



December 10, 2018

VIA OVERNIGHT MAIL AND EMAIL

Andrew Smith, Director, Bureau of Consumer Protection
Mary Engle, Associate Director, Division of Advertising Practices
Federal Trade Commission
600 Pennsylvania Ave. N.W.
Washington, D.C. 20580
[REDACTED]

Re: Deceptive Advertising by Diageo

Dear Mr. Smith and Ms. Engle:

Diageo, the world's largest spirits and beer company,¹ is surreptitiously marketing its Ciroc brand to more than 120 million Instagram users in the United States² in violation of FTC law. And while Diageo has recently taken the position that it is fully committed to following the FTC's endorsement guidelines,³ a Truth in Advertising, Inc. ("TINA.org") investigation proves otherwise.

TINA.org has identified 50 social media influencers who have combined to publish more than 1,700 Ciroc alcohol ads on Instagram.⁴ And for all of these ads, Diageo's influencers have failed to disclose their material connection to the brand in a clear and conspicuous manner. To make matters worse, with no age-gating features on the Instagram accounts of these Diageo influencers, minors are able to view these undisclosed alcohol ads. The deceptive impact and societal harm resulting from these undisclosed alcohol ads cannot be overstated. As a result, TINA.org urges the Federal Trade Commission to commence an investigation into the marketing tactics used by Diageo on social media and take appropriate enforcement action.

Diageo's Instagram Presence

TINA.org's findings show that when it comes to promoting Diageo's Ciroc brand on Instagram, anything goes: kids in Ciroc ads,⁵ Ciroc-fueled misogynistic ads,⁶ a recipe for cannabis-infused strawberry lemonade with Ciroc,⁷ and even a booze-drinking Santa who needs to spread the "liquid love."⁸



In addition, there are a multitude of undisclosed Ciroc ads that include nudity and explicit language.⁹ Take, for example, a 53-second video in which Sean “Diddy” Combs,¹⁰ Chairman and CEO of Combs Enterprises who has the “lead on all brand management activities for CÎROC,”¹¹ signs off by focusing the camera on two Ciroc bottles before saying into the camera, “Right here, you know what that is? A beautiful f***** weekend. Ciroc...”

Several other sponsored Ciroc videos on Instagram also include a graphic indicating that the content is rated “B” by the “Combs Motion Picture Association of America, Inc.,” and suggest that one need only be 17 years old in order to view these undisclosed alcohol ads.¹² In reality, these ads violate Instagram’s policies that prohibit such content from being shown to those under 21,¹³ as well as the self-regulatory agency code, which requires hard evidence that at least 71.6 percent of the audience is 21 or over before alcohol ads are published on social media accounts.¹⁴



Such tongue-in-cheek warnings, however, have not stopped Combs, who has more than 12 million Instagram followers, from including his young daughters in videos of the “CIROC LIFE.”¹⁵ And in another low for the brand, there is even an undisclosed ad that features a caricature of one influencer, a social media celebrity, as a toddler holding a baby bottle of Ciroc.¹⁶ (Not to mention the three Instagram posts by a Ciroc ambassador prior to her 21st birthday.¹⁷)



Diageo’s Failure to Disclose Its Marketing Message on Instagram

None of the more than 1,700 alcohol ads collected by TINA.org appropriately disclose the influencers’ material connection to Diageo’s Ciroc brand.¹⁸ FTC law makes clear that if there is a material connection between an endorser and the marketer of a product that connection must be clearly and conspicuously disclosed, unless the connection is already clear from the context of the communication containing the endorsement.¹⁹

After alerting Diageo earlier this year that another social media influencer, Khaled M. Khaled (aka DJ Khaled), was posting undisclosed Ciroc ads on social media, Diageo informed TINA.org that it was:

committed to complying with all laws and regulations, including the FTC's endorsement disclosure guidelines, as well as our rigorous marketing code and policies. We understand that representatives of DJ Khaled have already responded to your letter. We also have taken corrective and proactive steps in sync with our commitments.²⁰

TINA.org's sampling of undisclosed Ciroc ads makes clear that Diageo is not committed to complying with FTC law, and has not taken the corrective or proactive steps necessary to ensure that its social media influencers comply with the law.²¹

The Harm of Marketing Alcohol to Minors on Social Media

While many factors influence an underage person's drinking decisions, including, among other things, parents and peers, advertising plays a role.²² And social media influencer marketing may be a particularly effective and insidious way of advertising alcohol to minors. This is because the goal of this type of marketing is to establish a genuine connection with the viewer by delivering ads that feel organic and authentic, and thereby are more likely to be trusted.

The potential injurious consequences from celebrity influencers like Combs and his team of social media influencers promoting alcohol to minors is a serious issue as underage drinking is a major public health problem. It is a leading contributor to death from injuries, which are the main cause of loss of life for adolescents under age 21.²³ Underage drinking also contributes to a number of other adverse consequences, including:

- risky sexual behavior, including unwanted, unintended, and unprotected sexual activity, and sex with multiple partners, resulting in unplanned pregnancies and sexually transmitted diseases;²⁴
- increased risk of physical and sexual assault;²⁵ and
- tobacco and illicit drug use, and academic failure.²⁶

So while Diageo likes to present itself as a responsible corporate citizen, TINA.org's findings demonstrate that Diageo has embraced the deceptive marketing antics of its social media influencers on Instagram.²⁷

Conclusion

Based on the foregoing, TINA.org urges the FTC to commence an investigation into the undisclosed marketing of Ciroc on Instagram, take appropriate enforcement action against Diageo, and ensure that all present and future social media posts by Diageo promoting sponsored alcohol use are not directed at minors and are clearly and conspicuously labeled as advertisements.

Sincerely,



Laura Smith, Esq.
Legal Director
Truth in Advertising, Inc.



Bonnie Patten, Esq.
Executive Director
Truth in Advertising, Inc.

Cc: Diageo North America Inc.
Distilled Spirits Council of the United States
Facebook Inc. / Instagram
Combs Enterprises / Combs Wine & Spirits

¹ See <https://www.diageo.com/en/news-and-media/press-releases/sean-diddy-combs-and-the-makers-of-ciroc-ultra-premium-vodka-launch-ciroc-studios/>.

² See <https://www.statista.com/statistics/578364/countries-with-most-instagram-users/>.

³ See April 9, 2018 letter from Diageo to Truth in Advertising, available at <https://www.truthinadvertising.org/wp-content/uploads/2018/04/Diageo-Response-4-9-18-Redacted.pdf>.

⁴ TINA.org's Ciroc Influencer database, <https://www.truthinadvertising.org/ciroc-influencer-database/>.

⁵ https://www.truthinadvertising.org/wp-content/uploads/2018/11/Nick-Storm-2_4_18-wm.png.

⁶ https://www.truthinadvertising.org/wp-content/uploads/2018/12/Fatboy-1_30_18-wm.mp4.

⁷ <https://www.truthinadvertising.org/wp-content/uploads/2018/11/Diddy-213.mp4>.

⁸ https://www.truthinadvertising.org/wp-content/uploads/2018/11/Mikos-12_25_17a.mp4.

⁹ https://www.truthinadvertising.org/wp-content/uploads/2018/11/Mikos-1_5_18a-wm.mp4,
<https://www.truthinadvertising.org/wp-content/uploads/2018/11/Diddy-83.mp4>,
<https://www.truthinadvertising.org/wp-content/uploads/2018/11/Diddy-61.mp4>.

¹⁰ Combs is well aware of his obligation to clearly and conspicuously disclose his material connections to products he promotes on Instagram. See Letter from FTC to Combs, dated March 20, 2017, available at https://www.ftc.gov/system/files/documents/foia_requests/1b-2017-00799_instagram_influencers_327_pgs.pdf. In fact, following TINA.org's investigation of DJ Khlad's undisclosed Ciroc ads on social media, Combs added #ad to many of his 2018 Ciroc posts but did not take any corrective action with respect to his hundreds of pre-2018 posts, nor did he make any changes to posts promoting other products, including AQUAhydrate, the product that prompted the FTC's March 2017 letter to him, and DeLéon Tequila.

¹¹ See PRNewswire, Sean 'Diddy' Combs and the Makers of CÎROC Ultra Premium Expand to a New Category with CÎROC VS Fine French Brandy, dated June 11, 2018, <https://www.prnewswire.com/news-releases/sean-diddy-combs-and-the-makers-of-ciroc-ultra-premium-expand-to-a-new-category-with-ciroc-vs-fine-french-brandy-300663817.html>.

¹² <https://www.truthinadvertising.org/wp-content/uploads/2018/11/Diddy-65.mp4>,
<https://www.truthinadvertising.org/wp-content/uploads/2018/11/Diddy-92.mp4>,
<https://www.truthinadvertising.org/wp-content/uploads/2018/11/Diddy-125.mp4>,
<https://www.truthinadvertising.org/wp-content/uploads/2018/11/Diddy-147.mp4>,
<https://www.truthinadvertising.org/wp-content/uploads/2018/11/Diddy-201.mp4>,
<https://www.truthinadvertising.org/wp-content/uploads/2018/11/Diddy-219.mp4>.

¹³ The policies and procedures of Instagram prohibit advertising alcohol to minors.

Facebook's (and Instagram's) advertising policy regarding alcohol states, "[a]ds that promote or reference alcohol must comply with all applicable local laws, required or established industry codes, guidelines, licenses and approvals, and include age and country targeting criteria

consistent with Facebook’s targeting guidelines and applicable local laws...If you choose to run ads that promote or reference alcohol you must make sure to follow local laws and target your ads appropriately, including targeting your ads to . . . 21 years or older in . . . the US.” Facebook Advertising Policies, https://www.facebook.com/policies/ads/restricted_content/alcohol.

¹⁴ The Distilled Spirits Council similarly does not permit such marketing.

According to the Code of Responsible Practices for the Distilled Spirits Council, “[b]everage alcohol advertising and marketing should be placed in . . . internet/digital communications only where at least 71.6% of the audience is reasonably expected to be of legal purchase age (determined by using reliable, up-to-date audience composition data.)” Distilled Spirits Council Code of Responsible Practices, May 26, 2011, https://www.distilledspirits.org/wp-content/uploads/2018/03/May_26_2011_DISCUS_Code_Word_Version1.pdf, at 3.

¹⁵ <https://www.truthinadvertising.org/wp-content/uploads/2018/11/Diddy-203-watermarked.png>, <https://www.truthinadvertising.org/wp-content/uploads/2018/11/Diddy-203.mp4>.

¹⁶ https://www.truthinadvertising.org/wp-content/uploads/2018/11/Fatboy-9_3_18-wm.png.

¹⁷ https://www.truthinadvertising.org/wp-content/uploads/2018/11/Jamay-Geiger-3_23_18a_tag-wm.png, https://www.truthinadvertising.org/wp-content/uploads/2018/11/Jamay-Geiger-3_23_18b-wm.png, https://www.truthinadvertising.org/wp-content/uploads/2018/11/Jamay-Geiger-3_10_18-wm.png.

¹⁸ See TINA.org’s Ciroc Influencer database, <https://www.truthinadvertising.org/ciroc-influencer-database/>. Of the more than 1,700 Instagram posts in TINA.org’s database, there are more than a dozen posts – including posts by Combs, WizKid, and Britney Hampton – that include Instagram’s paid partnership tag. However, in many cases, the paid partnership tag is not visible unless a consumer is logged into Instagram.

¹⁹ See FTC Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 CFR § 255.5 (Disclosure of material connections), <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-publishes-final-guides-governing-endorsements-testimonials/091005revisedendorsementguides.pdf>; FTC’s .com Disclosures: How to Make Effective Disclosures in Digital Advertising, March 2013, <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>; In the Matter of Lord & Taylor, LLC, Docket No. C-4576, May 20, 2016 Decision and Order, available at <https://www.ftc.gov/system/files/documents/cases/160523lordtaylordo.pdf>; In the Matter of Deutsch LA, Inc., Docket No. C-4515, Mar. 24, 2015 Decision and Order, available at <https://www.ftc.gov/system/files/documents/cases/1503deutschdo.pdf>. See also Letter from FTC to Jennifer Lopez, dated March 20, 2017, (“If there is a material connection between you and the marketers of Beluga vodka, that connection should be clearly and conspicuously disclosed in your endorsement.”); Letter from FTC to Aliaume Damala Badara Akon Thiam (aka Akon), dated March 20, 2017 (“The Endorsement Guides apply to marketers and endorsers.”); Letter from FTC to Alexander Mechetin, CEO of JSC Synergy Group, dated March 20, 2017 (“FTC staff guidance makes clear that marketers should advise endorsers of their disclosure responsibilities and should monitor their endorsements to ensure that appropriate disclosures are made.”), all available at https://www.ftc.gov/system/files/documents/foia_requests/1b-2017-00799_instagram_influencers_327_pgs.pdf.

²⁰ See April 9, 2018 letter from Diageo to Truth in Advertising, available at <https://www.truthinadvertising.org/wp-content/uploads/2018/04/Diageo-Response-4-9-18-Redacted.pdf>.

²¹ In January 2018, Diageo reported that it was suspending all of its advertising on Snapchat after the U.K.'s Advertising Standards Authority ruled that the company did not take sufficient care to ensure that a Snapchat marketing campaign for Captain Morgan rum was not targeting users under the U.K.'s legal drinking age of 18. See *Diageo Halts Snapchat Ads Over Age-Targeting Concerns*, The Wall Street Journal, Jan. 2, 2018, <https://www.wsj.com/articles/diageo-halts-snapchat-ads-over-age-targeting-concerns-1514937661>. According to a statement released by Diageo, "We have now stopped all advertising on Snapchat globally whilst we assess the incremental age verification safeguards that Snapchat are implementing." *Id.*

A TINA.org investigation into DJ Khaled's social media accounts earlier this year found more than 100 undisclosed alcohol ads on Snapchat and more than 200 on Instagram, Facebook and Twitter combined with many promoting Ciroc. See <https://www.truthinadvertising.org/dj-khaled-summary-action/>. As such it is clear that Diageo failed to take into consideration the marketing of its social media influencers when it made the above statement.

²² See Federal Trade Commission, *Self-Regulation in the Alcohol Industry: A Review of Industry Efforts to Avoid Promoting Alcohol to Underage Consumers*, September 1999, https://www.ftc.gov/sites/default/files/documents/reports/self-regulation-alcohol-industry-federal-trade-commission-report-congress/1999_alcohol_report.pdf at 4; L.B. Snyder et al., *Effects of Alcohol Advertising Exposure on Drinking Among Youth*, 160 Arch. of Pediatr. and Adolesc. Med. 18 (2006); P.L. Elleckson et al., *Does Alcohol Advertising Promote Adolescent Drinking? Results from a Longitudinal Assessment*, 100 Addiction 235 (2005); A. McClure et al., *Ownership of Alcohol-Branded Merchandise and Initiation of Teen Drinking*, 30 Am. J. of Prev. Med. 277 (2006); J. D. Sargent et al., *Alcohol Use in Motion Pictures and its Relation with Early-Onset Teen Drinking*, 67 J. Stud. Alcohol 54 (2006); A. W. Stacy et al., *Exposure to Televised Alcohol Ads and Subsequent Adolescent Alcohol Use*, 28 Am. J. of Health Behav. 498 (2004). See also Bureau of Alcohol, Tobacco and Firearms, *Executive Summary of Findings of Research Study of the Public Opinion Concerning Warning Labels on Containers of Alcoholic Beverages* (Washington, DC: BATF, 1988) at 14 (Eighty percent of general public respondents in a poll believed "that alcohol advertising influences youth to drink alcoholic beverages.") cited in U.S. Dep't of Health and Human Servs., Office of Inspector Gen., *Youth and Alcohol: Controlling Alcohol Advertising that Appeals to Youth* (Washington, DC: Dep't of Health and Human Servs., Oct. 1991) at 2.

²³ Underage Drinking, U.S. Depart. Of Health and Human Servs., NIH Fact Sheet (March 29, 2013) <https://report.nih.gov/NIHfactsheets/ViewFactSheet.aspx?csid=21> ("Underage drinking is a leading contributor to death from injuries, which are the main cause of death for people under age 21. Each year, approximately 5,000 persons under the age of 21 die from causes related to underage drinking. These deaths include about 1,600 homicides and 300 suicides."); Centers for Disease Control and Prevention, Alcohol and Public Health: Alcohol-Related Disease Impact (ARDI), <http://www.cdc.gov/ARDI>.

²⁴ U.S. Department of Health and Human Services, The Surgeon General's Call to Action to Prevent and Reduce Underage Drinking (2007), <https://www.surgeongeneral.gov/library/calls/underage-drinking-educator-guide.pdf>.

²⁵ *Id.* See Ralph W. Hingson et al., *Age of Drinking Onset and Injuries, Motor Vehicle Crashes, and Physical Fights after Drinking and When Not Drinking*, 33 Alcohol Clin. Exp. Res. 783 (2009).

²⁶ *Id.*

²⁷ Diageo has pledged to comply with the Distilled Advertising Council's regulatory code, which is designed to limit the targeting of teens.