

## Evaluation of responses to Question 1b – Restrictions on HFSS product advertising

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?

CAP proposed to apply the new and amended rules to brand advertising that has the effect of promoting an HFSS product, mirroring present guidance used for TV advertising

	Respondent making points <u>in favour</u> of CAP's proposal:	Summary of significant points	CAP's evaluation:
1.b.1.1	ASDA, C4, FDF, FF, McDonalds, Nestle, PPA, PHDW, PHK	Respondents considered that there were benefits to both businesses and the public in having a consistent approach between CAP and BCAP. Some respondents noted the differences between broadcast and non-broadcast media; others considered that it was simplest approach to the issue of brand advertising. Respondents considered that the approach brought consistency and created a more level playing field.	See Regulatory Statement section 4.2.2.
1.b.1.2	SG	Respondent supported the proposal but expressed concern that the definition of "synonymous with" was a subjective one.	Identifying brand advertising that has the effect of promoting a specific HFSS product is not straight forward. There is no scientific means of identifying an "HFSS brand". As such, the use of the "synonymous with" test is, to a degree, subjective. CAP has amended the proposed text of the guidance to provide more clarity on how different types of branding are likely to relate to specific products that can be nutrient profiled. HFSS product branding

			(including straplines, celebrities, licensed characters and brand-generated characters) used in an advertisement without an image of the product itself is highly likely to have the effect of promoting it; the branding is “synonymous with” the product. Branding related to companies that sell a range or ranges of products is, in most cases, less strongly associated with a specific product as a consequence.
<b>1.b.1.3</b>	PHDW	Respondent urged CAP to take advice from those involved in enforcement to understand whether the rules worked in practice.	CAP is confident the version of the guidance adopted is fit for its purpose of identifying brand advertising that has the effect of promoting an HFSS product. The guidance will be applied by the ASA when it enforces the new and amended rules from July 2017. As the ASA makes new rulings, there is a potential for the guidance to evolve as more specific, case-based precedents are made.
<b>1.b.1.4</b>	IPH	Respondent supported the proposal provided that the BCAP guidance had been found to be a comprehensive approach based on previous experience.	See Regulatory Statement section 4.2.2.
<b>1.b.1.5</b>	Mars	Respondent supported the proposal as they believed there should be no advertising to under-12s. Restricting brand as well as product advertising was important to stop the inadvertent continuation of marketing to children under 12 years old.	See Regulatory Statement section 4.2.2.
<b>1.b.1.6</b>	Which?	Respondent supported the proposal. They believed brand advertising presented a potential “loophole” for HFSS-related brands to continue to market to children.	See Regulatory Statement section 4.2.2.

	<b>Respondent making points against of CAP's proposal:</b>	<b>Summary of significant points</b>	<b>CAP's evaluation:</b>
<b>1.b.2.1</b>	BDA (Dental) DPPW, LHHS, NS, OAS, PHD, PUB1, UKHF	Respondents considered that the brand guidance, as drafted, was not strong enough and should be strengthened.	See Regulatory Statement section 4.2.3.
<b>1.b.2.2</b>	CFC, MoL	Respondents considered that, although having a consistent approach across media was beneficial, the brand guidance, as drafted, was not strong enough. They therefore could not agree with the proposal.	See Regulatory Statement section 4.2.3.
<b>1.b.2.3</b>	ABGPHT, ACAD2, AoS/CASH, BGCBC, CFC, DPPW, HoM, JOFF, NS, SW, TCBC, WCRF, WOF/ASO	Respondents considered that the definition of advertising needed to be widened to cover all forms of commercially-sourced messages, including brand names and brand-related images.	The brand guidance applies to all advertising content that can be reasonably associated with a brand. As outlined in guidance scenario 5, branding includes "a strapline, celebrity, licensed character, brand-generated character or branding [...]". Subject to other relevant provisions of the guidance, if any of these pieces of content is judged by the ASA to be "synonymous with a specific HFSS product" the advertisement will be treated as an HFSS product advertisement for the purposes of the new restrictions.
<b>1.b.2.4</b>	LBH	Respondent urged wider restrictions on brand advertising. They gave an example; the Chewits branded dinosaur had a website including a vintage ad and giveaways encouraging sign up to social media like Twitter and Facebook.	See the evaluation of point 3.3.2 (Question 3).

<b>1.b.2.5</b>	ABGPHT, AoS/CASH, BGCBC, CFC, SW, TCBC, WCRF	Respondents said many advertisements promoted a corporate brand or 'family' of products. They considered that was problematic when most products within the brand or range were – or were perceived to be – HFSS.	CAP has amended the guidance recognising that companies are often “synonymous with” a range or ranges of products they manufacture or sell. The amendments provide a new test to allow the ASA to assess whether company has a sufficient identity as something other than a provider of HFSS products to ensure that company brand advertising would not be likely to have the effect of promoting a specific HFSS product (see Regulatory Statement section 4.2.4).
<b>1.b.2.6</b>	CEDAR	Respondent maintained that the BCAP guidance allowed brands that were known for HFSS products (e.g. fast-food companies) to avoid the restrictions on TV advertising by not showing any of their HFSS products.	See the evaluation of point 1.b.2.5 (above) and Regulatory Statement sections 4.2.3 and 4.2.4.
<b>1.b.2.7</b>	LBH	Respondent considered that the brand guidance was not robust enough due to changing products and ways of advertising, for instance, using platforms like Instagram to promote products.	The guidance identifies brand advertising that has the effect of promoting a specific HFSS product. See Regulatory Statement section 4.7 for further information on how CAP will identify media subject to the new placement restriction.
<b>1.b.2.8</b>	OAS	Respondent considered that stronger guidance should include restrictions on raisings brand awareness and the use of celebrities.	See Regulatory Statement sections 4.2.3 and 4.2.4. Additionally, the amended rule 15.15 now prohibits the use of celebrities popular with children in HFSS advertising that is targeted directly through its content at pre-school and primary school children.
<b>1.b.2.9</b>	BDA (Dental) DPPW, MoL, OAS, PHD, PUB1, UKHF	Respondents considered that stronger guidance should be adopted for both the CAP and BCAP Codes.	See Regulatory Statement sections 4.2.3 and 4.2.4. The BCAP Code is outside the scope of this consultation.
<b>1.b.2.10</b>	PHE	Respondent cited five studies which examined the impact of branding and suggested an influence on children’s preferences. The studies also suggested that branding might be more influential in children with a higher body weight.	CAP has introduced stronger guidance to address the evidence of brand advertng’s potential impact. However, the changes to the proposed guidance have regard to CAP’s conclusion (see Regulatory Statement section 4.1.2) that the evidence suggests advertising’s impact on children is relatively small.

<b>1.b.2.11</b>	ABGPHT, AoS/CASH, BGCBC, CFC, HoM, SW, TCBC, WCRF	Respondents said children’s knowledge of unhealthy food and soft drinks increased their obesity risk. They said research showed that children’s recognition of branded food logos increased with age and, compared with other children, those who recalled branding for unhealthy food and drink had stronger preferences for such products.	See the evaluation of point 1.b.2.10 (above).
<b>1.b.2.12</b>	HF, OHA	Respondents said there was evidence showing the impact of brand advertising on children’s consumption. Not only did advertisements for certain branded products make children more likely to prefer and purchase that particular product, they also encouraged consumption of similar products.	See the evaluation of point 1.b.2.10 (above).
<b>1.b.2.13</b>	CEDAR	Respondent said they 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.	CAP acknowledges parental concern and wider societal concerns over children’s diets. CAP has adopted a strengthened version of the BCAP guidance to better identify circumstances where brand advertising might have the effect of promoting a specific HFSS product.
<b>1.b.2.14</b>	SPHSU	Respondent said their focus group study showed the BCAP guidance was flawed because it allowed brands selling a predominantly HFSS product range to advertise to children. The respondent said their subjects had discussed the issue in relation to an advertisement from a fast food chain for carrots. Many of them suggested that it raised the profile of the brand further, ‘pretending’ to promote healthy foods deliberately to reduce public criticism if it largely providing HFSS products. They argued that it was unlikely to improve children’s diets, as the default option within the chain’s restaurants was fries. The respondent said both the BCAP and CAP guidance should be changed to prevent advertising	See Regulatory Statement section 4.2.4 for details of the changes CAP has made to the original BCAP guidance. These specifically address the issue of brand advertising that promotes a range or ranges of products.

		targeted at children and young people by brands with a predominantly HFSS product range.	
<b>1.b.2.15</b>	CEDAR	Respondent pointed out that the Department of Health nutrient profiling model identified products that were “less healthy” to be subject to restrictions, but that did not mean healthier products should necessarily be encouraged to advertise.	See Regulatory Statement section 4.4.3 for CAP’s view on “borderline” HFSS products.
<b>1.b.2.16</b>	LNCDU	Respondent considered that the guidance was not sufficiently comprehensive. For example, it did not apply to brand equity characters, which were known to influence children's food preferences.	The brand guidance is intended to identify brand advertising that has the effect of promoting an HFSS product; this includes the use of branding such as brand equity characters. The new placement restriction will apply to advertisements that the ASA deems to have this effect. The new rule 15.18 means such advertising may not be placed in children’s media or media where children make up a significant proportion of the audience. CAP does not, however, consider that there is a case for an additional content restriction on the use of brand equity characters in other types of advertising (see the evaluation of point 3.3.2 (Question 3).
<b>1.b.2.17</b>	ACAD2	Respondent called for the guidance to be extended to cover all commercially sources messaging. They cited evidence for the particular impact of brand equity characters on children.	See the evaluations of point 1.b.2.3 and point 1.b.2.16 (above).
<b>1.b.2.18</b>	BDA (Dietetic)	Respondent said the guidance was not strong enough. They called for the restriction on promotions to be extended to under-16s. They said the restriction on the use of licensed characters and celebrities was not strong enough because it applied only to HFSS product advertisements and not to brand advertisements. They also called for those rules to be extended to under-16s.	CAP has adopted new guidance to identify brand advertising that has the effect of promoting an HFSS product. The new and amended rules will apply to advertisements for or that are deemed to promote an HFSS product. See Regulatory Statement section 4.4 for more information on CAP’s approach to the existing content rules.
<b>1.b.2.19</b>	AA , ACS, ISBA	Respondents were concerned about the clarity of the guidance and called for further details of how it would apply in practice. They urged CAP to engage with industry.	See Regulatory Statement section 4.2.4 and other evaluations within this table.

1.b.2.20	Bel UK	Respondent considered the brand guidance penalized smaller operators, especially those with brands linked to single or small ranges of products.	CAP's <i>Regulatory and economic impact assessment</i> (see consultation document Annex 7) noted the potential for businesses to adapt to the new restrictions. One of the key ways was through reformulation or placing greater emphasis on non-HFSS products. CAP accepts that, in some circumstances, businesses have less recourse to adapt. However, CAP considers that the potential impact on such businesses is not disproportionate to its policy aim.
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	Respondent making other relevant points	Summary of significant points	CAP's evaluation:
1.b.3.1	ABGPHT, AoS/CASH, BGCBC, CFC, JOFF, NS, SW, TCBC	Respondents called on CAP and BCAP to adopt new guidance that only allowed; the use of brand characters, if all related products that used those characters were non-HFSS; a brand to be featured, if all varieties of that brand were non-HFSS; and a competition or giveaway featuring one (non-HFSS) variety, if all varieties available were non-HFSS.	See Regulatory Statement section 4.2.3.
1.b.3.2	ABGPHT, BGCBC, JOFF, TCBC	Respondents said "brand advertising" should, in line with the view of the Obesity Policy Coalition, be defined as: "a trade mark or design registered in respect of a food product or food range; the name of a manufacturer of a food product or food range; or the name of a food range, or any other words, designs or images, or combination of words, designs or images, that are closely associated with a food range."	See the evaluation of point 1.b.2.3 (above).
1.b.3.3	ABGPHT, BGCBC, JOFF, TCBC	Respondents said "unhealthy food advertisement" should, in line with the view of the Obesity Policy Coalition, be defined as: "any writing, still or moving picture, sign, symbol or other visual image, or any audio message (or any combination of these things) that publicises or promotes, or that is intended to publicise or promote: one or more unhealthy food products; or a food brand unless a healthy food product or range is the dominant feature of the advertisement."	The CAP Code does not define advertising as such. <a href="#">The Scope of the Code</a> section includes lists of types of media or other commercial practice that the Code applies and does not apply to.
1.b.3.4	CRUK, DUK	Respondents considered that the proposal was only acceptable, if the brand guidance was revised. They were concerned about HFSS brands using advertisements featuring non-HFSS products or even with no food cues to build relationships with children.	CAP has amended the guidance to clarify the circumstances in which non-HFSS advertising might feature branding from a wider company identity that is associated with HFSS products. In line with its view of the evidence and underlying objective of altering the nature and balance of food and soft drink advertising seen by

			children, CAP considers that branding is a useful tool in promoting healthier options. See Regulatory Statement sections 4.2.3 and 4.2.4.
<b>1.b.3.5</b>	DUK	Respondent cited evidence that showed brand advertising could have an effect on consumption and could also encourage the consumption of similar products.	See the evaluation of point 1.b.2.10 (above).
<b>1.b.3.6</b>	CRUK, HF, OHA	Respondents asked for more information on how “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.	The guidance will be applied by the ASA when it enforces the new and amended rules to identify brand advertising that has the effect of promoting a specific HFSS product. If an advertisement features the content listed by the respondents, it will be treated as an HFSS product advertisement under the new and amended rules.
<b>1.b.3.7</b>	CRUK	Respondent called for restrictions to be extended on the use of characters and celebrities due to their impact on building relationships with children. They cited research showing brand equity characters elicited the same positive response to food among children as licensed characters.	See the evaluation of point 1.b.2.16 (above).
<b>1.b.3.8</b>	CFT	Respondent called for a formal review across both the CAP and BCAP Codes to explore whether new approaches existed to effectively identify instances in which brand advertising should be treated in the same manner as HFSS product advertising. They noted Ofcom, after 2006, had committed to keeping the matter under review. They also cited the evidence of advertising’s impact from PHE and the WHO and Ofcom’s 2010 review of the TV restrictions which found, for instance, a number of McDonalds brand advertisements broadcast during children’s airtime.	CAP does not agree that such a review is necessary. In line with Regulatory Statement section 4.2.3, CAP considers that a proportionate balance is required to respond to the potential for brand advertising to promote specific products. However, it is important to maintain proportionality in the face of the limited overall evidence of advertising’s impact on children and also to contribute to the underlying objective of altering the nature and balance of advertising seen by children. CAP considers that there is a strong case to encourage marketers to promote healthier foods; including through the use of responsible brand advertising.
<b>1.b.3.9</b>	DUK	Respondent considered that the brand guidance was vague on what a brand’s product portfolio should look like in order to be considered non-HFSS.	See Regulatory Statement section 4.2.4.

<b>1.b.3.10</b>	HF, OHA	Respondents asked for clarity on how an advertisement featuring a range of products from one brand would be categorised, if one of the products was HFSS.	See Regulatory Statement section 4.2.4.
<b>1.b.3.11</b>	DUK	Respondent asked for clarity over whether a popular brand offering a range of healthy choices alongside HFSS products could be advertised to children. They asked whether the popularity of the brand's most popular product would be a deciding factor.	The presence of a specific, identifiable HFSS product in an advertisement is highly likely to render it an HFSS product advertisement. If it is one of several products featured. CAP has amended guidance to make clearer the ASA's likely decision in the instance of brand advertising that promotes a range or ranges of products but does not include a specific product (see Regulatory Statement section 4.2.2).
<b>1.b.3.12</b>	FF	Respondent maintained that the BCAP guidance allowed advertisements for a specific non-HFSS product, which referred to branding synonymous with a specific HFSS product. They called on it to be prohibited as it could cause confusion for children.	See Regulatory Statement section 4.2.4 for details of the changes CAP has introduced to the original draft of the guidance proposed in the consultation document.
<b>1.b.3.13</b>	LNCDU	Respondent urged CAP to consider the WHO recommendations from the WHO Framework Implementation Report.	See the evaluation of point 1.a.1.19 (Question 1a).
<b>1.b.3.14</b>	CFT, PHK, SW	Respondents accepted the proposal in the interim, but considered that, in the future, stricter guidance should be considered both the CAP and BCAP rules.	CAP has made amendments to the proposed guidance to address points raised by consultation respondents and to better meet the objective of identifying brand advertising that has the effect of promoting a specific HFSS product. From July 2017, the ASA will have regard to the guidance when applying to new and amended rules to complaints about individual advertisements. As the ASA makes new rulings, there is a potential for the guidance to evolve as more specific, case-based precedents are made.
<b>1.b.3.15</b>	BC, NHS (Sco)	Respondents considered the guidance to be sufficient but urged CAP to review it regularly.	
<b>1.b.3.16</b>	SG	Respondent maintained that the ASA should require access to any consumer market testing of brands to determine their associations.	It is a general requirement that advertisers have to hold evidence or other information to show that they comply with the Code. In the event of a complaint, the ASA will ask the advertiser for that evidence and will assess the response against the rules.

<b>1.b.3.17</b>	CRUK	Respondent said, if emerging evidence demonstrated that advertising an HFSS brand without any HFSS food cue influenced brand appeal or increased food consumption, there should be a commitment in the guidance to revise and reflect the new evidence in the guidance and the CAP code.	CAP will assess the implications of new evidence when the need arises. See also the evaluation of point 1.b.3.16 (above).
<b>1.b.3.18</b>	FF	Respondent said CAP and BCAP should commission independent research into brand-recognition and brand-loyalty among children. They called for CAP to consider another approach. Product advertisers would need to meet two thresholds before advertising products to children: individual products should meet minimum nutrient standards; and product ranges, when readily-identified through a single brand-name, should meet minimum nutrient standards.	See Regulatory Statement section 4.2.3.
<b>1.b.3.19</b>	BSDA	Respondent asked CAP to explain how the provisions of the brand guidance would be enforced as they were not rules.	See the evaluation of point 1.b.3.14 (above).
<b>1.b.3.20</b>	CAA/UKCA, FDF, IAB, IPM, McDonalds, PepsiCo	Respondents called for more clarity, in general, on the practical application of the brand guidance.	See Regulatory Statement section 4.2.4 and various evaluations of points above for examples of how the guidance is likely to be interpreted in practice.
<b>1.b.3.21</b>	IAB	Respondent asked for clarification on whether promotional activities such as sponsorship were outside the scope of the Code.	Sponsorship is outside the CAP Code's remit. See Regulatory Statement section 4.8 for more information on the scope of application of the new restrictions.
<b>1.b.3.22</b>	RCPCH	Respondent asked for more clarification what a "direct response mechanic" was.	Examples of direct response mechanics include telephone numbers and interactive links.
<b>1.b.3.23</b>	CRUK	Respondent supported changing the wording from products "likely to appeal" or "directly targeted" to an audience, to include all exposure of children to marketing.	See the Regulatory Statement section 4.7.