Action on Salt and Sugar Response to the Advertising Standards Authority Consultation on the implementation of the "less healthy" food and drink product advertising restrictions

About Action on Salt and Sugar
Action on Salt and Sugar is a non-profit organisation working to improve population health and food environments through impactful food and drink nutritional research. We inform policy, influence the food industry, raise awareness, and build advocacy for salt and sugar reformulation.

As members of the Obesity Health Alliance, we would like to direct you to their detailed submission and evidence and reiterate some key points below.

Question (i – iii)
We agree the wording accurately reflects the relevant legislation.

Question (iv)
We broadly agree that the guidance in Part 3 accurately reflects the relevant legislation.

We are however concerned that the new draft guidance, which provides businesses with a brand exemption, does not encourage the promotion of healthier products or incentivise reformulation, and risks diluting any intended public health impact. Research has demonstrated the effect that brand only advertising has on increasing consumption of unhealthy products, contributing to excess calories and weight gain.

Local governments and Transport for London have restricted brand only advertising, with noted success and impact. This demonstrates the industry's ability to change their advertising strategy, enabling them to successfully comply with brand only restrictions. To ensure the guidance remains aligned with the policy's original purpose, we support the OHA's proposed wording to bring the balance back in favour of encouraging healthier options rather than simply protecting brand equity.

Proposed addition: *"In line with the policy intent of the less healthy food and drink restrictions, advertisers should prioritise the promotion of healthier products and reformulated lines within their portfolios. The brand advertising exemption should not be used to promote or sustain brand recognition primarily associated with less healthy products. Where advertisers have both healthier and less healthy ranges, use of the exemption should clearly support the communication of brand attributes linked to the company's healthier offerings or its commitment to product improvement."*

Question (v)
We broadly agree that the guidance in Part 4 reflects the intent of the legislation. However, we recommend that the section on determining products in scope be strengthened to ensure clarity and consistency of interpretation. Specifically, any products - whether depicted as generic, photorealistic, or stylised - that fall within one of the listed less healthy food and drink

categories, should be presumed to represent a less healthy variant unless explicitly stated and demonstrated otherwise.

This would prevent ambiguity in assessing whether creative content featuring common food types (for example, pizzas, confectionery or burgers) should be considered in scope. This approach aligns with the spirit and letter of the legislation and ensures that advertisers do not inadvertently breach the restrictions through ambiguity. It also complements the overarching policy aim - to reduce children's exposure to less healthy food and drink marketing, regardless of presentation format, and will reduce the burden on the ASA.

Question (vi)
We broadly agree that the guidance in Part 5 is clear and reflects the intent of the legislation. However, we are concerned with the wording in 5.4.3 of the television ODPS – Advertisements by a non-SME delivery service, aggregator or similar *service on behalf of a food or drink…* To future-proof the policy and maintain its integrity, we recommend the guidance to explicitly clarify how compliance will be monitored and enforced on television and ODPS. This would help ensure that large intermediaries cannot act as vehicles for SMEs to collectively advertise less healthy products under the guise of exemption.

For clarity it is worth also adding that this is for television and ODPS rules only. Online, the exemption for SMEs is only applicable where the person paying is at the time when the payment is made, a food or drink SME. The exception does not extend to those paying on behalf of a food or drink SME.

Question (vii)
We broadly agree that the guidance in Part 6 is clear and reflects the relevant legislation. However, the section on influencer marketing (6.3.6) could be strengthened to reduce the risk of circumvention.

The ASA has stated they will assess each case based on the specific circumstances; however, this opens up concerns over practicality of enforcement - including whether monetary or non-monetary consideration has been made "for" influencer content. Given the dynamic and fast-evolving nature of influencer marketing, it is important to future-proof the guidance and ensure consistency of enforcement across broadcast, online, and influencer media. Without such clarity, there is a risk that the same marketing message could be restricted on one platform but permitted on another.

We recommend adding a clarifying statement along the following lines:
Proposed addition:
"Where an influencer has received products, benefits, or incentives from a brand including gifts, services and experiences, this should normally be treated as advertising for the purposes of these regulations, irrespective of whether an explicit oral or written contractual arrangement exists."

This would bring the guidance in line with ASA principles on transparency and consumer protection, while ensuring the policy's intent - to reduce children's exposure to less healthy food and drink marketing - is applied consistently across all media.

Question (viii)
We do not agree that the guidance in Part 7 is clear or fully aligned with legislative intent. While we recognise that the ASA's interpretation of the brand advertising exemption is largely consistent with the current legal position, the guidance as drafted leaves significant ambiguity around what constitutes a "brand" and the extent to which brand-related imagery, packaging, or sub-brands "brand of a range of products" fall within scope.

Key concerns include:
1. Unclear definitions of "range" and "brand" vs "specific product"
'Range' and 'brand' are undefined in practice. Sub-brands or minor variants e.g. flavours, shapes and limited editions) could be grouped as a 'range' to claim, exemption. For example, *Cadbury Dairy Milk* is widely understood to be a specific product and fits the ASA's definitions as a product that "is capable of being purchased", but the existence of variants such as Fruit & Nut or Daim could allow the company to argue that "Dairy Milk" is a *brand of a range of products*. The same could be said for Dairy Milk buttons, which has also been developed into multiple shapes and flavours like mint, orange and twisted, but again, "Dairy Milk buttons" is also a purchasable item.

The ASA must clearly define 'brand of a range of products', to exclude short-term, seasonal or limited-edition products, as well as products not widely available in UK retail space. It must also specify that sub-brands or product lines that are commonly understood as specific purchasable products are not eligible under the brand exemption. This will prevent a loophole that rewards portfolio engineering over health outcomes.

2. Equity brand characters
Equity characters closely tied to less healthy products could be repurposed to qualify as a 'range', again undermining the policy.

The ASA's guidance on equity brand character is welcome recognition of the association and influence this form of marketing has. It is good to see that these are being recognised as an extension of the unhealthy product and are therefore not granted a brand exemption. However, it is important that the ASA recognises the risk of not setting out how and when the character is used after July 2025. The ASA must prevent this by stating that the brand equity character has to have been in equal use with each of the products within the range before July 2025.

3. Unfair advantage to brands with formal range naming
Complex vertical brand architectures gain exemptions that simpler brands don't, irrespective of product healthiness. This creates an uneven playing field, privileging established branding

strategies and penalising simpler or more transparent labelling (Please refer to the OHA's submission for detailed examples and illustrations for how this could be problematic).

It is welcome to see that the Government has added in an expiration on the definition of a brand of a range of products, by stating that it only applies where it was in use before 16th July 2025. As a regulator that aims to be proportionate and consistent, the ASA must bring in regulation which ensures that every company is given opportunities, especially when they are moving closer to better alignment with the government's policy aims - by creating healthier products. It should not be the case that older companies are given advertising privileges to advertise their unhealthy ranges while newer companies - especially those marketing relatively healthier products - cannot.

We therefore recommend that the guidance be strengthened to:

- explicitly distinguish between brand-level advertising and sub-brand or product-line promotion.
- Explicitly state that any products that are temporary (e.g. seasonal)/limited offer/stunts/not widely available in Major Grocery Retailers to purchase on a UK retail site will not be considered as part of a range of products. NB this approach is line with ASA's current approach on promotional pricing
- clarify that any brand imagery, packaging or creative device that evokes a specific less healthy product should bring the advert within scope; and
- suggest that the exemption should not apply where a brand or corporate identity is primarily or predominantly associated with less healthy products.
- Suggest that where a healthier product exists within a 'brand of range of products', that product must be advertised instead of using the brand exemption

This would limit the risk of erosion or expansion of the exemption over time, maintain consistency with the policy's original intent to incentivise the promotion of healthier products, and protect the regulation's long-term public health impact.

4. Generic Packaging/imagery

There is concern that 'generic' pack shots (Figure 1) can effectively identify a specific, less healthy product while claiming exemption. Under the current guidance, such packaging may fall under the brand advertising exemption, even though consumers could reasonably interpret it as promoting a particular less healthy product.

Figure 1. McDonald's distinctive wrapper with cheese

We recommend that for both the ASA's workload and the ambitions of the policy, this loose interpretation to comply with the brand only advertising exemption is not granted, and that packaging, shapes and distinctive get up that an average viewer would link to a specific less healthy product, be treated as in-scope.

Proposed wording:
"Generic product-related imagery, including packaging, product shapes or distinctive presentation, that would reasonably be interpreted as a specific less healthy product renders the advertisement in-scope."

5. Combination of brand cues

We are concerned that clause 7.2.5 allows for too much flexibility, allowing for broad use of colours, themes, jingles, etc, provided the less healthy product isn't 'directly' depicted. This leaves ample room for indirect identification, and risks undermining the policy.

This narrow interpretation may also create an unfair commercial advantage for some businesses. For example, own-label retailers, delivery platforms and out-of-home providers are far more likely to advertise 'non-specific' (but still less healthy) products without branding, meaning their products evade restrictions simply due to presentation. There is no evidence that "non-specific" less healthy products are any less harmful than "specific" ones, or that they are any less likely to influence purchasing behaviour, brand loyalty, or children's dietary choices.

We also note that the current government definition of "less healthy" is already narrow, as it excludes many well-known less healthy categories such as chocolate spreads and sausage rolls.

Proposed wording:
"Any branding, packaging, imagery, or combination of creative techniques that could reasonably be interpreted as representing a specific less healthy product should be treated as in scope and not exempt"

6 Correct spelling in 7.3.1

Please correct the third bullet to:

- 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*), **and*** will fall under the brand advertising exemption

7. Legacy names

The guidance is in line with the legislation which introduces exemptions for brands that existed before 16 July 2025, either as part of a company, franchise, or pre-existing product range. There is no definitive registry distinguishing brands from product ranges, but evidence from trademark registrations, product listings and marketing strategies may provide understanding. We are concerned that pre-16 July exemptions will risk entrenching legacy less health product brands, and penalising newer, potentially healthier entrants.

Clear guidance is needed here to prevent legal complications and misuse of the exemption by brands retroactively claiming status for less healthy products. The proof for the purposes of marketing, advertising or retail sale immediately before 16 July 2025 must be supplied and independently verifiable.

8. Realistic images

We understand clause 7.4.1 to mean that if a realistic healthier product closely resembles a less healthy product, it could be interpreted as promoting the less healthy version, and that advertisers should make it clear that it is for a healthier product. However, it is unclear where the line falls between a product looking like a specific less healthy product versus a generic less healthy product.

For clarity, to minimise risk, and to reduce the burden on the ASA, we recommend that the guidance:

- advise advertisers to exercise caution when using imagery that could reasonably be perceived by an average viewer as a specific less healthy product, whether or not it meets the statutory definition of "realistic"; and
  encourage that where a product is featured in an advertisement and is not a product for sale, advertisers should use healthier versions of foods and products to avoid falling within this clause.
- Include 'product shape' as well as 'flavour variants'

Proposed alternative wording:

"Any image that is recognisable as a specific less healthy food or drink product, whether in or out of its packaging, should be considered in scope."

While we recognise that the current wording is set out in the statutory instrument, and think the addition of 'the advertisement should include additional information to make clear that the product shown is a non-less healthy variant' is very helpful, these practical clarifications would

help advertisers apply the rules consistently, reduce the risk of inadvertent breaches, and better protect the policy's public health objectives.

Question (ix)
We broadly agree with the wording of the guidance, however it needs to be clearer, fuller and future-proofed, and it should reflect the child-health purpose of the policy.

In the DHSC brand exemption consultation, a longer list of factors was provided to help determine whether content depicts a product, including:

- Name of the product (unless the name is the same as the brand name, pre-16 July 2025)
- Text
- Imagery
- Audio cues
- Jingles
- Livery
- Straplines
- Fonts
- Colour schemes
- Characters
- Other branding techniques

We propose this list be expanded to include:
"Or new creative techniques which aim to build recognition, brand equity, loyalty, emotional response, or similar associations, and any combination of the above."

Finally, we question the appropriateness of the ASA using a *"reasonably well-informed, reasonably observant and circumspect persons in the UK"* to be the standard bearer of whether an advertisement is for a less healthy product in a child health policy, The aim of which is to reduce the influence of unhealthy food advertising to improve children's health, and therefore the policy needs to be applicable to the impact advertising has on children. They would be unlikely to meet the definition of the ASA's standard bearer, and yet, the advertising will and does have impacts on them, as well evidenced. The ASA must reconsider how they interpret the Government's reference to "persons" in the context of the policy.

1

Advertising Association response to CAP and BCAP consultation on the implementation of the "less heathy" food and drink product advertising restrictions

About the Advertising Association

The Advertising Association welcomes the opportunity to respond to this consultation on 'Implementing further restrictions on advertising for "less healthy" food and drink products'.

The Advertising Association brings together the UK's advertising industry to promote the role and rights of responsible advertising – advertising that is trusted, inclusive and sustainable – and its value to people, society, businesses, and the economy.

We bring together the advertisers, agencies, commercial media, ad tech companies, online platforms, through their trade associations to reach a consensus on the issues that affect them. We develop and communicate industry-wide positions for politicians and opinionformers, and publish industry research through advertising's think-tank, Credos, including

the Advertising Pays series which has quantified the advertising industry's contribution to the economy, culture, jobs and society.

About the AA's response

1. We would like to thank the team at CAP / BCAP for their continued work on this issue and for their ongoing engagement with stakeholders ahead of the January 2026 statutory implementation date.

2. Our response to this consultation is focused on key issues and concerns raised by our members and reflects areas where the wording is perceived as unclear or where they would welcome additional information.

3. Wording and paragraphs which are not commented on should be understood to be acceptable to our members.

Questions regarding the TV, ODPS, and online rules

Question (i) – Do you agree that the proposed wording of the TV rule (32.21) set out in 3.4 above and as it appears in Annex A adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective

4. Yes, we agree.

Question (ii) – Do you agree that the proposed wording of the ODPS rule (30.16) set out in 3.5 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective

2

5. Yes, we agree.

Question (iii) – Do you agree that the proposed wording of the online rule (15.19) set out in 3.6 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more

effective
6. Yes, we agree.
Questions regarding the proposed implementation guidance
Question (iv) – Do you agree that the guidance set out in part 3 (Background) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective
7. Yes, this part of the guidance is clear and properly reflects the relevant legislation.
Question (v) – Do you agree that the guidance set out in part 4 (Determining products in scope) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective
8. Yes, this part of the guidance is clear and properly reflects the relevant legislation.
Question (vi) – Do you agree that the guidance set out in part 5 (Nature of the advertiser) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective
9. Yes, this part of the guidance is clear and properly reflects the relevant legislation.
Question (vii) – Do you agree that the guidance set out in part 6 (Media and scope) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective
10. On 6.3.5, members requested additional examples of 'non-paid-for space', particularly whether this would include brand stores on third party websites where the advertiser is in control of the content but does not pay for the store to exist.
11. An area which received substantive feedback from our members under 6.3.6 was around influencers and content creators and they asked for clarity on several points:
• That paying an influencer to create content featuring an identifiable LHF product is only within scope of the rules if they are paying the influencer
3
to place that advert on a channel (and that channel is not owned by the brand)
• That simply paying an influencer to create content, including content to be placed on the brand's owned channel(s), is not within scope
• How gifting will be assessed – several brands asked for it to be made clear whether monetary and non-monetary incentives amount to "paid-for" advertising, or whether gifting a product of a nominal value is permitted provided there is no editorial control exerted over the post by the brand / their agency. For example, some PR companies use a 'scatter gun' approach of sending samples of a new LHF product out to a wide range of

creators, including ones who do not have any formal relationship or arrangement with the brand in question. Clarity is needed over whether content created off the back of this approach would be considered in scope, even where no editorial control is included and there is no formal contract or arrangement between the creator and the brand

• Clarification around the role of journalists, and whether gifting a LHF product to journalists to consider reviewing in an editorial setting (e.g. a food magazine) would be in scope where the review is completely controlled by the publication and is not an advertorial or similar sponsored content

• Confirmation that organic content posted by creators – such as a product review – where a brand, agency, or any other representative has had no involvement in its inception or creation is not in scope. For example, a creator with no link to a brand decides of their own accord to test a brand's new product and post a review on their channel

• Direction on whether inviting an influencer to an event would constitute 'paid for' activity and whether any subsequent content created by the influencer at the event would be caught within scope of the restrictions if it included an identifiable LHF product

• Additional information on 'historic arrangements' with an individual creator and whether this would have a bearing on future content. For example, if a brand had a relationship with a creator from January to March and that relationship ended on March 31st, would subsequent organic posts by that creator about that brand's LHF products created

4

and posted later in the year be at risk of being caught due to the previous arrangement?

• More broadly, members would welcome additional materials expanding on what is and is not permitted when it comes to influencers. Given the rapid growth of this market and the increased use of influencer marketing as part of broader campaigns, brands and agencies would like as much clarity on different scenarios as possible

12. A member requested that the guidance clarify that prop placement and product placement fall outside the scope of these restrictions.

13. On 6.3.9, several members have requested more detail about what qualifies as b2b advertising "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" and how this would be assessed. For example, would an advert served on a website that primarily serves businesses – such as a wholesale website or an industry magazine website – be seen as a b2b advert, even if it is accessible by consumers? Or would there need to be a degree of control over access, such

as being behind a paywall? Or would individual websites need to provide evidence of their customer base being predominantly people within the industry to have advertising on that website qualify for the b2b exemption?

14. Separately in 6.3.9, some multinational companies run global campaigns where UK consumers may only be a small part of the overall audience (intended or otherwise). The phrase "accessed principally by persons in the UK" implies that these campaigns could be permissible for UK audiences as the UK market is not the principal demographic. We would welcome clarification on this wording and, if this interpretation is legally correct, guidance on what level of engagement by UK audiences on a global campaign would constitute being "accessed principally by persons in the UK".

Question (viii) – Do you agree that the guidance set out in part 7 (The brand advertisement exemption) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective

15. As a general point, a member requested that all registered trademarks – including abbreviations commonly used as company names or to describe a range of products – are covered in the guidance.

5

16. In 7.1.4, there is confusion over what does and does not constitute a "range". Specifically, several members raised concerns that 'pack size or packaging format' was a vague term. It is unclear whether this wording, derived from the SI, would capture a chocolate recipe served in different ways (a bar, a tablet, an Easter Egg), for example. Further clarity would be very welcome and we would highlight the IPA's response in this regard.

17. Several of our members fed back that paragraph 7.2.4 on brand characters was less clear on when such characters could be used than the guidance consulted on in 2023. The use of negative framing in this version of the guidance was viewed as less helpful in informing when characters could or could not be used compared to the positive framing in the initial version.

18. On ingredients (also 7.2.4), some members asked for further examples of what ingredients could be safely depicted – such as melted chocolate for a chocolate brand, or cookie crumbs for a range of different cookies. Members would welcome additional clarity in this guidance or subsequent accompanying documents.

Question (ix) – Do you agree that the guidance set out in part 8 (The identifiability test) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective

19.Members broadly welcomed the approach set out in this section of the guidance. There was a request for the phrase "and what people are likely to perceive the advertisement is for" (8.2.1) to be removed or qualified, as

members were concerned that this implied that the ASA would consider broader issues – such as a brand's perceived association with LHF products – as part of an assessment which would not be in keeping with the approach of the rest of the guidance or the Government's statutory instrument.

9th October 2025

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British Retail Consortium - a company limited by guarantee
Registered in England and Wales No. 405720
Regulatory Policy Team
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9 October 2025
Sent by email
(andrewt@cap.org.uk)
Dear Sir/Madam,
The British Retail Consortium (BRC) is the trade association for UK retail businesses. Our purpose is to make a positive difference to the retail industry and the customers it serves, today and in the future. We tell the story of retail, work with our members to drive positive change and use our expertise and influence to create an economic and policy environment that enables
retail businesses to thrive and consumers to benefit. Our membership comprises over 200 major retailers - whether operating physical stores, multichannel or pureplay online - plus thousands of smaller, independent retailers through a number of niche retail trade associations that are themselves members of BRC.
The retail Industry is committed to helping consumers to make healthier choices. Fresh fruit and vegetables are heavily price promoted and often the very first thing shoppers see when entering food retailing stores. Availability of healthy snack alternatives has risen considerably. Our industry has led the way on reformulating products to reduce salt, sugar, and fat. We pioneered traffic light labelling and clear energy/Kcal information on products and signage to help consumers understand products and make informed choices. These significant changes pioneered by retailers have yet to be fully adopted by other elements of the food and drink industry, for example hotels, restaurants, catering firms and parts of the foodservice industry. By no means is the process complete, but our members are rightly proud of the work they

have done.
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Thank you for giving us the opportunity to comment on this consultation on the advertising of 'less healthy' food and drink products (the Regulations).
We are supportive of the important policy objectives which underpin the Regulations. Most of our comments relate to the objective of gaining absolute clarity in the guidelines. This will best enable advertisers to implement the rules in a consistent way and from a level playing field, and allow us to implement simple compliance structures, that minimise complexity and business disruption. Naturally, the ASA / BCAP / CAP have no jurisdiction to require conduct / behaviour that goes beyond the Communications Act.
We have a couple of comments on the proposed changes to the codes. We also have a few specific comments on the guidance, which we cover below. However, we have a fundamental concern about the manner in which the guidance is approached.
The intent of the brand advertising exemption legislation was to resolve the issue for brands synonymous with HFSS products being able to continue to advertise. Businesses which are not synonymous with HFSS would not have been affected.
DHSC's memorandum in the brand advertising amendment consultation clearly stated that it is only when it is determined that an advertisement may be for an identifiable less healthy food or drink product or products (according to primary legislation), it will then be considered whether the advertisement meets the criteria of a 'brand advertisement' in the regulations and is exempt from the restrictions.
The guidance has the two steps in reverse, seemingly making all brands consider the provisions in the secondary brand advertising legislation, before the primary legislation is even considered.
This adds an unnecessary burden and complexity.
Section 1.3.4 of the new guidance states that all exemptions will be assessed before applying the identifiability test, and that section 7 on Brand Advertising comes before section 8 on Identifiability. This is not the sequence set out in the regulations, and therefore must be reset within the guidance.
This must be rectified and what is currently Section 8 - The identifiability test, moved to the front of the document. The explanation covered in the memorandum must be included in the guidance document and ideally further illustrated through a flow diagram / decisions making tree.
It is also very noticeable that Section 8 in this draft guidance, is substantially lighter that on previous draft guidance on how to establish if a product is identifiable or not. We feel these previously covered elements should be included in the final version of the guidance document.
We would also note, as raised in previous consultation responses, that neither the legislation,

the Regulations, nor the guidance defines what is meant by an “advertisement”. However, a lack of clarity on this point could result in inconsistent application of the rules. In our view, the Regulations ought not to capture any notification or message that is customer-specific (or bespoke), and surfaced in response to direct and individual query or search by that customer.
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From a practical perspective, this would mean that any relevant, online search results (even if those are paid-for) that are surfaced to respond to a particular customer’s direct search, ought to fall outside of the Regulations – such as a specific search response for an LHF category or product e.g Chocolate.
1
In practice, capturing these types of activities does not change the
meaningful and relevant results to specific search queries surfaced to a customer, and in many cases there are considerable practical challenges with implementing this. Ultimately this is unlikely to drive any different outcomes from a public health perspective and doesn’t feel aligned to the policy intent
This is a proportionate interpretation to balance the policy objectives of the Regulations whilst not undermining the utility of online platforms to deliver meaningful and relevant results to specific search queries nor the ability of publishers to derive turnover.2We have an additional overall concern. We read this version of the draft guidance with a different lens. For the last few months our members have been carefully considering how the provisions apply to all their specific adverts and commercial communications. It concerns us greatly that the majority of questions we have come up with during that period are not answered in this document. The concerned regulation is complex and more detailed support is needed. The absence of that further detail will only enhance the current situation where different players in the advertising process are interpreting the provisions differently. As the frontline regulator ASA/CAP is best placed to produce that more detailed advice, with practical, worked-through examples.
We believe an FAQ section should be produced and regularly updated, and any trending advice shared on an individual basis is shared with everyone to ensure no competitive disadvantage.
Question (i) – Do you agree that the proposed wording of the TV rule (32.21) set out in 3.4 above and as it appears in Annex A adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.
No. We believe it would be clearer if the exemptions were directly referred to in the rule. In the law, it is clear the rule is subject to exemptions. Presenting them together will give companies a clearer understanding of whether their ad is in or not in scope. Grouping the exemptions with the definitions is unhelpful.
The text in rule 32.21 has interpreted the reference in the law to ‘placing an ad by or on behalf of an SME’ as ‘ where the person paying for the advertisement of a food or drink is a small or

medium enterprise'. We believe it is not the role of the Codes to interpret the rules. That is the role of guidance. We also feel that this interpretation is quite narrow. There are many small brands, which receive support and patronage, when establishing themselves on the market. This could include help when placing their advertisements. Care should be given to avoid gold platting the rules.

1 This could include for instance sponsored product listings or search results, provided that these are clearly relevant results surfaced to an
individual customer in response to a direct search query.

2 This interpretation appears consistent with the ASA's overarching view on its remit, available: Remit: General - ASA | CAP. In particular,
we note that the types of "advertisements" listed by the ASA as being within-remit are those which are broadcast to the public at large
(e.g. publications, outdoor cinema, TV, radio etc).

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Question (ii) - Do you agree that the proposed wording of the ODPS rule (30.16) set out in 3.5 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.

No. See our comments to previous question.

As a separate point to Q(i) and (ii), our members consider that it would be effective and efficient for the ASA to more explicitly attach weight to ClearCast's approval of a TV advertisements, which is sought prior to the broadcast of a TV ad. Our members engage comprehensively with ClearCast – which can be time consuming and costly. If ClearCast has approved the advertisement as being compliant with the Regulations, that approval should be presumptive of compliance. Without this assurance, the utility of the ClearCast process is undermined, and creates an additional and unnecessary burden for advertisers.

Question (iii) - Do you agree that the proposed wording of the online rule (15.19) set out in 3.6 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.

No. See our comments regarding presentation of exemptions, in question (i).

We also consider that more clarity is required relating to the phrase "placed on the internet", which forms part of Rule 15.19 and consistent with the equivalent provision in the Communications Act.3

We think including paid-for advertisements for LHF products in emails
contradicts the legislation, which only restricts advertisements for LHF products "placed on the internet" (i.e. it does not extend to advertisements placed using the internet).

Question (iv) – Do you agree that the guidance set out in part 3 (Background) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details

of any alternative approach you consider more effective.
Yes. We believe this section is clear.
Question (v) – Do you agree that the guidance set out in part 4 (Determining products in scope) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.
No. This section explains the two part test clearly. However, currently it is not as clear as it could be due to the structure of the document. A business should have got to this section, once they have established if their 'specific' product is identifiable. This is already causing problems. Our members are phasing having to provide detailed information and scores for every product seen in the ad, including items not available for sale, e.g. serving suggestions, when presenting their ads for clearance. This is partly due to the fact the provisions are the wrong way around.
3 Section 368Z14 of the Communications Act which states: "…a person must not pay for advertisements for an identifiable less healthy
food or drink product to be placed on the internet" (emphasis added).
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Question (vi) – Do you agree that the guidance set out in part 5 (Nature of the advertiser) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.
No. Section 5.4.3 contradicts to the legislation, which states that ads placed on behalf of an SME are out of scope. It is unclear why would this not apply when the company placing an ad on behalf of the SME is an aggregator or an intermediary. We do not agree with this Interpretation. Please see our comments to question (i) and (ii).
Section 5.4.2 could be clearer. We have received numerous member questions on this issue. The wording on this section must be aligned with the text in section 6.3.6 on product listings, and make it clear that sponsored placements, etc. in aggregators will be in scope, but the individual retailers' listings on these websites are out of scope.
Question (vii) – Do you agree that the guidance set out in part 6 (Media and scope) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.
No.
6.3.2. We have received numerous questions seeking clarity on the definition of payment. Most companies understand monetary or gifting exchanges are considered payment. However, it is less clear in situation when neither money nor gifts are exchanged, but both companies, the brand advertising and the platform benefit from the engagement, e.g. affiliates. It would help to see a number of these less straight forward examples in the guidance document.
6.3.6. The section on product listings helpfully states that products listing which are not sponsored are out of scope.4 However, as currently drafted it could be understood that

contractual agreements between brands and retailers to price promote products, are in scope. We firmly believe they are not. The law clearly states the offense is to pay for an advertisement of a HFSS product placed on the internet. It should be clarified that product price discounts shown online, in for example a retailer's 'offers page', would be out of scope, if any payment in that context between the brand and the retailer relates to the promotion discount and not for the advertisement.

The section on influencers is not as clear as it could be. First, we do not believe the definition of influencer is clear. Cross references to other ASA/CAP advise on influencers should be included here. We also believe it is important to distinguish between influencers and journalists, noting that many freelance journalists must have a social media presence as part of their job roles

4 As above, we think a clearer distinction should be drawn between (i) unsolicited, paid-for advertisements surfaced to the general public,

which we agree would be in-scope; vs (ii) paid-for natural search results surfaced only to a customer in response to his / her search query,

which ought to be out-of-scope. In this respect, we would note that the ASA's own guidance states that "…even if natural results have been

paid for they might not automatically be considered ads".

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We would like to see clarification in the guidance, that retailers can pay influencers to write reviews to be included in the retailer's own website. All of our members have media events to present to new ranges, e.g. Christmas range to the media. We would like to see this referenced as out of scope , in this section.

Question (viii) – Do you agree that the guidance set out in part 7 (The brand advertisement exemption) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

No. The content of the part of the guidance is OK, although there are some areas, such as the section on 'an advertisement that promotes a brand name which is the name of a specific less healthy food and drink product', which is difficult to read, and would benefit from some examples.

As stated in our introduction we feel this section should come as a second step to the identifiability step, as clearly indicated by DHSC. Primary legislation should be applied first. We feel that applying the identifiability test first will avoid the very confused conversations which are currently taking place about whether a product can be distinguished from other products on the market.

Question (ix) – Do you agree that the guidance set out in part 8 (The identifiability test) of Annex C is clear and properly reflects the relevant legislation? If not, please state why,

including details of any alternative approach you consider more effective.
No. As stated throughout the document, we feel this section should be at the front of the document, and the identifiability test must be the first step in establishing if something is or not in scope of the provisions.
The current test states that 'if none of the exemptions detailed in parts 4,5,6 and 7 apply then an assessment is needed against the identifiability test'. This is the wrong way around.
We acknowledge there is some subjectivity in establish whether something is identifiable or not. Narrowing that subjectivity is something that the guidance can help with. We strongly feel that not including sections covered in previously consulted on versions of the draft guidance, hinders companies when establishing if something is identifiable or not.
Advice on fleeting (or incidental) images, background shoots, obscured images, recipes, etc., were very helpful. We feel that a strong 'identifiability test' section in the guidance, would have avoided may of the recent conversations with broadcasters and clearance bodies, for example on retailers' roast potatoes at a Christmas table. We feel very strongly that all that previous content should be included in this document.
We also believe it could be clarified in this section that general references to a product category, providing that no identifiable product is shown, e.g. verbally, or making general references to 'sweet treats' or 'naughty snacks', although associated with HFSS products, it is permitted.
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There are important consequences to keeping the structure of the guidance as it is, and not as it should be. Our members believe that applying the identifiability test will substantially reduce the number of products in ads which will need to be put through the second step assessment. This is important since currently there is a disproportionate burden on retailers to supply information and score for up to a products every time an ad goes through clearance.
We also want to avoid the confused and ill-informed conversations which are currently taking place on whether products are distinguishable or not from others on the market. These conversations would be avoided if the identifiability test had been applied in the first place.
Our understanding is that the brand exemption would apply where the advert is for a brand, and does not depict a specific, identifiable LHF product. We are confused by section 8.2.3 of Annex C. It seems to complicate / contradict that analysis by suggesting that the identifiability test could be met "….where an advertisement does not directly refer to or depict a less healthy product". Given the wide definition of depict, we cannot thinks of a scenario where this would be the case. An example will help clarify this paragraph.
Questions to be covered in the guidance or a FAQ
1. Showcases and Influencers:
• Confirmation if tickets/invites to events are considered non-monetary items

e.g. mutual benefit of promotion with no monetary exchange
• At what point does a journalist become classified as an influencer?
• At what stage does content become an advertisement, particularly when no direct request is made for promotional activity?
• Guidance on scenarios where an influencer with whom we have a partnership promotes products independently without explicit direction (e.g., featuring our Christmas section in a reel after a store visit)
• User generated content
• Liability for content shared by influencers we haven't asked to promote,
• Guidance on placing paid-for content on retailers own social media pages
• Sampling
• Competitions and prize draws that feature LHF products, or that require the purchase of an LHF product
• Experimental/activation events with any post going onto the retail website
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2. Payment Terms:
• Definitions of monetary vs non-monetary payments,
specifically whether tickets or event invitations are regarded as payments
3. Press and Digital Guidance:
• Clarification on the role of press, particularly if payment is made for placement
• Request for explicit guidance regarding digital advertising in relation to press content
• Is showcasing publications in paid ads non-compliant?
4. Annex C: Section 7.2.3:
• Explanation of the phrase "differentiation from other products capable of being purchased" with examples, such as cooked roast potatoes (out of scope) vs frozen prepared roast potatoes (in scope)
5. Recipes:
• Clear parameters on what recipe content is permissible
• Confirmation on whether demonstrating the preparation of a product (e.g., showing a cake and its baking process) is allowed
6. Definitions for "indistinguishable" and "unidentifiable" products and clarity on how these differ.
Please do not hesitate to contact us if you wish to discuss any aspects of our response.

The British Soft Drink Association's response to the CAP and BCAP consultation on the implementation of the "less healthy" food and drink product advertising restrictions

1. Executive summary

The British Soft Drinks Association (BSDA) welcomes the opportunity to respond to the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice's (BCAP) consultation on the implementation of the less healthy food and drink product advertising restrictions. We value the continued engagement with regulators on this important issue. While we believe that the draft guidance is broadly clear there are some specific areas where we believe further clarity would be helpful to ensure there is no ambiguity for industry as a whole and producers are able to ensure compliance with their regulatory obligations.

2. Background

The BSDA represents UK producers of soft drinks, including carbonated, still and dilutable drinks, fruit juices and bottled waters. Our membership includes the majority of Britain's soft drinks manufacturers as well as franchisors, importers and suppliers to the UK soft drinks industry. Operating at over 70 sites across the country. From household names to great British brands, our industry contributes £5.6 billion to GDP and supports nearly 56,000 production and supply chain jobs.

3. Consultation response

3.1. Do you agree that the proposed wording of the TV rule (32.21) set out in 3.4 above and as it appears in Annex A adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.

Partially. While the proposed wording of the TV rule (32.21) broadly captures the intention of the relevant legislation, greater clarity is needed to ensure that the guidance can be applied proportionately and consistently across all advertisers.

Specifically, clearer wording is required from CAP and BCAP confirming that all registered trademarks, including abbreviations or shortened forms that are commonly used as the company name or to describe a range of products, are covered under the exemption.

Without such clarification, there remains a risk of inconsistent application and enforcement, as brands with comparable product portfolios could be treated differently depending on how their names align with a company or product range. Providing explicit confirmation within the guidance would help to ensure equitable treatment across sectors and support the original policy intent of allowing brands to advertise their broader identity, provided no specific less healthy product is promoted.

3.2. Do you agree that the proposed wording of the ODPS rule (30.16) set out in 3.5 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.

Partially. While the proposed wording of the ODPS rule (30.16) broadly captures the intention of the relevant legislation, greater clarity is needed to ensure proportional and consistent application across all on-demand platforms.

In particular, clearer wording from CAP and BCAP is required confirming that all registered trademarks, including abbreviations or shortened forms commonly used as the company name or to describe a range of products, are covered within the exemption.

Please also see BSDA's response to question 3.1.

3.3. Do you agree that the proposed wording of the online rule (15.19) set out in 3.6 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.

Partially. While the proposed wording of the online rule (15.19) broadly captures the intention of the relevant legislation, greater clarity is required to ensure that the guidance can be applied proportionately and consistently across all online platforms.

As outlined in BSDA's response to question 3.1, clearer wording should confirm that all registered trademarks, including abbreviations or shortened forms commonly used as the company name or to describe a range of products, are covered within the exemption.

Please see BSDA's response to question 3.1 for further detail.

3.4. Do you agree that the guidance set out in part 3 (Background) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

Yes. The BSDA agrees that the guidance set out in part 3 (Background) of Annex C is clear and properly reflects the relevant legislation.

3.5. Do you agree that the guidance set out in part 4 (Determining products in scope) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

Yes. The BSDA agrees that the guidance set out in part 4 (Determining products in scope) of Annex C is clear and properly reflects the relevant legislation.

3.6. Do you agree that the guidance set out in part 5 (Nature of the advertiser) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

Yes. The BSDA agrees that the guidance set out in part 5 (Nature of the advertiser) of Annex C is clear and properly reflects the relevant legislation.

3.7. Do you agree that the guidance set out in part 6 (Media and scope) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

The guidance in part 6 (Media and scope) is generally clear and in line with the legislation. However, it would be useful for the text to recognise the practical difficulties that may arise in distinguishing between brand activity and product promotion, particularly where incidental imagery of less healthy products appears in broader brand or event advertising.

Although CAP and BCAP cannot reinterpret the regulations, the guidance could still promote proportionality by emphasising the importance of context in assessing whether a specific product is being actively promoted. This would assist in ensuring consistent decision-making while respecting the limitations of the legislative wording.

3.8. Do you agree that the guidance set out in part 7 (The brand advertisement exemption) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

Partially. While the guidance set out in part 7 (The brand advertisement exemption) broadly reflects the legislative wording, significant uncertainty remains within the soft drinks industry as to how the brand exemption will operate in practice.

In particular, there is ambiguity regarding how the exemption applies to brands that include both less healthy and non-less healthy products, especially where brand and product names overlap. The BSDA would therefore welcome clearer wording from CAP and BCAP confirming that all registered trademarks — including abbreviations or shortened forms commonly used as the company name or to describe a range of products — are covered within the guidance. Such clarification would ensure consistent treatment across advertisers and greater confidence in compliance. For further information, please see BSDA's response to question 3.1.

3.9. Do you agree that the guidance set out in part 8 (The identifiability test) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

The guidance in part 8 (The identifiability test) is clear and largely reflective of the legislation. However, there remains a degree of ambiguity around what constitutes "depiction", particularly in relation to broader brand cues such as logos, colours, or sounds.

We would encourage CAP and BCAP to provide examples demonstrating when such elements would or would not be deemed to identify a specific less healthy product. This would assist in achieving greater consistency and predictability in application, while remaining compliant with the legislative framework.

CRUK response: consultation on the implementation of the "less healthy" food and drink product advertising restrictions

About CRUK

CRUK is the world's leading cancer charity dedicated to saving and improving lives through research. We fund research into the prevention, detection and treatment of more than 200 types of cancer through the work of over 4,000 scientists, doctors and nurses. In the last 50 years, we've helped double cancer survival in the UK and our research has played a role in more than half of the world's essential cancer drugs.[1] Our vision is a world where everybody lives longer, better lives, free from the fear of cancer.

We develop evidence and policy, and advocate and campaign for policy change, and both fund and are a member of Obesity Health Alliance, a coalition of over 65 health organisations who advocate for policies to improve population health and address overweight and obesity. We also support Obesity Health Alliance's submission.

[1] Estimated based on Cancer Research UK analysis of England data for 2022/23.

A substantial proportion of cancers in the UK are preventable. **Overweight and obesity is a risk factor for at least 13 different types of cancer, and is the UK's second biggest preventable cause of cancer after smoking.**[i] Almost a third (29%) of adults in the UK are currently estimated to be obese, and more than 6 in 10 (64%) are estimated to be either overweight or obese'.[ii]

Rising levels of overweight and obesity are expected to lead to future increases in cancer incidence, which is why CRUK advocates for public health interventions that create healthier environments for everyone, and reduce overweight and obesity rates at a population level.

Since 2018 we have publicly campaigned to protect children and young people from exposure to HFSS marketing. The TV & Online advertising restrictions, if effectively implemented, go some way towards achieving this goal, which is why we have been engaged throughout the previous consultation process and welcome the chance to do so again.

Question (i) – Do you agree that the proposed wording of the TV rule (32.21) set out in 3.4 above and as it appears in Annex A adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.

Yes, we agree that the proposed wording of the TV rule (32.21) appropriately reflects the legislation, which aim to restrict the advertising of a 'less healthy food and drink products'.[iii]

A proliferation of HFSS marketing and promotion shapes consumer behaviour and makes less healthy food more appealing and accessible.[iv] Evidence suggests there is a link between marketing and food preferences and intake in children[v] - with research underscoring the impact of exposure to brand advertising. [vi,vii,viii,ix,x,xi]

Whilst we understand that the updated guidance surrounding brand advertising reflects the legislation, our response to question viii outlines why we remain committed to our previous consultation responses which favoured inclusion of brand advertising within the scope of restrictions.

Advertisers will have had over 5 years to prepare for the incoming restrictions since they were first introduced in July 2020. Ensuring the final ASA guidance is published without further delays or weakening will allow the restrictions to come into effect in January 2026.

Question (ii) – Do you agree that the proposed wording of the ODPS rule (30.16) set out in 3.5 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.

Yes, we agree that the proposed wording of the ODPS rule (30.16) adequately reflects the relevant legislation, which aims to restrict the advertising of a 'less healthy food and drink

products'.[xii] Our response to question I is also applicable to on-demand services and encourage reviewers to refer back to it in full.

Question (iii) – Do you agree that the proposed wording of the online rule (15.19) set out in 3.6 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.

Yes, we agree that the proposed wording of the online rule (15.19) adequately reflects the legislation. It is positive to see the wording of 15.19 cover both traditional paid-for advertising, alongside payment (monetary or non-monetary) under sponsorship agreement.[xiii]

Cancer Research UK's recently published 'Digital Influencing Report' demonstrates that children and young people are frequently exposed to online advertising and promotion of HFSS products from both businesses and influencers, highlighting the need for stronger regulations:[xiv]

- More than 1 in 2 of children and young people surveyed reported seeing HFSS posts from businesses or influencers on social media in the last month.
- Around 4 in 10 said they engaged with these posts by commenting, liking or sharing.
- The extent to which children and young people were able to identify posts as brand advertising depended on the social media sites. Young people reported finding it harder to anticipate brand marketing on sites such as Instagram or Tiktok, where advertising is embedded into the overall experience.

We appreciate that regulating social media and online marketing is different to, and in some ways more difficult than regulating other media platforms – algorithms change quickly, and digital age verification tools rely on young people being truthful about their age online. Based off the findings of the report, CRUK have developed recommendations aimed at regulatory bodies to increase the effectiveness of regulations, and make it easier for advertisers to adhere to them despite an ever -changing online landscape:[xv]

- More clearly and widely communicate the existing, and upcoming, guidance and legislation so that they are properly understood.
- Better enforce current and planned legislation, including the HFSS TV and online advertising restrictions, and ensure proactive and systematic monitoring.
- Increase transparency on how often proactive monitoring is used, and how sanctions are progressed. This could help deter other offenders.

When developing the final guidance, ASA should take these recommendations into account to ensure rule 15.19 is appropriately and adequately enforced.

However, as stated in response to question (i), whilst the exclusion of brand advertising from the scope of guidance is reflective of changes to the legislation, it nevertheless could impact the extent to which the restrictions can meet their intended aim.

Question (iv) – Do you agree that the guidance set out in part 3 (Background) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

Yes we agree that the guidance in part 3 of Annex C is clear and properly reflects the relevant legislation – including providing details on Ofcom's role and the ASA's role as co-regulators.

However, as OHA note in their response, there are concerns that the new draft guidance does not sufficiently incentivise the promotion of healthier products, with companies instead being able to default to brand advertising, regardless of their product range. This is a shift away from the original policy intention, and could reduce the policy's public health impact.

Therefore, we support OHA's proposed addition, which aims to ensure that part 3 of Annex C clearly encourages advertisers to prioritise the promotion of healthier products or reformulate accordingly.

Question (v) – Do you agree that the guidance set out in part 4 (Determining products in scope) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

The guidance in part 4 of Annex C is clear and reflects current legislation.

Currently, Part 4 of the ASA guidance currently outlines how the 2004-5 Nutrient Profile Model will be used by the ASA to identify HFSS products as part of the two-part test.[xvi] However, the 10 Year Health Plan states the Government's intention to modernise the Nutrient Profile Model and update regulations accordingly. [xvii] The 2018 Nutrient Profile, developed by Public Health England, reflects updated dietary guidance on free sugars and fibre intake.[xviii]

ASA guidance should ensure provisions for updating the Nutrient Profile Model used as part of the two-part test accordingly. This would strengthen the guidance, and ensure the scope of product advertising restrictions reflected the latest dietary advice.

We also align with OHA's submission, which recommends strengthening the section on determining products in scope to ensure clarity and consistency of interpretation.

Question (vi) – Do you agree that the guidance set out in part 5 (Nature of the advertiser) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

We agree that the guidance in part 5 is clear and reflects the intent of the legislation, though support OHA's submission that the guidance explicitly clarify how compliance will be monitored and enforced online.

Question (vii) – Do you agree that the guidance set out in part 6 (Media and scope) of Annex C is clear and properly reflects the relevant legislation? If not,

please state why, including details of any alternative approach you consider more effective.

We agree that the guidance in part 6 is clear and reflects the relevant legislation, though underscore OHA's recommendation that the guidance strengthens section 6.3.6 on influencer marketing to provide greater clarity surrounding the types of influencer advertising that will be exempt.

We also support their call for stronger guidance surrounding Corporate Social Responsibility, to ensure that this is not used for brand building or emotional engagement.

Question (viii) – Do you agree that the guidance set out in part 7 (The brand advertisement exemption) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

We do not fully agree that the guidance is clear.

Whilst previously included in ASA guidance, the Government has laid secondary legislation to exclude brand advertising from the scope of the advertising restrictions. The updated ASA guidance makes it clear that brand advertising will remain out of scope and therefore aligns with the relevant legislation.

However, we remain committed to our previous consultation submissions which support the inclusion of brand advertising within the scope of the regulations. There is extensive evidence that exposure to brand advertising can impact children and young people's food intake and preference for particular brands.[xix,xx,xxi,xxii,xxiii,xxiv] Exempting brand advertising from the scope of restrictions therefore presents a considerable weakening of the regulation, and could impact the extent to which the regulation will be able to meet its intended aim.

We also share OHA's concerns surrounding unclear definitions of 'range' versus 'brand' and the need for greater clarity on how the brand advertising exemption will apply to equity brand characters and generic product-related imagery.

Question (ix) – Do you agree that the guidance set out in part 8 (The identifiability test) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

Yes we agree that the identifiability test is clear and reflects the relevant legislation.

ASA's updated guidance states that *"a less healthy food or drink product is identifiable, in relation to advertisements, if persons in the UK (or any part of the UK) could reasonably be expected to be able to identify the advertisement as being for that product."*

Therefore, any advertisement that meets the criteria for inclusion whose purpose is to promote less healthy products has the potential to be restricted.

To further strengthen the guidance, we support OHA's call to include a greater list of factors (such as those included in the DHSC brand exemption consultation), to help determine whether content depicts a product.

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[vii] McGale, L.S et al. The Influence of Brand Equity Characters on Children's Food Preferences and Choices. J Pediatr. 2016

[viii] Boyland, E. et al. Association of Food and Nonalcohol Beverage Marketing with Children and Adolescents' Eating Behaviours and Health: A Systematic Review and Meta-analysis. JAMA Pediatr. 2022

[ix] Biteback. Brand Advertising of Food & Drink: Developing an Evidence-Based Policy Approach. 2025

[x] Packer, J et al. The impact on dietary outcomes of licensed and brand equity characters in marketing unhealthy foods to children: A systemic review and meta-analysis. Obes Rev. 2022

[xi] Ares, G et al. The role of food packaging on children's diet: Insights for the design of comprehensive regulations to encourage healthier eating habits in childhood and beyond. Food Qual Prefer. 2022

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[xx] McGale, L.S et al. The Influence of Brand Equity Characters on Children's Food Preferences and Choices. J Pediatr. 2016

[xxi] Boyland, E. et al. Association of Food and Nonalcohol Beverage Marketing with Children and Adolescents' Eating Behaviours and Health: A Systematic Review and Meta-analysis. JAMA Pediatr. 2022

[xxii] Biteback. Brand Advertising of Food & Drink: Developing an Evidence-Based Policy Approach. 2025

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[xxiv] Ares, G et al. The role of food packaging on children's diet: Insights for the design of comprehensive regulations to encourage healthier eating habits in childhood and beyond. Food Qual Prefer. 2022

Thank you for the opportunity to feed into the Advertising Standards Authorities consultation on the implementation of the "less healthy" food and drink product advertising restrictions. This submission is made on behalf of Diabetes UK, as a member of the Obesity Health Alliance, we also refer you to their consultation response.
Submission from Diabetes UK :
4.6 million people are now living with diabetes across the UK, and one in five adults has either diabetes or prediabetes. Once considered a condition of older age, type 2 diabetes is now rising at a faster rate in people under the age of 40 than over the age of 40.
Drastic changes to the environment we live in and food we eat are taking a toll on our health. Children and young people are bombarded by adverts for cheaper, unhealthy food, while rising costs push a healthy diet out of reach for millions. These are contributing factors to rising levels of obesity, which is the largest modifiable risk factor for type 2 diabetes.
When type 2 diabetes develops at a younger age, it is more acute and serious. It can impact people's ability to work or to have a healthy pregnancy. It is also associated with an increased risk of devastating complications, such as heart disease, kidney disease and sight loss, and even early death.
Question (i) – Do you agree that the proposed wording of the TV rule (32.21) set out in 3.4 above and as it appears in Annex A adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.
32.21 – Television programme services must not include advertisements for an identifiable less healthy food or drink product between 5.30am and 9.00pm.
Yes. We agree this is clear and accurately reflects the legislation.
Question (ii) – Do you agree that the proposed wording of the ODPS rule (30.16) set out in 3.5 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.
30.16 – Regulated on-demand programme services must not include advertisements for an identifiable less healthy food or drink product between 5.30am and 9.00pm.
Yes. We agree this is clear and accurately reflects the legislation.

Question (iii) – Do you agree that the proposed wording of the online rule (15.19) set out in 3.6 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.
15.19 Persons must not pay for advertisements for an identifiable less healthy food or drink product to be placed on the internet
Yes. We agree this is clear and accurately reflects the legislation.
Question (iv) – Do you agree that the guidance set out in part 3 (Background) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.
We broadly agree that the guidance in Part 3 is clear and accurately reflects the letter of the legislation. However, we are proposing that a paragraph is added to the guidance (see below).

The Government stated last month in their consultation outcome document that they expect the policy to "remove up to 7.2 billion calories from UK children's diets each year." This figure comes from the Government's Impact Assessment for this policy which is calculated based on the understanding that advertisers affected by the restrictions would have several routes to comply with the policy. For example, by reformulating products, advertising their healthier ranges, shifting activity outside of restricted time windows or media, or focusing on promoting brand attributes.

The Impact Assessment sets out that companies with healthier products would advertise those products, and that the brand exemption would only be used by companies without healthier options. This would be determined by CAP/BCAP, recognising that the CAP/BCAP clearance system for adverts may take a more robust approach. Analysis from Cancer Research UK in 2019 showed that 79% of unhealthy food advertising could be replaced by a healthier alternative – e.g. the brands advertising an HFSS product have another non-HFSS brand in their portfolio that could be advertised instead or retailers could remove HFSS products from their adverts [ref: Cancer Research UK (2020) Analysis of revenue for ITV1, Channel 4, Channel 5 and Sky One derived from HFSS TV advertising spots in September 2019.[xxiv]

The research examined the extent to which portfolios complied with HFSS regulations and not less healthy products compliance. Given there are fewer products in scope of the less healthy products definitions than the HFSS definitions, brands will have more portfolio compliance.

However, in contrast to the Government's impact assessment, the new draft guidance does not incentivise the promotion of healthier products. Instead, it encourages companies to default to the brand exemption, regardless of their product range. This represents a significant shift from the original policy intention and may dilute the intended public health impact.

Evidence shows that brand only advertising increases consumption of unhealthy foods and drinks and therefore contributes to child obesity. In the previous draft guidance proposals, the Advertising Standards Authority (ASA) acknowledged that brand-only advertising should be restricted in some circumstances.

Pre-publication research conducted by the University of Liverpool and funded by the National Institute for Health and Care Research finds that compared to non-food advertising, brand-only food adverts from brands associated with unhealthy products (through multiple formats: audiovisual, visual only, audio only, static) increased snack intake, lunch intake, and overall intake in children 7-15 years to the same extent as product ads (+128.39kcal across snack and lunch). Therefore brand-only adverts by food and drink companies do not have a benign effect when it comes to child obesity. They have such a strong association that they increase calorie intake significantly with similar consequences as those when people see less healthy food and drink product adverts.

As set out by Minister Ashley Dalton (16 July 2025,), the purpose of the restrictions is to reduce children's exposure to Less Healthy Product marketing and incentivise industry reformulation. But by exempting brand marketing so broadly - including brands known primarily for High fat, salt sugar (HFSS) products - the regulations remove that incentive and allow continued exposure via switching to brand-led advertising.

The delay in implementation - from January 2023 to October 2025 - was explicitly intended to give industry time to reformulate products ahead of the restrictions. Many companies have used this time effectively. But if brand advertising is excluded too broadly, **the incentive to reformulate is removed**, and the time afforded to industry has been wasted, during which

time children have continued to be exposed to commercial messages known to harm dietary health. Those companies that responded in line with the public health goals of the policy have invested in healthier products and switching their advertising will now see their competitors who did not invest able to continue advertising as before.
Since 2007, the UK has had over 18 years of policy experience with HFSS marketing restrictions, and advertisers will have had more than five years to prepare for this specific intervention. The intention has always been clear: **if an advert promotes a less healthy product, or has the effect of doing so, it should be restricted - regardless of format.**
The same can be said of local governments – Transport for London plus 24 English councils – which have successfully restricted brand only advertising. Industry has changed their advertising to successfully comply with brand only restrictions on local government estates since 2019.
To ensure the guidance remains aligned with the policy's original purpose - to incentivise the promotion and reformulation of healthier products - we propose the following wording to bring the balance back in favour of encouraging healthier options rather than simply protecting brand equity.
Proposed addition:
"In line with the policy intent of the less healthy food and drink restrictions, advertisers should prioritise the promotion of healthier products and reformulated lines within their portfolios. The brand advertising exemption should not be used to promote or sustain brand recognition primarily associated with less healthy products. Where advertisers have both healthier and less healthy ranges, use of the exemption should clearly support the communication of brand attributes linked to the company's healthier offerings or its commitment to product improvement."
Implementing further restrictions on advertising for 'less healthy' food and drink products: Annex C - ASA
Question (v) – Do you agree that the guidance set out in part 4 (Determining products in scope) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.
We broadly agree that the guidance in Part 4 is clear and reflects the intent of the legislation. However, we recommend that the section on determining products in scope be strengthened to ensure clarity and consistency of interpretation. Specifically, any products - whether depicted as generic, photorealistic, or stylised - that fall within one of the listed less healthy food and drink categories should be presumed to represent a less healthy variant unless explicitly stated otherwise.
This would prevent ambiguity in assessing whether creative content featuring common food types (for example, pizzas, confectionery or burgers) should be considered in scope.
This approach aligns with the spirit and letter of the legislation and ensures that advertisers do not inadvertently breach the restrictions through ambiguity. It also complements the overarching policy aim - to reduce children's exposure to less healthy food and drink marketing, regardless of presentation format, and will reduce the burden on the ASA.

Question (vi) – Do you agree that the guidance set out in part 5 (Nature of the advertiser) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.
We broadly agree that the guidance in Part 5 is clear and reflects the intent of the legislation. The Government's stated intention is that only small and medium-sized enterprises (SMEs)

— defined as those with 249 employees or fewer — that pay to advertise less healthy food and drink products they manufacture or sell should be exempt from the restrictions.
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 be subject to the SME exemption
However, we are concerned by the wording 'on behalf of a food or drink SME' on the television and ODPS rules. Despite the welcome clarity that delivery services, aggregators and other intermediaries will NOT be subject to the exemption, there remains a risk of the SME exemption being exploited. Without clear safeguards, multiple SMEs could pool resources to fund an advertisement via an aggregator, delivery platform or similar intermediary, and thereby seek to benefit from the exemption despite the advertisement being placed by a non-SME entity.
To future-proof the policy and maintain its integrity, we recommend the guidance to explicitly clarify how compliance will be monitored and enforced on television and ODPS. This would help ensure that large intermediaries cannot act as vehicles for SMEs to collectively advertise less healthy products under the guise of exemption.
For clarity it is worth also adding that this is for television and ODPS rules only. Online, the exemption for SMEs is only applicable where the person paying is at the time when the payment is made, a food or drink SME. The exception does not extend to those paying on behalf of a food or drink SME.
Question (vii) – Do you agree that the guidance set out in part 6 (Media and scope) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.
We broadly agree that the guidance in Part 6 is clear and reflects the relevant legislation. However, the section on influencer marketing (6.3.6) could be strengthened to reduce the risk of circumvention.
We recognise that the government is permitting Corporate Social Responsibility (CSR) advertising for brands linked to less healthy food and drink and that they have reasserted this in recent months on multiple occasions. This is therefore outside of the jurisdiction of the ASA but in the paragraphs below we set out why this is misaligned from the intentions of the policy and how these should be handled and we hope this evidence will be taken into consideration.
As has been clearly and consistently evidenced in published research CSR advertising by food and drink companies still functions as brand marketing. CSR campaigns can significantly influence consumer behaviour: they increase brand recall, brand appeal, buying intentions, and market share, particularly among children and young people. [xxiv], [xxiv]
This type of brand association can lead to increased sales of less healthy products connected to that brand - regardless of whether specific products are shown in the advert. In effect, CSR campaigns can serve as a back door for promoting HFSS products, particularly when the brand is strongly associated with such products. Research from Liverpool University shows that brand exposure activates brain areas responsible for emotional processing in the brains of children and adults. If the aim is to prioritise children's health, the ASA must not encourage brand-building or emotional engagement that increases demand for less healthy products.

6.3.6 – Influencer marketing. 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 monetary or non-monetary consideration has been made 'for' influencer content (i.e. an advertisement has been placed on the internet).
We recognise that the ASA will assess each case based on the specific circumstances, which opens up concerns over practicality of enforcement - including whether monetary or non-monetary consideration has been made "for" influencer content. However, there remains a real risk that advertisers could misunderstand the current wording and be non-compliant for example by:

- gifting products without an explicit requirement to post content,
- forming longer-term or informal relationships with influencers that blur commercial boundaries, or
- using affiliate links or discount codes that incentivise posts but may not be declared as "paid" advertising.
- Breaching the code using 'live streamed' content, rather than fixed 'posts'

Given the dynamic and fast-evolving nature of influencer marketing, and evidence to suggest 'work arounds' using non CAP guidance, it is important to future-proof the guidance and ensure consistency of enforcement across broadcast, online, and influencer media. Without such clarity, there is a risk that the same marketing message could be restricted on one platform but permitted on another.
We recommend adding a clarifying statement along the following lines:
Proposed addition:
"Where an influencer has received products, benefits, or incentives from a brand including gifts, services and experiences, this should normally be treated as advertising for the purposes of these regulations, irrespective of whether an explicit oral or written contractual arrangement exists."
This would bring the guidance in line with ASA principles on transparency and consumer protection, while ensuring the policy's intent - to reduce children's exposure to less healthy food and drink marketing - is applied consistently across all media.

Question (viii) – Do you agree that the guidance set out in part 7 (The brand advertisement exemption) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.
We do not fully agree that the guidance in Part 7 is clear or fully reflects the intent of the legislation.
While we recognise that the ASA's interpretation of the brand advertising exemption is largely consistent with the current legal position, the guidance as drafted leaves significant ambiguity around what constitutes a "brand" and the extent to which brand-related imagery, packaging, or sub-brands "brand of a range of products" fall within scope.
Key concerns include: (please see OHA's response for more details)

1. **Unclear definitions of "range" and "brand" vs "specific product"**
2. **Equity brand character**
3. **Unfair advantage to brands with formal range naming**

There is a real risk that advertisers could exploit this ambiguity to promote less healthy products indirectly. Without greater clarity, the exemption could become the rule rather than the exception, undermining both the spirit and the letter of the law.
We therefore recommend that the guidance be strengthened to:

- explicitly distinguish between brand-level advertising and sub-brand or product-line promotion;
- Explicitly state that any products that are temporary/limited offer/stunts/not widely available to purchase on a UK retail site within a range will not be considered as part of a range of products.
- clarify that any brand imagery, packaging or creative device that evokes a specific less healthy product should bring the advert within scope; and
- suggest that the exemption should not apply where a brand or corporate identity is primarily or predominantly associated with less healthy products.
- Suggest that where a healthier product exists within a 'brand of range of products', that product should be advertised instead of using the brand exemption'

This would limit the risk of erosion or expansion of the exemption over time, maintain consistency with the policy's original intent to incentivise the promotion of healthier products, and protect the regulation's long-term public health impact.

7.2.4 - 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.
A further area of concern is generic product-related imagery. For example, an advertisement might feature a McDonald's wrapper with cheese (eg below). It is unclear whether this represents a specific cheeseburger variant (eg Cheeseburger, Double Cheeseburger, Chilli Double Cheeseburger, are all Less Healthy) or could equally apply to another product containing cheese within the range that might be healthier. Under the current guidance, such packaging may fall under the brand advertising exemption, even though consumers could reasonably interpret it as promoting a particular less healthy product.
For example:

If this is considered to be applicable for the brand only exemption despite the fact it is promoting specific less healthy products, this would incentivise companies to employ this marketing strategy. It presents a slippery slope towards advertising specific less healthy food and drink products. We recommend that for both the ASA's workload and the ambitions of the policy, this loose interpretation to comply with the brand only advertising exemption is not granted.

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 depict a specific less healthy product.

We are concerned that clause 7.2.5 allows for too much flexibility. The current wording suggests that advertisers may use a combination of brand techniques - such as a range of products, colours, or themes - as long as they do not "directly" depict a specific less healthy product. In practice, this leaves significant scope for indirect promotion of less healthy products and creates uncertainty for both advertisers and regulators.

Public Perception Evidence

OHA conducted polling with Savanta to explore how the public interpret adverts featuring less healthy products without naming specific items. A representative sample of 2,000 UK adults was shown various adverts and asked:

"Do you consider this advert to be for:

A. A healthier food and drink product?

B. A less healthy food and drink product?

C. Not sure/don't know"

Between 52% and 85% of respondents identified these adverts as being for a less healthy product - even when the product was not named or branded. For example, when shown a generic image of pizza in a Just Eat advert, 85% of respondents identified it as an advert for a less healthy food.

This evidence demonstrates that consumers can and do identify less healthy products even without specific branding – confirming that the term “specific” does not reflect real-world perceptions.
This narrow interpretation may also create an unfair commercial advantage for some businesses. For example, own-label retailers, delivery platforms and out-of-home providers are far more likely to advertise ‘non specific’ (but still less healthy) products without branding, meaning their products evade restrictions simply due to presentation.
There is no evidence that “non-specific” less healthy products are any less harmful than “specific” ones, or that they are any less likely to influence purchasing behaviour, brand loyalty, or children’s dietary choices.
We also note that the current definition of “less healthy” is already narrow, as it excludes many well-known less healthy categories such as chocolate spreads and sausage rolls. [xxiv]
We recommend that the guidance be clearer, for example:
Proposed wording:
“Any branding, packaging, imagery, or creative technique that could reasonably be interpreted as representing a specific less healthy product should be treated as in scope and not exempt under the brand advertising exemption.”
This would reduce ambiguity, limit the risk of circumvention, and ensure the policy’s intent - to restrict marketing of less healthy products - is upheld

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 is unlikely to 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), is will fall under the brand advertising exemption

We believe this is a typographical error and should read:
“…and **will NOT fall under the brand advertising exemption**.”
This correction aligns with the policy intent, ensuring that naming conventions which clearly refer to a specific less healthy product variant are treated in scope and not exempt.

7.3.2 – However, the brand exemption will still apply to advertisements for brands which name a specific less healthy product where the full name of that product:
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)).
The guidance is in line with the legislation which introduces exemptions for brands that existed before 16 July 2025, either as part of a company, franchise, or pre-existing product range.

There is no definitive registry distinguishing brands from product ranges, but evidence from trademark registrations, product listings and marketing strategies may provide understanding.
Newer brands would face stricter marketing restrictions than long-established less healthy brands with the same names as the brand. This creates an unfair commercial advantage for legacy brands and may disincentivise innovation from newer or smaller companies trying to enter the market with healthier products. Legacy exemptions could help preserve and entrench brand loyalty to less healthy brands with the same name as the product. This could lock in patterns of unhealthy consumption rather than support the shift to a healthier food environment.
Clear guidance here is needed to prevent legal complications and misuse of the exemption by brands retroactively claiming status for less healthy products. Proof of this for the purposes of marketing, advertising or retail sale immediately before 16 July 2025 must be supplied and independently verifiable.

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)).
We understand this to mean that if a realistic healthier product closely resembles a less healthy product, it could be interpreted as promoting the less healthy version - and that advertisers should make it clear that it is for a healthier product. However, it is unclear where the line falls between a product looking like a specific less healthy product versus a generic less healthy product.
For clarity, to minimise risk, and to reduce the burden on the ASA, we recommend that the guidance:

- advise advertisers to exercise caution when using imagery that could reasonably be perceived by an average viewer as a specific less healthy product, whether or not it meets the statutory definition of "realistic"; and
  encourage that where a product is featured in an advertisement and is not a product for sale, advertisers should use healthier versions of foods and products to avoid falling within this clause.
- Include 'product shape' as well as 'flavour variants'

Proposed alternative wording:
"Any image that is recognisable as a specific less healthy food or drink product, whether in or out of its packaging, should be considered in scope."
While we recognise that the current wording is set out in the statutory instrument, and think the addition of 'the advertisement should include additional information to make clear that the product shown is a non-less healthy variant' is very helpful, these practical clarifications would help advertisers apply the rules consistently, reduce the risk of inadvertent breaches, and better protect the policy's public health objectives.

Question (ix) – Do you agree that the guidance set out in part 8 (The identifiability test) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

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 or a combination of factors that means persons in the UK could CAP and BCAP Consultation 20 could/would? 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. If such an advertisement does not fall under one of the exemptions outlined above, it may be restricted.

We broadly agree that the identifiability test is the legally defined mechanism to capture advertising that does not explicitly depict a less healthy product but could reasonably be identified as promoting one. The guidance correctly states that “branding” should be understood in a broad sense, encompassing logos, livery, straplines, fonts, colour schemes, characters, audio cues, and jingles.
However, the guidance would benefit from greater clarity and completeness for advertisers. In the DHSC brand exemption consultation, a longer list of factors was provided to help determine whether content depicts a product, including:

- Name of the product (unless the name is the same as the brand name, pre-16 July 2025) (as above, clarity is required as to whether this is the text name - or a logo - and that the product must have been available for retail sale to consumers before this date)
- Text
- Imagery
- Audio cues
- Jingles
- Livery
- Straplines
- Fonts
- Colour schemes
- Characters
- Other branding techniques

We propose this list be expanded to include:
“or new creative techniques which aim to build recognition, brand equity, loyalty, emotional response, or similar associations, and any combination of the above.”
Including this full list would help future-proof the guidance, covering emerging advertising techniques and preventing circumvention through novel digital or creative methods. It would

also provide clearer direction for advertisers while maintaining the integrity of the policy's public health objectives.

Other points for consideration

We appreciate that there is a short timeline until 5th January, however giving only three weeks to respond to this consultation will result in fewer and poorer quality responses, and ultimately create permanent, untested changes. Due to the extremely short turnaround, the OHA have been unable to conduct this consultation with our wider members, which is to the detriment of our response. For this reason we would appreciate the opportunity to follow up with the policy team should any corrections or further issues come to light after submission.

We do not support the exemption for brand advertising, but recognise this has now been established in law. Although the government suggests that this exemption was (loosely) based on evidence available in 2021, the evidence base has already evolved. Since then, advertisers, public health bodies, academics, and regulators have generated new and compelling insights into how brand advertising influences consumer perceptions, preferences, and purchasing behaviour and consumption - particularly in relation to less healthy food and drink.

We have appreciated the time given to us by the CAP team to explain the process and the intentions of the consultation, and share our thanks. However we are concerned with the wider role the regulator has played in allowing industry to weaken the policy, and in being unable to produce clear and timely guidance.

As the frontline enforcer of compliance, the regulator's decisions must be transparent, accountable, proportionate, and consistently applied. The ASA has not clearly outlined the decision-making processes the ASA will follow, nor have they committed to transparency or accountability regarding how regulatory rulings are reached.

The OHA seeks clarity on how the complaints process will be fairly administered, who will oversee enforcement, and how the ASA Council's rulings will incorporate public health and public perspectives.

We are also concerned about the structural relationship between the ASA, BCAP, CAP, and Ofcom, particularly the close ties between industry representatives and regulatory decision-making. Academic research highlights the problem of "revolving doors" - the movement of individuals between regulatory bodies and the industries they regulate - which can lead to regulatory capture, where public officials favour corporate interests over the public good.

Recommendations:

1. Remove representatives from regulated industries on the boards of ASA, BCAP, CAP, and Ofcom to eliminate conflicts of interest.
2. Appoint experts on marketing's impact on health to these boards in place of industry representatives.
3. Establish an independent UK-based panel to provide impartial pre-clearance of advertisements before media launch, reducing costly and time-consuming ASA investigations.
4. Commission and publish a transparent review of industry involvement on these boards, including public consultation and feedback.
5. Maintain a publicly accessible repository of complaints investigated, coordinated with the Department of Health and Social Care, to monitor and evaluate regulatory enforcement.

6. The government should be responsible for the policy, and the ASA for producing clear guidance, and not have overreach into policy design as may have happened in this case.

The OHA will monitor the application of the new rules closely, tracking both best and worst practices. Our goal is to work constructively with the government, advertisers, and the ASA to clarify grey areas, ensure the guidance is robust, future-proof, and truly protects public health.

Timely review and proactive updates to the guidance are essential to safeguard children and ensure that the legislation is responsive to real-world advertising practices. There is clear precedent for this: in 2009, Ofcom undertook a review just one year after the HFSS broadcast advertising restrictions came into full effect, publishing the report in July 2010.[xxiv]

It is also vital that the legislation is flexible and broad enough to future-proof against the evolution of marketing strategies - especially as new advertising techniques emerge or shift rapidly across digital platforms.

In addition to the specific points above, we recommend the following to ensure the guidance remains effective, future-proof, and enforceable:

1. **ASA self-initiated monitoring** – The ASA should actively monitor and make public compliance, particularly in the online space, rather than relying solely on complaints, to identify potential breaches early and maintain the integrity of the restrictions.

2. **Timely policy review** – Guidance should be formally reviewed at regular intervals to ensure it continues to reflect emerging advertising techniques and market developments.

3. **Check for unintended consequences** – Reviews should assess whether any aspects of the guidance inadvertently enable circumvention or disadvantage certain types of advertisers, products, or media.

4. **Annual guidance review** – Consider allowing for a full review of the guidance within one year of implementation, to incorporate learning from early enforcement, technological changes, and stakeholder feedback.

5. **Publication of all responses** – ASA should publish all adjudications and case responses, even where no breach is found, to provide transparency and help advertisers understand boundaries.

6. **Clarity for digital and social media** – Explicit guidance on emerging online formats, including influencer marketing, user-generated content, and interactive media, to reduce ambiguity and prevent loopholes.

7. **Consistent cross-media application** – Ensure that principles applied to TV and online media are aligned to avoid inconsistencies that could be exploited

8. **Practical examples and case studies** – Include anonymised/theoretical examples of borderline cases to help advertisers understand how rules are applied in practice.

9. **Stakeholder engagement** – Encourage regular engagement with public health bodies and consumer groups to ensure guidance is realistic, enforceable, and aligned with policy intent.

10. **Monitoring of impact** – Track and report on the effect of restrictions on children's exposure to less healthy food and drink advertising, as well as on industry behaviour, to inform future policy decisions.

Consultation on the implementation of the "less healthy" food and drink product advertising restrictions

Media Owner: Dine Time Ltd t/a AfternoonTea.co.uk
Date: 7th October 2025

Who we are

AfternoonTea.co.uk is a UK guide to afternoon tea in hotels and restaurants. We are a very successful and respected hospitality marketing business of over 26 years. We earn revenue from commission on bookings and from paid advertising. The site is aimed at adults only.

What Afternoon Tea is

A traditional British hospitality experience of tea, sandwiches, scones and cakes, usually served mid-afternoon, prepared by professional chefs. It is served 'out-of-home' in hotels and restaurants and is not packaged.

Our business model

We host restaurant profiles with menus, photos and "Book Now" links. Standard listings are free to restaurants, but we earn a commission on bookings generated. Restaurants may also pay for additional promotion (enhanced listings, banners, newsletter features, social posts).

Why we are responding

We are seeking clarity on how CAP/BCAP will apply the HFSS restrictions to composite hospitality experiences such as afternoon tea.

Our listings and ads promote a bookable experience consumed on-premise, not an individual HFSS product. The two-part test (category + DHSC nutrient score) cannot be applied to a whole experience. Treating a hospitality experience ad as multiple product ads would go beyond Parliament's product-led scope and be impractical online.

We therefore ask CAP/BCAP to confirm that advertising for composite hospitality experiences remains out of scope, even when paid and even when menus and photos of component items are shown, and to add examples of this to Annex C.

Why this matters to AfternoonTea.co.uk

Our pages show a named experience, price per person, sitting times and location, with supporting menu detail and photography. CAP's draft Annex C suggests ASA could treat such content as identifying specific products (cakes, scones, sandwiches, hot chocolate) and therefore in-scope when advertising is paid for.

Our clients are already interpreting the HFSS regulations in their own way, unsure whether the regulation apply to afternoon tea or not. We need clear guidance, in simple language, that we can give to reassure them that afternoon tea advertising is not within the scope of the HFSS guidelines.
We have already had to put expansion plans on hold and cancel interviews to employ two additional staff. Investment on development this year will be wasted if we are forced to make redundancies or cease trading.
Without clarification, we risk losing clients and substantial revenue, and UK hospitality businesses risk losing a key niche marketing channel.

Requested changes to Annex C

Add bullets stating:

- Composite hospitality experiences (e.g. afternoon tea, brunch, tasting menus) are not "products" for the Schedule.
- Ads for such experiences are out of scope, including when paid-for and including menus and realistic photography of component items.
- Marketplace/directory pages whose primary purpose is discovery and booking of out-of-home, on-premise hospitality are out of scope, provided they are not targeted at children and do not position a specific listed product as the primary promotion.

DMG Media response to the BCAP/CAP consultation on the implementation of "less healthy" food and drink product advertising restrictions'

Introduction

1. This submission is made on behalf of DMG Media, publishers of the Daily Mail, Mail on Sunday, Metro, the i Paper, New Scientist, and their respective websites.

Overview

2. In the months prior to the laying of the Advertising (Less Healthy Food and Drink) (Brand Advertising Exemption) Regulations 2025 ("**the 2025 Regulations**"), uncertainty surrounding the upcoming advertising restrictions caused significant disruption to our advertising capabilities that ultimately impacted revenue streams. This was particularly felt in the run-up to peak seasonal periods, like Christmas. The knock-on effects of this disruption were felt in areas like business planning, investment, and jobs, given the lack of certainty around advertising revenue.

2.1. DMG Media therefore appreciates the efforts undertaken by all parties in ensuring the implementation of the Less Healthy Food ("**LHF**") advertising restriction takes effect from 5 January 2026, following several delays and calls for clarity. To that end, the laying of the 2025 Regulations is welcomed, following the outcome of the consultation on the matter held between July and August 2025. It is our view that all areas of uncertainty have been addressed.

2.2. For DMG Media, it is crucial that the LHF regime is fully implemented without delay now that uncertainty has been addressed with the 2025 Regulations. Further delays would only serve to cause more disruptions to advertisers and, subsequently, our operations.

Consultation questions

3. *Do you agree that the proposed wording of the TV rule (32.21) set out in 3.4 above and as it appears in Annex A adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective*.

3.1. The question is not applicable to news publishers.

4. *Do you agree that the proposed wording of the ODPS rule (30.16) set out in 3.5 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective*.

4.1. The question is not applicable to news publishers.

5. *Do you agree that the proposed wording of the online rule (15.19) set out in 3.6 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.*

5.1. It is the view of DMG Media that the proposed wording to the CAP Code section 15.19 is clear and accurately reflects the relevant legislation, including the brand advertising exemption regulations, the introduction of which is welcomed in order to provide clarity to the advertising sector.

6. *Question (iv) – Do you agree that the guidance set out in part 3 (Background) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.*

6.1. It is the view of DMG Media that the guidance set out in Part 3 (Background) of Annex C is clear and reflective of the relevant legislation.

7. *Question (v) – Do you agree that the guidance set out in part 4 (Determining products in scope) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.*

7.1. It is the view of DMG Media that the guidance set out in Part 4 (Determining products in scope) of Annex C is clear and reflects relevant legislation.

8. *Question (vi) – Do you agree that the guidance set out in part 5 (Nature of the advertiser) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.*

8.1. It is the view of DMG Media that the guidance set out in Part 5 (Nature of the advertiser) of Annex C is clear and reflects the relevant legislation.

9. *Question (vii) – Do you agree that the guidance set out in part 6 (Media and scope) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.*

9.1. It is the view of DMG Media that the guidance set out in Part 6 (Media and scope) of Annex C is clear and reflects the relevant legislation.

10. *Question (viii) – Do you agree that the guidance set out in part 7 (The brand advertisement exemption) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.*

10.1. It is the view of DMG Media that the guidance set out in Part 7 (The brand advertisement exemption) of Annex C is clear and reflects the Advertising (Less Healthy Food and Drink) (Brand Advertising Exemption) Regulations 2025 laid before Parliament on 10 September 2025. It is welcome that concerns have been heeded, and clarity has been provided through this statutory instrument and renewed guidance.

11. *Question (ix) – Do you agree that the guidance set out in part 8 (The identifiability test) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.*

11.1. It is the view of DMG Media that the guidance set out in Part 8 (The identifiability test) of Annex C is clear and reflects the relevant legislation.

DMG Media
9 October 2025

information and guidance it provides are correct but accepts no liability in respect thereof. Such information and guidance are not substitutes for specific legal or other professional advice.

FDF Response

CAP / BCAP Consultation: Implementing further restrictions on advertising for "less healthy" food and drink products

The Food and Drink Federation (FDF) represents the UK food and drink manufacturing industry, the largest manufacturing sector in the country. Our industry has a turnover of almost £148 billion, accounting for 23 per cent of total UK manufacturing, and Gross Value Added (GVA) of £37 billion. Food and drink manufacturers directly employ almost 500,000 people across every region and nation of the UK. Exports of food and drink make an increasingly important contribution to the economy, exceeding £24 billion in 2024, and going to over 220 countries worldwide. The UK's 12,195 food and drink manufacturers sit at the heart of a food and drink supply chain which is worth £152billion to the economy and employs almost 4.3 million people.

Executive Summary

• Our members use advertising responsibly and have extremely high levels of compliance with the current advertising codes. FDF supports the industry agreement for companies to follow the rules from 1 October 2025. We want to ensure that companies are clear about the new rules and welcome the opportunity to input into this regulatory guidance consultation.

• We are grateful for the engagement with CAP / BCAP and welcome that many of our previously raised questions are helpfully addressed in the draft guidance.

• It would be helpful for the guidance to include more clarity. Particularly on how the 'identifiability' test will be applied in practice. In addition, more clarity on working with influencers, as well as how the rules apply to depiction of ingredients, recipes and serving suggestions would be helpful.

• Many FDF members are also members of the Advertising Association (AA) and Incorporated Society of British Advertisers (ISBA). As such, we fully support the consultation responses of both trade bodies given their long-standing roles representing the UK advertising industry.

Consultation Questions

Question (i) – Do you agree that the proposed wording of the TV rule (32.21) set out in 3.4 above and as it appears in Annex A adequately reflects the relevant legislation?

Agree this is clear.

Question (ii) – Do you agree that the proposed wording of the ODPS rule (30.16) set out in 3.5 above and as it appears in Annex B adequately reflects the relevant legislation?

Agree this is clear.

Question (iii) – Do you agree that the proposed wording of the online

rule (15.19) set out in 3.6 above and as it appears in Annex B adequately reflects the relevant legislation?
The online rules need to make it clear where unregulated IPTV sits. This needs to be addressed in the codes as well as within the guidance itself. Will these streaming services be subject to the online rules or the 9pm watershed?
Question (iv) – Do you agree that the guidance set out in part 3 (Background) of Annex C is clear and properly reflects the relevant legislation?
Agree this is clear.
Previous discussions with CAP included the potential development of a decision tree or flowchart tool. We believe this would be an extremely useful resource to help businesses understand the tiers of restrictions and determine which of the different restrictions apply to their advertisement. We strongly encourage CAP / BCAP to develop this tool as an additional element of the guidance.
Question (v) – Do you agree that the guidance set out in part 4 (Determining products in scope) of Annex C is clear and properly reflects the relevant legislation?
This is largely clear. However, some of the category titles do not appropriately reflect categories in scope of the Regulations, for example 'complete meals,' which should be amended to 'ready meals and meal centres'. It would be helpful for the CAP / BCAP guidance to direct to the DHSC guidance for further information on the categories in scope.
It would also be helpful here to state that in scope products include those that are prepacked (including all variations of packaging) and those that are nonprepacked and served loose.
Food and Drink Federation Page 3
Question (vi) – Do you agree that the guidance set out in part 5 (Nature of the advertiser) of Annex C is clear and properly reflects the relevant legislation?
Mostly agree. Within section 5.1.4 (alongside a link to the relevant section of the advertising code) we suggest that a link is added to the ASA's latest guidance on age restricted advertising as a further helpful resource.
Within section 5.1.2, we welcome the explanation here that the definition of an SME is based on international and franchisee staff numbers.
Within section 5.5, we welcome the reference for securing compliance. For clarity, this section should include additional information about liability when working with third parties such as agencies or influencers, as set out in section 6.3.4.
Question (vii) – Do you agree that the guidance set out in part 6 (Media and scope) of Annex C is clear and properly reflects the relevant legislation?
Mostly agree. We welcome clarification that the term 'online' does not take into account digital advertising shown outdoors, or via in-store display boards or screens (footnote of section 6.3.2).

Paid-for
Within section 6.3.5, we welcome the reminder that the prohibition applies only to 'paid-for' advertising, and that the regulation does not apply to advertisers own marketing communications appearing on their own websites, social media channels or apps, where no payment has taken place. More information is needed here about scenarios such as paid placements on retailer platforms, where the suppliers fund activity but do not control placement directly.
Influencers
We would welcome further advice on influencer marketing within section 6.3.6. Companies work with a wide variety of people, so further guidance on the definition of an influencer would be helpful here. We understand that the presence of a 'payment' alone is enough to bring advertising into scope, not 'payment' and 'editorial control' as set out in existing CAP/BCAP guidance. If this interpretation is correct, this should be set out here to prevent any misapplication.
Contractual Agreements
Section 6.3.7 states that ASA will have regard to underlying contractual agreements, to assess whether the advertisement is 'paid-for'. We would welcome further clarity on:
• How commercial relationships, including generic or sponsorships, will be assessed, particularly if promotional content placed by a sponsored
Food and Drink Federation Page 4
organisation invertedly breaches the regulation. Where would liability sit in this scenario?
• Long term partnerships with brand ambassadors.
• International creators targeting UK audiences.
We welcome section 6.3.5 which sets out examples of non-paid-for space online. Would this include brand stores on third party websites?
Exemptions
Section 6.3.9 (exemptions) would benefit from some examples to illustrate the exemptions in practice. For example:
• Advertisements shown on a website aimed at businesses would be exempt but could still be accessible by consumers. Would a company need to prove that the intended recipient was a business? What evidence would be needed?
• What would be defined as 'accessed principally by persons in the UK'. Multinational companies may run campaigns in a number of nations and need further information to ensure any such campaign would not be in breach.
Overlap with HFSS Promotion and Placement Regulations
The CAP / BCAP guidance should make reference to the overlap between the LHF advertising regulation and regulation on the promotion and placement of HFSS products currently applicable in England (regulation will be in place in Wales and Scotland in the future).
Guidance on when online marketing displays would constitute paid for

advertising would be helpful in this section, but as a minimum there should be a reference to where liability sits, and a link to the DHSC implementation guidance.

Question (viii) – Do you agree that the guidance set out in part 7 (The brand advertisement exemption) of Annex C is clear and properly reflects the relevant legislation?

More clarity is needed in this section.

The guidance states (section 7.2.5) that care should be taken to ensure a combination of branding techniques do not result in an advertisement for a specific LHF product. Although this judgement will vary on a case-by-case basis, more advice would be helpful here.

We welcome the reference in section 7.2.3 which sets out that a specific product is one capable of being purchased. We seek further clarification on:

• Whether an advertisement for a non-LHF product (e.g. oats) can show a recipe for a generic LHF product (e.g. chocolate flapjack).

Food and Drink Federation Page 5

• Whether ingredients common to the brand category can be shown (e.g. cake batter, chocolate etc).

Section 7.3 explains the rules for brand names that are also the names of specific healthy products. This section is unclear. The content of section 7.3.2 (what is exempt) would fit more logically ahead of the content of section 7.3.1 (what is not exempt). Reading the content of section 7.3.1 first does not make sense and may lead the reader to misinterpret the rules. A flowchart or decision tree here would be particularly helpful.

It would be helpful for section 7.3.2 to explain that registered trademark abbreviations would also fall under the definition of 'included in the name of a company'.

Question (ix) – Do you agree that the guidance set out in part 8 (The identifiability test) of Annex C is clear and properly reflects the relevant legislation?

This section would benefit from examples to illustrate how the identifiability test will work in practice. For example, the use of stylised product elements could be interpreted differently depending on context.

Food and Drink Federation Page 6

Annex - The UK Food and Drink Manufacturing Industry

The Food and Drink Federation (FDF) represents the UK food and drink manufacturing industry, the largest manufacturing sector in the country. Our industry has a turnover of almost £148 billion, accounting for 23 per cent of total UK manufacturing, and Gross Value Added (GVA) of £37 billion. Food and drink manufacturers directly employ almost 500,000 people across every region and nation of the UK. Exports of food and drink make an increasingly important contribution to the economy, exceeding £24 billion in 2024, and going to over 220 countries worldwide. The UK's 12,195 food and drink manufacturers sit at the heart of a food and drink supply chain which is worth £152billion to the economy and employs almost 4.3 million people.

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

ABIM Association of Bakery Ingredient 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
FOB Federation of Bakers
GFIA Gluten Free Industry Association
PPA Potato Processors Association
SSA Seasoning and Spice Association
UKAPY UK Association of Producers of Yeast
UKTIA United Kingdom Tea & Infusions Association
FDF also delivers specialist sector groups for members:
Ice Cream Group
Organic Group
CBD Group

HFSS – Updated draft LHF Guidance

https://www.asa.org.uk/static/2b482bba-e16b-4687-a06ff2071f3479a9/Annex-C-Implementation-guidance.pdf

Final deadline for questions to be submitted to CAP 9th October

Questions / clarification points:

1. Is there a way to run the "identifiability test" to understand if ads meet the brand advertiser guidance before ads are fully produced or go to air? Specifically for digital activity – the guidance states that Advertisers are responsible for ensuring their own compliance. What will media owners be doing to police this?

2. Legal jargon confirmation – are visual elements of audio advertising i.e. pod/vodcasts allowed? These are not treated as part of the regulated radio service.

3. What are the regulations regarding background / menu imagery such as the below within brand advertising (in this instance, LHF products are featured on an in-store menu, but this is purely incidental based on the creative being shot in-restaurant)?

4. What are the regulations around wording within an ad ie. “Jelly and custard aisle” has been pulled up for us before based on the word “custard”, even though it relates to a location in a supermarket and we were not advertising custard.
    a. Could you therefore conceivably not say “A healthy alternative to cake…” as cake is likely LHF?

5. What will be done to police / monitor influencer content where it is ambiguous if they have been paid or not (either via money or product or from having a longstanding relationship)

6. How can brands be sure they fall within the exemptions for companies under 250 employees (SMEs)? Is this something they need to flag with any governing body? For example, we work with a food brand who is very well known in the UK but has less than 250 employees in total, so is an SME.

7. Is it correct that even SME’s cannot use paid for influencer content showing or naming an HFSS product? Or boost organic content?

1

Response to CAP and BCAP

Consultation on the implementation of the “less healthy” food and drink product advertising restrictions

October 2025

1. About ISBA

1.1. ISBA represents UK brand advertisers. We are the only body in the UK that enables advertisers to understand their industry and shape its future, because we bring together a powerful network of marketers with common interests, empower decisionmaking with knowledge and insight, and give a single voice to advocacy for the improvement of the industry.

1.2. ISBA is a member of the Advertising Association, and represents advertisers on the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) – the sister organisations of the Advertising Standards Authority (ASA) which are responsible for writing the Advertising Codes. We are also members of the World Federation of Advertisers (WFA). We are able to use our leadership role in such bodies to set and promote high industry standards, as well as a robust selfregulatory regime.

2. Introduction

2.1. ISBA welcomes this consultation and the progress made by CAP/BCAP towards establishing the final guidance for advertisers for the ‘less healthy’ food and drink (LHF) restrictions ahead of their coming into force on 5 January 2026.

2.2. The guidance as drafted represents a substantial improvement to the version most recently consulted on, given its shift in position on the brand advertising exemption, which was enabled by the Government’s move to codify that exemption in law. The removal of that legal uncertainty has resulted in draft guidance which adheres to the Government’s policy intention – focusing on ads which contain identifiable LHF products available for sale to the public, incentivising reformulation, and not

pigeonholing brands as synonymous with LHF.
2.3. ISBA considers that the draft guidance is clear and usable, and ISBA members have reacted broadly positively to it. We have consolidated members' feedback to selected consultation questions, reflected in the response below.
3. Consultation Response
Question (i). Do you agree that the proposed wording of the TV rule (32.21) set out in 3.4 above and as it appears in Annex A adequately reflects the relevant legislation? If not, please
state why including details of any alternative approach you consider more effective.
Question (ii). Do you agree that the proposed wording of the ODPS rule (30.16) set out in 3.5
above and as it appears in Annex B adequately reflects the relevant legislation? If not, please
state why including details of any alternative approach you consider more effective.
2
Question (iii). Do you agree that the proposed wording of the online rule (15.19) set out in 3.6
above and as it appears in Annex B adequately reflects the relevant legislation? If not, please
state why including details of any alternative approach you consider more effective.
3.1. We agree that the proposed wording of all three rules adequately reflects the relevant legislation.
3.2. An ISBA member queried the adequacy of the reference to the exemption for small and medium-sized enterprises (SMEs) in the definitions and supporting information to the Rules. The relevant legislation exempts "arrangements made by or on behalf of [emphasis added] a person who is, at the time when the arrangements are made, a food or drink SME". However, the supporting information makes no mention of "on behalf of", only specifying "the person paying". The distinction is important to small brands and businesses who may be looking to establish themselves in the market.
Question (iv). Do you agree that the guidance set out in part 3 (Background) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details
of any alternative approach you consider more effective.
3.3. We agree that the guidance set out in part 3 is clear and properly reflects the relevant legislation.
Question (v). Do you agree that the guidance set out in part 4 (Determining products in scope)
of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.
3.4. We agree that the guidance set out in part 4 is clear and properly reflects the relevant legislation.
Question (vi). Do you agree that the guidance set out in part 5 (Nature of the advertiser) of
Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.
3.5. We agree that the guidance set out in part 5 is clear and properly reflects the relevant

legislation.
3.6. ISBA members have raised two points here – firstly with regards to section 5.3.2 on joint advertisements, where it is suggested that an example or definition of a "joint advertisement" would be beneficial.
3.7. Secondly, a query was raised with regards to section 5.4.3 and the statement that a non-SME delivery service running ads on behalf of an "associated" food and drink SME would not benefit from the SME exemption, and how this squares with the legislation.
Question (vii). Do you agree that the guidance set out in part 6 (Media and scope) of Annex C
is clear and properly reflects the relevant legislation? If not, please state why, including details
of any alternative approach you consider more effective.
3.8. We agree that the guidance set out in part 6 is broadly clear and properly reflects the relevant legislation. ISBA members have submitted specific queries on some aspects of media, which we have highlighted below.
3
3.9. An ISBA member raised the question of retailers' 'offers pages' under the product listings part of section 6.3.6, and that it should be clear that these are out of scope of the restrictions unless any payment has been made for additional sponsored placement.
3.10. There was also feedback on the application of the rules to influencer marketing, particularly around the question of a 'payment + control' test. There was a request for direct clarity on whether gifting counts as payment. There was also a request for clarity on a situation where an influencer was gifted a food or drink product due to the relationship they have with a business, but the business not being in a position to dictate what that influencer did and whether they posted the product or not, and there being no contractual relationship indicating control or expectation that the influencer would post. In such circumstances, members wished to be clear that this could not be considered to be a paid-for online advertisement.
3.11. The question of liability if an influencer did not correctly execute a brief, and why the brand should be held responsible (particularly if there is contractual evidence to the contrary) was also raised; as well as whether it would be possible to provide examples of permitted influencer marketing to aid compliance and prevent unintentional breaches, especially around gifting.
3.12. We also received a request for clarification on what counts as an influencer, and have had numerous inquiries about journalistic content – for example, journalists gifted products so that they are aware of launches and can sample new offerings. These journalists are not asked to post on social media, but can do so and clearly write content. The assumption is that this is exempt as it is not 'influencer marketing' per se, but it would be useful to have this confirmed.
3.13. A member asked for clarification on the types of online media that fall within the scope
of the restrictions, including confirmation that prop and product placement are not in scope.
3.14. Section 6.3.9 refers to campaigns "not intended to be accessed principally by persons in the UK". There was a request for more clarity here, given the inclusion in section

6.3.11 of “marketing communications appearing on websites with a .uk top-level domain” and how this could conflict with the owned media exemption. The member gave the example of a multinational company running a regional campaign, aimed broadly at consumers across Europe and not targeted at UK audiences, but with elements replicated in owned media for UK audiences.

3.15. Further questions included: what CAP understands “earned media” to include – for example, whether this covers all traditional PR; whether there could be examples given on non-paid-for space online – for example, whether this includes brand stores on third party websites where the advertiser is in control of the content; and clearer guidance on what would fall under the B2B exemption – specifically, whether this covers websites aimed at B2B customers and where the majority of visitors would be B2B customers, but which are also accessible by general consumers.

Question (viii). Do you agree that the guidance set out in part 7 (The brand advertisement exemption) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

4

3.16. Broadly, we agree that the guidance set out in part 7 is clear and properly reflects the relevant legislation. ISBA welcomes the general approach taken by CAP to the brand exemption. Some issues raised by ISBA members are detailed below.

3.17. It would be useful if the guidance were clear that registered trademarks, including abbreviations commonly used for company names or to describe a range of products (for example, “Coke” and “KFC”) are not restricted.

3.18. Section 7.2.3 provides a definition of a “specific product”. A member noted that this tracks the wording provided in Regulations agreed by Parliament, but considered that some added definition would be welcome in order to provide certainty. They proposed that the definition could mention that a specific product is one which is “uniquely differentiated from other products capable of being purchased, which includes a single distinguishing feature even if other aspects of packaging design are common to a range”, and noting that packaging format does not relate to packaging design.

3.19. A member noted that the 2023-24 draft guidance was clearer on the point around the

use of brand characters. This draft notes that “brand characters that are personifications of a specific less healthy product … would not fall under the brand advertising exemption”, which does imply the context brand characters can be used in; but it would be useful for this to be positively referenced, to avoid confusion.

3.20. Section 7.4 relates to “realistic imagery”, and where a food or drink product is visually indistinguishable from a specific LHF product. This requirement is to be used in deciding whether the brand exemption applies or not, as per the secondary legislation; but it should not be applied to the primary legislation in cases such as recipes, serving suggestions and the depiction of generic products which are not specific LHF products, with the potential result that whole categories of product could be rejected if they were judged to be indistinguishable from LHF products of that type. The 2023 draft guidance contained a definition of a “specific product” which was consistent with the definition in the Government’s brand exemption SI – namely, that it is a purchasable product and one for which a Nutrient Profile Score can be obtained. It should be clear that this definition holds, and that recipes and serving suggestions (where there is no

purchasable product or NPS) are not in scope.
3.21. On a related note, members have requested examples as to what ingredients could be depicted in advertisements (for example, biscuit crumbs), so long as no final identifiable LHF product is present.
3.22. A member did note that in previous versions of the draft guidance, SKUs were used as a reference point, and that this had been helpful, but that this was now absent.
Question (ix). Do you agree that the guidance set out in part 8 (The identifiability test) of Annex
C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.
3.23. Broadly, we agree that the guidance set out in part 8 is clear and properly reflects the relevant legislation. Some issues raised by ISBA members are detailed below.
3.24. Section 8.2.2 includes the term "specific", which aligns with the brand exemption SI and the original policy intent that the legislation applies to purchasable products for which NPS data is available. As noted above, a definition of a specific product should
5
include guidance that the output of following a recipe, serving suggestions, and shots of generic products are not in scope.
3.25. The first bullet under section 8.2.2 refers to "a clear and prominent inclusion of a specific LHF product" [emphasis added]. ISBA members continue to look for further guidance on what would count as sufficient prominence of a product in an ad in order for it to become restricted. It would be useful to consider topics such as foreground vs. background, in-aisle ads, fleeting images, sweeping shots of dinner tables featuring multiple products, and obscured images.
3.26. Members also asked for considerations around prominence to be subject to the key test of whether that advertisement is 'for' an LHF product or not – for example, if an advert ran for a music festival and featured imagery of last year's festival with revellers consuming LHF products, the ad would clearly not be for those products, whether they could be identified in real time or not.
3.27. In general, section 8.2 refers to the fact that the ASA "will place weight on the content of the advertisement and what people are likely to perceive the advertisement is for". Members have noted that this is not necessarily the same as the Government's approach in its brand exemption SI, the Explanatory Memorandum for which states that the restrictions are focused "only on the content of the advertisement … and does not consider the perception or associations that a person seeing an advertisement might have of the advertising brand". CAP will know that the question of brands being pigeonholed as synonymous with LHF, or being strongly associated with it, has been a consistent concern of ISBA members, and it would be useful for the guidance to confirm that ads for brands will be assessed on their content, not contextual factors such as perception or associations.

CAP and BCAP Consultation

Consultation on the implementation of the "less healthy" food and drink product advertising restrictions

IPA response

The IPA

The IPA is the professional trade body representing advertising, media and marketing communications agencies based in the United Kingdom. We have approximately 250 agency brands within our membership.

As a membership body incorporated by Royal Charter, the IPA's role is two-fold: (i) to provide essential core support services to our corporate members who are key players in the advertising industry; and (ii) to act as our members' spokesperson.

We support the ASA and the UK's self-regulatory system, with whose codes our members are required to comply in accordance with our rulebook, and we are a member of both Committees of Advertising Practice.

We are grateful to the CAP executive for all their work on the guidance to the restrictions and we welcome the opportunity to contribute to this consultation.

Consultation Questions

Question (i) *– Do you agree that the proposed wording of the TV rule (32.21) set out in 3.4 above and as it appears in Annex A adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.*

With regard to the list of exceptions to the brand advertisement exemption in Rule 32.21 (p.8 Annex A):

1. The first sub-bullet point reflects paragraph 2(3) of The Advertising (Less Healthy Food and Drink) (Brand Advertising Exemption) Regulations 2025 in respect of the depiction of the name of a specific less healthy food or drink product. Should it not also include the caveats set out in sub-paragraphs (a) and (b) of that paragraph?

2. In the bullet point reflecting the SME exemption set out in Section 321A(3)(a) Communications Act 2003 (as amended):

   (a) - section 321A(3)(a) Communications Act 2003 (as amended) refers to "arrangements" made on behalf of a food or drink SME, rather than to "payments" made; and

   (b) – as reflected in paragraph 4(b) The Advertising (Less Healthy Food Definitions and Exemptions) Regulations 2024, replace "less than" with "fewer than" in the definition of "SME".

Question (ii) *– Do you agree that the proposed wording of the ODPS rule (30.16) set out in 3.5 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.*

With regard to the list of exceptions to the brand advertisement exemption in Rule 30.16 (p.8 Annex B):

1. The first sub-bullet point reflects paragraph 2(3) of The Advertising (Less Healthy Food and Drink) (Brand Advertising Exemption) Regulations 2025 and the depiction of the name of a specific less healthy food or drink product. Please see paragraph 1. in our response to Question (i).

2. In the bullet point reflecting the SME exemption set out in section 368FA(2) Communications Act 2003 (as amended), please see paragraphs 2(a) and (b) in our response to Question (i) (with the reference in (a) here to section 368FA(2) rather than 321A(3)(a) Communications Act 2003 (as amended)).

Question (iii) *– Do you agree that the proposed wording of the online rule (15.19) set out in 3.6 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.*

With regard to the list of exceptions to the brand advertisement exemption in Rule 15.19 (p.4-6 Annex B):

1. The first sub-bullet point reflects paragraph 2(3) of The Advertising (Less Healthy Food and Drink) (Brand Advertising Exemption) Regulations 2025 and the depiction of the name of a specific less healthy food or drink product. Please see paragraph 1. in our response to Question (i).

2. In the bullet point reflecting the SME exemption set out in section 368Z14(2) Communications Act 2003 (as amended), please see paragraph 2(b) in our response to Question (i).

3. In the bullet point reflecting the exemption for advertisements included in a television licensable content service, which is a regulated television service, it would be helpful if the guidance explained whether the reference to BCAP Code rule 32.21 means that such advertisements are subject to that rule.

Question (iv) *– Do you agree that the guidance set out in part 3 (Background) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective*.

The guidance set out in part 3 of Annex C is clear and properly reflects the relevant legislation.

Question (v) *– Do you agree that the guidance set out in part 4 (Determining products in scope) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.*

The guidance set out in part 4 of Annex C is clear. However, in order to better reflect the information provided under category 13 of the schedule to The Advertising (Less Healthy Food Definitions and Exemptions) Regulations 2024, we wonder whether the last line in the first bullet point at paragraph 4.1.1 of the guidance should be amended to include not just complete meals but also meal-centres, battered or breaded products and any type of sandwiches.

Question (vi) *– Do you agree that the guidance set out in part 5 (Nature of the advertiser) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.*

The guidance set out in part 5 of Annex C is clear and properly reflects the relevant legislation.

However, with regard to the last sentence of paragraph 5.3.2, we would ask for a clarification (as included in paragraph 6.3.4) that a party paying for an online advertisement and therefore responsible for ensuring compliance with the rules, would not include an agency making a payment to a media owner on behalf of its advertiser client.

Question (vii) *– Do you agree that the guidance set out in part 6 (Media and scope) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.*

The guidance set out in part 6 of Annex C properly reflects the relevant legislation. However, we have the following comments:

1. In paragraph 6.3.6, the bullet point dealing with Social Media explains: "*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*." However, the bullet point dealing with Influencer marketing says: "*Where consideration is provided for an influencer to create content for publishing on the internet that depicts a specific less healthy product, the resulting content is likely be prohibited*." It continues: "*Most obviously, where the advertiser paying reaches an arrangement with an influencer to create and place such content on* ***their*** *social media channel (for example, a written or oral contract or other agreement), that would be deemed to be paying for an advertisement to be placed on the internet resulting in the influencer's content being prohibited*." (Our emphasis.)

   It is unclear to which of the advertiser or influencer "their" refers, though it must, presumably, be the influencer. Our understanding of the rule and the guidance is that an advertiser may pay an influencer to create content for, or to appear in, an advertisement, just as they may pay any other talent to do so. The restriction only applies where the advertiser pays the influencer to publish an advertisement on the influencer's own social media channel because that would amount to paying to place an advertisement on the internet.

   Assuming this understanding is accurate, we would suggest amending the guidance to add clarity, perhaps as follows:

   "*Where consideration is provided for an influencer to create an advertisement 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 (for example, a written or oral contract or other agreement stipulating payment for posting), that would be deemed to be paying for an advertisement to be placed on the internet resulting in the influencer's content posted on their channel being prohibited. 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, that will not be prohibited.*

   Further, since the ASA considers that payment to an influencer can include gifting, we question the need for the second sub-bullet point under the Influencer Marketing paragraph of the guidance. However, if the sub-bullet point must be included, it might be amended as follows:

   - *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 non-monetary consideration has been made 'for' influencer content (i.e. whether an influencer has been paid to place an advertisement on the internet).*

2. With regard to paragraph 6.3.9 which sets out the exemptions to the online rule, the relevant sections of the Communications Act 2003 (as amended) and The Advertising (Less Healthy Food Definitions and Exemptions) Regulations 2024 are complex. We would ask that explanations or examples are provided against the corresponding bullet points under paragraph 6.3.9.

Question (viii) *– Do you agree that the guidance set out in part 7 (The brand advertisement exemption) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.*

The guidance set out in part 7 of Annex C properly reflects the relevant legislation. However, we have the following comments:

7.1.4 – It is clear that products differentiated only by pack size or packaging format will not fall within a range of products because they are, essentially, the same. However, we consider it important that the guidance makes the distinction for users between the format of packaging, and the format of products themselves. Products often comprise the same ingredients but are manufactured into entirely different formats and sold as separate, distinct products which consumers, for any number of reasons, such as taste, texture, appearance or occasion, recognise and treat as separate and distinct. For example, a specific type of chocolate may be sold in bar, button, star and Easter egg formats. The products will, through necessity, be differentiated by pack size or packaging format (and each might itself be sold in different pack sizes or product item quantities) but, crucially, they will also be differentiated by the shape and format of the products themselves. The guidance should make clear that such different products will be separate and distinct, and capable of forming part of a range.

7.1.5 – the explanation that the brand advertisement exemption does not apply in the circumstances set out in 7.2, 7.3 or 7.4 following, where the identifiability test is met, is unclear. Those paragraphs include examples where the exemption will apply.

7.2.3 – with regard to the second bullet point, please see our comment in relation to paragraph 7.1.4.

7.2.5 – this paragraph seems to make the same point as the bullet point directly preceding it in paragraph 7.2.4.

7.2.6 (second bullet point) and 7.2.7

1. It would be helpful to clarify in paragraph 7.2.7, that it sets out a caveat to the exception to the brand advertisement exemption referred to in paragraph 7.2.1.

2. It would be helpful to clarify whether paragraph 7.2.7 means that there is a carve-out for advertisements that would otherwise fall under the second bullet point in paragraph 7.2.6, or whether regulation 2(3) means that only the name of a specific product – not a logo – may be depicted, even if that logo contains the specific product name and that name would satisfy the other requirements of regulations 2(3) and 2(6).

Question (ix) *– Do you agree that the guidance set out in part 8 (The identifiability test) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.*

The guidance set out in part 8 of Annex C properly reflects the relevant legislation. However, we have the following comments:

8.2.1 – at the end of the final sentence, shouldn't the text read: "….as being for a **specific** less healthy product."? The wording of the identifiability test, which reflects the law, includes "**that** product", meaning, presumably, a specific or particular product, rather than any product.

8.2.3 – the example given in the second sentence simply repeats the identifiability test and does not provide clear guidance. It could be understood as contradicting or diminishing the brand advertisement exemption.

Additional comments

As we have suggested in previous consultation responses, while we are grateful for the efforts made by CAP in producing the draft statutory guidance, the advertising industry will need more detail in order that it can fully understand what will and will not be caught by the new rules.

We would like to see a full package of resources and advice made available to help support compliance, including additional reference materials, information, flow-charts and training modules, with practical, visual examples and case studies explaining what will and will not fall within scope of the new rules and showing worked examples of the brand advertising exemption and the scope of its application.

We will submit a set of additional questions under separate cover.

9 October 2025

CAP and BCAP Consultation

Consultation on the implementation of the "less healthy" food and

drink product advertising restrictions

IPA response

9 October 2025

SCHEDULE OF FURTHER QUESTIONS

1. Paragraphs 3.4.2 and 8.2.1 of Annex C explain that, in applying the identifiability test, the ASA will consider an advertisement from the perspective of a notional 'average consumer', meaning that 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.

   Some advertisers may publish/broadcast advertisements depicting a less healthy product in media which are not restricted under the new rules, including, in the case of television, outside of the restricted hours. They may also, as part of the same campaign, publish almost identical advertisements but which do not depict the less healthy product (it may be entirely absent, or pixellated so that it is unidentifiable), in restricted media including, in the case of television, within the restricted period.

There will be members of the public, therefore, who will see the less healthy product advertisements in unrestricted media, and the almost identical advertisements which do not depict the less healthy product, in restricted media.

If the ASA decides it has reason to assess an almost identical advertisement even though it does not depict a less healthy product, and does so from the perspective of a notional 'average consumer', will that average consumer be deemed to have been influenced by the less healthy product advertisements forming part of the same campaign so that he/she might reasonably be expected to be able to identify the almost identical advertisement as being for a less healthy product? If so, on what basis?

2. Similar to the scenario in 1. above, how will the ASA assess a sequence of ads forming part of a TV campaign, where an ad broadcast outside of the restricted hours depicts a less healthy product, and an almost identical ad but which does not depict a less healthy product, is broadcast within the restricted hours? Will the ASA consider the proximity in timing of the broadcast of each ad as relevant? For example, if the ad which does not depict a less healthy product is broadcast at 20.55 and an ad which does depict the less healthy product is broadcast at 21.05, as opposed to if the ad which does not depict a less healthy product is broadcast at 15.00 and an ad which does depict the less healthy product is broadcast at 22.00?

3. Would limited edition variants of less healthy products count towards a "range"? For example, what if a brand offers primarily one less healthy product for sale in the UK, but offers, occasionally, a limited edition or seasonal variant of that product in a different flavour during the Christmas season?

4. Is a "build your own" less healthy product a "specific" product, or part of a "range"? For example, a fast-food restaurant offers one milkshake item on their menu, but each consumer can choose one or more of 15 flavourings and other ingredients to be blended in when ordering. Would a reference in an ad to the restaurant's "Milkshakes" amount to the depiction of a specific less healthy product, even though the end-product purchased will depend on the flavourings and ingredients chosen by the consumer?

5. Will the TV restriction apply to less healthy product ads that feature within the content of programmes, for example, displayed on advertising hoardings at televised sporting events?

6. Would supermarket advertisements featuring less healthy food products that have been cooked (and so are unbranded and cannot be specifically identified as belonging to any particular brand) and are presented on a table for a family lunch, be caught by the restrictions?

7. Would the restrictions apply to less healthy product ads included in a supermarket's magazine that is provided free in-store to shoppers and which is replicated on its own website?

8. Will the restrictions prohibit the use in restricted media of a logo which depicts a specific less healthy product which is a registered trademark?

- Firstly, we want to recognise the extensive efforts made by CAP to revise and restructure this guidance. Taken as a whole, this final draft is clear and easily navigable and will support business readiness ahead of 5th January 2026.
- Our consultation response therefore focusses only on aspects of the guidance where we believe further clarification or additions would be beneficial.

How the brand exemption interacts with the identifiable test

- Over the last few years industry has become familiar with the concept of the 'identifiable test'. However, the introduction of the brand exemption means that, in practice, a significant number of ads will not be subject to this test. If an ad qualifies for the brand exemption it is de facto exempt from the restrictions, so the advertiser does not need to apply the 'average consumer' test - they just need to ensure that the ad does not depict a specific LHF product.
- To really emphasize this point – and ensure advertisers don't struggle with applying the 'average consumer' test when it is not relevant - it would be helpful if the guidance explicitly set out the relationship between the brand exemption and the 'identifiable test', e.g.:

  - In order for the brand exemption to apply, an ad must not depict a specific LHF product/s. If an ad qualifies for the brand exemption, it will not be judged against the 'identifiable test' because it will be de facto exempt from restrictions
  - If none of the legal exemptions apply, the 'identifiable test' always applies
- Linked to that, it would be helpful to set out how the ASA will assess whether a brand ad has met the threshold for 'depicting' a product. When the 'identifiable test' is applied, the relevant factor is what the average consumer understands the ad to be for, but it is not clear in the guidance what 'test' the ASA will apply to determine whether there is a depiction of an LHF product in a brand ad. This threshold is relevant in cases where a brand ad includes multiple product-related factors (for example ingredients), so it would be useful to include wording to the effect of *'when considering whether a brand ad depicts a specific LHF product, the ASA will objectively consider all factors present to determine whether references to a product collectively constitute a depiction of an LHF product'*.

Section 8

- Section 8 is far shorter than in previous drafts. In the previous guidance, there were subheadings such as "*references, imagery, or other representations **likely** to result in an ad for an identifiable less healthy product*", and "*references, imagery, or other representations **not likely** to result in an identifiable less healthy product advertisement*". These examples were helpful in giving a creative steer, but now no practical examples are given – it would be great to see the inclusion of more examples as these help brands to apply the rules to real-world scenarios.
- Similarly, previous versions of this guidance included wording which clarified that fleeting images of products which appeared in an ad very briefly were unlikely to cause a product ad to meet the 'identifiable test'. It would be helpful to re-instate this wording in section 8.

Other comments

- For the avoidance of doubt:
  - It would be helpful to clarify in section 1 that print media is out of scope of the restrictions.

- The document should confirm that non-Ofcom regulated IPTV channels are in scope of the online restrictions – as it stands IPTV is not mentioned, which feels like a 'gap' in the document.
- The word 'specific' should be added to section 5.4.2 to clarify that only depictions of specific LHF products will fall in-scope of the rules.

- It would be helpful to state explicitly in section 6.3.6 that the LHF restrictions apply in 'live' environments. 'Live' product promotion is increasingly common across all online platforms, so it's important that the guidance accounts for this advertising medium.
- We would also welcome clarity on how the rules apply to affiliate marketing. Our assumption is that affiliate marketing constitutes a 'paid for' relationship between the brand and content producer, but it would be helpful if this was clarified in section 6.3.6. In addition, some guidance on use of affiliate links would be useful – a previous version of this document did make reference to the status of 'links' within ads, so perhaps this text could be re-instated in the context of affiliate marketing.
- Further, it would be good to get a specific steer on how the rules apply in the following affiliate scenarios:
  - **Affiliate editorial content** (e.g. this piece) **which references food/drink products**: This kind of content is a significant revenue stream for many news publishers, so it would be useful if the guidance set out the factors that might lead the ASA to conclude that a piece of content meets the 'identifiable test'. In other words, it would be helpful to understand what factors may lead to a piece like the linked example being perceived as advertorial as opposed to purely editorial. That steer would help news publishers to develop their own in-house guidelines to ensure that editorial content does not inadvertently fall in scope of the LHF restrictions.
  - **Affiliate marketing on socials:** It is not necessarily obvious that a commission-based affiliate arrangement equates to payment to place an ad, so it is important that the guidance clearly states how the ASA will view affiliate marketing arrangements. That information will give agencies the clarity they need to fully support influencers with compliance.
- The previous version of the guidance referred specifically to recipes, noting that: "*the concept of a specific products does not include a food or drink item that is not available for sale, such as the ingredients of a finished specific product, a serving suggestion involving a specific product as part of a finished item, or a finished item that results from following a recipe involving one or more specific products*". There is no explicit mention of recipes in this new guidance. While the identifiable test can be applied to any advertisement features that include recipes, the removal of recipes from the guidance leaves a slight grey area whereby a brand might have to consider the end product of a recipe and whether it resembles an LHF product that the advertiser sells (despite it not being available to purchase).
- Finally, if anything can be done to further emphasize that a delivery service cannot benefit from the SME exemption if it pays to place an ad relating to an SME partner restaurant, that would be appreciated. This principle is set out in section 5.4.3 but we continue to receive questions about the status of such ads, so we would recommend adding additional text here to re-iterate that in order to benefit from the SME exemption the business paying to place must be a food/drink SME.

RESPONSE OF KELLANOVA TO THE 3rd CAP CONSULTATION ON "IMPLEMENTING FURTHER RESTRICTIONS ON ADVERTISING FOR "LESS HEALTHY" FOOD AND DRINK PRODUCTS"

Question (i) – Do you agree that the proposed wording of the TV rule (32.21) set out in 3.4 above and as it appears in Annex A adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.

We consider that the proposed wording of the TV rule (32.21) set out in 3.4 above and as it appears in Annex A adequately reflects the relevant legislation.

Question (ii) – Do you agree that the proposed wording of the ODPS rule (30.16) set out in 3.5 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.

We consider that the proposed wording of the ODPS rule (30.16) set out in 3.5 above and as it appears in Annex B adequately reflects the relevant legislation.

Question (iii) – Do you agree that the proposed wording of the online rule (15.19) set out in 3.6 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.

We consider that the proposed wording of the online rule (15.19) set out in 3.6 above and as it appears in Annex B adequately reflects the relevant legislation.

Question (iv) – Do you agree that the guidance set out in part 3 (Background) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

We consider that the guidance set out in part 3 (Background) of Annex C is clear and properly reflects the relevant legislation.

Question (v) – Do you agree that the guidance set out in part 4 (Determining products in scope) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

We consider that the guidance set out in part 4 (Determining products in scope) of Annex C is clear and properly reflects the relevant legislation.

Question (vi) – Do you agree that the guidance set out in part 5 (Nature of the advertiser) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

Section 5.3.1 states that "*Advertisements solely by or on behalf of businesses not involved directly in the supply of food and drink are highly unlikely to be subject to the rules, even if the content of the advertisements features food and drink product-related imagery of food and drinks…".*

Further, Section 5.3.2 states that "…*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*". We consider that the guidance needs to be made clear that charities and CSR businesses who partner with a non-SME business involved directly in the supply of food and drink will not be in scope as reflected in legislation.

Question (vii) – Do you agree that the guidance set out in part 6 (Media and scope) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

Section 6.1.3 states that *"…advertisements under a sponsorship agreement, and anything else under a sponsorship agreement that is included in a television service, for example, programme sponsorship credits"* are restricted. We consider it necessary to make clear that advertising, for example, in stadiums and events are not restricted if a game or event is being broadcast.

Section 6.3.5 states that "…*the prohibition applies only to paid for advertising…or in other non-paid-for space online under their control such as marketers' own social media channels or apps where no payment for placement of an advertisement is involved*". We consider it necessary to be clear that corporate social media channels/apps, such as LinkedIn, are also non-paid for and should not be restricted.

Section 6.3.6 provides that "*In the case of 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".* We consider it necessary to make clear that gifting of merchandising to influencers would be acceptable e.g. a brand logo on t-shirts, keyrings, tote bags - as long as those items do not depict a specific less healthy food or drink.

Question (viii) – Do you agree that the guidance set out in part 7 (The brand advertisement exemption) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

Section 7.1.4 sets out the definition of "range of products" and provides that it may also include a group of products "…*composed of* ***variants of a product****, such as different flavours…*". We consider it necessary to expand on "*variants of a product*" - such as "…*different shape food formats or variation to ingredients*". We consider that if a product variant is launched after 16 July 2025 under the same brand name as an existing brand and that product variant has, for example, a different shape food format or variation to ingredients, this should be caught by the definition of "range of products".

Section 7.2.2 provides a definition of "Depict" lifted from the brand exemption regulation. We note the limited scope of the current consultation and in particular that the consultation process will not consider responses relating to underlying legislation. However, we do consider this definition to be too wide and open to interpretation which may give rise to uncertainty. We suggest it is made clearer that depiction should only be limited to the content of the brand advertisement as opposed to the contextual factors such as the perception of the brand or assumption of its association with less healthy food and drinks.

Section 7.2.6 states that "*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".* This conflicts with the brand exemption regulation as Regulation 2(3)(a) states that *"…unless such depiction of the product is…****in the logo of a brand of a range of products****". As pointed out in Section 7.1.4, a "range of products" "*means of a group of related food or drink products (whether or not those products are less healthy)…."* The second bullet point in Section 7.2.6 suggests that you cannot show a brand logo if the entire range is made up of less healthy products which conflicts with what is stated at Section 7.2.7.

Section 7.3.2 provides that "…*the brand exemption will still apply to advertisements for brands which name a specific less healthy product where the full name of that product…****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 avoidance of doubt, we consider it necessary to ensure that where this section refers to "*is the name of the brand*", that the "name" can be depicted as a logo (as stated in Regulation 2(3)(a) of the brand exemption regulation).

Question (ix) – Do you agree that the guidance set out in part 8 (The identifiability test) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

We consider that the guidance set out in part 8 (The identifiability test) of Annex C is clear and properly reflects the legislation.

09.10.25

1

CAP and BCAP consultation: Consultation on the implementation of
the "less healthy" food and drink product advertising restrictions
Mars UK consultation response, October 2025

Introduction

Mars is a private, family-owned business which operates across the UK, employing over 10,000
Associates.
We have a proud history in the UK, dating back to the opening of our chocolate factory in Slough in
1932 which still produces some of the country's most popular brands, including MARS®, GALAXY®,
and MALTESERS®. We also produce some of the country's most recognisable brands across our
confectionery, food and petcare businesses including SKITTLES®, EXTRA®, KIND®, Ben's Original™,
DOLMIO® and PEDIGREE®. Last year, Mars acquired Hotel Chocolat, which has a growing network of
over 150 stores across the UK.

Response to question (i):

Yes, the proposed wording of the TV rule (32.21) adequately reflects the relevant legislation.

We welcome the proposed wording, as set out, which accurately reflects the law as set out under the
Health and Care Act 2022; The Advertising (Less Healthy Food Definitions and Exemptions)
Regulations 2024; and The Advertising (Less Healthy Food and Drink) (Brand Advertising Exemption)
Regulations 2025.

We particularly welcome the correct interpretation of the "brand advertising exemption". The new wording signposts to guidance; our consultation response deals with the content of the
draft guidance more specifically in Questions (iv) to (ix) inclusive.

Response to question (ii):

Yes, the proposed wording of the ODPS rule (30.16) adequately reflects the relevant legislation.

We welcome the proposed wording, as set out, which accurately reflects the law as set out under the

Health and Care Act 2022; The Advertising (Less Healthy Food Definitions and Exemptions)
Regulations 2024; and The Advertising (Less Healthy Food and Drink) (Brand Advertising Exemption)
Regulations 2025.
We particularly welcome the correct interpretation of the “brand advertising exemption”.
The new wording signposts to guidance; our consultation response deals with the content of the
draft guidance more specifically in Questions (iv) to (ix) inclusive.
Response to question (iii):
The proposed wording of the online rule (15.19) adequately reflects the relevant legislation.
We welcome the proposed wording, as set out, which accurately reflects the law as set out under the
Health and Care Act 2022; The Advertising (Less Healthy Food Definitions and Exemptions)
Regulations 2024; and The Advertising (Less Healthy Food and Drink) (Brand Advertising Exemption)
Regulations 2025.
We particularly welcome the correct interpretation of the “brand advertising exemption”.
2
The wording here is clear that “[p]aying for advertisements to be placed on the internet includes
providing any consideration (monetary or non-monetary)…”. This is clear in isolation, but the draft
guidance potentially contradicts this clear-cut stance in section 6.3.6. Our consultation response
deals with this issue in response to Question (vii) below.
The new wording signposts to guidance; our consultation response deals with the content of the
draft guidance more specifically in Questions (iv) to (ix) inclusive.
Response to question (iv):
No, part 3 of the guidance should explicitly name and acknowledge the relevance of the Health and
Care Act 2022; The Advertising (Less Healthy Food Definitions and Exemptions) Regulations 2024; and
The Advertising (Less Healthy Food and Drink) (Brand Advertising Exemption) Regulations 2025.
Response to question (v):
Yes, part 4 of the guidance appropriately reflects the relevant legislation in determining which
products are in scope of the restrictions. We welcome this clarity.
Response to question (vi):
Yes, part 5 of the guidance is clear and appropriately reflects the relevant legislation in determining
the nature and responsibilities of advertisers. We welcome this clarity.
Response to question (vii):
Part 6 of the guidance largely offers clarity and appropriately reflects the relevant legislation in setting
out the scope of the rules across different media.

6.3.1: The explicit acknowledgement that "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" is particularly welcome (emphasis added). This clarity
is particularly important for multinational businesses such as ours, employing people in regional and
global roles in the UK and executing regional and international campaigns from the UK.
6.3.5: The wording around "advertisers' own marketing communications appearing on their own
websites" is clear, but the example of "online groceries platforms" is perhaps unhelpful, without it
being clear that the example relates to online grocery companies.
6.3.6: The wording and level of detail around product listings and social media is helpful. The wording
on influencer marketing is, however, confusing and self-contradictory. There is clarity in the position
that "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 becomes less clear with the wording "In the case of an influencer creating and disseminating
content following an advertiser gifting them a product, the ASA will assess the precise circumstances
… including the presence of any arrangement between the parties to determine whether monetary
or non-monetary consideration has been made 'for' influencer content".
The guidance should either make clear that monetary and non-monetary incentives amount to "paidfor" advertising; or it should permit product gifting of nominal value, provided there is no editorial
control exerted or wider commercial arrangements in place. Either way, the guidance should offer
clarity and ensure a level playing field for advertisers. The guidance could also go further in defining
who qualifies as an "influencer", to ensure that user generated content or product giveaways to
consumers are not inadvertently caught within these restrictions.
3
6.3.9: As stated above, the clarity on advertisements "not intended to be accessed principally by
persons in the UK" is particularly welcome. This clarity is particularly important for multinational
businesses such as ours, employing people in regional and global roles in the UK and executing
regional and international campaigns from the UK. However 6.3.11 could go further in delivering
assurance. The inclusion of "Marketing communications appearing on websites with a ".uk" top-level

domain" potentially contradicts the exemption of owned spaces online. It is very likely that a
multinational company could be running a regional campaign, aimed broadly at consumers across
Europe and not targeted at UK audiences, with elements of this campaign replicated in exempt
owned spaces online for UK audiences.
Furthermore, the wording around "Paid-for marketing communications from or by marketers
targeting people in the UK" would be at least equally clear without the words "from or by marketers",
bearing in mind multinational organisations employ people in the UK in regional and global roles.
We would like to see greater clarity on the criteria used in determining what qualifies as an
advertisement that is not intended to be accessed principally by people in the UK. For example, it
may be appropriate to set a threshold for the maximum proportion of the target audience that can
be based in the UK before an advertisement is considered to be "intended to be accessed principally
by people in the UK"; perhaps no more than 25% or 50%.
Question (viii):
Part 7 of the guidance largely offers clarity and appropriately reflects the relevant legislation in setting
out the brand advertising exemption.
The wording in 7.1.5 should be careful not position the brand exemption as being subservient to the
identifiability test. The Advertising (Less Healthy Food and Drink) (Brand Advertising Exemption)
Regulations 2025 are clear and specific about where the exemption does and does not apply, and the
guidance should primarily reflect this.
The wording across 7.2.4 could go further in delivering certainty and clarity for end users, by being
clearer about what is in or out of scope under the restrictions. There are unnecessary qualifications
within the language in this draft – for example, "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" (emphasis added).
7.2.4 states that "brand characters that are personifications of a specific less healthy product … would
not fall under the brand advertising exemption … [but] imagery that is instead representative of a
brand or a range of products … is likely to fall under the brand advertising exemption".
We would urge greater clarity, and positive wording, that brand characters can be used in compliance
with the advertising restrictions, as long as it is a brand and not a specific less-healthy product being

advertised and as long as the characters are not being used to represent specific less-healthy food or
drink products, as defined in law.
The draft guidance consulted upon in 2023/24 offered more certainty on this point:
"Branding outside the scope of the less healthy product rules includes… [o]ther branding that relates
to a range of products … if there are no depictions or references specific to a specific less healthy
product … This includes, branding on distinctive packaging (like take-away bags and pizza boxes),
brand ambassadors, equity brand characters, and licensed characters."
We would propose using "stylised" rather than "stylized" within 7.2.4.
4
We welcome the clarity and specificity offered on the use of generic product imagery vs realistic
imagery, as set out in 7.2 and 7.4. This is an accurate reflection of what has been set out in law.
We have already seen the ordering of 7.3.1 and 7.3.2 giving rise to unnecessary confusion for media
partners. We would suggest either swapping the order of the sections or presenting the information
together within one section and not two separate sections.
Question (ix):
Yes, and we particularly welcome the clarity that 8.1.2 offers – i.e. that the starting point for
determining whether a product and advertisement are compliant are the conditions set out under
The Advertising (Less Healthy Food and Drink) (Brand Advertising Exemption) Regulations 2025, and
that the identifiability test only comes into play where advertisements do not enjoy the exemptions
set out under law.

Nestlé response to 'Consultation on the implementation of the "less healthy" food and drink product advertising restrictions'

Introduction

We always are grateful for the opportunity to provide our views in response to the work carried out by the Committees of Advertising Practice (CAP and BCAP), on behalf of the ASA.

In relation to the implementation of the new rules on advertising for "less healthy" food and drink products (LHF), we are glad to see that the process to provide us with the necessary legislative certainty and the implementation guidance is close to conclusion.

You will find our response to the consultation questions below. We aimed to make them as practical as possible, but if you believe they need further clarification, we remain at your disposal for explanation and to answer any follow-up questions.

We look forward to the final implementation guidance to ensure compliance with the new regulations. In the meantime, we continue to respect the Industry Agreement with the Government so that our advertisements for identifiable LHF products are not shown before the watershed on Ofcom-licensed TV and Ofcom-regulated on-demand services, or as paid-for online advertisements at any time.

Do you agree that the proposed wording of the TV rule (32.21) set out in 3.4 above and as it appears in Annex A adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.

We, agree that the proposed wording of the TV rule (32.21) set out in 3.4 above and as it appears in Annex A adequately reflects the relevant legislation, however, we could not verify any linked content.

Do you agree that the proposed wording of the ODPS rule (30.16) set out in 3.5 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.

We agree that the proposed wording of the ODPS rule (30.16) set out in 3.5 above and as it appears in Annex B adequately reflects the relevant legislation, however, we could not verify any linked content.

Do you agree that the proposed wording of the online rule (15.19) set out in 3.6 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.

We agree that the proposed wording of the online rule (15.19) set out in 3.6 above and as it appears in Annex B adequately reflects the relevant legislation, however, we could not verify any linked content.

Do you agree that the guidance set out in part 3 (Background) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

We agree that the guidance set out in part 3 (Background) of Annex C is clear and properly reflects the relevant legislation. However, we would like to highlight further comments regarding some practical guidance for the implementation regarding:

- 5. Nature of the advertiser
- 6. Media and scope
- 8. The identifiability test

Do you agree that the guidance set out in part 4 (Determining products in scope) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

We agree that the guidance set out in part 4 (Determining products in scope) of Annex C is clear and properly reflects the relevant legislation.

Do you agree that the guidance set out in part 5 (Nature of the advertiser) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

We agree that the guidance set out in part 5 (Nature of the advertiser) of Annex C is clear and properly reflects the relevant legislation. However, we are seeking confirmation that the inclusion of generic imagery of food or drink products shown as part of a serving suggestion or recipe idea or otherwise to provide context to the sale of an out of scope product 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 an out of scope product. For example, an advert for an out-of-scope product such as sugar, might include an image of a cake as part of a recipe idea (and this would not be perceived as an advert for a cake).

Do you agree that the guidance set out in part 6 (Media and scope) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

We suggest further explanation of practical aspects of the Online rule (6.3): although the guidance sufficiently describes what is meant by 'paying' and 'placed', it fails to comprehensively describe 'on the internet'. We appreciate that, in this context, it's clarified that the regulation does not apply to advertisers own marketing communications appearing on their own websites, social media channels or apps. We also welcome the clarification that digital advertising shown outdoors, or via in-store display boards or screens remains out-of-scope.

We would also welcome further clarity on the use of any footage of out of home events (such as a sporting or cultural event) where out-of-home advertisements of identifiable "less healthy" products might be present and visible and that is then featured on the online media or broadcast. In our view, provided that online footage or broadcast of such events does not benefit from any additional online activation (that would be subject to the regulations), the footage or broadcast should be compliant with the regulations without any further requirement (for editing or otherwise).

Do you agree that the guidance set out in part 7 (The brand advertisement exemption) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

We agree that the guidance set out in part 7 (The brand advertisement exemption) of Annex C is clear and properly reflects the relevant legislation.

Do you agree that the guidance set out in part 8 (The identifiability test) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

We agree that the guidance set out in part 8 (The identifiability test) of Annex C properly reflects the relevant legislation, but can be further clarified for more practical cases, which might include advertisements for products that are not classified as "less healthy" but include pack shots where the packaging might feature reference to an identifiable "less healthy" product(s) (e.g. flavour description or serving suggestion) – we believe such advertisement should not be subject to the restrictions, and this should be clarified in the final guidelines.

1

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NMA response to B/CAP consultation, titled 'the implementation of the "less healthy" food and drink product advertising restrictions'

Introduction

1. The News Media Association ("NMA") is the voice of UK national, regional, and local news media in all their print and digital forms – a £4 billion sector read by more than 46.4 million adults every

month. Our members publish around 900 news media titles, ranging from well-known national and
international brands to independent local papers of record, including The Guardian, Financial Times,
The Daily Telegraph and the Daily Mirror, to the Manchester Evening News, Kent Messenger, and the
Monmouthshire Beacon.
Overview
2. In the months before the laying of the Advertising (Less Healthy Food and Drink) (Brand Advertising
Exemption) Regulations 2025 ("the 2025 Regulations"), uncertainty surrounding the upcoming advertising restrictions caused significant disruption for news publishers and their advertisingrelated activities, particularly leading up to peak seasonal periods like Christmas. The lack of
certainty ultimately impacted advertising revenues and the ability of individual titles to undertake accurate business planning or invest in newsrooms and journalists.
2.1. The NMA therefore appreciate the efforts undertaken by all parties in ensuring the implementation
of the Less Healthy Food ("LHF") advertising restriction takes effect from 5 January 2026, following
several delays and calls for clarity. To that end, the laying of the 2025 Regulations is welcomed, following the outcome of the consultation on the matter held between July and August 2025. We view that the uncertainty has now been remedied.
2.2. For the news publishing sector, it is crucial that the LHF regime is fully implemented without delay,
given that uncertainty has been addressed with the 2025 Regulations. Further delays or revisiting the merits of a policy which enjoys support from across the political divide and the Government would only serve to hamper the operations of news publishers and their ability to produce journalism. This is especially true for titles that rely on advertising to fund free-to-consume journalism.
2.3. The NMA also welcomes this opportunity to reaffirm its commitment to the May 2025 voluntary
industry agreement, which it was a signatory to.
Consultation questions
3. Do you agree that the proposed wording of the TV rule (32.21) set out in 3.4 above and as it appears
in Annex A adequately reflects the relevant legislation? If not, please state why including details of
any alternative approach you consider more effective.

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3.1. The question is not applicable to news publishers.
4. Do you agree that the proposed wording of the ODPS rule (30.16) set out in 3.5 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.

4.1. The question is not applicable to news publishers.
5. Do you agree that the proposed wording of the online rule (15.19) set out in 3.6 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.
5.1. It is the view of the NMA that the proposed wording to the CAP Code section 15.19 is clear and accurately reflects the relevant legislation, including the brand advertising exemption regulations, the introduction of which is welcomed in order to provide clarity to the advertising sector.
6. Question (iv) – Do you agree that the guidance set out in part 3 (Background) of Annex C is clear and
properly reflects the relevant legislation? If not, please state why, including details of any alternative
approach you consider more effective.
6.1. It is the view of the NMA that the guidance set out in Part 3 (Background) of Annex C is clear and
reflective of the relevant legislation.
7. Question (v) – Do you agree that the guidance set out in part 4 (Determining products in scope) of
Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.
7.1. It is the view of the NMA that the guidance set out in Part 4 (Determining products in scope) of Annex
C is clear and reflects relevant legislation.
8. Question (vi) – Do you agree that the guidance set out in part 5 (Nature of the advertiser) of Annex C
is clear and properly reflects the relevant legislation? If not, please state why, including details of any
alternative approach you consider more effective.
8.1. It is the view of the NMA that the guidance set out in Part 5 (Nature of the advertiser) of Annex C is
clear and reflects the relevant legislation.
9. Question (vii) –Do you agree that the guidance set out in part 6 (Media and scope) of Annex C is clear
and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

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9.1. It is the view of the NMA that the guidance set out in Part 6 (Media and scope) of Annex C is clear
and reflects the relevant legislation.
10. Question (viii) – Do you agree that the guidance set out in part 7 (The brand advertisement exemption) of Annex C is clear and properly reflects the relevant legislation? If not, please state why,
including details of any alternative approach you consider more effective.
10.1. It is the view of the NMA that the guidance set out in Part 7 (The brand advertisement exemption)

of Annex C is clear and reflects the Advertising (Less Healthy Food and Drink) (Brand Advertising Exemption) Regulations 2025 laid before Parliament on 10 September 2025. It is welcome that industry concerns have been heeded, and clarity has been provided through this statutory instrument and updated guidance.

11. Question (ix) – Do you agree that the guidance set out in part 8 (The identifiability test) of Annex C is
clear and properly reflects the relevant legislation? If not, please state why, including details of any
alternative approach you consider more effective.

11.1. It is the view of the NMA that the guidance set out in Part 8 (The identifiability test) of Annex C is
clear and reflects the relevant legislation.

News Media Association
8 October 2025

OHA – Consultation Response to the ASA's Less Healthy Food Consultation

October 2024

The Obesity Health Alliance (OHA) is a coalition of over 65 health organisations including the British Heart Foundation, Cancer Research UK, Diabetes UK, the British Medical Association and Medical Royal Colleges. A full list of members is available here: www.obesityhealthalliance.org.uk

This submission is made on behalf of the coalition to the Advertising Standards Authority's **Consultation** on restrictions on adverts for "less healthy" foods.

OHA answers in red

Question (i) – Do you agree that the proposed wording of the TV rule (32.21) set out in 3.4 above and as it appears in Annex A adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.

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

Yes. We agree this is clear and accurately reflects the legislation.

Question (ii) – Do you agree that the proposed wording of the ODPS rule (30.16) set out in 3.5 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.

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

Yes. We agree this is clear and accurately reflects the legislation.

Question (iii) – Do you agree that the proposed wording of the online rule (15.19) set out in 3.6 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.

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

Yes. We agree this is clear and accurately reflects the legislation.

Question (iv) – Do you agree that the guidance set out in part 3 (Background) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

We broadly agree that the guidance in Part 3 is clear and accurately reflects the letter of the legislation.

The Government stated last month in their consultation outcome document that they expect the policy to "remove up to 7.2 billion calories from UK children's diets each year." This figure comes from the Government's Impact Assessment for this policy which is calculated based on the understanding that advertisers affected by the restrictions would have several routes to comply with the policy. For example, by reformulating products, advertising their healthier ranges, shifting activity outside of restricted time windows or media, or focusing on promoting brand attributes.

The Impact Assessment sets out that companies with healthier products would advertise those products, and that the brand exemption would only be used by companies without healthier options. This would be determined by CAP/BCAP, recognising that the CAP/BCAP clearance system for adverts may take a more robust approach. Analysis from Cancer Research UK in 2019 showed that 79% of unhealthy food advertising could be replaced by a healthier alternative – e.g. the brands advertising an HFSS product have another non-HFSS brand in their portfolio that could be advertised instead or retailers could remove HFSS products from their adverts (Cancer Research UK (2020) Analysis of revenue for ITV1, Channel 4, Channel 5 and Sky One derived from HFSS TV advertising spots in September 2019) The research examined the extent to which portfolios complied with HFSS regulations and not less healthy products compliance. Given there are fewer products in scope of the less healthy products definitions than the Less Healthy Product definitions, brands will have more portfolio compliance.

However, in contrast to the Government's impact assessment, the new draft guidance does not incentivise the promotion of healthier products. Instead, it encourages companies to default to the brand exemption, regardless of their product range. This represents a significant shift from the original policy intention and may dilute the intended public health impact.

Evidence shows that brand only advertising increases consumption of unhealthy foods and drinks and therefore contributes to child obesity. In the previous draft guidance proposals, the Advertising Standards Authority (ASA) acknowledged that brand-only advertising should be restricted in some circumstances.

Pre-publication research conducted by the University of Liverpool and funded by the National Institute for Health and Care Research finds that compared to non-food advertising, brand-only food adverts from brands associated with unhealthy products (through multiple formats: audiovisual, visual only, audio only, static) increased snack intake, lunch intake, and overall intake in children 7-15 years to the same extent as product ads (+128.39kcal across snack and lunch). Therefore brand-only adverts by food and drink companies do not have a benign effect when it comes to child obesity. They have such a strong association that they increase calorie intake significantly with similar consequences as those when people see less healthy food and drink product adverts.

As set out by Minister Ashley Dalton (16 July 2025,), the purpose of the restrictions is to reduce children's exposure to Less Healthy Product marketing and incentivise industry reformulation. But by exempting brand marketing so broadly - including brands known primarily for, and clearly associated with, High fat, salt sugar (HFSS) products - the regulations remove that incentive and allow continued exposure via switching to brand-led advertising.

The delay in implementation - from January 2023 to October 2025 - was explicitly intended to give industry time to reformulate products ahead of the restrictions. Many companies have used this time effectively. But if brand advertising is excluded too broadly, **the incentive to reformulate is removed**, and the time afforded to industry has been wasted, during which time children have continued to be exposed to commercial messages known to harm dietary health. Those companies that responded in line with the public health goals of the policy have invested in healthier products and switching their advertising will now see their competitors who did not invest able to continue advertising as before.

Since 2007, the UK has had over 18 years of policy experience with HFSS marketing restrictions, and advertisers will have had more than five years to prepare for this specific intervention. The intention has always been clear: **if an advert promotes a less healthy product, or has the effect of doing so, it should be restricted - regardless of format.** The same can be said of local governments – Transport for London plus 24 English councils – which have successfully restricted brand only advertising. Industry has changed their advertising to successfully comply with brand only restrictions on local government estates since 2019.

To ensure the guidance remains aligned with the policy's original purpose - to incentivise the promotion and reformulation of healthier products - we propose the following wording to bring the balance back in favour of encouraging healthier options rather than simply protecting brand equity.

Proposed addition:

"In line with the policy intent of the less healthy food and drink restrictions, advertisers should prioritise the promotion of healthier products and reformulated lines within their portfolios. The brand advertising exemption should not be used to promote or sustain brand recognition primarily associated with less healthy products. Where advertisers have both healthier and less healthy ranges, use of the exemption should clearly support the communication of brand attributes linked to the company's healthier offerings or its commitment to product improvement."

Implementing further restrictions on advertising for 'less healthy' food and drink products: Annex C - ASA

Question (v) – Do you agree that the guidance set out in part 4 (Determining products in scope) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

We broadly agree that the guidance in Part 4 is clear and reflects the intent of the legislation.

However, we recommend that the section on determining products in scope be strengthened to ensure clarity and consistency of interpretation. Specifically, any products - whether depicted as generic, photorealistic, or stylised - that fall within one of the listed less healthy food and drink categories should be presumed to represent a less healthy variant unless explicitly stated otherwise. The list of Less Healthy Product categories are limited in scope, therefore if a 'product for sale' is not being promoted, there are ample other food categories to choose from for such a purpose.

This would prevent ambiguity in assessing whether creative content featuring common food types (for example, pizzas, confectionery or burgers) should be considered in scope.

This approach aligns with the spirit and letter of the legislation and ensures that advertisers do not inadvertently breach the restrictions through ambiguity. It also complements the overarching policy aim - to reduce children's exposure to less healthy food and drink marketing, regardless of presentation format, and will reduce the burden on the ASA.

Question (vi) – Do you agree that the guidance set out in part 5 (Nature of the advertiser) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

We broadly agree that the guidance in Part 5 is clear and reflects the intent of the legislation. The Government's stated intention is that only small and medium-sized enterprises (SMEs) — defined as those with 249 employees or fewer — that pay to advertise less healthy food and drink products they manufacture or sell should be exempt from the restrictions.

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 be subject to the SME exemption

However, we are concerned by the wording 'on behalf of a food or drink SME' on the television and ODPS rules. Despite the welcome clarity that delivery services, aggregators and other intermediatories will NOT be subject to the exemption, there remains a risk of the SME exemption being exploited. Without clear safeguards, multiple SMEs could pool resources to fund an advertisement via an aggregator, delivery platform or similar intermediary, and thereby seek to benefit from the exemption despite the advertisement being placed by a non-SME entity.

To future-proof the policy and maintain its integrity, we recommend the guidance to explicitly clarify how compliance will be monitored and enforced on television and ODPS. This would help ensure that large intermediaries cannot act as vehicles for SMEs to collectively advertise less healthy products under the guise of exemption.

For clarity it is worth also adding that this is for television and ODPS rules only. Online, the exemption for SMEs is only applicable where the person paying is at the time when the payment is made, a food or drink SME. The exception does not extend to those paying on behalf of a food or drink SME.

Question (vii) – Do you agree that the guidance set out in part 6 (Media and scope) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

We broadly agree that the guidance in Part 6 is clear and reflects the relevant legislation. However, the section on influencer marketing (6.3.6) could be strengthened to reduce the risk of circumvention.

We recognise that the government is permitting Corporate Social Responsibility (CSR) advertising for brands linked to less healthy food and drink and that they have reasserted this in recent months on multiple occasions. This is therefore outside of the jurisdiction of the ASA but in the paragraphs below we set out why this is misaligned from the intentions of the policy and how these should be handled and we hope this evidence will be taken into consideration.

As has been clearly and consistently evidenced in published research CSR advertising by food and drink companies still functions as brand marketing. CSR campaigns can significantly influence consumer behaviour: they increase brand recall, brand appeal, buying intentions, and market share, particularly among children and young people. [Ref Boyland E, et al. The impact of food advertising on children's immediate and later food intake: do media type, advertisement content, and participant characteristics moderate these effects? and Norman J, et al. Exposure to unfamiliar food brands in TV advertising and online advergames drives children's brand recognition, attitudes, and desire to eat foods. J Acad Nutr Diet. 2020;120(1):120–129. doi: 10.1016/j.jand.2019.05.006)

This type of brand association can lead to increased sales of less healthy products connected to that brand - regardless of whether specific products are shown in the advert. In effect, CSR campaigns can serve as a back door for promoting HFSS products, particularly when the brand is strongly associated with such products. Research from Liverpool University shows that brand exposure

activates brain areas responsible for emotional processing in the brains of children and adults. If the aim is to prioritise children's health, the ASA must not encourage brand-building or emotional engagement that increases demand for less healthy products.

6.3.6 – Influencer marketing. 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 monetary or non-monetary consideration has been made 'for' influencer content (i.e. an advertisement has been placed on the internet).

We recognise that the ASA will assess each case based on the specific circumstances, which opens up concerns over practicality of enforcement - including whether monetary or non-monetary "consideration" has been made "for" influencer content. However, there remains a real risk that advertisers could misunderstand the current wording and be non-compliant for example by:

- gifting products without an explicit requirement to post content,
- forming longer-term or informal relationships with influencers that blur commercial boundaries, or
- using affiliate links or discount codes that incentivise posts but may not be declared as "paid" advertising.
- Breaching the code using 'live streamed' content, rather than fixed 'posts'
- Not understanding the term 'consideration'

Given the dynamic and fast-evolving nature of influencer marketing, and evidence to suggest 'work arounds' using non CAP guidance, it is important to future-proof the guidance and ensure consistency of enforcement across broadcast, online, and influencer media. Without such clarity, there is a risk that the same marketing message could be restricted on one platform but permitted on another.

We recommend adding a clarifying statement along the following lines:

Proposed addition:
"Where an influencer has received products, benefits, or incentives from a brand including gifts, services and experiences, this should normally be treated as advertising for the purposes of these regulations, irrespective of whether an explicit oral or written contractual arrangement exists."

This would bring the guidance in line with ASA principles on transparency and consumer protection, while ensuring the policy's intent - to reduce children's exposure to less healthy food and drink marketing - is applied consistently across all media.

Question (viii) – Do you agree that the guidance set out in part 7 (The brand advertisement exemption) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

We do not fully agree that the guidance in Part 7 is clear or fully reflects the intent of the legislation.

While we recognise that the ASA's interpretation of the brand advertising exemption is largely consistent with the current legal position, the guidance as drafted leaves significant ambiguity around what constitutes a "brand" and the extent to which brand-related imagery, packaging, or sub-brands "brand of a range of products" fall within scope.

Key concerns include:

1. Unclear definitions of "range" and "brand" vs "specific product"

The current drafting could allow product lines with minor variations (e.g. flavours) to be framed as a 'range' and therefore eligible for exemption. For example, *Cadbury Dairy Milk* is widely understood to be a specific product and fits the ASA's definitions as a product that "is capable of being purchased", but the existence of variants such as Fruit & Nut or Daim could allow the company to argue that "Dairy Milk" is a *brand of a range of products*. The same could be said for Dairy Milk buttons which has also been developed into multiple shapes and flavours like mint, orange and twisted, but again, "Dairy Milk buttons" is also a purchasable item.

The ASA must set out what counts as a brand of a range of products. There are many well-known unhealthy products which occasionally bring out limited edition shapes, flavours or novelty versions of their product using the same core product and branding. This appears to be a distinct loophole ripe for exploitation by long-running companies selling unhealthy products. The ASA must make it clear that short term/limited availability (i.e. not available in Major retailers) of different versions of products will not be considered a brand of a range of products and will therefore not benefit from the brand exemption.

2. Equity brand characters

It is unclear how the exemption would apply to equity brand characters. These are often associated with specific less healthy products, but owned at brand level. For example, *Tony the Tiger* is used to promote *Kellogg's Frosties*, which would be subject to restrictions. If the brand character remains in use under a 'brand of a range of products exemption', this could effectively allow continued promotion of the restricted product.

The ASA's guidance on equity brand character is welcome recognition of the association and influence this form of marketing has. It is good to see that these are being recognised as an extension of the unhealthy product, and are therefore not granted a brand exemption. However, it is important that the ASA recognises the risk of not setting out how and when the character is used

after July 2025. For example, Tony the Tiger is the brand equity character for Frosties which is an unhealthy product. However, this policy could incentivise Kelloggs to use Tony the Tiger in other marketing/products so that it can be argued the character is the brand equity character for their 'brand of a range of products'. This would be a significant loophole in brand equity advertising. The ASA must prevent this by stating that the brand equity character has to have been in equal use with each of the products within the range before July 2025.

There is robust evidence that brand equity characters significantly influence children's purchase preferences and increase consumption of the associated products.

[Ref: WHO/UNICEF 2023 guidance on digital food marketing to children.]

3. Unfair advantage to brands with formal range naming

The draft approach may inadvertently favour large, well established manufacturers with formal sub-branding strategies and vertical brand architectures over smaller or newer companies. For example:

- *Heinz Ketchup* or *Cadbury Dairy Milk* may be treated as brands of a range of products instead of individual products, despite also people products available to purchase (with different pack sizes).
- But *Yeo Valley Greek Yogurt* or *Deliciously Ella Mixed Berry Oat Bars* could be restricted, since those companies describe their products by function rather than formal range names.

This creates an uneven playing field, privileging established branding strategies and penalising simpler or more transparent labelling.

Similarly, a supermarket could advertise "Waitrose Essentials" under the exemption, and which does not indicate 'a specific roduct available for sal'e, but not "Waitrose Essentials Ketchup", whereas *Heinz Ketchup* might qualify as a 'brand of a range of products', whilst also being understood by a notional consumer as 'a specific product available for sale'.

Appendix: Brand of a Range of Products Visual Examples

Whilst the issue of including exemptions for both 'brand of a range of products' and 'name of company or brand' applies to all advertisers, we have illustrated the complications using two top 10 manufacturers that predominantly market less healthy food products – Kraft/Mondelez International's Cadbury Dairy Milk and Unilever's Ben & Jerry's.

Appendix - Dairy Milk and Ben and Jerry's Reflection Analysis

Appendix - Dairy Milk and Ben and Jerry's Miro Boards (two)

The draft guidelines are inconsistent in how they would apply to different types of brands, depending on their brand architecture and naming conventions.

Cadbury Dairy Milk is a specific, identifiable product – a chocolate bar that is HFSS. Similarly, Cadbury Dairy Milk Buttons is a specific, identifiable product – a bag of chocolate buttons that is HFSS, containing the same substance in a different shape (but not necessarily flavour). On that basis, we would expect both to fall outside the brand exemption, as their names alone (even without 'depicting' the product) promote identifiable less healthy products.

However, Cadbury's HFSS portfolio (around 200 products) is structured under a vertical brand architecture, with multiple product variants and formats marketed under different names, but using the same core ingredient 'Dairy Milk Chocolate' (HFSS) – e.g. Dairy Milk Freddo, Dairy Milk Caramel, Dairy Milk Fingers, Dairy Milk Buttons, each with a further range of products underneath them.

The regulations allow companies to benefit from exemptions based on the company's own definitions. Many of these sub-brands may be able to advertise their names and logos simply because of their vertical architecture, regardless of the range's less healthy products. This would enable Cadbury to continue promoting products like Dairy Milk Buttons or Dairy Milk Caramel just by naming them. The audience would reasonably understand this to be promoting the products behind the name and available to purchase in stores under that name, but the government now considers this to be a 'brand of ranges' disconnected from them.

By contrast, Ben & Jerry's operates under a horizontal brand architecture. It markets around 39 HFSS products under a single brand name, 'Ben & Jerry', without further building their brand architecture by creating many sub-brands of ranges of products. Most of Ben and Jerry's products are not captured by a brand beneath "Ben &Jerry", as a result, currently Ben & Jerry's would not have as much opportunity as Cadbury to promote specific product lines beyond their general headline brand.

This illustrates how the current drafting creates unfair advantages for brands with more complex or strategic naming structures, not based on product healthiness which would be consistent with policy intention, but on how those products are grouped and named.

This diversification is nothing new – companies like Mondelez International's Cadbury have been doing this for many years. These are well established and successful approaches to branding, and therefore it is more important the ASA carefully considers how the proposals will be enacted upon these branding structures, as well as future-proofed so that they are in line with the intentions and ambitions as set out in the impact assessment.

It is welcome to see that the Government has added in an expiration on the definition of a brand of a range of products, by stating that it only applies where it was in use before 16th July 2025. This will ensure a loophole is closed, which otherwise would have incentivised companies to simply introduce more unhealthy products in order to create a "brand of a range of products" to advertise. However,

this definition is still not determined by the healthiness of products and therefore is misaligned with the policy intentions' health outcomes. Less well established companies trying to introduce healthier products onto the market are disadvantaged as they will be up against 'big brands' with pre-existing products that could be swept up under 'brands of ranges'. As a regulator that aims to be proportionate and consistent, the ASA must bring in regulation which ensures that every company is given opportunities, especially when they are moving closer to better alignment with the government's policy aims - by creating healthier products. It should not be the case that older companies are given advertising privileges to advertise their unhealthy ranges while newer companies - especially those marketing relatively healthier products - cannot.

There is a real risk that advertisers could exploit this ambiguity to promote less healthy products indirectly. Without greater clarity, the exemption could become the rule rather than the exception, undermining both the spirit and the letter of the law.

We therefore recommend that the guidance be strengthened to:

- explicitly distinguish between brand-level advertising and sub-brand or product-line promotion;
- Explicitly state that any products that are temporary (e.g. seasonal/limited offer/stunts/not widely available in Major Grocery Retailers to purchase on a UK retail site will not be considered as part of a range of products. NB this approach is line with ASA's current approach on promotional pricing
- clarify that any brand imagery, packaging or creative device that evokes a specific less healthy product should bring the advert within scope; and
- suggest that the exemption should not apply where a brand or corporate identity is primarily or predominantly associated with less healthy products.
- Suggest that where a healthier product exists within a 'brand of range of products', that product must be advertised instead of using the brand exemption

This would limit the risk of erosion or expansion of the exemption over time, maintain consistency with the policy's original intent to incentivise the promotion of healthier products, and protect the regulation's long-term public health impact.

7.2.4 - 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.

A further area of concern is generic product-related imagery. For example, an advertisement might feature a McDonald's wrapper with cheese (eg below). It is unclear whether this represents a

specific cheeseburger variant (eg Cheeseburger, Double Cheeseburger, Chilli Double Cheeseburger, are all Less Healthy) or could equally apply to another product containing cheese within the range that might be healthier. Under the current guidance, such packaging may fall under the brand advertising exemption, even though consumers could reasonably interpret it as promoting a particular less healthy product.

For example:

If this is considered to be applicable for the brand only exemption despite the fact it is promoting specific less healthy products, this would incentivise companies to employ this marketing strategy. It presents a slippery slope towards advertising specific less healthy food and drink products. We recommend that for both the ASA's workload and the ambitions of the policy, this loose interpretation to comply with the brand only advertising exemption is not granted.

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 depict a specific less healthy product.

We are concerned that clause 7.2.5 allows for too much flexibility. The current wording suggests that advertisers may use a combination of brand techniques - such as a range of products, colours, or themes - as long as they do not "directly" depict a specific less healthy product. In practice, this leaves significant scope for indirect promotion of less healthy products and creates uncertainty for both advertisers and regulators.

Public Perception Evidence

We conducted polling with Savanta to explore how the public interpret adverts featuring less healthy products without naming specific items. A representative sample of 2,000 UK adults was shown various adverts and asked:

"Do you consider this advert to be for:
A. A healthier food and drink product?
B. A less healthy food and drink product?
C. Not sure/don't know"

Between 52% and 85% of respondents identified these adverts as being for a less healthy product - even when the product was not named or branded. For example, when shown a generic image of pizza in a Just Eat advert, 85% of respondents identified it as an advert for a less healthy food.

This evidence demonstrates that consumers can and do identify less healthy products even without specific branding – confirming that the term "specific" does not reflect real-world perceptions.

[Appendix - Savanta Polling]

This narrow interpretation may also create an unfair commercial advantage for some businesses. For example, own-label retailers, delivery platforms and out-of-home providers are far more likely to advertise 'non specific' (but still less healthy) products without branding, meaning their products evade restrictions simply due to presentation.

There is no evidence that "non-specific" less healthy products are any less harmful than "specific" ones, or that they are any less likely to influence purchasing behaviour, brand loyalty, or children's dietary choices.

We also note that the current government definition of "less healthy" is already narrow, as it excludes many well-known less healthy categories such as chocolate spreads and sausage rolls.

We recommend that the guidance be clearer, for example:

Proposed wording:

"Any branding, packaging, imagery, or creative technique that could reasonably be interpreted as representing a specific less healthy product should be treated as in scope and not exempt under the brand advertising exemption."

This would reduce ambiguity, limit the risk of circumvention, and ensure the policy's intent - to restrict marketing of less healthy products - is upheld

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 is unlikely to 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), is will fall under the brand advertising exemption

We believe this is a typographical error and should read:

"**…and** will fall under the brand advertising exemption."

7.3.2 – However, the brand exemption will still apply to advertisements for brands which name a specific less healthy product where the full name of that product:

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)).

The guidance is in line with the legislation which introduces exemptions for brands that existed before 16 July 2025, either as part of a company, franchise, or pre-existing product range.

Newer brands would face stricter marketing restrictions than long-established less healthy brands with the same names as the brand. This creates an unfair commercial advantage for legacy brands and may disincentivise innovation from newer or smaller companies trying to enter the market with healthier products. Legacy exemptions could help preserve and entrench brand loyalty to less healthy brands with the same name as the product. This could lock in patterns of unhealthy consumption rather than support the shift to healthier food and better health outcomes.

Clear guidance is needed here to prevent legal complications and misuse of the exemption by brands retroactively claiming status for less healthy products. The proof for the purposes of marketing,

advertising or retail sale - in Major Grocery retailers - immediately before 16 July 2025 must be supplied and independently verifiable.

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)).

We understand this to mean that if a realistic healthier product closely resembles a less healthy product, it could be interpreted as promoting the less healthy version - and that advertisers should make it clear that it is for a healthier product. However, it is unclear where the line falls between a product looking like a specific less healthy product versus a generic less healthy product.

For clarity, to minimise risk, and to reduce the burden on the ASA, we recommend that the guidance:

- advise advertisers to exercise caution when using imagery that could reasonably be perceived by an average viewer as a specific less healthy product, whether or not it meets the statutory definition of "realistic"; and
  encourage that where a product is featured in an advertisement and is not a product for sale, advertisers should use healthier versions of foods and products to avoid falling within this clause.
- Include 'product shape' as well as 'flavour variants'

Proposed alternative wording:
"Any image that is recognisable as a specific less healthy food or drink product, whether in or out of its packaging, should be considered in scope."

While we recognise that the current wording is set out in the statutory instrument, and think the addition of 'the advertisement should include additional information to make clear that the product shown is a non-less healthy variant' is very helpful, these practical clarifications would help advertisers apply the rules consistently, reduce the risk of inadvertent breaches, and better protect the policy's public health objectives.

Question (ix) – Do you agree that the guidance set out in part 8 (The identifiability test) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

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 or a combination of factors that means 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. If such an advertisement does not fall under one of the exemptions outlined above, it may be restricted.

We broadly agree that the identifiability test is the legally defined mechanism to capture advertising that does not explicitly depict a less healthy product but could reasonably be identified as promoting one. The guidance correctly states that “branding” should be understood in a broad sense, encompassing logos, livery, straplines, fonts, colour schemes, characters, audio cues, and jingles.

However, the guidance would benefit from greater clarity and completeness for advertisers. In the DHSC brand exemption consultation, a longer list of factors was provided to help determine whether content depicts a product, including:

- Name of the product (unless the name is the same as the brand name, pre-16 July 2025) (as above, clarity is required as to whether this is the text name - or a logo - and that the product must have been available for retail sale to consumers before this date)
- Text
- Imagery
- Audio cues
- Jingles
- Livery
- Straplines
- Fonts
- Colour schemes
- Characters
- Other branding techniques

We propose this list be expanded to include:

"or new creative techniques which aim to build recognition, brand equity, loyalty, emotional response, or similar associations, and any combination of the above."

Including this full list would help future-proof the guidance, covering emerging advertising techniques and preventing circumvention through novel digital or creative methods. It would also provide clearer direction for advertisers while maintaining the integrity of the policy's public health objectives.

We question the appropriateness of the ASA using a "reasonably well-informed, reasonably observant and circumspect persons in the UK" to be the standard bearer of whether an advertisement is for a less healthy product in a child health policy, The aim of which is to reduce the influence unhealthy food advertising to improve children's health, and therefore the policy needs to be applicable to the impact advertising has on children, including those who are toddlers and in primary school. They would be unlikely to meet the definition of the ASA's standard bearer, and yet, the advertising will and does have impacts on them, as well evidenced. The ASA must reconsider how they interpret the Government's reference to "persons" in the context of the policy.

Other points for consideration

We appreciate that there is a short timeline until 5th January, however giving only three weeks to respond to this consultation will result in fewer and poorer quality responses, and ultimately create permanent, untested changes. Due to the extremely short turnaround, the OHA have been unable to conduct this consultation with our wider members, which is to the detriment of our response. For this reason we would appreciate the opportunity to follow up with the policy team should any corrections or further issues come to light after submission.

We do not support the exemption for brand advertising, but recognise this has now been established in law. Although the government suggests that this exemption was (loosely) based on evidence available in 2021, the evidence base has already evolved. Since then, advertisers, public health bodies, academics, and regulators have generated new and compelling insights into how brand advertising influences consumer perceptions, preferences, purchasing behaviour and consumption - particularly in relation to less healthy food and drink.

We have appreciated the time given to us by the CAP team to explain the process and the intentions of the consultation, and share our thanks. However we are concerned with the wider role the regulator has played in allowing industry to weaken the policy, and in being unable to produce clear and timely guidance.

As the frontline enforcer of compliance, the regulator's decisions must be transparent, accountable, proportionate, and consistently applied. The ASA has not clearly outlined the decision-making processes the ASA will follow, nor have they committed to transparency or accountability regarding how regulatory rulings are reached.

The OHA seeks clarity on how the complaints process will be fairly administered, who will oversee enforcement, and how the ASA Council's rulings will incorporate public health and public perspectives.

We are also concerned about the structural relationship between the ASA, BCAP, CAP, and Ofcom, particularly the close ties between industry representatives and regulatory decision-making. Academic research highlights the problem of "revolving doors" - the movement of individuals between regulatory bodies and the industries they regulate - which can lead to regulatory capture, where public officials favour corporate interests over the public good.

Recommendations:

1. Remove representatives from regulated industries on the boards of ASA, BCAP, CAP, and Ofcom to eliminate conflicts of interest.
2. Appoint experts on marketing's impact on health to these boards in place of industry representatives.
3. Establish an independent UK-based panel to provide impartial pre-clearance of advertisements before media launch, reducing costly and time-consuming ASA investigations.
4. Commission and publish a transparent review of industry involvement on these boards, including public consultation and feedback.
5. Maintain a publicly accessible repository of complaints investigated, coordinated with the Department of Health and Social Care, to monitor and evaluate regulatory enforcement.
6. The government should be responsible for the policy, and the ASA for producing clear guidance, and not have overreach into policy design as may have happened in this case.

The OHA will monitor the application of the new rules closely, tracking both best and worst practices. Our goal is to work constructively with the government, advertisers, and the ASA to clarify grey areas, ensure the guidance is robust, future-proof, and truly protects public health.

Timely review and proactive updates to the guidance are essential to safeguard children and ensure that the legislation is responsive to real-world advertising practices. There is clear precedent for this: in 2009, Ofcom undertook a review just one year after the HFSS broadcast advertising restrictions came into full effect, publishing the report in July 2010.

It is also vital that the legislation is flexible and broad enough to future-proof against the evolution of marketing strategies - especially as new advertising techniques emerge or shift rapidly across digital platforms.

In addition to the specific points above, we recommend the following to ensure the guidance remains effective, future-proof, and enforceable:

1. **ASA self-initiated monitoring** – The ASA should actively monitor and make public compliance, particularly in the online space, rather than relying solely on complaints, to

identify potential breaches early and maintain the integrity of the restrictions.

2. **Timely policy review** – Guidance should be formally reviewed at regular intervals to ensure it continues to reflect emerging advertising techniques and market developments.

3. **Check for unintended consequences** – Reviews should assess whether any aspects of the guidance inadvertently enable circumvention or disadvantage certain types of advertisers, products, or media.

4. **Annual guidance review** – Consider allowing for a full review of the guidance within one year of implementation, to incorporate learning from early enforcement, technological changes, and stakeholder feedback.

5. **Publication of all responses** – ASA should publish all adjudications and case responses, even where no breach is found, to provide transparency and help advertisers understand boundaries.

6. **Clarity for digital and social media** – Explicit guidance on emerging online formats, including influencer marketing, user-generated content, and interactive media, to reduce ambiguity and prevent loopholes.

7. **Consistent cross-media application** – Ensure that principles applied to TV and online media are aligned to avoid inconsistencies that could be exploited.

8. **Practical examples and case studies** – Include anonymised/theoretical examples of borderline cases to help advertisers understand how rules are applied in practice.

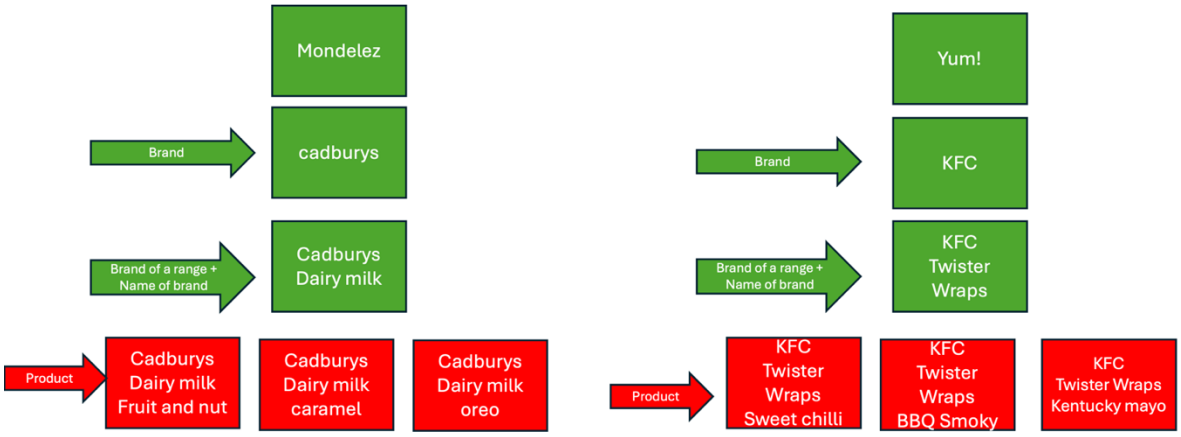
9. **Stakeholder engagement** – Encourage regular engagement with public health bodies and consumer groups to ensure guidance is realistic, enforceable, and aligned with policy intent.

10. **Monitoring of impact** – Track and report on the effect of restrictions on children's exposure to less healthy food and drink advertising, as well as on industry behaviour, to inform future policy decisions.

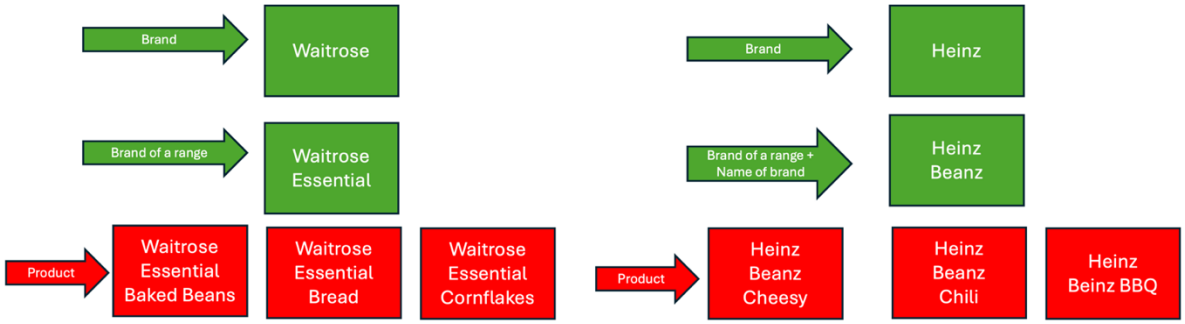
Brand of a range of products visual examples:

(green = exempt red = not exempt)

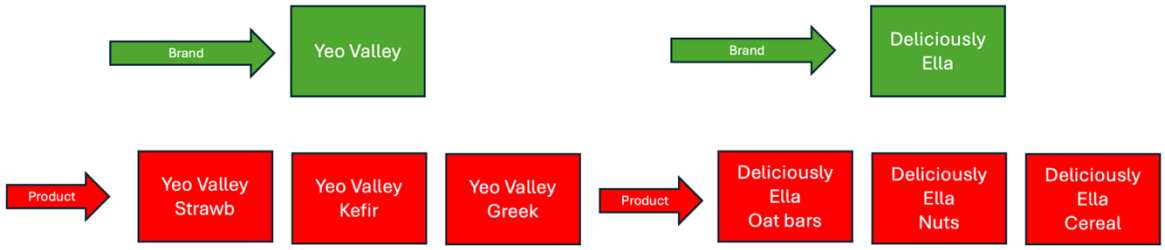
Cadburys and KFC has ‘brand of a range’ and ‘name of company’ – allowing identifiable product names to be exempt



Waitrose has ‘brand of a range’ but not ‘name of company’, Heinz has ‘brand of a range’ and ‘name of company’ – allowing baked beans to be advertised by Heinz, but not Waitrose



Yeo Valley and Deliciously Ella do not have 'brand of a range' or 'name of company' – not allowing identifiable product names to be exempt



Dairy Milk and Ben and Jerry's analysis

Whilst the issue of including exemptions for a 'brand of a range of products' applies to all advertisers, we have illustrated the complications using two top 10 manufacturers that predominantly market HFSS products.

This is outlined visually in Appendix – Dairy Milk and Ben & Jerry's Miro Boards

Summary:

The draft regulations are inconsistent in how they would apply to different types of brands, depending on their brand architecture and naming conventions.

Cadbury Dairy Milk is a specific, identifiable product – a chocolate bar that is HFSS. Similarly, Cadbury Dairy Milk Buttons is a specific, identifiable product – a bag of chocolate buttons that is HFSS. On that basis, we would expect both to fall outside the brand exemption, as their names alone (even without 'depicting' the product) promote identifiable less healthy products.

However, Cadbury's HFSS portfolio (around 200 products) is structured under a vertical brand architecture, with multiple product variants and formats marketed under slightly different names – e.g. Dairy Milk &More, Dairy Milk Caramel, Dairy Milk Fingers, Dairy Milk Buttons, each with a further range of products underneath them. These names fall under the 'brand of a range of products' definitions in the draft regulations.

The regulations allow exemptions based on those definitions, many of these sub-brands may be able to advertise their names – even without 'depicting' the product – despite their strong and recognisable association with identifiable less healthy products. This would enable Cadbury to continue promoting products like Dairy Milk Buttons or Dairy Milk Caramel just by naming them. The audience would reasonably understand this to be promoting the products behind the name and sold in stores under that name, but the government now considers this to be a 'brand of ranges' disconnected from them.

By contrast, Ben & Jerry's operates under a horizontal brand architecture. It markets around 39 HFSS products under a single brand name, 'Ben & Jerry', without further building their brand architecture by creating many sub-brands of ranges of products . Most of Ben and Jerry's products are not captured by a brand beneath "Ben and Jerry", as a result, currently Ben & Jerry's would not have as much opportunity as Cadbury to promote specific product lines beyond their general headline brand, Ben and Jerry.

This illustrates how the current drafting creates unfair advantages for brands with more complex naming structures, not based on product healthiness, but on how those products are grouped and named.

Analysis of products:

Cadbury Dairy Milk

Cadbury Dairy Milk would be considered an identifiable product (i.e. a chocolate bar of varying sizes and HFSS), and thus we would expect it to be out of scope of the brand exemption. However, we found at least 35 Cadbury Dairy Milk 'ranges of products', (we expect there are in fact many more which could not be researched due to the time constraints of the consultation). These include products like 'Cadbury Dairy Milk Buttons', 'Cadbury Dairy Milk Caramel' and 'Cadbury Dairy Milk Freddo' brand. Cadbury Dairy Milk vertical brand architecture has almost 200 different products, not including those where the only difference is by size or format e.g. a bag instead of a bar – as set out by the Government's definition. The company behind the brand has created many 'ranges or products' that would be in scope of the draft brand exemption. Even without 'depicting' any products, they would still be able to advertise what is reasonably expected to be identifiable as less healthy products by using the name 'Cadbury Dairy Milk' or 'Cadbury Dairy Milk Buttons'.

Ben and Jerry has less opportunity to advertise under the legislation. Aside from a few ranges of products, it is for the most part a range of ice creams in different flavours, also all HFSS. Ben and Jerry's has considerably fewer products than Cadbury Dairy Milk (39) however, the vast majority of these fall under the headline brand of Ben and Jerry's, and are not 'brands of ranges'. Under Ben and Jerry's more horizontal brand architecture, they would only be able to advertise the name 'Ben and Jerry's, and non-product specific attributes of the brand, be less able to advertise new developments in products via sub-brands than Cadbury Dairy Milk, because they tend to bring out a new flavour under the general brand name.

Cadbury Dairy Milk and Ben and Jerry's are sub-brands that refer to a fluid range of many different products. They are added, deleted or rebranded regularly. For example, Cadbury Dairy Winter Orange Crisp bar was discontinued in November 2024. Ben and Jerry's has a page of its website dedicated to its discontinued products. They also launch new products regularly, such as Cadbury Dairy Milk &More range which was launched in 2024[xxiv] and Ben and Jerry's Chocolatey Orange Chunk Flavour which was launched this week.[xxiv]

What determines whether a range of products is a brand?

Do they need to be branded for them to be recognised as a branded range of products?

Many of Cadbury Dairy Milk products are ranges of a type of product, for example, advent calendars, ice creams or cookies but they do not have specific matching branding.

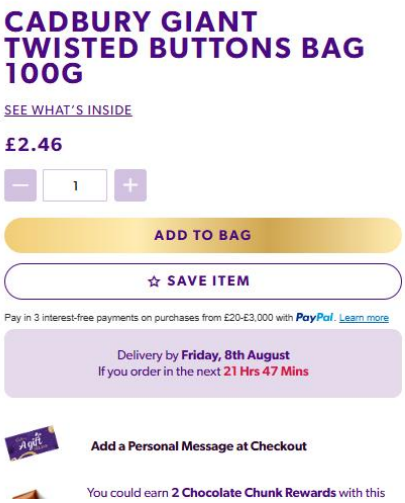
If the brand for a range of products exists but there currently isn't a range of products: Dairy Milk Marvellous Creations is a range of products with its own unique branding, however, Cadbury Dairy Milk has discontinued many of the products. Currently only one of those products within the range - Cadbury Dairy Milk Marvellous Creations Jelly Popping Candy - is available to purchase in stores.

<u>If there is shared branding but it's inconsistent:</u> Cadbury Caramel product is sometimes part of Dairy Milk and sometimes its own Cadbury product.

Cadbury Dairy Milk branding	Cadbury branding only
 Caramel bar	 Caramel cake bar
 Caramel ice cream cone	 Caramel egg
 Caramel ice cream stick	
 Caramel ice cream	

  Caramel pots of joy dessert	
 Caramel layer cake	

In some cases products are inconsistently part of a range. For example Cadbury Dairy Milk Twisted Buttons are sometimes marketed as “Giant” buttons, and sometimes not. According to their packaging, “Cadburys Giant Twisted Buttons” does not include the branding “Giant”, but on the Cadbury website, they are listed as “Giant” – see screenshot below.



<u>When several similar products use the same messaging:</u> Ben and Jerry’s has several non-dairy products which have labelling on their packaging to state they are non-dairy. There is also a non-dairy section of their website. Is this therefore a brand or could it simply be seen as clearly labelled allergen information?

<u>When the products in different ranges are the same but the branding changes:</u> Cadbury regularly creates different brands to sell similar ranges of products.

Cadbury Dairy Milk has created several messaging ranges of products. These ranges are identical or almost identical to each other apart from their messaging which each has a different message such as “Good Luck”, “Thank you” or “You’re Amazing”.
The “Cadbury Dairy Milk You’re Amazing” range of products and the “Cadbury Dairy Milk You’re Perfect” range of products are almost identical apart from the branding. These are branded ranges of products, and therefore under the legislation each of these ranges would presumably be considered a brand.

Cadbury Dairy Milk You’re Amazing range	**Cadbury Dairy Milk You’re Perfect range**
 Chocolate bar with sleeve 110g	 Chocolate Bar with sleeve 110g
 Chocolate gift	 Chocolate Gift

 Chocolate selection box	
 Chocolate gift - large	 Chocolate gift - large

There are also wider themes like “Love” which can be understood to be sub-branded into product ranges by the object of the love. For example, “I Love You” bar and box, “Love You Mum” bar.

Dairy Milk “Celebrate” range with several sub-ranges within it:

	Celebrate	Congratulations	Celebration	Congrats	Great Job	Let’s Celebrate
Bar	X	X		X	X	X
Box						
Basket			X		X	

Dairy Milk Love range with several sub-ranges within it:

	I Love You	Love You Mum	No 1 Dad	One of a Kind
Bar	X	X	X	X
Box	X	X		

Gift Variety Product			X	
Basket				X

The dad range with sub-ranges within it:

	No 1 Dad	Happy Father's Day	Dad My Hero	Best Dad	Father's Day	Dad's Chocolate
Bar	X					
Box		X	X	X		
Basket			X		X	
Gift Variety Product	X					
Hamper						X

As Cadbury elongates their brand architecture with more sub-brands/ranges of products, the branding is referencing a more specific range of products each time. The company has already developed a strong association after many years of advertising so that the Cadbury brand will be associated with chocolate - which is always an unhealthy product - so when the brand is further sub-branded into ranges, it is a more specific association within an already unhealthy food category.

Vertical brand architecture at Dairy Milk – for example:

	Brand level	**No of products**	**Product specificity**	**LHF?**
	Kraft	1000s of products	Low	Mostly LHF
	Mondelez International	100s of products	Medium	Majority
	Cadbury	100s of products	High	Vast majority
	Dairy Milk	>200 products	Very high	Always LHF
	Buttons	<10	Very high	Always LHF

	Giant Buttons	<5	Very high	Always LHF

Often there are different product types with different formatting. The government has expressly stated that it does not count as a product range if it is the same product in different sizes or packaging formats such as a bag or tin. However, there is more variation to consider that is not captured by the legislation. Cadbury Dairy Milk uses slightly different assemblies of products for each of their different formats. For example, the No 1 Dad product range. There are just two products which are not varied by size or formatting type, but by the contents. See below:

No 1. Dad Range

Product	Contains
Chocolate bar (850g or 150g)	1 chocolate bar
Selection Box Gift (524.5g)	• 1 x Cadbury Dairy Milk Chocolate Bar 110g • 1 x Cadbury Dairy Milk Chocolate Bar 45g • 1x Cadbury Dairy Milk Chocolate with Caramel Bar 45g • 1 x Cadbury Dairy Milk Chocolate Fruit & Nut Bar 49g • 1 x Cadbury Crunchie Bar 40g • 1 x Cadbury Twirl Bar 43g • 1 x Cadbury Flake Bar 32g • 1 x Cadbury Curly Wurly Bar 21.5g • 1 x Cadbury Wispa Bar 36g • 1 x Cadbury Boost Bar 48.5g • 1 x Cadbury Double Decker Bar 54.5g

The easter eggs are another example of variation of similar products where the products are almost identical but they vary by whether the buttons are inside or outside the easter egg. Is this significantly different enough for the government to consider them two different products, and therefore a range of products in the Cadbury Dairy Milk Giant Buttons Easter Egg range?

Product		
Giant Buttons Chocolate Egg 195g	• 1 x Cadbury Dairy Milk Giant Buttons Large Milk Chocolate Egg 195g • One bag of Cadbury Dairy Milk Giant Buttons	

Giant Chocolate Buttons Easter Egg 96g	• 1 x Cadbury Dairy Milk Giant Chocolate Buttons Easter Egg 96g • Cadbury Dairy Milk Giant Chocolate Buttons inside	

Cadbury Dairy Milk has many product ranges by flavour (e.g. Fruit and Nut, Mint, Orange, Daim) message (e.g. No 1 Dad, Get Well Soon), kit (pizza kit, train kit, castle kit) or product type (e.g. ice cream, biscuits, collaborations, advent calendars) – which enables multiple products to feature in different product ranges.

There is an endless number of branding possibilities, and Cadbury is already demonstrating the extent to which they can brand one single product, Dairy Milk, far beyond one or two sub-brands of ranges of flavours. They have explored building their brand architecture both horizontally and vertically so that despite the large number of products under the Cadbury Dairy Milk branding (around 200), there are so many sub-brands that the majority of products are in sub-brands of only 2-5 other products. For example, Cadbury Dairy Milk has a sub-brand called Freddo which comes in original or caramel flavour and an easter egg and variety pack. Freddo has formed a range of products with Oreo, another Mondelez International brand. This includes the Freddo and Oreo Tractor Build Your Own Kit, and the Freddo and Oreo Train Kit. However, these products also fall under other branding, such as Cadbury Dairy Milk kit range which includes Cadbury Dairy Milk Chocolate Pizza Kit, Cadbury Dairy Milk & Caramilk Castle Kit, Cadbury Dairy Milk Christmas Chocolate House Kit and a Cadbury Santa's Chocolate Sleigh Build Your Own Kit, in addition to the Freddo and Oreo themed items.

Do the companies determine if their range of products are a brand?

Not all Cadbury Dairy Milk products are available through their websites. Their ice creams and desserts and even some of their bars appear to only be available from retailers. Sometimes there are discrepancies between how the product is branded on the packaging and how the retailer is branding the product. Who will make the decision on if it is a 'brand of a range' of products? We would not advise that the government leave it to the companies themselves to make decisions which will determine their commercial opportunities. However, even if the government did leave it up to brands to decide, it is still unclear what counts as a 'brand of a range' and what does not.

Cadbury has a dropdown menu of what it terms "brands" on its Cadbury Gifts Direct website where it lists products like Twix, Caramel, Wispa, Crunchie, Twirl and Curly Wurly. The range of products under each of these "brands" provides different variations of variety boxes with one of the products inside in different formulations, and not different types of the branded product. For example, searching for "Curly Wurly" does not produce results of different types or flavours of Curly Wurly, but different variety boxes which contain a Curly Wurly bar.

There is often disparity between how the company categorises its products on its website and how they brand their products. For example, Cadbury Dairy Milk fingers is a product range on the Cadbury website which brings up the following 5 products – only two of which are labelled Cadbury Dairy Milk:

- Cadbury **Dairy Milk** Chocolate Fingers 114g
- Cadbury Mini Chocolate Fingers 125g
- Cadbury nibbly mini chocolate fingers 40g
- Cadbury **Dairy Milk** Salted Caramel Chocolate fingers 114g
- Cadbury White Chocolate Fingers 114g

See screenshots below:

The impacts of this policy

While brands may not currently have specific branding for their range of products, this legislation may prompt companies to create sub-branding for all the different ways their products can be technically separated into 'brands of product' ranges, whilst the audience would reasonably consider these to be for an identifiable product.

Cadbury is continually rebranding their 'brand of a range' of products to enhance their acceptability to the market. If the proposed legislation is brought in, Cadbury will likely adapt their brand architecture and brand again so that it more neatly aligns with the commercial opportunities. In the context of Cadbury Dairy Milk, this might mean further sub-branding. There are currently collaborations between sub-brands such as Cadbury Dairy Milk and Oreo (Mondelez International), or Cadbury Dairy Milk and Caramel (Cadbury), or Cadbury Dairy Milk and Dairylea (Mondelez International) and other brands such as Ben and Jerrys and Tony's Chocolonely. We believe that the government's proposal would not meaningfully change the healthiness of the food and drink advertising, but instead would change the branding. For example by increasing the number of the collaborations between sub-brands (as seen by Freddo and Oreo range of products), by creating a slight variation of the messaging of the brand (as seen by Dairy Milk messaging products), and will incentivise companies to group products together under one type of branding (as seen by Ben and Jerry's non-dairy range).

Appendix – Dairy Milk and Ben and Jerry Miro Boards

We have undertaken a brand architecture and naming convention analysis of two leading brands, Cadbury Dairy Milk and Ben & Jerry's to highlight the lack of clarity as to where brand, brand of ranges, and products sit, and how complex it is to 'draw a line' where the 'brand of ranges' will apply.

Cadbury Dairy Milk Ranges and Brands of Ranges
https://miro.com/app/board/uXjVJX-gMew=/

Ben & Jerry's Ranges and Brands of Ranges
https://miro.com/app/board/uXjVJXWkD_o=/

09 October 2025

FAO: Mr. Andrew Taylor

Regulatory Policy Team

Committee of Advertising Practice

Castle House

37-45 Paul Street

London

EC21 4LS

CAP and BCAP Consultation - Further consultation on the implementation of the “less healthy” food and drink product advertising restrictions

Official response by pladis (UK) Limited - 09/10/2025

1. About pladis

1.1 pladis (UK) Limited is the British operating company of pladis Foods Limited, which has its global headquarters in Chiswick, London. pladis is the proud owner of iconic British food brands such as McVitie’s, Jacob’s and Carr’s, each holding a significant piece of British history and representing an important British export asset. The business was formed in 2016 from the acquisition of United Biscuits by Yildiz Holding. It is now one of the fastest-growing snacking companies in the world.

1.2 pladis UK Ltd is a prominent member of the UK food and drink sector. Our company contributes over £626 million Gross Value Added per annum to the UK economy and support 7,151 jobs across ten sites – six of which are manufacturing locations. More than 70% of our UK colleagues work across locations outside London and the South East. pladis UK Ltd is a member of the Incorporated Society of British Advertisers

(ISBA) and the Food and Drink Federation (FDF).

1.3 As a prominent business with brands that are woven into the fabric of society, we support the Government's ambition to deliver economic growth. At the same time, we accept our responsibility to play our part in strategies to halt and reverse health problems caused by overweight and obesity. In line with that commitment, we supported legislation passed in 2022 under the Health and Care Act to modify the 2003 Communications Act with a view to restricting advertising of less healthy food in an effort to address childhood obesity.

2. Summary response

pladis (UK) Limited, Building 3, Chiswick Park, 566 Chiswick High Rd, Chiswick, London, W4 5YA

T 0208 234 5000 www.pladisglobal.com pladis (UK) Limited, registered in registered in England number 02506007, registered address as above

General

2.1 Question (i) – Do you agree that the proposed wording of the TV rule (32.21) set out in 3.4 above and as it appears in Annex A adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.

Yes – we agree. This wording reflects the legislation in clearly exempting from the restrictions those advertisements containing the name of a brand of a range of products, including the name within a logo, where a brand was in use before 16 July 2025. It is clear we are permitted to publish advertisements featuring the name of our corporate brand (e.g. pladis), the name of our portfolio brands (e.g. McVitie's, Jacob's,

Carr's, Flipz, Godiva, Ulker etc.), and the name of brands in our key ranges offering different flavour variants (e.g. Digestives, Hobnobs, Club, Penguin, Signature, Gold etc.), provided no specific LHF product is depicted.

2.2 Question (ii) – Do you agree that the proposed wording of the ODPS rule (30.16) set out in 3.5 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.

Yes – we agree. Our response to (i) applies.

2.3 Question (iii) – Do you agree that the proposed wording of the online rule (15.19) set out in 3.6 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.

Yes – we agree. Our response to (i)/(ii) applies.

2.4 Question (iv) – Do you agree that the guidance set out in part 3 (Background) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

Yes – we agree.

2.5 Question (v) – Do you agree that the guidance set out in part 4 (Determining products in scope) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

pladis (UK) Limited, Building 3, Chiswick Park, 566 Chiswick High Rd, Chiswick, London, W4 5YA

T 0208 234 5000 www.pladisglobal.com pladis (UK) Limited, registered in registered in England number 02506007, registered address as above

General

Yes – we agree.

2.6 Question (vi) – Do you agree that the guidance set out in part 5 (Nature of the advertiser) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

Yes – we agree.

2.7 Question (vii) – Do you agree that the guidance set out in part 6 (Media and scope) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

Yes – we agree. We agree it is important that ASA must consider underlying contractual arrangements in assessing, objectively and reasonably, whether an advertiser has paid to place an advertisement on the internet for an identifiable less health product.

2.8 Question (viii) – Do you agree that the guidance set out in part 7 (The brand advertisement exemption) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

Yes – we agree. Our response to (i)/(ii) applies. We also find the wording in brackets in 7.3.1 helpful and aligns with the intention of the legislation – "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". In our case, using Digestives and Hobnobs as examples, these brand names of a range of products are not the full name of a specific less healthy product (such as 'Digestives Dark Chocolate' or 'Hobnobs Milk Chocolate'). Advertising these brand names (and names in a logo) is clearly permitted.

2.9 Question (ix) – Do you agree that the guidance set out in part 8 (The identifiability test) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective

Yes – we agree.

1

9 October 2025

PPA response to CAP/BCAP consultation on the implementation of "less healthy" food and drink products advertising restrictions

Introduction

The Potato Processors' Association Ltd (PPA) is the trade association for UK manufacturers of frozen and chilled chips/French fries and potato products, potato crisps, potato-based snack products and dehydrated potatoes. PPA incorporates both the Frozen and Chilled Potato Processors' Association (FCPPA) and the Snack, Nut and Crisp Manufacturers' Association (SNACMA).

Collectively PPA members are the largest customer for GB potatoes, purchasing around 1.52 million tonnes

annuallyi

(approximately 37% of the estimated GB potato volume in 2024

ii).

Over 13,000 people are directly employed by the potato processing sector and other dependent jobs,

including those in the farming sector, more than double this total.

The sector also makes a significant contribution to the country's manufacturing base. Frozen chips are

currently worth £842 million and is the biggest segment in savoury frozen foodiii. The sliced potato crisps

market is estimated to be worth £1.83 billion in 2025

iv

. Furthermore, the value of the entire savoury snacks

sector (which in addition to potato crisps includes cereal, nut, popcorn and meat-based snacks) was

estimated to have a combined retail value of £5.25 billion in 2025

iv

.

Please see below our response to the recent CAP/BCAP consultation on the implementation of "less healthy"

food and drink products advertising restrictions. We are really grateful for all the work done by CAP and the

ASA on the many revisions of the guidance and are thankful for the opportunity to respond to this new

consultation. PPA have worked with the Advertising Association (AA) and the Food and Drink Federation

(FDF) and have been keen supporters of the voluntary Industry Agreement. Our members from all sectors

are responsible advertisers and have agreed to adhere to the Industry Agreement as of 1 October 2025.

Timely implementation guidance is essential for ensuring compliance with the LHF advertising restrictions,

and the draft guidance represents a welcome step forward. The sector recognises the complexity and

subjectivity of these restrictions and is acutely aware that publication of the guidance is long overdue. As

such, there is a strong desire to see it released without further delay.

To enhance its practical value, we recommend including illustrative examples and a decision tree, either

now or in future iterations, to better support compliance. It is also important that the guidance is reviewed

regularly to ensure it remains current as advertisers adapt to the legal requirements and gain experience

through implementation.

2

9 October 2025

Consultation questions

Question (i) – Do you agree that the proposed wording of the TV rule (32.21) set out in 3.4 above and as it

appears in Annex A adequately reflects the relevant legislation? If not, please state why including details

of any alternative approach you consider more effective. If not, please state explain why, with reference

to the relevant legislative provisions.

Yes. We have no objections to the proposed wording.

Question (ii) – Do you agree that the proposed wording of the ODPS rule (30.16) set out in 3.5 above and

as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including

details of any alternative approach you consider more effective. If not, please state why, including details

of any alternative approach you consider more effective.

Yes. We have no objections to the proposed wording.

Question (iii) – Do you agree that the proposed wording of the online rule (15.19) set out in 3.6 above and

as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including

details of any alternative approach you consider more effective.

Yes, we have no objections to the proposed wording. However, it is essential that the guidance explicitly

references the regulatory framework applicable to Internet Protocol TV (IPTV) services, including both

Ofcom-regulated and unregulated services. Whilst we understand that Ofcom-regulated IPTV services fall

under the rules for television services (as outlined in section 321A of the Communications Act 2013), and

unregulated IPTV services are subject to the online restrictions (section 368Z14 of the Communications Act

2013), this distinction must be clearly stated in the implementation guidance. In addition, section 3 should

ideally reiterate the exemption from online rules when IPTV services are broadcast simultaneously across

both media (stated under 6.3.9), so all rules applicable to IPTV are listed together.

Question (iv) – Do you agree that the guidance set out in part 3 (Background) of Annex C is clear and

properly reflects the relevant legislation? If not, please state why, including details of any alternative

approach you consider more effective.

Yes. We have no objections to the proposed wording. However, we strongly recommend including a decision

tree within the guidance to clarify the steps and rationale the ASA will follow when assessing compliance.

This should cover the full scope of the TV and online restrictions, from identifying relevant products,

businesses, and media, through to the application of the identifiability test, to support consistent

interpretation and implementation.

Question (v) – Do you agree that the guidance set out in part 4 (Determining products in scope) of Annex

C is clear and properly reflects the relevant legislation? If not, please state why, including details of any

alternative approach you consider more effective.

Yes. We have no objections to the proposed wording.

Question (vi) – Do you agree that the guidance set out in part 5 (Nature of the advertiser) of Annex C is

clear and properly reflects the relevant legislation? If not, please state why, including details of any

alternative approach you consider more effective.

Yes. We have no objections to the proposed wording. However, we would suggest that information about

liability of third parties involved in advertising, such as agencies and influencers (as outlined in 6.3.4) is

included under part 5. Furthermore, a definition of 'influencer' would be helpful (see also our comments re.

influencer marketing under Question (vii)).

Question (vii) – Do you agree that the guidance set out in part 6 (Media and scope) of Annex C is clear and

properly reflects the relevant legislation? If not, please state why, including details of any alternative

approach you consider more effective.

Not entirely. Although part 6 is mostly clear, it does not address the interaction between the LHF advertising

restrictions and the online promotion restrictions of food high in fat, sugar and salt (HFSS) (currently

applicable in England under the Food (Promotion and Placement) (England) Regulations 2021, as amended).

The implementation guidance issued by the Department of Health and Social Care (DHSC) on the England

Regulations on HFSS promotion restrictions, specifies the following:

Banners or headers

If a header on a website is owned and controlled by the qualifying business, and does not show

specified foods within a different schedule 1 category to the one the consumer is searching for or

browsing, then the header is permitted. For example, if a customer is on a cakes page, banners of

other cakes or indeed fresh fruit and vegetables (non-specified foods) on that page are allowed.

However, headers or banners are not permitted to show specified foods from other categories – such

as yoghurts or pizzas – on that page, unless they are not offered for sale but merely advertisements

linking through to third-party websites.

A banner on a home page can feature images of specified food if the banner is not offering the food

for sale but only signposting to a taxonomy page. The taxonomy page can feature a mix of specified

and non-specified food if the consumer is searching or browsing the category of specified food that is

shown.

It is our understanding that such a representation (as highlighted/underlined above) would now fall foul of

the LHF advertising restrictions, but it would be helpful if the guidance document included examples of when

online marketing displays would constitute advertising. As a minimum, we ask CAP to include a link to the

DHSC implementation guidance, directing users to refer to the section on online promotion and placement

restrictions.

In addition, paragraph 6.3.6 addresses influencer marketing. It is our understanding that payment alone

would bring an online ad in scope of the LHF advertising regulations. Editorial control does not play a part in

determining compliance against the LHF advertising regulations, and therefore this should be explicitly stated

in this implementation guidance.

With regards to paragraph 6.3.9 (covering exemptions to the online rule), it would be helpful if the guidance

included examples to illustrate the exemptions in practice.

And finally, the guidance should expand on the nature of underlying contractual arrangements when

determining whether an advertisement qualifies as 'paid-for'. We would appreciate further clarification on

how different types of commercial relationships will be evaluated (e.g. general sponsorship,

manufacturer/supplier vs. retailer), and examples of what would constitute payment, particularly in cases

where promotional content is shared by a sponsored entity, or a retailer promotes a supplier's products in

ways other than via product listings on their website. In such instances, it would be helpful to understand

where liability would lie.

Question (viii) – Do you agree that the guidance set out in part 7 (The brand advertisement exemption) of

Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of

any alternative approach you consider more effective.

We are grateful for the clarity provided by part 7 of the draft document. However, the guidance does not

expand much from the requirements set in the legislation and therefore would highly benefit from the

inclusion of additional practical examples/scenarios, such as those included in the 2023 draft guidance. For

example:

4

9 October 2025

• When a brand of crisps (that has many different flavour variants) advertises their brand by showing

crisps being produced, and depicts potatoes, together with images of cheese and onion, would such

an advert be considered for their cheese and onion variant, and therefore be caught under the

Regulations? How about if the same advert depicted potatoes, together with many ingredients that

are used in the many different products made under the same brand, e.g. cheese and onion, but also

salt and vinegar, and chillies (that will not necessarily be used in combination in any of their flavour

variants)? And if the advert only depicted potatoes being fried in oil? We understand that the latter

two examples would not be caught by the advertising restrictions, but the lack of examples in the

guidance leads to uncertainty.

• Paragraph 7.2.5 refers to the use of a 'unique colour scheme' as part of a combination of brand

techniques that may bring an advert within scope of the restrictions. In the snacks sector, colour is

commonly used to differentiate flavour variants (e.g. red for salted, blue/green for salt & vinegar)

within product ranges that may include both LHF and non-LHF products. Where an advert features

the brand logo alongside a colour associated with a specific flavour, it is unlikely that consumers

would be able to identify a particular LHF product. Greater clarity on how such use of colour is

assessed under the guidance would be appreciated.

Additionally, we draw your attention to the paragraph below, which may need to be re-worded (the 3rd

paragraph, in particular), as it is currently unclear:

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 is unlikely to 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), is will fall under the brand advertising exemption.

Furthermore, because the guidance is so close to the legislation, it is difficult to differentiate legal

requirements to interpretation and best practice. For example, paragraph 7.4.3 states that:

7.4.3 – If an advertisement includes a picture 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 a

specific less healthy product, the advertisement should include additional information to make clear

that the product shown is a non-less healthy variant.

We understand this is guidance/good practice to support the assessment of an advert against the

identifiability test (set out in part 8 of the document), but this is not clearly differentiated from other (i.e.

legal) text in the guidance. We really appreciate this type of guidance and would encourage further similar

examples supporting compliance to be provided.

Question (ix) – Do you agree that the guidance set out in part 8 (The identifiability test) of Annex C is clear

and properly reflects the relevant legislation? If not, please state why, including details of any alternative

approach you consider more effective.

We appreciate the inclusion of guidance on the 'Identifiability test' and welcome the effort to clarify this

important area. To further support understanding and implementation, it would be helpful to expand on how

the assessment will be conducted and the relative weighting of the elements considered. A flow chart or

structured list outlining the components of the assessment, including 'content' and 'context', and their

respective weightings would be particularly useful.

5

9 October 2025

Additionally, as noted earlier in our response, Section 8 of the guidance would benefit from practical

examples illustrating the application of the identifiability test. In particular, the second and third bullet points

under 8.2.2 would be strengthened by the inclusion of further examples and suggested mitigation measures

to assist advertisers in achieving compliance. We recognise this may be a challenging request given time

constraints but believe that additional detail would significantly enhance the guidance.

i

Source: PPA own data, collected from members annually.

ii Source: Calculation based on PPA own data (above) and Defra. Agriculture in the United Kingdom 2024. Accredited official statistics. Chapter 7: Crops.

Volume of harvested production. For human consumption. 2024. 5,137 thousand tonnes. Published 10 July 2025 (Link:

https://www.gov.uk/government/statistics/agriculture-in-the-united-kingdom-2024).

iii Source: Nielsen Discover Frozen Potato data to 14th Sept 2025 RSV 52 weeks

iv Source: Kantar 52 w/e 6 September 2025.

Reach

Reach response to B/CAP consultation, titled 'the implementation of the "less healthy" food and drink product advertising restrictions'

Introduction

12. We are the UK's largest commercial publisher, employing the most journalists of any organisation outside of the BBC, and publishing over 100 national and local brands. We write this in support of the News Media Association's submission and to add our voice to the opinion that exempting brand advertising from the LHF advertising regime is a positive move for local press in particular, and will allow the intended impact of this legislation to come through, without unnecessarily harming an already challenged sector.

Foreword

13. In the months prior to the laying of the Advertising (Less Healthy Food and Drink) (Brand Advertising Exemption) Regulations 2025 ("**the 2025 Regulations**"), uncertainty surrounding the upcoming advertising restrictions caused significant disruption to our advertising capabilities that ultimately impacted revenue streams. This was particularly felt in the run-up to peak seasonal periods, like Christmas. The knock-on effects of this disruption were felt in areas like business planning, investment, and jobs, given the lack of certainty around advertising revenue.

13.1. Reach therefore appreciates the efforts undertaken by all parties in ensuring the implementation of the Less Healthy Food ("**LHF**") advertising restriction takes effect on 5 January 2026, following several delays and calls for clarity. To that end, the laying of the 2025 Regulations is welcomed, following the outcome of the consultation on the matter held between July and August 2025. It is our view that all areas of uncertainty have been addressed.

13.2. For news publishers, it is crucial that the LHF regime is fully implemented without delay now that uncertainty has been addressed with the 2025 Regulations. Further delays or revisiting the merits of a policy which enjoys widespread support across the divide in Parliament would only serve to cause more disruptions to advertisers and, subsequently, news publishers.

13.3. Reach welcomes this opportunity to reaffirm its commitment to the May 2025 voluntary industry agreement, which it was a signatory to.

Consultation questions

14. *Do you agree that the proposed wording of the TV rule (32.21) set out in 3.4 above and as it appears in Annex A adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective*.

14.1. The question is not applicable to news publishers.

15. *Do you agree that the proposed wording of the ODPS rule (30.16) set out in 3.5 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective*.

15.1. The question is not applicable to news publishers.

16. *Do you agree that the proposed wording of the online rule (15.19) set out in 3.6 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.*

16.1. It is the view of Reach that the proposed wording to the CAP Code section 15.19 is clear and accurately reflects the relevant legislation, including the brand advertising exemption regulations, the introduction of which is welcomed in order to provide clarity to the advertising sector.

17. *Question (iv) – Do you agree that the guidance set out in part 3 (Background) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.*

17.1. It is the view of Reach that the guidance set out in Part 3 (Background) of Annex C is clear and reflective of the relevant legislation.

18. *Question (v) – Do you agree that the guidance set out in part 4 (Determining products in scope) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.*

18.1. It is the view of Reach that the guidance set out in Part 4 (Determining products in scope) of Annex C is clear and reflects relevant legislation.

19. *Question (vi) – Do you agree that the guidance set out in part 5 (Nature of the advertiser) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.*

19.1. It is the view of Reach that the guidance set out in Part 5 (Nature of the advertiser) of Annex C is clear and reflects the relevant legislation.

20. *Question (vii) – Do you agree that the guidance set out in part 6 (Media and scope) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.*

20.1. It is the view of Reach that the guidance set out in Part 6 (Media and scope) of Annex C is clear and reflects the relevant legislation.

21. *Question (viii) – Do you agree that the guidance set out in part 7 (The brand advertisement exemption) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.*

21.1. It is the view of Reach that the guidance set out in Part 7 (The brand advertisement exemption) of Annex C is clear and reflects the Advertising (Less Healthy Food and Drink) (Brand Advertising Exemption) Regulations 2025 laid before Parliament on 10 September 2025. It is welcome that concerns have been heeded, and clarity has been provided through this statutory instrument and renewed guidance.

22. *Question (ix) – Do you agree that the guidance set out in part 8 (The identifiability test) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.*

22.1. It is the view of Reach that the guidance set out in Part 8 (The identifiability test) of Annex C is clear and reflects the relevant legislation.

Reach plc
9 October 2025

1. Can a Celebrity or Influencer be paid to attend and event where the product is non compliant BUT not post to social media and instead be photographed at the event and images used in the media under the headline 'XYZ attends the launch of XXX product'
2. Can an influencer be invited to and attend an event hosted by a non compliant brand/product and post – this is where the brand have explicitly said that they do not expect the influencer to post
3. Please can we get clarity on how to measure number of employee's a brand has – i.e the rules are not applicable to brands under 250 employees?
4. Who is responsible for identifying/disclosing products/brand as being non compliant
5. Where a non compliant, ie a Fast food brand, sponsors an event can they invite celebrities to attend and allow them to be photographed and show the guests on the brand social media account.
6. Can the ASA produce a catch all, top 10/15 rules/guidelines that give brands the best chance of not breaking the law, whilst still using celebrites and influencers.

Regulatory Policy Team,
Committee of Advertising Practice,
Castle House,
37-45 Paul Street,
London, EC2A 4LS

E: andrewt@cap.org.uk

9th October 2025

Re: ASA consultation on the implementation of the less healthy food and drink advertising restrictions

Dear Sir/Madam,

Safefood welcomes the opportunity to share our views on the implementation of the less healthy food and drink product advertising restrictions and in particular on the proposed rules to implement the restrictions in the UK Advertising Codes, and implementation to support their interpretation. Please find enclosed a response from Safefood.

Safefood is an all-island implementation body set up under the British-Irish Agreement with a remit to promote food safety and healthy eating on the island of Ireland. We have been working in the area of advertising of food to children for the past 25 years including:

- Support for the development of the children's advertising code by the Broadcasting Commission of Ireland (2005) and review of the code in 2008 and in 2024[xxiv].
- Support for the development of the Online Safety Code by Coimisiún na Meán[xxiv] (2024)
- Commissioning research on the nature and extent of children's exposure to food advertising[xxiv]
- Facilitating the discourse on food advertising to children[xxiv]
- Supporting the development of critical media literacy skills in the primary school setting[xxiv]

Our response is mainly in support of the proposal to ensure that there is clear and unambiguous implementation guidance in respect of ads that feature brands but that do not explicitly feature or refer to a less healthy product. It is our strong assertion that any and all aspects of the legislation should be unequivocal in the protection of children's health. Thank you for taking the time to consider our response. Please do not hesitate to contact us should you require more information or clarity on any of the points we have raised.

Kind regards,

Safefood response to the ASA consultation on the implementation of the less healthy food and drink advertising restrictions

Safefood welcomes the opportunity to share our views on the implementation of the less healthy food and drink advertising restrictions. We are very concerned however at the extent of the brand exemptions, and this is a missed opportunity for public health. There is now clear evidence that children consume significantly more calories after exposure to food advertising—whether for products or brands[xxiv]. Safefood, therefore urges the ASA to

ensure common-sense guidance that hold s to the spirit and principles of protecting the health of the population with priority afforded to the health of children and young people.

There is clear evidence that children continue to be exposed to powerful food marketing, which predominantly promotes foods high in saturated fatty acids, trans-fatty acids, free sugars and/or sodium and uses a wide variety of marketing strategies that are likely to appeal to children. Food marketing has a harmful impact on children's food choice and their dietary intake, affects their purchase requests to adults for marketed foods and influences the development of their norms about food consumption. Food marketing is also increasingly recognized as a children's rights concern, given its negative impact on several of the rights enshrined in the United Nations Convention on the Rights of the Child[xxiv].

Today's youth are at the epicentre of an exploding digital media and marketing landscape. We therefore strongly support the secondary legislation which introduces further advertising restrictions on TV and online for products high in fat, salt or sugar.

Safefood sees an important role for the regulation of harmful content in protecting children's health. We support the argument proposed by non-industry responses to the first consultation such that the implementation guidance should clearly disallow advertisements to promote less healthy products using references or depictions of generic products, branding relating to less healthy product ranges or references to general less healthy product categories. There is particularly the case because:

- Research shows that children as young as 18 months can recognise brands[xxiv], with preschool children demonstrating preferences for branded products[xxiv].
- Brand logos are learned and linked to the products they sell before children know their ABCs[xxivxxiv]
- A 2023 report found that overall, 89% of the top 20 food and beverage companies' brand sales were classified as unhealthy (using the WHO Europe nutrient profile model)[xxiv].

Safefood commissioned a multi-stage project using the WHO CLICK framework to:

- **C**omprehend the digital ecosystem on the island of Ireland
- Assess the **L**andscape of campaigns on the island of Ireland
- **I**nvestigate children's exposure on the island of Ireland

- **C**apture on-screen what children actually see online on their devices on the island of Ireland
- **K**nowledge sharing of findings to support advocacy and policy change.

This project (report in press) identified a very high level of unhealthy digital food marketing exposure among children and adolescents on the island of Ireland. This advertising is ubiquitous and consists of many blurred lines, such as marketing from favoured influencers and content creators. As such, it often bypasses categorisation as “advertising”, yet the evidence of several decades shows that less conscious processing of advertising content still affects food preferences, purchase requests, purchases and consumption.

The project also found that, in social media, advertising mimics social media formats and content, and children form “parasocial” relationships and attachments to celebrities, influencers and content creators. Advertisers and parents believe that this is a grey area, describing it as sinister and worrying. Even though children understand advertising well, they often do not perceive themselves as being advertised to. Advertising strategies in social media undermine their autonomy and constitute violations of their rights – to health, privacy and freedom from exploitation, among others. Self-regulation has clearly failed and government-led, mandatory regulation is required.

The project proposed several recommendations that pertain to this consultation including:

- Regulation should encompass influencers/content creators, going beyond mandated disclosure of remuneration for referencing a specific food product or brand.
- Regulation should encompass brand marketing (where advertising features a brand associated with unhealthy food products) and ‘owned’ social media marketing (i.e., brand accounts on social media).
- Regulation should minimise the risk of migration of marketing to other media, and to other digital spaces.

It is also strongly recommended that the monitoring of food marketing regulation should be independent, effective, efficient and adequately supported, which includes:

- Provide necessary resources for comprehensive, regular, independent monitoring to assess compliance, enforce restrictions, and inform future policy iterations.

- Require provision of nutritional information in an easily accessible and standardised format that facilitates automation

- Update nutrient profile models to include portion-size considerations when evaluating restaurant meals, ready meals and other multi-component foods.

The report shows that audiovisual commercial communications strongly influence what young people eat and drink, harming their health, well-being, and rights. Additionally, the research concludes that these commercial communications are incompatible with a vision for health-promoting and sustainable food systems and, as such, must be addressed by the legislation amending the Communications Act 2003 to place additional restrictions on certain food and drink advertising with no loopholes.

Question (i): Do you agree that the proposed wording of the TV rule (32.21) adequately reflects the relevant legislation?

The proposed wording of the television rule (32.21) reflects the intention and structure of the underlying legislation, especially by providing explicit limits on the placement of advertisements for identifiable less healthy food and drink products between 5:30am and 9:00pm. The rule clearly outlines exemptions in line with the legislation, such as for brand advertisements and SMEs. However, it is essential that the interpretation of “identifiable less healthy food or drink product” is comprehensive and robust to prevent indirect brand-related marketing of these products. Clear implementation guidance is needed to ensure the rule is not circumvented by generic branding or indirect references to less healthy products, as children can easily make associations with brands and product categories even when specific products are not depicted.

Question (ii): Do you agree that the proposed wording of the ODPS rule (30.16) adequately reflects the relevant legislation?

The ODPS rule similarly aligns well with legislative requirements, prohibiting advertising for identifiable less healthy food and drink products on regulated on-demand services during the protected hours, with explicit attention to the same categories and exemptions as the television rule. The definition of “identifiable” is also correct in law, but implementation guidance must continue to protect children from indirect exposure to such advertising through brand marketing, generic product promotion, and influencer content associated with unhealthy foods. Research shows marketing strategies that do not explicitly name products nevertheless impact children’s preferences, requests, and consumption patterns.

Question (iii): Do you agree that the proposed wording of the online rule (15.19) adequately reflects the relevant legislation?

The online rule accurately incorporates the legislative requirements, including exemptions and definitions. It rightly extends the ban on paid-for advertisements for identifiable less healthy products intended for UK audiences, supporting the move to reduce children's exposure in digital media. Evidence suggests that moving marketing for these products to digital and social spaces remains a risk, and so further clarification on enforcement, especially for brand-related promotional activity and influencer content, is paramount for the rule's effectiveness.

Question (iv): Do you agree that the guidance set out in part 3 (Background) of Annex C is clear and properly reflects the relevant legislation?

The background section comprehensively describes the roles and responsibilities of the ASA, Ofcom, CAP and BCAP and their approach to assessment and enforcement. It appropriately situates the new rules within the broader regulatory framework and highlights the intended protections for children's health, which Safefood strongly supports. The clarity is welcome, but ongoing efforts should be made to communicate to stakeholders the potential for indirect advertising to undermine these aims.

Question (v): Do you agree that the guidance in part 4 (Determining products in scope) of Annex C is clear and properly reflects the relevant legislation?

The guidance sets out a clear two-stage test for identifying less healthy products, referencing relevant secondary legislation and DHSC nutrient profiling guidance. This clarity is valuable for industry and regulators. However, regular updates and stakeholder engagement are necessary to ensure definitions remain relevant given developments in product reformulation and broader dietary science.

Question (vi): Do you agree that the guidance set out in part 5 (Nature of the advertiser) of Annex C is clear and properly reflects the relevant legislation?

The advertiser criteria and SME exemptions are clearly defined in the guidance, with direct reference to legislative criteria. It is recommended that future iterations include clear guidance for content creators and influencers whose activity can fall outside traditional categories but who exert substantial influence on children's food choices. Regulation should consider not only who pays for the advertisement but also the real-world pathways of content and brand propagation.

Question (vii): Do you agree that the guidance set out in part 6 (Media and scope) of Annex C is clear and properly reflects the relevant legislation?

The guidance provides a detailed summary of the applicable media, focusing on broadcast, ODPS, and online, correctly referencing the legal scope. As marketing evolves rapidly, robust, future-proof definitions are needed to minimise migration of unhealthy product advertising to new digital channels and content formats, including cross-promotion via influencer and creator accounts.

Question (viii): Do you agree that the guidance set out in part 7 (Brand advertisement exemption) of Annex C is clear and properly reflects the relevant legislation?

Safefood strongly recommends further detail to prevent exploitation of this exemption for de facto promotion of less healthy products. Brand logos and generic references can be powerful cues for children, and guidance must retain a precautionary approach, particularly in online environments and influencer marketing where children may not recognise promotional content as advertising.

Question (ix): Do you agree that the guidance set out in part 8 (Identifiability test) of Annex C is clear and properly reflects the relevant legislation?

Safefood supports clear, unambiguous guidance for industry and regulators, ensuring all creative content depicting, referencing, or otherwise promoting less healthy products—directly or indirectly—is assessed rigorously. This is critical to safeguard children's rights to health and privacy, given their demonstrated vulnerability to sophisticated advertising and marketing tactics, especially on digital and social media platforms.

Sky response to CAP/BCAP consultation on the implementation of the "less healthy" food and drink product advertising restrictions – 9 October 2025

Question	Proposed Sky response	Comment
Question (i) – Do you agree that the proposed wording of the TV rule (32.21) set out in 3.4 above and as it appears in Annex A adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.	Yes	
Question (ii) – Do you agree that the proposed wording of the ODPS rule (30.16) set out in 3.5 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including	Yes	

details of any alternative approach you consider more effective.		
Question (iii) – Do you agree that the proposed wording of the online rule (15.19) set out in 3.6 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.	Yes	
Question (iv) – Do you agree that the guidance set out in part 3 (Background) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.	Yes	
Question (v) – Do you agree that the guidance set out in part 4 (Determining products in scope) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.	Yes	
Question (vi) – Do you agree that the guidance set out in part 5 (Nature of the advertiser) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.	Yes	
Question (vii) – Do you agree that the guidance set out in part 6 (Media and scope) of Annex C is clear	Yes	

and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.		
Question (viii) – Do you agree that the guidance set out in part 7 (The brand advertisement exemption) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.	Yes	
Question (ix) – Do you agree that the guidance set out in part 8 (The identifiability test) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.	Yes	Whilst it is clear why the ASA is assessing the perspective of a notional 'average consumer' when assessing adverts, we would recommend referencing in 8.2.1, or in the creation of a new 8.2.2, that the concept of the notional 'average consumer' is already enshrined in law and widely used. This should make it clearer for advertisers to interpret how the ASA intends to interpret a "reasonably well-informed, reasonably observant and circumspect person" – and indicate that it is in keeping with current statutory expectations.

Question (i) *– Do you agree that the proposed wording of the TV rule (32.21) set out in 3.4 above and as it appears in Annex A adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.*
32.21 – Television programme services must not include advertisements for an identifiable less healthy food or drink product between 5.30am and 9.00pm.

Yes. We agree this is clear and accurately reflects the legislation.

Question (ii) *– Do you agree that the proposed wording of the ODPS rule (30.16) set out in 3.5 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.*

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

Yes. We agree this is clear and accurately reflects the legislation.

Question (iii) *– Do you agree that the proposed wording of the online rule (15.19) set out in 3.6 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.*

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

Yes. We agree this is clear and accurately reflects the legislation.

Question (iv) *– Do you agree that the guidance set out in part 3 (Background) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.*

We broadly agree that the guidance in Part 3 is clear and accurately reflects the letter of the legislation.
The Government stated last month in their consultation outcome document that they expect the policy to "remove up to 7.2 billion calories from UK children's diets each year." This figure comes from the Government's Impact Assessment for this policy which is calculated based on the understanding that advertisers affected by the restrictions would have several routes to comply with the policy. For example, by reformulating products, advertising their healthier ranges, shifting activity outside of restricted time windows or media, or focusing on promoting brand attributes.
The Impact Assessment sets out that companies with healthier products would advertise those products, and that the brand exemption would only be used by companies without healthier options. This would be determined by CAP/BCAP, recognising that the CAP/BCAP clearance system for adverts may take a more robust approach. Analysis from Cancer Research UK in 2019 showed that 79% of unhealthy food advertising could be replaced by a healthier alternative – e.g. the brands advertising an HFSS product have another non-HFSS brand in their portfolio that could be advertised instead or retailers could remove HFSS products from their adverts [ref: Cancer Research UK (2020) Analysis of revenue for ITV1,

Channel 4, Channel 5 and Sky One derived from HFSS TV advertising spots in September 2019.
https://www.cancerresearchuk.org/sites/default/files/cruk_report_on_sept19_nielsen_tv_ad_analysis_-_final22july20.pdf] The research examined the extent to which portfolios complied with HFSS regulations and not less healthy products compliance. Given there are fewer products in scope of the less healthy products definitions than the HFSS definitions, brands will have more portfolio compliance.

However, in contrast to the Government's impact assessment, the new draft guidance does not incentivise the promotion of healthier products. Instead, it encourages companies to default to the brand exemption, regardless of their product range. This represents a significant shift from the original policy intention and may dilute the intended public health impact.

Evidence shows that brand only advertising increases consumption of unhealthy foods and drinks and therefore contributes to child obesity. In the previous draft guidance proposals, the Advertising Standards Authority (ASA) acknowledged that brand-only advertising should be restricted in some circumstances.

Pre-publication research conducted by the University of Liverpool and funded by the National Institute for Health and Care Research finds that compared to non-food advertising, brand-only food adverts from brands associated with unhealthy products (through multiple formats: audiovisual, visual only, audio only, static) increased snack intake, lunch intake, and overall intake in children 7-15 years to the same extent as product ads (+128.39kcal across snack and lunch). Therefore brand-only adverts by food and drink companies do not have a benign effect when it comes to child obesity. They have such a strong association that they increase calorie intake significantly with similar consequences as those when people see less healthy food and drink product adverts.

[Appendix – Professor Boyland Research Summary – available on request]

As set out by Minister Ashley Dalton (16 July 2025), the purpose of the restrictions is to reduce children's exposure to Less Healthy Product marketing and incentivise industry reformulation. But by exempting brand marketing so broadly - including brands known primarily for, and clearly associated with, High fat, salt and/or sugar (HFSS) products - the regulations remove that incentive and allow continued exposure via switching to brand-led advertising.

The delay in implementation - from January 2023 to October 2025 - was explicitly intended to give industry time to reformulate products ahead of the restrictions. Many companies have used this time effectively. But if brand advertising is excluded too broadly, **the incentive to reformulate is removed**, and the time afforded to industry has been wasted, during which time children have continued to be exposed to commercial messages known to harm dietary health. Those companies that responded in line with the public health goals of the policy have invested in healthier products and switching their advertising will now see their competitors who did not invest able to continue advertising as before.

Since 2007, the UK has had over 18 years of policy experience with HFSS marketing restrictions, and advertisers will have had more than five years to prepare for this specific intervention. The intention has always been clear: **if an advert promotes a less healthy product, or has the effect of doing so, it should be restricted - regardless of format.**

The same can be said of local governments – Transport for London plus 24 English councils – which have successfully restricted brand only advertising. Industry has changed their advertising to successfully comply with brand only restrictions on local government estates since 2019.

To ensure the guidance remains aligned with the policy's original purpose - to incentivise the promotion and reformulation of healthier products - we propose the following wording to bring the balance back in favour of encouraging healthier options rather than simply protecting brand equity.

Proposed addition:

"In line with the policy intent of the less healthy food and drink restrictions, advertisers should prioritise the promotion of healthier products and reformulated lines within their portfolios. The brand advertising exemption should not be used to promote or sustain brand recognition primarily associated with less healthy products. Where advertisers have both healthier and less healthy ranges, use of the exemption should clearly support the communication of brand attributes linked to the company's healthier offerings or its commitment to product improvement."

Implementing further restrictions on advertising for 'less healthy' food and drink products: Annex C - ASA

***Question (v)** – Do you agree that the guidance set out in part 4 (Determining products in scope) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.*

We broadly agree that the guidance in Part 4 is clear and reflects the intent of the legislation. However, we recommend that the section on determining products in scope be strengthened to ensure clarity and consistency of interpretation. Specifically, any products - whether depicted as generic, photorealistic, or stylised - that fall within one of the listed less healthy food and drink categories should be presumed to represent a less healthy variant unless explicitly stated otherwise.

This would prevent ambiguity in assessing whether creative content featuring common food types (for example, pizzas, confectionery or burgers) should be considered in scope.

This approach aligns with the spirit and letter of the legislation and ensures that advertisers do not inadvertently breach the restrictions through ambiguity. It also complements the overarching policy aim - to reduce children's exposure to less healthy food and drink marketing, regardless of presentation format, and will reduce the burden on the ASA.

***Question (vi)** – Do you agree that the guidance set out in part 5 (Nature of the advertiser) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.*

We broadly agree that the guidance in Part 5 is clear and reflects the intent of the legislation.

The Government's stated intention is that only small and medium-sized enterprises (SMEs) — defined as those with 249 employees or fewer — that pay to advertise less healthy food and drink products they manufacture or sell should be exempt from the restrictions.

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 be subject to the SME exemption

However, we are concerned by the wording 'on behalf of a food or drink SME' on the television and ODPS rules. Despite the welcome clarity that delivery services, aggregators and other intermediaries will not be subject to the exemption, there remains a risk of the SME exemption being exploited. Without clear safeguards, multiple SMEs could pool resources to fund an advertisement via an aggregator, delivery platform or similar

intermediary, and thereby seek to benefit from the exemption despite the advertisement being placed by a non-SME entity.
To future-proof the policy and maintain its integrity, we recommend the guidance to explicitly clarify how compliance will be monitored and enforced on television and ODPS. This would help ensure that large intermediaries cannot act as vehicles for SMEs to collectively advertise less healthy products under the guise of exemption.
For clarity, it is worth also adding that this is for television and ODPS rules only. Online, the exemption for SMEs is only applicable where the person paying is at the time when the payment is made, a food or drink SME. The exception does not extend to those paying on behalf of a food or drink SME.

Question (vii) *– Do you agree that the guidance set out in part 6 (Media and scope) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.*
We broadly agree that the guidance in Part 6 is clear and reflects the relevant legislation. However, the section on influencer marketing (6.3.6) could be strengthened to reduce the risk of circumvention.
We recognise that the government is permitting Corporate Social Responsibility (CSR) advertising for brands linked to less healthy food and drink and that they have reasserted this in recent months on multiple occasions. This is therefore outside of the jurisdiction of the ASA but in the paragraphs below we set out why this is misaligned from the intentions of the policy and how these should be handled and we hope this evidence will be taken into consideration.
As has been clearly and consistently evidenced in published research CSR advertising by food and drink companies still functions as brand marketing. CSR campaigns can significantly influence consumer behaviour: they increase brand recall, brand appeal, buying intentions, and market share, particularly among children and young people. [Ref: Boyland E, et al. The impact of food advertising on children's immediate and later food intake: do media type, advertisement content, and participant characteristics moderate these effects? and Norman J, et al. Exposure to unfamiliar food brands in TV advertising and online advergames drives children's brand recognition, attitudes, and desire to eat foods. J Acad Nutr Diet. 2020;120(1):120–129. doi: 10.1016/j.jand.2019.05.006]
This type of brand association can lead to increased sales of less healthy products connected to that brand - regardless of whether specific products are shown in the advert. In effect, CSR campaigns can serve as a back door for promoting HFSS products, particularly when the brand is strongly associated with such products. Research from Liverpool University shows that brand exposure activates brain areas responsible for emotional processing in the brains of children and adults. If the aim is to prioritise children's health, the ASA must not encourage brand-building or emotional engagement that increases demand for less healthy products.

6.3.6 – Influencer marketing. 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 monetary or non-monetary consideration has been made 'for' influencer content (i.e. an advertisement has been placed on the internet).

We recognise that the ASA will assess each case based on the specific circumstances, which opens up concerns over practicality of enforcement - including whether monetary or non-monetary consideration has been made “for” influencer content. However, there remains a real risk that advertisers could misunderstand the current wording and be non-compliant for example by:

- gifting products without an explicit requirement to post content,
- forming longer-term or informal relationships with influencers that blur commercial boundaries, or
- using affiliate links or discount codes that incentivise posts but may not be declared as “paid” advertising.
- Breaching the code using ‘live streamed’ content, rather than fixed ‘posts’

Given the dynamic and fast-evolving nature of influencer marketing, and evidence to suggest ‘work arounds’ using non CAP guidance, it is important to future-proof the guidance and ensure consistency of enforcement across broadcast, online, and influencer media. Without such clarity, there is a risk that the same marketing message could be restricted on one platform but permitted on another.
We recommend adding a clarifying statement along the following lines:
Proposed addition:
“Where an influencer has received products, benefits, or incentives from a brand including gifts, services and experiences, this should normally be treated as advertising for the purposes of these regulations, irrespective of whether an explicit oral or written contractual arrangement exists.”
This would bring the guidance in line with ASA principles on transparency and consumer protection, while ensuring the policy’s intent - to reduce children’s exposure to less healthy food and drink marketing - is applied consistently across all media.

Question (viii) *– Do you agree that the guidance set out in part 7 (The brand advertisement exemption) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.*
We do not fully agree that the guidance in Part 7 is clear or fully reflects the intent of the legislation.
While we recognise that the ASA’s interpretation of the brand advertising exemption is largely consistent with the current legal position, the guidance as drafted leaves significant ambiguity around what constitutes a “brand” and the extent to which brand-related imagery, packaging, or sub-brands “brand of a range of products” fall within scope.
Key concerns include:
1. Unclear definitions of “range” and “brand” vs “specific product”
The current drafting could allow product lines with minor variations (e.g. flavours) to be framed as a ‘range’ and therefore eligible for exemption. For example, *Cadbury Dairy Milk* is widely understood to be a specific product and fits the ASA’s definitions as a product that “is capable of being purchased”, but the existence of variants such as Fruit & Nut or Daim could allow the company to argue that “Dairy Milk” is a *brand of a range of products*. The same could be said for Dairy Milk buttons which has also been developed into multiple shapes and

flavours like mint, orange and twisted, but again, “Dairy Milk buttons” is also a purchasable item.

The ASA must set out what counts as a brand of a range of products. There are many well-known unhealthy products which occasionally bring out limited edition shapes, flavours or novelty versions of their product using the same core product and branding. This appears to be a distinct loophole ripe for exploitation by long-running companies selling unhealthy products. The ASA must make it clear that short term/limited availability (i.e. not available in Major Grocery retailers) of different versions of products will not be considered a brand of a range of products and will therefore not benefit from the brand exemption.

2. Equity brand characters

It is unclear how the exemption would apply to equity brand characters. These are often associated with specific less healthy products, but owned at brand level. For example, *Tony the Tiger* is used to promote *Kellogg’s Frosties*, which would be subject to restrictions. If the brand character remains in use under a 'brand exemption', this could effectively allow continued promotion of the restricted product.

The ASA’s guidance on equity brand character is welcome recognition of the association and influence this form of marketing has. It is good to see that these are being recognised as an extension of the unhealthy product and are therefore not granted a brand exemption. However, it is important that the ASA recognises the risk of not setting out how and when the character is used after July 2025. For example, Tony the Tiger is the brand equity character for Frosties which is an unhealthy product. However, this policy could incentivise Kellogg to use Tony the Tiger in other marketing/products so that it can be argued the character is the brand equity character for their ‘brand of a range of products’. This would be a significant loophole in brand equity advertising. The ASA must prevent this by stating that the brand equity character must have been in equal use with each of the products within the range before July 2025.

There is robust evidence that brand equity characters significantly influence children’s purchase preferences and increase consumption of the associated products.

[Ref: WHO/UNICEF 2023 guidance on digital food marketing to children. https://www.unicef.org/media/142621/file/UNICEF-WHO%20Toolkit%20to%20Protect%20Children%20from%20the%20Harmful%20Impact%20of%20Food%20Marketing.pdf]

3. Unfair advantage to brands with formal range naming

The draft approach may inadvertently favour large, well-established manufacturers with formal sub-branding strategies and vertical brand architectures over smaller or newer companies. For example:

· *Heinz Ketchup* or *Cadbury Dairy Milk* may be treated as brands of a range of products instead of individual products.

· But *Yeo Valley Greek Yogurt* or *Deliciously Ella Mixed Berry Oat Bars* could be restricted, since those companies describe their products by function rather than formal range names.

This creates an uneven playing field, privileging established branding strategies and penalising simpler or more transparent labelling.

Similarly, a supermarket could advertise “Waitrose Essentials” under the exemption, but not “Waitrose Essentials Ketchup”, whereas *Heinz Ketchup* might qualify as a ‘brand of a range of products’, whilst also being understood by a notional consumer as ‘a product available for sale’.

Appendix: Brand of a Range of Products Visual Examples

Whilst the issue of including exemptions for both ‘brand of a range of products’ and ‘name of company or brand’ applies to all advertisers, we have illustrated the complications using two top 10 manufacturers that predominantly market less healthy food products – Kraft/Mondelez International’s Cadbury Dairy Milk and Unilever’s Ben & Jerry’s.
Appendix - Dairy Milk and Ben and Jerry’s Reflection Analysis
Appendix - Dairy Milk and Ben and Jerry’s Miro Boards (two)
The draft guidelines are inconsistent in how they would apply to different types of brands, depending on their brand architecture and naming conventions.
Cadbury Dairy Milk is a specific, identifiable product – a chocolate bar that is HFSS. Similarly, Cadbury Dairy Milk Buttons is a specific, identifiable product – a bag of chocolate buttons that is HFSS, containing the same substance in a different shape (but not necessarily flavour). On that basis, we would expect both to fall outside the brand exemption, as their names alone (even without ‘depicting’ the product) promote identifiable less healthy products.
However, Cadbury’s HFSS portfolio (around 200 products) is structured under a vertical brand architecture, with multiple product variants and formats marketed under different names, but using the same core ingredient ‘Dairy Milk Chocolate’ (HFSS) – e.g. Dairy Milk Freddo, Dairy Milk Caramel, Dairy Milk Fingers, Dairy Milk Buttons, each with a further range of products underneath them.
The regulations allow companies to benefit from exemptions based on the company’s own definitions. Many of these sub-brands may be able to advertise their names and logos simply because of their vertical architecture, regardless of the range’s less healthy products. This would enable Cadbury to continue promoting products like Dairy Milk Buttons or Dairy Milk Caramel just by naming them. The audience would reasonably understand this to be promoting the products behind the name and available to purchase in stores under that name, but the government now considers this to be a ‘brand of ranges’ disconnected from them.
By contrast, Ben & Jerry’s operates under a horizontal brand architecture. It markets around 39 HFSS products under a single brand name, ‘Ben & Jerry’, without further building their brand architecture by creating many sub-brands of ranges of products. Most of Ben and Jerry’s products are not captured by a brand beneath “Ben &Jerry”, as a result, currently Ben & Jerry’s would not have as much opportunity as Cadbury to promote specific product lines beyond their general headline brand.
This illustrates how the current drafting creates unfair advantages for brands with more complex or strategic naming structures, not based on product healthiness which would be consistent with policy intention, but on how those products are grouped and named.
This diversification is nothing new – companies like Mondelez International’s Cadbury have been doing this for many years. These are well established and successful approaches to branding, and therefore it is more important the ASA carefully considers how the proposals will be enacted upon these branding structures, as well as future-proofed so that they are in line with the intentions and ambitions as set out in the impact assessment.

It is welcome to see that the Government has added in an expiration on the definition of a brand of a range of products, by stating that it only applies where it was in use before 16th July 2025. This will ensure a loophole is closed, which otherwise would have incentivised companies to simply introduce more unhealthy products in order to create a “brand of a range of products” to advertise. However, this definition is still not determined by the healthiness of products and therefore is misaligned with the policy intentions’ health

outcomes. Less well-established companies trying to introduce healthier products onto the market are disadvantaged as they will be up against 'big brands' with pre-existing products that could be swept up under 'brands of ranges'. As a regulator that aims to be proportionate and consistent, the ASA must bring in regulation which ensures that every company is given opportunities, especially when they are moving closer to better alignment with the government's policy aims - by creating healthier products. It should not be the case that older companies are given awarded privileges to advertise their unhealthy ranges while newer companies - especially those marketing relatively healthier products - cannot.
There is a real risk that advertisers could exploit this ambiguity to promote less healthy products indirectly. Without greater clarity, the exemption could become the rule rather than the exception, undermining both the spirit and the letter of the law.
We therefore recommend that the guidance be strengthened to:

- explicitly distinguish between brand-level advertising and sub-brand or product-line promotion;
- Explicitly state that any products that are temporary (e.g. seasonal)/limited offer/stunts/not widely available in UK Major Grocery Retailers for purchase will not be considered as part of a range of products. NB this approach is line with ASA's current approach on promotional pricing
- clarify that any brand imagery, packaging or creative device that evokes a specific less healthy product should bring the advert within scope; and
- suggest that the exemption should not apply where a brand or corporate identity is primarily or predominantly associated with less healthy products.
- Suggest that where a healthier product exists within a 'brand of range of products', that product must be advertised instead of using the brand exemption

This would limit the risk of erosion or expansion of the exemption over time, maintain consistency with the policy's original intent to incentivise the promotion of healthier products, and protect the regulation's long-term public health impact.

7.2.4 - 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.

A further area of concern is generic product-related imagery. For example, an advertisement might feature a McDonald's wrapper with cheese (see the example below). It is unclear whether this represents a specific cheeseburger variant (such as Cheeseburger, Double Cheeseburger, Chilli Double Cheeseburger which are all Less Healthy) or could equally apply to another product containing cheese within the range that might be healthier. Under the current guidance, such packaging may fall under the brand advertising exemption, even though consumers could reasonably interpret it as promoting a particular less healthy product.

For example:

If this is considered to be applicable for the brand only exemption despite the fact it is promoting specific less healthy products, this would incentivise companies to employ this marketing strategy. It presents a slippery slope towards advertising specific less healthy food and drink products. We recommend that for both the ASA's workload and the ambitions of the policy, this loose interpretation to comply with the brand only advertising exemption is not granted.

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 depict a specific less healthy product.

We are concerned that clause 7.2.5 allows for too much flexibility. The current wording suggests that advertisers may use a combination of brand techniques - such as a range of products, colours, or themes - as long as they do not "directly" depict a specific less healthy product. In practice, this leaves significant scope for indirect promotion of less healthy products and creates uncertainty for both advertisers and regulators.

Public Perception Evidence

We conducted polling with Savanta to explore how the public interpret adverts featuring less healthy products without naming specific items. A representative sample of 2,000 UK adults was shown various adverts and asked:

"Do you consider this advert to be for:

A. A healthier food and drink product?

B. A less healthy food and drink product?

C. Not sure/don't know"

Between 52% and 85% of respondents identified these adverts as being for a less healthy product - even when the product was not named or branded. For example, when shown a generic image of pizza in a Just Eat advert, 85% of respondents identified it as an advert for a less healthy food.
This evidence demonstrates that consumers can and do identify less healthy products even without specific branding – confirming that the term “specific” does not reflect real-world perceptions.
[Appendix - Savanta Polling]
This narrow interpretation may also create an unfair commercial advantage for some businesses. For example, own-label retailers, delivery platforms and out-of-home providers are far more likely to advertise ‘non-specific’ (but still less healthy) products without branding, meaning their products evade restrictions simply due to presentation.
There is no evidence that “non-specific” less healthy products are any less harmful than “specific” ones, or that they are any less likely to influence purchasing behaviour, brand loyalty, or children’s dietary choices.
We also note that the current government definition of “less healthy” is already narrow, as it excludes many well-known, less healthy categories such as chocolate spreads and sausage rolls.

We recommend that the guidance is made clearer, for example:
Proposed wording:
“Any branding, packaging, imagery, or creative technique that could reasonably be interpreted as representing a specific less healthy product should be treated as in scope and not exempt under the brand advertising exemption.”
This would reduce ambiguity, limit the risk of circumvention, and ensure the policy’s intent - to restrict marketing of less healthy products - is upheld

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 is unlikely to 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), is will fall under the brand advertising exemption

We believe this is a typographical error and should read:
“**…and** will fall under the brand advertising exemption.”

7.3.2 – However, the brand exemption will still apply to advertisements for brands which name a specific less healthy product where the full name of that product:

- 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)).

The guidance is in line with the legislation which introduces exemptions for brands that existed before 16 July 2025, either as part of a company, franchise, or pre-existing product range.
There is no definitive registry distinguishing brands from product ranges, but evidence from trademark registrations, product listings and marketing strategies may provide understanding.
Newer brands would face stricter marketing restrictions than long-established less healthy brands with the same names as the brand. This creates an unfair commercial advantage for legacy brands and may disincentivise innovation from newer or smaller companies trying to enter the market with healthier products. Legacy exemptions could help preserve and entrench brand loyalty to less healthy brands with the same name as the product. This could lock in patterns of unhealthy consumption rather than support the shift to healthier food and better health outcomes.
Clear guidance is needed here to prevent legal complications and misuse of the exemption by brands retroactively claiming status for less healthy products. The proof for the purposes of marketing, advertising or retail sale immediately before 16 July 2025 must be supplied and independently verifiable.

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)).

We understand this to mean that if a realistic healthier product closely resembles a less healthy product, it could be interpreted as promoting the less healthy version - and that advertisers should make it clear that it is for a healthier product. However, it is unclear where the line falls between a product looking like a specific less healthy product versus a generic less healthy product.
For clarity, to minimise risk, and to reduce the burden on the ASA, we recommend that the guidance:

- advise advertisers to exercise caution when using imagery that could reasonably be perceived by an average viewer as a specific less healthy product, whether or not it meets the statutory definition of "realistic"; and
  encourage that where a product is featured in an advertisement and is not a product for sale, advertisers should use healthier versions of foods and products to avoid falling within this clause.

- Include 'product shape' as well as 'flavour variants'

Proposed alternative wording:

"Any image that is recognisable as a specific less healthy food or drink product, whether in or out of its packaging, should be considered in scope."
While we recognise that the current wording is set out in the statutory instrument, and think the addition of 'the advertisement should include additional information to make clear that the product shown is a non-less healthy variant' is very helpful, these practical clarifications would help advertisers apply the rules consistently, reduce the risk of inadvertent breaches, and better protect the policy's public health objectives.

Question (ix) *– Do you agree that the guidance set out in part 8 (The identifiability test) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.*

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 or a combination of factors that means 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. If such an advertisement does not fall under one of the exemptions outlined above, it may be restricted.

We broadly agree that the identifiability test is the legally defined mechanism to capture advertising that does not explicitly depict a less healthy product but could reasonably be identified as promoting one. The guidance correctly states that "branding" should be understood in a broad sense, encompassing logos, livery, straplines, fonts, colour schemes, characters, audio cues, and jingles.
However, the guidance would benefit from greater clarity and completeness for advertisers. In the DHSC brand exemption consultation, a longer list of factors was provided to help determine whether content depicts a product, including:

- Name of the product (unless the name is the same as the brand name, pre-16 July 2025) (as above, clarity is required as to whether this is the text name - or a logo - and that the product must have been available for retail sale to consumers before this date)
- Text
- Imagery
- Audio cues
- Jingles
- Livery
- Straplines
- Fonts
- Colour schemes
- Characters

- Other branding techniques

We propose this list be expanded to include:
“or new creative techniques which aim to build recognition, brand equity, loyalty, emotional response, or similar associations, and any combination of the above.”
Including this full list would help future-proof the guidance, covering emerging advertising techniques and preventing circumvention through novel digital or creative methods. It would also provide clearer direction for advertisers while maintaining the integrity of the policy’s public health objectives.
We question the appropriateness of the ASA using a “reasonably well-informed, reasonably observant and circumspect persons in the UK” to be the standard bearer of whether an advertisement is for a less healthy product in a child health policy, The aim of which is to reduce the influence unhealthy food advertising to improve children’s health, and therefore the policy needs to be applicable to the impact advertising has on children, including those who are toddlers and in primary school. They would be unlikely to meet the definition of the ASA’s standard bearer, and yet, the advertising will and does have impacts on them, as well evidenced. The ASA must reconsider how they interpret the Government’s reference to “persons” in the context of the policy.

Other points for consideration
We appreciate that there is a short timeline until 5th January, however giving only three weeks to respond to this consultation will result in fewer and poorer quality responses, and ultimately create permanent, untested changes. Due to the extremely short turnaround, we have been unable to conduct this consultation with our wider members, which is to the detriment of our response. For this reason we would appreciate the opportunity to follow up with the policy team should any corrections or further issues come to light after submission.
We do not support the exemption for brand advertising, but recognise this has now been established in law. Although the government suggests that this exemption was (loosely) based on evidence available in 2021, the evidence base has already evolved. Since then, advertisers, public health bodies, academics, and regulators have generated new and compelling insights into how brand advertising influences consumer perceptions, preferences, purchasing behaviour and consumption - particularly in relation to less healthy food and drink.
We have appreciated the time given to us by the CAP team to explain the process and the intentions of the consultation, and share our thanks. However we are concerned with the wider role the regulator has played in allowing industry to weaken the policy, and in being unable to produce clear and timely guidance.
As the frontline enforcer of compliance, the regulator’s decisions must be transparent, accountable, proportionate, and consistently applied. The ASA has not clearly outlined the decision-making processes the ASA will follow, nor have they committed to transparency or accountability regarding how regulatory rulings are reached.
We seek clarity on how the complaints process will be fairly administered, who will oversee enforcement, and how the ASA Council’s rulings will incorporate public health and public perspectives.
We are also concerned about the structural relationship between the ASA, BCAP, CAP, and Ofcom, particularly the close ties between industry representatives and regulatory decision-making. Academic research highlights the problem of “revolving doors” - the movement of

individuals between regulatory bodies and the industries they regulate - which can lead to regulatory capture, where public officials favour corporate interests over the public good.

Recommendations:

1. Remove representatives from regulated industries on the boards of ASA, BCAP, CAP, and Ofcom to eliminate conflicts of interest.
2. Appoint experts on marketing's impact on health to these boards in place of industry representatives.
3. Establish an independent UK-based panel to provide impartial pre-clearance of advertisements before media launch, reducing costly and time-consuming ASA investigations.
4. Commission and publish a transparent review of industry involvement on these boards, including public consultation and feedback.
5. Maintain a publicly accessible repository of complaints investigated, coordinated with the Department of Health and Social Care, to monitor and evaluate regulatory enforcement.
6. The government should be responsible for the policy, and the ASA for producing clear guidance, and not have overreach into policy design as may have happened in this case.

The OHA will monitor the application of the new rules closely, tracking both best and worst practices. Our goal is to work constructively with the government, advertisers, and the ASA to clarify grey areas, ensure the guidance is robust, future-proofed, and truly protects public health.

Timely review and proactive updates to the guidance are essential to safeguard children and ensure that the legislation is responsive to real-world advertising practices. There is clear precedent for this: in 2009, Ofcom undertook a review just one year after the HFSS broadcast advertising restrictions came into full effect, publishing the report in July 2010.

It is also vital that the legislation is flexible and broad enough to future-proof against the evolution of marketing strategies - especially as new advertising techniques emerge or shift rapidly across digital platforms.

In addition to the specific points above, we recommend the following to ensure the guidance remains effective, future-proof, and enforceable:

1. **ASA self-initiated monitoring** – The ASA should actively monitor and make public compliance, particularly in the online space, rather than relying solely on complaints, to identify potential breaches early and maintain the integrity of the restrictions.
2. **Timely policy review** – Guidance should be formally reviewed at regular intervals to ensure it continues to reflect emerging advertising techniques and market developments.
3. **Check for unintended consequences** – Reviews should assess whether any aspects of the guidance inadvertently enable circumvention or disadvantage certain types of advertisers, products, or media.

4. **Annual guidance review** – Consider allowing for a full review of the guidance within one year of implementation, to incorporate learning from early enforcement, technological changes, and stakeholder feedback.

5. **Publication of all responses** – ASA should publish all adjudications and case responses, even where no breach is found, to provide transparency and help advertisers understand boundaries.

6. **Clarity for digital and social media** – Explicit guidance on emerging online formats, including influencer marketing, user-generated content, and interactive media, to reduce ambiguity and prevent loopholes.

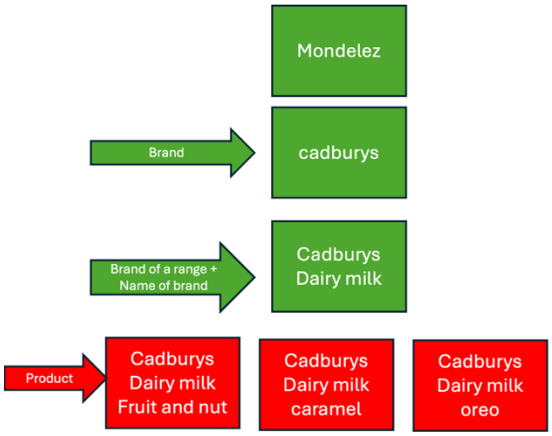
7. **Consistent cross-media application** – Ensure that principles applied to TV and online media are aligned to avoid inconsistencies that could be exploited.

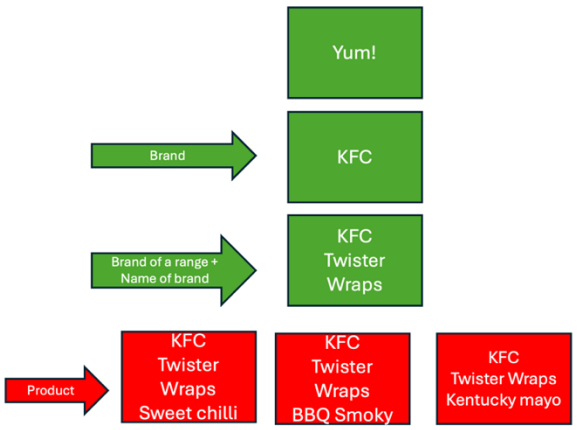
8. **Practical examples and case studies** – Include anonymised/theoretical examples of borderline cases to help advertisers understand how rules are applied in practice.

9. **Stakeholder engagement** – Encourage regular engagement with public health bodies and consumer groups to ensure guidance is realistic, enforceable, and aligned with policy intent.

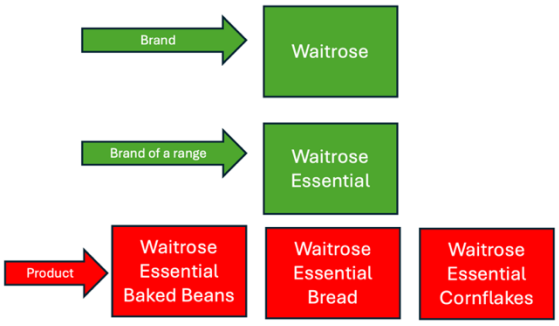
10. **Monitoring of impact** – Track and report on the effect of restrictions on children's exposure to less healthy food and drink advertising, as well as on industry behaviour, to inform future policy decisions.

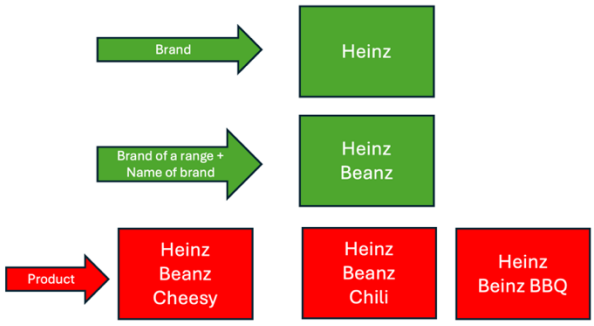
11. Brand of a range of products visual examples:
12. (green = exempt red = not exempt)
13.
14. Cadburys and KFC has 'brand of a range' and 'name of company' – allowing identifiable product names to be exempt
15.



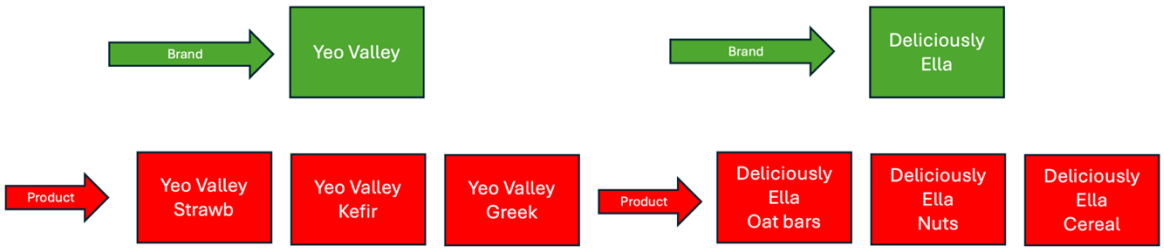


16.
17.
18.
19.
20.
21. Waitrose has ‘brand of a range’ but not ‘name of company’, Heinz has ‘brand of a range’ and ‘name of company’ – allowing baked beans to be advertised by Heinz, but not Waitrose
22.





23.
24.
25. Yeo Valley and Deliciously Ella do not have ‘brand of a range’ or ‘name of company’ – not allowing identifiable product names to be exempt



26.

Dairy Milk and Ben and Jerry's analysis

Whilst the issue of including exemptions for a 'brand of a range of products' applies to all advertisers, we have illustrated the complications using two top 10 manufacturers that predominantly market HFSS products.

This is outlined visually in Appendix – Dairy Milk and Ben & Jerry's Miro Boards

Summary:

The draft regulations are inconsistent in how they would apply to different types of brands, depending on their brand architecture and naming conventions.

Cadbury Dairy Milk is a specific, identifiable product – a chocolate bar that is HFSS. Similarly, Cadbury Dairy Milk Buttons is a specific, identifiable product – a bag of chocolate buttons that is HFSS. On that basis, we would expect both to fall outside the brand exemption, as their names alone (even without 'depicting' the product) promote identifiable less healthy products.

However, Cadbury's HFSS portfolio (around 200 products) is structured under a vertical brand architecture, with multiple product variants and formats marketed under slightly different names – e.g. Dairy Milk &More, Dairy Milk Caramel, Dairy Milk Fingers, Dairy Milk Buttons, each with a further range of products underneath them. These names fall under the 'brand of a range of products' definitions in the draft regulations.

The regulations allow exemptions based on those definitions, many of these sub-brands may be able to advertise their names – even without 'depicting' the product – despite their strong and recognisable association with identifiable less healthy products. This would enable Cadbury to continue promoting products like Dairy Milk Buttons or Dairy Milk Caramel just by naming them. The audience would reasonably understand this to be promoting the products

behind the name and sold in stores under that name, but the government now considers this to be a ‘brand of ranges’ disconnected from them.

By contrast, Ben & Jerry’s operates under a horizontal brand architecture. It markets around 39 HFSS products under a single brand name, ‘Ben & Jerry’, without further building their brand architecture by creating many sub-brands of ranges of products . Most of Ben and Jerry’s products are not captured by a brand beneath “Ben and Jerry”, as a result, currently Ben & Jerry’s would not have as much opportunity as Cadbury to promote specific product lines beyond their general headline brand, Ben and Jerry.

This illustrates how the current drafting creates unfair advantages for brands with more complex naming structures, not based on product healthiness, but on how those products are grouped and named.

Analysis of products:

Cadbury Dairy Milk

Cadbury Dairy Milk would be considered an identifiable product (i.e. a chocolate bar of varying sizes and HFSS), and thus we would expect it to be out of scope of the brand exemption. However, we found at least 35 Cadbury Dairy Milk ‘ranges of products’, (we expect there are in fact many more which could not be researched due to the time constraints of the consultation). These include products like ‘Cadbury Dairy Milk Buttons’, ‘Cadbury Dairy Milk Caramel’ and ‘Cadbury Dairy Milk Freddo’ brand. Cadbury Dairy Milk vertical brand architecture has almost 200 different products, not including those where the only difference is by size or format e.g. a bag instead of a bar – as set out by the Government’s definition. The company behind the brand has created many ‘ranges or products’ that would be in scope of the draft brand exemption. Even without ‘depicting’ any products, they would still be able to advertise what is reasonably expected to be identifiable as less healthy products by using the name ‘Cadbury Dairy Milk’ or ‘Cadbury Dairy Milk Buttons’.

Ben and Jerry has less opportunity to advertise under the legislation. Aside from a few ranges of products, it is for the most part a range of ice creams in different flavours, also all HFSS. Ben and Jerry’s has considerably fewer products than Cadbury Dairy Milk (39) however, the vast majority of these fall under the headline brand of Ben and Jerry’s, and are not 'brands of ranges’. Under Ben and Jerry’s more horizontal brand architecture, they would only be able to advertise the name ‘Ben and Jerry’s, and non-product specific attributes of the brand, be less able to advertise new developments in products via sub-brands than Cadbury Dairy Milk, because they tend to bring out a new flavour under the general brand name.

Cadbury Dairy Milk and Ben and Jerry’s are sub-brands that refer to a fluid range of many different products. They are added, deleted or rebranded regularly. For example, Cadbury Dairy Winter Orange Crisp bar was discontinued in November 2024. Ben and Jerry’s has a page of its website dedicated to its discontinued products. They also launch new products regularly, such as Cadbury Dairy Milk &More range which was launched in 2024[xxiv] and Ben and Jerry’s Chocolatey Orange Chunk Flavour which was launched this week.[xxiv]

What determines whether a range of products is a brand?

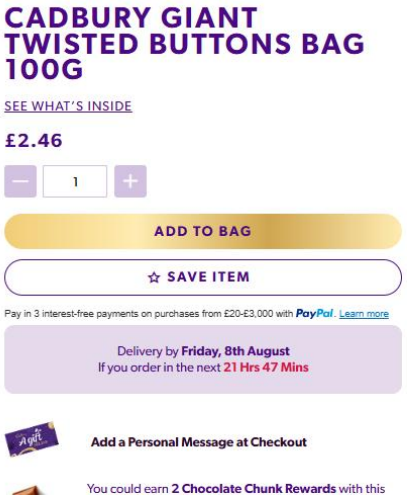
Do they need to be branded for them to be recognised as a branded range of products?
Many of Cadbury Dairy Milk products are ranges of a type of product, for example, advent calendars, ice creams or cookies but they do not have specific matching branding.
If the brand for a range of products exists but there currently isn't a range of products: Dairy Milk Marvellous Creations is a range of products with its own unique branding, however, Cadbury Dairy Milk has discontinued many of the products. Currently only one of those products within the range - Cadbury Dairy Milk Marvellous Creations Jelly Popping Candy - is available to purchase in stores.

If there is shared branding but it's inconsistent: Cadbury Caramel product is sometimes part of Dairy Milk and sometimes its own Cadbury product.

Cadbury Dairy Milk branding	Cadbury branding only
 Caramel bar	 Caramel cake bar
 Caramel ice cream cone	 Caramel egg
 Caramel ice cream stick	

 Caramel ice cream	
  Caramel pots of joy dessert	
 Caramel layer cake	

In some cases products are inconsistently part of a range. For example Cadbury Dairy Milk Twisted Buttons are sometimes marketed as “Giant” buttons, and sometimes not. According to their packaging, “Cadburys Giant Twisted Buttons” does not include the branding “Giant”, but on the Cadbury website, they are listed as “Giant” – see screenshot below.



When several similar products use the same messaging: Ben and Jerry's has several non-dairy products which have labelling on their packaging to state they are non-dairy. There is also a non-dairy section of their website. Is this therefore a brand or could it simply be seen as clearly labelled allergen information?

When the products in different ranges are the same but the branding changes: Cadbury regularly creates different brands to sell similar ranges of products.

Cadbury Dairy Milk has created several messaging ranges of products. These ranges are identical or almost identical to each other apart from their messaging which each has a different message such as "Good Luck", "Thank you" or "You're Amazing".

The "Cadbury Dairy Milk You're Amazing" range of products and the "Cadbury Dairy Milk You're Perfect" range of products are almost identical apart from the branding. These are branded ranges of products, and therefore under the legislation each of these ranges would presumably be considered a brand.

Cadbury Dairy Milk You're Amazing range	**Cadbury Dairy Milk You're Perfect range**
 Chocolate bar with sleeve 110g	 Chocolate Bar with sleeve 110g
 Chocolate gift	 Chocolate Gift

 Chocolate selection box	
 Chocolate gift - large	 Chocolate gift - large

There are also wider themes like “Love” which can be understood to be sub-branded into product ranges by the object of the love. For example, “I Love You” bar and box, “Love You Mum” bar.

Dairy Milk “Celebrate” range with several sub-ranges within it:

	Celebrate	Congratulations	Celebration	Congrats	Great Job	Let’s Celebrate
Bar	X	X		X	X	X
Box						
Basket			X		X	

Dairy Milk Love range with several sub-ranges within it:

	I Love You	Love You Mum	No 1 Dad	One of a Kind
Bar	X	X	X	X
Box	X	X		

Gift Variety Product			X	
Basket				X

The dad range with sub-ranges within it:

	No 1 Dad	Happy Father's Day	Dad My Hero	Best Dad	Father's Day	Dad's Chocolate
Bar	X					
Box		X	X	X		
Basket			X		X	
Gift Variety Product	X					
Hamper						X

As Cadbury elongates their brand architecture with more sub-brands/ranges of products, the branding is referencing a more specific range of products each time. The company has already developed a strong association after many years of advertising so that the Cadbury brand will be associated with chocolate - which is always an unhealthy product - so when the brand is further sub-branded into ranges, it is a more specific association within an already unhealthy food category.

Vertical brand architecture at Dairy Milk – for example:

	Brand level	**No of products**	**Product specificity**	**LHF?**
	Kraft	1000s of products	Low	Mostly LHF
	Mondelez International	100s of products	Medium	Majority
	Cadbury	100s of products	High	Vast majority
	Dairy Milk	>200 products	Very high	Always LHF
	Buttons	<10	Very high	Always LHF

	Giant Buttons	<5	Very high	Always LHF

Often there are different product types with different formatting. The government has expressly stated that it does not count as a product range if it is the same product in different sizes or packaging formats such as a bag or tin. However, there is more variation to consider that is not captured by the legislation. Cadbury Dairy Milk uses slightly different assemblies of products for each of their different formats. For example, the No 1 Dad product range. There are just two products which are not varied by size or formatting type, but by the contents. See below:

No 1. Dad Range

Product	Contains
Chocolate bar (850g or 150g)	1 chocolate bar
Selection Box Gift (524.5g)	• 1 x Cadbury Dairy Milk Chocolate Bar 110g • 1 x Cadbury Dairy Milk Chocolate Bar 45g • 1x Cadbury Dairy Milk Chocolate with Caramel Bar 45g • 1 x Cadbury Dairy Milk Chocolate Fruit & Nut Bar 49g • 1 x Cadbury Crunchie Bar 40g • 1 x Cadbury Twirl Bar 43g • 1 x Cadbury Flake Bar 32g • 1 x Cadbury Curly Wurly Bar 21.5g • 1 x Cadbury Wispa Bar 36g • 1 x Cadbury Boost Bar 48.5g • 1 x Cadbury Double Decker Bar 54.5g

The easter eggs are another example of variation of similar products where the products are almost identical but they vary by whether the buttons are inside or outside the easter egg. Is this significantly different enough for the government to consider them two different products, and therefore a range of products in the Cadbury Dairy Milk Giant Buttons Easter Egg range?

Product		
Giant Buttons Chocolate Egg 195g	• 1 x Cadbury Dairy Milk Giant Buttons Large Milk Chocolate Egg 195g • One bag of Cadbury Dairy Milk Giant Buttons	

Giant Chocolate Buttons Easter Egg 96g	• 1 x Cadbury Dairy Milk Giant Chocolate Buttons Easter Egg 96g • Cadbury Dairy Milk Giant Chocolate Buttons inside	

Cadbury Dairy Milk has many product ranges by flavour (e.g. Fruit and Nut, Mint, Orange, Daim) message (e.g. No 1 Dad, Get Well Soon), kit (pizza kit, train kit, castle kit) or product type (e.g. ice cream, biscuits, collaborations, advent calendars) – which enables multiple products to feature in different product ranges.

There is an endless number of branding possibilities, and Cadbury is already demonstrating the extent to which they can brand one single product, Dairy Milk, far beyond one or two sub-brands of ranges of flavours. They have explored building their brand architecture both horizontally and vertically so that despite the large number of products under the Cadbury Dairy Milk branding (around 200), there are so many sub-brands that the majority of products are in sub-brands of only 2-5 other products. For example, Cadbury Dairy Milk has a sub-brand called Freddo which comes in original or caramel flavour and an easter egg and variety pack. Freddo has formed a range of products with Oreo, another Mondelez International brand. This includes the Freddo and Oreo Tractor Build Your Own Kit, and the Freddo and Oreo Train Kit. However, these products also fall under other branding, such as Cadbury Dairy Milk kit range which includes Cadbury Dairy Milk Chocolate Pizza Kit, Cadbury Dairy Milk & Caramilk Castle Kit, Cadbury Dairy Milk Christmas Chocolate House Kit and a Cadbury Santa's Chocolate Sleigh Build Your Own Kit, in addition to the Freddo and Oreo themed items.

Do the companies determine if their range of products are a brand?

Not all Cadbury Dairy Milk products are available through their websites. Their ice creams and desserts and even some of their bars appear to only be available from retailers. Sometimes there are discrepancies between how the product is branded on the packaging and how the retailer is branding the product. Who will make the decision on if it is a 'brand of a range' of products? We would not advise that the government leave it to the companies themselves to make decisions which will determine their commercial opportunities. However, even if the government did leave it up to brands to decide, it is still unclear what counts as a 'brand of a range' and what does not.

Cadbury has a dropdown menu of what it terms "brands" on its Cadbury Gifts Direct website where it lists products like Twix, Caramel, Wispa, Crunchie, Twirl and Curly Wurly. The range of products under each of these "brands" provides different variations of variety boxes with one of the products inside in different formulations, and not different types of the branded product. For example, searching for "Curly Wurly" does not produce results of different types or flavours of Curly Wurly, but different variety boxes which contain a Curly Wurly bar.

There is often disparity between how the company categorises its products on its website and how they brand their products. For example, Cadbury Dairy Milk fingers is a product range on the Cadbury website which brings up the following 5 products – only two of which are labelled Cadbury Dairy Milk:

- Cadbury **Dairy Milk** Chocolate Fingers 114g
- Cadbury Mini Chocolate Fingers 125g
- Cadbury nibbly mini chocolate fingers 40g
- Cadbury **Dairy Milk** Salted Caramel Chocolate fingers 114g
- Cadbury White Chocolate Fingers 114g

See screenshots below:

The impacts of this policy

While brands may not currently have specific branding for their range of products, this legislation may prompt companies to create sub-branding for all the different ways their products can be technically separated into 'brands of product' ranges, whilst the audience would reasonably consider these to be for an identifiable product.

Cadbury is continually rebranding their 'brand of a range' of products to enhance their acceptability to the market. If the proposed legislation is brought in, Cadbury will likely adapt their brand architecture and brand again so that it more neatly aligns with the commercial opportunities. In the context of Cadbury Dairy Milk, this might mean further sub-branding. There are currently collaborations between sub-brands such as Cadbury Dairy Milk and Oreo (Mondelez International), or Cadbury Dairy Milk and Caramel (Cadbury), or Cadbury Dairy Milk and Dairylea (Mondelez International) and other brands such as Ben and Jerrys and Tony's Chocolonely. We believe that the government's proposal would not meaningfully change the healthiness of the food and drink advertising, but instead would change the branding. For example by increasing the number of the collaborations between sub-brands (as seen by Freddo and Oreo range of products), by creating a slight variation of the messaging of the brand (as seen by Dairy Milk messaging products), and will incentivise companies to group products together under one type of branding (as seen by Ben and Jerry's non-dairy range).

Appendix – Dairy Milk and Ben and Jerry Miro Boards

We have undertaken a brand architecture and naming convention analysis of two leading brands, Cadbury Dairy Milk and Ben & Jerry's to highlight the lack of clarity as to where brand, brand of ranges, and products sit, and how complex it is to 'draw a line' where the 'brand of ranges' will apply.

Cadbury Dairy Milk Ranges and Brands of Ranges
https://miro.com/app/board/uXjVJX-gMew=/

Ben & Jerry's Ranges and Brands of Ranges
https://miro.com/app/board/uXjVJXWkD_o=/

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9 October 2025
Consultation on the implementation of the “less healthy” food and drink product advertising restrictions
Thank you for giving us the opportunity to comment on this consultation on the advertising of less healthy food and drink products.
The Waitrose position is that we fully support the response submitted by the British Retail Consortium. We would like to take the opportunity to draw your attention to two particular points within the consultation:
Intent and purpose of the primary and secondary legislation
The new guidance states that all exemptions will be assessed before applying the identifiability test, and as such, section 7 on Brand Advertising comes before section 8 on Identifiability. This is not the sequence set out in the regulations, nor is it the intended purpose of the legislation as stated by DHSC. We believe that the primary legislation should be applied before the secondary legislation, if that becomes necessary.
Definition of Identifiability
The 2023 draft guidance, which was the subject of earlier consultation, contained a definition of a ‘specific product’ which was consistent with the definition in the Brand Advertising SI, namely that it is a purchasable product and one for which a NPS can be obtained. The absence of this definition in the new version of the guidance has implications for generic products without recognisable characteristics that would make them specific, including the output of following a recipe and serving suggestions which are not purchasable products, and have no NPS data available. Guidance on background shots such as blurred images, aisle shots, fleeting images, sweeping shots of dinner tables

featuring multiple products etc is also omitted. It is important that these elements are re-instated in
the guidance for clarity.
Kind regards
Waitrose Limited
2