

15

FOOD, FOOD SUPPLEMENTS
AND ASSOCIATED HEALTH OR
NUTRITION CLAIMS

Principle

Public health policy increasingly emphasises good dietary behaviour and an active lifestyle as a means of promoting health. Commercial product advertising cannot reasonably be expected to perform the same role as education and public information in promoting a varied and balanced diet but should not undermine progress towards national dietary improvement by misleading or confusing consumers.

Background

These rules apply to all marketing communications for food products, and must be read in conjunction with the relevant legislation.

In July 2007, a Regulation of the European Parliament and of the Council of the European Union on nutrition and health claims made on foods (the NHCR) came into force; as a Regulation, the NHCR is directly applicable in EU Member States. The NHCR seeks to protect consumers from misleading or false claims by prescribing specific conditions of use associated with authorised health and nutrition claims, which are determined at a European level. The EU Register of nutrition and health claims (the EU Register) lists all authorised nutrition and health claims as well as non-authorised health claims that have been rejected.

Following the UK's departure from the EU on 31 January 2020, the UK entered a time-limited transition period until 31 December 2020. Following the end of the transition period, regulation of nutrition and health claims for foods became an autonomous matter for both Great Britain and the EU as two separate legal and regulatory systems.

From 1 January 2021, European Regulations (including the NHCR) and tertiary legislation relating to nutrition were retained under the powers contained within the European Union (Withdrawal) Act 2018 as domestic law. That retained EU legislation was subsequently amended by the Nutrition (Amendment etc.) (EU Exit) Regulations 2019 and the Nutrition (Amendment etc.) (EU Exit) Regulations 2020. These Regulations transferred responsibilities from EU organisations involved in the risk assessment and risk management processes covered by nutrition legislation to appropriate authorities and bodies in Great Britain, and gave effect to the Protocol on Ireland / Northern Ireland (the NIP) in respect of nutrition labelling, composition and standards. This legislation also led to the creation of the Great Britain nutrition and health claims register (the GB Register), which replaced the EU Register for health and nutrition claims made in Great Britain from 1 January 2021. However, Regulations listed in Annex 2 to the NIP also apply to, and in, the United Kingdom in respect

of Northern Ireland. Consequently, the EU Register continues to apply to nutrition and health claims made in Northern Ireland.

In these rules, the term “applicable register” is used to refer to the EU Register and / or the GB Register, and the register or registers which apply to a particular marketing communication will be determined with reference to the legislation set out earlier in this section. Updated versions of both registers are available here:

[EU Register](#)

[GB Register](#)

CAP urges marketers to take legal advice on the effect of the legislation set out in this section, as well as any other relevant legislation (for example, the Food Safety Act 1990 and the Food Information Regulations 2014), and to consider the Department of Health and Social Care’s [Guidance on nutrition and health claims on foods](#).

Definitions

For the purposes of the rules in this section:

'Nutrition claim' means any claim which states, suggests or implies that a food has particular beneficial nutritional properties due to:

- (a) the energy (calorific value) it provides; provides at a reduced or increased rate; or does not provide; and/or
- (b) the nutrients or other substances it contains; contains in reduced or increased proportions; or does not contain;

'Health claim' means any claim that states, suggests or implies that a relationship exists between a food category, a food or one of its constituents and health.

'Reduction of disease risk claim' means any health claim that states, suggests or implies that the consumption of a food category, a food or one of its constituents significantly reduces a risk factor in the development of a human disease.

References to food apply also to drink products.

Rules

These rules should be read in conjunction with other rules in this Code, especially Section 5: Children and Section 13: Weight Control and Slimming.

General

- 15.1** Marketing communications that contain nutrition or health claims must be supported by documentary evidence to show they meet the conditions of use associated with the relevant claim, as specified in the applicable register. Claims must be presented clearly and without exaggeration.
- 15.1.1** Only nutrition claims listed in the applicable register may be used in marketing communications.
- Only health claims listed as authorised in the applicable register, or claims that would have the same meaning to the consumer, may be used in marketing communications.
- 15.2** References to general benefits of a nutrient or food for overall good health or health-related well-being are acceptable only if accompanied by a specific authorised health claim.
- 15.3** Comparative nutrition claims must compare the difference in the claimed nutrient to a range of foods of the same category which do not have a composition which allows them to bear a nutrition claim.
- 15.3.1** A marketing communication may use one product as the sole reference for comparison only if that product is representative of the products in its category.
- 15.3.2** The difference in the quantity of a nutrient or energy value must be stated in the marketing communication and must relate to the same quantity of food.
- 15.4** Marketing communications must not condone or encourage excessive consumption of a food.
- 15.5** Marketing communications must not condone or encourage damaging oral health care practices, especially in children.
- 15.6** These are not acceptable in marketing communications for products within the remit of this section:

- 15.6.1 Claims that state or imply health could be affected by not consuming a food
- 15.6.2 Claims that state or imply a food prevents, treats or cures human disease. Reduction-of disease-risk claims are acceptable if authorised on the applicable register.
- 15.6.3 Health claims that refer to the recommendation of an individual health professional. Health claims that refer to the recommendation of an association are acceptable only if that association is a health-related charity or a national representative body of medicine, nutrition or dietetics
- 15.6.4 References to changes in bodily functions that could give rise to or exploit fear in the audience
- 15.6.5 Claims of a nutrition or health benefit that gives rise to doubt the safety or nutritional adequacy of another product
- 15.6.6 Health claims that refer to a rate or amount of weight loss.

Food supplements and other vitamins and minerals

CAP advises marketers to ensure that claims made for dietary supplements and other vitamins and minerals are in line with the requirements of the NHCR or other relevant legislation.

- 15.7 Nutrition and health claims for food supplements must be permitted or authorised as provided for at rule 15.1.1 above. Marketing communications that contain nutrition or health claims must be supported by documentary evidence to show they meet the conditions of use associated with the relevant claim as specified in the applicable register.
- 15.8 Marketers must not state or imply that a balanced or varied diet cannot provide appropriate quantities of nutrients in general. Individuals should not be encouraged to swap a healthy diet for supplementation, and without well-established proof, no marketing communication may suggest that a widespread vitamin or mineral deficiency exists.
- 15.9 Marketing communications for foods must not claim to treat clinical vitamin or mineral deficiency.

Infant and follow-on formula

The rules on infant and follow-on formula are presently under review. CAP is considering the implications of the provisions of the [Commission Delegated Regulation \(EU\) 2016/127](#) as retained in UK law. This replaces [The Infant Formula and Follow-on Formula \(England\) Regulations 2007](#), which have been repealed.

Marketers are advised to refer to the Commission Delegated Regulation along with other relevant food law when preparing ads. The ASA will have appropriate regard to it when applying the rules below.

15.10 Except for those in a scientific publication or, for the purposes of trade before the retail stage, a publication of which the intended readers are not the general public, marketing communications for infant formula are prohibited.

15.10.1 Marketing communications must not confuse between infant formula and follow-on formula.

Food and soft drink product marketing communications and children

Background

"HFSS products" are those food or soft drink products that are assessed as High in Fat, Salt or Sugar in accordance with the Department of Health and Social Care's nutrient profiling model. Information on the nutrient profiling model is now available on the Department of Health and Social Care's website at:

[the-nutrient-profiling-model](#)

See also the [Help Note for food or soft drink product advertisements and children](#).

Diet and lifestyle

15.11 Marketing communications must not condone or encourage poor nutritional habits or an unhealthy lifestyle in children.

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

Promotional offers

- 15.13 Marketing communications featuring a promotional offer must be prepared with a due sense of responsibility.
- 15.14 HFSS product advertisements that are targeted through their content directly at pre-school or primary school children must not include a promotional offer. Additionally, for children under 16:
- 15.14.1 Except those for fresh fruit or fresh vegetables, marketing communications must not seem to encourage children to eat or drink a product only to take advantage of a promotional offer: the product should be offered on its merits, with the offer as an added incentive. Marketing communications featuring a promotional offer must ensure a significant presence for the product
 - 15.14.2 Marketing communications featuring a promotional offer linked to a food product of interest to children must avoid creating a sense of urgency or encouraging the purchase of an excessive quantity for irresponsible consumption
 - 15.14.3 Marketing communications must not encourage children to eat more than they otherwise would
 - 15.14.4 Marketing communications for collection-based promotions must not seem to urge children or their parents to buy excessive quantities of food.

Licensed characters and celebrities

- 15.15 Licensed characters and celebrities popular with children must be used with a due sense of responsibility. HFSS product advertisements that are targeted directly at pre-school or primary school children through their content must not include licensed characters or celebrities popular with children. For the avoidance of doubt, that prohibition applies to food or drink advertisements only.

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

Licensed characters and celebrities popular with children may present factual and relevant generic statements about nutrition, safety, education or similar.

Pressure to purchase

- 15.16** Although children might be expected to exercise some preference over the food they eat or drink, marketing communications must be prepared with a due sense of responsibility and must not directly advise or ask children to buy or to ask their parents or other adults to make enquiries or purchases for them (see rule 5.4.2).
- 15.16.1** Marketing communications must neither try to sell to children by directly appealing to emotions such as pity, fear or self-confidence nor suggest that having the advertised product somehow confers superiority; for example, making a child more confident, clever, popular or successful.
- 15.16.2** Marketing communications addressed to children must not urge children to buy or persuade others to buy and must avoid high-pressure or hard-sell techniques. Nothing must suggest that children could be bullied, cajoled or otherwise put under pressure to acquire the advertised item.
- 15.16.3** Products or prices must not be presented in marketing communications in a way that suggests children or their families can easily afford them.

Nutrition claims and health claims

- 15.17** Claims referring to children's development and health are acceptable if authorised on the applicable register.

HFSS Product Ad Placement

- 15.18** HFSS product advertisements must not be directed at people under 16 through the selection of media or the context in which they appear. No medium should be used to advertise HFSS products, if more than 25% of its audience is under 16 years of age.