

Congress of the United States

Washington, DC 20515

October 12, 2022

Mary G. Ryan
Administrator
Alcohol and Tobacco Tax and Trade Bureau
1310 G Street NW, Box 12
Washington, DC 20005

Dear Administrator Ryan:

The U.S. alcohol industry has experienced exceptional growth in the number of participants in recent years. While we are pleased to see a successful segment of our economy continue to innovate and create jobs, we write to ensure the latest alcohol industry entrants play by the same set of rules that has governed all players in the industry since the end of Prohibition.

Many of these new entrants, including large soft drink corporations, enjoy well-established and widespread consumer recognition among all age groups for their household brands. However, these brands have gained consumer recognition without the complex regulatory structure that makers of alcoholic beverages must comply with. In recent months, press reports¹ have indicated that large soft drink companies are launching alcoholic versions of some of their longstanding and well-established brands, including one particular beverage with significant if not primary appeal to consumers under the age of 21.

The federal government has committed significant resources to programs that attempt to prevent and reduce underage drinking.² However, recent market developments by large soft drink companies entering the alcohol sector present a critical question for federal regulators and their ability to respond and continue to prioritize the safety of consumers. In fact, there is a federal interagency working group made up of 16 federal agencies called the Interagency Coordinating Committee on the Prevention of Underage Drinking (ICCPUD).

¹ (1) "Here's where you can get boozy Mountain Dew first." CNN – February 22, 2022. [https://www.cnn.com/2022/02/22/business/hard-mtn-dew-launch-states/index.html#:~:text=HARD%20MTN%20DEW%20is%20launching%20first%20in%20Tennessee%2C%20Florida%20and,permits%20in%20each%20US%20state](https://www.cnn.com/2022/02/22/business/hard-mtn-dew-launch-states/index.html#:~:text=HARD%20MTN%20DEW%20is%20launching%20first%20in%20Tennessee%2C%20Florida%20and,permits%20in%20each%20US%20state;);

(2) "Hard Mtn Dew hits Iowa stores with a hard seltzer with a 5% citrusy kick of alcohol." Des Moines Register – February 23, 2022. <https://www.desmoinesregister.com/story/entertainment/2022/02/23/hard-mountain-dew-iowa-one-first-states-carry-alcohol-hard-seltzer-mountain-baja-blast/6907481001/>;

(3) "Hard Mtn Dew offers an alcoholic spin on Taco Bell exclusive Baja Blast." EconoTimes – January 29, 2022. <https://www.econotimes.com/A-Boozy-Baja-Blast-Is-Joining-the-Hard-Mtn-Dew-Lineup-1625982>

(4) "Fresca is Launching a Line of Hard Cocktails." Food & Wine – January 7, 2022. <https://www.foodandwine.com/news/fresca-canned-cocktails>

(5) "Exclusive: Simply Lemonade is becoming a boozy beverage." CNN Business – January 25, 2022. <https://www.cnn.com/2022/01/25/business/coke-simply-spiked-launch/index.html>

(6) "No bartender required: Premixed Jack and Coke going on sale." AP News – June 13, 2022. <https://apnews.com/article/business-beverages-cocktails-brown-forman-corp-701ef6c94b28593dc31ccb8c38a1d141>

² Funding and Grants page of the Interagency Coordinating Committee on the Prevention of Underage Drinking (ICCPUD). <https://www.stopalcoholabuse.gov/funding.aspx>

The U.S. Department of Treasury is one of the member agencies of the ICCPUD, and included in the three founding principles that ICCPUD members operate under is to “speak with a common voice” and operate using a “federally coordinated approach to prevent and reduce underage drinking.”³ As longtime supporters of efforts to curb underage drinking, we ask that our concerns outlined below be considered in this context.

As you know, alcohol industry participants, including manufacturers, distributors, and retailers, must abide by strict regulations enforced by the Alcohol and Tobacco Tax and Trade Bureau (TTB) and state oversight bodies. For example, it is illegal for alcohol beverage suppliers to pay slotting fees to alcohol beverage retailers. For years, large soft drink producers have paid retailers millions of dollars annually to secure shelf space for their soft drink brands. We understand state regulators are asking questions about the propriety of these arrangements and it is an open question if they will continue. However, should large soft drink companies be allowed to sell their alcoholic and nonalcoholic products in the same store, we would like to obtain a clear understanding how TTB plans to manage this complex regulatory situation.

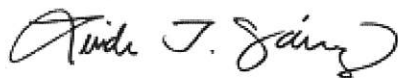
We commend the dedicated professionals at the TTB for keeping pace with rapidly evolving developments in this sector. We respectfully ask for responses in writing to the below items.

1. How is TTB preventing large soft drink companies and other new entrants to the alcohol industry from circumventing prohibitions on unfair trade practices, including by leveraging slotting fees to retailers for their non-alcoholic beverages/products to gain preferential treatment for their alcoholic products?
2. What is TTB doing to enforce its ban on alcohol producers/distributors providing items of value (such as equipment, free product, etc.) to retailers in the case where large soft drink companies are now selling alcohol to the very same retailers to whom they provide, at no cost, soft drink versions of such items of value?
3. How is TTB enforcing its ban on alcohol producers conducting cooperative advertising (focused on display cases or in store tastings) with retailers in the case where large soft drink companies sell alcohol products to the very same retailers with whom they are conducting cooperative advertising campaigns for non-alcohol products?
4. Please explain how TTB is addressing consumer confusion regarding alcohol products that have brand names, packaging, and other visual cues, and/or trade off the soft drink products that are popular with consumers under 21 years old.
5. Is TTB communicating with the FTC and state alcohol regulators about these issues related to trade practices and consumer confusion caused by large soft drink companies entering the alcohol market, and if so, how are those interactions organized and managed? What actions are anticipated?

³ Mission and Principles page of the Interagency Coordinating Committee on the Prevention of Underage Drinking (ICCPUD).
<https://www.stopalcoholabuse.gov/about-iccpud/>

Thank you again for all the work by your teams of experts at TTB to oversee the alcohol beverage industry. We have a shared commitment to support this thriving and dynamic sector of our economy and guarantee the regulations in place are enforced evenly among all players to protect the integrity of the industry. We appreciate your attention to this request and look forward to hearing from you soon.

Sincerely,

A handwritten signature in blue ink, reading "Linda T. Sánchez". The signature is fluid and cursive, with the first name "Linda" being more prominent.

Linda T. Sánchez
Member of Congress

A handwritten signature in blue ink, reading "Ann McLane Kuster". The signature is fluid and cursive, with the first name "Ann" being more prominent.

Ann McLane Kuster
Member of Congress