

# CAP and BCAP Consultation

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

**Annex A:** Proposed guidance to accompany the less health product restrictions



## Explanatory notes for Annex A

This annex includes the proposed guidance that will support the new less healthy product rules. It should be read in conjunction with Part A of the [consultation document](#):

- 2.5 (Proposed guidance) provides an overview of the content and purpose of the proposed guidance below; and
- 2.6 (Consultation questions) sets out the questions you are asked to respond to.

Readers should also have regard to 2.3 (Development of the proposed guidance), explaining CAP and BCAP's approach to Government's proposed secondary legislation (the [Advertising \(Less Healthy Food Definitions and Exemptions\) Regulations 2022](#)), which is currently subject to an ongoing Government [consultation](#) process. This is most relevant to 3.2 of the proposed guidance below on identifying products subject to the less healthy product restrictions. References to the proposed secondary legislation in this document are bracketed and highlighted to indicate their provisional nature.

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## Advertising Guidance: Advertising of less healthy food and drink products

### 1. Introduction

The UK Advertising Codes restrict children’s exposure to certain types of food and drink advertising. They include rules that reflect specific provisions of the Communications Act 2003 (as amended)<sup>1</sup>, which place restrictions on the advertising of certain types of high fat, salt and sugar (“HFSS”) product – those categorised as “less healthy”.

These additional restrictions prohibit:

- Ofcom-licensed TV services from including advertising and sponsorship for identifiable less healthy products between 5:30am and 9:00pm<sup>2</sup>;
- Ofcom-regulated on-demand programme services (“ODPS”) from including advertising and sponsorship for identifiable less healthy products between 5:30am and 9:00pm<sup>3</sup>; and
- paid-for advertisements for identifiable less healthy products aimed at UK consumers from being placed in online media at any time<sup>4</sup>.

The rules are subject to several exemptions, principally, they do not apply to advertisements for identifiable less healthy products by or on behalf of small or medium enterprises (“food or drink SMEs”).

Ofcom is the statutory body responsible for the framework underpinning the less healthy product advertising rules. Under the framework, it has appointed the Advertising Standards Authority (“ASA”) as the body responsible for frontline enforcement.

This guidance sets out criteria that determine whether an advertisement is subject to the less healthy product rules. It satisfies the statutory duties set out in the Communications Act 2003 (as amended) to produce guidance on how the ODPS and online media rules will be applied. Alongside regulated ODPS providers and advertisers placing paid-for advertisements in online media, the guidance is useful for others involved in preparing and publishing these advertisements. It is also relevant for those ensuring compliance with the less healthy product rule for TV advertising.

Where the less healthy product rules do not apply, advertisements for HFSS products must comply with the UK Advertising Codes’ rules on HFSS advertising. These restrict the media environments where HFSS advertisements can appear and, where they are allowed, control the content of such advertisements, including by limiting their appeal to children.

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<sup>1</sup> The Health and Care Act 2022 received Royal Assent in April 2022. [Schedule 18](#) introduced amendments to the Communications Act 2003 (as amended) that placed additional restrictions on certain HFSS products; those categorised as “less healthy” as defined in the [\[Advertising \(Less Healthy Food Definitions and Exemptions\) Regulations 202X\]](#). The legislation followed an extensive process of consultation summarized in Government’s statement on the outcome, [Introducing further advertising restrictions on TV and online for products high in fat, salt and sugar: government response](#).

<sup>2</sup> Reflecting section [321A of the Communications Act 2003 \(as amended\)](#).

<sup>3</sup> Reflecting section [368FA of the Communications Act 2003 \(as amended\)](#).

<sup>4</sup> Reflecting section [368Z14 of the Communications Act 2003 \(as amended\)](#).

## 2. Background

### 2.1 Using this guidance

The less healthy product advertising rules rely on several criteria (covering the status of the product, the status of the advertiser, the media used and whether the advertisement is for an identifiable product) to determine their scope of application. Part 3 of this guidance helps users to assess each advertisement in a campaign to determine whether it is subject to the less healthy rules and satisfy themselves that a given advertisement is compliant. If a food or drink advertisement is not within scope of the less healthy product rules, guidance users should then consider other rules in the UK Advertising Codes that may apply to their food and drink marketing.

### 2.2 Ofcom's role

Ofcom is the statutory body with responsibility for the less healthy product advertising restrictions as part of its wider role as the UK's communications regulator. Under the relevant parts of the Communications Act 2003 (as amended), Ofcom has powers to designate an appropriate regulatory authority as frontline regulator for their enforcement. In July 2023, it [confirmed](#) the co-regulatory arrangements for each of the restrictions and the designation of the ASA as frontline regulator.

Under these arrangements, Ofcom retains statutory backstop powers. These may be used, for instance, where a party does not co-operate with the ASA, including by failing to comply with an ASA ruling. In such circumstances, the ASA can refer the matter to Ofcom, which has powers to investigate, request information and take enforcement action.

### 2.3 ASA's role

The ASA is the independent body that administers the UK Advertising Codes, which are authored by the Committees of Advertising Practice (CAP and BCAP). It also ensures that the self-regulatory system works in the public interest. The ASA has enforced the Codes' rules on HFSS advertising since 2007.

In accordance with the designation of the ASA as regulatory authority responsible for frontline enforcement of the less healthy product advertising restrictions, the UK Advertising Codes have been revised to incorporate rules reflecting the relevant provisions of the Communications Act 2003 (as amended). The ASA has asked the Committees of Advertising Practice, as the bodies that author the UK Advertising Codes, to develop this guidance on its behalf, although it retains ultimate responsibility for it under the terms of the designation.

In administering the less healthy product rules, the ASA will consider relevant advertisements in line with its established [case-handling processes](#) to determine whether they have breached the rules. It may seek advice from and/or refer relevant cases to Ofcom (for instance, in the case of serious or repeated non-compliance).

### 2.4 Status of this guidance

This guidance has been produced to satisfy relevant statutory duties. The Communications Act 2003 (as amended) includes duties for the relevant regulatory authority to develop guidance on the application of the less healthy product advertising restrictions to advertising

included in ODPS (section [368C](#)) and in online media (section [368Z18](#)). It must consult the Secretary of State before drawing up or revising the guidance, and with those stakeholders affected by the guidance.

Although it supports compliance with less healthy product advertising rules that reflect legislation, this guidance does not constitute legal advice and does not limit the ASA's (or Ofcom's) discretion to determine whether advertising is compliant with the rules. The ASA will have regard to the guidance when considering relevant advertisements.

## 3. Application of the less healthy product advertising rules

### 3.1 Overview

In-scope advertisements for identifiable less healthy food or drink products must comply with the following rules:

- BCAP Code rule 32.21 prohibits such advertisements from being included in [Ofcom-regulated TV channels](#) between 5:30am and 9:00pm;
- CAP Code [Appendix 2](#) (Advertising rules for on-demand services regulated by statute) rule 30.16, prohibits such advertisements from being included in [Ofcom-regulated ODPS](#) between 5:30am and 9:00pm; and
- CAP Code rule 15.19 prohibits [paid-for advertisements](#) for such products aimed at UK consumers from being placed in online media at any time.

The guidance below explains how the relevant provisions of the Communications Act 2003 (as amended) upon which the rules are based should be understood. It has appropriate regard to the UK Government's [policy statement](#) on the new restrictions including indications of their intended scope such as the exclusion of owned-media and certain types of brand advertising.

The rules are also subject to several exemptions reflecting legislation:

- advertising by or on behalf of small or medium enterprises (“food or drink SMEs”);
- business-to-business advertising in online media;
- advertisements in online media which are not intended to be accessed principally by persons in the UK;
- advertising in online services connected to Ofcom-regulated radio services, which are the same or substantially the same as items broadcast by a relevant radio service digitally or in analogue form; and
- advertisements included in other online audio services provided they are not visual advertisements.

Readers can use the relevant hyperlinks in this document to link to the definitions and guidance for each of the criteria involved. Broadly, the criteria are set out in order of the tests that guidance users should apply to determine whether a particular advertisement is subject to the less healthy product rules.

### 3.2 Products in scope

Where an HFSS product, as defined by the Department of Health and Social Care (DHSC) 2004-2005 nutrient profiling model, is also within one of the categories set out in the schedule to the [\[Advertising \(Less healthy Food Definitions and Exemptions\) Regulations 202X\]](#), it is classified as less healthy and is subject to the less healthy product advertising rules.

HFSS products are identified through nutrient profiling, which involves apportioning positive and negative scores to different nutritional aspects of a 100g reference amount of a product. HFSS products are those foods scoring 4 or more points, and drinks scoring 1 or more points.

DHSC's [Nutrient Profiling Technical Guidance](#), which accompanies the 2004-2005 nutrient profiling model, provides detail on the nutrient profiling calculation, and includes a range of case studies and examples. Guidance users should note that this model has been in place for the purposes of BCAP's HFSS for TV advertising since 2007 and for CAP's non-broadcast HFSS rules since 2017.

Guidance users must have regard to the [\[Advertising \(Less healthy Food Definitions and Exemptions\) 202X\]](#) Regulations and the [Nutrient Profiling Technical Guidance](#) to demonstrate the status of their products showing they have made an appropriate assessment. This information should be available for the ASA to assess in the event that it has cause to investigate the advertisement's compliance with the relevant rules.

### **3.3 Parties subject to the less healthy product advertising rules**

Although the rules apply to advertisements for identifiable less healthy products, the legislation does not explicitly define an "advertiser". The status of the party ultimately responsible for placing an advertisement is a relevant consideration to the assessment of whether an advertisement is within scope of the rules.

Firstly, there is an explicit exemption from the scope of the TV, ODPS and online media restrictions for advertisements by or on behalf of food or drink SMEs, and for the online media restriction where the person paying for an advertisement to be placed is a food or drink SME. These are businesses which involve or are associated with the manufacture or sale of food or drink, and have 249 or fewer employees. The full criteria that determine the scope of the SME exemption are set out in the [\[Advertising \(Less healthy Food Definitions and Exemptions\) \(England\) Regulations 202X\]](#). Guidance users must have regard to the Regulations, if they wish to confirm that a particular advertiser is covered by the food or drink SME exemption. This information should be available for the ASA to assess, in the event that it has cause to investigate the advertisement's compliance with the relevant rules.

As the restrictions apply to advertisements for identifiable less healthy products, advertisers most likely to be subject to the rules are businesses involved in or associated with the manufacture or sale of food or drink.

Advertisements for identifiable less healthy products involving other advertisers are likely to be within scope of the restrictions where there is an association with a business involved in or associated with the manufacture or sale of food or drink that results in the advertisement being placed. In making this determination, the ASA will consider the extent to which relevant information, including any commercial relationship between the two parties, sheds light on the association between the two parties. For example, advertisements for:

- an out-of-home delivery provider that includes an identifiable less healthy product as a result of an arrangement with a restaurant selling the product; or
- a charity event that includes an identifiable less healthy product as a result of partnership with a business that manufactures or sells the less healthy food or drink.

Ofcom regulated TV broadcasters and ODPS providers are responsible for compliance with the less healthy product advertising rules applying to their respective media. They should satisfy themselves that parties placing advertisements comply with the relevant rules, where an advertisement falls within scope. Advertisers are responsible for ensuring their own compliance with the rule relating to online media.

### 3.4 Media and scope

This section details each of the media covered by the less healthy product advertising rules. Full text of the rules is included in part 4 of the guidance below.

- I. **Television rule** – BCAP Code rule 32.21 applies to advertisements for identifiable less healthy products included in Ofcom-licensed TV services between 5:30am and 9:00pm. The rule will be applied in line with the BCAP Code, which sets out its remit over advertisements in Ofcom-licensed television services in the Code's ['Introduction'](#) (see (a)).

Rule 32.21 also applies to advertisements under a sponsorship agreement, and anything else under a sponsorship agreement that is included in a TV service outside of programming, for example, programme sponsorship credits. These are regulated by Ofcom under rules in [section nine](#) of Ofcom's Broadcasting Code (Commercial references on TV), which require that sponsorship credits comply with the BCAP Code. The ASA will refer complaints concerning sponsorship credits to Ofcom.

- II. **ODPS rule** – CAP Code [Appendix 2](#) (Advertising rules for on-demand services regulated by statute) rule 30.16 applies to advertisements for identifiable less healthy products included in Ofcom-regulated ODPS between 5:30am and 9:00pm. Advertising "included" in a regulated on-demand service is defined as advertising that can be viewed by a user of the service as a result of the user selecting a programme to view. In-scope advertising for an identifiable less healthy product that appears on the service, but not as a result of the user selecting a programme to view, is not in scope of the ODPS rule, but would be subject to the online media rule (see (III) below).

ODPS that are subject to the rules contained in Appendix 2 must ensure compliance with the less healthy product rule. The ASA will enforce the ODPS rule against media service providers.

The less healthy product restriction also applies to sponsorship announcements included in Ofcom-regulated ODPS. These are regulated by Ofcom under its [ODPS Rules and Guidance](#), which includes provisions reflecting the legislation. The ASA will refer complaints about sponsorship announcements to Ofcom.

- III. **Online media rule** – CAP Code rule 15.19 applies to paid-for advertisements for identifiable less healthy products placed in online media where the advertisement is directed at UK consumers. 'Paying' includes providing any consideration whether monetary or non-monetary. It includes advertisements that continue to be placed and paying under a sponsorship agreement that results in an advertisement being placed.

There are several exemptions from the scope of the less healthy product advertising rule for online media reflecting the legislation:

- business-to-business advertising in online media;
- advertisements in online media which are not intended to be accessed principally by persons in the UK;



- advertising in online services connected to Ofcom-regulated radio services, which are the same or substantially the same as items broadcast by a relevant radio service digitally or in analogue form;
- advertisements included in other online audio services provided they are not visual advertisements; and
- advertisements in regulated ODPS between 5.30am and 9.00 pm (these are subject to rule 30.16 in Appendix 2 of the Code, as detailed above).

Legislation does not provide a detailed definition of the types of online media where payment for the placement of an identifiable less health product advertisement would bring a communication within scope of rule 15.19.

The [‘Scope of the Code’](#) sets out a list of media to which the CAP Code applies. The online media listed here are highly likely to be within the scope of the less healthy product restrictions where payment for the placement of an advertisement is involved. When considering scope issues for the online rule, the ASA will have particular regard to whether payment has resulted in placement of what can reasonably be considered an advertisement by or on behalf of the party paying.

Guidance users are cautioned that the Scope of CAP Code is not an exhaustive list of all online media where the less healthy product restrictions apply. The ASA will assess instances where the remit under the CAP Code is uncertain on a case-by-case basis liaising with Ofcom as the statutory co-regulator.

Because the legislation applies only to instances where payment results in the placement of an advertisement, rule 15.19 is unlikely to apply to advertisers’ marketing communications appearing on their own websites, or in other non-paid-for space online under their control such as marketers’ own social media channels or apps where no payment for the placement of an advertisement is involved. For example, this includes product listings on retail sites or delivery apps provided the underlying commercial relationship with the manufacturer or supplier does not entail a requirement for the placement of a product listing that could reasonably be considered an advertisement by or on behalf of the manufacturer or supplier.

In terms of jurisdiction, the legislation underpinning the less healthy product rules does not bring within scope advertisements that are not intended to be accessed principally by persons in any part of the UK. This reflects the [approach](#) taken by the CAP Code, which covers advertisements appearing in UK paid-media online and advertisements directed at UK audiences appearing paid-for space online where the advertiser is located outside the UK. The CAP Code does not cover advertisements that appear in non-UK paid-online media that are not directed at UK audiences.

### **3.5 “Identifiable” less healthy product advertisements**

An advertisement is for an identifiable less healthy product, if people in the UK can reasonably be expected to identify the advertisement as being for that product.

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.

This part of the guidance sets out (I) factors likely to lead the ASA to conclude that an advertisement is for an identifiable less healthy product, and (II) factors that are likely to lead the ASA to conclude otherwise. It also explains (III) how the rules apply to the use of branding, and (IV) how combinations of different factors and branding will be assessed by the ASA when considering whether an advertisement falls within scope of the less healthy product advertising rules.

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 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. They are also distinct from generic products (e.g. 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.

I. **References, imagery, or other representations likely to result in an ad for an identifiable less healthy product** – If one or more of the following factors is present in an advertisement, the ASA is likely to consider that the advertisement is subject to the less healthy product rules.

- a) Text or audio references that include the name of a specific less healthy product (as distinct from variants of that product, such as different flavours). The name could be included in text as part of a simple headline, strapline or wider claim, or in audio content like jingles, music or other audio cues.
- b) Imagery or other representations of a specific less healthy product in its packaging that are sufficiently prominent for consumers to recognise it. A product shown in its packaging is likely to be straight-forwardly identifiable through the visibility of the product's name or other identifying features.
- c) Imagery and other representations of a specific less healthy product not in its packaging that is sufficiently prominent for consumers to recognise it. Although direct identifiers usually included on-pack are not present, the product might be recognisable owing to characteristics, like a distinctive product shape, marks, or other design features. This includes distinctive parts of a product, such as a piece of a chocolate bar or cake. Such attributes must relate to a specific product as opposed to a range of products.
- d) References to, or imagery or other representations of one or more specific less healthy products in an advertisement for multiple products even though other products depicted are not categorised as less healthy. For example, basket of goods price comparison ads by retailers that include less healthy products in ways that make them prominent enough for consumers to recognise them will be subject to the less healthy product rules.
- e) Advertisements that do not aim to promote food or drink products manufactured or sold by the advertiser as the direct focus, such as those promoting customer service experience or loyalty schemes, are likely to be within scope of the less healthy product rules, if a less healthy product is included with sufficient prominence for consumers to recognise it.
- f) References to, or imagery or other representations of a specific, named less healthy product as part of a promotional offer like '2 for 1' offers or a meal deal.
- g) Background imagery or other representations of a specific less healthy product that is sufficiently prominent for consumers to recognise it. For example, the product might be included as a graphical background or wallpaper to a creative, in a table scene intended to contextualize the main product promoted, or as part of a creative promoting a serving suggestion.
- h) Stylised representations of products that include sufficient characteristics to render them identifiable to people viewing an advertisement, for example, a cartoon or animated representation of a product.

- II. **References, imagery, or other representations not likely to result in an identifiable less healthy product advertisement** – Using the following factors in an advertisement that does not include any of the factors listed in (I) above is unlikely to result in the ASA considering that the ad is within scope of the less healthy product rules. However, in some scenarios, the factors listed in this section may render the advertisement within scope when used in combination, including with pieces of branding discussed in (III) below, if the approach is likely to lead people to identify a specific product. See also (IV) below, which sets out the approach to assessing combinations of factors and branding.

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).
  - A product in a range with a standardized shape that results in products being indistinguishable without their packaging, like an easter egg.
  - An unbranded soft drink shown as a mixer included in an advertisement for an alcohol product.
  - A generic product shown as part of a serving suggestion or to provide context to the promotion of an out-of-scope product, such as a table scene in a Christmas-themed creative.
- b) References to, or imagery or other representations of out-of-scope specific products that share significant similarities with in-scope less healthy products in the same range provided the advertisement identifies only the out-of-scope product and/or the range to which the products belong.
- c) Incidental depictions of in-scope products that people are unlikely to be able to recognise when viewing an advertisement in real time. This could be because the product is only shown very briefly in a video or TV advertisement, or because it is of very low prominence in the background of an ad creative. For example, general imagery of supermarket shelves, or food or drink products on tables in a restaurant.
- d) Background imagery or other representations that are non-specific or abstract enough to prevent people from recognizing a specific less healthy product. For example, the background or wallpaper to an ad creative that includes animated depictions of generic burgers, doughnuts, or cakes.
- e) 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.

- f) Depictions of ingredients or products during production that are being processed into less healthy products but cannot be identified as a finished, specific less healthy product. For example, meat being ground, bread being mixed, crisps being baked, chocolate being poured, or products on a production line provided no identifiable factors are prominent enough for people to recognise a specific less healthy product.
- g) Generic descriptors of categories of food or drink product like, biscuits, burgers, milkshakes, fried chicken, or curry. Terms like these are likely to be outside scope when used in claims like “selection of snacks”, “our best cakes”, or “new pizza restaurant”.
- h) Advertisements for meal combinations, which include one or more less healthy products as part of the offer, but do not depict or refer directly to those products. For example, the advertisement focuses on out-of-scope products included in the meal combination referring only to the less healthy product(s) generically.
- i) Links to an advertiser’s own website or other space online under their control and outside scope of the rules (like marketers’ own apps or social media accounts), where less healthy products and related information are included provided no specific references or depictions are included in the originating advertisement. For instance, they might use simple URLs, such as [www.brandX.co.uk/241Deal](http://www.brandX.co.uk/241Deal), which do not include the name of a specific less healthy product or techniques like QR codes, which can only be read by a connected device. Promotions like those referred to in (IIh) can use this approach to ensure less healthy products that are part of an offer are not referred to in a way that brings an advertisement within scope of the less healthy product rules.
- j) Depictions of generic packaging with no specific product identifiers. For example, branded take-away boxes, coffee cups, drinks cartons and bags, provided the branding included on the packaging does not relate to a specific less healthy product (see (III) below). This also applies to ‘iconic’ packaging, where shapes or other design features of the pack are likely to be recognisable, provided that the packaging relates to a range of products and not a specific less healthy product, and the depiction in the ad does not have the effect of identifying a specific less healthy product within that range.

**III. Application of the less healthy product advertising rules to the use of branding** – Branding can be used in advertisements for a variety of purposes, including the indirect promotion of products that a piece or pieces of branding identify. This contrasts with more direct approaches to promotion involving references to or depictions of the specific product advertised.

“Branding” should be understood in a broad sense encompassing a diverse range of content and techniques used in advertising, such as logos, livery, straplines, fonts, colour schemes, characters, audio cues and jingles.

The use of branding in advertising will not necessarily bring an advertisement within scope of the less healthy product rules. The rules apply only where the piece of branding is so inextricably linked with a specific less healthy product that its use

would result in that product being identifiable to people viewing an advertisement. The primary example is a specific less healthy product's logo used only to identify that product. The same can apply to other pieces of branding used in a similar manner. 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.

Guidance users are cautioned that branding of this kind that is ordinarily outside the scope of the less healthy products rules when used in isolation may be within scope if used in a combination with product imagery, other product representations and/or branding that is likely to lead consumers to identify a specific less healthy product without depicting or referring to it directly. See (IV) below for further guidance on this.

Guidance users should also note that, separately, use of branding may still be subject to the UK Advertising Codes' rules for HFSS product advertising. These rules have a broader scope when considering how branding might have the effect of promoting an HFSS product. Advertisers satisfied that their advertisements are not covered by the Codes' less healthy product rules should then assess their advertisements against the relevant guidance, [Identifying brand advertising that has the effect of promoting an HFSS product](#).

- IV. Advertisements including combinations of factors and branding** – When used in isolation, the factors listed in (II) and types of out-of-scope branding set out in (III) are unlikely to result in an advertisement for an identifiable less healthy product. However, guidance users should exercise caution over combinations of factors and branding that are likely to lead people to identify a specific less healthy product without depicting or referring to it directly.

The ASA will consider the cumulative effect of the product references and depictions, and use of branding included in an advertisement. For example, a distinctive (or 'iconic') piece of packaging or depiction of a generic product that relates to a range of products and are therefore outside scope, could be rendered within scope if included in an advertisement with branding, colours, or other identifiers (like imagery of ingredients) likely to lead people to recognise a particular flavour in the range that constitutes a specific less health product.

The ASA may also have regard to underlying contractual arrangements between the party paying for an advertisement and others involved in its preparation and publication to assess the intent behind a communication as it may be relevant to determining whether an advertiser has paid to advertise an identifiable less healthy product.

#### 4. Less healthy product advertising rules

The rules and supporting information from the relevant sections of the UK Advertising Codes are set out below:

I. **Television rule**

[Final text of rule to be inserted here]

II. **ODPS rule**

[Final text of rule to be inserted here]

III. **Online media rule**

[Final text of rule to be inserted here]


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