

**Compliance Report**

# **Food and Soft Drink Advertising Survey 2009**



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# 1. Summary

The Advertising Standards Authority (ASA) has undertaken this survey to measure compliance with the content rules of food and soft drink product advertisements.

The food advertising rules were significantly tightened in 2007 in response to public concern about rising levels of childhood obesity and the need to help protect children's health. The new rules aim to reduce the appeal to and the exposure of children to ads for less healthy foods and diets.

The Compliance team assessed 1,110 ads during the month of October in 2009. Seven breached a Code, producing an overall compliance rate of 99.4%. None of the ads breached any of the new rules. We recorded a breach of a Code only for those advertisements that obviously did not comply with the food advertising rules.

The Compliance team examined 164 television ads, 27 radio ads, 37 direct mailings, 277 online ads, 104 posters, 452 press ads, 14 cinema ads and 35 circulars. For full details of where the ads appeared please see Appendix 5.

The high compliance rate was in line with both the 2007 (99.2%) and 2008 (98.6%) Food and Soft Drink Survey results. Indeed, the 2009 survey included no breaches of the new rules, whereas the 2008 survey had one. The new rules had not been introduced when the 2007 survey was conducted.

In 2008, nine of the 660 surveyed non-broadcast advertisements breached the CAP Code (1.4%). This year the result improved with only five of the 919 ads in breach of the rules (0.5%).

The Compliance team will continue to monitor food and soft drink ads and will work with advertisers, publishers, Clearcast and the RACC (the bodies that clear TV and radio ads for broadcast) to maintain the high level of compliance with the CAP and BCAP Codes.

## 2. Introduction

### 2.1 Background

The Advertising Standards Authority (ASA) is the independent body that administers the CAP and BCAP Codes (see appendix 1), which apply to the content, placement and scheduling of UK non-broadcast and broadcast marketing communications.

The ASA is responsible for ensuring that the self-regulatory system works in the public interest. It achieves that by investigating complaints, identifying and resolving problems through research and by promoting and enforcing high standards in marketing communications by ensuring that marketers observe the CAP and BCAP Codes.

The Committee of Advertising Practice (CAP) is the body that writes and maintains the Advertising Codes through two committees.

The Committee of Advertising Practice for non-broadcast is responsible for the CAP Code. It represents advertisers, agencies, media owners and trade and professional organisations in the advertising, sales promotion and direct marketing industries. CAP provides a pre-publication copy advice service and co-ordinates the activities of its members to achieve the highest degree of compliance with the CAP Code.

The Committee of Advertising Practice for broadcast (BCAP) is contracted by the communications regulator, Ofcom, to write and enforce the BCAP Code, which comprises the rules that govern the content and scheduling of TV and radio advertisements. BCAP comprises representatives of broadcasters, advertisers, agencies, direct marketers and interactive marketers.

The Compliance team works to ensure that marketing communications comply with the CAP and BCAP Codes and with ASA adjudications. The team follows up ASA adjudications, monitors both broadcast and non-broadcast marketing communications and takes immediate action to ensure ads that breach the Codes are removed from the media. One of the team's objectives is to create a level-playing field for marketers in each sector and it ensures that by communicating decisions that have sector-wide ramifications. The Compliance team conducts surveys (of which this is one) to assess compliance rates in particular industries, sectors or media. The surveys help to identify marketing trends and to anticipate subjects of concern that need to be addressed by the ASA or CAP.

In summary, the stricter food rules introduced in 2007 for broadcast and non-broadcast advertisements state that ads for food or soft drink products should not:

- condone or encourage poor nutritional habits or an unhealthy lifestyle in children
- encourage excessive consumption of food or drink products

- encourage the purchase of food or soft drinks by inappropriately using licensed characters, celebrities or promotional offers in ads intended for children
- encourage the pestering of parents
- promote consumption of a food purely to get a promotional offer
- give a misleading impression of the nutritional or health benefits of the product.

The non-broadcast and radio rules allow fresh fruit or fresh vegetables to be advertised using techniques restricted for other food or drink products.

The BCAP Code includes rules that cover ads for products high in fat, salt or sugar (HFSS). Foods are categorised according to the Nutrient Profiling (NP) model that was developed by the Food Standards Agency (FSA) on 6 December 2005 (see appendix 2). Those products rated as HFSS under the FSA model are subject to scheduling and content restrictions (see appendix 3).

In regard to the advertising of food products, the main differences between the CAP and BCAP Codes are:

- the TV rules include scheduling restrictions that prohibit the advertising of HFSS products in children's programmes and around programmes of particular appeal to children (persons aged under 16)
- the radio rules include basic scheduling guidance but contain no specific restrictions on food advertisements
- neither placement nor volume restrictions have been incorporated into the CAP Code. The rules are a set of content restrictions only
- the TV rules use the FSA's Nutrient Profiling model to restrict products that are assessed as HFSS from being advertised to children
- the radio rules and those in the CAP Code apply to all foods except fresh fruit and vegetables; they are not based on the Nutrient Profiling model which was specifically developed for TV.

Note: this survey considers compliance with the broadcast and non-broadcast advertising content restrictions but not with the TV scheduling restrictions. Ofcom is currently reviewing whether the content and scheduling rules are being implemented as intended, as part of its review of the TV HFSS rules.

## 2.2 Survey objectives

The purpose of this survey is to:

- assess compliance rates against the rules (not including the TV scheduling rules) for food and soft drink advertisements by food category and media type;
- assess compliance rates for food and soft drinks advertisements against all the clauses in the BCAP Codes and the CAP Code;
- identify and resolve obvious Code breaches;

- compare the results with the 2007 and 2008 Food and Soft Drink Surveys;
- act as a deterrent to bad practice and an encouragement to good practice.

## 3. Methodology

### 3.1 Sample method

Billets Media Monitoring, run by Ebiquity, an online provider of advertising and media intelligence in the UK, was used to identify food or soft drink advertisements for assessment.

The Compliance team assessed 164 television advertisements, 27 radio advertisements, 37 direct mailings, 277 online advertisements, 104 posters, 452 press advertisements, 14 cinema ads and 35 circulars. To ensure the number of advertisements in the survey remained manageable, we limited the sample of press, online and television advertisements to ads that appeared in October 2009. In line with last year, we systematically selected a sample of 35 circulars from the 349 that the Billets Media Monitoring search generated. A total of 1,110 advertisements were scrutinised.

The Compliance team limited its remit to identifying those ads that obviously breached a Code clause. Ads that, on a fine balance, could be said to breach a clause were not recorded as a breach of a Code. During the survey period, the ASA undertook three formal investigations about food or soft drink advertisements. Of those, two resulted in 'upheld' adjudications and one a 'not upheld' adjudication (see Appendix 6).

We assessed the advertisements against the food and soft drink rules in the CAP Code and the BCAP Television and Radio Codes (see appendix 1) and against all other applicable Code clauses.

### 3.2 Food and Soft Drink Categories

The food and soft drink categories identified within the Billets Media Monitoring samples were:

#### FMCG

- Confectionery

#### Drinks

- Beverages
- Non-alcoholic

#### Food

- Bakery goods
- Tinned
- Cereal
- Cooking ingredients
- Dairy
- Food range
- Frozen
- Ready-to-eat meals
- Sauces and condiments
- Soup
- Vegetarian

#### Retail

- Mail Order Food and Drink
- Stores – Department – Food
- Stores – Other - Fast Food
- Confectionery
- Stores – Supermarket
- Supermarket range.

## 4. Findings

### 4.1 Compliance rate

Seven ads (0.6%) were found to breach a Code clause, a compliance rate of 99.4%. The result mirrors the one recorded in last year's survey. It is worth noting, however, that fewer breaches were recorded from a larger sample in this year's survey. Last year there were 10 breaches amongst 927 ads, this year seven breaches were identified from a sample of 1,110 ads.

The ads were placed into one of 21 categories listed by Billets Media Monitoring. Table 1 shows that four categories accounted for over half the ads scrutinised: Stores - Fast Food (167), Stores – Supermarket Food (151), Stores - Supermarket Range (146) and Confectionery (122). No ads were categorised under Stores - Confectionery.

**Table 1: Ads by media and product category**

	Broadcast			Non-Broadcast						Total
	TV HFSS	TV Non-HFSS	Radio	Press	Cinema	Dir. Mkting	Online	Posters	Circulars	
<b>Confectionery</b>										
<b>Confectionery</b>	3	7	0	41	4	2	0	3	0	<b>122</b>
<b>Drinks</b>										
<b>Beverages</b>	0	0	0	22	0	0	9	12	0	<b>53</b>
<b>Non-alcoholic</b>	3	3	1	30	1	0	8	5	0	<b>61</b>
<b>Food</b>										
<b>Bakery</b>	0	2	2	16	0	0	42	2	0	<b>64</b>
<b>Canned</b>	0	0	0	8	0	0	0	1	0	<b>9</b>
<b>Cereal</b>	5	5	0	17	2	0	8	0	0	<b>37</b>
<b>Cooking ingredients</b>	1	1	0	5	2	0	2	0	0	<b>11</b>
<b>Dairy</b>	5	0	1	38	5	0	6	2	0	<b>77</b>

<b>Range</b>	2	1	1	7	0	0	0	0	0	<b>11</b>
<b>Fresh</b>	0	5	0	6	0	0	3	1	0	<b>15</b>
<b>Frozen</b>	1	14	3	10	0	0	6	1	3	<b>48</b>
<b>Ready to eat</b>	2	2	2	18	0	0	2	0	0	<b>46</b>
<b>Sauces</b>	4	0	3	13	0	0	6	6	0	<b>32</b>
<b>Soup</b>	7	5	1	3	0	0	1	0	0	<b>17</b>
<b>Vegetarian</b>	0	2	0	4	0	0	0	2	0	<b>8</b>
<b>Mail order</b>	0	0	0	19	0	5	8	1	0	<b>33</b>
<b>Stores</b>										
<b>Confectionery</b>	0	0	0	0	0	0	0	0	0	<b>0</b>
<b>Dept. (food)</b>	0	0	0	2	0	0	0	0	0	<b>2</b>
<b>Fast food</b>	17	0	7	22	0	28	6	1	6	<b>167</b>
<b>Supermarket (food)</b>	6	9	3	89	0	0	1	3	0	<b>151</b>
<b>Supermarket range</b>	0	2	3	82	0	2	9	2	6	<b>146</b>
<b>TOTAL</b>	<b>76</b>	<b>88</b>	<b>27</b>	<b>452</b>	<b>14</b>	<b>37</b>	<b>277</b>	<b>04</b>	<b>35</b>	<b>1,110</b>

## 4.2 Breaches by product category

Table 2: Number of breaches by product category

Product category	No of ads	Breaches	Compliance rate (%)
<b>Confectionery</b>			
Confectionery	122	0	100
<b>Drinks</b>			
Beverages	53	0	100
Non-alcoholic	61	2	96.7
<b>Food</b>			
Bakery	64	2	96.9
Tinned	9	0	100
Cereal	37	0	100
Cooking ingredients	11	0	100
Dairy	77	2	97.4
Range	11	0	100
Fresh	15	0	100
Frozen	48	0	100
Ready to eat	46	0	100
Sauces	32	0	100
Soup	17	0	100
Vegetarian	8	0	100
Mail order	33	1	97.0
<b>Stores</b>			
Confectionery	0	0	n/a
Department Stores (Food)	2	0	100
Fast Food	167	0	100
Supermarket food	151	0	100
Supermarket range	146	0	100
<b>TOTAL</b>	<b>1110</b>	<b>7</b>	<b>99.4</b>

Last year, eight of the 10 breaches were in the Drinks: Non-alcoholic category but this year both the number of ads in the sample and the number of breaches in that category were lower. The Compliance rate in this category showed a slight improvement: up 1% to 97%.

Two breaches from a sample of 77 ads were recorded in the Food: Dairy category and two from 64 in the Food: Bakery category. Both categories had a compliance rate of 97% which, although not a cause for concern, was not as good as last year's 100% compliance rate for both. There was one breach from 33 ads in the Food: Mail Order category. The sample size in the Food: Mail Order category was too small to draw meaningful conclusions but there was a slightly improved compliance rate versus last year.

Although the compliance rate was not noticeably affected, there was a noticeable increase in the number of ads for Confectionery, Beverages, Food: Bakery, Food: Frozen, Stores: Fast Food and, perhaps most significantly, ads placed by Supermarkets. While ads for Supermarkets nearly trebled, it is worth noting that no breaches were recorded for the second year running.

Please refer to section 4.4 for a description of the breaches.

### 4.3 Breaches by media type

**Table 3: Number of breaches by media type**

Media type	No of ads	Breaches	Compliance rate (%)
Television	164	2	98.8
Radio	27	0	100
Press	452	3	99.3
Circulars	35	0	100
Direct mail	37	1	97.3
Online	277	0	100
Cinema	14	0	n/a
Poster	104	1	99.0
<b>TOTAL</b>	<b>1,110</b>	<b>7</b>	<b>99.4</b>

In line with last year, press ads comprised 40% of the total sample. Online ads accounted for 25% of the total, perhaps unsurprisingly up from last year's figure of 17%. Conversely, the share for broadcast ads fell from 29% to 17%. The data suggests broadcast ads lost share to online ads. There were more cinema and outdoor ads in the sample than last year.

Two TV advertisements were found to be in breach; the compliance rate for that medium was slightly worse than last year but did not give cause for concern. The breach rate for press ads improved by a single percentage point. The compliance rate of 97% for direct mail was the lowest recorded. Because there were only 37 in the direct mail sample it was difficult to attribute statistical significance to this result. None of the 35 circulars breached the Code, nor any of the 277 online ads, which was an impressive result. One of the 104 posters surveyed breached the CAP Code, a compliance rate of 99%.

#### **4.4 Complaints**

Three food or soft drink advertisements that appeared during the sample period were the subject of formally investigated complaints by the ASA; two of those complaints were subsequently 'upheld'. To read the adjudications please see Appendix 6. Two further complaints were resolved informally. The ASA Council 'upheld' complaints about a television ad making claims that could not be substantiated and poster ads that misleadingly implied a non-alcoholic soft drink was healthier than claimed. The 'not upheld' complaint concerned a TV ad for dairy produce.

Another complaint submitted during the survey period referred to an on-pack sales promotion. While the complaint was 'upheld', the relevant ad was not in the survey sample because ebiqity do not carry data about on-pack sales promotions.

#### **4.5 Breaches identified by the Compliance team**

All the breaches identified by the Compliance team that occurred in non-broadcast advertisements were the subject of complaints to the ASA, either before, during or after the survey period. All of the issues identified by the Compliance team in the survey have, therefore, been resolved by the ASA adjudications in Appendix 6.

## 5. Conclusion

The Compliance team was encouraged to find that 99.4% of all ads during the period complied with the Advertising Codes and that the high compliance rate recorded in both the 2007 and 2008 surveys has been maintained. Importantly, the survey found no breaches of the new food rules despite a larger sample of ads assessed compared with earlier years.

Non-broadcast ads recorded a slightly improved compliance rate (99.4%) versus last year (98.6%); that is a testament to advertisers, agencies and media owners understanding and observing the rules. Although TV ads recorded a slightly worse compliance record than last year, the rate (98.8%) remained encouragingly high. The compliance rate for Radio ads was 100%. These impressive results are testament to the good work of Clearcast and the RACC, who help ensure that broadcast ads meet the BCAP Codes' requirements.

Ofcom's review of the regulatory impact of the HFSS rules for television advertisements is ongoing and will cover compliance with the scheduling rules. The report is due to be published in the second half of 2010 and Ofcom will include the relevant results of our survey as part of its evaluation of the content rules.

We shall continue to work with media owners and advertisers to ensure that the high level of compliance is maintained.

## 6. Advice and Training – CAP Services

CAP and BCAP support the commitment of advertisers to communicate responsibly by providing a comprehensive range of advice and training resources. Collectively known as [CAP Services](#), those include bespoke advice, online tools, advice newsletters and training seminars – all designed to raise awareness of the rules and to prevent breaches.

Of particular note is the pre-publication Copy Advice service which offers convenient and comprehensive online resources as well as a bespoke service. The dedicated [website](#) brings together more than 400 AdviceOnline entries and HelpNotes. Practitioners are urged to register to access the full database as well as case studies and other practical information.

The team of six experts also provide fast, free and confidential bespoke advice by email or telephone on specific queries for practitioners who want to check whether or not their campaigns comply with the CAP Code before publishing. The dedicated and experienced team can draw on ASA research, previous adjudications and the likely reaction of the ASA Council, making Copy Advice the most authoritative provider of compliance advice on the CAP Code. For bespoke advice, consult the Copy Advice team on 020 7492 2100 or by e-mailing [copyadvice@cap.org.uk](mailto:copyadvice@cap.org.uk).

To keep up-to-date with the latest advice, training seminars, ground-breaking ASA adjudications, regulatory developments and changes to the Advertising Codes, we encourage all industry practitioners to sign up to receive the e-newsletters - Update and Insight - provided by CAP and Copy Advice respectively. To sign up, go to [www.cap.org.uk](http://www.cap.org.uk) or [www.copyadvice.org.uk](http://www.copyadvice.org.uk).

For full details of CAP Services, visit [www.cap.org.uk/capservices.aspx](http://www.cap.org.uk/capservices.aspx).

# 7. Appendices

## Appendix 1 - The Cap and BCAP Codes

### BCAP Code

#### Television

The BCAP Television Advertising Standards Code sets out the rules that govern advertisements on television channels licensed by Ofcom.

The rules for food and soft drink advertisements are:

#### Food and Soft Drink Advertising and Children

##### Diet and lifestyle

Advertisements must avoid anything likely to encourage poor nutritional habits or an unhealthy lifestyle in children.

##### Notes:

1. This rule does not preclude responsible advertising for any products including those that should be eaten only in moderation.
2. In particular, advertisements should not encourage excessive consumption of any food or drink, frequent eating between meals or eating immediately before going to bed.
3. It is important to avoid encouraging or condoning attitudes associated with poor diets, for example, a dislike of green vegetables.
4. Portion sizes or quantities of food shown should be responsible and relevant to the scene depicted, especially if children are involved. No advertisement should suggest that a portion intended for more than one person is to be consumed by a single individual or an adult's portion, by a small child.
5. Advertisements for food should not suggest that an inactive or sedentary lifestyle is preferable to physical activity.

##### Pressure to purchase

Although children may be expected to exercise some preference over the food they eat or drink, advertisements must be prepared with a due sense of responsibility and should not directly advise or ask children to buy or to ask their parents or other adults to make enquiries or purchases.

## Notes:

1. This extends to behaviour shown: for example, a child should not be shown asking for a product or putting it into the parent's trolley in the supermarket.
2. Phrases such as "Ask Mummy to buy you" are not acceptable.
  - a. Nothing in an advertisement may seem to encourage children to pester or make a nuisance of themselves.
  - b. Advertisements must not imply that children will be inferior to others, disloyal or will have let someone down, if they or their family do not buy, consume or use a product or service.
  - c. Advertisements must neither try to sell to children by appealing to emotions such as pity, fear, loyalty or self-confidence nor suggest that having the advertised product somehow confers superiority, for example making a child more confident, clever, popular, or successful.
  - d. Advertisements addressed to children should avoid 'high pressure' and 'hard sell' techniques, i.e. urging children to buy or persuade others to buy. Neither the words used nor the tone of the advertisement should suggest that young viewers are being bullied, cajoled or otherwise put under pressure to acquire the advertised item.
  - e. If an advertisement for a children's product contains a price, the price must not be minimised by the use of words such as "only" or "just".

## Promotional offers

Promotional offers should be used with a due sense of responsibility. They may not be used in HFSS product advertisements targeted directly at pre-school or primary school children.

1. Advertisements featuring promotional offers linked to food products of interest to children must avoid creating a sense of urgency or encouraging the purchase of excessive quantities for irresponsible consumption.
2. Advertisements should not seem to encourage children to eat or drink a product only to take advantage of a promotional offer: the product should be offered on its merits, with the offer as an added incentive. Advertisements featuring a promotional offer should ensure a significant presence for the product.
3. Advertisements for collection-based promotions must not seem to urge children or their parents to buy excessive quantities of food. They should not directly encourage children only to collect promotional items or emphasise the number of items to be collected. If promotional offers can also be bought, that should be made clear. Closing dates for collection-based promotions should enable the whole set to be collected without having to buy excessive or irresponsible quantities of the product in a short time. There should be no suggestion of "Hurry and buy".
4. If they feature large pack sizes or promotional offers, e.g. "3 for the price of 2", advertisements should not encourage children to eat more than they otherwise would.
5. The notion of excessive or irresponsible consumption relates to the frequency of consumption as well as the amount consumed.

## **Use of characters and celebrities**

Licensed characters and celebrities popular with children must be used with a due sense of responsibility. They may not be used in HFSS product advertisements targeted directly at pre-school or primary school children.

### **Notes:**

Advertisements must not, for example, suggest that consuming the advertised product will enable children to resemble an admired figure or role-model or that by not doing so children will fail in loyalty or let someone down.

This prohibition does not apply to advertiser-created equity brand characters (puppets, persons or characters), which may be used by advertisers to sell the products they were designed to sell.

Persons such as professional actors or announcers who are not identified with characters in programmes appealing to children may be used as presenters.

Celebrities and characters well-known to children may present factual and relevant generic statements about nutrition, safety, education, etc.

## **Restrictions on TV advertising for HFSS products:**

### **Accuracy in food advertising**

1. No nutrition or health claim may be used in HFSS product advertisements targeted directly at pre-school or primary school children.

### **Scheduling restriction**

The following may not be advertised in or adjacent to children's programmes or programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 16: (iii) food or drink products that are assessed as high in fat, salt or sugar in accordance with the nutrient profiling scheme published by the Food Standards Agency (FSA) on 6 December 2005.

### **Radio**

The BCAP Radio Advertising Standards Code sets out the rules that govern advertisements on any radio station licensed by Ofcom.

The rules for food and soft drink advertisements are:

### **Food and Soft Drink Advertisements and Children**

1. Promotional offers to children should be used with a due sense of responsibility. They may not be used in food or soft drink product advertisements targeted directly at pre-school or primary school children; that prohibition does not apply to advertisements for fresh fruit or fresh vegetables. Advertisements that contain promotional offers linked to food and drink products of interest to children must neither seem to encourage children to eat or drink a product only to take advantage of a promotional offer nor create a sense of urgency. If promotional offers can also be bought, that should be made clear. Closing dates for collection-based promotions should enable the whole set to be collected without having to buy excessive or irresponsible quantities of the product in a short time.
2. Licensed characters and celebrities popular with children must be used with a due sense of responsibility. They may not be used in food or soft drink product advertisements targeted directly at pre-school or primary school children; that prohibition does not apply to advertisements for fresh fruit or fresh vegetables.

- a. This prohibition does not apply to advertiser-created equity brand characters (puppets, persons or characters), which may be used by advertisers to sell the products they were designed to sell.
- b. Persons such as professional actors or announcers who are not identified with characters in programmes appealing to children may be used as presenters.
- c. Licensed characters, equity brand characters or celebrities well-known to children may present factual and relevant generic statements about nutrition, safety, education and the like.
- d. Licensed Characters are those characters that are borrowed equities and have no historical association with the product.
- e. Equity Brand Characters are those characters that have been created by the advertiser and have no separate identity outside their associated product or brand.

### **Diet and Lifestyle**

Advertisements must not disparage good dietary practice and must avoid anything likely to encourage poor nutritional habits or an unhealthy lifestyle, especially in children.

Advertisements must not discourage selection of foods, such as fresh fruit and vegetables, that generally accepted dietary opinion recommends should form a greater part of the average diet.

This rule does not preclude responsible advertising for any products including those that should be eaten only in moderation. Claims of nutritional or health benefits should be considered in the context of a balanced diet or lifestyle or both.

Nutrition or health claims must be supported by sound scientific evidence.

No nutrition or health claim may be used in food or soft drink product advertisements targeted directly at pre-school or primary school children; that prohibition does not apply to advertisements for fresh fruit or fresh vegetables. Generalised claims such as 'goodness' or 'wholesome' must not exaggerate the nutritional or health benefit of a food product or an ingredient. Reference to the properties of an ingredient must not give a misleading impression of the properties of the whole product. The scientific meaning of the word "energy", calorific value, must not be confused with its colloquial meaning of physical vigour.

Advertisements must not encourage or condone excessive consumption of any food.

Particular attention should be paid to the requirements of the Food Labelling Regulations 1996, especially the prohibited and restricted claims set out in Schedule 6. Guidelines that offer best-practice advice for nutritional claims and healthy eating are available. For example, The Food Standard Agency's Guidelines for the Use of Certain Nutrition Claims in Food Labelling and Advertising include a recommendation to avoid "% fat free" claims (issued November 1999).

## CAP Code

The 11<sup>th</sup> edition of the British Code of Advertising and Sales Promotion came into force on 4 March 2003. The purpose of the Code is to maintain, in the best and most flexible way possible, the integrity of marketing communications in the interests of both the consumer and the trade.

All advertisements should be legal, decent honest and truthful. They should be prepared with a sense of responsibility to consumers and society and be in line with the accepted principles of fair competition.

The rules for food and soft drink advertisements are:

**47.6** Marketing communications should not condone or encourage poor nutritional habits or an unhealthy lifestyle in children.

### 47.7

a) Although children might be expected to exercise some preference over the food they eat or drink, marketing communications should be prepared with a due sense of responsibility and should not directly advise or ask children to buy or to ask their parents or other adults to make enquiries or purchases. (see 47.4a)

b) Marketing communications should neither try to sell to children by directly appealing to emotions such as pity, fear, or self-confidence nor suggest that having the advertised product somehow confers superiority, for example making a child more confident, clever, popular, or successful.

c) Marketing communications addressed to children should avoid high pressure and hard sell techniques; they should neither directly urge children to buy or persuade others to buy nor suggest that children could be bullied, cajoled or otherwise put under pressure to acquire the advertised item.

d) Products and prices should not be presented in marketing communications in a way that suggests children or their families can easily afford them.

e) Marketing communications addressed to or targeted directly at children should not actively encourage them to eat or drink at or near bedtime, to eat frequently throughout the day or to replace main meals with confectionery or snack foods.

### 47.8

Marketing communications featuring a promotional offer should be prepared with a due sense of responsibility. Except those for fresh fruit or fresh vegetables, food or drink advertisements that are targeted directly at pre-school or primary school children through their content should not include promotional offers.

a) Marketing communications featuring a promotional offer linked to food products of interest to children should avoid creating a sense of urgency or encouraging the purchase of excessive quantities for irresponsible consumption.

b) Marketing communications should not seem to encourage children to eat or drink a product only to take advantage of a promotional offer: the product should be offered on its merits, with the offer as an added incentive. Marketing communications featuring a promotional offer should ensure a significant presence for the product. Marketing communications for fresh fruit or fresh vegetable products are exempt from this restriction.

c) Marketing communications for collection-based promotions should not seem to urge children or their parents to buy excessive quantities of food.

d) Marketing communications should not encourage children to eat more than they otherwise would.

#### **47.9**

Licensed characters and celebrities popular with children should be used with a due sense of responsibility. Except those for fresh fruit or fresh vegetables, food or drink advertisements that are targeted directly at pre-school or primary school children through their content should not include licensed characters or celebrities popular with children.

#### **47.10**

Marketing communications should not give a misleading impression of the nutritional or health benefits of the product as a whole. Except those for fresh fruit or fresh vegetables, food or drink advertisements that are targeted directly at pre-school or primary school children through their content should not include nutrition or health claims.

#### **47.11**

Marketing communications should not disparage good dietary practice or the selection of options, such as fresh fruit and vegetables that accepted dietary opinion recommends should form part of the average diet.

## **Appendix 2 – CAP Help Note for food or soft drink product advertisements and children**

### **Help Note for food or soft drink product advertisements and children**

CAP Help Notes offer guidance for non-broadcast marketing communications under the British Code of Advertising, Sales Promotions and Direct Marketing (the CAP Code).

These guidelines, drawn up by CAP, are intended to help marketers and their agencies interpret the rules in the British Code of Advertising, Sales Promotion and Direct Marketing (the CAP Code). They neither constitute new rules nor bind the ASA Council in the event of a complaint about a marketing communication that follows them.

These guidelines should be read in conjunction with the other rules in the CAP Code. References to food apply also, where relevant, to beverages.

These definitions apply to the rules in this section:

- Children - persons below the age of 16, unless otherwise qualified as in “pre-school or primary-school children”.
- Licensed characters - those characters that are borrowed equities and have no historical association with the product.
- Equity brand characters - those characters that have been created by the advertiser and have no separate identity outside their associated product or brand.

**47.6** Marketing communications should not condone or encourage poor nutritional habits or an unhealthy lifestyle in children.

**Notes to 47.6:**

- (1) This rule does not preclude responsible advertising for any products including those that should be eaten only in moderation. An advertisement may show someone enjoying a chocolate bar but not someone eating whole boxes of chocolates in one sitting. Interpretation of the rule should be by reference to generally accepted nutritional advice.
- (2) Marketing communications should not encourage excessive consumption of any food or drink, frequent eating between meals or eating immediately before going to bed. The notion of excessive consumption relates to the frequency of consumption as well as the amount consumed.
- (3) Marketing communications should not condone or encourage attitudes associated with poor diets, for example, a dislike of green vegetables.
- (4) Portion sizes or quantities of food shown should be responsible and relevant to the scene depicted, especially if children are involved. No marketing communication should suggest that a portion intended for more than one person is to be consumed by a single individual or an adult's portion, by a small child.
- (5) Marketing communications for food should not suggest that an inactive or sedentary lifestyle is preferable to physical activity.
- (6) Marketing communications should not encourage frequent consumption throughout the day of potentially carcinogenic products such as those containing sugar.

**47.7**

- (a) Although children might be expected to exercise some preference over the food they eat or drink, marketing communications should be prepared with a due sense of responsibility and should not directly advise or ask children to buy or to ask their parents or other adults to make enquiries or purchases. (see 47.4a)

**Notes to 47.7.a:**

- (1) This extends to behaviour; for example, a child should not be shown asking for a product or putting it into the parent's trolley in the supermarket.
- (2) Phrases such as "Ask Mummy to buy you" are not acceptable.
- (b) Marketing communications should neither try to sell to children by directly appealing to emotions such as pity, fear, or self-confidence nor suggest that having the advertised product somehow confers superiority, for example making a child more confident, clever, popular, or successful.
- (c) Marketing communications addressed to children should avoid "high pressure" and "hard sell" techniques; they should neither directly urge children to buy or persuade others to buy nor suggest that children could be bullied, cajoled or otherwise put under pressure to acquire the advertised item.
- (d) Products and prices should not be presented in marketing communications in a way that suggests children or their families can easily afford them.

**Note to 47.7(d):**

If an advertisement for a product to be bought or consumed by children contains a price, the price should not be minimised by words such as “only” or “just”.

(e) Marketing communications addressed to or targeted directly at children should not actively encourage them to eat or drink at or near bedtime, to eat frequently throughout the day or to replace main meals with confectionery or snack foods.

**47.8** Marketing communications featuring a promotional offer should be prepared with a due sense of responsibility. Except those for fresh fruit or fresh vegetables, food or drink advertisements that are targeted directly at pre-school or primary school children through their content should not include promotional offers.

**Notes to 47.8:**

1. For the avoidance of doubt, this prohibition applies to food or drink advertisements only.
2. Fresh fruit or fresh vegetables means non-pre-packaged fresh fruit or fresh vegetables put up for sale to the final consumer, or fresh fruit or fresh vegetables packed at the point of sale or pre-packaged fresh fruit or fresh vegetables with a view to imminent sale.

a) Marketing communications featuring a promotional offer linked to food products of interest to children should avoid creating a sense of urgency or encouraging the purchase of excessive quantities for irresponsible consumption.

b) Marketing communications should not seem to encourage children to eat or drink a product only to take advantage of a promotional offer: the product should be offered on its merits, with the offer as an added incentive. Marketing communications featuring a promotional offer should ensure a significant presence for the product. Marketing communications for fresh fruit or fresh vegetable products are exempt from this restriction.

c) Marketing communications for collection-based promotions should not seem to urge children or their parents to buy excessive quantities of food.

**Note to 47.8(c):**

They should not suggest “Hurry and buy”, not directly encourage children only to collect promotional items and not emphasise the number of items to be collected. If promotional offers can also be bought, that should be made clear. Closing dates for collection-based promotions should enable the whole set to be collected without having to buy excessive or irresponsible quantities of the product in a short time.

(d) Marketing communications should not encourage children to eat more than they otherwise would.

**Notes to 47.8(d):**

1. The notion of responsible consumption relates to the frequency of consumption as well as the amount consumed.
2. Marketers should be particularly mindful of this rule if the marketing communication features large pack sizes or promotional offers, for example “3 for the price of 2”.

**47.9** Licensed characters and celebrities popular with children should be used with a due sense of responsibility. Except those for fresh fruit or fresh vegetables, food or drink advertisements that are targeted directly at pre-school or primary school children through their content should not include licensed characters or celebrities popular with children.

**Notes to 47.9:**

1. For the avoidance of doubt, this prohibition applies to food or drink advertisements only. The prohibition does not apply to advertiser-created equity brand characters (puppets, persons or characters), which may be used by advertisers to sell the products they were designed to sell.
2. Marketing communications should not suggest that consuming the advertised product will enable children to resemble an admired figure or role-model or that by not doing so children will fail in loyalty or let someone down.
3. Persons such as professional actors or announcers who are identified with characters in TV or radio programmes that appeal to children may not be used as presenters.
4. Celebrities and characters well-known to children may present factual and relevant generic statements about nutrition, safety, education and the like.
5. Fresh fruit or fresh vegetables means non-pre-packaged fresh fruit or fresh vegetables put up for sale to the final consumer or fresh fruit or fresh vegetables packed at the point of sale or pre-packaged fresh fruit or fresh vegetables with a view to imminent sale.

**47.10** Marketing communications should not give a misleading impression of the nutritional or health benefits of the product as a whole. Except those for fresh fruit or fresh vegetables, food or drink advertisements that are targeted directly at pre-school or primary school children through their content should not include nutrition or health claims.

**Notes to 47.10:**

1. For the avoidance of doubt, this prohibition applies to food or drinks advertisements only.
2. Nutritional claims (for example “full of the goodness of vitamin C”) or health claims (for example “aids a healthy digestion”) must be supported by sound scientific evidence. Factual nutrition statements should not imply a nutritional or health claim that cannot be supported. Ambiguous wording that could be understood as a nutritional claim should be avoided. For example, “goodness” should not be used as a synonym for “wholesomeness” and, if a claim relates to taste, that should be made clear, for example “It tastes good”, not “It is good”. The scientific meaning of the word “energy”, calorific value, should not be confused with its colloquial meaning of physical vigour. Nutritional claims and health claims should relate to benefits that are significant and relevant to groups likely to be strongly interested in or affected by the advertisement. Claims should be presented clearly and without exaggeration. The fact that a food product is a good source of certain nutrients does not justify generalised claims of a wider nutritional benefit.
3. Claims of nutritional or health benefits should be considered in the context of a balanced diet or lifestyle or both.
4. A wide range of guidelines that offers best-practice advice for nutritional claims and healthy eating is available. For example, The Food Standards Agency’s Guidelines for the Use of Certain Nutrition Claims in Food Labelling and Advertising include a recommendation to avoid “% fat-free” claims (issued November 1999). The ASA will give suitable consideration to and uniform application of, such guidelines.
5. Fresh fruit or fresh vegetables means non-pre-packaged fresh fruit or fresh vegetables put up for sale to the final consumer or fresh fruit or fresh vegetables packed at the point of sale or pre-packaged fresh fruit or fresh vegetables with a view to imminent sale.

**47.11** Marketing communications should not disparage good dietary practice or the selection of options such as fresh fruit and vegetables that accepted dietary opinion recommends should form part of the average diet.

**Notes to 47.11:**

1. Marketing communications should not seem to contradict or ignore good dietary practice.
2. To reflect generally accepted good dietary practice, a reasonable variety of other foods should be shown if the advertised product is presented as part of a meal.
3. Food products not intended as substitutes for meals should not be presented as such.

Advice on specific marketing communications is available from the Copy Advice team by telephone on 020 7492 2100, by fax on 020 7404 3404 or by e-mail on [copyadvice@cap.org.uk](mailto:copyadvice@cap.org.uk). The Copy Advice website [www.copyadvice.org.uk](http://www.copyadvice.org.uk) contains a full list of Help Notes as well as access to the AdviceOnline database, which has links through to relevant Code rules and ASA adjudications.

## Appendix 3 - Food Standards Agency – Nutrient Profile Model

A nutrient profiling model has been developed by the Food Standards Agency as a tool for categorising foods on the basis of their nutrient content.

This model is what is known as a 'simple scoring' system, where points are allocated on the basis of the nutritional content in 100g of a food or drink.

There are three steps to working out the overall score for the food or drink.

### 1. Work out total 'A' points

A maximum of ten points can be awarded for each nutrient.

Total 'A' points = (points for energy) + (points for saturated fat) + (points for sugars) + (points for sodium)

The following table indicates the points scored, depending on the content of each nutrient in 100g of the food:

Points P	Energy (kJ)	Sat Fat (g)	Total Sugar (g)	Sodium (mg)
0	≤ 335	≤ 1	≤ 4.5	≤ 90
1	>335	>1	>4.5	>90
2	>670	>2	>9	>180
3	>1005	>3	>13.5	>270
4	>1340	>4	>18	>360
5	>1675	>5	>22.5	>450
6	>2010	>6	>27	>540
7	>2345	>7	>31	>630
8	>2680	>8	>36	>720
9	>3015	>9	>40	>810
10	>3350	>10	>45	>900

If a food or drink scores 11 or more 'A' points then it cannot score points for protein unless it also scores 5 points for fruit, veg and nuts.

## 2. Work out total 'C' points

A maximum of five points can be awarded for each nutrient/food component.

Total 'C' points = (points for fruit, veg & nut content) + (points for fibre [either NSP or AOAC]) + (points for protein)

The following table indicates the points scored, depending on the content of each nutrient/food component in 100g of the food:

Points P	Fruit, Veg & Nuts (%)	NSP Fibre ' (g)	Or AOAC Fibre ' (g)	Protein (g)
0	≤ 40	≤ 0.7	≤ 0.9	≤ 1.6
1	>40	>0.7	>0.9	>1.6
2	>60	>1.4	>1.9	>3.2
3	-	>2.1	>2.8	>4.8
4	-	>2.8	>3.7	>6.4
5*	>80	>3.5	>4.7	>8.0

\*If a food or drink scores 5 points for fruit, veg & nuts the 'A' nutrient cut-off no longer applies.

## 3. Work out overall score

If a food scores less than 11 'A' points then the overall score is calculated as follows:

Overall score = (total 'A' points) minus (total 'C' points)

If a food scores 11 or more 'A' points but scores 5 points for fruit, vegetables and nuts then the overall score is calculated as follows:

Overall score = (total 'A' points) minus (total 'C' points)

If a food scores 11 or more 'A' points but also scores less than 5 points for fruit, veg and nuts then the overall score is calculated as follows:

Overall score = (total 'A' points) minus (fibre points + fruit, veg and nuts points only) [i.e. not allowed to score points for protein]

A food is classified as 'less healthy' where it scores 4 points or more.

A drink is classified as 'less healthy' where it scores 1 point or more.

## **Appendix 4 – Restrictions on television advertising for HFSS products**

### **Content restrictions**

#### **Promotional offers**

Promotional offers should be used with a due sense of responsibility. They may not be used in HFSS product advertisements targeted directly at pre-school or primary school children.

#### **Use of characters and celebrities**

Licensed characters and celebrities popular with children must be used with a due sense of responsibility. They may not be used in HFSS product advertisements targeted directly at pre-school or primary school children.

#### **Accuracy in food advertising**

(c) No nutrition or health claim may be used in HFSS product advertisements targeted directly at pre-school or primary school children.

### **Scheduling restrictions**

#### **Children and young people 4.2.1**

(b) The following may not be advertised in or adjacent to children's programmes or programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 10:

(iii) food or drink products that are assessed as high in fat, salt or sugar in accordance with the nutrient profiling scheme published by the Food Standards Agency (FSA) on 6 December 2005.

#### **Differentiating HFSS product TV ads from brand TV ads**

#### **Principles**

The HFSS product-specific rules do not apply to TV advertisements for food or drink products that are assessed as not being high in fat, salt or sugar in accordance with the nutrient profiling scheme published by the Food Standards Agency on 6 December 2005 or as amended.

## Scenarios

Likely to be regarded as an ad for an HFSS product	Unlikely to be regarded as an ad for an HFSS product
An advertisement refers to or prominently features an identifiable HFSS product.	An advertisement neither refers to nor prominently features an identifiable HFSS product.
OR	
An advertisement contains a direct response mechanic relating to a specific HFSS product.	An advertisement does not contain a direct response mechanic relating to an HFSS product but may encourage the audience to buy a non-HFSS product or may promote a range, or ranges, of different products.
OR	
An advertisement refers to or features a brand name that is synonymous with a specific HFSS product. <sup>1</sup> That name could be featured on other products or product variants but is inextricably linked to a specific HFSS product.	An advertisement refers to or features a brand name. That name is synonymous not with a specific HFSS product but with a range, or ranges, of products that are sold under that name. <sup>1</sup>
OR	
An advertisement refers to or prominently features a product but does not provide enough information for the audience to identify it as a product that can be nutrient profiled. The advertiser does not provide evidence that its range of that type of product is mainly non-HFSS. (For the avoidance of doubt, an advertisement that refers to a brand name that incorporates the name of a type of food or drink product will not be subject to the HFSS restrictions merely because it mentions that brand name.)	An advertisement refers to or prominently features a product but does not provide enough information for the audience to identify it as a product that can be nutrient profiled. The advertiser provides evidence that its range of that type of product is mainly non-HFSS.
OR	
An advertisement for a brand refers to or features, for example, a strapline, celebrity, licensed character, brand-generated character or branding synonymous with a specific HFSS product. <sup>1</sup>	An advertisement for a specific non-HFSS product refers to or features, for example, a strapline, celebrity, licensed character, brand-generated character or branding synonymous with a specific HFSS product. <sup>1</sup>

## Appendix 5 – Where the advertisements appeared

### Where the TV advertisements appeared

- 4 Music
- Abc1
- Anglia ITV
- Animal Planet
- At The Races
- Boomerang
- Border ITV
- Bravo
- Carlton ITV
- Cartoon Network
- CBS Reality
- Central ITV
- CH4
- Comedy Central
- Dave
- Discovery
- Disney XD
- E4
- ESPN
- EuroSport
- Extreme Sports
- Film4
- Five
- Five Life
- Five US
- Five USA
- Fiver
- Flaunt
- Grampian ITV
- Granada +
- Granada ITV
- Hallmark
- HTV ITV
- ITV 2
- ITV 3
- ITV 4
- Jetix
- Kiss TV
- Meridian ITV
- More4
- MTV
- Nickelodeon
- Paramount
- Q
- Reality TV
- Sci-Fi Channel
- Scottish ITV
- Setanta Sports 1
- Sky News
- Sky Sports 1
- Sky Sports 3
- Sky 1
- SW England ITV
- The Box
- TMF
- Tyne Tees ITV
- UK Gold
- UK Living
- UTV ITV
- Virgin 1
- Viva
- Watch
- Yesterday
- Yorkshire ITV
- Zone Reality

### Where the Radio advertisements appeared

- 104.9 XFM
- Absolute AM
- Absolute FM
- Beat 106
- BMRB
- Capital Gold
- Capital Radio
- Century 105.4 FM
- Classic FM
- Clyde 1
- Clyde 2
- Cool FM
- Essex FM
- Forth 1
- Galaxy Birmingham
- Galaxy Manchester
- Galaxy Scotland
- Galaxy South Coast
- Galaxy Yorkshire
- Heart 100.7
- Heart 106.2
- Heart 96.3
- Heart Kent
- Invicta FM
- Key 103 FM
- Kiss 100 FM
- LBC FM
- LBC News
- Magic 105.4
- Mercia 97 FM
- Metro City
- Power FM
- Radio City
- Radio Wave
- Real Radio FM
- Real Radio Scotland
- Red Dragon
- Smooth FM
- TalkSPORT
- Virgin AM
- XFM Manchester
- XFM Scotland

### Where the Press & Magazines advertisements appeared

- 25 Beautiful Homes
- 360 Christmas Special
- 360 Gamer
- 360 Special Edition
- 4x4
- All About Soap
- Amateur Gardening
- Arena Homme
- ASDA Magazine
- Auto Express
- Auto Trader
- Autocar
- Autosport
- BBC Gardeners' World
- BBC Good Food Magazine
- BBC Good Homes
- BBC History Magazine
- BBC Homes And Antiques
- BBC Music Magazine
- BBC Music Magazine Christmas Special
- BBC Music Magazine Special Edition
- BBC Wildlife
- BBC Wildlife Special Edition
- Morrisons
- Mother & Baby
- My Weekly
- National Geographic
- National Geographic Kids
- National Geographic Kids Special Edition
- New Musical Express
- New Scientist
- New Statesman
- New!
- Newcastle-Upon-Tyne Evening Chronicle - Regionwide
- News of the World
- Newsweek
- Nintendo Official Magazine
- Nintendo The Official Magazine Christmas Special
- Nitro
- Nottingham Evening Post
- Now
- Nuts
- Observer
- Official Xbox 360
- Official Xbox 360 Christmas Edition
- OK!

- Beano
- Beautiful Kitchens
- Belfast Telegraph
- Bella
- Best
- Birmingham Mail
- Bizarre
- Bizarre Christmas Special
- Bizarre Halloween Special
- Bliss
- Bliss Special Edition
- Boots Health & Beauty
- Bratz
- Bratz Special Edition
- Brides
- Bristol - Western Daily Press - Somerset
- Candis
- Car
- Chat
- City A.M.
- Classic Rock
- Classic Rock Special Edition
- Closer
- Company
- Computeractive
- Conde Nast Traveller
- Cork Evening Echo
- Cosmopolitan
- Cosmopolitan Bride
- Country Homes and Interiors
- Country Life
- Country Living
- Custom PC
- Daily Mail
- Daily Record Scottish Edition
- Daily Sport
- Daily Star
- Daily Star Sunday
- Daily Telegraph
- Dandy
- Dazed & Confused
- Debenhams Desire
- Decanter
- Delicious
- Derry Journal (Friday)
- Derry Journal (Tuesday)
- DJ
- DVD Review
- Olive
- Paediatric Nursing
- PC Advisor
- PC Format
- PC Format Christmas Special
- PC Gamer
- PC Gamer Christmas Special
- PC Pro
- PC Zone
- PC Zone Christmas Special
- People
- Pick Me Up
- Play
- Play Christmas Special
- Play Special Edition
- Playstation Official Magazine - UK
- Playstation Official Magazine - UK Christmas Special
- Practical Parenting
- Pregnancy And Birth
- Prima
- Prima Baby
- Private Eye
- Psychologies
- Q
- Q Special Edition
- Racing Post
- Radio Times
- Reader's Digest
- Real Homes
- Real People
- Red
- Redline
- Redline Special Edition
- Reveal
- Rugby World
- Saga Magazine
- Sainsbury's Magazine
- Scooby Doo
- Scotsman
- SFX
- SFX Xmas Special
- She
- ShortList
- Shout
- Sight and Sound
- Simpsons Comics
- Simpsons Comics Halloween
- Simpsons Comics Presents

- DVD Review Special Edition
- Easy Living
- Edge
- Edge Christmas Special Edition
- Elle
- Emma's Diary Pregnancy Guide
- Empire
- Esquire
- Essentials
- Evening Standard
- Evo
- Evo Car of The Year
- Evo Special Edition
- Expat Investor
- Express
- Fast Car
- Fast Car Special Edition
- FHM
- Financial Times
- First News
- FourFourTwo
- FourFourTwo Special Edition
- Front
- Games Master
- Games Master Christmas Special
- Games TM
- Games TM Special Edition
- Girl Talk
- Glamour
- Go Girl
- Golf Monthly
- Golf World
- Good Housekeeping
- GQ
- Grazia
- Guardian
- Guitar & Bass
- Guitar & Bass Winter Special
- Hair
- Harper's Bazaar
- Heat
- HELLO!
- Herald (Glasgow)
- Hi-Fi News
- High Life
- Homes & Gardens
- Simpsons Comics Presents Special Edition
- Simpsons Comics Presents The Best of Bart Simpson
- Simpsons Comics Presents Treehouse of Horror Special
- Simpsons Comics Special Edition
- Simpsons Super Spectacular
- Sky Movies
- Sky Sports
- Sky The Magazine
- Soaplife
- Spectator Business
- SpongeBob SquarePants
- SpongeBob SquarePants Special Edition
- Star
- Stuff For Men
- Stylist
- Sugar
- Sun
- Sunday Express
- Sunday Independent
- Sunday Life
- Sunday Mail Scottish Edition
- Sunday Mirror
- Sunday Mirror Belfast Edition
- Sunday Sport
- Sunday Telegraph
- Sunday Times
- Sunday Tribune
- Sunday World Northern Ireland Edition
- T3
- T3 Christmas Special Edition
- Take a Break
- Tatler
- Tesco Magazine
- That's Life!
- The Fly
- The Irish Times
- The National Trust Magazine
- The Northern Echo - County Durham
- The Spectator
- The Sunday Business Post
- The Week
- Time
- Time Out
- Times
- Today's Golfer
- Today's Golfer Special Edition

- Horse and Hound
- House & Garden
- House Beautiful
- I-D
- Ideal Home
- Ideal Home Special Edition
- Independent
- Independent on Sunday
- Infant
- Inside Soap
- InStyle
- Investors Chronicle
- Ipswich - East Anglian Daily Times
- Irish Examiner
- Irish Independent
- Irish Mail on Sunday
- Irish News
- Jersey Evening Post
- Jersey Weekly Post
- Kent on Sunday
- Kerrang
- Kick!
- Kick! Special Edition
- Kraze Club
- Leicester Mercury
- Liverpool Echo
- Living Etc
- Loaded
- London Sport
- Look
- Love it!
- Mail on Sunday
- Manchester Evening News (Main Edition)
- Marie Claire
- Match
- Maxpower
- Men's Fitness
- Men's Fitness Christmas Special
- Men's Health
- Metal Hammer
- Metal Hammer Christmas Edition
- Metal Hammer Special Edition
- Metro-London
- Microsoft Windows XP The Official Magazine
- Microsoft Windows XP The Official Magazine Special Edition
- Mirror
- Today's Golfer Summer Edition
- Top Gear
- Top Gear Special Edition
- Top of the Pops
- Top Sante Health & Beauty
- Total Film
- Total Film Christmas Edition
- Total Film Special Edition
- Total TV Guide
- Toxic
- TV & Satellite Week
- TV Choice
- TV Easy
- TV Quick
- TV Times
- Ulster - News Letter
- Ulster Star
- Uncut
- Vanity Fair
- Vogue
- Waitrose Food Illustrated
- Wall Street Journal (Europe)
- Wallpaper
- What Car
- What Car New Reg Special
- What Car? Car of the Year Awards
- What Digital Camera Awards
- What Digital Camera Awards Special
- What Digital Camera Special Issue
- What Digital Camera?
- What Hi-Fi?
- What Hi-Fi? Awards 2009
- What Investment
- What Mortgage
- What's on TV
- Woman
- Woman and Home
- Woman's Own
- Woman's Weekly
- X 360
- X 360 Christmas Special Edition
- Xbox World 360
- Xbox World 360 Christmas Edition
- Yorkshire Evening Post
- Yorkshire Post - North Yorkshire
- Your M & S Magazine

- Mixmag
- Mojo
- Money Observer
- MoneyWeek
- Moneywise
- More
- Your M & S Magazine Christmas Special Edition
- Your Money Savings & Investments
- Your Mortgage
- Yours
- Zest
- Zoo Weekly

## Appendix 6 - ASA Adjudications

### ASA Adjudication on Danone UK Ltd

#### Danone UK Ltd

2nd Floor  
International House  
7 High Street  
London  
W5 5DW

#### Date

14 October 2009

#### Media

Television

#### Sector

Food and drink

#### Number of complaints

1

#### Complaint Ref

59081

#### Ad

A TV ad, for Actimel, showed a bottle of the product jumping over a skipping rope and featured the sound of children playing in the background. A voice-over stated "Kids love Actimel and it's good for them too". The ad then featured the sound of children cheering. The voice-over continued "Actimel. Scientifically proven to help support your kids' defences". The final image showed the text "Scientifically proven" stamped on the screen.

#### Issue

One viewer challenged whether the claim that Actimel was "scientifically proven to help support your kids' defences" could be substantiated.

#### BCAP TV Code

[5.1 \(old\)5.2.18.3.1\(a\)](#)

#### Response

Danone UK Ltd (Danone) explained that Actimel, which contained *Lactobacillus casei*, was a pro-biotic drinking yogurt intended for consumption by the general population (children, adults and the elderly). They said the health benefits of Actimel had been demonstrated in 23 human studies conducted on over 6000 people across different age ranges. They said that of those studies, eight had been carried out on children up to 16 years of age.

Danone explained that the health benefit of the product was its support of the human body's natural defence system, which helped to protect us against pathogens and harmful environmental factors. They said that some of the most important defence systems were located within the gastrointestinal tract, and were made up of three key components. Firstly, intestinal microbiota, which directly keeps the activity of some pathogens under control (microbial barrier), secondly the intestinal epithelium, which represents a physical barrier able to prevent the intrusion of unwanted agents, and finally the intestinal immune system, which is able to react to pathogens (immunological barrier).

Danone said they had referred to Actimel as being "scientifically proven" in their ads since November 2007, and that the basis for that claim was a significant body of published scientific evidence that showed that Actimel supported the natural defences of different age groups, including children. Danone said the body of evidence should be considered in its totality, and not judged as a group of individual papers. They argued that each individual study did not need to demonstrate multiple health benefits, as long as they pointed towards a positive effect for Actimel overall. Danone said that Clearcast had approved an earlier claim made in 2006 that stated "Every morning I like to give my kids Actimel to help support their bodies' natural defences". They said Clearcast's nutritional consultant was satisfied that the evidence showed that Actimel could support the body's defences in that particular age group; they said that view was also supported by UK and international scientific experts. Danone provided us with copies of the evidence used to support the claims made in the 2006 ad.

Danone said the claim made in the current ad was also supported by new studies that added to the scientific proof for the benefits of Actimel. They explained that those studies had not been completed, or made available to Clearcast, at the time the ad was approved, but that they had since been presented to Clearcast and their nutritional consultant. Danone explained that, because those trials were still awaiting publication, they had asked for independent advice from external experts in order to confirm the validity of their interpretation of the studies' results. Danone submitted copies of those recent studies, as well as two letters from experts who had reviewed the studies and data from one of those experts on the immune systems of children.

Clearcast said they received substantiation for the claim from Danone, which was assessed by their nutritional consultant. They said their consultant was satisfied that the claim had been supported, and they had approved the ad on that basis.

## **Assessment**

Upheld

The ASA took expert advice.

We considered that the image in the ad of the bottle of Actimel jumping over the skipping rope, together with the sound of children playing in the background, would be understood by most consumers to imply that the product was aimed at normal, healthy children of school age (five to sixteen years old). We also considered that most consumers would understand the claim that Actimel "was scientifically proven to support your kids' defences" to mean that the product would help defend those children against common, every-day childhood infections.

We acknowledged Danone's comments regarding the totality of their evidence. We considered, however, that it was necessary to assess the accuracy and relevance of each individual study in order to be able to assess the merits of the body of work as a whole.

We noted the five scientific studies submitted in support of the claims made in the 2006 ad. We noted that two of those studies, though well-designed, examined the effect of Actimel on hospitalised children in India suffering from acute diarrhoea or receiving medication for chronic *Helicobacter pylori* respectively. We considered that both trials were unsuitable for use in support of a claim that was likely to be seen as referring to normal, healthy children.

We noted that one of the five trials, Guerin-Danan et al. (1998), was a randomised, controlled study that assessed the effect of consumption of Actimel on the faecal microflora of children aged between 10 and 18 months. We understood from the expert that the impact of Actimel on the health of the child subjects, or their immune systems, was not assessed in the study. We therefore considered that the study did not support the claim made in the ad that Actimel supported children's natural defences.

We noted that two of the five studies were produced by the same research group, Pedone et al. (1999) and (2000). We noted that the 1999 study showed that consumption of Actimel had a slight effect on the duration of diarrhoea in children but that the sample size used was too small to show any effect on the incidence of diarrhoea. Conversely, the larger 2000 study did show a benefit for Actimel on the incidence of diarrhoea amongst the child subjects, but the study observed no effect for Actimel on the duration of diarrhoea. We also noted that the children studied by the Pedone group were between six and 33 months old, with a mean age of six months in the 1999 study and 15.5 months in the 2000 study, and we considered that that age-group was lower than the target group of school-age children suggested by the ad. We understood that the immune systems of children aged two and over were likely to be representative of the immune systems of older children. However, we also understood that the developing immune systems of children under two differed from those of older children, and we therefore did not consider that it could be safely assumed that the results reported for the young children in the Pedone studies would be the same for school-aged children. We noted that the children in the studies were supplemented with either Actimel or the control product in portion sizes that were larger than the recommended serving size of one 100 g pot of Actimel per day, and we were therefore concerned that the observed benefit for Actimel in the clinical trials might not be representative of the efficacy of the product when consumed on an 'everyday' basis. We considered that the inconsistency in the results between the two studies, the young age-group of the participants and the portion sizes used in the trials meant that the studies were not sufficient to support the claim that Actimel supported the natural defences of school-age children.

We noted the three recent studies submitted by Danone in support of the current ad. We noted that one published study, Giovannini et al. (2007), assessed the effect of Actimel on the occurrence and duration of a range of symptoms, including asthma, rhinitis, diarrhoea, nausea and vomiting, abdominal pains and fever, in children aged two to five years who suffered from allergic asthma and allergic rhinitis. We noted that no health benefit was reported for the group of asthmatic children taking Actimel. We understood from our expert that the study reported a reduction in the number of episodes of rhinitis and reduced duration of diarrhoea in children with allergic rhinitis in the Actimel group, although the difference between the Actimel and control groups was small. We considered that the fact the children in the study suffered from allergic conditions meant that the results of the study could not necessarily be extrapolated to apply to normal, healthy children.

We understood that the final two studies were unpublished trials designed to assess the rate of change in activity due to illness, and the cumulative number of all Common Infectious Diseases (CIDs), in children aged three to six years in day care centres in Russia and America. We acknowledged that the Russian study did show a benefit for Actimel in the cumulative number of rhinopharyngitis (common cold) episodes. However, we also noted that there were no statistically significant differences between the Actimel and control groups in the number of CIDs as a whole, or in the rate of change in activity due to illness. We noted that the American study reported a benefit for Actimel in the cumulative number of CIDs during the three-month study, although we also noted that the difference in the rate of change in activity due to illness between the Actimel and control groups was not statistically significant, and that no other differences were reported between the two groups. We also noted that in both studies the child participants were given doses of Actimel or control products that were twice as large as the recommended daily serving size of 100 g. We considered that the Russian and American studies showed that some children might see a beneficial effect when consuming twice the recommended daily serving of Actimel. However, we also considered that the ad was making an absolute claim that Actimel would support the defences of children, and that the reference to "your kids" in particular would be understood by consumers to mean that Actimel would benefit their child. Because we understood that some children would not see a benefit from consuming Actimel, and because we were concerned that any observed effects for Actimel in the trials might not be representative of the efficacy of the product when consumed in line with the recommended daily serving, we considered that the Russian and American studies were not sufficient to substantiate the claim made in the ad.

We considered that the evidence provided by Danone did not support the claim made in the ad that a serving of Actimel was scientifically proven to support the defences of normal, healthy school-aged children against common, every-day childhood infections. We therefore concluded that the ad was misleading.

The ad breached CAP (Broadcast) TV Advertising Standards Code rules 5.1 (Misleading advertising), 5.2.1 (Evidence) and 8.3.1 (a) (Accuracy in food advertising).

**Action**

The ad must not be broadcast again in its current form.

Adjudication of the ASA Council (Broadcast)

## ASA Adjudication on Wyke Farms Ltd

### Wyke Farms Ltd

White House Farm  
Wyke Champflower  
Bruton  
Somerset  
BA10 0PU

### Date:

14 October 2009

### Media:

Television, Magazine

### Sector:

Food and drink

### Number of complaints:

1

### Complaint Ref:

95462

### Ad

A TV ad and two magazine ads for Wyke Farms cheese.

a. The TV ad showed various sequences, in black and white, of cheese making and a farm. A voiceover stated "In 1902, Ivy Clothier created her special recipe for Farmhouse Cheddar. It was so good it won prizes all over the country. It became so popular we had to change the milking machine and demand was so great we had to change the tractor. But no matter what, our family has promised we'll never change our award-winning flavour. Wyke Farms Cheddar".

b. The first magazine ad featured an image of the product and black and white photographs of a milk maid and a tractor. Text alongside the respective photographs stated "we had to change the milking machine" and "we had to change the tractor". Text beneath the image of the product stated "But we'll never change the recipe. The UK's Favourite Farmhouse Cheddar". Small print underneath stated "Still made using our Grandmother's original 100 year old Somerset recipe".

c. The second magazine ad featured a black and white photograph of a boy. Text stated "Dad may have changed a little since his first day cheese making. But our award winning Cheddar hasn't." Text at the bottom stated "Somerset farming since 1902".

### Issue

Dairy Crest objected that the ads misleadingly implied all Wyke Farms cheese was made by them on their own farms according to their own traditional recipe, because they believed that was not the case.

## **CAP Code**

### 3.17.17.2

## **BCAP TV Code**

### 5.1.15.1.35.2.1

### **Response**

Wyke Farms believed the ads were unlikely to be seen to imply that all Wyke Farms cheese was made on their farm in Somerset. They pointed out that they merely told a story about the Clothier/Wyke family business and its heritage, which, they believed, emphasised their quality cheese making and selection pedigree. They also argued that the core claim of the TV advert and press advert (c) related to the cheese's award winning flavour.

Wyke Farms stressed that all of the 'Just Delicious' Extra Mature brand, which featured in the ads, was made on their farm in Somerset. They acknowledged that they occasionally outsourced packing, because they had limited packing capacity, and said they reserved the right to have the featured cheese made under licence should demand outstrip supply at a later date. They said most of their other brands came from their own dairy, but a small amount of one particular brand (not featured in the ad) was manufactured under licence for them in the UK. However, Wyke Farms pointed out that any off-site production had to conform to their strict recipe criteria, which, they reiterated, was the focus of each of the ads.

Clearcast endorsed Wyke Farms comments.

### **Assessment**

Not upheld

The ASA noted the ads made several references to the history of Wyke Farms cheese making. We noted the ads referred to continuity in the recipe and flavour of Wyke Farms cheese and considered that viewers were likely to infer that the ads were emphasising Wyke Farms heritage in cheese making. Although we noted Wyke Farms sometimes outsourced various functions, we considered in any case that viewers were unlikely to infer that all Wykes Farms cheese was manufactured by them on their own farm. We considered viewers would infer that the cheese accorded with Wyke Farms own traditional recipe criteria and understood that was the case. We concluded that the ads were unlikely to mislead.

We investigated ads (b) and (c) under CAP Code clauses 3.1 (Substantiation), 7.1 and 7.2 (Truthfulness), and ad (a) under CAP (Broadcast) TV Advertising Standards Code rules 5.1.1 and 5.1.3 (Misleadingness) and 5.2.1 (Evidence) but did not find them in breach.

### **Action**

No further action necessary.

Adjudication of the ASA Council (Broadcast)

Adjudication of the ASA Council (Non-broadcast)

## ASA Adjudication on Coca-Cola Great Britain

### Coca-Cola Great Britain t/a Beverage Services Ltd

1 Queen Caroline Street  
Hammersmith  
London  
W6 9HQ

**Date:**

7 October 2009

**Media:**

Leaflet, Poster

**Sector:**

Food and drink

**Number of complaints:**

3

**Complaint Ref:**

98122

**Ad**

Two posters and a leaflet for the Vitaminwater range of soft drinks.

a. One poster was headlined "more muscles than brussels". A pack shot of the 'power-c' drink was shown. Text on its label stated "popeye had it easy. A can of spinach and he bulked up ... the nutrients in this bottle won't enable you to walk on mud, or become a strapping sailor man, but they will help you beat your granny in an arm wrestle."

b. Another poster was headlined "keep perky when you're feeling murky". A pack shot of the 'defence' drink was shown. Text on its label stated "if you've had to use sick days because you've actually been sick, then you're seriously missing out my friend. The trick is to stay perky and use sick days to just, erm, not go in."

c. The leaflet included pack shots of each of the six drinks in the range and text about the benefits of each: "... vitamins b + zinc are great for giving you superhero-like powers ..."; "... with vitamin c and zinc to help you spend less time reading old magazines in the doctor's waiting room ..."; "... to help you 'feel slightly more normal'...".

**Issue**

1. Two complainants challenged whether ad (a) misleadingly implied that the vitamins in the range of drinks conferred health benefits that made them equivalent, or preferable to vegetables.

2. One complainant challenged whether ads (a), (b) and (c) implied that the vitamins in the range of drinks could confer health benefits such as raised energy levels and resistance to illness.

3. Two complainants challenged whether ads (a) and (b) misleadingly implied that the range of drinks were healthy, because they believed they contained high levels of sugar.

**CAP Code**

3.17.1

## Response

Coca-Cola Great Britain ("Coca-Cola") said the Vitaminwater brand had adopted a humorous and irreverent tone for its advertising. All advertising and packaging reflected this style and the fictional stories were linked to the different ingredients in the drinks.

1. Coca-Cola said the phrase "more muscles than brussels" was not a reference to brussels sprout but rather to the actor Jean Claude Van Damme who was commonly labelled "the Muscles from Brussels". The products label said that Vitaminwater would not enable you to "become a strapping sailor man" and they did not think readers were likely to infer that the product was preferable to, or equivalent to vegetables. They argued that this was consistent with the brands humour and explained that the word "brussels" was not capitalised in accordance with their brand style.

2. Coca-Cola said that the claim "keep perky when you're feeling murky" in ad (b) related to mood rather than resistance to illness. Although they considered that zinc and vitamin C did play a role in immune function, they believed the ad made no functional claims. They said the reference to the "doctors' waiting room" in ad (c) similarly related to the benefits vitamin C and zinc could have, but thought that the ad did not imply that it could prevent illness.

Coca-Cola argued that consumers would not think that the claim "beating your granny in an arm wrestle" in ad (a) meant they would require higher energy levels. They also believed that the claim "great for giving you superhero-like powers" was so far removed from reality that consumers were unlikely to think it was true.

3. Coca-Cola said the products were clearly labelled and detailed the sugar content of the drinks. They also supplied a breakdown of the products ingredients. They did not believe the products could be described as "high sugar" because a 500 ml serving contained less than 7.5 g sugar per 100 ml. Furthermore, they said that the product was defined as "Low calorie" in accordance with the Nutrition and Health Claims Regulation 1924/2006/EC.

## Assessment

### 1. Upheld

The ASA noted Coca-Cola's argument that the claim "more muscles than brussels" was intended to be a humorous reference to the actor Jean Claude Van Damme who was known as "the Muscles from Brussels". We also noted that the word "brussels" was not capitalised and considered it was not clear from the ad, or its context, that the claim intended to refer to a well known actor. We considered that the claim was therefore ambiguous and likely to be interpreted by consumers, in conjunction with claims such as "popeye had it easy" and "sometimes we all need an injection of strength", as a comparison between the nutritional benefit of the 'power-c' drink and the vegetable brussels sprout. Because we had not seen any evidence to show that 'power-c' was nutritionally equivalent or preferable to vegetables, we concluded the claim in ad (a) was likely to mislead.

On this point, the ad breached CAP Code clauses 3.1 (Substantiation) and 7.1 (Truthfulness).

## 2. Upheld

We considered that a number of claims in ads (a), (b) and (c) were likely to be understood as claims about the nutritional benefit of the vitamins.

We noted that in ad (b) the name "defence" was used in conjunction with the claim "keep perky when you're feeling murky" which we considered was likely to be interpreted as claiming that the drink could increase resistance to illness. Furthermore, ad (c) claimed that the product would enable one to "pull a sickie" without actually being ill which posited a direct relationship between the vitamins contained in the drink and the implied health or nutritional benefits. Whilst we understood that the ads were intended to be comical and irreverent, we concluded that claims such as "keep perky", "more muscles" and "help you spend less time in the doctor's waiting room" were likely to be understood as claiming that the products could increase resistance to illness, strength, or boost mood. Because we had seen no evidence to support the claims that the vitamins mentioned could confer the implied health benefits, we concluded the claims were likely to mislead.

On this point, the ad breached CAP Code Clauses 3.1 (Substantiation), 7.1 (Truthfulness) and 50.1 (Health and beauty products).

## 3. Upheld

We noted Coca-Cola's assertion that the product could be defined as "low calorie"; however, we also noted from the ingredient breakdown supplied that the products contained 4.6 g sugar per 100 ml or 23 g per 500 ml serving which constituted 26% of the recommended daily allowance (RDA) based on 2000 calories per day. We considered that the appearance of the product, its colour, and the fact that it was fortified with vitamins made it clear to consumers that they were not "pure" water without calories or sugar. However, because we considered the ads made claims that were likely to be understood as referring to the nutritional and health benefits of the drinks, it was likely that, in conjunction with these claims, readers would infer that the range of drinks were "healthy". Because the drinks contained a significant proportion of a consumers RDA for sugar we concluded the ads were likely to mislead.

On this point the ad breached CAP Code Clause 7.1 (Truthfulness).

### **Action**

The ads must not appear again in their current form.

Adjudication of the ASA Council (Non-broadcast)