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Advertising Standards Authority submission on the consultation for a bill to bring forward measures to help change the culture in relation to alcohol in Scotland

1. Introduction and Executive Summary

- 1.1 This submission is provided on behalf of the Advertising Standards Authority (ASA). The ASA is the UK's independent regulator for ensuring that advertising in all media is legal, decent, honest and truthful, for the benefit of consumers, business and society.
- 1.2 The ASA is committed to upholding high standards in advertising. We recognise the important role that advertising regulation has to play in ensuring that alcohol advertising is responsible.
- 1.3 This submission addresses consultation questions 4 and 5, regarding proposals for further non-broadcast advertising restrictions.
- 1.4 We do not believe that the proposals for a complete ban on all advertising of alcoholic drinks in public places (e.g. on billboards, hoardings, bus-shelters, buses and other vehicles) is proportionate or necessary, in light of the best available evidence of the effect of alcohol advertising on behaviour, and in light of the strict alcohol advertising rules administered by the ASA.
- 1.5 This submission provides:
 - An overview of the UK advertising regulatory system
 - A response to consultation questions 4 & 5
 - An outline of the alcohol rules and the evidence on which they are based
 - A summary of recent developments in alcohol advertising regulation



Legal, decent, honest and truthful

Chairman Rt Hon Lord Smith of Finsbury **Chief Executive** Guy Parker
ASA Council (Non-broadcast) Louisa Bolch, Alan Bookbinder, Sally Cartwright, Rachel Childs, Roisin Donnelly, David Harker, John Mayhead, Andrew Motion, Martin Narey, Hamish Pringle, Ruth Sawtell and Anthony Wilkes

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2. Overview of the ASA system

- 2.1 The Advertising Codes are written and maintained by two industry committees, the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP)¹. Together, these Codes cover advertising across all media.
- 2.2 The ASA is the independent body responsible for administering the Codes. The system is entirely funded by industry, through an arms-length levy of 0.1% on display advertising space and airtime and 0.2% on Royal Mail Mailsort contracts². This ensures a proper separation between the system's regulatory functions and its industry funders.
- 2.3 We take a 360° approach to regulation. In addition to handling complaints, the ASA pro-actively monitors ads across both national and local media to make sure standards are being maintained.
- 2.4 CAP, recognising that prevention is better than cure, provides a wealth of training and advice services³ for advertisers (most of which are free) to help them understand their responsibilities under the Codes, meaning fewer problem ads appear in the first place. CAP gave advice on over 97,000 occasions in 2011.
- 2.5 The ASA is 50 years old this year, and is widely viewed as an example of a best-practice self-regulator:

*"The Government recognises the ASA as a highly successful model of both self and co-regulation; and that the UK's advertising regulatory system is well respected and seen as a gold standard worldwide."*⁴

- 2.6 The ASA is an integral part of the alcohol regulatory system. Our role is distinct from that of The Portman Group⁵, which regulates the naming, packaging and promotion of alcoholic drinks, as well as drinks sponsorship.

More comprehensive information about the ASA system can be found on our website at www.asa.org.uk.

2.7 How the Advertising Codes are developed

- 2.7.1 CAP and BCAP work to ensure the Codes remain relevant and provide effective protection for consumers and society. They seek to ensure that the rules are

¹ www.cap.org.uk

² The levies are collected by two arms-length funding bodies, the Advertising Standards Board of Finance (Asbof) and the Broadcast Advertising Standards Board of Finance (Basbof).

³ <http://www.cap.org.uk/CAPServices.aspx>

⁴ Rt Hon Jeremy Hunt MP, Secretary of State for Culture, Media and Sport, in a letter to Rt Hon Chris Smith of Finsbury, ASA Chairman, 2 March 2012

⁵ <http://www.portmangroup.org.uk/?pid=1&level=1>

responsive to changes in society and technology, reflective of the best available evidence, and consistent with the law.

- 2.7.2 The rules are developed in line with Government's better regulation principles⁶. These require that regulation is transparent, accountable, proportionate, consistent and targeted. The Codes are designed to protect those whose circumstances put them in need of special protection, while retaining an environment in which responsible advertising can operate – to the benefit of the wider economy.
- 2.7.3 Any evidence that suggests a need to amend the Codes will be carefully assessed by CAP and BCAP, who are committed to evidence-based policy making.
- 2.7.4 CAP and BCAP periodically review the Codes, in their entirety, to ensure they remain fit for purpose. The last full Code Review was undertaken in 2009. At this time, the alcohol advertising rules were reviewed and subject to a full public consultation in light of the latest evidence (see section 5).

3. A response to consultation questions 4 & 5

3.1 The consultation document asks:

Q4) Do you believe that the proposed restrictions on advertising are proportionate or necessary?

Q5) Are there further measures you feel should be introduced?

- 3.2 Based on the most up to date evidence, we believe the proposed restrictions on alcohol advertising are disproportionate and unnecessary. The Advertising Codes, administered by the ASA, contain strict rules to ensure alcohol advertising is responsible. These rules are consistent with better regulation principles, and govern both the content and placement of alcohol advertising.
- 3.3 If the Labour Party in Scotland has concerns about the strength of the advertising rules in place, we believe the self-regulatory system is best placed to assess the evidence and if necessary, take action.

4. What are the current rules surrounding alcohol advertising?

4.1 The alcohol rules

- 4.1.1 The ASA wholly supports the social imperative of ensuring that alcohol advertising is responsible, and above all that children and the vulnerable are fully protected. To that end, each of the Codes contain a specific set of alcohol rules that sit on top of the general Code requirements that ads must not mislead, harm or offend, and must be prepared with a sense of social responsibility.

⁶ <http://www.bis.gov.uk/policies/bre/principles-of-regulation>

4.1.2 The alcohol rules are comprehensive, proportionate, and based upon detailed assessments of the best available evidence of the effect of alcohol advertising on drinking behaviour. The alcohol rules were significantly strengthened in 2005 in response to concerns about underage drinking and anti-social behaviour.

4.1.3 In summary, the rules state that alcohol ads must not:

- link alcohol with daring, antisocial, aggressive or irresponsible behaviour;
- link alcohol with seduction, sex or social success;
- show alcohol being handled or served irresponsibly; or
- show people drinking or behaving in an adolescent or juvenile way or reflecting the culture of people under 18 years of age.

4.1.4 In non-broadcast media (for example in outdoor space and in the cinema) alcoholic drinks cannot be advertised if more than 25% of the audience is under 18 years of age. On television, alcohol ads cannot be shown around programmes of 'particular appeal' to under 18s (see 4.3.1).

4.1.5 The content and placement rules should be viewed alongside one another. The content rules ensure that, where children do see alcohol ads, those ads do not appeal to them.

4.2 Cinema advertising

4.2.1 Alcohol advertising in cinemas is subject to the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (CAP Code). As previously outlined, the rules prohibit alcohol ads from being shown if more than 25% of the audience is under the age of 18. Where ads are permitted, they are subject to the strict content rules, which mean they cannot appeal to children or otherwise condone irresponsible drinking behaviours.

4.2.2 Additionally for cinema ads, since August 2008 films that are based on superhero/comic book characters, or considered to be 'gross-out' comedies, appear on the Cinema Advertising Association's (CAA) proscribed list, which means that those films will not carry alcohol advertising regardless of the make-up of the audience of the film. The CAA is a member of CAP and acts to pre-vet all ads which appear in cinemas in order to ensure compliance with the Code.

4.2.3 Moreover, there exists a self-imposed rule that no cinema advertising reel should carry more than 40% of alcohol commercials in terms of the duration of that entire advertising reel, and cinemas endeavour to ensure that alcohol commercials do not run sequentially.

4.2.4 A complete ban on alcohol advertising appearing before all but 18-rated films would not be consistent with better regulation principles that require that advertising restrictions are targeted, proportionate and evidence-based. Film ratings are not

necessarily indicative of the target audience for a film and are an inappropriate proxy for regulating advertising. For example, it is often the case that art house or documentary films, for example *The Artist*, whose audience is likely to be exclusively over 18, carry a U or PG rating because they do not contain unsuitable content. Indeed, alcohol advertisements themselves are generally rated 'U'.

4.3 TV scheduling rules for alcohol

4.3.1 While the consultation proposals do not touch upon broadcast advertising, it is worth pointing out that alcohol ads are banned from appearing in and around programmes which are made for, or likely to appeal to those under the age of 18 and are subject to strict rules about their content.

4.4 Complaints and Compliance

4.4.1 The ASA actively checks ads for compliance with the rules. Our most recent survey of alcohol ads in 2009⁷ revealed a compliance rate of 99.7%⁸. This is generally in line with previous surveys, which show a high level of compliance across this sector.

4.4.2 Advertisers cannot 'opt out' of the ASA system. It is not voluntary. Compliance with both the rules and ASA decisions is mandatory.

4.4.3 The ASA receives relatively few complaints about alcohol advertising. In 2011 the ASA received 336 complaints (out of a total of 31,458) about 179 alcohol ads (out of a total of 22,397), so alcohol ads comprised just 0.8% of all those complained about.

4.4.4 When advertisers do get it wrong, they face both financial loss from having an ad campaign pulled, and damage to their reputation through the publication of an upheld ASA adjudication.

4.4.5 In the rare event of an advertiser refusing to amend or withdraw their ad following an ASA adjudication, or in the event of a particularly serious breach, the system has a range of sanctions available to it to enforce its decisions, details of which can be found at www.asa.org.uk.

4.5 Examples of ASA action

4.5.1 Below are links to recent ASA alcohol adjudications, full details of which are available on our website⁹.

⁷ [Alcohol Advertising Survey 2009](#)

⁸ The result was an improvement on the compliance rate of 98.9% from the 2008 survey and 97.4% from the 2007 survey.

⁹ <http://www.asa.org.uk/ASA-action/Adjudications.aspx>

- [Cell Drinks](#) (Aug 2011) – In a social media first, the ASA decided that these YouTube ads, featuring a free-runner jumping around and over buildings, would appeal particularly to young people and that the ad was in breach of the Code.
- [Aston Manor Brewery Company Ltd](#) (Jun 2012) - The ASA considered that Youtube videos, which were incorporated into the company's marketing strategy, linked alcohol with juvenile behaviour and were therefore in breach of the Code.

5. The evidence base

- 5.1 The UK's relationship with alcohol is widely acknowledged to stem from a complex range of factors including, but not limited to, socio-economic status, family influences and peer pressure.
- 5.2 In March 2004 the Government's Alcohol Harm Reduction Strategy concluded, "*There is no clear case of the effect of advertising on behaviour*". However, the strategy did highlight a possible link between young people's awareness and appreciation of alcohol advertising, and their propensity to drink.
- 5.3 The Strategy recommended that Ofcom (who was at the time directly responsible for TV advertising regulation) should oversee a review of the TV alcohol advertising rules. In parallel with Ofcom's consultation, CAP reviewed its own non-broadcast alcohol rules.
- 5.4 Consequently, in 2005 the broadcast and non-broadcast alcohol advertising rules were significantly tightened, in recognition of the evidence of a possible link between young people's awareness of alcohol advertising and their attitudes to drinking.
- 5.5 The alcohol rules were reviewed again in 2009, taking account of the latest Department of Health commissioned evidence (the SchARR Review) and subject to a full public consultation. In so far as the SchARR Review related to advertisements, it did not offer persuasive evidence to support proposals to restrict alcohol advertising further. Any robust evidence that it contained – and other evidence we have seen published since that date – simply endorses the existing evidence base, but does not point to a stronger link to that which had been identified in 2004¹⁰.
- 5.6 Other studies considered by CAP and BCAP as part of the 2009 Code Review, including one by the European Alcohol & Health Forum's Science Group (SGEAHF)¹¹, had common methodological problems.

¹⁰ CAP and BCAP's assessments of the SchARR Review evidence are available on CAP's website: http://www.cap.org.uk/CAP-and-BCAP-Consultations/Closed-consultations/BCAP-Code-Review-consultation/~/_media/Files/CAP/New%20Codes%20Evaluation%20Tables/BCAP%20Evaluation%20Section%2019%20Alcohol.ashx

¹¹ http://www.tekry.fi/web/pdf/misc/Eptv_Scientific-opinion-on-marketing-communication.pdf

- 5.7 Most referred to evidence previously included in the ScHARR Review, rather than offering anything new. Sometimes such evidence cherry-picked those studies that supported a particular hypothesis, but ignored the wider balance of evidence. Many were conducted in the US where the regulatory environment for alcohol and advertising is very different from that in the UK. Not all of the studies reviewed looked at the relationship between advertising and consumption, but instead considered other types of influences on young people, such as film, music and videos.
- 5.8 CAP and BCAP's evidence-based approach requires them to look objectively at the balance of the evidence. None of these studies provided persuasive evidence that alcohol ads contribute to alcohol-related harms (beyond the possible link identified in 2004) or that further restrictions, on top of those already in place, would lead to a reduction in alcohol-related harm.
- 5.9 Further restrictions on alcohol ads must be proportionate and evidenced-based. If evidence is presented to CAP and BCAP that demonstrates a compelling case for a reconsideration of the rules, CAP and BCAP will act accordingly, as they have done consistently in the past.

6. Current/future activities

- 6.1 It is important to note that, whilst we believe the rules in the Codes are robust and proportionate, we are not complacent. Our online remit, which was extended to cover companies' marketing claims on their own websites in March 2011, is subject to a two-year review. The review will consider the applicability of the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing, including its alcohol rules, to online marketing communications, to ensure they are effective and provide adequate protection. The ASA is vigilant to the challenges of new media and ensuring that ads are responsible, no matter what media they appear in.
- 6.2 Separately, CAP is preparing to undertake a project researching young people's experience of advertising on social media. This research will help provide a clear understanding of the types of ads young people see on social networking sites, and will enable the ASA system to identify where and whether regulatory action is required.

7. Summary

- 7.1 The alcohol advertising rules administered by the ASA are comprehensive and robust. We do not believe that further restrictions on alcohol advertising are warranted.
- 7.2 Complaints by the public about alcohol advertising are few in number (despite high public awareness of the advertising regulator) and advertiser compliance with the rules is high.

7.3 The rules must remain evidence-based and proportionate. We are confident that the ASA system is best-placed for considering appropriate concerns and evidence about advertising and potential harm and CAP remains open to receiving and considering representations supported with appropriate evidence.

7.4 **Contact details**

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