

# CAP Consultation on food and soft drink advertising to children: Individual responses C-F

18 – Cancer Research UK

## Introduction

Every year around 300,000 people are diagnosed with cancer in the UK and more than 150,000 people die from cancer. Cancer Research UK is the world's leading cancer charity dedicated to saving lives through research. The charity's pioneering work has been at the heart of the progress that has already seen survival rates in the UK double in the last forty years. As the largest fundraising charity in the UK, we support research into all aspects of cancer through the work of over 4,000 scientists, doctors and nurses. In 2015/16, we spent £404 million on research. We receive no funding from the Government for our research, and of every £1 donated, 80p was available for investment in our core purpose.

One of our priorities is to significantly reduce the number of children who are overweight or obese. This is because obese children are five times more likely to become obese adults, placing them at risk of preventable cancers. More than four in ten cases of cancer in the UK are preventable – around 150,000 cases every year. Obesity is the single biggest preventable cause of cancer after smoking. Obesity is linked to ten different types of cancer, including two of the most common – bowel and breast – and two of the hardest to treat – pancreatic and oesophageal. Our research shows that if current trends continue, obesity could cause 670,000 cases of cancer over the next 20 years.

To this end, Cancer Research UK welcomes the opportunity to outline its position in relation to this consultation. We are grateful to the following experts in food and drink promotion for their expertise and input into our response: Professor Simone Pettigrew , Dr Emma Boyland , Dr Stephanie Chambers, PhD students Nathan Critchlow and Lauren White , Dr Frans Folkvord , and Professor Agnes Nairn .

Cancer Research UK believes CAP's proposals are only a first step in addressing the growing concern of marketing foods and drinks high in fat, sugar and salt (HFSS) in non-broadcast media. We recognise the positive intentions to close the significant discrepancies between the current rules governing broadcast advertising of HFSS, and on non-broadcast advertising. A comprehensive response is needed to minimise children's exposure to HFSS marketing in order to help reduce childhood obesity. These current proposals are only a small step in reducing children's exposure to HFSS marketing and they must be strengthened. Whilst outside of the scope of this consultation, we also note that stronger rules are needed to close the current loopholes in the advertising of HFSS foods on broadcast media.

Cancer Research UK is also a member of the Obesity Health Alliance and the Children's Food Campaign. We endorse the recommendations in their responses, which echo the calls of the public health community for comprehensive action.

## Response

### Q1 – 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 (HFSS)?*

Yes. We welcome CAP's acknowledgement of the problem of obesity, and the recognition of the role of marketing as a cause of children's obesity. In addition to support for tougher restrictions from Cancer Research UK and across the public health community, Ofcom recognises that 'protecting children from harmful or inappropriate material on TV, radio and video on demand services is one of Ofcom's most important duties and we take it very seriously', while food industry actors have called to stop junk food adverts to children aged under 16. As such, we greatly welcome CAP's conclusion that 'there is a case for regulatory change' to protect public health and acknowledgement that self-regulation has not been effective to achieve public health outcomes.

This supports the case for tougher restrictions that are grounded in overwhelming evidence. HFSS marketing to adults and children is a critical influencer in the obesogenic environment. The evidence base, including ample systematic reviews and meta-analyses, is clear that commercial cues and exposure to junk food marketing has a substantial impact on increasing the amount of food that children eat, as well as what brands they prefer, and what types of food they choose to consume. Recent evidence from the WHO has found increases in the food energy supply (through caloric intake) alone are sufficient to explain increases in weight gain over recent decades, especially in high income countries. The World Health Assembly accepted findings of the Commission on England Childhood Obesity that underline the need to reduce 'the exposure of children and adolescents to, and the power of, the marketing of unhealthy foods', while the WHO note 'food and drink marketing is a vast and increasingly sophisticated industry, and children are among its prime targets'.

And these 'targets' are being influenced by marketing up and down the UK. Our recently published qualitative research with 8-12 year olds in England and Scotland show worrying real-world examples of the impact of marketing unhealthy food and drink advertising to children. It results in children pestering their parents to purchase junk food and tempts them into eating unhealthy foods despite having a good nutritional knowledge. Marketing these products also delivers short, medium and long-term impacts: the immediate impact of adverts making children hungry, pestering their parents after seeing an advert, and long-term recall of the adverts and desire for the specific products through reinforced cravings or cue-related cravings e.g. in the supermarket.

Our research saw children describe junk food advertising as 'tempting' and 'addictive', and say they could 'lick the screen'. One boy said 'you might be eating a piece of fruit, you might see the advert, and you might just throw it in the bin and ask your mum for money and leg it to the shop'. After watching a commercial for sweets, one girl said: 'It makes you feel as if you're happy and excited and it feels like you want to try it because the guy's dancing in it because he's eaten it and it tastes good', while another stated 'I asked my mum if I could have it and she said no and I was annoyed and I kept trying and she finally said yes and I got to go to the shops to get it'.

The impacts of marketing on the UK's obesogenic environment have contributed dire consequences for child health. One in three children in England leave primary school overweight or obese, with similar rates across the devolved nations, whilst children in England from the most deprived communities are twice as likely to be overweight or obese as those from the least. An obese child is five times more likely to be obese as an adult, placing them at risk of preventable cancer and a host of other health conditions throughout their life.

As a consequence of health harms, the economic burden of obesity is staggering. An economic analysis has found the total economic burden of obesity to the UK at £47 billion in 2012 – more than armed violence, war and terrorism and second only to smoking. When these costs include reduced productivity and increased absence from illness, it does not make economic sense for productivity and employers, from advertisers to web developers, to have an obese population.

The support for evidence-based changes to HFSS product advertising is high among the public. Polling conducted by Cancer Research UK and YouGov found 69% of the public support reducing junk food advertising online, with just 18% opposition. Support is consistently high across England and the devolved nations.

*(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?*

Yes, but only with reform. Our concern remains about an HFSS brand using non-HFSS foods, or even no food cues, to build a relationship with child consumers. We welcome practical and enforceable guidance from CAP over how to enforce the principle that 'a strapline, celebrity, licensed character, brand-generated character or branding synonymous with a specific HFSS product' would be removed by the new and amended rules. We also believe restrictions should be extended on the use of characters and celebrities, given their impact on building brand relationships with children and encourage HFSS food intake, with research (in press) showing brand equity characters illicit the same positive response to food among children as licensed characters, which are restricted for this reason. Finally, we support changing the wording from products 'likely to appeal' or 'directly targeted' to an audience, to include all exposure of children to marketing.

If emerging evidence demonstrates that advertising an HFSS brand without any HFSS food cue influences brand appeal or increased food consumption, there should be a commitment in the guidance to revise and reflect this in the BCAP guidance and the CAP code.

## **Q2 – Selecting a nutrient profiling model**

*Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?*

Yes. It is vital that the Department of Health's nutrient profiling model is used as an evidence-based model. We welcome CAP's commitments in Annex 2 to maintain this model, and to recognise changes following the PHE review. However, we believe the updated model should be adopted automatically rather than consulted on, as is inferred in the consultation. To ensure consistency with the BCAP guidelines and set a level playing field for advertisers across all media, a version of the Department of Health's nutrient profiling model must always be in place and used to determine which foods are HFSS.

This is because a comparison of nutrient profiling schemes shows that government-led schemes, such as the Department of Health's model, are significantly more effective than industry-led schemes. Here, the EU Pledge was the second least successful model at reducing exposure to foods high in fat, sugar and salt, only ahead of the established voluntary scheme in the USA. These two voluntary pledges share 11 signatories, while research has described signatories to the EU Pledge as having 'a public image strongly based on products with appeal to children'. European research has also found nonconformity with the EU Pledge Nutrition Criteria of up to 95.9% on advertised food for children, showing the clear flaws and ease to circumvent this model.

### **Q3 - Existing prohibitions on the use of promotions and licensed characters and celebrities**

*There are existing rules (prohibitions on the use of promotions and of celebrities and licensed characters popular with children) 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?*

No. These rules should continue to apply to all food and soft drink advertising to children.

We are particularly concerned about brands that produce a multitude of HFSS products, who advertise fruit and vegetables, or fruit and vegetable products to enhance their brand recognition and perceptions. We encourage CAP to seriously consider this, because evidence shows children perceive unhealthy food brands to have positive attributes, desirable user traits, personality traits or use symbolic information that associate with healthiness, incorrectly positioning HFSS brands as 'healthy' in children's minds. This is further demonstrated when children are exposed to 'healthy' fast food meal bundle advertisements, their liking for fast food increases but their desire to make healthier choices does not.

This has clear and damaging consequences that increase a relationship between a child and HFSS products. Furthermore, research shows the influence of a celebrity endorser on food intake in children 'extends beyond his or her role in the specific endorsed food commercial, prompting increased consumption of the endorsed brand even when the endorser has been viewed in a non-food context'. This suggests any relaxation of the rules would not increase the appeal of healthier alternatives, but could merely reaffirm the relationship between a HFSS brand and a child consumer. We are open to consider the marketing of non-branded fruit and vegetables to address this.

### **Q4 – Introducing placement restrictions**

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

Yes. Exposure to continual and repetitive marketing on a daily basis over a lifetime, across multiple platforms and settings, leads to cumulative increases in energy intake and increasing obesity rates. To reflect changing media use among children and young people, it is important that strong restrictions are applied across all forms of non-broadcast media.

*(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?*

We recommend the definition of children should be set at 15 or younger at an absolute minimum, and strongly support a definition of 17 or younger being adopted. There are three critical justifications for this. Firstly, the need to be consistent with the established principle of defining children as aged 15 or younger as a minimum in UK advertising regulation. Secondly, the unequivocal evidence base of the commercial influences of marketing on children up to early adulthood, which establishes why an increased age restriction is necessary. And thirdly, the need to comply with international child's rights law that identifies children as anyone aged 17 or younger.

Ofcom and the Broadcast Committee of Advertising Practise (BCAP) consistently define a child as aged 5-15 when analysing children's media use and literacy, alcohol exposure, and advertising guidance for scheduling and audience indexing. The Market Research Society defines a 'child' as any person under 16, with the vital aim 'to protect potentially vulnerable members of society'. Despite article 2.1 of the CAP code acknowledging the practical need to ensure children understand the commercial intent of online marketing, Ofcom's research has shown two-thirds of 12-15 years are unable to identify sponsored links or paid-for advertising on the Google search engine. This failure to protect children, coupled with the CAP code explicitly defining 'a child is someone under 16', it would be inconsistent to define the age of a child any lower for the purpose of HFSS product advertising.

As well as the example of children aged over 12 not being aware of online marketing, the evidence shows food marketing has a clear impact on children aged above 12. Particularly telling is the evidence covered in the University of Glasgow's submission, which shows the harmful exposures of junk food marketing to children aged 12-14 years old. Internet advertising exposure has been associated with increased consumption frequency of HFSS foods among children aged 14, as well as their parents. A study with 15 year old children has also shown these older teenagers were unable to recognise the commercial intent of marketing communications, and are unconsciously influenced by them. Swedish research, also with 15 year olds, found children were largely unaware of online advert exposure and that food adverts had the highest impact compared to all other product categories. Australia, which uses a definition of children aged 12 or under alongside an audience index, has found that 13-17 year old children are exposed to the same level of alcohol marketing as adults – essentially rendering an age restriction of 11 and under ineffective to reduce children's exposure to marketing.

It is frequently argued that education to raise advertising literacy makes children less susceptible to the effects of advertising. However, as well as the above research, reviews of empirical research does not provide convincing evidence for this view, finding that children are unlikely to be able to use advertising knowledge as a critical defence, and different persuasive techniques such as argumentation are used to undermine advertising literacy. Even as age brings some moderate development of cognition to evaluate advertising more critically, the persuasive intent of advertising still has a clear impact on those 15 and under and may not be fully understood until late adolescence and early adulthood.

As well as ensuring consistency, there is a strong case that this age should be even higher. Beyond a definition of aged 15 or younger, Ofcom have also previously considered a child to 'mean children aged 17 or younger'. The UN Convention on the Rights of the Child, which has been ratified by the UK, defines a child as 'every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier'. Failure to protect under-18 year olds from excessive food and drink advertising risks falling foul of Article 3 of this Convention, that 'the best interests of the child shall be the primary consideration'. It also may not put a child's best interest above commercial intent, in conflict of the European Charter of Fundamental Rights, where children 'have the right to such protection and care as is necessary for their wellbeing' and that 'in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration'. We advocate a child's rights approach as enshrined by The Sydney Principles, which notes the merits of restrictions to those aged 17 and under.

Specific to the UK, The Bailey Review of the Commercialisation and Sexualisation of Children conducted for Government in 2011, gives the ambition that 'the regulations protecting children from excessive commercial pressures are comprehensive and effective across all media and in line with parental expectations'. This comprehensive review, which used a definition of children as those aged 5-16, finds that 'while adults may understand that companies might look to 'push the boundaries' when advertising to them, children are especially vulnerable and need to be given special consideration'.

There is an unequivocal evidence base of the commercial influences of marketing on children aged up to early adulthood, to identify children as anyone aged 17 or younger in conjunction with international law, and an established principle of defining children as aged 15 or younger in UK advertising regulation. We therefore recommend the definition of children should be set at 15 or younger at an **absolute minimum**, and strongly support a definition of 17 or younger being adopted. It is important that there are no inconsistencies between this new rule (15.18) and sections of the code applying to 'pre-school or primary school' children.

## **Q5 – Defining the audience**

*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?*

No. We have four main concerns with these principles. Firstly, we have serious concerns about how an index is monitored and enforced. Secondly, the measure is a proportion with no absolute limit that is inconsistently high compared to other audience indices. Thirdly, we do not think an audience index is appropriate without a supporting model to address the placement and promotion of HFSS advertising. And finally, we are concerned that placing the responsibility on the advertiser to demonstrate exposures leaves room for interpretation and inconsistency, and call for improved access for the public health community to industry data to appraise this.

We have concerns about how this measure would offer enforceable protections. Taking the example of IP addresses, which provides one numerical identifier for each computer or electronic device, rather than a record of the individual users of a device. This could allow for repeated exposures of HFSS marketing to children, without a clear explanation of when an audience index threshold would be broken.

We note concerns about self-reported age verification being ineffective, with research into the marketing of snus (a form of oral tobacco) across the European Union finding this method 'inadequate', further demonstrated by international research on children purchasing tobacco despite verification. The ASA has also found children register on social media using a false age, frequently exposing them to inappropriate advertisements. We share the sentiment of the ASA's Chief Executive: 'On the face of it, our survey suggests that advertisers are sticking to the rules but children aren't. But before we all lay the blame with parents and guardians, we need to be honest: if advertisers and social media companies know that children say they're older than they are, don't they have a crucial part to play too?'

We request clarity on what basis the figure of 25% was decided, particularly given a TV programme 'of particular appeal to children' is deemed to attract an over-represented audience of children by 20% compared to the total. If an audience index has to be used, it should be used alongside another verification tool to restrict HFSS advertising, and the threshold must be reduced significantly. We do not believe CAP has made the case that an audience index is the most effective way to comprehensively reduce children's exposure to junk food advertising.

Considering the full range of non-broadcast avenues under CAP's remit emphasises the flaws of using an audience index driven by proportion rather than absolute numbers. For example, the CAP Code covers static and interactive billboard in Transport for London premises. Considering up to 4.8 million passenger journeys are made per day, the proposed audience index would mean up to 1.2 million journeys could be made by children with exposure to HFSS advertising without the proposed restrictions applying. Building on this concern, our previous submission to CAP noted the example of alcohol advertisements in Skyfall. Here, only 12% of viewership were under-18s but the film reached almost one-fifth of the UK population. This emphasises the cumulative impact of individual exposures: a UK population of 63.7 million in 2012 means that in excess of 1.5 million children could have been exposed to these adverts.

We believe that CAP's current audience indexing proposals are inappropriate, and offer the following solutions. One option for a dramatic upgrade is following Quebec's approach to advertising. To determine whether an advertisement is directed at children, it must take account of: a) the nature and destination of the product advertised, b) the manner of presenting the advertisement, and c) time and place it is shown. Secondly, we strongly recommend CAP consider Finland's approach to restricting alcohol marketing to children. Here, all advertising and sales promotion of alcoholic beverages are prohibited if they involve taking part in a game, lottery or contest, if they involve an information networking service, if they include any textual or visual content produced by consumers, or content that is intended to be shared.

While we do not believe it realistic to apply these principles across all advertising categories, we recommend applying them in the UK to HFSS products and brands associated with the production, promotion or sale of HFSS products. As a result, under our proposal foods and drinks defined as less healthy under the Food Standard Agency's nutrient profiling system should not be allowed if they meet the criteria detailed above, including taking part in a game, lottery or contest, or if they involve text or visual content shaped by consumers, or content intended to be shared or commented on by consumers. This also addresses user-generated branding and audience interaction, which we would like to see CAP understand the impact of.

Finally, our ability to suggest improvements is impaired by the fact that civil society organisations are not privy to industry data, without an extremely costly investment that detracts from other charitable activities. Because the current proposals place responsibility on the advertiser to demonstrate compliance, the public health community must be granted access to data in an open-access, publically available way to scrutinise children's exposure to marketing.

## **Q6 – 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?*

Yes, and it is crucial all non-broadcast areas are covered within the CAP Code. HFSS products are widely promoted online, exploiting a loophole where TV adverts for such products are restricted. This leaves us with serious health and ethical concerns that children's food choices are being influenced subconsciously, in direct violation of CAP Code article 2.1 which states that 'marketing communications must be obviously identifiable as such'. A review of the influence of social media for the European Commission found 'children are exposed to a number of problematic practises in online games, mobile application and social media sites' and that the various marketing techniques used are not always transparent to the child consumer, yet have a significant effect on children's behaviour.

It is vitally important that online advertising is not the only area effectively covered, and that there are no exemptions across all non-broadcast media. Public Health England's mixed-methods review of the evidence behind reducing sugar consumption clearly shows 'children are exposed to a high volume of marketing in many different forms, and that these affect food preference' and that 'all forms of marketing consistently influence food preference, choice and purchasing in children and adults'.

There is a clear case for removing online games where HFSS food or drink products are promoted across all non-broadcast platforms. Playing a game can impair a child's cognitive ability and affect behaviour, limiting their ability to critically analyse content, even if they do not understand they are exposed to advertising or branding. International evidence shows playing an advergame promoting energy-dense snacks contributes to increased caloric intake in children, by influencing food choices, brand recognition and intentions to pester. Multiple systematic analyses of international food marketing websites shows such games overwhelmingly promote either HFSS products, that they overrule the impulse to refrain from eating, and that children are more likely to eat the same advertised snacks than those who played a game with non-food products. Lack of understanding of cognitive intent is also a clear problem. American research saw only one child of 112 spontaneously identify an advergame's purpose was to sell cereal, whilst a study on another cereal advergame from Australia saw low awareness that the game was made by a food producer.

As with any innovative, disruptive and diffusive technologies, taking a case-by-case approach to restrict particular formats of marketing to children is not an adequate protection for public health. One form of HFSS marketing is replaced by another: advergames are replaced by new mobile apps. This reason underlies our support for the Finland model, to comprehensively reduce marketing exposure to children across the Code, and offer a case-by-case approach to new technologies.

We encourage CAP to engage with the evidence base on the impact of HFSS marketing to children, including the systematic reviews and meta-analyses we have submitted in this consultation, as the basis for action. CAP should look wider than their literature review on research on online food and beverage marketing to children, which we have significant concerns with. It is unclear if this review has been peer-reviewed, whilst it also makes a number of short-sighted conclusions, including that 'there is however a lack of evidence to show the long term effect of advergames of children's eating habits', despite advergames being a recent phenomenon where it was impossible to show long term impact at the time. Instead, we share the following sentiment in the report that: 'put simply, it may be that people are trying to sell us things without us recognising that this is what they are doing'.

### **Further comments**

Sitting across all the points in this consultation, CAP are committed to 'good regulation' that is 'transparent' and 'evidence-based'. Comprehensively reducing the number of HFSS adverts that children see online would be good regulation that is great for child health. As noted in paragraph 39, it would be extremely disappointing of CAP to directly contradict this commitment without engaging the established evidence, including that submitted in this response and from others in the public health community.

We are concerned about ASA's complaints process. We have significant issues with the reactive mechanisms, particularly when considering non-broadcast advertising cycles are typically much shorter and targeted than broadcast. We note a comment by the UK Advertising Association that the 'all-time number-one complained about ad in the UK was for Kentucky Fried Chicken, and the reason was that people in the commercial were speaking with their mouths full', and pose this has less to do with British etiquette and more with the labyrinthine process of successfully upholding a complaint. Effectively holding the food and drinks industry to account will be impossible without an efficient, proactive complaints process – rendering redundant CAP's potential for good work.

## Introduction

This response is on behalf of Cardiff and Vale University Health Board. On reading the consultation document we have reviewed the evidence in coming to a clear stance with regards to the proposals made towards food and soft drink advertising to children. Overall, we welcome the approach as we are both working towards reducing obesity in children. Locally, 4 to 5 year olds in Cardiff are 22.4% overweight or obese and in the Vale this figure is 17.0 % (1).

Promotions on social media, widgets and viral videos are commonly used by Food Companies to target children and adolescents (2, 3), we would like to work with you to reduce their impact.

We are responding to your six consultation questions as follows:

### **Question 1: Restrictions on HFSS product advertising.**

Overall we agree that the CAP code should be updated to introduce tougher restrictions on the advertising of products high in fat, salt and sugar (HFSS)

Advertisements targeted at children are prohibited in Norway, Sweden and Canada. These countries enforce these prohibitions through a government agency. These bans reduced advertisements directed at children (4). In Canada, to ensure adherence, there is an advertisement clearing division that pre-screens all food, drugs, alcohol and cosmetic advertisements (5). This is also the case in France where the Bureau De Verification De La Publicite pre-screen television advertisements (6).

We agree CAP should use the existing Broadcast Committee of Advertising Practice guidance on identifying brand advertising that promotes HFSS products. The South Korean Government introduced the Special Act on Safety Management in 2010. This Act restricted daily TV advertisements of unhealthy children's foods between the hours of 17:00 and 19:00 and with all children's programmes run outside of these hours. The size of the audience exposed to these advertisements reduced by 82% during the restricted broadcast time (7).

**Question 2: Selecting a nutrient profiling model.** We agree the CAP code should adopt the Department of Health (DH) nutrient profiling model to identify HFSS products. We support that the CAP code adopts the DH nutrient profiling model to identify HFSS products. The model applies to all food and drinks without exemptions and will be consistent across all media. However, the DH profiling model needs to be reviewed in view of the Scientific Advisory Committee on Nutrition (SACN) recommendations within the Carbohydrate and Health report (8). SACN recommended that the population average intake of free sugars should not exceed 5% of total dietary energy, based on SACN's assessment of evidence on the effect of free sugars on the risk of dental caries and on total energy intake. This should be reflected in the scoring system. SACN also recommended that dietary fibre is to be chemically determined using the AOAC method and that the recommended fibre intake is increased. Again this should be reflected in the scoring system used in the DH model. The addition of fruit juice to a food or drink item would not be seen as a high C score due to its high free sugar content.

**Question 3: Existing prohibitions on the use of promotions and licensed characters and celebrities.** We support the amendments of existing rules to apply only to HFSS product advertising. Food products using a branded character are shown to be preferred by children (9). Cartoon characters are used on product packaging to target children, and celebrities are used by food and drink companies to target adolescents (10). The portrayal of food as a toy is frequently seen on television advertising aimed at children (11). Traditionally these methods have been used to promote energy dense food and drinks (junk food), but there is no reason why these methods could not be used to promote healthy food and drink options in order to improve future health. For example, a study was conducted with 216 preschool students where each one was assigned a healthy snack (chopped banana) or an unhealthy snack (banana candy). Where familiar characters like Dora the Explorer and Spongebob Squarepants were placed on the products packaging, results showed that with the introduction of brand characters, that intent to purchase and liking of fruit was increased in these children (12). We believe implementing these techniques will allow for greater opportunities for healthier foods to be advertised to children.

**Question 4: Introducing Placement restrictions.** We support a rule restricting the placement of HFSS product advertising. It has been found that purchase decisions are being made by children between 6 and 8 years of age (13). Advertisements are seen as entertainment for children up to 4 years of age, in children aged 6 to 7 advertisements are seen as a means of providing information; in children aged 7 to 8 they cannot differentiate between persuasion and information; in children aged 10 to 12 they can understand an advertisement's aim but cannot explain sales techniques (14). Therefore, our opinion would be to prohibit product advertising in media targeted at all ages under 16 for HFSS products.

**Question 5: Defining the audience.** We support the CAP using the "particular appeal" test for the purpose of restricting HFSS product advertising. A programme of "particular appeal" is one where children and adolescents make up a certain proportion of the target audience (15). Therefore, we believe a similar approach should be taken with regards to HFSS product advertising in the under 16's.

**Question 6: Application to different media.** We believe CAP should apply the placement restriction on HFSS product advertising to all non-broadcast media with the remit of the Code, including online advertising. The WHO stated that a viable contributory factor in obesity is the direct marketing of fast food chains, energy dense beverages and food of poor nutritional value (4). The internet is an opportune place to aim advertising at children. There are a variety of methods in which marketing is aimed at children online, including competitions, product discounts, advertorials and advergaming. Companies are also creating advergaming to promote their brands. These are video games which have messages embedded within them and designed to be fun and fast paced for children (16).

Overall we support the approach to reducing HFSS advertising in the under 16s. We would like to thank you for allowing us the opportunity to respond to your consultation.

## 20 – Centre for Diet and Activity Research (CEDAR)

### Introduction

The Centre for Diet and Activity Research (CEDAR) is one of five Centres of Excellence in Public Health Research funded through the UK Clinical Research Collaboration, and is a partnership between the University of Cambridge, the University of East Anglia and MRC Units in Cambridge. CEDAR studies the factors that influence diet and physical activity related behaviours, develops and evaluates public health interventions, and is helping shape public health practice and policy. Our goal is to support effective interventions to change diet and physical activity behaviours at the population level.

This response is submitted on behalf of CEDAR and was prepared by:

- Dr Jean Adams, research programme leader, Evaluation of population interventions in dietary public health, MRC Epidemiology Unit, University of Cambridge.
- Prof Martin White, research programme leader, Food behaviours and public health intervention, MRC Epidemiology Unit, University of Cambridge.

Dr Adams and Prof White have conducted a range of previous research on food and alcohol marketing, particularly food marketing to children, including an evaluation of the regulations on television food advertising to children.

### Response

There is substantial evidence from systematic reviews (considered the most robust form of scientific evidence) that food marketing to children has an effect on children's food knowledge, preferences, purchasing and consumption. As the majority of food marketing in the UK is for less healthy foods, food marketing likely contributes to consumption of unhealthy diets. The effects of food marketing occur at the brand and category level meaning that food marketing does not simply encourage children to switch brands, but to change their overall food intake.

The diets of UK children are not healthy. Only 13% of 11-18 year olds achieve the recommended five portions of fruit and vegetables per day; 77% consume more saturated fat than recommended; and 71% more 'added' sugars than recommended. These dietary patterns contribute to the third of year 6 children who are overweight or obese in England. Despite considerable efforts, substantial improvements in diet and obesity remain elusive.

Food marketing is one part of a complex system of factors influencing children's diets. It is naïve to think that there will be simple, single interventions that will achieve substantial changes in children's diet. Many interventions, each with apparently small individual effects, are likely to be required.

Interventions such as restrictions on food marketing can be described as "low agency, population interventions". That is to say that:

- they operate across the whole population irrespective of any individual's risk of disease (population interventions);
- they require little, if any, mental or physical engagement from individual recipients (low agency) for them to benefit from the intervention.

Low-agency, population interventions are likely to be more effective and to have wider and more equitable reach than other types of interventions. In particular, they are likely to be more effective than the 'high agency' interventions based on education and information which are predominant in current UK policy action in this area. Low agency, population interventions have been described as "central to public health action on diet and obesity".

## Q1 – 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 (HFSS)?*

**Yes.** As described above, there is considerable evidence that food marketing, in all its forms, influences children's food knowledge, preferences, purchasing and consumption. Given the proliferation of media forms and access by children, it is inconsistent that advertisements for HFSS products are restricted on television, but not elsewhere. The rationale for restricting advertisements for HFSS products on television (to help protect children from unhealthy diets and obesity) extend to other spheres. Extending the restrictions would help parents provide a consistent message to their children, help achieve the vision of the current TV restrictions (of reducing, significantly, the exposure of children to these advertisements), and help reduce the totality of less healthy food marketing.

*(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?*

**No, stricter rules are required.** The current BCAP guidance allows brands that tend to be known for HFSS products (e.g. fast-food companies) to avoid the current restrictions on TV food advertising to children by not showing any of their HFSS products. We conducted qualitative focus group research with parents on their views and perspectives on TV food advertising to children and the current regulations. Parents were particularly frustrated by the failure of the current restrictions to cover brand advertisements, describing this as "unacceptable", "exploitation", and "cynical". Parents expressed a desire for stricter regulation on this issue for television and such stricter regulation should logically be extended to other media.

Furthermore, the nutrient profiling model used to identify HFSS products describes products as 'less healthy' or not. It is important to remember that products which are not 'less healthy' are not necessarily 'healthy'. Marketing of these products should not necessarily be encouraged.

## Q2 – Selecting a nutrient profiling model

*Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?*

**Yes, and this model should be regularly reviewed.** For consistency, it would be sensible to adopt the current NPM used to determine whether foods can be advertised to children on television. The DH NPM was developed using systematic methods and has been validated against professional opinion and a range of other models and scores. However, the DH NPM should be regularly reviewed and updated to reflect changes in scientific knowledge and food composition.

### **Q3 - Existing prohibitions on the use of promotions and licensed characters and celebrities**

*There are existing rules (prohibitions on the use of promotions and of celebrities and licensed characters popular with children) 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?*

**No, they should apply to all products.** The current restrictions on promotions, licensed characters and celebrities are based on the evidence that these strategies are particularly effective in influencing children. As described above, it is important to remember that products which are not HFSS should not automatically be considered 'healthy'. In addition, it may be desirable to extend the current restrictions on promotions, licensed characters and celebrities to advertisements for brands generally associated with HFSS products.

### **Q4 – Introducing placement restrictions**

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

**Yes.** We have described the role of food marketing in general above and support stronger restrictions on food marketing across all media in order to promote healthier diets and reduce diet-related illnesses and obesity.

*(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?*

**Aged 15 and under.** As with our responses elsewhere, we feel it is important to apply and send consistent messages concerning food marketing. If exposure to HFSS TV food advertising should be reduced amongst children aged 15 and under, then this age cut-off should also apply to other media.

It is clear that the impact of food marketing to adults and older children has been much less studied than that on younger children. However, the current gaps in the evidence base related to adults and older children very clearly represent 'absence of evidence' rather than 'evidence of absence of an effect'.

There is currently no reason to believe that food marketing does not have an effect on adults and older children, although the mechanism of this effect may vary with age. For example, younger children may be particularly vulnerable to food marketing because they do not understand the 'persuasive' intent of advertisements – although even older children often do not appreciate the 'selling' intent. In contrast, older children may be particularly vulnerable to food marketing because they ascribe much greater value and meaning to food branding and see consuming particular (often less healthy) food brands as highly important for defining and maintaining their personal and social identity.

## Q5 – Defining the audience

*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?*

**No, a stricter cut-off is required.** We conducted an evaluation of the current TV restrictions on HFSS food advertising to children. We found no change in children’s exposure to HFSS food advertisements after the introduction of the restrictions compared to the exposure before. We also found a significant increase in adults’ exposure to HFSS food advertisements over the same time period. This was despite finding very good adherence by broadcasters to the restrictions.

The most likely explanation for our findings is that HFSS food advertisements moved from ‘children’s’ slots covered by the regulations to ‘family’ slots not covered by the regulations. Hence, children were no longer seeing HFSS food advertisements during programme ‘of particular appeal’ to children, but were seeing these advertisements during other programming. This leads us to conclude that a significant failing of the current restrictions on TV food advertising to children is that the definition of programming ‘of particular appeal’ to children is not strict enough.

On TV, the “120 index” is used to define programmes ‘of particular appeal’ to children – this is when the proportion of children watching is more than 120% of the proportion of children in the population. Around 19% of the UK population are aged 15 years or under; 120% of 19 is around 23%. Hence, at least 23% of people viewing a programme must be children for it to be defined as ‘of particular appeal’ to children. If this is not a strict enough cut off to be associated with a change in exposure, then nor is the proposed 25% measure. We would encourage a much lower cut-off and certainly not one above 19%.

We would also encourage consideration of both an absolute and relative definition of which media are ‘of particular appeal to’ children. Whilst the relative proportion of children exposed to media made particularly for children may be very high when expressed as a percentage of all those exposed, the absolute number of children exposed may be quite low for less popular content. In fact, the absolute number of children exposed to more popular media made for families may be much higher, despite children not making up such a high proportion of all those exposed. For this reason, we would encourage consideration of restrictions placed on media that exceed either a relative (e.g. more than 19% children) or absolute (e.g. more than 500,000 children) threshold of exposure to children.

## Q6 – 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?*

**Yes.** There is no good reason to restrict the regulations to specific forms of advertising or marketing. Children spend increasing amounts of time online, increasingly consume TV and video via online formats, and increasingly value their online time.<sup>28</sup> In addition, all forms of food marketing are known to have an impact on children – including promotions, label based branding and in-store placement.<sup>16</sup> For this reason, we would encourage extension of the proposed restrictions to all forms of marketing.

## 21 – Channel 4

Channel 4 welcomes the opportunity to respond to CAP's consultation on introducing new restrictions on the advertising of food and soft drink products to children. Channel 4 agrees that obesity is an important problem and believes that industry have a responsibility to contribute towards tackling this issue.

As a Public Service Broadcaster Channel 4 has a remit to inspire people to make changes in their lives. Channel 4 is the only PSB in the world to enjoy a share of viewing for young people that is higher than our share of viewing for the general population - this strong relationship with 16-34 year olds means we are ideally placed to reach this group with public service programming aimed at changing behaviours around obesity.

Channel 4 has a proud history of programming that encourages viewers to make informed choices around food, health and wellbeing. For years programmes like River Cottage, Jamie's School Dinners and Food Unwrapped have been prominent in our schedules. Recent programming has also placed a particular focus on the risks of high consumption of certain food groups such as Dispatches: Are you addicted to sugar, Dispatches: Salt: Are You Eating Too Much?, Superfoods: The Real Story, Jamie's Super Foods and Sugar Rush with Jamie Oliver.

These programmes resonate with viewers and research indicates that they have a real demonstrable impact on behaviours and attitudes. In 2015 Channel 4's healthy eating programming reached 20m people with half of viewers claiming their attitudes to their diet changed as a result of watching and 6 in 10 also saying it made them think differently about what to feed their family.

The UK's self-regulatory approach to advertising has been proven to be extremely effective and Channel 4 supports CAP's intention to bring the non-broadcast code into line with high standard set by Broadcasting and BCAP.

Channel 4 would note in particular that it already voluntarily applies the same high standards set by BCAP for linear television to its online services including All 4. Channel 4 agrees with CAP that given the scale and importance of the obesity problem in the UK it is appropriate to seek to harmonise the CAP and BCAP codes to provide viewers with one clear set of standardised rules across all media. Doing so will also reduce the burden on businesses who operate in Broadcasting and online and currently have to apply two separate sets of rules to their services.

### **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 (HFSS)?**

Channel 4 supports CAP's intention to update the CAP code of practice to bring it in to line with the BCAP code of practice. This process should have the aim of ensuring both codes are harmonised where practicable to provide viewers with one set of rules for HFSS advertising across both broadcast and non-broadcast media.

**(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?**

Yes, Channel 4 believes the simplest and most effective way to harmonise rules across broadcast and non-broadcast is to use existing BCAP guidance.

#### **Selecting a nutrient profiling model**

**Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?**

Yes, in order to ensure alignment with other restrictions on HFSS advertising Channel 4 believes CAP should adopt the DH nutrient profiling model to identify HFSS products.

#### **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 BCAP code currently contains rules around using licenced characters and celebrities in advertisements towards children. Channel 4 believes CAP should seek to harmonise these rules across both codes.

#### **Introducing media placement restrictions**

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

Channel 4 supports CAP's intention to introduce a rule to restrict the placement of HFSS advertising. Channel 4 already voluntarily applies the BCAP code to its online services and believes it is appropriate to amend the CAP code of practice to bring it in to line with the BCAP code of practice.

**(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?**

Channel 4 believes that media restrictions should be harmonised across broadcast and non – broadcast media. Introducing a younger restriction for online compared to broadcast increases complexity unnecessarily whilst also making it more difficult for viewers to understand the rules.

### **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?**

Channel 4 believes that the CAP code should seek to harmonise with the BCAP code wherever possible – both to provide viewers with a clear set of rules across all media and to reduce the regulatory burden on broadcasters who also operate online services.

Broadcasters currently apply a "120 index" to restrict HFSS advertising – this level was reached after Ofcom carried out detailed work to decide the appropriate level of restriction and Channel 4 believes this should be replicated by the CAP code where possible.

### **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?**

Yes, Channel 4 believes it is appropriate for CAP to apply the placement restriction on HFSS advertising across all non-broadcast media within the remit of the code, including online advertising.

The Children’s Food Trust is a national charity on a mission to get every child eating well: at home, in childcare, at school and beyond.

That means spreading the skills, knowledge and confidence to cook from scratch, helping anyone who provides food for children to do a great job and encouraging industry to help families make better food choices.

**Response to consultation:**

**Q1 (a) Should the CAP Code be updated to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?**

**(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?**

- (a) Yes. We strongly welcome the proposal to strengthen the CAP code with regard to the advertising of products high in fat, sugar and salt to protect children from exposure to this sort of advertising across all non-broadcast media, in line with the World Health Organisation’s recommendation that nations should reduce the exposure of children and adolescents to, and the power of, the marketing of unhealthy foods.
- (b) Yes: the rules governing the advertising of products high in fat, sugar and salt to children should be consistent across all media forms and advertising codes.

However, we would also recommend that guidance on this specific issue across both codes should be strengthened even further, so that brand advertising which should be treated as HFSS can be more easily identified and, thus, prohibited alongside advertising for HFSS products to children. We recognise Ofcom’s concerns, stated in 2006 and repeated since, as to the practical difficulties of distinguishing when a brand is wholly or mainly used for HFSS products for the purposes of broadcast advertising to children. However, Ofcom also committed to keeping the issue under review. In light of concerns from both the World Health Organisation and Public Health England as to the impact of marketing of foods and non-alcoholic beverages to children, we believe this is the time for a formal review of this specific issue across both advertising codes – to explore whether new, practical solutions may now exist to effectively identify the specific instances in which brand advertising should be treated in the same manner as HFSS product advertising. For example, in its 2010 review of the impact of the tighter

regulations on advertising HFSS products to children in broadcast media, Ofcom noted in its ([Figure A9, 2009](#)) non-HFSS proxy that a number of adverts for the McDonalds restaurant chain were broadcast during children's airtime in 2009. Whilst we welcome McDonalds' pledge to the World Health Organisation in 2014 that it would stop marketing unhealthy foods to children through all forms of media by 2016, we fear that without stronger controls across both codes, this sort of brand advertising may continue to target children – negating the spirit of CAP's proposed new and amended rules.

**Q2: Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?**

Yes. We believe that the CAP code should adopt the Department of Health (DH) nutrient profiling model to identify HFSS products. This would create consistency across all media, and mitigate any costs of compliance as this model is already in use in relation to broadcast advertising. However, we strongly believe that any changes to the model as a result of a PHE review should automatically be adopted – such changes, if any, would be driven by evidence published by Public Health England /SACN on the need to reduce sugar and increase fibre intakes. Adopting the DH model in full is vital in promoting consistency across all activities designed to improve the diet and health of children.

**Q3: 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?**

No. We welcome CAP's consideration of the principle of lessening the restrictions on the content of non-HFSS product advertising to children, and acknowledge the argument that this may encourage advertisers to adapt their behaviour and advertise healthier foods to children. The idea of making it easier for healthier foods to be promoted to young audiences aligns with Public Health England's recommendation in its report [Sugar reduction: the case for action](#) that reducing, limiting and rebalancing the promotion of products is key to improving diet. As CAP states in its consultation document, "*various studies... suggest that the balance of food advertised is not representative of a healthy diet.*" Furthermore, a 2009 [study by Pempek and Calvert](#) concluded that "*advergaming may... be used to promote healthier foods and beverages,*" after studying the snack choices of children who played healthier and less healthy versions of an advergaming game beforehand. Their conclusion continues: "*This kind of social marketing approach could tip the scales toward the selection of higher-quality snacks, thereby helping to curb the obesity epidemic.*" Regulations which successfully encourage and enable greater awareness of healthy choices among children – whilst still providing complete protection from creative content which uses celebrities and licensed characters in advertising for food and drink products high in fat, sugar and salt - could help to demonstrate the commitment and leadership required of advertisers to play their part in supporting children to eat a better diet.

However, we fear that by applying the rules on promotions, licensed characters and celebrities to HFSS foods *only*, CAP would be opening the door for advertising of 'borderline' non-HFSS products which do not support a healthy diet for children, and also – without action in line with our recommendations under Question 1 - allowing brand advertising of brands synonymous with HFSS products to this group: precisely the opposite effect to that intended. It is likely that products just under the threshold score for HFSS would choose to exploit such advertising techniques - these products may not be 'less healthy' as defined by the nutrient profiling model, but might be high in sugar and/or with sugar, salt and saturated fat levels formulated to come in just under the thresholds.

Subsequently, we believe there are two possible options: first, to retain the status quo and apply the rules covering creative content of food and drink advertising directed at children to *all* food and drink products. Whilst this continues to restrict creative content options for healthier food and drink products, it also continues to provide a clear exemption for fresh fruit and vegetables and ensures complete protection from creative content linking celebrities or licensed characters with less healthy foods (whether HFSS or borderline cases).

Alternatively, the feasibility of developing criteria to effectively deliver the desired impact – of opening up advertising options for genuinely healthy products - could be examined as part of Public Health England's review of the Department of Health's nutrient profiling model. This would ensure that any change to the rules on creative content would be in line with national, evidence-based dietary advice and that the focus is on opening up advertising content possibilities for *only* those foods and drinks which are at the very core of a healthy diet for children. This is our preferred option.

In addition, we would urge CAP to ensure the content rules apply not just to promotions, licensed characters and celebrities, but also to brand equity characters - ensuring consistency in the approach and in recognition of its own assessment of the power of the relationships forged with such characters, particularly by younger children. Whilst the ASA has argued that brand equity characters have 'no existence' outside advertising, and that they are less emotionally appealing to children, this [2014 study published in the Journal of Consumer Research](#) concluded that brand characters in advertising to children can have very long-term pay-offs for the brand. A [2015 study](#) also found that children's food choices are influenced by brand equity characters, when choosing between two types of the same food. While this could be hugely beneficial for healthy products, the findings question the role of brand characters in the wider context of supporting and encouraging healthy decision-making in tomorrow's adults. Public Health England's [Sugar Reduction: The Evidence for Action](#) highlights the lack of restriction on the use of marketing forms such as brand characters and notes that plugging loopholes to limit such techniques could help to reduce the purchase of foods high in sugar and, so, their consumption.

Finally, we would urge CAP to apply the new and amended rules on creative content of food and soft drink advertising to children of 15 and younger, in line with our response to question 4 below.

**Q4: (a) Should CAP introduce a rule restricting the placement of HFSS product advertising?**

**(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?**

- (a) Yes. We strongly support the proposal for a media placement restriction for the advertising of HFSS products and would note that consistency on this across both codes, covering all media, is crucial here.
- (b) ii: this restriction should cover media directed at or likely to appeal particularly to children aged 15 and younger. 12-15 year olds have the highest [estimated consumption of all media types](#) by under-16s, and at a time in their lives when they are asserting greater independent choice and preference around food, around one third of children begin their secondary school career either overweight or obese. Most children under 16 fail to consume enough fruit and vegetables, and consume too much sugar, salt and saturated fat. Data from the National Diet and Nutrition survey show that 11-15 year olds consume an average of 2.9 portions of fruit and vegetables per day, with only 9% meeting the 5-a-day recommendation. This age group consumes too much saturated fat and added sugar, too little fibre, and girls' intakes of calcium and iron are low.

We recognise that the impact of food advertising on older children remains under-researched, but given that CAP's own impact assessment states that "*a higher age restriction is almost certain to result in a more significant reduction in exposure to HFSS product advertising for all children*", we recommend that this is the option which offers the greatest potential benefit for children's health – which must be the primary aim here.

We strongly disagree that the question of whether a higher age restriction will result in disproportionate costs to advertisers and media providers should be a consideration here, and note that industry bodies including the Food and Drink Federation and the British Retail Consortium back the application of a media placement restriction to children of 15 and younger, in line with their recognition that industry must market to children in a responsible way. Restriction in this way would also align with the BCAP Code rules, providing greater consistency for advertisers and consumers.

However, we believe that CAP and BCAP can and should go even further. We remain concerned that the BCAP code fails to apply to HFSS product advertising during shows such as Britain's Got Talent and The X Factor: shows broadcast before the 9pm watershed which are watched by families including children. These programmes are not classified as children's programming, yet their appeal to children and families is enormous: in 2011, both shows ranked among the ten [most-watched programmes of the year by 4-15 year olds](#). Evidence shows that while the tighter BCAP rules have been a significant and welcome step forward, children continue to be exposed to similar levels of advertising for HFSS products on TV because, as a [Newcastle University study](#) concluded in 2012, "children don't just watch children's programmes."

We continue to campaign on this – and hope that the forthcoming childhood obesity strategy will seek to address this loophole – but in the meantime, CAP has an opportunity here to strike a far stronger balance for children's health by ensuring that a media placement restriction covering media directed at or likely to appeal to children aged 15 or younger includes – exhaustively - all non-broadcast media (as [recommended](#) by the British Heart Foundation and Children's Food Campaign, 2011). We support the Children's Food Campaign's view that this restriction should include media currently outside of CAP's remit, including brand characters, packaging, labelling, in-school marketing, in-store placement and sponsorship.

**Q5: Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?**

No. While we accept that the 25% measure has been that used to prevent advertising of alcohol and tobacco products to children in non-broadcast media, the efficacy of this in a non-broadcast context for food and drink products has not been measured and we remain unconvinced – given the gravity of the challenges facing children's dietary health in the UK – that this goes far enough, or that it can be applied effectively enough across non-broadcast media. 25% is still a significant proportion of a total audience. Unlike broadcast media, there is no reliable data for non-broadcast media upon which to base a 25% audience index – we would echo the Children's Food Campaign's concern that relying on data from advertisers does not allow for independent verification. □

Given Public Health England's view that "*children are exposed to a high volume of marketing in many different forms, and that these affect food preference, choice and purchasing, moving choices towards less healthy products*", and that there is a need to "*set...broader and deeper controls on advertising of high sugar foods and drinks to children*", we believe this is the time for an even stronger model.

We strongly endorse the model being proposed by the Children's Food Campaign, which seeks to identify all marketing which is child-directed - irrespective of the media platform or venue, or the percentage or total numbers of children exposed.

They suggest using three criteria to judge whether communications can be seen as child directed: (i) product appeal (ii) marketing content and (iii) marketing placement. Starting from a product standpoint before reviewing the other criteria, the Children's Food Campaign proposes the following questions:

- For whom are the advertised goods or services intended? Do they appeal to children?
- Is the advertisement designed to attract the attention of children?
- Are children targeted by the advertisement or exposed to it? Are they present at the time and place it appears?

The relationship between the three criteria can then be used to determine whether a marketing communication is directed at children, and whether it should be restricted or not. If there is doubt, the overall impression it gives must also be taken into account.

Essentially, to be approved the HFSS marketing communication must not:

- Be designed in a way that appeals to children.
- Be broadcast or distributed in a place where, or at a time when children are normally reached.

Marketing communications run more risk of being considered as directed at children:

- The more the goods appeal to them
- The more childlike the content of the communications is
- The more the place or means of broadcast or distribution is likely to increase the odds of reaching children

This type of approach is being explored or advocated in countries as diverse as Australia, Brazil, Canada, and Chile; and recommended by an emerging consensus of academics and public health professionals.

**Q6: Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?**

Yes – restrictions on advertising of HFSS products to children should apply to *all* forms of non-broadcast media, without exception, including media currently outside of CAP's remit such as brand equity characters, packaging, labelling, in-school marketing, in-store placement and sponsorship. When weighed against the need to protect and improve children's health and the World Health Organisation's recommendations on the need to reduce the exposure of children and adolescents to marketing of unhealthy foods and drinks, along with the financial cost of conditions linked to obesity for health services, the economic impact for advertisers and brands of applying restrictions to all non-broadcast media (whether for children's media, advertisers or brands) should not be a consideration here.

**Additional comments:**

- CAP should also take this opportunity to provide a clearer definition within the code of what constitutes 'condoning or encouraging poor nutritional habits or an unhealthy lifestyle in children'; this is currently open to interpretation by advertisers and could be significantly strengthened by a framework of questions and examples.
- More generally, our recommendations for this review should also be considered recommendations for a universal system of advertising practice for HFSS products to children, across all media: the same rules should apply across both codes and all media, to ensure consistency in practice for advertisers and appropriate protection for children.

## **About Children’s Food Campaign:**

The Children’s Food Campaign (CFC) aims to improve children and young people’s health by campaigning for policy changes in our schools, in our communities and throughout our society that would promote healthy and sustainable food environments. The Children’s Food Campaign is supported by over 100 UK-wide and national organisations, including children’s and health charities, public health professional bodies, trade unions, school food experts and environmental organisations. It is co-ordinated by Sustain: the alliance for better food and farming. [www.childrensfood.org.uk](http://www.childrensfood.org.uk)

Children’s Food Campaign has significant experience acting as a consumer watchdog on junk food marketing issues, and is highly respected by journalists and politicians (including the Health Select Committee) for the work it does exposing irresponsible behaviour by companies and the loopholes in the marketing rules.

This submission was compiled based on conversations with, and feedback from, many of CFC’s individual supporter organisations by phone or email. CFC also discussed a draft of its submission at its working party meeting on 6 July, which was attended by representatives from 16 organisations.

## **CFC policy position:**

Children should be protected from the marketing and promotion of less healthy food and drink across all forms of media, wherever it is placed and whenever it is they see it. This includes a 9pm watershed for junk food adverts on TV, as well as comprehensive rules with no exceptions across non-broadcast media and platforms. Ideally, it should be the Government – through, for instance, its Childhood Obesity Strategy – which sets the ambitious policy goals for the Committee of Advertising Practice and other relevant bodies/regulators to then align their rules to meet. These should always seek to match international best practice, and adhere to World Health Organisation recommendations.

## **Summary response to CAP consultation questions:**

**Q1a = Yes** – *the CAP Code should be updated to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS).*

**Q1b = No** – *whilst in favour of harmonising rules across all forms of media, the existing broadcast guidance on identifying brand advertising is not strong enough. Tougher rules should be adopted for both broadcast and non-broadcast brand advertising.*

**Q2 = Yes** – the Department of Health nutrient profiling model to identify HFSS products should be adopted immediately. That model should also be updated to reflect current nutrition guidance and to close loopholes.

**Q3 = No** – existing prohibitions on the use of promotions and licensed characters and celebrities to market food and drink to children should only be loosened for demonstrably ‘healthier’ products, but not for all non-HFSS products, and not for brands which include any prominent HFSS products.

**Q4a = Yes** - CAP should introduce a rule restricting the placement of HFSS product advertising.

**Q4b = aged 17 and under** – should be the audience that media placement restrictions apply to; although we note that option was not given in the consultation. Of the two options given, we support aged 15 and under.

**Q5 = No** – the 25% audience measure for the purpose of restricting HFSS product advertising provides insufficient protection to children. Additional measures to more broadly define the ‘particular appeal’ of marketing to children (including content, marketing techniques and placement) should be introduced.

**Q6 = Yes** – the placement restriction on HFSS product advertising should be applied to all non-broadcast media, including online advertising, without any exemptions. This also should include media currently outside of CAP’s remit, including brand characters, packaging, labelling, in-school marketing, in-store placement and sponsorship.

## **Key points in response to CAP consultation:**

The Children’s Food Campaign believes that the Committee of Advertising Practice rules should be harmonised across all forms of media (including in cinemas, on posters, in print, online and advergimes), using the current restrictions on broadcast advertising of HFSS products to children under 16 as a starting point, but going further (Q1a) (Q2) (Q4a&b).

The proposals under consultation by CAP are likely to be too weak to be effective in adequately restricting children’s exposure to the marketing of HFSS products. This particularly applies to the proposals on brand advertising (Q1b), on the use of licensed characters and celebrities to promote non-HFSS products to children (Q3); on not extending the age children are protected to under 18 (Q4b); on only defining an advert as having ‘particular appeal’ to children if children make up more than 25% of the audience (Q5); and in inviting the advertising and food industry to apply for exemptions and delays to implementation of the rules (Q6). We have particular concern over the practical and fair application in non-broadcast media of the proposed 25% measure (Q5).

Instead, in order for children's exposure to HFSS non-broadcast marketing to be minimised, the CAP rules should be updated to incorporate:

- a definition of advertising that is widened to include all forms of commercially-sourced messages which include brand names or brand-related images.
- a remit which includes – for the purposes of governing child-directed marketing – the labelling and packaging of food and drink.
- the tightening of restrictions on the techniques that can be used to engage with children, including plugging the 'loopholes' that currently exist around the use of unlicensed but commonly recognised cartoon characters and celebrity endorsement within children's advertising.
- a "particular appeal" test which extends beyond child-directed advertising to include advertising likely to be seen by children under 18, and focuses on the probability that a child may see the messaging.
- the adoption and the tightening of the current nutrient profiling model that governs what can be advertised.
- transparent monitoring and effective sanctions for transgressions.

### **Context - the right of children to health and protection:**

Children have the right to participate in social life and to have their voices heard, but also have rights to health and to have their best interests considered. Children should be able to go about their daily lives without being subject to targeted marketing for products that have been demonstrated to have a negative effect on their health and well-being.

In May 2010 the World Health Organisation endorsed Resolution WHA63.14, the aim of which is to restrict the marketing of unhealthy food and non-alcoholic drinks to children and adolescents to reduce the prevalence of overweight, obesity and diet-related ill-health. Following its adoption, WHO released recommendations which asked national governments "to implement policies to restrict the marketing of unhealthy food and drink products in settings where children spend time". In 2016, WHO's *Report of the commission on ending childhood obesity* emphasised that "the settings where children and adolescents gather and the screen-based offerings they watch, should be free of unhealthy foods and sugar-sweetened beverages" (Kraak et al, *Bull World Health Organ* 2016; 94:540-548 – note 31)

Kraak et al (Bull) conclude: “no company has yet restricted the marketing of unhealthy food and drink products comprehensively – ie in all settings, for all practices, and across all media platforms – to children”. Hence why the regulator, in this case CAP, is right to step in and provide the rules which will make them do so.

### **A note on the evidence base for action:**

*“A robust evidence base accumulated between 2003 and 2013 demonstrated how the extensive and persistent exposure to the powerful marketing of unhealthy food and drink products could affect the preferences and purchasing requests of children. Rigorous reviews have documented how often the sophisticated and integrated marketing communications of the food and drink industries continue to influence the dietary behaviour of young people and contribute to energy-dense and nutrient-poor diets, increased risks of unhealthy weight gain and negative health outcomes.”*  
(Bull World Health Organ 2016; 94:540-548)

### **Detailed Response to CAP consultation questions:**

#### **Q1) Restrictions on HFSS product advertising**

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

**Yes.** The Children’s Food Campaign has long been calling for tougher restrictions on the marketing of less healthy food and drink to children, on TV, online and beyond. Our research, briefings and monitoring reports all consistently show how prevalent this form of marketing is, and how the current rules are neither adequate nor robustly enforced. **[See Appendix A]**

Current marketing rules fail to protect children from junk food marketing online and across other forms of media. The rules are vague, inconsistently applied and don’t distinguish between healthy and unhealthy products. There are loopholes which allow adverts promoting junk food to be targeted at children online that wouldn’t be able to be shown on children’s television. The rules also fail to cover a number of common marketing techniques that are targeted at children. For example, brand characters (the likes of Chewie the Chewits dinosaur, Honey Monster, the Nesquik rabbit), brand marketing, and product packaging featuring games and competitions are not included in the regulations. In-school marketing, sponsorship deals and in-store placement of products are other areas not covered by the existing rules.

Online branding geared towards children and websites and apps containing child-friendly games and activities are particularly prevalent amongst confectionery brands. Licensed characters are another huge area where children are exposed to HFSS marketing. Far greater amounts of sweets and chocolate, cakes, sugary cereals, yoghurts and drinks than markedly healthier options feature tie-ins with Minions, Star Wars, Peppa Pig and other cinema and TV hits popular with children. HFSS brands are also increasingly making use of influencers (e.g. vloggers and musicians) to produce and distribute marketing content, not all of it as clearly labelled as advertising as is required. In addition, misleading health or nutrition claims online and on packaging – alongside images of happy children eating the products – skew the information parents are relying on when making purchasing decisions.

*(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?*

**No.** Whilst we are in favour of harmonising rules across all forms of media, the existing BCAP guidance is not strong enough, and thus we cannot unequivocally agree with the proposal.

Children's knowledge of unhealthy food and drink increases their obesity risk. Children's recognition of branded food logos increases with age and compared with other children, those who recall branded unhealthy food and drink have stronger preferences for such products (see notes 12-15 of Bull).

Many ads and other marketing aimed at children focus primarily on promoting a corporate brand or 'family' of products. This is particularly problematic when most products within that brand/range are – or are perceived as being – HFSS, and thus are not appropriate to market to children.

The definition of advertising needs to be widened to include all forms of commercially-sourced messages which include brand names or brand-related images.

Examples (presuming the "particular appeal to children" test has been met) of advertising that would be allowed under the proposed tightening of the BCAP and CAP rules that we are proposing:

- Brand characters could only be used if all products which used those characters were non-HFSS.
- An ad featuring a brand but not the products would only be allowed if all varieties of that brand were non-HFSS.
- If an ad focused primarily on a competition / a giveaway and only featured one (non-HFSS) variety in the ad, it would only be allowed if all varieties available were non-HFSS. The same for all kids' meals too.

## **Q2) Selecting a nutrient profiling model**

*Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?*

**Yes**, the FSA/Ofcom nutrient profile model (now also referred to as the DH model) should be adopted immediately for assessing whether a food or drink marketed in non-broadcast media is high in fat, sugar and/or salt and considered 'less healthy' and thus should not be advertised to children.

Public Health England has just started conducting a review of the current nutrient profile model for broadcast advertising, to check if it is still fulfilling its purpose and to incorporate new dietary recommendations on sugar reduction and fibre intake. Assuming that the result of the review is a strengthened model, then this revised model should be adopted for non-broadcast too. In the meantime, the current model should be adopted.

## **Q3) Existing prohibitions on the use of promotions and licensed characters and celebrities**

*There are existing rules (prohibitions on the use of promotions and of celebrities and licensed characters popular with children) 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?*

**No**. We are very concerned that by allowing any non-HFSS product to be advertised to children using celebrities and licensed characters, there would be many products just under the threshold score for HFSS which would choose to exploit such advertising techniques. These products may not be 'less healthy' as defined by the nutrient profiling model, but might be high in sugar and/or with sugar, salt and saturated fat levels formulated to come in just under the thresholds. It is common to find branded products reformulated or new variations created which score 9 or 10 on the nutrient profile model before taking into account fibre and protein.

However, there is a case for loosening the restrictions on use of licensed characters and celebrities for demonstrably healthier products such as fruit and vegetables.

In addition, the restrictions on the use of media characters, mascots and celebrities should extend to point-of-sale/purchase, packaging, in-store promotion, toy giveaways and competitions. The same should also apply to equity brand characters.

#### **Q4) Introducing placement restrictions**

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

**Yes**, CAP should introduce such a rule.

*(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? **No**

ii) aged 15 or younger? **Yes – but preference is actually for aged 17 and under.**

WHO recommendations and the UN Convention of the Rights of the Child define a child as anyone under 18. Therefore that should be age definition which is used to give the best protection to all children.

However, we also recognise that current BCAP rules define children as younger than 16 years of age. That should be the minimum which the CAP rules apply to.

There is ample evidence to rule out under 12s as a sufficient definition. Children aged 12 and above are substantially influenced by junk food marketing due to their greater independence and higher levels of media consumption. In addition, newer forms of digital and social media food marketing practices are often difficult, even for older children, to recognise and resist.

#### **Q5) Defining the audience**

*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?*

**No.** The 25% measure offers insufficient protection to children, and would be almost impossible to implement or enforce effectively for many forms of non-broadcast media.

It would still allow up to 25% of children to be exposed to the marketing communication, when the aim of the restrictions – and of WHO's recommendations – is to minimise children's exposure to HFSS advertising. That 25% could also be 25% of a very large number, especially for something which was particularly popular online for instance, and thus potentially 100,000s of children could see the advert whilst it still being allowed.

In addition, the 25% audience indexing measure is only practical to be applied to television, as BARB data is available and is universally recognised as giving accurate figures on audience demographics. There are no similar data sets for non-broadcast media. What data there is on audience breakdown online, for instance, is often partial, proprietary and inaccurate when it comes to age profiles. We are also concerned that CAP would rely on advertiser-provided figures and would have little way of independently verifying them.

The model CAP are proposing is used for restricting alcohol and gambling advertising to under 18s. However, CAP have not evaluated the effectiveness of these rules in non-broadcast media. The experiences and anecdotal evidence of Alcohol Concern and other organisations working in this field strongly suggest that these rules are not effective, especially in regards to the targeting of teenagers. Furthermore, food and drink is a different proposition, as they are not prohibited from sale to under 18s, unlike alcohol & gambling.

#### Alternative proposal

Any marketing that is particularly appealing to kids is child-directed, and should be classified as such based on its overall impression, irrespective of the media platform or venue, or the % or total numbers of children exposed.

There is precedent already from the Advertising Standards Authority for this approach. In certain complaints, they must judge whether an advert appeals to children and they have an ad hoc list of marketing techniques and cues which help them to decide this. As yet they have not compiled this into a formal set of criteria; and neither have they passed this on to CAP. Both should happen.

**See Appendix B to this submission for further information.**

We suggest using three criteria to judge whether communications can be seen as child directed: (i) product appeal (ii) marketing content and (iii) marketing placement.

Starting from a product stand point before reviewing the other criteria we have outlined the following questions:

- For whom are the advertised goods or services intended? Do they appeal to children?

- Is the advertisement designed to attract the attention of children?
- Are children targeted by the advertisement or exposed to it? Are they present at the time and place it appears?

The relationship between the three criteria can then be used to determine whether a marketing communication is directed at children, and whether it should be restricted or not. If there is doubt, the overall impression it gives must also be taken into account.

Essentially, to be approved the HFSS marketing communication must not:

- Be designed in a way that appeals to children.
- Be broadcast or distributed in a place where, or at a time when children are normally reached.

Marketing communications run more risk of being considered as directed at children:

- The more the goods appeal to them
- The more childlike the content of the communications is
- The more the place or means of broadcast or distribution is likely to increase the odds of reaching children

This type of approach is being explored or advocated in countries as diverse as Australia, Brazil, Canada, and Chile; and recommended by an emerging consensus of academics and public health professionals.

## **Q6) 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?*

**Yes**, the placement restriction on HFSS product advertising should be applied to all non-broadcast media, including online advertising, without any exemptions. This also should include media currently outside of CAP's remit, including brand characters, packaging, labelling, in-school marketing, in-store placement and sponsorship.

## **Additional Comments:**

### **1) Clarifying CAP Code wording**

CAP should also take this opportunity to provide a clearer definition within the code of what constitutes 'condoning or encouraging poor nutritional habits or an unhealthy lifestyle in children'; this is currently open to interpretation by advertisers and could be significantly strengthened by a framework of questions and examples.

### **2) Reform of the ASA's practices**

Our experience 'down the rabbit-hole' of the frustrating and time-consuming complaints process shows that the Advertising Standards Authority:

- tends to focus on the letter, not the spirit of the Code and can be inconsistent;
- sometimes operates in secret, so their decisions are 'informally resolved' and not open to public scrutiny;
- seems to favour those with the money and time to challenge rulings, which is usually the industry;

We propose that the Advertising Standards Authority:

- Improves its complaints procedures to provide a level playing field between citizens and industry, including by helping individual complainants and by increasing the amount of independent expert advice sought before making a ruling.
- Toughens up its enforcement by using sanctions such as fines, and corrections that are as prominent as the misleading advert, which serve as a deterrent.
- Opens its compliance and informal resolution processes to public scrutiny.
- Regularly convenes a parents' jury and children's panel to judge what is and isn't appropriate; and what appeals to and/or is targeted at children.

### **3) Impact of Brexit**

Brexit must not mean an end to policies that can reduce the diet-related conditions that threaten to overwhelm the NHS. We have already waited nearly a year for the government's Childhood Obesity Strategy, yet decisive action is still urgently needed to decrease consumption of junk food. The UK's future outside Europe must not be allowed to result in a rise in diet-related disease. We are particularly concerned about the fate of the health and nutrition claims rules, which originate from EU regulation and have been incorporated into the CAP Code.

Rather than Brexit being an excuse to weaken rules such as these, CAP should seize it as an opportunity to show leadership on issues where the rest of Europe had been dragging their feet and preventing action - such as on including a nutrient profile model within the health and nutrition claims rules.

### **4) pre-9pm restriction on HFSS advertising on TV**

We remain concerned that the BCAP code fails to apply to HFSS product advertising during shows such as Britain's Got Talent and The X Factor: shows broadcast before the 9pm watershed which are watched by families including children. These programmes are not classified as children's programming, yet their appeal to children and families is enormous: in 2011, both shows ranked among the ten most-watched programmes of the year by 4-15 year olds. Evidence shows that while the tighter BCAP rules have been a significant and welcome step forward, children continue to be exposed to similar levels of advertising for HFSS products on TV because, as a Newcastle University study concluded in 2012, "children don't just watch children's programmes."

## **Case studies of online marketing of high sugar products / brands**

**May 2016**

Products listed are ‘less healthy’ according to FSA Ofcom nutrient profiling model, high in fat, salt or sugar, and/or categorised as ‘red’ under front-of-pack nutrition labelling rules.

Websites and owned channels were categorised according to:

1. Was the online branding geared towards children?
  - a. No
  - b. Some elements are – e.g. imagery of children, or generic imagery aimed at all ages
  - c. Marketing has clear signs of being targeted to children – through games, appealing imagery or mascots?
2. Does it contain images of children?
3. Does it contain child-friendly activities (e.g. competitions, advergames etc)?
4. Does it contain tie-ins with child-friendly films, TV shows, musicians etc?
5. Is it aimed at parents, encouraging them to buy the product for their children?

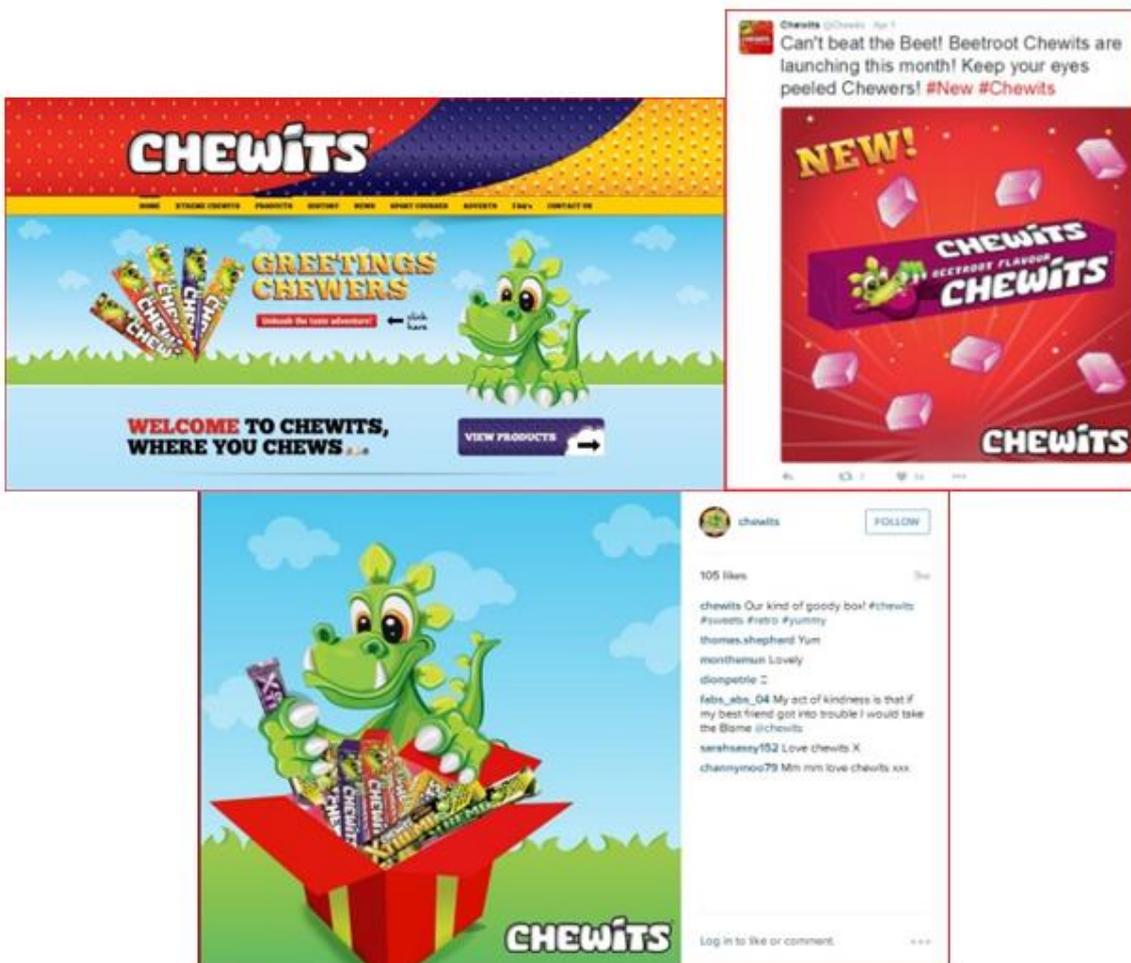
This briefing highlights the websites which we found were the ‘worst offenders’, and also looks at some of the loop holes brands might try to exploit in the future in order to communicate with children.

***NB** An \* by the brand indicates that brand / website was included in our super-complaint to the Advertising Standards Authority in 2012.*

# 1. Chewits\* (confectionery)

- Website: <http://chewits.co.uk/>
- Facebook: <https://www.facebook.com/chewits/>
- Twitter: <https://twitter.com/Chewits>
- Instagram <https://www.instagram.com/chewits/>

The branding and imagery used here are clearly designed to attract children's attention, with bright colours, cartoon (equity brand) character and a 'child-centred' tone on social media.



## 2. Fruit Bowl (confectionery / snacks)

- Website: <http://www.fruit-bowl.com/>
- Facebook: <https://www.facebook.com/fruitbowl>

*NB the yoghurt-coated products (flakes and raisins) are HFSS and contain added sugar. Much of the rest of their range – bar the specific school-food standards compliant ones for schools – are HFSS due to being high in free sugars (from fruit puree and fruit juice).*

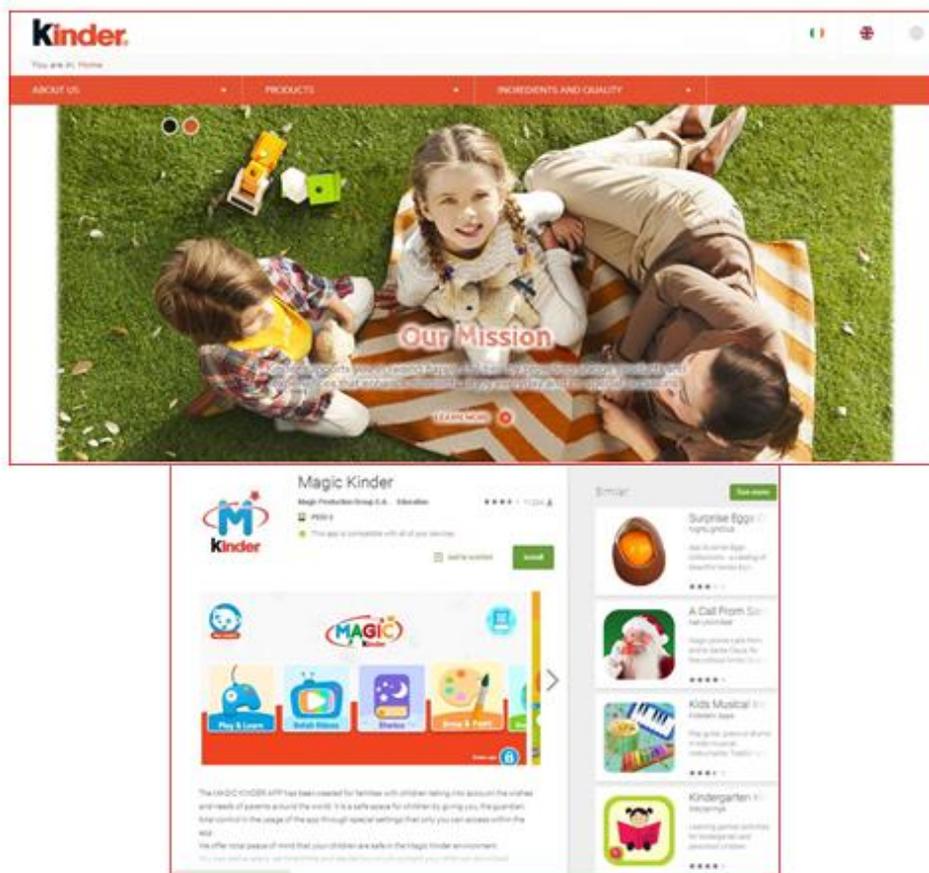
Branding and activity, which includes a partnership with National Geographic Kids is clearly child directed with messaging targeted at parents, heavily skewed towards a theme of bring the family together.

The image shows a composite of three screenshots related to the Fruit Bowl brand. The top screenshot is the website's homepage, featuring a colorful, cartoonish landscape with a zebra and various fruit bowls. The middle screenshot shows a promotional banner for National Geographic Kids, including a video player for a TV ad and a graphic for 'FREE NATIONAL GEOGRAPHIC KIDS ANIMAL STICKERS INSIDE'. The bottom screenshot is a Facebook page for Fruit Bowl, displaying two posts: one for 'Recipes - Fruit Bowl' and another for 'Fruit Bowl Party Packs'.

### 3. Kinder (confectionery)

- Website: <http://www.kinder.co.uk/en/>
- App: <https://app.magic-kinder.com/en/uk>
- Facebook: <https://www.facebook.com/kinder/>

Imagery across the web features children quite heavily. Tone on Facebook seems specific to parents, again featuring images of children, with Kinder branding accents likely to attract children's attention. They also have an app which specifically says it's for families with children.



## 4. Natural Confectionery Co (confectionery)

Facebook: <https://en-gb.facebook.com/thenaturalconfectioneryco/>

The brand characters are very child friendly, but the majority of marketing work is geared towards helping parents build an affinity with the brand, instead of nutritional claims. For example, they did a partnership with Dublin Zoo and launched an elephant selfie competition, they also use timely family events like half term to do promotions like a free candy giveaway.

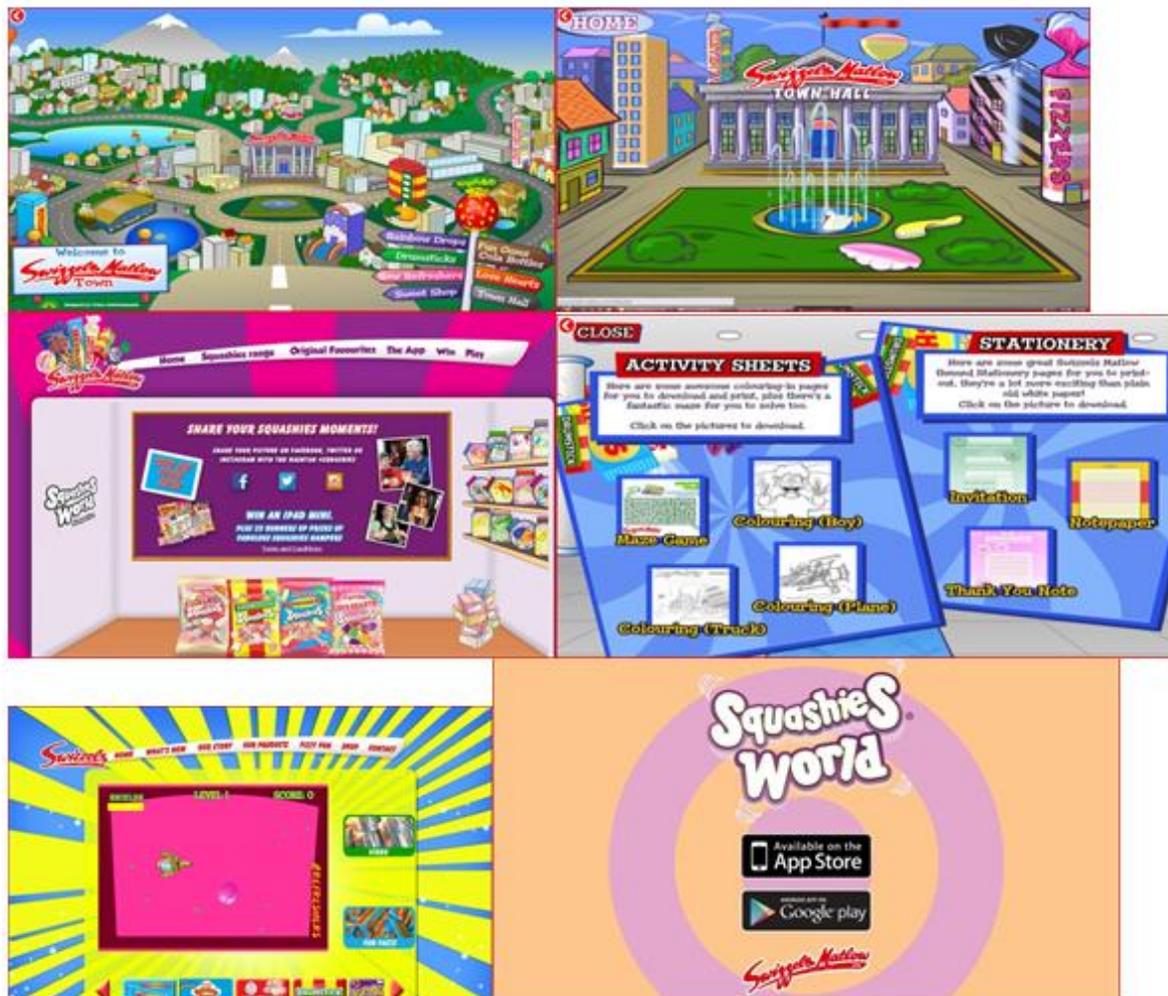
The image displays three screenshots of Facebook posts from 'The Natural Confectionery Co.':

- Post 1 (Left):** Dated 23 October 2015. Text: "To celebrate the School Bus Term Break we're giving away a hamper of delicious Dublin Zoo jellies! Like and comment for your chance to win 🍬". The image shows a hamper filled with various 'ZOO' brand jelly packets.
- Post 2 (Middle):** Dated 22 October 2015. Text: "How many TNCC jellies can you spot hiding?". The image shows a red bucket filled with green plants and several colorful jellies hidden among the foliage.
- Post 3 (Right):** Dated 20 August 2015. Text: "Did you know we are having an Elephants Birthday Party on Saturday in Dublin Zoo? Come and join in on the fun 🍬". The image features three rhino-shaped jellies (red, orange, and yellow) with speech bubbles. One says "SHHWEEET" and the other says "YO RHINO! COMING TO OUR BIRTHDAY PARTY!". Below the jellies is the text "RHINO LOVES TO PARTY...".

## 5. Swizzels Matlow\* (confectionery)

- Website <http://www.swizzels-matlow.com/>
- Mini-site: <http://www.swizzels-matlow.com/town/index.html>
- Mini-site: <http://squashiesworld.com/>

This website is an animated candy world complete with games and children's activities. The terms and conditions attached for a competition by the Squashies sub brand shows that it is open to participants aged 13 and over.

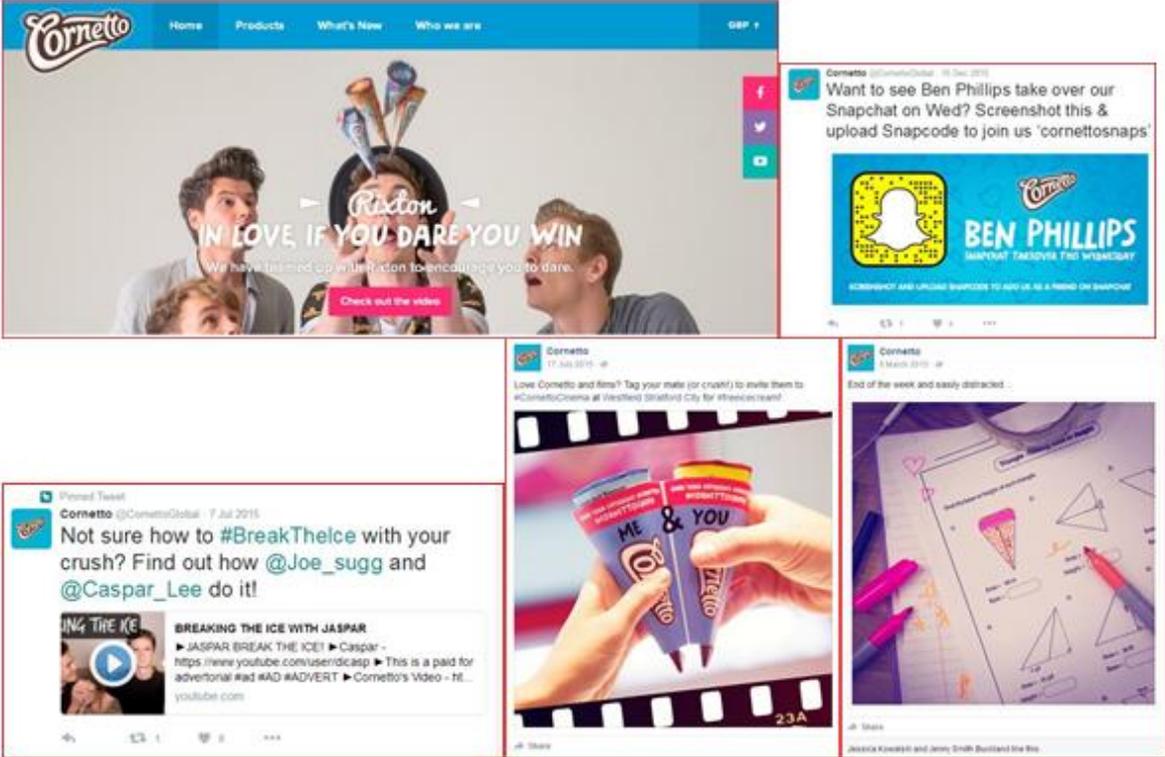


# Targeted at children, as well as young adults

## 1. Cornetto

<http://www.cornetto.com/>

Content themes focused on awkward romance and being daring are designed to speak to teens. Also notable are the presence on SnapChat and tie-in with boyband Rixton and YouTubers Joe Sugg and Caspar Lee.



## 2. Chupa Chups\*

<https://www.facebook.com/chupachupsuk>

Influencers like STR Skill School and slang used in copy suggests that brand is focussed on marketing to teens and up.

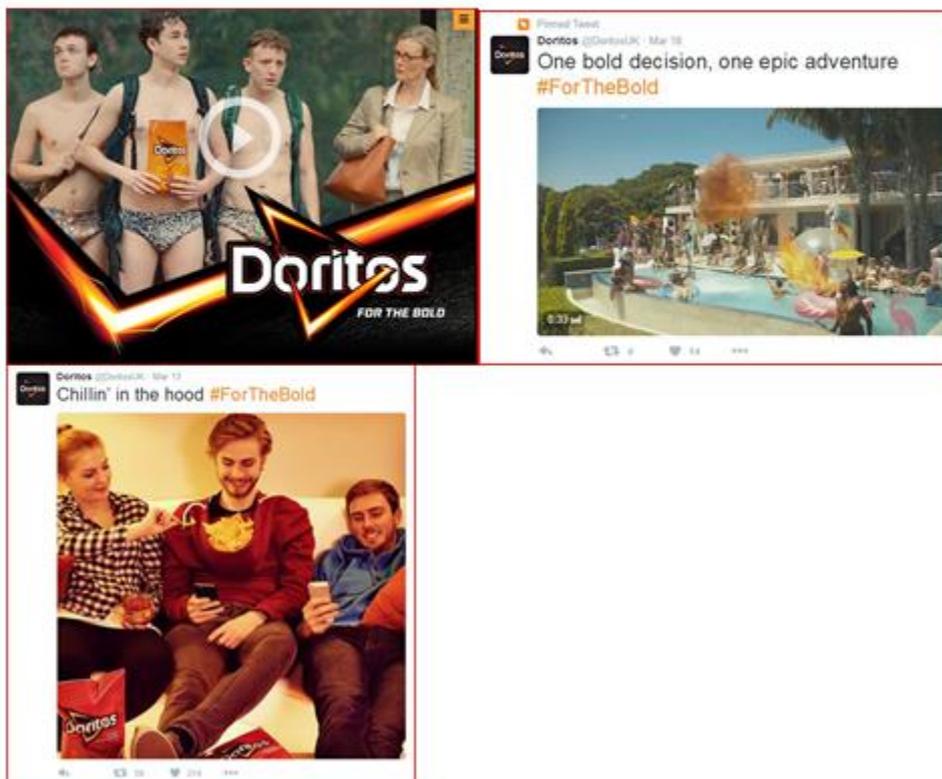


## 3. Doritos\*

<https://www.doritos.co.uk/>

<https://twitter.com/DoritosUK>

Currently running a campaign 'For The Bold', which features fun, exciting, daring behaviour that is aspirational for teens.



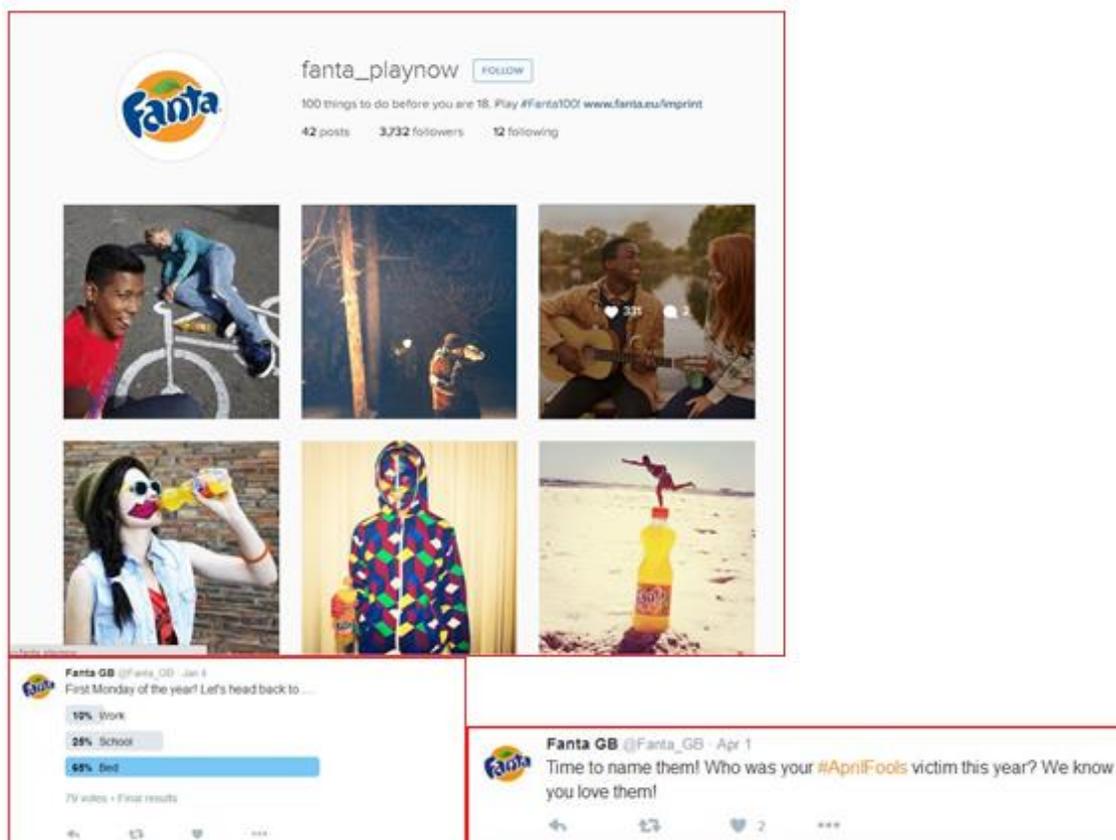
#### 4. Fanta – NB no longer HFSS in all variants any more

<http://www.fanta.co.uk/en/home/>

[https://www.instagram.com/fanta\\_playnow/](https://www.instagram.com/fanta_playnow/)

[https://twitter.com/Fanta\\_GB](https://twitter.com/Fanta_GB)

From images of teens being used to the nature of the content and copy, it is clear that Fanta's social publishing purpose is to have teens associate the brand with being and having fun.

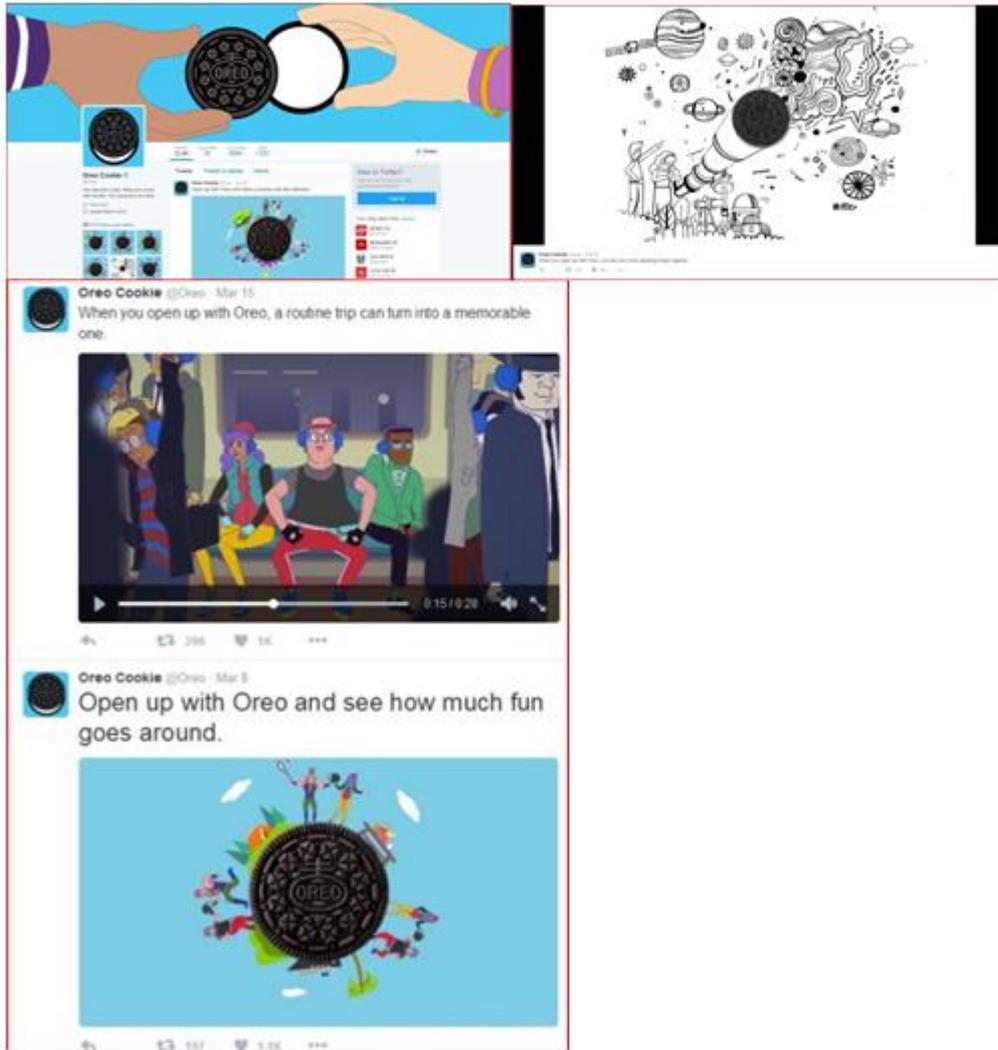


## 5. Oreo\*

<http://www.oreo.co.uk/>

<https://twitter.com/Oreo/status/724963020368166912>

Although website and content used aren't particularly child directed, some of the imagery and copy used on social media can attract children.





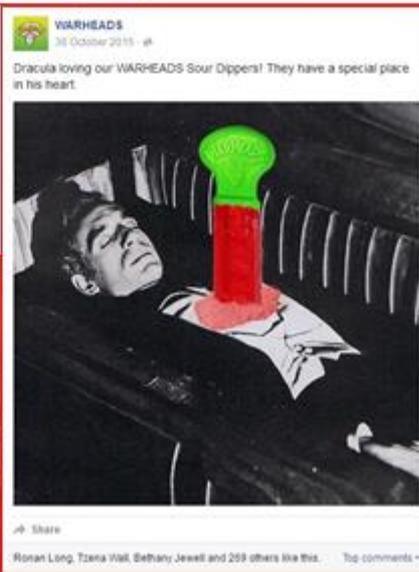
## 7. WarHeads

<https://www.warheads.com/>

<https://twitter.com/WARHEADS>

<https://www.facebook.com/WARHEADS>

Imagery and low brow humour likely to appeal to teens. Brand also posts videos of people completing WarHeads challenge, some of which include children.



# Targeted At Parents

Harvest Chewee\*

<https://www.harvestchewee.co.uk/>

<https://www.pinterest.com/harvestchewee/>

Strategy hinges on talking to parents about lunch boxes and snacks.



## Rice Krispies\*

<http://www.ricekrispies.co.uk/>

Content focuses on recipes and cooking, however imagery and brand characters are likely to be attractive to children.

The image shows a screenshot of the Kellogg's Rice Krispies website homepage. At the top, there is a navigation bar with four main categories: 'CREATIVE RECIPES' (with a lightbulb icon), 'TEMPT THEIR TASTE BUDS' (with a bowl of cereal icon), 'WHAT'S NEW?' (with a megaphone icon), and 'MULTIGRAIN SHAPES' (with a bowl of cereal icon). A search icon is located on the far right of the navigation bar. Below the navigation bar is a large yellow banner featuring the Kellogg's Rice Krispies logo, a red kitchen scale, a blue pitcher, a rolling pin, and a cartoon character. The banner text reads: 'WELCOME TO THE HOME OF RICE KRISPIES! Have a look around and discover delicious Rice Krispies recipes and treats for you and your kid's to enjoy. We've also got news, promotions and product information. Let the adventures begin!' Below the banner is a large blue rectangular area containing a tablet displaying a recipe, a rolling pin, and a cupcake. At the bottom, there are four circular icons representing the main categories: a lightbulb for 'CREATIVE RECIPES', a bowl of cereal for 'TEMPT THEIR TASTE BUDS', a megaphone for 'WHAT'S NEW?', and a bowl of cereal for 'MULTIGRAIN SHAPES'. Each icon has a corresponding text block below it: 'CREATIVE RECIPES: Fun ideas to inspire little bakers.', 'TEMPT THEIR TASTE BUDS: Tasty breakfasts and snacks for all the family.', 'WHAT'S NEW?: Check out our latest promos and TV ad.', and 'MULTIGRAIN SHAPES: Discover our fibre, wholegrain and imagination-packed cereal.'

## Loop Holes & Future Tricks

This section looks at tricks currently being employed within this field by brands, which gives them access to kids but is harder to prove that they are marketing to kids.

- **Chupa Chups\***

<https://www.youtube.com/watch?v=6aGZh6gQhAA>

[https://www.youtube.com/watch?v=hr\\_2zqf\\_cIE](https://www.youtube.com/watch?v=hr_2zqf_cIE)

Brands like Chupa Chups have been making use of influencers to produce and distribute branded marketing content. This area of marketing isn't very stringently guarded with a heavy majority of marketers not requiring influencers to declare that they have been paid to promote a product as is legally required. Furthermore, brands don't need to message or promote content from their owned channel, which makes their activity subsequently harder to track.



- **Doritos\* and Fanta\***

<https://twitter.com/DoritosUK/status/720967456131383297>

[https://twitter.com/Fanta\\_GB/status/682539960805670915](https://twitter.com/Fanta_GB/status/682539960805670915)

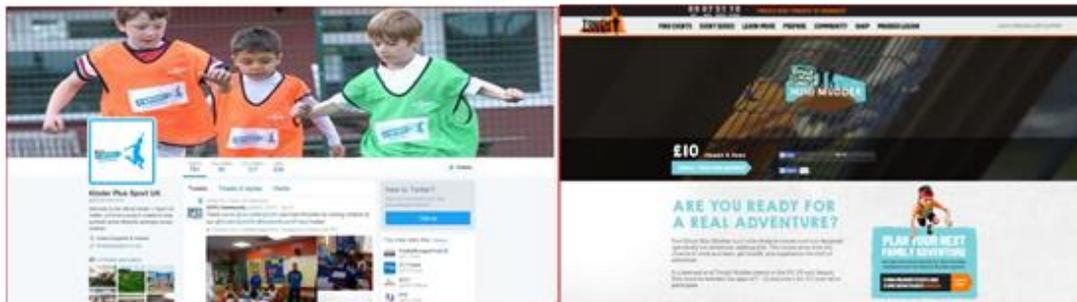
Doritos and Fanta both operate in a space which makes it hard to prove, who exactly they are targeting. Making use of older teenagers and the themes like fun used in their product promotion effectively blurs the line between teen and young adult when determining the target of the advertising. This is most important where the cut off age for children's advertising is 18, instead of 16 but still noteworthy.



- **Kinder**

<http://www.kinderplussport.co.uk/en>

The brand has moved into the realm of sponsoring sports programmes for children. Kinder's masterbrand Ferrero have launched a global campaign, in the UK called Kinder Plus Sport, to promote an active lifestyle for children. These activities allow the brand unprecedented access to children and children a high level of access to their products.



## Dark Posts on Facebook

A Facebook dark post is essentially a newsfeed style ad that does not appear on the poster's timeline. It allows marketers to create ads with very specific messages and target them to the audience, meaning that only those targeted will ever view it. This makes it easy to distribute a message to only relevant consumers, but it also is an area which cannot be monitored.

## **APPENDIX B:**

### Children’s Food Campaign briefing

#### **The ‘particular appeal’ test – what Advertising Standards Authority (ASA) rulings define as ‘particularly appealing to children’**

Rather than the vague and opaque definition of non-broadcast marketing ‘particularly appealing to children’ proposed in the CAP consultation, we propose that a much stronger framework is created to define what constitutes marketing to children. There are international case studies, as well as our own version, which we refer to in our submission.

However, there is a precedent much closer to home. The ASA itself, in its published rulings, has adjudicated and spelt out some of the elements which it sees as making an advert ‘particularly appealing’ to children. These justifications for individual rulings have – as far we are aware – never been gathered together to form a clear and public statement; let alone have they been formally incorporated into the CAP Code. This would be a positive step forward for ASA/CAP if that happened, although still not as comprehensive a measure as recommended.

We have provided an example of what this might look like below. However, this is only using a small selection of the body of ASA rulings available online. It also does not include any relevant analysis from those cases which have been resolved informally, and whose full details are not publicly available.

ASA rules use of the following constitutes having “particular appeal to children”

#### **1) Tie-ins with films and TV programmes popular with children**

“We considered it likely that the film ‘Monsters University’ would have had particular appeal to children”. ([ruling](#))

“We also noted that Metro Play were willing to stop advertising for Transformers, Battle of Cybertron, and ensure that future marketing communications did not use characters that might appeal to under-18s. However, the Code stated that marketing communications should not be likely to be of particular appeal to children or young persons, especially by reflecting or being associated with youth culture.” ([ruling](#))

“We considered that the depiction of the popular comic book character [Optimus Prime] was likely to have particular appeal to children and young people, regardless of the context in which it appeared.” ([ruling](#))

We acknowledged that Spiderman appealed to some adults, but considered that the depiction of the popular comic book character was likely to have particular appeal to children and young people. ([ruling](#))

"The ASA noted that the ad featured children and offered collectable Disney cards, as well as the chance to win a holiday to Disneyland Paris. We considered these to be factors which would hold a strong appeal amongst children. ... We considered that the ad depicted the opportunity to collect Disney cards and to win a trip to Disneyland Paris as something that would be highly desirable to children." ([ruling](#))

## 2) **Cartoons and cartoon-like imagery**

"We considered the cartoon-style, the animal characters and the storyline of the Coco Pops 'gang' working together to defeat an enemy would be of appeal to children, and younger children in particular." ([ruling](#))

"We considered that the use of cartoons or cartoon-like imagery had the potential to appeal to under-18s." ([ruling](#))

"Those games were also presented with colourful and exaggerated cartoon-like imagery, which was likely to strengthen that appeal. We considered that the presentation of those games, along with the image of the meerkat on the home page and a fairy with confetti in the background on the "promotions" page, meant that the overall theme of the website was child-like." ([ruling](#))

"We considered that the use of cartoons or cartoon-like imagery had the potential to appeal to children and young persons. ... Given that animated animals were very common in children's programming, the character was likely to appeal particularly to children, especially in the context of the claim, "Spin will whisk you away to his magical world through levels to collect extra bonuses". ([ruling](#))

## 3) **Child-friendly characters**

"We did not consider that the presence of jeans, boots and sunglasses [on the pirate character] would in themselves significantly lessen the image's appeal to children, and neither would the presence of a briefcase of money rather than a treasure chest. We considered that the characters were not adult in nature and, as animated animals & pirate characters were relatively common within children's programming & popular culture, the characters were likely to appeal particularly to under-18s." ([ruling](#))

"We considered that the depiction of the toy brand character was likely to have particular appeal to children and young people." ([ruling](#))

"We considered that regardless of those elements and the context in which the ads appeared, the images of the large teddy bears which formed the central focus of the ads, would have been seen as children's toys and were therefore likely to be of particular appeal to children." ([ruling](#))

"We nevertheless considered that the nature of the game, which featured the well-known Honey Monster character, made it likely to be of particular appeal to children." ([ruling](#))

#### 4) Colourful and exaggerated style

"We considered that the presentation of the pirate, the goat and the gameplay were colourful and exaggerated in style and were not so differently presented as to be distinct from the style of children's characters." ([ruling](#))

"The ASA considered the animated colourful parrot and its behaviour, including the slapstick humour, with the parrot being frozen, moving its eyes in a comical fashion and falling off the bar, was likely to strongly appeal to children. We also considered the parrot's squawk and conversational noises, which were directed at the viewer, along with the Caribbean-style music, beach scenery and the colourful crystal-ice appearance of the drink also contributed to an impression that was likely to appeal to children." ([ruling](#))

"We noted that the ad did not have an adult theme, and although we acknowledged that it might appeal to some adults, we considered that it was reminiscent of a child's video game. We noted that the voice-over was read in the style of a rhyming poem, and considered that the language used, such as, "You land in a world of magic and fun" and "the wonder begins" created an impression of adventure. That impression was added to by the graphics, including the brightly-coloured treasure, and the music, as well as 'shimmering' magic sound effects. We considered that 'adventure' was a theme which was common in children's programmes and games, and that, in combination with the other elements of the ad, the overall theme was child-like, and was more likely to appeal to under-18s than adults. ([ruling](#))

We considered that the combination of the language, music, sound effects, and imagery used was likely to mean that the ad would appeal particularly to under-18s. ([ruling](#))

#### 5) Images of children

"We noted that ad (a) featured a number of scenes in which children of various ages were seen playing and eating. Although we noted many of those children were clearly over four years old and, in some cases, appeared to be young teenagers, we noted that the ad also featured some much younger children and two who clearly were under two years old. ([ruling](#))

#### **6) Characters which children aspire to be**

"We noted the website also included a webpage which included 'profiles' of some of the characters who featured in the ad. Whilst we noted those characters appeared to be older teenagers and young adults, we considered it was likely that teenagers under 16 would personally identify with and aspire to be like the characters described." ([ruling](#))

#### **7) Music / artists popular with children**

"Examples of artists used to target consumers included One Direction, Beyoncé and Selena Gomez. We understood that ad (a) appeared before a clip about the popular boyband One Direction. We acknowledged that the group were popular with people of various ages, including under 15s." ([ruling](#))

#### **8) Simple game play**

"The game was relatively simple and straightforward and therefore likely to appeal to young children." ([ruling](#))

"Although Swizzels stated that many adults played online games, because these games were not particularly difficult or sophisticated, we considered that they were targeted at a younger age group, specifically primary-school children." ([ruling](#))

#### **9) Games with names appealing to children**

"We considered that a number of the games had names that were likely to appeal to under-18s, such as "Farmania", "Fluffy Favourites", "Legend of the Fairies", "Kitcats", "Piggy Payout" and "Candilicious". ([ruling](#))

"The names of games such as "Jack and the Beanstalk" and "Transformers" would be familiar with children and young persons, and we considered that those and a number of the other games had names which were likely to appeal to under-18s, such as "Fluffy Favourites", "Piggy Payout" and "Pirate Princess". Those games were also presented with cartoon-like imagery, which was likely to strengthen that appeal." ([ruling](#))

#### **10) Downloadable games / ringtones / screensavers**

"We considered the colourful theme of the website, its free downloadable desktop backgrounds and screensavers for computers and mobile phones, a free downloadable ringtone of the upbeat music used in the ad, and a free downloadable game for mobile phones, which could also be played on Facebook, would all have particular appeal to young teenagers." ([ruling](#))

### 11) Appealing ad wording

"We considered the ad's descriptions of the different types of 'Rocks' in the cereal as 'soft' and 'crunchy' and the product as a whole as "tasty" would be of particular appeal to children." ([ruling](#))

Some of the phrases in the ad were spelled out in a traditionally piratical way (such as "find ye fortune") and ... we considered that the style of phrasing would further identify the character as a pirate to children and increase the appeal, and that the innuendo would not diminish this. ([ruling](#))

### 12) Small print

"We also considered that, in the context of the exciting action in the visuals of the ad, it was unlikely that even those children with the ability to read and understand the on-screen text would pay attention to the information, which was contained in small print at the bottom of the screen. We considered the information in the small print was unlikely to mitigate the appeal of the product to children in the audience, or make clear to them that the product should only be eaten in moderation." ([ruling](#))

"While we noted the final frame included the text "contains alcohol", we considered that this was not sufficient to ensure children would not take an interest in the ad, and, instead, the "freeze a parrot today" slogan, which was larger and more prominent on the screen, referred back to the slapstick humour previously shown and, therefore, also represented a concept that was likely to appeal to children." ([ruling](#))

"We considered that many children would not have the reading comprehension skills or relevant knowledge to be able to interpret and understand the information about the sugar content of the product and that it should be eaten as part of a varied diet and active lifestyle. ([ruling](#))

## 26 – Cinema Advertising Association (CAA) and the UK Cinema Association (UKCA)

### **Introduction**

The Cinema Advertising Association (CAA) and the United Kingdom Cinema Association (UKCA) welcome the opportunity to respond to the Committee of Advertising Practice (CAP)'s proposal for further restrictions on the advertising to children of food and soft drink products in non-broadcast media.

The CAA represents the cinema advertising companies of the UK and runs the rigorous clearance system for advertising that implements CAP rules.

The UKCA represents the interest of over 90% of the UK Cinema operators by size and market share. The UKCA advocates on behalf of the UK Cinema Sector at international, national, regional and local level.

### **Questions**

#### **1. Should the CAP code be updated to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?**

The UKCA and CAA agree with updating the code. We are focused on our responsibility to our patrons and recognise the changes to children's media habits.

We recognise the role that our sector has in playing its part within a framework, aimed at reducing children's exposure to the HFSS advertising.

#### **2. Should the CAP Code adopt the DH nutrient profiling model to identify HFSS products?**

It is appropriate that there is a consistency in approach across the varied media that operate in the UK. We feel that a clear explanation of how the relevant brands are identified would be helpful to our members. It is also important that brands right to advertise is protected.

##### **a. Selecting a nutrient profiling model.**

As the Department of Health profiling model is already well established within the framework of self-legislation, this would be appropriate. The UKCA and CAA believe that any regulatory impact should be considered before they are adopted.

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

Yes. This would support the aim of reducing children's exposure to HFSS. We would be hopeful that this change would encourage the promotion of healthier options.

#### **4. Introducing placement restrictions. Should CAP introduce a rule restricting the placement of HFSS product advertising?**

Although there is no proven link between children's exposure to HFSS advertising and current societal concerns around obesity, this is a step towards healthier outcomes.

**5. Should the CAP Code use the 25% measures for the purpose of restricting HFSS product advertising?**

If a media placement restriction is introduced, should it cover media directed or likely to appear particularly to children:

- I. Aged 11 or younger
- II. Aged 15 or younger

The UKCA and the CAA believe that the nature of family viewing at the cinema where families enjoy the films together, places it in a unique position. We are also conscious of the role that the BBFC plays in film classification. Their age ratings are a trusted form of guidance and the BBFC's insight helps viewers make informed choices about what they watch. While a film rated U should be suitable for audiences age 4 and over, not all films rated U are children's films.

Cinema staff have a part in enforcement of ratings – a 12A certificate requires an adult to accompany the child – and a cinema may lose its license if adult accompaniment is not enforced.

We would endorse a media restriction on children aged 11 or under. (15 or younger would cover a range of films that would primarily consist of a 15+ audience and which we feel would be problematic to enforce).

**6. Application to different media.**

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

Yes.

## Executive Summary

1. COBA welcomes the detailed work CAP has undertaken in the run up to and as part of this consultation. We believe that the co-regulatory regime has worked well and has proven to be robust and effective. In this fast evolving media landscape, the advertising co-regulatory system has an intrinsic responsiveness that makes it ideally suited to ensuring that the right balance is struck between protecting consumers and supporting investment and growth for businesses.
2. Although linear viewing overall remains strong, we recognise that in recent years there has been a gradual change in viewing habits and we therefore support in principle a reform to reflect this. However, our support is very much subject to the concerns we raise in response to Question 5 about how industry will be expected to demonstrate compliance with the proposed restrictions. After consultation with member companies and industry stakeholders, it is clear that a variety of different methods are used to demonstrate compliance with other existing restrictions, and that empirical data on audiences is, at best, inconsistent, and may well not be available at all in some cases. Furthermore, any approach involving the use of empirical data may not be consistent with data minimization principles.
3. We therefore stress that we need clarity from CAP on how companies will be expected to demonstrate compliance before we can support the proposal.
4. As an alternative to a numerical threshold, we believe there may be merits in using a set of broader factors to assess when media is of particular appeal to children, based on the content, style and presentation of the media. For example, the OFT laid out a non-exhaustive list in its policy guidance on in-app purchases and children.<sup>1</sup> Indeed, our understanding is that such factors are already used to demonstrate compliance in some cases.
5. More broadly, we stress that this proposal will mark a significant alteration to the online regulatory landscape, and that the video-on-demand market is developing rapidly and is seen as an area with a high growth potential. New regulations must take this into account to avoid dampening the incentive for the market to invest in the future.
6. Finally, we would like to note COBA members have developed a number of protections on their online services on a voluntary basis. For example, COBA members have recently made a voluntary commitment to a Statement of Practice for Video-on-Demand services under which on-demand catch-up services have committed to provide protection, information and standards that are comparable to linear channels.<sup>2</sup>

## Introduction

1. The Commercial Broadcasters Association (COBA) is the industry body for multichannel broadcasters in the digital, cable and satellite television sector, and their on-demand services. COBA members operate in a wide variety of channels, including news, factual, children's, music, arts, entertainment, sports and comedy. Their content is available on free-to-air and pay-TV platforms, as well as on-demand.
2. COBA members are critical to the global success of the UK broadcasting sector and its "mixed ecology" of public and private investors. As arguably the fastest growing part of the UK television industry, they are increasing their investment in jobs, content and infrastructure:
  - Scale: In the last decade, the sector has increased its turnover by 30% to more than £5 billion a year. This is rapidly approaching half of the UK broadcasting sector's total annual turnover, and has helped establish the UK as a leading global television hub.<sup>3</sup>
  - Employment: As part of this growth, the multichannel sector has doubled direct employment over the last decade.<sup>4</sup>
  - UK production: In addition, the sector has increased investment in UK television content to a record £725m per annum, up nearly 50% on 2009 levels.<sup>5</sup>

## Response to consultation questions

### **Q1. (a) Should the CAP Code be updated to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?**

- 1.1 COBA welcomes the opportunity to provide a response to CAP's consultation on food advertising rules for non-broadcast media. We believe that this review is important in response to the shift in the media landscape and the ongoing challenges of convergence.
- 1.2 As broadcasters licensed by the statutory regulator Ofcom, COBA members already operate in a highly regulated sector, with clear and enforceable restrictions on what can and cannot be advertised, particularly to children, at both UK and European level. This includes a complete ban on HFSS products for TV programmes aimed at children – a rule which means the UK is more restrictive than most other European countries in this regard.

- 1.3 Although linear viewing overall remains strong, we recognise that in recent years there has been a gradual change in viewing habits, with children increasingly consuming less broadcast TV and more online media.
- 1.4 We therefore support in principle a reform of the CAP Code to take account of viewing habits and the changes that have taken place in the media landscape over the past decade. However, our support is absolutely subject to resolving the serious concerns about implementation that we raise in Question 5.

**(b) Should CAP use the existing Broadcast Committee of Advertising (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?**

- 1.5 In principle, we support CAP adopting the BCAP guidance to determine whether brand advertising promotes HFSS products, subject to the concerns we raise in Question 5. However, the detail set out in the BCAP guidance is not defined in the BCAP Code and we would have serious concerns if the CAP Code were to introduce a new rule defining a process around brand advertising that does not already exist in broadcasting. This would go further than broadcasting restrictions and would in our view be disproportionate.

**Q2. Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?**

- 2.1 In principle, we support CAP using the Department of Health (DH) nutrient profiling model to identify HFSS products for non-broadcast advertising. This is already implemented and well understood in broadcasting, and we believe that it is a practical and reasonable basis for distinguishing between food products. Furthermore, we agree that it would reduce the compliance costs of adopting a new model.
- 2.2 However, given that there may be changes to the DH model in 2017 following a review by Public Health England, we support CAP/BCAP conducting a further consultation in order to assess the effects of any changes on both the broadcasting and non-broadcasting sectors.
- 2.3 Again, this support is subject to concerns outlined in Question 5.

**Q3. 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?**

- 3.1 We agree that the existing rules in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger should now be applied to advertising for HFSS products only.

**Q4. (a) Should CAP introduce a rule restricting the placement of HFSS product advertising?**

4.1 Yes, subject to the concerns we outline in Question 5. For more detail see our response to Q 1 (a) and Q 5.

**(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?**

4.2 In principle, we support applying the restrictions to media directed at or likely to appeal particularly to children aged 15 or younger as is currently the case in broadcasting, subject to the concerns raised in Question 5.

4.3 This would offer young audiences a high and robust level of protection, which goes further than the current EU pledge.<sup>6</sup>

**Q5. Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?**

5.1 We have consulted with members and stakeholders in some detail about the current audience measurement tools that they have in place and what is available. It is clear that a variety of different methods are used to demonstrate compliance with other existing restrictions, and that empirical data on audiences is, at best, inconsistent, and may well not be available at all in some cases. Furthermore, any approach involving the use of empirical data may not be consistent with data minimization principles.

5.2 We therefore stress that we need clarity from CAP on how companies will be expected to demonstrate compliance before we can support the proposal.

5.3 As an alternative to a numerical threshold, we believe there may be merits in using a set of broader factors to assess when media is of particular appeal to children, based on the content, style and presentation of the media. Such criteria have been successfully used in other regulatory frameworks designed to protect children in the digital environment. For example, the OFT laid out a non-exhaustive list in its policy guidance on in-app purchases and children.<sup>7</sup> This list includes the use of characters popular with or of particular appeal to children, cartoon like graphics, and bright colours, amongst other factors. We believe this option merits further consultation with industry. Indeed, our understanding is that such factors are already used to demonstrate compliance in some cases. (It should also be noted that characters are often used in advertising that promotes healthy eating and lifestyles).

**Q6. Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?**

6.1 In principle, we agree that the new CAP rules should apply to all non-broadcast media, subject to our concerns raised in Question 5.

Dairy UK is a trade body representing the interests of producer co-operatives, processors, manufacturers and distributors of dairy products within the UK. Between them, Dairy UK's membership collect and process approximately 85% of UK milk.

We welcome the opportunity to reply to the CAP consultation on food and soft drink advertising to children. Please find below our response to the consultation questions as set out in the main consultation document.

**QUESTION 1 - Restrictions on HFSS product advertising**

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

**(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. The text of the BCAP guidance note is available via the link above or in Annex 5.**

(a) Dairy UK welcomes constructive policies which can be effective and appropriate for tackling the obesity problem amongst children in the UK. All parties must play a part, and the dairy industry is committed to supplying and promoting healthy, wholesome and safe food.

For this reason, we believe amending the CAP Code can be a real opportunity to reinforce positive dietary behaviour amongst children and promote the consumption of nutrient-rich, healthy and tasty foods which can provide the nutrients needed during critical periods of growth and development. Dairy products provide a vast array of important nutrients and can deliver great health benefits to children.

Dairy UK calls on any potential policy measure to give due consideration to the need to protect the health of children in the UK and to deliver solutions which are targeted, meaningful, appropriate and which take into account the scientific evidence available.

Dairy UK would also like to point out that any new measure should be implemented with due consideration of the adaption times of businesses. If new rules are introduced as a result of this consultation, companies should be given a fair amount of time to review their practices and implement solutions. Dairy UK believes that 12 months would be appropriate.

(b) Dairy UK does not have concerns around CAP using the established bCAP guidance for identifying advertisement of HFSS foods to children.

## **QUESTION 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. Please consider CAP's recommendation in section 45 and the information on potential nutrient profiling models included in Annex 6 when answering this question.**

Dairy UK believes that it would not be appropriate to apply the current Department of Health nutrient profiling model to identify HFSS products.

Firstly, this model is currently under revision and is likely to be for the next 18 months; therefore we cannot agree with a model which is very likely to change and whose changes could potentially be incorporated into the CAP Code without further consultation with stakeholders.

Secondly, as it currently stands, the model is not appropriate for addressing unhealthy eating in the younger population. However, Dairy UK recognises that, out of the three models proposed, an amended Department of Health model would be most appropriate as it would provide consistency across all advertising channels and facilitate business compliance and effective enforcement. Nevertheless, Dairy UK has serious concerns about the current DH model and cannot endorse it on the basis of its current scoring system. We detail these concerns below, and will engage with PHE during their revision of the model.

Our main concern is based on the unintended consequences that the current model has (in broadcast advertising) and could have (for advertising which falls under the CAP Code) on cheese. We cannot agree with a profiling model which restricts advertisement of nutrient-rich cheese in the same way as it restricts it for confectionery or fizzy drinks.

Cheese is a nutrient-rich food which contains a number of essential minerals and vitamins. For example, a portion of cheddar cheese (30g) provides the 4-10 and 11-to-18 year-old population group with the following:

<b>Contribution to Recommended Nutrient Intake of 30g Cheddar Cheese</b>		
	<b>4-10 year-olds</b>	<b>11-18 year-olds</b>
Calcium	40-49%	22-28%
Phosphorus	34-43%	20-24%
Zinc	18-19%	13-18%
Riboflavin	12-15%	9-11%
Vitamin B <sub>12</sub>	72-90%	48-60%

**Table 1: Contribution to Recommended Nutrient Intake of 30g Cheddar Cheese<sup>1,2</sup>**

These numbers acquire particular importance when considering that significant proportions of those same age groups do not meet recommended intakes for a number of those essential nutrients from the food they eat. According to the latest National Diet and Nutrition Survey (NDNS) figures<sup>3</sup>:

- 19% of girls (11-18 years) and 8% of boys (11-18 years) do not meet their recommended dietary intake for calcium;

- 21% of girls (11-18 years) and 9% of boys (11-18 years) do not meet their recommended dietary intake for riboflavin;
- 22% of girls (11-18 years) and 12% of boys (11-18 years) do not meet their recommended dietary intake for zinc;
- 11% of girls (4-10 years) and 7% of boys (4-10 years) do not meet their recommended dietary intake for zinc.

In particular, calcium is established as being essential during the critical phases of growth of childhood and adolescence<sup>4</sup>, as it helps achieve peak bone mass and reduce risk of osteoporosis later in life<sup>5</sup>.

Dairy UK acknowledges discussions in the past regarding how the model should account for micronutrient content and which identified the protein score as a good indicator for the presence of calcium, iron and omega 3. However, there needs to be consideration of the many other essential nutrients provided in food which the current DH model does not adequately address. Using protein as an umbrella for all micronutrients in a food is not sufficient and the effect of the current model on advertisement of cheese in broadcast channels is a striking example. Although other dairy products (such as flavoured milks and yogurts) are also nutrient-rich and are an important part of a healthy balanced diet, these can be reformulated in order to meet the nutritional criteria set by the model. This is not the case for cheese, and this is addressed in detail further on.

Due consideration must also be given to the impact on businesses and whether the end justifies the means. If the current DH profiling model were to be implemented for non-broadcast advertising, the cheese industry – and the intake of nutrients which cheese provides to children – would be affected in a way which is disproportionate to the intended goal.

The cheese industry cannot meet the current profiling model requirements regardless of whether it reformulates its products or not. In the pre-consultation process, stakeholders identified the restriction of HFSS product advertising to children in non-broadcast media as an opportunity for food manufacturers to switch to advertisement of non-HFSS products within their range. A hard cheese, even with the lowest achievable fat content, does not qualify under the current model, owing also to the fact that the model is based on 100g rather than on portion size. It is easy to see then how the current model places cheese at a competitive disadvantage compared to other highly processed nutrient-poor foods which can benefit from reformulation. Additionally, smaller cheese producers tend to sell a narrow range of products (mostly cheese) and lack the resources to adapt.

For this reason, Dairy UK calls on the CAP to not implement any policy measure which will undermine the future of the sector. Particularly, we call for consideration of the CAP's principle that restrictions imposed must be a proportionate means of achieving a legitimate aim. We do not consider restriction of cheese advertising to be a proportionate mean for addressing our childhood obesity crisis. On the contrary, cheese is a nutrient-rich food and should be promoted as part of a healthy balanced diet.

Of course excessive amounts of cheese are not recommended (as with any food), but data shows that children in the UK consume well below the 30g recommended portion: the latest NDNS figures<sup>3</sup> show that the average daily portion size for cheese amongst 4-10 year-old children is a mere 10-11g, and 10-12g amongst 11-18 year-olds. Dairy UK recognises that individual consumption will vary, but scientific evidence does not point to cheese being at the heart of this obesity crisis. It is important to remember that cheese contributes only 2% to the calorie intake of children and adolescents aged 4-18 years<sup>3</sup>.

With this in mind, Dairy UK asks that the CAP have due regard to the evidence of/potential for harm, and whether this is proportionate with the proposed means. Dairy UK would argue that, in light of the evidence, cheese manufacturers have the right to advertise their products responsibly.

In conclusion, Dairy UK calls for an amended nutrient profiling model which adequately and proportionately addresses healthy eating habits amongst children and has due regard to the right of businesses to advertise their products responsibly and within the tightly regulated framework of the EU Nutrition and Health Claims Regulation<sup>6</sup> and the Food Information to Consumers Regulation<sup>7</sup>. We therefore recommend that the CAP exempt the cheese category from any nutrient model it may choose to pursue; Dairy UK believes that a revised DH model would be most appropriate. We believe this is the fairest way to address the shortcomings of the current model without needing to develop an entirely new model. We are keen to enter into further discussions regarding the definition for cheese and what should be included in the category.

### **QUESTION 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. Please consider CAP's recommendation in section 46 when answering this question.**

Dairy UK agrees with CAP's proposal to amend existing rules on the creative content of food and soft drink advertising – prohibiting licensed characters, celebrities popular with children and promotions directed at children aged 11 and younger – to apply only to HFSS product advertising allowing greater opportunities for healthier foods to be advertised to children.

We consider that this approach could contribute towards shaping healthier eating habits amongst children in the UK and would likely encourage companies to advertise non-HFSS products and improve the nutritional value of HFSS products.

### **QUESTION 4 - Introducing placement restrictions**

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

**(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.**

(a) As mentioned elsewhere in this submission, Dairy UK welcomes constructive policies which can be effective and appropriate for tackling the obesity problem amongst children in the UK.

(b) Dairy UK believes that the media placement restriction should be introduced for children aged 11 or younger, as this captures the most vulnerable population group and is the measure supported by the most evidence (as set out in the CAP consultation document). Dairy UK would also like to cite the practical considerations reported in the pre-consultation document, such as the likelihood of new restrictions for 12-15-year-olds covering media not intended for children, owing to the difficulties in measuring and separating older children's media habits from those of young adults. Older children are more independent and have greater access to different types of media, and it may be more difficult to control the content of what they watch without affecting other age groups of the population. In this context, Dairy UK believes it is important that any approach respect the right of consumers to receive responsible advertising for products that may be of interest to them.

Dairy UK considers that a media placement restriction for children aged 11 or under is easier to implement and can facilitate business compliance and enforcement and is proportionate with the very limited evidence around food advertising to 12-15 year-olds and its impact on their food preferences.

#### **QUESTION 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.**

Dairy UK does not have competence in this field and cannot therefore offer an informed opinion. However, we would like to re-iterate the importance of an approach which respects the right of adult consumers to receive responsible advertising for products that may be of interest to them.

#### **QUESTION 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.**

Once again, Dairy UK highlights the importance of effective targeting of children media channels, maintaining the right of adult consumers to receive responsible advertising for products that may be of interest to them.

**QUESTION 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 (HFSS)?**

CAP code should be updated to apply the rules that currently apply to broadcast advertising as it provides an adequate means of limiting the exposure of children to the advertising of food and drinks high in fat, salt or sugar.

**(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?**

Yes.

**QUESTION 2 - Selecting a nutrient profiling model**

**Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?**

Yes, the system is well established in the UK regulatory context.

**QUESTION 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?**

Yes the current restrictions should only apply to HFSS products. This fulfills the intention to protect children while providing an incentive for food manufacturers to reformulate by allowing greater opportunities to advertise foods that are non-HFSS.

**QUESTION 4 - Introducing placement restrictions**

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

Placement restrictions would be worthwhile much like they currently are in broadcast media.

**(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?**

15 or under. This is the current threshold in the broadcast code of advertising. It only seems reasonable to align the CAP and BCAP codes.

**QUESTION 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?**

The proposed 25% rule seems reasonable in its intent. However as the onus will be on advertisers to evaluate their adherence to the 25% rule, the application of this rule should first be detailed and guidance drawn up to ensure advertisers can operate with as much clarity and legal certainty as possible. By way of example, while the broadcast code has an objective measure in the way of an index score, how would an advertiser know if a proposed ad will be seen by more than 25% of children when the ad is on/in: a product brand or general news Twitter feed; a brand website; a product brand Youtube channel; a magazine of broad appeal. What type of documentation, proof should an advertiser hold on record to demonstrate compliance with the proposed 25% rule and use in case of an ASA query/challenge? Final application of the proposed rule should not proceed until such time as the aforementioned questions can be addressed, and stakeholder input gathered on the same.

**QUESTION 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?**

Given the intent to limit the exposure of children to the advertising of unhealthy food and drinks, all non-broadcast advertising media should be equally subject to the proposed rules. This should however be subject to the practical implementation of the 25% rule - See answer to question 5 re. need to detail the application of the proposed rule and what documentary evidence should be kept to demonstrate compliance.

**Committee of Advertising Practice food consultation  
Diabetes UK response July 2016**

Diabetes is the most potentially devastating – and fastest growing – health crisis of our time, requiring ongoing high-quality care and support. Diabetes UK is committed to delivering a world in which diabetes can do no harm. To succeed as a society we need to work together now – and take action now – to fund critical research, improve healthcare and treatment, and prevent yet more people developing this potentially life-threatening condition.

Being overweight and obese is a major risk factor for developing Type 2 diabetes. Currently around a third of children are overweight or obese in the UK<sup>1</sup>, which is putting their future health at risk of developing Type 2 diabetes, cardiovascular conditions and cancer. Diabetes UK therefore welcome the opportunity to respond to this consultation. We want to see urgent action taken across society to protect the future health of our children and to reduce the figures of childhood obesity. We believe that this will be delivered through the introduction of a range of policy interventions, with greater restrictions on marketing of unhealthy food and drink products to children being one pillar of this.

Diabetes UK is a steering group member of the Obesity Health Alliance and a member of the Children's Food Campaign and therefore support other members of the Alliance submissions to this consultation.

For more information about this consultation response, please contact Amy Smullen, Senior Policy Officer at, [amy.smullen@diabetes.org.uk](mailto:amy.smullen@diabetes.org.uk) or tel. 020 3757 7871.

**Question 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 (HFSS)?*

Yes. The current CAP Code is not fit for purpose and should therefore be updated. This is because the Code is vague in what it defines as a healthy or a high fat, sugar or salt (HFSS) product and is inconsistent in its application of age thresholds for certain techniques. It also excludes a number of non-broadcast marketing activities such as product packaging that should be included in the CAP code.

Many of the techniques used to promote food and drinks online blur the lines between what is designed to persuade and what is designed to entertain, and it is often difficult for children to identify forms of online marketing<sup>2</sup>. Recent evidence from Public Health England support the findings of previous systematic reviews that marketing (both broadcast and non-broadcast) is an effective influencing tool, driving the purchase and consumption of HFSS (particularly high sugar) foods<sup>3</sup> in children therefore confirming the need to restrict HFSS marketing to children.

Currently, there is also discrepancy between the level of control HFSS advertisements are subject to on broadcast communications, which are tougher, compared to the weak and vague controls in place for non-broadcast. These must be levelled out to protect children, who are a vulnerable audience<sup>4</sup>, regardless of the platform they are engaging in. For example, given that children aged between 5-15 years now spend 13.7 hours online<sup>5</sup> this is clearly a platform where children should be protected from HFSS advertising.

*(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?*

Yes, CAP should apply the BCAP guidance on identifying brand advertising but the guidance needs reform. This an important first step to levelling out the protection of children offered across the media platforms. Evidence shows that brand advertising can have effect consumption on children. Not only do advertisements for certain branded products make children more likely to prefer and purchase that particular product, and it encourages consumption of similar products<sup>6</sup>. However, the current guidance requires reform to ensure the guidance is strong and clear in its application. For example the current guidance is vague on what a brand's product portfolio should look like in order to be considered as a non-HFSS brand. It remains unclear under current guidance if a popular brand offers a range of healthy choices alongside HFSS products and whether this would be allowed to be advertised to children. It also remains unclear whether the popularity of their most popular product would be a deciding factor in this. Therefore further work should be carried out to ensure that the BCAP guidance is clear and takes into consideration recent evidence around brand advertising.

### **Question 2: Selecting a nutrient profiling model**

*Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?*

Diabetes UK support CAP adopting the DH nutrient profiling model to distinguish between less healthy and healthier products on non-broadcast advertising. This is for two main reasons. First, this is the nutrient profiling model currently used by the BCAP Code to determine which products should not be shown during programmes of particular appeal to children. This would therefore close a large loophole and level the protection offered by the CAP Code between broadcast and non-broadcast communications. Second, we support this model because it considers the overall impact products will have on health rather than demonising on particular nutrient reflecting the importance of a balanced diet.

We support Public Health England's review into the DH nutrient profiling scheme. This is a necessary piece of work following new dietary guidance from the Scientific Advisory Committee on Nutrition (SACN) and development of a new Eatwell Guide to ensure that the model being used reflects the current dietary advice. As this is a long term piece of work, we support CAP in adopting the current DH model to ensure children are protected from HFSS advertising as soon as possible whilst the outcome of the review is awaited. When the proposals set out in PHE review are published they should be reviewed to assess whether they provide greater protection of children, and if they do CAP to adopt this model.

### **Question 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?*

These rules should be applied to all food and drink products except fresh fruit and vegetables. We acknowledge the impact and influence that advertising has, particularly the use of characters that resonate with children. As supporters of the Eatwell guide we believe that all efforts should be taken to ensure that the advertised diet mirrors the diet recommended by the Eatwell guide. Therefore it is important to encourage marketers to use techniques like promotion and licensed characters to promote fruit and vegetables to children in order to increase the number of children who meet their 5 a day target<sup>7</sup>.

In addition, the loophole that allows brand characters to be exempted from current regulations should be reversed so that brand characters are subjected to the same regulations as licensed characters. Evidence has shown that the use of characters or 'spokes characters' can increase preference for, choice and consumption of high sugar foods by young children<sup>8</sup>. Whilst there may be legal differences between brand and licensed characters the impact on the consumption of unhealthy products is driven by both, as well as both appealing to child audiences. Therefore both should be restricted.

#### **Question 4: Introducing placement restrictions**

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

Diabetes UK support the introduction of a rule restricting the placement of HFSS product advertising in media targeted at children aged under 16. There is unity in the public health community and food and drink industry on this point with the Obesity Health Alliance<sup>9</sup> and Food and Drink Federation<sup>10</sup> agreeing that restrictions should protect those under the age of 16. This will protect the most vulnerable children, take into consideration that media literacy isn't always a chronological skill that every child learns at the same speed and will also protect children at the age they start to make more independent choices about the food they eat. It will also harmonise the BCAP Code.

We would welcome clarification as to why the age bracket is presented as '15 and under' and not 'under 16 years' as is used in the BCAP code. Using the same terminology would provide consistency for readers of the Code.

#### **Question 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?*

The current information provided is limited and therefore it is not possible to answer this question. We would welcome more information on how CAP arrived at the 25% threshold and how it corresponds with the 120 index used for broadcast. Adopting a percentage figure rather than an absolute number allows for HFSS marketing loopholes on broadcast media during family programmes that have a high audience figure. More information on how CAP/ ASA propose to enforce and monitor this rule for particular types of media such as websites, and social media sites which have ineffective age gating is also necessary.

**Question 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.

We support the application of placement restriction applying to all forms of non-broadcast advertising as defined within the Code. This is necessary coordinate the level of protection offered to children regardless of what media platform they engage with. It also provides a level playing field for industry regardless of what type of marketing activity they create.

However, there remains other non-broadcast marketing techniques which are not included in the CAP Code – such as product based techniques (including packaging, food colour and shape, use of promotions on packs). Sponsorship of events or programmes is another frequently used marketing tool, which reaches a large child audience. To really impact on the consumption of unhealthy foods it will be necessary for CAP to extend their remit to cover such techniques.

The following response has been prepared by the Directors of Public Protection Wales (DPPW). DPPW is the overarching strategic leadership group for Public Protection services in Wales and consists of twenty three Directors or Heads of Service representing each of the twenty two Welsh local authorities plus Swansea Bay Port Health Authority. DPPW represents a range of local government Public Protection services typically including Trading Standards, Environmental Health and Licensing.

### **Response to CAP consultation questions**

#### **Q1) 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 (HFSS)?***

**Yes.** Tougher restrictions on the marketing of less healthy food and drink to children, on TV and online would help to disrupt obesogenic social norms. The current marketing rules fail to protect children from junk food marketing online and across other forms of media. Children and young people's media habits are changing and it is important that the CAP code keeps up to date with these social and technical developments.

***(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?***

**No** – the existing broadcast guidance on identifying brand advertising is not strong enough; tougher rules should be adopted for both broadcast and non-broadcast brand advertising. The existing BCAP guidance is not strong enough. The definition of advertising needs to be widened to include all forms of commercially-sourced messages which include brand names or brand-related images.

## **Q2) Selecting a nutrient profiling model**

**Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?**

**Yes**, the FSA/Ofcom nutrient profile model (now also referred to as the DH model) should be adopted immediately for assessing whether a food or drink marketed in non-broadcast media is high in fat, sugar and/or salt and considered 'less healthy' and thus should not be advertised to children.

**Q3) Existing prohibitions on the use of promotions and licensed characters and celebrities**

*There are existing rules (prohibitions on the use of promotions and of celebrities and licensed characters popular with children) 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?*

**No.** We are very concerned that by allowing any non-HFSS product to be advertised to children using celebrities and licensed characters, there would be many products just under the threshold score for HFSS which would choose to exploit such advertising techniques. These products may not be 'less healthy' as defined by the nutrient profiling model, but might be high in sugar and/or with sugar, salt and saturated fat levels formulated to come in just under the thresholds. It is common to find branded products reformulated or new variations created which score 9 or 10 on the nutrient profile model before taking into account fibre and protein.

However, there is a case for loosening the restrictions on use of licensed characters and celebrities for demonstrably healthier products such as fruit and vegetables.

In addition, the restrictions on the use of media characters, mascots and celebrities should extend to point-of-sale/purchase, packaging, in-store promotion, toy giveaways and competitions. The same should also apply to equity brand characters.

#### **Q4) Introducing placement restrictions**

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

**Yes**, CAP should introduce such a rule.

***(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? **No**      ii) aged 15 or younger? **Yes – but preference is actually for aged 17 and under.**

WHO recommendations and the UN Convention of the Rights of the Child define a child as anyone under 18. Therefore that should be the age definition which is used to give the best protection to all children.

However, we also recognise that current BCAP rules define children as younger than 16 years of age. That should be the minimum which the CAP rules apply to.

#### **Q5) Defining the audience**

***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?***

**No.** The 25% measure offers insufficient protection to children, and would be almost impossible to implement or enforce effectively for many forms of non-broadcast media.

It would still allow up to 25% of children to be exposed to the marketing communication, when the aim of the restrictions – and of WHO’s recommendations – is to minimise children’s exposure to HFSS advertising. That 25% could also be 25% of a very large number, especially for something which was particularly popular online for instance and thus potentially 100,000’s of children could see the advert whilst it still being allowed.

In addition, the 25% audience indexing measure is only practical to be applied to television, as BARB data is available and is universally recognised as giving accurate figures on audience demographics. There are no similar data sets for non-broadcast media. What data there is on audience breakdown online, for instance, is often partial, proprietary and inaccurate when it comes to age profiles. We are also concerned that CAP would rely on advertiser-provided figures and would have little way of independently verifying them.

The model CAP are proposing is used for restricting alcohol and gambling advertising to under 18’s. However, we are concerned that CAP have not evaluated the effectiveness of these rules in non-broadcast media. The experiences and anecdotal evidence of Alcohol Concern and other organisations working in this field strongly suggest that these rules are not effective, especially in regards to the targeting of teenagers. Furthermore, food and drink is a different proposition, as they are not prohibited from sale to under 18’s, unlike alcohol and gambling. We support the alternative proposal suggested by the Children’s Food Campaign, which is outlined below:-

#### Alternative proposal

Any marketing that is particularly appealing to children is child-directed, and should be classified as such based on its overall impression, irrespective of the media platform or venue, or the percentage or total numbers of children exposed.

There is precedent already from the Advertising Standards Authority for this approach. In certain complaints, they must judge whether an advert appeals to children and have an ad hoc list of marketing techniques and cues which help them to decide this. As yet they have not compiled this into a formal set of criteria; and neither have they passed this on to CAP. Both should happen.

We suggest using three criteria to judge whether communications can be seen as child directed: (i) product appeal (ii) marketing content and (iii) marketing placement.

Starting from a product stand point before reviewing the other criteria we have outlined the following questions:

- For whom are the advertised goods or services intended? Do they appeal to children?
- Is the advertisement designed to attract the attention of children?
- Are children targeted by the advertisement or exposed to it? Are they present at the time and place it appears?

The relationship between the three criteria can then be used to determine whether a marketing communication is directed at children, and whether it should be restricted or not. If there is doubt, the overall impression it gives must also be taken into account.

Essentially, to be approved the HFSS marketing communication must not:

- Be designed in a way that appeals to children.
- Be broadcast or distributed in a place where, or at a time when children are normally reached.

#### **Q6) 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?***

**Yes**, the placement restriction on HFSS product advertising should be applied to all non-broadcast media, including online advertising, without any exemptions. This also should include media currently outside of CAP's remit, including brand characters, packaging, labelling, in-school marketing, in-store placement and sponsorship.

Many websites and social media outlets self publish which creates difficulty enforcing ASA judgements. The LB of Camden is the backstop organisation that the ASA refers non food potential criminal issues to. There is no agreement for enforcement of breaches for any food issues at this time. There needs to be a similar agreement reached for food issues.

## 32 – Faculty of Dental Surgery and the Royal College of Surgeons

### **Introduction**

The Faculty of Dental Surgery at the Royal College of Surgeons welcomes the opportunity to respond to the Committee of Advertising Practice's (CAP's) consultation on food and soft drink advertising to children. While we understand the emphasis on the need to prevent childhood obesity, given the impact of sugar on tooth decay, the restriction of advertising of high sugar products to children would also have great potential to improve their oral health, which is in a concerning state.

### **Impact of sugar on oral health**

We published the report, [\*The state of children's oral health in England\*](#), to highlight the poor rates of oral health across the country. Almost a quarter of five-year-olds in England<sup>1</sup> suffer from tooth decay and it is by far the most common cause of hospital admissions among five- to nine-year-olds.<sup>2</sup> In some cases children are being admitted for multiple tooth extractions under general anaesthetic. The situation is particularly concerning considering tooth decay is largely preventable through moderate sugar consumption, regular brushing, adequate exposure to fluoride and routine visits to the dentist.

### **Support for the CAP proposals**

Therefore the Faculty strongly supports the CAP proposals to introduce tougher restrictions on the advertising of food and soft drink products by using the Department of Health nutrient profiling model to identify HFSS products.

We point to the systematic review that has found exposure to unhealthy food advertising is associated with greater food intake in children, but not adults.<sup>3</sup> Several studies have associated television food advertising with an increase in children's snacking, and the consumption of energy-dense snacks in particular.<sup>4</sup> A review by the Food Standards Agency found that an advert for a specific brand of junk food will make a person more likely to buy that brand, but also more likely to buy that kind of junk food in general.<sup>5</sup> This suggests that restrictions on advertising have the potential to reduce the amount of sugar children consume, thereby improving both their general and oral health.

QUESTION

1

**Restrictions on HFSS product advertising**

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

(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. The text of the BCAP guidance [note](#) is available via the link above or in [Annex 5](#).

(a) It is worth noting that, in the report that accompanies this consultation, there is no robust evidence cited that advertising, and in particular non-broadcast advertising, of HFSS foods has a notable impact on children's diets. In particular, there is no strong evidence that has emerged since the last time the advertising rules were reviewed. If changes to the advertising rules are needed, it is not because of the effect of advertising.

(b) Ferrero believes that advertising is a legitimate and indeed positive technique, but it needs to be identified as such and aimed only at those who can recognise it for what it is. Ferrero therefore does not market its products or aim its advertising to children under the age of 12. This is a policy that applies across all channels, including those where there is otherwise no regulation at all.

Under this philosophy, brand advertising should be no less regulated than product advertising, if that brand advertising indeed has the effect of advertising those products.

QUESTION

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. Please consider CAP's recommendation in [section 45](#) and the information on potential nutrient profiling models included in [Annex 6](#) when answering this question.

If a nutrient profiling model is to be used in a self-regulatory code, then that nutrient profiling model itself should arise from self-regulation. To use a model from an external regulator undermines the self-regulatory nature of advertising regulation: what if that external regulator should make amendments to that model after it has been adopted? For this reason, the most appropriate nutrient profiling model to be used by CAP is that of the EU Pledge.

QUESTION

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. Please consider CAP's recommendation in [section 46](#) when answering this question.

Ferrero does not consider it appropriate to market its products or target its advertising to children under the age of 12. We have no comment to make on the regulations that should apply to those companies that, for whatever reasons, do consider it appropriate to act in this way.

QUESTION

4

**Introducing placement restrictions**

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

(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.

- (a) As observed in the answer to question 1, we have seen no robust evidence that demands new restrictions on advertising.
- (b) Having examined the evidence on the effect of advertising on children, Ferrero considers that it is not appropriate to market its products or target its advertising to children under the age of 12. The best evidence on childhood development, for example that cited in "Food and beverage advertising to children. When is a child a child?" published by the World Federation of Advertisers in July 2007, suggests that from the age of 12, children have an understanding of the persuasive intent of advertising. Children below that age may not have that developed understanding and therefore it is not appropriate to target them with advertising.

Ferrero believes that advertising is a legitimate and indeed positive technique, but it needs to be identified as such and aimed only at those who can recognise it for what it is.

Ferrero, along with many other companies and organisations, supports the [MediaSmart](#) project that aims to encourage media literacy among children, both above and below the age of 12. This is an appropriate response to any residual doubts about the legitimacy of advertising to those aged 12 and over.

QUESTION

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.

An important consideration in drafting advertising regulations is one of proportionality. Even if it is not appropriate to target advertising at children under the age of 12, advertising to adults is a legitimate and indeed positive technique. An advertising regulation that protects children should not deprive adults unnecessarily of the benefits of advertising. A balance must be struck.

Ferrero considers that the threshold of 35%, as used in the EU Pledge, is a more appropriate place to find the balance than 25% as proposed by CAP. 25% is disproportionate and is likely to deprive too many adults of the benefits of advertising.

QUESTION

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.

As observed in the answer to question 1, Ferrero believes that advertising is a legitimate and indeed positive technique, but it needs to be identified as such and aimed only at those who can recognise it for what it is. Ferrero therefore does not market its products or aim its advertising to children under the age of 12. This is a policy that applies across all channels, including those where there is otherwise no regulation at all.

This philosophy of applying a regulatory approach across all channels must take into account the consideration raised in the answer to question 5, namely that of proportionality. The protection of children should not deprive adults unnecessarily of the benefits of advertising, which includes the funding of channels or media.

## 34 – Food and Drink Federation (FDF)

This submission is made by the Food and Drink Federation, the trade association for food and drink manufacturing. Food and drink is the largest manufacturing sector in the UK (accounting for 16% of the total manufacturing sector) turning over £83.7bn per annum; creating GVA of £21.9bn and employing around 400,000 people.

FDF welcomes the opportunity to comment on the proposed changes to the CAP code. Despite evidence that suggests advertising is one small factor in a very complex obesity equation<sup>1</sup>, we acknowledge that there have been significant changes in the media landscape over the past decade and agree that current advertising codes should reflect this change in order to continue to be effective.

### **QUESTION 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 (HFSS)?**

FDF members support the further tightening of non-broadcast advertising codes. Many companies already employ a wide range of responsible marketing measures which go over and above the existing codes, yet another example of voluntary industry action moving faster and further than regulation.

Examples of such activity are given in Annex 1.

#### **(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?**

We support applying the existing BCAP guidance to non-broadcast brand advertising. We are mindful that some brand names may be synonymous or intrinsically linked with HFSS products, and thus this measure would be required to ensure consistency with existing BCAP codes.

There is some confusion amongst FDF members on how to identify a HFSS brand. Further expansion of the existing CAP guidance with additional scenarios would be welcomed.

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<sup>1</sup> Buckingham, David et al. (2009): The Impact of the Commercial World on Children's Wellbeing: Report of an Independent Assessment, Report to the Department of Culture, Media & Sport.

## **QUESTION 2 - Selecting a nutrient profiling model**

### **Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?**

FDF members agree that the DH nutrient profiling model is the most suitable model to use. It is already well established and thus would be relatively easy for companies to apply compared to the other profiling options considered.

There is also benefit to consistency in approach across broadcast and non-broadcast codes. FDF believes that any nutrient profiling model should balance the evidence of advertising's impact on children's diets with the right to advertise in general. Although there are aspects of the DH profiling model that we still question, (such as the prohibition of advertising cheese to children, and lack of account of portion sizes) we believe it is the most appropriate tool for the purpose. It is sufficiently robust but in some sectors still leaves room to encourage reformulation of products.

We are aware that Public Health England has begun a review of the DH nutrient profiling model, in order to update it in light of the recommendations of the SACN carbohydrate report. The impact of revision of this model is yet unknown, and could be significant. Thus if the DH nutrient profiling model is integrated into CAP codes, we would urge CAP to monitor the outcome of the PHE review and consult further once the PHE review is complete.

We would not support use of the WHO nutrient profiling model as it includes outright prohibitions for certain categories of food such as edible ices and 100% fruit and vegetable juices. It also states that soft drinks with artificial sweeteners should not be advertised to children. Restricting advertising of anything that could help people reduce their calorie intake would seem counterintuitive in today's present climate.

The EU Pledge profiling model is supported by FDF members as it is sufficiently robust but allows for reformulation as it is category based and also takes into account nutrients such as fibre, vitamins and minerals. However, we are mindful that the DH / Ofcom model has been in use for almost a decade in TV advertisements and thus would be a more practical model to transpose to non-broadcast media.

**QUESTION 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?**

We would support changing the current rules. Prohibitions relating to the creative content should still apply to HFSS products, but should be removed to allow non-HFSS products to be advertised more creatively. Permitting such advertising of non-HFSS products to younger consumers would encourage reformulation.

This change should also apply to brand advertising where a brand may be seen as inherently associated with a non-HFSS product.

**QUESTION 4 - Introducing placement restrictions**

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

We support restricting the placement of HFSS advertising. As the CAP impact assessment shows, this will provide a meaningful reduction in children's exposure to HFSS product advertising. There is also benefit to consistency in approach across broadcast and non-broadcast codes.

**(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?**

We acknowledge evidence that suggests children's critical understanding of more integrated online media may not be fully developed until the age of 12. We also acknowledge that signatories of the EU pledge define a child as under 12, and that in the European context this is the most appropriate definition.

However, in the UK context, the CAP and BCAP codes define a child as being under 16 for the purposes of advertising food and non-alcoholic beverages. Any change to this definition is likely to be criticised as a relaxing of the code, and thus we believe that restrictions should target children aged 15 and under.

**QUESTION 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?**

FDF does not have expertise in this area, so takes no view on the appropriateness of the recommended 25%.

**QUESTION 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?**

We support application across the scope of the current CAP code, including online advertising. Some children have access to smartphones and tablets at a young age, and CAPs own analysis shows that online advertising spend has increased.

We would recommend a review of this after one year of application in order to identify difficulties and introduce exemptions where appropriate.

**Additional Comments**

TV advertisements have to be sent to Clearcast for authorisation before they can be shown. We believe such a pre-authorisation system for non-broadcast advertisements is not necessary and would be too burdensome to implement and maintain.

However, we do believe that there is benefit in CAP providing additional guidance, with reference in particular to company websites and brand advertising. (We are aware of the existing CAP guidance differentiating HFSS product advertising from brand TV advertisements). We would also welcome guidance on how the 25% measure would apply to advertising in public places around schools, leisure centres and on public transport used by school children.

We would welcome a transition period of at least 12 months before new rules are enforced so companies can submit questions to CAP on a case by case basis to ensure they are compliant.

## Annex 1

### Responsible Marketing Voluntary Initiatives

This table sets out examples of responsible marketing activity that individual FDF member companies are undertaking, which go over and above the statutory advertising codes.

Voluntary Pledges	<ul style="list-style-type: none"> <li>• Commitment to the <a href="#">EU Pledge</a>. – a voluntary initiative which restricts advertising of food and drink to under 12's on TV, print and internet. (No advertising of products to under 12s, except for products which fulfil nutrition criteria. For the purpose of this initiative, “advertising to children under 12 years” means advertising to media audiences with a minimum of 35% of children under 12 years).</li> <li>• Commitment to the <a href="#">Advertising Association’s UK Brand Ambassador and Peer-to-Peer Marketing Pledge</a> - a voluntary initiative, which promises not to employ children to actively promote brands, products, goods, services, causes or ideas to their peers, associates or friends.</li> <li>• Commitment to the International Food &amp; Beverage Alliance (IFBA) code on <a href="#">Responsible Marketing and Advertising to Children</a>.</li> </ul>
Schools	<ul style="list-style-type: none"> <li>• No outdoor advertisements for HFSS products within 100 metres of schools in the UK.</li> <li>• No sponsorship of sporting events in primary schools.</li> <li>• No communication, distribution or sampling of products in primary schools.</li> </ul>
Sampling	<ul style="list-style-type: none"> <li>• No sampling of products to under 12s. Actively select locations with broad family appeal where parents/guardians are likely to be present. Make a regular and a low/no calorie option available.</li> </ul>
Celebrities and Licenced Characters	<ul style="list-style-type: none"> <li>• No celebrities of appeal to children less than 12.</li> <li>• No celebrities or licensed characters on HFSS products.</li> </ul>
Digital Media	<ul style="list-style-type: none"> <li>• Digital media for marketing communications to include links to nutrition information and healthy lifestyle messages.</li> <li>• No advertising, advergaming, promotional initiatives or other communications targeted directly to under 12s.</li> <li>• No advergence experience longer than 15 minutes in total or depict consumption of products. Incorporate active lifestyle messages throughout.</li> <li>• No marketing messages directed to or using children’s mobile phones for brands which fail to meet nutrient criteria.</li> <li>• No viral marketing directed to children under 12 for brands which fail to meet nutrient criteria.</li> </ul>

Other Commitments	<ul style="list-style-type: none"> <li>• No portrayal of physically inactive children (e.g. watching TV or playing sedentary games) in commercial communications.</li> <li>• Ensure giveaways do not encourage sedentary behaviour.</li> <li>• No advertising for any products on any media that has an audience comprising 35% or more children under 12.</li> <li>• The content of advertising not to feature children visibly younger than 12 years of age consuming the products</li> <li>• No advertising of HFSS foods to under 16s in any paid for media.</li> </ul>
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## The UK Food and Drink Manufacturing Industry

The Food and Drink Federation (FDF) is the voice of the UK food and drink manufacturing industry, the largest manufacturing sector in the country. The industry has a turnover of £83.7bn, which is 16% of total manufacturing turnover, and Gross Value Added (GVA) of £21.9bn. The industry employs around 400,000 people. Exports of food and non-alcoholic drink have doubled in the last ten years, amounting to a worth of £12.8bn in 2014.

The following Associations actively work with the Food and Drink Federation:

ABIM	Association of Bakery Ingredient Manufacturers
ACFM	Association of Cereal Food Manufacturers
BCA	British Coffee Association
BOBMA	British Oats and Barley Millers Association
BSIA	British Starch Industry Association
BSNA	British Specialist Nutrition Association
CIMA	Cereal Ingredient Manufacturers' Association
EMMA	European Malt Product Manufacturers' Association
FCPPA	Frozen and Chilled Potato Processors Association
FOB	Federation of Bakers
PPA	Potato Processors Association

SMA	Salt Association
SN	Sugar Nutrition UK
SNACMA	Snack, Nut and Crisp Manufacturers' Association
SPA	Soya Protein Association
SSA	Seasoning and Spice Association
UKAMBY	UK Association of Manufacturers of Bakers' Yeast
UKTIA	United Kingdom Tea & Infusions Association Ltd

FDF also runs specialist sector groups for members:

Biscuit, Cake, Chocolate and Confectionery Group (BCCC)  
Frozen Food Group  
Ice Cream Committee  
Meat Group  
Organic Group  
Seafood Committee

## 35 – Food Ethics Council

The Food Ethics Council is an independent charity, established in 1998. Our vision is healthy and sustainable food for everyone, everywhere, for ever. Our mission is to build fair and resilient food systems that respect people, animals and the planet. We believe that sustainable diets are an integral part of a future where businesses deliver social value, within the limits of the planet, and are commercially successful.

We work with businesses, government and civil society to address ethical concerns at the heart of decision-making about food and farming. Our unique contribution is to:

- Promote ethical considerations in relation to decisions about food and farming; and
- Facilitate deliberative thinking and bold action for a fair food system.

We have a core team that is supported by our Council, which is made up of senior food industry leaders and experts and opinion formers in the food ethics field. The 18 members actively participate in our work, provide technical expertise, and extend our access to experts and decision-makers through their networks. Our Board is made up of (currently) six Council Members, and our Chair is Helen Browning OBE, Chief Executive of the Soil Association. Board members include representatives from the food and drink industry, academia and civil society.

### QUESTION 1

#### Restrictions on HFSS product advertising

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

The Food Ethics Council strongly believes that obesity is not due to individuals deliberately setting out to eat themselves ill; it's the outcome of a food system which is set up to promote cheap ingredients and cheap foods, including fast foods and ready meals, which are likely to lead to obesity, and unlikely to enable a healthy diet.

Obesity then, is not a matter of individual choice but of deeply unhealthy and inappropriate food environments (shopping, fast foods, schools, workplaces, hospitals) which promote foodstuffs that encourage obesity, and normalise dietary patterns which damage people's health. These environments are not created by accident; they are the product of choices made by national and local governments about planning, social structures, working conditions, school and hospital responsibilities.

The dominant narrative in our society is that it is the individual's responsibility to make 'appropriate choices', but in food, this presumes a 'level playing field' and fair, appropriate choice being possible. For many people, these appropriate choices are impossible. A recent report by the Food Foundation<sup>i</sup> found that – for instance – less healthy foods are three times cheaper as a source of calories than healthy foods.

This can make it very hard for an average family to choose food which is good for health within the mainstream supermarkets, because unhealthy food is heavily promoted by industry and retail alike, as well as the media.

Many children don't have access to healthy food at school, and are not helped by what their parents can afford, or have time to prepare, at home. Today's children are tomorrow's parents. This is why restricting the advertising of HFSS foods to children across *all* media is so important.

It is clear that diet related diseases are rising rapidly in the UK, putting great strain on our healthcare. On 21 June 2016 Simon Stevens, head of NHS England, told the House of Commons Health Select Committee that around £16 billion a year is spent on the direct medical costs of diabetes and conditions related to being overweight or obese<sup>ii</sup>.

According to a recent Cancer Research UK [study](#), almost three in four adults will be overweight or obese by 2035<sup>iii</sup>.

Thus we are facing an unprecedented public health crisis precipitated by dietary related issues. It is for this reason that the Food Ethics Council believes the CAP Code should be updated to introduce tougher restrictions on the advertising of HFSS products. We welcome the fact that CAP recognises the role HFSS products play in the burgeoning obesity crisis in the UK, and that it proposes tightening restrictions on advertising them.

**(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. The text of the BCAP guidance note is available via the link above or in Annex 5.**

The Food Ethics Council does not have an official view on this question.

## QUESTION 2

### Selecting a nutrient profiling model

**Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?**

The Food Ethics Council does not have an official view on this question.

## QUESTION 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?**

According to recent research by the Food Foundation, in its report *Force Fed*, *three per cent* of food product advertising is spent on fruit and vegetables, and *58%* is spent on confectionary and convenience foods. Fruit and vegetables should be eligible for promotion to children aged 11 and younger.

## QUESTION 4

### Introducing placement restrictions

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

Yes it should introduce such a rule. Currently one in five children in England is overweight or obese before they start primary school, and by the time they leave, this increases to almost one in three. Obese children are more likely to be obese as adults, which in turn increases their risk of developing serious health conditions such as Type 2 diabetes, cancer, stroke and cardiovascular disease. These conditions have a devastating human impact and also place a huge financial burden on our already stretched health service.

Tough action is therefore needed to protect children from harmful advertising and to give them the best possible chance of a healthy future. Restricting placement of HFSS product advertising, and creating stricter rules for regulating advertising of HFSS products are both desperately needed, both in traditional media and in non-traditional media such as [advergames](#) online.

**(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 Food Ethics Council believes that media placement restriction should be implemented for children aged 15 or younger. Whilst children under the age of 11 are more likely to be persuaded to eat a certain way than teenagers, it's clear that teens spend the majority of their time online rather than watching TV: 96% of 12-15 year olds spent more time online than watching TV (OFCOM, 2015). Therefore, the bulk of the messages they receive about food consumption are on a currently unregulated platform. According to the 2014 UK diet and nutrition survey<sup>iv</sup>, teenagers between the ages of 11 and 18 were the age group most likely to exceed recommended sugar intake (predominately through soft drinks).

## QUESTION 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.**

Restrictions on HFSS product advertising should be wider than the 25% measure.

It is no longer straight-forward to identify media targeted at children. 'Family' TV shows are increasingly shown across the watershed (e.g. Britain's Got Talent, whose final few shows run between 8pm and 9:30 pm). In addition, children and families consume their media in different ways now, with the rise of on demand media. Given the levels of obesity – amongst children *and* adults – the Food Ethics Council recommends that HFSS product advertising should be restricted beyond the 9pm watershed when appropriate, and that a new measure of 'family' TV be developed.

## QUESTION 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.**

The Food Ethics Council is pleased that CAP are now looking into non-broadcast advertising of food and soft drinks to children. We firmly believe that the CAP should apply placement restrictions on HFSS product advertising to all non-broadcast media. As seen above, children and young people access media far differently than they did even five years ago, relying more on online content than traditional TV viewing. Many children and young people spend more time online, watching YouTube videos and engaging in interactive online content such as advergames. This change in media consumption needs to be reflected in the CAP regulations. As such, all forms of advertising including media and digital platforms to children and adolescents should be banned for unhealthy food and drink.

**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.**

The Food Ethics Council has for many years<sup>9</sup> believed that there should be tougher restrictions on marketing less healthy food and drink to children, not just on TV, but online and in the physical world (e.g. leisure centres, schools etc). We are pleased to see in this consultation document that the Committee of Advertising Practice (CAP) has set out some fairly far reaching commitments to take action – especially regarding the harmonisation of the rules across all forms of media, using the current restrictions on TV advertising as a starting point.

We would urge the CAP to be bold, to push for the upper age limit for advertising bans, and to use the widest possible definition of a HFSS product. It must be a robust set of rules if we are to tackle the obesity crisis that the government has so graphically described. It must not be a set of rules that the industry can circumvent, or water down to protect its own vested interests.

## 36 – Food Foundation

The diets of typical British families now pose the greatest threat to their health and survival.<sup>1</sup> The dietary habits of children and young people are particularly concerning. Dietary analysis of median-income British families show that all children are exceeding their Recommended Daily Allowances (RDAs) of free sugars, almost all are eating too much saturated fat (85% of primary school children and 71% of secondary school children), and the majority are eating too much salt (67% of 4-6 year olds, 41% of 7-10 year olds, and 66% of secondary school children).<sup>2</sup>

Our analysis shows that in typical families, 47% of primary-school aged children's dietary energy, and 45% of secondary-school aged children's dietary energy comes from foods classified as High in Fat, Sugar and/ or Salt (HFSS) by the nutrient profiling model currently employed within the BCAP Code. A multi-pronged approach is needed to tackle this problem, and the regulation of non-broadcast media must be a key pillar of this.

Advertising can also be harnessed as a force for good: analyses of the National Diet and Nutrition Survey Indicates that 9% of 4-10 year olds and 24% of 11-18 year olds eat less than a single portion of vegetables a day. While government-sponsored healthy eating messages should be encouraged, industry advertising in broadcast and non-broadcast media could play a role in increasing consumption of healthy foods among children and young people. However, the Food Foundation has analysed data on advertising spend across all media types covered by the CAP and BCAP Code (excluding digital) and found that between January 2010 to June 2016 only 1.2% of all advertising spend was used to promote vegetable products, with a further 2.5% spent on potato products.<sup>3</sup> Industry, working in compliance with the current CAP and BCAP Codes, have missed a key health opportunity to rebalance promotions from less healthy products to healthier products.

There is strong consensus among the academic and third sector communities that the UK currently lacks adequate measures to protect children from marketing of less healthy foods through non-broadcast media. This is demonstrated in the results of the Food Foundation's recent application of the Food Environment Policy Index (Food EPI).<sup>4</sup> The Food EPI is an internationally-validated benchmarking tool, designed to track the progress that governments have made towards good practice in improving food environments and tackling non-communicable diseases such as heart disease and type 2 diabetes. It identifies critical gaps in policies and infrastructure, provides a means of benchmarking against international best practice, and tracks progress over time.

In May 2016 the Food Foundation convened an expert panel of over 40 academics and third sector representatives from across the UK, in addition to a number of government observers. The panel was asked to rate England's food policies against 48 *good practice statements* which reflect policies that have the greatest positive impacts on public health. The good practice statement for non-broadcast media is as follows:

*"Effective policies are implemented by the government to restrict exposure and power of promotion of less healthy foods to children through non-broadcast media (e.g. internet, social media, food packaging, sponsorship, outdoor advertising including around schools)"*

The Expert Panel ranked government's progress towards meeting this statement as the 8<sup>th</sup> worst among all 48 areas of policy, demonstrating the importance of action resulting from this consultation.

The Expert Panel identified a number of areas where Government has made relatively good progress towards implementing good practice such as nutrient declarations on packaging. The regulation of non-broadcast media needs to be strengthened so that progress in other areas is not undermined.

The good practice statement relating to broadcast media - *Effective policies are implemented by the government to restrict exposure and power of promotion of less healthy foods to children through broadcast media (TV, radio)* – was ranked as being the 17<sup>th</sup> best implemented policy area. While the content of CAP Code should, at a minimum, be made comparable with the BCAP Code, this latter code should not be regarded as a gold-standard policy model for protecting children’s health.<sup>6</sup>

Q1a) Should the CAP Code be updated to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?

Yes.

Q1b) 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?

Yes in the first instance, in order to achieve parity with the BCAP code.

However, CAP should subsequently and immediately commission, in partnership with BCAP, independent research to identify areas in BCAP’s guidance that require strengthening. Furthermore, initial revisions to BCAP’s guidance should be made after review of submissions to this consultation.

CAP and BCAP should commission independent analyses of the available literature on brand-recognition and brand-loyalty among children to consider whether additional differentiation principles are needed to restrict advertisements currently regarded as *product-specific adverts for non-HFSS products* which serve, in practice, as *brand advertisements for brands which include HFSS products in their portfolios* (e.g. a product advertisement for a non-HFSS cereal identifiably sold by a brand which manufactures HFSS cereals). Under such an approach, product advertisers would need to meet two thresholds before advertising products to children: i) individual products should meet minimum nutrient standards; and ii) product ranges, when readily-identified through a single brand-name, should meet minimum nutrient standards.

Likewise, BCAP’s current guidance allows *advertisement[s] for a specific non-HFSS product [which] refer to or feature... a strapline, celebrity, licensed character, brand-generated character or branding synonymous with a specific HFSS product*. This should be prohibited, as it fosters confusion among young people and other vulnerable groups, who are led to believe HFSS and non-HFSS products are comparable/synonymous with one another.

Q2) Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?

Yes: in order to achieve parity with the BCAP Code and ensure consistency across all media types.

As CAP noted in its pre-consultation exercise, international profiling models (e.g. the voluntary EU Pledge model) generally have tighter criteria than DH’s current model. Recognising that DH’s nutrient profiling model is evidence-based, CAP (and BCAP) should automatically (and without consultation) revise the CAP Code (& BCAP Code) so that it incorporates any future adaptations of this model which closer align it to international norms, and/or incorporate new governmental dietary advice. CAP and BCAP should therefore adopt the new DH nutrient profiling model once the review currently being conducted by DH and Public Health England is completed.

Q3) 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?

No, due to the concerns expressed in the pre-consultation exercise that this would increase promotions of 'borderline' non-HFSS products.

As demonstrated at our Food EPI expert panel event, there is a consensus that non-broadcast regulations are NOT currently adequately protecting children's health. This significant relaxation of the CAP Code would send the wrong signal to businesses and consumers, and harm consumers' confidence in businesses' ability to work in the public interest.

The Food Foundation welcomes work investigating the use of licensed characters and other related promotional strategies for promoting vegetable consumption among children and young people: e.g. the Food Dudes healthy eating scheme.<sup>7</sup> Such innovation should be encouraged. However, the CAP Code already allows the use of licensed characters and celebrities popular with children to promote fresh fruit and fresh vegetables. This caveat already provides advertisers with the encouragement needed "to adapt... behaviour and advertise healthier foods to children".<sup>8</sup>

The Food Foundation likewise acknowledges academic and grey literature which suggests that some minimal processing of fresh fruit and vegetables could increase their acceptability among children and young people: e.g. by shaping carrots into 'chip' shapes. To allow such innovative practices - while accepting an academic consensus that increased consumption of industrially processed foods is related to increases in non-communicable diseases - CAP should consider utilising the NOVA classification for processed and ultra-processed foods<sup>9</sup> (or equivalent) in parallel to DH's nutrient profiling model: so that creative content can be used to promote a non-HFSS product so long as said product undergoes only minimal processing.

As per our concerns expressed in Q1b of this consultation, advertisers should not be allowed to use a licensed character or celebrity to promote any product (including fresh or minimally processed non-HFSS products) if they are sold under a readily-identifiable brand-name which also features HFSS products.

In order to minimise burdens on advertisers promoting products across broadcast and non-broadcast mediums, CAP should work with BCAP to align guidance on this matter within the two respective Codes.

Q4a) Should CAP introduce a rule restricting the placement of HFSS product advertising?

Yes

Q4b) 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?

Aged 15 or younger, in the first instance. Obesity and overweight rates are considerably higher among secondary school aged pupils (27% boys, 38% girls) when compared with primary school aged pupils (21% boys, 24% girls),<sup>10</sup> and having begun to appear at the start of this century, there are now an estimated 600 cases of type 2 diabetes among teenagers in the UK.<sup>11</sup>

At the Food EPI expert panel event, there was a near unanimous consensus - from academics, public health practitioners, and the third sector - that *at a minimum* children under the age 16 should be protected by non-broadcast restrictions: no one voiced the view that only children under the age of twelve should be protected; while many suggested that all children and young people under the age of 19 should be protected from non-broadcast advertisements for HFSS products.

The Food Foundation is disappointed that the Terms of Reference of this consultation does not provide an opportunity for these considerations to be made. The diets of older teenagers are particularly susceptible to influence from advertisers as they grow more independent, and impact on health in later life.<sup>12</sup> As regulators bound by the Department for Business, Innovation and Skill's (BIS) Regulator's Code<sup>13</sup>, both CAP and BCAP are required to "base their regulatory activities on risk". The interests of the particularly vulnerable 16-18 year old group should then be considered within the scope of the CAP Code.

Q5) 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?

No.

As CAP itself acknowledges in Annex 7 of this Consultation, estimating audience numbers is very difficult in non-broadcast media: particularly in digital spaces where the data required for making such estimates are private domain and commercially sensitive. This would prevent CAP and its industry stakeholders from conducting "particular appeal" tests in a transparent manner.

Furthermore, CAP argues in this consultation that "aiming restrictions at media targeted specifically at children protects the right of adult viewers in general media to see ads for products of interest to them". However, CAP should acknowledge the authority of Public Health England, which recently supported the right of adult viewers to non-exposure to HFSS advertisements: [recommending](#) that there should be "significantly reduce[d] opportunities to market and advertise high sugar food and drink products to children *and adults* across all media including digital platforms and through sponsorship".

The Food Foundation supports the submissions of others made to this consultation - notably World Obesity and the Children's Food Trust – which propose that a more sophisticated measure is needed which considers several key issues using a matrix approach:

- 1) The message of a particular advert: how child-focussed is the product being advertised
- 2) The communication method of a particular advert: how child-focussed is the language/style of the advert
- 3) The placement of the particular advert: what is the *probability* that the advert's location (in physical/digital space) will expose children to HFSS content

A measure which limits/prohibits child-directed messages and communications methods, and reduces the probability of children being exposed to HFSS content, should be designed with input from independent experts.

Furthermore, as per recommendations made at the Food EPI Expert consultation: quantified targets should be introduced and monitored by independent observers to reduce children's exposure to any HFSS-advertising across all mediums over a fixed period of time. For example, assuming current studies show that 100% of UK children see HFSS promotion once per week, targets might be set to reduce this by 20% a year over the next 5 years. Legislative controls on the advertising practices of the industry should be tightened if these targets are not met. In addition, HFSS brands and products which transgress these rules and/or retain a high profile in children's minds should be the subject of specific sanction, including such advertisers being required to pay a higher levy to CAP and the ASA in order to fund proactive compliance checks.

Q6) Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?

Yes, there should not be any non-broadcast media placement exceptions to restrictions contained within the CAP Code. In addition, the CAP Code should be widened to include other forms of advertising not currently covered by the BCAP and CAP Codes: notably the use of licensed characters through on-product packaging and wrapping; and point of sale displays. Restrictions on the sponsorship of sporting events should be introduced, to protect children and adults from the purposeful association of HFSS-brands and HFSS-products with otherwise healthy lifestyles.

Cross-cutting remarks

The above consultation pays no regard to proprietorial creative content – e.g. unlicensed characters. When such content appeals to children, it should be treated as equivalent to licensed creative content throughout the CAP and BCAP Codes.

Government is committed to publishing a cross-cutting Childhood Obesity Strategy in order to secure policy coherence across government. A mechanism between government and CAP should be implemented to ensure the latter's regulatory activities automatically align with this strategy once published.

## About us

Food Standards Scotland (FSS) is the public sector food body for Scotland, established as a non-ministerial office part of the Scottish Administration, but separate from the Scottish Government. Its role is to ensure that information and advice on food safety and standards, nutrition and labelling is independent, consistent, evidence-based and consumer focused. In relation to diet and nutrition our statutory objectives include improving the extent to which members of the public have diets which are conducive to good health.

In January 2016, FSS agreed an urgent need to bring about change to the Scottish diet based on the current and forecast impacts of diet-related disease in Scotland and almost complete lack of progress in meeting the Scottish Dietary Goals over the past 15 years. The broad range of actions agreed by Food Standards Scotland were framed around the strong and increasing evidence of the effect of our food environment on consumer choices. These environmental factors include the way that food is placed, presented, and promoted in the environment. Changes to these factors will require fundamental shifts in commercial practices, including the way that products high in fat, sugar and/or salt are advertised or marketed. The paper discussed by the FSS board at its January meeting provides a full background to the evidence for urgent action.

## CAP consultation: food and soft drink advertising to children

In relation to the CAP consultation Food Standards Scotland considers that the evidence set out in section 36 of the consultation document, on the impact of advertising of food to children, is sufficient to warrant robust additional measures to reduce advertising of high fat salt and/or sugar (HFSS) products, particularly in the non-broadcast media.

In view of the health impact of diet-related ill-health, including obesity, and the significance of advertising and promotion **it is essential that the balance between commercial objectives and potential harm is fully reviewed across all demographics. In the case of advertising to children the approach and the scope of this review does not provide sufficient challenge to advertisers.** A significant extension of the scope of the CAP in non-broadcast media standard may go some way to preventing the marketing of inappropriate foods to children.

Whilst not in the scope of this consultation, we would encourage the general principles around diet and lifestyle (see rules 15.11 and 15.12 of the CAP code) which state 'marketing should not condone or disparage good dietary practice in children' be extended to the full population. Furthermore, given the disproportionately large amount of advertising of HFSS products, consideration should be given for these restrictions to be applied more widely across the population.

The scope of the CAP code does not include advertising or promotion in-store or on packaging but does in other cases include promotions, including price promotion. **Given the potential impact of marketing and price promotions in these locations, their exclusion from this code undermines its effectiveness.** If CAP has potential jurisdiction in store and on packaging, the code should be extended or supplemented by an additional code designed to cover these current exclusions. The current code is also unclear about its application to distance selling. Given that online grocery sales are now an integral part of mainstream retailing it would be beneficial to either clarify that the code does apply to these online sales, or otherwise to extend it to this aspect of advertising and marketing.

**The separate development of broadcast and non-broadcast standards does not appear to best serve consumer interests.** This is particularly apparent because the current consultation is based on adopting BCAP standards which should themselves be reviewed. Greater consistency might be achieved by defining a set of common standards which apply to the advertising and marketing of food across broadcast and non-broadcast media, which extends to in-store. Separate broadcast on non-broadcast codes could then deal only with issues which are specific to the relevant medium.

### Key messages

- FSS supports the proposal for further restrictions to advertising food and drink to children and aims to see a consistent approach across all media (broadcast and non-broadcast) that extends to in-store and point of sale.
- FSS would encourage that CAP and industry monitor and demonstrate the effectiveness of the implementation of any revised restrictions set out in the code. Given the potential impact of food advertising to children, an on-going monitoring programme to demonstrate the effectiveness on restrictions to advertising of food should be an integral part of CAP's work.
- FSS supports the development of a nutrient profiling model as soon as possible (agreed by Food Standards Scotland and other UK Government departments including Department of Health) to reflect updated dietary guidelines for use across all media.
- Given the diverse range of media to which this code applies, FSS ask CAP to consider the development of approaches tailored to each specific medium.

### QUESTION 1

QUESTION 1	Restrictions on HFSS product advertising
	<p>(a) Should the CAP Code be update to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?</p> <p>(b) Should CAP use the existing <a href="#">Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products</a> to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules?</p> <p>Please explain your reasons. Please consider CAP's recommendations in <a href="#">Section 44</a> when answering this question. The text of the BCAP guidance note is available via the link above or in <a href="#">Annex 5</a>.</p>

Food Standards Scotland welcomes the proposal to introduce tighter restrictions on the advertising of HFSS products to children in non-broadcast media.

The existing BCAP guidance is somewhat subjective in terms of identifying brand advertising that is synonymous with HFSS products. **When adjudicating we suggest that the code should establish a duty on advertisers to have taken reasonable steps through market research, to establish compliance and the right for the ASA to access all market research used by the advertiser.**

## QUESTION 2

QUESTION 2	Selecting a nutrient profiling model
	<p>Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?</p> <p>Please explain your reasons and, if applicable, the details of your preferred nutrient profiling model. Please consider CAP's recommendation in <a href="#">section 45</a> and the information on potential nutrient profiling models included in <a href="#">Annex 6</a> when answering this question.</p>

The existing nutrient profiling model does not reflect currently accepted dietary advice and should not be extended until an amended version has been agreed by Food Standards Scotland and other relevant government bodies across the UK.

The persistent use of the current NPM in the CAP code will potentially allow advertising of products to children that are not in line with current dietary recommendations.

### Supplementary information

The WHO model is comparatively stricter (when compared with the DH model) and follows a category based approach in which some categories are excluded. FSS does not agree with the principle of excluded categories some of the categories such as composite dishes (including ready meals) and savoury bakery. In addition, **this may be considered unfair to industry that produce healthier versions of foods from some food categories and could be a disincentive to product reformulation.**

The EU pledge model uses a category based approach in which nine categories of food that are broken down into sub-categories which are then assessed against different criteria and thresholds for each category. An assessment of this model shows that it is more lenient for a number of the more food categories including sweet and savoury bakery, breakfast cereals and snacks when compared with the DH model. For this reason FSS would not recommend its use for the purpose of advertising restrictions in the UK.

### QUESTION 3

QUESTION 3	<b>Existing prohibitions on the use of promotions and licensed characters and celebrities</b>
	<p>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?</p> <p>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. Please consider CAP's recommendation in <a href="#">section 46</a> when answering this question.</p>

Advertising which demonstrably promotes consumption of healthy balanced diet and good dietary habits should be encouraged. However this does not necessarily equate with the advertising to children of foods simply based on a non-HFSS basis. Promotion of food to children should be based on positive dietary value rather than a specific reduction in a particular risk factor. As stated above in question 2 the current NPM is insufficient to determine which products should be advertised to children and therefore this potentially represents a risk and may not support achievement of the Scottish Dietary Goals.

There is no evidence to support a relaxation of the definition of a child ("someone under 16") currently provided in chapter 5 of the existing code.

### QUESTION 4

QUESTION 4	<b>Introducing placement restrictions</b>
	<p>(a) Should CAP introduce a rule restricting the placement of HFSS product advertising?</p> <p>(b) If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children:</p> <ul style="list-style-type: none"><li>i) aged 11 or younger?</li><li>ii) aged 15 or younger?</li></ul> <p>Please explain your reasons. Please consider CAP's recommendations in <a href="#">section 47</a> when answering this question.</p>

**FSS agree that additional restrictions on the placement of HFSS product advertising should be introduced as quickly as possible and that this restriction should extend to all children under 16**, in line with the codes existing definition of a child.

Adopting a younger age threshold would potentially expose children between 11 and 15 years old to insufficiently restricted advertising of HFSS foods during a life-stage when lifelong dietary habits are likely to be formed. The majority of food promotions are for HFSS foods<sup>1</sup>. Given the impact of dietary ill-health on Scotland's population, lack of progress towards meeting dietary goals and the known associations between environment and consumption, there can be no case for reduced restrictions on advertising to children under 16.

**Delaying implementation for further consultation on age threshold would not be in the interests of consumers.** Consistency with the BCAP code would be a positive development in line with all evidence supporting an urgent need to improve dietary habits through multiple interventions including change to the food environment.

## QUESTION 5

QUESTION 5	<b>Defining the audience</b>
	<p>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.</p> <p>Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?</p> <p>Please explain your reasons. Please consider CAP's recommendation in <a href="#">section 48</a> when answering this question.</p>

The case for an audience threshold of 25% is not made in the consultation pack nor by any evidence or standards that FSS has seen and we do not agree that it should be implemented as proposed.

A simple distinction between broadcast and non-broadcast media is unlikely to take account of the wide range of difference across all aspects of non-broadcast media. There are situations where there is almost limitation to the probable audience. For example in relation to general outdoor and public space advertising, where a clearer general standard relating to assumed audiences could be provided for all advertisers. There are also examples where audiences are specifically known or controlled. For example in cinema advertising it should be possible to ensure that the rating standards for age groups under 16 do not permit food advertising in contravention of the CAP requirements.

FSS would suggest that CAP should initiate an on-going monitoring and review process along with a commitment to modify thresholds, by type of medium, based on performance.

## QUESTION 6

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QUESTION  
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### Application to different media

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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.

FSS fully supports the control of and advertising to children across all media in order to provide consistent protection for all children. We would also urge CAP to further examine and report on any mechanisms that could be put in place by CAP or any other body to extend parallel standards to in-store promotion and marketing.