

ASA system submission to the Welsh Government's consultation on a healthy food environment

1. Background and Introduction

1.1. This submission is provided by the Advertising Standards Authority (ASA), the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) – the 'ASA system.'

1.2. The ASA is the UK's independent advertising regulator. We have been administering the non-broadcast Advertising Code (written and maintained by CAP) for 60 years and the broadcast Advertising Code (written and maintained by BCAP) for 18, with our remit further extended in 2011 to include companies' advertising claims on their own websites and in social media spaces under their control.

1.3. We are responsible for ensuring that advertising is legal, decent, honest, and truthful and our work includes undertaking proactive projects and acting on complaints to tackle misleading, harmful or offensive advertisements. We are committed to evidence-based regulation, and we continually review new evidence to ensure the rules and our application of them remain fit-for-purpose.

1.4. As the UK's frontline advertising regulator, the ASA brings together different statutory, co-regulatory and self-regulatory enforcement mechanisms so they appear seamless to people and businesses. Our system involves the active participation of a range of legal backstops in the consumer protection landscape. We work closely with a network of partners including Ofcom, the Gambling Commission, the Information Commissioner's Office, the Medicines and Healthcare products Regulatory Agency, the Financial Conduct Authority and the Competition and Markets Authority.

1.5. Through the sharing of information, joined-up enforcement action and referral processes, our partners bolster our regulation and assist us, where necessary, to bring non-compliant advertisers into line. Together, this 'collective regulation' helps to protect people and responsible business from irresponsible ads: ads that mislead, harm or offend their audience.

1.6. We bring together the ad industry and media owners to set, maintain and police high standards. The UK Advertising Codes are drafted and maintained by the industry committees of CAP and BCAP, supported by experts in our Regulatory Policy team. This means businesses have a direct stake and an enlightened self-interest in adhering to the standards they set and creates a level-playing field amongst them. There are multiple checks and balances in place to ensure the committees' development of rules and guidance is transparent, open to scrutiny and adheres to the principles of good regulation. These include calls for evidence and public consultations; mandatory regard to the advice of an expert independent consumer panel; Ofcom signing off on BCAP rule changes; the ASA System's processes being open to judicial review and more besides. All to ensure the system is wholly accountable to everyone with a stake in advertising.

1.7. The UK Advertising Codes include rules reflecting specific legal provisions and rules developed through separate regulatory process, which in combination ensure ads don't mislead, harm or seriously offend their audience. The inclusion of the rules in the UK Advertising Codes has enormous one-stop-shop benefits for the marketing industry in their application of the rules and for consumers, who benefit from the protection they afford.

1.8. In addition to investigating ads, we also provide a wealth of training and advice services (most of which are free) for advertisers, agencies and media to help them understand their responsibilities under the Codes and to ensure that fewer problem ads appear in the first place. CAP and BCAP provided over 850,000 pieces of advice and training in 2021.

1.9. The ASA system is providing this written submission in response to the Welsh Government's consultation on a healthy food environment.

2. ASA position on HFSS promotions restrictions

2.1. The Advertising Code covers both traditional advertising appearing in paid-for space and marketing communications that appear in marketers' own space online (both websites and social media). Additionally, the Code covers promotional marketing, and applies to communications not in paid ad space (e.g. at point of sale in-store and on-pack) that includes promotional marketing.

2.2. There are two general areas where the ASA might be made aware of a promotion relevant to the Welsh Government's consultation: through its complaint handling or the course of its proactive monitoring activities. These are:

- Promotional marketing (e.g. leaflets or promotional displays) present at the point of sale (i.e. in-store, proximate to the checkout facilities); and
- Marketing communications on marketers' own websites (including e-tail platforms, online grocery sites etc.).

2.3. The Welsh Government's proposals include restrictions on particular kinds of commercial activity and are similar to proposals made by the UK Government on promotions in England which the ASA has [responded to](#).

2.4. The proposals concern business practices in areas not wholly covered by the remit of the CAP Code. They are also highly complex in terms of the tests to be applied in order to identify commercial practices that are in scope. As such, it would not be effective to attempt to reflect the restrictions in the CAP Code. We will however work to ensure that the protections we maintain in this area are highly unlikely, in practice, to lead marketers to undertake promotions prohibited by the new legal restrictions (see paragraph 2.10).

2.5. The ASA will still play a part in supporting the compliance work of Trading Standards Officers. It is a principle of the CAP Code that advertising must be lawful (rule 1.10). If we identify instances of promotions likely to be covered by the new regulations, we will of course refer them to the relevant authorities for action. This will include any cases found as a result of our proactive monitoring work.

2.6. This is in line with the CAP Code's approach to enforcement where there are underlying statutory frameworks governing advertising. The Scope of the Code IV(I) states:

"In relevant cases the ASA will have regard to existing statutory enforcement bodies. The ASA reserves the right to refer complainants to the relevant statutory regulator in cases where a complaint about a marketing communication relates to a Code rule that reflects a legal provision for a regulated product."

2.7. In practice, the number of referrals is likely to be limited. Our experience tells us that the number of complaints from members of the public are likely to be low. Those such as NGOs with

more knowledge of the regulatory regime are likely to be aware that local authorities are the relevant enforcement bodies.

2.8. In 2021, we received in total 43,325 complaints related to 22,115 cases. Of these 53 complaints were related to HFSS advertising. In 2021, we referred 156 advertisers to Trading Standards and other statutory backstops, none of which were related to HFSS advertising.

2.9. Recognising the statutory prohibition of the promotions covered by the envisaged regulations, the ASA will assess the complaints it receives – irrespective of the issue raised by the complainant – to identify matters that should be addressed under the new regulations.

2.10. The ASA will also consider the need to provide advice or guidance to marketers so they're aware of the new restrictions and how the ASA will deal with cases that arise.

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