

**ASA system submission to the Science and Technology Committee
Inquiry into the Consumption of Energy Drinks**

1. Background and Introduction

- 1.1. This submission is provided by the Advertising Standards Authority (ASA), the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) – the ‘ASA system.’
- 1.2. The ASA is the UK’s independent advertising regulator. We have been administering the non-broadcast Advertising Code (written and maintained by CAP) for 57 years and the broadcast Advertising Code (written and maintained by BCAP, under contract with Ofcom) for 14 years, with our remit further extended in 2011 to include companies’ advertising claims on their own websites and in social media spaces under their control.
- 1.3. We are responsible for ensuring that advertising is legal, decent, honest and truthful and our work includes undertaking proactive projects and acting on complaints to take action against misleading, harmful or offensive advertisements. We are committed to better regulation principles and evidence-based regulation and, we continually review new evidence to ensure the rules and our administration of them remain fit-for-purpose.
- 1.4. In addition to investigating ads, we also provide a wealth of training and advice services (most of which are free) for advertisers, agencies and media to help them understand their responsibilities under the Codes and to ensure that fewer problem ads appear in the first place. CAP and BCAP provided nearly 390,000 pieces of advice and training in 2017.
- 1.5. The ASA is providing this written submission in response to the Science and Technology Committee’s Inquiry into the Consumption of Energy Drinks.

2. Advertising regulation and drinks high in sugar

- 2.1 Protecting children and ensuring advertising is responsible is at the core of what we do.
- 2.2 Energy drinks that have high sugar content come within our rules restricting advertising of food and soft drinks high in fat, sugar or salt to children, covering both broadcast and non-broadcast media.
- 2.3 Against a background of concern about childhood obesity rates, these rules respond, in large part, to evidence¹ that consistently shows that advertising has no more than a modest influence on children’s food preferences. Parents and schools continue to have the greatest and most direct impact on children’s food preferences.
- 2.4 The TV rules ban HFSS food ads in children’s TV and around TV programmes that attract a disproportionately high child audience.
- 2.5 A review of ads between 2005 and 2009 showed that those rules resulted in a 37% reduction in children’s TV HFSS food ad exposure.

¹ [CAP Consultation: food and soft drink advertising to children](#), pp 30-48 on the evidence base.

- 2.6 Now, new data suggests that trend is very likely to have continued. Children's exposure to all TV food ads is around 40% lower now than it was in 2010. The trend for the energy, sports and health drinks category is starker; exposure of under-16s to TV ads for this category of products is under a third of what it was in 2015.
- 2.7 In July 2017, recognising in particular that children now spend more time online than they do watching TV², the rules were tightened to limit children's exposure across all non-broadcast media, including, in online spaces like social media and advergames. The new rules ban HFSS food and soft drinks ads on children's websites or targeted at them on social media. They also restrict such ads in other media where children make up more than 25% of the audience.
- 2.8 Since the rules came into force, we haven't seen evidence of widespread or serious non-compliance. We are currently investigating a handful of complaints and we would be happy to alert the Committee to the outcome of the investigations in due course. We'll also be carrying out monitoring work later this year, with a particular focus on social media and online environments. We want to be absolutely sure that companies are getting it right.
- 2.9 Moreover, in July 2018 CAP will undertake a review of the new non-broadcast rules; one year after they came into force. The review will assess advertisers' compliance with the new rules; our success as a regulator in securing amendments to or removal of ads that are found to be in breach of the rules; and, the economic and other impacts of the rules, including to children's media and advertisers. CAP will publish its conclusions by the end of the year.
- 2.10 Also, BCAP is undertaking a call for evidence to assist in its regulation of TV advertising for HFSS products. As the UK Government approaches the next stage of its strategy to tackle childhood obesity, BCAP considers that it's important to provide up-to-date analysis of the latest evidence. BCAP will evaluate the latest evidence and publish its analysis in the autumn.
- 2.11 The Committee may be aware that the UK Department of Health is consulting on a new nutrient profiling model. On completion of this work, BCAP and CAP have committed to reviewing the suitability of the new model for classifying HFSS product advertising and non-HFSS product advertising.
- 2.12 In order to help advertisers comply with our rules, our Copy Advice team have been providing advice; we've launched a [new online training module](#) to help advertisers get to grips with the broadcast and non-broadcast rules on advertising food and soft drinks to children in non-broadcast media; and we've also produced various pieces of guidance.
- 2.13 This includes [new guidance on non-broadcast ad placement](#) – including online – to protect children and young people when it comes to age-restricted products such as HFSS and alcohol. Linked to this, we also published [new guidance dedicated to children and age-restricted ads online](#) – including HFSS ads. The guidance advises advertisers to use a range of interest targeting factors to complement and address some of the imperfections of self-reported age data. By doing so, advertisers of age-restricted products are better able to reach their target audience, while excluding children and young people who benefit from explicit protections under our rules. We have also produced [guidance on brand advertising](#). If a piece of branding is synonymous with a specific HFSS product, using it even without

² Ofcom research showing that youngsters aged 5-15 are spending around 15 hours each week online – overtaking time spent watching a TV set.

featuring or referencing the product itself could be a problem. The guidance helps advertisers identify such issues.

- 2.14 We remain vigilant and will respond to any new evidence or other factors that compel us to formally review the current regulations.

3. Health claims

- 3.1. While we don't prohibit the advertising of products containing caffeine to children, we have strict rules in the Advertising Codes about making health claims in ads which can include claims made for energy drinks. Only health claims listed as authorised on the EU Register of nutrition and health claims made on foods (the Register) are permitted in marketing communications for a food (including drinks). Health claims can be made through the use of images and in the overall presentation of an ad as well as in text, but, however they are represented, health claims must be presented clearly and without exaggeration.
- 3.2. The ASA has banned several ads for energy drinks because the health claims they made broke our rules. [Vitality 1 Health energy drink](#) claimed in their ad on Twitter that "All our plant ingredients have cell renewal action ... because it's fun to stay young ... #youth #antiageing". We took this to mean that if someone drank the product, it would help reduce the effects of ageing by improving cell renewal. We told them to ensure they did not make general health claims unless they were accompanied by a specific authorised health claim. We also told them not to state or imply that their product or its ingredients could prevent ageing and improve cell renewal, or to make any other specific health claims for the product or its ingredients, unless they were authorised on the Register.

4. Conclusion

- 4.1 In summary, advertisers must stick to our rules when advertising energy drinks where the content makes it a HFSS product and, therefore, cannot be targeted in children's media or in media where children make up more than 25% of the audience. Moreover, advertisers must take care when making health claims about energy drinks and by making sure they are authorised on the EU Register. We have and will continue to look into any complaints on these grounds and we have the power to ban ads which break these rules.
- 4.2 We are happy to provide the Committee with any further information they require on our regulation of energy drinks.

Contact

Shabnum Mustapha
Advertising Standards Authority
shabnumm@asa.org.uk or publicaffairs@asa.org.uk
07985 033076