Self-Regulation Code on Beer Advertising*

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1.- Introduction

The idea of adopting a self-regulation code on beer advertising comes from the need to improve, in the field of Private Food law, the Public law, including both national and EU law, through the private instrument of self-regulation and the voluntary respect by all parts concerned.

The aim of such private activity is to integrate the Public law in this field with the adoption of simple and fast rules, voluntarily adopted by the companies, to marketing properly alcoholic products, as beer, and to promote those products to the consumer, in order to obtain a safer consumption.

In this regard, the rules of the Italian Self-regulation Code represent a considerable progress in the field of commercial advertising’s self-regulation, because both regulatory and procedural provisions have been conceived not only to regulate brewers and distributors’ marketing activity, but also to make consumers more aware of important social matters, related to the consumption of alcoholic beverages. In addition, the self-regulation makes the consumer able to use free, fast and efficient instruments of private justice, in order to prevent immediately the spread of unfair advertising.

The Code is therefore the instrument by which the companies associated to Assobirra\(^1\) show, on one hand, their will to be bound by the principles commonly shared by the brewers of Europe, and on the other hand, the need to educate the public on a responsible consumption of alcohol. This principle constitutes the common ground adopted by all European beer producers.


\(^1\) ASSOBIRRA – Associazione degli industriali della Birra e del Malto. Assobirra is the Italian association of beer and malt producers/distributors, settled in Rome (Viale di Val fiorita n. 90). Assobirra is associated with Confindustria (Confederation of Italian industry) and with the European Association Brewers of Europe (BOE), embracing in full the ethical code of the latter and carries on institutional, promotional and technological development tasks.
2.- The European Principles

On the European level, the principles concerning the alcohol advertising were set for the first time in 1989 by the Directive n. 552\(^2\) and then confirmed in the Directive 2007/65/CE concerning television broadcasting activities, which has been recently transposed into Italian law by the Decree 15 March 2010, n. 44\(^3\). Now, those principles are laid down in the Directive n. 13 of 10 March 2010, concerning television advertising and teleshopping for alcoholic beverages\(^4\) and the Beer’s Italian Code fully complies with the Directive’s purposes.

First of all, the new Directive stresses the importance of the self-regulation instruments in the field of alcoholic products’ advertising. In recital n. 44, it states that self-regulation instruments can play an important role in delivering a high level of consumer protection and that Member States should recognise this role as a complement to the legislative and judicial and/or administrative mechanisms in place. In addition, recital n. 89 of the Directive foresees that it is necessary to lay down strict criteria relating to the television advertising of alcoholic beverages, in order to safeguard the consumer against unfair commercial communication.

These criteria are laid down in article 22 of the Directive\(^5\) and they have been implemented in the Italian Self-regulation Code on beer advertising.


\(^3\) Decreto Legislativo 15/03/2010, n. 44 implementing Directive n. 2007/65/CE on the coordination of certain provisions laid down by Law, Regulation and Administrative Action in Member States concerning the pursuit of television broadcasting activities.


\(^5\) Directive 2010/13/EU, article 22: “Television advertising and teleshopping for alcoholic beverages shall comply with the following criteria: (a) it may not be aimed specifically at minors or, in particular, depict minors consuming these beverages; (b) it shall not link the consumption of alcohol to enhanced physical performance or to driving; (c) it shall not create the impression that the consumption of alcohol contributes towards social or sexual success; (d) it shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts; (e) it shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light; (f) it shall not place emphasis on high alcoholic content as being a positive quality of the beverages”.

In particular, the advertising of beer may not be aimed at minors or depict minors consuming these beverages; it shall not link the consumption of alcohol to enhanced physical performance or to driving; it shall not create the impression that the consumption of alcohol contributes towards social or sexual success; it shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts; it shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light and, finally, it shall not place emphasis on high alcohol content as being a positive quality of the beverages. The Italian Code on beer advertising reflects also the provisions of the Italian Code of Self-Regulation of Marketing Communication, that is a private standard voluntarily adopted in Italy since 1966 by all producers, advertising agencies and media, concerning the advertising in all fields. Article 22 of this Code refers to alcoholic beverages and affirms that the marketing communication concerning such beverages should not be in contrast with the principle to invite a responsible consumption of alcohol. This principle aims to safeguard the primary interest of the consumers in general, especially children and young people, in a family, social and working environment protected from negative consequences of alcohol abuse.

Regarding beer, in application of art. 22, the Jury has decided some cases. One of the most interesting case recently decided by the Jury on alcohol advertising was about a tv advertising of “Birra Nastro Azzurro” of April 2008. This tv advertising shows a cargo ship full of beer boxes that leaves the harbour. The captain does not realize that a group of young people are going after the boat, on board dinghy, because he’s listening to the music with earphones. The guys manage to reach the boat, start a big party where all the people on board dance and drink beer all night long. At sunrise, the cargo ship arrives to the harbour of destination and from the pier one guy asks the captain where the Italian party is. The captain is surprised and realizes what happened during the night: the guys drank all beers and wrote “Thanks Italy!” on the cargo ship. The captain and the boy laugh and drink the last two beers. The tv advertising finishes with a claim “Nastro Azzurro. C’è più gusto a essere italiani” and the image of some empty bottles of beers.

On this advertising, the Jury, appointed by the Review Board, stresses the strong psychological impact that marketing communication on alcoholic beverages could have on consumers, if alcohol is depicted as a means to satisfy unreasonable needs and behaviours. On the other hand, art. 22 of the Code (CAP) on alcoholic beverages doesn’t have the function to give a teaching direction to advertising agency’s creativity. In the tv advertising examined, the Jury considers that the story showed the event on unreal basis because it’s unlikely that a group of young people attacks a cargo ship,

makes a noisy party without any reaction from the captain. In addition the tv advertising showes only few bottles of beer inside a box full of ice. Consequently there are no messagees that suggest an irresponsible consumption of alcohol. For these reasons, the Jury has considered that the message complies with article 22 of CAP.

The specifically improvement made by the Italian Code on beer advertising is that to emphasize a moderate and responsible consumption of beer, as an alcoholic beverage. Despite the importance of such rules, there was no specific and independent regulation on beer advertising in Europe. Therefore Brewers of Europe, with the adoption of Seven Operational Standards, has satisfied this need.

3.- Seven Operational Standards of the «Brewers of Europe»

The Association of the Brewers of Europe currently represents 27 national brewing associations and producers of around 95% of the beer brewed in the EU and is a founding member of the EU Alcohol and Health Forum and is committed to being part of the solution when it comes to tackling alcohol misuse. The Brewers of Europe has adopted uniform criteria for the institution in the Member States of self-regulation systems for the commercial communication of beer.

The Seven Operational Standards, agreed upon by the Brewers of Europe in 2007, have been adopted in order to optimise, in the field of the beer advertising, the effectiveness of the national mechanisms of self-regulation and to guarantee responsible commercial communications in the EU. These particular guide lines would have to be implemented by April 2010 and Italy has fulfilled the task through the adoption of the Code. At the moment, we have implemented all the Seven Operational Standard, fixed by the Brewers of Europe.

The first Standard deals with “code coverage”. The objective is that all the commercial communications on beer, regardless of their form and source, have to be covered by

(1) Website: www.brewersofeurope.org.

(2) On May 26th 2010 the association of the Brewers of Europe has published a report on the Seven Operational Standards: “Responsible beer advertising through self-regulation”. The report offers, both from an EU-wide and a national perspective, an overview of the background, baseline, progress and next steps in relation to the full implementation of the Seven Operational Standards by the membership of the Brewers of Europe.

the Code, as well as all brewers and all distributors and all practitioners (for example advertising agencies, promotional commercial agencies, points of sale involved on promotional operations).

The second Operational Standard deals with “code compliance”. It’s essential that there is the maximum compliance with both the letter (that’s to say, formal rules) and the spirit (which are the principles not formally written down) of the code, in order to prevent that irresponsible commercial communications on beer reach the public sphere. In addition, it’s important that the “copy advice” is provided on a confidential and free basis, making this mechanism easily available to every beer producer.

The third Operational Standard requests an impartial judgement in the commercial communications. The private judicial body is composed by three independent and qualified members including the chairman. “Indipendent” means that the individual should be independent not just from the company whose advertisement is being investigated, but also independent from the brewing and advertising industries as a whole.

The fourth Operational Standard requests a fast procedure, in order to have a speed decision if the advertising is in breach of the Code and consequently the Jury may order to interrupt immediately the advertising or promotional activities in breach.

The fifth Operational Standard deals with “Sanctions”. It is necessary that sanctions act as a deterrent to prevent brewers from launching unfair communications or promotional activities. The strength of such sanctions must show both the regulator and the consumer that self-regulation is an efficient and effective system.

The sixth Standard stresses the importance to guarantee and increase the consumer’s awareness of the self-regulatory system and its functioning. Such knowledge is reachable by the publication of the jury decisions.

The last Operational Standard deals with the monitoring, time to time, of the Code by the judicial body: the Jury. Such system has to be based on planned and systematic check of the Jury’s activity, as well as on a continue up-dating of the code through a regular review.

4.- Purposes and Obligations

The Italian Self-regulation Code on beer advertising is composed of two parts: the first one deals with general purposes, the obligations undertaken by all Italian beer producers associated to Assobirra, the field of application and the definitions commonly accepted; the second one is about conduct rules, procedural and judicial rules.

Concerning the purposes, the Code aims to ensure that any kind of marketing communication on beer (that’s to say all media, tv, radio, cinema, web, press, public
bills, promotional activities in the points of sale, … and including labels and packagings) must comply with the principle of “responsible drinking”.

The subjects bound by the Code are all the Assobirra’s associated companies (producers and distributors) and their marketing agencies, including advertising agencies, advertising dealers and media advertising managers and the point of sale of HO.RE.CA (Hotel Restaurant Cafè Sale Channel) and large distribution dealers, where promotional activities are made.

In particular, the brewers and the practitioners voluntarily undertake to observe the code and its rules, to ensure compliance by their members, to efficiently disseminate the rulings of the Jury and to adopt appropriate measures towards members who fail to comply with/or repeatedly disregard the Jury’s decisions.

In the part dedicated to definitions, the key terms of the Code are explicated. The principal terms contain definitions for: acceptance clause, agency, Assobirra, beer, code, copy advice, hazardous activities, Jury, marketing communication, minors, point of sale, sanctions and secretariat.

One of the most important definitions refers to the acceptance clause. In this regard, Italian brewers undertake to ensure that their members and associates shall include a special clause in the contracts subscribed with their advertising agencies, specifying acceptance of the provisions of the Code, its Regulations and the rulings of the Jury including publication of the latter, as well as acceptance of final desist orders issued by the Jury. The desist order consists in the immediate interruption of marketing communication on beer.

(10) Some of the most relevant definitions: AGency – Advertising agencies, advertising and marketing advisors, exclusive dealer advertising, advertising managing agents and promotional commercial agencies, points of sale involved on promotional operation in Italy; POINT OF SALE: location of supply and/or sale of beer including sales free of charge, to the consumer that belongs to HO. RE. CA. channel or to the LARGE ORGANIZED DISTRIBUTION or to exhibition opened to public, to promote beer, in the latter case that such promotion will be made directly by the brewer itself, with or without distribution of free beer samples; SANCTION/S - The sanctions imposed by the Jury to the beer company are as follows: a) at the first stage the interruption of marketing communication on beer i.e. desist order should marketing communication submitted for examination appear to clearly violate one or more articles of the self-regulation code, the Jury may order to the beer company and agencies to desist from publishing it, and the condemnation of Jury’s costs of procedure; b) at the second stage, in case of non-compliance of the desist order, a fine will imposed through a compulsory contribution from a minimum of € 1.000 to a maximum of € 10.000 devolved to scientific research, in the field of the prevention of alcohol abuse accompanied by the publication of the Jury’s decisions on Assobirra’s website; SECRETARIAT – The Jury’s Secretariat is the independent office competent to receive the consumers petition on marketing communication about beer. The Jury’s Secretariat, will examine the consumers petition and will perform the inquiring tasks for the Jury. The Jury’s Secretariat is the competent office to realize the copy advice.
Another important definition refers to the Copy Advice. In fact, it consists of an advisory and confidential service given from the Jury’s Secretariat to the brewers companies or relative agencies. The legal advice delivered by the Jury’s Secretariat concerns the compliance or the non-compliance with the Code of a forecast advertising campaign. The advertising is submitted in advance and in a confidentially way by the brewers producers or agencies before its broadcast or publication.

Finally, the Jury is defined. The Jury is judging body and it is composed of three independent and qualified members chosen among experts in law, consumer affairs and communication. The expert in law (lawyer and/or university professor in law) holds the office of chief of justice, the expert of communication holds the office of reporter, the expert of consumerism is the third private Judge.

5.- Conduct rules

The crucial point of the Code is represented by the conduct rules, in accordance to the provisions of the mentioned article 22 of Directive n. 13 of 2010. These rules are included in articles from 1 to 8 of the Code and their purpose is to address any kind of marketing communication and/or promotional activities towards principles of moderation and responsibility in the alcohol consumption, in relation to the standards established by the Brewers of Europe.

According to article 1, the marketing communication about beer must not encourage excessive or irresponsible consumption of beer, nor present abstinence or moderation in a negative way; it must not be connected with violent, aggressive or anti-social behaviour and it must not show people who appear to be intoxicated or in any way present intoxication in a positive way.

In this regard, Assobirra has focused its attention on the social matters connected with an irresponsible consumption of alcohol and it has promoted a specific information and awareness campaign concerning the abuse of alcoholic beverages, in order to make the public more aware of the importance of a moderate and responsible consumption in our society.

The program is called “Guida tu la vita. Bevi responsabilmente” (drive your life. Drink responsible)\(^\text{(1)}\) and it focuses on specific situations, like alcohol and driving, alcohol and pregnancy, alcohol and young people.

On the matter dealing with alcohol and pregnancy, Assobirra wants the gynaecologists and women to be more aware of the risks connected with alcohol consumption during the pregnancy, especially for the future child. The Italian beer producers initiative on this

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\(^{\text{(1)}}\) There is also a website dedicated to the program, www.beviresponsabilmente.it.
problem has been recognised by the EU Alcohol & Health Forum as the first initiative promoted on this field in Europe by an alcohol company.

Regarding young people, Assobirra promotes some initiatives in cooperation with the Italian private radio, called “Radio 105”, one of the most popular radio among young Italians. Young people are asked to talk together about alcohol and promote a correct behaviour in relation to alcohol consumption.

In the Code a special attention is dedicated to minors. According to article 2, the marketing communication about beer must not be aimed at minors, it must not show minors consuming beer, it must not be promoted in media, programs or at events where the majority of the audience is composed by minors. In particular, marketing communication must not address to minors through graphic pictures and/or cartoons on beer and it should not use testimonials whose normal working activity is addressed to minors.\(^{12}\)

Article 3 of the conduct rules deals with driving. The advertising about beer must not associate, directly or indirectly, the consumption of beer with the act of driving vehicles of any kind. In this regard, the mentioned Assobirra’s advertising campaign on alcohol, “drive your life, drink responsible”, is focused on the problems connected with alcohol and driving.

This clause of the Code is in accordance with the new provisions recently adopted in the Italian legislation. From August 13\(^{th}\) it is in force the new Driving code (codice della strada), L. 29 July 2010 n. 120.\(^{13}\) According to the article 53, it is forbidden to sell alcoholic beverages in the highway stops between 2:00 and 6:00 a.m., in order to fight road accidents caused by alcohol consumption. For bars, discos, pubs and clubs the prohibition is valid between 3:00 and 6:00 a.m., according to article 54 of the new legislation. A fixed level of 0,5 grams per litre is considered “driving under the influence of alcohol” and forbidden by the new Driving code.

The other conduct rules of the Code refer to hazardous activities, therapeutic properties, alcohol content, performances and promotional activities. In particular, article 4 establishes that marketing communication about beer must not associate consumption of beer with the performance of hazardous activities (all the human activities that involve a particular attention and/or physical effort), nor portray the act of consumption prior to or during such activities.

\(^{12}\) Recently the new Decree 15 March 2010 n. 44 on audiovisual media services has increased minors’ protection. In particular, art. 9 bans tv transmissions that could damage the physical, psychological and moral development of minors or show scenes of violence or pornography. Art. 9 also introduces a protection system against any kind of transmission that could damage minors.

\(^{13}\) L. 29 July 2010 n. 120.
On therapeutic properties, article 5 says that marketing communication must not lead to believe that beer has properties of preventing, treating or curing a human diseases. Article 6 stresses the importance that beer advertising must not create any confusion as to the nature and strength of beer and it must not present the high alcoholic content of beer as a positive quality of the beverage or as a good reason for choosing it. In accordance to article 7, the beer advertising must not connect the consumption of beer to better physical abilities and it must not lead people to believe that consumption of beer enhances social or sexual success. The last conduct rule, article 8, underlines that promotional activities on beer in the point of sale must not drive to irresponsible or anti-social behaviour or encourage an excessive consumption of beer. In addition, the distribution of free beer samples must not be made out of the points of sale and no sampling of beer must be offered to minors.

6.- Procedural rules

The competent bodies for beer advertising and promotional activities are the Jury and the Secretariat. The first one is the judging body and the second one is the independent office competent to receive the consumer’s petitions and the requests of copy advice. The articles of the Code dedicated to the bodies and the procedures are from 9 to 18. The procedure of monitoring starts with a petition, through which the consumer or the consumer’s association make the Jury’s Secretariat aware of an advertising which is probably in infringement with the Code. The Secretariat evaluates the petition and in the term of 5 workdays it can act in three alternative ways:
- it can accept the petition and send it to the Jury with a brief report and, simultaneously inform both the consumer and the beer company that the procedure is started; the beer company is invited to present pleadings to the Jury in the successive 5 workdays,
- the Secretariat can refuse the petition with a brief explanatory note to the consumer;
- it can consider the petition incomplete and so ask the consumer further information and, in case of refusal, the Secretariat files the petition in the successive 10 workdays.

In case of acceptance of the consumer’s petition, the Jury within 10 workdays judges the submitted marketing communication and after the evaluation of pleadings eventually submitted by the beer company, it can decide in two alternative ways:
- it can order the company to stop immediately the advertising, which is called “desist order”, warning that in case of non-compliance a sanction will be imposed
- it can consider the company’s pleadings worthy to be discussed before the Jury in a public hearing in the successive 10 workdays.
During the discussion before the Jury, the Secretariat will report on the case. The petitioner consumer and the beer company may explain their opinions on the matter, also through a nominee named for the purpose. At the end of the discussion, the Jury takes a decision.

The Jury’s decisions have a binding effect not only for the company involved in the procedure introduced by the consumer, but also for all the agencies and the points of sale which have accepted the Code’s provisions with the acceptance clause. The decisions are also published on Assobirra’s website.

7.- Copy advice

The request of copy advice is examined confidentially by the Secretariat with the storyboard, the graphic production completed by texts of marketing communication on beer. In the term of 7 workdays the Secretariat gives its legal advice to the asking beer company or advertising agency. In particular, the Secretariat can provide in three alternative ways:
- it can approve the marketing communication and if a consumer makes a petition on that advertising, the Secretariat will not accept the petition, in accordance to its previous copy advice, unless the consumer’s petition concerns the ways of spread used for the advertising (for example: spread in programs for minors);
- it can find some infringements to the Code and order the beer company to remove them and to prepare a written commitment in the successive 5 workdays. If the commitment is received correctly and in time by the Secretariat, the marketing communication will be approved in the modified version;
- it can refuse the submitted marketing communication, considering it in breach of the Code. In case of successive broadcast or publication of this advertising, the Secretariat will alert immediately the Jury. In this case, the beer company involved can argue the copy advice before the Jury, which decides in the successive 10 workdays, in a private session.

8.- Cases

To better understand the functioning of the procedures followed by the Jury and the Secretariat, it seems advisable to illustrate two practical cases:
- the Case A is about a TV advertising;
- the Case B is about promotional activities in points of sale.
Case A

The first case refers to a TV beer advertising broadcasted during the afternoon, a particular and protected time slot which is typically aimed at minors. According to article 13 Italian Law No. 125/2001, the advertising of alcoholic beverages is forbidden in programs aimed at minors, especially in the 15 minutes that come before and after the transmission of such programs.

First of all, the consumer communicates the Secretariat (by mail or e-mail) the advertising he wants to submit to the Jury, explaining his reasons and attaching the required documents.

Then the Jury’s Secretariat examines the petition sent by the consumer and in the term of 5 workdays:
- it can accept the petition and send it to the Jury with a report and, at the same time, inform both the consumer and the beer company that the procedure is started. The beer company is invited to present pleadings to the Jury in the successive 5 workdays.
- OR it can, on the contrary, refuse the petition with a brief explanatory note to the consumer
- OR finally, it can consider the petition incomplete and so ask the consumer further information and, in case of refusal, the Secretariat files the petition in the successive 10 workdays.

When the consumer’s petition is sent to the Jury, the Jury within 10 workdays judges the marketing communication and after the evaluation of pleadings eventually submitted by the beer company
- it can order the company to stop immediately the TV beer advertising in question (“desist order”), warning that in case of non-compliance a sanction will be imposed as a compulsory contribution to be devolved to the scientific research, accompanied by the publication of the Jury’s decision on Assobirra website and the condemnation of Jury’s costs of procedure
- on the contrary, the Jury can consider the company’s pleadings worthy to be discussed before the Jury in the successive 10 workdays.

During the discussion before the Jury, the Secretariat will report on the case. The petitioner consumer and the beer company may explain their opinions on the matter, also through a nominee named for the purpose. At the end of the discussion, the Jury takes a decision.

Case B
The second case deals with promotion and sampling within points of sale with distribution of leaflets to the consumer which lead to an irresponsible consumption of beer because of their content and pictures.
In this case the consumer warns the Secretariat of the promotional activity in the point of sale and he explains his reasons, supporting them with the required documents.
If the procedure starts before the Jury, the Secretariat asks the point of sale to send a brief report concerning the ways used for the promotion impeached, in the term of 5 workdays.
After having examined the pleadings submitted by the beer company and by the point of sale, the Jury in the term of 10 workdays...
- can order the company and the point of sale to stop immediately the promotional activities in breach with the Code, warning that in case of non compliance of such order, a sanction will be imposed as a compulsory contribution to be devolved to the scientific research, accompanied by the publication of the Jury’s decision on Assobirra website and the condemnation of Jury’s costs of procedure
- on the contrary, the Jury can consider the company’s pleadings and the brief sent by the point of sale worthy to be discussed before the Jury in the successive 10 workdays.
During the discussion before the Jury, the Secretariat will report on the case. The petitioner consumer and the beer company may explain their opinions on the matter, also through a nominee named for the purpose. At the end of the discussion, the Jury takes a decision.
Finally, it is important to remember that whenever the Jury is involved in such cases, it has to inform the Italian Antitrust Authority (AGCM)\(^\text{15}\) for the purpose of foreclosure and of stay of proceedings foreseen by the Italian Consumer Code, article 27-ter par. 3\(^\text{16}\), and by the Regulation on the inquiry procedures concerning the unfair business-to-consumer commercial practices, article 20.

\(^\text{15}\) Website: www.agcm.it.
\(^\text{16}\) Legislative Decree 6 September 2005, n. 206, Art. 27-ter (Self-Regulation): par.3 – when a procedure starts before a self-regulation body, the parties can decide not to refer to the Authority until the final decision of the body, or they can ask the Authority to suspend the proceeding, whenever the it has been introduced by another person entitled to do so, waiting for the self-regulation body to decide.