

# CAP and BCAP Regulatory statement

Implementation of the “less healthy” food and drink product advertising restrictions

**Annex C:** Mark up of final revisions to the proposed implementation guidance



## Explanatory notes for Annex C

This annex includes a mark-up of changes to the proposed implementation guidance that will support the new less healthy product advertising rules resulting from CAP and BCAP's evaluation of responses.

The marked up text is accompanied by explanatory comments denoting particularly significant changes. The annex should be read in conjunction with Part II of the [Regulatory statement](#). The final, published version of the guidance is available [here](#).

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## Advertising Guidance: Advertising of less healthy food and drink products

### 1. Introduction

#### 1.1 Overview

1.1.1 – This Guidance supports users of the UK Advertising Codes to understand how the Advertising Standards Authority (“ASA”) is likely to apply rules, which reflect restrictions on the advertising of “less healthy” food and drink products (“less healthy products”) inserted into the [Communications Act 2003](#) by [Schedule 18](#) of the Health and Care Act 2022.

1.1.2 – Ofcom is the statutory authority responsible for the less healthy product advertising regulatory framework. The ASA has been designated as the “appropriate regulatory authority” and is responsible for frontline enforcement of the restrictions and producing guidance on how it will exercise its functions in relation to the restrictions.

1.1.3 – The framework adds significantly to the long-established pan-media rules that continue to prohibit food and soft drink products that are high in fat, salt or sugar (HFSS products) from being advertised in children’s media and media disproportionately popular with them. The focus on products of most concern in relation to childhood diet and health, and Ofcom-regulated television and on-demand programme services, and online, will further reduce children’s exposure to such commercial messaging.

1.1.4 – The primary legislation underpinning the rules (the [Communications Act 2003](#)) prohibits advertisements for “identifiable” less healthy products. Secondary legislation ([The Advertising \(Less Healthy Food Definitions and Exemptions\) Regulations 2024](#) and [The Advertising \(Less Healthy Food and Drink\) \(Brand Advertising Exemption\) Regulations 2025](#)) provides qualified exemptions to the prohibition. This guidance has been developed in a manner that the ASA considers appropriate for persons who are likely to be affected by the restrictions to support compliance with the rules, as required by law.

#### 1.2 Less healthy product advertising restrictions

1.2.1 – The UK Advertising Codes restrict children’s exposure to certain types of food and drink advertising. These include rules reflecting specific provisions of the Communications Act 2003 (as amended)<sup>1</sup>, which place restrictions on the advertising of certain types of HFSS product – those categorised as less healthy products.

1.2.2 – The less healthy product advertising rules prohibit:

- Ofcom-licensed television services from including advertising and sponsorship for identifiable less healthy products between 5:30am and 9:00pm<sup>2</sup>;

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<sup>1</sup> The Health and Care Act 2022 received Royal Assent in April 2022. This legislation followed an extensive process of consultation summarized in Government’s statement on the outcome, [Introducing further advertising restrictions on TV and online for products high in fat, salt and sugar: government response](#).

<sup>2</sup> Section [321A of the Communications Act 2003](#).

- Ofcom-regulated on-demand programme services (“ODPS”) from including advertising and sponsorship for identifiable less healthy products between 5:30am and 9:00pm<sup>3</sup>; and
- paid-for advertisements for identifiable less healthy products intended to be accessed principally by persons in the UK from being placed on the internet at any time<sup>4</sup>.

References in the singular (“product”) should be taken also to include the plural (“products”), and vice versa.

### 1.3 Tests and exemptions

1.3.1 – The legal test determining whether the content of an advertisement is covered by the restrictions is set out in [the Communications Act 2003 sections 321A \(television\), 368FA \(on demand programme services\) and 368Z14 \(online\)](#). The law states that a less healthy product is “identifiable”, in relation to advertisements, if persons in the United Kingdom (or any part of the United Kingdom) could reasonably be expected to be able to identify the advertisements as being for that product. This definition of “identifiable” is referred to in this document as the “identifiability test”. Advertisements that do not meet the identifiability test are not within scope of the rules. The ASA’s approach to assessing individual advertisements under the identifiability test is set out below in part 8.

1.3.2 – In practice, guidance users can have regard to the exemptions that are applicable in law where they consider that the identifiability test is likely to have been met. They mean the restrictions do not apply in circumstances where it can be demonstrated that an advertisement falls within one of the following exemptions.

- Advertisements for out-of-scope products: The rules only prohibit advertisements for less healthy products, as defined (see part 4 below).
- Advertisements for small and medium-sized enterprises: The rules do not apply to any advertisement by or on behalf of food or drink SMEs (companies with fewer than 250 employees) (see part 5 below).
- Advertisements in out-of-scope media: The rules only prohibit less healthy product advertisements in Ofcom-licensed television services and Ofcom-regulated on-demand programme services (where, in each case, the prohibition applies between 5.30am and 9pm), and on the internet (where the prohibition applies to paid-for advertisements only, subject to exemptions set out in part 6 below). Advertisements in other media are not subject to the less healthy product advertising restrictions.
- Advertisements for brands: Brand advertisements are exempt from the rules within the meaning given by [The Advertising \(Less Healthy Food and Drink\) \(Brand Advertising Exemption\) Regulations 2025](#) (see part 7 below).

<sup>3</sup> Section [368FA of the Communications Act 2003](#).

<sup>4</sup> Section [368Z14 of the Communications Act 2003](#).

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1.3.3 – If an advertisement meets the identifiability test but falls under any of the exemptions listed above, an advertisement will not be restricted under the less healthy product rules. No further assessment is necessary.

1.3.4 – If none of these exemptions apply, an assessment of the advertisement under part 8 is needed to ascertain if it is likely to be restricted under the less healthy product advertising rules because it meets the identifiability test.

## 1.4 Using this guidance

1.4.1 – This guidance explains how the ASA intends to exercise its functions in relation to the rules that reflect the statutory prohibitions. It outlines factors that the ASA will consider when interpreting and applying these rules to support Code users to determine the risks of an advertisement being subject to the restrictions.

1.4.2 – The Guidance emphasises the need to assess advertisements on a case-by-case basis and is not prescriptive as to the order in which the criteria below are assessed.

- Part 4: Determining products in scope – This part explains how a two-part test is used to determine whether a product is categorised as “less healthy”.
- Part 5: Nature of the advertiser – This part sets out the food or drink exemption for small and medium sized enterprises (SMEs), and provides an indication of how the nature of the other types of advertiser is relevant to the application of the restrictions.
- Part 6: Media and scope – This part details each of the media covered by the less healthy product advertising rules. Media not listed are not subject to these restrictions.
- Part 7: Brand advertising – This part explains the factors that would make an advertisement exempt from the restrictions as a “brand advertisement” under [The Advertising \(Less Healthy Food and Drink\) \(Brand Advertising Exemption\) Regulations 2025](#).
- Part 8: The identifiability test – This part explains how an individual advertisement that does not fall under one of the exemptions listed above will be assessed by the ASA to determine whether it is for an identifiable less healthy product.

1.4.3 – Where the less healthy product rules do not apply, advertisements for HFSS products must comply with the UK Advertising Codes’ rules on HFSS advertising. These restrict HFSS advertisements in media disproportionately popular with children and, where the advertisements are allowed, control the content of such advertisements, including by limiting their appeal to children.

**Commented [A1]:** Revised to further clarify how the structure of the document should be understood avoiding the implication that the tests must be applied in a certain order.

See Regulatory statement section 3.10.

## 2. The less healthy food and drink product advertising rules

### Television rule

BCAP Code rule 32.21 states:

Television programme services must not include advertisements for an identifiable less healthy food or drink product between 5.30am and 9.00pm.

### ODPS rule

CAP Code Appendix 2 rule 30.16 states:

Regulated on-demand programme services must not include advertisements for an identifiable less healthy food or drink product between 5.30am and 9.00pm.

### Online rule

CAP Code rule 15.19 states:

Persons must not pay for advertisements for an identifiable less healthy food or drink product to be placed on the internet.

## 3. Background

### 3.1 Status of this guidance

3.1.1 – This guidance has been produced to satisfy relevant statutory duties. The Communications Act 2003 requires the appropriate regulatory authority to draw up (and, from time to time, review and revise) guidance setting out its intentions concerning the exercise of its functions in relation to the less healthy product advertising restrictions. This statutory duty requires the drawing up of guidance in relation to the restrictions for ODPS (section [368C](#)) and online (section [368Z18](#)). The appropriate regulatory authority must consult the Secretary of State before drawing up or revising the guidance and publish it in such a manner so as to bring it to the attention of those likely to be affected by it.

3.1.2 – Although it supports compliance with less healthy product advertising rules that reflect legislation, this guidance does not constitute legal advice. It is ultimately the responsibility of regulated parties to ensure that advertising complies with the law.

3.1.3 – The ASA will have regard to the guidance when considering relevant advertisements, but the guidance does not limit the ASA's (or Ofcom's) discretion to decide whether advertising is compliant with the rules.

### 3.2 Ofcom's role

3.2.1 – Ofcom is the statutory body with responsibility for the less healthy product advertising restrictions under the Communications Act 2003. In July 2023, Ofcom [confirmed](#) the co-regulatory arrangements for each of the media covered by the restrictions, including the designation of the ASA as the appropriate regulatory authority for the online restrictions, responsible for their frontline enforcement.

3.2.2 – Under these arrangements, Ofcom retains statutory backstop powers. These may be used, for instance, where a party does not co-operate with the ASA, including by failing to comply with an ASA ruling, or failing to provide information. In such circumstances, the ASA can refer the matter to Ofcom, whose powers include taking enforcement action.

### 3.3 ASA's role

3.3.1 – The ASA is the independent body that administers the UK Advertising Codes, which are authored by the Committees of Advertising Practice (CAP and BCAP).

3.3.2 – In accordance with the designation of the ASA as the appropriate regulatory authority, responsible for frontline enforcement of the less healthy product advertising restrictions, the UK Advertising Codes have been revised to incorporate rules reflecting the relevant provisions of the Communications Act 2003. Under the terms of the designation, the ASA is responsible for producing guidance in relation to the ODPS and online

restrictions. Although these statutory duties relate only to the ODPS and online restrictions, the ASA will also have regard to the guidance in relation to television advertising.<sup>5</sup>

3.3.3 – The ASA asked the Committees of Advertising Practice, as the bodies that author the UK Advertising Codes, to develop this guidance on its behalf, although the ASA retains responsibility for it under the terms of the designation.

### 3.4 ASA approach to the assessment of advertising

3.4.1 – The ASA will apply the less healthy product advertising rules, in line with the parts of the Communications Act 2003 that they are based on, and the detailed criteria in the secondary legislation made under the relevant powers contained in the Communications Act 2003; in particular, in relation to the SME and brand advertising exemptions.

3.4.2 – In applying the identifiability test, the ASA will consider the advertisement from the perspective of a notional ‘average consumer’. A similar approach is applied by the ASA in other areas of advertising regulation, notably when considering whether an advertisement is likely to mislead as provided for under consumer protection law. In this case it involves the ASA assessing whether reasonably well-informed, reasonably observant and circumspect persons in the UK could be expected to be able to identify an advertisement as being for a less healthy product. When considering “person” or “persons” in the guidance below, the ASA will be informed by this [approach](#). **In applying provisions of the brand exemption (as set out in part 7 below), the ASA’s focus will be on the content of the advertisement.**

3.4.3 – In administering the less healthy product rules, the ASA will follow its established [case-handling processes](#). It will consider advertisements on a case-by-case basis, as they appeared at the time of complaint or at the time they were identified through the ASA’s monitoring.

3.4.4 – The ASA may seek advice from and/or refer relevant cases to Ofcom (for instance, in the case of serious or repeated non-compliance on the part of Ofcom-regulated media or online advertisers).

**Commented [A2]:** Revised to include an explanation of the approach to assessing advertisements under the brand exemption to avoid confusion with the approach to the identifiability test.

See Regulatory statement section 3.5.

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<sup>5</sup> The Advertising Standards Authority (Broadcast) Ltd exercises functions contracted out by Ofcom in respect of broadcast advertising. For the purpose of the less healthy product restrictions in ODPS and online, The Advertising Standards Authority Ltd is the regulator designated by Ofcom. For the purposes of this guidance, both are abbreviated to ASA. For more on the ASA system, see [here](#).



## 4. Determining products in scope

### 4.1 Applying the two-part test

4.1.1 – Less healthy food or drink products are those meeting a two-part test set out in the relevant legislation. They are products that:

- fall within one of the categories set out in the Schedule of [The Advertising \(Less Healthy Food Definitions and Exemptions\) Regulations 2024](#) ("the 2024 Regulations"), and are not an exempt product under paragraph 1 of that Schedule (broadly speaking, the **categories cover** soft drinks with added sugar, savoury snacks, breakfast cereals, confectionary, ice cream, cakes, biscuits, morning goods, desserts, sweetened yoghurt, pizza, potato products, complete meals, **ready meals, battered or breaded products and sandwiches**); and
- are classified as HFSS, scoring 4 or more points for a food, or 1 or more points for a drink, under the Department of Health and Social Care (DHSC) 2004-05 nutrient profiling model, as detailed in DHSC's January 2011 [Nutrient profiling technical guidance](#).

4.1.2 – Products that do not meet both parts of the test are outside the scope of the restrictions.

### 4.2 Product categories in-scope

4.2.1 – Guidance users should note that categories in the Schedule of the 2024 Regulations should be understood in accordance with [the Government's guidance on what products each category comprises](#); see [Restricting advertising of less healthy food or drink on TV and online: products in scope](#).

### 4.3 Nutrient profiling

4.3.1 – HFSS products are identified through nutrient profiling, which involves apportioning positive and negative scores to different nutritional aspects of a 100g reference amount of a product. HFSS products are those foods scoring 4 or more points, and drinks scoring 1 or more points. DHSC's [Nutrient Profiling Technical Guidance](#), which accompanies the 2004-2005 nutrient profiling model, provides detail on the nutrient profiling calculation, and includes a range of case studies and examples. This model has been in place for the purposes of BCAP's HFSS rules for television advertising since 2007, and for CAP's non-broadcast HFSS rules since 2017.

4.3.2 – Guidance users must have regard to the DHSC [Nutrient Profiling Technical Guidance](#) to demonstrate the status of their products showing they have made an appropriate assessment. This information should be available for the ASA to assess in the event that it has cause to investigate the advertisement's compliance with the relevant rules.

**Commented [A3]:** Revised to better reflect the product categories as set out in the schedule to the 2024 Regulations that support the LHF restrictions.

See Regulatory statement section 3.6.

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## 5. Nature of the advertiser

### 5.1 Small or Medium-sized Enterprise (SME) advertisers

5.1.1 – The television and ODPS rules do not apply to advertisements arranged by or on behalf of food or drink SMEs, and the online restriction does not apply where the person paying for an advertisement to be placed is a food or drink SME.

5.1.2 – Food or drink SMEs are defined in [The Advertising \(Less Healthy Food Definitions and Exemptions\) Regulations 2024](#) as those enterprises that carry on one or more businesses which involve or are associated with the manufacture or sale of food or drink during that financial year, and on the first day of the UK financial year, employ fewer than 250 people for the purposes of those businesses (including international and franchisee staff numbers).

5.1.3 – Guidance users should refer to the 2024 Regulations in relation to the application of the food or drink SME exemption. Any enterprise relying on the SME exemption should keep evidence of its eligibility available, in the event that the ASA investigates an advertisement's compliance with the rules.

5.1.4 – Guidance users are reminded that HFSS food or drink advertisements by an SME must still comply with the UK Advertising Codes' HFSS restrictions.

### 5.2 Non-SME advertisers

5.2.1 – As the restrictions apply to advertisements for identifiable less healthy products, advertisers most obviously in scope of the rules are larger businesses (250 or more employees) involved directly in the supply of relevant food or drink products (for example, manufacturers, retailers or outlets like restaurants and takeaways).

5.2.2 – The legislation, however, makes no further distinction between different types of advertiser. As such, advertisements by any non-SME party are potentially in scope of the rules irrespective of whether they are directly involved in the supply of food or drink products. The ASA will assess all such advertisements in line with the identifiability test and provisions exempting brand advertising.

### 5.3 Co-advertising with a supplier of food or drink products

5.3.1 – Advertisements solely by or on behalf of businesses not involved directly in the supply of food or drink are highly unlikely to be subject to the rules, even if the content of the advertisements features food and drink product-related references like generic imagery of food or drink products. For example, a car manufacturer advertisement, which incidentally portrays characters eating less healthy products as part of the advertisement's narrative, is highly unlikely to amount to an advertisement for an identifiable less healthy product because of the way people are likely to perceive the content in the context of an advertisement promoting a non-food or drink product.

5.3.2 – However, where such advertisers engage in a joint advertisement with a non-SME business that is involved directly in the supply of food or drink products, the advertisement is more likely to fall in scope of the rules because of how the involvement of such a party is likely to influence the content of the advertisement and the audience's understanding of what it is for under the identifiability test. In applying the online restrictions, the party (or

parties) paying for an advertisement to be placed is responsible for ensuring compliance with the rules.

#### 5.4 Delivery services, aggregators and other intermediaries

5.4.1 – Particular care should be taken in relation to advertising by food and drink delivery services, aggregators and the like. Although they do not normally supply their own products, they provide consumers the food and drink products of other companies (such as restaurants offering takeaways).

5.4.2 – Such advertisements that depict or refer to a less healthy product available through a delivery service, aggregator or similar service risk falling within scope of the rules (subject to assessment under other provisions of the guidance).

5.4.3 – Advertisements by a non-SME delivery service, aggregator or similar service on behalf of a food or drink SME associated with their service will not benefit from the SME exemption where the advertisement promotes the products of the non-SME party, if the advertisement falls within scope under the wider provisions of this guidance (subject to 5.4.4 below).

5.4.4 – Advertisements, such as sponsored or enhanced product listings, on a non-SME delivery service, aggregator or similar service's website or app, fall under the SME exemption where the sole person paying for the advertisement is a food or drink SME (see also paragraph 6.3.6 below on product listings).

#### 5.5 Responsibilities for securing compliance

5.5.1 – Ofcom-regulated television broadcasters and ODPS providers are responsible for compliance with the less healthy product advertising rules applying to their respective media. They should satisfy themselves that advertisements on their services comply with the applicable rules.

5.5.2 – Advertisers are responsible for ensuring their own compliance with the online rule. This includes food or drink SMEs ensuring that they hold necessary information to demonstrate their exempt status as set out in [The Advertising \(Less Healthy Food Definitions and Exemptions\) Regulations 2024](#) (see also paragraph 6.3.4 below on the liability of other parties involved in advertising campaigns).

**Commented [A4]:** Revised to clarify that ads like product listings by the delivery service on its own website or app are not within scope.

See Regulatory statement section 3.7.

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**Commented [A5]:** Revised to clarify that ads by the delivery service on its own website or app on behalf of an SME are not within scope (as is the case for retail listings by the retailer).

See Regulatory statement section 3.7.

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See Regulatory statement section 3.7.

## 6. Media and scope

### 6.1 Television rule

6.1.1 – BCAP Code rule 32.21 applies to advertisements for identifiable less healthy products included in Ofcom-licensed television services between 5:30am and 9:00pm.

6.1.2 – Rule 32.21 will be applied in line with the BCAP Code, which sets out its remit over advertisements in Ofcom-licensed television services in the Code's ['Introduction'](#) (see (a)). The rule does not apply to commercial references in editorial content.

6.1.3 – The restriction, as set out in section [321A](#) of the Communications Act 2003, also applies to advertisements under a sponsorship agreement, and anything else under a sponsorship agreement that is included in a television service, for example, programme sponsorship credits. Such content is regulated by Ofcom under [Section Nine](#) of Ofcom's Broadcasting Code (*'Commercial references on TV'*). The ASA will refer complaints or other intelligence concerning sponsorship to Ofcom.

### 6.2 ODPS rule

6.2.1 – CAP Code [Appendix 2](#) rule 30.16 applies to advertisements for identifiable less healthy products included in Ofcom-regulated ODPS between 5:30am and 9:00pm.

6.2.2 – Advertising "included" in a regulated on-demand service is defined as advertising that can be viewed by a user of the service as a result of the user selecting a programme to view. Advertisements that appear on the service, but not as a result of the user selecting a programme to view, are not in scope of the ODPS rule, but are likely to be subject to the online rule (see 6.3 below).

6.2.3 – Rule 30.16 does not apply to commercial references in editorial content.

6.2.4 – The restriction, as set out in section [368FA](#), also applies to sponsorship announcements included in Ofcom-regulated ODPS. These are regulated by Ofcom under its [ODPS Rules and Guidance](#), which includes provisions reflecting the legislation. The ASA will refer complaints or other intelligence about sponsorship announcements to Ofcom.

### 6.3 Online rule

6.3.1 – CAP Code rule 15.19 applies to paid-for advertisements for identifiable less healthy products placed on the internet where the advertisement is intended to be accessed principally by persons in the UK.

6.3.2 – The legislation (section [368Z14](#) of the Communications Act 2003) does not specify the types of media covered by the restriction. It states that: *a person must not pay for advertisements for an identifiable less healthy food or drink product to be placed on the*

internet.<sup>6</sup> “Paying” includes providing any consideration, whether monetary or non-monetary. “Placed” includes advertisements that continue to be placed and paying under a sponsorship agreement that results in an advertisement being placed.

6.3.3 – When considering the application of the rule, the ASA will assess whether payment has resulted in placement of what can reasonably be considered an advertisement by or on behalf of the party paying.

6.3.4 – The ASA recognises that advertisers ordinarily pay online publishers, media owners and/or other intermediaries (for example, agencies) to place online advertisements on their behalf. In these circumstances, the advertiser will be held responsible for securing compliance.

6.3.5 – As the prohibition applies only to paid for advertising, Rule 15.19 will not apply to advertisers’ own marketing communications appearing on their own websites (for example, online groceries platforms, customer service sites, loyalty scheme portals, or corporate and social responsibility sites), or in other non-paid-for space online under their control such as marketers’ own social media channels or apps where no payment for the placement of an advertisement is involved.

6.3.6 – However, there are circumstances where marketing communications appearing in such spaces could be within scope. For example:

- Product listings – Listings such as those on retail sites (for example, a supermarket) or delivery apps are ordinarily out of scope as they are communications in an advertiser’s own media space. However, different considerations apply where the underlying commercial relationship (involving payment or a reciprocal arrangement) with the manufacturer or supplier relating to the supply of products for sale that includes a requirement for the placement of a product listing that could reasonably be considered an advertisement involving a manufacturer or supplier. This could be because, as a result of the commercial relationship, the listing is afforded enhanced prominence on the site, app or in search results. The ASA will consider the terms of the commercial relationship and, in particular, whether a listing has been placed in a manner different to ordinary, organic product listings. The ASA will not consider the provision by the manufacturer or supplier of product information (including imagery) for use by the party publishing a product listing, as evidence of payment to place an advertisement having been made.
- Social media – Posts solely by companies from their own social media accounts will not be within scope provided payment is not involved in the placement of posts. Paid-for ‘promoted’ or ‘boosted’ posts are examples of social media content that meets the payment test.

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<sup>6</sup> The term “online” is used in this guidance as a general descriptor for the CAP Code rule. When considering whether a particular communication is within scope, the ASA will apply the test in line with the wording set out in legislation. This is relevant in circumstances such as media where advertising is delivered by online or digital means, but advertisements appearing in the medium cannot reasonably be considered to have been “placed on the internet” (for instance, outdoor or instore display boards or screens).

- Influencer marketing – CAP Code rule 15.19 prevents a person paying for an advertisement for an identifiable less healthy product to be placed on the internet, where “paying includes providing any consideration, monetary or non-monetary”. This is likely to include reciprocal and affiliate relationships and arrangements such as the gifting of products. Where consideration is provided for an influencer to create content for publishing on the internet that depicts a specific less healthy product and to publish it on the influencer’s social media channels, the resulting content is likely to be prohibited.
  - Most obviously, where the advertiser reaches an arrangement to pay, an influencer to create such content and to post it on a social media channel that is owned and operated by the influencer, that would be deemed to be paying for an advertisement to be placed on the internet resulting in the influencer’s content being within scope. Examples of an arrangement include a written or oral contract or other agreement stipulating payment for posting. However, if an influencer is paid by an advertiser to create and/or feature in an advertisement that will be posted on the advertiser’s own social media channels, it is unlikely to be within scope because placement of the advertisement has not been paid for.
  - In the case of an influencer creating and disseminating content following an advertiser gifting them a product, the ASA will assess the precise circumstances resulting in the content being created and how and where it was disseminated, including the presence of any arrangement between the parties to determine whether the gifting, which is likely to be considered non-monetary consideration, has been made ‘for’ influencer content (i.e. whether an influencer has been paid to place an advertisement on the internet).

**Commented [A7]:** Revised to clarify that arrangements like gifting and affiliate deals are likely to fall under “consideration”.  
See Regulatory statement section 3.8.

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**Commented [A8]:** Revised to clarify reference to “their social media” and avoid confusion between social media bullet and influencer bullet over different types of ‘own’ media (the influencer’s and an advertiser’s).

See Regulatory statement section 3.8.

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6.3.7 – The ASA will have regard to underlying contractual arrangements between the party paying for an advertisement and others involved in its preparation and publication to assess whether an advertiser has paid to place an advertisement on the internet for an identifiable less healthy product.

6.3.8 – Exemptions to online rule – There are several exemptions from the online rule reflecting the legislation. Guidance users should refer to the relevant sections of the Communications Act 2003 and [The Advertising \(Less Healthy Food Definitions and Exemptions\) Regulations 2024](#).

6.3.9 – In summary, the exemptions cover advertisements:

- on the internet which are not intended to be accessed principally by persons in the UK;
- directed solely at persons who are engaged in, or employed by, a business which involves or is associated with the manufacture or sale of food or drink;
- in services connected to a regulated radio service, where visual advertisements for less healthy products included in the connected service are not to be treated as part of that service, and where the connected service is:
  - provided by means of the internet; and
  - corresponds to a service broadcast by a relevant radio service (i.e. the majority of the audio items included in the connected service are broadcast on

the relevant radio service at the same time as they are provided by the connected service; a relevant radio service is a radio service regulated by Ofcom);

- included in other online audio services and that are not visual advertisements;
- included in a television licensable content service, which is a regulated television service (these are subject to rule 32.21 of the BCAP Code);
- included in an unregulated television licensable content service, which:
  - is provided by means of the internet; and
  - corresponds to a regulated television service (i.e. all the programmes, including advertisements, provided by the regulated television service are provided at the same time on both services); and
- included in regulated on-demand programmes services (these are subject to rule 30.16 in Appendix 2 of the CAP Code, as detailed immediately above).

6.3.10 – The ASA considers the exemption for online advertisements which are not intended to be accessed principally by persons in the UK is broadly consistent with the [approach](#) taken by the CAP Code (see '[Scope of the Code](#)' II (c)).

6.3.11 – II (c) of the CAP Code clarifies that marketing communications on websites, apps and cross-border platforms (for example, social media platforms or retail platforms) are outside the Code's remit unless they meet at least one of the following criteria:

- Non-paid-for marketing communications from or by marketers with a UK registered company address.
- Marketing communications appearing on websites with a ".uk" top-level domain.  
Paid-for marketing communications from or by marketers targeting people in the UK.

**Commented [A10]:** Revised to make clear BCAP Code applies to ads appearing in this media.

See Regulatory statement section 3.8.

## 7. The brand advertisement exemption

### 7.1 Overview

7.1.1 – The less healthy product advertising rules reflect the relevant provisions of the Communications Act 2003 and prohibit advertisements for identifiable less healthy products, as detailed in part 8 below. However, an advertisement may be exempt from the restrictions, either because it: (a) is for an out-of-scope product; (b) is by or on behalf of a food or drink SME; or (c) appears in out-of-scope media.

7.1.2 – Additionally, [The Advertising \(Less Healthy Food and Drink\) \(Brand Advertising Exemption\) Regulations 2025](#) create an exemption from the less healthy product advertising restrictions for “brand advertisements”.

7.1.3 – “Brand Advertisement” means an advertisement that promotes a brand, including the brand of a range of products, provided that the advertisement in question does not fall under one of three provisions (regulations 2(3), 2(4) or 2(5)) that set out the types of advertising content that are deemed to depict a specific less healthy product.

7.1.4 – A “range of products” means a group of related food or drink products (whether or not those products are less healthy) and such group may include a group of products composed of variants of a product, such as different flavours, but may not include a group of products where such products are differentiated only by pack size or packaging format, such as carton, tin, block or bag. For example, chocolate differentiated only by pack size or packaging format will not fall within “range of products”.

7.1.5 – The brand advertisement exemption does not apply in the circumstances discussed in 7.2, 7.3 or 7.4 following, where the identifiability test is met (as explained in part 8 below). The ASA will expect marketers seeking to rely on these provisions of the brand advertising exemption to provide information to demonstrate that they meet them.

### 7.2 Depiction of a specific less healthy product

7.2.1 – An advertisement the content of which depicts a specific less healthy product or products is not a brand advertisement and therefore does not fall within the brand advertising exemption (regulation 2(3)).

7.2.2 – “Depict” means to represent by way of name, text, imagery, logo, audio cue, jingle, brand character or other branding technique or combination of branding techniques.

7.2.3 – A “specific” product means a food or drink product which:

- is capable of being purchased; and
- is differentiated from other products capable of being purchased, unless it is only differentiated from such other products by pack size or packaging format such as carton, tin, block or bag.

7.2.4 – Guidance users should exercise caution when including food or drink products or product-related imagery or references in a brand advertisement. For example, an advertisement including:

**Commented [A11]:** Amended to make clear not all circumstances following are exempt from the brand exemptions.

See Regulatory statement section 3.9.

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- Imagery of a specific less healthy product (for example, a pack shot) will not fall under the brand advertising exemption. The same is likely to be the case for imagery of parts of a product or other characteristics that are unique to a specific less healthy product.
- Imagery representative of a specific less healthy product (such as brand characters that are personifications of a specific less healthy product) would not fall under the brand advertising exemption. However, imagery that is instead representative of a brand or a range of products, that does not depict any specific less healthy product within the range, is likely to fall under the brand advertising exemption.
- Generic product imagery (such as a stylized or abstract representation of a type of product, or ingredients being used in preparation) is likely to fall under the brand advertising exemption provided the imagery is sufficiently distinct from a specific less healthy product supplied by the advertiser; for example, the image does not convey enough information to denote a particular flavour variant within a range of products. This is, however, subject to regulation 2(5) – see 7.4 below.
- Generic product-related imagery such as an item of packaging common to several products within a range is likely to fall under the brand advertising exemption. However, the brand exemption is unlikely to apply where the advertisement includes further information that has the combined effect of denoting a particular variant within the range such as creative content pointed to a specific flavour variant of a less healthy product. This is, however, subject to regulation 2(5) – see 7.4 below.

7.2.5 – Where a specific less healthy product is not depicted directly, guidance users should take care to ensure that the combination of brand techniques deployed (for instance, the identification of a range of products combined with a unique colour scheme or theme associated only with a specific less healthy product within that range) do not, taken together, result in an advertisement which depicts a specific less healthy product.

7.2.6 – An advertisement may depict a specific less healthy product through branding techniques or combinations of branding techniques relating to a such a product. Guidance users should exercise caution when using branding as certain approaches might result in an advertisement that has the effect of depicting a specific less healthy product meaning the advertisement will not benefit from the brand advertising exemption.

- If an advertisement includes a piece of branding like logos, livery or jingles relating to a company or a range of products, but does not include branding references related only to a specific less healthy product, the advertisement is likely to fall under the brand advertising exemption.
- An advertisement that includes a piece of branding that is related only to a specific less healthy product (such as a specific product's logo) would not fall under the brand advertising exemption because it would be deemed to depict a specific less healthy product (subject to 7.2.7 following).

7.2.7 – However, regulation 2(3)(a) does allow product depictions that are only by way of the name of the product, including where the name of the product appears in the logo of a company, franchise or other commercial entity or in the logo of a brand of a range of products that also fall under the provisions of regulation 2(6) as detailed in paragraph 7.3.2 below.

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**Commented [A12]:** Revised to clarify that caution is necessary as branding might result in an ad not falling under the exemption.

See Regulatory statement section 3.9.

### 7.3 Brand names that are also the names of specific less healthy products

7.3.1 – The brand advertising exemption does not apply to “an advertisement that promotes a brand the name of which is the name of a specific less healthy food or drink product” (regulation 2(4)). For example, an advertisement including:

- the name of a brand that is exactly the same as the full name of a specific less healthy product will not fall under the brand advertising exemption.
- the name of a brand of a range that is exactly the same as the full name of a specific less healthy product will not fall under the brand advertising exemption.
- the name of a range that is a common part of the names of all product variants supplied under it, but is not the full name of a specific less healthy product (for instance, each product variant has a further named descriptor, like a flavour), will fall under the brand advertising exemption.

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7.3.2 – However, there are exceptions to the provision detailed in paragraph 7.3.1. The brand exemption will still apply to advertisements for brands which name a specific less healthy product where the full name of that product:

**Commented [A13]:** Amended to clarify that 7.3.2 is subsidiary to the main provision in 7.3.1.

See Regulatory statement section 3.9.

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- is the name or is included in the name of a company, franchise or other commercial entity which was established before 16th July 2025 and which held that name immediately before that date (regulation 2(6)(a); or
- is the name of the brand of a range of products, where that brand was in use, as the brand of that range, for the purposes of marketing, advertising or retail sale immediately before 16th July 2025, and held that name immediately before 16th July 2025 (regulation 2(6)(b)).

### 7.4 Realistic imagery

7.4.1 – The brand advertising exemption does not apply to an advertisement the content of which includes a realistic image of a food or drink product where—(a) the realistic image shows the food or drink itself and is not only of the product’s packaging, and (b) the food or drink product is visually indistinguishable from a specific less healthy food or drink product (regulation 2(5)).

7.4.2 – This is particularly relevant to advertisements where marketers are seeking to use realistic imagery of specific less healthy products in the role of generic imagery; for example, in the background of a creative providing context to the main message of the creative.

**7.4.3** – If an advertisement includes a realistic image, such as a photograph or video imagery of a product without packaging that is from a range of products that includes both in and out of scope variants that are visually indistinguishable from one or more specific less healthy products, the advertisement should include additional information to make clear that the product shown is a non-less healthy variant (for example, the product’s name or other identifier of the specific product variant).

**Commented [A14]:** Amend to correct wording to align with the law and add an example of what “additional information” entails.

See Regulatory statement section 3.9.

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7.4.4 – A “realistic image” means a photograph, a video recording, or an image, whether still or moving, and however created or altered, that is so realistic as to make it indistinguishable, for all practical purposes, from a photograph or video recording. Guidance users should exercise caution over use of realistic forms of product imagery.

## 8. The identifiability test

### 8.1 Overview

8.1.1 – The test determining whether an advertisement is covered by the restrictions is set out in law and states that a less healthy product is "identifiable", in relation to advertisements, if persons in the United Kingdom (or any part of the United Kingdom) could reasonably be expected to be able to identify the advertisements as being for that product.

8.1.2 – If none of the exemptions detailed in parts 4, 5, 6 and 7 (above) apply, an assessment of the advertisement under this part of the Guidance is needed to ascertain if it is likely to be restricted under the less healthy product advertising rules because it meets the identifiability test.

### 8.2 Applying the identifiability test

8.2.1 – The ASA will place weight on the content of the advertisement and what people are likely to perceive the advertisement is for. It will assess an advertisement from the perspective of a notional 'average consumer', and not on the advertiser's likely or expressed intent in terms of the advertisement's promotional message. The ASA will assess whether reasonably well-informed, reasonably observant and circumspect persons in the UK could be expected to be able to identify an advertisement as being for a less healthy product.

8.2.2 – Because references in the rules and guidance in the singular ("that product") are taken also to include the plural ("those products"), and vice versa, the ASA will also consider whether an advertisement includes content that also meets the test in relation to two or more specific less healthy products.

- Most straight-forwardly, a clear and prominent inclusion of a specific less healthy product as the focus of the advertisement's promotional message is highly likely to result in the advertisement meeting the identifiability test. For example, text or audio references to a specific less healthy product, imagery of a specific less healthy product in its packaging, or imagery of a less healthy product, which although it is not featured in its packaging, features clear characteristics of that product, like a distinctive product shape, marks, or other design features.
- Following on from this, advertisements deemed to be for one or more specific less healthy products (even if the advertisement also includes non-less healthy products) will meet the identifiability test.
- As "product" also includes the plural, the identifiability test can be met by advertisements that include references that distinguish specific variants of a less healthy product. For example, an advertisement that does not prominently feature products within the range but does include identifiers relating to specific products, which are likely to lead the audience to identify the advertisement as being for specific flavour variants within the range, would likely meet the identifiability test and would not be exempt under the brand exemption.
- In assessing prominence, the ASA will consider factors such as the positioning of product references within an advertisement (in the foreground or background, for example), the duration of their appearance, and how people's attention is drawn to

**Commented [A15]:** Revised by adding a further bullet (below) clarifying that product references that are not sufficiently prominent are unlikely to result in ad meeting the identifiability test.

See Regulatory statement section 3.10.

them. Imagery of less healthy products that people are unlikely to be able to recognise when viewing an advertisement in real time are unlikely to meet the identifiability test. This could be because the product is shown very briefly in the advertisement, or because it is in the background of an advertisement resulting in it not being discernible. For example, advertisements that include fleeting references to less healthy products in the context of general imagery of supermarket shelves, or food or drink products on tables in a restaurant or as part of a retailer creative promoting their Christmas offerings.

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8.2.3 – The identifiability test can also be met in scenarios where an advertisement does not directly refer to or depict a less healthy product. For example, if the content includes a piece of branding that relates to a range of mostly less healthy products, or a combination of factors, like a company logo and imagery relating to a type of less healthy product it is known for supplying, it is likely that persons in the UK could reasonably be expected to be able to identify the advertisement as being for a less healthy product. “Branding” should be understood in a broad sense to encompass a diverse range of content and techniques used in advertising, such as logos, livery, straplines, fonts, colour schemes, characters, audio cues and jingles. The brand advertising exemption applies in the situations outlined above, where no specific less healthy product is depicted, but if such an advertisement does not fall under one of the exemptions outlined above, it may be restricted.

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