



BACARDI-MARTINI LIMITED



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

2 June 2005

Dear Ms Keefe

BCAP Consultation on Broadcast Advertising of Alcohol - Section 3

In response to the above consultation, we would like to make the following points.

1. During last year's consultation on broadcast advertising codes for alcohol, it was concluded that changes were required for TV but not for radio.

We would suggest that this decision should also be applied to the specific clauses covering alcohol and therapeutic qualities and that the rule for radio advertising does not change.

2. Our consumer research shows that there is a distinction made with consumers when considering the role of alcohol as part of their lifestyle, and that as alcohol can contain significant calories, e.g. beer, having factual information to support the planning of calorific content and intake is appreciated, and this extends to the "branding" of alternatives using "diet", Lite etc subnames as reference points.

We would therefore suggest the use of these subnames helps consumers in their choice of drinks, and do not mislead the consumer over the level of alcoholic strength, which is clearly marked.

3. We think there is a distinction between claims made on health and fitness grounds, where we concur with the BCAP and AAC views, and in a weight control regime, where consumers would be offered factual information in advertising product variants, which were offering lower calorific or carbohydrate content.
4. We do not believe alcohol should make nutritional claims, and would expect consumers to receive factual information on both absolute and comparative basis to better make informed choices or decisions.

.../...

BACARDI-MARTINI LIMITED

Page 2 of 2

5. We find some of the statements alluded to in the BCAP paper to calorific value confusing as consumers do not distinguish between the quality of calorie they intake, only the amount.

Some of the references to the influence of alcohol in reducing will power, for example, do not appear to be based on evidence-based research.

Given the above, we would recommend that the proposed TV rules would change as follows:

- a) Advertisements must neither suggest that alcohol has therapeutic qualities nor offer it as a stimulant, sedative, mood-changer or source of nourishment, or to boost confidence. Although they may refer to refreshment, advertisements must not imply that alcohol can improve any type of performance. Advertisements must not suggest that alcohol might be indispensable or link it to illicit drugs.
- b) Advertisements may contain factual statements and factual comparative statements in the context of weight control. Alcohol advertising must not make health or fitness claims.

Guidance notes should allow consumer information to use terms like "reduced" in relation to a reduction of calories or carbohydrates.

Descriptors such as "lite", "diet" or "low/reduced" should be allowed provided they do not allude to nutritional qualities.

Yours sincerely



Chris Searle
External Affairs Director

BCAP
Mid City Place
71 High Holborn
London WC1V 6QT

6 June 2005

Dear Sirs

BCAP Consultation: Health and Dietary Claims in TV and Radio Alcohol Advertising

The Broadcast Advertising Clearance Centre (BACC) welcomes the opportunity of commenting on the current BCAP consultation. The BACC interprets and applies the Broadcast Advertising Code in order to ensure Television Advertising is compliant.

The BACC has no position on the content of the rules but will need to feel confident it can interpret and apply the rules once they are in place. It seems clear that there will be distinctions to be drawn between whether weight reduction claims are being made or simple factual information being imparted and whether products are being offered as part of a fitness or health promotion regime or simply as a refreshment perhaps for a particular target group.

BACC would wish to reassure BCAP that we are confident we will be able to identify and deal with nuance in order to help achieve compliance taking account of the precise intention or revised rules.

Yours faithfully

Paul Denham
Managing Editor

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

**RESPONSE TO THE COMMITTEE OF ADVERTISING PRACTICE
(BROADCASTING) CONSULTATION ON HEALTH AND DIETARY CLAIMS
IN TV AND RADIO ADVERTISING OF ALCOHOL**

FROM CHRYSALIS RADIO

We welcome the opportunity to respond to the BCAP's consultation on the advertising of alcohol. Chrysalis Radio is the one of the UK's 'Big Three' commercial radio groups. We own and operate eight major analogue local radio stations under the Heart, Galaxy and LBC, covering nearly 23 million adults (15+) and reaching over 5 million each week. We are also a leading player in digital radio, as the major shareholder in the MXR digital radio multiplex consortium, and as the provider of digital radio services covering over 30 million adults. As a commercial radio operator, we are funded entirely from advertising and related revenue, and therefore have an interest in the regulation of the advertisements that we carry. We have limited our comments in this response to section 3 of the consultation, on 'Health and Dietary Claims in TV and Radio Alcohol Advertising', as this relates specifically to radio.

We fully support the principle that alcohol should not be advertised as a health product, nor should it be marketed as possessing health-giving properties. However, we believe that the new rule proposed by BCAP removes clarity, rather than reinforcing it, and may actually prevent consumers from making informed purchasing decisions based on clear and comprehensible marketing messages.

The proposed new rule, and accompanying guidance notes, are unclear. Paragraphs 20-42 of the consultation document, discussing the issue of 'low calorie' and 'low carb' products, suggest that BCAP wishes to prevent to use of the words 'low' and 'lower' when advertising alcoholic drinks. However, this is not clearly stated in the proposed rule and guidance notes.

The guidance notes relating to the use of the word 'light' or 'lite' are also unclear. The notes state that these words "can be used in ways that do not necessarily imply dietary qualities, for example to refer to light colour, body or flavour." However, it goes on to say that "the use of such words as part of a brand name is therefore acceptable unless some other element, such as a logo, implies an unacceptable claim." It is not clear from this whether the inclusion of the word 'light' in a brand name, where it is intended to imply lower calorie content, is acceptable and, if so, on what basis. To the best of our knowledge, the word 'light' when used as an alcohol brand, is currently only used to express low calorie content. Is it BCAP's intention that the use of such brands should be prohibited in broadcast advertising, or that alcohol manufacturers should adapt their marketing messages to imply that 'light' no longer refers to calorie content but instead to some other property of the product?

BCAP proposes to prohibit the use of phrases like 'low calorie' and 'low carb', but allow the communication of strictly factual messages, such as the numerical calorie or carbohydrate content in a product. In doing so, BCAP acknowledges that some consumers may wish legitimately to make purchasing decisions on the basis of calorie or carbohydrate content, but it actually imposes a barrier to informed purchase decisions. We consider it unlikely that the majority of consumers will be able to interpret numerical data on calorie or carbohydrate content. To do so requires some basic scientific understanding of the relevance of the figures, as well as knowledge of the calorie or carbohydrate levels in normal, non-'low' products. Terms like 'low' and 'light' are easily understood by consumers and the imposition of legally enforceable definitions of those terms in the Food Labelling

Regulations allows consumers to have confidence in the use of those terms in labelling and advertising.

Replacing the use of terms like 'low' and 'light' with numerical data not only makes it harder for consumers to make informed purchasing decisions, but may even create an opportunity for advertisers to give the misleading impression that products are low calorie or low carb when in fact they are not. If a consumer hears a radio advertisement for a beer, for example, which ends with the statement that the product 'contains xx calories per unit of alcohol', they are unlikely to know what this means, but may assume, solely because of its inclusion in the advertisement, that it is a positive statement, implying low calorie content. In other words, the combination of consumer ignorance and the presentation of numerical data might actually create a false impression of the product, even in an advertisement that is entirely truthful and fully conforms with the proposed regulations.

We believe that the interests of consumers are best served by advertisements that are easily understood. We therefore urge BCAP to reconsider its proposals.

Daniel Owen
Director of Regulatory and Public Affairs
29 April 2005

GCAP MEDIA PLC RESPONSE TO CONSULTATION ON HEALTH AND DIETARY CLAIMS IN TV AND RADIO ALCOHOL ADVERTISING

Introduction

GCap Media PLC launched on 9 May 2005, formed by a merger of Capital Radio PLC and GWR Group PLC. GCap Media is the UK's largest commercial radio company: it owns one national and 55 local radio stations. In DAB digital radio, it operates 100 digital radio stations and owns or has an interest in 28 digital radio multiplexes, including a controlling shareholding in the UK's only national commercial digital radio multiplex, Digital One. GCap Media reaches approximately 17 million listeners, representing 35 per cent of the UK commercial radio audience.

General Points

- Ofcom's consultation on alcohol advertising in July 2004 referred to TV advertising, but asked whether rules on alcohol advertising on radio should also be revised, in line with television. The consultation concluded that there was no need to amend radio alcohol advertising at this time. On 22 October 2004, Ofcom wrote, "Ofcom remains of the view that the issues which arise with alcohol advertising on TV are not a problem on radio. On that basis, it is satisfied that the existing radio rules are effective and, given the potential disruption of apparently harmless commercial arrangements which alignment could bring, sees no good grounds to change them."
- We strongly support this conclusion; the reasons for planning to amend TV advertising had to do with the visual treatments available to television advertisers. The same considerations still apply and, "if it ain't broke, don't fix it". This applies particularly to the first part of the proposed new rule, which is already covered in the existing Code.
- We are disappointed that no impact assessment has been undertaken examining the relative costs and benefits of adopting the new rule as against doing nothing, particular with regard to radio. We believe the costs of changing the rules for radio greatly outweigh the only identified 'benefit' of achieving consistency with television. And we are unsure who would benefit from this consistency.
- The proposed Notes to the new rule are not written as guidance, but as obligatory rules. Their status is not at all clear. This is contrary to good regulatory practice and can lead to regulatory creep (see the Better Regulation Task Force Report "Avoiding Regulatory Creep", October 2004). "The Task Force recommends that the Government and regulators should include clear statements in their guidance documents setting out their purpose and legal status." This is in order to ensure that guidance remains as that, and is not presented – or treated - as mandatory.

- **BCAP Consultation: Broadcast Advertising of Alcohol – Proposed new Rule and Notes**

1) Advertisements must neither suggest that alcohol has therapeutic qualities nor offer it as a stimulant, sedative, mood-changer or source of nourishment, or to boost confidence. Although they may refer to refreshment, advertisements must not imply that alcohol can improve any type of performance. Advertisements must not suggest that alcohol might be indispensable or link it to illicit drugs.

GCap Media Comments

- Nearly every element of this proposed new rule is already covered in existing (Radio Authority) Code rules 11(a), (c) and (d). It is not clear which of these existing rules is intended to be replaced, or why a replacement is needed or desirable, at all.
- The second sentence of the rule has deleted the phrase “after physical performance” after “refreshment”. This omission results in it not being clear why this rule would fall within rules relating to health and dietary claims, nor why refreshment might be related to performance, or indeed what sort of performance is being referred to.
- It is not at all clear how the third sentence relates to health and dietary claims.

2) Advertisements may state the number of calories per unit of alcohol. They may state the number of grams of carbohydrates per unit but only if the number of calories per unit is also made clear. Factual comparisons with other products are acceptable but no other statements of nutritional content are permitted. Alcohol must not be advertised in a context of health or fitness.

GCap Media Comments

- The last sentence needs clarification to avoid banning sports personalities from appearing in alcohol ads.

Proposed Guidance Notes to help broadcasters and advertisers interpret and apply the rules are:

Notes to part 1:

- Advertisements must not suggest that alcohol can improve physical or mental performance or that it is necessary to maintain a normal lifestyle.

GCap Media Comments

This is written as a rule, not as guidance. We would refer you to the Better Regulation Task Force’s October 2004 report: *Avoiding Regulatory Creep*, which identifies lack of clarity about the status of ‘guidance’ as a major contributing factor to regulatory creep.

- Please refer also to rules 11.8.1(a)(1) and 11.8.1(d).

Notes to part 2:

- Numerical statements of calorie or carbohydrate content should not be qualified, for example by words such as “only”. A statement of carbohydrate content should be no less prominent than the statement of calorie content.

- Factual comparisons of calorie content, or of carbohydrate and calorie content, may be made either “internally”, between an advertiser’s own products (for example, where calorie content has been reduced) or between the advertiser’s product and its competitors’. If an internal comparison relates to a reduction of calories, or calories and carbohydrates, words such as “reduced” are acceptable but those claims may be used only for a reasonable period after the product formulation has changed.

- Advertisements should not imply that an alcoholic drink may be suitable as part of an exercise, weight loss, weight maintenance or weight gain regime.

- If a brand name implies a dietary or health claim, the advertisement should make clear that the product is not suitable for exercise, health, fitness, weight loss, weight maintenance or weight gain purposes, as appropriate. Words such as “light”, “lite”, etc can be used in ways that do not necessarily imply dietary qualities, for example to refer to light colour, body or flavour. The use of such words as part of a brand name is therefore acceptable unless some other element, such as a logo, implies an unacceptable claim. In that case, the advertisement should make clear that the product is not suitable for exercise, health, fitness, weight loss, weight maintenance or weight gain purposes.

GCap Media Comments

All of these ‘guidance notes’ read as rules. For example, if a statement that an alcoholic product contained “only 100 calories”, would this be treated as a breach? If so, then the first guidance bullet should be a rule.

46. The Guidance notes apply to both TV advertisements and to radio advertisements. For both media they are identical but the requirement for the statement of carbohydrate content to be no less prominent than that of calorie content, although needed, does not have to be spelt out in the Guidance notes for the radio Code rule.

GCap Media Comments

This statement is contradictory and unclear. What is the position on statements of carbohydrate content for radio? Furthermore, this paragraph confirms the unclear status of the ‘guidance’ notes, as it implies that the ‘guidance’ is mandatory.

ES

13.05.05

Institute of Alcohol Studies
Elmgren House
1 The Quay
St Ives
Cambridgeshire
PE27 5AR

3 June 2005

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

Dear Ms Keefe

[This response need not be regarded as confidential]

Guidance Notes for the Health and Dietary Claims in TV and Radio Alcohol Advertising

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.

We welcome the analysis in regard to dietary claims in TV and Radio alcohol advertising but we regret that no distinction was made between “*dietary*” and “*health*” claims which are different both from a marketing and scientific point of view.

In regard to health claims, we would like to suggest that this consultation should have been placed in the context of a larger debate on nutrition and health claims currently taking place at the European level. However, there are currently no harmonized EU rules to ensure the scientific accuracy and appropriateness of such claims. In this respect, the proposed Regulation on Health and Nutritional claims proposed by the European Commission¹ is to be welcomed as it sets clear parameters across Europe for any health and nutritional claims to permit only those that are scientifically substantiated. This regulation also strictly regulates the use of health claims on alcoholic beverages, specifying that:

¹ Proposal for a Regulation of the European Parliament and of the Council on nutrition and health claims made on foods - Interinstitutional File: 2003/0165 (COD)

Beverages containing more than 1.2% by volume of alcohol shall not bear:

- (a) Health claims;
- (b) Nutrition claims, other than those, which refer to a reduction in the alcohol or energy content.

With regard to dietary claims, we welcome the analysis conducted as part of the consultation. We support the Committee's recommendation that claims should be purely factual, only in numerical form and expressed per unit of alcohol. We agree that "low" or "lower" claims could be potentially misleading to those people, probably a substantial number, who do not fully understand that alcohol is relatively high in calories. We agree with BCAP that it would be intrinsically misleading to imply that dietary claims for alcoholic beverages could have a positive role in weight control/management.

Andrew McNeill

Director



The Voice of British Advertisers

ISBA Alcohol working group
Response to
BCAP consultation on
Health and Dietary Claims in TV and Radio Alcohol Advertising

1. The ISBA Alcohol Working Group has observations on the following points:
 - **Advertising in the context of weight control;**
The Group agreed with the proposal to prohibit claims associated with health and fitness, but would positively allow factual and comparative statements associated with weight control.
 - **No extension to Radio:**
To question the rationale of the proposal to apply this Code change to the Radio as well as the TV Codes, when no similar proposal was made for the rest of the Code.
 - **Cal and carb:**
To question the factual basis of the statements concerning calories and carbohydrates under para 37
2. **Confusion over nutrition and weight loss**
 - 2.1 The Working group concurred with BCAP and AAC in their recommended rule change to prohibit Health and fitness claims. However it was not accepted that health and fitness claims should be confused with the issue of weight control.
 - 2.2 Whilst it is possible to take a principle total abstention stance in weight control, ISBA does not support the drafting of the advertising rules to support the 'no drinking' lobby.
 - 2.3 Advertising should support people drinking and enjoying drinking responsibly; the offering of lower calorie, 'diet', 'lite' and 'light' products, is of benefit to the consumer in controlling their calorie intake. Consumers are well aware of the terms 'diet' and 'light' both of which are in daily use over the whole range of food and drink offers; we therefore strongly support rule changes to make it clear that factual statements and factual comparative statements concerning weight control (management, loss and gain) may be made for alcoholic beverages.
3. **Radio**
 - 3.1 The proposal to uniquely use the same wording for this one rule in both radio and television advertising codes is reflected in the consultation title and appears in the conclusions. However no justification is given for the recommendation.
 - 3.2 The group had no objection in principle to the convergence of code wording where this is in the wider interest. However the practical implications for two very separate media are different and we are therefore inclined to argue against the unsubstantiated recommendation, especially as this is the sole area of the code for which the suggestion is made.

Comment [a1]: Andrew Brown called to say that the original wording ("factual claims and comparative claims" was an error

4. Unproven statements on calories and carbohydrates

- 4.1 The BCAP paper relies, in para 37, on setting out six points on calories and two on carbohydrates, which do not stand up to the high standards of scientific objectivity upon which it is reasonable to assume that policy makers will base their recommendations.
- 4.2 This paragraph confuses the concept of controlled diets and the role of calorie and carbohydrate input with the entirely separate issue of nutrients.
- 4.3 Alcohol is calorific, but so too are other ingredients in beverages, including carbohydrates and fats.
- 4.4 The concept of 'empty' calories is a controversial point, not a scientific point;
- 4.5 it is unhelpful to belittle calorie reduction as part of a balanced diet, for example the use of 'diet' versions of RTDs could lead to avoiding 1000 cals over a week of drinking within RDAs;
- 4.6 the expression of the opinion that alcohol 'may well' reduce will power is out of place in a reasoned argument.
- 4.7 The place of carbohydrates in weight management is controversial, neither ISBA nor BCAP are equipped to make the claim in the proposal.

5. ISBA recommended changes

On the basis of our discussion we would amend the BCAP consultation conclusions.

44. On the basis of the information and advice received, BCAP proposes:

- to amend the rules to prevent alcohol advertisements making explicit or implicit health or fitness claims being advertised in a context of health or fitness
- ~~to use the same wording in both the radio and television advertising Codes~~
- to ensure (by incorporating wording from the radio Code) that there is no doubt that TV advertising may continue to promote alcoholic drinks as refreshment
- to limit nutritional content product claims in line with AAC advice to factual statements.

45. The proposed rule for ~~both radio and~~ TV follows. Significant wording that is drawn from neither of the current rules is marked in bold below.

1) Advertisements must neither suggest that alcohol has therapeutic qualities nor offer it as a stimulant, sedative, mood-changer or source of nourishment, or to boost confidence. Although they may refer to refreshment, advertisements must not imply that alcohol can improve any type of performance. Advertisements must not suggest that alcohol might be indispensable or link it to illicit drugs.

2) Advertisements may contain factual statements and factual comparative statements in the context of weight control, state the number of calories per unit of alcohol. They may state the number of grams of carbohydrates per unit but only if the number of calories per unit is also made clear. Factual comparisons with other products are acceptable but no other statements of nutritional content are permitted. ~~Alcohol advertising must not -make be advertised in a context of health or fitness claims.~~

Proposed Guidance Notes to help broadcasters and advertisers interpret and apply the rules are:

Notes to part 1:

- Advertisements must not suggest that alcohol can improve physical or mental performance or that it is necessary to maintain a normal lifestyle.
- Please refer also to rules 11.8.1(a)(1) and 11.8.1(d).

Notes to part 2:

- Numerical statements of calorie or carbohydrate content should not be qualified, for example by words such as "only". A statement of carbohydrate content should be no less prominent

than the statement of calorie content.

- Factual comparisons of calorie content, or of carbohydrate ~~and calorie~~ content, may be made either "internally", between an advertiser's own products (for example, where calorie content has been reduced) or between the advertiser's product and its competitors'. If an internal comparison relates to a reduction of calories, or ~~calories and~~ carbohydrates, words such as "reduced" are an acceptable form of consumer information, ~~but these claims may be used only for a reasonable period after the product formulation has changed.~~
- ~~Advertisements should not imply that an alcoholic drink may be suitable as part of an exercise, weight loss, weight maintenance or weight gain regime.~~
- If a brand name implies a ~~dietary or~~ health or fitness claim, the advertisement should make clear that the product is not suitable for exercise, health, or fitness, ~~weight loss, weight maintenance or weight gain purposes~~, as appropriate.

- Words such as "light", "lite", "diet", etc can be used provided that they in ways that do not ~~necessarily~~ imply nutritional dietary qualities, ~~for example to refer to light colour, body or flavour.~~ The use of such words as part of a brand name is therefore acceptable unless some other element, such as a logo, implies an unacceptable claim. In that case, the advertisement should make clear that the product is not suitable for exercise, health, or fitness, ~~weight loss, weight maintenance or weight gain~~ purposes.

~~46. The Guidance notes apply to both TV advertisements and to radio advertisements. For both media they are identical but the requirement for the statement of carbohydrate content to be no less prominent than that of calorie content, although needed, does not have to be spelt out in the Guidance notes for the radio Code rule.~~

CONTACT

Ian Twinn
Director of Public Affairs
ISBA – the Voice of British Advertisers
Langham House, 1b Portland Place
London W1B 1PN

iant@isba.org.uk
020 7291 9020

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**ITV plc, Channel 4 TV Corporation and Channel 5 Broadcasting Ltd
response to BCAP Consultation on Broadcast Advertising of Alcohol.**

**Section 3: Health and Dietary Claims
6 June 2005**

Commercial PSBs support the need for clear advertising codes which help to protect from misleading communications and welcome the opportunity to provide input into BCAPs consultation.

Commercial PSBs strongly support the need for consistency in regulation between media platforms, including regarding alcohol advertising and the use of factual health claims in alcohol communications. The non-broadcast codes for alcohol advertising are currently under review and it is important that there is as much alignment as possible between broadcast and non-broadcast in order to ensure a level playing field between mediums and derive maximum benefit from the ASA's 'one-stop-shop'.

Committee of Advertising Practise
London

17th March 2005

Dear Helen Keefe,

Following on from your letter dated 14th March 2005 I am writing to comment on your proposed changes on the alcohol advertising rules.

We believe that the proposed changes to the advertisement of alcohol products are sensible and appropriate. This is a positive step in providing relevant and realistic information to the general public.

My only concern is with regards to "light/lite" beers, which are generally perceived to relate to dietary terms rather than the colour or body of a beer. The terms of use for this wording should be made absolutely clear in any new rules.

I think it is also a positive move to revise the rules and make them identical for tv, radio and other forms of advertising media.

If you have any other queries, please don't hesitate to contact me.

Kind regards,

Jamie Butcher.

Group Commercial Production Manager
Lincs FM Group Ltd

Jamie Butcher
(Group Commercial Production Manager)

Lincs FM Group Limited
Tel: 01302 341166
Fax: 01302 321975



Helen Keefe
Committee of Advertising Practice (Broadcast)
Mid City Place
71 High Holborn
London
WC1V 6QT
6th June 2005

Dear Ms Keefe

The MRC Collaborative Centre for Human Nutrition Research (hereafter HNR) thanks the Committee of Advertising Practice (Broadcast) for its invitation to comment on their Broadcast Advertising of Alcohol Consultation. Our formal response is attached.

This consultation was prepared by Dr Susan Jebb and Ms Claire Mac Evilly on behalf of senior staff at HNR and does not necessarily reflect the view of the Medical Research Council. HNR scientists have a particular interest in food and health, so our comments reflect this perspective.

We hope that these comments will make a useful contribution to this consultation and we would be pleased to offer additional input on specific issues should this be required.

If you have any queries regarding this response then, in the first instance, please address them Ms Claire Mac Evilly at the above address, email Claire.MacEvilly@mrc-hnr.cam.ac.uk

Yours sincerely

Claire Mac Evilly
Communications Manager

MRC Human Nutrition Research response to the BCAP Consultation on Broadcast Advertising of Alcohol – Health and Dietary Claims in TV and Radio Alcohol Advertising

June 2005

MRC Collaborative Centre for Human Nutrition Research (hereafter HNR) was established in 1998 to advance knowledge of the relationships between human nutrition and health by providing a national centre of excellence for the measurement and interpretation of biochemical, functional and dietary indicators of nutritional status and health. HNR conducts basic research in relevant areas, focusing on optimal nutritional status and nutritional vulnerability in relation to health, including the development of innovative methodologies. HNR responds to the strategic priorities of the wider scientific community by conducting research projects, within the scope of HNR's activities, in collaboration with, and on behalf of: other MRC establishments and groups, Government departments, industry, national and international agencies, universities, research foundations and charitable organisations. HNR also acts as an independent, authoritative source of scientific advice and information on nutrition and health in order to foster evidence-based nutrition policy and practice. In light of the work carried out at the HNR and the expertise of our staff, our comments are confined primarily to the role of nutrition in securing good health for the whole population.

HNR welcomes the opportunity to comment on the BCAP Consultation on Health and Dietary Claims in TV and Radio Alcohol Advertising. The use of unsubstantiated health claims on foods and drinks has contributed to the consumer confusion about a healthy diet and we support initiatives that encourage responsible marketing.

HNR supports the following BCAP proposals:

- to amend the rules to prevent alcohol being advertised in a context of health or fitness
- to use the same wording in both the radio and television advertising codes
- to limit nutritional content claims in line with AAC advice

It is not within our remit to comment on the general issue of TV advertising of food and drinks and we have no specific position on the BCAP proposal that TV advertising may continue to promote alcoholic drinks as refreshment.

Proposed rule 45 (1)

We support this rule for both radio and television.

Proposed rule 45 (2)

We support the proposed rule that advertisements may state the number of calories per unit of alcohol and the number of grams of carbohydrate per unit but only if the number of calories per unit is also made clear. In addition, there is confusion amongst the public about what constitutes a 'unit' of alcohol. In the UK the unit was based upon a 125 ml glass of wine with an alcohol content of 8-9%. Commonly today home servings are nearer 175 ml (and up to 250 ml in bars) and wine is 12.5-14%. A glass is commonly 2 - 3.5 units. In simple terms, alcoholic beverages that quote nutrients per unit of alcohol need to be very clear about the alignment between a 'serving' and a 'unit'.

We would welcome further clarification on the statement that "factual comparisons with other products are acceptable but no other statements of nutritional content are permitted". We believe that providing consumers with as much information as possible on the nutritional

content of alcoholic beverages particularly, those that are high in calories will encourage healthier choices. There is no inherent reason to feel that alcoholic beverages should not factually quote their nutritional content (as per other foods). The important point is that the information is kept factual and not interpreted in the context of health guidelines.

By email attachment to: consult@cap.org.uk

**To: Helen Keefe
Committee of Advertising Practice (Broadcast)**

**From: Yvonne Kintoff
Radio Advertising Clearance Centre (RACC)**

26th May 2005

BROADCAST ADVERTISING OF ALCOHOL: SECTION 3 (HEALTH & DIET)

THE RACC'S RESPONSE

THE RACC'S REMIT

The Radio Advertising Clearance Centre (RACC) is a member of the Broadcast Committee of Advertising Practice (BCAP), under the auspices of the Commercial Radio Companies Association (CRCA). Its role is to check the content of certain radio advertisements and sponsorship credits against the "BCAP Radio Advertising Standards Code". It does this on behalf of all Ofcom's radio licensees who fund it collectively. In operation since July 1996, the RACC processes between 1,700-2,000 draft radio scripts each month and 'clears' for broadcast in excess of 20,000 radio commercials each year.

INTRODUCTION

The RACC welcomes the opportunity to respond to the above BCAP consultation and confirms that its submission is not confidential. The RACC's views are confined to radio advertising and are based on nine years of day-to-day experience of clearing radio advertisement campaigns for alcoholic drinks. Should any new rules be implemented in the BCAP Radio Code, the RACC would be responsible for interpreting those rules, and accompanying guidance notes, on a practical basis on behalf of its customers, e.g. radio copywriters and producers, advertising agency creatives, radio station staff and radio advertisers.

THE RACC'S VIEWS

1. Ofcom's consultation on broadcast advertising of alcohol in July 2004 concluded that there was no good reason to make any changes to the existing *radio* code rules (which Ofcom felt were effective) and was, RACC understood, confined to television advertising. This is reflected in Section 3 "Background", paragraph 22 on page 15 of BCAP's consultation document which confirms that "Ofcom proposed to prevent *television* advertisements from making any 'health or dietary' claims for alcoholic drinks". Furthermore, the consultation document does not clarify *why* the BCAP Executive feels that radio advertising should also be included. If it is mainly for regulatory consistency between television and radio, we would ask BCAP to consider whether this draft regulation is 'targeted' appropriately to the radio medium (given that 'targeted' regulation has been identified by the Better Regulation Task Force as one of the five core principles of better regulation, and given the points made below in paragraphs 2 and 3).

The RACC therefore queries the need to include radio advertising in this consultation, by expanding existing code rule 11.3 g) and by seeking to implement an entirely new rule about 'health and diet' in the BCAP *Radio* Code.

2. The frequency of radio advertisers wishing to link alcohol with health, diet, fitness, exercise or weight control is extremely rare. Where the RACC has seen radio advertising scenarios or radio copy, in their draft form and conditional on clearance, the RACC has tended to reject them. We have had one approach (March 2004), by one single radio advertiser, who wished to claim that its product was "the new, low-carb beer". Following the RACC's queries, the campaign did not go to air. The RACC would also point out that there has been no evidence of listener harm or misleadingness relating to alcoholic drink advertising and spurious health and dietary claims/links on radio, borne out by no listener complaints.

For the reasons given in paragraph 2 above, the RACC feels that the amount of proposed regulation is disproportionate, both to the potential for mischief by radio advertisers and the potential for listener misleadingness.

3. The RACC notes the proposed expanded code rule (the new requirements of which already exist elsewhere in the alcohol rules), the brand new code rule for radio (which, the RACC feels, could be worded better, for clarity) and the accompanying six bullet points of 'Guidance Notes' (some of which are not relevant to the radio medium, i.e. the rule referrals, the reference to a "logo" and the 'no less prominence' policy). As far as the RACC understands it, the new draft code rule will mean that radio advertisements that wish to refer to dietary aspects of an alcoholic drink will need to state, as a minimum, "X brand – 80 k/cals per unit" or "X brand - 2 grams of carb and 80 k/cals per unit" and, as a maximum, "X brand – 2 grams of carb and 80 k/cals per unit, compared to Y brand which has z grams of carb and x k/cals per unit". For the radio medium, these statements are relatively lengthy, could sound cumbersome, will cost extra airtime and cannot be in the form of superimposed text.

In drawing up the proposed new/amended rule for radio, the RACC queries whether the BCAP Executive has taken into account fully, not only the alleged benefits to the consumer, but also the characteristics of radio as an advertising medium and the additional costs to it.

4. However, it is likely that there will be new rules for television advertising and **it would make no sense for the Radio Code to remain totally silent on this issue.** To do so would not be in the interests of clarity and consistency for advertisers and consumers as a whole and would ignore the current, wider political sensitivity about “low fat/low calorie/low carb” labels being promoted by food and drink manufacturers. More importantly, the RACC believes that one of the advantages of self-regulation is that radio advertisers and broadcasters are able, when called upon, to amend jointly their code of advertising practice swiftly to reflect potential consumer concerns. This is a good case in point.

5. The RACC notes the background, other considerations and AAC advice as spelt out in BCAP’s consultation document which has led to the proposed new rules and guidance notes. The RACC has consulted its independent advisor on nutrition, (a different advisor to the one used by BCAP staff), who confirmed that the nutritional reasoning given in the document is sound. Based on its consultant’s advice, the RACC would tend to agree that, because alcoholic drinks are not low in calories, radio advertising which claims or implies this by phrases such as “low/er calorie” or “low/er carbohydrate” is capable of misleading some listeners. However, the RACC is not wholly convinced that listeners will benefit to any great degree from factual information, expressed in a numerical way, about calorie and carbohydrate content in an alcoholic drink. In addition, radio advertisers may well decide not to include any such statements at all, given that they may detract from the snappiness of a 30-second radio advertisement.

On balance, however, the RACC feels that the Radio Code should nevertheless clarify what type of dietary claim is acceptable, in the interests of choice, clarity and consistency for radio advertisers.

6. To conclude, the RACC recommends that the BCAP Executive consider the following, amended addition to the BCAP Radio Code, under Section 3, Rule 11 Alcoholic Drinks, 11.3 i) Unacceptable Treatments:

“Alcoholic drink advertisements must not claim or imply benefits in a context of health, fitness, exercise or weight control. Any dietary claim must be limited to a factual statement of calorie content only, or of carbohydrate content followed by calorie content. These statements should be expressed as “x grams of carbs” and “x k/cals per unit”. Factual comparisons by advertisers, both with their own products and with competitor products are also acceptable, if expressed in this way”.

Whilst the above draft rule is not shorter than the one proposed by BCAP staff, we contend that it is both comprehensive and sufficiently clear not to require the proposed supplementary guidance note.

Radio Advertising Clearance Centre
26th May 2005

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

RESPONSE FROM THE PORTMAN GROUP TO THE BCAP CONSULTATION ON HEALTH AND DIETARY CLAIMS IN TV AND RADIO ALCOHOL ADVERTISING

Introduction

1. The Portman Group (TPG) was set up in 1989 by the UK's leading alcohol 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.
2. TPG speaks for its member companies¹ 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.

BCAP's proposals

3. BCAP proposes the introduction of a new rule for both TV and radio advertising, as follows:

Advertisements may state the number of calories per unit of alcohol. They may state the number of grams of carbohydrates per unit but only if the number of calories per unit is also made clear. Factual comparisons with other products are acceptable but no other statements of nutritional content are permitted. Alcohol must not be advertised in a context of health or fitness.

4. We recognise that the question of how, if at all, health and dietary claims should be made in alcohol advertising is highly complex and embraces

¹[1] 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.

THE PORTMAN GROUP

7-10 Chandos Street, Cavendish Square, London W1G 9DQ Registered office
Tel: 020 7907 3700 Fax: 020 7907 3710
info@portmangroup.org.uk www.portmangroup.org.uk
Registered in England & Wales No. 2184853 A company limited by guarantee.

not just issues of social responsibility but also scientific/nutritional and legal issues.

5. We are happy with the suggestion that alcohol must not be advertised in a context of health or fitness. While moderate alcohol consumption is not harmful, and can even carry health benefits for certain sections of the population, we agree that the special nature of alcohol and the particular problems that can be caused by its excessive consumption mean it is unwise for alcoholic drinks companies to present their products in a health and fitness context.
6. When it comes to alcohol being advertised in a context of weight control, the situation is less clear cut. One could argue that if someone is concerned about their weight and is intending to drink alcohol, they are better off choosing a lower calorie drink; therefore such drinks should be entitled to be offered on a slimming platform. This is, after all, the situation that exists for all other foodstuffs, even those that carry little nutritional benefit, for example carbonated soft drinks. On the other hand, one could argue that the special nature of alcohol and the risks associated with its over-consumption mean that it is better not to market alcohol in this way as the emphasis, in isolation, of a particular nutritional/dietary property is misleading and potentially irresponsible.
7. While recognising that a good case could be made in defence of such advertising, TPG is nonetheless of the view that the more responsible course of action is to not advertise alcohol on a slimming platform. This should not, however, prevent the communication of purely factual information about a drink's content. Such information needs to be imparted if consumers are to be allowed to make informed choices. Factual statements such as 'low calorie' should be in accordance with the definitions set down in food labelling legislation. We consider that allowing statements of this nature, while disallowing any other suggestion within an advertisement that an alcoholic drink has particular suitability as part of a weight control regime, is a sensible compromise.
8. The BCAP proposal, however, goes further than preventing alcohol being advertised in a weight control context. It prevents advertisers from making descriptive statements about the content of their product, for example 'low calorie', even though the use of these statements is defined in food labelling legislation. We consider that this is unnecessarily restrictive. We note that the AAC considers that the number of calories in a low calorie alcoholic drink (as defined under the Food Labelling Regulations 1996) is too high to justify the description 'low calorie'. With

respect, the AAC should express this concern to the Government rather than re-define the term according to its own opinion.

TPG's preferred solution

9. TPG's preferred solution was summed up in a letter to BCAP earlier on this year in which we recommended that the television advertising Code should include the following rule:

Advertisements may include purely factual statements of nutritional content but must not otherwise imply that an alcoholic drink has any suitability as part of an exercise, fitness or weight control regime.

10. Such a rule would allow the claims 'low-calorie' and 'low carbohydrate' but would disallow alcohol advertisers from going any further and advertising their products on a slimming platform. TPG remains of the view that the above rule is appropriate.
11. If, however, BCAP is concerned that the above rule would be insufficient to prevent alcohol being advertised on a slimming platform, it could be strengthened by the additional sentence:

The statements of nutritional content must not be the dominant theme of the advertisement.

12. This would be similar to the way in which both our Code of Practice and the CAP Code deal with the subject of alcoholic strength. The codes allow the alcoholic strength of a drink to be communicated (i.e. allow the consumer to make an informed choice) but disallow this from being the dominant theme of packaging or advertising (i.e. prevent the drink from being marketed on an irresponsible platform). We consider that this is preferable to the more restrictive and prescriptive solution being put forward by BCAP.
13. If, despite our concerns, BCAP decides to impose its proposed rule, we suggest that thought should be given to whether the number of calories (and carbohydrates) should be stated per unit of alcohol, or whether it would be better to state the number of calories, carbohydrates and units of alcohol per 100ml or typical serving. Under the BCAP proposal, the consumer may be informed that a product contains, for example, 70 calories per unit of alcohol but will not necessarily know either how many units or calories are in the overall product. If the figures are given per volume of product (either per 100ml or per typical serving), it will allow

them to calculate their actual intake of calories and will also allow the relationship between calories and alcoholic strength to be revealed.

June 2005