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Advertising alcohol in college athletics : four dilemmas

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ADVERTISING ALCOHOL IN COLLEGE ATHLETICS:
FOUR DILEMMAS

A Thesis

Presented to

The Faculty of the School of Journalism and Mass Communications

San Jose State University

In Partial Fulfillment

of the Requirements for the Degree

Master of Science

by

Brianna Niemi

December 2007

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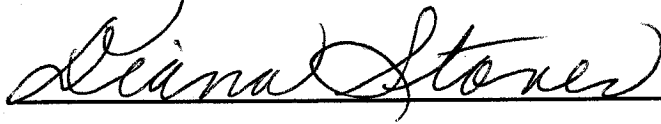
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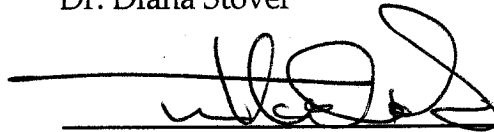
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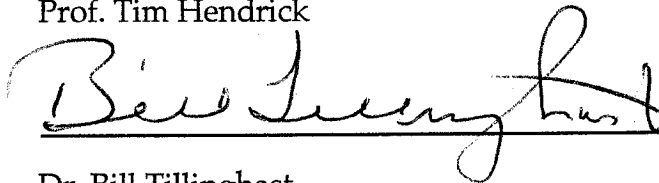
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ABSTRACT

ADVERTISING ALCOHOL IN COLLEGE ATHLETICS: FOUR DILEMMAS

by Brianna Niemi

This thesis addresses the four dilemmas of advertising alcohol in intercollegiate athletics, including the protection of commercial speech under the First Amendment, revenue, the ethical and moral dilemma, and student athletes and their susceptibility to binge drinking. It compares and contrasts UC-Davis and its non-permissible policy of advertising alcohol, and UC-Irvine and its permissible policy of advertising alcohol. It also utilizes UC-Berkeley for its knowledge and expertise in student athlete services. In-depth interviews covering the four dilemmas were conducted with athletics administrators, NCAA staff, college marketing professionals, doctors, and legal counsel. In addition, documents from the NCAA and the CSU system were reviewed and analyzed. Research on this subject shows that athletics departments must address these four dilemmas to protect the image of the university, the welfare of the student athlete, and the fiscal future of intercollegiate athletics.

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This thesis is dedicated to my parents, Chuck and Leslie Niemi. Your example of patience, perseverance, and sacrifice has taught me a lot, especially during this writing process. Thank you for everything you have done for me and my brothers.

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CHAPTER I

Introduction

Alcohol advertising is a contentious issue. The beverage has addicted millions. The insidious nature of its advertising has enraged just as many. For every unfortunate incident related to alcohol, there is an equal number of perfectly capable individuals handling both the drink and the advertising, and thus the cycle begins. Where should the line be drawn in regulation of the product and the promotion? Researchers spend an enormous amount of time and money studying the effects of such advertising while organizations, from the grassroots level to multimillion dollar corporations, implement programs to tackle everything from alcohol awareness to alcohol abuse. This ongoing debate of at-risk product advertising spills over into different sects of the community, raising questions for those whose audience might be adversely affected. For public and private university and college athletics departments, advertising and corporate sponsorship dollars can make up a large portion of the budget of their athletics programs. Revenue impacts those from the bottom to the top, including in this case, student athletes, coaches, and administrators. Although not every sponsorship contract is monetary-based because trade-outs are exchanged, every deal affects the bottom line of an athletics department budget. Ultimately, the decision can be a complex one, as universities strive to increase cash flow, while maintaining an appropriate stance on a potentially harmful product. For an athletics department facing the choice of whether to enter into a relationship with an alcohol company or brewery, at least four dilemmas are at stake and must be taken into consideration.

Four Dilemmas

First, there is the understanding that commercial speech under the First Amendment is protected speech, although there are some limitations. Without recourse to legally prohibit such advertising, the National Collegiate Athletics Association (NCAA), the governing body of Division I, II, and III athletics programs, has begun to rely heavily on policies encouraging limited or outright removal of alcohol advertising. In a memorandum from the Division I Board and Executive Committee to its member institutions in August of 2005, six policies regarding alcohol were issued and encouraged for adoption. Of those six policies, three explicitly relate to advertising, implicating it as an important component in combating alcohol abuse. Legally speaking, the NCAA can not prohibit advertising of alcohol; therefore it relies on these policies that minimize the prominence of such advertising, and is hopeful that institutions remove at-risk advertising entirely. Athletics directors must find an appropriate balance between adhering to the Constitution, while maintaining good standing with those who administer policies for the membership.

Second, the issue of revenue must be addressed. As the competition to recruit the best athletes becomes more intense across the nation, athletics departments must produce enough income to entice the better athletes, showing them that should they sign a letter of intent to play at their institutions, then they will have the best of coaching staffs, facilities, uniforms, and of course, the potential to win it all. College athletics, like professional sports, is big business and a lot can be determined in one championship season, with the right athletes. Although not all college sports proponents enjoy the pendulum swing towards corporate sponsorship and the professional model, there is no denying the

current state of intercollegiate athletics and its need for revenue. NCAA President Myles Brand argued that commercialism in college sports is not a negative component, but an essential one if athletics departments are going to survive in the 21st century. In early April of 2005, Brand wrote a commentary for the *Chicago Tribune* stating:

I want to argue that college sports needs more commercial dollars, not fewer. Maintaining a clear difference between the professional sports entertainment industry and intercollegiate athletics does not depend on the source of revenues, commercial activities in this instance, but rather the use of the revenue. (para. 3)

Brand maintained that athletics departments should be able to bring in as much money as possible, from wherever they could obtain it, as long as that revenue is then being spent on improving the overall experience for the student athlete.

Third, and to some the most important consideration, is the ethical and moral dilemma that is raised when colleges and universities promote products that a large portion of the players on the field, the students in the stands, and those in the viewing audience are not of legal age to consume. Is it important for the institution to protect students from potential harm to themselves? Is it necessary for an institution to take a stand on an issue that many believe has a domino effect, resulting in problems such as violence on campus? Should there be some sort of discussion with those universities that have no qualms in taking such advertising dollars, but turn around and do little or nothing to combat over-consumption of alcohol among the larger student population? Negative sports stories make headlines all across the nation, and many times alcohol can fuel post-game celebrations, creating a melee of unruly behavior. How a university distinguishes itself alongside the ethical and moral boundaries of

advertising alcohol can have a lasting impact on the university as a whole.

Fourth and finally, is the evidence that student athletes are more susceptible to binge drinking than their non-athlete counterparts. In a 2001 study conducted by the NCAA to gauge student athlete drinking habits, 80% reported that they did drink. Further research by Wechsler and Wuethrich (2002) found that more than half of male athletes and just less than half of female athletes were binge drinkers. Along ethical lines, athletics administrators must take into account that the at-risk products that are being hawked in conjunction with student athletic competitions, could have more of an effect on those participating in the game than the general student population. These four dilemmas have to be addressed when universities deal with at-risk product advertising.

Purpose of the Research

The purpose of this thesis is to examine four dilemmas (protection of commercial speech rights, revenue, the ethical and moral dilemma, and student athletes and their susceptibility to binge drinking) of advertising alcohol at intercollegiate athletics events. There is a significant philosophical disagreement between protecting First Amendment rights, while, at the same time, protecting young people from potential to harm themselves. Prominent coaches have heightened awareness of these four dilemmas. Tom Osborne, former football coach at the University of Nebraska and Dean Smith, former basketball coach at the University of North Carolina, generated publicity by calling for athletics departments to completely ban alcohol advertising. With the "Campaign for Alcohol-Free Sports television," the duo combined efforts with the Center for Science in the Public Interest (CSPI) to combat advertising alcohol in

intercollegiate athletics. Moore (2004) quoted Osborne as saying: "You're sending a mixed message to students by taking this money. You're saying that alcohol is all right while trying to fight it as a problem on campuses" (para. 4). Osborne and Smith stated that universities are talking out of both sides of their mouths, accepting large sums of money for advertising time and space during athletic events, while doing very little about the increasing problem of underage drinking on campus, which can fuel alcohol-related post-game incidents.

The goal of this thesis was to further understand what athletics administrators are doing under their existing contractual agreements as it relates to advertising alcohol. It was recognized that universities were going to be held to different standards and litmus tests depending on, but not limited too, geography, student enrollment, budget concerns, division, and standing. Understanding and learning about the four dilemmas can assist universities as they determine whether to enter into a relationship with a company wanting to advertise its at-risk product. This research is important for intercollegiate athletics as it provides information on the positive effects of advertising alcohol, including revenue generation and substantial corporate sponsorships. It also shows the negative aspects of advertising alcohol, including student athletes and binge drinking, reaching an underage audience, and the need to protect students from harm to themselves.

Analytical Framework

The analytical framework for this thesis is based on the legal history of commercial speech, as it made its way through the courts, gaining protection under the First Amendment. The First Amendment of the Constitution of the United States provides that Congress shall make no law abridging the freedom

of speech and press. Commercial speech, although not given the same protection as other speech under the First Amendment, now has considerable protection. The heart of the issue surrounding the protection of commercial speech is whether the government should regulate potentially harmful products through restrictions on advertising. In short, it is the boundary between regulating the mode of communication or the product itself. Cases that have set precedent for protection of commercial speech include, but are not limited too, the *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council Inc.*, *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 44 *Liquormart Inc. v. Rhode Island and Rhode Island Liquor Stores Association*, and *Greater New Orleans Broadcasting Association v. United States*. In addition, the more recent cases of *The Pitt News v. Pappert* and *Eichenseer v. Madison-Dane County Tavern League, Inc.* have shed new light on advertising alcohol at universities and colleges. Each of these cases has been reviewed in this thesis.

Additional literature in the health sciences relating to students (the general population and the student athlete), advertising alcohol, and drinking was also reviewed. To delve too much into the effects of alcohol advertising would broaden the intended scope of this thesis, but it is important to understand the general relationship among the three components. In a 2001 report entitled, "The Marketing of Alcohol to College Students," written for the *American Journal of Preventive Medicine*, scholars Kuo, Wechsler, Greenberg, and Lee studied the impact of alcohol advertising on students' drinking habits. They found that the marketing of drink specials and other promotions had a direct effect on the consumption of alcohol by students. It was noted in this study that, as the price of alcohol decreased, the amount of purchased drinks increased.

Additional background research for this thesis showed that student athletes are particularly susceptible to binge drinking and alcohol abuse. Wechsler and Wuethrich (2002) found that there is “no doubt that college athletes are at a statistically higher risk for alcohol abuse and exposure to its secondhand effects than non-athlete students” (p. 55). Because advertising of alcohol has become so prevalent in the college atmosphere, and because there is the strong potential for student athletes to harm themselves by over-consumption of such products as compared with the general student population, it is imperative to look at what institutions of higher learning are doing to combat this issue, while protecting the university, the athletics department, and the student athlete.

How the Study was Conducted

This thesis was a case study in which data was generated from in-depth interviews and documentary analysis of executive memos from the NCAA and the California State University (CSU) system. It was important to get a variety of opinions through interviews with as many different people as possible, as their interest in the topic varied. UC-Davis, which has a strict no-tolerance policy for advertising alcohol was the first university studied. In-depth interviews were conducted with the director of marketing for the athletics department, as well as the senior director of development in campus administration. In contrast, UC-Irvine, which is more lenient towards advertising alcohol (specifically breweries), was also studied. The director of corporate relations provided UC-Irvine’s policies on such advertising. In addition, to provide perspective on the issues, athletics personnel at UC-Berkeley discussed the effects of alcohol as it relates to student athlete training and event management. The NCAA and the National

Inter-Association Task Force on Alcohol Issues provided information on what the national body is doing in regard to student athlete binge drinking, as well as the legal aspect of institutions adhering to the First Amendment. Four interviews were done with those in college marketing positions, as some companies chose to combine efforts with at-risk companies, and others did not. An attorney specializing in First Amendment cases was also interviewed for this case study. An interview with the director of the division of healthy lifestyles at the American Medical Association (AMA) provided information on the stance of the medical community as it relates to student athlete binge drinking. All of the interviews were important to this thesis as they provided a broad spectrum of views on these four very important dilemmas.

Documentary analysis was used in this thesis. Information was generated from the NCAA memorandum on alcohol advertising policies, as well as 2005 Executive Order No. 966 from the Office of the Chancellor of the CSU system that established alcohol beverage sales and advertising policies for its state institutions.

CHAPTER II

Literature Review

Commercial Speech

Commercial speech is defined as speech that proposes a commercial transaction. It is often intended to turn a profit for a business or an individual. The fundamental questions regarding commercial speech, according to Stewart (1996) are “whether the government should be able to influence people’s conduct by controlling the messages that advertisers convey rather than regulating the products themselves, and whether consumers are entitled to hear all the messages before making up their own minds” (p. 44). When at-risk products are the focus of advertising contention, it is often the government and its public health concerns pitted against the media industry and its rights for protected speech. Proponents of regulation of advertising have stated that “advertising by its nature takes a biased point-of-view. It, therefore, does not purport to provide grounded information relevant to a person’s health or well-being” (Gostin, 2004, p. 32). Many scholars will argue that excessive advertising leads those who are predisposed to consuming large amounts of alcohol or other at-risk products to partake in such activities that much more because of the content on their television, radio, or Internet (Gostin, 2004).

For many years the Supreme Court had sided with the government, offering no protection for commercial speech, whatsoever. Gostin (2004) wrote: “It was not until 1976 that the Court provided any First Amendment protection for advertising. Even then, the Court was decidedly deferential to public health regulation of advertising” (p. 32). Another concern of commercial speech and the government’s control over health-related advertising is what Justice Stevens

called “legislation designed to suppress truthful, nonmisleading information for paternalistic purposes” (Stewart, 1996, p. 44). He also pointed out that the First Amendment “assumes that attempts to regulate speech are more dangerous than attempts to regulate conduct” (Stewart, 1996, p. 44). Justice Thomas also denied any justification for the government “to keep legal users of a product or service ignorant in order to manipulate their choices in the marketplace” (Stewart, 1996, p. 44). Although the Court has not given commercial speech the same protection as other speech under the First Amendment, it has provided limited protection.

Commercial Speech Doctrine

The Court established the commercial speech doctrine in the 1942 case of *Valentine v. Chrestensen*. This case came before the Supreme Court to decide the matter regarding a Florida citizen who was promoting his docked submarine in New York through pamphlets he handed out on the street, which later ended up as litter on the ground. The individual was warned by the New York police commission that he could be cited under the anti-litter ordinance. Still persistent to advertise his message, he wrote a message on the back of the handbill which protested the action of the City Dock Department that had not allowed him to exhibit his boat. He tried to conceal his commercial speech advertising by adding protected political speech (Lexis-Nexis, 1942).

The Supreme Court, in its review without analysis, created what is referred to as “the first commercial speech doctrine,” exempting such speech from First Amendment protection (Lexis-Nexis, 1942; Johnson, para. 2). In an opinion written by Justice Roberts, the Court noted: “We are equally clear that the Constitution imposes no such restraint on government as respect to purely

commercial advertising” (Lexis-Nexis, p. 4). Consula (2001) added that “the Court, without citing precedent, historical evidence, or policy considerations, relegated commercial speech, which included advertising, outside of the scope of the First Amendment” (p. 356). Thirty-four years later the Court would do just the opposite and reverse this decision, protecting commercial speech for the first time in United States history.

Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.

In 1976, the case of *Virginia State Board of Pharmacy v. Virginia Citizens Council, Inc.* was brought before the Supreme Court. A Virginia resident who took prescription drugs argued that, a state statute making it unprofessional conduct for a pharmacist to advertise a price for prescription-only drugs, violated First and Fourteenth Amendment rights. The District Court found for the consumer and upon direct appeal, the Supreme Court affirmed. Justice Blackmun, expressing the view of seven members of the Court, noted that advertisers had the First Amendment right to distribute information so that consumers could receive all necessary information regarding the product in question. The Court noted:

It was held that (1) any First Amendment protection attaching to the flow of drug price information was a protection enjoyed not solely by the advertisers themselves who sought to disseminate that information, but also was a precaution enjoyed by the plaintiffs as the recipients of such information, which protection the plaintiffs could assert in the action, (2) since ‘commercial speech’ was protected under the First Amendment, the advertisement of prescription drug prices was protected under the First Amendment notwithstanding its commercial speech character, and (3) justification for the statute’s advertising ban as maintaining a high degree of professionalism on the part of licensed pharmacists was insufficient. (Lexis-Nexis, 1976, p. 748)

Virginia law, which stated that price advertising of prescription drugs by pharmacists was “unprofessional conduct,” was struck down in this Supreme

Court case. Justice Stewart noted that “differences between commercial price and product advertising and ideological communication allow the State a scope in regulating the former that would be unacceptable under the First Amendment with respect to the latter” (Lexis-Nexis, p. 774). In addition, Justice Burger concurred, but wrote that a much different decision could have been made had the court been faced with a law regulating advertising by the medical or legal communities. The only dissent came from Justice Rehnquist who stated that:

The logical consequences of the Court's decision in this case, a decision which elevates commercial intercourse between a seller hawking his wares and a buyer seeking to strike a bargain to the same plane as has been previously reserved for the free marketplace of ideas, are far reaching indeed. (Lexis-Nexis, 1976, p. 781)

Sackett (1983) wrote: “Striking down Virginia’s ban on advertising of prescription drug prices by pharmacists, the Court held that commercial speech was entitled to protection and declared that a state may not completely suppress truthful information about an entirely lawful activity” (p. 869). The rationale of the Court was that the public had the right to come to its own conclusion based on commercial information.

The Court was very clear, despite Rehnquist’s dissent, that speech need not be related to political issues to be protected under the First Amendment. *Virginia Pharmacy* also went so far as to outline commercial speech regulations permitted by the First Amendment. In regards to these regulations, Sackett (1983) wrote that “these included content-neutral time, place, and manner restrictions and regulations designed to insure that advertising were not false, misleading, or deceptive” (p. 870). What the *Virginia Pharmacy* case did was set a precedent for the advertising community. It gave the industry a protected foundation to build on as it disseminated information through various modes of

advertising communication. Although other cases have strengthened limited protection for commercial speech, *Virginia Pharmacy* stands as a landmark case. *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*

The most important case regarding advertising following *Virginia Pharmacy* was the *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, which reached the Supreme Court in 1980. During a winter fuel shortage in the state of New York, the Public Service Commission mandated that all electric utilities stop advertising the use of electricity because it did not have the supply to meet customer demand for the winter. After three years the shortage had ceased, but the Commission proposed to continue the ban on advertising, prohibiting promotional advertising based on the state's interest in conserving energy. It was then challenged in the New York state courts as a violation of the First and Fourteenth Amendments. The New York Court of Appeals upheld the prohibition on advertising, but ultimately the Supreme Court reversed the decision. In an opinion written by Justice Powell and joined by Stewart, White, and Marshall, the Court noted that, despite the state's concern in prohibiting advertising, which was neither inaccurate nor unlawful, it was unconstitutional because the "link between the advertising prohibition and the state's interest in ensuring fair and efficient rates was too tenuous and speculative to justify the ban" (Lexis-Nexis, p. 558). *Central Hudson* established a four-part test that determined the scrutiny to which future cases involving government prohibition of commercial speech would be subjected. The *Central Hudson* test maintained that: "There can be no protection for the speech if it is false or concerns unlawful activity; to regulate truthful speech the government must assert a substantial interest in support of the regulation; the government

must demonstrate that the restriction on commercial speech directly and materially advances that interest; and the regulation must be narrowly drawn” (Lexis-Nexis, p. 566). For the most part, proponents of legal alcohol advertising have no problem in supporting both part one and two of the *Central Hudson* test. It is in prong three, where things start to get more complicated. In this case, the government could not prove that a ban on this promotional advertising would decrease energy consumption. The third prong is also muddled as it relates to alcohol advertising because behavioral evidence on the effects of alcohol advertising or over-consumption are inconclusive. As Sterchi (1985) noted: “The third prong, which addresses whether advertising restrictions directly advance the government interest in reducing alcohol abuse, is troublesome because of uncertainty about the effects of alcohol advertising” (p. 792). In an 8-1 decision in the *Central Hudson* case, Justices Brennan and Blackmun concurred, but emphasized their disagreement with the distinction between commercial speech and other speech. The dissent came courtesy of Justice Rehnquist who stated that, because the state had a utility with monopoly power, it justified its control over advertising:

The restriction on ‘commercial speech’ in the case at bar was not violative of the First Amendment and that the ban on advertising falling within the scope of permissible state regulation of an economic activity by an entity that could not exist in corporate form or enjoy its monopoly status but for the laws of New York. (Lexis-Nexis, 1980, p. 558)

Despite both victories for commercial speech in *Virginia Pharmacy* and *Central Hudson*, the Court had second thoughts about protecting commercial speech in promoting casino gambling in a 1986 case, *Posadas de Puerto Rico Associates d.b.a. Condada Holiday Inn v. Tourism of Puerto Rico*. The Supreme Court, upon appeal from the Supreme Court of Puerto Rico, determined that under a

statute of the Commonwealth of Puerto Rico, gambling was legal, but advertising the casino was not. A particular hotel with a casino inside that had been fined for violating advertising regulations, filed suit in the Superior Court of Puerto Rico stating that this law violated freedom of speech rights. A setback for the protection of commercial speech, the Court wrote that by prohibiting advertising on casino gambling in Puerto Rico, the law protected citizens from the evils of gambling. Rehnquist delivered the opinion of the Court, stating that the Commonwealth law met all four prongs of the *Central Hudson* test: "We conclude that the statute and regulations at issue in this case, as construed by the Superior Court, pass muster under each prong of the *Central Hudson* test. We therefore hold that the Supreme Court of Puerto Rico properly rejected appellant's First Amendment claim" (Lexis-Nexis, p. 345). Despite the setback, it was not the last time the Supreme Court would hear such a case regarding advertising of at-risk products, and in fact, the decision did not stand for long.

44 Liquormart, Inc. v. Rhode Island and Rhode Island Liquor Stores Association

Ten years later, the Court reaffirmed its stance on the protection of commercial speech. Sullivan (1996) wrote: "Left for dead after the Court's decision a decade ago in *Posadas*, the protection of commercial speech under the First Amendment has enjoyed a remarkable revival" (p. 123). On writ of certiorari, the Supreme Court reviewed the case of *44 Liquormart, Inc. v. Rhode Island and Rhode Island Liquor Stores Association*, stemming from a retailer being fined \$400 for running a newspaper ad that did not actually list the price of any alcoholic beverages but advertised low prices on mixers and snacks. The state of Rhode Island had enacted legislation that prohibited liquor stores from advertising the prices of intoxicating beverages outside of the store as well as

prohibiting the media to refer to alcohol prices in Rhode Island or any other state. The rules were so strict that they also included a ban on any signage that promoted alcohol pricing that was visible from outside the store (Lexis-Nexis, p. 718). The state defended itself by stating that the statute encouraged temperance by its residents. Stewart (1996) explained: "Prohibiting advertising about liquor prices, the state argued, kept prices from dropping, which in turn held down consumption" (p. 44). The Court of Appeals decision was reversed by the Supreme Court, having found that the complete ban abridged the freedom of speech under the First Amendment, as well as finding no empirical evidence that a lack of advertising would lead to a reduction of alcohol abuse problems. The important impact that this case had, in terms of a precedent for future cases, was that the government could not legally prove that a ban on advertising alcohol or other at-risk products would limit its abuse; therefore commercial speech was still protected. Sullivan noted:

The Supreme Court reversed [44 *Liquormart*] unanimously, invalidating the ban. The Justices fragmented messily on the appropriate standard of scrutiny, but all of the principal opinions expressed strong skepticism toward state regulation of advertising as a device for preventing consumers from knowing about a product in order to induce them not to buy it - the very rationale that had easily sustained the regulation in *Posadas*. (1996, p. 124)

Gostin added that "thus far, a divided Court has generally sided with the proponents of free commercial speech, sometimes striking down lower court rulings that found for the public health viewpoint" (2004, p. 32). Following the decision handed down in 44 *Liquormart*, the Justices, as well as legal experts, were critical of the government's role in trying to control speech, as opposed to the product, itself. O'Neill (1998) wrote: "Advertising is a good target for legislators because it is visible and pervasive. A legislator can make it appear that he

is taking steps toward regulating a particular industry, without taking any direct steps against the industry, by attacking that industry's advertising" (p. 267). In conclusion, the First Amendment was strong enough to outweigh any provisions that the state's Twenty-First Amendment carried with it, protecting the right for businesses to defend their advertising. Three years later, the next substantial case would reach the Supreme Court for review.

Greater New Orleans Broadcasting Association v. United States

Under a 1999 Federal Communications Commission (FCC) regulation, radio and television broadcasters were prohibited from carrying advertising from commercially-operated casinos. As noted by the Court: "Some radio and television broadcasters in the New Orleans metropolitan area--with broadcast areas in Louisiana, Mississippi, and other states--wished to broadcast promotional advertising for gambling available at private, for-profit casinos that were lawful in Louisiana and Mississippi" (Lexis-Nexis, p. 176). The Court, in an opinion written by Stevens, and joined by Justices Rehnquist, O'Connor, Scalia, Kennedy, Souter, Ginsburg, and Breyer, noted that such regulations by the FCC were a violation of the First Amendment. Under the four-part test, it was determined that the advertising content was not misleading, the federal policy of discouraging casino gambling was already sufficient, the restriction did not directly further the interests of the government; and the FCC legislation sacrificed an intolerable amount of truthful speech about lawful conduct. Based on the *Central Hudson* test as written by the Supreme Court, the same four-pronged test was still applicable and used in the *Greater New Orleans Broadcasting* case. Johnson (n.d.) wrote that "with *Greater New Orleans Broadcasting*, the Court's commercial speech jurisprudence has solidified, into a steadfast First

Amendment principle--with the *Central Hudson* test requiring government to justify, with real evidence, any limitations on commercial speech or advertising" (para. 24). Rehnquist, in a concurring opinion, wrote: "Were Congress to undertake substantive regulation of the gambling industry, rather than simply the manner in which it may broadcast advertising, 'exemptions and inconsistencies' such as those in [USCS 1304] might well prove constitutionally intolerable" (Lexis-Nexis, 1999, p. 196). Justice Thomas concurred and stated:

In cases such as this, in which the government's asserted interest is to keep legal users of a product or service ignorant in order to manipulate their choices in the marketplace, the *Central Hudson* test should not be applied because such an interest is *per se illegitimate* and can no more justify regulation of commercial speech than it can justify noncommercial speech. (Lexis-Nexis, 1999, p. 197)

Dating back to the 1976 *Virginia Pharmacy* landmark case, aside from one case that produced a minor setback, the Supreme Court has maintained a commercial speech protection standard that continues to this day.

The Pitt News v. Pappert

As commercial speech gained increased protection from the Supreme Court, *The Pitt News v. Pappert* case had the challenging task of determining legal boundaries surrounding advertising alcohol on a college campus. According to the Holland + Knight web site, *The Pitt News* is an example of "a legislatively-supported effort to restrict alcohol beverage advertising on educational campuses undermined by a court's determination that the restriction unconstitutionally impacted a student newspaper's First Amendment rights" (2004, para. 1). On appeal from the United States District Court for the Western District of Pennsylvania, the student newspaper at the University of Pennsylvania claimed that its First Amendment rights were being violated by the

“Pennsylvania law that bans advertisers from paying for the dissemination of alcoholic beverage advertising by communications media affiliated with a university, college or other educational institution” (Lexis-Nexis, 2004, p. 2). The District Court granted a judgment in favor of the defendants, stating that the law “had no effect on *The Pitt News*’ freedom of expression because the paper remains free to say whatever it wishes about alcoholic beverages as long as it is not paid for engaging in the expression” (Lexis-Nexis, 2004, p. 2). The appeals court reversed and remanded this decision however, holding that the First Amendment precludes the enforcement of such a law. In an opinion by Circuit Judge Samuel Alito, the Court noted that more than 75% of the University population was of 21 years of age, while in addition, the newspaper was created by the University Board of Trustees in recognition of the students’ right to free speech. Alito wrote: “*The Pitt News* is displayed at locations together with other free weekly newspapers, including *In Pittsburgh*, *City Paper*, and *UR Pittsburgh*. None of these other publications are affiliated with an educational institution, and they all contain alcoholic beverage advertising” (Lexis-Nexis, 2004, p. 102). After determining that free speech had been abridged by the Pennsylvania law, the Court determined that “the law violated the student newspaper’s commercial speech rights, because it did not advance adequately the substantial government interest in reducing underage drinking” and “no evidence was offered by the state to prove that a reduction in alcohol advertising in *The Pitt News* would lead to a ‘material’ decrease in irresponsible consumption and related activity on campus” (Lexis-Nexis, 2004, p. 102).

Eichenseer v. Madison-Dane County Tavern League, Inc

In other college-related cases, the University of Wisconsin-Madison attempted to limit drinking on its campus by working with local taverns to limit price promotions. In *Eichenseer v. Madison-Dane County Tavern League, Inc.*, “students alleged that the taverns had engaged in an illegal conspiracy in restraint of trade by voluntarily agreeing to limit drink specials on Friday and Saturday nights after 8 p.m.” (Lexis-Nexis, 2006, p. 495). Chancellor John D. Wiley decided to “work directly with local bar operators, negotiating an agreement with the retailers to prohibit discount drink coupons. This, the chancellor reasoned, would help reduce drinking by students who flocked to night spots that offered ‘drink till you sink’ specials” (para. 1, “Holland + Knight,” 2004). What began as a plan by the administration to limit underage and abusive drinking, spiraled into a legal battle, pitting students against campus officials over the right to receive information, through promotion of at-risk products. The trial court found for the taverns, and upon appeal in October of 2006, the Madison-Dane County Circuit Court threw out the lawsuit, upholding the decision of the lower court which stated that “the bar owners’ action in 2002 was exempt from antitrust laws because it amounted to a political compromise with city officials who were threatening tighter regulations at the time” (Lexis-Nexis, 2006, p. 497). After the bar owners agreed to the voluntary ban of drink specials brought by the university, a study conducted by the University of Wisconsin found that “serious alcohol-related crime continued to rise despite the effort” (Foley, 2006, para. 6). Overall, advertising of at-risk products has been granted commercial speech protection, beginning with the precedent set in *Virginia Pharmacy* in 1976 and carrying through *The Pitt News* case decided in

2004. Despite small setbacks, the Court has maintained that commercial speech deserves a great deal of protection under the First Amendment.

Self-Regulation of Beverage Alcohol Advertising

Despite the First Amendment, alcohol industry professionals understand the potential dangers of their products, imposing their own self-restrictions on the promotion of alcohol. According to the International Center for Alcohol Policies (ICAP), “the basic elements of self-regulation are two-fold: a code of practice or set of guiding principles governing the content of advertising, and a process for the establishment, review and application of the code or principles” (ICAP Reports, 2001, p. 1). The beer industry, directed by the Beer Institute, has an advertising and marketing code that states that “brewers should adhere to standards of candor and good taste applicable to all commercial advertising and; brewers are responsible corporate citizens, sensitive to the problems of the society in which they exist, and their advertising should reflect that fact” (para. 3, “Beer Institute,” n.d.). It also has directives that relate explicitly to college marketing, stating:

Beer advertising and marketing activities on college and university campuses, or in college media, should not portray consumption of beer as being important to education, nor shall advertising directly or indirectly degrade studying. Beer may be advertised and marketed on college campuses or at college-sponsored events only when permitted by appropriate college policy. (para. 12)

The wine industry, too, has a code of advertising standards that it encourages its companies to adhere to. Among its guidelines, last amended in 2000, include the policy that “wine and wine cooler advertising by code subscribers shall not appear on the premises of college and university campuses or in newspapers of college and university campuses” (para. 3e, “Wine Institute,”

2003). Although both the beer and wine industries have general guidelines that they encourage their suppliers to comply with, obviously, exceptions are always granted in a market-driven society. Often times, companies whose main business comes from at-risk products will cover themselves, both legally and morally from the public relations spectrum, by encouraging adoption of such rules, without maintaining or enforcing on any substantial level.

Two researchers from the University of Texas and the University of Connecticut agreed that, despite self-regulation of the industry, compliance of appropriate advertising can be questionable at best, especially when advertising is taking place during sports television. Zwarun and Farrar (2005) stated:

Although nearly every ad followed guidelines literally, there were numerous instances of strategically ambiguous content that could be interpreted as violating the guidelines' spirit. . . . The study also confirmed that alcohol ads are common in televised sporting events and that the most frequent themes are humor, friendship, sex, and romance, a potentially troubling finding given that beliefs of alcohol predict drinking in young people. These findings suggest that alcohol advertising might contribute to the formation of expectancies in young people, and that current self-regulation may not be an effective way to prevent alcohol advertising from appealing to people under the age of 21. (p. 347)

Zwarun and Farrar looked specifically at sports television to examine its adherence to self-regulation, concerned with four main portrayals: depictions of drinking, portrayals of intoxication, drinking accompanied by risky activities, and underage characters. The duo maintained that because the beer, wine, and liquor industries have imposed such guidelines upon their own respective industries, they should be held to these standards of compliance, noting that "given that the purpose of the alcohol industry's self-regulatory guidelines is to prevent their advertising from encouraging underage drinking, we argue that ads should avoid using appeals that have shown to contribute to positive alcohol

expectancies in young people” (p. 354). On the surface, Zwarun and Farrar argued, the advertising appeared to be in compliance with industry standards, but the insidious nature of the commercials promoted a large amount of ambiguous content. Because of this, each advertisement was measured both literally by the structure of the spirits’ guideline and by the intended objective of the guideline, including prohibiting underage drinking by avoiding such advertising that would appeal to those under the legal drinking age.

The study looked at professional and college football, and professional and college basketball during the years of 1994-1997 and 1999-2002. Zwarun and Farrar noted that the amount of alcohol advertising was consistent between both time spans, while the percentage of alcohol advertising in professional and college basketball rose to 100%. When it came to all four categories, depictions of drinking, excessive consumption, potentially hazardous activities or to underage characters, the pair found that the three industries were in compliance with all guidelines. Only a small percentage of ads (2%) “contain portrayals that hint at excessive consumption” (p. 362). But again, these images were always implied, never straight-forward. Critics maintained that “the guidelines are designed more to prevent government involvement with advertising regulation than to make drinking unappealing to young people” (p. 350). Despite the beer, wine, and liquor industries’ attempt to restrict particular content as it relates to its advertising, there are still many who believe not enough is being done to guide the advertising towards those of legal age. The researchers stated:

But even if they are forced to channel their advertising in some way, it is likely that the alcohol industry will continue to advertise heavily during sports, because males 21 to 34 are the desired audience for alcohol advertisers and sporting events are one of the few places on television where this audience can reliably be found. (p. 364-365)

Commercial speech, so long as it is not false speech, is given protection under the First Amendment. Based on precedent set in Supreme Court cases, advertisers have the right to disseminate information, regardless of whether it is deemed an at-risk product or a non-at-risk product. The beverage alcohol advertising industry has a self-regulation code to protect itself and its product. However, despite the attempts to neutralize the advertisement of alcohol, many still feel that alcohol should not reach the college student market.

Social Science Review

Advertising alcohol and college students.

For many college students, consuming alcohol is a part of life. It is such an ingrained part of the culture that it probably wouldn't matter if beer, wine, or liquor were advertised at all. Dr. Henry Wechsler of the Harvard School of Public Health told the *Pittsburgh Post-Gazette*:

You're never going to get college students not to drink, but you can decrease how much they drink. We don't need to throw it at them. The first thing that colleges need to do is divest themselves of being sponsored by alcohol producers. (Dvorchak, 2005, para. 5)

Despite the fact that a large portion of the college student population is legally prohibited from drinking, many young people, regardless of their age, do pay attention to advertising that depict the latest drink in a party-saturated environment. Statistics provided by Mothers Against Drunk Driving (MADD) showed that in 2000, the highest prevalence of binge and heavy drinking was for young adults, ages 18-25, with the peak rate occurring at age 21 (MADD, 2005). The concern for many researchers and scholars, aside from the safety of the intoxicated individual, is how often binge drinking results in crime. MADD (2005) noted that alcohol is closely linked with violence. About 40% of all crimes

(violent or non-violent) are committed under the influence of alcohol. What starts out as an innocent night of fun, four out of 10 times can end in violence.

In a 2001 report entitled, "The Marketing of Alcohol to College Students," written for the *American Journal of Preventative Medicine*, scholars Kuo et al. examined the "alcohol environment surrounding college campuses and assessed the impact on students' drinking. This environment included alcohol promotions, price specials, and advertising at drinking establishments that served beer for on-premise consumption and retail outlets that sold beer for off-premise consumption" (p. 204). Defining binge drinking as more than five drinks in a row for men and more than four drinks in a row for women, at least once in a two-week time-span, has been "recognized as a major problem on American college campuses by college presidents, alcohol researchers, the National Institute on Alcohol Abuse and Alcoholism (NIAAA), and the U.S. Surgeon General" (p. 204). Kuo et al. noted that the price of alcohol had a direct influence on college students and young adolescents, more so than the average adult:

Previous studies have documented the effect of price on alcohol consumption in the general population and among young adults and adolescents. In general, as the price of alcohol increases, consumption rates decrease. Conversely, as the price of alcohol decreases, consumption rates increase. Moreover, young people are more affected by the price of alcohol. (p. 204)

Bars and clubs surrounding college campuses often used advertising promising drink specials to entice the college crowd to come to their establishments. They continued to use these half-off specials or discounted entry fees because they worked. The study "found that both heavy and light drinkers drank more than twice as much alcohol during simulated 'happy hours' as they

did during times without such promotion” (p. 205). Because college students often found themselves in the lower-income brackets, living off small stipends and purchasing only the bare necessities, it did not come as a surprise that price-special promotions were largely successful for the alcohol companies. Kuo et al. used student self-report data from the 2001 College Alcohol Survey (CAS), along with observational assessments by researchers who went to alcohol establishments located near the colleges. The analytic sample included more than 10,000 students, 830 on-premise, and 1,684 off-premise establishments at 118 colleges. The survey and observational data indicated that not only were most college environments inundated with drink specials and promotions from competing alcohol entities surrounding the campus, but nearly three quarters of on-premise establishments offered specials on the weekends, and almost one-half of the on-premise establishments and more than 60% of off-premise establishments provided at least one type of beer promotion (p. 204). Kuo et al. concluded that “in examining the marketing of alcohol in the communities surrounding college campuses, it was found that alcohol specials, promotions, and advertising were prevalent in the alcohol outlets around college campuses” (p. 209). In addition, “the results of this study suggest that the regulation of marketing practices (e.g., sale prices, promotions, and exterior advertising) may be important strategies” (p. 210). Although educational efforts to improve alcohol awareness and smart drinking habits among college students are important, according to this research, regulation of advertising and promotions might also have an immediate impact on alcohol abuse in college or university environments.

Journalist Ellen Lyon, in an article for *The Patriot-News*, focused on the drinking climate at Lehigh University in August of 2004. She quoted a senior, John Orobono, who said: "Every time you see an advertisement, you see a bunch of guys drinking at a bar, people having a good time, and that's what people in college want. They make the funniest commercials I've ever seen, and that helps" (p. 1). Although Orobono contended that television commercials hook him and his friends to drink, his fraternity brother noted that low-price promotions work best with cash-poor college students, stating: "You go to a bar . . . and it's a dollar special, something you don't even like, you're going to choose the dollar beer and get drunk" (p. 1). The problem that beer and liquor advertising companies have had is that for every legal-age college student who takes in a commercial or promotion, there is another underage student who sees the exact same message. Rev. Jesse W. Brown Jr., Pennsylvania Coordinator of Georgetown University's Center on Alcohol Marketing and Youth, noted to author Lyon that "one of the problems with marketing alcoholic beverages to college students of legal drinking age is 'spillover' to their underage classmates" (p. 1). Whether it is the commercial or the on-premise advertising spouting low drink specials, college environments and communities share the burden of adhering to the First Amendment, while protecting college students from themselves.

Numerous research studies have searched for the role that alcohol plays in sport and how the two separate entities have become so entwined. It has become just as common for sports fans to pick up a beer as they look to find the game on television, as it is to find alcohol companies as the prime sponsor for the local college athletic teams. Wechsler and Wuethrich wrote:

Alcohol promotion and consumption have become an expected part of the college and professional sports landscape. Alcohol advertising is on display around athletic fields, at tailgate parties in stadium parking lots, and during the commercial breaks of broadcast sporting events, both college and professional. (2002, p. 54)

It has been noted that alcohol companies specifically seek out underage drinkers to get them “while they’re young” and that student athletes are more susceptible than the non-athlete to binge drinking and its harmful effects. Congress has gotten in on the act, as well. In 1998, Joseph R. Biden, a democratic senator from Delaware, proposed “a resolution in the U.S. Senate that includes recommendations that universities not enter into sponsorship agreements with alcoholic beverage companies” (Hawes, “NCAA,” 1998). Although both Congress and the NCAA have recommended certain policies for universities and their athletics departments, the advertising of such at-risk products are still in practice, on a variety of levels.

Further research has been done to determine how adolescent males and females responded to beer advertising in the manner of how the advertisement was presented and where it fell between television programming. Slater et al. (1997) sought to understand if planned alcohol use behavior was affected by beer advertising in sports and entertainment programming and how, if at all, that varied along gender (male and female) and ethnic (Anglo and Latino) lines. The experiment measured the students’ counterarguments to beer advertising as well as their positive or negative reaction to what they saw on the screen. Slater, Rouner, Domenech-Rodriguez, Beauvais, Murphy, and Van Leuven found that there were differences between both gender and ethnicity in the results of this study. They found that “female adolescents responded less positively and with more counterarguments to beer ads than did males” (p. 117). Further, it was

concluded that “as expected, the tendency for male adolescents to respond more positively and less critically to beer ads with sports content was not found among females” (p. 117). The researchers also concluded that the more likely an adolescent was to have current or planned alcohol use, the more positive their responses were to the beer advertising. What can be inferred from this study is that male adolescents, as compared to their female counterparts, respond more positively to beer advertising, especially those commercials that are sports-related. In addition, if the adolescent had already experimented with alcohol or planned to in the near future, his/her response to advertising was much more positive, with fewer counter-arguments. The next question researchers wanted to answer was why? One hypothesis stated that “given that female adolescents drink less alcohol in general and beer in particular, we should expect them to be less receptive to beer advertising than are males, and to be more likely to cognitively resist or counter-argue these ads” (p. 109). Slater et al. went on to hypothesize in terms of sports content that “sports are highly salient in the socialization process for adolescent males and are considerably less important for most adolescent females” (p. 109). Although the group did find females to respond less positively than the males, neither hypothesis as to why could be confirmed. It was noted that “females may be responding negatively to the content of the beer ads, which emphasize male interests, rather than responding more negatively than males to portrayals of beer alcohol use in themselves” (p. 109). This research provides evidence of a relationship among alcohol, sports, and advertising.

Student athletes and drinking.

In a 2001 study, the NCAA found that nearly 80% of college athletes drink (Wechsler & Wuethrich, 2002). Although this may appear to fall in line with the general student population of any given college or university, further research indicated that student athletes are at a greater risk for alcohol abuse. In their 2002 Harvard School of Public Health College Alcohol Study, Wechsler and Wuethrich found that 57% of male athletes and 48% of female athletes were “binge drinkers and experience a greater number of drinking-related harms than other students” and that there was “no doubt that college athletes are at a statistically higher risk for alcohol abuse and exposure to its secondhand effects than non-athlete students” (2002, p. 55). Two explanations are given as to why this might be. Wechsler and Wuethrich interviewed Murray Sperber, American studies professor at the University of Indiana in Bloomington who had written extensively about college sports, who said that, “if the average eighteen to twenty-year old thinks that nothing is going to affect them physically, imagine an athlete who is in wonderful condition” (2002, p. 56). Ignorance is heightened when youthful indiscretion is combined with elite physical status. Wechsler and Wuethrich added that another culprit for student athlete binge drinking is blamed on insistence from upperclassmen and the mandate that players think as a team, both on and off the field: “Athletes are particularly prone to peer pressure, to ‘team think’ and bonding” (p. 56). At some schools, rookie initiations often included drinking games that could potentially put individuals, no matter how great their physical condition, in great harm. When any sort of hazing story goes public, the university takes fierce action to maintain its educational and athletic credibility, but for every horror story that gets reported,

numerous go down quietly with only those team members involved to remember, regret, or reinvent for the next freshman class.

Another study recognizing alcohol abuse among intercollegiate athletes, as compared to their non-athlete counterparts, attempted to find alcohol use rates, motivations for drinking, perception, and consumption among various demographics. Kueffler, Lim, and Choi used 208 participants (121 intercollegiate student athletes and 87 non-athletes) from a NCAA Division II university in the Midwest. Student athletes were used from the following men's and women's sports: track and field, basketball, volleyball, soccer, softball, baseball, and wrestling. A questionnaire was used to determine the aforementioned issues around alcohol use. Kueffler et al. wrote:

The participants completed a 26-item questionnaire assessing their alcohol usage rates, their perceptions of alcohol use by their peers, and their motive for using alcohol. All items were modified from previous studies and validated for this study. The results of this study indicated the student athlete group had a significant higher rate of alcohol use than non-athletes over the past 12 months. . . . However, the athletes perceived that non-athletes used alcohol more often than did athletes. (2005, p. 10)

An independent t-test was used to determine if there was a statistically significant difference between the student athletes and the non-athletes in terms of drinking use. Their motivation for drinking was recreation or social purposes, according to 81% of the respondents. What Kueffler et al. found, solidified and reaffirmed the results of the 2002 study conducted by Wechsler and Wuethrich:

This study showed that there was a statistically significant difference in the drinking habits between athletes and non-athletes. The results of this study revealed that athletes were more likely to drink twice a week, while non-athletes drank only once a month over the past 12 months. (2005, p. 12)

The AMA has become so concerned with student athletes and drinking, that it too has asked for a ban on alcohol advertising at NCAA sporting events. In a statement from the Association in April of 2005, then-President Dr. J. Edward Hill wrote: "The prevalence of alcohol advertising in college sports sends a damaging message about the core values of the NCAA and higher education" (para. 2, "Consumer Affairs," 2005). The AMA then went to the NCAA headquarters to meet with top officials to review alcohol advertising policies. Dr. Hill explained: "Using collegiate sports to flood the airwaves with alcohol ads undermines efforts to combat binge drinking that occurs among nearly 44% of full-time college students" (para. 4, "Consumer Affairs," 2005). The AMA also noted that while working to combat binge drinking, schools were also trying to fight other effects, which their studies had shown to be assault, sexual assault, and date rape ("Consumer Affairs," 2005).

Research results showing that student athletes are more susceptible to binge drinking than their non-athlete counterparts raises numerous questions as to the ethical or moral boundaries that exist in terms of advertising at-risk products and athletics departments having sponsorships with at-risk companies. Although alcohol beverage companies have self-regulation codes to guide them as they attempt to promote their products to college-age students, the bottom line is that profit, above all else, is their goal. Advertisers, given their protection of commercial speech under the First Amendment, can adhere to their loosely set industry guidelines, while achieving maximum profit from a susceptible student population and athletics administration.

Overview of athletics atmosphere and resources.

According to the Center on Alcohol Marketing and Youth: "Beer advertising on televised college sports was a \$58 million enterprise in 2002" (Badger, 2004, p. 1). Although university and college policies vary from campus to campus, the NCAA restricts beer and wine ads to 14% of total advertising content or 60 seconds per hour of television time and it does not allow ads containing hard liquor (Brogan, 2004, p. 4C). But advertising are not just relegated to the television set. Lee (2004) wrote that "a University of Miami fan who attends a Hurricanes home football game at the Orange Bowl this Fall not only can buy beer, but also will see signs for athletic department sponsors Coors and Bacardi" (p. 1). Sponsorship advertising can grace the signage in stadiums, the back cover of a game day program, or be strategically placed as the primary logo on a ticket stub. According to a *SportsBusiness Journal* survey, 70% of the NCAA's 117 Division I-A programs "have deals with beer companies, either directly or through their rights holders. The deals range from a couple of thousand dollars a year for radio spots for a small I-A school to as much as \$450,000 for a comprehensive agreement" (Lee, 2004, p. 2). The money to be had depends on the prominence of the program, but for most departments struggling to make it through budget cuts and a weak economy, the decision to partner with beer or liquor companies can be financially enticing.

Previous research in the area of advertising at-risk products in college athletics had focused mainly on the Division I men's basketball championship and its multimillion dollar contract with CBS, and in essence, the advertising relationships that came along with the association. Because the football championship is not a part of the NCAA, rather it is governed by the Bowl

Championship Series (BCS) and independent postseason bowl games, there has been very little data collected in this area. In 2004, the "Campaign for Alcohol-Free Sports television" was created by the CSPI to ban all alcohol advertising from television (Moore, "The Chronicle," 2004). A number of the articles and material written on the NCAA Tournament and beer sponsorships came from the publicity of this project. Led by Tom Osborne, former football coach at the University of Nebraska and Dean Smith, former basketball coach at the University of North Carolina, signatures were petitioned in light of the problems that were occurring on campuses resulting from alcohol that fueled post-game riots. Brogan (2004) wrote: "Beer advertising on college sports broadcasts are nothing new. But new questions are being raised about the willingness of schools to accept millions from the industry amid mounting evidence that beer and college students are a dangerous mix" (p. 4C). Campus crime and violence are often alcohol-fueled, according to numerous reports, but aside from all the numbers, many sports administrators are concerned with the message it sends to students when incredibly large amounts of money are accepted without concern for what is happening to those young people on the field and in the stands. Andy Geiger, former athletics director at The Ohio State University, told Brogan that "it's inconsistent to say you want to discourage underage drinking and turn around and huckster the stuff on your broadcasts" (2004, p. 4C).

As collegiate sports becomes more competitive, athletics departments are realizing the sometimes-costly implications of advertising alcohol and are becoming highly aware of this issue that must be addressed on both the state and national level. Regardless of the stance that any individual or institution takes, the cooperation between athletics departments and alcohol companies

does raise ethical questions. At Colorado State University, in the Fall of 2004, a 19-year-old sophomore died after consuming the equivalent of 30 to 40 beer and hard liquor drinks within a 10-hour period, prompting a complete ban of beer sales at CSU's Hughes Stadium and a 28-person task force sent to address the alcohol problem on the campus (Walters, 2004). The student, who never did make it to the football game, posted the following message on her web site prior to her death: "I'm also going to get extremely wasted this weekend, not just because it's Labor Day, but because Colorado State plays Colorado in football tomorrow" (Dvorchak, 2005, para. 32). The unfortunate death of the student has made many university officials, in both athletics and general administration, cognizant of a problem that some believe has spiraled out of control.

Advertising of alcohol is related to whether an institution chooses to serve alcohol on its premises. As noted in *College Athletics and the Law*, "whether to serve beer or alcohol at large-scale sporting events is one of the most challenging decisions for campus officials. The decision may come down to the current climate at the institution or in the state" (para. 1, "College Athletics/Law," 2004). Along with the loss of any potential revenue earned from sponsorships, athletics departments also have to take into account the financial impact of not selling beer at its events. The University of Southern California (USC), in June of 2005, banned beer at its football games, citing "increasing surliness, foul language, and other behavior by fans that he [President Steven Sample] said was harming the game day atmosphere" (Klein, 2005, p. 1). Although USC might have more freedom and flexibility to say no to the revenue dollars that come from beer sales than other institutions that are not as competitively dominant, it still could potentially take a big financial hit in ending the relationship. Other universities,

both on the scale of USC and smaller, must be willing to weigh the advantages and disadvantages of both alcohol advertising and beer sales within its stadiums, arenas, and other venues. Not only must financial ramifications be considered, but ethical, moral, and practical decisions must be made on a case-by-case basis.

In Idaho, it is the state's Board of Education that has weighed in on the matter. It voted to allow beer and wine in "designated areas at home football games for the University of Idaho and Boise State University" (para. 5, "College Athletics/Law," 2004). Officials made the decision based on wanting to create a "festive atmosphere, while building corporate relationships and making money from the sale of alcoholic drinks" (para. 6, "College Athletics/Law," 2004).

The intercollegiate athletics world continues to grow and get more competitive and financially promising for sponsors and athletics administrators. The issue of advertising or selling alcohol does not live within just the confines of a university-owned facility, it is a much larger issue with implications that go far beyond the playing field. To understand how institutional decisions are made, it is important to find out from the decision-makers themselves.

Research questions.

The questions that this study seeks to answer relate to the four dilemmas of advertising alcohol in college athletics. First, although commercial speech is protected speech, there are some limitations. How do athletics departments adhere to the First Amendment, while protecting students from potentially harming themselves? What other legal areas do universities need to be concerned with as they embark upon relationships with at-risk companies, and what liability do they have when they do have such sponsors? Second, because revenue from alcohol sponsors is so considerable, what other ways can athletics

departments make up for lost opportunity by not partnering with at-risk companies? For those that do choose such sponsors, what costs are incurred from these partnerships? Third, how do athletics departments handle the moral and ethical implications of advertising alcohol? Fourth and finally, research has shown that student athletes are more susceptible to binge drinking than their non-athlete counterparts. How do athletics departments handle this epidemic in terms of athletic training, treatment, and assistance? This study was designed to answer questions inherent to advertising alcohol at athletic events.

CHAPTER III

Method

In studying advertising alcohol in college athletics, an understanding of the protection of commercial speech under the First Amendment, the atmosphere of advertising at-risk products in intercollegiate athletics, revenue generation, moral implications, and the link between student athletes and binge drinking is crucial. All four dilemmas relate to one another and are important factors that athletics departments must weigh.

The method for this thesis was a case study in which data was generated from in-depth interviews and documentary analysis of executive memos from the NCAA and the CSU system. To provide insight on these four explicit, yet different, dilemmas, athletics department administrators and other athletics personnel were interviewed. In addition, documentary analysis provided insight on both advertising and the sale of alcohol.

All participant interviewees were first contacted by phone or e-mail to determine their interest and willingness in being a part of this study. Upon confirmation, all interviewees were interviewed by phone, tape recorded, with transcribed conversations completed following the call. In-depth interviews were conducted with five institutional athletics administrators, one NCAA administrative staff member, four college marketing professionals, one First Amendment lawyer, and one director and member of the AMA. It was the goal of this author to gather information from as broad a spectrum as possible, to fully understand the four dilemmas of advertising alcohol in intercollegiate athletics.

Institutional Background

The institutional athletics administrators interviewed for this study were from the University of California system. UC-Davis has a strict policy against advertising alcohol on campus, while UC-Irvine has a much more lenient policy, allowing for certain alcohol companies and breweries to have a presence at athletic events. UC-Davis is a school just north of the San Francisco Bay Area with an enrollment of more than 30,000 students (as of Fall, 2007) and a focus on agriculture, because of its rural location. A strong athletics department, the UC-Davis Aggies compete in the Big West conference with more than 800 student athletes. UC-Davis is a unique story in that, entering the 2006-07 academic year, it was beginning its final year of a four-year reclassification to NCAA Division I status. This was a big jump for the campus, but it was highlighted with wins along the way against established Division I powerhouses in football and men's basketball. UC-Davis does not advertise alcohol or associate with other at-risk companies such as breweries.

UC-Irvine is located 40 miles south of downtown Los Angeles. It has an enrollment of about 25,000 (as of Fall, 2007) and has strong health and social sciences programs. A competitive athletics department, the UC-Irvine Anteaters also compete in the Big West, having earned their last national championship in 2007 with a men's volleyball title. UC-Irvine does allow for sponsorships with alcohol companies and breweries, with the understanding that there is no permanent signage in its athletics facilities.

In addition, UC-Berkeley is located 20 miles east of San Francisco and has an enrollment of 33,000 (as of Fall, 2007) and is recognized as the nation's top-rated public institution. The Golden Bears compete in the Pacific-10 Conference and have historical archives filled with athletic accolades, national champions,

and awards. UC-Berkeley is affiliated with at-risk companies as described in this thesis only through its media rights-holders.

Because of the competitive disparity between UC-Berkeley athletics and UC-Davis and UC-Irvine athletics, the comparison of alcohol policies were limited to athletics administrators at UC-Davis and UC-Irvine, where athletic events are on an equal scale. However, UC-Berkeley athletics administrators were utilized for their knowledge and expertise in student athlete services, such as athletic training and event management.

Interviewee Background

Interviewees from campuses included the following: Susan Collins, senior director of development, UC-Davis; Brian Otis, director of marketing, UC-Davis; Robby Ray, director of corporate relations, UC-Irvine; Ann Caslin, certified athletic trainer, UC-Berkeley; Nicole Strange, athletics events manager, UC-Berkeley. These interviews were the foundation of the study.

Mary Wilfert, associate director at the NCAA, who also serves on the National Inter-Association Task Force on Alcohol Issues, was interviewed for her expertise on this national issue. She specializes in NCAA affairs, specifically looking at drug testing and substance abuse programs for student athletes.

Four marketing directors were interviewed for their policies of dealing with at-risk sponsors, including: Renee Cohen, marketing director, Fox Sports Net Properties; Laird Veatch, regional vice president, Learfield Sports Properties; Brian Carbone, marketing director, Campus Solutions, Inc.; Brandon Bernt, marketing associate, Affiliate Marketing. Their assessment of advertising alcohol was critical as they deal with both parties directly, trying to appease campus administrators, athletics administrators, and the sponsors, themselves.

Wayne Giampietro, an attorney and director of the First Amendment Lawyers Organization in Chicago, IL, was interviewed for his legal expertise. His knowledge was crucial since he was able to provide a unique look at the situation that many institutions are facing.

Dr. Richard Yoast, director of the division of healthy lifestyles at the AMA, was interviewed for a national perspective on policies set forth by the association regarding advertising alcohol in college athletics.

All of the interviews conducted for this thesis were beneficial in their own way, allowing for insight into the way people and institutions deal with the advertisement, and in some cases, the sale or management, of alcohol and intoxicated individuals. It is important to note that this matter is a delicate subject and all interviewees were given the option of not answering any of the questions asked. There was initial concern on the part of the author that some individuals might not be able to be completely open or frank because of a potential conflict of interest. However, all interviewees spoke freely and without concern for harming existing sponsor relationships or breaching the confidential way in which athletics departments are run, considering the competitive nature of collegiate athletics.

Documentary Analysis

Two documents were analyzed for this thesis. The first was the NCAA's Division I Board and Executive Committee memorandum of August 2005, encouraging the membership's adoption of six alcohol-related policies. Three of the policies dealt entirely with the sale of alcohol in and around athletic events, facilities, and stadiums. The other three policies related to the advertising of

alcohol during regular season, conference, and postseason intercollegiate athletic events. The voluntary NCAA policies were an important part of this research.

Second, the CSU memorandum on Alcoholic Beverage Sales and Advertising Policy was also reviewed. In interviews, University of California administrators said that the UC system was considering policies similar to what the CSU system had adopted. However, since more work was being conducted on their campuses to determine how, when, and whether these policies should be adopted, a draft of the UC memorandum was not made available to the author of this study. Alternatively, a CSU policy was reviewed. It was determined that the CSU policy was much more strict than the NCAA's voluntary policies in its mandated provisions aimed at curbing alcohol abuse at university-operated athletics events. The memorandum, issued by the Office of the Chancellor with no prior executive order, prohibits the sale of alcohol, while being more lenient on the advertising of alcoholic beverages. Because of this, the CSU memo was analyzed for its effectiveness in prohibiting alcohol sales, but not dictating such strict policies on advertising. Both the memos were reviewed in their entirety and show two very different approaches on the subject of alcohol sale and alcohol advertisement.

CHAPTER IV

Findings

The purpose of this thesis was to examine the four dilemmas (protection of commercial speech rights, revenue, the ethical and moral dilemma, and student athletes and their susceptibility to binge drinking) of advertising alcohol in intercollegiate athletics. There is an important philosophical dilemma between adhering to the First Amendment, while protecting young people from a potential harm to themselves. For UC-Davis, the choice is a simple one. It has no existing relationships with alcohol companies or breweries. Brian Otis, director of marketing, noted that “having sponsorships of at-risk companies is considered by many here at the university to be promoting and therefore accepting of activities such as alcohol consumption” (2006). He added that: “UC-Davis athletics has made a philosophical stance that it will not advertise for any at-risk companies. The department will not participate in activities that do not comply with the core values of its mission.” In contrast, UC-Irvine has an open policy in reaching out to alcohol sponsors or breweries. Although it does not have an existing contract with an alcohol company, just breweries, Robby Ray, director of corporate relations, noted that revenue pressure is just as strong as pressure to comply with university standards: “We are under two sets of pressures. One being the pressure to bring in revenue for the athletics department and the other being to work within the guidelines of the university to provide an atmosphere where we’re supporting its policy. As long as we’re able to work within those guidelines, I’d love to work with Miller [or other alcohol companies]” (2007). Ray explained that UC-Irvine does operate under the parameters of no permanent alcohol signage in athletics facilities and that,

when it comes to marketing the breweries, “the focus is on the restaurant portion. I wouldn’t go into a partnership with a bar because obviously its primary focus is alcohol.” The dilemma that surrounds alcohol advertising at universities is different for every athletics department, individual, and property. There is no right, nor wrong answer, only many facets to consider.

Dilemma 1: First Amendment Protection

Under existing law, the First Amendment gives commercial speech constitutional-based limited protection. As long as advertisers are not engaging in false advertising, their content is protected based on precedents set in a number of commercial speech cases, including *Virginia State Board of Pharmacy*, *Central Hudson*, and *44 Liquormart* rulings. A university can partner with any type of advertiser it so chooses and, for some university athletics departments, the financial gain of partnering with an alcohol company can be quite lucrative and appealing. However, there are at least three issues under this first dilemma to consider, should an institution be willing to enter into an at-risk product advertising relationship. The three issues include NCAA and conference policy, public vs. private institutions, and civil suits. The first issue is that, without recourse to legally prohibit beer or alcohol advertising, the NCAA and other governing conferences have begun to rely on policies encouraging limited or outright removal of alcohol advertising. As far as the NCAA is concerned, there is no penalty for not adhering to these general guidelines but a complete dismissal of the guidelines, combined with excessive at-risk product advertising, could lead to trouble down the road. In addition, conference policy can also determine how these relationships are handled. Two documents regarding the advertising and sale of alcohol in intercollegiate athletics are pertinent to this

study. The first document is from the NCAA, and the second document is from the CSU system.

Documentary Analysis - NCAA Policy

The NCAA Board and Executive Committee used its August 12, 2005 memorandum to address the sale and advertising of alcoholic beverages at its member institutions. After much discussion, the two groups urged all universities and conference offices to adopt the following six policies:

“1. Prohibit the sale of alcohol beverages during all preseason, regular season, conference, and postseason intercollegiate athletic events.

2. Promote legal and responsible use of alcohol by fans outside the stadium or arena (e.g., tailgating).

3. Prohibit on-site alcohol advertising during all preseason, regular season, conference, and postseason intercollegiate events.

4. Prohibit media advertising of alcoholic beverages that exceed 6% alcohol by volume.

5. Limit advertising of malt beverages, beer, and wine products that do not exceed 6% by volume and include content that emphasizes legal use of alcohol.

6. Provide programs and resources for education, prevention, and treatment of alcohol abuse (p. 3).“

In the first policy, the NCAA stressed that “alcoholic beverages should not be sold or otherwise made available for public consumption in the athletics facility during intercollegiate athletic events” (p. 3). Universities will often allow the sale of alcohol to take place in their buildings, but set a cut-off time (i.e., the second half, end of third quarter) when alcohol can no longer be sold. Further,

individual sellers might be asked to determine whether a patron should be cut off before the actual time period when alcohol can no longer be sold. The NCAA, in its encouraged guidelines, takes away the need for a cut-off time or concessionaire's decision on the blood alcohol level of any given person by asking institutions and conferences to prohibit the sale of alcohol completely. Just two months prior to the NCAA's memorandum, one of the biggest powerhouses in college athletics decided to ban beer at its football games for the first time in school history. The *Los Angeles Times* reported that University of Southern California (USC) President Steven Sample cited "increased surliness, foul language, and other behavior by fans that was harming the game-day atmosphere" that led to his decision to prohibit the sale and possession of alcohol inside the USC Coliseum (Klein, 2005, para. 1). In a letter written to season-ticket holders and the USC campus including a "Trojan Spirit Code," Sample wrote that the code was developed "because of the noticeable rise in recent years of incidents involving the use of alcohol. Longtime attendees at our games have witnessed an escalation in the rude behavior of fans, rudeness that is almost always exacerbated by alcohol consumption" (Klein, 2005, para. 16). Alcohol was determined to be the major factor in deciding to prohibit the sale of such beverages inside the USC stadium. Although the athletics department would have to find a way to subsidize that lost revenue, the president and athletics administrators decided that the benefits to selling alcohol did not outweigh the effects of the drinks on fans' behavior.

The second policy asked that:

To the extent that an institution can preclude the sale of alcohol outside the stadium or arena, those efforts should be made. When such restrictions are not feasible, an institution should visibly promote the legal and responsible use of alcohol for all fans associated with the event. (p. 3)

This is a challenging policy on many different levels. For starters, institutions can not control how many alcoholic drinks an individual consumes prior to arriving at a university-operated property. Further, it is very hard to enforce consumption at tailgating events. Because there are far too many people and too many ways to sneak in alcohol, it is almost impossible to enforce this policy. What universities have done, however, is not allow patrons into the stadium if they appear to be intoxicated. This is one of the most important aspects of game-day event management. Nicole Strange, athletics event manager at UC-Berkeley, stated: "We can't control what students do outside of our facilities, but at our football games, we have policemen at our student entrance to breathalyze if we think they are remotely intoxicated" (2007). The consequences include a warning if they are found to be above the legal limit the first time, with season tickets revoked if it happens a second time.

Event management and what to do when an individual becomes intoxicated to the level that he or she is out of control is an important component of advertising and selling beer or other alcohol at intercollegiate athletics-related events. This can be an institution's worst nightmare, but event management officials are employed to curtail any potentially harmful incidents. Even when alcohol is not permitted to be sold or advertised in arenas or stadiums, as is the case at UC-Berkeley, problems can still arise. Although some schools do not allow for alcohol to be sold or advertised in their stadiums or arenas, others are more lenient in terms of the two. Some allow for signage to be present, but sales are not permitted. The third policy asked that:

Except when expressly prohibited by contract, institutions should preclude advertising, banners and signs or displays for liquor, beer, (including nonalcoholic beer) or wine products. Any permanently affixed or leased

advertising, including banners, signs, or displays in the facility, should be covered during the event. (p. 3)

This is also a challenging policy to enforce because many universities already have existing contracts with alcohol companies, prohibiting them from taking down any signage or refusing rights that the sponsor has already agreed to. This policy does not say anything about the fact that universities should seek replacement sponsors for those at-risk companies, moving away from any relationships with those that promote alcohol. The fourth policy dictated that “immediately prior to, during, and subsequent to televised competition, institutions should preclude media advertising of alcoholic beverages that exceed 6% alcohol by volume” (p. 3). Again, it is very hard to establish this as an encouraged policy when so much revenue is garnered from commercials during televised athletics events. If the NCAA truly wanted to move forward with a system of alcohol-free intercollegiate athletics, this could be adopted for all sports, most notably the Division I men’s basketball championship, but until then, it is an institutionally-based decision that unless a university is sponsorship-dry, might be hard to come by. Policy five stated that:

These advertising should not compose more than 14% of the space in any game publications; not more than 60 seconds per hour of any telecast or broadcast or not more than one hundred twenty (120) seconds total in any telecast or broadcast. Any such content should include an appropriate focus on legal and responsible use of alcohol. (p. 3)

This rule basically allows for the promotion of such at-risk products, with some sort of social responsibility attached to the relationship. The NCAA quantifies this by asking that only a certain amount of time or space be devoted to such promotion of alcohol (those drinks that don’t exceed 6% in volume). Renee Cohen, marketing director of Fox Sports Net Properties, spoke of being

employed at the University of Miami where it had a sponsorship with Bacardi and was allowed to show signage in its football stadium, but “we also had to run a specific drinking and driving PSA as our television spot” (2007). The final policy reminded institutions to provide information and educate its student population, student athletes, and larger campus community on the harms of drinking and what can be done to prevent alcohol abuse.

The NCAA, in its infancy, began as, and has continued to be an association through which its membership operates. That is, it only does what the membership asks of it, working for all of the universities that make up Divisions I, II, and III. It rarely, if ever, takes matters into its own hands, instead working through committees and subcommittees made up of athletics administrators all across the nation to come to agreements and rules on which all institutions must administer their programs. Conferences work much the same way. Member universities dictate how the league should be controlled, monitored, and administered, therefore making each conference very different. It is important to note that the NCAA policy on alcohol, which was issued through the Division I Board and Executive Committee, is not a mandated policy. Wieberg (2005) wrote that “schools are left to decide for themselves. While setting policy for championships (except in football) and recommending guidelines for individual institutions, the NCAA has shied away from imposing across-the-board restrictions on advertising, sponsorships, and sales at events” (p. 1).

When it comes to regular season or conference play, the universities in a conference have the right to run their events how they please. However, that doesn’t mean that the NCAA can’t advise them on how to run their events, especially when a complex issue such as alcohol is at stake. After the

memorandum was issued, universities were allowed to move forward as they and their conference felt appropriate. The head of the Executive Committee, University of Hartford President Walter Harrison told Wieberg after the fact: "I would personally wonder how one justifies the sale of alcohol in an on-campus venue. But, we just felt that was something better left to institutions, that the NCAA is not really in a position to dictate" (2005, p. 1). In summary, the NCAA set its guidelines and encouraged institutions to adopt them, but made it clear that it was going to allow institutional and conference decisions to govern how advertising and alcohol sales were managed and controlled.

Documentary Analysis - CSU Policy

In the California State University (CSU) system, however, policies have become much more strict. In a December 23, 2005 Executive Order from the Office of the Chancellor of the CSU system, administrators bolster the NCAA's suggested policies, stating: "All sales of alcoholic beverages will be prohibited in conjunction with any athletic events held in university owned or operated facilities" (Reed, p. 1). Working with the Board of Trustees and the CSU Alcohol Policy and Prevention Program (2001), Chancellor Charles B. Reed noted that, although the majority of students, faculty, and staff are of legal drinking age, "there has been a recent national trend to address the illegal use and abuse of alcohol at intercollegiate athletic events that has led to incidents of poor sportsmanship, disorderly conduct, and a negative atmosphere for the fans" (p. 1). The CSU system did not feel that sales of such products coexisted with its promotion of a "safe and healthy learning environment for members of the university community" (p. 1). What was once an institutional decision--selling or banning the sale of alcoholic beverages on campus at athletic-related events--

became a systemwide mandate. CSU universities were no longer allowed to determine for themselves what the appropriate policy was concerning the sale and consumption of alcohol among students and the institutional community. For those institutions that did have existing contracts with alcohol beverage companies at the time that this memo was disseminated, the Chancellor noted: "Existing contracts that provide for the sale of alcoholic beverages at university owned or operated facilities may not be renewed" (p. 1). In addition to the mandate that further contract negotiations with such companies must cease, there were additional guidelines that such schools would need to abide by, including all of the following:

1. Sale of alcoholic beverages must be conducted in accord with all local and state laws under the auspices of Alcohol Beverage Control (ABC).

2. Policies must be established on each campus that ensure appropriate training for servers of alcoholic beverages, place limitations on the number of alcohol beverages that can be purchased at the point of sale, and adopt cessation of sales prior to the end of the event (i.e., at the end of half-time at football and basketball games, etc.).

3. Promotion of alcoholic beverages should not encourage any form of alcohol abuse nor place emphasis on quantity and frequency of use."

For the most part, universities with existing contracts with alcohol beverage companies were already abiding by the three guidelines. But now the guidelines came in the form of a systemwide mandate.

The NCAA only encouraged institutions to prohibit the sale of alcohol and curb, where possible, the advertising of such products. However, the CSU system completely prohibited the sale of alcohol. Although the memorandum

from the Office of the CSU Chancellor addressed part of the issue relating to alcohol abuse at sporting events, three major issues were not resolved. The first issue concerns the use of university owned or operated facilities. As written, "all sales of alcoholic beverages will be prohibited in conjunction with any athletic events held in university owned or operated facilities," but, for many universities, athletic events are also held at neutral sites where they may not have control over how the facility is operated. The university may not have the ability to dictate if or how alcohol is sold at these neutral or rented facilities and arenas. If, for instance, one institution runs all of its basketball games in a rented arena while its own gymnasium is being renovated, the sale of alcohol might not be something that the institution can contractually dictate. The CSU memorandum does not mention this topic, perhaps because it isn't relevant or because the Chancellor understands that this is not the norm and thinks that nothing can be done about it. Lee (2004) discussed this in her review of intercollegiate athletics and alcohol sponsorships, noting:

The use of non-school-operated facilities can also throw a glitch in a school's policy on alcohol sponsors, since it is the outside operators of those facilities that typically control whether beer is served during games. Sometimes, they also control the signage that's in their facilities. (p. 32)

When institutions have campus-operated events and non-campus-operated events, they sometimes have to devise two different contracts with sponsors as to what can be sold and what type of signage is appropriate for each venue. The CSU memorandum did not address this outright, other than to focus these policies on university owned or operated facilities.

Second, although the sale of alcohol is prohibited under the CSU memorandum, the advertising of alcohol is permitted within certain parameters. As stated in the CSU memorandum: "In addition, the advertising of alcoholic

beverages on campus, including athletic events in university owned or operated facilities is permissible, but alcohol advertising should not encourage any form of alcohol abuse nor place emphasis on quantity and frequency of use" (p. 2). The mandate required that institutions comply with the policy guidelines set up through the "Guidelines for Beverage Alcohol Marketing" distributed by the National Inter-Association Task Force on Alcohol Issues, which was described as a "higher education coalition dedicated to the responsible use and advertising of alcoholic beverages." Those parameters included all of the following:

"1. Any promotional displays or messages shall incorporate clear language and encourage only responsible and legal use of alcoholic beverages. Such messages shall be at least as prominent as any other message content such as product slogans or listed attributes of a particular product.

2. Advertising from local retailers or distributors that promote "drink specials" (i.e., 2 for 1 drinks, half-price happy hour drinks, etc.) should not be accepted or posted.

3. Beverage alcohol advertising on campus or in institutional media should not portray drinking as a solution to personal or academic problems, or as necessary to personal, social, sexual, or academic success.

4. Beverage alcohol marketers/ distributors must support campus alcohol awareness programs that encourage and inform students about the responsible use or nonuse of beer, wine, or distilled spirits.

5. Alcohol beverage promotions permitted by the university may not incorporate students or employees (including coaches, faculty, etc.) as active participants in a promotional message.

6. In all promotions, alcohol beverage trademarks or logos must be clearly subordinate to the sponsored event itself.

7. Promotional actives should not be associated with existing campus events or programs without the prior knowledge of consent of the president.

8. The name of an alcohol beverage product may not be connected to the name of a university event or a facility (i.e., XYZ wine golf tournament, etc.).

9. The university's name or department or any related nickname may not be utilized in a way that implies a product endorsement by the university (i.e., XYZ Beer is the beverage of choice for CSU fans).

10. Alcoholic beverages should not be provided as free awards to individual students, campus organizations or other members of the academic community.

11. University departments and organizations may not distribute clothing, posters, or other promotional items that utilize the university symbol in combination with an alcoholic beverage trademark or logo.

12. Any alcohol promotional material connected with any university athletic event (i.e., media guide game programs) must receive prior written approval by the athletics director and the president.

13. Promotional materials associated with any other university program (other than athletics) must be approved by the vice president for student affairs.

14. This policy does not restrict the amount or content of alcohol advertising, purchased independently through commercial radio or television companies, during broadcasts of athletics events. However, broadcasters under contract with a CSU institution should strongly be urged to follow the above provisions when accepting commercials that promote alcoholic beverages.

15. Student newspaper publications should also be encouraged to follow the above provisions for any advertising messages for alcoholic beverage companies/distributors" (p. 2).

The CSU policy restricted alcohol sales, but was much more lenient toward the advertising. Some athletics administrators indicated that prohibiting the sale of alcohol, while permitting advertising, defeats the purpose. Strange (2007) explained: "If they don't sell it in facilities, they shouldn't be allowed to advertise it. Even if they are advertising it, but not selling it, they are reminding people to go drink at half time." For many opponents of advertising alcohol in intercollegiate athletics, this is the biggest issue. They claim that a university lacks moral responsibility when it brings alcohol sponsors into its stadiums, given the fact that college students and the student athlete population are susceptible to binge drinking and over-consumption of alcohol. Opponents maintain that universities must completely revamp their policies that allow the advertising of alcohol at athletic events if they hope to curb binge drinking, alcohol abuse, and unruly fan behavior. They maintain that a tag line at the end of an advertisement to drink responsibly is not enough. Simply put, they feel that alcohol advertising has no place at university-sponsored events.

The third issue in the CSU memorandum is item Number 14 under the advertising policy guidelines that stated: "This policy does not restrict the amount or content of alcohol advertising, purchased independently through commercial radio or television companies, during broadcasts of athletic events. However, broadcasters under contract with a CSU institution should be strongly urged to follow the above provisions when accepting commercials that promote alcohol beverages" (p. 3). This issue concerns what the institution has the right

to control when certain aspects are out of its hands, similar to the university owned and operated facilities debate. When athletics events are sold to television or radio outlets, how much control an institution has over the commercials that are run in between the actual event is most always subject to the rights-holder. Broadcasters are not obligated to comply with the NCAA or other conference-issued encouraged policies, but instead are held to only contractual agreements that dictate which companies can or can not be affiliated with a television or radio production. Even for UC-Davis, an institution where alcohol is not permitted, this exception is allowed by the university: Otis (2006), director of marketing, noted:

We have an exception regarding our existing alcohol policy and it is with our radio broadcasts for our football and basketball games. UC-Davis athletics does not own all the inventory for the radio spots aired. Therefore, the radio station is allowed to sell its own spots to whatever company it sees fit.

The bottom line is that an institution that chooses to move away from advertising alcohol could get rid of every print advertisement, every sign in its stadium, and every sponsor logo on the back of its tickets, but when it comes down to the TV and radio commercials in which its athletics teams are being featured, it has little, if no say. One of the biggest money-making revenue streams in intercollegiate athletics is the seven-year, one-billion dollar deal the NCAA struck with CBS to air its men's basketball championship at the end of March, also known as "March Madness." This money is distributed to the NCAA, the conference offices and the member institutions and is a huge revenue boost and an important business deal for many athletics departments. However, the NCAA has very little say over what commercials are being broadcasted during the men's basketball games. CBS has the right to accept any sponsor,

and, many times, beer and other alcohol companies are at the forefront of this discussion because of the demographic of the men's basketball fan base. A study by the Center on Alcohol Marketing and Youth showed that:

In 2002, alcohol companies spent \$58 million on advertising during college sports. Fifty-eight percent [sic] of this came from four major beer brands: Bud Light, Miller Lite, Coors Light and Budweiser. Of the \$58 million, \$27 million was spent on advertising during the 2002 NCAA Men's Basketball tournament, which featured 939 alcohol ads, more than the Super Bowl, World Series, Monday Night Football and college bowl games combined. (Moore, 2004, para. 5)

This advertising is counter to the NCAA's policy that beer commercials "be limited to 60 seconds every hour (still the current standard) and the spots had to be educational, promoting moderation and designated drivers" (Badger, 2004). Still, despite the efforts of the NCAA to limit beer commercials and control the messages being disseminated, universities can do as they please although they must contend with public vs. private issues.

Public vs. Private Institutions

The second issue that an institution must take into account when discussing its First Amendment right to advertise alcohol on campus, is what guidelines it is held to, in terms of being a public or private university. In an interview, Wayne Giampietro, an attorney specializing in First Amendment cases, noted:

If it's a private institution with its own private endowment and all that, I don't think the government can touch that. If it's a state-supported school it might get a little different. If the government is talking about making regulations for its own entity, it would have a little more leeway because it's their property and it's the public's money. (2007)

Although they would have to withstand First Amendment challenges, public institutions could be held to strict government guidelines should the state

wish to pursue and enforce them on a campus funded with state money. When asked whether public or private university athletics departments should be allowed to promote at-risk products to audiences with mixed-aged demographics, Giampietro said: "That's an interesting question. I've never seen that where that issue has come up before. There's a dichotomy of what is merely bad taste but constitutionally-protected and which you can't legitimately prohibit." Giampietro said that there is a possibility the government could try to restrict such alcohol advertising for public institutions on the basis of it not being compatible with its educational goals. Citing a precedent in a U.S. Supreme Court case that found for a high school when students held up signs reading 'Bong Hits for Jesus,' he explained:

The court said that the school could prohibit that because it could possibly disrupt the educational goals and endeavors of the school. I'm not sure I agree with that opinion, but that opinion would tend to give the government the right to decide that certain types of advertising could be prohibiting what the school was trying to do and its educational mission and give it the right to prohibit or certainly regulate certain types of advertising. Probably these days there is some leeway for the government to say some types of advertising aren't permitted. And that will stay the same until the personnel on the Supreme Court changes, and who knows when that will be.

Although private institutions might have more freedom to do as they wish as compared with their public counterparts, both types of institutions need to be aware that legal issues could come in the form of a civil suit.

Civil Suits

Another ramification for institutions to consider when discussing legal issues is that of civil suits. As previously discussed, an institution has the legal right to advertise with any corporation it so chooses, including those that hawk at-risk products. When asked if that institution could be held liable if something

tragic were to happen to one of its student athletes, whether it be binge drinking or drinking and driving, Giampietro replied:

I think it would be a stretch to hold a school liable just because there's a relationship with some company that makes beer. . . . But, if the school knows that this is going on, and after every football game the players are going out and getting absolutely smashed and they let that go on again and again, then I think the school becomes liable.

Giampietro referred to a case in Illinois in which a trial court found the parents guilty of contributing to the delinquency of a minor because they let their underage son and his friends drink at their house and then leave the house and drive their car into a tree; they were killed:

I think that same kind of theory applies, certainly in the civil context, if the school knows that this kind of binge drinking is going on and it allows it to continue, then I think that its got some serious liability. Even though a lot of students are of legal age at the college level, I still think they are somewhat still in the protection of the school. I think the school has a duty to not let that stuff go on. They could be liable under some circumstances, but most certainly civilly.

Certainly in many cases where binge drinking is occurring on campus by student athletes, athletics administrators are not aware of the situation because the athletes fear retribution if their coach or other athletic department officials were to find out. Prosecutors would have to find ample evidence that the university and its administrators did know what was happening after-hours, at bars, and at parties. In defense, it could be argued that that information was not common knowledge. Still, Giampietro noted that institutions should "go very slowly and tread very lightly" when looking to embark upon a relationship with an at-risk company.

Dilemma 2: Revenue

Revenue is a key component of this discussion because the financial implications in intercollegiate athletics are huge. Not only are corporate sponsorships essential to the operating budget of all athletics departments, but the trade-outs that a university can negotiate with companies can keep overhead down and the value of the athletics department up. For UC-Irvine, this is a major reason that it partners with local breweries to help stay afloat in a saturated Los Angeles environment. Ray (2007), director of corporate relations, stated: "We don't have any breweries or restaurants that are providing a significant amount of cash. What they do provide us is a trade-out for special events or business meetings, things of that nature. That would impact our bottom line."

Although Susan Collins, senior director of development at UC-Davis, spoke more of lost opportunity, rather than lost revenue, a monetary value can be affixed to choosing to not advertise with alcohol companies. Otis (2006), director of marketing, added: "Based on other major UC-Davis athletic sponsorships, I feel it is safe to say that \$250,000 in revenue is lost on an annual basis due to not advertising with at-risk companies." For all athletics departments, not just those on the smaller scale of UC-Davis, this is a large sum of money. However, it is not looked at as a negative component, merely just the way things are done at the institution. There is a complete understanding that more effort has to be put into seeking out neutral corporate sponsors. Otis stated:

Revenue is subsidized by essentially attacking non-at-risk companies and not thinking of alcohol as lost revenue, rather not an option. There are literally thousands of companies out there and while it may be a bit more challenging, there are plenty of other opportunities.

For Cohen, marketing director for Fox Sports Net Properties, which deals with the collegiate marketing aspects of the Pacific-10 Conference, the stance is much of the same when it comes to so-called lost revenue from at-risk companies. Her role at the agency dictates that she not seek out at-risk advertising because of the nature of the Conference. When it comes to these sponsorships, Cohen stated: "It's something that the Conference has decided against in securing those types of sponsorships. With our relationship with the Conference, we don't actively pursue those types of companies." Because of these stipulations, Cohen and the other account managers have to find other resources for corporate sponsors. But, she contended that this is not as challenging as it may seem on the surface, noting that there are other clients who are just as willing as at-risk companies to commit large amounts of money:

I think that you can make it [revenue] up. The kind of sponsorship money that you could get from a company that sells alcohol, for example, can be made up in other ways with other clients who have just as much money and who might not pose the same social responsibility problems that would come along with partnering with gaming or alcohol.

The good news for those institutions that choose to not partner with at-risk companies is that neutral sponsors or non-at-risk companies are also available in large numbers to partner with athletics departments. For some institutions, the ability to bring in a lucrative contract with an alcohol company might be too good to pass up, but Cohen does bring up an interesting point concerning social responsibility and the implications of advertising such products. For universities that do not enter into an alcohol relationship, they do not incur the cost of social responsibility.

The Cost of Social Responsibility

Social responsibility plays an important role in the decision-making process an institution goes through when it decides whether to enter into a relationship with potential at-risk sponsors. For most institutions that do enter into this type of relationship, it is understood that the advertising or the sale of alcohol needs to be accompanied by a tag line or some sort of warning as to the dangers of the product. This message comes at a price and should be taken into account when institutions are looking at the net gain of entering into such a relationship. Whether it be in an additional public service announcement to explain the dangers of drinking or the more subtle public relations efforts to ease or justify such advertising, these messages cost money. Cohen noted:

You would need to spend money on the social responsibility end of it so that your audience understands drinking and driving or gambling and the problems that come along with it. So you would have to have some sort of PSA that comes along with it, which is an expense. I think you could easily make it up in other categories. I don't think the money is really worth it.

UC-Irvine's Ray agreed, noting that although promotion of such a product would be targeted to an over-21 demographic, including alumni and donors who were most likely beyond their undergraduate studies, there would still need to be an element of social responsibility:

For us, and I would imagine at other institutions as well where they are allowed to operate under these parameters, if we did bring an alcohol partner, it would be on a basis where they were tied into our over-21 crowd. We certainly wouldn't target towards students, but maybe more with our donors, season ticket holders, television broadcasts, things of that nature. At the same time, I think you have to have a responsible element to it where there is a component that speaks to students and that is the responsible drinking message.

Universities and athletics departments must ask themselves what is it worth to partner with alcohol companies or breweries. As discussed throughout this study, there are many issues to take into account, some more subjective than others, but when dealing with revenue and dollar figures, social responsibility must be figured into the equation. Athletics departments will have to determine who bears the cost of creating the PSA, is it the institution or the sponsor? Further, athletics department officials should take note of the other financial implications discussed in dilemma one, such as civil suits, should something go tragically wrong with student athletes, donors, or fans. Athletics administrators, in their strategic, critical planning and risk assessment meetings, need to figure social and other costs of doing business with an at-risk sponsor.

Dilemma 3: Ethical and Moral Implications

The ethical and moral implications of universities advertising alcohol is probably the most contentious issue of the four-part dilemma. To some, the parental role that universities take on when bringing in young adults from across the world, comes with the expectation that they will maintain higher standards. Student athletes are not allowed to hawk products under NCAA rules for many reasons, most notably to protect them from being taken advantage of by agents. It would not fit with the model of amateurism for college student athletes to have their names or images used for endorsements. Similarly, many feel that athletics departments are crossing the line when stadiums, that these same student athletes are playing in, are adorned with at-risk product advertising, or that commercial breaks on radio or television are filled with the same advertising. Opponents of alcohol advertising maintain that it sends the wrong message, and that universities are obligated to protect

student athletes from potential harm to themselves. In contrast, those who do not find fault in advertising alcohol in intercollegiate athletics maintain that such promotion is aimed at, and consumed by, the legal age demographic. Further, they argue, socially-responsible messages accompany all advertising and that more is actually being done to combat alcohol abuse with the advertising in place, than having none at all. They argue that, since commercial speech and advertising are protected under the First Amendment, consumers should be allowed to determine for themselves what products to purchase, alcohol included. Although it is unlikely that either side will see the truth in one another's argument, there are valuable points to address from both those who find it unethical to advertise alcohol in intercollegiate athletics and those who do not find fault with such product promotion.

Proponents of Alcohol Advertising

College marketers play a critical role in the successful partnership of college athletics departments and corporate sponsors. In many cases, the athletics department will outsource this work to maximize sponsorship and media-rights opportunities. Learfield Sports Properties is one such company that deals with a host of college athletics departments that want to bring in as much revenue as possible for the school. Laird Veatch, regional vice president, further explained the Learfield model:

We have a relationship with each of the schools that we work with where we pay a rights fee for all those rights, whether it be radio, television, print, signage, in-game promotions, all those opportunities. We bundle those together and then we pay the athletic department for them and then work together with them to maximize all the revenue opportunities for them. (2007)

Learfield Sports Properties does have schools that choose to market with at-risk product advertisers and, in fact, Veatch said: "I would say the majority of our partners are okay with that [partnering with alcohol or breweries] in different respects." The marketing includes in-game signage, broadcast commercials, print material, or public address announcements. When asked if there were moral or ethical implications in doing so, Veatch responded: "I think the question really comes down more to the demographic," explaining that in his experience the demographic "skewed a lot higher than students." Veatch also noted that social responsibility comes from the sponsor and that it too, is just as aware of the ramifications as athletics departments:

I know that particularly from our relationship with Anheuser-Busch in the past, they have been always very, very conscious that when it is a message that's in stadium or it's going to get more eyes and ears from students then maybe a radio broadcast, they are very attentive to the 'know when to say when' type message and promoting non-alcoholic beverages. They always use it in those manners which I think is appropriate.

Learfield Sports Properties is not the only company that holds this view. Brandon Bernt, formerly of Affiliate Marketing, and now working in the online poker industry, came to much the same conclusions as Veatch when dealing with college athletics departments. More aggressive than other conservative companies, his group received requests for alcohol advertising, mainly at football and men's basketball events. Bernt (2007) noted: "The students are adults and should be treated as such. They are like any other market when it comes to advertising; they need to understand that they are accountable for their actions when consuming alcohol." Bernt agreed that there does need to be some sort of social responsibility tag line whenever the product is advertised, but "once it is known, however, it is up to the consumer to be responsible." For UC-

Irvine, partnering with alcohol companies or breweries works, as long as it is narrowly drawn in that it is geared toward those of a legal age, there is no permanent signage in athletics facilities, and there is a social responsibility context to everything that is being advertised.

Opponents of Alcohol Advertising

For others, those parameters are simply not enough. Brian Carbone of Campus Solutions, Inc. works with a variety of sponsors to get their messages out on university campuses. Carbone said that morally, he could not justify working with such companies to help sell their products to a potentially underage crowd. Carbone explained that “we’ve had standards that we don’t affiliate ourselves with three types of companies--alcohol, tobacco, and credit card companies. Even though they have a lot of financial backing, I remember being in college and feeling like it was not appropriate” (2007). Carbone added that the defense of a legal-age demographic is not enough because an advertisement can influence an underage consumer as well. He noted that the argument will be made that a percentage “of the student population is of age, so it is a great targeted market for us and we are only trying to reach those that are 21 and older, but it’s going to influence the underage students just as much.” Carbone is so adamant against advertising such at-risk products that he even went so far as to create and market the Cab Card program, which allows parents to purchase prepaid taxi vouchers for their students in college. He stated that, despite the red tape in even getting on campus to market any sort of product in the first place, there were not pressures from campus administration to not affiliate with certain at-risk companies:

As an industry there are no guidelines or real pressures, but it’s just something that we kind of felt that in our beginnings, we were doing

things to avoid alcohol and instances where there are accidents and influences by drinking. As a company, it didn't make sense and it was too hypocritical.

As previously noted, Cohen, marketing director for Fox Sports Net Properties, has much of the same take on working with potentially hazardous sponsors. She reiterated that universities have a parental role when school is in session: "You tell their [student's] parents that you're going to take care of them and look after them and that means on every level. . . . The university is being the parent away from home" (2007). In addition to the company's standards, Cohen personally agrees with not advertising alcohol:

My personal opinion is I don't think the money is worth it to advertise and it is the wrong message to give the fans. Even if you have an off-campus stadium, I don't think alcohol should be served. I know it's a money-maker for the city and some of that revenue would go back to the school so it's a significant amount of money for the city and the school to lose but it's such a hypocritical message that you give to the fans. I think that the majority of collegiate fans understand the relationship between alcohol and the demographic of the students and the student athletes so there is that fine line.

Even First Amendment expert Giampietro had a hard time accepting the decision to advertise, despite constitutional protection to do so: "Could they legally do it? Yeah probably. Should they? I think not. Because where do you draw the line, do you start giving naming rights to every building on campus" (2007)? He added that there is "something really unseemly about having an educational institution that is supposed to be teaching people how to think critically and sort out what is right and wrong and, at the same time, it is being bought by some private entity." For UC-Davis, the decision to not advertise with at-risk companies allows it the freedom of not having to defend a sponsorship decision based on moral or ethical implications.

Dilemma 4: Student Athletes and Drinking

Research has shown that student athletes are more susceptible to binge drinking than their non-student athlete counterparts. Individuals in college are often of legal-age, and a saturated drinking environment can be filled with local bars, taverns, and clubs advertising drink specials, which brings in a cash-poor college crowd. But for student athletes, this drinking appeal could be even more dangerous. Wechsler and Wuethrich (2002) found that there was “no doubt that college athletes are at a statistically higher risk for alcohol abuse and exposure to its secondhand effects than non-athlete students” (p. 55). This does not come as a surprise to many people working in the athletics industry. Ann Caslin, certified athletic trainer at UC-Berkeley, has worked at three Division I institutions and with more than 500 student athletes in her career in athletic training. Knowing the nature of the world that these student athletes live in, she has grown accustomed to their vulnerability to such at-risk products. When asked if she was surprised by the findings of the Wechsler and Wuethrich study, she replied:

No, I'm not surprised because if I had to guess I would say that part of it has to do with their competitive nature. They try to out do one another so it could be like competing against one another. I also think that they have limited time windows when they can drink because of competition or team rules so when they do, they go for broke. They try to get in as much as they can. (2007)

Otis, director of marketing at UC-Davis, agreed with Caslin: “Many athletes may not be able to drink very often, but when they do, they drink more than their non-athlete counterpart. It seems as though non-athletes drink more often; however, athletes will drink a lot more when they do drink” (2006).

Rochman (2000) identified athletic trainers as playing a key role in alcohol abuse prevention among student athletes. Trainers are important because they

often have the most direct contact with the student athlete and are aware of the individual's health habits. She wrote: "Too many athletic trainers have seen the signs too often: student athletes who are late for practice, who miss training room appointments, who are no longer performing well. These signs of alcohol abuse can be troubling" (2000, p. 1). She also noted that student athletes are more susceptible to binge drinking: "In fact, when it comes to drinking, and binge drinking in particular, athletes who are team leaders are all too often ahead of their peers in this area as well" (p. 1).

Collins, senior director of development at UC-Davis, explained that peer pressure could play a big role as student athletes feel the need to be accepted by their teammates, noting:

Athletes can be considered vulnerable since there is peer pressure among team members and this age group is especially susceptible to peer group acceptance. In some cases athletes may engage in binge drinking along with teammates, whereas, alone, that individual would not be doing that much drinking. They may also feel pressure to perform as an athlete and drinking is seen as a way to deal with the pressure. (2006)

Still, the group seemed divided when it came to whether universities should be held to a higher standard, knowing that their student athletes are susceptible to this kind of behavior. Cohen stated that this factor really shouldn't come into play and that, "regardless of who is more likely to binge drink, when you're in college it is the universal perception that students are going to drink. To be socially responsible as a university, you need to display the right message to people" (2007). However, Caslin (2007) stated: "I think they probably do [have ethical implications in advertising], but I think a lot of times ethical and moral decisions get bumped for money-making decisions."

The AMA has also called for a ban on advertising alcohol in college athletics. Dr. Richard Yoast, director of the healthy lifestyles division in the national association, explained that alcohol advertising reaches a wide market: "It is a ready-made market to get to them [underage audiences]. We just think that the athletes themselves are not supposed to be drinking, so why are you promoting a product that they are not supposed to be using" (2007)? Yoast agreed that trainers and doctors can have an immediate impact on student athletes in that they are dealing with them in a very personal, day-to-day manner. However, the NCAA has also taken steps to curb student athlete binge drinking.

National Inter-Association Task Force on Alcohol Issues

The National Inter-Association Task Force on Alcohol Issues was founded in 1983 to work specifically with higher education institutions to combat issues of drugs and alcohol. The organization's main mission is to provide students with more than a book education, giving them skills and tools to perform successfully when they graduate. Mary Wilfert represents the NCAA as its committee member, striving for educational programs for student athletes as they relate to alcohol and other at-risk products. Wilfert, an NCAA administrator of drug-education and testing programs, has extensive experience when dealing with student athletes and combating the issue of alcohol in students' lives. When asked how she responds to those who say it's immoral or unethical to advertise alcohol on campus, Wilfert responded:

Each campus must determine whether benefits outweigh the potential risks of alcohol advertising on their campus. Obviously every campus has its own unique demographics and needs, and each needs to consider these within the context of the body of literature that speaks to this issue. (2007)

Wilfert is cognizant of the fact that the NCAA can only do so much to encourage its institutions to adopt the no-sale, no-advertising policy of alcohol, stating: "The NCAA has established its own policies restricting advertising and forbidding the sale of alcohol at championship events that it governs and encourages its member institutions to consider similar policies for their events." Ensuring that student athletes are educated on the harmful dangers of binge drinking and alcohol in general is something that the NCAA strives for across the board, regardless of whether universities choose to partner with at-risk corporations:

Institutions should establish clear written policies with input from all constituents, including student athletes, engage in a discussion of these policies and consequences with their student athletes, and conduct routine educational programming on this issue. In addition, attention should be paid to intervention and treatment services for those in need.

For student athletes, there are great sources of information and education available to them when it comes to the dangers of binge drinking, which can be prevalent among their peers. The NCAA and its member institutions go to great lengths to ensure that individuals are aware of the consequences both on and off the field and work to maintain a positive dialogue about alcohol among student athletes and administrators.

CHAPTER V

Conclusion

The important decision of whether to partner with an alcohol company is not one that can be taken lightly. As discussed throughout this study, four dilemmas in advertising alcohol must be addressed. They include the legal aspects of protected commercial speech under the First Amendment, revenue and the cost of social responsibility, the moral and ethical implications, and student athletes and their susceptibility to binge drinking and alcohol abuse. University decision-makers must take into account how important it is for their institutions to advertise and sell alcohol and, in turn, if they choose to do so, how they manage the intoxicated individuals in their stadiums and arenas.

Commercial speech has enjoyed increased protection under the First Amendment despite animated opposition from several U.S. Supreme Court Justices. Although it is not given the same protection as other speech, it does have substantial protection. When it comes to alcohol and other at-risk product advertising, the U.S. Supreme Court has generally ruled that it should be the product that is regulated, not the advertising.

The voluntary NCAA policy encourages universities to ban alcohol advertising and it sets an example for member institutions by limiting alcohol advertising at its championships. This research has shown that, although institutions such as UC-Davis do not advertise alcohol or other at-risk products on their campuses or at their athletics events, others, including UC-Irvine, do not preclude alcohol companies or breweries as sponsors. In contrast to the NCAA's voluntary policy, the 23 universities in the CSU system--all of which are NCAA members--are subject to a much more rigid policy. The CSU prohibits the sale of

alcohol at athletic events. However, it allows alcohol advertising, consistent with First Amendment protections, but bans the product.

The Four Dilemmas

Universities must address all four dilemmas discussed in this study. First, athletics departments must be aware of legal aspects of the protection of commercial speech, public vs. private institutions, civil suits, and NCAA and conference-encouraged or enforced guidelines.

Second, revenue needs to be considered, including social responsibility costs. NCAA President Myles Brand has made his feelings on revenue very clear. Universities and athletics departments should be allowed to generate revenue wherever they can, as long as that money is given back to improve the welfare of the student athletes. Commercialism, he argued, is helping, not hurting intercollegiate athletics, because athletics departments are able to use advertising revenue to operate with larger budgets and increased revenue. Although not everyone agrees with Brand's assessment on the issue, it is important to recognize that athletics departments must be able to keep up with what is known as the arms race, the competition among athletic departments to recruit the best student athletes through facilities and student athlete opportunities.

Although UC-Irvine does not receive money from alcohol advertisers, it does use trade-outs from breweries, which help keep its event costs down. Also, as discussed by Cohen (2007), universities that choose to advertise alcohol will incur production costs in creating PSAs to promote responsible drinking. UC-Davis said that about \$250,000 in annual revenue is lost by not partnering with

alcohol companies. To make up for that revenue, UC-Davis has had to find other sponsors to generate advertising revenue.

Third, ethical and moral issues must be addressed to determine what public relations efforts will be made should the institution choose to partner with at-risk sponsors and face potential public criticism. UC-Davis campus policy prohibited it from advertising alcohol so ethical issues did not need to be addressed. UC-Irvine explained that intentionally targeting an underage demographic would be considered unethical so it prohibits permanent signage at its athletics events and limits alcohol at events where only alumni or people of-age are present.

Finally, universities must work with their medical and athletic training staff to monitor the state of their student athletes and what is being done to combat binge drinking among players and teams. Caslin, a certified athletic trainer at UC-Berkeley, said that she had worked with the Life Skills department on campus to sponsor speakers on athletics and alcohol to educate current student athletes.

In summary, as long as an athletics department can say that it has considered the four dilemmas, the decision of whether to advertise alcohol can be justified by the university.

Contribution to the Literature

Previous research on alcohol advertising to college students, as shown in the literature review for this study, has primarily centered on the effects of advertising on drinking behavior. In research focused on the drinking habits of the student athlete, Wechsler and Wuethrich (2002) found that more than half of male athletes and just less than half of female athletes were binge drinkers.

Another study documenting alcohol abuse among student athletes, as compared to their non-athlete counterparts, was conducted by Kueffler et al. (2005). They found that student athletes were more likely to drink twice a week for recreation, as compared with non-student athletes who were more likely to drink once a month for recreation. In focusing on marketing to the college student population, Kuo et al. (2001), who examined the environment surrounding college campuses and assessed the impact on students' drinking, found that the price of alcohol had a direct influence on college students and young adolescents, even more so than the average adult.

When it came to television, Zwarun and Farrar (2005) looked at sports to examine depictions of drinking, portrayals of intoxication, drinking accompanied by risky activities, and underage characters. The duo showed that male adolescents, as compared with their female counterparts, responded more positively to beer advertising, especially those commercials that were sports-related. Looking specifically at college athletics, Lee (2004) examined revenue generation for universities from beer advertising and found that 70% of the NCAA's 117 Division I-A programs have deals either directly or through their rights holders.

Although this study is not a social science effects study, it used the findings noted above to develop the conceptual framework for the research. This public policy study extends the literature to a macro-level of analysis by examining First Amendment protections for alcohol advertising and how this has affected athletic policy at NCAA universities, especially at UC-Davis and UC-Irvine. A major public policy contribution of the study is the formulation of the four

dilemmas that universities must consider when they decide whether to advertise alcohol at athletics events.

Universities in the process of reviewing their policies on alcohol advertising have two models for decision making. The research explains both how and why UC-Davis operates under a policy of prohibiting advertising alcohol and how and why UC-Irvine operates under a policy of permitting alcohol advertising. Understanding how each of the four dilemmas can affect athletics departments can assist universities as they determine whether to enter into a relationship with a company wanting to advertise its at-risk product. This research is important for intercollegiate athletics as it provides information on the advantages and disadvantages of advertising alcohol. The case study provided evidence that the advantages for advertising alcohol are revenue-based. The amount of money to be gained in partnering with an at-risk company is significant; similarly, the amount of money that can be lost in not partnering with an at-risk company is significant. This case study showed that the disadvantages for advertising alcohol can include the possibility of legal action from civil suits, a negative public image, and contributing to the susceptibility of student athletes to binge drinking.

Directions for Future Research

What research should be done in the future will need to be based on decisions made by the NCAA and national conference offices. For example, if the NCAA decides to adopt all or part of the CSU memorandum, a case study could be conducted with a university or an entire conference as it confronted a directive prohibiting the sale and advertising of alcohol.

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APPENDIX INTERVIEW TRANSCRIPTS

Institutional Administrators

1. Brian Otis, Director of Marketing, UC-Davis
2. Susan Collins, Senior Director of Development, UC-Davis
3. Robby Ray, Director of Corporate Relations, UC-Irvine
4. Nicole Strange, Athletics Event Manager, UC-Berkeley
5. Ann Caslin, Certified Athletic Trainer, UC-Berkeley

National Association Professionals

1. Mary Wilfert, Associate Director, National Collegiate Athletics Association/National Inter-Association Task Force
2. Wayne Giampietro, Director, First Amendment Lawyers Association
3. Richard Yoast, Director/Division of Healthy Lifestyles, American Medical Association

Marketing/Advertising Professionals

1. Renee Cohen, Marketing Director, Fox Sports Net Properties
2. Laird Veatch, Regional Vice President, Learfield Sports Properties
3. Brian Carbone, Marketing Director, Campus Solutions, Inc.
4. Brandon Bernt, Marketing Associate, Affiliate Marketing

1. Your existing campus policy does not allow for sponsorships to be sought from at-risk companies such as those promoting alcohol. What was the rationale behind this decision?

Brian Otis, UC-Davis: Having sponsorships of at-risk companies is considered by many here at the university to be promoting, and therefore accepting of activities such as alcohol consumption. UC-Davis athletics has made a philosophical stance that the department will not advertise for any at-risk companies, nor support any at-risk activities at its events. The department will not participate in activities that do not comply with the core values of its mission.

Susan Collins, UC-Davis: As a campus with a focus on educating students and providing a safe and sound environment, the promotion of alcohol would not be consistent with other messages being sent to encourage a healthy lifestyle.

Nicole Strange, UC-Berkeley: I don't know what the rationale was, but we don't allow it. We don't allow alcohol to be sold on our campus or at our athletic events either.

2. Did your institution ever have a different policy on this matter and when and what changed?

Brian Otis, UC-Davis: UC-Davis athletics has always had a no-tolerance policy regarding sponsorships of at-risk companies.

3. Does FSN Properties allow for sponsorships to be sought from at-risk companies such as those promoting alcohol?

Renee Cohen, Fox Sports Net Properties: No. It's something that the Pac-10 Conference has decided against in securing those types of sponsorships. With our relationship with the Conference, we don't actively pursue those types of companies. I know that some of the individual schools might have relationships with alcohol or gaming companies, and that is based on the presidents and the athletics directors' decisions. It's not something that the Conference mandates across the board; it's something that is up to the individual presidents and athletics directors if they want to get those types of sponsorships. They have to be careful of the rules and whether the events are televised and so forth, but it's up to them and their policies.

4. Was it ever agreeable for FSN Properties to secure these sponsorships from at-risk companies such as those promoting alcohol?

Renee Cohen, Fox Sports Net Properties: I don't think so. I think it was just always something that the Conference has decided against. It was just easier to avoid having that type of relationship with those specific types of sponsors, rather than getting yourself in the mix of all the types of rules and problems that might come along with it. As a Conference, it was decided to step back from that. Properties has always respected that decision.

5. Does FSN Properties ever get approached by at-risk companies wishing to establish a relationship with the Conference?

Renee Cohen, Fox Sports Net Properties: In the past we have, and we've just always said we don't try to get any kind of alcohol or gaming sponsorships. Over the years, a lot of those kinds of companies, when it comes to collegiate properties, they don't necessarily actively push and seek those sponsorships. I think it's more if the collegiate property approaches them. We don't get solicited by those companies on a fairly frequent basis in any sort of way. I think it's sort of a universal, understood rule that they don't actively seek those kinds of sponsorships.

6. Is there a significant amount of revenue that the Conference does not tap into when it doesn't have sponsorships with those at-risk companies?

Renee Cohen, Fox Sports Net Properties: No. I think that you can make it up. The kind of sponsorship money that you can get from a company that sells alcohol, for example, can be made up in other ways with other clients who have just as much money. And who might not pose the same social responsibility problems that would come along with partnering with gaming or alcohol. You would need to spend money on the social responsibility end of it, so that your audience understands drinking and driving or gambling, and the problems that come along with. You would have to have some sort of PSA that comes along with it, which is an expense. I think you could easily make it up in other categories. I don't think the money is really worth it.

7. Have you ever been employed by an institution or a conference where sponsorships with at-risk companies were sought?

Renee Cohen, Fox Sports Net Properties: Yes, when I was at the University of Miami. When I was there, Bacardi was one of the biggest sponsors, mainly because Bacardi was based in Miami. I believe we also had a deal with Budweiser. When I was there, Miami was still in the Big East and for stadium signage within the Orange Bowl, the Big East mandate allowed their schools to acquire those types of sponsorships. As long as when it was a televised event, it was placed in certain locations so that the television did not capture that signage. When I went back, Bacardi was still a sponsor, but not in the same capacity. I think part of that is because they used to sell alcohol at the Orange Bowl and there were so many issues the last couple of years. As their program got better, instead of having 30,000 fans, they were having 90,000 fans, which brings so many more problems serving alcohol at the stadium. The president then wanted to get away from even having those types of sponsorships. I think they still have Bacardi, but not in the same capacity. When I was there from 2000-2003, there were places that we could place the signage, and then we also had to run a specific drinking and driving PSA as our television spot.

8. How much revenue do you feel is lost from not advertising alcohol? How do you subsidize that lost revenue?

Brian Otis, UC-Davis: Based on other major UC-Davis athletic sponsorships, I feel it is safe to say that \$250,000 in revenue is lost on an annual basis due to not advertising at-risk companies. That revenue is subsidized by essentially attacking non at-risk companies and not thinking of alcohol as lost revenue, rather not an option. There are literally thousands of companies out there and while it may be a bit more challenging, there are plenty of other opportunities.

Nicole Strange, UC-Berkeley: If we sold it in our stadium or in our arena, but we didn't have advertising then I think we would lose revenue. But because we don't have either, I don't think we do lose money.

9. What concerns does your institution have in terms of subsidizing lost revenue from alcohol companies?

Susan Collins, UC-Davis: Since we have never had income from this source, there is only the lost opportunity, not lost revenue.

10. Do you face pressures from campus administration in terms of agreeing to not advertise alcohol or other at-risk products?

Brian Otis, UC-Davis: Pressures, no. There are no questions or debates, UC-Davis athletics will not advertise any at-risk products. This is a philosophical decision made by the university, and it is something that UC-Davis athletics will conform to.

Susan Collins, UC-Davis: There have been no complaints over the past five years.

Robby Ray, UC-Irvine: Well I don't know about pressure. There has been guidelines there, but I haven't ever had anybody in administration go through everything we're doing to make sure we're adhering to those policies.

11. What pressures do you face from the student population in terms of agreeing to not advertise alcohol or other at-risk products?

Susan Collins, UC-Davis: This has not been an issue with students. The only comments the campus has heard have been from alumni or other adults who have expressed the desire to be able to drink in a controlled setting, like a club room prior to a game.

12. What advice can you give to institutions who are considering moving away from alcohol sponsorships?

Brian Otis, UC-Davis: If an institution currently has alcohol sponsors, and is looking to move away from that, it will definitely be a challenge to absorb the financial impact that the institution will take. Before making such a decision, I feel an institution should fully examine the opportunity to have at-risk companies get involved in the education of students of higher education on how to responsibly engage in certain activities. If a university's philosophical ideals are to move away from alcohol sponsorships after that, my biggest advice is to make sure the mentality of the sales force is to eliminate all attitudes of 'what if'

or 'if we could only.' The department must accept the change, not dwell on it and get creative to generate new revenue. No excuses.

Mary Wilfert, National Collegiate Athletics Association/National Inter-Association Task Force: This is an institutional development issue, and an area outside of my expertise.

13. What exceptions are made to this existing policy and how do you enforce and deal with any backlash on this?

Brian Otis, UC-Davis: We have two exceptions regarding our existing alcohol policy. First, is with our radio broadcasts for our football and basketball games. UC-Davis athletics does not own the inventory for the radio spots aired. Therefore, the radio station is allowed to sell its own spots to whatever company it sees fit. With that said, there are still strict rules on the verbiage of the spots that must conform to FCC rules and regulations. The second exception is regarding the Aggie Auction. The Aggie Auction is a fund raiser for our Grant and Aid Program for student athletes here at UC-Davis. We are permitted to have alcohol sponsors for this specific event, due to the fact that there are no students involved. Regarding backlash, we have not had any because we have received prior approvals from the necessary people here on campus. We will never solicit any at-risk companies that do not fall into the two exceptions listed above.

14. How do you respond to those who say it's immoral or unethical to advertise alcohol on a campus of higher learning?

Brian Otis, UC-Davis: I don't feel it is immoral or unethical to advertise alcohol on campus, but I do feel that if you do advertise alcohol, it is also your responsibility as a place of higher education to promote safety. College students are going to drink. So my opinion is to educate the students to drink responsibly and avoid the senseless accidents that can potentially arise due to alcohol. There is more to college than opening a book. It is also a time to teach life experiences, so why not contribute to those life experiences in a positive manner? From my experience I have seen a strong mentality by many people at the university who feel that, if we don't talk about it, it doesn't happen. I don't see that when it comes to alcohol, and feel it is something to be talked about to hopefully avoid dangerous situations.

Robby Ray, UC-Irvine: Unethical or immoral to advertise to college kids? If you're intentionally targeting an underage demographic then I would agree with it.

Mary Wilfert, National Collegiate Athletics Association/National Inter-Association Task Force: Each campus must determine whether benefits outweigh the potential risks of alcohol advertising on their campus. Obviously, every campus has its own unique demographics and needs, and each needs to consider these within the context of the body of literature that speaks to this issue.

Laird Veatch, Learfield Sports Properties: I think the question really comes down more to the demographic. Particularly when you look at our radio and television networks, those kinds of things, the demographic actually skews a lot higher than students, although certainly we are on a college campus. It depends on the medium that you are utilizing, but typically as it relates to those two, I would suggest the demographic is a lot older than students.

And I know that particularly from our relationship with Anheuser-Busch in the past, they have been always very, very conscious that when it is a message that's in stadium or it's going to get more eyes and ears from students then maybe a radio broadcast, they are very attentive to the 'know when to say when' type message, and promoting non-alcoholic beverages. They always use it in those manners which I think is appropriate.

Brian Carbone, Campus Solutions, Inc.: I would agree with that statement. Someone could just as quickly say 50% of the student population is of age, so it is a great targeted market for us and we are only trying to reach those that are 21 and older. But we also know that it's going to influence the underage students just as much. It seems like there's a lot of gray area, there always really has been, but we, as a company just try to avoid it. If you're really trying to reach out to students, we won't try to do anything on campus, but let's consider some ideas through the bars and restaurants. We would say to them, let's not go on campus, but let's try putting some signage at the local bars, maybe not too local, but around the area. We would say, let's do some printing on the beverage coasters and do a sponsored night and reserve the bar and do promoting that way, rather than doing some signage in the basketball or football arenas, or even doing some sponsorship during the tailgating time frame before a football game. We would say, let's avoid that, but you can still reach that demographic by reaching out to students off-campus.

Brandon Bernt, Affiliate Marketing: The students are adults and should be treated as such. They are like any other market when it comes to advertising, they need to understand that they are accountable for their actions when consuming alcohol. It is always important to let that be known when marketing towards any age group. Once it is known however, it is up to the consumer to be responsible.

15. How do you respond to those who say that promoting at-risk products does a disservice to the student athlete population, those in the stands, and those in the viewing audience?

Brian Otis, UC-Davis: I do not believe promoting at-risk products is in any way a disservice to anyone that participates in an athletic event. Promotions involve revenue, which equates to scholarships and additional funds to improve the overall experience of the those in the stands and the viewing audience. Not talking about the issues of at-risk products is the only disservice I can think of.

Susan Collins, UC-Davis: We would agree. Promotion of alcohol again sends the wrong message. Student athletes should only be encouraged to do their best in their sport and on campus. Those in the stands and viewing audience should be encouraged to support the team, and individual and team work, not get loud and obnoxious.

Mary Wilfert, National Collegiate Athletics Association/National Inter-Association Task Force: The NCAA has established its own policies restricting advertising and forbidding the sale of alcohol at championship events that it governs. And it encourages its member institutions to consider similar policies for their events.

16. How do you ensure that your student athletes are responsible when it comes to participating in potentially dangerous activities such as drinking?

Brian Otis, UC-Davis: Obviously this is a huge challenge, but from my experience I have found once again, that educating student athletes of the effects of at-risk products such as alcohol is the best way to ensure student athletes are responsible. Yes, drinking can be potentially dangerous, but so can driving a car. Teach somebody how to drive and know their limits, that will help eliminate many dangerous situations. I think at-risk products fit into the same category. Educate students to be smart in how they engage in certain activities and hopefully they will be responsible in their actions.

Susan Collins, UC-Davis: The student athletes are required to attend a number of educational programs that discuss the issues associated with drinking and drug use, including anger management. Coaches are also required to attend classes to learn to detect behaviors associated with drug and alcohol abuse. The campus has a sports medicine program and a sports nutritionist to work with athletes, all of which are resources for the athletes.

Mary Wilfert, National Collegiate Athletics Association/National Inter-Association Task Force: Institutions should establish clear written policies, with input from all constituents, including student athletes, engage a discussion of these policies and consequences with their student athletes, and conduct routine

educational programming on this issue. In addition, attention should be paid to intervention and treatment services for those in need.

17. Research has shown that student athletes are more susceptible to binge drinking than their non-athlete counterparts. How do you react to this statement?

Brian Otis, UC-Davis: My initial reaction to this statement is to think about the lifestyle of a student athlete. Most athletes are extremely busy. Therefore, I feel it is safe to say that many athletes may not be able to drink very often, but when they do, they drink more than their non-athlete counterpart. From my experience it seems as though non-athletes drink more often, however athletes will drink a lot more when they do drink.

Susan Collins, UC-Davis: Athletes can be considered vulnerable since there is peer pressure among team members and this age group is especially susceptible to peer group acceptance. In some cases, athletes may engage in binge drinking along with teammates, whereas, alone, that individual would not be doing that much drinking. They may also feel pressure to perform as an athlete and drinking is seen as a way to deal with the pressure.

Nicole Strange, UC-Berkeley: I disagree that student athletes are more susceptible to binge drinking, I think all college students are. I think for fans it's part of the whole game. I don't think it really matters if alcohol is advertised or not.

Mary Wilfert, National Collegiate Athletics Association/National Inter-Association Task Force: The NCAA Study of Substance Use of student athletes identifies similar concerns, and provides the impetus for NCAA guidelines and resources to address the issue.

Renee Cohen, Fox Sports Net Properties: Regardless of who is more likely to binge drink or not, when you're in college it is the universal perception that students are going to drink. To be socially responsible as a university, you need to display the right message to those people. The majority of where your money is coming from, the people buying your tickets and donating back to your program, are the people that are of age, that have the money to do that, which is great. But then you have the whole demographic that you need to take care of as a university, especially when you have student athletes on scholarships. You tell their parents that you're going to take care of them and look after them and that means on every level, and the same thing goes for regular students. The university is being the parent away from home. I think it's the university's responsibility to be socially responsible, make sure that those students have the right messages, and understand the dangers that go along with those at-risk companies.

18. What is the NCAA doing to ensure that student athletes are responsible when it comes to participating in potentially dangerous activities such as drinking?

Mary Wilfert, National Collegiate Athletics Association/National Inter-Association Task Force: The NCAA provides guidelines and resources to its member institutions to educate student athletes. We administer a national drug testing program to reduce the use of performance enhancing drugs, and encourages collaboration across campus to enhance prevention efforts.

19. The NCAA is encouraging institutions to limit or ban their alcohol advertising. Do you feel institutions of higher learning should adhere to these guidelines?

Susan Collins, UC-Davis: Yes, definitely. Advertising for alcohol would not send the right message for higher education. Many of the students are under the legal age, but even for those of age, alcohol abuse among this age group is well documented. This abuse then leads to other related behaviors, including date rape and physical violence. The abuse does not promote exercising good judgment.

Nicole Strange, UC-Berkeley: Yes, I think they should if the NCAA says to do it, then they should do it. People see the NCAA as a governing body, but really it's the institutions that must want this to happen.

Brandon Bernt, Affiliate Marketing: No, I do not for the same reasons as stated before. College students should be no different then any other adults. The NCAA should not encourage institutions to limit or ban alcohol advertising in the first place.

20. Because your institution can not advertise alcohol at its sporting events, do you think this has affected the student population in a positive, neutral, or negative way?

Susan Collins, UC-Davis: Since we have never advertised, there is no effect to be judged. However, the campus wants to encourage attendance at athletic events to promote supporting a team, not promoting a "party."

Nicole Strange, UC-Berkeley: I think it would be neutral. If we advertised it, but didn't sell it, it would be a wash. We can't control what the students do outside of our facilities. But at our football games for instance, we have policeman at our student entrance to breathalyze our students if we think they are remotely intoxicated. If they are, they aren't allowed into the game and they

get a warning the first time. If it happens again, they get their tickets revoked for the whole season.

21. What concerns does your institution have to adhering to the First Amendment (limited protection of commercial speech), while protecting students from a potential danger of themselves?

Susan Collins, UC-Davis: The campus has a Code of Conduct for all students which states: "Alcohol Use on Campus - UC-Davis strives to maintain a campus free from the illegal use, possession or distribution of controlled substances. Manufacture, sale, distribution, dispensation, possession, or use of alcohol and controlled substances by University students and employees on University property, at official University functions, or on University business is prohibited except as permitted by law, University policy and campus regulations. Students violating applicable laws may be subject to criminal sanctions. Students violating University policies or regulations are subject to disciplinary action, including suspension or dismissal from the University, and may be referred for criminal prosecution and/or required to participate in appropriate treatment programs."

All state laws regarding alcohol and drug use apply on campus, as it is not a sanctuary from state law. All drugs made illegal by state and federal law are also prohibited by University policy.

Athletes are held to the same standard of conduct on the campus, and an even higher level of conduct by the athletic department. Failure to meet the standards can result in restricting eligibility, withholding grades, and censure and dismissal from the campus.

22. In California, certain conferences are prohibiting the sale of alcohol, but are not banning advertising. Do you agree with this approach? Will it change the atmosphere and environment of athletic events?

Susan Collins, UC-Davis: The campus wants to minimize the exposure to alcohol. Advertising would only be encouraged or considered if it promoted alcohol education.

Nicole Strange, UC-Berkeley: No. If they don't sell it in facilities, they shouldn't advertise it. It's almost like advertising for people to come drink before they get there. At our stadium, we don't have "ins" and "outs." At some schools, you can do that, enter the game, and then go back out and binge drink at your car and come back in. Even if they are advertising it, but not selling it, they are reminding people to go drink at half time.

Mary Wilfert, National Collegiate Athletics Association/National Inter-Association Task Force: Clear messages about legal and safe alcohol use should be a part of any message, whether it be through television commercials or print ads.

Renee Cohen, Fox Sports Net Properties: My personal opinion is, I don't think the money is worth it to advertise, and it is the wrong message to give the fans. Even if you have an off-campus stadium, I don't think alcohol should be served. I know it's a money-maker for the city and some of that revenue would go back to the school, so it's a significant amount of money for the city and the school to lose, but it's such a hypocritical message that you give to the fans. I think that the majority of college fans understand the relationship between alcohol and the demographic of the students and the student athletes, so there is that fine line. There's tailgating, obviously, but when you get in the stadium, as long as you keep the purity of what college sports is, you shouldn't have the signage either. If you're going to want your universities to stay away from those types of sponsorships, you shouldn't have signage in the arena and stadium.

Brian Carbone, Campus Solutions, Inc.: I would say it may be a little hypocritical. If anything, I would have to learn more about the statutes that are being pushed in California, but it would seem to be more pressing to alcohol and beverage companies to find advertising and even spend more money. It's a give and take situation where if anything, it could have a negative effect where they could say, we need to find more advertising venues and opportunities since the sale is no longer there. I think for California it could be a good idea, but let's hope it works.

Brandon Bernt, Affiliate Marketing: There should be no double standards when it comes to alcohol. How can you prohibit the sale, but receive money for the advertising? If you are going to take a stance, you should do it 100% or don't do it at all. Athletic events are not just college students; they are for alumni, fans, and families. Adults want to drink alcohol at sporting events, it's plain and simple. You are cutting a lot of revenue by not allowing them to do so.

23. Are you fine with the limited protection that commercial speech sees today under the First Amendment? If there was anything you could add or change, what would it be?

Wayne Giampietro, First Amendment Lawyers Association: You mean other than what the Supreme Court changes every time it sees a case? I think right now it's a pretty good test for commercial speech. The latest decisions from the Supreme Court have been pretty balanced for the most part. I think it is okay.

24. When it comes to at-risk advertising, should the government be able to regulate the product or the advertising message? Neither? Why?

Wayne Giampietro, First Amendment Lawyers Association: Well, obviously the government has the ability to regulate products. They do it in a number of different ways. For example, with alcohol, you can regulate it by age of people that can purchase it. There are a lot of regulations on entities that can sell it, you can only get a liquor license if you meet certain requirements, and things of that nature. Clearly the government does, and I don't think many people would quarrel with its right to regulate the product, especially if they have the potential to cause harm to people.

There is a little bit more controversy as to whether the government has the right to regulate advertising and speech about the products. Clearly, I think everybody would pretty much agree that the government should prohibit advertisers from making false claims about products. Flat out lying, I don't think there is a whole lot of controversy about that. The question gets a little more difficult when the government tries to regulate more about the speech regarding a product. I can't remember the name of the case, but there was a decision some while ago that pretty much has been overruled; that it was okay to sell the product, but you could regulate the advertising about the product. I doubt that is constitutional and I don't think that is legitimate.

Here's the situation that might cause some very interesting discussion. What if somebody was selling beer and they wanted to get a collegiate athlete to endorse that product. I think there is some real question as to whether that is proper and appropriate for an advertiser to do. To say I'm "Joe Shmoe," the quarterback of the football team. We just won our conference championship and after every game, me and my teammates go have five beers. I think there might be some kind of problem with that sort of thing, certainly if they are underage, there is a huge problem with that. I think they could certainly prohibit underage people from endorsing products and things of that kind. If they are of the drinking age, that's a much more tough question. I can see some areas where there might be some legitimate discussion on both sides of the issue, including what kind of advertising you could do about products.

25. Should consumers have the right to receive information of at-risk product advertising if they are mixed in with consumers that are not of age? (i.e. the crowd at a football game)

Wayne Giampietro, First Amendment Lawyers Association: Well if you are just talking about a billboard that says "Drink Budweiser" or whatever kind of beer you are talking about, I don't see how that is any different from going to a major league, or even a minor league sports stadium where they've got that kind of stuff on the walls. For example, the big rage these days is to give naming rights

to your stadiums and a lot of the professional teams do that. I just saw some college is doing it to now where it says for a million dollar donation you can name your football field "Anheuser-Busch Football Field." I would have a problem with the government saying you can't do that. Certainly if it's a private institution, with its own private endowment and all that, I don't think the government can touch that. If it's a state-supported school, it might get a little different. I guess if the government is talking about making regulations for its own entity, it would have a little more leeway because it's their property and it's the public's money. I guess maybe there is some argument to be made that if the government is dealing with its own entities, maybe it has got a little more leeway as to making regulations of how its property should be. That's an interesting question. I've never seen that where that issue has come up before. There's a dichotomy of what is merely bad taste, but constitutionally-protected and which you can't legitimately prohibit.

For example, last term the Supreme Court handed down a decision in this case where there was some sort of school function going on, and some of the kids were across the street or on an overpass and they had this big sign that said "Bong Hits for Jesus." The court said that the school could prohibit that because it could possibly disrupt the educational goals and endeavors of the school. I'm not sure I agree with that opinion, but that opinion would tend to give the government the right to decide that certain types of advertising could be inhibiting what the school was trying to do and its educational mission, and give it the right to prohibit or certainly regulate certain types of advertising. Probably these days, there is some leeway for the government to say some types of advertising aren't permitted. And that will stay the same until the personnel on the Supreme Court changes, and who knows when that will be.

26. From a legal standpoint, what would you tell a college institution that was thinking of embarking upon a relationship with an alcohol company? What advice would you give them?

Wayne Giampietro, First Amendment Lawyers Association: Go very slowly and tread very lightly. If you're talking about in essence selling the school to advertisers, that is a very slippery slope and I think that it's a bad policy. Could they legally do it? Yeah probably. Should they? I think not. Because where do you draw the line, do you start giving naming rights to every building on campus? You know this is the "Coors Chem Lab" and this is the "United Airlines Engineering Building." Boy, I think that is a mistake. It's just a gut reaction on my part, not so much a legal one because I think they have the legal right to do that if they want to. I guess there could be some arguments that if you want to keep tuition down, and keep students from coming out of school in hundreds of thousands of dollars of debt, this might be one of the main alternatives. There is something really unseemly about having an educational institution that is supposed to be teaching people how to think critically and sort

out what is right and wrong, and at the same time, it is being bought by some private entity.

27. Studies have shown that student athletes are more susceptible to binge drinking than their non-student athlete counterparts. Can an institution be held liable for advertising alcohol at an event that perhaps the athlete participated in?

Wayne Giampietro, First Amendment Lawyers Association: I think it would be a stretch to hold a school liable just because there's a relationship with some company that makes beer. I think just that relationship is a little bit of a stretch. But, for example, if the school knows that this is going on, and that after every football game, all the players are going out and getting absolutely smashed and they let that go on again and again, then I think the school becomes liable. We just had a situation here in Illinois, where a pair of parents were found guilty of contributing to the delinquency of a minor by letting their kid have a party at their house and letting them serve booze. What happened was a couple of the kids got drunk and drove their car into a tree and killed themselves. So now, the parents have been held criminally liable for allowing that to go on; the theory being they knew the kids were down in the basement drinking beer or harder stuff, and knowing they were underage.

I think that same kind of theory applies, certainly in the civil context; if the school knows that this kind of binge drinking is going on and it allows it to continue, then I think that it has got some serious liability. Even though a lot of students are of legal age at the college level, I still think they are somewhat still in the protection of the school. I think the school has a duty to not let that stuff go on. They could be liable under some circumstances, but most certainly civilly.

28. What is the culture of marketing alcohol on college campuses today? What about marketing specifically at sporting events?

Brian Carbone, Campus Solutions, Inc.: Well as you probably know with both the alcohol and tobacco industries, there's limited advertising capabilities for them. So they are always trying to do something a little bit unique or doing something new. We've been approached by a number of different brands and corporations, but as I've mentioned, we started out as a company that tried to curb drinking and driving and curb the epidemic of drinking and driving. It has always been something as a company, we've had standards that we don't affiliate ourselves with either of these three types of companies--alcohol, tobacco and credit card companies. We've just found that even though they have a lot of financial backing, I remember being in college and especially with the credit cards, feeling like it was not appropriate. Again, as a company we try to avoid it, or if they're really trying to push something, we would suggest more off-

campus promoting, through the bars and restaurants and taking things that angle, rather than doing tailgating scenes or around the football and athletic centers.

Brandon Bernt, Affiliate Marketing: We received multiple requests to market alcohol-related products at sporting events and on the campus. They are usually concentrated towards men's basketball and football contests. The important factor to concentrate on when marketing alcohol on college campuses is to tap into the lifestyles of students. College is a haven for functions where a lot of alcohol is consumed. It is very important to brand your product to fit the student's lifestyle. Branding yourself as the "party" beer is much more important than branding your product as the sophisticated alternative.

29. Is this a moral issue for you as the head of this company, or do you receive outside pressure to not affiliate with these three types of companies?

Brian Carbone, Campus Solutions, Inc.: I would say its more of a moral issue. As an industry, there are no guidelines or real pressures, but it was just something that we kind of felt that in our beginning, we were doing things to avoid alcohol and instances where there are accidents and influences by drinking. As a company, it didn't make sense and it was too hypocritical.

30. Can you tell me about your Cab Card program?

Brian Carbone, Campus Solutions, Inc.: It was an idea that really launched our company that I came up with while attending Florida State University. It was inevitable that someone was going to be drinking and behind the wheel and if it's you or a friend of yours, you're kind of putting yourself at risk. Although, the "drunk bus" is a great concept, it's one that most college students try to avoid and it has never been really popular at the majority of the schools that have involved themselves in that kind of idea. So we came up with the idea to reach out to the parents of the students since obviously it is a big concern for them. One of many when they are saying goodbye to their kid, and letting them start on their own. This program is a prepaid cab service where parents would purchase these cab cards that can only be redeemed for cab fair. They come in \$10 increments and they might buy five of these cards. On the back of the card, it has the number of two different cab companies, and they would call them and the taxi would pick them up. It's a way for the parents to know that their students have a way of getting home safely. We probably know that at the end of the night, no one really has any money and most students aren't going to save money for the cab ride home; but they'll say hey, my Mom bought this cab card for me and lets use it.

31. How successful has that been for your company?

Brian Carbone, Campus Solutions, Inc.: It's been pretty successful. It's something that we first initiated on the University of Hartford, and then did some more campuses in the Northeast. There was some red tape issues and it was hard for the faculty to sign off on something because of the stigma of drinking and driving. The faculty would say, I know its a great idea, but it's almost promoting getting drunk. So, it was more of a liability issue. At Hartford, we would do some street team initiatives and sampling initiatives on campus.

32. Research has shown that student athletes are more susceptible to binge drinking than their non-athlete counterparts. Are you surprised by this statement? Why or why not?

Ann Caslin, UC-Berkeley: No, I'm not surprised because if I had to guess I would say that part of it has to do with their competitive nature. They try to out do one another, so it could be like competing against one another. I also think that they have limited time windows when they can drink because of competition or team rules, so when they do, they go for broke. They try to get in as much as they can.

33. There are some that are of the opinion that 18-20 year old students tend to think they are invincible, and combining that with the fact that student athletes are in elite physical condition, this makes them more willing to binge. In your opinion, do you find that to be true?

Ann Caslin, UC-Berkeley: I think a lot of them have this feeling of invincibility in everything, not just with alcohol, but in their sport and other social activities, driving, etc.

34. Others say that it is due to the fact that athletes are taught to think as a team, and pressure from other teammates to fit in can contribute to that. Thoughts?

Ann Caslin, UC-Berkeley: I bet it depends a lot on age. Freshman, I bet, would feel more obligated to drink if the upperclassmen were drinking to feel like they are a part of it. I bet it's a lot different for team sport athletes than individual sport athletes. I would bet that team sport athletes binge more. Just because of that pressure, that camaraderie from the team. Individual athletes tend to be more in tune with their bodies than team sport athletes because they are relying on themselves.

35. Knowing that research has shown that student athletes are more susceptible to binge drinking than their non-athlete counterpart, do you think institutions of higher learning have ethical implications in advertising alcohol?

Ann Caslin, UC-Berkeley: That's a good question. I think they probably do, but I think a lot of times ethical and moral decisions get bumped for money-making decisions. It doesn't seem that most colleges have alcohol relationships. In theory, on a moral basis or ethical basis, they shouldn't, but like I say, I don't think that's what makes decisions around athletic departments sometimes.

Richard Yoast, American Medical Association: Yes. We feel really strongly that collegiate athletic activities should not be used to promote alcohol. We've been active, even before our policy passed, as far as opposing the use of alcohol advertising for the basketball finals, for example. Part of that is that a lot of younger kids watch those games, it's not just college students, but also high school students. It is a ready-made market to get to them. We just think that the athletes themselves are not supposed to be drinking, so why are you promoting a product that they are not supposed to be using? Now the alcohol industries have come back and said they are promoting responsibility ads. That is an improvement over just promoting the product directly, but the reality is that they are promoting their company names and their brands. It is a not very subtle way of doing the same thing. Those messages don't mean anything. What is responsible drinking? I think everybody has a sense of what it is, but I don't think you could put 20 people in a room and have them come up with the same answer. You certainly don't get the same answer when you talk to college students.

36. In your field, what alcohol situations do you deal with?

Ann Caslin, UC-Berkeley: We try to sponsor, in conjunction with Life Skills, educational seminars multiple times a year where we try to get the whole student athlete population out. I know in the past we've done ones about alcohol awareness and have brought in people who were former alcoholics and student athletes. We do other stuff too about domestic violence, sexual health, stuff like that, but we always try to do one about alcohol each year because there are always kids with drinking problems. We end up referring them to physicians. I've had a couple kids throughout my career that have gone to rehab, some have made it, some have not. One has been sober over a year, which is pretty good to be a college athlete and have to deal with that in college. We'll send kids to counseling when they come to us, or we'll hear from teammates that so-and-so is drinking all the time and they're passing out and doing stupid things. So we'll try and intervene on that and at least get them to a physician.

You'll get more occasional than not, the student athlete who will get injured while they're drinking so then they have to come in and they'll either lie, or if you know them well enough, they'll say, 'I was hammered and I fell down a flight of stairs' or whatever. So then, you kind of just have to be conscious of, is this a problem, or is this them just being kids? We are not required to do anything about it, you just have to use your best judgment. I've had plenty of conversations with kids where you have to ask, 'Is this an every day thing or just a one time thing?' You just try to assess the situation as best you can and if you feel like they have a problem or it is ongoing, you try and get them to somebody who can help them.

37. You mentioned when I first contacted you that UC-Irvine can not have permanent alcohol or brewery advertising on campus, is that correct?

Robby Ray, UC-Irvine: Yeah, I believe what you will find, if you've interviewed any of the other campuses in the state, is that we all are governed through our parent institutions, so for me it would be the UC system, or the campus in general. For us, at least the way it stands right now, there is no permanent advertising alcohol on the UC-Irvine campus. That's where we fall under. And actually it was interesting because after you contacted me, there was a release sent out by the Office of the President for the UC system as a whole, where they were discussing the removal of any alcohol advertising with athletic programs. We're looking into clarifying that, but it might be like your television broadcasts, or your radio, or things that don't involve permanent signage.

38. As it stands right now, if Miller Lite (for example) came to you and wanted to be a sponsor, what would you guys say?

Robby Ray, UC-Irvine: Well as it stands right now, I am trying to get a definition on exactly what the Office of the President is doing, because we are under two sets of pressures. One, being the pressure to bring in revenue for the athletics department. The other, being to work within the guidelines of the university to provide an atmosphere where we're supporting their policy. As long as we're able to work within those guidelines, I'd love to work with Miller.

39. As it stands now, you do have sponsorships with breweries, but you said you do have to market them as restaurants, is that correct?

Robby Ray, UC-Irvine: Yes, the focus is on the restaurant portion. I wouldn't go into a partnership with a bar because obviously their primary focus is alcohol.

40. Is the revenue that you bring in right now with the breweries significant enough where if your administration were to prohibit it, it would be cutting out a large portion of your operating budget?

Robby Ray, UC-Irvine: For us, we don't have any breweries or restaurants that are providing a significant amount of cash. What they do provide us is a trade out for special events or business meetings, things of that nature. That would impact our bottom line.

41. What advice can you give to institutions who are considering moving into a relationship with alcohol sponsor?

Robby Ray, UC-Irvine: Advice, I could really use advice! That's a category that we don't really have filled. For us, and I would imagine at other institutions as well, where they are allowed to operate under these parameters, if we did bring an alcohol partner, it would be on a basis where they were tied into our over-21 crowd. We certainly wouldn't be targeting students, but maybe more with our donors, season ticket holders, television broadcasts, things of that nature. At the same time, I think you have to have a responsible element to it where there is a component that speaks to students and that is the responsible drinking message.

Laird Veatch, Learfield Sports Properties: I think just to make sure they are really informed about what their potential partners want to accomplish, what they are looking for. Typically there are competitors, depending on the location in the country it could be Anheuser-Busch, Coors, Miller or whoever that might be. Make sure they are communicating with them on the philosophy and beliefs of the institution. Talk to them about the 'know when to say when' type messages, those kinds of things. A lot of times those companies want to have access to marks or either signage or give-aways, and it is important for the institution to make sure it is understood there. From an athletic director's standpoint, just make sure you are on the same page as your president or board of regents, so there is no confusion. If you take all those things into consideration, I think it could be a relationship that could be managed very well and beneficial to many folks.

42. In California, the CSU is prohibiting the sale of alcohol, but not banning the advertising. Is that similar to what the UC system might be doing?

Robby Ray, UC-Irvine: Right, I've found that in the Big West, as well. No, because what I've seen is that the UC system is looking specifically at advertising. To me, if you're going to be a dry campus and then still allow advertising and signage, that kind of defeats the purpose.

43. Does your company receive requests from institutions to solicit sponsors or do sponsors come to you or both?

Laird Veatch, Learfield Sports Properties: Well let me explain a little bit about the outsourced model of Learfield. It is a trend that you see a lot, as you probably found in searching around. The majority of schools actually outsource their corporate sponsorship opportunities, all of their multimedia rights, as they're more commonly referred. We have a relationship with each of the schools that we work with, where we pay a rights fee for all those rights, whether it be radio, television, print, signage, in-game promotions, all those opportunities. We bundle those together and then we pay the athletic department for them and then work together with them to maximize all the revenue opportunities for them. We usually have some type of revenue share situation and then we take all that inventory and our job is to manage and sell all that. At each one of these properties we have a general manager and a staff who is in charge of doing that for that property or that athletic department.

What we then do is take all that out and we are calling on clients all the time, whether that be our current clients or new clients; it's just a sales process, we go out and we have a good product and we work on selling that to potential sponsors. So that's typically the process, more of us reaching out to them, to answer your question, and then just seeing what is the fit for them.

44. Does it vary from school to school in terms of who is willing to take on an at-risk sponsor?

Laird Veatch, Learfield Sports Properties: It does vary and a lot of times that is understood and managed on the front end in our rights contract with the school. We always make sure we maintain good communication with them for anything like that, for things that might be deemed controversial. We just make sure the school is comfortable with anything that we do.

45. Are there schools that Learfield Sports Properties works with that are okay with partnering with alcohol companies or breweries?

Laird Veatch, Learfield Sports Properties: Yeah, certainly, we have several and in fact, I would say the majority of our partners are okay with that in different respects. Sometimes it's a school issue where they want us to only to do certain aspects, whether it be radio or television, some allow signage, some don't. So it varies from institution to institution.

46. The NCAA's Executive Board issued recommendations to its membership that they should limit or ban alcohol advertising. Did you see a fall back from this memorandum?

Laird Veatch, Learfield Sports Properties: I was in a different position then so I can't speak to the company as a whole in that regard. I was at Mizzou (University of Missouri) where we had a very good relationship with Anheuser-Busch, which was right there in St. Louis. I'm sure it caused presidents and athletics directors to take a step back, analyze what they were doing, making sure it was consistent with their beliefs and goals and those type of things. That is just more kind of what I observed in the market. You certainly see people wanting to make good decisions there and think about what they're doing, but I don't know if it necessarily directly impacted the relationships that much, at least from my view.

47. Why did the American Medical Association call for a ban of alcohol advertising in college athletics?

Richard Yoast, American Medical Association: Well we've actually had a policy for over 10 years calling for a ban of alcohol advertising in general, outside of wholesale and retail sites. I think that was passed before I got here. I think the reasoning, from what I know of our members, is that they feel that alcohol advertising first of all reaches and promotes alcohol to kids. Also, it promotes drinking behaviors that don't need to be promoted. The AMA runs a national program on binge drinking and college campuses. A major focus of that is what was going on relating to drinking and sports. That was something that the campuses felt strongly about and also looking at the issue. We did some promotion of the project to the Big 10, but when CSPI really started the major initiative, we started to join that too.

48. How much does alcohol contribute to on-campus violence or other things of that nature?

Richard Yoast, American Medical Association: I can't give you the figures, but it's really high. One of the Harvard studies pointed out that heavy alcohol use is more common among sports fans, so it is not just the athletes who are drinking more heavily, but it is the sports fans too.