

Guidance Note

Cannabidiol (CBD)

April 2021



Products containing Cannabidiol (CBD)

This guidance is intended to help drinks producers comply with the Portman Group's (PG) Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks (Code). 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.

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 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.

Legal position

CBD is a compound naturally found in cannabis. In the UK, the Home Office provides advice on the level of tetrahydrocannabinol (THC) permitted in CBD products¹. THC is the psychoactive element of cannabis; CBD itself has no psychoactive effect and does not generate a 'high'.

The benefits and uses of CBD are widely debated. This guidance is only intended to help producers comply with the Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks. The law on the use of CBD in food and drink products is complex and this guidance does not imply that the inclusion of CBD in alcoholic drinks is legally permitted. We urge producers to seek legal advice before placing products containing CBD on the market.

In January 2019, CBD products were accorded novel food status. Current UK guidance does not rule out the possibility of regulation as medicines or controlled substances and it is a producer's responsibility to conduct the necessary due diligence in this area. In addition to seeking legal counsel, producers may find the following helpful:

- [Food Standards Agency - Business guidance on cannabidiol as a novel food](#)
- [Home Office - Drug Licensing Factsheet](#)

Introduction

Alcohol products containing CBD need to be carefully considered under the Code. At the time of writing, there is very little research available about CBD infused alcohol. As an emerging innovation, the Advisory Service has prepared this guidance to highlight points that producers should be mindful of when marketing products in this category.

This guidance focuses on the application of Code Rules 3.2(c) and 3.2(j) in relation to CBD but the entirety of the Code will still apply. If specific advice is required, please contact the Advisory Service.

For reference, Code Rules 3.2(c) and 3.2(j) read as:

¹ [Home Office, Drugs Licensing Factsheet – Cannabis, CBD and other cannabinoids](#)

- 3.2 A drink, its packaging and any promotional material or activity should not in any direct or indirect way:
- (c) suggest any association with, acceptance of, or allusion to, illicit drugs;
 - (j) suggest that the product has therapeutic qualities, can enhance mental or physical capabilities, or change mood or behaviour.

Illicit Drugs

- Please read this section alongside our [Guidance Note on Code Rule 3.2\(c\) – Associations or allusions to illicit drugs](#).
- The Code currently prohibits direct and indirect associations with illicit drugs such as cannabis.
- It is important to note the distinction between CBD and cannabis. Cannabis is a controlled drug, and its use, growth and distribution are illegal in the UK. In contrast to this, CBD is a legal cannabinoid in the UK. Therefore, references to CBD will not necessarily breach Code Rule 3.2(c).
- Producers should take care, however, to avoid using words or images that are commonly associated with illicit cannabis use. For instance, the words 'high' or 'blow' might be interpreted as references to illicit drugs when they appear on products that contain CBD.
- Words and imagery that create a direct association with illicit drugs will breach the Code. For instance, if a CBD product includes images of marijuana leaves or uses words like 'buzz', 'restricted' or 'caution' these elements will be problematic for creating a link to illicit drugs, regardless of the fact that CBD is not an illicit drug. It is the implicit association with cannabis that will be problematic.
- The overall impression conveyed by a product will always be considered. Even though CBD does not generate a high or alter an individual's mental state, any suggestion that it could, may also create an indirect association with illicit drugs depending on its presentation. For instance, imagery which has a hallucinogenic look and feel could create an indirect association with illicit drugs and the same could apply to imagery and wording which suggests a product is 'out of this world'.
- In January 2021, the Panel ruled on a complaint against [Colorado High CBD Gin](#). The complainant stated that the product referred to 'getting high' and that the picture on the front of the packaging appeared hallucinogenic.

The Panel noted that Colorado was one of the first states in the US to decriminalise recreational cannabis and that 'high' was commonly associated with drugs. The Panel considered that these elements might be acceptable in some contexts but concluded that the cumulative effect of the image, the reference to Colorado and the word 'high', created an indirect association with illicit drugs. The Panel therefore concluded that the product breached Code Rule 3.2(c).

Therapeutic qualities

- Please read this section alongside our [Guidance note on Code Rule 3.2\(j\) – Therapeutic qualities or change in mood or behaviour](#).

- Producers should avoid making any claims about CBD having benefits for health or wellbeing.
- As set out in the retained European Regulation (EC) No 1924/2006 (Nutrition and Health Claims Regulation), health claims are not permissible for alcoholic drinks containing more than 1.2% ABV². Nutrition claims are acceptable only if referring to low alcohol levels, the reduction of the alcohol content, or the reduction of energy content.
- This guidance does not prevent drinks stating that they contain CBD as an ingredient. It is important for product labelling to be clear about the nature of a product and consumers should know if a product contains CBD as an ingredient. The Advisory Service would recommend that this ingredient is listed factually, and clearly, on the back label of the product so that it is not given undue prominence when considering the overall impression of the product packaging.
- Factual references to CBD are likely to be acceptable in context, provided they are straightforward statements about the ingredient used in the product and are not given undue emphasis or featured prominently. Products should not incorporate CBD in the name or product descriptor. For example, products should not incorporate descriptors like 'CBD Gin' or 'Rum infused with CBD' as the Panel have stated that there is a risk that consumers may infer therapeutic benefits even without explicit claims about health or wellbeing.
- Producers should also take care to avoid featuring CBD prominently on their packaging. Prominence is a matter of presentation: for example, using larger font or a different colour font can make a claim more prominent.
- The Panel will consider whether references go beyond mere factual statements by considering the overall impression conveyed by the packaging.
- As part of the January 2021 Colorado High case, the Panel noted that the back label of the product stated 'A sensory infusion of wellness-enhancing CBD and refreshingly complex gin ...' and 'Colorado High is a spirit that supports your body's natural balance and tastes great doing so'. The Panel was of the view that the packaging did convey a health benefit by stating that it was 'wellness-enhancing'.

After carefully considering the risk that consumers would infer therapeutic qualities from the descriptor 'CBD Gin', the Panel concluded on the basis of the evidence in this case that products containing CBD should name it as an ingredient but should not incorporate CBD into the name of the product, the product descriptor or feature it prominently on their packaging.

The Panel concluded that the description 'CBD Gin' on the front of the bottle, as well as the claims about wellbeing elsewhere on the packaging, breached Code Rule 3.2(j).

² Article 4(3) of retained Regulation (EC) No. 1924/2006 prohibits health claims on or about drinks containing more than 1.2% abv and all nutrition claims other than 'reduced alcohol', 'low alcohol', and 'reduced energy (calorie) claims'. 'Health claim' means any claim that states, suggests or implies that a relationship exists between a food category, a food or one of its constituents and health.

Summary of key points

- Words and images associated with recreational cannabis are likely to create an association with illicit drugs and should be avoided.
- If there is any claim, implied or explicit, for the effect of CBD (for example linked with a brand name) then this is likely to be found in breach of the Code. This type of claim is problematic whether or not the claimed effect is likely to be achieved in practice. For example, the 'high' in 'Colorado High Gin' was found to create an association with illicit drugs, even though CBD is not normally associated with a 'high'.
- Producers must not make direct or indirect claims about health or mood change.
- References to the taste and quality of a product are likely to be fine under the Code and the Advisory Service would encourage producers to focus on these elements when making emotive statements. However, suggestions that a drink can invoke feelings/emotions, directly caused by consumption of the product, for example 'chill out', or 'unwind', are likely to be problematic.
- It may be necessary to inform consumers that a product contains CBD as an ingredient, but this must be done in a factual and 'non-emotive' way. Any product which incorporates CBD into its marketing, such as the brand name, or product descriptor, is likely to breach the Code for suggesting an implicit health effect.

While the Advisory Service has focused on particular rules in this guidance document the product will be assessed against the Code in its entirety. For more detailed advice please contact the Advisory Service (advice@portmangroup.org.uk).

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.

