

## Guidance Note

Rule 3.2(f): Illegal, irresponsible or immoderate consumption



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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.

### Application of the Rule

- Code paragraph 3.2(f) requires that a drink's naming, packaging or promotional material or activity does not in any direct or indirect way encourage illegal, irresponsible or immoderate consumption, such as drink-driving, binge-drinking or drunkenness. Therefore, there are three elements/ways in which this rule can be breached which will also differ depending on the medium: packaging or promotional activity.
- Although this document provides guidance on all three individual elements, the majority of the cases the Panel has had to consider have been in relation to the encouragement of immoderate consumption, and that is the main focus of this guidance document. It is unusual for a product/promotion to breach all three elements of the rule although there have been cases of products/promotions breaching the Code for encouraging immoderate and irresponsible consumption.

### 1. Immoderate Consumption

#### a. In the context of drinks packaging

- The Advisory Service recommends that containers which are typically single-serve, and whose contents are typically consumed by one person in one sitting, should not contain more than four units. This position has received support from the CMO's and the Department of Health and Social Care (DHSC) as an appropriate threshold to help reduce alcohol-related harms, and as a pragmatic and responsible industry approach in the absence of national daily guidelines.
- In determining what constitutes a single-serve container, the Panel is likely to have regard to cultural assumptions about container types (what the 'average' consumer would do), their archetypal contents, whether the packaging can be easily/is typically re-sealed and consumer research as to how consumers interact with/consume from different packaging. In 2014, the Panel commissioned independent research from YouGov to understand whether

packaging and contents influenced consumer consumption behaviour<sup>1</sup>. The results showed that 80% of adults polled believed that a 500ml can of beer/cider was designed for the contents to be consumed by one person in one sitting. In comparison, the results showed that 61% of those polled shared the contents of a 750ml bottle of wine with others in one sitting, and 21% shared the contents with others over more than one sitting. The results for beer show that, of those polled, 46% would share the contents of a 750ml bottle, and 12% would share the contents with others over more than one sitting. The results are indicative of the 'average' consumer's behaviour; and, demonstrate that packaging, and to some extent alcohol type, influences consumer behaviour.

- There will be individuals that choose to consume the entire contents of a bottle of wine by themselves in one sitting<sup>2</sup>. In our view, this does not reflect 'average' consumer behaviour, as only a minority of individuals choose to do this, nor does it follow cultural assumptions about how the average consumer interacts with this packaging. Therefore, it is the view of the Advisory Service that (regardless of alcohol type) a 750ml bottle would not constitute a single-serve container and is for sharing over one or more than one sitting.
- Whilst research tested the single-serve theory with cans of a maximum size of 500ml, and previous Panel decisions have been about 500ml cans, it is the opinion of the Advisory Service that pint size cans and bottles (568ml) would also be regarded as single-serve containers, further supported by the fact that a pint is the largest typical serve for draught beer/cider available in the on-trade. Anything larger than this for beer/cider is unlikely to be considered a single serve. Please see the Panel's decision against [Carlsberg](#) in 2014 for more information.
- Having more than four-units in a single-serve container will not automatically result in a product being found in breach of the Code; it is the view of the Advisory Service that the Panel is likely to take other factors into account when determining whether a product encourages immoderate consumption. It is not possible to produce an exhaustive list of mitigating factors but the Panel may consider: whether the container contained a 'share' message or a 'per serve' recommendation, how easily the container could be resealed, whether the producer was able to demonstrate that the contents were shared (by decanting) or typically consumed over more than one sitting, the premium status/quality of the product and its positioning in the market including the price at which it is generally sold, alcohol type (does the product degrade quickly once opened) and the overall impression conveyed by the product packaging (such as terminology used in the name and product description). The mitigating factors should be commensurate with the number of units (above 4 units) in the single-serve container. The Panel is also likely to take into consideration whether the packaging contains responsibility messaging, for example, the number of units in the container and a reference to the Drinkaware website.
- The Panel has not yet considered immoderate consumption in relation to a bottle of wine, but it has for spirits. In its consideration of a complaint against [Old English Gin](#), which was sold in a 750ml bottle with cork and wax seal, the Panel noted that the bottle was designed to be resealed with the cork; it would also be possible for consumers to use a wine bottle stopper to reseal the bottle. The Panel was also of the view that because the bottle contained a spirit it was unlikely to deteriorate quickly, and thereby encourage consumers to consume the contents more quickly than they would otherwise have done. Whilst this case did not directly address whether the bottle could be regarded as a single-serve container, it was nonetheless a significant decision in that it addressed two other factors: ease of resealability and alcohol type. The Panel is likely to take these factors into account when considering future cases.

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<sup>1</sup> YouGov Polling Results for Drink Sizes 2014; commissioned by the Portman Group

<sup>2</sup> YouGov Polling showed this to be 3% of respondents would consume an entire bottle of wine by themselves in one sitting.

- Whilst the Panel is likely to consider mitigating factors for single-serve containers that contain more than four-units, it is the view of the Advisory Service that single-serve non-resealable containers which contain upwards of six units will be difficult to rationalise, even with mitigating factors.
  - In 2012, a complaint was upheld against a product called '[Crunk Juice](#)'. This was a can which contained 8.4 units, more than double the Chief Medical Officers' then applicable sensible drinking guidelines for men. Accordingly, the Panel found the product packaging in breach of Code paragraph 3.2(f) for encouraging immoderate consumption.
- b. In the context of terminology/words and phrases.
- Words or phrases which might be seen as describing the effect of excessive consumption (for example, 'Wasted', 'Smashed') will be problematic under the Code (on packaging and/or in promotions) and should be avoided. As should words which refer to a lengthy period of consumption, for example 'having a session'.
  - While 'having a session' is problematic, to describe a drink as a 'session beer/lager', or 'sessionable' is not in principle. 'Session IPA' is a commonly used descriptor, mostly to denote a lower than average IPA, but also used in the same way to describe beer/lager that is comparatively lower in strength. The term has therefore now passed into common parlance and widely understood by consumers to convey a comparatively lower strength product. However, this is not a legal definition as recognised in UK regulations and therefore producers should still exercise caution when describing their product as a 'session' product, especially if the description could be interpreted as an encouragement to have a sustained period of drinking.
  - The Panel is still likely to regard 'session' as problematic if it's used to describe a drinking occasion, rather than in the context of the product strength and/or taste.
  - In 2018 the Panel considered a complaint against [Easy IPA](#) which incorporated the product descriptor 'Session IPA' on the front of the product packaging. The Panel acknowledged that the original meaning of the term suggested a prolonged drinking session but noted that the term was widely used in the craft beer market to denote a comparatively lower strength beer. In this instance, the Panel did not uphold the complaint on this basis alone and concluded that it would consider the use of the term on a case by case basis and that the term's acceptability would depend on the overall impression conveyed by a product.
  - While considering the overall impression conveyed by the product the Panel also examined the illustration on the front of the can. The Panel noted that the illustrative figure appeared to be balancing on one leg whilst walking a line which, when considered in the context of an alcoholic product, looked akin to someone balancing along a line to demonstrate sobriety. The Panel considered this alongside the character's red eyelids, droopy eyes and red nose and concluded that the intoxicated nature of the character alongside the phrases Easy and 'Session' meant that the product could be seen to encourage drunkenness, and accordingly upheld the product under Code rule 3.2(f).
  - Words or phrases like 'big night out' should be avoided unless the drinking element is part of a bigger event involving other activities, for example, music, dancing and food.
  - 'Bomb' (or the bomb serve) and words that could have the same meaning (for example Torpedo, Depth Charger) is an inappropriate word to use to describe or name an alcoholic drink not only because of connotations of strength and/or intoxicating effect (see advice in

guidance paper Communication of Alcoholic Strength), but also because the method of dropping one alcoholic drink into another is tantamount to spiking.

- In 2014, a complaint against a retail-based [Diageo](#) counter-top unit which included multiple gin, whisky and vodka 20cl bottles was upheld because the dominant message on the unit was 'mix it up tonight'; in the Panel's view this was not obviously about suggesting the consumer should make mixed drinks with one of the bottles, but equally, if not more, about suggesting that the consumer should have several of the bottles in one sitting, as implied by the word 'tonight'. Accordingly, the Panel upheld the products for encouraging immoderate consumption.
- Most recently, in 2018 the Panel upheld a complaint against two [SPAR](#) press releases which incorporated the terminology 'everyday drinking'. The Panel concluded that the messaging was creating a direct correlation, possibly unintentionally, between low price and the acceptability of everyday alcohol consumption. When considered in the context of the 2016 Chief Medical Officers' Guidelines on Low Risk Drinking, which advise those wishing to cut down the amount they drink to have several drink-free days a week, the Panel agreed that the term 'everyday drinking' was problematic under the Code.
- In 2017 the Advertising Standards Authority upheld a complaint against email marketing messages from Prezzo advertising 'bottomless prosecco'. There were other contextual factors, but the ASA decision stated that the wording 'bottomless prosecco' "contributed to an impression that large or excessive amounts of alcohol could be consumed as part of the offer." Although the Independent Complaints Panel have yet to consider any complaints of this nature, we would advise against associating an alcohol product with an unlimited drink offer. See the ASA's full decision [here](#).

c. In on-trade drinks promotions.

- On-trade drinks promotions<sup>3</sup> (sales promotion) are any type of promotional incentive used to encourage consumers to try or purchase new or existing products. They can take many forms and include BOGOF and 2-4-1/3-4-2 deals, money-off coupons or reward schemes and free gift with purchase. Where they differ from off-trade promotions is that the alcohol (purchased and/or promotional alcohol) is usually for immediate consumption on the licensed premises.
- The promotions also tend to be time restricted; for example, the consumer is required to purchase a stated number of drinks/units of alcohol to redeem a free drink/product in one sitting. The Advisory Service has always recommended that the consumer should not be required or encouraged to consume more than four units in one drinking occasion. This is based on the upper limit of the Chief Medical Officer's (CMO's) 'Sensible Drinking' Guidelines<sup>4</sup> (which were current between 1995 and 2016)<sup>5</sup>. Despite the CMO's guidelines changing to a 14-unit weekly limit<sup>6</sup>, the Advisory Service continues to recommend that a consumer should not be encouraged to drink more than 4 units in one sitting in on trade drinks promotions.

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<sup>3</sup> The Licensing (Scotland) Act 2005 and the Alcohol etc. (Scotland) Act 2010 prohibit the supply of an alcoholic drink free of charge in both the on and off trade. Companies are encouraged to contact Local Authorities in Scotland for more information.

<sup>4</sup> Department of Health Sensible Drinking: the Report of an inter-departmental working Group; 1995. [https://webarchive.nationalarchives.gov.uk/20130105043158/http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/@dh/@en/documents/digitalasset/dh\\_4084702.pdf](https://webarchive.nationalarchives.gov.uk/20130105043158/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_4084702.pdf)

<sup>5</sup> These guidelines recommended that 'men should not regularly drink more than 3–4 units of alcohol a day and women should not regularly drink more than 2–3 units a day'.

<sup>6</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/545937/UK\\_CMOs\\_report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/545937/UK_CMOs_report.pdf)



- If an on-trade promotion requires the purchase or consumption of more than four units on one occasion promotional material should make clear that the alcohol is intended for shared consumption to avoid criticism that there is any encouragement of excessive drinking. The 'share' message can be communicated through words or imagery, i.e. by depicting several glasses or people in the communication.
- Alternatively, companies may make the promotion a coupon collection type of scheme whereby consumers purchase the alcohol over a reasonable period of time which is at least consistent with the sensible drinking guidelines (i.e. the consumer has a number of days or weeks to purchase the alcohol).
- In 2011, a complaint was made against a promotion which required the purchase of a bucket of five [Coronas](#) in order to enter a competition. The complainant believed that asking one person to purchase five bottles was irresponsible. The company had made regular use of the Code Advisory Service and all consumer-facing communications contained a 'share' message. The company further asserted that the message that the holiday prize was for the individual entrant and three friends implicitly suggested that the bucket of beer was for sharing between four individuals, reinforcing the 'share' message. The Panel considered that the point-of-sale material made very clear that the bucket of five Coronas was for shared consumption. Accordingly, it did not find the promotion in breach of Code paragraph 3.2(f).
- For guidance on responsible sampling activity please see our Product Sampling [guidance note](#).

d. Other depictions of immoderate consumption

- Drinking games, particularly those that involve speed drinking, are likely quickly to lead to drunkenness. This is because participants in such games abdicate their personal responsibility to decide when and how much alcohol to consume and instead allow the rules of the game to determine drinking behaviour. Any reference or allusion to drinking games, or the 'ritual' involved, will be in breach of rule 3.2(f) of the Code.
- Round-buying or a 'round' usually requires each person in a group to take their turn to buy a drink for each person in the group. If there is any suggestion that there is a repeat pattern of drinking, the reference to 'round-buying' or 'rounds' will be unacceptable under the Code for implying immoderate consumption.
- Certain drinking containers and methods have long been associated with, or come with the baggage of, irresponsible and immoderate consumption, for example, goldfish bowls, dentist's chairs, drink luges and pouring alcohol straight into the mouth. Most of these practices have been used as examples of irresponsible promotions in the Mandatory Licensing Conditions; therefore, companies should not get involved in or sanction such promotions.

## 2. Irresponsible Consumption

- The vast majority of drinks containers carry the pregnancy warning logo or statement: "it is safest not to drink alcohol when pregnant"; and, we have not yet come across a scenario, either a case before the Panel or a company seeking pre-launch advice, where someone has either directly or indirectly linked alcohol consumption to pregnancy.
- It is the view of the Advisory Service that such depictions should be avoided.

- An example of a promotion which depicted irresponsible (as opposed to immoderate) consumption was [WKD Halloween Cocktail Cauldron](#) in 2014. The 1.4L capacity cauldron contained a cocktail mix which was promoted for shared consumption. However, it was not clear from the point-of-sale material how the contents were to be served to the consumer – either with glasses for the contents to be decanted, or straws for the contents to be consumed straight from the vessel.
- The Panel believed that if the vessel was served with glasses then a consumer could, to an extent, have an indication of how much they were consuming. If the vessel was served with straws, and the consumer had to drink straight from the vessel, a consumer would not necessarily know, or control, how much they had consumed. Based on the fact it was not clear how the vessel was served to consumers, and that consumers might therefore be drinking directly from the vessel and more than they intended the Panel upheld the product for encouraging irresponsible consumption.
- The Advisory Service would recommend that such 'vessels' incorporate a pouring lip to emphasise the fact that the contents should be poured into glasses and that accompanying point of sale materials should incorporate images of glasses to further emphasise the 'sharing' and decanting nature of the vessel.

### 3. Illegal Consumption

- There are only a few scenarios when consuming alcohol is actually illegal. For example, driving whilst over the alcohol limit<sup>7</sup>; or for an unaccompanied under-18 to drink alcohol in a licensed premise. There may also be scenarios where there are local policies banning drinking or carrying open alcohol containers in local areas or transport networks.
- No producer wants to depict the illegal consumption of its products and the Panel has not had to consider any such cases. There are more likely to be links with alcohol and illegal behaviour; this is covered in a separate Guidance note (please see Guidance Note on Rule 3.2b Bravado, violent, aggressive, dangerous, anti-social and illegal behaviour).

### 4. Low and No Alcohol

- Low alcohol products, products above 0.5% abv but not exceeding 1.2% abv, should not be presented in a way that suggests they can be consumed in situations where alcohol consumption would otherwise be unwise, for example, operating machinery or driving. It should not be suggested that a particular alcoholic drink should be preferred by drivers because it contains less alcohol than other drinks (please also see Guidance on Rule 3.2a Communication of Alcoholic Strength).
- The Code does not apply to drinks of 0.5% abv or below. However, it remains necessary to prevent the marketing of these products from appealing to under-18s when the  $\leq 0.5\%$  abv product shares the same brand/branding as, or is a variant of, a drink above 0.5% abv. As such, it is the view of the Advisory Service that the spirit of the Code will apply to uphold the Code's fundamental principle to protect under-18s from irresponsible marketing.

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<sup>7</sup> In England and Wales, the alcohol limit for drivers is 80 mg of alcohol/100 ml of blood and in Scotland 50mg of alcohol/100 ml of blood.

The Portman Group is a responsibility body and regulator of the naming, packaging, promotion and sponsorship of alcohol. The above guidance should help you to avoid problems under the Portman Group's Code of Practice.

### The Portman Group's Advisory Service

If you are in any doubt 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 3295 5704 and ask for the Advisory Service. Alternatively email your request to [advice@portmangroup.org.uk](mailto:advice@portmangroup.org.uk), with full details of the proposed activity.

### The Portman Group's Code Training Programme

We also provide free CPD accredited training to ensure that the Code is widely understood and applied; as well as providing details on the wider regulatory landscape. Should you wish the Portman Group's training sessions can be tailored to suit your organisation or individual needs. To book a training session or to find out more, please telephone the Portman Group on 020 3925 5704 and ask for the Training Manager. Alternatively, email your booking request or query to [training@portmangroup.org.uk](mailto:training@portmangroup.org.uk).

