

Amending limitations on advertising low-alcohol products

Committee of Advertising Practice and Broadcast Committee of Advertising Practice consultation on amending the rule limiting marketing claims for low-alcohol products

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1. Executive summary

The Committee of Advertising Practice (CAP), author of the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (CAP Code) and the Broadcast Committee of Advertising Practice (BCAP), author of the UK Code of Broadcast Advertising (BCAP Code) are consulting on changes to the rule limiting advertising of low-alcohol products.

The Advertising Codes only allow low-alcohol products (that is, with an ABV of 0.5-1.2%) to be advertised as preferable because of their (low) strength. All other alcoholic products may only make factual statements about strength or make a limited comparison with a higher-strength product. No ads must imply that a drink is preferable because of its higher strength or intoxicating effects, or that an unusually high strength for its category is a selling point. These measures are intended to ensure that advertising of alcoholic products is responsible and does not use alcoholic strength as a key selling point.

Low-alcohol products have more leeway to promote their strength, since it is distinctly lower than standard products. However, under current rules, their lower strength can only be promoted as preferable if the ad as a whole could not be considered to promote a higher strength product as well. In practice, this means that it is only acceptable to highlight a low-alcohol drink's strength if it is the only product type in the ad; any inclusion of a standard drink would be likely to breach this rule.

For the reasons outlined in the document, CAP and BCAP consider that this restriction is no longer an impactful means of ensuring responsible marketing in this area, and that it has the effect of preventing marketers from effectively promoting products that consumers have a marked interest in. In the context of an increased market for low-alcohol products, higher consumer take-up, and stricter guidelines on alcohol consumption, CAP and BCAP propose removing this restriction in order to enable marketers to advertise low-alcohol products alongside standard strength drinks.

This consultation presents that proposal, as well as the rationale and background informing it. Respondents are invited to submit their comments on the proposal, and we particularly welcome responses from those with expertise on low-alcohol products.

The consultation will close at 5pm on 15 April 2021. For more information on how to respond, please see section 7.

2. Introduction to UK advertising regulation

2.1 The Committee of Advertising Practice (CAP)

CAP is the self-regulatory body that creates, revises and enforces the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (the CAP Code). The CAP Code covers non-broadcast marketing communications, which include those placed in traditional and new media, promotional marketing, direct marketing communications and marketing communications on marketers' own websites. The marketer has primary responsibility for complying with the CAP Code and their ads must comply with it. Ads that are judged not to comply with the Code must be withdrawn or amended. Parties that do not comply with the CAP Code could be subject to adverse publicity, resulting from rulings by the Advertising Standards Authority (ASA), or further sanctions including the denial of media space.

CAP's members include organisations that represent advertising, promotional and direct marketing and media businesses. Through their membership of CAP member organisations, or through contractual agreements with media publishers and carriers, those organisations agree to comply with the Code so that marketing communications are legal, decent, honest and truthful, and consumer confidence is maintained.

By practising self-regulation, the marketing community ensures the integrity of advertising, promotions and direct marketing. The value of self-regulation as an alternative to statutory control is recognised in EC Directives, including Directive 2005/29/EC (on unfair business to consumer commercial practices). Self-regulation is accepted by the Department for Business, Energy and Industrial Strategy and the courts as a first line of control in protecting consumers and the industry.

Further information about CAP is available at www.cap.org.uk.

2.2 The Broadcast Committee of Advertising Practice (BCAP)

BCAP is the regulatory body responsible for maintaining the UK Code of Broadcast Advertising (the BCAP Code) under agreement with the Office of Communications (Ofcom). Ofcom has a statutory duty, under the Communications Act 2003, to maintain standards in TV and radio advertisements. In 2004, Ofcom entrusted BCAP and the broadcast arm of the ASA with the regulation of broadcast advertisements in recognition of CAP and the ASA's successful regulation of non-broadcast marketing for over 40 years, and in line with better regulation principles.

The BCAP Code regulates all advertisements on television channels and radio stations licensed by Ofcom and all advertisements on Sianel Pedwar Cymru (S4C) and S4C digital, including teleshopping channels and any additional television service (including television text services and interactive television services). The BCAP Code is enforced against Ofcom-licensed broadcasters, Sianel Pedwar Cymru (S4C) and S4C digital. Broadcasters are required by the terms of their Ofcom licence, and, for S4C, by statute, to adhere to the standards set out in the BCAP Code.

BCAP members include broadcasters and trade associations representing advertisers, broadcasters and agencies. BCAP must seek advice on proposed Code changes from an expert consumer panel, the Advertising Advisory Committee (AAC). Under Section 324 of the Communications Act 2003, BCAP must consult on proposed Code changes. BCAP strives to ensure that its rule-making is transparent, accountable, proportionate, consistent

and targeted where action is needed, in accordance with the Communications Act 2003. Ofcom must approve Code changes before BCAP implements them.

Further information about BCAP and the AAC is available at www.cap.org.uk.

2.3 The Advertising Standards Authority (ASA)

The ASA is the independent body responsible for administering the CAP and BCAP Codes and ensuring that the self-regulatory system works in the public interest. The Codes require that all advertising is legal, decent, honest and truthful.

The ASA assesses complaints from the public and industry. Decisions on investigated complaints are taken by the independent ASA Council. The ASA Council's rulings are published on the ASA's website and made available to the media. If the ASA Council upholds a complaint about an ad, it must be withdrawn or amended.

An Independent Review Procedure exists for interested parties who are dissatisfied with the outcome of a case. CAP conducts compliance, monitoring and research to help enforce the ASA Council's decisions. Information about the ASA is available at www.asa.org.uk.

2.4 Funding

The entire system is funded by a levy on the cost of advertising space, administered by the Advertising Standards Board of Finance (Asbof) and the Broadcast Advertising Standards Board of Finance (Basbof). Both finance boards operate independently of the ASA to ensure there is no question of funding affecting the ASA's decision-making.

Information about Asbof and Basbof is available at www.asbof.co.uk and www.basbof.co.uk.

3. Regulatory framework of the BCAP Code

3.1 Communications Act 2003

The [Communications Act 2003](#) (the Act) sets out provisions for the regulation of broadcasting and television and radio services, including provisions aimed at securing standards for broadcast advertisements. The most relevant standards objective to this consultation is:

[319\(2\)\(h\)](#) that the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented.

The Act requires Ofcom to set and, from time to time, review and revise, a Code containing standards for the content of broadcast advertisements carried by TV and radio services licensed under the Broadcasting Acts [1990](#) and [1996](#). Ofcom has contracted out the setting of advertising standards to BCAP under the [Contracting Out \(Functions Relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004](#). That function is exercised in consultation with and agreement of Ofcom.

4. Proposals

4.1 Current rule

The following rule from the CAP Code and BCAP Alcohol sections respectively is under consideration:

18.9/19.10

[Marketing communications/advertisements] may give factual information about the alcoholic strength of a drink. They may also make a factual alcohol strength comparison with another product, but only when the comparison is with a higher-strength product of a similar beverage.

[Marketing communications/advertisements] must not imply that a drink may be preferred because of its alcohol content or intoxicating effect. However, low-alcohol drinks may be presented as preferable because of their low alcoholic strength, provided that:

- *the [marketing communication/advertisement] could not be considered as promoting a stronger alcoholic drink, and*
- *the alcohol content of the drink is stated clearly in the [marketing communication/advertisement].*

In the case of a drink with relatively high alcoholic strength in relation to its category, the factual information should not be given undue emphasis.

The rationale for this rule is to prevent the implication that a drink is preferable due to a higher alcoholic strength, which would potentially encourage problematic drinking. Only low-alcohol products can be marketed as having a preferable alcohol strength (i.e. they are preferable because they contain much less alcohol). However, for this to be permissible the ad must satisfy the following conditions:

- The ad could not be considered as promoting a stronger drink, and
- The alcohol content is stated clearly

4.2 Proposed amendment

On the basis of the background and rationale explored below, CAP and BCAP propose removing the clause “*the [marketing communication/advertisement] could not be considered as promoting a stronger alcoholic drink*” from this rule

4.3 Intended outcome of amendment

Removing this clause would allow marketers to promote low-alcohol drinks as part of an ad for their standard range. This increases the ability of advertisers to promote these drinks, which CAP and BCAP consider is of benefit to consumers.

The requirements to only compare alcoholic strength with a stronger product (that is, focussing on the strength of the weaker product) and to ensure that ads do not imply that a product is preferable because it is stronger still apply.

5. Background

5.1 Changes in the market

This limitation to the low alcohol exception was introduced in 2008, with the aim of ensuring that all ads that could be seen as promoting higher strength drinks were suitably responsible, including those featuring low alcohol products. Since then, the alcohol market has changed dramatically with regard to zero and low alcohol products, which are now widely available and increasingly part of events such as 'Dry January'. Beer, for instance, has seen a 30% increase in consumer purchase of no and low-alcohol products just since 2016¹. There have also been developments in health research, with increasing focus on minimising alcohol intake to preserve long-term health and a revision of guidelines for low risk drinking.²

While tentative, some academic research has also demonstrated that the higher the relative or absolute availability of non-alcoholic drinks, the more likely consumers are to choose them.³ As such, the availability of non-alcoholic drinks and, by inference, awareness of them driven through marketing, could be a factor in reducing alcohol consumption. Therefore, providing more opportunities for advertisers to include their no/low alcohol options in broader advertising treatments (as opposed to standalone ads) could be beneficial.

Against this backdrop, effective marketing of low alcohol products, particularly as alternatives to standard products, is an important part of the sector.

5.2 Rationale for change

CAP and BCAP consider that the over-arching principle of the rule, that an alcoholic drink should not be marketed as being preferable because it has a higher alcohol content than other, is an important part of ensuring that alcohol advertising is responsible. The proposed amendment to the wording of the rule would not change this position or the application of the rule.

However, CAP and BCAP are concerned that the wording of the rule could make it difficult for marketers to promote a low alcohol product as part of a range of drinks. Currently, low-alcohol drinks can be marketed as preferable because of their low strength, but only where "the [marketing communication/advertisement] could not be considered as promoting a stronger alcoholic drink." Promotion of a stronger alcoholic drink would include any reference to them within the ad. This means that marketers can either show a low-alcohol products alongside other, stronger products, or they can make a virtue of the low-alcohol drink in a standalone ad.

In practice, this means that an ad would not be able to show standard alcohol products alongside any claims relating to positive aspects of low-alcohol products. For instance, the following claim would not be compliant with the current rule:

¹ SIBA British Craft Beer Report 2020

² UK Chief Medical Officers' Low Risk Drinking Guidelines, August 2016

³ Blackwell, A.K.M., De-loyde, K., Hollands, G.J. *et al.* The impact on selection of non-alcoholic vs alcoholic drink availability: an online experiment. *BMC Public Health* 20, 526 (2020). <https://doi.org/10.1186/s12889-020-08633-5>

“We have a wide range of drinks, including a refreshing IPA and a rich stout. If you’re looking for something lower strength, we also have a low-alcohol lager that’s just 0.9% ABV – perfect if you want to cut down”

Currently, the limitations on low alcohol products making a feature of this fact if they share an ad with a standard product is potentially having a detrimental effect on the ability of advertisers to highlight the key feature of their products to consumers. CAP and BCAP consider that it is within the interest of the consumer for low alcohol alternatives to familiar products to be marketed effectively, including by showing them in the same ad as the standard strength product.

Although the existing rule already allows for low-alcohol and standard products to be shown in the same ad, but only if the low strength is not featured as a reason to prefer the low-alcohol drink. CAP and BCAP consider that this does not allow sufficient attention to be drawn to the positive characteristics of low-alcohol drinks in comparison to standard-strength options, thus diminishing the potential benefits for consumers.

5.3 Consequences of proposals for responsible advertising of standard products

As outlined above, the rationale for the restriction on promoting low-alcohol products is to ensure that any marketing for standard strength drinks is responsible. At the time this clause was introduced, there were potential concerns that, by featuring a standard product in the same ad as a low-alcohol product highlighted as preferable because of its lower strength, there could be the implication that these standard drinks are themselves lower risk or otherwise preferable. This may have been because low-alcohol products were less readily available, and consumers may not have expected standard and low strength products to be marketed together. However, as noted above, the market has changed considerably since then, with major standard drinks brands producing low or no-alcohol products, and it is no longer reasonable to suppose that low-alcohol preference claims would be likely also to imply a preference for standard strength products.

CAP and BCAP consider that, because the rest of rule 18.9/19.10 still covers all other aspects of strength and preference, removing the restriction in question is unlikely to allow harmful or irresponsible marketing of alcoholic drinks. It would still be prohibited for advertisers to imply either that a standard-strength product was low-alcohol or was preferable because of its higher strength. As such, the consequences for responsible advertising of standard strength drinks are likely to be minimal.

6. Consultation question

Proposed rule:

18.9/19.10

[Marketing communications/advertisements] may give factual information about the alcoholic strength of a drink. They may also make a factual alcohol strength comparison with another product, but only when the comparison is with a higher-strength product of a similar beverage.

[Marketing communications/advertisements] must not imply that a drink may be preferred because of its alcohol content or intoxicating effect. However, low-alcohol drinks may be presented as preferable because of their low alcoholic strength, provided that the alcohol content of the drink is stated clearly in the [marketing communication/advertisement].

In the case of a drink with relatively high alcoholic strength in relation to its category, the factual information should not be given undue emphasis.

Question 1: Do you agree with CAP and BCAP's proposed new rule to replace CAP rule 18.9 and BCAP rule 19.10? Please set out your arguments for supporting or disagreeing with the proposal.

7. How to respond and next steps

CAP and BCAP are committed to considering all responses carefully and with an open mind. CAP and BCAP would particularly welcome responses from stakeholders with an interest or expertise in games, apps, and digital purchasing.

The following summarises the consultation process and subsequent stages of CAP's consideration of the proposed changes to the Code:

- the consultation will run for 10 weeks, closing at 5pm on 15 April 2021;
- CAP will consider each response carefully and evaluate all significant points explaining the reasons behind the decisions they make; and
- the evaluation will be published on the CAP website when the outcome of the consultation is announced.

How to respond

CAP and BCAP invite written comments and supporting information on the proposals contained in this document by 5pm on 15 April 2021.

Responses via email with attachments in Microsoft Word format are preferred to assist in their processing.

Please send responses to: AdPolicy@cap.org.uk

If you are unable to respond by email you may submit your response by post to: Regulatory Policy Team, Committee of Advertising Practice, Castle House, 37-45 Paul Street, London EC2A 4LS

Confidentiality

CAP and BCAP considers that everyone who is interested in the consultation should see the consultation responses. In its evaluation document, CAP will publish all the relevant significant comments made by respondents and identify all non-confidential respondents. The evaluation and copies of original consultation responses will be published with the outcome of the consultation.

All comments will be treated as non-confidential unless you state that all or a specified part of your response is confidential and should not be disclosed. If you reply by email or fax, unless you include a specific statement to the contrary in your response, the presumption of non-confidentiality will override any confidentiality disclaimer generated by your organisation's IT system or included as a general statement on your fax cover sheet. If part of a response is confidential, please put that in a separate annex so that nonconfidential parts may be published with your identity. Confidential responses will be included in any statistical summary of numbers of comments received.

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