
THE PORTMAN GROUP

Code of Practice

on the Naming, Packaging and
Promotion of Alcoholic Drinks

Consultation

October 2006



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1 - Introduction and Background

1.1 History of the Code

The Portman Group (TPG) was set up in 1989 by the UK's leading drinks producers¹. Its role was to promote responsible drinking; to help prevent alcohol misuse; and to foster a balanced understanding of alcohol-related social issues.

In April 1996, TPG introduced its Code of Practice covering the naming and packaging of alcoholic drinks. This was in response to the concern being expressed by sections of the media, Government, consumer and health education interests that some alcoholic drinks were aimed at and predominantly appealing to the under 18s. Since then, the Code has undergone two major revisions following public consultation exercises. It now applies not only to a drink's naming and packaging, but also to a range of below-the-line promotional activities such as websites and sponsorship (it does not, however, generally apply to advertising because this is already regulated by the Advertising Standards Authority).

1.2 The way the Code works

The Code is written by The Portman Group in consultation with the industry and other stakeholders, as explained above.

The Code has an open and accessible

complaints system allowing anyone to make a complaint against a product or promotion that they consider is in breach of the Code. Complaints are ruled on by an Independent Complaints Panel (ICP) and it is the independence of the ICP, coupled with the effective enforcement process (see below), that provides the system with its credibility.

The ICP is currently chaired by Lord Condon. There are eight other members of the ICP. Details of the ICP membership can be found on TPG's website (www.portmangroup.org.uk). The ICP has its own constitution which requires that the membership represent a diversity of backgrounds and experience. No ICP member is allowed to be employed by TPG or its member companies. At least one member, however, (but no more than two) must be currently employed, or have been previously employed, by an alcoholic drinks producer. The ICP's decisions are published on TPG's website and in an annual Code report produced at the end of each calendar year.

If a complaint is upheld and a product or promotion is found in breach of the Code, the offending company is asked to take appropriate remedial action. In the event of a breach concerning the naming, packaging or point-of-sale advertising material of a drink, TPG also issues a Retailer Alert Bulletin (RAB) asking licensed retailers not to stock the

¹ The Portman Group's current members are: Bacardi Brown Forman Brands, Beverage Brands (UK), Carlsberg UK, Coors Brewers UK, Diageo Great Britain, InBev UK, Pernod Ricard UK, Scottish & Newcastle

offending product, or display the offending point-of-sale material until the company has taken appropriate remedial action. The RAB is published in the trade press and also distributed to Code signatories, trade associations, police licensing officers and local authority licensing officers.

In the event of a retailer ignoring a RAB and continuing to stock a product or display point-of-sale material that has been found in breach of the Code, TPG may report that retailer to their local licensing authority for it to take whatever action it deems appropriate. TPG has not yet had to report any retailer in this way, such has been the level of retailer support for the ICP's decisions.

To assist companies in complying with the Code, TPG offers a free Advisory Service. Companies can approach the Advisory Service for confidential guidance in advance of launching a product or undertaking an activity covered by the Code. The Advisory Service will say whether, in its opinion, the proposed product or activity raises any potential problem under the Code so that the company can take appropriate action in advance. The Advisory Service's opinion is not binding on the ICP but the increasing demand for its opinion (see below) is testament to how useful the industry finds the Advisory Service and it performs a valuable role in ensuring Code compliance.

1.3 Support for the Code

The Code is owned and administered by The Portman Group. There are, however, over 130 companies that are signatories to the Code. These signatories, which include

both alcohol producers and retailers, as well as trade associations, represent the overwhelming majority of the drinks industry and thus reflect the fact that the Code enjoys widespread industry support.

Outside of the industry, there is also strong support for the Code. Under preceding competition law regimes, the Office of Fair Trading recognised the Code and its procedures as compatible with competition law and we are confident that the Code and its procedures are still so compatible. The Better Regulation Commission has described the Code as "an example of a code that works well". The Government has acknowledged the Code as an effective instrument of self-regulation and welcomed the efforts of the industry to contribute to the reduction of alcohol misuse through active compliance with the Code. Indeed, The Secretary of State's Guidance under the Licensing Act 2003 commends the Code to licensing authorities and recommends that they, in turn, should commend it in their statements of licensing policy.

1.4 Impact of the Code to date

2006 marks the 10th year of the Code of Practice. During the last decade, there have been almost 150 complaints under the Code and over 70 irresponsible or inappropriate products have been removed from the market.

Figure 1 - Total number of complaints received 1996-2006

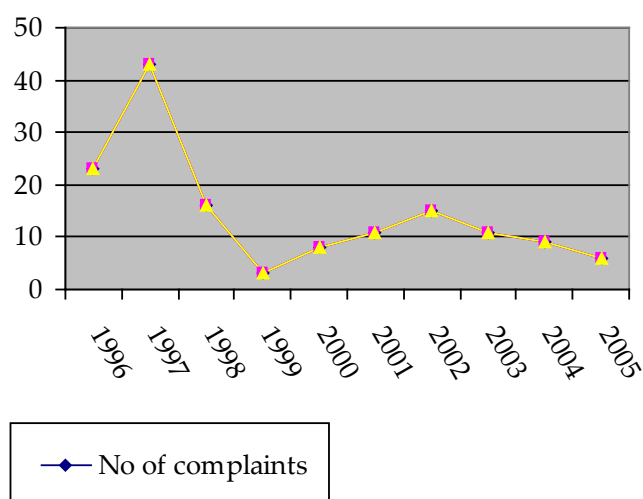
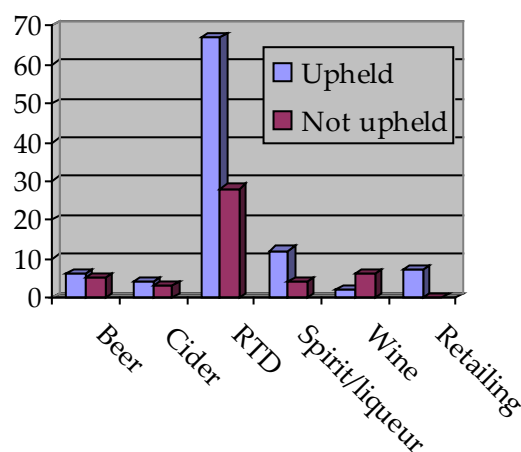


Figure 2 - Complaint breakdown by drink type



The first two years of the Code’s existence saw the biggest number of complaints made (Figure 1). This could have been due to factors such as the higher number of problematic products on the market at the time the Code was launched, an active policy at that time amongst certain organisations to submit complaints about those products and the Code’s high profile after its launch. Complaint numbers subsequently dropped dramatically in the following years. The fact that fewer complaints are received today is not necessarily a cause for concern as it can be seen as an indication that producers’ awareness of, and compliance with, the Code is high. TPG nevertheless intends to undertake initiatives during the remainder of 2006 and in 2007 to raise awareness of the Code and the complaints system among consumers and non-industry groups.

Complaints have been made (and upheld) about all types of beverages (Figure 2) and, since the Code’s remit was widened in 2003, some have concerned ‘below-the-line’ promotional activities including brand websites aimed at UK consumers and branded merchandise. RTDs or ‘Ready-to-Drink’ beverages have attracted the most complaints over the years.

In terms of the basis of the complaints made (Figure 3), appeal to under 18s has been the biggest concern over the years, in particular when the Code was first launched, followed by complaints about failure to make clear the alcoholic nature of the drink.

The rate of compliance with Panel decisions is high (Figure 4) with the vast majority of problematic products being modified or withdrawn. The Retailer Alert Bulletin enforcement system, which calls on retailers to deny shelf space to products found in breach of the Code, means that even uncooperative producers find that they are unable to ignore the Panel's decisions.

Use of the Advisory Service has steadily increased over the last 10 years (Figure 5) and, in fact, 2006 is set to prove the busiest year since it was established. Seeking and following pre-launch advice greatly increases the likelihood of a product or promotion complying with the Code and this chart clearly shows that the number of requests for advice is now well over tenfold the number of complaints received.

Figure 3 - Basis of complaint

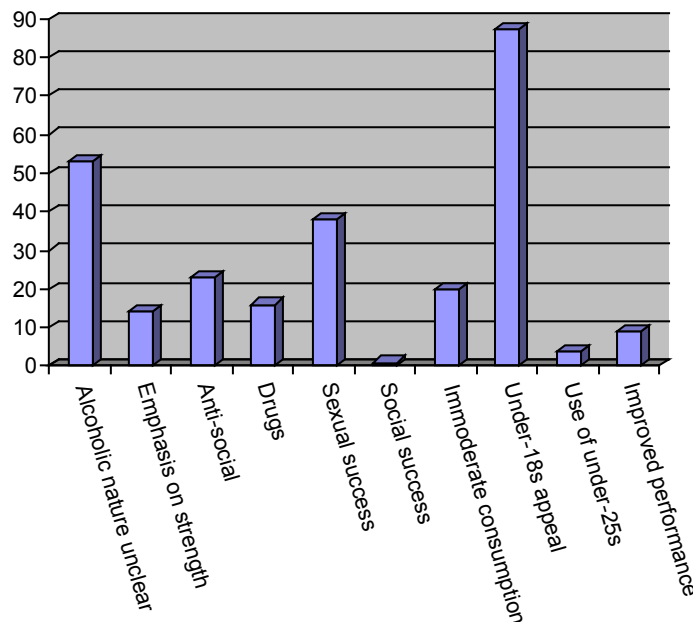


Figure 4 - Code compliance

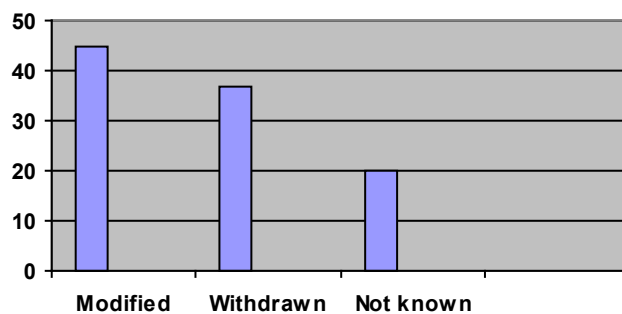
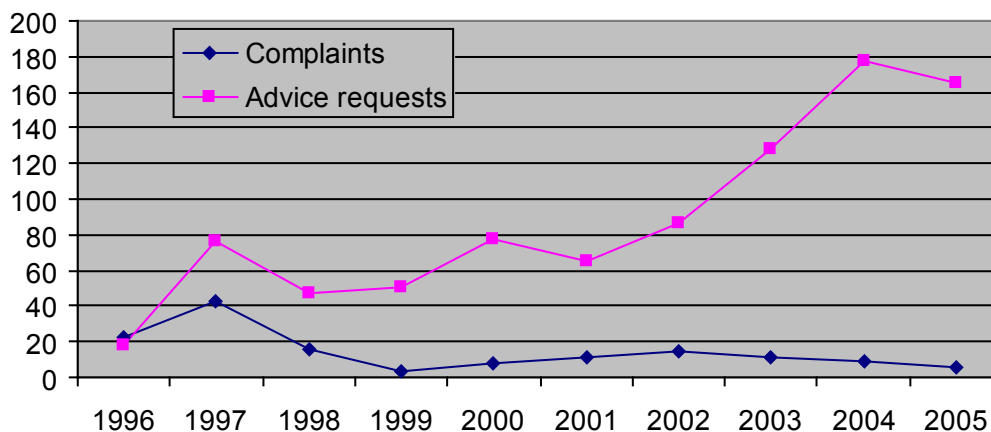


Figure 5 - Complaints versus advice requests



1.5 The need for a review

Regular review is one of the features of good self-regulation. The Code's flexibility and responsiveness to public opinion, cultural change and industry innovation have helped to secure its effectiveness to date. The last review, however, was in 2001 and it is now time again to take stock and see where, if at all, the Code can be improved to meet the requirements of industry and other stakeholders.

1.6 Achieving the right level of restriction

In undertaking this exercise, it is a good idea to remind stakeholders of the purpose of the Code. It is to ensure that alcohol is promoted in a socially responsible manner and only to those over 18 years of age. In so doing, the Code not only protects the public from irresponsible marketing, it also protects the industry from public and media criticism, and from the risk of unnecessary government interference that might impact adversely on the industry's marketing freedom and wider commercial interests.

The Code, to be successful, thus needs to strike a balance between the provision of adequate public protection and the retention of reasonable marketing freedom. If the Code should seek to over-protect the public it will simultaneously run the risk of denying the industry reasonable creative freedom to promote its products. This will eventually cause the Code to lose credibility among its industry stakeholders on whom it depends for support and compliance. Thus the self-regulatory system would collapse. If, on the other hand, the Code seeks to provide the

industry with too great a licence in the way it markets its products, it will simultaneously run the risk of failing in its duty to protect the public from irresponsible approaches. This will eventually cause the Code to lose its credibility among the public, media and policy-makers leading to pressure for it to be replaced by more restrictive legislation.

By and large, we are satisfied that the Code has achieved the right balance but this review allows us the opportunity to seek confirmation of this from stakeholders and to learn what adjustments, if any, might be necessary to ensure that the balance is correct going forwards.

It is also worth noting that the Code seeks to impose a minimum marketing standard with which all companies across the industry are expected to comply to ensure that the public is adequately protected. It does not seek to lay down a gold standard in marketing practice to which companies might seek to aspire. There are many drinks producers that choose to go further than the Code's requirements to demonstrate their commitment to social responsibility. The Portman Group's member companies, for example, undertake to include unit labelling information on their drinks containers to help consumers better understand the alcohol content, and include reference to the consumer advice website, www.drinkaware.co.uk, on all brand packaging and advertising. While these and other marketing initiatives are welcome, they should not necessarily be seen as mandatory obligations on the entire industry as would be the case if they were to be included as requirements in the Code. Indeed, on some of the issues highlighted

in this review, thought should be given as to whether they warrant the imposition of a minimum standard across the industry through a change in the Code or whether they should just be seen as a form of best practice to which the industry should, through other means, be encouraged to aspire.

1.7 Issues not included in this review

Section 2 of this document outlines various issues which potentially might warrant a change in the Code and on which specific response is sought. There are certain other issues which we considered including in this section but which we have eventually decided against. These issues, and our reasons for not including them, are explained below.

Health and nutrition claims have recently been of potential concern to us. We have seen examples of alcoholic drinks containing added ingredients, such as vitamins. On occasion, the drink has been marketed by reference to the alleged beneficial effect of these added ingredients. In effect, the drink is being marketed as a functional food, to be preferred on the basis of its physiological effect upon the drinker. There are, however, potential concerns about this style of marketing. In particular, it can be argued that an alcoholic drink is an inappropriate choice of vehicle to deliver beneficial ingredients to the consumer, and should not be promoted on a health or nutritional platform, because alcohol itself is a psychoactive substance that is dangerous if consumed in excess or in the wrong circumstances (e.g. before driving). We were intending to consult on

the introduction of a new Code rule that would prevent any therapeutic claim being made for an alcoholic drink. However, a new European Regulation on nutrition and health claims made on food is expected to be adopted later this year and will enter into force in 2007. This regulation will prevent alcoholic drinks with an ABV of 1.2% or above from making any health or nutrition claims on labelling or advertising, other than those which refer to low alcohol levels, reduced alcohol (to which national rules continue to apply) or reduced energy. In light of this, we consider that it is unnecessary for us to seek to address this issue through our Code.

We also have had concerns over the marketing of some lower calorie alcoholic drinks and were intending to consult on a possible new rule concerning **dietary claims**. Again, however, the above regulation will, in our opinion, largely address this issue thus eliminating the need for action under our Code.

We considered consulting on whether the Code should include a rule relating to **taste and decency**. This was an issue that we consulted on the last time we reviewed the Code and opinion was divided. On reflection, we considered that it was inappropriate to include such a rule in the Code. The Code relates to issues specific to alcohol. It includes provisions concerning associations with sexual success and anti-social behaviour because these issues have an alcohol-related significance. The question of whether something offends simply on grounds of taste and decency does not, in our opinion, have any relevance to the issue of alcohol and/or its misuse. For example,

the use of a swear word on a drink's packaging is equally offensive regardless of whether it is a soft drink or an alcoholic drink. It would furthermore leave the ICP in the unenviable position of perhaps having to act as moral arbiters on a whole host of issues, including those relating to sex, race and religion. This, in turn, could damage the credibility of the ICP, the Code and TPG. Rather than again invite comment on this issue, we instead propose to continue to exclude taste and decency issues from the Code (though products and promotions that are potentially offensive may, of course, still be subject to other Code provisions, such as the rule disallowing any suggestion of an association with sexual success).

We considered inviting comment on the issue of the **volume alcohol content of single-serve drinks containers**. Some cans of alcoholic drink (typically, 500ml cans of high strength beers and ciders) contain over four units of alcohol. The Government sensible drinking guidelines state that men should drink no more than three to four units of alcohol a day. Given that a can normally is not for shared consumption and is consumed in one session, it has been argued by some that these cans encourage excessive consumption and should therefore explicitly be disallowed under the Code. The situation, however, is not necessarily straightforward. For example, if cans of super-strength lager or cider that exceed four units are deemed irresponsible, where does that leave large 'party' cans, large plastic bottles of cider, bottles of premium 'dinner table' beer, bottles of wine and bottles of spirit, all of which contain in excess of four units? We are currently looking at this issue

in more detail to determine if distinctions can reasonably and objectively be made between different types of drink container in terms of the way in which their contents are consumed and may consult separately on this issue when the evidence base for the debate is clearer.

It has been suggested to us that the Code would benefit from an **appeals process** against upheld decisions by the ICP. We consider such a process would be disproportionate, given that the ICP normally deals with fewer than 15 complaints a year. Furthermore, there is a form of appeal process already built in to the Code in that, if the ICP is minded to uphold a complaint, the decision is only provisional and a company has the opportunity to submit further written representations to support its case before a final decision is made. Our legal advice is that these procedures are compliant with the rules of natural justice but we shall keep this matter under review.

In addition, there are several ways in which the structure and wording of the Code might be amended for the sake of greater clarity or consistency. This document, however, includes only those proposed changes which would make a material difference to the substance of the Code, not those which are merely stylistic or editorial.

2 - Issues for Review

2.1 Rapid drinking

Some drinks are promoted on the basis that they should be consumed rapidly or “in one” (e.g. shooters and slammers). Such drinks have been increasing in popularity over recent years. This increase in popularity has co-incided with the apparent increased prevalence of binge drinking and associated disorder in the UK. Critics, including some within the industry, argue that the practice of ‘downing’ drinks is a purely ‘functional’ style of drinking whereby alcohol is consumed for its effect rather than its taste. These critics argue that the practice is clearly incompatible with sensible drinking and is merely designed to achieve intoxication. They claim that the promotion of this style of drinking undermines the industry’s claim to be responsible. The concern over this matter goes wider than just shooters and slammers because if one agrees with the principle that this style of drinking should not be encouraged, it should apply to all drinks, not just spirit or spirit-based drinks

Defenders of the category argue that this is a traditional way of consuming certain drinks (e.g. schnapps). They argue that even shooters can be consumed in moderation and that the style of drinking is not an issue. The alcohol content of some pre-packaged shooter drinks can be very small (e.g. an 18ml drink with an ABV of 15% contains only 0.27 units of alcohol). It might also be argued that any change in the Code is unlikely to impact significantly on consumer behaviour

and may create an unhelpful difference in required responsibility standards for drinks producers versus drinks retailers.

The Broadcast Committee of Advertising Practice’s rules applying to alcohol prevent any encouragement of speed drinking or ‘downing’ drinks. The Committee of Advertising Practice’s non-broadcast advertising rules are less explicit but require that advertising must contain nothing that is likely to lead people to adopt styles of drinking that are unwise.

The British Beer and Pub Association’s standards on point-of-sale promotions make no specific reference to shooters or slammers but disallow promotions “that are an incentive to speed drinking or encourage people to ‘down their drinks in one’”.

TPG’s Code contains no explicit reference to either rapid drinking or shooters and slammers. The issue was considered as part of the last Code review in December 2001. It was decided it was unnecessary to include a new provision because the Code already disallowed the encouragement of “irresponsible or immoderate consumption” and it was felt that this was sufficient to allow the Independent Complaints Panel, should it wish, to act against the irresponsible promotion of drinks in this sector. The Panel, however, has not so far invoked this rule against a product on the basis that it is being marketed as a shooter or slammer. We consider that, in view of the marginal

nature of the decision at the last review, and the change in the prevailing climate that might have occurred since then, it is worth re-considering this issue.

It should be noted that if a new rule were to be introduced, this should not prevent the marketing of a particular type of alcohol that is consumed in a shot-type glass (e.g. schnapps or tequila). Nor should it necessarily prevent the marketing of a spirit drink in a single-serve container but this depends on the exact wording of the rule and nature of the packaging (for example, if the rule were to disallow implicit encouragement of rapid drinking, the question would arise as to whether the mere fact that a product is pre-packaged in a single-serve, shot-type glass might cause it to be found in breach of the Code). A new rule might impact on drinks produced by companies whose name carries connotations of 'down-in-one' consumption (e.g. "The Shooter Drinks Co"), if this name is featured on the product's packaging.

A possible compromise might be to introduce a new rule but for it to apply only to drinks containing above a certain amount of alcohol (e.g. 0.5 units²). On the other hand, if it is deemed irresponsible to encourage a particular method of consumption, it might be argued that there should be no exception for drinks containing relatively small quantities of alcohol.

Questions

1a) *Should the Code contain a new provision that disallows the explicit encouragement of rapid drinking or the 'downing' of a drink (thus effectively preventing the marketing of a drink as a shooter or a slammer)?*

1b) *Should the provision be extended to also disallow implicit encouragement of rapid drinking, thereby potentially impacting on a wider number of existing drinks, particularly those in small, single-serve containers (e.g. shot glasses, test tubes)?*

1c) *Should the above provisions apply only to drinks that contain above a certain amount of alcohol (e.g. 0.5 units)?*

2.2 Website age verification pages

An Age Verification Page (AVP) is a website landing page which requires visitors to self-verify their age before being allowed access to the site. Some companies have chosen to have an AVP to discourage, and demonstrate they are discouraging, under 18s from entering their brand websites. TPG and The European Forum for Responsible Drinking (EFRD, successor organisation to The Amsterdam Group) require members to have an AVP on their brand websites. It might be argued, particularly as there is little downside to the initiative and it is fairly inexpensive to introduce, that this requirement should be extended to all producer companies that operate a brand-based website through TPG's Code to demonstrate the industry's commitment to responsible marketing.

² 0.5 units is equal to 4 grammes of alcohol and would be the amount of alcohol found, for example, in 20ml of a 40% ABV spirit drink

On the other hand, it might be argued that such a step is unnecessary because the Code already requires companies to ensure their UK brand websites do not appeal to under-18s. Furthermore, it is impractical to check whether a consumer is being honest about their age, so the inclusion of an AVP is unlikely to prevent all under-18s access. Finally, some brands are advertised on corporate websites to which under-18s should be allowed access. The difficulty of applying restrictions only to certain parts of a site is too great and if the Code is applied only to dedicated brand websites it creates a discrepancy of standards between these and other sites on which brands may be promoted. For all of these reasons, it might be argued that the introduction of an AVP is an example of best practice to which companies should aspire rather than a matter which requires pan-industry compliance through inclusion in TPG's Code.

If one accepts that an AVP is necessary, there are different ways in which age verification can be requested. The visitor may either simply be invited to confirm they are over 18 or may be required to indicate their actual date of birth. If the latter, the AVP may automatically default to a date setting that allows the visitor to 'click and enter' or may require the visitor proactively to input their date of birth (e.g. from a drop-down list). A default setting which allows the visitor to 'click and enter' is more likely to cause the AVP to be viewed cynically because it is easier for the visitor to enter the site than to indicate that they are ineligible. A requirement for the visitor proactively to input their date of birth is likely to act as the most effective deterrent to under 18s,

though the effort of entering a date could also deter some over 18s from accessing the site. TPG and EFRD members are required to adopt this more stringent means of age verification. In all cases, access is blocked if the visitor indicates they are under 18.

A further issue concerns repeat visitors to the site. Some websites require age verification the first time a user visits the site but thereafter allow unhindered access from that computer. This is fine provided that there is only ever one user of that computer. In practice, of course, more than one user may share a computer and therefore an under 18 may be unwittingly granted access to the site without having to navigate an AVP. In light of this, it might be argued that brand websites should either require visitors to navigate the AVP every time they visit the site or enable visitors to register with the site and access it using a password on repeat visits.

Questions

2a) *Should the Code require that dedicated UK websites for alcoholic drinks brands should be accessed only through an AVP?*

2b) *If the Code does require access only through an AVP, should the Code stipulate the method of age verification and what should that be?*

2c) *If the Code does require access only through an AVP, should it require repeat visitors to go through a verification process (either through the AVP or through a password)?*

2.3 Sexual success

The first two editions of TPG's Code of Practice (from 1996 until 2003) included a clause that the naming, packaging and point of sale material of a drink should not, in any direct or indirect way, "suggest sexual success or prowess".

In 2001, the Independent Complaints Panel considered a complaint against Shag Lager. The complainant considered that the name of the product was a clear breach of the Code's rule concerning sexual success. The Panel, however, did not uphold the complaint. It considered that even though the name "Shag" was likely to be seen as a reference to sexual intercourse, it did not imply that consumers would become more sexually successful after drinking the product.

The Panel's decision caused some concern within and outside the industry. Some felt that the product was clearly irresponsible and that if it were not in breach of the Code, there must be something wrong with the Code.

When the third edition of the Code was introduced in 2003, the wording of the Code was tightened to disallow "any suggestion of an association with sexual success". Since the amended wording was introduced, there have been a number of products found in breach of the sexual success clause, including Shag.

In 2004, OFCOM amended the statutory television advertising rule on sexual success to mirror the new wording of TPG's Code.

The rationale behind the strict rule is

that alcohol is a psychoactive substance that reduces inhibitions and can impair judgement and affect behaviour. There is therefore an increased danger of engaging in risky or regretted sexual activity after excessive drinking. The close association of an alcohol brand with sexual activity is thus unwise because it might be seen to encourage and/or trivialise potentially harmful attitudes and behaviour.

We consider that the current rule works well, is in the best interests of the industry and society, and is supported by the overwhelming majority of the industry. A handful of companies, however, have expressed the view that it is too restrictive. We should therefore like to receive confirmation that our view is shared by the wider industry.

Question

3) *Do you agree that the current rule concerning sexual success is appropriate?*

2.4 Replica kit in children's sizes

Code rule 3.2(g) requires that drinks companies should not produce promotional materials that have a particular appeal to under-18s. The rule would prohibit alcohol-branded children's size replica kits.

TPG acknowledged the adverse impact this could have on sports sponsorship by drinks companies and therefore allowed a special exemption from this rule for alcohol-branded replica kits in children's sizes. The reasons for the exemption are:

- the kits are produced by the sponsored club not the drinks companies;

-
- the branding is there purely for authenticity rather than to promote the brand; and
 - as far as TPG is aware, there is no evidence that sponsorship like this leads to an increase in under-age drinking.

Furthermore, it could be argued that small children are less likely to be affected by drinks branding, if at all, and that those aged 14-17 who are more at risk of misusing alcohol are more than likely to be wearing adult sizes already. It is also worth pointing out that the intended consequences of banning branded replica kits in children's sizes could include children choosing to wear poorly fitting adult-sized branded shirts and/or buying illegally produced/unofficial clothing.

The exemption exists in the Definitions section of the Code, and is on the understanding that:

- Drinks companies should not insist that the sponsored club feature drinks branding on children's size replica kits; and
- Should the sponsored club choose to feature drinks branding on children's size replica kits for reasons of authenticity, the drinks company should insist that unbranded alternatives are as easily and readily available.
- No other merchandise bearing the brand name or logo of an alcoholic drink should be aimed at children or have a particular appeal to them.

The above provisions place the onus on parents to decide whether to buy branded

or unbranded kits and thus mitigate against criticism against the industry over the continued existence of drinks branding on children-sized replica kit. This does not mean, however, that the criticism has gone away altogether.

Critics remain concerned about the issue of young people wearing branded kits. Some see it as nothing short of walking advertising boards for the drinks companies, the drinks companies' deliberate attempt to create strong brand recognition from an early age. There is a danger that this criticism, if not addressed, will eventually impact not just on the continued existence of alcohol branding on children's replica kits but will jeopardize alcohol sports sponsorship more generally. Indeed, in September 2006, the Advisory Council on the Misuse of Drugs became the latest body to argue that alcoholic drinks companies should be banned from engaging in sports sponsorship.

In view of the continued criticism and concern surrounding this issue, we consider it would be appropriate to remove the special exemption from 3.2(g) that exists for replica sports kits and require drinks companies to prevent sponsored clubs from providing branded replica kits in children's sizes. This is likely to reduce the sponsored club's merchandising revenue and hence will make alcohol companies less attractive as a sponsor, perhaps requiring them to pay a premium in comparison with potential sponsors from outside the alcohol industry. We nonetheless consider that the industry should accept this financial downside in order to negate criticism and thus protect its longer-term freedom to engage in sports sponsorship.

A change to the Code could, of course, have serious implications for existing sponsorship deals which may be subject to contract for several years. We consider it is unreasonable to require alcohol companies to cancel or re-negotiate existing contracts following a change to the Code. Instead, in the event of a Code change, we would recommend that current sponsorship deals be allowed to continue until the end of the contract.

Questions

4) *Do you agree that TPG should remove the special exemption from Code rule 3.2 (g) that exists for children's size replica kits?*

2.5 Surrogate marketing

Surrogate marketing can be loosely defined as the indirect promotion of a product through the marketing of an associated product. The two products usually share similar branding. Where surrogate marketing could become problematic from the point of view of the TPG Code is if an alcoholic drink is promoted through the marketing of a non-alcoholic product in ways that would not be permitted under TPG's Code (for example, through appealing to under-18s, alluding to illicit drugs, etc.).

In the BCAP broadcast advertising Code (and similar provisions exist in the CAP non-broadcast Code) the spirit as well as the letter of the alcohol rules apply whether or not a product is shown, referred to or seen being consumed. The spirit of the Code is applied in a strict form to prohibit surrogate marketing. Thus, if for example an advertisement ostensibly for a non-alcoholic product is believed to be promoting

a similarly branded alcoholic drink, the full weight of the alcohol rules can be applied to that advertisement.

The BCAP and CAP Codes apply to all advertisements, however, whereas TPG's Code applies to pre-packaged alcoholic drinks only. This means that TPG's Code is more vulnerable to a company deliberately using surrogate marketing to circumvent the Code. For example, a company could launch a soft drink that, through the images and claims on its packaging, associated itself strongly with sexual success. The company could subsequently launch an alcoholic drink that was similarly branded and, even though it contained no problematic images and claims on its packaging, it may be perceived by consumers to carry the same brand 'values' as the non-alcoholic drink. TPG cannot investigate complaints or take action against the non-alcoholic drink and the ICP may find difficulty in upholding a complaint against the alcoholic version given that its packaging is, to all intents and purposes, socially responsible.

There is no easy solution to this problem. Rule 2.8 of TPG's Code, however, states that the Code is to be applied in the spirit as well as the letter and rule 2.9 allows the ICP to look at the matter broadly and have regard to all the circumstances when considering a product's compliance with the Code. In the case of a complaint against FCUK Spirit, the ICP felt able to take the marketing of the parent (non-alcohol) brand into account in upholding a complaint against the drink. We consider that there is no practical way of dealing with the potential problem of surrogate marketing other than to rely on the

ICP using the above rules to their maximum effect.

It should be acknowledged that we have no evidence thus far of a company in the UK using surrogate marketing as a deliberate tactic to circumvent TPG's Code.

Questions

5) *Do you agree that Code rules 2.8 and 2.9 provide sufficient protection against the potential danger of surrogate marketing and, if not, what more can be done under the Code?*

2.6 Detailed rules for particular media/activities

Since the issue of the third edition of the Code of Practice in 2003, the Code has applied to various forms of below-the-line promotional media/activities, including websites, sponsorship, branded merchandise and sampling. The Code generally does not provide specific rules for these media/activities. Instead, it requires that all promotional material or activity covered by the Code complies with the general rules found in paragraph 3.2 of the Code and provides in an annex a definition of each media/activity to clarify the Code's remit.

There are a few paragraphs in the annex, however, particularly in the section relating to sponsorship, where the Code carries an instruction of how the general rules are to be interpreted (for example, it states that sponsorship should not be undertaken where those under 18 years of age comprise more than 25% of the participants, audience or spectators). These paragraphs notwithstanding, the interpretation of the Code is generally left open and it would

ultimately be the decision of the ICP as to how the general rules under paragraph 3.2 should be applied to particular circumstances.

The practice of having broad rules of principle that are applied across the board by the ICP has some advantages. A Code can never be written to cover every eventuality or circumstance and is always going to be open to subjective interpretation to a greater or lesser extent. Broad rules allow the ICP greater flexibility in interpretation and may allow companies greater marketing freedom compared with overly prescriptive rules which may inadvertently prevent relatively harmless activity.

On the other hand, if too much is left to interpretation it can make things difficult for companies. There will be greater uncertainty as to whether a particular approach is compliant with the Code and therefore a greater risk of inadvertently breaching the Code.

TPG's Advisory Service can help alleviate this problem by offering guidance on specific products/promotions and issuing Help Notes to assist in likely interpretation of the Code (a Help Note, for example, was issued in 2005 on product sampling). The additional detail provided by a Help Note may help companies understand how the Code is likely to apply to particular activities. It should be noted, however, that a Help Note is produced by TPG's Advisory Service and the advice it contains is not binding on the ICP.

While acknowledging the advantages of broad rules of principle, we consider that the Code would benefit from having more

detailed rules in certain areas, particularly in relation to sponsorship but also, for example, in relation to websites, branded merchandise and sampling. This might have the effect of clarifying what is acceptable and ensuring that standards were high within the industry.

In the event that such rules were thought desirable, we would not seek to draft them in time to incorporate within the next edition of the Code. Instead, we would embark on a separate consultation exercise over the rules and would seek to incorporate them within the Code at the earliest opportunity thereafter.

This review, of course, is already consulting on a new rule applying specifically to websites and the amendment of a rule relating to replica sports kit. The decisions on those two issues would not be affected by a decision to start work on more detailed rules in certain areas.

Questions

6a) *Are there certain areas of activity covered by the Code which would benefit from more detailed rules to clarify what is acceptable and, if so, what are these areas?*

6b) *Are there certain areas of activity covered by the Code which do not need more detailed rules but which would benefit from being the subject of an Advisory Service Help Note and, if so, what are these areas?*

3 - The Consultation Process

Thank you for taking the time to read this far. The Portman Group is committed to maintaining a strong and effective Code of Practice for the naming and marketing of alcoholic drinks. If you share these aims then please let us have your views. Comments are welcome on any of the issues raised in this document and on any other relevant issue we may not have included.

We prefer to receive responses as e-mail attachments. Please send your response to dpoley@portmangroup.org.uk. If you are unable to reply by e-mail, you may submit your response by post or fax to:

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In the interests of transparency, we intend to publish all consultation responses on our website, www.portmangroup.org.uk. If all or any specified part of your response is confidential and should not be disclosed, please state this clearly at the beginning of your response document.

Consultation Timetable

The consultation ends on **5 January 2007**.

In light of the comments received, The Portman Group will prepare a revised Code of Practice. It is hoped that the fourth edition of the Code will be published in the spring/summer of 2007.

In the event of new rules, there will be a grace period of at least six months for products and promotions to comply with the new Code. At the end of this period (the date of which will be confirmed when the fourth edition is published), all relevant products and promotions will have to comply with the new rules.

Code Signatories' Forum

Code Signatories Forums will be held on 9th November in London, and 15th November in Manchester. Attendance at the forums is strictly invitation only and is restricted to Portman Group Code Signatories. The Forums will be the Code Signatories' opportunity to meet and discuss the consultation and the issues subject to review, before submitting their written responses.

If you have any questions about this consultation or need advice on the form of the response please contact Kay Gill on 020 7907 3706.



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