



Guidance Note

Rule 3.2(j): Therapeutic qualities, enhancing mental and/or physical capabilities and change in mood or behaviour

Rule 3.2(j): Therapeutic qualities, enhancing mental and/or physical capabilities and change in mood or behaviour

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(j) requires that a drink's naming, packaging and any promotional material or activity does not, in any direct or indirect way, suggest that the product has therapeutic qualities, can enhance mental or physical capabilities, or change mood or behaviour. Because, at the time of writing, the change in mood or behaviour requirement is a new addition to the Code rule, there are no precedents to show how this element of the rule has been interpreted by the Panel. This guidance, however, seeks to anticipate how the Panel may interpret the new rule in the future. The guidance will be amended and updated in light of future decisions by the Panel.

Application of the Rule

- 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 one's surroundings/setting, and not the alcohol, which is a by-product of the setting, are likely to

be acceptable. 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.
- The revised element of the rule seeks to prevent suggestions that an alcoholic drink can have mind-altering qualities, not necessarily positive ones, and can therefore help a consumer to perceive a situation differently. For the avoidance of doubt, experiential activities which seek to provide a consumer with a unique brand-related experience are likely to be fine under this aspect of the rule but those activities which suggest that they can help consumers to 'forget' their everyday lives and see things through the rose-tinted lens of an alcoholic drink are likely to be problematic.
- References to the taste and quality of a product are likely to be fine under the Code and the Advisory Service would encourage producers to focus on these elements when making emotive statements. However, suggestions that a drink can invoke feelings/emotions, directly caused by consumption of the product, for example 'get in touch with your wild side', are likely to be problematic.
- 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 drinks¹.
- 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.

¹ 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'.

- 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 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% abv². Nutrition claims are acceptable only if referring to low alcohol levels, the reduction of the alcohol content, or the reduction of energy content.
- 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 Panel will always consider the overall impression conveyed by a product but there may be some circumstances where a product makes a direct or implied 'claim' in its name. For example, 'Pound Shedder' directly suggests that the product will aid weight loss, and, in the opinion of the Advisory Service, such an unambiguous claim would be problematic under the Code regardless of any mitigating statements on the packaging and in accompanying marketing materials. As is the case under every rule, this element of guidance will apply irrespective of any trademark in place for the brand name.
- In 2012, the Panel considered the product packaging and promotional material of [Dr Von Hyde's Herbal Liqueur](#). While the Panel acknowledged that that the product was a herbal liqueur, and the name incorporated the abbreviation 'Dr', it considered that the product did not seek to position itself as medicine. However, when considering the promotional materials which included claims such as "cure for all", "a healer" and "medication for the

² 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'.

masses”, the Panel concluded that the materials did claim that the product had medicinal properties and found the promotional material in breach of the Code.

- The Panel also upheld a complaint against [Vitesse Noir](#) in 2012 for implying that the product could enhance an individual’s physical capabilities by including the lines “this beer is so packed full of beans it could have you dancing on the ceiling” and “just when you are not sure you can manage the last dance, take a nip and it’ll be just the tonic that you needed” on the product’s packaging.

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.