

CAP and BCAP Consultation

Implementing further restrictions on advertising for “less healthy” food and drink products

Annex D: Proposed amendments to the HFSS branding guidance



Explanatory notes for Annex D

This annex provides a mark-up of proposed changes to CAP and BCAP's existing guidance, [*Identifying brand advertising that has the effect of promoting an HFSS product*](#). This guidance advises affected parties on an important aspect of the scope of the HFSS restrictions.

The proposed amendments to the guidance below should be read in conjunction with Part C of the [consultation document](#) concerning proposed consequential amendments to the existing rules and guidance responding to the implementation of the new less healthy product rules.

Readers should note that proposed deletions are struck through and additions are shown in red text.

Identifying brand advertising that has the effect of promoting an HFSS product

Advertising Guidance

Foreword

The Committee of Advertising Practice (CAP) offers guidance on the interpretation of the UK Code of Advertising (the CAP Code) in relation to non-broadcast marketing communications.

The Broadcast Committee of Advertising Practice (BCAP) offers guidance on the interpretation of the UK Code of Broadcast Advertising (the BCAP Code) in relation to broadcast advertisements.

Advertising Guidance is intended to guide advertisers, agencies and media owners on how to interpret the Codes but is not a substitute for those Codes. Advertising Guidance reflects CAP's and/or BCAP's intended effect of the Codes but neither constitutes new rules nor binds the ASA Councils in the event of a complaint about an advertisement that follows it.

For pre-publication advice on specific non-broadcast advertisements, consult the CAP Copy Advice team ~~by telephone on 020 7492 2100, by fax on 020 7404 3404 or you can log a written enquiry via our~~ [online request form](#).

For advice on specific TV advertisements, please contact [Clearcast](#).

For the full list of Advertising Guidance, please [visit our website](#).

1. Scope

This Advertising Guidance is intended to give greater clarity on when the rules that govern the advertising of products high in fat, salt or sugar (HFSS) apply.

HFSS products can be promoted both directly, by including them in an advertisement, and indirectly, through the use of brands or branding that is synonymous with a specific HFSS product. This can be through product-related branding or, more broadly, company or corporate branding.

HFSS products are food or soft drink products that are assessed as being high in fat, salt or sugar in accordance with the ~~Department of Health nutrient profiling model~~. **Department of Health and Social Care's Nutrient Profiling Technical Guidance issued in 2011. Information on the nutrient profiling model is available on the Department of Health and Social Care website [here](#).**

Both the CAP Code and the BCAP Code include specific rules on HFSS product advertising restricting **their** placement and content (see ~~section~~ part 3 of this guidance).

Those restrictions do not apply to:

- advertisements for non-HFSS products;
- **advertisements for identifiable HFSS products that are also classified as 'less healthy' in accordance with the specific provisions of the Communications Act 2003 (as amended)¹, appearing on TV and in on-demand programme services (ODPS), which are prohibited between 5.30am and 9.00pm (subject to limited exemptions), and at any time in paid media online; or**
- brand advertising and brand sponsorship that does not have the effect of promoting a specific HFSS product.

CAP and BCAP acknowledge that differentiating an HFSS product advertisement from a brand advertisement is not always easy. This Advertising Guidance is intended to help the ASA and Clearcast, along with advertisers, agencies and media owners, to achieve a common understanding of where to draw the line between HFSS product advertisements and brand advertisements.

¹ **The statutory restrictions on identifiable less healthy food or drink product advertisements were introduced by Government through amendments to the Communications Act 2003. Ofcom is responsible for the restrictions as part of its general functions under the Act. The ASA has been designated by Ofcom as frontline regulator responsible for enforcing the less healthy product advertisement restrictions.**

2. Restrictions on advertising for HFSS products

Both The UK Advertising Codes have dedicated content and placement restrictions for HFSS product advertising:

- CAP Code [section 15](#) includes rules 15.14 (promotional offers), 15.15 (use of licensed characters and celebrities) and 15.18 (placement of HFSS product advertising).
- BCAP Code [section 13](#) includes rules 13.9 (promotional offers) and 13.10 (use of licensed characters and celebrities), and [section 32](#) includes rule [32.22](#) ~~32.5~~ (scheduling of HFSS product advertising).

In addition to the HFSS rules, special restrictions apply to certain HFSS products. Reflecting specific provisions of the Communications Act 2003 (as amended), advertisements for identifiable food or drink products that are classified as less healthy are prohibited:

- between 5.30am and 9.00pm on TV (see BCAP Code rule 32.21);
- between 5.30am and 9.00pm in ODPS (see CAP Code Appendix 2 rule 30.16); and
- in paid online media (see CAP Code rule 15.19).

Dedicated guidance on the application of the less healthy product advertising rules is available [here](#).

3. Differentiating HFSS product ads from brand ads

The specific guidance in part 4 (Scenarios) is subject to the following principles:

~~The restrictions on advertisements for HFSS products have been introduced against a background of concern about childhood obesity. Efforts are being made to reduce the demand for less healthy food and soft drink options and to encourage the promotion of healthier alternatives and a healthy, active lifestyle to children. That provides important and relevant context to the application of the HFSS product advertising rules and can help develop an understanding of the spirit and purpose of a brand advertisement.~~

- a. The HFSS restrictions do not apply to advertisements for food or soft drink products that are assessed as not being high in fat, salt or sugar in accordance with the nutrient profiling **model** scheme [published](#) by the Department of Health and Social Care.
- b. Differentiating an HFSS product advertisement from a brand advertisement is not always easy. This guidance sets out scenarios in which that problem could arise and provides CAP and BCAP's opinion on whether the ad amounts to an HFSS product advertisement.
- c. The list of scenarios is not exhaustive, and it is for the ASA to decide on a case-by-case basis whether an advertisement has the effect of promoting an HFSS product and should therefore be subject to the HFSS product advertising rules.
- d. CAP and BCAP strongly advise that advertisers should exercise caution and not rely entirely on the scenarios outlined in this Guidance because other factors could lead to an advertisement being judged to be an advertisement for an HFSS product and not a brand advertisement or vice versa. Use of a brand that conforms to one of the scenarios "unlikely to be regarded as an ad for an HFSS product", set out below, might still be judged to promote an HFSS product if the ASA considers that the overall content and context of an ad is likely to have the effect of promoting one.
- e. This guidance applies to advertisements **not subject** to the UK Advertising Codes' scheduling and placement prohibitions on identifiable advertisements for less healthy food and drink products. The guidance **does not** provide advice on how those rules should be interpreted. For guidance on the application of the scheduling and placement prohibitions on identifiable advertisements for less healthy food and drink products see [here](#).

4. Scenarios

<u>Likely to be an ad for an HFSS product</u>	<u>Unlikely to be an ad for an HFSS product</u>
<p>1 An advertisement refers to or prominently features an identifiable HFSS product.</p>	<p>An advertisement neither refers to nor prominently features an identifiable HFSS product.</p>
<p>2 An advertisement contains a direct response mechanic relating to a specific HFSS product.²</p>	<p>An advertisement does not contain a direct response mechanic relating to an HFSS product but may encourage an audience to buy a non-HFSS product or may directly promote a specific range of products where the products in that range are mainly non-HFSS.³</p>
<p>3 An advertisement refers to or features a brand name that is synonymous with a specific HFSS product.⁴ That name could be featured on other products or product variants but is inextricably linked to a specific HFSS product.</p>	<p>An advertisement for a brand that promotes a specific range of products, where the products in that range are mainly non-HFSS.³</p> <p>An advertisement for a company brand that does not promote a specific product or a specific range of products and is synonymous with an identity other than the provision of HFSS products.</p> <p>In assessing whether the brand is synonymous with an identity other than the provision of HFSS products, the ASA will take account of factors such as, the company's:</p> <ul style="list-style-type: none"> • provision of non-HFSS products; • provision of goods and services other than food and soft drink products; or • association with significant initiatives relating to education, sport, community etc. <p>If such factors are relevant but, having taken them into account, the brand name is nevertheless deemed to fall short of being synonymous with a non-HFSS identity, the advertisement is less likely to be regarded as one for an HFSS product if its theme relates exclusively to social responsibility, good causes etc.</p>

² Examples of direct response mechanics include telephone numbers and interactive links.

³ "Mainly non-HFSS" means a range where more than 50% of products sold under a range are categorized as non-HFSS under the nutrient profiling scheme.

⁴ For the purposes of this Advertising Guidance, "synonymous with" should be taken to mean "very strongly associated with".

<p>4 An advertisement refers to or prominently features a product but does not provide enough information for the audience to identify it as a product that can be nutrient profiled. The advertiser does not provide evidence that its range of that type of product is mainly non-HFSS.³ For the avoidance of doubt, an advertisement that refers to a brand name that incorporates the name of a type of food or soft drink product will not be subject to the HFSS restrictions merely because it mentions that brand name.</p>	<p>An advertisement refers to or prominently features a product but does not provide enough information for the audience to identify it as a product that can be nutrient profiled. The advertiser provides evidence that its range of that type of product is mainly non-HFSS.³</p>
<p>5 An advertisement for a brand refers to or features, for example, a strapline, celebrity, licensed character, brand-generated character or branding synonymous with a specific HFSS product.⁴</p>	<p>An advertisement for a specific non-HFSS product refers to or features, for example, a strapline, celebrity, licensed character, brand-generated character or branding synonymous with a specific HFSS product.⁴</p> <p>The guidance recognises that products and product ranges can evolve, including due to reformulation or new products coming to market. The use of branding, such as licensed characters, can be a powerful technique in promoting healthier options. Where such techniques are synonymous with a specific HFSS product, the ASA is more likely to apply HFSS product advertising restrictions where reference to the non-HFSS product is incidental to the use of the techniques.</p>


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