



Guidance Note

Rule 3.2(h): Particular appeal to under-18s

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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

Code paragraph 3.2(h) requires that a drink's naming, packaging and any promotional material or activity does not, in any direct or indirect way, 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).

Application of the Rule

- 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 (See 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.

- In 2018, the Panel considered a complaint against [Pink IPA](#) which was a limited edition version of Punk IPA for International Women's Day, designed to generate discussion and

awareness of the gender pay gap. The product incorporated the tagline 'Beer for Girls' on the front label. The Panel discussed the use of the term 'girls' in the context of an alcoholic product and noted that the primary definition of 'girls', and likewise 'boys', related to children. The Panel concluded that, however unintentionally, the phrase created a link between beer and children and accordingly upheld the product under Code rule 3.2(h).

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.