using terms to the effect of “low alcohol,” “reduced alcohol,” “non-alcoholic,” and “alcohol-free,” as long as the claim is true and not deceptive.

Other Alcohol Related Tips:

- Ads shall not contain any statement concerning a brand/lot of wine that is inconsistent with any statement on the labeling.
- Any labels in the ad must be a reproduction of an approved label.
- Statements about age.
- No statements relative to age, except for vintage wine, in accordance with 4.27; references in accordance with 4.38(f); or use of the word “old” as part of a brand name.
- Statements of bottling dates *are* allowed, and not prohibited by the no-age-statement requirement, but they must not be unduly emphasized, and must be shown in the following form: “Bottled in [year]”.
- No other date will be stated unless there is a clearly visible explanation of its significance.
- No flags, seals, coats of arms, crests, etc. of the US, its armed forces, or anything related. Period.
- No flags, seals, etc. of any OTHER country/organization/government “likely to mislead” the consumer to think that country had endorsed, used, produced, supervised, etc. that wine.

- No display creating the impression that the wine originated in a particular place unless the label of the advertised product says the same thing.
- No use of the word “importer” or similar words, if it is an ad for domestic wine, unless it’s part of a name of one of the parties involved in producing or selling the wine. But if you do use that word, you have to also indicate that the wine is a product of the United States, in order to negate any impression that the wine is imported.
- Health related statements: A health related statement is any statement related to health, including statements of a curative or therapeutic nature that suggest a relationship between consumption of alcohol in general or that wine specifically, and health benefits or effects on health. This can be specific or general. The term also includes statements and claims implying a “physical or psychological sensation” results from consuming the wine. It also includes directional statements, which direct consumers to a third party for information regarding the effects on health of wine or alcohol consumption.
- Generally, ads may not contain any health-related statement that is untrue or tends to mislead a consumer. A specific health claim will not be considered misleading if it is truthful, adequately substantiated by scientific / medical evidence, detailed and qualified to whom it applies, discloses the health risks associated with moderate and heavier levels of alcohol consumption, and outlines the categories of people for whom alcohol consumption may cause heart risks.
- If a health statement directs someone to a third party, it must do so in a neutral / non-misleading manner, and say something to the effect of “This statement should not encourage you to drink or increase your alcohol consumption for health reasons,” or some other such qualifying statement.
- Different brands: Two or more different brands/lots of wine cannot be advertised in one ad, or in two or more ads in one issue of the newspaper/periodical IF the ad creates the impression that representations made to one apply to the other, when it would not be correct as to the other.
- Deceptive advertising: No subliminal or similar techniques. This is any device or technique used to convey a message to someone by means of images or sounds of a very brief nature that cannot be perceived at a normal level of awareness.
- Comparative advertising: You can do it, but you cannot disparage another competitor’s products. Taste tests can be used if they’re not deceptive, misleading or disparaging. The taste test procedure should be scientifically accepted, and you must put a statement in the ad stating the name and address of the testing administrator.
- Ad can list the names / addresses of retailers selling the products.