

PORTMAN GROUP CODE COMPLIANCE HELP NOTE

IMAGES OF PROMOTIONAL STAFF AND CONSUMERS IN MARKETING MATERIAL

This help note is intended to help drink producers comply with The Portman Group's Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks. The help note represents the opinion of TPG's Advisory Service and is based, in part, on previous decisions made by the Independent Complaints Panel. Please note that the Panel is the final arbiter on how the Code should be interpreted and applied. Following the advice in this document is no guarantee that your product's packaging or promotion will not be found in breach of the Code if a complaint is received

INTRODUCTION

Traditional marketing, such as television and press advertising, uses actors and models to promote a brand. Strict rules control the way in which those actors and models are portrayed to ensure that there is no encouragement of irresponsible drinking. These days, however, many companies also use images of 'real' people to promote their brand. For example, a company may stage a promotion at which a photographer is present and later display photographs of consumers participating in that promotion on their brand website. A recent decision of the Independent Complaints Panel (see *decision on 'Mugshots' section of WKD website - 28 March 2008*) has confirmed that these images of 'real' people used to promote brands are subject to exactly the same rules as those that would be applied to actors and models. This Help Note seeks to help the industry understand and address the potential issues that can arise under the Code out of using images of 'real' people, in particular promotional staff and consumers, in marketing material.

REQUIREMENTS UNDER THE CODE

All elements of a promotion (including, for example, branded merchandise and scripts for promotional staff) are required to comply with all of the Code's provisions in both the spirit and the letter. There are, however, four Code rules that have particular relevance to the use of images of promotional staff and consumers. They are as follows:

3.2(d) [A promotion should not] suggest any association with sexual success

3.2(e) *[A promotion should not] suggest any association with social success or popularity*

3.2(f) *[A promotion should not] encourage illegal, irresponsible or immoderate consumption, such as drink-driving, binge-drinking or drunkenness*

3.2(i) *[A promotion should not] incorporate images of people who are, or look as if they are, under 25 years of age, unless there is no suggestion that they have just consumed, are consuming or are about to consume alcohol*

Below, we consider various issues arising from all four rules and offer advice on how best to avoid problems under the Code and achieve best practice.

Sexual success

Promotional staff actively encourage the consumer to engage with a brand through sampling and other fun promotional activity, usually at live events. They are typically young, attractive and outgoing, and they may wear an eye-catching uniform that sets them apart from consumers and associates them with a brand. Promotional events create opportunities for consumers to have their photograph taken with attractive promotional staff. The photographs can then appear in marketing material, for example on a brand website. While it is acceptable to show people socialising and having a good time, there is a danger that close physical interaction between attractive promotional staff and consumers will suggest an association with sexual success. Before displaying photographs of promotional staff and consumers on brand websites or in other marketing material, companies should bear in mind the following:

- Avoid showing close physical contact between the promotional staff and the consumer. For example, avoid showing them kissing or one sitting on the other's lap. Even showing one with their arm around the other may be suggestive of sexual success.
- Avoid images where either promotional staff or consumers are making sexually suggestive facial expressions or gestures.
- Bear in mind that the clothing of the promotional staff may add to the sexual connotations of the image; the more revealing that it is, the more likely that the image will be judged to have an association with sexual success.

Social success

It is natural that drinks producers want to associate their brand with consumers having fun and may therefore want to display photographs showing consumers huddled together, enjoying themselves and with the brand prominently positioned. It is also the case that inviting consumers to pose for a photograph in a licensed venue will cause a certain amount of 'playing-up' for the camera with funny faces and poses. There is a danger, however, that the effect of the

resultant image is to imply close bonding, popularity and a good time, all very closely linked to the brand in question. This is likely to breach the Code. Companies should bear in mind the following:

- It is acceptable to portray drinking as sociable but beware of images which appear to show an exaggerated good time
- Consider the pose, facial expressions and interactions of the people in the photograph and what this says about the brand
- When considering the acceptability of a particular photograph, ask yourself whether consumers would have posed in the same way if they had not been drinking. If the answer is no, it implies the alcohol is an essential ingredient in the good time portrayed and the photograph should not be displayed.

Drunkenness

As noted above, inviting people in a licensed venue to pose for a photograph may encourage a certain amount of 'playing up' for the camera. This can, however, leave the image open to ambiguous interpretation. Companies should bear in mind the following:

- Avoid images showing a lack of inhibition; they may be interpreted as showing drunkenness
- Avoid images showing consumers apparently being supported, for example with their arm slung around another's shoulders, as this might indicate drunkenness
- Avoid images of consumers looking bleary-eyed
- When considering the acceptability of a photograph, ask yourself whether, bearing in mind the Code, you would be happy to ask models to pose in the same way. If the answer is no, the photograph should not be used.

Must not be, or look, under 25 years of age

The rule disallowing images of people who are, or look as if they are, under 25 years of age was introduced to protect the industry against accusations that it was in any way seeking to appeal to under-18s by using people who may look under 18 to promote a brand.

While this rule was introduced in the context of models used on packaging and other promotional material, it applies equally to images of 'real' people taken at live events, and later used in marketing material.

Therefore, if drinks producers are proposing to use images of consumers in promotional material, including on brand websites, they should ensure that everyone featured in the image is, and looks, over 25 years of age.

The Code makes an exemption if there is no suggestion that the under-25 person has just consumed, is consuming, or is about to consume alcohol. This is to allow incidental portrayals where the person is clearly not endorsing the product. A crowd shot at a sponsored sports event may include some under-25s but this is not a problem assuming they are not drinking. Anyone in a posed photograph at a licensed venue, however, might be assumed to be a drinker.

Similarly, while the Code is not seeking to exclude under-25's (providing they are over 18) from entering drinks-related competitions, companies should also avoid using images of an under-25 year old competition winner, or an over-25 who looks under 25, in promotional material.

With regard to promotional staff, while their image should not be used in marketing material unless they are, and look, over 25, they may nonetheless be employed if they are under 25 (provided, of course, they are aged over 18).

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.

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