



Guidance Note

Rule 3.1: Communicating Alcoholic Content

March 2019

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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 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, the overall impression conveyed and any other relevant matters. It is therefore difficult to say whether a particular product name, image or statement on a drink's packaging or in a promotion is acceptable under the Code without seeing/considering it in context. Companies are therefore encouraged to make use of the free Advisory Service before undertaking promotional activities or launching products to help ensure that they comply with the Code.

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.

Introduction

Rule 3.1 states that 'the alcoholic nature of a drink should be communicated on its packaging with absolute clarity¹.' 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.²

It should not be hard for consumers to establish whether a product contains alcohol. Usually this means that either the alcohol type (e.g. beer, vodka etc) or the abbreviation 'alc' is clearly legible, easily located and featured with reasonable prominence on packaging. Some drinks contain obvious visual 'cues' to show they contain alcohol, such as bottle shape. If the packaging is more obscure, there must be clear references to the alcoholic content. 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.

Food Information Regulations

When considering whether a product complies with rule 3.1 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.

¹ 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.

² 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.*

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).
- '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:

- **Novel container:** The Panel consider that a bottle or can typical of an alcoholic drink goes a long way towards informing a consumer that a drink is alcoholic. However, there has been great innovation in container-type both in terms of size and typical contents. If a product is novel in design, for example, a foil pouch or a novelty drinks container, the packaging will have to work

harder to convey that the product is alcohol. Also, if the container used is not readily associated with alcohol, for example a 330ml can (although this is increasingly becoming the norm), it may need to work harder (see case decisions below).

- **Positive vs Negative Cues:** When determining whether a product's packaging communicates its alcoholic nature, the Panel will consider the number of 'positive' cues against the number of 'negative' cues.
- Positive cues could include:
 - ABV
 - References to alcohol or the alcohol type
 - Crown cap or cork
 - Colour of bottle
 - Shape and size of the bottle
 - Ingredients referenced that are typical of alcoholic drinks
- Negative cues could include:
 - Dominance of images of fruit images or other non-alcohol-related imagery on packaging
 - Novel packaging
 - Overly busy design.
 - Cartoon-like illustrations or references to children's culture
 - Primary colours
- No one element will make a drink's packaging compliant or not-compliant with rule 3.1. The Panel always consider the packaging as a whole. It's important to bear in mind that if the cumulative impact of the negative cues outweighs the positive ones, the Panel is likely to find the product in breach of the Code.
- **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 a 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 applies the same way to both types of packaging; both are considered important. If mandatory information is only on the bottom of secondary packaging, and the labels of the products/containers within the packaging are not visible 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 ultimately on the product itself, in addition to being on the bottom of the pack, this could help towards providing clarity.

- **Different language:** 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.
- **Placement:** Marketers cannot rely on the product being sold in an off-licence or in the alcohol section of a shop to communicate the alcoholic nature to a consumer. The Panel will consider the product packaging on its own terms without regard to where it was sold.

Previous Cases

In respect of [Lefte 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 Lefte 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.

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.

Despite being packaged in a wine bottle and stating the ABV on the front label, the Panel considered that the negative cues dominated the positive cues on the packaging for [Mr Gladstone's Curious Emporium](#) and ruled that the drink was in breach of rule 3.1.

The Panel said that, because premium soft drinks are now sold in bottles similar to those typically associated with alcoholic drinks, the bottle shape alone could not be relied on to communicate alcoholic nature. The other positive cues were not clear enough. The ABV was present on the front label but it was on a gold foil-embossed background, which the Panel considered was difficult to read. The Panel considered that consumers would not understand the descriptor 'delicious fusion beverage' to mean alcohol. They noted that the rear labels contained the wording 'mixed alcoholic beverage' and standard alcohol health messaging. The Panel also noted however that one rear label suggested mixing the drink with sparkling wine, which they considered further added to confusion over the alcoholic nature of the contents. In addition to this, dominating the packaging was an image of a sweet shop owner called Mr Marjorum and on the packaging there were references to sweet flavour names which added to the confusion about the alcoholic nature of the drink.

The Panel considered the product packaging for [Hoola Hooch](#) carefully and noted that the ABV appeared three times on the can, along with the wording 'alcoholic passion fruit and mango brew' which also appeared three times on the product packaging. The Panel recognised that the words 'hooch' and 'brew' could also be classed as words used to describe alcohol and noted that when the

product was facing forward there were four alcoholic descriptors in the primary field of vision (ABV, 'alcoholic', 'hooch' and 'brew'). The Panel concluded that the product packaging went above the minimal compliance level in communicating the alcoholic nature of the product with absolute clarity and accordingly did not uphold the complaint under Code rule 3.1.

The Portman Group's Advisory Service

The above guidance should help you to avoid problems under the Code. If you are in any doubt, however, as to whether your proposed 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 The Portman Group on 020 7290 1460 and ask for the Advisory Service. Alternatively, email your request to advice@portmangroup.org.uk, with full details of the proposed activity.