

ASA submission to The Portman Group Code of Practice Review

1. Background and Introduction

- 1.1. This submission is provided by the Advertising Standards Authority (ASA), the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) – the ‘ASA system.’
- 1.2. The ASA is the UK’s independent advertising regulator. We have been administering the non-broadcast Advertising Code (written and maintained by CAP) for 56 years and the broadcast Advertising Code (written and maintained by BCAP) for 14, with our remit further extended in 2011 to include companies’ advertising claims on their own websites and in social media spaces under their control.
- 1.3. We are responsible for ensuring that advertising is legal, decent, honest and truthful and our work includes undertaking proactive projects and acting on complaints to take action against misleading, harmful or offensive advertisements. We are committed to evidence-based regulation and we continually review new evidence to ensure the rules remain fit-for-purpose.
- 1.4. In addition to investigating ads, we also provide a wealth of training and advice services (most of which are free) for advertisers, agencies and media to help them understand their responsibilities under the Codes and to ensure that fewer problem ads appear in the first place. CAP and BCAP provided over 389,000 pieces of advice and training in 2017.
- 1.5. The ASA is providing this written submission in response to The Portman Group’s review of its Code of Practice

1. Do you agree that the Code should be amended to prevent alcohol being offered on the basis that it can change mood or behaviour?

1.1 Yes

2. Do you agree with the proposed drafting of the Code rule?

2.1 Yes. This drafting provides consistency with the CAP Codes which is helpful for alcohol producers and advertisers.

3. Do you agree that it is important to have a unit-based definition for immoderate consumption?

3.1 Yes. We agree it is important for The Portman Group to have a practicable definition in order to enforce aspects of rule 3.2 (f) and prevent irresponsible non-resealable, single-serve packaging.

3.2 While the challenges faced by the ASA differ from those that fall within The Portman Group’s remit on this issue, it does regulate to prevent ads from encouraging excessive or unwise drinking styles and has recently ruled on a number of promotional offers for ‘unlimited’ or ‘bottomless’ alcohol by bars, restaurants and clubs.¹

¹ Rulings to illustrate ASA position on ads that encourage irresponsible, unwise or excessive drinking:

<https://www.asa.org.uk/rulings/prezzo-ltd-a17-382047.html>

3.3 These rulings demonstrate that we will evaluate a variety of factors when assessing complaints, and will look at the overall context and content of an ad to judge whether it encourages irresponsible drinking. Our position indicates that these offers might be considered to encourage excessive or unwise drinking styles if they emphasise a particular celebratory occasion e.g. payday or Christmas and/or if they use language or images associated with inebriation.

3.4 We will also consider how different elements of this kind of promotional offer interact with each other to create an overall message. Our [Epic Pub](#) ruling included a calculation of the number of units available to consumers as part of a promotional offer and noted that the amount of alcohol on offer was approximately 12 units per person. While the UK Chief Medical Officers' (CMO) did not identify a threshold for daily consumption, it recommended that it was safest for men and women not to drink regularly more than 14 units per week and it was best to spread this evenly over three days or more. We also noted that the Office of National Statistics (ONS) defined binge drinking as having over eight units in a single session for men and over six units in a single session for women. Taking these factors into account, we ruled against the promotion.

3.5 See also, CAP guidance on [excessive or unwise consumption of alcohol](#)

4. Do you agree there is enough evidence, as set out in the section above, (for evidence see consultation document pages 12-13) to introduce a definition of immoderate consumption based on a daily threshold of 4 units?

4.1 Yes. As set out above, the issue can be dealt with on a case-by-case basis by us according to the overall presentation of the ad, however we agree that it is important for The Portman Group to have a definition given its different regulatory remit and that the evidence base suggests a 4 units daily threshold is appropriate.

5. Do you agree that the Code should be amended to prevent any associations with illegal behaviour?

5.1 Yes. The CAP and BCAP Codes both contain similar rules based on the same policy set out in the consultation document. (CAP rules 1.10 and 1.10.1 and BCAP rule 1.3)

6. Do you agree with the proposed drafting of the Code rule?

6.1 Yes

7. Should the Code be amended to offer protection to vulnerable individuals?

7.1 Yes. This provides consistency with the CAP Code which is helpful for alcohol producers and advertisers.

<https://www.asa.org.uk/rulings/suede-bar---nightclub-a17-409116.html>

<https://www.asa.org.uk/rulings/magaluf-events-a18-411042.html>

<https://www.asa.org.uk/rulings/barhopping-uk-a16-353962.html>

<https://www.asa.org.uk/rulings/epic-pub-company-ltd-a17-400670.html>

8. If so, do you agree this should be an over-arching principle of the Code, and as drafted?

8.1 Yes. This approach and drafting provides consistency with the CAP Code which is helpful for alcohol producers and advertisers

8.2 As noted in the consultation, there is not a single definition of vulnerability but we consider it is appropriate for a regulator to take an evidence-based approach to prevent vulnerable groups or individuals from being exploited.

9. Do you agree that the Code should be amended to protect individuals and/or groups from serious or widespread offence?

9.1 Yes. This approach provides consistency with the CAP Code which is helpful for alcohol producers and advertisers

9.2 The ASA report '[Depictions, Perceptions and Harm](#)' published in 2017 identifies that some portrayals of gender stereotypes in ads have the potential to cause harm in addition to offence. CAP and BCAP are currently consulting on new rules and detailed guidance to reflect the findings of this report.

9.3 It might be helpful for The Portman Group to clarify in guidance what is meant by "take into account the type of offence (personal or on behalf of others)" to understand how the rule will be applied and enforced in practice.

10. Do you agree with the proposed wording of the new rule?

10.1 Yes. The proposed drafting of the Code rule is consistent with the existing CAP rule which provides helpful consistency for alcohol producers and advertisers.

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