



## Guidance Note

# **General Interpretation of the Fifth Edition of the Code**

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## General Interpretation of the Fifth Edition of the Code

*This guidance is intended to help drinks producers comply with the Portman Group's (PG) Code of Practice on the Responsible Naming, Packaging and Promotion of Alcoholic Drinks. This guidance represents the opinion of the Advisory Service. Please note that the Independent Complaints Panel (Panel) is the final arbiter on how the Code should be interpreted and applied. Following the advice in this document is no guarantee that a product's packaging or promotion will not be found in breach of the Code if a complaint is received. The guidance will be updated regularly to reflect the views of the Panel.*

*The Code sets the minimum standards; producers may have their own internal marketing guidelines which go above and beyond what is required of them under the Code.*

### SCOPE OF THE GUIDANCE

This guidance relates mostly to the packaging (including the brand name) of alcoholic drinks above 0.5% abv<sup>1</sup>. This is because most of the Panel's previous decisions have been in relation to drinks' packaging. However, the Code applies not just to packaging but also to various forms of promotional activity such as websites<sup>2</sup>, sponsorship, public relations, branded merchandise, co-promotional activity and sampling. This guidance paper does not contain specific advice on these areas, particularly because there are no precedent decisions by the Panel in some of these areas on which the guidance can be based. The guidance in most cases, however, is relevant not only for packaging but also for these other areas of activity.

More detailed guidance is contained within separate documents on the following topics:

- Sponsorship
- Remit of the Code
- Use of Images of Under-25s
- Communication of Alcoholic Strength
- Sampling
- Gift Packs Containing Alcohol
- Multi-purchase On-trade Promotions
- Rapid or 'Down-in-one' Drinking

These guidance notes are available on our website [www.portmangroup.org.uk](http://www.portmangroup.org.uk) alongside the full wording of the Panel decisions referenced within this guidance document.

### INTRODUCTION

The fundamental principle is that the Code is applied in the spirit as well as in the letter and to both direct and indirect claims. In judging compliance with the Code, the matter will be looked at broadly and with regard to all the circumstances including (but not limited to) the drink and any

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<sup>1</sup> A *drink* is any alcoholic drink above 0.5% abv, packaged for sale and sold in the off-trade to the final consumer. In the on-trade, a drink is any alcoholic drink served as part of producer-led promotional activity, or producer approved or agreed co-promotional activity. This includes a product developed or marketed primarily as an alcoholic 'drink', even if it is classified as a foodstuff rather than a drink for the purposes of licensing or customs and excise legislation, or even if it appears to be solid or heavily textured, or an aerosol (or can be made to be, for example by freezing or shaking), rather than liquid. This also includes a barrel, (i.e. a draught drink) or permanent dispenser unit.

<sup>2</sup> Since 1 March 2011 the ASA has been regulating advertisers' own marketing communications on their websites and on other non-paid-for online space under their control.

other relevant matters, including the overall impression conveyed. It is therefore difficult to say whether a particular image or statement on a drink's packaging or in a promotion is acceptable under the Code without seeing/considering it in context. Often a word or image might, in itself, be acceptable but nonetheless be problematic in combination with other words or images. Companies are therefore encouraged to make use of the free and confidential Advisory Service when undertaking promotional activities or launching products to help ensure that they comply with the Code.

The Code does not apply to drinks below 0.5%<sup>3</sup>. However, if a drink below 0.5% abv shares the same brand or branding, or is a variant of a drink that is subject to the Code, then it is the view of the Advisory Service that the spirit of the Code will apply in the same way to that product.

## LEGAL POSITION

It is the producer's responsibility to ensure that any drinks packaging or promotional activity it has undertaken complies with the applicable laws and regulations.<sup>4</sup>

Promotional activity must comply with the mandatory licensing conditions<sup>5</sup> imposed under the Licensing Act 2003 (England and Wales) and the mandatory licensing conditions<sup>6</sup> imposed under the Licensing (Scotland) Act 2005; both sets of conditions aim to prevent irresponsible on-trade drinks promotions such as free/discounted drinks for specific groups or an unlimited or very high number of drinks for a fixed entry price. Further advice on whether a promotion complies with the mandatory conditions can be obtained from local licensing authorities/licensing boards and/or the police. In Northern Ireland, the Joint Industry Code for Responsible Retail Promotions was launched in May 2012. This Code also aims to prevent irresponsible on-trade promotions and further advice on its application can be obtained from the relevant trade body in Northern Ireland<sup>7</sup>.

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<sup>3</sup> The Code is applied in the spirit as well as the letter and rule 1.6 allows the Panel to look at a matter broadly whilst giving regard to all the circumstances when considering a product's compliance with the Code. So while the Code does not seek to prevent the promotion of alcohol-free drinks and drinks below 0.5%, if they share similar branding with an alcoholic version, they should be promoted within the spirit of the Code.

<sup>4</sup> Code rule 1.8 states: *The Code operates alongside the law. It is the responsibility of a producer to ensure a drinks packaging complies with the Food Labelling Regulations 1996 and all other applicable regulations and legislation,*

<sup>5</sup> <http://www.homeoffice.gov.uk/publications/alcohol-drugs/alcohol/guidance-section-182-licensing?view=Binary>

<sup>6</sup> <http://www.scotland.gov.uk/Topics/Health/health/Alcohol/licensing/consultations/alcoholguidance>

<sup>7</sup> [www.responsibleetailingcodeni.org](http://www.responsibleetailingcodeni.org)

## THE GUIDANCE

The guidance below is presented in accordance with section 3 of the Code which sets out the rules that apply to naming, packaging and promotional material and activity.

### **3.1 *The alcoholic nature of a drink should be communicated on its packaging with absolute clarity*<sup>8</sup>;**

- The Portman Group Advisory Service has presented a summary below of labelling legislation that will be considered when determining compliance with rule 3.1. It is the producer's responsibility to ensure that any drinks packaging and/or promotional activity it has undertaken complies with the applicable laws and regulations, and are therefore advised to seek legal advice.<sup>9</sup>
- As always under the Code, it is the overall impression conveyed that is important and the Panel can look at a matter broadly and have regard to all the circumstances when considering a product's compliance with the Code.

When considering whether a product complies with this rule the Panel will have regard to Regulation (EU) No 1169/2011 on the provision of food information to consumers and the Food Information Regulations (FIR) in the UK, whose primary objective is consumer protection.

- The EU Directive sets out the particulars which alone shall be compulsory on the labelling of alcohol. These are further set out in the UK's implementing legislation, the Food Information Regulations 2014, which requires that for a 'pre-packed' alcohol drink (other than community controlled wine), every drink with an alcoholic strength by volume of more than 1.2% shall be marked or labelled with its alcoholic strength by volume in the form of a figure to not more than one decimal place (*which may be preceded by the word "alcohol" or by the abbreviation "alc" followed by the symbol "% vol"*).
- The EU Directive lists the mandatory particulars required on all food labelling under Chapter IV, Article 9.
- Annex IV to the EU Directive sets out the minimum font size and Article 13 (5) the 'field of vision requirements', but the mandatory particulars (including abv) should be:
  - *'marked in a conspicuous place in such a way as to be easily visible, clearly legible and where appropriate indelible. It shall not in any way, be hidden, obscured, detracted from or interrupted by any other written or pictorial matter: for example, the name of the food must not be broken up by other material'* Article 13 (1).
  - Certain information must be provided in the same field of vision, namely the legal name of the food, the net quantity and the abv statement, Article 13 (5).

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<sup>8</sup> Producers would be expected at least to demonstrate compliance with EU Regulation 1169/2011 on the provision of food information to consumers. Rule 3.1 should be read in conjunction with Code paragraph 1.8.

<sup>9</sup> Code paragraph 1.8 states: *The Code operates alongside the law. It is the responsibility of a producer to ensure a drinks packaging complies with food labelling regulations and all other applicable regulations and legislation.*

- ‘Field of vision’ is defined as ‘*all the surfaces of a package that can be read from a single viewing point*’, Article 2 (k).
- Neither the EU Directive, nor UK Regulations, go as far as to say any of this mandatory information is required on the front of product packaging. Therefore, the Panel has taken a view that none of this mandatory information is required on the front of packaging unless, in the Panel’s view, the packaging was likely to mislead as to its alcoholic nature. In which case, the Panel may require that some mandatory information, such as the alcoholic strength by volume, is provided on the front of packaging, notwithstanding that it would still have to be present (perhaps additionally) in the same field of vision as the legal name and net quantity.
- The Panel is likely to regard a product’s compliance with EU and UK labelling legislation as compliance with Code rule 3.1. Despite this, if the Panel believes a product’s labelling or packaging will confuse or mislead consumers as to its alcoholic nature, i.e. it is not easily recognisable as alcohol, it may still find it in breach of the Code.

### Best Practice Guidance

- To avoid any suggestion of misleading consumers or causing confusion, companies are encouraged to adopt the following best practice guidance:
  - **Consumer confusion:** Where a product is so novel in design, for example a foil pouch or a novelty drinks container, or the number of ‘negative’ cues on a product’s packaging far outweighs the number of ‘positive’ cues the packaging will have to work harder to convey that the product is alcohol. Negative cues could include the dominance of fruit images or other non-alcohol-related imagery on packaging, novel packaging, or an overly busy design. Positive cues could include a crown cap, cork, colour of bottle, shape and size of a bottle and the presence of alcohol-related health information.
  - **Overall Impression:** Product packaging will be considered as a whole, so there is no distinction between the front and back of a product when assessing whether the alcoholic nature has been communicated with absolute clarity, unless it is likely to cause consumer confusion. Consumers are likely to look at a product as whole, not just gain information from the front of a product; they are likely to pick up a product and turn it round. Ideally, mandatory information on the front of a product’s packaging is preferable, since this is how a product is most likely to be displayed in a retail outlet, but where all the mandatory and alcohol-related health information is sufficiently clear on the back of a product it does not need to be repeated on the front.
  - **Primary/Secondary packaging:** The rule does not apply differently to either packaging; both are considered to be as important as each other. If mandatory information is only on the bottom of secondary packaging this is unlikely to be viewed as contributing to the overall impression of the product: a consumer would not typically look at the bottom of a package when assessing a product and would therefore not meet the requirements of the rule. If the mandatory information was repeated elsewhere on the packaging and product, in addition to being on the bottom of the pack, this could help towards providing clarity.

- **Different language:** The product as a whole will be taken into consideration, i.e. taking into account positive visual cues from the shape and design of the container and other information on the label. It would be hard to convey that a product was alcohol with absolute clarity if mandatory information (most notably the name of the food) was not provided clearly in English somewhere on the packaging. For example, if this mandatory information appears on the back of the product, it should stand out from any narrative that appeared alongside it to counterbalance the lack of information in English on the front of packaging. Where the foreign language word/name very closely resembles the English alcohol descriptor/name consumers are less likely to be confused by it.
- **Reliance on Brand names:** EU rules provide that '*no trade mark, brand name or fancy name*' may be substituted for the generic product name under which the product is required to be sold. Where a product does not contain all the mandatory information as required under legislation and seeks instead to rely on its brand name to convey its alcoholic nature this will breach the Code.

### Previous Cases

- In 2014, as part of a Code Compliance Audit carried out by Campden BRI, four products were referred to the Panel for consideration under this rule: Leffe Blond, Guinness Original cluster pack, Fursty Ferret and Pernod. In all four cases the Panel's considered the overall impression conveyed by taking into account the products as a whole, together with information provided on the front and back labels and in some cases, additionally, the information provided on secondary packaging.
- In respect of [Leffe Blond](#), the Panel noted that the front label did not contain the alcohol strength statement, nor did it contain the name of the alcohol type in English. Despite this, the Panel considered the product packaging contained some positive visual alcohol cues (shape and colour of the bottle; cork stopper; overall design; references to 'beer' in the narrative on the back label; health information on the back label; and the words 'biere' and 'bier' on the front label). In addition to the positive cues there were no obvious negative cues, i.e. the front label was not overly busy, nor did it contain imagery that might detract from the alcohol message. Also, the alcohol type on the front label, albeit in a foreign language, so closely resembled the word 'beer' that consumers would understand it as 'beer'. In light of this, the Panel concluded that the packaging of Leffe did not breach Code rule 3.1.
- With regards to [Guinness Original 4 x 330ml Cardboard Cluster Pack](#), again the Panel considered the overall impression conveyed by the pack, taking into account the product as a whole, together with the information provided on the primary and secondary packaging. The Panel determined that the secondary packaging needed to be just as clear as the primary packaging. The Panel considered the product packaging contained several positive visual alcohol cues (much like the previous example, but also the reference to alcohol volume 'Alc. 4.2% Vol' being more prominent than the 'barley' message, references to 'stout' in the narrative on the back label; health information on the back label; reference to the Drinkaware website and 'Drink Responsibly' message on the secondary packaging). The Panel also noted that the open sides of the wraparound sleeve allowed the bottles, and therefore the bottle back labels, to be visible. In light of

the many positive visual cues, the Panel concluded that the packaging of Guinness Original 4 x 330ml cardboard cluster pack did not breach Code rule 3.1.

- In the case of [Pernod](#) it was the Panel's view that Pernod was relying principally on its brand name to communicate the alcoholic nature of the product. The Panel did not consider such reliance to be appropriate, given that there will inevitably be consumers who are not familiar with the Pernod brand and may therefore fail to associate the brand name with an alcoholic product. The Panel did note that the front label included the text '40%', but that this did not stand out. On the back label there were two mentions of the word 'spirit', and also the word 'distillation', and some alcohol-related health information which appeared to provide an indication that the product was alcohol. However, the Panel noted that the words 'spirit' and 'distillation' were couched within a lyrical description rather than being read in isolation as the product descriptor, and the font size and colouring meant they were not easily legible. The term 'spiritueux anise' also featured on the back label and was seen as an attempt to describe the product contents, but this was not in English so as to be easily understood by a UK consumer. Looking at the product and labelling as a whole, the Panel considered that the alcoholic nature of the product was not being communicated with absolute clarity and found the product in breach of Code rule 3.1.
- More recently, in 2015 and 2017, the Panel considered cases where consumers had mistaken beers in 330ml cans for soft drinks. In the cases of [Gamma Ray](#) and [Cwtch](#), both complainants raised the issue of the 330ml can size, when coupled with bright colourful illustrations, as confusing and likely to appeal to under-18s. Gamma Ray and Cwtch both included the word 'ale' on the front of the packaging and included further alcoholic descriptors on the side of the can (the word 'beer' in multiple languages, the word 'ale', the alcohol by volume, the unit content of the container, active signposting to Drinkaware and a pregnancy warning). While neither product was upheld under 3.1 the Panel urged producers to be aware that 330ml cans, because they had been long established in the soft drinks market, could be ambiguous, particularly if there was a risk that the product could appeal to children and such products needed to work harder to ensure a distinction with soft drinks.

The Panel has previously agreed that producers should be lauded for innovation and creativity, especially with innovations in packaging size and design. This means that, in principle, the Panel does not find 330ml cans problematic under the Code but they have urged producers to think about how they are perceived by consumers and to consider best practice presentation when communicating the alcoholic nature of such products if there is the possibility that consumers may be confused by the packaging size and design.

**3.2 A drink, its packaging and any promotional material or activity (as defined in section 2 of the Code) should not in any direct or indirect way:**

- (a) give the higher alcoholic strength, or the intoxicating effect, undue emphasis. A product's lower alcoholic strength may be emphasised proportionately when it is**

***below the average strength for similar beverages. Factual information about alcoholic strength may be given<sup>10</sup>;***

See: Guidance on Communication of Alcoholic Strength, available at [www.portmangroup.org.uk/marketingadvice/guidance](http://www.portmangroup.org.uk/marketingadvice/guidance).

**(b) *suggest any association with bravado, or with violent, aggressive, dangerous or anti-social behaviour (though sponsorship of activities which may be dangerous after alcohol consumption, such as motor racing, or yachting are not in themselves in breach of this clause);***

See: Sponsorship Guidelines<sup>11</sup>, available at [www.portmangroup.org.uk/marketingadvice/guidance](http://www.portmangroup.org.uk/marketingadvice/guidance).

- The packaging should not suggest that one has to be tough or daring to drink a particular product. Nor should it be suggested that consumption of the product will make the drinker tough or daring.
- Consumption of the product should not be presented as a 'challenge'. Asking whether drinkers can 'handle it' or are 'up for it', and thereby presenting consumption of a product as a 'challenge' (including warnings about the product's strength; see previous advice under rule 3.2a) will be problematic under the Code.
- There should be no association with violent, aggressive or anti-social behaviour that has any contemporary relevance (for example, brand names such as 'Gangsta' and 'Taser').
- The inclusion of weapon imagery is not necessarily, of itself, problematic under the Code - the Panel will look at a matter broadly and will consider the imagery in context, including factors such as whether the weapon is presented with a fantastical character, the type of weapon being depicted (even if it is fictional), whether it is a prominent feature on the packaging/promotional material, how the weapon is being used, the accompanying name of the product and how strong the overall link to violence is. Any imagery that is inextricably linked to violent behaviour is likely to breach the Code.
- In 2005, the Panel upheld a complaint against a product called Kalashnikov Vodka because it felt that first and foremost, UK consumers would associate the name Kalashnikov with a gun and that many would associate it specifically with the assault rifle the AK-47. Having considered the product as a whole, including its packaging and overall presentation, the Panel concluded that a name that primarily evoked an image of a contemporary gun, namely the AK-47 which is the most widely used firearm in the world, was an unacceptable choice of brand name for an alcoholic drink because it indirectly suggested an association with violent and dangerous behaviour.

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<sup>10</sup> Under the Food Labelling Regulations 1996, Regulation 42(1) and Schedule 8 Part I, the description 'low alcohol' or any other word or description which implies that the drink being described is 'low' in alcohol shall not be applied to any alcoholic drink unless the drink is no more than 1.2% abv.

<sup>11</sup> Publication date Summer 2013

- Similarly, in 2014, the Panel upheld a complaint against a product called Red Army Vodka which was a vodka product in a glass AK-47 gun-shaped container in a green wooden ammunition presentation box, together with hand-grenade shaped flasks. The Panel concluded that the packaging and the name Red Army, in the context of the product's AK-47 shape packaging, were unacceptable for an alcoholic drink because they suggested a direct association with violent and dangerous behaviour.
- In 2012, a complaint against a beer called Dark Conspiracy was upheld, not because of the product name, but because the image used on the bar fount was of the Kray twins. The Panel considered the Krays were intrinsically linked with violence and aggression and were still relevant and contemporary, and consumers would make the connection with them and the level of violence they used; the image had direct associations with violence and aggression and, accordingly, the Panel found the image in breach of Code paragraph 3.2(b).
- As part of a case in 2016, the Panel considered the use of an image of a pistol on a limited edition bottle of Heineken which was linked to the James Bond film Spectre. The Heineken bottle incorporated the well-known silhouette motif of the James Bond character holding a silenced pistol in a pose that was established in the first film in 1962. The Panel considered that the pistol was displayed in a stylised pose and was not depicted as being used to shoot or to cause harm, nor was the pistol a prominent feature on the packaging. The Panel agreed that including an image of a gun on packaging will naturally carry a high risk of creating an association with violent behaviour; however, on balance, the Panel was satisfied that the stylised motif of James Bond in his trademark silhouette stance served mainly to draw attention to the wider James Bond brand rather than violent behaviour. Accordingly, the Panel did not uphold the complaint under Code paragraph 3.2(b).

(c) ***suggest any association with, acceptance of, or allusion to, illegal drugs;***

- This does not necessarily prevent, for example, hemp-based drinks from stating that they are made from hemp, provided this is done in a straightforward, factual way.
- If, however, the packaging of a hemp-based drink alludes in any way to the illegal use of hemp, for example by using the term 'cannabis' or even simply by featuring an image of a cannabis leaf, the Panel will find that packaging in breach of the Code.
- In 2007, complaints against a range of cannabis-flavored spirits were upheld because on all three products the word 'cannabis', along with a visual of what appeared to be a cannabis leaf, featured on the label. The Panel concluded that this caused each product to have an association with illicit drugs, in breach of Code paragraph 3.2(c).
- In 2009, a complaint against a product called Speedball was upheld because the Panel concluded that the packaging claim 'class A ale' in conjunction with the product name sought to present the product as akin to an illicit and dangerous drug.

(d) ***suggest any association with sexual activity or sexual success;***

- The reference to 'sexual activity' within the rule is new.

- This is stricter wording than the fourth edition of the Code which referred only to sexual success. It not only disallows claims which imply a link between alcohol and sexual success but also categorically disallows any reference to types of sexual activity.
- Allusions to romance are acceptable under the Code providing there is no suggestion that the alcohol has been the catalyst for the behaviour, is essential to the success of the relationship, and/or has played a role in the outcome of the event.
- As always under the Code, it is the overall impression conveyed that is important, both explicitly and implicitly.
- Strong sexual images will breach the Code even if nothing directly suggests that the drink enhances the drinker's sexual capabilities. The context of an image will be important in determining whether the image is in breach of the Code, for example, an image of a person in sexy underwear lying on a bed will be viewed as more gratuitous (and therefore unacceptable) than an image which depicts people in swimwear in a beach scene.
- Allusions to a person being attractive are likely to be fine, unless it is suggested the person has become *more* attractive because of the alcohol.
- In 2007, the Panel upheld a complaint against a product called Rubbel Sexy Lager whose label featured a young woman apparently wearing a swimsuit. The swimsuit, however, could be scratched off by the consumer to reveal the woman naked. The Panel considered that both this feature and the product's brand name, Rubbel Sexy Lager, suggested an association with sexual success and therefore caused the product to be in breach of Code paragraph 3.2(d).
- In 2009, a complaint about a promotional poster for a test-tube product called Rampant, which featured a provocative image of a woman in a bikini with her fingers inside the bikini bottom, was upheld. The Panel noted that rampant had various meanings, including 'unrestrained' which in itself was not necessarily in breach of the Code. In the context of the poster, however, the term 'rampant' carried sexual connotations and accordingly was found in breach of Code rule 3.2(d).
- Marketers should be responsive and sensitive to changes in society and, in particular, to the more cautious attitudes that exist towards alcohol promotion. In 2004, a complaint against a product called Stiffy's was considered by the Panel on the basis that the complainant felt the word 'stiffy' could only be used in a sexual context. At the time the Panel concluded that the brand name did not suggest an association with sexual success. In 2011, a similar complaint was considered by the Panel. The Panel, however, decided that, in view of the length of time that had since elapsed and the fact that society's attitude to alcohol promotion had become more conservative; it should not necessarily be bound by its previous decision. The Panel noted that 'stiffy' was a common slang term for an erection and considered that the brand name therefore had strong sexual connotations; indeed, it noted that in the Panel's decision on the previous complaint the company had been criticised for playing on these connotations in some of its marketing activity. It therefore concluded that the brand name suggested an association with sexual success and accordingly found the product in breach of Code paragraph 3.2(d).

**(e) *suggest that the consumption of the drink can lead to social success or popularity;***

- There should be no suggestion that consumption of a drink has played a part in achieving popularity or sociability.
- Avoid any implication that alcohol can enhance one's confidence, help overcome shyness, or is essential to have a good time. Expressions such as 'Icebreaker', 'Social Lubricator' or 'Dutch Courage' will be unacceptable.
- Nor should it be suggested that alcohol has played a key part in the success of an event, for example, by suggesting that the presence or consumption of alcohol can transform a dull/boring occasion into a more lively/successful event. Or suggest that a person is in any way 'losing out' for not being part of an alcohol-related scene.
- There is not necessarily a problem with suggesting that people who drink the product are sociable and popular, for example by showing or alluding to consumption of the drink in a happy, group setting.
- It is acceptable to portray drinking as a legitimate accompaniment to a sociable and relaxing setting, even among a group of people who appear to be confident and/or attractive.
- In 2008, a complaint was received about a series of photographs of consumers which appeared on the Mugshots section of the WKD website. The Panel noted that the event photographs showed groups posing for a camera while drinking WKD. In some cases, the groups would be huddled together and/or would be 'playing up' for the camera with funny faces and poses. The Panel considered that the invitation to pose for a photograph in a licensed venue was likely to cause this reaction. It was concerned, however, that the effect was to imply close bonding, popularity and a good time, all very closely linked to the WKD brand. While it was acceptable to portray drinking as sociable, the Panel considered that some of the photographs, because of the above elements, went further and suggested that consumption of WKD could lead to social success and popularity. Accordingly, it found the website in breach of Code paragraph 3.2(e).

**(f) *encourage illegal, irresponsible or immoderate consumption, such as binge drinking, drunkenness or drink-driving;***

See also: Guidance on multi-purchase on-trade promotions, available on [www.portmangroup.org.uk/marketingadvice/guidance](http://www.portmangroup.org.uk/marketingadvice/guidance).

- It is vital that drinks companies do not promote the irresponsible use of their products. Any encouragement of excessive drinking will be found in breach of the Code.
- Drinking games, particularly those that involve speed drinking, are likely quickly to lead to drunkenness. This is because participants in such games abdicate their personal responsibility to decide when and how much alcohol to consume and instead allow the

rules of the game to determine drinking behaviour. Any reference to drinking games, or the 'ritual' involved, will be in breach of the Code.

- Low<sup>12</sup> alcohol products should not be presented in a way that suggests they can be consumed in situations where alcohol consumption would otherwise be unwise, for example, operating machinery or driving. It should not be suggested that a particular alcoholic drink should be preferred by drivers because it contains less alcohol than other drinks (*cf: Guidance on Communication of Alcoholic Strength*).
- Round-buying or a 'round' usually requires each person in a group to take their turn to buy a drink for each person in the group. If there is any suggestion that there is a repeat pattern of drinking, the reference to 'round-buying' or 'rounds' will be unacceptable under the Code.
- Certain drinking containers and methods have long been associated with, or come with the baggage of, immoderate consumption, for example, goldfish bowls, dentist's chairs, drink luges and pouring alcohol straight into the mouth. Most of these practices have been used as examples of irresponsible promotions in the Mandatory Licensing Conditions; therefore companies should not get involved in or sanction such promotions.
- Words or phrases which might be seen as describing the effect of irresponsible or excessive consumption (for example, 'Wasted', 'Smashed') should be avoided as should words which refer to a lengthy period of consumption (for example the 'session drink').
- Words or phrases like 'big night out' should be avoided unless the drinking element is only part of a bigger event involving other activities, for example, music, dancing and food.
- 'Bomb' (or the bomb serve) and words that could have the same meaning (for example Torpedo, Depth Charger) is an inappropriate word to use to describe or name an alcoholic drink not only because of connotations of strength and/or intoxicating effect (see advice in guidance paper Communication of Alcoholic Strength), but also because the method of dropping one alcoholic drink into another is tantamount to spiking.
- On-trade drinks promotions should be in line with the UK Government's recommended guidelines<sup>13</sup>. If an on-trade promotion requires the purchase of more than one drink (whether in separate containers or in a single container, e.g. a pitcher), promotional material should make clear that the alcohol is intended for shared consumption in order to avoid criticism that there is any encouragement of excessive drinking. Alternatively, companies may make the promotion a coupon collection type of scheme whereby consumers purchase the alcohol over a reasonable period of time which is at least consistent with the sensible drinking guidelines (i.e. the consumer has a number of days or weeks to purchase the alcohol).

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<sup>12</sup> Alcoholic drinks of at least 0.5% abv but not exceeding 1.2% abv

<sup>13</sup> The UK Chief Medical Officers' guideline for both men and women is that to keep health risks from alcohol to a low level it is safest not to drink more than 14 units a week on a regular basis. For more information, see [www.drinkaware.co.uk](http://www.drinkaware.co.uk)

- The 'share' message can be communicated through words or imagery, i.e. by depicting several glasses or people in the communication.
- In 2011, a complaint was made against a promotion which required the purchase of a bucket of five Coronas in order to enter a competition. The complainant believed that asking one person to purchase five bottles was irresponsible. The company had made regular use of the Code Advisory Service and all consumer-facing communications contained a 'share' message. The company further asserted that the message that the holiday prize was for the individual entrant and three friends implicitly suggested that the bucket of beer was for sharing between four individuals, reinforcing the 'share' message. The Panel considered that the point-of-sale material made very clear that the bucket of five Coronas was for shared consumption. Accordingly, it did not find the promotion in breach of Code paragraph 3.2(f).
- In 2012, a complaint was upheld against a product called 'Crunk Juice'. This was a can which contained 8.4 units, more than double the Chief Medical Officers' sensible drinking guidelines for men at the time of the complaint. Accordingly, the Panel found the product packaging in breach of Code paragraph 3.2(f) for encouraging immoderate consumption.
- In 2017 the Advertising Standards Authority upheld a complaint against email marketing messages from Prezzo advertising 'bottomless prosecco'. There were other contextual factors, but the ASA decision stated that the wording 'bottomless prosecco' "contributed to an impression that large or excessive amounts of alcohol could be consumed as part of the offer." Although the Independent Complaints Panel have yet to consider any complaints of this nature, we would advise against associating an alcohol product with an unlimited drinks offer. See the ASA's full decision [here](#).

***(g) urge the consumer to drink rapidly or to 'down' a product in one;***

See also: Guidance on Rapid or 'Down-in-one' Drinking, available at [www.portmangroup.org.uk/marketingadvice/guidance](http://www.portmangroup.org.uk/marketingadvice/guidance)

- The purpose of this rule is not to prohibit products that have historically been consumed 'down-in-one' or rapidly, e.g. sambuca or tequila. However, there should be nothing on the product packaging or in promotional material that urges the consumer to consume these products in this way.
- The rule is also unlikely to impact on containers like shot glasses, as the consumer can choose to hold the shot glass and set it down between sips.
- However, if a product cannot be resealed and cannot easily be set down it is likely that such packaging design has an increased risk of breaching the Code for effectively urging 'down-in-one' consumption.

- The name or descriptor of a drink may cause a problem under the Code. We consider that the terms ‘shooter’ or ‘slammer’ so strongly imply a particular style of consumption that their use on drink’s packaging is likely to cause the Panel to find the product in breach of the Code.
  - The term ‘shot’ is more ambiguous in that it might also be taken to imply a small measure of a drink rather than a style of consumption. Nonetheless, care should be taken how, and in what context, the term ‘shot’ is used.
  - As always under the Code, products or promotions will be judged on their overall appearance and in their overall context. Therefore a product descriptor or a product design may not individually be a problem under the Code, but in combination they convey such a strong impression that a drink is to be consumed rapidly that the Panel regards it as in breach of the Code.
  - In 2010, the Panel asked the Portman Group to commission independent research into the way in which consumers tended to drink products in test-tube containers and their perceptions of such products. The Panel noted from the research that it was highly likely that a test-tube drink would be consumed ‘down-in-one’ by the drinker. It also noted, however, that only a minority of drinkers cited the test-tube design as the cause of this drinking behavior; drinkers were more likely to claim that they drank the product ‘down-in-one’ because of the small volume of liquid in the test-tube; less than a mouthful. The Panel acknowledged it had previously made decisions that implied a drink in a test-tube container would inevitably breach the Code for urging ‘down-in-one’ consumption (see 2009 decisions on Rampant and Mwaah!). In light of the fresh evidence that had been made available, however, and considering the relatively small quantity of alcohol contained in each test-tube, the Panel considered that such products were unlikely to cause harmful drinking behavior. Accordingly, the Panel concluded that test-tube products, on the basis of their design alone, did not breach Code paragraph 3.2(g).
  - In 2012, a complaint was made against a jelly shot in a tube which had screw lids at both ends. The product was consumed by one person blowing the contents of the tube into the mouth of the person at the other end of the tube. The Panel felt the product’s design, where one person blew the contents into another person’s mouth, lent itself to being ‘downed-in-one’. Accordingly, it found the product packaging in breach of Code paragraph 3.2(g).
- (h) *have a particular appeal to under-18s (in the case of sponsorship, those under 18 years of age should not comprise more than 25% of the participants, audience or spectators);***
- By ‘particular’ appeal the test to apply is not one of quantity, i.e. appealing to more under 18s than over 18s, but the way in which it appeals, i.e. the packaging/promotion appeals to/resonates with under 18s in a way that it does not with over-18s.
  - It is not possible to produce an exhaustive list of possible infringements of this rule but as a guide, caution should be exercised as follows: care should be taken when using cartoon-style imagery, childish fonts, bright colouring, personalities that are particularly admired by under-18s, pictures of real or fictional people known to children or

terminology popular with children as these, individually or in combination, could cause packaging or a promotion to breach this rule.

- Marketing should only take place in media or with partners where at least 75% of the audience (spectators or participants) is over 18. This is particularly important when considering potential sponsorships or co-promotions.
- Merchandise should not have a particular appeal to under-18s, this is particularly important in gift-with-purchase (GWP) promotions in the off-trade. Examples of products that could fall into this category include children's confectionery, toys including teddy bears (cf: Guidance on Gift Packs Containing Alcohol).
- Care should be taken when naming a product, or the product flavour, after well-known sweets/confectionery. The Panel has considered a number of cases where this has been the primary source of complaint. While some complaints have not been upheld by the Panel (see the rulings on Cactus Jack's Schnapps and Stiffy's), in 2017 the Panel upheld a complaint against Mr Gladstone's Curious Emporium range. The drinks packaging featured names of well-known sweets to help distinguish between the variants, which the Panel felt was acceptable in and of itself. The Panel stated that there was a difference between using a sweet name as a flavour, and marketing a drink in the context of sweets. However, the label referred to a 'confectionery emporium' which the Panel judged put the drinks in the context of a sweet shop and therefore meant they were likely to particularly appeal to under-18s.
- It is not necessarily the case that every toy and all confectionery is unsuitable, for example, replica cars and other models catering more for the collectors' market, chocolate liqueurs, after dinner mints, etc.
- In 2009, a complaint was made against a bottle of cider which featured, on its label, an image of a cartoon snake character in dark glasses which the complainant believed was similar to the characters from 'Teenage Mutant Ninja Turtles' and therefore led the product to breach the Code. The Panel considered that the prominence and nature of the snake image caused the packaging to have a particular appeal to under-18s. Accordingly, it found the product's packaging in breach of Code paragraph 3.2(h).
- In 2009, the Panel upheld a complaint against two products called Baby Pink and Baby Blue because they felt the names in combination with the bright colours and the childish font gave the products a childish feel.
- In 2015, the Panel sought expert opinion on marketing elements (such as imagery and colours) which the Panel had believed might have an appeal to children and teenagers. The Panel heard that when creating visuals which appeal to children, marketing agencies tend not to focus primarily on bright colours, but instead place importance on the levels of luminance and contrast levels between the colours. Bolder colours with greater contrast tend to gain the attention of children. The Panel has made it clear in past decisions that bright colours alone are not enough to breach the Code under this rule and it is the overall impression conveyed by a product which will determine compliance (most recently [Hoola Hooch](#) 2018).

- Two recent cases, [Cwtch](#) (2017) and [Gamma Ray](#) (2015), have seen the Panel debate at length nostalgia-based appeal in the broader context of how this may influence a particular, potentially inadvertent, appeal to under-18s.

In the Gamma Ray case, the Panel discussed whether nostalgia-based appeal could create an unintentional appeal to under-18s. In particular, the Panel considered whether the product could have an inadvertent appeal to aspirational teenagers in the 16 – 17 year old bracket, who wanted to emulate adult behaviour. In this particular case, while the Panel acknowledged that there was an element of inadvertent appeal, they ruled that the images were of an adult nature and did not find the product in breach of the Code.

As part of their response to a complaint from a member of the public, Tiny Rebel Brewing Company asserted that their Cwtch 330ml can was designed to create a nostalgic-feel to appeal to adults, who would recognise the urban themes from their teenage years. The Panel considered the point that the design of the can was aimed at adults on a nostalgia-based level but concluded that certain elements, such as the bear wearing a hoodie and graffiti in bright swirling colours, were features that would still be used to market to teenagers today. The product was upheld for having a particular appeal to under-18s.

A key point to bear in mind for nostalgia-based products is if the elements appealed to adults when they themselves were teenagers, such elements could still appeal to teenagers today. The Advisory Service would recommend considering whether a nostalgia-based element could still have a strong appeal to children/teenagers today i.e. has the character/reference been subject to a reboot in recent times and does the image, such as a teddy bear, intrinsically appeal to children more than adults? If you are unsure please contact the Advisory Service for an informal, free, discussion.

- The Advertising Standards Authority recently [ruled](#) on whether emojis have particular youth appeal. The complaint was about a Twitter post on an alcohol brand's page and featured a photo of a phone screen containing a message and a 'face with tears of joy' emoji. They did not uphold the complaint. As part of their assessment the ASA stated:

*“We considered emojis were likely to have appeal across many age groups including, because of their cartoon-like appearance, those under 18. However, we considered they were not likely to have particular appeal to under-18s by reflecting or being associated with youth culture and concluded that the ad therefore did not breach the Code.”*

However, it is worth noting that the emoji in the Twitter post was in the context of a message. There are myriad options for combining emojis or using them in different media so while the Advisory Service will bear the ASA's position in mind when reviewing future requests, we will continue to operate on a case-by-case basis as to their acceptability under the Code.

- (i) ***incorporate images of people who are, or look as if they are, under 25 years of age, where there is any suggestion that they are drinking alcohol or they are featured in a significant role. Images may be shown where people appear only in an incidental context;***

See: Guidance on Use of images of under-25s, available at [www.portmangroup.org.uk/marketingadvice/guidance](http://www.portmangroup.org.uk/marketingadvice/guidance).

**(j) *suggest that the product has therapeutic qualities or can enhance mental or physical capabilities;***

- The reference to ‘therapeutic qualities’ is a new Code requirement.
- Any direct or implied suggestion that consumption of alcohol has helped the consumer relax is likely to be unacceptable under the Code.
- Alcohol must not be the catalyst for change of mood or mental state.
- The portrayal of drinking as a legitimate accompaniment to a relaxing setting will be acceptable. For example, expressions where the relaxation element is attributed to the socialising aspect. However, any claims that directly link consumption with relaxation will be unacceptable.
- Do not claim that anyone needs, as opposed to likes, or enjoys, a drink.
- Claims that alcohol can make the drinker smarter, wittier, sharper, more focused, stronger, faster or higher performing in some way are likely to be unacceptable.
- Care should be taken in relation to alcoholic drinks containing recognised stimulant ingredients. Alcohol is a depressant and it is therefore irresponsible and misleading to market an alcoholic drink in a way which implies it will make the consumer feel more energetic, even if the stimulation effect is attributed to the energy component and not the alcohol. A factual statement that a product contains a particular ingredient, for example high caffeine content, is unlikely in itself to be problematic under the Code. The Code operates alongside the law and will have regard to Regulation (EU) No 1169/2011 on the provision of food information to consumers and Food Information Regulations (FIR) in the UK which require additional labelling for high caffeine drinks<sup>14</sup>.
- It may be necessary to inform consumers that a product contains certain ingredients, for example high caffeine content, but this must be done in a factual and ‘non-emotive’ way.
- If any ingredient which has an implied effect is given undue emphasis over and above the level deemed to be informative to consumers (for example, by placing the word ‘high caffeine’, in large red font on otherwise sober packaging) the Panel may decide that the product is being indirectly marketed on its therapeutic effect and find it in breach of the Code.
- If there is any claim, implied or explicit, for the effect of a stimulant ingredient (for example linked with a brand name such as ‘Awake’) then this is likely to be found in

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<sup>14</sup> Annex III (4) of EU Regulation 1169/2011 stipulates that drinks that contain caffeine from whatever source at a level over 150mg per litre (mg/l) must state ‘High caffeine content. Not recommended for children or pregnant or breast-feeding women’.

breach of the Code. If an alcoholic drink were to state that it was mixed with an 'energy drink' then this is also likely to be found in breach of the Code as the word 'energy' itself suggests a stimulant effect.

- Producers may give factual information about product contents but must not make any health, fitness or weight-control claims.
- As set out in the EU Nutrition and Health Claims Regulations 2006, health claims are not permissible for alcoholic drinks containing more than 1.2% abv<sup>15</sup>. Nutrition claims are acceptable only if referring to low alcohol levels, the reduction of the alcohol content, or the reduction of energy content. In addition, in the UK the Food Labelling Regulations 1996, Regulation 42(1) and Schedule 8 Part 1 provides that the description 'low alcohol' or any word or descriptor likely to have the same meaning to the consumer may not be applied to a drink with more than 1.2% abv.
- Claims such as 'light/lite' (referring to alcohol content) or 'reduced calories' are permissible but all such claims must comply with the criteria for use set down in the Regulations. Claims such as 'reduced sugar', 'half sugar' or 'reduced/low carbohydrate' are not acceptable, since they are not energy claims. Marketers are urged to seek advice from Trading Standards if they wish to make nutrition claims.
- Purely factual statements concerning calorie content, for example, 'contains X calories', are likely to be acceptable. However, numerical statements of calorie or carbohydrate content should not be qualified, for example by words such as 'only' as this amounts to more than a factual statement. Again, advice should be sought from Trading Standards.
- Trade Marks or brand names which imply a slimming effect or an amount of weight loss, for example, 'Pound Shedder' or 'Slimline Vodka' should be avoided

### **THE PORTMAN GROUP'S CODE ADVISORY SERVICE**

The above guidance should help producers avoid problems under the Code. If you are in any doubt, however, as to whether your product's proposed packaging or promotional activity conforms to the Code you can seek free, fast and confidential advice from the Portman Group's Advisory Service. To obtain advice, please telephone 020 7290 1460 and ask for the Advisory Service. Alternatively, e-mail your request to [advice@portmangroup.org.uk](mailto:advice@portmangroup.org.uk), preferably including a colour layout of the proposed packaging or promotional materials, or full details of the proposed activity.

**Updated: June 2018**

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<sup>15</sup> Article 4(3) of EU Regulation No. 1924/2006 prohibits health claims on or about drinks containing more than 1.2% abv and all nutrition claims other than 'reduced alcohol', 'low alcohol', and 'reduced energy (calorie) claims'.