

Eliminating Promotions for Underage Drinking in Mexico

The Border Project • February, 2002

The Institute for Public Strategies (IPS) calls for creation of an ordinance to eliminate all alcohol promotions that target minors under 21 to drink in Mexico. This issue briefing provides background information and data illustrating the

magnitude of local underage drinking and the rationale for recommended policy changes. It then outlines specific steps that can be taken to remedy this serious problem.

The lure of cheap drinks, all-you-can-drink specials and a lax social environment, combined with a drinking age of 18, has long attracted U.S. youth under the age of 21 to travel south to Mexico to party. Sophisticated promotions from nightclubs in Tijuana continue to infiltrate high school and college campuses on the U.S. side of the border, soliciting underage drinkers. In fact, some of the Tijuana nightclubs offer a free shuttle service from convenient locations near local colleges.

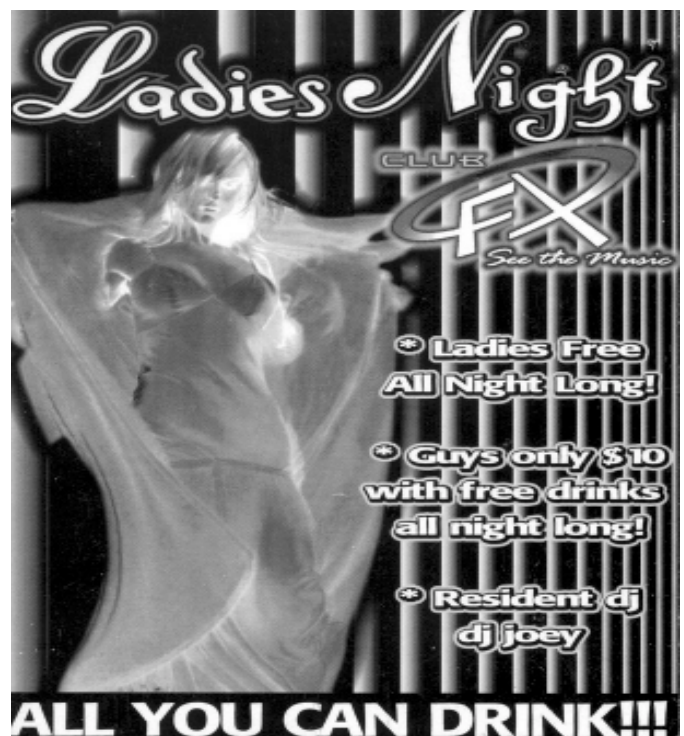
Many of the promoters that entice people under 21 to drink in Mexico are California businesses. They use the radio, Internet, newspapers and flyers to reach an underage drinking audience in Southern California, creating an information network that draws young people to a drinking environment. The resulting increase in crime, sexual assaults, violence, alcohol-related crashes and problems at home and school creates a wake of destruction as intoxicated partiers head north from Mexico.

The Facts About Ads and Drinking

In 2001, as part of a workgroup for the San Diego County Substance Abuse Summit VI, youth



conducted a radio audit to see how youth-oriented radio stations measured up regarding alcohol and other drug promotions. The radio stations they observed provided mixed and confusing messages about alcohol as well as tobacco and other drugs. One station broadcast an ad for a Tijuana bar and its \$1.00 drink specials, followed by a public service ad to not drink and drive, followed by a DJ making jokes about drinking when he was a teenager.





the hours of midnight and 5:00 a.m. Of that number, nearly half are under the age of 21. Data show that many cross-border drinkers travel great distances to drink in Mexico (Voas, 2000a). A telephone survey of 1,400 San Diego County youth between the ages of 18 and 20 indicated that 52 percent had visited a Tijuana nightclub within the last year (Voas, 2000b). As a result, thousands of intoxicated youth jeopardize themselves and others when they return to San Diego County from Tijuana.

Access Granted

A comprehensive telephone poll of 750 San Diego County residents demonstrates that respondents are very concerned about underage youth traveling to Tijuana to drink alcohol. Furthermore, respondents believe that marketing, advertising and promotions by Tijuana bars play a large role in influencing minors to cross the border into Mexico.

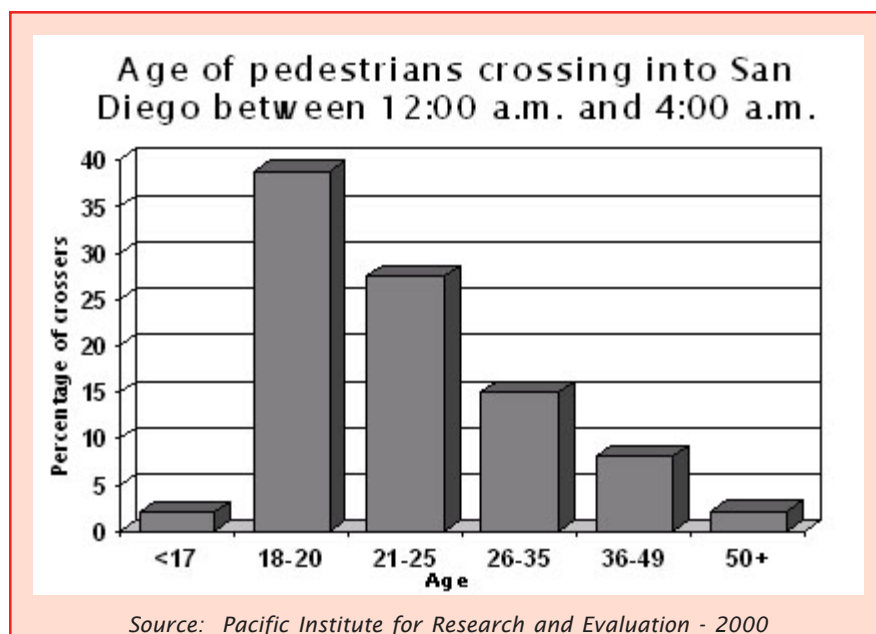
In partnership with the Alcohol and Drug Services Department of the San Diego County Health and Human Services Agency, IPS and the Pacific Institute for Research and Evaluation (PIRE) have collaborated to address the problem of cross-border drinking between San Diego and Tijuana. PIRE, under the direction of Dr. Robert Voas, has been compiling survey data on the profile of cross-border travelers on one Wednesday, Friday and Saturday night each month since June of 1997.

Data indicate that more than 8,000 youth, most under the age of 25, return from Tijuana every Friday and Saturday between

Easy access to clubs that are open all night and a permissive, inexpensive drinking scene are heavily promoted to the underage drinking crowd of military personnel, students and other young people with limited incomes. These promotions, which include cheap drink specials, “all you can drink for one price” and “ladies drink free” specials, saturate the radio, newspapers and flyers that infiltrate high school and college campuses and surrounding communities.

Many promoters contract with companies in California using San Diego phone numbers to provide Tijuana club information. High school students (including some

under 18) are recruited to distribute flyers on campus and are paid cash for each advance ticket sold along with free drinks at the club. On the Mexico side, limited identification checks, all you can drink specials and serving practices that promote high risk drinking create a dangerous combination for youth.



Stemming the Flow

Alcohol promotions that encourage underage drinking cannot be addressed in a conventional manner, since there are no U.S. controls over alcohol licensees in Mexico. The California Business and Professions Code Section 25664 provides that “the use in any advertisement of alcoholic beverages of any subject, language, or slogan addressed to and intended to encourage minors under 21 to drink the alcoholic beverage is prohibited.” This law, enforced by the California Alcohol Beverage Control Department, is designed to provide sanctions against alcohol license holders only.

The statute is unenforceable against bar owners in Tijuana that encourage minors under 21 to drink. But it clearly states that any form of encouraging minors in California who are under age 21 to drink is illegal. The law does not include language stating that it’s illegal to encourage minors to drink “no matter where the consumption is to take place.” However, communities can restrict alcohol promotions encouraging minors under 21 to drink in Mexico.

IPS recommends that the following steps be taken to restrict alcohol promotions:

1. Eliminate all alcohol promotions that encourage people under 21 to drink in Mexico.
2. Establish penalties for California promoters who market to people under 21 with drinking ads for bars and clubs in Mexico.
3. Review and amend any existing ordinances or statutes that could provide a vehicle or loophole for use of alcohol promotions encouraging people under 21 to drink in Mexico.

The marketing provisions described above are constitutionally defensible, because they would not block or impede alcohol businesses’ ability to

Alcohol Ads and Free Speech

Since the *Central Hudson* decision, the Supreme Court has used a four-part test to assess the constitutionality of government restrictions on free speech. The limits on promotions advocated in this issue briefing do meet the standard of constitutionality according to the test:

1) ***Does the speech concern an unlawful activity or is it misleading? If not, does the restriction satisfy all the remaining three prongs of the test?***

Yes. The marketing and sale of alcohol products is legal, but not the sale of alcohol to those under 21 – which the ads in question encourage, regardless of where the consumption is to take place.

2) ***Is the government’s interest in regulating the speech substantial?***

Yes. On average, young people begin drinking at 13.1 years of age (USDHHS, 1998). Alcohol is a leading factor in the four leading causes of death among people aged 10 to 24 (Kann, L., et al., 2000). And underage drinking costs Americans nearly \$53 billion annually (PIRE, 1999).

3) ***Does the constraint directly advance the government’s interest?***

Yes. Numerous research studies show that alcohol advertising has a major influence on young people under the drinking age and their likelihood to drink.

4) ***Is the constraint no more extensive than necessary to advance the government’s interest?***

Yes. To comply with the fourth prong of the test, the court has held that a restriction need not be the “least restrictive” possible as long as the “fit” between the ends and the means is “reasonable.”

communicate product information to adult customers. The U.S. Supreme Court has held that in limited and appropriate circumstances the First Amendment allows the government to restrict commercial speech, such as advertising, to advance a substantial or compelling government interest (National Center for Tobacco-Free Kids, 2000). It is also clear from the four-part First Amendment test set forth by the Supreme Court in *Central Hudson Gas and Electric v. Public Service Commission* and subsequent cases, such as *44 Liquormart, Inc. v. Rhode Island*, that new restrictions on alcohol marketing would easily survive any constitutional challenges if they were carefully tailored to protect minors under 21 and supported by substantial scientific evidence.

There is strong public support for these recommendations. In the San Diego poll mentioned above, 80% of respondents who are registered voters support a ban on all ads that target youth to drink in Mexico and 74% support fining California promoters who encourage underage people to drink in Mexico.

Using these recommendations, policymakers can reduce the problems associated with underage drinking by creating an ordinance to eliminate alcohol promotions luring people under 21 to drink in Mexico. There is strong public support for these recommendations: in the San Diego poll mentioned above, 80 percent of respondents who were registered voters supported a ban on all ads that target youth to drink in Mexico, and 74 percent supported fining California promoters who encourage underage people to drink in Mexico. These measures are part of an overall strategy to reduce cross-border underage and high-risk drinking, and they represent a positive step to ensure safe and healthy communities.

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