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## ADVERTISING STANDARDS AUTHORITY EVIDENCE FOR THE HEALTH SELECT COMMITTEE INQUIRY INTO ALCOHOL

### SECTION 1: Introduction & Overview

#### 1. Introduction

- 1.1 This evidence is provided on behalf of the Advertising Standards Authority (ASA). The ASA is content for this evidence to be published.
- 1.2 The ASA is the UK self-regulatory body for maintaining standards in advertising. The Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) are the industry bodies responsible for writing and maintaining the Advertising Codes.
- 1.3 The ASA would be prepared to give oral evidence to the Committee or provide further written information on request.

#### 2. Executive Summary

- 2.1 The advertising regulatory system is committed to upholding high standards in alcohol advertising.
- 2.2 The Codes contain special rules for alcohol, which sit on top of the general Code provisions that all ads must not mislead, harm or offend.
- 2.3 The rules for alcohol advertisements were strengthened significantly in 2005 to ensure that they remain relevant and evidence-based. These are actively promoted and enforced.
- 2.4 The updated rules are designed to protect young people and vulnerable groups. In particular, the rules ensure that alcohol ads do not reflect or encourage any antisocial or undesirable behaviours associated with

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alcohol misuse. There are also scheduling restrictions to protect young people.

- 2.5 The advertising regulatory system takes a 360° approach to regulation. This approach incorporates training and guidance; pre-publication advice and clearance; proactive monitoring of advertisements and, of course, an effective complaints and investigations procedure.
- 2.6 Recent ASA research shows that alcohol advertisements are mostly compliant with the rules. However, the ASA has not hesitated to take action against problematic ads, either those we have received a complaint about or those we have picked up ourselves. We will continue to monitor the sector closely. All ASA rulings and compliance surveys can be found on our website.
- 2.7 The ASA, CAP and BCAP are responsive to new evidence, which we will consider in light of Government Better Regulation principles. New evidence can be used to inform the application or effectiveness of existing rules.
- 2.8 We do not have any recommendations for the Health Select Committee to propose in the area of advertising because the UK advertising self-regulatory system is already effective and comprehensive. However, the system is open to considering any new evidence that comes to light through the Committee's work.

### **3. A brief overview of the Advertising Regulatory System**

- 3.1 More comprehensive information about the ASA one-stop-shop is detailed at **Annex A** and on our website at [www.asa.org.uk](http://www.asa.org.uk).
- 3.2 The ASA is the UK body responsible for regulating advertising in all media. It does this by enforcing the Advertising Codes. It accepts complaints from the public and industry about ads that seem to have breached those Codes. It also conducts other activities such as providing training and advice, and proactively monitoring ads in order to keep advertising standards high.
- 3.3 The Advertising Codes are written and maintained by CAP and BCAP. CAP is responsible for the Code that covers non-broadcast advertising

(print, outdoor, cinema, online, SMS direct mail etc) and BCAP is responsible for the TV and Radio Advertising Codes.<sup>1</sup>

- 3.4 The system is both self-regulatory (for non-broadcast advertising) and co-regulatory (there is a co-regulatory partnership with Ofcom for TV and radio advertising). Compliance with the Advertising Codes is not voluntary and all upheld adjudications are strictly enforced.
- 3.5 The system is widely recognised by Government, industry, consumers, the Courts and partner regulators, for example the OFT and Ofcom, as the means for providing consumer protection against misleading, offensive or harmful advertising.
- 3.6 The ASA is independent of both Government and industry. The system has consistently proven that it is prepared to take action against those advertisers that breach the Codes. In 2008, 2,475 ads were changed or withdrawn following ASA action.
- 3.7 The advertising regulatory system is an integral part of the alcohol regulatory system. Our role is distinctly different from that of The Portman Group, which regulates the naming, packaging and promotion of alcoholic drinks. The Portman Group code does not regulate any alcohol advertising that is covered by our Codes. The ASA has not seen any evidence of confusion about our respective roles.

## **SECTION 2: Regulating Alcohol Advertising**

### **4. The Rules**

- 4.1 The full alcohol advertising code rules are attached at **Annex B**
- 4.2 The system recognises the social imperative of ensuring that alcohol advertising is responsible. For that reason, the Codes contain special rules for alcohol, which sit on top of the general Code provisions that all ads must not mislead, harm or offend.

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<sup>1</sup> The CAP & BCAP Codes can be found at: <http://www.cap.org.uk/cap/codes/>, those Codes describe the remit in full.

- 4.3 The rules were developed in line with Government's better regulation principles, which state that regulation must be transparent, accountable, proportionate, consistent and targeted. The rules were drafted in light of the best available evidence about the impact of alcohol advertising on society.
- 4.4 The alcohol ad rules are exceptionally robust, especially in relation to the protection of young people and vulnerable groups. They were tightened significantly in October 2005, in response to the 2004 Alcohol Harm Reduction Strategy, which suggested a possible link between young people's awareness and appreciation of alcohol advertising and their propensity to drink.
- 4.5 The rules cover both the content and scheduling of alcohol advertisements.
- 4.6 The updated content rules ensure alcohol ads do not reflect or encourage any antisocial or undesirable behaviours associated with alcohol misuse. In summary, the rules state that alcohol ads must not:
- link alcohol with daring, antisocial, aggressive or irresponsible behaviour
  - link alcohol with seduction, sex or social success
  - show alcohol being handled or served irresponsibly
  - show people drinking or behaving in an adolescent or juvenile way or reflecting the culture of people under 18 years of age
  - depict people who are, or appear to be, under the age of 25.
- 4.7 In television, alcohol advertisements are subject to tough scheduling restrictions. The rules prevent alcohol ads from being placed during any programme that is made for or aimed at children<sup>2</sup> or is likely to appeal particularly to audiences below the age of 18, regardless of the time of day. This is done by audience indexing, which is explained at **Annex B**.
- 4.8 The rules mean alcohol ads cannot be shown around programmes popular with young people, such as 'The Simpsons' and 'Ugly Betty', even if those programmes appear after 9pm.

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<sup>2</sup> A child is defined as under 16 for the purposes of the Code.

4.9 In non-broadcast advertising, alcohol advertisements should not be directed at people under 18 through the selection of media, style of presentation, content or context in which they appear. No medium should be used to advertise alcohol if more than 25% of its audience is under 18 years of age.

## **5. How are the rules enforced?**

5.1 The alcohol advertising rules are comprehensively enforced. The ASA is aware of the importance not just of robust rules but of active enforcement. This means that we take a 360° approach to regulation: the industry receives training and pre-publication advice and, once the ads have been placed, the ASA considers complaints and proactively monitors the sector to remove problematic ads.

### **5.2 Training and Guidance**

5.2.1 CAP and BCAP have produced guidance explaining the alcohol advertising rules, which is available online at the CAP website<sup>3</sup>.

5.2.2 CAP and BCAP also provide regular training for the industry, via seminars, presentations and visits by our Code experts to companies and agencies. In 2008, CAP provided 13 training sessions for alcohol advertisers<sup>4</sup>.

### **5.3 Pre-publication Advice and Pre-clearance**

5.3.1 CAP provides a free pre-publication advice service for advertisers, agencies and media, called Copy Advice. The team dealt with some 225 alcohol ad queries in 2008.

5.3.2 TV and radio advertisements are centrally pre-cleared by Clearcast and the Radio Advertising Clearance Centre (RACC) respectively. These bodies have been set up and funded by the broadcasters to help ensure compliance with the Codes. This means that the vast majority of alcohol advertisements are compliant with Codes before they are aired. Clearcast and RACC approval does not prevent the ASA from acting on

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<sup>3</sup> The CAP website is [www.cap.org.uk](http://www.cap.org.uk)

<sup>4</sup> 11 of these were co-presentations with The Portman Group

ads that seem to be problematic. More information about Clearcast and the RACC can be found at [www.clearcast.co.uk](http://www.clearcast.co.uk) and [www.racc.co.uk](http://www.racc.co.uk).

- 5.3.3 It is worth mentioning that cinema also has a pre-clearance mechanism, which is provided by the Cinema Advertising Association (CAA). The CAA clears ads for every cinema in the UK. Their pre-clearance procedures are designed to ensure alcohol ads comply with the CAP Code and are scheduled around films with 'U', 'PG', '12A' and '15' certificates only if 75% of the average audience is likely to be 18 or older.
- 5.3.4 The BBFC rating is not a suitable mechanism for predicting the age make-up of audiences, for example, the current film 'The Young Victoria' is certified PG but is highly unlikely to attract a youth audience; conversely the film 'Sex Drive', which carries a 15 certificate, is expected to have a high youth audience.

#### **5.4 Complaints and Investigations**

- 5.4.1 The ASA is able to accept complaints from both industry and consumers. One complaint is enough to trigger an investigation, which could lead to the withdrawal of an ad campaign.
- 5.4.2 All complaints are considered fully and those that bring to light possible Code breaches will be sent for thorough investigation.
- 5.4.3 All decisions on investigated ads are made by the independent ASA Council. The Council is two-thirds lay and is chaired by the Rt Hon Lord (Chris) Smith of Finsbury.
- 5.4.4 The investigation process is transparent and all adjudications are published weekly on the ASA website and attract significant media attention.
- 5.4.5 When it upholds a complaint against an advertisement, the ASA can ban the ad or require the advertiser or broadcaster to amend or schedule the advertisement appropriately.
- 5.4.6 In 2008, the ASA resolved 392 complaints about alcohol ads. To put this in context, the ASA deals with around 26,422 complaints during the year.

5.4.7 Complaint levels about alcohol are not particularly high but the ASA has banned 18 ad campaigns under the new alcohol rules since they were introduced. That figure does not include those alcohol advertisers that have breached the general Code provisions, for misleading, harmful or offensive ads.

5.4.8 To give the Committee a clearer idea of the enforcement approach taken by the ASA, below are examples of three ads that we have recently taken action against on three different aspects of the Codes.

**5.4.9 Linking Alcohol to Social Success and Enhanced Confidence (Wm Magners Ltd, February 2009<sup>5</sup>)**

The ASA banned this TV ad for using the words "It's the perfect ice breaker" and "Making sure the conversation flows" in a voiceover for Magners Draught Cider. The ASA felt the use of these words broke the rules that state that alcohol ads cannot imply that alcohol can boost a person's confidence or be a reason for the success of a social situation.

**5.4.10 Linking Alcohol with Sexual Success (Moet Hennessy UK Ltd, December 2008<sup>6</sup>)**

This press ad, for Belvedere vodka, showed a man sitting on a couch with a woman on either side of him, looking at his face. One woman had her arm around his neck. On a table in front of them were glasses and a half full bottle of Belvedere vodka. Text stated "Luxury Reborn".

The ASA felt that the overall effect of the image implied that Belvedere had enhanced the attractiveness of the man; we concluded that the ad linked Belvedere with sexual success and therefore breached the Code.

**5.4.11 Linking Alcohol to Youth Culture (Coors Brewers, October 2008<sup>7</sup>)**

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<sup>5</sup> The full adjudication can be found at:

[http://www.asa.org.uk/asa/adjudications/Public/TF\\_ADJ\\_45841.htm](http://www.asa.org.uk/asa/adjudications/Public/TF_ADJ_45841.htm)

<sup>6</sup> The full adjudication can be found at:

[http://www.asa.org.uk/asa/adjudications/Public/TF\\_ADJ\\_45068.htm](http://www.asa.org.uk/asa/adjudications/Public/TF_ADJ_45068.htm)

<sup>7</sup> The full adjudication can be found at:

[http://www.asa.org.uk/asa/adjudications/Public/TF\\_ADJ\\_45145.htm](http://www.asa.org.uk/asa/adjudications/Public/TF_ADJ_45145.htm)

The ASA acted against this TV ad because it used themes including exaggerated dance moves, a bear impression, props such as a fake moose and plastic keyboard and a woman hitting men with a pillow.

The ASA found that the characters' silly behaviour would appeal strongly to young people's sense of humour and concluded that the ad breached the Code for linking alcohol with youth culture.

## 5.5 Monitoring and Compliance Surveys

5.5.1 The ASA does not just wait for complaints to come in, but pro-actively monitors ads on a daily basis across all media for compliance with the Codes. It concentrates its activities on high-profile sectors (such as alcohol) or sectors with low compliance.

5.5.2 The monitoring team can ask advertisers to remove or amend their ads voluntarily but sometimes it is necessary to launch a formal investigation and take the advertisements to the ASA Council. A good example of monitoring enforcement was for a series of ads for 'Smirnoff Ice', which we banned for associating alcohol with youth culture.<sup>8</sup>

5.5.3 The team conducts compliance surveys. Surveys involve assessing all ads from a particular sector that have appeared during a defined period. Ads are assessed against the Codes and unacceptable ads are either amended or removed.

5.5.4 We have conducted three surveys on alcohol ads since the rules changed. The 2006 survey revealed a compliance rate of 94%. The 2007 survey revealed a significantly higher proportion of alcohol ads (97%) were complied with the Codes<sup>9</sup>. The 2008 survey will be published later this year; early indications are that the survey will reveal a similar level of high compliance.

5.5.5 Although the alcohol surveys have shown an acceptable level of compliance, we continually strive to improve it, as evidenced by the high number of training sessions held for alcohol advertisers in 2008.

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<sup>8</sup> The adjudication can be found at [http://www.asa.org.uk/asa/adjudications/Public/TF\\_ADJ\\_41791.htm](http://www.asa.org.uk/asa/adjudications/Public/TF_ADJ_41791.htm)

<sup>9</sup> Both reviews can be found on the ASA website at <http://www.asa.org.uk/asa/research/>

## 5.6 Sanctions

- 5.6.1 Advertisers that breach the Codes face financial loss from having an ad campaign pulled and damage to reputation through the publication of upheld adjudications, which attract media attention.
- 5.6.2 Compliance with ASA adjudications is extremely high. For those few advertisers who refuse to comply, industry and other pressures can be brought to bear. For example, poster pre-vetting can be imposed and direct marketing companies can have benefits such as Royal Mail bulk mailing discounts removed. Although very rare, in serious cases of non-compliance, advertisers can be referred to the statutory authorities, for example to the OFT for action for unfair or misleading advertising, or to Ofcom for action against broadcasters.

## 5.7 Consumer and Market Research

- 5.7.1 The ASA, jointly with Ofcom, commissioned a major two-stage research project to assess the impact of the strengthened alcohol advertising rules on young peoples' attitudes to alcohol ads.
- 5.7.2 The first wave (December 2005) established a measure of the appeal of alcohol advertising to young people. It was created as a benchmark against which the impact of the new rules could be assessed<sup>10</sup>.
- 5.7.3 The second wave (November 2007) evaluated the impact of the tightened Codes and the changes to the alcohol advertising market over the previous two years<sup>11</sup>.
- 5.7.4 Both waves of the research used ads that seemed to be aimed at the younger end of the legitimate market: The research findings are not representative of all alcohol ads. Significantly it was more difficult to find

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<sup>10</sup> First stage research results at: [http://www.asa.org.uk/NR/rdonlyres/CC8127C7-D1AE-4092-99B0-335FE2F2A221/0/alcohol\\_research\\_2005.pdf](http://www.asa.org.uk/NR/rdonlyres/CC8127C7-D1AE-4092-99B0-335FE2F2A221/0/alcohol_research_2005.pdf)

<sup>11</sup> The second stage research results can be accessed at: [http://www.asa.org.uk/NR/rdonlyres/D311E8A2-C7CD-44B5-BECD-D87BC3812F04/0/Youngpeoplealcoholadvertising\\_20071116.pdf](http://www.asa.org.uk/NR/rdonlyres/D311E8A2-C7CD-44B5-BECD-D87BC3812F04/0/Youngpeoplealcoholadvertising_20071116.pdf)

suitable ads for the 2007 survey, perhaps indicating a shift in marketing focus away from the younger end of the legitimate market.

#### 5.7.5 Findings from the second wave showed:

- Alcoholic drink suppliers had shifted their advertising spend away from television with a reduction of 26% on TV compared to a 3% fall for all media from 2005-2007.
- Children and young adults were exposed to fewer alcohol advertisements on television.
- A significant decline in the proportion of young people saying they felt alcohol ads were aimed at them.
- A significant decline in young people's recall of alcohol ads, with unprompted mentions of alcohol ads down from an average of 3.9 ads remembered to 3.3.
- Young people also felt some of the 'edgier' ads made the drink look appealing and would encourage people to drink, with 34% believing that in 2007 compared with 25% in 2005.

5.7.6 The results were positive but the ASA was concerned that some alcohol ads were still of strong appeal to under-18s. The ASA has taken the findings into account when interpreting the rules about youth appeal.

### **SECTION 3: The Future of Alcohol Advertising Regulation**

#### **6. Online Regulation**

- 6.1 Although it covers online sales promotions and online ads in paid-for space, the CAP Code does not currently cover other parts of companies' own websites, which are classified as editorial content.
- 6.2 The ASA and the advertising industry are aware of the need to future-proof advertising self-regulation so that online marketing material is

regulated with the same sense of social responsibility as in traditional media.

- 6.3 Any extension to the ASA's remit is a decision for the advertising industry, not the ASA. The advertising industry, led by the Advertising Association, is presently considering whether and how the scope of the CAP Code might extend to promotional material on websites. The ASA, CAP and BCAP await the outcome of that work.

## **7. Code Review**

- 7.1 In 2007, CAP and BCAP started work on a joint review of their Codes to ensure that they are more accessible and, importantly, in good shape for regulating advertising in the coming years.
- 7.2 Having completed the internal review process, CAP and BCAP are scheduled to launch a 12-week public consultation on the amended Codes before the end of March.
- 7.3 We are not a position to share any aspect of the consultation with the Health Committee at this stage but we will contact the Committee once it is launched.

## **8. Price, Promotion and Harm Review**

- 8.1 The advertising regulatory system has consistently maintained an open relationship with Government on alcohol advertising.
- 8.2 Since the publication of Department of Health's review of the relationship between price, promotion and harm, the Culture Secretary has asked CAP and BCAP to assess the findings of that review.
- 8.3 CAP and BCAP are evidence-based regulators and have committed to undertake the Culture Secretary's request. If the review presents new evidence that brings into question the effectiveness of the current rules, CAP and BCAP will consider whether to revise the Codes.

## **SECTION 4: Conclusion and Contact**

## **9. Conclusion**

- 9.1 We do not have any recommendations for the Health Select Committee to propose, because there are already strict, evidence based rules in place to control alcohol advertising in the UK, which are comprehensively enforced by the ASA.
- 9.2 The ASA, CAP and BCAP are responsive to new evidence. New evidence can be used to inform the application of existing rules or the effectiveness of the rules. The system is open to considering any new evidence that comes to light through the Select Committee's work. We are committed to keeping advertising standards high.

## **10. Contact details**

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