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David Poley  
Chief Executive  
The Portman Group  
7-10 Chandos Street  
London  
W1G 9DQ

11 January 2007

Dear Mr Poley,

## **ASA RESPONSE TO THE THIRD REVIEW OF THE PORTMAN GROUP'S CODE OF PRACTICE ON THE NAMING, PACKAGING AND PROMOTION OF ALCOHOLIC DRINKS**

### **1. INTRODUCTION**

- 1.1 The Advertising Standards Authority (ASA) is the UK self-regulatory body for ensuring that all ads, wherever they appear, are legal, decent, honest and truthful.
- 1.2 The ASA is responsible for policing three advertising codes. These are owned by the Committee of Advertising Practice (CAP), which owns and updates the British Code of Advertising, Sales Promotion and Direct Marketing (the CAP Code), and the Broadcast Committee of Advertising Practice (BCAP) which owns and updates the TV and Radio Advertising Codes (the BCAP Codes)<sup>1</sup>.
- 1.3 Further information about the ASA, CAP and BCAP can be found at [www.asa.org.uk](http://www.asa.org.uk) and [www.cap.org.uk](http://www.cap.org.uk).
- 1.4 The ASA is grateful for the opportunity to respond this consultation.
- 1.5 The ASA notes that the remit of The Portman Group's (TPG) Code specifically excludes any advertisement that falls within the remit of the CAP and BCAP Codes.
- 1.6 This response offers no views on the level of regulation that TPG seeks to impose via its Code, but instead seeks to clarify the regulatory role of the ASA, CAP and BCAP.

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<sup>1</sup> The three Advertising Codes can be accessed at [www.bcap.org.uk/cap/codes](http://www.bcap.org.uk/cap/codes). A copy of alcohol rules from all three advertising codes is included in the annex to this response.

## **2. THE ASA 'ONE-STOP SHOP'**

2.1 Since the publication of the third edition of TPG's Code, the regulatory regime for advertising has been altered considerably.

2.2 The ASA has successfully administered the self-regulation of non-broadcast advertising for more than 40 years, in recognition of that success in November 2004 the ASA and BCAP were entrusted with the responsibility for regulating broadcast (TV and radio) advertising by the Office of Communications (Ofcom).

1.7 For the first time in the UK this created a 'one-stop shop' for advertising complaints.

1.8 The ASA system for non-broadcast advertising remains self-regulatory. However, the broadcast advertising regime is co-regulatory: Ofcom acts as a statutory backstop to the system.

1.10 The changes to the advertising regulatory system need to be reflected in the new TPG Code. Section 5 of this response makes suggested amendments to specific sections of TPG's Code for your consideration.

## **3. THE NEW CAP AND BCAP CODE RULES ON ALCOHOL**

3.1 Since October 2005, new rules governing alcohol advertising on television and in the non-broadcast media have been in force in the UK. The existing alcohol rules in the Radio Code were considered to be appropriate and have not been changed.

3.2 The key changes to the TV Code include:

- alcohol commercials likely to have "strong appeal to people under 18" are not allowed. Previously the restriction was only on material with "particular" appeal;
- the rules on sexual content or links were strengthened;
- the rules about linking daring, aggressive, irresponsible or anti-social behaviour to drinking or to an alcohol brand were strengthened;
- alcoholic drinks must be shown being handled and served responsibly.

3.3 The key changes to the CAP Code include:

- alcohol must not be shown being handled and or served irresponsibly;

- people shown drinking should not behave in an adolescent or juvenile way and alcohol advertisements should not reflect the culture of people under 18;
- links must not be made between alcohol and seduction, sexual activity or sexual success.

3.4 The latest versions of the TV, radio and non-broadcast alcohol advertising rules are enclosed in the Annex to this response.

3.5 The ASA has no recommendations or comments to make on changes to TPG's Code.

3.6 However, Section 1.3 of TPG's Code states that the Code is consistent with the broadcast and non-broadcast Advertising Codes. Although, there does not currently appear to be any notable inconsistency with the CAP and BCAP Codes, it would be sensible for TPG to cross-check any changes to its Code with the new ad rules to ensure that TPG's Code is not more lenient than the CAP and BCAP Codes.

#### **4. QUESTION RAISED IN THE CONSULTATION DOCUMENT**

##### **4.1 'Sexual Success'**

When considering whether its current Code rule concerning sexual success was appropriate, TPG might wish to take into account that CAP and BCAP currently have no plans to relax the rules on sexual success in the Advertising Codes.

#### **5. SUGGESTED CHANGES TO THE THIRD EDITION**

5.1 **Section 1.3** describes the previous regulatory regime for advertising and should be amended to reflect the current position. Suggested amendment:

"The Code complements and is consistent with the Broadcast Committee of Advertising Practice (BCAP) TV Advertising Standards Code, the BCAP Radio Advertising Standards Code and the British Code of Advertising, Sales Promotion and Direct Marketing (the CAP Code). These Codes are administered by the Advertising Standards Authority (ASA)<sup>1</sup>. All advertisements and sales promotions should comply fully with the requirements of those Codes. TV commercials are cleared by the Broadcast Advertising Clearance Centre (BACC) and radio commercials by the Radio Advertising Clearance Centre (RACC).

<sup>1</sup>Ofcom contracted-out day-to-day responsibility for broadcast (TV and radio) advertising to the ASA and BCAP in November 2004. Ofcom acts as a backstop regulator to the ASA for TV and radio advertising.”

5.2 **Section 2.5** refers to the old advertising regulatory regime. Suggested amendment:

“...For the avoidance of doubt, this Code does not apply to any broadcast or non-broadcast advertising within the scope of the CAP or BCAP Codes. The Code Secretariat may refer a complaint to the ASA if it considers that the complaint is better dealt with under the CAP or BCAP Codes.”

5.3 **Annex 1** currently contains a definition of advertorials that implies that ASA decides its own remit; remit is defined by the CAP Code. Therefore, it would be clearer if this section stated: “...NB. if its content is within the control of the producer or UK distributor, it is regarded as advertising and within the remit of *the CAP Code, administered by the Advertising Standards Authority.*”

#### 5.4 **Useful Contacts Section**

5.4.1 The ASA moved offices in November 2004, therefore the contact details listed are incorrect. Furthermore, to reflect the change in the regulatory regime, the contact details for the ITC and the Radio Authority should be deleted and the description of the ASA amended to reflect its new remit.

“Advertising Standards Authority  
Mid City Place  
71 High Holborn  
London  
WC1V 6QT  
Tel: 020 7492 2222  
[www.asa.org.uk](http://www.asa.org.uk)

The ASA deals with complaints about advertisements in both broadcast and non-broadcast media.”

5.4.2 Like The Portman Group, the advertising self-regulatory and co-regulatory system places a strong emphasis on encouraging companies to seek pre-publication advice. Therefore, it would be very helpful (to advertisers and agencies) if TPG could include in this section contact details for the various

pre-publication advice services, along with a weblink to the Advertising Codes.

“CAP Copy Advice  
Tel: 020 7492 2100  
Fax: 020 7404 3404  
Email: [copyadvice@cap.org.uk](mailto:copyadvice@cap.org.uk)

Broadcast Advertising Clearance Centre (BACC)  
4 Roger Street  
2nd Floor  
London  
WC1N 2JX  
Tel: 020 7339 4700  
[www.bacc.org.uk](http://www.bacc.org.uk)

Radio Advertising Clearance Centre (RACC)  
The RadioCentre  
77 Shaftesbury Avenue  
London  
W1D 5DU  
Tel: 020 7306 2620  
[www.racc.co.uk](http://www.racc.co.uk)

The Advertising Codes can be accessed at [www.cap.org.uk/cap/codes](http://www.cap.org.uk/cap/codes).”

Once again, thank you for the opportunity to respond to this consultation. If you have any questions about this submission, then please do not hesitate to contact me.

Yours sincerely,



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## Annex

### CAP and BCAP ALCOHOL ADVERTISING CODE RULES

#### **British Code of Advertising, Sales Promotion and Direct Marketing (Non-broadcast advertisements)**

- 56.1 For the purposes of the Code, alcoholic drinks are those that exceed 1.2% alcohol by volume.
- 56.2 Marketing communications must contain nothing that is likely to lead people to adopt styles of drinking that are unwise. Alcohol must not be handled or served irresponsibly. The consumption of alcohol may be portrayed as sociable and thirst-quenching. Marketing communications may be humorous but must nevertheless conform with the intention of the rules.
- 56.3
- a) As is implied by clause 2.8, the spirit as well as the letter of the rules in this section apply whether or not a product is shown or referred to or seen being consumed.
  - b) The rules are not intended to inhibit advertising on alcohol-related health or safety themes that is responsible and is not likely to promote a brand of alcohol.
- 56.4 Marketing communications should be socially responsible and should neither encourage excessive drinking nor suggest that drinking can overcome boredom, loneliness or other problems. They should not suggest that alcohol might be indispensable. Care should be taken not to exploit the young, the immature or those who are mentally or socially vulnerable.
- 56.5 Marketing communications should not be directed at people under 18 through the selection of media, style of presentation, content or context in which they appear. No medium should be used to advertise alcoholic drinks if more than 25% of its audience is under 18 years of age.
- 56.6 People shown drinking or playing a significant role should neither be nor look under 25 and should not be shown behaving in an adolescent or juvenile way. Younger people may be shown in marketing communications, for example in the context of family celebrations, but

should be obviously not drinking.

- 56.7 Marketing communications should not be associated with people under 18 or reflect their culture. They should not feature or portray real or fictitious characters who are likely to appeal particularly to people under 18 in a way that might encourage them to drink.
- 56.8 Marketing communications should not suggest that any alcoholic drink has therapeutic qualities (for example, stimulant or sedative qualities) or can change moods or enhance confidence, mental or physical capabilities or performance, popularity or sporting achievements. They should not link alcoholic drinks to illicit drugs.
- 56.9 Marketing communications must neither link alcohol with seduction, sexual activity or sexual success nor imply that alcohol can enhance attractiveness, masculinity or femininity.
- 56.10 Marketing communications may give factual information about:
- a) product contents, including comparisons, but must not make any other type of health, fitness or weight control claim
  - b) the alcoholic strength of a drink or make factual strength comparisons with other products but must not otherwise suggest that a drink may be preferred because of its high alcohol content or intoxicating effect. Drinks may be presented as preferable because of low or lower strength.
- 56.11 Marketing communications should not suggest that drinking alcohol is a reason for the success of any personal relationship or social event. A brand preference may be promoted as a mark of, for example, the drinker's good taste and discernment.
- 56.12 Drinking alcohol should not be portrayed as a challenge, especially to the young. Marketing communications should neither show, imply or refer to aggression or unruly, irresponsible or anti-social behaviour nor link alcohol with brave, tough or daring people or behaviour.
- 56.13 Particular care should be taken to ensure that marketing communications for sales promotions requiring multiple purchases do

not encourage excessive consumption.

56.14 Marketing communications should not depict activities or locations in which drinking alcohol would be unsafe or unwise. In particular, marketing communications should not associate the consumption of alcohol with an occupation that requires concentration to be done safely, for example, operating machinery, driving or activity relating to water or heights. Alcohol should not normally be shown in a work environment.

56.15 **Low alcohol drinks**

Low alcohol drinks are those that contain between 0.5% - 1.2% alcohol by volume. Marketers should ensure that low alcohol drinks are not promoted in a way that encourages their inappropriate consumption and should not depict activities that require complete sobriety.

## **The BCAP TV Advertising Standards Code**

### **11.8 Alcoholic Drinks**

The spirit as well as the letter of the rules in this section apply whether or not a product is shown, referred to or seen being consumed. (See also rule 1.2).

Rule 11.8.1 applies to all advertising. 11.8.2 applies only to advertising for alcoholic drinks.

Where soft drinks are promoted as mixers, rules 11.8.1 and 11.8.2 apply in full.

#### **11.8.1 – Rules which apply to all advertising.**

##### **11.8.1(a)**

(1) Advertisements must not suggest that alcohol can contribute to an individual's popularity or confidence, or that refusal is a sign of weakness. Nor may they suggest that alcohol can enhance personal qualities.

(2) Advertisements must not suggest that the success of a social occasion depends on the presence or consumption of alcohol.

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

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

##### **11.8.1(c)**

Advertisements must not link alcohol with sexual activity or success or imply that alcohol can enhance attractiveness.

##### **11.8.1 (d)**

Advertisements must not suggest that regular solitary drinking is acceptable or that drinking can overcome problems.

##### **11.8.1(e)**

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.

### **11.8.1 (f)**

Advertisements must not suggest that a drink is to be preferred because of its alcohol content nor place undue emphasis on alcoholic strength. (This does not apply to low alcohol drinks. See 11.8.3).

### **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.

### **11.8.1(h)**

Advertisements must not link drinking with the use of potentially dangerous machinery, with behaviour which would be dangerous after consuming alcohol (such as swimming) or with driving.

## **11.8.2 – Additional rules for alcohol advertisements.**

### **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.

(2) Children must not be seen or heard, and no-one who is, or appears to be, under 25 years old may play a significant role in advertisements for alcoholic drinks. No-one may behave in an adolescent or juvenile way.

Notes: (1) See the exception in 11.8.2 (a)(3)

(2) In advertising for low alcohol drinks, anyone associated with drinking must be, and appear to be, at least 18 years old.

(3) There is an exception to 11.8.2 (a)(2) for advertisements in which families are socialising responsibly. In these circumstances, children may be included but they, and anyone who is, or appears to be, under 25 must only have an incidental role. Nevertheless, it must be explicitly clear that anyone who appears to be under the age of 18 is not drinking alcohol.

**11.8.2(b)**

Advertisements for alcoholic drinks must not show, imply or refer to daring, toughness, aggression or unruly, irresponsible or anti-social behaviour.

**11.8.2(c)**

Advertisements for alcoholic drinks must not appear to encourage irresponsible consumption.

**11.8.2(d)**

Advertisements for alcoholic drinks must not normally show alcohol being drunk in a working environment.

**11.8.2(e)**

Alcoholic drinks must not be advertised in a context of sexual activity or seduction but may include romance and flirtation subject to rule 11.8.2 (a) (Youth appeal).

**11.8.2(f)**

Advertisements for alcoholic drinks may contain factual statements about product contents, including comparisons, but must not make any other type of health, fitness, or weight control claim.

**11.8.3 – Low alcohol drinks.**

Exceptions to 11.8.1 and 11.8.2 apply to advertisements for drinks containing 1.2% alcohol by volume or less so long as the low alcohol content is made clear. (The exceptions are not granted if the advertising might promote a product of higher alcoholic strength or might conflict with the spirit of the rules.)

The exceptions are:

(a) 11.8.2 (a)(2): Anyone associated with drinking must be, and appear to be, at least 18 years old.

(b) The advertisements need not comply with:

1.8.1 (f) 11.8.1 (g)(1) or (2)

## **The BCAP Radio Advertising Standards Code**

### **11 Alcoholic Drinks**

**Central copy clearance is required. Alcoholic drink advertisements must comply with the minimum standards set out here. These Rules also apply to low alcoholic drinks, except where otherwise stated.**

These Rules apply principally to advertisements for alcoholic drinks and low alcoholic drinks. However, incidental portrayals of alcohol consumption in advertisements for other products and services must always be carefully considered to ensure that they do not contradict the spirit of these Rules.

#### **11.1 Scheduling of Advertisements for Alcohol**

Advertisements for alcoholic drinks must not be broadcast in or around religious programming or programming aimed particularly at those aged below 18 years (see also Rule 11.2, below).

#### **11.2 Protection of Younger Listeners**

- a) Alcoholic drink advertising must not be aimed at those aged below 18 years or use treatments likely to be of particular appeal to them;
- b) Advertisements for alcoholic drinks must not include any personality whose example is likely to be followed by those aged below 18 years, or who has a particular appeal to those aged below 18 years;
- c) Advertisements for alcoholic drinks must only use voiceovers of those who are, and sound as if they are, at least 25 years of age;
- d) Advertisements for drinks containing less than 1.2% alcohol by volume must only use voiceovers of those who are, and sound as if they are, at least 18 years of age;
- e) Children's voices must not be heard in advertisements for alcoholic drinks.

#### **11.3 Unacceptable Treatments**

- a) Advertisements must not imply that drinking is essential to social success or acceptance, or that refusal is a sign of weakness. Nor must they imply that the

successful outcome of a social occasion is dependent on the consumption of alcohol;

b) Advertisements must neither claim nor suggest that any drink can contribute towards sexual success or that drinking can enhance sexual attractiveness;

c) Advertisements must not suggest that regular solitary drinking is acceptable or that drinking is a means of resolving personal problems. Nor must they imply that drinking is an essential part of daily routine or can bring about a change in mood;

d) Advertisements must not suggest or imply that drinking is an essential attribute of gender. References to daring, toughness or bravado in association with drinking are not acceptable;

e) Alcoholic drinks must not be advertised in a context of aggressive, dangerous, anti-social or irresponsible behaviour;

f) Advertisements must not foster, depict or imply immoderate or irresponsible drinking or drinking at speed. References to buying rounds of drinks are unacceptable;

g) Advertisements must not offer alcohol as therapeutic, or as a stimulant, sedative, tranquilliser or source of nourishment/goodness, or link the product to illicit drugs. While advertisements may refer to refreshment after physical performance, they must not give any impression that performance can be improved by drink;

h) Advertisements must not suggest that a drink is preferable because of its higher alcohol content or intoxicating effect and must not place undue emphasis on alcoholic strength.

### **11.3.1 Health, Diet and Nutritional Claims**

(See the [BCAP Help Note on Health, Diet and Nutritional Claims in Radio Alcohol Advertisements](#))

Advertisements for alcoholic drinks may contain factual statements about product contents, including comparisons, but must not make any other type of health, fitness or weight control claim.

## **11.4 Safety**

a) Nothing may link drinking with driving or with the use of potentially dangerous machinery, except in drunk driving messages (see also Section 3, Rule 18 Motor Vehicles);

b) Nothing may link alcohol with a work or other unsuitable environment.

## **11.5 Sales Promotions**

Advertisements for alcoholic drinks must not publicise sales promotions (including competitions) that appear to encourage excessive consumption.

## **11.6 Cut-price Offers**

References to 'cut-price/happy hour drinks', 'buy two and get one free', 'money-off coupons' and the like must be considered with caution. References which encourage excessive or immoderate consumption are unacceptable. However, off-licences and alcoholic drink retailers may advertise price reductions for their stock.

## **11.7 Low Alcohol Drinks**

Provided they comply generally with the Code and reflect responsible consumption and behaviour, advertisements for drinks containing less than 1.2% alcohol by volume will not normally be subject to Rules 11.3f), 11.4b) and 11.5. However, if a significant purpose of an advertisement for a low alcoholic drink could be considered to promote a brand of stronger alcoholic drink, or if the drink's low alcohol content is not stated in the advertisement, all the above Rules are applicable.