



Guidance Note

Rule 3.2(a): Communication of Alcoholic Strength

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.

The Legal Position

Alcohol packaging is subject to a raft of legislation including, but not limited to, the Food Information regulations 2014¹, Spirits Drinks Regulations 2008 and the Wine Regulations 2011. The Advisory Service does not give advice on the application of the law. It is the producer's responsibility to ensure that any drinks packaging or promotional activity it undertakes complies with applicable laws and regulations and advice should be sought from a producer's own legal counsel, Trading Standards or the Food Standards Agency. This is particularly recommended for advice under the Nutrition and Health Claims Regulation 2006² if making comparative strength claims. This controls the types of nutritional claims that can be made for alcohol and is both complex and mandatory.

¹ Regulation 42(1) and Schedule 8 Part of the Food Labelling Regulations 1996 will continue to apply until December 2018. This lays down 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.

² Article 4(3) of EU Regulation No. 1924/2006 prohibits all nutrition and health claims on or about drinks containing more than 1.2% abv other than 'reduced alcohol', 'low alcohol', and 'reduced energy (calorie) claims'

Background

The Public Health Responsibility Deal³ enabled the industry to identify practical measures it could take to support the Government's wider strategy on alcohol. One such pledge from the industry was to improve consumer choice and access to, low and lower alcohol products. While it remains necessary to prevent the irresponsible promotion of a drink based on its higher than average strength or intoxicating effect, consumers should be presented with clear information to allow them to make sensible drinking decisions.

The Rule

Code paragraph 3.2(a) requires that a drink's naming, packaging and promotion should not in any direct or indirect way:

- (a) *give the higher alcoholic strength, or 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.*

The rule effectively allows for two types of claim to be made:

- i. Products which are below average strength (within category), or existing products which have been reformulated to below average strength, may make a virtue of their strength providing this is done in a manner which is proportionate to the product's strength relative to the category average;
- ii. Products of above average strength for a category can make factual statements about strength, or factual statements about the reduction in strength, following any reformulation.

Companies are advised to exercise caution when making comparative claims and seek legal advice or contact Trading Standards for advice under the Department of Health's 2011 guidance to the Nutrition and Health Claims Regulations 1924/2006.

The Committee of Advertising Practice Non-broadcast rule⁴ that regulate alcohol advertising in the UK allow only 'low' alcohol drinks (drinks 0.5% to 1.2% abv⁵) to be presented as preferable. If making claims in media which are subject to the CAP rules, marketers are advised to seek advice from CAP's Advisory Service (Clearcast for TV advertisements, and the Radiocentre for radio advertisements).

³ Department of Health – The Public Health Responsibility Deal, March 2011.

⁴ UK Code of Non-broadcast Advertising and Direct & Promotional Marketing.

⁵ 'abv' stands for 'alcohol by volume', which is the recognised measurement of alcohol strength.

Application of the Rule

The Code, and therefore the rule, applies to all alcoholic drinks above 0.5% abv. The rule might be expected, however, to impact more on the marketing of certain categories of drink than others. In particular, it might impact on the marketing of beer, ciders and wines more so than spirits because of the greater strength variations permitted within these sectors, and because the legal minimum strength for some spirits is set at 37.5% abv (40% for whisky and brandy/cognac).

The rule does not seek to benefit, or present as favourable, one category of alcohol over another and this is reflected in the fact that comparative claims should only be made on the basis of 'similar beverages' (see section below on Comparative Claims).

Defining strength categories, and creating new ones, is both complicated and complex and it was agreed with industry that it was not the Portman Group's role to do this. A more pragmatic approach has been taken; we will use existing abv levels set within legislation and, where they exist, the current UK average strengths by category. These should be used as the benchmark when making comparative claims for new 'lower' strength products or existing 'reformulated' products.

Definitions:

- low alcohol: a drink with an abv of not more than 1.2%;
- de-alcoholised: a drink from which the alcohol has been extracted and which has an abv of not more than 0.5%.
- alcohol-free: a drink with an abv of not more than 0.05%.

Average Strengths (where data exists)⁶:

- Beer/lager/ale: 4.2% abv
- Wine: 12.5%
- Cider: 5%
- Ready to drink (RTD): 4.7%.

Spirits need to be treated differently; it is not possible to calculate or set an average strength because a legal minimum strength is set within legislation. This is 37.5% abv for gin and vodka and 40% abv for whisky and brandy/cognac. These values should therefore not be used as the benchmark by which all spirits should be judged. Also, liqueurs and spirit-drinks have not been included in the list of average strengths as data is not currently available for this broad category.

⁶ Information supplied by Department of Health; this information will need to be updated as and when new data becomes available.

As mentioned earlier, the rule will allow for two types of claim which fall into two broad categories: comparative claims and factual statements of strength.

a) Comparative Claims: drinks below average strength (within category)

- It is the view of the Advisory Service that the rule allows for two types of strength comparison (within category):
 - Comparison 1: a product which is below the average strength (in its category) compared to the category average.
 - Comparison 2: an existing product which has been reformulated to a strength lower than the category average being compared to its previous version, or compared to another within the same brand family.
- Comparative claims should be made only with 'similar beverages'; this requires us to define the term. There are numerous sub-categories within broad drinks categories, particularly for wine, liqueurs and spirits, most of which will not be familiar to people outside the industry. For the sake of simplicity however, broad categories will be used to determine what constitutes a 'similar beverage' which can then be used as the basis for comparison. We expect the Panel will also use these broad categories when making decisions while having regard to the 'average' strengths (where data is available) as stated above:
 - Wine (to include white, red, rosé and sparkling)
 - Spirits⁷ (to include rum, whisky, gin, vodka, tequila, brandy)
 - RTD (an alcohol-based fruit or mixed drink)
 - Beer (to include lager, ale, wheat beer, etc)
 - Cider
 - Spirit-drinks, including liqueurs.
- Therefore, alcohol strength comparisons are permitted with another product, but only when the comparison is with a higher strength product of a *similar beverage*. Thus, it would not be permissible to make a strength comparison between a wine and a beer, or a spirit and an RTD as they would not be regarded as similar beverages.
- The rule requires that the 'lower' strength must be emphasised '*proportionately when it is below the average strength for its category*', i.e. the greater the difference between the product being presented and its predecessor, (reformulated products) or the greater the difference between the product being presented and the average strength for its category, the more emphasis/virtue can be placed on the lower strength product. This will discourage abuse of the rule for products which fall just beneath the average strength for their category.

⁷ Given the legal minimum strengths within the spirit category (as highlighted above) it would not be possible to compare, for example, a gin and a whisky. For further definitions of 'spirit' see the Spirits Drinks Regulations 2008

- In claiming that a product is 'lower' it must not be implied that the product is 'low alcohol' if its strength remains above 1.2% abv.
- Comparisons can be direct or indirect, for example, a statement like 'lower in alcohol, same great taste', would be an indirect comparison if only one product was being featured/referred to, but it is being presented as 'lower-than' another product.
- In presenting a product as 'lower' it must not be implied that you can consume as much as you want of the lower strength drink, that it is in any way healthy or that it can be consumed in situations where any alcohol consumption would be regarded as dangerous, e.g. before driving.
- Other types of comparison may be permitted, for example, taste, quality or age, but the advice in this guidance paper is offered only insofar as it relates to strength.

b) Factual Statements: for products above average strength (within category)

The guidance in this section is largely unchanged from guidance issued under the third edition of the Code except where it refers to lower strength products. In Annex A we have used fictional products which show the practical application of this section of guidance.

i) Product Names, Descriptors and Images

- The statement of a product's alcoholic strength is required by law⁸ and the Code requires that the alcoholic nature of a drink must be communicated with absolute clarity on its packaging. Some brands go beyond stating the product strength just in the form of the 'abv' and incorporate the product strength into the brand name; in most cases this makes the strength the dominant theme of the packaging. Such products would have been in breach of the letter of the previous rule, (even if the strength was relatively low), which did not allow the alcoholic strength to be a dominant theme.
- The revised rule no longer refers to 'dominant theme' but to 'undue emphasis'. Unlike the current rule, it will be possible to make the 'lower' alcohol content (anything below the average strength for its category) of a drink the dominant theme, and give it undue emphasis, by using it as part of the brand name or making the strength the most dominant theme on the packaging (see annex A, example A).

⁸ All pre-packaged drinks with an alcoholic strength of more than 1.2% (abv) must be labelled with an indication of the abv. This must be shown by a figure, to not more than one decimal place. It shall be followed by the symbol '% vol.' and may be preceded by the word 'alcohol' or the abbreviation 'alc', (Article 28 and Annex XII of Regulation (EU) No 1169/2011 on the provision of food information to consumers)

- High strength products are not prohibited under the Code. However, the way they are presented/promoted must be done so carefully, i.e. it would not be possible to give high strength ‘undue emphasis’ by, for example, incorporating the strength into the brand name so that the high strength became the main message (see example B).
- Some spirit products might refer to their product ‘proof’⁹ on their packaging. UK consumers are not as familiar with the term as they are with abv and may not necessarily associate ‘proof’ with product strength. Nonetheless, if ‘proof’ is used as part of a brand name it should not be given ‘undue emphasis’, i.e. by making it the dominant message (as advised under the previous bullet point).
- It may be necessary to inform consumers that a product is strong. The message, however, must be communicated in a factual and non-emotive way. So, a small statement on the bottom of packaging like ‘strong’ alongside the statement of the product’s alcoholic strength (for example, ‘alc. 7.5%’) need not be problematic under the Code (see example C and E).
- However, if the statement is given undue emphasis (for example, by placing it in a highlighted box in red on otherwise sober packaging) the Panel might well decide that the product is being sold primarily on the basis of its strength and find against it under the Code. Also, the more emotive the claim, for example ‘super strength’, ‘extra strength’, where the term ‘super’ and ‘extra’ are directly referring to the strength of the product rather than the brand name, the more likely the Panel will find against the product for placing undue emphasis on strength. (see examples B, D, F, G and J)
- It is the view of the Advisory Service that there is a difference between the factual communication of a drink’s abv and the use of descriptive words or imagery which seek to ‘glamorise’, or allude to, strength. The former is simply providing the consumer with necessary information while the latter is more likely to glamorise the strength aspect. Therefore, statements that draw attention to the relatively high strength in a way that suggests the drink is to be preferred because of this (for example, ‘The strongest lager you can buy’), or which use emotive language to convey the strength (for example, ‘Warning!!! Dangerously high in alcohol’) the more likely these products will be found in breach of the Code. Likewise, imagery which draws undue attention to the strength is also likely to breach the Code. (See examples G and J).
- It is the opinion of the Advisory Service that any product name that alludes to the effect of the alcohol or intoxicating effect should be avoided because this goes beyond simply factual information about a product’s strength. For example, names like ‘Blackout’ or ‘Brain Attack’ should be avoided.

⁹ The term was originally used in the UK and was defined as 7/4 times (abv); but it can also be defined as twice the percentage of abv (for U.S products). For example, a product at 100 proof would be at least 50% abv.

- Words or names like ‘Bomb’, ‘Turbo’, ‘Torpedo’, etc., are inappropriate to describe or name an alcoholic drink because of connotations of strength and/or intoxicating effect. In the context of names for an alcoholic drink they imply the drink is strong and likely to have a powerful effect on the consumer.
- Descriptions of quality or production, for example Triple Filtered, Cask Quality, Premium, Export, Special Reserve are likely to be acceptable under the Code providing they do not seek to glamorise the strength of the product. (See example H).
- Cask strength is a term used for the bottling of a single malt whisky which is bottled at the strength at which it comes out of the cask following maturation, i.e. no water is added prior to bottling. Other single malt whiskies will be bottled at lower strengths after dilution with water following maturation to various strengths down to 40% abv, which is the minimum legal strength for whisky in the EU.
- There are a number of ‘cask strength’ whiskies on the market whose labelling seeks to do no more than inform the consumer of the quality of the product. As always, it is the overall impression conveyed and if the message is presented in a way which glamorises, or places undue emphasis on, the strength then they could be problematic under the Code. (see examples I and J).

ii) **Nutritional Claims**

- As set out in the EU Nutrition and Health Claims Regulations 2006, health claims are not permissible for alcohol above 1.2%. Nutritional claims are acceptable under the Regulations only if referring to ‘low alcohol’ levels, the ‘reduction of the alcohol’ content, or the ‘reduction of energy/calorie’ content.
- Claims such as ‘light’ or ‘lite’ (referring to alcohol content) or ‘reduced calories’ are acceptable for drinks with more than 1.2% abv only if they do not imply ‘low alcohol’. Claims such as ‘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. (See image K).
- Producers are urged to seek advice from Trading Standards if they wish to make nutritional claims.

The Portman Group’s Code 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 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, preferably including a colour

layout of the proposed packaging or promotional materials, and full details of the proposed activity.

ANNEX A

Application of the Rule using examples

Example A: Undue emphasis



Application of the rule:

At 4% abv this product is below the average strength for its category therefore it is possible to feature the strength prominently, or place 'due' emphasis on it.

Decision: NO BREACH

Example B: Undue emphasis



Application of the rule:

At 80% abv this vodka is higher than the norm for its category therefore it would not be possible to give the high strength undue emphasis, i.e. incorporating it into the brand name in a way that the strength becomes the main message. This product would also have been in breach of the previous strength rule by making high strength the dominant theme.

Decision: BREACH

Example C: Factual communication of alcoholic strength



Application of the rule:

A relatively strong cider, at 8%, which the Code does not prohibit. However, the strength must be communicated in a factual way (without undue emphasis). The label includes the word 'strong' just above the ABV statement. Compare this example with example D.

Decision: NO BREACH

Example D: Undue emphasis



Application of the rule:

This product is the same product as in the previous example except the packaging differs: the word 'strong' is read in conjunction with the brand name and is given more prominence than the brand name, thereby making high strength the dominant theme.

Decision: BREACH

Example E: Factual communication of alcoholic strength



Application of the rule:

Compare this product to example D: both products are high in strength for their category but the way the high strength has been communicated is different. In example D 'strong' is given prominence over any other message on the packaging, while in this example the primary message is the brand name, followed by the imagery and then the factual information about the strength of the product.

Decision: NO BREACH

Example F: Undue emphasis

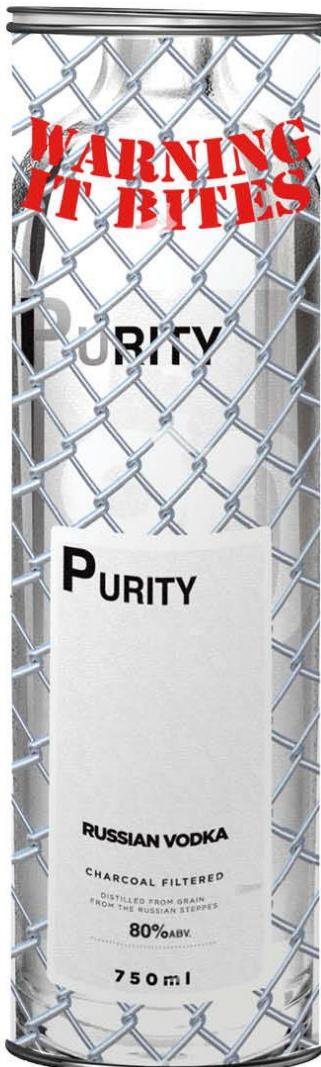


Application of the rule

The brand name, Wurtz Brau, is the most prominent message on the packaging of this high strength product. However, the inclusion of the word 'extra' goes beyond giving factual information about the product strength (compare with example E).

Decision: BREACH

Example G: Undue emphasis



Application of the rule:

The product is 80%, and the only reference to the strength on the product label is the abv statement at the bottom of the outside label. However, imagery (so strong it needs to be kept behind a cage) and emotive language (warning, it bites) has been used to place undue emphasis to the product strength.

Decision: BREACH

Example H: Product descriptor



Application of the rule:

Claims referring to production and taste, like quality, premium, triple filtered, etc., are acceptable even if they become a dominant part of the overall messaging, (providing they do not inadvertently play on the high strength of the product).

Decision: NO BREACH

Example I: Product descriptor



Application of the rule:

The whisky is presented as 'cask strength' at 58.3% abv. The high strength has been communicated in a factual way without undue emphasis. Compare with Example J below.

Decision: NO BREACH

Example J: Undue emphasis



Application of the rule:

This is the same product (and strength at 58.3%) as example I above. The higher strength has been highlighted and given undue emphasis by placing it in a highlighted red box, almost like a mark of strength. This design feature appears to go further than simply informing the consumer of the quality of the product.

Decision: BREACH

Example K: Nutritional claims



Application of the rule:

Under the Nutrition and Health Claims Regulations 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. In this example no claims are made about the reduction in the calorie content and the information has been presented in a purely factual way.

Decision: BREACH