

Brand sharing between alcoholic drinks and non-alcoholic offerings: A challenge to Ireland's restrictions on alcohol advertising

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In November 2022, it will be three years since Section 14 of Ireland's Public Health (Alcohol) Act made it an offence to advertise alcohol on public transport (e.g., buses, trains, or light rail vehicles) and at designated boarding or alighting points (e.g., train stations, bus stops, or tram stops) [1]. This policy intervention is expected to contribute to a reduction in exposure to alcohol advertising given the high levels of footfall on public transport in Ireland [2] and high past-month awareness of this type of advertising prior to the ban [3].

Despite the restrictions, concerns have been raised about the continued presence of alcohol-related cues on public transport in Ireland [4,5]. In Dublin, for example, advertising for beverages with zero alcohol-strength-by-volume (i.e., 0.0% ABV), but using the same brand iconography as a 'regular strength' alcohol product, has been observed on the display screens of bus shelters (Fig. 1) and a large electronic billboard affixed to a railway bridge (Fig. 2). Advertising for a tourist attraction carrying the same branding as a 'regular strength' alcohol product has also been observed affixed to the same railway bridge, on digital billboards in Dublin's main railway stations (Fig. 3), and on the side of buses.

Whether advertising that shares almost identical branding to a 'regular strength' alcohol product is compliant with the public transport restrictions is a matter to be determined by the judicial authorities in Ireland. How alcohol advertising is defined in the legislation appears key to this determination. In Section 2 of the Act, it is defined as any form of commercial communication with the aim or direct or indirect effect of promoting an alcohol product to the public, with brand or manufacturer names, trademarks, emblems, marketing images, and logos offered as examples [1]. According to the legislation, however, the display of such brand iconography is only interpreted as alcohol advertising in circumstances where it may 'reasonably be regarded' as a recommendation of the (alcohol) product to the public. Clarity is needed on whether advertising for beverages with zero alcohol-strength-by-volume (hereafter 'zero-alcohol', also sometimes referred to as 'no-and-low-alcohol') and themed tourist attractions are considered indirect advertising for an alcohol product or brand and, if so, whether they may also 'reasonably be regarded' as a recommendation of that alcohol product or brand to the public. Clarity is also needed on whether the ban on alcohol advertising on public transport and designated stopping points is also intended to extend to wider public transport infrastructure, such as railway bridges, which are not currently mentioned in the legislation [1].

Clarification concerning zero-alcohol products also has implications for enforcing other parts of the Act. Since November 2021, Section 15 has made it an offence to advertise alcohol in or on a sports area during a sporting event (e.g., logos on the pitch or sports track) [1]. This ban does not extend to advertising outwith the sporting area (e.g., hoardings around the pitch), while branded clothing worn by participants in the event is also exempt (e.g., logos on match shirts). Subsequently, for fixtures played in Ireland during the European Rugby Champions Cup, sponsored by Heineken, the protective covers around the rugby goals have displayed branding for Heineken 0.0% [6,7]. Similarly, during matches played in Ireland as part of the 2022 Six Nations Championship, for which Guinness is the lead sponsor, the post covers have displayed branding for Guinness 0.0% [8,9]. Since November 2020, Section 22 of the Act has also required mixed retailers (e.g., supermarkets, convenience stores, etc) to physically segregate alcohol products and associated advertising from non-alcohol products [1]. Heineken has since discussed the positioning of zero-alcohol products outside these segregated areas [10].

Ireland is not alone in experiencing an industry response to alcohol marketing controls [11,12]. In France, for example, ‘alibi marketing’ has been employed in response to the Évin law restrictions on alcohol advertising during sport. Alibi marketing is the practice of using features considered synonymous with a brand (e.g., colours, logos, fonts) but without referring to the brand or manufacturer name. Alibi marketing has its roots in response to tobacco control [13-15], but it has also been documented in France for alcohol marketing during the UEFA Euro 2016 football tournament [16,17] and, of relevance to the current debate in Ireland, during the Six Nations rugby tournament [18,19]. Other European countries have responded with corrective actions. In Norway, for instance, restrictions were extended to include advertising for non-alcoholic products which carry the same branding as an alcohol product [11]. A similar stance towards zero-alcohol products was also initially adopted in Lithuania, although a Supreme Administrative Court judgement in 2022 has reportedly reversed this position, with the court placing emphasis on the absence of evidence that consumers associate or confuse zero-alcohol products with alcohol equivalents [12].

Decisions about how Ireland should respond to brand-sharing advertising are complicated by the lack of research into the risks or gains to public health by increasing the availability and visibility of zero-alcohol products [20,21]. Examining how exposure to brand-sharing advertising interacts with

attitudes towards, and consumption of, 'regular-strength' alcohol products among consumers, including young people, is urgently needed to support decision-making. The conclusions of such research would help determine whether such indirect advertising may 'reasonably be regarded' as a recommendation of a 'regular strength' alcohol product to the public.

DECLARATIONS

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Fig. 1: Zero-alcohol advertising on a bus shelter in Dublin



Note: Image taken by NC, July 2022

Fig 2. Zero-alcohol advertising on a railway bridge in Dublin



Note: Image taken by NC, July 2022

Fig 3. Tourist attraction advertising in a main train station (Connelly) in Dublin



Note: Image taken by NC, July 2022

ACCEPTED VERSION