

## CopyClear Footnotes

21 December 2015

### Introduction

The 7th Code of Standards for Advertising and Marketing Communications in Ireland is effective from March 1<sup>st</sup> 2016.

These Footnotes have been written to help CopyClear Managers, along with Advertisers and Agencies, understand the intent behind the new code and how the new code will be read and interpreted by the CopyClear Managers.

These Footnotes have been developed with the co-operation and approval of the owners of the code, the ASAI.

However, it should be noted that these Footnotes are not binding on the ASAI nor its Complaints Committee.

These Footnotes are designed to be complementary to existing statutory obligations and other voluntary codes of practice, for example, the BCI Code, the 'Drink Aware' codes and the Alcohol Marketing, Communications and Sponsorship Codes of Practice.

*Creative marketing communications consistently pose new scenarios and challenges to accepted norms. That is part of their function. For this reason the Footnotes are regularly updated to reflect the latest thinking of the Copy Clearance Managers when reviewing new challenges in the context of changing consumer attitudes. Any amendments to the Guidance Notes will be agreed with the ASAI and will be advised to users.*

### Section 9: ALCOHOLIC DRINKS

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The rules in this Section are designed to ensure that the content of alcohol advertising and promotion is consistent with the need for demonstrating responsibility and moderation in consumption, and that it does not encourage consumption by children.

The rules in this Section apply to marketing communications for alcoholic drinks and to marketing communications that feature, or refer to, alcoholic drinks.

Alcoholic drinks are defined as those that exceed 1.2% alcohol by volume. They include products that are classified as foodstuffs rather than drinks for the purposes of licensing or customs and excise legislation, or even if they appear to be gaseous, solid or heavily textured (or can be made to be, for example by freezing or shaking), rather than liquid.

Where stated, exceptions are made for low-alcohol drinks (those that contain 2.8% alcohol by volume or less). But, if a marketing communication for a low-alcohol drink could be considered to promote a stronger alcoholic drink, or if the drink's low alcohol content is not stated clearly in the marketing communications, all the rules in this Section apply.

If a soft drink is promoted as a mixer, the rules in this Section apply in full.

These rules are not intended to inhibit responsible marketing communications that are intended to counter problem drinking or inform consumers about alcohol related health or safety themes. Marketing communications of that type should not, however, be likely to promote an alcohol product or brand.

*This aspect of the code does not preclude brands from engaging in communications specifically created to promote responsible consumption.*

*Section 9 refers to marketing communications specifically for alcohol brands. If an alcoholic product is featured in a marketing communication for a non-alcohol brand – such as retail ads around Christmas dinners, price specific retail ads etc., but the alcohol brand featured is incidental to the communication and has no material impact on the behaviour of the protagonists, then a CopyClear approval code is not required.*

#### 9.1

Marketing communications for alcoholic drinks (i.e. those that exceed 1.2% alcohol by volume) should be socially responsible and should not exploit the young or the immature. They should neither encourage excessive drinking nor present abstinence or moderation in a negative way.

#### 9.2

Marketing communications which depict or refer to alcohol, or to a specific alcohol brand or company, may be considered under the rules of this Section, whether or not alcohol is the main product being marketed.

#### 9.3

Advertisers should be aware that there are other requirements that alcohol marketing communications should comply with and their attention is drawn to the list under **Other Requirements at 9.12**.

#### 9.4

Marketing communications for alcohol should include a responsibility message to drink alcohol responsibly.

## Social Dimension

9.5

Marketing communications may refer to the social dimension or refreshing attributes of a drink, but:

- (a) Should not state, depict or imply that the presence or consumption of alcohol can improve physical performance or personal qualities or capabilities.

*Marketing communications for alcohol brands cannot state, depict or imply any shift in behaviour, ability, demeanour or performance.*

*This 'shift' may not be in actual behaviour and can be implied in a number of different ways – through music, changes in atmosphere, environment, etc.*

*'Presence' in a communication for alcohol is assumed.*

- (b) Should not state, depict or imply that the presence or consumption of alcohol can contribute to social, sporting or business success or distinction or that those who do not drink are less likely to be acceptable or successful than those who do.

*Marketing communications can depict or suggest consumption of alcohol in a responsible manner.*

*However, if there is any suggestion than the presence or consumption of alcohol is likely to, or does positively impact, on a social event or on how a person is perceived, then CopyClear are likely to determine that the communication does not comply with the code.*

*While the Managers will take into consideration when the brand is introduced into the communication, the key consideration will be 'what is the likely take out?'*

*CopyClear Managers are likely to consider the following when determining the issue of social success:*

- Is there a change in behaviour? Does the character become more likable? Cooler? More attractive? Etc.*
- Is there a change in ambience?*
- Does the scenario become more congenial / cooler / more sophisticated etc.?*

*It is always useful for the Managers to understand the intent behind marketing communications, particularly with a new campaign launch. However, this is not how CopyClear Managers evaluate marketing communications. CopyClear Managers must ultimately consider the likely consumer take-out – what is the communication saying about the brand?*

*The likely consumer take-out is not always the intended consumer take-out.*

*See Guidance Note at 9.5. (a) above re “presence”.*

(c) Should not state, depict or suggest, by word or allusion that the presence or consumption of alcohol can contribute towards sexual success or make the drinker more attractive. Advertisers should take account of public sensitivities regarding coarseness and sexual innuendo in marketing communications for alcohol.

*This is not about prohibiting beauty, glamour or aspiration being featured. Neither is it about prohibiting ‘sexiness’ or flirtation. It is about precluding behaviours between individuals or groups that are influenced in parallel to the presence or consumption of alcohol. These behaviours are likely to include:*

- Flirtatious behaviour, innuendo, use of (body) language that is likely to be deemed suggestive*
- A change in behaviour, atmosphere, music, etc.*
- Environment / wardrobe / ambience & other surrounding aspects will be considered in evaluating whether sexual success is an issue.*

*It should be noted that sexual success is more likely to be deemed present when ‘opportunity’ beyond the particular communication is clearly established.*

*See Guidance Note at 9.5. (a) above re “presence”.*

(d) Should not portray drinking alcohol as a challenge and should not state, depict or suggest that those who drink are brave, daring or tough.

*Acts of bravery or daring are not, per se, excluded from marketing communications for alcohol brands when these acts are everyday to sportspeople, etc.*

*Care is needed when showing activities that are high risk, even with safety precautions, in line with the spirit of the Code.*

*It could also include people engaged in a 'brave' activity which is being professionally managed, with all appropriate safety precautions obviously in place etc., (such as zip-lining). The end of the activity must be shown before inference of consumption of alcohol.*

*Behaviours that are dangerous, challenging, or are likely to be perceived as macho, irresponsible, reckless, etc. will be evaluated within this context of the code.*

*Key to 9.5(d) is whether such behaviours are likely to be perceived as being responsible, appropriate and safe; ie. free from undue risk.*

(e) Should not link in any way the presence or consumption of alcohol to aggressive, unruly, irresponsible or anti-social behaviour.

*This precludes any behaviour that is deemed to be or threatening, or the portrayal of an atmosphere that appears aggressive or threatening, when linked to the presence or consumption of alcohol.*

*Behaviour – whether shown or implied - that is threatening or has the potential to be viewed as violent, or an atmosphere that is conducive to such behaviour is not acceptable.*

*Equally, boorish, loutish, unruly or other irresponsible and immature behaviours and attitudes are similarly precluded.*

*See footnote at 9.5. (a) above re "presence*

## 9.6

Marketing communications should not suggest that a product can mask the effects of alcohol in tests on drivers; marketing communications for breath-testing devices should include a prominent warning on the dangers of drinking and driving.

## Children

### 9.7

Marketing communications should not be directed at children or in any way encourage them to start drinking.

*The ASA code defines children as anyone under the age of 18 years.*

(a) Anyone depicted in an alcohol marketing communication should be aged over 25 and should appear to be over 25.

*Although children are defined as under 18, anybody in an alcohol marketing communication must be over 25 and look over 25. Advertisers and agencies must be able to demonstrate that anybody featured or seen in an alcohol marketing communication is over 25 (Passport/national identity card/driving licence etc), and submit this to CopyClear on request.*

*When stock photography is being used, whether in traditional or digital marketing communications, proof of age is mandatory.*

(i) The preceding rule may not apply if the marketing communication shows an image of people attending an over 18s ticketed event which appears either on the advertiser's owned media (such as, for example, an advertiser's own website) or on an advertiser's social media page, provided such media are accessed through a secure and appropriate Age Verification System and provided the person depicted:

- appears to be clearly over 18 years of age
- is not playing a significant role
- cannot be seen consuming alcohol
- does not appear to be under the influence of, or have consumed, alcohol prior to the events depicted in the marketing communication.

*This rule applies to brand-owned social media postings at ticketed over-18's events where all attendees, by definition, must be over 18 years.*

*Where someone is over 18 years but looks, or is, under 25 years, the following guidelines apply:*

- *They cannot be seen holding an alcoholic drink*
- *They cannot be wearing branded clothing / hats or holding / engaging with branded items*
- *They cannot appear to be under the influence of alcohol*

- *These images can only be posted on brand's owned media in the context of the specific event and not used in broader marketing communication outside of this.*

*Please note – anyone employed by the brand who is featured in a posting must be over - and look over - the age of 25 years.*

(b) Aspects of youth culture and treatments that are likely to appeal to children should not be used. Treatments should not portray adolescent, juvenile, childish or immature behaviour.

*This aspect of the code is not intended to preclude activities or behaviours that have an appeal to adults / young adults, but refers to attitudes, activities that are more likely to be associated with a youth (under 18 year) market.*

*Behaviour that is likely to be deemed childish, adolescent or puerile is likely to be in breach of the ASAI code.*

*The use of sports or activities primarily associated with a youth audience, -are also likely to be considered in breach of the code.*

*Animation is not precluded by the code; however, care must be taken that the animation / production techniques used do not have a strong appeal to children.*

(c) Marketing communications should not use or refer to identifiable heroes or heroines of the young. See Guidance Note on Alcohol Marketing Communications at [www.asai.ie](http://www.asai.ie).

*The code specifically excludes the use of 'heroes or heroines of the young' in marketing communications for alcohol. Heroes or heroines of the young are likely to come from the sporting arena or the entertainment world.*

*The ASAI has specific guidelines around who might comprise a hero / heroine of the young and these are available at [www.asai.ie](http://www.asai.ie).*

*In addition to the ASAI Guidelines, CopyClear would suggest that when considering using someone who might fall into this category, brands should:*

*consider how they can demonstrate convincingly why the personality is not a hero / heroine of the young*

*CopyClear Managers are likely to review the following issues when considering if someone is likely to be deemed a hero / heroine of the young, particularly in the area of sport:*

- *How long did the personality play at a professional / national level?*
- *When did the personality retire from their sport?*
  - *A professional sports person who is retired less than two years is likely to be considered a hero of the young, depending on the length of their professional career and their current profile. Some retired players are likely to be deemed 'heroes of the young' for many years after their retirement.*
- *How involved is the personality in the sport currently? Are they actively involved in punditry / management?*

(d) Marketing communications should not feature personalities or characters (real or fictitious) that would have a particular appeal to children.

(e) Alcohol marketing communications should not be placed in media primarily intended for children. Advertisers should take account of the audience's age profile so that marketing communications are communicated, so far as is possible, to adults. In this context the ASAI will have regard to the Alcohol Marketing, Communication and Sponsorship Codes of Practice, agreed by the Department of Health, the drinks industry, and the media as detailed under Other Requirements at 9.12.

(f) Digital media, including apps, that primarily promote an alcohol brand should be age gated through a secure and appropriate Age Verification System.

See Guidance Note on Alcohol Marketing Communications at [www.asai.ie](http://www.asai.ie).

*CopyClear Managers review content and not placement. However, when the Managers observe material that might not be compliant with the AMCMB code or any other code, we will refer it on to the appropriate body.*

## **Health and Safety**

9.8

In the interests of health and safety:

(a) Marketing communications should only depict or imply the responsible and moderate consumption of alcoholic drinks.

- (b) Marketing communications should not show, imply or encourage immoderate or irresponsible drinking or regular solitary drinking. This applies to the amount of alcohol, the numbers drinking or the way drinking is portrayed. The buying of a large round of drinks should not be depicted or implied.

*The Managers will look at any situation where drink is present and assess how alcohol is being portrayed:*

- *Does the suggested / supposed consumption look 'natural'?*
- *Is there any suggestion of excess in the number of drinks depicted in relation to the number of people shown /suggested?*
- *Is the manner of consumption appropriate?*
- *The use of the word 'round' in the Irish vernacular tends to be associated with a lack of moderate consumption and should be avoided*
- *It is worth considering featuring non-alcoholic drinks in marketing communications as a means to support responsible drinking, particularly in the context of social settings.*

- (c) Marketing communications for alcohol should not portray drinking games or sessions, or show or imply pub or club crawls.

- (d) Abstinence or moderation should not be presented in a negative light.

- (e) Marketing communications should not attempt to influence nondrinkers of any age to drink or to purchase alcoholic drinks.

- (f) Marketing communications may not suggest, or commend, or make fun of over-indulgence in respect of alcohol or its after-effects.

- (g) Marketing communications should not claim that alcohol has therapeutic qualities or that it is a stimulant, a mood-changer or a sedative, or that it is or can be transformative of an individual or a situation or that it is a means of boosting confidence or resolving personal conflict.

*There can be no suggestion that alcohol can or might be a social lubricant or that it has the potential to improve personal, social, professional or physical performance or could be transformative in any way.*

*This could be demonstrated through a shift in*

- *Environment/ambience*
- *Attitude*
- *Music*
- *Demeanour*
- *Physical contact*
- *Wardrobe □ Atmosphere □ Etc.*

- (h) Marketing communications should not depict any direct association with the consumption of alcoholic drinks and activities or locations where drinking alcohol would be unsafe, unwise or unacceptable. Where consumption is shown or implied it should not be represented as having taken place before or during engagement of the activity in question.

*This aspect of the code refers to consumption linked to dangerous locations / activities. However, the Managers will look at when consumption occurs in the context of the activity / location [SP4]. It must be clear that the activity is finished and will not be resumed.*

*This does not preclude scenarios where consumption is unlikely, not compliant with the code or not possible. For example,*

- *a professional sportsperson engaged in their sport*
- *a professional engaged in their 'field' which may be considered as dangerous for ordinary folk - a professional [SP6] acrobat, etc.*

*The Managers are likely to consider the following in respect of this aspect of the code:*

- *Is the activity being carried out with all appropriate professional standards / safety precautions in place*
- *Is there any suggestion of consumption prior to the activity taking place? Is there any suggestion of danger outside of the managed activity?*
- *While a treatment may be allowed under this Code provision, it should be checked against Section 9.5d as it might contravene that provision if the person/action is likely to be considered brave, daring or tough. (note applies to all bullet points)*

*This aspect of the code should be looked at with due observation of 9.5 (b)*

- (i) Marketing communications should not associate the consumption of alcohol with operating machinery, driving, any activity relating to water or heights, or any other occupation that requires concentration in order to be done safely.

*Key is the potential danger of location / activity if alcohol were to be consumed. This includes, but is not limited to, the following:*

- *Operating machinery*
- *'Extreme' sports*
- *Driving / Cycling*
- *Environmental aspects such as heights etc. – there can be no suggestion of danger where consumption can be occurring*

- *Close to or involving water – there can be no suggestion that someone could enter water after consuming alcohol. This could be suggested by proximity to water, wardrobe – are the protagonists wearing swimming togs? Is this a beach bar? A boat? Are there safety rails? Life-vests being worn? Safe distance from sea, river or swimming pool is crucial.*
- *It is unacceptable to feature alcohol in a work environment or in any work scenario where drinking alcohol would be unacceptable or would impair performance.*

(i) Factual information can be given about the alcoholic strength of a particular drink. However, with the exception of low-alcohol drinks (i.e. those that contain 2.8% alcohol by volume or less) it should not be the principal theme of any marketing communication. Drinks should not be promoted as being more intoxicating or presented as preferable because of their higher alcohol content.

(k) Advertisers should ensure that low-alcohol drinks (i.e. those that contain 2.8% alcohol by volume or less) are not promoted in a way that encourages excessive consumption.

## Promotions

9.9

Terms and conditions for promotions involving alcohol should make it clear:

(a) That entry is restricted to those 18 years of age and older.

(b) That prizes and/or gifts will only be awarded to those 18 years of age or older.

9.10

Marketing communications or promotions should not combine alcohol with a gift that has particular appeal to under-18s.

9.11

Promotions involving alcohol that require multiple purchases should not promote excessive consumption.

- *CopyClear does not review the specifics or mechanics around promotions; however, any marketing communication around a promotion for an alcohol brand should be submitted to CopyClear.*

## Other Requirements

9.12

Attention is drawn to a number of other requirements, in addition to those in this Code, which apply to the marketing of alcohol in Ireland:

- All campaigns by drinks manufacturers solely or mainly for alcohol carried in Irish media should carry Copy Clear approval.
- The voluntary codes agreed between the Department of Health, the drinks industry and the media in relation to television, radio, cinema and outdoor/ambient media.
- Codes of standards, practices and prohibitions in advertising, sponsorship, and other forms of commercial promotion in broadcasting service, regulated by the Broadcasting Authority of Ireland.
- Code for Sponsorships by Alcohol Drinks Companies.
- Intoxicating Liquor Acts, 1988 – 2008.
- Responsible Retailing of Alcohol in Ireland Code