

CAP and BCAP Consultation

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

Issue date: 18/02/2025

Closing date: 18/03/2025



Contents

1. Executive summary	3
2. Update on the 2023 consultation	5
3. Why further consultation is necessary	10
4. Further consultation exercise.....	15
5. How to respond and next steps	18
Contact us	20

[Annex A](#) – Proposed revised implementation guidance

[Annex B](#) – Comparison with the version of the implementation guidance consulted on in 2023

1. Executive summary

Overview

The [Committees of Advertising Practice](#) (CAP and BCAP) are consulting on revised proposals for guidance on the implementation of the “less healthy” food and drink product advertising restrictions.

Readers are urged to pay particular attention to proposals on how the less healthy product advertising rules apply to ads that do not explicitly feature or refer to a less healthy product. This aspect of the proposed guidance differs materially from what was originally proposed in CAP and BCAP’s first consultation on guidance for these restrictions.

Background

In December 2023, on behalf of the Advertising Standards Authority (ASA), CAP and BCAP [consulted](#) on rules and guidance to implement provisions in the Communications Act 2003 (the Act), which will prohibit ads for “identifiable” less healthy food and drink products from being included in Ofcom-regulated TV services and on-demand programme services (“ODPS”) between 5:30am and 9:00pm, and placed in paid-for space in online media at any time. The new restrictions will come into force from October 2025.

The purpose of the proposed guidance is to advise on how the new rules reflecting the law are likely to be interpreted and applied to advertisements in the three media covered. In the course of evaluating responses to the original consultation, CAP and BCAP identified significant challenges to important aspects of the original guidance proposal, which have informed their decision to consult on revised guidance following further legal advice.

Why is further consultation necessary?

The Committees now consider that some parts of the original guidance proposal are likely to require revision, particularly as they relate to advice on ads by food and soft drink companies and brands that do not explicitly feature or refer to a less healthy product. Some aspects of the advice given in the original guidance are unlikely to be consistent with the relevant statutory test (now described in the proposed revised guidance as the “identifiability test”), as explained in [part 3](#) of this document.

As a result of consultation responses and legal advice, CAP and BCAP are now proposing revisions to the guidance, which they consider to be sufficiently significant and material to require another consultation. The Committees have engaged with Ofcom and the ASA to develop the revised version of the guidance, which is the focus of this second consultation exercise; it is included in [Annex A](#) for respondents to review.

Who should respond to this consultation?

The effect of the changes set out in this document is relevant to all parties potentially impacted by the new restrictions, but is likely to have a greater impact on advertising by those brands more closely associated with less healthy products.

Next steps

Responses to this further consultation are welcome until **5:00pm on 18 March 2025**. Details of how to respond are included in [part 5](#) of this document below.

CAP and BCAP are aware of the significant interest among stakeholders in confirming the final version of the implementation guidance as quickly as possible. They are working with Ofcom and the ASA to go through the necessary governance process that must be completed following evaluation of the consultation responses as quickly as possible. In accordance with the law containing the restrictions, this must involve consulting the Secretary of State before drawing up or revising the guidance.

The final guidance will be published in spring 2025, barring any unforeseen developments.

2. Update on the 2023 consultation

2.1 Overview

In December 2023, CAP and BCAP launched a consultation covering three areas relating to the implementation of the new restrictions on the advertising of “less healthy” food and drink products set out by in legislation.

- Part A included proposals for new guidance on how the less healthy product advertising rules should be understood by affected businesses.
- Part B included proposals for new rules to be added to the UK Advertising Codes to reflect and implement the less healthy product advertising restrictions.
- Part C included proposals for consequential amendments to the existing Codes and guidance related to food and drink advertising.

CAP and BCAP’s further consultation exercise focuses on the issues considered in Part A of the 2023 consultation. This section summarises the background to that process and stakeholder responses received to the original guidance proposal.

This section should be read in conjunction with the original [consultation document](#) – parts 5 and 6 of which provide further background on the ASA, the Committees, and the new less healthy product restrictions.

2.2 Advertising of “less healthy” food and drink products

Since 2007, the ASA has enforced dedicated rules designed to appropriately limit the potential for high fat, salt or sugar (HFSS) product advertising to influence children’s dietary choices. The HFSS product advertising rules combine specific scheduling and placement restrictions that apply across all media covered by the UK Advertising Codes, and restrictions on the creative content of these ads. They seek to appropriately limit children’s overall exposure to HFSS advertising – banning outright HFSS advertisements in media made for or disproportionately popular with children – and they prevent the use of specific creative techniques with the aim of reducing the impact of HFSS ads they do see.

In 2018, the UK Government [set out](#) its aim to halve childhood obesity by 2030. Following a process of consultation, a range of interventions intended to address continuing concerns over diet and health were announced in 2020. In relation to advertising, Government [concluded](#) that further action was necessary to improve protections for children. As a result, [Schedule 18](#) of the Health and Care Act 2022 amended the Communications Act 2003 to insert additional restrictions on certain food and drink advertising. The aim was to build on the existing framework of rules to increase protections and further mitigate the effects of advertising on children’s dietary choices.

Ofcom is the statutory body responsible for the framework underpinning the new restrictions. In 2023, under powers conferred in legislation it [appointed](#) the ASA as the body responsible for frontline enforcement. To ensure the effective implementation of the new framework, the ASA asked CAP and BCAP to conduct the consultation recognising the Committees’ role as code-owning bodies, and their extensive experience in providing advertisers, media owners and other practitioners with advice and guidance on how to comply with the Codes.

2.3 “Less healthy” food and drink product advertising restrictions

Amendments to the Communications Act 2003 placed further restrictions on a sub-set of HFSS products; those falling under categories set out in law of what are termed “less healthy” food and drink products. The restrictions prohibit:

- Ofcom-licensed TV services from including advertising and sponsorship for identifiable less healthy products between 5:30am and 9:00pm (as set out section [321A](#));
- Ofcom-regulated on-demand programme services (ODPS) from including advertising and sponsorship announcements for identifiable less healthy products between 5:30am and 9:00pm (as set out section [368FA](#)); and
- paid-for advertisements for identifiable less healthy products aimed at UK consumers from being placed in online media at any time (as set out section [368Z14](#)).

The new restrictions apply to most but not all HFSS products. “Less healthy” food or drink products are defined by a two-stage test. They are products that:

- fall within one of the categories set out in [The Advertising \(Less Healthy Food Definitions and Exemptions\) Regulations 2024](#); and
- score 4 or more points for a non-drink, or 1 or more points for a drink, under the 2004-05 nutrient profiling model, as detailed in DHSC’s [Nutrient profiling technical guidance](#).

All three media-based restrictions are subject to exemptions for advertisements by or on behalf of small or medium enterprises (“food or drink SMEs”). There are also exemptions in law to the online media restriction for: advertising that is not addressed to those in the UK; business-to-business advertising; audio ads included in services connected to Ofcom-regulated radio services; audio ads included in other online audio services; advertising in Ofcom-regulated TV services delivered over the internet (which are subject to the restriction on TV advertising); and unregulated TV services delivered over the internet that correspond to a regulated TV service.

The less healthy product rules will form a new and additional tier to CAP and BCAP’s existing HFSS rules. In circumstances where the less healthy product rules do not apply, the existing HFSS rules will continue to apply to the scheduling and placement of advertisements for HFSS products, which are not categorised as “less healthy”. In addition, the existing HFSS rules that apply to the content of advertisements will continue to apply to ads for all HFSS products, including those categorised as less healthy where they are permitted, in other words not within scope of the media restrictions.

2.3 CAP and BCAP's 2023 consultation on implementation guidance

The amended Communications Act 2003 includes duties requiring the regulatory authority to develop guidance on how it intends to exercise its functions¹. The duties also require that the authority must consult the Secretary of State before drawing up or revising the guidance and publish it so as to bring it to the attention of affected stakeholders. With confirmation of Ofcom's [designation](#), these duties became the responsibility of the ASA as the frontline regulator, and it asked CAP and BCAP to carry out the work on its behalf on the basis of their greater experience in formal public consultations.

Part A of the 2023 CAP and BCAP consultation covered proposals aiming to meet the statutory requirement to develop guidance on implementation.

The proposed guidance originally consulted on (included in an [Annex](#) to that consultation) was developed primarily to reflect the Committees' understanding of how the restrictions were likely to apply based on the legislation, having appropriate regard to Government statements on its intended purpose and effect. It sought to provide users with an understanding of how they should assess whether an ad is within scope of the less healthy product rules, with reference to businesses, products and the content of a particular ad creative. It was also developed to meet CAP and BCAP's general objective that rules and guidance are transparent, accountable, proportionate, consistent, targeted only where regulation is needed and written so that the rules are easily understood, easily implemented and easily enforced.

The proposed guidance, as originally consulted on, set out the different considerations that affected businesses should take into account in determining whether a particular advertisement is likely to fall within scope of the new rules. It aimed to explain how the ASA would be likely to apply the less healthy product advertising rules based on the underlying legislation, and the factors that relevant parties should take account of when considering compliance with the rules. It included details of the scope of the restrictions in terms of media covered and the exemptions that apply.

The proposed guidance was based on the Committees' understanding of how the restrictions were likely to apply based on the legislation, having appropriate regard to Government's [statement](#) on the outcome of its consultation process, as well as the ASA, CAP and BCAP's wider experience in enforcing rules relating to food and drink advertising and the protection of children.

The 2023 consultation asked respondents for detailed feedback on all significant parts of the guidance in terms of its alignment with the underlying legislation, and its clarity and ease of use.

¹ The duties relate to advertising included in ODPS (as set out in section [368C](#)) and in paid online media (as set out in section [368Z18](#)). There is no equivalent duty relating to the restriction applying to TV. However, in confirming that the existing co-regulatory arrangements for broadcast advertising adequately cover the new less healthy food advertising restriction for TV, Ofcom indicated that BCAP could produce guidance on the application of that restriction. Although the statutory duties relate only to the ODPS and paid online media restrictions, the interpretation of key concepts and tests are relevant also to TV.

2.4 Other parts of the 2023 consultation

The 2023 consultation had two additional parts covering other, more technical aspects of implementation. Part B included proposals for new rules to be added to the UK Advertising Codes to reflect and implement the less healthy product advertising restrictions. Part C included proposals for consequential amendments to the existing Codes and guidance related to food and drink advertising. On the basis of the Committees' evaluation of consultation responses, they do not consider a further consultation is necessary in regard to the proposals set out in Parts B and C of the original consultation.

In relation to Part B, the new restrictions involve distinct co-regulatory frameworks specific to the three media covered. Reflecting these arrangements, three new rules will be added to the UK Advertising Codes. In its [consultation and statement](#) on the implementation of the restrictions, and using its powers of direction under the existing co-regulatory arrangements for broadcast advertising, Ofcom consulted on specific wording of a rule to be inserted into the BCAP Code reflecting the TV restriction. CAP developed rules to reflect the ODPS and paid online media restrictions based on the legislation, and having regard to Ofcom's final text for the broadcast TV restriction. Feedback from respondents was sought to ensure the ODPS and online restrictions appropriately reflected legislation.

In relation to Part C, several technical changes were proposed to the existing structures and wording of the Code sections relating to food and drink advertising, and existing guidance supporting compliance with the established HFSS rules. The aim was to ensure the new less healthy product rules are presented clearly alongside the existing HFSS rules to ensure Code users know when and how the less healthy product advertising rules apply and when and how the HFSS rules apply.

2.5 Summary of consultation responses

The 2023 consultation received 36 responses from a broad range of stakeholders including the food and drink industry, advertising industry, media owners, and non-industry parties such as public health campaign groups. The overwhelming focus for respondents was Part A, concerning the proposed implementation guidance. A fuller evaluation of responses will be published as part of the final outcome later in 2025. The following is a brief summary of the main themes arising from the responses.

Industry responses mainly addressed technical matters relating to several areas of the proposed guidance. Many respondents requested elaboration on particular points, more examples, and clarity over particular scenarios. This included requests for further clarification on:

- how the ASA would assess scenarios involving ads by non-food or drink businesses, like charities, that have a commercial partnership with a supplier of less healthy products;
- the scope of application to businesses' own websites (which some respondents believed the guidance should exempt entirely), including where a commercial relationship exists with a third-party supplier of the products featured;
- the ASA's approach to assessing the test of whether payment for an ad to be placed in relation to the online restriction has been met (for example, several respondents presented a range of scenarios relating to influencer marketing practices); and

- how the guidance distinguished, for the purpose of compliance with the rules, between the use in advertising of different types of company and product branding related to product ranges.

One overarching point made by several respondents was the need for the guidance to be clearer that advertisers' intent in publishing an advertisement would be a secondary consideration; assessments would rely on the likely impact of ads on the audience.

Non-industry responses generally argued that the proposed guidance had the effect of extending and adding to the legislative exemptions in a manner inconsistent with the legislation and Government's original intent. For example, respondents considered that the concept of an "identifiable" product should not be interpreted to mean a "specific" product, because this had the effect of allowing 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.

Overall, non-industry respondents considered that the approach proposed in the draft guidance unduly narrowed the scope of how the legislation, and therefore the restrictions, would be applied, creating loopholes for advertisers to exploit, which would have the effect of undermining Government's ambition to improve child diet and health.

3. Why further consultation is necessary

3.1 Overview

CAP and BCAP, supported by ASA and Ofcom, have decided to launch a second consultation exercise.

CAP and BCAP now consider that some parts of the original guidance proposal are likely to require revision. This is to ensure that the parts of the guidance that deal with ads by companies and brands which do not explicitly feature or refer to specific less healthy products are in line with the test set out in law. As a result of consultation responses and further legal advice, CAP and BCAP consider that the guidance should be more circumspect and qualified in the advice it provides about these ads.

3.2 Development of the proposed guidance consulted on in 2023 and extracts relevant to further consultation

The original guidance proposal was based on legislation, having appropriate regard to Government's [statement](#) on the outcome of its consultation process (see CAP and BCAP's [consultation update](#) of 13 January 2025), and the ASA, CAP and BCAP's wider experience in enforcing rules relating to food and drink advertising and the protection of children.

Section 3.5 of the original guidance proposal dealt with how "identifiable" (in the proposed rules restricting advertising and sponsorship for "*identifiable*" less healthy products) would be likely to be interpreted by the ASA. It included the following:

In general, the less healthy product rules are likely to apply to advertisements that:

- *name a specific less healthy product explicitly in the text or audio of the advertisement;*
- *include imagery or other representations (including animation, CGI and artistic renderings) of a specific less healthy product with sufficient prominence for people in the UK to recognise it as an advertisement for that product (as distinct from other potential variants of that product);*
- *include a piece of branding that is likely to result in consumers identifying the advertisement as one for a specific less healthy product (as distinct from potential variants of that product) without referring to it or depicting it directly; or*
- *use a combination of imagery, other representations and/or branding that is likely to lead consumers to identify the advertisement as one for a specific less healthy product (as distinct from potential variants of that product) without referring to it or depicting it directly.*

A definition of "specific product" and an explanation of the relevance of the concept of a "specific product" were included in the following section of the original guidance proposal (emphasis added)

A "specific product" should be understood as a single food or drink item for presentation to the final consumer, either in its packaging or without it, which can be purchased by a consumer. Stock keeping unit ("SKU") codes or similar, are useful to guidance users as a means of distinguishing between specific products, for example, specific product variants of a range of crisps. SKU

codes are unique codes assigned to each product, including different variants, pack sizes and formats within a range of products.

*The concept of a specific product 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. **They are also distinct from generic products (for example pizzas) in that general depictions or references to such products are not sufficient for a consumer to identify a particular specific product that is available for sale.***

The less healthy product rules apply only to advertisements where a specific product is identifiable as opposed to those that lead people to identify a range of products. A range of products is a group of related specific products supplied by an advertiser whether promoted generally by their manufacturer or promoted directly for sale by a retailer. A range may be wholly comprised of less healthy products, or include both in-scope and out-of-scope products. Guidance users should note that, for the purposes of the less healthy product advertising rules, which apply to specific products and not ranges of products, different pack sizes (for example, single or multipack) or formats (for example, block or bag) of the same product will not be considered sufficient to constitute a range.

Only imagery or other representations of a specific less healthy product that are sufficiently prominent and that people in the UK can reasonably be expected to identify as being for a specific less healthy product, as distinct from potential variants of that product, will result in an advertisement being subject to the rules. In assessing “sufficient prominence”, the ASA will consider factors such as positioning of a product within an ad creative (in the foreground or background), the duration of its appearance, and the general focus of the advertisement in terms of drawing people’s attention to it.

Parts II and III of section 3.5 of the original guidance proposal included further details on the use of branding, “ranges” and representations of “generic” products. Examples of statements within these sections relevant to the further consultation are (emphasis added):

II. References, imagery, or other representations not likely to result in an identifiable less healthy product advertisement

[...] Provided no other factors or combinations of factors included in an advertisement identify a specific product, use of the following types of depiction is unlikely to bring an ad within scope of the less healthy product rules

- a) *Imagery or other representations of generic products sufficiently prominent for people to recognise them, but with insufficient characteristics or information to identify a specific less healthy product. Examples include:*
 - *Products like crisps or other snacks that come in multiple flavours but a specific variant cannot be identified without its packaging because an individual unit of the product has no features that distinguish it from other product variants (like different colours, textures or designs) [...]*

- *Creative approaches that imply the presence of a product without depicting it directly. For example, depictions of a character opening a pizza box, chewing, or giving a product wrapped as a gift. This also applies to audio content such as the sound of a wrapper or drinks can being opened.*

III. Application of the less healthy product advertising rules to the use of branding

[...] Where a piece of branding relates to a range of products, the less healthy product rules do not apply.

[...] Branding outside the scope of the less healthy product rules includes:

- *Company or corporate branding such as that relating to a business unit or wider group entity. For example, advertisements that aim to promote a company’s commitments to sustainability or social responsibility are outside scope of the less healthy product rules, if they comply with this guidance on the inclusion of identifiable less healthy products.*
- *“Master brands” owned by a company or wider group that relate to a range or ranges of specific products. This applies to master brands that include multiple product variants (like different flavours of crisps), have a core product with brand extensions (such as ‘lite’ or ‘low fat’ variants), or comprise just one product (including where it is available in different pack sizes or product formats). The composition of a product range in terms of the proportion of specific products that are not within scope of the less healthy product rules is not a relevant consideration.*
- *Other branding that relates to a range of products (including all-less healthy product ranges and meal bundles), if there are no depictions or references specific to a specific less healthy product (ranges of the same product in different pack or portion sizes are not exempted). This includes, branding on distinctive packaging (like take-away bags and pizza boxes), brand ambassadors, equity brand characters, and licensed characters.*

3.3 Challenges from consultation respondents

Several consultation respondents challenged the position in the guidance (as reflected in [2.5](#) above) on ads by companies and brands which do not explicitly refer to or feature specific less healthy products. They drew particular attention to statements relating to advertising of product “ranges” and the inclusion of “generic” imagery or references to products, noting, for example:

- An advertisement featuring a range where the only options are less healthy is undoubtedly an advertisement for less healthy products.
- References to ranges (particularly those comprising only less healthy products) and generic imagery are not referenced in the law, and therefore the guidance should not treat these differently from an advertisement for an identifiable less healthy product.

- The guidance doesn't make it clear whether ranges that are made up of entirely less healthy products would be restricted.

3.4 Further consideration of the interpretation of the law

Given the points raised by consultation respondents, particularly those outlined in [3.3](#) above, CAP and BCAP sought independent specialist legal opinion. The opinion focused on whether the advice provided in relation to “brand advertising” in the original guidance is consistent with the legislation. “Brand advertising”, in this context, had been used to refer to ads that do not explicitly feature or refer to specific products.

Under the statutory test (now described in the proposed revised guidance as the “identifiability test”), ads are for identifiable less healthy products (and therefore subject to the restrictions):

if persons in the United Kingdom (or any part of the United Kingdom) could reasonably be expected to be able to identify the advertisements as being for that [less healthy] product [or products].

On the basis of the legal opinion and with reference to the statutory test, CAP and BCAP offer the following observations:

- In each case, the decision as to whether an advertisement falls within the scope of the restrictions is reached by asking whether “*persons in the United Kingdom (or any part of the United Kingdom) could reasonably be expected to be able to identify the advertisement as being for*” a less healthy product or products. Decisions necessarily depend on the content and context of the ad, and not on concepts such as “brand advertising”. In a case where the statutory test is met (in other words an ad is for an “*identifiable less healthy food or drink product*” (or products)), the restriction will apply. It will not change this fact if the ad might be said to also be “brand advertising”. Therefore, where an ad is for an “*identifiable less healthy food or drink product*”, as reasonably understood by persons in the United Kingdom (or any part of the United Kingdom), the fact it might also be characterised as “brand advertising” will not preclude the less healthy product rules from applying to it.
- The statutory test is an objective test. It can be considered to be akin to a notional average consumer test used in consumer protection law, and applied by the ASA in other areas of advertising regulation.
- Given section 6 of the Interpretation Act 1978, “*advertisements for an identifiable less healthy food or drink product*” includes advertisements for identifiable less healthy food or drink products (plural), as there is nothing in the Act to indicate otherwise.
- CAP and BCAP consider that, in line with the factors presented above, certain parts of the original guidance proposal (including those extracted in [3.2](#) above) should be amended to remove unduly categorical statements, such as “*Where a piece of branding relates to a range of products, the less healthy product rules **do not apply***”, (emphasis added). Instead, the guidance needs to be more circumspect and qualified in relation to ads that do not explicitly feature or refer to products. These

amendments are marked in the revised version of the guidance for readers' ease of reference.

- Having proposed these changes in line with the legal opinion they have received, CAP and BCAP recognise that the revised guidance provides less certainty about whether and when such advertisements may meet the legal test for an identifiable product. One potential approach in delivering greater certainty, as proposed in responses to the first consultation and reflected in the revised guidance published today, is to consider wider contextual factors beyond the on-screen content of the ad, such as the extent to which the advertiser offers non-less healthy products overall, or as part of the particular brand range portrayed in the ad. Whilst this may offer more certainty to certain advertisers and affected media, it would also make it more likely that ads from less healthy product-only brands, or those with a range of products that are predominantly less healthy products, would fall within scope of the restrictions. The law places restrictions on ads, not brands, so these advertisers would need to take particular care to ensure persons in the United Kingdom (or any part of the United Kingdom) cannot reasonably be expected to be able to identify their ads as being for a less healthy product or products.
- CAP and BCAP have also amended the guidance to make clear that advertisements which only promote products that are not categorised as “less healthy”, by including those products explicitly, are very unlikely to be within scope of the restrictions, given that under the statutory test, people could not reasonably be expected to identify such advertisements as being for less healthy products.

4. Further consultation exercise

4.1 Overview

This part of the consultation invites comments from respondents on a revised version of the proposed implementation guidance originally consulted on in 2023 – this is included in [Annex A](#).

There are three bases for the changes made in developing the revised version of the implementation guidance, of which the first is the reason for this further consultation exercise:

- significant and material revisions responding to legal opinion over the alignment of the proposed guidance with the legislation (see 4.2 below);
- amendments addressing other responses to the 2023 consultation (see 4.3 below); and
- amendments updating the text in response to the finalised Regulations (see 4.4 below).

4.2 Addressing legal interpretation issues

CAP and BCAP have developed a revised version of the guidance intended to address the issues set out above in [part 3](#) of this consultation. The proposed revised guidance is included in [Annex A](#).

Aspects of the proposed guidance differ significantly and materially from the original guidance proposal reflecting a revised interpretation of the underlying legislation; in particular, how the statutory test of what constitutes an ad for an “identifiable” less healthy product should be interpreted and applied – this is now referred to in the proposed revised guidance as the “identifiability test”.

The effect of the changes would, if ultimately confirmed, have relevance to all parties potentially impacted by the new restrictions. However, it would likely have a greater impact on less healthy product-only or less healthy product-heavy brands due to the strong association there might be between the brand and their less healthy products. Although the primary difference will be in how the ASA assesses advertising that might represent various types of product-related and company-related branding, the proposed revisions are not limited to this. The changes would likely have a bearing on how the ASA assesses all ads.

The following summarise the main areas of the proposed guidance that have been revised:

- A new section, 2.4 (*Approach to assessment of advertising*), has been added with more detail on how the ASA will approach enforcement; in particular, the application of the identifiability test.
- Section 3.3 (*Nature of the advertiser*) has been amended to reflect the greater emphasis on the perception of the creative content – as opposed to the status of an advertising party or their commercial relationship with such a party – of an ad in assessing it against the identifiability test.
- The existing section 3.5 (*Advertisements for “Identifiable” less healthy products*) has been revised considerably with more detail in its introductory paragraphs aiming to

explain the underlying concepts and principles that will inform the ASA's assessment of advertisement under the identifiability test.

- Section 3.5 has also been restructured to improve clarity. The introductory principles are followed by sub-sections that discuss compliance scenarios presented by common pieces of ad creative content. These have been developed from the original version of the guidance consulted on, but there have been significant changes to better align the substance of the guidance in light of the issues set out in section 3 of this consultation above.
- A new sub-section, 3.5.7 (*Brand Advertisements: advertisements that do not explicitly feature or refer to a product*), sets out a significantly revised approach to how the ASA will apply the identifiability test to advertising that includes various types of product-related and company-related branding. A summary guide graphic has also been developed to assist users in understanding of this part of the guidance.

Respondents are advised to review the new version of the guidance having regard to the comparison with the [original version](#) consulted on in 2023 – this is in [Annex B](#).

4.3 Amendments addressing other consultation responses

The document generally has been amended in several places in light of consultation feedback. However, these amendments are relatively limited owing to significant revisions to structure and substance resulting from the issue detailed in [part 3](#) of this document and summarised in 4.2 above. In line with the summary of responses in [2.5](#) above, the aim is to add more detail to develop the draft in line with feedback already received rather than making other material changes to the way the new restrictions would likely be applied.

CAP and BCAP will report more fully on amendments addressing responses to the original consultation when the final outcome is published later in 2025.

4.4 Amendments responding to the finalised Regulations

In December 2024, Government published the [final outcome](#) of its consultation process to develop secondary legislation providing technical detail relating to some of the definitions that support the new restrictions. The [Advertising \(Less Healthy Food Definitions and Exemptions\) Regulations 2024](#) cover products categories within scope, the SME exemption, and other exemptions applying to advertising included in certain online services. The regulations were accompanied by DHSC [guidance](#) providing further advice on how to interpret the categories of products within scope.

At the time of the 2023 consultation, secondary legislation was part of an ongoing government [consultation](#) process. Recognising the need to produce the implementation guidance in good time before the less healthy product restrictions enter force in October 2025, CAP and BCAP decided to consult on implementation guidance to accompany the new restrictions because these had then already been established in primary legislation.

In mitigation of any uncertainties arising, CAP and BCAP committed to assess the finalised regulations and report publicly on any changes that might be required to the draft guidance consulted on. This assessment of the finalised regulations has now been carried out and minor changes made to references to the regulations included in the original version of the guidance consulted on; these portions of the text are unaffected by the issues set out above that have necessitated further consultation.

The revised version of the guidance includes:

- updated text reflecting the finalised regulations at relevant points in the document; and
- signposting of Government’s new guidance resource that accompanies the product categories set out in the finalised regulations.

4.5 Consultation questions

Question (i)

Do you agree that the position set out in [part 3](#) above in relation to advertisements for an identifiable less healthy product appropriately reflects the relevant provisions of the Communications Act 2003?

If not, please state explain why, with reference to the relevant legislative provisions.

Question (ii)

Do you agree that the proposed revisions to the guidance in [Annex A](#) responding to the legal interpretation matter explained in [part 3](#) above, and summarised in [4.2](#) above are clear and accurately reflect the relevant legislation?

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

Question (iii)

Do you have any further comments on the clarity or accuracy of other parts of the guidance document not affected by the issues that are subject of question (ii)?

Please provide details including any suggestions for changes to the document.

5. How to respond and next steps

CAP and BCAP are committed to considering all responses carefully and with an open mind.

5.1 Consultation process

The following summarises the consultation process and subsequent stages of CAP and BCAP's consideration of the proposals:

- The consultation will run for four weeks, closing at 5:00pm on 18 March 2025.
- CAP and BCAP will evaluate responses to this further consultation exercise, alongside responses to the original consultation, and finalise the implementation guidance accompanying the new less health product rules.
- The Committees will also evaluate responses already received relating to Parts B and C of the original concerning the new rules to reflect the less healthy product restrictions and changes to the Codes and existing guidance (see [2.4](#) above).
- The outcomes of this second consultation exercise will be reviewed alongside those from the original consultation by the ASA as the appointed frontline regulator before Ofcom is invited to approve them (as applicable) in its role as statutory body responsible for the restrictions².
- An evaluation of responses to both consultation exercises will be published on the ASA website alongside the statement confirming the outcomes.
- The final outcome will be published in Spring 2025, barring any unforeseen developments.

5.2 How to respond

CAP and BCAP invite written comments and supporting information on the proposals contained in this document by 5:00pm on 18 March 2025.

Responses via email with attachments in Microsoft Word format are preferred to assist in their processing.

Please send responses to: andrewt@cap.org.uk

If you are unable to respond by email you may submit your response by post to:

Regulatory Policy Team
Committee of Advertising Practice
Castle House
37-45 Paul Street
London, EC2A 4LS

² Normally, the ASA agrees to have regard to CAP and BCAP guidance on the Codes when considering relevant cases. The ASA has final say over the interpretation of the Codes and is not strictly bound by any guidance produced. Given the applicable statutory duties and the fact that the ASA alone has been designated by Ofcom in relation to the ODPS and online restrictions, it takes direct responsibility for the co-regulatory relationship underpinning the less healthy food restrictions. This includes formal ownership of the guidance being developed through this consultation process.

5.3 Confidentiality


CAP and BCAP consider that everyone who is interested in the consultation should see the consultation responses. In the evaluation document, CAP and BCAP will publish all the relevant significant comments made by respondents and identify all non-confidential respondents. The evaluation and copies of original consultation responses will be published with the outcome of the consultation.

All comments will be treated as non-confidential unless you state that all or a specified part of your response is confidential and should not be disclosed. If you reply by email, unless you include a specific statement to the contrary in your response, the presumption of non-confidentiality will override any confidentiality disclaimer generated by your organisation's IT system or included as a general statement on your fax cover sheet. If part of a response is confidential, please put that in a separate annex so that nonconfidential parts may be published with your identity. Confidential responses will be included in any statistical summary of numbers of comments received.

Contact us

Committee of Advertising Practice
Castle House
37-45 Paul Street
London, EC2A 4LS

Telephone: 020 7492 2200
Textphone: 020 7242 8159
Email: enquiries@cap.org.uk

 Follow us: [@CAP_UK](https://twitter.com/CAP_UK)