

Guidance Note

Hard Seltzers

March 2022



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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.

Introduction

The Advisory Service has seen a rise in advice requests seeking clarification on the acceptability of the phrase 'hard seltzer' under the Code. This guidance seeks to anticipate how the Panel may consider the term under the Code and highlights points that producers should be mindful of when developing products in this category. The guidance will be amended and updated in light of future decisions by the Panel.

Hard seltzers are a fairly new sub-category within the ready to drink (RTD) category. The Advisory Service has concerns that the phrase 'hard seltzer' is not recognised by consumers as indicating an alcoholic drink. The Advisory Service is also mindful that the Panel has historically ruled against 'hard' in product names, so this guidance includes careful consideration of consumer perceptions and underlying policy issues.

Background

- The Panel has previously ruled on the term 'hard' under the fourth edition of the Code. In 2012, the Panel considered a complaint against [Healey's Texan-style Hard Cyder](#). As part of its consideration the Panel noted that the producer had explained that 'hard' cider was intended as a reference to an alcoholic drink, rather than a suggestion that a consumer needed to be 'hard' to consume the product. However, the Panel concluded that the word 'hard' in this context was unnecessary to describe the product as alcoholic as UK consumers were familiar with the term 'cider' being used exclusively as an alcoholic drink, in contrast to US consumers who would recognise the term as a soft drink. In the context of the product packaging, the Panel concluded that the phrase 'hard' had direct associations with strong alcohol, thereby making alcoholic strength the dominant theme and accordingly upheld the complaint under Code Rule 3.2(a).
- As highlighted, the ruling was made under the fourth edition of the Code and at the time Code Rule 3.2(a) read as:
A drink, its packaging and any promotional material or activity should not in any direct or indirect way have the alcoholic strength, relatively high alcoholic content, or the intoxicating effect, as a dominant theme.
- The Code applies in the spirit as well as the letter and the intention behind the rule was to prevent producers from presenting a product as favourable due to its alcoholic strength. The



Advisory Service has always encouraged producers to focus on the taste and quality of a product rather than solely marketing on its alcoholic content.

- At the time of the 2012 Code Review, the industry had launched a wide variety of low/lower strength alcohol products¹ onto the market to diversify consumer choice for those who wanted to reduce their alcohol consumption. Discussions at the time acknowledged that the wording of the fourth edition of the Code limited potential marketing opportunities in this area as producers were not able to present lower strength products as favourable compared to similar products in the same category.
- In response to this, the fifth edition of the Code removed the phrase 'alcoholic strength...as a dominant theme' and changed this to 'give the higher alcoholic strength...undue emphasis'. Accompanying guidance introduced the average strength for each category of alcohol² so that 'higher alcoholic strength' could be defined. This change made it possible for the 'lower' alcoholic content of a drink to become a dominant theme in marketing.
- The strength rule is unchanged in the sixth edition of the Code:
3.2(a) A drink, its packaging and any promotional material or activity should not in any direct or indirect way give the higher alcoholic strength, or intoxicating effect, undue emphasis. A product's lower alcoholic strength may be emphasised proportionately when it is below the average strength for similar beverages. Factual information about alcoholic strength may be given
- Due to the change in the Code, it is not possible to directly apply the Panel's rationale in the Healey's Texan-style Hard Cyder case to hard seltzers. The Advisory Service has therefore used the YouGov research to understand consumer perceptions of the term 'hard' when developing guidance in this area.

Consumer understanding of the phrase 'hard'

- In November 2020 and December 2021, the Advisory Service commissioned consumer polling from YouGov to understand consumer perceptions around the term 'hard' and to also gauge understanding of awareness around the term 'hard seltzer'³.
- The most recent results from December 2021 showed that only 14% of respondents had heard of 'hard seltzer' compared to 7% in November 2020. When asked about 'hard seltzers' in 2021, 65% of respondents did not know if the word 'hard' was being used to convey the alcoholic content, alcoholic strength, or both.
- Overall in 2021, 61% of respondents did not find the term 'hard' useful to denote the alcoholic content when used in combination with traditional soft drink names (like seltzer) and a similar percentage (63%) did not find the term useful to denote the alcoholic content when used in combination with traditional alcoholic drinks (like cider).
- The results of the 2021 polling revealed familiarity of hard seltzers was slightly more common in women (16%) compared to men (12%), and in the 25-34 age group (27%). In addition this, the youngest drinkers (18-24), were just as likely as those aged 35-54 to be familiar with the term 'hard seltzer' (17%).

¹ Linked to the Public Health Responsibility Deal, 2011

² Guidance Note on Code Rule 3.2(a) – Communication of Alcoholic Strength

³ YouGov Polling Results, Consumer Perceptions of the Term 'Hard', commissioned by the Portman Group November 2020 and December 2021



- In summary, there is still low consumer awareness of the term 'hard seltzer' and at present, consumers do not find the term 'hard' a useful signifier of alcoholic content or to convey whether a product has higher alcoholic strength.
- The consumer polling referenced in this section will not bind the Panel in the event that a complaint is received on this topic. The polling at this stage has been used by the Advisory Service to help advise the industry on how to comply with the Code.

Communicating the alcoholic nature with absolute clarity

- Rule 3.1 provides that 'The alcoholic nature of a drink should be communicated on its packaging with absolute clarity'. Please read this section alongside our [Guidance note on Code Rule 3.1 – Communicating Alcoholic Content](#).
- As consumer awareness of the term 'hard seltzer' is minimal, producers need to ensure that such products communicate their alcoholic nature with absolute clarity as the descriptor itself cannot be relied upon.
- A seltzer is a soft drink and the term 'hard', from a consumer perspective, does not convey that the product is alcoholic.
- To avoid any suggestion of misleading consumers, or consumer confusion, companies are encouraged to adopt the following practice in this area:
 - Include the alcohol by volume (ABV) on the front of the packaging
 - Include references to 'alcohol' or the word 'alcoholic' on the front of the packaging
 - Ensure that positive alcohol cues (ABV, alcohol phrases etc.) are given more prominence than negative alcohol cues (fruit images, fruit descriptors, overly busy design, cartoon illustrations etc.)
- The Panel will always consider the overall impression conveyed by a product. If the cumulative impact of the negative cues outweighs the positive ones, the Panel is likely to find the product in breach of the Code.
- The above does not suggest that fruit images and fruit descriptors cannot be used, but companies are encouraged to balance these alongside clear alcoholic signifiers to avoid consumer confusion.

Application of the strength rule (Rule 3.2(a)) to 'hard'

- Rule 3.2(a) in the Sixth edition of the Code states: 'A drink, its packaging and any promotional material or activity should not in any direct or indirect way give the higher alcoholic strength, or intoxicating effect, undue emphasis. A product's lower alcoholic strength may be emphasised proportionately when it is below the average strength for similar beverages. Factual information about alcoholic strength may be given'. Please read this section alongside our [Guidance note on Code Rule 3.2\(a\) – Communication of Alcoholic Strength](#).

- The category average strength for RTD's is 4.6% ABV⁴. RTD's below this strength are considered 'lower' than the category average and this lower strength can be emphasised proportionally on the product packaging depending on the difference in strength (i.e. the greater the difference between the product and the category average the more emphasis/virtue that can be placed on the lower strength).
- When applying the rule to 'hard seltzers' we may to some extent draw a distinction between those that are considered 'higher strength' products under the rule and those that are considered 'lower strength'.

a) Higher strength hard seltzers (above 4.6% ABV)

- A hard seltzer with an ABV above 4.6% ABV will not necessarily be problematic under Code Rule 3.2(a) despite the incorporation of the word 'hard'. The Advisory Service is mindful that YouGov polling in this area showed that consumers do not necessarily associate the term 'hard' with placing undue emphasis on the higher alcoholic strength of a product.
- When considering hard seltzers under this rule, the Panel is likely to consider how strong the hard seltzer is when compared to the RTD category average strength. For instance, if the hard seltzer is marginally stronger than the category average, then it is unlikely that the descriptor 'hard' will be problematic in and of itself. Compliance will therefore be dependent on the overall impression conveyed by the packaging.
- The Advisory Service often advises that some elements, when considered in isolation, may be acceptable under the Code but when combined with other elements may change the overall message that is being conveyed and lead to a breach of the Code.
- While consumers may not associate the term 'hard' with placing undue emphasis on strength, this could change depending on the overall impression conveyed by the product. For instance, if a hard seltzer placed the ABV in thick red font on sombre packaging and included phrases that directly linked the product to strength (i.e. extra strong) then the cumulative effect of these elements could lead the product to be problematic under Code Rule 3.2(a).
- The Advisory Service would recommend that producers are mindful that the incorporation of the word 'hard' means that care needs to be taken when incorporating other elements that could link to strength. Producers will need to think carefully about brand names as, when combined with the descriptor 'hard', they may place undue emphasis on the strength of the product. For instance, 'Pack a punch', 'Juggernaut' and 'Turbo' would all be names that, when considered in combination with 'hard', could place undue emphasis on the higher strength of the product, even if said product was minimally over the category average strength.
- The Advisory Service would recommend that RTD's which are significantly higher than the category average, should not label themselves as 'hard' as it is likely that the descriptor 'hard' and the higher ABV would have the cumulative effect of placing undue emphasis on the higher strength of the product. Please be mindful that if the word 'hard' is removed from the product, and leaves the descriptor 'seltzer', this could be confusing for consumers who may associate the word with a soft drink.

⁴ Information supplied by Public Health England, 2020



b) Lower strength hard seltzers (4.6% ABV and below)

- While it is unlikely that a lower strength hard seltzer would place undue emphasis on strength, the Code rule could still apply if the product was solely marketed on the intoxicating effect of the product (i.e. a hard seltzer is preferable compared to a soft seltzer solely because it has alcohol in it).
- As always, complaints will be considered on a case-by-case basis.

Therapeutic qualities

- Rule 3.2(j) provides that 'A drink, its packaging and any promotional material or activity should not in any direct or indirect way suggest that the product has therapeutic qualities, can enhance mental or physical capabilities, or change mood or behaviour'. Please read this section alongside our [Guidance note on Code Rule 3.2\(j\) – Therapeutic qualities or change in mood or behaviour.](#)
- It is a company's responsibility to ensure that any drinks packaging or promotional activity it undertakes complies with applicable laws and regulations.
- As set out in the retained EU Nutrition and Health Claims Regulations 2006, health claims are not permissible for alcoholic drinks containing more than 1.2% ABV⁵. Nutrition claims are acceptable only if referring to low alcohol levels, the reduction of the alcohol content, or the reduction of energy content.
- A seltzer can be defined as mineral water with bubbles⁶. Some consumers may link the name to the pain-relief brand 'Alka-Seltzer'. However, it is the opinion of the Advisory Service that the phrase 'seltzer' has its own definition as a drink and, when considered in isolation, does not have a direct association with therapeutic qualities.
- Hard seltzers have been developed as part of a new sub-category of low-calorie drinks with the aim of appealing to younger and more health-conscious (alcohol) consumers. Producers need to be mindful that such products cannot suggest that they have therapeutic qualities, and the Advisory Service would urge caution when considering accompanying marketing materials in this area.
- Products should not make any health or wellness claims such as suggesting that hard seltzers are for those who are health-conscious and on a diet. There should also be no suggestions that the product will invigorate, refresh, or enhance the consumer's physical and/or mental wellbeing.
- Hard seltzers which incorporate fruit imagery on packaging will not be deemed to be making a health claim by advertising the flavour of the product. For instance, a blueberry flavoured hard seltzer could include images of blueberries on the packaging. However, a health claim would be made if the product then stated that it had 'antioxidant effects' and is likely to be problematic under the Code.

⁵ Article 4(3) of retained EU Regulation 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'

⁶ Cambridge English Dictionary

- While the Portman Group does not have a case precedent relating to hard seltzers, the sub-category has featured with the Advertising Standards Authority (ASA). We have detailed these cases below to demonstrate examples of where a producer has encountered issues under the similarly worded Committee of Advertising Practice (CAP) Code.
1. The ASA received a complaint about a paid-for post on Instagram from BrewDog, for an alcoholic hard seltzer drink, which included an image of a can of Clean & Press Hard Seltzer and the text "DUE TO ADVERTISING REGULATIONS WE CANNOT CLAIM THIS DRINK IS HEALTHY". Text below the image stated "Even though Clean & Press is only 90 calories per can, with no carbs or sugar and a little bit of alcohol, this is not a health drink. If you are looking for a health drink, do not drink Clean & Press." The ASA challenged the ad on three points;
 - whether the claim "only 90 calories per can" and "no carbs or sugar" were nutrition claims that were not permitted for alcoholic drinks;
 - whether the ad and accompanying text implied general health claims which were not permitted for alcohol drinks;
 - and whether the phrase a 'little bit of alcohol' implied a lower alcohol claim which was not permitted as the drink had a 5% ABV

On this first point the ASA considered that "no carbs or sugar" was a nutritional claim and was not permitted to be made in relation to alcohol. Similarly, on the second point the ASA concluded that the ad, while tongue in cheek, implied that the drink was in fact healthy and thus the ad was making a non-permitted health claim about the product. On the third point, the ASA judged that a 'little bit of alcohol' was likely to be understood by consumers as a low alcohol claim that was not permitted for alcohol drinks with more than 1.2% ABV. Accordingly, the ad was upheld on all three points.

2. The ASA also received a complaint about two posts appearing on DRTY DRINKS's Instagram account, for a hard seltzer alcoholic drink. The first ad included a close-up image of someone's hands as they played on a fruit machine. In their left hand they held a can of the drink. Text next to the image stated "'4 cans of DRTY and a scotch egg please'". Below that text included "#spikedseltzer [...] #nosugardiet #keto #ketodiet #carbfree [...] #zerosugar #nocarbs #lowcalorie".

The second, posted on 14 January 2021, included an image of several cans of the drink in a cooler, with someone reaching to take one, alongside the text "Everyone: There's a pandemic happening and it's 7altic [sic] outside, should probably stay in. Me: Solo DRTY's in the garden? Don't mind if I do." Below that further text included "#spikedseltzer".

The ASA challenged the ad on two points including whether "#lowcalorie", "#nosugardiet", "#zerosugar", "#keto", "#ketodiet", "#carbfree, and "#nocarbs" in an ad were nutrition or health claims that were not permitted for alcoholic drinks. The ASA considered that consumers were likely to understand "#lowcalorie", "#nosugardiet", "#zerosugar", "#keto", "#ketodiet", "#carbfree, and "#nocarbs" as nutritional claims which were not permitted for alcoholic drinks, and they concluded that the ads had breached the CAP Code.

- Health and nutrition claims are subject to legal restrictions, in addition to Code Rule 3.2j. We strongly recommend seeking guidance from a legal advisor or trading standards service before making any health or nutrition claims. This might include claims about reduced calories, sugar content or allergens.
- In addition to the above, the Advisory Service, would also urge caution to producers to take care around implied claims, as well as direct ones. Any direct or indirect claim that is likely to be understood as a health or nutritional claim is likely to be understood as a therapeutic property of the drink, which is unlikely to be acceptable under the Code. Even where claims

may be acceptable, such as the energy value of the drink, we urge caution about using phrases such as 'only XX calories'. This is because it is likely to be understood as a claim that a drink has a particular beneficial nutritional property of being low in calories, which is unlikely to be acceptable under Code rule 3.2(j).

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Bravado and aggressive behaviour

- Rule 3.2(b) states that 'A drink, its packaging and any promotional material or activity should not in any direct or indirect way suggest any association with bravado, or with violent, aggressive, dangerous, anti-social and illegal behaviour. Please read this section alongside our [Guidance note on Code Rule 3.2\(b\) – Bravado, violent, aggressive, dangerous, anti-social and illegal behaviour](#).
- As part of the Healey's Texan-style Hard Cyder case in 2012, the Panel debated whether the term 'hard' could create an association with a person who was violent and aggressive but determined that this term was not universally recognised.
- Producers need to be mindful that certain language and imagery could create a link with bravado. The Advisory Service would advise against any potential suggestion that a consumer needs to be 'hard' to consume the product or that consuming the product would invoke such a quality.

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.

