



ALCOHOLIC DRINKS CONTROL (PROMOTIONS) GUIDELINES

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1. Introduction

The alcoholic drinks industry has over the years intensified their marketing strategies through promotion and advertisement of alcoholic drinks. Developments in information, communication technology sphere has led to various innovative marketing strategies and tools targeting different market segments. This has been notable in the area of alcohol promotion messages communicated through electronic advertisements such as TV and internet, print media and outdoor advertisements such as bill boards.

Promotion of alcoholic drinks has been associated with exposing children and young people to alcoholic drinks consumption behaviour. Cumulatively, these promotions have the potential to reinforce positive attitudes towards alcohol drinking culture and practices

There are some notable trends in promotion of alcoholic drinks in Kenya which have impact on children and young people. These trends include:

- (a) Advertisements seeking to lure young people into drinking culture through social success messages
- (b) Promoting alcohol consumption as a lifestyle
- (c) Glamorising alcohol and drinking culture
- (d) Seductive nature of the advertisements
- (e) Increase in frequency of adverts especially in electronic media such as TV
- (f) Use of young people in promotion and advertisements of alcoholic drinks
- (g) Alcohol advertisements with messages that indicate that alcoholic drinks have therapeutic value

Although promotion of alcoholic drinks would not be the only leading factor to persons under the age of 18 years drinking, it nevertheless plays a significant role in cultivating culture and influencing positive attitudes on consumption of alcoholic

drinks by persons under the age of 18 years (persons below the age of 18 years). When alcohol is promoted as an attractive product with associated social benefit such as success, children and young adults have the tendency to emulate the culture of alcohol drinking. Consequently, this exposure has resulted to persons, increased HIV/AIDS prevalence, low education standards especially among persons under the age of 18 years engaged in drinking alcohol as well as increased poverty among the youth.

Part six of the Alcoholic Drinks Control Act, 2010 seeks to control promotions of alcoholic drinks in order to protect the public from misleading and deceptive promotions and the glamorizing alcoholic drinks consumption through perceived social success messages. Specifically, The Act prohibits:

- (a) false and misleading promotion of alcoholic drinks
- (b) promotion of alcoholic drinks that creates false impression in regard to linking alcoholic drink consumption with social or sexual success, sporting activities, therapeutic value or portrayal of abstention from drinking as foolish or wrong
- (c) promotion of alcoholic drinks in events or activities associated with persons below age of 18 years
- (d) promotion of alcoholic drink using things or materials associated with persons below age of 18 years
- (e) promotion of alcoholic drink in a manner that encourages more consumption of an alcoholic drink in order for one to win a prize or award.

2. Purpose

One of the objectives of the Act is to protect consumers from misleading and deceptive inducements which would be associated with promotion of alcoholic drinks. The purpose of these guidelines therefore is:

- To provide a framework for enforcement of the provisions on control of alcoholic drinks promotions to ensure compliance
- To provide for clarification of meaning and understanding of various provisions on promotion of alcoholic drinks
- To provide for specific areas or promotions issues that have been prohibited under the Act
- To ensure that persons below age of 18 years and consumers are protected from prohibited promotions by ensuring that comprehensive issues of promotions of alcoholic drinks are addressed
- To guide the law enforcement agencies on the areas of enforcement and compliance in regard to promotions of alcoholic drinks

3. Definitions

Advertising - is the non personal communication of information usually paid for and usually persuasive in nature about products, services or ideas by identified sponsors through the various media

Children things or materials- products of more or less exclusive interest to children for example children's size replica sports kits, or any promotional material distributed to children

Events and activities - a planned public or social occasion which include music and drama or community festivals, parties, concerts, sporting events

Material information - information that consumers need in context to make informed decisions about whether or how to buy a product or service

Promotion of alcoholic drinks - Communication by alcohol industry players and licensees and media trying to persuade and influence customers to consume alcoholic drinks including:

- i. Advertising - any form of advertisements or commercials through television, radio, internet, mobile phone, newspapers, magazines, billboards, posters, catalogues etc;
- ii. Publicity - generating commercially significant news in the mass media;
- iii. Personal selling - with one or more prospective purchasers for the purpose of making sales and includes providing free samples for tasting or consumption; and

Sponsorship -means the terms of an agreement or part of an agreement to support a cultural product, event or activity, in return for which the sponsored party agrees to be associated with or promote the sponsor's drink(s) or outlet.

Social success – fun, social popularity, success in relationships, ability to win and maintain friendships, personal success, professional or career success, lifestyle advertising not to portray alcohol as attractive or appealing

Sexual success – attractiveness to opposite sex, physical attractiveness, sexiness, sexually explicit content, sexual exploits and sexual opportunity or appeal

Therapeutic value- preventive, healing, beneficial, curative, remedial, aid to relaxation, positive alteration of mood, physical or emotional refreshment or enhancing enjoyment of any activity

Products of interest to children - products that are likely to appeal to children but are not of exclusive interest to them

4. False Promotion (Section 44)

The following guidelines shall apply in regard to enforcement and implementation of control of false promotions of alcoholic drinks as stipulated under section 44 of the Act-

1. Advertisements must not mislead alcoholic drink consumers by omitting material information. An advertiser must not mislead by hiding material information or presenting it in an unclear, unintelligible, ambiguous or untimely manner.
2. Advertisements must not mislead by omitting the identity of the advertiser.
3. The advertisement of any alcoholic drink shall not contain deceptive advertising techniques that is used to convey, or attempts to convey, a message to a person by means of images or sounds of a very brief nature that cannot be perceived at a normal level of awareness.
4. Advertisements must not condone, encourage or unreasonably feature behaviour that could be dangerous for children to emulate.
5. Advertisements must not mislead by exaggerating the capability or performance of an alcoholic drink.
6. Advertisements must not present rights given to consumers in law as a distinctive feature of the advertiser's offer.
7. Advertisements must not suggest that their claims are universally accepted if a significant division of informed or scientific opinion exists.
8. Advertisements must not discredit or denigrate another product, advertiser or advertisement or a trade mark, trade name or other distinguishing mark.
9. Advertisements must not present a product as an imitation or replica of a product or service with a protected trade mark or trade name.
10. Advertisements must not feature, imply, condone or encourage irresponsible or immoderate drinking. That applies to both the amount of drink and the way drinking is portrayed.
11. Advertisement of alcoholic drinks shall not:
 - (a) portray intoxication in the advert; and/or

(b) promote intoxication in any way through referring to its enhanced alcohol content or emphasizing its intoxicating qualities by use of such words as “extra strong”.

12. Alcoholic drinks shall not be promoted to-

- (a) induce excessive consumption of alcohol;
- (b) make references to the intoxicating effects of alcoholic drinks;
- (c) depict activities that tend to encourage excessive and/or uncontrollable consumption;
- (d) encourage or induce drinking excessive amounts or at an unduly rapid rate or encourage intemperance.

13. Promotional material or activity shall not in any direct or indirect way have the alcoholic strength, relatively high alcohol content, or the intoxicating effect, as a dominant theme.

14. Promotional items and activities must ensure that-

- (a) there is no suggestion of any of the following-
 - i. reference to the feeling or effect caused by consumption of alcohol
 - ii. the impression that the people depicted are under the influence of alcohol
 - iii. portray persons with product in situations in which the consumption of alcoholic drinks is prohibited.
- (b) they avoid representations of behavior that is determined as unacceptable in relationship to alcoholic drinks such as; violent, aggressive, dangerous, anti-social or illicit acts or activities;
- (c) they do not use emotive descriptions that encourages irresponsible drinking and is likely to result in intoxication;
- (d) they do not encourage irresponsible, rapid or excessive consumption of alcoholic drink.

5. Promotion by Advertisement (Section 45)

The following guidelines shall apply in regard to enforcement and implementation of control of false promotions of alcoholic drinks as stipulated under section 45 of the Act-

1. Advertisements for alcoholic drinks must neither imply that alcoholic drink can contribute to an individual's popularity or confidence, personal, social or business success nor imply that alcoholic drink can enhance personal qualities.
2. Advertisements for alcoholic drinks must not imply that drinking alcohol is a key component of social success or acceptance or that refusal is a sign of weakness.
3. Advertisements for alcoholic drinks must not imply that the success of a social occasion depends on the presence or consumption of alcoholic drinks. If an alcoholic drink is depicted as part of a celebration in an advertisement/promotion, it must not imply or suggest that the drink was a cause of or contributed to success or achievement.
4. Advertisements for alcoholic drinks must not link alcoholic drink with daring, toughness or aggression.
5. Advertisements for alcoholic drinks must not link alcoholic drink with sexual activity, sexual success or seduction or imply that alcohol can enhance attractiveness. That does not preclude linking alcoholic drink with romance or flirtation.
6. Advertisements for alcoholic drinks must not portray alcoholic drink as indispensable or as taking priority in life.
7. Advertisements for alcoholic drinks must not imply that drinking alcohol can overcome problems or that regular solitary drinking is acceptable.
8. Advertisements for alcoholic drinks must not imply that an alcoholic drink has therapeutic qualities or value. Therefore, an alcoholic drink must not be portrayed as capable of changing mood, physical condition or behaviour or as a source of nourishment.

9. Advertisements for alcoholic drinks must not imply that an alcoholic drink can improve any type of performance or suggest that the product can enhance mental or physical capabilities or produce unrealistic outcomes.
10. Advertisements for alcoholic drinks should not capitalize on individual's natural feelings, occurrences or instincts.
11. Advertisements for alcoholic drinks must not show alcohol being drunk by anyone in their working environment.
12. Advertisements for alcoholic drinks must not imply that an alcoholic drink may be preferred because of its alcohol content or intoxicating effect.
13. Advertisements for alcoholic drinks must not display or use advertising material that suggests the consumption or presence of alcoholic drinks may create or contribute to a significant change in mood or environment.
14. Advertisements for alcoholic drinks may give factual statements about product contents, including comparisons, but must not make any health claims, which include fitness or weight-control claims.
15. Alcohol advertisements must not feature in a significant role anyone who is, or seems to be, under age of 25 years and must not feature persons below age of 18 years.
16. No advertisement for alcoholic drinks shall contain any statement, picture or illustration implying that the consumption of alcoholic drink enhances athletic or sporting prowess, or any statement, picture or illustration referring to any known athlete or sports personality, if such statement, picture or illustration implies, or if the reader may reasonably infer, that the use of alcoholic drink contributed to such known athlete's athletic or sports' personality's achievements
17. Promotional items for alcoholic drinks must ensure that:
 - (a) there are no direct or indirect claims that:
 - (i) the product has healthful, promotive, preventive, nutritive, curative, stimulative, sedative or medicinal qualities or properties;
 - (ii) suggest sexual success or prowess.
 - (b) they do not use imperative language to urge people to purchase or consume product.

- (c) they do not attempt to establish the product as having attributes that may assist in achievement of a desired objective, such as-
- (i) social status;
 - (ii) personal or business success;
 - (iii) a necessity for the enjoyment of life or any activity;
 - (iv) appropriate for every occasion;
 - (v) an escape from life's problems; or
 - (vi) attempt to establish that consumption of product should take precedence over other activities or that any activity would be incomplete without the presence or consumption of alcoholic drink
 - (vii) they avoid the use of language or graphics that suggests in any way compulsive behaviors, urgency of need or urgency of use of an alcoholic drink

18. Advertisements of alcoholic drinks must not depict any direct association between the consumption of alcoholic drinks and the operation of any machinery, driving or other activity that require concentration in order to be carried out safely. Accordingly any depiction of the consumption of alcoholic drinks in connection with these activities must not be represented as having taken place before or during engagement of the activity in question and must in all cases portray safe practices.

6. Promotions Targeting Persons under Age of 18 years (Section 46)

The following guidelines shall apply in regard to enforcement and implementation of control of false promotions of alcoholic drinks targeting persons under the age of 18 years as stipulated under section 46 of the Act-

1. Alcoholic drinks advertisements must not-
 - (a) be likely to appeal strongly to people below 18 years, especially by reflecting or being associated with youth culture or showing adolescent or juvenile behaviour;
 - (b) include a person or character whose example is likely to be followed by those aged under 18 years or who has a strong appeal to those aged under 18 years.
2. No promotion through sponsorship of alcoholic drinks in school events or events associated with persons under the age of 18 years such as festivals, concerts, sports, cultural oriented events or community activities
3. No advertisement shall include anything which might appeal to persons under the age of 18 years by implying that the consumption of alcoholic drinks is fashionable or the accepted course of behaviour.
4. Alcoholic drink branded merchandise should not be aimed at children or persons under the age of 18 years or have particular appeal to them
5. Promotional items and activities must ensure that they are not more likely to appeal to persons under the age of 18 years by the use of images such as:
 - (a) designs, figures, symbols, cartoons, motifs, names or promotional techniques based on or resembling existing characters that are popular with or have special appeal to persons under the age of 18 years persons
 - (b) any imagery that is established in the culture of persons under the age of 18 years
 - (c) portraying product in context of or in relation to an activity primarily attractive to persons under the age of 18 years

(d) portraying persons under the age of 18 years.

7. Promotion Encouraging Consumption (Section 47)

The following guidelines shall apply in regard to enforcement and implementation of control of false promotions of alcoholic drinks as stipulated under section 47 of the Act-

1. No promotion of an alcoholic drink by way of offering free alcoholic drinks for any number of similar drinks purchased.
2. No promotion of an alcoholic drink by way of awarding prizes to highest consumers of the drink in a competition based on the number of such drinks one consumes
3. No promotion of an alcoholic drink by way of awarding consumers (individuals or groups) or regions prizes or trophies for having been highest consumers of alcoholic drinks in a given period of time.

8. General Requirements and Health Warnings

The following guidelines shall apply in regard to enforcement and implementation of control of advertisements in context of Part VI and Second Schedule of the Act:

1. All alcoholic drinks advertisements, whether electronic, print, outdoor bill boards and signs or whichever the form must carry at least two health warning messages stipulated in Second schedule of the Act.
2. All health warnings specified in section 32 (4) and in the Second Schedule shall be displayed in each twelve month on rotational basis and in such equal number of times as is possible in each advertisement of each brand of an alcoholic drink.
3. The health warning in each print or outdoor advertisement (such as Bill boards and banners) of an alcoholic drink must be substantially legible and must comprise not less than 10 % of the total surface area of the advertisements which should appear in conspicuous and legible type and should be black on white background or white on black background and enclosed by rectangular border that is the same colour as the letters of the statement.
4. The health warning in visual commercial advertisements for alcoholic drink must be substantially legible and should roll as a strip or take not less than five seconds for still picture and should be aired at the end of the commercial advertisement
5. The health warning in audio commercial advertisement for alcoholic drink should cover substantial time within the advertisement which shall take not less than five seconds and should be aired at the end of the commercial advertisement

9. Enforcement and Compliance

In order to ensure compliance with the Act and these guidelines, the following enforcement mechanism shall apply:

1. There shall be established the Alcoholic Drinks Promotions Regulation Committee

- 2. Composition of the Committee**

The committee shall be composed of NACADA, Inspector General of Police, Kenya Bureau of Standards (KEBS), Kenya Film Classification Board (KFCB), Communications Authority of Kenya (CAK), one media expert appointed by the Cabinet Secretary on recommendation of the committee, Media Council of Kenya, Betting Control and Licensing Board and Ministries responsible for-

- (i) Interior and Coordination of National Government
- (ii) Health
- (iii) Education
- (iv) Information Communication and Technology
- (v) Labour-Children affairs Department

3. NACADA shall provide the secretariat for the committee
4. The committee shall be responsible for preclearance and monitoring all promotions and advertisements of alcoholic drinks.
5. The quorum of the committee meetings shall be 50% of the members.

- 6. Procedure for preclearance of alcoholic drinks promotions and advertisements**

- (1) Any person intending to promote or advertise and alcoholic drink shall submit a copy of promotional or advertisement materials, script for audio, visual for story board and concept to NACADA for preclearance by the committee. For visual products, the applicant shall submit the final copy of the final product for approval

- (2) Upon receiving the application, NACADA shall convene the committee within 10 days for the purposes of scrutinizing the promotion and advertisement materials submitted. NACADA shall subsequently provide feedback in writing within 10 working days
- (3) The committee shall scrutinize the materials and establish whether such materials comply with the Act and these guidelines.
- (4) If the committee does not approve the promotion or advertisement materials such decision shall be communicated to the applicant. NACADA shall in writing communicate to the applicant giving reasons for such rejection within 7 working days after the committee meeting.
- (5) If the committee approves the promotional and advertisement materials, NACADA shall in within 7 working days after the committee meeting communicate the decision in writing to the applicant giving directive for the next level of application with the relevant government agency.
- (6) An applicant whose promotional or advertisement materials has been approved by the committee shall apply for a licence with the relevant government agency as provided for in the respective statutes.

7. **Monitoring and Surveillance**

- (1) The committee shall on regular basis monitor the promotion and advertisement of alcoholic drinks.
- (2) The committee shall meet on a quarterly basis in each financial year to deliberate on the trends and emerging concerns in relation to promotions and advertisement of alcoholic drinks.
- (3) In the event that any person is violating the Act or the guidelines or any other law in relation to promotion and advertisement of alcoholic drinks, NACADA shall write to the concerned person of the violation and the required corrective measures to be taken.
- (4) Respective agencies such as Kenya Film Classification Board (KFCB) and Media Council of Kenya shall in addition take respective measures as permitted within their respective laws

- (5) The committee shall in addition advise NACADA and the Ministry responsible for provincial administration on the necessary policy and legal measures to be adopted in regard to control of alcoholic drinks promotions and advertisements.
- (6) In principle the committee establish systems for monitoring and surveillance such as:
- (a) documenting and tracking all existing regulations on alcohol promotion practices
 - (b) monitoring media use and exposure to persons under the age of 18 years
 - (c) monitoring persons under age of 18 years' perceptions to alcohol promotion practices
 - (d) monitoring new technologies and types of media
 - (e) monitoring cross border promotion
 - (f) documenting violations of existing regulations