

Guidance Note

Rule 3.2(i): The use of images of under-25s in alcohol marketing



Use of images of under-25's in alcohol marketing

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 composition and context of the image, the overall impression conveyed and any other relevant matters. It is therefore difficult to say whether a particular image or photo used in drink's marketing or promotion is acceptable under the Code without seeing/considering it in context. Companies are therefore encouraged to make use of the free Advisory Service 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.

In writing this guidance, the Advisory Service has, in effect, commented on images that are likely to fall outside of the scope of the Code. This is because most of the examples provided in this document are likely to be subject to regulation by the Advertising Standards Authority (ASA) – see their guidance [here](#). Therefore, areas that are outside of PG remit are clearly highlighted as such and producers are encouraged to seek advice from the ASA, where necessary.

Introduction

Rule 3.2(i) requires that a drink, its packaging or promotional material should not, in any direct or indirect way incorporate images of people who are, or look as if they are, under twenty-five years of age, where there is any suggestion that they are drinking alcohol or they are featured in a significant role. Images may be shown where people appear only in an incidental context.

The rule restricting the use of images of under-25s in alcohol marketing is well established and has formed part of the Code since its inception. The rule is intended to protect under-18s from being exposed to images in alcohol marketing of people with whom they might identify. The threshold of 25 was chosen because it is thought a 'safety barrier' of seven years is appropriate to minimise the risk of misestimating someone's age (i.e. it is highly unlikely that anyone under the age of 18 would be mistaken for a 25 year-old and vice versa).

Application of the Rule

The rule poses a number of challenges for marketers, not least because estimating a person's age is subjective. It may also prove challenging to determine who is playing a 'significant role', or what constitutes an 'incidental' context; therefore, some key principles are outlined below. These should be read in conjunction with Annex A (a flow chart setting out the different tests that need to be applied when considering whether an image is likely to be acceptable. The flowchart is intended as a tool to assist image evaluation only, and is not intended to indicate binding assessments) and Annex B (a practical application of the rule to fictional images typical of the type of images producers might use in their marketing materials).

The advice below follows the same order/steps as the flow chart and the sections have been ordered according to the complexity of the test being applied.

1) Images of people who are, or who look as if they are, under twenty-five years of age

- The rule was originally introduced to apply to models used on packaging and in other promotional material. However, following a decision of the Independent Complaints Panel (the Panel) in 2008, the rule was applied to the use of images of 'real' people, i.e. consumers and promotional staff, in the same way as it had always applied to models and actors.¹
- Therefore, the rule will apply to images where anyone who is or appears to be under-25 is being used to promote a brand regardless of whether they are consumers of the brand, attendees at a brand-sponsored event or whether they are paid, employed or obligated to do so (for example promotional staff, brand ambassadors and bar staff). For particular guidance on the use of images of bar staff, please see section 3 below.
- The use of images in sponsorship material needs to be consistent with the rule². This does not mean that drinks producers cannot sponsor personalities, sports people or performers who are, or who look under-25, it just means that the use of their images will be restricted. For further guidance on the use of images of sponsored teams and individuals, please contact the PG Advisory Service.

2) Are they drinking alcohol?

This is the single-most straightforward test to apply as it will be relatively easy to determine whether anyone featured in an image who is/appears to be under 25 is either drinking or holding an alcoholic drink in their hand. Such images are not permitted. For particular guidance on whether there is any suggestion that an under-25 is drinking alcohol see section 4 below.

3) Featured in a significant role

- An image featuring a single individual, aged under-25, is likely to be deemed significant by default and will therefore be unacceptable (see Annex B, example A).
- It is more difficult to determine who is significant in a group/crowd shot. However, if all, or most, of the people featured in that image are, or appear to be, under 25 and they can be identified as such, then that image should not be used (see Annex B, example B).
- Images of bar staff aged under 25, pictured working, not featured on their own and who are not seen to be endorsing a brand are likely to be acceptable. However, if the image has been staged so that the bar-tender appears to be posing for the image, then this is more likely to suggest the person is not 'working' but has been chosen specifically to appear in marketing material, rather than being incidental. It should be noted, however, that the ASA does not allow an exemption for bar staff (see Annex B, examples C and D)
- If an image features people of varied ages (some of whom are or appear to be under-25), then consideration should be given to the following factors in determining who is playing a significant role:

¹ WKD Mugshots decision, 2008 –<http://www.portmangroup.org.uk/?pid=25&level=2&bid=216>

² Companies may therefore sponsor individuals aged 18-24 years of age as well as groups, teams or events which feature participants aged under-25 (provided at least 75% are aged over 18).

- i) The composition of the image: is any individual, aged under-25, given more prominence or playing a more significant role in comparison with those around them. If the viewer's eye is drawn to one or more people – either intentionally or by default – then this may have the result that they may be deemed to be playing a significant role. (See Annex B, examples E and F).
- ii) The extent to which an individual(s) can clearly be identified as being under-25. For example, blurring of facial features, or taking an image from a distance make it more likely that an image might be considered acceptable (See annex B, example G).
- iii) An image featuring a performer, or group of performers, some or all of who are under-25, and set apart from the main crowd, does not necessarily make them significant. For example, if the image is taken from a distance or from an angle that gives everyone equal prominence, this may be acceptable. (See Annex B, example H).
- iv) If an individual or group (all of whom are under-25) are identifiable, perhaps because the individual or group are well-known, if they feature in a prominent role or become the main focus of the image, then this is likely to breach the rule (see Annex B, example I).

Remit

Care should be taken if photographs of under-25s are taken at an event and then shared by brand owners on social media. As the use of images on social media falls within the remit of the Advertising Standards Authority, enquiries on this subject should be made to the Committee of Advertising Practice's Copy Advice Team.

4) Any suggestion that they are drinking alcohol

- In section 2 (above) we have already determined that an image featuring anyone under-25 drinking alcohol will not be permitted. It is more difficult to determine whether there is any suggestion of drinking. In deciding this consideration needs to be given to the composition and context of the image.
- For example, if there is any alcohol or drinking paraphernalia present in the image, this is likely to add weight to the suggestion that those present are drinking. Images of people featured in a neutral setting are likely to be less contentious. In deciding whether a setting is neutral, the level and use of branding in an image will also be taken into consideration.
- Producers are advised to avoid using images of under-25s in situations in which there is a suggestion of consumption or endorsement of a brand. For example:

i. Where the image is clearly identifiable as:

- i) A brand-related competition³ (see Annex B, example J);
- ii) A brand-related promotion;
- iii) Attendance at a brand-owned event.

ii. Where individuals have chosen to interact or engage with branded merchandise, such as wearing a branded t-shirt.

- A brand-sponsored event is an event run by a third-party organiser and usually open to anyone of any age. People attending brand-sponsored, events are unlikely to be seen as consumers or endorsers of a brand. This is because people attending a live music event, for

³ It should however be noted that the Code does not seek to exclude 18-24 year olds from engaging in these activities, it simply restricts the use of their images.

example, are doing so as they are fans of the performer(s) and not because they are fans of the brand.

- Brand-owned events tend to be organised and managed by the brand owner, open only to over-18s, who are usually fans of the brand. People attending a brand-owned event are likely to be seen as consumers or endorsers of the brand.

5) An incidental context

- Images of under-25s may be used where they appear only in an incidental context and where there is no suggestion that they are drinking.
- It is acceptable to feature under-25s in a context where alcohol is being consumed by those aged over 25 in the context of a family celebration, provided those aged under-25 are incidental and there is no suggestion that they are drinking (See annex B, example K).



Annex A: Application of the Rule – A Step by Step Guide

This flowchart is intended as a tool to assist image evaluation only and is not intended to indicate blinding assessments.



Annex B: Application of the Rule Using Examples

Please note: Whilst many of the examples that follow are likely to fall within the ASA's remit, for the purposes of writing this guidance, the PG Code will be applied across all the examples. Marketers should be mindful of the fact that the PG and ASA rule on the use of images of under-25s is consistent: therefore, the guidance may prove useful across all platforms and media.

Example A: Significant role (use of individuals)

The rule applies to the use of images of people aged 18-24 years old, regardless of whether they are models, actors or 'real' people. This would include, for example, any photographs of consumers taken by a photographer at a staged promotion or event, and which are used later in brand marketing.



The above image has been mocked up as if it were to appear in a photo gallery on a brand webpage. It features a young lady, who appears to be under-25, at a brand-sponsored event.

Application of the rule:

- Is she drinking? NO.
- Under-25 playing a significant role/does the image feature an individual? YES. Individuals featured on their own (or who appear to be on their own because they are the main focus of an image) are, by default, likely to be seen as playing a significant role.

Decision: BREACH

Example B: Significant role (crowd shots)



This example shows a large group of people – most, or all of whom, appear to be under-25.

Application of the rule:

- Are they drinking? NO
- Under-25s playing a significant role? YES. The majority of people in the image whose features are clearly identifiable are under 25, in particular those in the front row.

Decision: BREACH

Example C: Significant role (bar staff)

Images of bar staff, aged under 25, pictured working, not shown on their own and who are not endorsing a brand are likely to be acceptable. However, if the image has been staged, so that the bar-tender appears to be posing for the image, then this is more likely to suggest the person is not 'working' but has been chosen specifically to appear in marketing material, rather than being incidental, although this will not be the deciding factor. It should be noted, however, that the ASA does not allow an exemption for bar staff.



Application of the Rule:

- Are they drinking? NO
- Are they playing a significant role? YES. We have to assume this is not a staged image and the bar staff are working: our eyes are drawn to the female bar-tender, probably because she is facing the camera, and the two people at the front of the image have their back to the camera. So, she is playing a significant role in this group image but she is not endorsing any brand. Therefore, this image is likely to be acceptable.

Decision: NO BREACH

Example D: Significant role (bar staff)



Application of the Rule:

- Are they drinking? NO
- Are they playing a significant role? YES; as in the previous example. However, even though the exemption exists, the staff are both wearing branded clothing and branding appears behind the bar. This image would be unacceptable.

Decision: NO BREACH

Example E: Significant role (composition of the image)



Application of the rule:

- Are they drinking? NO
- Group shot where all or most under-25?: NO
- Under 25 playing a significant role? NO. The player holding the trophy and those featured around him are the focus of the image and are more significant; however, they also appear to be over 25. Although one or two of the players towards the rear of the photo appear younger, the layered effect of the photo means that the viewers' eyes are naturally drawn to these people at the front of the picture as opposed to others featured in the image. The younger players therefore appear in a less significant role.

Decision: NO BREACH

Note: The use of images in sponsorship material needs to be consistent with the rule. For example, a group shot showing players enjoying a post-match celebration should not feature anyone aged under-25 in a significant role.

Example F: Significant role (composition of the image)



Application of the Rule:

- Are they drinking? NO
- Under 25 playing a significant role? Yes. The player holding the trophy is the focus of the image and the most significant; he also appears to be under 25 years of age. We have to assume that most of the other players in the image are over 25; because the person playing the most significant role appears to be under 25 this image is likely to be unacceptable.

Decision: BREACH

Example G: Significant role (crowd shots)



The extent to which an individual or individuals can clearly be identified as being under-25 will depend on the individual image. For example, blurring of facial features, or taking an image from a distance make it more likely that an image might be considered acceptable.

Application of the rule:

- Are they drinking? NO
- Under 25 playing a significant role? NO. The distance from the camera and lack of clarity in respect of facial features make it impossible to clearly discern whether any of the individuals featured are under-25.
- Group shot where all or most under 25? NO; even if most of the crowd were under the age of 25 no-one is identifiable as such.

Decision: NO BREACH

Example H: Significant role (performers aged under-15)



Images from brand sponsored or brand-owned events that feature performers who are under-25 should be careful not to show them in a significant role.

Application of the rule:

- Are they drinking? NO
- Under-25 playing a significant role? NO. An image featuring a performer, or group of performers, where some, or the entire group might be under-25, and if set apart from the main crowd, does not necessarily make them significant. For example, if the image is taken from a distance, from an angle that gives everyone equal prominence or where facial features have been blurred so it is not easy to identify band members, this may be acceptable.
- Group shot where all or most under 25? NO; but even if they were the individuals are not identifiable, unless the band is well-known.
- Anyone under 25 in group playing significant role? NO; all playing an equally prominent role.
- Any suggestion they are drinking? NO

Decision: NO BREACH

Example I: Significant role (performers aged under-25)



Images from brand sponsored or brand-owned events that feature performers who are under-25 should be careful not to show them in a significant role.

Application of the rule:

- Are they drinking? NO
- Under 25 playing a significant role? YES. This image features one member of a band set apart from the rest of the group and the crowd; therefore he becomes the focus of the image. In this instance, we have to assume he is under-25, in which case the image is likely to breach the rule. (If the image was taken from a distance or in a way in which any under 25 band members featured less prominently in relation to other elements of the photograph, this type of image may be viewed as acceptable; see Example H).

Decision: BREACH

Example J: Brand-competition winners

Whilst the Code does not seek to exclude under-25s (providing they are over 18) from entering brand-related competitions or taking part in brand-related promotions, producers should avoid using images of 18-24 year old winners as they are likely to be seen as consumers of that brand.



Application of the rule:

- Are they drinking? NO
- Are they featured in a significant role? YES.
- Any suggestion that they are drinking? YES. There is a close association with the brand through the use of the imagery and more importantly, due to the nature of the competition – i.e. "win a year's supply of beer" this suggests that he is a consumer of, or otherwise endorsing, the brand.

Decision: BREACH

Example K: Incidental context (i.e. family celebration)



It is possible to feature images of under-25s in drinks marketing if they are not shown drinking and are featured in an incidental context only. For example, images of people aged under-25 may be shown in the context of family celebrations where alcohol is being consumed by those aged over 25, see above.

This is the case even if the image shows them in a licensed premise, such as a restaurant or bar, where branding appears, and alcohol is featured.

Application of the rule:

- Aged under-25? YES
- Are they drinking? NO
- Appearing in an incidental context: Yes

Decision: NO BREACH

Example L: Professional competition winner

Please note: The exemption set out below does not apply to media/platforms covered by the ASA Codes.



As mentioned in the guidance above, an exemption exists for marketing material that serves to promote branded activities which seek to support individuals or groups, through career development, training or apprenticeship schemes. The exemption also applies to branded activities that seek to reward people who have competed in skills-based competitions, such as in the above example where a young man is receiving the Würzbrau "Bar Tender of the Year" award.

The exemption exists because there is unlikely to be as strong a suggestion that they are consumers or endorsers of the brand, as is the case with brand-sponsored competitions/events. In addition to this, marketing material around this type of promotion is unlikely to feature in consumer facing media: it is normally communicated from business to business through trade media or other publications. In these cases, producers are allowed to feature images of people aged 18-24 years of age.

Application of the rule:

- Are they drinking? NO
- Playing a significant role? YES;
- Any suggestion that they are drinking? NO; but an exemption exists to allow this type of image (as per the above rationale).

Decision: NO BREACH

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, 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.

