



## **The Advertising Association**

Abford House, 15 Wilton Road, London SW1V 1NJ  
Telephone: +44 (0) 20 7828 2771 Fax: +44 (0) 20 7931 0376  
e-mail: [aa@adassoc.org.uk](mailto:aa@adassoc.org.uk) web: <http://www.adassoc.org.uk>

### **RESPONSE OF THE ADVERTISING ASSOCIATION TO THE BROADCAST COMMITTEE OF ADVERTISING PRACTICE'S CONSULTATION ON ITS GUIDANCE NOTES TO OFCOM'S TELEVISION ALCOHOL ADVERTISING RULES**

#### **1. Preamble**

The Advertising Association (AA) is a federation of 26 trade associations and professional bodies representing the advertising and promotional marketing industries, including advertisers, agencies, the media and support services in the UK. It is the only body that speaks for all sides of an industry that was worth over £18.3 billion in 2004. Further information about the AA, its membership and remit, can be found at the following location:  
<http://www.adassoc.org.uk/>

#### **2. Introduction**

The AA welcomes the opportunity to respond to Section 2 (Guidance Notes for the TV Alcohol Advertising Rules) of the consultation by the Broadcast Committee of Advertising Practice (BCAP) on the broadcast advertising of alcohol.

The AA will be responding separately to Section 3 (Health and Dietary Claims).

The AA is not seeking for any part of this submission to be treated as confidential.

The AA is a member of BCAP.

#### **3. AA's comments on "Background" section to Guidance Notes**

The AA supports the development of guidance for the industry as to how the new rules on alcohol advertising should be implemented. The value of BCAP publishing Guidance Notes is that this demonstrates industry commitment to implementing the spirit of the Code. The fact that BCAP will publish Guidance Notes that must be approved by Ofcom before they come into effect and on which ASA(B) decisions could be taken is a new and prescriptive departure from the current situation in which the Broadcast Advertising Clearance Centre (BACC) produces detailed interpretative Notes of Guidance for copy clearance purposes. In this case, we accept that the particular policy concerns surrounding alcohol abuse and young people justify the approach as the Guidance Notes will help agencies interpret the spirit and not just the letter of the new Code. However, this should not be seen as setting a precedent for other areas of advertising.

The AA understands that, once these Guidance Notes have been finalised, they will be incorporated into the Notes of Guidance of the Broadcast Advertising Clearance Centre

(BACC). One source or location for guidance notes is essential in order to facilitate copy clearance advice and procedures.

Paragraph 15 needs to be expanded to explain in the public domain why the draft explanatory notes were taken out of the Code rules after Ofcom's public consultation last autumn and why BCAP was asked to draft Guidance Notes instead. The separation of the two helps to make it clear that there are the rules (the Code), and there is the interpretation of the rules (the Guidance Notes). The Guidance Notes exist to explain the thinking behind the Code and set out in a practical and detailed way for advertisers and agencies how they should be interpreted. The Guidance Notes should be regarded as constituting a flexible working document - able to be adapted as appropriate to give guidance as to how the rules should be implemented and with regard to emerging problems of creative interpretation as they occur.

These Guidance Notes are strict. They rightly place an emphasis, in the interests of the young, on the need to avoid scenes of alcohol misuse in advertising. The Government's Alcohol Harm Reduction Strategy pinpointed this as a key area to address, and consequently Ofcom's tightening of the TV advertising rules aimed to ensure that the alcoholic beverages industry advertises responsibly and that advertisements do not target young drinkers or glamorise irresponsible drinking behaviour. In some respects, (Rules 11.8, 11.8.1(b) and 11.8.2(b)), the Guidance Notes need to be more explicit that the latter, not the former, is being targeted, and that the Code changes are not intended to rule out conventional, responsible alcohol advertising.

The reference to "recent research" in Paragraph 8 (and in the first paragraph of the Guidance Note to Rule 11.8.1) needs to be explained and qualified. The research commissioned by the Independent Television Commission to which this reference relates provided at best only some tentative conclusions, often based on unsupported opinion that was then re-interpreted with unwarranted certainty.

In Paragraph 13 BCAP should be referred to as an industry "body", not an "organisation". Secondly, Paragraph 13 currently fails to reflect the input made by the Advertising Advisory Committee to the new co-regulatory system for broadcast advertising.

In Paragraph 14 the word "television" should be inserted before "broadcast licensees", thereby clarifying that these Guidance Notes do not apply to radio broadcast licensees.

#### **4. AA's comments on BCAP's proposed Guidance Notes to Ofcom's Rules**

##### ***Rule 11.8 (implementing the spirit of the Code)***

The second paragraph on page 6, about the examples illustrating the intended spirit of the rule, could usefully be expanded. Following the spirit rather than the letter of the rules is of key importance as it means that advertisers and agencies should be committed to adopting a more rigorous, responsible, self-regulatory approach to alcohol advertising, especially when considering the interests of the young.

##### ***Rule 11.8.1***

The AA accepts the principle that, in order to encourage responsible drinking, public health and safety advertising may need to show irresponsible drinking and its effects, and that this therefore justifies an exemption from Rule 11.8.1 for such advertisements. However, we question why the exemption should not extend to advertisements by commercial companies that are also aimed at encouraging the message to drink responsibly. The revised Code and Guidance Notes should not have the effect of deterring such advertising.

**Rule 11.8.1(a)(2) (social occasions)**

In the second paragraph of this Rule's accompanying Guidance Note, the reference to "social interaction" should specifically include "party scenes", so as to make it clear that creative treatments may include such scenes, but only under the conditions set out here.

**Rule 11.8.1(b) (daring behaviour)**

In the second paragraph of this Rule's accompanying Guidance Note, the reference to prohibiting daring behaviour that "would be considered unsuitable or out of the ordinary" is currently rather general and needs to be qualified. The AA supports the revised wording proposed by the Portman Group, ie paragraph 2 should read:

"The 'daring' element of the rule is designed to prevent associating alcohol with acts of bravery or recklessness and which might encourage irresponsible or anti-social behaviour".

In addition, we propose that after "anti-social behaviour" (paragraph 2), the words "particularly amongst the young" should be added in order to qualify the intention of the Rule.

**Rule 11.8.1(c) (links with sexual activity or success)**

In the sixth paragraph of this Rule's accompanying Guidance Note, the words "provided that it is limited to" should be replaced by the word "including". This alternative form of wording imparts guidance through the provision of examples, without excluding other representations of "mild flirtation or romance".

**Rule 11.8.1(h) (links with hazardous or dangerous activities)**

By stating in the first sentence, paragraph 1, that advertisements should not portray drinking in "hazardous" locations, the Guidance Note could be interpreted as going further than the rule itself. For greater clarity, the word "potentially", which is used in the rule but not the Guidance Note, should be added before "hazardous". The words "for drinking" should be added after "hazardous" in order to qualify the situations which should be ruled out.

**Rule 11.8.2(a)(1) (associations with youth culture)**

This Rule is of key importance to the policy of removing youth appeal in alcohol advertisements and the prescriptive Guidance Notes reflect the need for extra care to be taken in creative treatments. Greater clarity would be achieved about the areas in which particular caution should be exercised with the removal of the word "avoid" at the beginning of paragraphs (a) (second word), (b), (d) and (h). After "cartoons, rhymes or animation" in paragraph (f), the full-stop should be replaced by a comma, and the word "avoid" should be replaced by "especially". It should be clear that the creative treatments described in this section of the Guidance Notes should be treated with caution, but are not completely ruled out.

It will be difficult for agencies to determine what clothing is "mostly associated" with teenage fashion as opposed to the over 25's, as sub-paragraph (c) of the Guidance Note (clothing) accompanying this Rule demands. Such guidance goes further than the original interpretative notes published by Ofcom, as do sub-paragraphs (d) and (e), which concern music and language respectively. Again, in some cases it will be difficult to draw a dividing line. It is therefore sensible that the Guidance Notes to this rule contain advice to contact the BACC or companies' own compliance departments at the outset.

**Rule 11.8.2(b) (daring/anti-social behaviour)**

The words "particularly in relation to the young" should be added to the first sentence of paragraph 2 (after "alcoholic drinks advertising") to make the interpretation of the Guidance Note more directional. Otherwise, it could rule out any alcohol advertising with such treatments, even if they do not appear to be targeted at the young.

***Rule 11.8.2(c) (irresponsible consumption)***

Whilst recognising the need to depict the responsible consumption of alcohol, the reference in the third paragraph of the Guidance Note accompanying this Rule to “multiple-purchase promotions” may cause confusion and restrict unnecessarily creative executions which do not suggest that large quantities of alcohol will be irresponsibly consumed by a small number of people. The AA therefore proposes that “multiple-purchase promotions” be replaced by “multiple purchases and promotions”.

April 2005

## **The AERC Response to the BCAP Consultation on the Broadcast Advertising of Alcohol**

The AERC notes and agrees with BCAP's statement that it "*has been long-standing public policy that one of the aims of the regulation of TV advertising should be to reduce any negative impact of alcoholic drinks advertising, particularly on children and young teenagers*"<sup>1</sup>. It also welcomes the organisation's acceptance that advertising for alcohol is currently having a deleterious effect on the young<sup>2</sup>. However the AERC is convinced that the UK's current system of advertising regulation is deeply flawed, for the reasons laid out below, and the suggested revisions will do nothing to tackle these deficiencies:

1. the current system depends on judgements being made by expert committees - either before the fact through the pre-vetting procedure or after the fact through the complaints committee. This defies our long established understanding of how advertising works<sup>34</sup>. Like all communication, advertising is a two way process, as much dependent on audience interpretation as message construction and design. Thus it is, like beauty, in the eye of the beholder - and beholders vary. In particular a fifteen year-old's take on an ad may be very different from a fifty year olds. This is why advertisers subject their efforts to rigorous pretesting and formative research with the target audience – and any other significant groups who might see the them - before transmission. No serious advertising professional would rely on the views of a committee to decide if an ad aimed at young people was getting it right, say, as far as "*teenage fashion or clothing mostly associated with those under 18*"<sup>5</sup> is concerned.
2. These problems increase when the complexities of modern television advertising are taken into consideration. It is subtle and extremely sophisticated, relying on association and image not clear cut or objective fact. The regulations themselves make this all too apparent when, for example, they forbid "*an erotic atmosphere*" but allow "*glamorous images*"<sup>6</sup>. How will a (mostly middle aged) committee judge where glamorous ends and erotic begins for an 18 year old – let alone whether a glamorous image aimed at an eighteen year old will also appeal to his 15 year old brother? Similarly how will they judge whether an ad linking alcohol with "*warm, sensuous images or dialogue to alcohol*" has crossed the line and "*seems*" to have "*linked*" it "*to a sexual motive*".
3. The problems become even more apparent with technological innovation. How will they protect the young from phenomena like viral marketing, internet promotions and texting, which have proved so popular with brands like WKD, and have recently been identified as the key future media by the CEO of Omnicoms BBDO<sup>7</sup>. Neither the committees or the vast majority of potential complainers will even be aware of such activity, simply because they are not in the target group.
4. The penalties for transgressions are far too lenient. Bad publicity, withdrawal of the ad and prohibition from award ceremonies are the three principle ones<sup>8</sup>. The first assumes that getting in to trouble for breaking rules is bad publicity; the makers of a brand like WKD, which seeks to appeal to the 'up for it', ladette culture, are unlikely to think so. The second only comes into force after the adjudication; meanwhile the ad has been transmitted as often as the advertiser likes. The third does not merit serious comment. This lack of effective penalty

encourages advertisers – especially the less responsible ones – to push the envelope.

5. Final decisions need to be made by a body that is genuinely independent of both alcohol and advertising industries. This is far from being the case at present.

For all these reasons the current codes of conduct have, just as with tobacco advertising in the past, been completely ineffective. The proposed changes will do nothing to improve the situation. In the view of the AERC there are only two options:

- a) Either the current system must be completely revised to match the realities of modern advertising as discussed above.
- b) Or the UK should consider introducing its own equivalent of the French ‘Loi Evin’.

Without such radical measures it is inevitable that the current “*negative impact of alcoholic drinks advertising, particularly on children and young teenagers*”<sup>9</sup> will continue.

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<sup>1</sup> BCAP Consultation Document page 3

<sup>2</sup> Ibid page 3

<sup>3</sup> Hedges A, What is Advertising Research? Chapter 6 in *Testing to Destruction*, IPA, 1982, pp30-47.

<sup>4</sup> Rossiter J & Percy L (eds), Concept Development Research and Management Judgement, Chapter 19 in *Advertising Communications and Promotion Management*, McGraw-Hill, 2<sup>nd</sup> International Edition, 1998, pp505-537.

<sup>5</sup> BCAP Consultation Document page 10

<sup>6</sup> Ibid page 7

<sup>7</sup> Financial Times April 7 2005 page 1

<sup>8</sup> [http://www.cap.org.uk/cap/about/cap\\_broadcast/](http://www.cap.org.uk/cap/about/cap_broadcast/)

<sup>9</sup> BCAP Consultation Document page 3

## Alcohol Concern

12<sup>th</sup> April 2005

Helen Keefe  
Committee of Advertising Practice  
Mid City Place  
71 High Holborn  
London WC1V 6QT

Dear Helen,

As you know Alcohol Concern welcomed the recent changes made to the rules by Ofcom. However we see the guidance being consulted on in this document as being vital in ensuring that there is a genuine tightening of current rules. This will be vital if we are to shift the framework in which advertisements are commissioned, conceived and produced.

We have the following detailed comments:

**Rule 11.8.1b Advertisements must not link alcohol with daring, toughness, aggression or anti-social behaviour.**

We would support a wider scope of guidance on this rule. Traditionally the rule has been interpreted very narrowly leaving large swathes of popular culture untouched. For example in the recent past, advertisements have very much capitalised on the “ladette” culture and the guidance on this rule should specifically mention this concept.

We support the guidance around the concept of “daring” as the disinhibiting effect of alcohol is in part shaped by social norms and beliefs. Adverts that use positive portrayal of bravado may encourage greater acceptance that this behaviour is normal for people who drink, and thus increase the likelihood of this behaviour.

**Rule 11.8.1(c)\_Advertisements must not link alcohol with sexual activity or success or imply that alcohol can enhance attractiveness.**

We are concerned that this rule has significantly watered down since the initial Ofcom consultation of September 2004.

We would support the initial wording which stated that “alcohol drinks should not be advertised in the context of sexual suggestiveness, flirtation or other sexual interaction”. The tone and spirit of this guidance has now changed in a number of ways which leaves the focus of the paragraph very much on what is allowed within the guidance rather than

what is not. Under the previous rules any complainant needs to prove that there is likely to be sexual success later 'off camera' as it were, and that without the alcohol there would be no sexual success – this is nigh on impossible to do where an advertisement simply shows alcohol as playing a key role in implied sexual success.

The new wording suggested by Ofcom importantly noted that “alcoholic drinks must not be advertised in the context of sexual suggestiveness etc. Without this included there is a strong danger that yet again the letter rather than the spirit of the rule will be applied.

The importance of this particular guidance note is emphasised by the links between alcohol and teenage sex and the vulnerability of young people to advertising messages as outlined by the Government Strategy Unit report. Whilst sex and sexual innuendo are, used as a theme to advertise many different products, it is a more dangerous association when used with alcohol because when intoxicated many people do things they may not have done if sober. This is borne out by the statistics which show that after drinking alcohol:

- one in seven 16 to 24 year olds have had unprotected sex
- one in five had sex they later regretted
- one in ten have been unable to remember if they had sex the night before.

(Statistics from Health Education Authority 1998)

We would be extremely opposed to the watering down of this rule for these reasons.

#### **Rule 11.8.1 (g)**

**(1) Advertisements must not show, imply or encourage immoderate drinking. This applies both to the amount of drink and to the way drinking is portrayed.**

**(2) References to, or suggestions of, buying repeat rounds of drinks are not acceptable. (Note: This does not prevent, for example, someone buying a drink for each of a group of friends. It does, however, prevent any suggestion that other members of the group will buy any further rounds.)**

**(3) Alcoholic drinks must be handled and served responsibly.**

We are pleased to see that the concept of “reckless abandon” is mentioned in particular. The serving of alcohol in an irresponsible manner is regularly seen on current advertisements and

We would like to see the line “In considering what would constitute an excessive amount of alcohol, please bear in mind the Department of Health’s Recommended Daily Amounts of alcohol” strengthened. Department of Health sensible drinking guidelines are based on a review of available evidence and endorsed by a range of academic and scientific bodies. For this reason, advertisements should respect the validity of these as a unit of measure. We would suggest “Excessive amounts of alcohol should be defined as exceeding the Department of Health’s sensible drinking guidelines” as a suitable form of words.



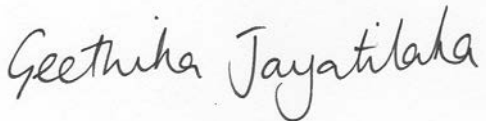
**Rule 11.8.2(a)**

**(1) Advertisements for alcoholic drinks must not be likely to appeal strongly to people under 18, in particular by reflecting or being associated with youth culture.**

We are pleased that the guidance for this rule includes particular mention of personalities, music and language.

Please contact me if you would like to talk further about any of these issues.

Yours sincerely

A handwritten signature in black ink that reads "Geethika Jayatilaka". The signature is written in a cursive, flowing style.

**Geethika Jayatilaka**  
**Director of Policy and Public Affairs**  
Direct Line: 0207 922 8650

## **Alcohol Focus Scotland – Comments on Guidance Notes for TV Alcohol Advertising Rules**

Alcohol Focus Scotland welcomes the tightening up of the TV advertising rules for alcoholic drinks. In our consultation response, we set out some concerns we had over the wording of certain rules but are pleased to see that overall the guidance notes explain these more fully. We would suggest that some actual examples of past advertising campaigns would be helpful in demonstrating what is and is not acceptable and would further back up the guidance notes.

Alcohol Focus Scotland welcomes the fact that advertisers will have to steer clear of 'youth culture' and that adverts using themes, personalities, music or language which are likely to appeal to under 18's will be unacceptable.

We have expressed some concern about the number of adverts which link alcohol with sexual activity. We would reiterate what we said in our original response – that it is nonsensical to feature sexual success or interaction in advertising and justify it on the grounds the brand wasn't in fact drunk. This is in our view a semantic differentiation since the point of advertising is to create an association between the product and the activity contained in the advert. Clearly the implication is the association between the brand and sexual success. The guidance notes do not make it clear whether the rule only applies if the brand of alcohol is actually being drunk in the advert.

We have some concern about rule 11.8.2(c) which states that adverts should not appear to encourage irresponsible consumption. We would like further clarification on whether this will apply to supermarkets who regularly advertise multiple purchases e.g. a case of lager for £10 advertised as a special deal. How will this be made clear that it should not be for individual consumption?

Gillian Bell  
Communications Officer  
Alcohol Focus Scotland

Tel: 0141 572 6701  
Fax: 0141 333 1606  
Email: [gillianbell@alcohol-focus-scotland.org.uk](mailto:gillianbell@alcohol-focus-scotland.org.uk)

Web: [www.alcohol-focus-scotland.org.uk](http://www.alcohol-focus-scotland.org.uk)



**ALLIED DOMECCQ**

**STEPHEN WHITEHEAD**

GROUP DIRECTOR CORPORATE AFFAIRS  
DIRECT TELEPHONE +44 (0)20 7009 3959  
DIRECT FACSIMILE +44 (0)20 7009 3923  
E-MAIL [stephen.whitehead@adsweu.com](mailto:stephen.whitehead@adsweu.com)

Helen Keefe  
Committee of Advertising Practice  
Advertising Standards Authority  
Mid City Place  
71 High Holborn  
London  
WC1V 6QT

11 April 2005

Dear Helen

**Guidance notes for revised TV alcohol advertising rules**

I am pleased to respond to this consultation on behalf of Allied Domecq PLC. Allied Domecq was supportive of the original Ofcom review and we continue to believe that the revisions represent a significant and necessary step in strengthening the rules which will help to ensure that alcohol advertising is approached in a responsible way by all parties.

In addition, Allied Domecq's own advertising review panel looks at all advertising in all media and I am delighted to enclose a copy of our internal guidelines. The advertising review board consists of internal and external experts and examples of some of its decisions are illustrated by the enclosed newspaper article in yesterday's "Independent on Sunday".

We believe the key is responsibility and we, with others, must take this very seriously. We are committed to going beyond compliance with regulation, where it exists as in the UK, and to work by our own code where none exists. We believe that, although advertising is not one of the main causes of children and young people drinking, it is important to ensure that this is not the case.

We have a duty to promote our products responsibly so that they are consumed sensibly and we continue to strive to find the best means of achieving this end. Television is an important and influential medium and it is right that there should be separate rules in this area, but we believe for the message to be truly enforced it needs to percolate right through the advertising strategy and be visible in the output.

We would encourage tough and consistent enforcement action as this will be vital. We feel that a tight interpretation of the rules will ensure that both the letter and the spirit are met. For this reason the guidance notes are very welcome, as they provide clarity and allow for producers and advertisers to reach appropriate decisions at an early stage. For our part, we have reviewed our code against the revised rules and will continue to monitor this very closely.

For all of these reasons, we feel the most appropriate response to this consultation is to endorse the revised rules and to welcome clear and effective enforcement.

Kind regards

ALLIED DOMECCQ PLC

WASHINGTON HOUSE 40 CONDUIT STREET LONDON W1S 2YQ

TELEPHONE 020 7009 3900

REGISTERED OFFICE THE PAVILIONS BRIDGWATER ROAD BEDMINSTER DOWN BRISTOL BS13 8AR REGISTERED IN ENGLAND & WALES NUMBER 3771147



BACARDI-MARTINI LIMITED



Ms Helen Keefe  
Committee of Advertising Practice (Broadcast)  
Mid City Place  
71 High Holborn  
London  
WC1V 6QT

6 April 2005

Dear Ms Keefe

**BCAP Consultation on Broadcast Advertising of Alcohol - Section 2**

We are responding to the above consultation document as Bacardi-Martini (UK) Limited. We are a major advertiser in the alcoholic drinks sector and as such welcome the opportunity to comment on the draft guidance notes.

We welcome the approach in the consultation document in principle, but there are a few areas where we would like to see greater clarification as well as some areas where we believe the guidance for interpretation is too literal. These areas are as follows:

**Section 2 - Background**

We are concerned that reference continues to be made to recent research that indicates that advertising has some influence on young viewers' attitudes to drinking, albeit at a relatively low level compared to other factors.

Independent academic research that we have seen agrees that alcohol issues are very complex and that problems associated with alcohol are primarily related to family, culture, social and economic factors. The volume of alcohol, which is consumed in total, is valued at around £34.87bn per annum at retail prices (source: Mintel "Attitude Towards Drinking", March 2004). With a total broadcast advertising expenditure of around £142.47m (source: Ad Dynamix) behind alcoholic beverages, the share of alcohol supported by advertising is relatively low, and therefore has no significant primary effect on consumer behaviour.

**11.8.1. (a) (2)**

We would suggest that for sake of clarity the guidance notes should make clear that party scenes are permitted as part of the expression of a social occasion. We find it difficult to define what is a responsible social interaction (as opposed to what is not).

**11.8.1. (b)**

We would be concerned if the interpretation of the "daring" element of the rule would be designed to prevent associating alcohol with acts where out of the ordinary behaviour would be stopped simply because this was different to "normal" behaviour. What we would like to Guidance Notes to stress is a prevention of events or actions which could be seen as a catalyst to encourage irresponsible or anti-social behaviour.

.../...

# BACARDI-MARTINI LIMITED

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On "aggression", we would like to have clarification that the reference to violent attitudes would be prevented where clear images would be shown in the commercial rather than simply trying to prevent a potential attitude from being interpreted as potentially aggressive.

## 11.8.1. (c)

We would like to suggest that in the paragraph where the linkage with alcohol and mild flirtation and romance is referred to, the reference to gentle dialogue, body language or facial expressions does not add much value. We think there is a clear distinction between the expression of sexual attraction or innuendo, and social interaction or communication. Interaction should not be sexually aggressive between individuals or groups.

## 11.8.1. (h)


We would like to have a little more clarity on what the Guidance Notes would define as a hazardous environment. For example, drink-driving areas are very clear, but it would be appreciated if there was some clarification on locations near to water, e.g. drinking on a beach should be acceptable, but not in the water itself (e.g. on a boat or in the shallows of the seashore).

## 11.8.2. (a)

We agree that it is not possible to produce an exhaustive list of possible infringements on the youth culture rule. However, in order to give credence to areas where caution should be exercised, we would suggest that the area of teenage fashion or clothing should be deleted from the specific list. It would also be extremely difficult to define under point (d) what music or dance actions are so specific that they would appeal strongly to under-18s. It would be useful if the Guidance Notes could provide a clear and almost extreme example to differentiate what would appeal strongly to under 18s and what would, by definition, appeal strongly to over 18s.

We have no other comments under Section 2 of the Consultation and we are broadly supportive of the need to have an informal review of how the new Guidance Notes and Codes have been implemented in due course.

Yours sincerely



**Chris Searle**  
**Executive Director**

## **Beverage Brands' response to the**

## **BCAP Guidance notes on Alcohol**

### **Executive Summary.**

We welcome any clarification to the latest Alcohol Advertising Rules and agree that everyone needs to understand what is & what is not acceptable.

As full members of The Portman Group we are very aware of acting within set guidelines & all branded activity being socially responsible.

In general our concern is still that of subjectivity & the degree of 'interpretation' that still exists around some of the rules.

We have been through a similar scenario in the Republic of Ireland and have worked with the authorities to help understand their guidelines and come up with an appropriate creative solution.

We would welcome the opportunity to work with you.

Karen Salters

Marketing Director

**Rule 11.8.1(b)**

The interpretation of 'Acts not normally associated with sobriety' is open for question.

Practical jokes for example are commonplace when sober, not only if people are drinking.

Can you, for instance, bury your Dad in the sand on the beach but not your mate? Would rudeness or practical jokes in the TV programme 'The Office' be deemed to be associated with sobriety?

There is a difference between *harmful* and *harmless*. We accept that there should be nothing harmful or dangerous portrayed.

**How would this affect us?**

Our highly successful campaign is based upon 'harmless humour' that is commonplace when people are sober.

**Rule 11.8.1(c)**

We feel 'Sexual contact' and 'erotic atmosphere' needs clearer definition.

It should not be acceptable to link 'warm, sensuous images or dialogue' with alcohol at all, even where there is no sexual motive. This will be associated with the brand and therefore link the brand with sex.

Similarly It should not be acceptable to link 'warm, sensuous images or dialogue' with alcohol at all, even where there is no sexual motive. This will be associated with the brand and therefore link the brand with sex.

We feel the these last points could be at odds with what the rule is trying to achieve.

**How would this affect us?**

It would not, as our style of communication has never gone down the overtly sexual creative route.

**Rule 11.8.1(f)**

An observation...surely the consumer will take the key messages from an advert....'strength & taste'? Even if there is an effort not to link the two they will be the key messages to take away?

**How would this affect us?**

It would not affect us under our current advertising treatments, as we do not link the two variables mentioned above.

**Rule 11.8.1(h)**

Should it not be acceptable to show someone drinking after they have finished their driving duties but this would have to be made quite obvious to the viewers?

**How would this affect us?**

Not currently.

**Rule 11.8.2(a)**

**Ref personalities**

We can accept that some personalities will have strong appeal to the young (& older generations)...but not all personalities will carry the same weight of influence/ appeal. Is it their presence on the screen; voice; or inference etc...?

**How would this affect us?**

Currently we use a personality voice-over at the very end of our ad. We do not believe the personality appeals overtly to young people and his style of shows would certainly not have teenagers as their primary audience.



**Ref ‘juvenile behaviour, immature practical jokes and any behaviour that seeks to set those under 18 apart from those of an older age group’**

This seems extremely difficult to police and open to interpretation? What makes one practical joke particularly relevant to under 18s over others? Practical jokes and immaturity are commonplace amongst adults as well as under 18s.

We therefore don't see that this behaviour sets under 18s apart.

**How would this affect us?**

Already highlighted under section 11.8.1 (b)

**Ref Teenage Fashion**

Examples would be useful to clarify ‘teenage fashion’. In many cases the adult fashions are created first & then emulated for children's/ teenager's designs.

**Ref music or dance appealing to under 18s**

It is very difficult to define music that has strong appeal to under 18s. Many under 18s like classical music as much as hip hop. This therefore seems too vague currently and examples need citing.

UEFA based the theme for the 'Champions League' on music by Handel (Zadok the Priest) and performed by the Royal Philharmonic Orchestra...this music is now extremely well known amongst all football fans (including teenagers)- does this mean it has appeal to under 18s?

**Rule 11.8.2(a)**

We feel the definition of ‘an immature, adolescent or childish manner’ needs clarification.

**How would this affect us?**

This is open to interpretation so it would be extremely helpful if examples were cited.

BMA House, Tavistock Square, London, WC1H 9JP  
T 020 73836687 F 020 73836383  
E gjackson@bma.org.uk

Ms Helen Keefe  
Committee of Advertising Practice (Broadcast)  
Mid City Place  
71 High Holborn  
London  
WC1V 6QT

**Board of Professional  
Activities**

1 June 2005

Dear Ms Keefe

**BCAP Consultation: Broadcast Advertising of Alcohol Section 3 (health and dietary claims)**

Thank you for the opportunity to comment on the guidance notes for broadcasters (Section 3) in respect to the new rules governing health and dietary claims in television and radio advertising of alcohol. This letter is further to the response given by the BMA to section 2 of the guidance notes regarding alcohol advertising on television in March 2005 [copy of letter attached for ease of reference].

We would like to take this opportunity to reiterate that since 2003 it has been BMA policy that **because of the damaging effects alcohol has on the health of our society and because of the rising levels of binge drinking among the young**, there should be a complete ban on advertising of alcohol.

The BMA has previously commented on the need for informative and accurate labelling of food and alcohol to ensure that claims about nutritional and alcoholic content respectively are clear and understandable to the consumer. We extend this view to include nutritional claims made when advertising alcoholic products.

The BMA would welcome the proposed changes to the rules regarding health and dietary claims in alcohol advertising as proposed in the BCAP consultation. The advice of the AAC is welcomed and we agree that it is vital for all information about calorie content is accurate and presented in a way that is understandable to the consumer. Further, it should be made clear that most of these calories are in the form of alcohol and are therefore 'empty' calories with no nutritional value. All misleading claims about the nutritional value of alcoholic drinks should be outlawed.

I hope these comments are helpful.

Yours sincerely,

Professor Vivienne Nathanson  
Director of Professional Activities



# BROWN-FORMAN

SPIRITS EUROPE AFRICA EURASIA

UK OFFICE • REGENT ARCADE HOUSE • 19-25 ARGYLL STREET • LONDON W1F 7TS • TEL: +44 (0)20 7478 1300 • FAX: +44 (0)20 7287 3781

Page 1 of 1

Ms Helen Keefe  
Committee of Advertising Practice (Broadcast)  
Mid City Place  
71 High Holborn  
London  
WC1V 6QT

11<sup>th</sup> April 2005

Dear Ms Keefe

**BCAP Consultation on Broadcast Advertising of Alcohol - Section 2**

We are responding to the above consultation document as Brown-Forman Beverages (UK) Limited. We are a major advertiser in the alcoholic drinks sector and as such welcome the opportunity to comment on the draft guidance notes.

We welcome the approach in the consultation document; however, we would like to see greater clarification in the following sections:

**11.8.1. (a) (2)**

The phrase "lively, but responsible, social interaction" may be difficult to define. We would suggest that for sake of clarity the guidance notes should make clear that party scenes are permitted as part of the expression of such an occasion.

**11.8.1. (b)**

We would be concerned if the interpretation of the "daring" element of the rule resulted in preventing the association of alcohol with behaviour displaying traits of individuality, independence of mind or other "out of the ordinary" but perfectly acceptable social behaviour. What we would like the Guidance Notes to stress is a prevention of events or actions which could be seen as a catalyst to encourage irresponsible or anti-social behaviour.

**11.8.1. (h)**

We would like to have a little more clarity on what the Guidance Notes would define as "an environment that is hazardous". For example, drinking on a beach should be acceptable, but not in the water itself (e.g. on a boat or in the shallows of the seashore).

**11.8.2. (a)**

We agree that it is not possible to produce an exhaustive list of possible infringements on the youth culture rule. However, there would seem to be a need to define more precisely what constitutes "teenage fashion or clothing mostly associated with those under 18" (point c) and "music or dance that is likely to appeal strongly to under-18s" (point d). In the absence of such clarification we would suggest that these points should be deleted from the specific list.

We have no other comments under Section 2 of the Consultation and we are broadly supportive of the need to have an informal review of how the new Guidance Notes and Codes have been implemented in due course.

Yours sincerely,

**Andrew Wilby**  
Managing Director

BROWN-FORMAN BEVERAGES UK Ltd

A Limited Liability Company incorporated in England and Wales. Company Number 4129810. VAT Number 722 7696 14.  
Registered Office: Regent Arcade House, 19-25 Argyll Street, London W1F 7TS, UK.

Committee of Advertising Practice  
Mid City Place  
71 High Holborn  
London  
WC1V 6QT

11<sup>th</sup> April 2005

To whom it may concern,

**Re: Carlsberg UK Consultation Comments: Guidance Notes for the Revised TV Alcohol Advertising Rules (Section 2).**

In accordance with our earlier response to the draft Guidance Notes released for public consultation for the revised TV Alcohol Advertising Rules we would firstly like to reiterate both our own organisational commitment and that of our agencies to continue to create and produce advertising which works within the rules set out by the committee.

However, in order to ensure accurate interpretation of the rules (and to apply them correctly within our advertising development process) there remain some prevailing questions we have and wish to seek further clarification on.

**11.8.1 Rules for all advertising**

11.8.1 (A) 2) Social Success

"Lively, but responsible, social interaction with alcohol present is allowed but that liveliness must not depend on the presence of alcohol. No behaviour may be juvenile".

We continue to request further elucidation on what type of behaviour denotes 'juvenile'.

Referencing 11.8.1 (B) 'juvenile behaviour' has been replaced with the following attributes:

"Immature, adolescent or childish behaviour"

Please provide and confirm a definitive expression of what juvenile behaviour is. If the intention were to review 'juvenile behaviour' as expressed above – we would seek no further clarity.

11.8.1 (C) Sexual Success

"Linking alcohol with mild flirtation or romance is similarly allowed provided that it is limited to gentle dialogue, facial expressions or body language that do not imply sexual activity has taken, or is about to take, place".

Irrespective of the inclusion of 'body language' this remains unclear. Does this mean you can or cannot show people touching? For example, hand holding or affectionate kissing?

#### 11.8.1 (G) 2) Immoderate Drinking

As a point of clarification, please consider extending what is allowed within this rule. Currently "Depictions of well-stocked bars or guests arriving carrying alcohol are acceptable..." would not provide a definitive indication that, for instance, we could see a consumer buying or leaving a retail environment with a large pack of beer eg. 24 pack (this could be in anticipation for a party or simply 'stocking up').

#### **11.8.2 Additional Rules for alcohol advertisements**

##### 11.8.2 (A) b) Appeal to under 18's/Youth Culture

As per our original response, we are not satisfied with the "themes" which have been decided are associated with youth culture; disregard for authority, mocking or outwitting authority and immature practical jokes. We continue to believe they are not clearly defined.

As the Note stands, it could render unacceptable any commercial which is intended simply to be humorous (and indeed aimed at an older audience).

##### 11.8.2 (A) c) Appeal to under 18's/Youth Culture

Caution should be exercised with "teenage fashion or clothing mostly associated with those under 18".

We believe further clarification is required here. With the blurring between generations with regards to fashion, we need to consider very carefully what that fashion is. For example, does a baseball cap constitute an item of clothing mostly associated with those under 18? We would say not. What would BCAP say?

##### 11.8.2 (A) e) Appeal to under 18's/Youth Culture

We believe this Note is ill considered in the current reading. In order to be true to how language evolves, we would like to see the additional guidance including wording to the effect that if "slang" or "street" words, over time, have passed into the common vocabulary/understanding it should be acceptable. For example, "chick flick" when describing a film.

Finally, at Carlsberg UK, we have always taken our responsibility to ensure no negative impact of alcoholic drinks, particularly on children and teenagers, is of paramount importance and will continue to do so. As such, additional consideration of our feedback will be appreciated and will only assist us in continuing to produce advertising acceptable to the ACC and others.

Yours truly,

Darran Britton  
Brands Director, Ales & Lagers

## **CONFIDENTIAL**

On the whole, we believe the guidelines are clear and will help to achieve the objectives of the new rules: to avoid alcohol advertising appealing to under 18s and to tighten up treatments relating to sexual content, daring, aggressive, irresponsible and anti-social behaviour. However, there are some areas of the guidelines that we believe need clearer explanation.

Firstly, the guidance note for rule 11.8.1(b) says that some examples of anti-social behaviour include 'non-playful rudeness, excessive boisterousness ...and care should be taken to avoid immature, adolescent or childish behaviour.' It then goes on to say that 'the rule is not intended to prevent harmless irreverence or humour.' However, there is a very fine line between acting immaturity (like the characters in the WKD campaigns arguably do) and acting with harmless irreverence. We feel that this wording muddies the water, rather than helping to explain what is acceptable and what is not.

Secondly, although we welcome the new rules and guidelines to protect alcohol advertisements appealing to 'youth', some of the minutiae will be difficult to interpret. For instance, it's arguably easier for the Broadcast Advertising Clearance Centre to come to a judgement call concerning personalities and sporting events that may or may not appeal to 'youth'. However, this becomes much more difficult when it has to consider music, language and animation. To begin with, one could argue that all animation appeals to 'youth', to some degree. Furthermore, during Euro 2004, an advertisement for Famous Grouse Whisky featured an animated bird playing football. Would this now fall foul of the new rule and guidelines? In situ, this animated animal may not fall foul of guidance note (h) under 11.8.2(a); however, as this character, in this treatment, is playing a sport which is enjoyed by 'youth', this treatment is likely to fall foul of a combination of these guidelines. We believe this point needs to be made more explicit in the guidelines. We fully appreciate, as the guidelines make clear, that it is impossible to produce a comprehensive list of possible infringements, but we believe it necessary to articulate that some treatments may contravene the rule because of their cumulative effect.

Finally, under the same rule, guidance note (d) says that when an alcohol advertisement features an old record which, perhaps as a result of its use in the advertisement, becomes popular with the young once again, this will not necessarily be challenged. This assumes that the original record will be released i.e.: by an old recording artist that 'the young' will not have heard of. We believe the guidelines need to address the possibility that 'old' records may be recorded by today's popular artists. For example, an alcohol advertisement could use a song from the 1950s, but it could be recorded by Robbie Williams. Would the same guideline apply in this instance? If, as we suspect, it does, we believe this should be explained to avoid confusion.

Yours sincerely,

11<sup>th</sup> April 2005

**Via Email**

Helen Keefe  
Committee of Advertising Practice (Broadcast)  
Mid City Place  
71 High Holborn  
London  
WC1V 6QT

Dear Ms Keefe,

**BCAP Consultation on Broadcast Advertising of Alcohol**

This is a response on behalf of Diageo Great Britain to section 2 (guidance notes) of the BCAP consultation on broadcast advertising of alcohol, issued on 15th March. Our comments to section 3 will be submitted at a later date.

**About Diageo**

Diageo is the world's leading premium drinks business with an outstanding collection of beverage alcohol brands across spirits, wine and beer categories. These brands include: Smirnoff, Johnnie Walker, Guinness, Baileys, J&B, Captain Morgan, Cuervo, Tanqueray, and Beaulieu Vineyard and Sterling Vineyards wines. The Diageo group of companies operates globally trading in over 180 markets around the world. Diageo plc is listed on both the London Stock Exchange (DGE) and the New York Stock Exchange (DEO).

Diageo Great Britain (Diageo GB) is the sales and marketing division of the Diageo Group in England, Scotland and Wales and is a major advertiser of beverage alcohol brands.

Diageo GB is a member of the Incorporated Society of British Advertisers (ISBA) and this submission should be read as complementary to the industry-wide submission made by them.

## General Comments

The Diageo Group takes its responsibilities in relation to the marketing of its brands very seriously. Paul Walsh, Global Chief Executive of Diageo, has said: *"We are proud of our brands. We want Diageo's marketing and promotional activities to be recognised as the best in the world. That means delivering great results for our brands, and doing so in a way which sets the industry standards for responsible marketing"*

We bring this commitment to life through the Diageo Marketing Code, which was developed in 1997 and has evolved ever since. It aims to set the highest standards in all our marketing communications. In Great Britain, it is accompanied by a comprehensive guide which assists all people involved in the promotion of our brands in using our Code in their day to day work. Everyone in Diageo GB (even those outside marketing and commercial functions), and all the external marketing communications agencies we use, have to be trained in the Diageo Marketing Code.

## Response to BCAP Consultation

Regulation of alcohol advertising is intrinsically linked to perceptions and realities of the scale of alcohol misuse and the harms that may result from it. In recent years, particular concerns have focused on the growth of 'binge drinking' (particularly among younger people) and under-age drinking. Alcohol-related anti-social behaviour is also high on the political agenda.

Is it not surprising, therefore, that public perceptions about how alcohol consumption is portrayed are constantly evolving. Some advertisements that were acceptable by common consent a few years ago would not be acceptable today. The industry has a responsibility to keep its standards under review and to respond to changes in the climate of opinion. Several months ago, before the publication of the Government's National Alcohol Harm Reduction Strategy, ISBA began consulting its members on changes to the existing alcohol advertising code. We participated actively in that process, which led to a series of recommended changes, some of which are reflected in the new OFCOM/ASA code.

We now agree that in order to ensure that the code is properly used and applied it is essential to reduce any ambiguity as between the letter and the spirit of the code.



Clearly the interpretive guidance will play an important role in this process. We welcome the broad thrust of the guidance as drafted, but would offer a number of detailed comments, set out below.

- **Rule 11.8 Alcoholic Drinks**

We are surprised to see – twice - within the draft guidance the following reference:

“recent research indicates that advertising has some influence on young viewers’ attitudes to drinking, albeit at a relatively low level compared to those other factors.”

The inclusion of such a claim in the guidance should, in our view, be substantiated by reference to published, peer reviewed work or otherwise omitted.

- **Inclusion of “party scenes” [11.8.1(a)(2)]**

We believe that, for the sake of clarity, the notes should include the following:

**Pg 6 line 4** after ...‘social interaction’ **add** ‘,including party scenes,’  
**change** ‘is’ to ‘are’.

- **“Daring” [11.8.1(b)]**

We are concerned that, as drafted, the draft guidance on the ‘daring’ element runs the risk of extending, rather than illuminating, the code. The words “unsuitable or out the ordinary” both lack clarity and are not obviously relevant to the Code on daring. We would propose in the alternative:

**Pg 6 line 15 delete** all after “...considered” and add “irresponsible or likely to encourage anti-social behaviour.”

- **Defining behaviour in the context of a ban on links to sexual activity [11.8.1(c)]**

Again, we are concerned that, as drafted, the draft guidance on ‘link to sexual activity’ runs the risk of extending, rather than illuminating, the code. We would propose:

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**Pg 7, line 12 and 13 delete ‘...provided that it is limited to...’ and add...’including...’**

---

- **“Dangerous behaviour” [11.8.1(h)]**

Again, we are concerned that, as drafted, the draft guidance potentially extends rather than illuminates the code. The code is clear on what is prohibited. The guidance note appears to extend this rule to a concept of “an environment that is hazardous”. We take this to mean ‘environment’ in the limited sense of being in the context of machinery or imminent danger, rather than non-specific geographic or built-environment locations; the rule qualification about avoiding behaviour that would be dangerous we understand to refer to actual activity rather than (mis) perceived potential for danger. On this basis we would be content to leave the guidance as it is, (though we would oppose any more general interpretation).

- **Youth appeal [11.8.2.(a)]**

The concept of youth appeal goes to the heart of the code revision and it is critical that we get the guidance on this area precisely right. That requires the utmost certainty and the smallest margin of ambiguity.

The criteria which would need to be applied by both BACC and ASA(B) in judging this area are subjective nature but are not set out in the guidance.

We do not believe that ‘teenage fashion and clothing’ should be included, as fashion changes and there is not an identifiable ‘fashion’ of the under 18’s. Similarly music is an area where 20’s taste would be indistinguishable from an 18 year old. Language, again, is subjective, judging advertising content through the perceptual filters of a middle age mind, could lead to over restrictive interpretations.

The inclusion of such criteria in the guidance, while undoubtedly intended to clarify, in our view runs the risk of increasing ambiguity. We would prefer to see them omitted.

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We hope you find this submission helpful.

Yours sincerely,

**Andy Fennell**

Director of Marketing, Diageo Great Britain

# **BCAP CONSULTATION DOCUMENT**

## **BROADCAST ADVERTISING OF ALCOHOL**

[REDACTED]

We are the owners of “The Famous Grouse” brand of Scotch whisky, which has been marketed since 1896 with the grouse bird as its central theme, logo and brand icon. The grouse bird has of course evolved over the years from its rigid, black and white origins to colour and since 1996 in animated form. “The Famous Grouse” grouse bird is a registered trade mark, is the image on the face of our products and is the image portrayed in our advertising.

We have invested significantly in a long term advertising campaign involving an animated grouse bird in a series of relevant social situations, all of which we believe are in good taste and aimed at an adult audience. We do have a concern in this regard that extreme interpretation of the new rules on alcohol advertising, particularly those included within section 11.8.2. of OFCOM’s revised rules concerning animals, animation and music, could unfairly prejudice our campaigns without cognisance of their effective impact.

While “The Famous Grouse” campaign features an animal in the starring role, that is because the grouse bird is the brand image itself, the image is a registered trade mark and the brand cannot effectively be advertised without it. The style and presentation of the advertisements is adult, mature and quirky. The advertising is not intended to be mischievous, rebellious or immature and the situations portrayed are adult orientated, dramatised by the grouse bird’s adult behaviour. There is no drinking imagery and no drinking takes place. The messages are geared towards the product’s quality, which youth tends to find uninteresting.

Animation is the technology that we use to give the grouse bird life, a necessary course of action as it is not possible to train a real grouse bird to perform in front of the camera! There is no intention of using animation purely to add humour to the character or the situations in the same way that Disney might do with traditional cartoon animation.

The music used (it is essentially the same piece of music in different forms and styles) has no relationship with youth culture.

Over 8 years of airing “The Famous Grouse” campaign the profiles of our target audience and consumers have not changed significantly. The target audience is at least 30 years old, consumers whose palates have matured such that they enjoy the taste of Scotch whisky. Scotch whisky is not generally on the social radar of youth who are more attracted to the cheaper, sweeter and more glitzy presented alcoholic drinks. Core consumers of “The Famous Grouse” are in the 40 to 60 years old bracket, with a large proportion over 65 years.

In summary we believe that “The Famous Grouse” advertisements as produced and aired over the past 8 years are so adult focused as to have no effect on youth interest. The historical pattern of consumption, skewed strongly in favour of the over 40 year olds, corroborates this view.

**The Edrington Group Limited**  
**2500 Great Western Road**  
**Glasgow G15 6RW**  
**7<sup>th</sup> April 2005**

## **First Drinks Brands Limited**

April 8, 2005

Ms Helen Keefe

This letter is a summary of the response by First Drinks Brands Limited to the broadcast advertising of Alcohol Guidance Notes Consultation. First Drinks Brands Limited is a UK based distributor offering sales and marketing services to a range of brand owners. Our brands include a range of whiskies, liqueurs and wines such as Glenfiddich Malt Whisky and Disaronno Amaretto.

We offer our opinion on the consultation as several of our brands benefit from TV advertising, so we feel it is important that we offer our thoughts on the guidance notes that we will ultimately work to within our business.

We welcome the opportunity to comment and believe the guidance notes will add value. The overall approach is also welcomed, however we believe there are a few areas that need further clarity.

### Rule 11.8.1 (b)

We support ISBA's suggestion on this note.

### Rule 11.8.2 (c)

We again support ISBA's suggestion on this note.

### Rule 11.8.2 (c) Page 9, Paragraph 2

We believe it would be beneficial to specify the measure that would be acceptable e.g. a small glass of wine, 25/35ml measure of spirits.

### Rule 11.8.2 (c) Page 9, Section 3, Paragraph 2

We believe the description of "demonstration of panache of a cocktail barman" as "likely to be acceptable" does not offer a sufficient level of clarity. We suggest this should be changed to "will be acceptable" as the controlled dispense of alcohol in this way is often part of a responsible drinking evening.

### Rule 11.8.1 (h)

We support ISBA's suggestion on this note.

### Rule 11.8.2 (a) Page 11, Point F

We believe clarification on the types of illustration that would be acceptable would be useful. This is important because certain illustration styles clearly do not appeal to young people so should be permissible.

We have no comment on the health and dietary claim guidelines as this is not currently relevant to our brands.

If you have any queries on our submission please feel free to contact myself or our Marketing Services Manager, Clive Patten on 02380 312000.

Yours sincerely

Mrs. Fiona Chinn  
Director of Marketing

30 March 2005

Helen Keefe  
Committee of Advertising Practice (Broadcast)  
Mid City Place  
71 High Holborn  
London  
WC1V 6QT

Dear 

### **Guidance Notes for the TV Alcohol Advertising Rules**

The Institute is concerned with the prevention of harm associated with alcohol products, and it is from this perspective that we address very briefly the issues raised in the Consultation Paper.

In the main we welcome the proposals as far as they go, and we wish to make only two specific points about the Guidance notes themselves:

1. In the introductory section (background) it is stated that one of the aims of regulation is *'to reduce any negative impact of alcoholic drinks advertising .....on children and young teenagers'*. Whilst, of course, it is necessary to prevent advertising which seeks to associate alcohol products with anti-social behaviour, any advertising, however 'socially responsible' its content, is having a negative impact on children and young teenagers if it increases the likelihood of their attempting to buy or consume the product.
2. In regard to Rule 11, 8.1 ©, the sentence *'It is permissible to link warm, sensuous images or dialogue to alcohol but they must not seem to be linked to a sexual motive.'* is in our view verging on the self-

contradictory, especially as it is later stated that linking alcohol to 'mild flirtation or romance' is acceptable. The distinction between sensuous and sensual is a nice one and will be difficult to maintain. We would prefer the Guidance to be clearer on this point.

In conclusion, as point 1 above suggests, there are other, probably more important, issues to do with alcohol advertising than the subject of this consultation. Protecting children and young teenagers requires reducing their exposure to alcohol advertising and promotion per se, and this raises issues to do with the volume and the placement of advertising. We hope that these issues will be addressed at some point.

We are particularly concerned at the implications of the recent comments of the chief executive of Ofcom in regard to a possible relaxation of the rules governing product placement.<sup>1</sup> Clearly, there is a danger that any good resulting from the new Guidelines could be undone by largely unfettered proliferation of alcohol product placement.

Yours sincerely



Andrew McNeill

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<sup>1</sup> Stephen Carter: Incorporated Society of British Advertisers' Conference. March 2005





## Institute of Practitioners in Advertising

Helen Keefe  
Committee of Advertising Practice (Broadcast)  
Mid City Place  
71 High Holborn  
London WC1V 6QT

4th April 2005

Dear Ms Keefe

### Broadcast advertising of alcohol consultation

The Institute of Practitioners in Advertising (the "IPA") is the trade association and professional institute for UK advertising agencies. Our 238 corporate members are primarily concerned with providing strategic advice on marketing communications, including creating and/or placing advertising. Based throughout the country, they are responsible for over 85% of the UK's advertising agency business and play a pivotal role in advising the nation's companies on how they should deploy their total marketing communications spend of £14 billion.

The IPA has received the consultation paper on the guidance notes for the TV Alcohol Advertising Rules and welcomes the opportunity to respond to it. This response should be read in conjunction with the response from the Advertising Association, whose comments the IPA also endorses.

The IPA supports the publishing of the guidance notes as it will inevitably increase the level of understanding for advertising agencies. The IPA considers the new guidance notes to be tough but manageable.

We believe that there is generally too little emphasis in the notes on the misuse of alcohol and an inclination towards demonising alcohol *per se*. Alcohol is a product which, when used in moderation, is perfectly acceptable, and the IPA therefore strongly supports the freedom to advertise the product, on the basis that it is done so sensibly and responsibly. We trust that this positive view will be the starting point in any consideration of scripts or investigation of a complaint.

The IPA also has a particular concern with the guidance notes interpreting [clause 11.8.2\(a\)](#). This is a [fundamentally important rule](#) as it deals with the Government's principal aim of reducing the appeal of alcohol to children

44 Belgrave Square  
London  
SW1X 8QS

telephone:  
020 7235 7020

fax:  
020 7245 9904

direct telephone:  
020 7201 8246

direct fax:  
020 7245 9904

e-mail:  
[Christopher@ipa.co.uk](mailto:Christopher@ipa.co.uk)

website:  
[www.ipa.co.uk](http://www.ipa.co.uk)



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page: 2



## Institute of Practitioners in Advertising

and teenagers. Advertising agencies therefore need to be particularly careful not to fall foul of this rule. However, agencies are faced with the problem that most music, dance and fashion which appeals to people in the age range 18-25 will also appeal strongly to under-18s. The guidance notes do not make it easy to differentiate, particularly in these areas where there is so much overlap, between what is appealing to people over 18 (and therefore acceptable) and what appeals strongly to people under 18 (and therefore is not permitted). Further clarification would be welcome.

Finally, the IPA assumes that the guidance notes, when finalised, will form part of the BACC Notes of Guidance. It is the IPA's view that any duplicity of guidance notes would be detrimental and unhelpful for the industry.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Chris Hackford', written in a cursive style.

Christopher Hackford  
Legal Manager

A handwritten signature in blue ink, appearing to read 'Chris Hackford', written in a cursive style.



**The Voice of British Advertisers**

**ISBA Alcohol working group  
Response to  
BCAP consultation on  
Section 2**

**Guidance notes to Broadcast advertising code on alcohol**

**About ISBA**

ISBA is the single representative body on all aspects of commercial communications for some 380 leading UK advertisers whose total spend on all marketing communications exceeds £10 billion.

**Consultation**

The working group welcome the opportunity to comment on the draft guidance notes and will welcome the formal introduction of the guidance notes. The approach in the consultation document is broadly welcomed, but inevitably there remain areas where greater clarity would be of benefit to advertisers and their agencies in committing resources to their campaigns.

**Rule 11.8 Alcoholic Drinks**

**Misrepresenting claim to valid research**

**Background**

**Pg 3 8.** - we do not accept the applicability of the limited published research to support the claim in the first para (8) that 'recent research indicates that advertising has some influence on young viewers' attitudes to drinking, albeit at a relatively low level compared to those other factors.' This claim is repeated on **pg 4**. The claim should either be fully substantiated, with full referencing to peer reviewed published work, or deleted.

**Health and safety messages**

**Rule 11.8.1**

**Pg 5** the derogation from Rule 11.8.1 to allow alcohol-related health or safety advertisements should not be limited to 'non-commercial organisations'; the definition is subjective, and the qualification patronising to business. Allowance should be made for business, business related or business funded organisations to promote health and safety messages.

**Inclusion of party scenes**

**11.8.1(a)(2)**

For the sake of clarity the notes should include the following:

**Pg 6 line 4** after ...'social interaction' **add** ',including party scenes,' **change** 'is' to 'are'.

## **Clarification of daring**

### **11.8.1(b)**

The draft guidance note on the 'daring' element approaches a code extension rather than a guidance note. The use of 'unsuitable or out the ordinary' both lack clarity and are not obviously relevant to the Code on daring.

**Pg 6 line 15 delete** all after '...considered' and add 'irresponsible or likely to encourage anti-social behaviour.'

## **Defining behaviour in the context of a ban on links to sexual activity**

### **11.8.1(c)**

The wording of the note is potentially more restrictive on normal behaviour than a ban on (undefined) sexual activity implies.

**Pg 7, line 12 and 13 delete** '...provided that it is limited to...' and **add**...'including...'

## **Clarification of dangerous behaviour**

### **11.8.1(h)**

The code itself is clear on what is banned. The guidance note appears to extend this rule to a concept of 'an environment that is hazardous'. We take this to mean environment in the limited sense of being in the context of machinery or imminent danger, rather than non-specific geographic or built-environment locations; the rule qualification about avoiding behaviour that would be dangerous we understand to refer to actual activity rather than (mis) perceived potential for danger. Leaving the guidance note as it is leaves this rule open to over zealous interpretations. We offer the following slight amendment, but would be interested in a more widespread rewording that reflects a prohibition on alcohol and driving, or before or during the operation of machinery, or encouraging consumption before activities known to be associated with risk following the consumption of alcohol, eg swimming.

**Pg 10 line add** 'positively' before 'hazardous'.

## **Youth appeal**

### **11.8.2(a)**

This is a key code in terms of meeting the shared objectives on not appealing to youth. Yet we have some difficulty with the tone of the guidance, which does not deliver sufficient business certainty.

We question the subjective nature of the criteria that BACC and ASA(B) would need to apply, as they are not set out in the guidance.

In addition we do not believe that teenage fashion and clothing should be included, as fashion changes and there is not an identifiable 'fashion' of the under 18's.

Similarly music is an area where 20's taste would be indistinguishable from an 18 year old.

Language is again subjective, judging advertising content through the perceptual filters of a middle age mind, could lead to over restrictive interpretations.

## **Contact**

Ian Twinn

Director of Public Affairs

ISBA - the Voice of British Advertisers

020 7291 920

iant@isba.org.uk

## **ITV plc, Channel 4 Broadcasting and Channel 5 Broadcasting Ltd (Five) response to BCAP Consultation on Broadcast Advertising of Alcohol.**

ITV, Channel 4 and Five are members of BCAP and the Advertising Association (AA). We support the AA submission to the consultation.

### Background

As public service broadcasters, departure from the traditional proscriptive approach to self-regulation has been central to our concerns throughout this consultation and Ofcom's earlier consultation on the Rules themselves. If the Code and associated Guidance Notes are too detailed in the restrictions placed upon advertisers, the complexity has the potential to increase the difficulties for the industry to work creatively within their scope. Similarly, overly complex and detailed regulation may pose difficulties for Licensees with regard to self-regulation in respect of the Code.

We also believe that a previous lack of clarity surrounding the most favourable and logical publication site for the Notes to some degree contributed to this anxiety. The Rules for Alcohol advertising within 11.8 of The Advertising Code (*in most respects*) maintain the expected and customary proscriptive approach to regulation. Once it became clear that BCAP intended to publish the Guidance Notes separately, many of these fears receded. It is important that BCAP confirm that the most logical environment for detailed Guidance Notes is within the BACC Notes of Guidance themselves. This will enable the BACC (and by implication the Broadcasters) to ensure both the letter and spirit of the Rules are upheld in respect of creative ideas submitted. In addition, this should add the necessary transparency for agencies and their clients in terms of *content* compliance.

We accept that the commercial clearance process should be as rigorous as possible and that ambiguity in terms of application of the Rules should not subsequently lead to ASAB intervention. However, it is important that Guidance Notes place the Regulatory Framework in context whilst not seeking to comprise the Rules themselves. We also unequivocally concur with the view that Alcohol Scheduling Rules have been considered sufficiently robust.

### Comments on the Substance of the Guidance Notes

Although, in our view, much of the Guidance continues to be overly prescriptive, we do understand the necessity for this in view of prevailing public policy concerns. From the perspective of copy clearance and content, the BACC and advertisers respectively require unambiguous guidance in order to comply with The Code.

## **Rule 11.8.1**

This rule presumably precludes adherence to certain areas of The Code with regard to drink/drive advertising and other public health and safety organisations in order to transmit a powerful and effective message.

### **Rule 11.8.1 (a) (2) Social Occasions And Rule 11.8.1 (h) Hazardous Environments**

Although there is an incidental reference to swimming in the latter, perhaps this could be usefully expanded as well as further examples of potentially dangerous activities.

### **Rule 11.8.2 (a) Youth Appeal**

This is perhaps the core issue in driving the review of alcohol advertising rules. In fact this is one area where the prescriptive nature of the Guidance Notes is of benefit, particularly with regard to BACC clearance of creative treatments and advertising content. We echo the AA's concerns regarding difficult to define areas such as clothing, music & language and humour.

### **Rule 11.8.2 (c) Irresponsible Consumption**

The language in Rule 11.8.2 (c) should be made clearer in order to allow advertisements featuring multi-purchases that may not be part of a promotion for example if an individual is shown purchasing two or three bottles of wine clearly depicted to be consumed by a number of individuals. This depiction may therefore be deemed to contravene the Rule because it was not part of a "multiple-purchase promotion" but would be allowed if the wording were amended to read 'multiple purchase and promotions'.

## **Conclusion**

ITV, Channel 4 and Five support the central premise of a more socially responsible and accountable approach towards alcohol advertising, whilst at the same time, we commend the development and implementation of industry guidance through BCAP. We believe the rules are sufficiently exacting and in this respect clearly achieve the stated aim of a responsible methodology towards alcohol advertising.

As stated above, the correct environment for Guidance Notes of a significantly prescriptive nature is within BACC Notes of Guidance. The introduction of the Advertising Standards Code refers to: *the responsibility of the broadcasters themselves to ensure the advertising they transmit complies with both the **spirit** and the letter of Code*. We are concerned that these Guidance Notes set out to define the *spirit* and therefore remove the necessity for interpretation.

We are concerned this does not set a precedent and that the customary proscriptive approach to regulation is maintained.

11 April 2005

Helen Keefe  
Committee of Advertising Practice (Broadcast)  
Mid City Place  
71 High Holborn  
London  
WC1V 6QT

6<sup>th</sup> April 2005

Dear Ms Keefe,

**Consultation Response: Broadcast advertising of alcohol (Guidance Notes)**

The Music Publishers Association welcomes the opportunity to respond to BCAP's consultation on the guidance notes relating to the advertising of alcohol on television and radio on behalf of our members who together constitute over 90% of music publishers in the UK.

We responded to Ofcom's consultation on alcohol advertising on television last year with concerns about the impact of the proposed changes advanced by Ofcom. We are disappointed and concerned that despite our previous comments with respect to the proposed guidance notes being neither appropriate, nor proportionate, nor justified by the existing research, BCAP has proposed in its guidance notes that music that is likely to appeal strongly to under 18s must be avoided. Specifically, we refer to the recent BCAP guidance note that accompanies Rule 11.8.2 (a)(1):

*(d) Avoid music or dance that is likely to appeal strongly to under 18s. But an advertisement that, for example, features an old record which, perhaps as a result of its use in the advertisement, becomes popular with the young once again, will not necessarily be challenged. Announcements of alcohol-sponsored events may be made but the emphasis must be on the event, not the alcohol.*

We recognise the importance of addressing the issues of under-age drinking and alcohol abuse and we endorse the introduction of measures which will address these issues effectively. We would expect BCAP to be considering the introduction of some more obvious measures including, for example, restrictions on scheduling of alcohol related advertisements to after 9 pm and requirements for on screen warnings that alcohol is not suitable for people under 18 to the extent that such provisions do not apply already.

On BCAP's own admission, advertising has a relatively low level of influence on young viewers' attitudes towards drinking, particularly as compared to family and social factors. It is only reasonable in such circumstances therefore that the extent to which the rules are to be toughened at the cost of other stakeholders should be proportionate to the actual and effective impact that the rules will have on the problem at hand.

Notwithstanding the tenuous connection between the music used and the influence of the commercial, the application of such a provision gives rise to the following very practical considerations:

- The appeal of music is a very personal and subjective matter. How does one decide that a particular song appeals to someone under 18? What objective criteria are to be applied and who is qualified to decide the issue? It is worth pointing out that experience to date in making any kind of distinction along these lines has proved that it is almost impossible to do. It has challenged those within the music industry itself. It has also resulted in some curious decisions by external regulators such as RTE in Ireland where similar rules apply.
- There is a danger that the rule could inadvertently have a more far reaching effect than is expected and apply to a much broader range of music than might be intended. Music which may be aimed at an older audience may well also appeal to younger people too. Music spans the generations and it is not always possible to isolate music that appeals to a particular age group.
- Fashions in and attitudes to music change constantly and so to try and legislate for the appropriateness or otherwise of a piece of music in this context is unworkable.
- Any attempt to ring-fence certain music as suggested is more likely to encourage an unhealthy sport in trying to get round the rules by placing music which actually does appeal to young people but which somehow slips through the regulatory net, so defeating the objective.

We therefore believe that the BCAP guidance note is overtly prescriptive in nature, whilst at the same time being confusingly ambiguous and could be subjectively and inconsistently interpreted.

**We urge BCAP to seriously reconsider the need for music to be specifically included in the guidance note and would like to discuss this matter to explain our concerns before the final approval is granted.**

For ease of reference, we have included the responses from ourselves, British Music Rights and British Phonographic Industry (BPI) to Ofcom's consultation on alcohol advertising in order to reiterate our concerns in this area.

Yours sincerely

**Sarah Faulder**

Chief Executive  
Music Publishers Association

CC: Andrew Brown, Director-General, Advertising Association  
Marina Palomba, Legal Director, Institute of Practitioners in Advertising  
Malcolm Earnshaw, Director General, ISBA  
Dr Ian Twinn, Director of Public Affairs, ISBA  
Andy Wilson, Advertising Standards Agency



**RACC**

**BCAP CONSULTATION ON THE GUIDANCE NOTES FOR THE TV ALCOHOL ADVERTISING RULES**

**(FAO Helen Keefe, before deadline of 11.4.05)**

The RACC has no comments to add to its original comments dated 1<sup>st</sup> February 2005 regarding the Guidance Notes for the TV Alcohol Advertising Rules. We note that our original comments were largely ignored or not addressed. The RACC's opinion on the draft guidance notes as submitted on 1<sup>st</sup> February was (and is) based on our practical experience of applying similar rules and guidance notes for the content of radio advertisements.

Best regards;

Yvonne Kintoff  
Manager, Radio Advertising Clearance Centre



**Royal College  
of Physicians**

Setting higher medical standards

11 St. Andrews Place  
Regent's Park, London NW1 4LE

Telephone +44(0) 20 7935 1174  
Textphone +44(0) 20 7486 5687  
Facsimile +44(0) 20 7487 5218

[www.rcplondon.ac.uk](http://www.rcplondon.ac.uk)

Ms Helen Keefe  
Committee of Advertising Practice (Broadcast)  
MidCity Place  
71 High Holborn  
London WC1V 6QT

**From The Registrar**  
Rodney Burnham MD FRCP

Telephone extension 235  
Direct facsimile +44(0) 20 7487 5218  
[rodney.burnham@rcplondon.ac.uk](mailto:rodney.burnham@rcplondon.ac.uk)

8 April 2005

Dear Ms Keefe

### **Broadcast advertising of alcohol**

The Royal College of Physicians (RCP) welcomes the opportunity to comment on the guidance produced by the Broadcast Committee of Advertising Practice (BCAP) to help interpret and apply the revised alcohol rules produced by Ofcom and which came into force on 1<sup>st</sup> January this year. However the RCP is disappointed that the concerns it raised with Ofcom during the public consultation last year were not addressed. While any strengthening of the regulations is welcome, real opportunities were missed, such as the introduction of a 9pm watershed for alcohol advertising. Also, the waiving of many rules for low-alcohol drinks provides an unacceptable loophole. It allows the drinks industry to exploit low alcohol drinks as a means of introducing children and teenagers to alcohol, and begin to bind them into the culture and the brands.

Although the rules have been strengthened, the fundamental difficulty is in the interpretation of words like 'strongly' in the guidance. While BCAP has made a reasonable effort at interpretation, it will remain impossible to draw a distinction between, for example, the use of alcohol as a social lubricant and its role in making an occasion successful (11.8.1.a) or linking alcohol with mild flirtation or romance but not sexual activity (11.8.1.c). How can alcohol be linked to sensuous images or dialogue without any link to a sexual motive?

Finally, we believe it inappropriate and pre-judging an area where research is scant and urgently needed to state in the background 'However ....advertising has *some* influence on young viewers' attitudes to drinking, albeit at a *relatively low level* compared to (those) other factors.' (our italics). This immediately sets the scene by implying that it really does not matter greatly whether or not we protect children from the highly funded, ingenious and pervasive promotion of alcoholic beverages in this country.

Yours sincerely

Dr Rodney Burnham  
Registrar



11 April 2005

Ms Helen Keefe  
Committee of Advertising Practice (Broadcast)  
Mid City Place  
71 High Holborn  
London  
WC1 6QT

### **Guidance Notes for TV Alcohol Advertising Rules**

The Scotch Whisky Association (SWA) is the Trade Association representing the Scotch Whisky industry at home and abroad.

The SWA and its member companies are committed to encouraging those adults who choose to drink, to do so responsibly. While care is required before over emphasising the role of advertising in harmful drinking patterns, as part of this commitment, Scotch Whisky distillers seek to rigorously adhere to the relevant national codes of practice on advertising and many have developed internal rules on the promotion of their brands, as well as submitting advertising for pre-clearance.

At an industry level, the SWA has published a 'Code of Practice on the Responsible Marketing and Promotion of Scotch Whisky'. Covering all commercial communications, including advertising, the Code set outs the principles and best practice SWA members are required to follow. We are also working with other alcoholic beverage trade associations in the preparation of industry responsibility standards, encompassing both producers and retailers.

With the aim of ensuring the highest standards in commercial communications, the SWA supported Ofcom's review of the rules governing TV alcohol advertising. Whilst setting tough but appropriate standards, the rules remain open to interpretation and could, as a result, lead to uncertainty as to their meaning and intent for advertisers and regulators. As such, we welcome the publication of detailed guidance notes by the BCAP and the opportunity to comment on their content.

In general terms, the SWA supports the guidance notes and believe them to provide useful clarity and, by and large, appropriate and proportionate standards for the objective application of the rules. They should be backed by consistent and tough enforcement action to ensure that advertising encourages only responsible alcohol consumption.

cont.../

We would offer the following comments on specific sections of the guidance notes:

- **Rule 11.8**

The SWA welcomes the explicit statement that the spirit as well as the letter of the rules must be adhered to.

We would, however, draw attention to the guidance note statement ‘Research has indicated that alcohol advertising has some influence on young people’s attitudes to drinking’. We would request that the statement’s inclusion be supported by reference to peer reviewed published work.

- **Rule 11.8.1**

Whilst welcoming the guidance that the rules are not intended to inhibit all alcohol-related public health or safety advertisements by non-commercial organisations, the notes should be amended to allow businesses the opportunity to promote responsibility messages in relation to alcohol consumption.

- **Rule 11.8.1 (a)**

We support the proposed guidance notes under this section. In particular, while adverts should not suggest the success of a social occasion depends on alcohol consumption, it is appropriate that advertisers should be able to portray alcohol as part of responsible and social experiences and activities.

- **Rule 11.8.1 (b) and 11.8.2 (b)**

The SWA agrees that the guidance notes are largely appropriate and proportionate. While the definition of anti-social behaviour is open to wide interpretation, we believe the guidance strikes the right balance.

We believe, however, that the wording ‘unsuitable or out of the ordinary’ in relation to ‘daring’ lacks clarity and should be reconsidered.

- **Rules 11.8.1 (c) and 11.8.2 (e)**

The SWA welcomes the clear guidance drafted in relation to sexual success. No advertising should associate alcohol consumption with enhanced sexual attractiveness or sexual activity. Provided the provisions are not implemented in an overly restrictive manner, we agree that the guidance is workable and appropriate.

- **Rule 11.8.1(d)**

We agree that the guidance notes under this section are appropriate.

cont.../

- **Rule 11.8.1(e)**

Both medical and scientific evidence shows that moderate consumption of alcohol is compatible with a healthy lifestyle. We agree that, while factual statements of nutritional content may be used, adverts should not seek to imply that alcohol is suitable as part of an exercise, fitness, health or weight control regime.

- **Rule 11.8.1 (f)**

We agree with the proposed guidance notes.

- **Rules 11.8.1 (g) and 11.8.2 (c)**

The SWA agrees with the guidance notes. Advertising should portray alcoholic beverages being consumed, handled and served in a responsible manner so as to avoid any possible linkage with irresponsible or immoderate consumption.

- **Rules 11.8.1 (h) and 11.8.2 (d)**

We agree with the proposed guidance notes.

- **Rule 11.8.2 (a)**

While producers must make every effort to ensure alcohol is not advertised in any manner directed or primarily appealing to persons below the legal purchase age, care should be taken not to introduce overly restrictive or disproportionate standards.

It is accepted that the use of personalities, music, animation, sport and the like can, in certain circumstances, appeal strongly to under 18s. Caution should therefore be exercised to ensure their use does not encourage those under the legal purchase age to buy alcohol. Early consultation with the BACC or broadcaster compliance teams should avoid difficulties.

However, as in the original Ofcom consultation, we would wish to again note that the key test should be whether any image, music, or other aspect of the advert is being used as a proxy to particularly appeal to an under age audience. In such cases, they should not be permitted but that in itself should not mean that their use is absolutely prohibited. It is what and how an image is depicted rather than its use per se that is important.

One example would be the use of animals. Scotch Whisky brands have been associated with Scottish wildlife, countryside and heritage, e.g. through brand names or images, for over a century. There is no suggestion that this has encouraged alcohol misuse or harmful drinking patterns. A pragmatic approach would be that these are not, as the guidance states, 'cute, lovable animals likely to inspire strong affection in the young' and we hope the guidelines will be applied in a common sense manner.

In line with the SWA Code of Practice, we agree with the guidance notes in relation to the use of individuals in alcohol advertising. Anyone featured in such adverts should be at least 25 years old, and be obviously over that age.

We hope you will find our submission of assistance. Needless to say, the SWA would be happy to provide clarification or further information on any aspect of its submission.

Yours sincerely

**Campbell Evans**  
**Director of Government & Consumer Affairs**



Promoting Responsible Drinking

## **BCAP CONSULTATION ON GUIDANCE NOTES TO ACCOMPANY THE TV ALCOHOL ADVERTISING RULES – RESPONSE OF THE PORTMAN GROUP**

### **Introduction**

The Portman Group (TPG) was set up in 1989 by the UK's leading alcoholic drinks producers. Its purpose is to promote responsible drinking; to help prevent alcohol misuse; to encourage responsible marketing; and to foster a balanced understanding of alcohol-related issues.

TPG speaks for its member companies<sup>1</sup> on these social aspects of alcohol. It does not represent any drinks companies or other part of the trade on any other matter. TPG nevertheless welcomes the participation of the wider drinks industry – manufacturers, wholesalers and retailers – in its activities, for example as signatories to the Code of Practice, or in using the Proof of Age Card scheme, and believes that the drinks industry can thereby demonstrate its social responsibility, help to protect its commercial freedoms and enhance its success in a manner consistent with good citizenship.

### **Overall comments**

In general, we welcome the draft Guidance Notes and consider that they provide helpful and sensible interpretation of the rules. There are a few areas where we believe that the Guidance Notes could be sharpened, sometimes in order to avoid untoward extension or toughening of the underlying rule. We highlight these areas below, by reference to the rule that the Guidance Note accompanies.

#### **11.8.1**

The Guidance Note states that the rules within this section are not intended to inhibit all alcohol-related public health or safety advertisements by non-commercial organisations. As we made clear in our response to the consultation on the television alcohol advertising rules, advertising aimed at encouraging responsible drinking may need to show irresponsible drinking. We therefore welcome the fact that an exemption is being made for responsibility advertising by certain types of organisation. We further presume that an organisation such as TPG (which is funded by the drinks industry but is non-profit making) would be regarded as non-commercial. We nonetheless wonder whether the exemption shouldn't extend to dedicated responsibility advertising by drinks companies themselves. If the rules relating to such advertisements are unduly restrictive, either the advertisements will

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<sup>1</sup> Member companies: Allied Domecq, Bacardi Brown Forman Brands, Beverage Brands (UK) Ltd, Carlsberg UK, Coors Brewers, Diageo Great Britain, Interbrew UK, Pernod Ricard, Scottish & Newcastle.

lack impact or companies will decide not to produce them at all. We consider that the Code should not be used to deter drinks companies from producing effective campaigns designed solely to promote responsible attitudes and behaviours.

#### **11.8.1(b)**

In explanation of the rule prohibiting the linking of alcohol with daring behaviour, the Guidance Note states this is “to prevent associating alcohol with feats that would be considered unsuitable or out of the ordinary”. This seems a little vague and unconnected to “daring”. It may be more appropriate to state that the purpose of the rule is “to prevent associating alcohol with acts of bravery or recklessness and which might encourage irresponsible or anti-social behaviour”.

#### **11.8.1(h)**

The Guidance Note on this rule states that advertisements should not portray drinking “in an environment that is hazardous”. This is going rather further than the rule itself. A hazardous environment might include, for example, a jungle, a swamp or even a balcony. It is not necessarily the case, however, that someone is increasing their risk of accident by drinking in such environments. We agree that advertisements should not in any way encourage drinking in inappropriate and dangerous locations and/or situations. We consider the Guidance Note should be amended to state either “... in an environment that is hazardous for drinking” or “... in an environment where lack of complete sobriety may significantly increase the risk of accident”.

April 2005