

ADVERTISING STANDARDS AUTHORITY - WRITTEN EVIDENCE (FDO0116)

1. Background

- 1.1. This submission is provided by the Advertising Standards Authority (ASA), the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) – the 'ASA system.'
- 1.2. The ASA is the UK's independent advertising regulator. We have been administering the non-broadcast Advertising Code (written and maintained by CAP) for over 60 years and the broadcast Advertising Code (written and maintained by BCAP) for 19, with our remit further extended in 2011 to include companies' advertising claims on their own websites and in social media spaces under their control.
- 1.3. We are the UK's independent frontline regulator of ads by legitimate businesses and other organisations in all media, including online. Our work includes undertaking proactive projects and acting on complaints to tackle misleading, harmful or offensive advertisements. We are committed to evidence-based regulation, and we continually review new evidence to ensure the rules and our application of them remain fit-for-purpose.
- 1.4. We work closely with a network of partner regulators including Ofcom, the Gambling Commission, the Information Commissioner's Office, the Medicines and Healthcare products Regulatory Agency, the Financial Conduct Authority and the Competition and Markets Authority. Our frontline ad regulation often complements their activities, or even frees them up entirely to concentrate on their other duties. Through the sharing of information, joined-up enforcement action and referral processes, our partners bolster our regulation and assist us, where necessary, to bring non-compliant advertisers into line.
- 1.5. We also bring together the ad industry and media owners to set, maintain and police high standards. The UK Advertising Codes are drafted and maintained by the industry committees of CAP and BCAP, supported by experts in our Regulatory Policy team. This means businesses have a direct stake and an enlightened self-interest in adhering to the standards they set and creating a level-

playing field amongst them.

- 1.6. There are multiple checks and balances in place to ensure the committees' development of rules and guidance is transparent, open to scrutiny and adheres to the principles of good regulation. These include calls for evidence and public consultations; mandatory regard to the advice of an expert independent consumer panel; Ofcom signing off on BCAP rule changes; the ASA System's processes being open to judicial review and more besides. All to ensure the system is wholly accountable to everyone with a stake in advertising.
- 1.7. We call our model of partnering with businesses and other regulators 'collective ad regulation.' Our independence and the buy-in and support we receive through collective ad regulation delivers faster, more flexible, more joined-up and proportionate regulation.
- 1.8. The UK Advertising Codes include rules reflecting specific legal provisions and rules developed through separate regulatory process, which in combination ensure ads don't mislead, harm, or seriously offend their audience. The inclusion of the rules in the UK Advertising Codes has enormous benefits for responsible businesses and for consumers, who benefit from the protection the rules afford.
- 1.9. In addition to investigating ads, we also provide a wealth of training and advice services (most of which are free) for advertisers, agencies, and media to help them understand their responsibilities under the Codes and to ensure that fewer problem ads appear in the first place. CAP and BCAP provided over a million pieces of advice and training in 2023.
- 1.10. The ASA system is providing this written submission in response to the Food, Diet and Obesity Committee inquiry.

2. The ASA System's response to the to the Food, Diet and Obesity Committee inquiry

- 2.1. We acknowledge that the committee's inquiry is looking to assess the links between food, a healthy diet and tackling obesity.
- 2.2. As the frontline regulator for advertising of food and drink products high in fat, salt, or sugar across all media (including TV, online, social media, cinema, and outdoor spaces) our response is

focussed on the committee's queries around advertising.

- 2.3. Our response focuses on the current advertising rules around HFSS products, Ultra Processed Foods, our proactive monitoring work, and our consultation on the new rules for advertising of less healthy food and drink products in ads which stem from the recent Government legislation.

3. The BCAP Code and HFSS restrictions

- 3.1. Both the BCAP Code and the CAP Code contain a dedicated set of rules on advertising for food and drink products high in fat, salt, or sugar (HFSS products). These products are assessed as being high in fat, salt, or sugar in accordance with the nutrient profiling scheme by the Department of Health and Social Care.
- 3.2. The rules on TV advertising are set out in the BCAP Code of Broadcast Advertising. BCAP authors and maintains the Code and associated guidance under contract with Ofcom, which has contracted out the role of regulating broadcast advertising to us and which, in respect of this role, acts as our legal backstop. All significant BCAP Code changes must be put to public consultation and, ultimately, agreed by Ofcom.
- 3.3. Research indicates that broadcast advertising for food and drink products have a modest impact on children's food preferences. In the context of child obesity rates in the UK, the broadcast rules are therefore designed to proportionately reduce children's exposure to HFSS ads and to curb their appeal to primary school children when they can see these ads in programmes attracting a predominantly adult audience. The TV rules contain content and scheduling restrictions on HFSS advertising that have helped significantly reduce the amount of these ads seen by children, whilst placing calculated constraints on advertisers' freedom of expression and the revenue that broadcasters can raise through advertising.
- 3.4. The BCAP Code makes it clear that:
 - Dedicated children's channels may not carry an advert for food or drink assessed as high in fat, salt, or sugar.
 - HFSS products may not be advertised in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 16.
 - Licensed characters and celebrities popular with children may not be used in HFSS product advertisements targeted directly

at pre-school or primary school children.

4. The CAP Code and HFSS restrictions

- 4.1. The rules for non-broadcast advertising, including online and social media, are set out in the CAP Code. In 2017, following a call for evidence and a full public consultation, the ASA introduced broadly equivalent rules. The rules ban ads for HFSS food and drinks in children's non-broadcast media (including online and in social media). The rules apply to media targeted at under-16s, reducing the online environments in which HFSS product ads can be placed.
- 4.2. The non-broadcast rules were introduced in 2017 in response to, amongst other evidence, research which found that 12–15-year-olds spend more time online than watching TV; the significant development of online marketing strategies over the previous decade; and children's increasing access to and engagement with the internet.
- 4.3. The rules state that:
 - Ads that directly or indirectly promote an HFSS product cannot appear in children's media
 - Ads for HFSS products cannot appear in other media where children make up over 25% of the audience
 - The UK Government's Department of Health nutrient profiling model will be used to classify which products are HFSS
 - If the content targets under-12s, ads for HFSS products will not be allowed to use promotions, licensed characters and celebrities popular with children
- 4.4. These rules prevent ads for HFSS products from appearing around video-on-demand content, online, or in apps and advergames that are directed at or likely to appeal particularly to children.
- 4.5. To complement these rules, CAP [guidance](#) requires advertisers to use all the tools available to them on social media platforms to prevent targeting their ads at under-16s. This includes both ad targeting facilities provided directly by the platform, based on their platform users' interests, and browsing behaviour, and tools that restrict under-16s' access to marketers' own social media content.
- 4.6. In terms of outdoor media, the CAP rules prevent HFSS ads from being advertised within 200m of primary and secondary schools.

5. Rules on licensed characters and celebrity endorsements

- 5.1. The BCAP Code prohibits HFSS advertising on children's channels, in children's programming and in other programmes that are of particular appeal to children.
- 5.2. The BCAP Code makes it clear that licensed characters and celebrities popular with children may not be used in HFSS product advertisements targeted directly at pre- school or primary school children.
- 5.3. The CAP rules state that if the content targets under-12s, ads for HFSS products will not be allowed to use promotions, licensed characters, and celebrities popular with children; advertisers may, however, use those techniques to better promote healthier options.

6. Consultation on new rules for less healthy food and drink products in ads

- 6.1. In 2022, the UK Government [introduced](#) legislation mandating additional restrictions on ads for 'less healthy' food and drink products aiming to further mitigate the potential impact of advertising on children's dietary choices.
- 6.2. Ofcom is the statutory body responsible for the new restrictions and [appointed](#) the ASA as the frontline regulator.
- 6.3. From December 2023 to February 2024, we ran a [consultation](#) on the implementation of new rules further limiting food and drink advertising to children on TV, in on-demand programme services (ODPS), and in paid online ad media. We are currently analysing the responses we received.
- 6.4. The new less healthy product rules will come into effect from October 2025. They will prohibit ads for identifiable less healthy products from being included in Ofcom- regulated TV services and ODPS between 5:30am and 9:00pm, and from being placed in paid-for space in online media at any time.
- 6.5. Less healthy products are a subset of HFSS products, which as detailed above, have been subject to dedicated restrictions in the UK Advertising Codes since 2007. The less healthy product rules will form a new tier of rules in addition to CAP and BCAP's existing HFSS rules.

6.6. This consultation covered three areas that support the implementation of the new restrictions:

- Guidance to accompany the new rules to enable advertisers, media owners and practitioners to apply them.
- Transposition of the legislation into new UK Advertising Code rules for each of the restrictions; and
- Technical updates to the existing rules to ensure interoperability of the less healthy product rules with the existing rules on HFSS advertising.

6.7. The consultation does not cover the underlying policy basis for the new restrictions, or the provisions already established by legislation. These were addressed through the extensive process of consultation undertaken by Government up to 2021.

6.8. Our consultation was open to all stakeholders including members of the public. We encouraged and welcomed responses from NGOs and health campaign groups so that we can consider their views which will help shape the outcome.

6.9. At the end of the consultation process, we'll set out in full our evaluation of responses. Ofcom, as the statutory regulator, will have final sign-off on the guidance and the Secretary of State for Health must also be consulted before publication to ensure it aligns with legislation.

7. **Ultra processed foods, health, and nutrition claims in advertising**

7.1. The ASA is aware of the rising profile of ultra processed foods (UPFs) in the context of public health. To this date, neither the ASA or CAP have received complaints or calls for regulatory change that address advertising for UPFs, as distinct from ads for HFSS products or LHF products.

7.2. UPFs are, as yet, not legally defined. That would need to happen before UPF- specific ad rules could be considered.

7.3. The Codes contain specific rules around health and nutrition claims in food underpinned by a legal framework. In 2007, a Regulation of the European Parliament and of the Council of the European Union - the Nutrition and Health Claims Regulations (NHCR) into force. The NHCR protected consumers from

misleading or false claims by prescribing specific conditions of use associated with authorised health and nutrition claims. The EU Register of nutrition and health claims (the EU Register) listed all authorised nutrition and health claims as well as non-authorised health claims that had been rejected.

- 7.4.** Following the UK's departure from the EU and the end of the transition period, regulation of nutrition and health claims for foods became an autonomous matter for Great Britain and the EU as two separate legal and regulatory systems.

- 7.5. The NHCR was retained under the European Union (Withdrawal) Act 2018 as domestic law and the Great Britain nutrition and health claims register (the GB NHC Register) replaced the EU Register for health and nutrition claims made in Great Britain from 1 January 2021.
- 7.6. Health claims in food specifically refer to a relationship between a food / ingredient and health, for example "Calcium is needed for the maintenance of normal bones". The ASA can assess such health claims under rule 15.1 which states that marketing communications that contain health claims must be supported by documentary evidence to show they meet the conditions of use associated with the relevant claim.
- 7.7. Rule 15.2 of the Code reflects the requirement under the Regulations that health claims referring to general non-specific health benefits of the nutrient / food (e.g. "good for you" or "healthy") must be accompanied by a specific authorised health claim.
- 7.8. As a result of the Regulations, marketers may make disease risk reduction claims, but the only acceptable claims of this type are those already authorised on the GB NHC Register. Aside from authorised disease risk reduction claims, claims that state or imply a food prevents, treats, or cures human disease are not acceptable in marketing communications for food products.
- 7.9. A nutrition claim is one that refers to a nutritional benefit of a food, for example "high fibre" or "low sugar". Rule 15.1.1 states that only Nutrition Claims listed on the applicable register or claims that would have the same meaning may be used in marketing communications. Therefore, any claim that states or implies that a food has particular beneficial nutritional properties because of its ingredients must comply with the criteria for use set down in the Register.
- 7.10. Food labelling must comply with the Food Information Regulations. Labelling issues generally fall outside the remit of the Codes. Where labelling claims do appear in advertising that falls under the scope of the ASA, we rely on the principles of the Food Information Regulations to assess these claims.

8. **Proactive monitoring of online HFSS advertising**

- 8.1. Since 2018 we've focussed on tech-assisted proactive

monitoring, particularly around online ads for age-restricted products like HFSS.

8.2. In 2019, we used [new Avatar Monitoring technology](#) in the form of child avatars, which simulate children's online browsing activity, to identify ads that children see online. The research harnessed technology to provide the ASA with intelligence to help it in a core regulatory objective of appropriately limiting and reducing children's exposure to online ads for HFSS products and products illegal to sell to children, like alcohol and gambling products.

8.3. The monitoring exercise did not identify any clear evidence of HFSS advertisers actively targeting child profile Avatars, or serving ads which were directed, through their content, at children under 12 through use of celebrities or licensed characters popular with children or promotions.

8.4. Some key findings were:

- 2.4% of the 41,030 ads served across the monitoring period were for HFSS products.
- More than two-thirds of the HFSS ads served to Child Avatars (647) were for products likely to be of little interest to children e.g. supermarkets, high-end cheese, condiments.
- 26 of the 39 websites in the monitoring exercise which were clearly aimed at children did not serve a single ad for an HFSS product.
- The 13 remaining children's websites served a total of 8,534 ads, 43 of which were for HFSS products – 0.5% of all ads served on those sites.

8.5. During the same two-week period, the ASA also monitored openly available online content from a selection of the 50 top UK food and soft drink brands. The monitoring covered content posted on the brands' official websites and social media accounts, which was visible to non-logged-in users. It did not include paid advertising on the social media platforms.

8.6. The social media monitoring found that the brands generally complied with the advertising rules. Only one of those - a website for Pom Bear - was considered likely to be problematic. This HFSS

ad, which appeared on the 'Family Fun' section of the website, was immediately removed when Pom Bear was made aware of the problem.

- 8.7. The Avatar Monitoring work gave us a springboard to expand our proactive monitoring of online advertising. In 2020/2021, we published the [first](#), [second](#), [third](#) and [fourth](#) reports of our year-long, CCTV-style online monitoring project, which identifies and tackles age-restricted ads appearing in children's media.
- 8.8. Over three-month intervals, we used monitoring tools to capture ads served on a sample of over 50 websites and YouTube channels aimed at under-18s or attracting a disproportionately high under-18 audience. This allowed us to:
 - Identify instances where the ad rules were being broken.
 - Take follow-up action to contact advertisers whose ads broke the rules to secure the removal of the problem ads; and
 - Warn advertisers to review and, as necessary, amend their practices to ensure they target future ads responsibly.
- 8.9. In 2021, we published a new [Avatar Monitoring report](#) focusing on age-restricted ads, including HFSS, in mixed-age online media (websites and YouTube channels likely to appeal to both adults and children, but where under-18s make up less than 25% of the audience) to assess whether these ads are being targeted away from child members of the audience.
- 8.10. In November 2022, we published the [100 Children report](#) examining the prevalence and consequences of under-18s falsifying their age on social media. We directly monitored the devices of 97 under-18s over seven days to examine the circumstances in which they're exposed to age-restricted ads on social media and other online environments.
- 8.11. Our findings suggest that at least 11% of under-18s' social media accounts are registered with a date of birth that falsely suggests the account holder is 18 or older. As a likely consequence, we found that those accounts were served 47% of all the age-restricted ads captured in our study, almost two-thirds more than children registered as under-18.
- 8.12. In July 2023, we published a [report](#) on our enforcement and engagement work following on from The 100 Children Report. In

line with the ASA's legitimate regulatory objective to appropriately limit children's exposure to these ads and reduce exposure wherever practicable, and our zero tolerance to age-restricted ads appearing in children's media, we committed to exploring further with advertisers, agencies and platforms the steps taken to serve these ads to adult audiences and away from child audiences. In particular, we were concerned to know whether CAP Guidance on Targeting Age-restricted Ads Online had been followed by advertisers and agencies. The Guidance sets out steps prior to, during and post ad campaigns to ensure marketers are doing everything they can to limit children's exposure to these ads.

- 8.13.** The ASA expects advertisers and their agencies to use a combination of targeting tools, and to not rely entirely on age data, to ensure they're doing everything they can to serve their age-restricted ads to an adult audience and away from a child audience.
- 8.14.** In March this year, we launched a new project as part of our strategic commitment to protect vulnerable audiences, including children, and to bring greater transparency and broader accountability to online advertising regulation.
- 8.15.** The projects involve assessing the role of advertisers, publishers, and the intermediaries in the ad supply pathway in respect of online ads that are found to have breached the CAP Code, for example, ads for HFSS products appearing on websites and YouTube channels disproportionately popular with children. Using monitoring findings, we will undertake a number of in-depth case studies seeking to identify the parties involved in the supplier pathway of these non-compliant ads, assessing the part played by the advertiser, the publisher and the intermediary companies that sit between them. We will seek their input to better understand how the ads came to appear, publishing our findings and assessments to help deliver our strategic commitments.

8 April 2024