

Compliance Report

Food and Soft Drink Advertising
Survey 2007

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1. Summary

In July 2007, new content rules for food and soft drink product advertisements were introduced in both the Broadcast Committee of Advertising Practice (BCAP) Television Code and the Committee of Advertising Practice (CAP) Code for non-broadcast advertising. The new rules, designed to help protect children's health, recognised and responded to public concern about rising levels of childhood obesity. The Government has an objective to reduce the demand for less healthy food options and encourage the promotion of healthier alternatives and a healthy, active lifestyle to children. The advertising restrictions were intended to play their part alongside many other initiatives in contributing to that objective.

This survey measures compliance with the new rules.

The rules governing food and soft drinks advertisements on radio came into effect in December 2007; so radio advertisements were not assessed in this survey.

The team did not assess television sponsorship credits: their content is regulated by the Office of Communications (Ofcom).

The Compliance team examined 292 unique food or soft drink television advertisements that appeared in July 2007. The team assessed seven direct mailings, 20 online advertisements, 33 posters, 377 press advertisements, three cinema advertisements and 27 circulars. A total of 759 food or soft drink advertisements were scrutinised. Only advertisements that included obvious or indisputable problems were recorded as breaches. The team did, however, identify three advertisements that it considered were questionable (two posters and one national press advertisement).

Six advertisements (0.8%) across all the surveyed media breached the Codes – a compliance rate of 99.2%. Of those, two were investigated by the ASA as a result of complaints.

In addition to the six advertisements picked up by the Compliance team, four other advertisements that were broadcast or published during the survey period were investigated by the ASA but were not found to breach the Codes. The ASA was investigating a complaint about a soft drink television advertisement at the time of writing.

The high compliance rate was encouraging. Only two television advertisements of 292 breached the BCAP Television Code (0.7%).

Only four of 467 non-broadcast advertisements breached the CAP Code (0.9%).

The Compliance team will continue to monitor the media and work with publishers and the BACC to ensure that the encouragingly high level of

compliance is maintained and that the vast majority of food and soft drink advertisements continue to comply with the CAP and BCAP Codes.

2. Introduction

2.1 Background

The Advertising Standards Authority (ASA) is the independent body that endorses and administers the British Code of Advertising, Sales Promotion and Direct Marketing (the CAP Code). It is responsible for ensuring that the self-regulatory system works in the public interest. It achieves that by investigating complaints, identifying and resolving problems through research and by promoting and enforcing high standards in marketing communications by ensuring advertisers observe the CAP Code. On 1 November 2004, the ASA assumed powers for television and radio advertisements under contract from the communications regulator Ofcom.

The Committee of Advertising Practice (CAP) is the industry body responsible for the UK's advertising Codes. CAP's Broadcast Committee (BCAP) is contracted by the broadcast regulator, Ofcom, to write and enforce the codes that govern TV and radio advertisements. The Committee comprises representatives of broadcasters licensed by Ofcom, advertisers, agencies, direct marketers and interactive marketers.

The Compliance team works to ensure that advertisements comply with the CAP and BCAP Codes and with ASA decisions. The team follows up ASA adjudications, monitors both broadcast and non-broadcast marketing communications and takes immediate action to ensure that advertisements that breach the Codes are removed from the media. One of the team's objectives is to create a level-playing field for marketers in each sector and it ensures that by communicating decisions that have sector-wide ramifications. The Compliance team conducts surveys (of which this is one) to assess compliance rates in particular industries, sectors or media; those surveys help to identify marketing trends and to anticipate subjects of concern that need to be addressed by the ASA or by CAP.

The new rules for food and soft drink advertising to children were phased in from 22 February 2007, when the new content rules came into effect for new TV advertising campaigns. The scheduling rules followed on 1 April 2007, stating that no TV advertisements for HFSS products were allowed in or around programmes for children (including pre-school children), or in or around programmes that are likely to be of particular appeal to children aged 4 to 9. From 1 July 2007, all TV and non-broadcast food and soft drink advertisements were required to comply with the new content rules. From 1 January 2008, no TV advertisements for HFSS products are allowed in or around programmes for children (including pre-school children), or in or around programmes that are likely to be of particular appeal to children aged 4 to 15. Children's channels have been permitted a graduated phase-in period, with full implementation required by 1 January 2009. The new content rules for radio food and soft drink advertisements came into effect on 16 December 2007.

In summary, the new, stricter, food rules for broadcast and non-broadcast advertising state that advertisements for food or soft drink products should:

- ensure that the content of advertisements does not condone or encourage poor nutritional habits or an unhealthy lifestyle in children
- not encourage excessive consumption of food or soft drink products
- not encourage the purchase of food or soft drinks by using licensed characters, celebrities or promotional offers in advertisements directed at children
- not promote the pestering of parents
- not promote consumption of a food purely to get a promotional offer
- not give a misleading impression of the nutritional or health benefits of the product.

The rules do, however, provide for fresh fruit or fresh vegetables to be advertised using techniques restricted for other food or drink products.

The BCAP Television Code includes rules that cover advertisements for products high in fat, salt or sugar (HFSS). Foods are categorised according to the Nutrient Profiling model that was developed by the Food Standards Agency (FSA) and published on 6 December 2005 (see appendix 2). Those products rated as HFSS by the FSA model are subject to scheduling and content restrictions (see appendix 3).

The HFSS product-specific rules do not apply to TV advertisements for food or drink products that are assessed as not being HFSS in accordance with the Nutrient Profiling model.

The main differences between the CAP and BCAP Codes:

- The TV Code includes scheduling and volume restrictions, as well as the content restrictions.
- The TV Code uses the FSA's Nutrient Profiling model to restrict products that are assessed as HFSS from being advertised to children
- The non-broadcast Code rules apply to all food and soft drinks, except fresh fruit and vegetables.

Because the Compliance team conducted a monitoring exercise in June 2007 that assessed the compliance rate of ads against the scheduling section of the BCAP Television Code, we did not consider the scheduling rules for the purposes of this survey.

2.2 BCAP Television Code Rules

The BCAP Television Advertising Standards Code sets out the rules that govern advertisements on any television channel licensed by Ofcom.

The specific new rules for food advertising are:

7.2 Food and Soft Drink Advertising and Children

7.2.1 Diet and lifestyle.

Advertisements must avoid anything likely to encourage poor nutritional habits or an unhealthy lifestyle in children.

Notes:

(1) This rule does not preclude responsible advertising for any products including those that should be eaten only in moderation.

(2) In particular, advertisements should not encourage excessive consumption of any food or drink, frequent eating between meals or eating immediately before going to bed. (3) It is important to avoid encouraging or condoning attitudes associated with poor diets, for example, a dislike of green vegetables.

(4) Portion sizes or quantities of food shown should be responsible and relevant to the scene depicted, especially if children are involved. No advertisement should suggest that a portion intended for more than one person is to be consumed by a single individual or an adult's portion, by a small child.

(5) Advertisements for food should not suggest that an inactive or sedentary lifestyle is preferable to physical activity.

7.2.2 Pressure to purchase

(a) Although children may be expected to exercise some preference over the food they eat or drink, advertisements must be prepared with a due sense of responsibility and should not directly advise or ask children to buy or to ask their parents or other adults to make enquiries or purchases

Notes:

(1) This extends to behaviour shown: for example, a child should not be shown asking for a product or putting it into the parent's trolley in the supermarket.

(2) Phrases such as "Ask Mummy to buy you" are not acceptable.

(b) Nothing in an advertisement may seem to encourage children to pester or make a nuisance of themselves.

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

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

(e) Advertisements addressed to children should avoid 'high pressure' and 'hard sell' techniques, i.e. urging children to buy or persuade others to buy. Neither the words used nor the tone of the advertisement should suggest that young viewers are being bullied, cajoled or otherwise put under pressure to acquire the advertised item.

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

7.2.3 Promotional offers

Promotional offers should be used with a due sense of responsibility. They may not be used in HFSS product advertisements targeted directly at pre-school or primary school children.

(a) Advertisements featuring promotional offers linked to food products of interest to children must avoid creating a sense of urgency or encouraging the purchase of excessive quantities for irresponsible consumption.

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

(c) Advertisements for collection-based promotions must not seem to urge children or their parents to buy excessive quantities of food. They should not directly encourage children only to collect promotional items or emphasise the number of items to be collected. If promotional offers can also be bought, that should be made clear. Closing dates for collection-based promotions should enable the whole set to be collected without having to buy excessive or irresponsible quantities of the product in a short time. There should be no suggestion of "Hurry and buy".

(d) If they feature large pack sizes or promotional offers, e.g. "3 for the price of 2", advertisements should not encourage children to eat more than they otherwise would.

(e) The notion of excessive or irresponsible consumption relates to the frequency of consumption as well as the amount consumed.

7.2.4 Use of characters and celebrities

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

Notes:

- (1) Advertisements must not, for example, suggest that consuming the advertised product will enable children to resemble an admired figure or role-model or that by not doing so children will fail in loyalty or let someone down.
- (2) This prohibition does not apply to advertiser-created equity brand characters (puppets, persons or characters), which may be used by advertisers to sell the products they were designed to sell.
- (3) Persons such as professional actors or announcers who are not identified with characters in programmes appealing to children may be used as presenters.
- (4) Celebrities and characters well-known to children may present factual and relevant generic statements about nutrition, safety, education, etc.

2.3 CAP non-broadcast Code Rules

The 11th edition of the British Code of Advertising and Sales Promotion came into force on 4 March 2003. The purpose of the Code is to maintain, in the best and most flexible way possible, the integrity of marketing communications in the interests of both the consumer and the trade. All advertisements should be legal, decent honest and truthful. They should be prepared with a sense of responsibility to consumers and to society and be in line with the accepted principles of fair competition.

The specific new rules for food advertising to children are:

47.6 Marketing communications should not condone or encourage poor nutritional habits or an unhealthy lifestyle in children.

47.7

a) Although children might be expected to exercise some preference over the food they eat or drink, marketing communications should be prepared with a due sense of responsibility and should not directly advise or ask children to buy or to ask their parents or other adults to make enquiries or purchases. (see 47.4a).

b) Marketing communications should neither try to sell to children by directly appealing to emotions such as pity, fear, or self-confidence nor suggest that having the advertised product somehow confers superiority, for example making a child more confident, clever, popular, or successful.

c) Marketing communications addressed to children should avoid high pressure and hard sell techniques; they should neither directly urge children to buy or persuade others to buy nor suggest that children could be bullied, cajoled or otherwise put under pressure to acquire the advertised item.

d) Products and prices should not be presented in marketing communications in a way that suggests children or their families can easily afford them.

e) Marketing communications addressed to or targeted directly at children should not actively encourage them to eat or drink at or near bedtime, to eat frequently throughout the day or to replace main meals with confectionery or snack foods.

47.8 Marketing communications featuring a promotional offer should be prepared with a due sense of responsibility. Except those for fresh fruit or fresh vegetables, food or drink advertisements that are targeted directly at pre-school or primary school children through their content should not include promotional offers.

a) Marketing communications featuring a promotional offer linked to food products of interest to children should avoid creating a sense of urgency or encouraging the purchase of excessive quantities for irresponsible consumption.

b) Marketing communications should not seem to encourage children to eat or drink a product only to take advantage of a promotional offer: the product should be offered on its merits, with the offer as an added incentive. Marketing communications featuring a promotional offer should ensure a significant presence for the product. Marketing communications for fresh fruit or fresh vegetable products are exempt from this restriction.

c) Marketing communications for collection-based promotions should not seem to urge children or their parents to buy excessive quantities of food.

d) Marketing communications should not encourage children to eat more than they otherwise would.

47.9 Licensed characters and celebrities popular with children should be used with a due sense of responsibility. Except those for fresh fruit or fresh vegetables, food or drink advertisements that are targeted directly at pre-school or primary school children through their content should not include licensed characters or celebrities popular with children.

47.10 Marketing communications should not give a misleading impression of the nutritional or health benefits of the product as a whole. Except those for fresh fruit or fresh vegetables, food or drink advertisements that are targeted directly at pre-school or primary school children through their content should not include nutrition or health claims.

47.11 Marketing communications should not disparage good dietary practice or the selection of options, such as fresh fruit and vegetables that accepted dietary opinion recommends should form part of the average diet.

Because the rules governing food and soft drinks advertisements on radio will not be introduced until December 2007, we have not referred to the Radio rules.

2.4 2007 Food Survey Objectives

The purpose of this survey was to:

- Assess compliance rates for food and soft drink advertisements, by food category and Code rule in television and in non-broadcast media, against the new content rules for food and soft drinks advertising;
- Assess compliance rates for food and soft drinks advertisements against the Advertising Codes in their entirety;
- Identify potential problems, either by food category or Code rule and resolve them and
- Act as a deterrent to bad practice and an encouragement to good practice.

3. Methodology

3.1 Sample Method

The Compliance team used Thomson Intermedia, an online provider of advertising and media intelligence in the UK, to identify the advertisements for assessment.

We assessed 292 television advertisements, seven direct mailings, 20 online advertisements, 33 posters, 377 press advertisements, three cinema advertisements and 27 circulars. The advertisements appeared in July 2007. To ensure the total number of advertisements in the survey remained manageable, we limited the sample of press advertisements to the first week in July and we selected a random sample of 27 circulars from the 1765 that the initial Thomson Intermedia search generated. In total, we scrutinised 759 advertisements.

We recorded as breaches only advertisements that obviously breached the relevant Code. We labelled as questionable advertisements that contained problematic claims. During the survey, the ASA was undertaking seven formal investigations of complaints about food and soft drink advertisements. Of those, two resulted in upheld adjudications about other aspects of the Codes (not the food rules). At the time of writing, one investigation about health claims made in a televised advertisement for a soft drink was still in progress.

We assessed the advertisements against the new food rules and also against all other applicable rules.

3.2 Where the television advertisements appeared

List 1: the Compliance team surveyed advertisements broadcast on these channels:

Abc1	MTV Dance
Anglia ITV	MTV Hits
Animal Planet	MTV2
Animal Planet	National Geographic TV
Animal Planet + 1	Nickelodeon
At the Races	Nickelodeon
Boomerang	Nickelodeon Replay
Border ITV	Paramount
Bravo	Paramount
Bravo	Paramount +1
Bravo + 1	Paramount Comedy 2
Carlton ITV	Q
Cartoon Network	Q
Central ITV	Reality TV
CH4	Reality TV
Challenge TV	Reality TV +1

Challenge TV + Channel 4 Channel 5 Discovery Discovery Discovery +1 Discovery Civilisations Discovery Health Discovery Home & Health Discovery Science Discovery Travel & Adventure Discovery Wings E4 E4 E4 + 1 EuroSport Extreme Sports Extreme Sports Channel Five Five Life Five US Flaunt FTN FX Grampian ITV Granada ITV Granada+ Hallmark Hallmark Home & Leisure Home & Leisure + 1 HTV ITV ITV 2 ITV 3 ITV 4 ITV1 ITV2 ITV3 Jetix Kerrang Kiss TV Kiss TV Living TV 2 LivingTV LivingTV + Magic TV Meridian ITV More 4 MTV MTV MTV Base	Sci-Fi Channel Sci-Fi Channel Scottish ITV Sky 1 Sky Cinema 1 Sky Moviemax 1 Sky Moviemax 5 Sky News Sky News Sky One Sky One Mix Sky Premier 1 Sky Premier 3 Sky Premier 4 Sky Sports 1 Sky Sports 3 Sky Travel 2 Smash Hits SW England ITV The Biography Channel The Box The HistoryChannel The Hits The Vault TheHistory Channel + 1 TMF Trouble TroubleReloaded Tyne Tees ITV UK Bright Ideas UK Drama UK Food UK Gold UK Gold UK Gold + 1 UK Gold 2 UK History UK Horizons UK Horizons + 1 UK Living UK Style UK Style Plus UKTV Food + 1 UKTV History + 1 UKTV People UKTV People + 1 UKTV Style Gardens UTV ITV VH1 Yorkshire ITV
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3.3 Where the press and magazine advertisements appeared

List 2: The Compliance team surveyed advertisements that appeared in these publications:

ASDA Magazine	Mirror
BBC Gardeners' World	More
BBC Good Food Magazine	Mother & Baby
BBC Good Homes	My Weekly
BBC Homes And Antiques	National Geographic
Bella	New Woman
Best	New!
Brides	News of the World
Candis	Now
Chat	Observer
Closer	OK!
Company	Olive
Cosmopolitan	Pick Me Up
Country Homes and Interiors	Practical Parenting
Country Living	Pregnancy And Birth
Daily Mail	Prima
Daily Record Scottish Edition	Prima Baby
Daily Star	Psychologies
Daily Telegraph	Radio Times
Decanter	Reader's Digest
Delicious	Real Homes
Derry Journal (Friday)	Red
Easy Living	Reveal
Elle	Rugby World
Esquire	Saga Magazine
Essentials	Sainsbury's Magazine
Eve	She
Evening Chronicle	Sky Sports
Evening Standard	Somerfield Magazine
Express	SpongeBob SquarePants
FHM	Sun
Financial Times	Sunday Express
Four Four Two	Sunday Independent
Glamour	Sunday Life
Golf Monthly	Sunday Mirror
Good Housekeeping	Sunday Telegraph
GQ	Sunday Times
Grazia	Sunday Tribune
Guardian	Sunday World Northern Ireland Edition
Heat	Take a Break
Hello	Tatler

Homes & Gardens	Tesco Magazine
House Beautiful	The Grocer
Ideal Home	The Irish Times
Independent	The Irish Times
Independent on Sunday	The Sunday Business Post
Inside Soap	TheLondonpaper
InStyle	Times
Irish Independent	Today's Golfer
Irish Mail on Sunday	Top Gear
Irish News	Top Sante Health & Beauty
Living etc	TV & Satellite Week
Loaded	TV Quick
London Lite	Waitrose Food Illustrated
Love It!	What's on TV
Mail on Sunday	Woman
Manchester Evening News	Woman and Home
Marie Claire	Woman's Own
Men's Health	Woman's Weekly
Metro London	Zest

3.4 Food and Soft Drink Categories

List 3: The food and soft drink categories identified in the Thomson Intermedia samples were:

FMCG:

Confectionery

DRINKS

Beverages

Non-alcoholic

FOOD

Bakery goods

Tinned

Cereal

Cooking ingredients

Dairy

Food range

Frozen

Ready-to-eat Meals

Sauces and Condiments

Soup

Vegetarian

RETAIL

Mail Order Food and Drink

Stores – Department – Food

Stores – Fast Food

Confectionery
Stores – Supermarket
Food
Supermarket range.

4. Findings

4.1 Compliance rate

We judged six (0.8%) had breached the Codes, a compliance rate of 99.2%.

The Survey sought to establish the proportion of food advertisements published or televised during July 2007 that complied with the Codes.

The advertisements in the survey were categorised using the 21 categories listed by Thomson Intermedia. Table 1 shows that the highest number of advertisements by category fell into the Food: Dairy category, 147 unique advertisements. No advertisements fell into the *Foods: Soup; Food: Vegetarian* and *Stores: Confectionery* categories.

Table 1: Breakdown of surveyed advertisements by media and product category

	Broadcast		Non-Broadcast						Total
	HFSS	N-HFSS	Press	Cinema	DM	Online	Posters	Circulars	
Confectionery	34	12	49	0	1	5	2	0	103
Drinks: Beverages	0	4	12	0	2	2	1	0	21
Drinks: Non- alcoholic	30	18	61	2	0	8	8	0	127
Food: Bakery	4	4	6	0	0	0	2	0	16
Food: Tinned	0	4	0	0	0	0	0	0	4
Food: Cereal	26	14	45	1	1	0	0	0	87
Food: Cooking ingredients.	3	2	12	0	0	0	0	0	17
Food: Dairy	26	28	87	0	3	0	3	0	147
Food: Range	2	0	5	0	0	0	0	0	7
Food: Fresh	3	1	20	0	0	0	1	0	25
Food: Frozen	4	0	2	0	0	0	0	0	6
Food: Ready-to- eat	5	0	16	0	0	2	1	0	24
Food: Sauces	4	3	26	0	0	0	0	0	33
Food: Soup	0	0	0	0	0	0	0	0	0
Food: Vegetarian	0	0	0	0	0	0	0	0	0
Mail Order Food	0	0	6	0	0	0	0	0	6
Stores: Confectionery	0	0	0	0	0	0	0	0	0
Stores: Dept. (Food)	2	0	0	0	0	0	7	0	9
Stores: Fast Food	21	5	4	0	0	3	8	7	48
Stores: Supermarket	14	19	26	0	0	0	0	20	79
Stores: Sup'mkt Range	0	0	0	0	0	0	0	0	0
TOTAL	178	114	377	3	7	20	33	28	759

Table 2: Press advertisements by category

Product Category	Total Advertisements
Confectionery	49
Drinks: Beverages	12
Drinks: Non-alcoholic	61
Food; Bakery	6
Food: Canned	0
Food: Cereal	45
Food: Cooking Ingredients	12
Food: Dairy	87
Food: Range	5
Food: Fresh	20
Food: Frozen	2
Food: Ready-to-eat	16
Food: Sauces	26
Food: Soup	0
Food: Vegetarian	0
Mail Order Food	6
Stores: Confectionery	0
Stores: Department Stores:	0
Stores: Fast Food	4
Stores: Supermarket Food	26
Stores: Supermarket Range	0
Total	377

Table 3: Posters by category:

Product Category	Total Advertisements
Confectionery	2
Drinks – Beverages	1
Drinks – Non alcoholic	8
Food – Bakery Goods	2
Food – Dairy	3
Food – Fresh	1
Food – Ready-to-eat Meals	1
Stores – Department	7
Stores – Fast Food	8
Total	33

Table 4: Direct Mailings by category:

Product Category	Total Advertisements
Confectionery	1
Drinks – Beverages	2
Food – Cereal	1
Food – Dairy	3
Total	7

Table 5: Online advertisements by category:

Product Category	Total Advertisements
Confectionery	5
Drinks – Beverages	2
Drinks – Non-alcoholic	8
Food – Ready-to-eat Meals	2
Stores- Fast Food	3
Total	20

Table 6: Circulars by category:

Product category	Total Advertisements
Stores: Fast Food	7
Stores: Supermarket	20
Total	27

4.2 Breaches by product category

Table 7: Number of breaches in each product category:

Product Category	Total advertisements	Breaches
Confectionery	103	0
Drinks: Beverages	21	1
Drinks: Non-alcoholic	126	1
Food: Bakery	16	0
Food: Tinned	4	0
Food: Cereal	87	2
Food: Cooking ingredients	17	0
Food: Dairy	147	2
Food: Range	7	0
Food: Fresh	25	0
Food: Frozen	7	0
Food: Ready-to-eat	24	0

Food: Sauces	33	0
Food: Soup	0	0
Food: Vegetarian	0	0
Mail Order Food	6	0
Stores: Confectionery	0	0
Stores: Department Stores (Food)	9	0
Stores: Fast Food	48	0
Stores: Supermarket: Food	79	0
Stores: Supermarket: Range	0	0
Total	759	6

As Table 7 shows, the number of breaches in each category was not proportional to the number of advertisements placed. Of the 103 advertisements in the confectionery category, none breached the Codes. The product categories with the highest number of breaches were “Food: Cereal” and “Food: Dairy”, with two breaches each. Those two categories produced two-thirds of all the breaches yet neither can truly be considered to be a problem category given that the breach rates were 2.3% and 1.4% respectively. Although we have not reproduced the advertisements or named the advertisers involved, we can describe the advertised products and the type of claim or presentation that breached the Code. (See Section 4.5).

4.3 Breaches by media type

Table 8: Number of breaches by media

Media	No of advertisements	Number	of
Television	292	2	
Press	377	3	
Circulars	28	0	
Direct mail	7	1	
Online	20	0	
Cinema	3	0	
Posters	33	0	
Total	759	6	

Half the breaches were press advertisements, although that was unsurprising given that almost 50% of the advertisements surveyed fell within that media group. The breach rate for press advertisements was 0.8%. The breach rate for television advertisements was slightly lower at 0.7%. By far the highest breach rate (14.3%) was in direct mail but that result can not be considered significant because only seven direct mailings were considered in the surveyed sample. We found no breaches in the circulars, posters, online or cinema advertisements.

4.4 Complaints

During the one month period covered by the Survey (July), seven advertisements were televised or published that were the subject of formally investigated complaints to the ASA. Of those, four complaints were not upheld, two were upheld and one was still being investigated at the time of writing.

The ASA upheld complaints against a television advertisement for a HFSS sports drink because the advertisement featured a cyclist who was not wearing reflective clothing and was not shown to have lights on his bicycle while cycling at night. The advertisement was not found to breach the food and soft drink rules. The advertisement breached rule 6.7 (Health & Safety) of the BCAP Television Code.

The ASA upheld complaints against a television advertisement for a HFSS cereal on the grounds that the advertisement misleadingly implied that a new version of the advertised product contained more protein and fibre than the original. The advertisement breached rules 5.1, 5.2.1 and 5.2.2 of the BCAP Television Code But not the specific food rules.

The ASA received complaints about a television advertisement for an HFSS confectionery product on the grounds that the advertisement was unsuitable to be broadcast before the 9pm watershed and that the advertisement was sexist and offensive. The complainants did not challenge the ad under the HFSS rules. The ASA did not uphold the complaints and ruled that the “ex-kids” timing restriction was acceptable.

The ASA investigated a complaint about whether a television advertisement misrepresented the size of the advertised HFSS fast-food product. The advertiser showed that the product shown in the advertisement was made to the same guidelines as those used in the restaurants. The ASA accepted that the product shown in the advertisement fairly represented those in the restaurants.

The ASA investigated complaints about whether a television advertisement implied that eating the advertised product could keep an unborn baby’s heart healthy. The complaints were not upheld on the grounds that the advertisement did not imply that using the advertised products would protect an unborn baby’s heart.

The ASA investigated complaints about whether a television advertisement for a supermarket misleadingly claimed that the advertiser’s bread was “made from scratch”, fish at the fish counters had never been frozen, sandwiches were freshly made in store and meat was available from a meat counter. The ASA Council ruled that the advertisement was unlikely to mislead on all counts.

At the time of writing, the ASA was investigating a complaint about a HFSS drink television advertisement that claimed “Helps protect you inside”.

4.5 Breaches identified by the Compliance team

All the breaches identified by the Compliance team occurred in non-broadcast media:

A national press advertisement for breakfast cereal claimed that children who ate breakfast every morning tended to perform better at school. The claim was based on research into one particular cereal. Because the Compliance team knew from a previous ASA adjudication that the study on which the claim was based was not robust enough to support it, and because the advertisement featured two of the advertiser's cereals that contained more sugar than the cereal used in the study, the Compliance team considered that the advertisement breached CAP Code clauses 3.1, 7.1 and 50.1.

Two magazine advertisements for eggs containing Omega 3. Both advertisements referred to a link between Omega 3 and brain development and behaviour. One claimed that Omega 3 was important for pregnant women in the last three months of pregnancy, when a baby's brain grew dramatically. Because the claims went beyond the established position on Omega 3 claims and because a link between Omega 3 and brain development was unproven, the Compliance team considered that the advertisements breached the Cap Code clauses 3.1, 7.1 and 50.1.

A tea company direct mailing that exaggerated the health benefits of drinking tea and offered a product that it claimed naturally aided detoxification. The ASA and CAP have not seen substantive evidence to demonstrate the antioxidant benefits of tea. Although they accept that drinking plenty of water and eliminating alcohol from your diet can help reduce the number of toxins in your system, the ASA and CAP expect to see clinical data to support claims that tea or other products could have the same effect. The Compliance team considered that the advertisement breached of CAP Code clauses 3.1, 7.1 and 50.1.

4.5 Questionable advertisements

The Compliance team identified three non-broadcast advertisements that it believed could be in breach of the CAP Code but did not record those problematic advertisements as breaches for the purposes of this survey. One was a regional press advertisement and the other two were posters.

A regional press advertisement for a yoghurt claimed that the product nourished skin from within. The Compliance team considered that that was a breakthrough claim and neither the ASA nor CAP had seen evidence that the oral consumption of the listed ingredients would have a skin-specific effect as implied by the advertisement. Because the CAP Copy Advice team was considering evidence sent by the advertisers, the Compliance team did not identify the advertisement as a breach.

The Compliance team considered that two posters for a soft drink could misleadingly imply that drinking the advertised product was the equivalent of consuming whole fruit.

5. Conclusion

The findings of the survey are encouraging: the compliance rate of 99.2% was excellent. Furthermore, none of the six identified breaches fell foul of the new food rules. The results showed that the food and soft drink advertising industry has successfully understood and acted upon the new rules. The industry knew long beforehand that the rules were coming and, during the period of grace before the new restrictions came fully into force, worked to ensure that all food and soft drink advertisements screened or published after the beginning of July took account of them. The compliance rate was nevertheless commendably high so soon after the new rules had been launched. The Compliance team looks forward to a similarly high compliance rate when it next surveys food and soft drink advertisements.

The rules will be reviewed to measure their impact. The Government, the FSA and Ofcom have all signalled their intention to review the effect of the rules, and in the FSA's case, the nutrient profiling model, in 2008.

We shall continue to work with broadcasters and advertisers to ensure that the level of compliance is maintained. The team will undertake another survey of food and soft drinks advertisements in 2008.

6. Pre-publication advice

Seeking free pre-publication advice from the CAP Copy Advice team is the best way to ensure that non-broadcast marketing communications do not break the Code. The team can draw on ASA research and previous ASA adjudications and is experienced at advising on the likely reaction of both the public and competitors. The team can be contacted on 020 7492 2100 (telephone), 020 7242 3696 (fax) or at copyadvice@cap.org.uk. The team responds to over 90% of all enquiries within 24 hours.

Advertisers, their agencies and the media should be aware of AdviceOnline, an up-to-date database of advice on code interpretation and how to ensure that advertisements comply with the CAP Code; it has useful links to relevant Code clauses, Help Notes and ASA decisions. CAP encourages users to subscribe to Update@CAP, its e-mail newsletter. Both services are free and available at www.cap.org.uk.

Television advertisements are sent to Clearcast, formally known as the BACC,, for pre-transmission examination and clearance at 4 Roger Street, London, WC1N 2JX; Telephone 020 7339 4700; www.clearcast.co.uk

7. Appendices

Appendix 1

Help Note for food or soft drink product advertisements and children

CAP Help Notes offer guidance for non-broadcast marketing communications under the British Code of Advertising, Sales Promotions and Direct Marketing (the CAP Code).

These guidelines, drawn up by CAP, are intended to help marketers and their agencies interpret the rules in the British Code of Advertising, Sales Promotion and Direct Marketing (the CAP Code). They neither constitute new rules nor bind the ASA Council in the event of a complaint about a marketing communication that follows them.

These guidelines should be read in conjunction with the other rules in the CAP Code. References to food apply also, where relevant, to beverages.

These definitions apply to the rules in this section:

- Children - persons below the age of 16, unless otherwise qualified as in “pre-school or primary-school children”.
- Licensed characters - those characters that are borrowed equities and have no historical association with the product.
- Equity brand characters - those characters that have been created by the advertiser and have no separate identity outside their associated product or brand.

47.6 Marketing communications should not condone or encourage poor nutritional habits or an unhealthy lifestyle in children.

Notes to 47.6:

(1) This rule does not preclude responsible advertising for any products including those that should be eaten only in moderation. An advertisement may show someone enjoying a chocolate bar but not someone eating whole boxes of chocolates in one sitting. Interpretation of the rule should be by reference to generally accepted nutritional advice.

(2) Marketing communications should not encourage excessive consumption of any food or drink, frequent eating between meals or eating immediately before going to bed. The notion of excessive consumption relates to the frequency of consumption as well as the amount consumed.

(3) Marketing communications should not condone or encourage attitudes associated with poor diets, for example, a dislike of green vegetables.

(4) Portion sizes or quantities of food shown should be responsible and relevant to the scene depicted, especially if children are involved. No marketing communication should suggest that a portion intended for more

than one person is to be consumed by a single individual or an adult's portion, by a small child.

(5) Marketing communications for food should not suggest that an inactive or sedentary lifestyle is preferable to physical activity.

(6) Marketing communications should not encourage frequent consumption throughout the day of potentially cariogenic products such as those containing sugar.

47.7

(a) Although children might be expected to exercise some preference over the food they eat or drink, marketing communications should be prepared with a due sense of responsibility and should not directly advise or ask children to buy or to ask their parents or other adults to make enquiries or purchases. (see 47.4a)

Notes to 47.7.a:

(1) This extends to behaviour; for example, a child should not be shown asking for a product or putting it into the parent's trolley in the supermarket.

(2) Phrases such as "Ask Mummy to buy you" are not acceptable.

(b) Marketing communications should neither try to sell to children by directly appealing to emotions such as pity, fear, or self-confidence nor suggest that having the advertised product somehow confers superiority, for example making a child more confident, clever, popular, or successful.

(c) Marketing communications addressed to children should avoid "high pressure" and "hard sell" techniques; they should neither directly urge children to buy or persuade others to buy nor suggest that children could be bullied, cajoled or otherwise put under pressure to acquire the advertised item.

(d) Products and prices should not be presented in marketing communications in a way that suggests children or their families can easily afford them.

Note to 47.7(d):

If an advertisement for a product to be bought or consumed by children contains a price, the price should not be minimised by words such as "only" or "just".

(e) Marketing communications addressed to or targeted directly at children should not actively encourage them to eat or drink at or near bedtime, to eat frequently throughout the day or to replace main meals with confectionery or snack foods.

47.8 Marketing communications featuring a promotional offer should be prepared with a due sense of responsibility. Except those for fresh fruit or fresh vegetables, food or drink advertisements that are targeted directly at pre-school or primary school children through their content should not include promotional offers.

Notes to 47.8:

(1) For the avoidance of doubt, this prohibition applies to food or drink advertisements only.

(2) Fresh fruit or fresh vegetables means non-prepackaged fresh fruit or fresh vegetables put up for sale to the final consumer or fresh fruit or fresh vegetables packed at the point of sale or pre-packaged fresh fruit or fresh vegetables with a view to imminent sale.

(a) Marketing communications featuring a promotional offer linked to food products of interest to children should avoid creating a sense of urgency or encouraging the purchase of excessive quantities for irresponsible consumption.

(b) Marketing communications should not seem to encourage children to eat or drink a product only to take advantage of a promotional offer: the product should be offered on its merits, with the offer as an added incentive. Marketing communications featuring a promotional offer should ensure a significant presence for the product. Marketing communications for fresh fruit or fresh vegetable products are exempt from this restriction.

(c) Marketing communications for collection-based promotions should not seem to urge children or their parents to buy excessive quantities of food.

Note to 47.8(c):

They should not suggest “Hurry and buy”, not directly encourage children only to collect promotional items and not emphasise the number of items to be collected. If promotional offers can also be bought, that should be made clear. Closing dates for collection-based promotions should enable the whole set to be collected without having to buy excessive or irresponsible quantities of the product in a short time.

(d) Marketing communications should not encourage children to eat more than they otherwise would.

Notes to 47.8(d):

(1) The notion of responsible consumption relates to the frequency of consumption as well as the amount consumed.

(2) Marketers should be particularly mindful of this rule if the marketing communication features large pack sizes or promotional offers, for example “3 for the price of 2”.

47.9 Licensed characters and celebrities popular with children should be used with a due sense of responsibility. Except those for fresh fruit or fresh vegetables, food or drink advertisements that are targeted directly at pre-school or primary school children through their content should not include licensed characters or celebrities popular with children.

Notes to 47.9:

(1) For the avoidance of doubt, this prohibition applies to food or drink advertisements only. The prohibition does not apply to advertiser-created equity brand characters (puppets, persons or characters), which may be used by advertisers to sell the products they were designed to sell.

(2) Marketing communications should not suggest that consuming the advertised product will enable children to resemble an admired figure or role-model or that by not doing so children will fail in loyalty or let someone down.

(3) Persons such as professional actors or announcers who are identified with characters in TV or radio programmes that appeal to children may not be used as presenters.

(4) Celebrities and characters well-known to children may present factual and relevant generic statements about nutrition, safety, education and the like.

(5) Fresh fruit or fresh vegetables means non-prepackaged fresh fruit or fresh vegetables put up for sale to the final consumer or fresh fruit or fresh vegetables packed at the point of sale or pre-packaged fresh fruit or fresh vegetables with a view to imminent sale.

47.10 Marketing communications should not give a misleading impression of the nutritional or health benefits of the product as a whole. Except those for fresh fruit or fresh vegetables, food or drink advertisements that are targeted directly at pre-school or primary school children through their content should not include nutrition or health claims.

Notes to 47.10:

(1) For the avoidance of doubt, this prohibition applies to food or drinks advertisements only.

(2) Nutritional claims (for example “full of the goodness of vitamin C”) or health claims (for example “aids a healthy digestion”) must be supported by sound scientific evidence. Factual nutrition statements should not imply a nutritional or health claim that cannot be supported. Ambiguous wording that could be understood as a nutritional claim should be avoided. For example, “goodness” should not be used as a synonym for “wholesomeness” and, if a claim relates to taste, that should be made clear, for example “It tastes good”,

not “It is good”. The scientific meaning of the word “energy”, calorific value, should not be confused with its colloquial meaning of physical vigour. Nutritional claims and health claims should relate to benefits that are significant and relevant to groups likely to be strongly interested in or affected by the advertisement. Claims should be presented clearly and without exaggeration. The fact that a food product is a good source of certain nutrients does not justify generalised claims of a wider nutritional benefit.

(3) Claims of nutritional or health benefits should be considered in the context of a balanced diet or lifestyle or both.

(4) A wide range of guidelines that offers best-practice advice for nutritional claims and healthy eating is available. For example, The Food Standards Agency’s Guidelines for the Use of Certain Nutrition Claims in Food Labelling and Advertising include a recommendation to avoid “% fat-free” claims (issued November 1999). The ASA will give suitable consideration to and uniform application of, such guidelines.

(5) Fresh fruit or fresh vegetables means non-prepackaged fresh fruit or fresh vegetables put up for sale to the final consumer or fresh fruit or fresh vegetables packed at the point of sale or pre-packaged fresh fruit or fresh vegetables with a view to imminent sale.

47.11 Marketing communications should not disparage good dietary practice or the selection of options such as fresh fruit and vegetables that accepted dietary opinion recommends should form part of the average diet.

Notes to 47.11:

(1) Marketing communications should not seem to contradict or ignore good dietary practice.

(2) To reflect generally accepted good dietary practice, a reasonable variety of other foods should be shown if the advertised product is presented as part of a meal.

(3) Food products not intended as substitutes for meals should not be presented as such.

Advice on specific marketing communications is available from the Copy Advice team by telephone on 020 7492 2100, by fax on 020 7404 3404 or by e-mail on copyadvice@cap.org.uk. The CAP website at www.cap.org.uk contains a full list of Help Notes as well as access to the AdviceOnline database, which has links through to relevant Code rules and ASA adjudications. (April 2007)

Appendix 2

Guide to using the FSA's Nutrient Profiling Model

A nutrient profiling model has been developed by the Agency as a tool for categorising foods on the basis of their nutrient content.

This model is what is known as a 'simple scoring' system, where points are allocated on the basis of the nutritional content in 100g of a food or drink.

There are three steps to working out the overall score for the food or drink.

1. Work out total 'A' points

A maximum of ten points can be awarded for each nutrient.

Total 'A' points = (points for energy) + (points for saturated fat) + (points for sugars) + (points for sodium)

The following table indicates the points scored, depending on the content of each nutrient in 100g of the food:

Points ⇒	Energy (kJ)	Sat Fat (g)	Total Sugar (g)	Sodium (mg)
0	≤ 335	≤ 1	≤ 4.5	≤ 90
1	>335	>1	>4.5	>90
2	>670	>2	>9	>180
3	>1005	>3	>13.5	>270
4	>1340	>4	>18	>360
5	>1675	>5	>22.5	>450
6	>2010	>6	>27	>540
7	>2345	>7	>31	>630
8	>2680	>8	>36	>720
9	>3015	>9	>40	>810
10	>3350	>10	>45	>900

If a food or drink scores 11 or more 'A' points then it cannot score points for protein unless it also scores 5 points for fruit, veg and nuts.

2. Work out total 'C' points

A maximum of five points can be awarded for each nutrient/food component.

Total 'C' points = (points for fruit, veg & nut content) + (points for fibre [either NSP or AOAC]) + (points for protein)

The following table indicates the points scored, depending on the content of each nutrient/food component in 100g of the food:

Points ⇒	Fruit, Veg & Nuts (%)	NSP Fibre ' (g)	Or AOAC Fibre ' (g)	Protein (g)
0	≤ 40	≤ 0.7	≤ 0.9	≤ 1.6

1	>40	>0.7	>0.9	>1.6
2	>60	>1.4	>1.9	>3.2
3	-	>2.1	>2.8	>4.8
4	-	>2.8	>3.7	>6.4
5*	>80	>3.5	>4.7	>8.0

*If a food or drink scores 5 points for fruit, veg & nuts the 'A' nutrient cut-off no longer applies.

3. Work out overall score

If a food scores less than 11 'A' points then the overall score is calculated as follows:

Overall score = (total 'A' points) minus (total 'C' points)

If a food scores 11 or more 'A' points but scores 5 points for fruit, vegetables and nuts then the overall score is calculated as follows:

Overall score = (total 'A' points) minus (total 'C' points)

If a food scores 11 or more 'A' points but also scores less than 5 points for fruit, veg and nuts then the overall score is calculated as follows:

Overall score = (total 'A' points) minus (fibre points + fruit, veg and nuts points only) [i.e. not allowed to score points for protein]

A **food** is classified as 'less healthy' where it scores **4 points or more**.

A **drink** is classified as 'less healthy' where it scores **1 point or more**.

Appendix 3

Restrictions on TV advertising for HFSS products:

Content restrictions:

7.2.3 Promotional offers

Promotional offers should be used with a due sense of responsibility. They may not be used in HFSS product advertisements targeted directly at pre-school or primary school children.

7.2.4 Use of characters and celebrities

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

8.3.1 Accuracy in food advertising

(c) No nutrition or health claim may be used in HFSS product advertisements targeted directly at pre-school or primary school children

Scheduling restrictions:

Children and young people 4.2.1

(b) The following may not be advertised in or adjacent to children's programmes or programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 10

(iii) food or drink products that are assessed as high in fat, salt or sugar in accordance with the nutrient profiling scheme published by the Food Standards Agency (FSA) on 6 December 2005.

Differentiating HFSS product TV ads from brand TV ads

Principles:

The HFSS product-specific rules do not apply to TV advertisements for food or drink products that are assessed as not being high in fat, salt or sugar in accordance with the nutrient profiling scheme published by the Food Standards Agency on 6 December 2005 or as amended.

Scenarios:

Likely to be regarded as an ad for an HFSS product	Unlikely to be regarded as an ad for an HFSS product
An advertisement refers to or prominently features an identifiable HFSS product.	An advertisement neither refers to nor prominently features an identifiable HFSS product.
OR	
An advertisement contains a direct response mechanic relating to a specific HFSS product.	An advertisement does not contain a direct response mechanic relating to an HFSS product but may encourage the audience to buy a non-HFSS product or may promote a range, or ranges, of different products.
OR	
An advertisement refers to or features a brand name that is synonymous with a specific HFSS product. ¹ That name could be featured on other products or product variants but is inextricably linked to a specific HFSS product.	An advertisement refers to or features a brand name. That name is synonymous not with a specific HFSS product but with a range, or ranges, of products that are sold under that name. ¹
OR	
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. (For the avoidance of doubt, an advertisement that refers to a brand name that incorporates the name of a type of food or drink product will not be subject to the HFSS restrictions merely because it mentions that brand name.)	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.
OR	
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. ¹	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. ¹

[1] For the purposes of this Guidance, “synonymous with” should be taken to mean “very strongly associated with” a specific HFSS product.