

CAP Food and Soft Drink Consultation  
Committee of Advertising Practice  
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# CAP Consultation: Food and soft drink advertising to children

**Which? is the largest consumer organisation in the UK with more than 1.4 million members and supporters. We operate as an independent, a-political, social enterprise working for all consumers and funded solely by our commercial ventures. We receive no government money, public donations, or other fundraising income. Which?'s mission is to make individuals as powerful as the organisations they have to deal with in their daily lives, by empowering them to make informed decisions and by campaigning to make people's lives fairer, simpler and safer.**

## Summary

Which? welcomes the opportunity to respond to the Committee on Advertising Practice (CAP) consultation on proposals to introduce new restrictions on the advertising of food and soft drinks to children.

We appreciate the Committee's intention to strengthen the Code in view of concerns about rates of childhood obesity and overweight. There are many aspects to the proposals that we support. However, the proposals should go further in order to effectively deal with the nature of advertising of foods high in fat, sugar and salt (HFSS) to children:

- We strongly support the introduction of tougher restrictions on the advertising of HFSS foods to children.

- We agree that brand advertising should be included within this – but revisions will need to be made to the BCAP guidance on brand advertising to address issues specific to non-broadcast and fully reflect the nature of brand advertising, including use of 'sub-brands'.
- We agree that the Department of Health nutrient profiling model should be used until the independent review recommended by Public Health England (PHE) has been completed.
- All restrictions should apply to children 15 and under in line with broadcast advertising restrictions and recognising that older, as well as younger children should be protected.
- This includes rules on use of promotions, celebrities and characters. But these rules also need to go further so that equity brand characters are included as well as user-generated characters initiated by companies and indirect as well as direct celebrity promotion and endorsements.
- We support the introduction of a rule restricting the placement of HFSS product advertising that covers media directed at or likely to appeal to children 15 and under. Reference to 'particular' appeal should be removed.
- We agree that a 25% of the audience measure is useful for determining what is 'targeted', but this needs to be supported by additional guidance on what type of techniques, imagery or other aspects of advertising are considered to appeal to children. There also needs to be a transparent way of verifying compliance across different non-broadcast media.
- We strongly agree that the restrictions on HFSS product advertising, along with the associated and updated guidance on brand advertising, should apply to all non-broadcast media within the remit of the Code.

In addition, we urge CAP to support the application of HFSS advertising restrictions to the non-broadcast media that fall outside of the scope of the Code, including packaging, point of sale promotions and sponsorship. This is particularly important given the integrated nature of food advertising to children which may cross some media that are within the scope of the CAP and others that are not.

## Introduction

Which? welcomes the opportunity to respond to the Committee on Advertising Practice (CAP) consultation on proposals to introduce new restrictions on the advertising of food and soft drink products to children.

We are pleased that the CAP recognises that too many children in the UK are growing up overweight or obese and that it is a legitimate policy aim to place appropriate restrictions on advertising to help protect the health and well-being of children and not undermine progress towards improving the nation's diet.

A third of 10-11 year olds and a fifth of 4-5 year olds are overweight or obese<sup>1</sup>. Two thirds of adults fall into this category. The causes are multi-factoral and many factors will shape the environment in which we make our food choices. The evidence shows that advertising does influence children's preferences and choices and it is therefore an important area for action.

Foods high in fat, sugar and salt (HFSS) are still advertised to both older and younger children in a variety of ways. This reflects the limitations of the current non-broadcast restrictions, for example in relation to age restrictions, as well as loopholes or very general rules within the current Code that are open to too much interpretation.

Which? therefore supports many aspects of the CAP proposals. However, we have set out several areas where they should go further to effectively address the way that HFSS foods are marketed to children and therefore ensure adequate protection.

## General comments

The nature of non-broadcast advertising to children has evolved considerably since advertising restrictions were last reviewed and Ofcom restrictions brought in for broadcast advertising. Our research has found that HFSS foods are still marketed to children through a variety of media and techniques, which are becoming increasingly integrated and, in some cases, difficult for parents and guardians who are potentially less media aware or not the target of the advertising to keep track of.

Many aspects fall within the scope of the media covered by the CAP Code. It is therefore important that this review reinforces the need for comprehensive measures that ensure a responsible approach, in line with, rather than in conflict with Government advice on healthy choices. There are some media, such as sponsorship, packaging and point of sale promotions that also need to be addressed but which lie outside of the scope of the CAP Code and so need to be dealt with through other Government mechanisms.

Our recent research has found that some companies will use a mix of media, both new and more traditional, as part of their campaigns. This may for example include combining TV, packaging, on-line ads, apps, promotions via social networking sites, company web-sites and sponsorship. It is therefore important that the Code deals with this complexity.

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<sup>1</sup> Health Surveys for England, Scotland and Wales 2014; National Child Measurement Programme results 2014/15 (Public Health England [http://www.noo.org.uk/NOO\\_about\\_obesity/child\\_obesity](http://www.noo.org.uk/NOO_about_obesity/child_obesity))

## CAP proposals and consultation questions

### 1. Restrictions on HFSS product advertising

*(a) Should the CAP Code be updated to introduce tougher restrictions on the advertising of products high in fat, salt or sugar?*

We strongly support tougher restrictions on the advertising of HFSS products. The purpose of the restrictions should be to ensure that food marketing to children is in line with Government advice about healthier choices. We therefore support an approach that continues to permit the advertising of healthier choices to children provided that the model that is used to determine this is robust. Advertising does influence children's food preferences and choices and so it should be used to help rather than hinder efforts to improve the quality of children's diets and ultimately their longer-term health.

*(b) Should CAP use the existing Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules? Please explain your reasons. Please consider CAP's recommendations in Section 44 when answering this question.*

We welcome CAP's proposal to address the issue of brand advertising as we consider that this is a potential loophole. Some brands are associated with HFSS foods, as has been recognised for broadcast advertising.

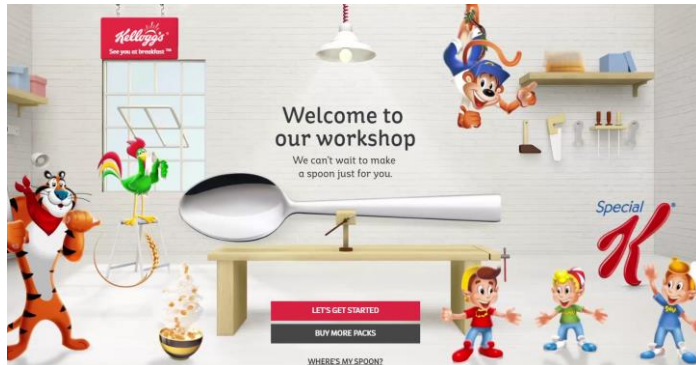
Examples of how this is currently used includes marketing by soft drink companies who's brand name is associated with its HFSS product and marketing of company 'sub-brands' which may include some healthier products, although the majority (and highest selling) products linked to the sub-brand are HFSS e.g. some breakfast cereals.

We agree that guidance will be needed in order to ensure that this aspect of the Code is understood and complied with. The brand advertising guidance developed for broadcast should be revised to ensure it includes examples specific to non-broadcast. As set out above, we also consider that the use of 'sub-brands' and of brand characters needs to be addressed.

The following image for Coca Cola TV, which is available on YouTube illustrates the need to ensure that the guidance is robust in relation to both broadcast and non-broadcast brand advertising and deals with the breadth of promotions and media that are now used.



The following example of a promotion (in the form of a game) also illustrates the importance of addressing branding using characters. This includes characters associated with HFSS products, but does not mention the products explicitly:



## 2. Selecting a nutrient profiling model

*Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products? Please explain your reasons and, if applicable, the details of your preferred nutrient profiling model.*

The Department of Health (DH) nutrient profiling model should be used, consistent with broadcast advertising restrictions, until the review of the nutrient profiling model recommended by Public Health England (PHE) has been concluded.

We agree with PHE that it is timely to independently review the model, particularly to bring it in line with Scientific Advisory Committee on Nutrition (SACN) recommendations, for example on sugar. The model does now appear too weak on some aspects and other models that may be more robust have evolved, including the WHO model. Until this review is concluded, we consider that the DH model remains the official one that is widely used and so on a practical basis should continue to be used until a new one is in place.

## 3. Existing prohibitions on the use of promotions and licensed characters and celebrities

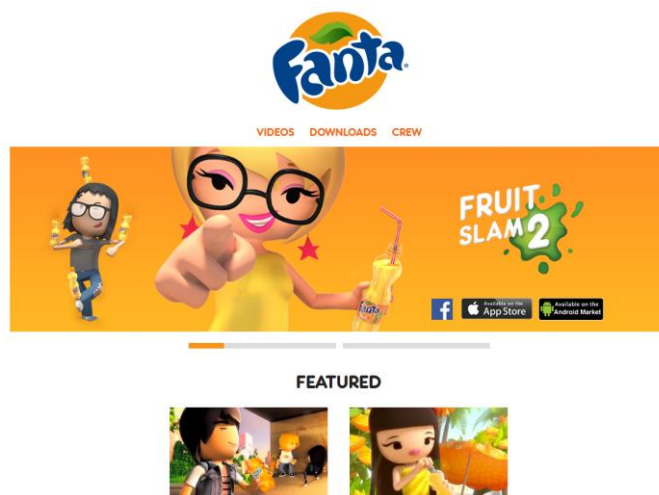
*There are existing rules in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only? The current rules on creative content are the prohibitions on the use of promotions (rule 15.14) and of celebrities and licensed characters popular with children (rule 15.15). Please explain your reasons.*

The restrictions should allow for the promotion of healthier products. A stricter approach should therefore be taken than merely restricting HFSS foods so that 'intermediate foods' as classified by the current model are still not advertised using these techniques.

This part of the Code also needs to be strengthened in several other respects:

- Restrictions on the use of promotions, celebrities and characters need to go broader than 'licensed' characters to include equity brand characters developed by companies.
- These more comprehensive restrictions should apply to children 15 and younger (not just 11 and under). Please see our later comments on age restrictions in general.

In the case of promotions using characters, our research has found examples of characters that are used to advertise HFSS foods to older children. In line with the broadcast restrictions (and definition of a child more generally for advertising purposes), we consider that the restrictions need to address these practices too.



- It is important to more clearly define 'celebrities' and 'popular with children'. We have been concerned how football stars for example have still continued to be used to market some HFSS foods despite their appeal to children as well as to adults. This also applies to music stars. There has also been a growth of on-line bloggers who have celebrity status with children and it is important that these are covered by the restrictions.
- Indirect celebrity endorsements and promotion should also be addressed. With user-generated videos, the relationship between the celebrity and the advertiser may also be less obvious. This endorsement of Krave (30% sugar) on the Facebook page of Olympic diver and DJ Chris Mears using Krave's custom lens on Snapchat is one example.



- The trend of encouraging user-generated characters should also be included. Our recent research has also highlighted how companies may encourage children to develop or promote characters themselves. Vimto's 2016 Vimtoad campaign for example made use of Snapchat, using custom lenses to allow videos to be created. These videos could then be shared across other social media platforms such as Facebook and Twitter. This type of character also needs to be addressed within this section of the Code.





#### 4. Introducing placement restrictions

*Should CAP introduce a rule restricting the placement of HFSS product advertising?*

We agree with the approach to introduce a rule restricting the placement of HFSS product advertising – but dependent on how this is defined.

The proposed wording for the Code includes reference to media targeted or likely to appeal particularly to children. We are concerned that this may leave a loophole in that HFSS foods will be marketed to children through media where large numbers of children will see the ad (e.g. social networking sites, video sharing sites etc), but which adults also use. The reference to 'particularly' should also be removed, so that it reads 'targeted or likely to appeal to children'. If it is retained, we are concerned that this will be used to circumvent this new rule by claiming that the ad is also of appeal to adults. This is likely to particularly be the case when determining what is of appeal to older children and it is important that they are also protected.

More robust guidance is also needed that goes beyond the restrictions described in question 4 to be explicit about what type of techniques, imagery or other aspects of the advertising are considered to appeal to children.

*(b) If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children:*

*i) aged 11 or younger?*

*ii) aged 15 or younger?*

*Please explain your reasons. Please consider CAP's recommendations in section 47 when answering this question.*

The restrictions in general, not merely in relation to the rule restricting the placement of HFSS advertising, should apply to children 15 and under. This would be consistent with broadcast advertising restrictions and would recognise that all children need protection.

#### 5. Defining the audience

*It is often straight-forward to identify media targeted at children. Where media has a broader audience, CAP uses a "particular appeal" test – where more than 25% of the audience are understood to be of a particular age or younger – to identify media that should not carry advertising for certain products media.*

*Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising? Please explain your reasons. Please consider CAP's recommendation in section 48 when answering this question.*

We consider that 25% of the audience is a useful measure to help determine what is 'targeted', but as set out above, this cannot be the only measure. The web-sites and other media that children are likely to use in the largest numbers (eg. YouTube, Instagram, Facebook) will also be used by large numbers of adults – so basing restrictions on the proportion of the audience is not enough. Additional guidance is needed on what is meant by targeting and 'of appeal to children' (rather than of 'particular' appeal) alongside the measure.



It is also important to ensure that there is a transparent way of verifying compliance with the 25% measure across the breadth of media.

## 6. Application to different media

*Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?*

*Please explain your reasons. Please consider CAP's recommendation in section 49 when answering this question.*

*Also, if relevant, please include information and data on why a particular media should be considered exempt from the scope of a new rule. CAP expects that respondents making a case for media exemptions will be able to demonstrate robustly the disproportionate impact on the media in question.*

We agree with the proposal that the new restrictions should apply to all non-broadcast media within the remit of the CAP Code, including on-line advertising, if they are to be effective and to have a meaningful impact. HFSS foods are advertised through a broad range of non-broadcast media which is constantly evolving and becoming increasingly integrated.

In addition, we urge CAP to support the application of HFSS advertising restrictions to the non-broadcast media that fall outside of the scope of the Code, including packaging, point of sale promotions and sponsorship.

For more information,  
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