

15 September 2009

Sir Kenneth Calman
Chairman BMA Board of Science
BMA
BMA House
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Dear Sir Kenneth

As you will be aware, Ofcom is the statutory regulator for the broadcasting and telecommunications sectors. As such, our duties and expertise relate to broadcasting and telecommunications regulation, not to public health issues. That said, I read the BMA Board of Science publication *Under the Influence* with interest. Having done so, I wanted to correct some factual errors in the report in relation to Ofcom's work in the area of broadcast advertising regulation. Throughout the document, advertising regulation is referred to as "voluntary". In particular Section 4.3 of the report states that:

"In the UK, alcohol marketing and promotion is regulated via voluntary codes governing creative content. There are separate codes for broadcast and non-broadcast media; the only significant difference in their provisions is that television advertising has to be cleared prior to transmission"

Broadcast advertising is not regulated on a voluntary basis. Sections 319 and 321 of the Communications Act 2003 place a statutory duty on Ofcom to regulate TV advertising. In 2004 Ofcom delegated the day-to-day responsibility for applying the statutory codes to the Advertising Standard Authority (ASA) as co-regulator under the terms of the Deregulation and Contracting Out Act 1994. All Ofcom licensed broadcasters are bound by this code and are required to check before transmission that adverts comply with the code; they are liable for statutory sanctions if adverts they broadcast are found in breach of its provisions.

In addition to the content regulations I should point out that there is a further set of statutory rules restricting when alcohol advertising may appear on television. Alcohol may not be advertised in or adjacent to children's programmes or programmes commissioned for, principally directed at or likely to be of particular appeal to audiences below the age of 18. A system of "indexing" prevents broadcasters from placing alcohol adverts in or around it if a disproportionately large number of young people watch a programme.

Under the influence also quotes extensively from the 2007 Ofcom/ASA research *Young people and alcohol advertising*. On page 15 of the BMA report there is a reference to the Ofcom/ASA 2007 research:

“This report notes however, that the appeal of such advertising to young people has increased - as has its perceived ability to encourage young people to drink.”

For clarity, our research stated that: more young people said broadcast advertising “makes the drinks look appealing” in 2007, than in 2005. The emphasis here is on how appealing the alcohol seems within the advert as opposed to implying that the adverts appeal more to young people as suggested in the above quote.

Additionally the research did not find that broadcast alcohol advertising was perceived to “encourage young people to drink”, the finding was that more young people in 2007 thought broadcast alcohol advertising would encourage people (in general) to drink – there was no age reference in this statement.

With specific reference to young people, the key finding was that fewer young people in 2007 said that broadcast alcohol advertising was “aimed at people like me”.

Should you require any further information about the existing statutory regulatory regime please do not hesitate to contact me.

A copy of this letter will be published on our website.

Yours sincerely

Kate Stross

Director of Content

Content and Standards