

13

FOOD, FOOD SUPPLEMENTS
AND ASSOCIATED HEALTH OR
NUTRITION CLAIMS



Principle

Public health policy increasingly emphasises good dietary behaviour and an active lifestyle as a means of promoting health. Commercial product advertising cannot reasonably be expected to perform the same role as education and public information in promoting a varied and balanced diet but should not undermine progress towards national dietary improvement by misleading or confusing consumers or by setting a bad example, especially to children. The spirit, as well as the letter, of the rules in this section applies to all advertisements that promote, directly or indirectly, a food or soft drink product.

Background

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

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

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

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

Regulations listed in Annex 2 to the NIP also apply to, and in, the United Kingdom in respect of Northern Ireland. Consequently, the EU Register continues to apply to nutrition and health claims made in Northern Ireland.

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

https://ec.europa.eu/food/safety/labelling_nutrition/claims/register/public/?event=register.home

<https://www.gov.uk/government/publications/great-britain-nutrition-and-health-claims-nhc-register>

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

Definitions

For the purposes of the rules in this section:

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

(a) the energy (calorific value) it provides; provides at a reduced or increased rate; or does not provide; and/or

(b) the nutrients or other substances it contains; contains in reduced or increased proportions; or does not contain;

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

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

References to food apply also to drink products.

Rules

General

- 13.1 Radio Central Copy Clearance** – Radio broadcasters must ensure advertisements subject to this Section are centrally cleared.
- 13.2** Advertisements must avoid anything likely to condone or encourage poor nutritional habits or an unhealthy lifestyle, especially in children.
- 13.2.1** Advertisements must not condone or encourage damaging oral healthcare practices, especially in children.
- 13.3** Advertisements must not condone or encourage excessive consumption of any food.
- 13.4** Only nutrition claims listed in the applicable register are permitted in advertisements.
- Only health claims listed as authorised in the applicable register or claims that would have the same meaning for the audience may be used in advertisements.
- 13.4.1** Nutrition claims must comply with the criteria in the applicable register.
- 13.4.2** Advertisements that contain nutrition or health claims must be supported by documentary evidence to show they meet the conditions of use associated with the relevant claim, as specified in the applicable register. Advertisements must not give a misleading impression of the nutrition or health benefits of the product as a whole and factual nutrition statements should not imply a nutrition or health claim that cannot be supported. Claims must be presented clearly and without exaggeration
- 13.4.3** References to general benefits of a nutrient or food for overall good health or health-related well-being are acceptable only if accompanied by a specific authorised health claim
- 13.4.4** Claims of a nutrition or health benefit that gives rise to doubt the safety or nutritional adequacy of another product are unacceptable.

- 13.5** Comparisons between foods must not discourage the selection of options such as fresh fruit and fresh vegetables, which generally accepted dietary opinion recommends should form a greater part of the average diet. Advertisements must not disparage good dietary practice. No advertisement should suggest that a balanced and varied diet cannot provide adequate nutrients in general
- 13.5.1** Comparative nutrition claims must compare the difference in the claimed nutrient to a range of foods of the same category which do not have the composition that allows them to bear a nutrition claim
- 13.5.2** An advertisement may use one product as the sole reference for comparison only if that product is representative of the products in its category
- 13.5.3** The difference in the quantity of a nutrient or energy value must be stated in the advertisement and must relate to the same quantity of food.
- 13.6** These are not acceptable in advertisements for products subject to this section:
- 13.6.1** Claims that state or imply health could be affected by not consuming a food
- 13.6.2** Claims that state or imply a food prevents, treats or cures human disease. Reduction-of-disease-risk claims are acceptable if authorised by the applicable register
- 13.6.3** Health claims that refer to the recommendation of an individual health professional. Health claims that refer to the recommendation of an association are acceptable only if that association is a health-related charity or a national representative body of medicine, nutrition or dietetics
- 13.6.4** References to changes in bodily functions that could give rise to or exploit fear in the audience
- 13.6.5** Health claims that refer to a rate or amount of weight loss.

Vitamins, Minerals and Other Food Supplements

BCAP advises advertising industry stakeholders to ensure that claims made for vitamins, minerals and other food supplements are in line with the requirements of the NHCR and other relevant legislation.

13.7 Advertisements must not state or imply that a balanced and varied diet cannot provide appropriate quantities of nutrients in general. Individuals must not be encouraged to swap a healthy diet for supplementation.

13.7.1 Nutrition and health claims for food supplements must be permitted or authorised as provided for at rule 13.4 above. Advertisements that contain Nutrition or health claims must be supported by documentary evidence to show they meet the conditions of use associated with the relevant claim, as specified by the applicable register.

Infant and Follow-on Formula

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

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

13.8 Advertisements for infant formula are prohibited.

13.8.1 Advertisements must not confuse between infant formula and follow-on formula.

Food and soft drink product advertising to children

Background

These rules should be read in conjunction with the general rules in this section and other rules in this code, especially Section 5: Children and, for television only, Section 32: Scheduling.

The spirit, as well as the letter, of the rules in this section applies to all advertisements that promote, directly or indirectly, a food.

Definitions

"Children": persons below the age of 16.

"Advertisements targeted directly at pre-school or primary school children": advertisements that directly target pre-school or primary school children through their content as opposed to

their scheduling. For rules on the scheduling of HFSS product advertisements, please see [Section 32: Scheduling](#).

"Equity brand characters": those characters that have been created by the advertiser and have no separate identity outside their associated product or brand.

"Licensed characters": those characters that are borrowed equities and have no historical association with the product.

"HFSS products": those food or drink products that are assessed as High in Fat, Salt or Sugar in accordance with the nutrient profiling scheme published by the Food Standards Agency (FSA) on 6 December 2005. Information on the nutrient profiling scheme is now available on the Department of Health website at:

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

For the avoidance of doubt, HFSS product advertisements may make nutritional or health claims in accordance with rule 13.4.

References to food apply also to soft drinks.

13.9 **Television only** – Promotional offers must be used with a due sense of responsibility. They may not be used in HFSS product advertisements targeted directly at pre-school or primary school children.

13.9.1 Advertisements featuring a promotional offer linked to a food product of interest to children must avoid creating a sense of urgency or encouraging the purchase of an excessive quantity for irresponsible consumption

13.9.2 Advertisements must not seem to encourage children to eat or drink a product only to take advantage of a promotional offer: the product should be offered on its merits, with the offer as an added incentive. Advertisements featuring a promotional offer should ensure a significant presence for the product

13.9.3 Advertisements for collection-based promotions must not seem to urge children or their parents to buy excessive quantities of food. They must not directly encourage children only to collect promotional items, emphasise the number of items to be collected or create a sense of urgency. If a promotional offer can also be bought, that must be made clear. Closing dates for collection-based promotions must enable the whole set to be collected without having to buy excessive or irresponsible quantities of the product in a short time

- 13.9.4** Advertisements must not encourage children to eat more than they otherwise would.
The notion of excessive or irresponsible consumption relates to the frequency of consumption as well as the amount consumed.

- 13.10** **Television only** – Licensed characters and celebrities popular with children must be used with a due sense of responsibility. They may not be used in HFSS product advertisements targeted directly at pre-school or primary school children.

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

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

- 13.11** **Television only** – No nutrition or health claim may be used in HFSS product advertisements targeted directly at pre-school or primary school children. For the avoidance of doubt, claims referring to children's development or health are acceptable in non-HFSS product advertisements, if those claims are authorised on the applicable register.

- 13.12** **Television only** – Although children might be expected to exercise some preference over the food they eat or drink, advertisements must be prepared with a due sense of responsibility and must not directly advise or ask children to buy or to ask their parents or other adults to make enquiries or purchases for them. (Please see rule 5.9 in [Section 5: Children](#))

- 13.12.1** Nothing in an advertisement may seem to encourage children to pester or make a nuisance of themselves

- 13.12.2** Advertisements must not imply that children will be inferior to others, disloyal or will have let someone down, if they or their family do not buy, consume or use a product or service

- 13.12.3** Advertisements must neither try to sell to children by appealing to emotions such as pity, fear, loyalty or self-confidence nor suggest that having the advertised product somehow confers superiority, for example, making a child more confident, clever, popular or successful

13.12.4 Advertisements addressed to children must not urge children to buy or persuade others to buy and must avoid high-pressure or hard-sell techniques. Neither the words used nor the tone of the advertisement should suggest that young viewers could be bullied, cajoled or otherwise put under pressure to acquire the advertised item

13.12.5 If an advertisement for a children's product contains a price, the price must not be minimised by the use of words such as "only" or "just".

13.13 **Radio only** – Promotional offers to children must be used with a due sense of responsibility. They may not be used in food or soft drink product advertisements targeted directly at pre-school or primary school children; that prohibition does not apply to advertisements for fresh fruit or fresh vegetables. Advertisements that contain a promotional offer linked to a food or drink product of interest to children must neither seem to encourage children to eat or drink a product only to take advantage of a promotional offer nor create a sense of urgency. If a promotional item can also be bought, that must be made clear. Closing dates for collection-based promotions must enable the whole set to be collected without having to buy excessive or irresponsible quantities of the product in a short time.

13.14 **Radio only** – Licensed characters and celebrities popular with children must be used with a due sense of responsibility. They may not be used in food or soft drink product advertisements targeted directly at pre-school or primary school children. That prohibition does not apply to advertisements for fresh fruit or fresh vegetables or to advertiser-created equity brand characters (puppets, persons or characters), which may be used by advertisers to sell the products they were designed to sell.

Licensed characters, equity brand characters or celebrities well-known to children may present factual and relevant generic statements about nutrition, safety, education and the like.

13.15 **Radio only** – Claims referring to children's development or health are acceptable in radio food or soft drink product advertisements if those claims are authorised on the applicable register.